



## **Frodsham Solar**

# **Written Summary of Applicant's Oral Submissions at the Issue Specific Hearing 1**



**December 2025**

PINS Ref: EN010153

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Planning Act 2008; and Infrastructure Planning (Examination Procedure) Rules 2010

## **1.0 INTRODUCTION**

- 1.1 This note summarises the oral submissions made on behalf of Frodsham Solar Limited (the Applicant) at Issue Specific Hearing 1 (ISH1) held on 2 and 3 December 2025 in relation to the application for development consent (Application) for the Frodsham Solar Farm (the Proposed Development).
- 1.2 Where the Examining Authority (the ExA) requested additional information from the Applicant on specified matters, or the Applicant undertook to provide additional information during the course of ISH1, that information is either set out in this document or otherwise submitted as part of the Applicant's Deadline 1 submissions.
- 1.3 This note does not purport to summarise the oral submissions of other parties, and summaries of submissions made by other parties are only included where necessary to give context to the Applicant's submissions, or where the Applicant agreed with the submission(s) made and so made no further submissions (this is noted within the document where relevant).
- 1.4 The structure of this note follows the order of the items listed in the detailed agenda published by the ExA [EV2-002] (the Agenda). Numbered agenda items referred to are references to the numbered items in the Agenda. The Applicant's substantive oral submissions commenced at Item 3 of the Agenda. Therefore, this note does not address Items 1 and 2 on the Agenda as these were procedural and administrative in nature.

## 2.0 WRITTEN SUMMARY OF THE APPLICANT'S ORAL SUBMISSIONS

### PART A: SUBMISSIONS MADE ON TUESDAY 2 DECEMBER

#	Agenda item	Applicant's response
3a	<b>Securing the mitigation relied on in the assessment</b>	<p>The ExA emphasised the complexity and volume of documentation associated with the application, noting the potential burden on discharging authorities if the draft Development Consent Order (dDCO) were to be made as proposed.</p> <p>The ExA indicated that they were concerned to ensure that dDCO and associated management and mitigation plans explicitly include all mitigation measures relied upon in the Environmental Statement (ES), whether set out in the main chapters or appendices. This approach was intended to ensure that no mitigation measures would be overlooked during the preparation of the detailed versions of the management plans. The ExA issued a general invitation to the Applicant to conduct a thorough audit of the ES chapters and appendices, ensuring that all relevant mitigation is reflected in the outline management plans.</p> <p>Mr Matt Fox, Senior Associate at Pinsent Masons, on behalf of the Applicant, agreed with the sentiments expressed by the ExA. Mr Fox explained that, during the preparation of the application, the Applicant's team, including the planning and legal teams had undertaken a process to ensure all mitigation identified in the ES was secured either through the dDCO or the relevant management plans. Mr Fox confirmed that this audit had been repeated as a result of the ExA's agenda and that, except for a small number of matters, all mitigation measures from the ES chapters are already secured via the draft DCO and the management plans to be certified.</p> <p>Mr Fox set out that the matters identified by the audit as needing to be dealt with were as follows:</p> <ul style="list-style-type: none"><li>• Paragraph 7.7.23 of Environmental Statement: Volume 1 Chapter 7: Terrestrial Ecology (APP-040) sets out a requirement for a 10m exclusion zone around buildings and</li></ul>

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		<p>structures in relation to protection of bats, if this cannot be achieved additional survey would be required. This needs to be added to the Outline Construction Environmental Management Plan.</p> <ul style="list-style-type: none"> <li>• Table 5-3, row 8, of the Outline Construction Environmental Management Plan (PD2-015) erroneously refers to water vole and not otters in relation to the implementation of RAMS (noting this row is in relation to otter).</li> <li>• Paragraph 7.7.49 of Environmental Statement: Volume 1 Chapter 7: Terrestrial Ecology (APP-040) sets out that non-native fish should be humanely dispatched, which needs to be added to the Outline Construction Environmental Management Plan.</li> <li>• Paragraph 8.7.6 and 8.7.8 of Environmental Statement: Volume 8: Ornithology (APP-041) refers to specific planting restrictions/proposals in relation to the NBBMA, which needs to be added to the Outline Landscape and Ecology Management Plan.</li> <li>• Paragraph 10.9.1 (vii) of Environmental Statement: Volume 1 Chapter 10: Ground Conditions (APP-043) requires a gas monitoring programme (relating to ground gasses) if permanent ground-bearing enclosed structures are adopted for the BESS/Frodsham Solar Substation, which needs to be added to the Outline Construction Environmental Management Plan</li> <li>• Paragraph 5.1.22 of the Statutory Nuisance Statement (APP-126) refers to production of an Emergency Pollution Incident Protocol within the oCEMP, where it should have referred to an Environmental Incident Management and Pollution Prevention Plan</li> </ul> <p>The ExA then sought confirmation from Mr Andrew Russell, Director of Axis Ltd, planning and EIA lead for the Proposed Development as to whether he considered that the audit was satisfactory. Mr Russell, on behalf of the Applicant agreed, stated that the plans were robust and incorporated comments from relevant representations. The ExA requested that any updates to the ES and management plans uploaded after the hearing should include both tracked changes and clean copies.</p>

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		<p>No further comments were raised by Cheshire West and Chester Council (CWACC) on this agenda item.</p> <p><b>Post hearing submission (ExA Action Point):</b> Updates have been made to the Outline Management Plans referred to above and submitted at Deadline 1 in Clean and Tracked Changes versions.</p>
3b	Submission of outline management plans and strategies	<p>The ExA referred to several post consent management plans and strategies mentioned in the application documents, seeking clarification on whether the Applicant intended to submit outline versions of these documents into the Examination.</p> <p>On behalf of the Applicant, Mr Russell explained that, at this stage, the Applicant did not consider it necessary to provide these documents in outline form. He stated that the parent management plans already submitted contained sufficient information, and that it was well established in previous Development Consent Orders (DCOs) to rely on such documents.</p> <p>Mr Russell noted that some of the requested plans would require final construction methodologies or additional assessment, which would depend on the protocols of the appointed contractors. Nevertheless, he indicated that the Applicant was willing to provide an appendix to the Outline Construction Environmental Management Plan (OCEMP) to offer further detail on the outline management plans, consolidating relevant information from different parts of the parent management plans into a single overview.</p> <p>Mr Russell highlighted that paragraph 1.3.3 of the OCEMP sets out the headlines of what should be included in each of these plans, which is then supplemented by specific commitments in the various topic tables. Where necessary, additional detail or specific requirements have then been incorporated into the topic specific tables within the parent management plans to ensure that the scope, principles and minimum standards for the subsidiary plans are clearly defined.</p>



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		<p><b>Post Hearing submission:</b> <i>It is also the case that no Interested Party have asked for further outline plans to be produced (including those listed in the agenda). Where information has been requested, this has been provided. The Environment Agency's comments in its Relevant Representation on the wording of the unexpected contamination protocol for inclusion in the oCEMP provide an example of this approach, and the Applicant has incorporated the requested changes into the revised oCEMP submitted at Procedural Deadline B (REP2-015).</i></p> <p>The ExA acknowledged that the control documents, such as the OCEMP, provided much of the necessary detail, but emphasised the need for confidence that the residual effects identified in the ES were achievable. The ExA suggested that an overview appendix to the OCEMP would be helpful and anticipated that further clarification might be sought through written questions. The ExA also indicated that at this stage it could see why it might not be considered reasonable to require all the outline management plans listed, but that this position could change depending on the outcome of the examination and discussions with other parties.</p> <p>Mr Morgan Hagman on behalf of the Environment Agency commented that the Applicant's approach was consistent with other Nationally Significant Infrastructure Projects (NSIPs) and expressed no concerns. No other parties present, either in the room or online, raised any comments.</p> <p>The ExA concluded by requesting the Applicant to reflect on what was currently secured in relation to the outline management plans and strategies, and to consider whether further detail should be added, either within the parent management plans or as appendices.</p> <p>Mr Fox, on behalf of the Applicant, confirmed that an appendix would be prepared within the outline Construction Environmental Management Plan and agreed to provide tracked changes of any updates by Deadline 1.</p>

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		<b>Post hearing submission (ExA Action Point):</b> The Applicant has prepared an appendix to the OCEMP, consolidating details of what will be included in the relevant management plans referenced in the ES and in the OCEMP itself. This is set out in the updated version of that plan submitted alongside this submission at Deadline 1.
4a	<p><b>THE DRAFT DEVELOPMENT CONSENT ORDER (including the scope of the proposed development)</b></p> <p><b>Part 1 – Preliminary Interpretation - Order limits, permitted preliminary works, commence, maintain</b></p>	<p><b>Order Limits</b></p> <p>The ExA questioned the inclusion of Frodsham Marsh Farm buildings within the Order limits, seeking clarification on why this land was necessary for the project. The ExA noted that while the Applicant had referenced previous solar farm projects, it was important for the Applicant to provide its own justification for including such areas. The ExA advised that this justification should be clearly set out in the next version of the Explanatory Memorandum.</p> <p>Mr Fox and Mr Russell, for the Applicant, explained that the Marsh Farm Buildings were included because they could be used for purposes such as equipment storage to support the grazing proposals which could be brought forward, as proposed as part of the OLEMP. Mr Fox also noted that the land was subject to an option agreement with the landowner, which allowed for use of these buildings. The ExA then went on to generally query the need for article 18 with the draft DCO (protective works to buildings) for the Proposed Development specifically and asked for a definition to be given for the use of 'emergency' in article 18 (5).</p> <p>Mr Russell gave e example of the power potentially being able to be used in order to provide protection to the Frodsham Wind Farm assets. The ExA queried if the use of such powers would be covered by Frodsham Wind Farm's Protective Provisions. Mr. Fox confirmed that it would be as such works would fall within the definition of 'authorised development' under article 2 (and thus would fall under the definition of 'specified works' in their Protective Provisions).</p>

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		<p><b>Post hearing submission (ExA Action Point):</b> <i>At Deadline 1, the Applicant has made amendments to the draft DCO to define 'emergency' in article 18(5) and provided further justification for article 18 for the Proposed Development in updates to the Explanatory Memorandum; both presented in clean and track changed versions.</i></p> <p><b>Permitted Preliminary Works</b></p> <p>The ExA sought clarification on the definition of "permitted preliminary works" ('PPWs'), particularly regarding the inclusion of archaeological intrusive works and remedial works for contamination. The ExA wanted to ensure that the scope of preliminary works was not overly broad and that appropriate controls were in place to mitigate potential impacts, especially those that could disturb the ground. The ExA also noted that page 17 paragraph (d) of the Explanatory Memorandum suggested that the PPWs do not require mitigation, which would appear to be incorrect.</p> <p>Mr Fox and Mr Russell, for the Applicant, explained the Applicant's general approach to controlling PPWs was to either include measures within Appendix 2-3 of the Environmental Statement (APP-052), as secured by Requirement 8 of the DCO, or to ensure that the relevant specific PPWs do need relevant specific DCO Requirements to be discharged before those works can take place (e.g. Requirement 18 requiring the archaeological mitigation strategy to be signed off before any archaeological investigations take place, or Requirement 17 requiring the ground conditions investigations and assessments strategy to be approved before ground conditions investigations take place).</p> <p>The ExA quoted the MHCLG Guidance on the Content of Development Consent Orders which indicates that '<i>Typical examples of matters which are not acceptable preliminary works include major earthworks, clearance of trees and ground clearing, activities affecting protected species or archaeological remains, unless appropriate controls are secured in another manner</i>'.</p>



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		<p>Mr Fox noted that the Applicant's approach mirrored that of solar DCOs both before and after the issuing of that Guidance in allowing archaeological works and site clearance to be PPWs, but that like those DCOs, 'appropriate controls' are secured, via Appendix 2-3 and their inclusion in the appropriate Requirements.</p> <p><b>Post hearing submission (ExA Action Point):</b> <i>Further to the discussions at the Hearing where Mr Fox indicated that the Applicant would consider these matters further, the Applicant has undertaken the following actions:</i></p> <ul style="list-style-type: none"> <li>• <i>amended the reference to 'intrusive archaeological surveys' in the PPWs definition to refer specifically to surveys that are required pursuant to the mitigation strategy approved under Requirement 18;</i></li> <li>• <i>amended the definition of site clearance in the PPWs (and in Appendix 2-3) to limit it to 'comprising' (i.e. a closed list) rather than 'including' vegetation removal and demolition of existing buildings and structure); and</i></li> <li>• <i>reviewed Requirement 17 and Appendix 2-3 and made updates where relevant to ensure there are appropriate controls for the PPWs.</i></li> </ul> <p><b>Commence</b></p> <p>The ExA requested that the reference to section 56 of the Town and Country Planning Act 1990 in the definition of 'commence' be changed to refer to section 155 of the Planning Act 2008. Mr Fox confirmed that this change will be made. <b>Post hearing submission (ExA Action Point):</b> <i>This change has been made in the updated draft DCO submitted at Deadline 1.</i></p> <p>The ExA noted that it was concerned that the Proposed Development involves a number of steps to be taken before certain aspects of the development can be undertaken (e.g. the NBBMA needing to be functional before solar works can commence) and was considering</p>

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		<p>whether greater certainty should be on the face of the DCO to ensure that the relevant timing restrictions are secured.</p> <p>Mr Fox, on behalf of the Applicant, noted that the Applicant considers that this is not necessary. Ultimately, the local planning authority will be able to consider whether the construction programme is acceptable in approving the detailed Construction Environmental Management Plan for the Proposed Development reflecting the various topic specific restrictions that are set out in the various topic tables within the OCEMP.</p> <p>He also went on to say that the Applicant could look to amend Requirement 9(2)(i) and (j) to provide for the Applicant to provide details of the 'programme' for the establishment of the NBBMA and Skylark Mitigation Area when discharging that Requirement.</p> <p><b><i>Post hearing submission (ExA Action Point):</i></b> <i>The Applicant maintains this position. Requirement 9 has been updated in the updated draft DCO submitted at Deadline 1 as indicated by Mr Fox at the Hearing.</i></p> <p>At the Hearing the discussion on timings also touched on Appendix 2-2 of the ES: Construction Phasing and Resourcing Schedule (APP-051), with the ExA asking whether this schedule should be updated to account for the PPWs, the establishment of the Skylark Mitigation Area, and the recent commitments given to Natural England in respect of not constructing any part of the SADA until the NBBMA is functional. The ExA acknowledged comments from Mr Fox and Mr Russell that this Schedule is indicative and not secured but that it is useful for the ExA's understanding.</p> <p>Mr Fox and Mr Russell on behalf of the Applicant confirmed that the Appendix will be updated to account for all of the above.</p>

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		<p><b>Post hearing submission (ExA Action Point):</b> <i>The Applicant has updated this Appendix in clean and track changed versions for Deadline 1.</i></p> <p><i>Alongside this, the Applicant has submitted a Traffic Technical Note, which deals with the implications of the Applicant's commitments to Natural England to construction traffic and construction worker profiles, building on the response given to Cheshire West and Chester Council ('CWaCC') on this point in item CWACC7.40 of PD2-027). This note deals also with the implications of the programme for the NBBMA establishment being delayed such that it stretches over more than one of the 'window's agreed with NE, as discussed under item 5(g) of the ISH1 Agenda.</i></p> <p><b>Maintain</b></p> <p>The ExA queried why the definition of maintain does not contain a restriction to not replace the whole authorised development, noting that this restriction appears in most solar DCOs, and in the context of the MCHLG Guidance on the Content of a Development Consent Order noting that <i>'The definition of maintenance must not be so extensive as to permit the replacement of the consented development with the construction of what is effectively a different project'</i>.</p> <p>Mr Fox noted that it is the Applicant's position that the Proposed Development's approach should be seen in the context that to date, most solar DCOs have not undertaken an assessment of a full replacement of the solar and battery infrastructure for their project; and that as a result, to ensure that those schemes stay within the parameters of their ESs, such a restriction within the definition of maintain is required. This contrasts with the Applicant's approach to the Proposed Development, which, as per the discussion on 'major replacements' later on in the ISH1 Agenda, has considered the ability to fully replace the solar and battery infrastructure of the Proposed Development and concluded that no likely significant effects arise.</p>

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		With the controls set out in the DCO (both in article 2 and article 6) that the power to maintain must not give rise to any materially new or materially difference effects that have not been assessed in the ES, the controls that will be in the OEMP and the limits of deviation shown on the Works Plans, the ExA can be confident that replacement activities will therefore be within the parameters of the ES and that there is no circumstance that such replacement will lead to the construction of a different project.
4b	<p><b>Part 3 – Streets</b></p> <p><b>Article 10.</b> Power to alter layout, etc. of streets</p> <p><b>Article 12.</b> Temporary prohibition or restriction of use of streets and public rights of way, and authorising vehicular use on public rights of way</p> <p><b>Article 13.</b> Permanent stopping up of, and creation of new public right of way and authorising</p>	<p><b>Article 10: Power to Alter Layout, etc. of Streets</b></p> <p>The ExA queried three aspects of article 10: (a) the fact that it allows for works to alter the layout of streets outside of the Order limits; (b) that paragraph (2) seems to be a power to alter any street when this should be specific and controlled; and (c) how could it be secured that such works would lead to materially new or materially different effects to those reported in the Environmental Statement.</p> <p>Mr. Fox, on behalf of the Applicant, responded as follows:</p> <p>In respect of (a) that this drafting had been proposed to enable the DCO regime to operate as intended, i.e. that it is a one-stop stop for all minor consents, alongside planning permission, that may be required for a project where the need for it may not be fully clear at the point of consent. He noted that the ability to use this power outside of the Order limits is well precedented (either through an explicit provision to say so, or there being no limitation on which street the powers to) (<i><b>Post hearing submission:</b> For example: Hynet Carbon Dioxide Pipeline, and the East Yorkshire, Byers Gill, Heckington Fen, Sunnica and West Burton solar farms</i>). Crucially, he noted that it is also the case that the use of this power is not untrammelled. It can only be used with the consent of the street authority (as per paragraph (3) of the article).</p>

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	<p>vehicular use of public rights of way</p> <p><b>Article 14. Access to Work</b></p>	<p><b>Post hearing submission (ExA Action Point):</b> Further to the request of the ExA at the Hearing to explain why such a power is needed specifically for the Proposed Development, the Applicant notes that this could be specifically used in the circumstances of the Proposed Development, by way of example on the access road from the direction of the Protos facilities. Whilst this road currently is of a sufficient standard that it not currently with the application Order limits, there may be circumstances where improvements need to be made to it (e.g. if it is damaged by the construction of the CCS enabled ERF facility that recently received planning permission on the Protos site).</p> <p>In respect of (b), paragraph (2) needs to be read alongside paragraph (1). Paragraph (1) provides consent for specific works that have been identified by the Applicant. Paragraph (2) is a more generic power, to allow for the fact that at this early stage of design, the Applicant may not have thought of every permutation of how the construction or maintenance contractor may choose to take access for the Proposed Development. Paragraph (2) is subject to street authority consent. Mr Fox went on to say that this approach (i.e. having a specific power and a separate generic power with street authority consent is a well precedented approach. (<b>Post hearing submission (ExA Action Point):</b> For example, this is the approach taken in all of the above DCOs)</p> <p>In respect of (c), it is the case that the works undertaken pursuant to article 10 (and indeed all the articles in Part 3 of the DCO) form part of the 'authorised development' as defined by article 2. This means that the carrying out of these works is subject to the Requirements in Schedule 2 to the DCO, meaning that their environmental effects are controlled.</p> <p><b>Post hearing submission:</b> The Applicant also notes that these works also fall under the ambit of highway authority involvement in the carrying out of highways works under Schedule 26 of the DCO</p>

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		<p>Following on from this discussion, the ExA asked, when considering article 11 of the DCO also, what drafting ensures that if only temporarily alterations are made to streets under article 10(2) (as that paragraph does not differentiate between temporary and permanent changes), that these works will be subject to restoration obligations. Mr Fox, on behalf of the Applicant agreed to take this point away.</p> <p><b>Post hearing submission (ExA Action Point):</b> The following drafting has been added as a new sub-paragraph (4) to article 10: "The undertaker must restore any street that has been temporarily altered under paragraph (2) to the reasonable satisfaction of the street authority". This drafting has precedent in DCOs such as the Cory Decarbonisation Project Order 2025.</p> <p><b>Article 12: Temporary Prohibition or Restriction of Use of Streets and Public Rights of Way, and Authorising Vehicular Use on Public Rights of Way</b></p> <p>The ExA questioned whether Article 12 provided sufficient justification for the generic temporary prohibition or restriction of use of streets and public rights of way, and whether it addressed the need for consent from the relevant street authority. The ExA suggested the drafting could be improved to make explicit reference to the requirement for street authority approval and queried whether the article could be limited by reference to a schedule of affected streets.</p> <p>Mr. Fox, on behalf of the Applicant, set out that, as with article 10, this approach to seeking generic powers in respect of affecting traffic on streets/rights of way (as in paragraph (1)) as well as having identified specific powers (as in paragraph (4) is well preceded (Post hearing submission (ExA Action Point): For example the East Yorkshire, Byers Gill, Sunnica and West Burton solar projects. This approach for this article was also reflected in the Model Provisions.</p> <p>Whilst the Applicant has undertaken detailed work to establish where changes to the streets/rights of way network are required for the Proposed Development, the detailed</p>



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		<p>construction methodology may identify the need for further changes; and it should be possible to do this through the regime created by the DCO rather than having to seek a separate consent.</p> <p>In respect of the consent of the street authority Mr Fox, for the Applicant, acknowledged that articles similar to this often had wording referring to the use of the powers being subject to the 'consent of the street authority', but that for the Proposed Development the proposed approach was for the consent to come via the approval of the public rights of way management plan (as set out in paragraph (6)), noting that this is a precedented approach (<b><i>Post hearing submission: For example in the Mallard Pass Solar Farm Order 2024 and the Cory Decarbonisation Project Order 2025</i></b>).</p> <p>Mr. Russell on behalf of the Applicant noted that the outline public rights of way management plan sets out numerous controls on how temporary changes to use of streets/public rights of way would be managed and that Requirement 15 provides that the relevant highway authority must be consulted on that plan by the local planning authority. This will ensure that all aspects will be able to be considered by the relevant public authorities.</p> <p><b><i>Post hearing submission (ExA Action Point):</i></b> At the Hearing, Mr Fox agreed to take away if the drafting of article 12 could be made clearer that consent is required before the powers in the article can be used. After consideration, at Deadline 1, paragraphs (1) and (4) of the DCO have been amended to provide that they are both 'subject to paragraph (7)' (as that article has been re-numbered), so it is clear that they need to be read alongside that latter paragraph.</p>

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		<p><b>Article 13 Permanent stopping up of, and creation of new public right of way and authorising vehicular use of public rights of way</b></p> <p>The discussion on this article at the Hearing focussed primarily on the concerns of National Highways in respect of the Applicant's proposals both generally, and specifically (including in the use of this article) in relation to its proposals:</p> <ul style="list-style-type: none"> <li>• to (under this article) convert the footpath on the Weaver Lane bridge to a bridleway (and thus use horses on it);</li> <li>• to (under this article) allow for the possibility of motor vehicles to use the Brooks Furlong bridge to access a new visitor car park of 10-20 spaces, if CWaCC and the Applicant consider that it is necessary/desirable to create a new carpark, where the status of that bridge is currently restricted byway; and</li> <li>• the scope of the National Highways Protective Provisions in the DCO.</li> </ul> <p>Mr Fox set out the Applicant's position as follows:</p> <ul style="list-style-type: none"> <li>• generally, the Applicant does not propose any works in the SRN or on either of the aforementioned bridges; and it had sought in its changes to the National Highways Protective Provisions at Procedural Deadline B to make this as clear as possible through excluding the relevant articles of the DCO from being able to be utilised in those areas;</li> <li>• Mr Fox noted that these exclusions incorrectly included article 13 which would be removed from the Deadline 1 DCO, and, following comments from Mr Grant, on behalf of National Highways, he acknowledged that article 12(4)(c) should not be an exception to those exclusions. <b><i>Post hearing submission: these changes have been made in the updated draft DCO submitted at Deadline 1);</i></b></li> </ul>

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		<ul style="list-style-type: none"> <li>• on this basis, the Applicant considers that the National Highways Protective Provisions do not need to be expanded to cover matters such as approval of specified works and associated indemnities/insurances and rights of inspection or the need for structural surveys of the existing bridges and the undertaking of any remedial works;</li> <li>• the parties are currently still discussing if National Highways need to be added as a consultee on other Requirements in the DCO;</li> <li>• in respect of the Weaver Lane bridge, the key question is whether the change of status to allow for horse riders to use the bridge would require an increase to the size of the parapets for the bridge. The Applicant accepts that if such changes are necessary and would involve extensive works, then this may necessitate the need for wider matters to be covered in the Protective Provisions. However, Mr Fox noted that if this was necessary, the Applicant may need to re-consider bringing forward a change in status at this location, as the potential costs may outweigh the benefits gained by allowing this change of use;</li> <li>• otherwise in respect of the Weaver Lane bridge, the Applicant's proposals do not involve a change in use in terms of motor vehicles. The Applicant has secured in the OCEMP that the bridge will not be used for construction or maintenance vehicles and whilst the DCO does allow for emergency vehicles to use the bridge, that is not a change of use – that is something that any emergency vehicle could choose to do now if there was an emergency on the Frodsham Marshes; and does not involve a change of use;</li> <li>• in respect of the Brook Furlong bridge, with the exception of the potential car park, the same principles apply and the Applicant considers that no survey or specified works approvals are required. Mr Fox noted that this bridge is currently used by: <ul style="list-style-type: none"> <li>○ cars parked on it (noting that this is visible on Google Earth over multiple years);</li> </ul> </li> </ul>

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		<ul style="list-style-type: none"> <li>○ vehicles accessing Frodsham Wind Farm;</li> <li>○ SPEN vehicles accessing a substation on Frodsham Marshes;</li> <li>○ Ship Canal vehicles accessing a berth;</li> <li>○ Environment Agency vehicles; and</li> <li>○ vehicles accessing the Hover Force business facilities; and</li> <li>○ vehicles accessing the Runcorn Modelling Flying Association premises;</li> </ul> <p>and so it is considered that a small amount of light vehicle usage of the bridge would not constitute a change of use from how the bridge is currently used.</p> <p><b><i>Post hearing submission: The Applicant's project team has also noted that:</i></b></p> <ul style="list-style-type: none"> <li>• <i>there is no signage on the approach to either side of the bridge to indicate that vehicles are not authorised to use the bridge;</i></li> <li>• <i>when Hover Force's planning application was brought forward inclusive of use of the bridge for access, National Highways did not object to the application;</i></li> <li>• <i>there is unofficial speed limit signage adjacent to Brook Furlong once the M56 is crossed when approaching from Frodsham village;</i></li> <li>• <i>National Highways and police vehicles have been seen parked on the bridge observing traffic movements on the M56; and</i></li> <li>• <i>the design of the bridge involves a metalled road and an associated pavement, suggesting a clear expectation of differing traffic movements.</i></li> </ul> <p>There was then discussion at the Hearing as to the extent to which National Highways are aware of, or have specifically authorised, motorised vehicle usage of the Brook Furlong bridge, with the ExA making the point that to the extent that the DCO 'formalises' something that is happening informally is not necessarily adequate to say that the Applicant's proposals are acceptable if</p>

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		<p>National Highways has not accepted those informal uses and that therefore the Applicant should not seek to solely rely on those past uses to make the case that its proposals are acceptable.</p> <p>Mr Fox noted this and confirmed that this (and the other matters mentioned above) would continue to be discussed with National Highways (noting that much of the above post hearing submissions would suggest that National Highways are aware of the vehicular usage of the bridge) and an update would be provided at Deadline 1.</p> <p><b><i>Post Hearing Submission (ExA Action Point):</i></b> <i>The Applicant has exchanged a number of emails with National Highways and the latest position is set out in the Statement of Common Ground also submitted at Deadline 1.</i></p> <p>Finally in respect of article 13, the ExA queried if the power under article 13(7) to allow motor vehicles to use public rights of way was permanent. Mr Fox, on behalf of the Applicant, confirmed that this is correct, and is required to be so, to enable maintenance vehicles to access the Proposed Development. This is particularly needed for the Proposed Development, given its location quite literally 'at the end of the road'.</p> <p><b>Article 14: Access to Works</b></p> <p>The ExA asked whether some of the proposed access works were temporary and whether requirement 6 (detailed design of access) would provide sufficient control over these works. The ExA also requested that the Explanatory Memorandum be updated to provide a clear justification for the proposed access arrangements.</p> <p>Mr Fox, on behalf of the Applicant, noted that this article again provides for specific powers at identified locations (paragraph (1)(a)) and then an additional generic power to create access to works (paragraph (1)(b)), with the latter being subject to highways authority consent. Mr Fox</p>

#	Agenda item	Applicant's response
		<p>confirmed that the Applicant would take these questions away and consider the appropriate document to provide a justification for the access proposals.</p> <p><b>Post hearing submission (ExA Action Point):</b> <i>The Applicant can confirm that paragraph (1)(c) could hypothetically be used to create temporary access points. However, both temporary and permanent works are covered by:</i></p> <ul style="list-style-type: none"> <li><i>approval either under the article (for the generic power as per the wording of (1)(b)) or under Requirement 6 (for both the specific and generic power);</i></li> <li><i>the protections set out in the highways authorities protective provisions under Schedule 26 of the DCO; and</i></li> <li><i>that the accesses created form part of the 'authorised development' controlled by the DCO Requirements.</i></li> </ul> <p><i>The Applicant has provided a justification for each access point identified in Schedule 6 of the draft DCO. This is set out in Appendix 1 of this note.</i></p>
4c	<p><b>Part 4 – Supplementary Powers</b> Article 19. Authority to survey and investigate the land</p>	<p>The ExA raised concerns about the breadth of the powers sought under Article 19, which would allow the Applicant to enter any land within the Order limits or any land which “may be affected” by the authorised development, to survey and investigate. The ExA questioned whether such powers were justified and requested that the Applicant provide precedent for this approach, and legal justification for the acceptability of such wide-ranging survey powers, including for works outside the Order limits. The ExA also asked how these powers related to the Written Scheme of Investigation (WSI) and whether there were sufficient safeguards in place to protect landowners' interests.</p>



#	Agenda item	Applicant's response
		<p>Mr Fox, on behalf of the Applicant, explained that the powers to survey and investigate land were intended to benefit landowners, as they enabled the Applicant to utilise this power first before need to take more onerous powers of full temporary possession or compulsory acquisition (albeit noting that for the SADA, all bar one land parcel is under Option and so all powers are controlled by voluntary agreement).</p> <p>He noted that this article should be seen in the context that absent it, the Applicant would be able to undertake such activities pursuant to section 172 of the Housing and Planning Act 2016, which would have no geographical limitation (noting that section 172(4) provides that an authorisation to access land to survey can relate to land which is the "subject of the proposal [to acquire an interest in or a right over land] <b>or to other land</b>".</p> <p>Mr Fox also noted that:</p> <ul style="list-style-type: none"> <li>• any activities carried out pursuant to this article would fall under the definition of the 'authorised development' and so would be controlled by the DCO Requirements (including in relation to archaeological matters);</li> <li>• relatedly, any activities carried out pursuant to this article would fall within the definition of specified works (which relate back to the authorised development definition) within the Protective Provisions for apparatus owners which would ensure their interests are protected;</li> <li>• landowners are compensated for damages pursuant to paragraph (5); and</li> <li>• the Applicant's approach of referring to land 'that may be affected by the authorised development' and not having drafting in relation to restoration of land is well preceded.</li> </ul> <p><b>Post hearing submission (ExA Action Point):</b> For example: the recently made Cory Decarbonisation Project DCO and the Mallard Pass and Sunnica solar farm DCOs.</p> <p><b>Post hearing submission (ExA Action Point):</b> Following the Hearings, the Applicant has considered the drafting of this article and is content to remove reference to the 'digging of trenches'</p>

#	Agenda item	Applicant's response
		<p>from article 19(1)(c). Examples of where the power in relation to 'land which may be affected by the authorised development' may be utilised includes:</p> <ul style="list-style-type: none"> <li>• to undertake final analysis to identify the full extent of high level peat, which may stretch beyond the Order limits and could be affected by, for example, changes to groundwater flows arising from the Proposed Development into that land; and</li> <li>• to check the ground conditions of adjacent land to ensure that works in the Order limits would not cause subsidence in that adjacent land (something referenced in multiple of the Protective Provisions in the DCO).</li> </ul>
4d	<p><b>Part 5 – Powers of Acquisition</b></p> <p>Article 23. Compulsory acquisition of rights</p> <p>Article 26. Acquisition of subsoil only</p> <p>Article 30. Temporary use of land for constructing the authorised development</p>	<p><b>Article 23: Compulsory Acquisition of Rights</b></p> <p>The ExA questioned article 23(1) and whether the land subject to compulsory acquisition of rights was clearly identified and whether the Explanatory Memorandum (EM) provided sufficient justification for these powers. The ExA drew attention to recent decisions by the DfT Secretary of State, such as Manston Airport, where powers to acquire undefined rights were limited. The ExA requested a clearer response from the Applicant on how their approach aligned with these precedents and whether the approach to acquiring rights was robust.</p> <p>Mr Fox, for the Applicant, explained that articles 23(1) and (5) needed to be considered together. Article 23(5) deals with the blue plots on the Land and Crown land Plans and is clear that the rights and restrictive covenants sought in each plot are identified in Schedule 8 of the DCO. Article 23(1) is dealing with the 'pink land' on the Land and Crown Land Plans and is put forward as a benefit to landowners. The effect of the article is that it enables the Applicant to take lesser powers than full acquisition over blue land, where this is appropriate.</p> <p>The extent of the rights/restrictive covenants is not defined to allow flexibility in what that lesser power looks like, as a reduction from otherwise taking full acquisition, as this will be fact specific</p>

#	Agenda item	Applicant's response
	Article 31. Temporary use of land for maintaining the authorised development	<p>in each case, based on discussions with landowners and detailed design, undertaken in the context that at this stage the Applicant considers full acquisition powers are required.</p> <p>There is a danger that referring only to specific rights for article 23(1) would restrict that flexibility such that the Applicant would need to use the full acquisition powers in any event to ensure it gets everything it needs from the land.</p> <p>Mr Fox also noted that there is an in-built control in the DCO, which is that the compulsory acquisition of rights powers can only be used for any purpose for which that land may be acquired. Article 21 is clear that compulsory acquisition powers can only be used "as is required for the authorised development or to facilitate, or as is incidental, to it". As such, any landowner could challenge a GVD which sought to impose rights/restrictive covenants which did not relate to the authorised development or to facilitate, or to be incidental, to it.</p> <p>As such, the proposed approach is considered to be appropriate and is well precededent. <b>Post hearing submission (ExA Action Point):</b> For example in the recently made Cory Decarbonisation Project DCO and the East Yorkshire and West Burton solar farm DCOs.</p> <p>At the Hearing, Mr Fox noted the ExA's concerns in this regard and set out that an alternative approach is possible which would definite the types of rights that could be applied, but on a plot-by-plot basis (thus maintaining at least some flexibility). This would follow similar drafting in the Mallard Pass Solar Farm Order 2024 in defining the types of rights by reference to Schedule 8</p> <p><b>Post hearing submission (ExA Action Point):</b> Such drafting would involve changing article 23(1) as follows. The Applicant's position is that this is not needed, and so this proposed drafting is made on a 'without prejudice' basis and has not been included in the updated draft DCO submitted at Deadline 1.</p>

#	Agenda item	Applicant's response
		<p>"Subject to paragraph (5) and article 30 (temporary use of land for constructing the authorised development), the undertaker may acquire compulsorily the Schedule 8 rights and impose the Schedule 8 restrictive covenants over the Order land, by creating them as well as by acquiring rights already in existence".</p> <p><i>"Schedule 8 rights" could then be defined at the end of article 23 as 'the rights defined by paragraph 1 of Schedule 8 (land in which only new rights etc. may be acquired)'.</i></p> <p><i>"Schedule 8 restrictive covenants" could then be defined at the end of article 23 as 'the restrictions set out in paragraph 1 of Schedule 8 (land in which only new rights etc. may be acquired)'.</i></p> <p><b>Article 26: Acquisition of Subsoil Only</b></p> <p>The ExA queried the criteria for exercising powers to acquire subsoil only, asking whether there was a particular threshold or justification for the extent of subsoil to be acquired. The ExA sought assurance that the approach was consistent with established precedent and that the powers would not be exercised more widely than necessary.</p> <p>Mr Matthew Fox explained that the power to acquire subsoil only was a well-precedented article in DCOs and was intended to provide flexibility where full surface rights were not required. Mr Matthew Fox clarified that the approach flowed from the broader powers in Article 21 (acquisition of land) and that the Applicant would only seek subsoil rights where appropriate. The Applicant confirmed that the drafting was consistent with other DCOs and undertook to provide further explanation if required.</p> <p><b>Article 30: Temporary Use of Land for Constructing the Authorised Development</b></p> <p>The ExA noted that Article 30 didn't appear to require the undertaker to remove equipment, vehicles, or temporary works upon ceasing occupation of land used temporarily for construction.</p>

#	Agenda item	Applicant's response
		<p>The ExA questioned whether this could allow the Applicant to leave items on site and whether the drafting of the dDCO provided sufficient protection for landowners.</p> <p>Mr Fox, on behalf of the Applicant, noted that paragraph (5) of the article specifically requires the undertaker to 'remove all works' before giving up temporary possession of the land and restore the land to the reasonable satisfaction of the owners of the land. There is therefore sufficient protection for landowners (noting for context that the usage of this power would be limited in any event, given that voluntary agreements are in place for the vast majority of the SADA).</p> <p>Paragraph (5) then sets out a 'closed list' of items that the undertaker is <u>not</u> required to remove as exceptions to that general obligation.</p> <p><b>Article 31: Temporary Use of Land for Maintaining the Authorised Development</b></p> <p>The ExA asked whether there was land that could be identified at this stage that would be required specifically for operation and generally whether the powers under Article 31 were appropriately limited to land genuinely required for maintenance.</p> <p>Mr Fox, on behalf of the Applicant, noted that:</p> <ul style="list-style-type: none"><li>• article 31(1)(a) already has an in-built protection as it can only be used where it is 'reasonably required for the purposes of maintaining the authorised development' – as such any landowner could challenge the exercise of those powers if they felt access was not being taken for these purposes;</li><li>• such powers are necessary to account for, for example, that, if compulsory acquisition powers are utilised, it may be that detailed design requirements (e.g. geotechnical or archaeological investigations) mean they are not utilised for the full extent of the Order limits in respect of the final operational design of the Proposed Development; but that to maintain</li></ul>

#	Agenda item	Applicant's response
		<p>the operational assets the land that is not compulsorily acquire might still be required to be accessed (e.g. for construction plant or equipment); and</p> <ul style="list-style-type: none"> <li>that this article in this form is well precededented to deal with exactly such scenarios. <b>Post hearing submission:</b> <i>For example the East Yorkshire, Heckington Fen, Sunnica and Byers Gill solar farm DCOs. The general approach in this article also reflects the equivalent article that was in the Model Provisions.</i></li> </ul>
4e	<p><b>Part 6 – Miscellaneous and General</b> Article 36. Consent to transfer the benefit of the Order</p> <p><b>Article 39.</b> Felling or lopping of trees and removal of hedgerows</p>	<p><b>Article 36: Consent to transfer the benefit of the Order</b></p> <p>The ExA raised concerns in respect of article 36(3)(c) of the draft DCO which seeks to allow the transfer of benefit without Secretary of State consent in respect of a holding company or subsidiary of the undertaker; noting that the Secretary of State had specifically deleted this from the recent Byers Gill Solar DCO.</p> <p>Mr Fox, on behalf of the Applicant, acknowledged this and noted that the Applicant had included such drafting on the basis that similar drafting had been proposed on the Cory Decarbonisation Project. On that matter too, the Secretary of State deleted such drafting. Given these two decisions, the Applicant was content to re-consider this drafting.</p> <p>However, Mr. Fox went on to say that consideration should also be given to the fact that given that the Proposed Development is proposing:</p> <ul style="list-style-type: none"> <li>the possibility of grazing taking place in and around the solar panels to help manage the proposed grassland;</li> <li>a dedicated skylark mitigation area; and</li> <li>a NBBMA with dedicated management arrangements,</li> </ul>



#	Agenda item	Applicant's response
		<p>the Applicant considers that article 36 should allow for transfer of benefit to any entity set up to deliver those commitments, even if they are in some way related corporately to the Applicant.</p> <p>At the Hearing, the ExA acknowledged that this could be a possibility but that there would need to be guardrails for the identity of such a body, and that the relevant stakeholders would need to be content that the body is appropriate to undertake these commitments.</p> <p>Mr Fox agreed and indicated that the Applicant would propose wording at Deadline 1 on this point.</p> <p><b><i>Post hearing submission (ExA Action Point):</i></b> <i>The Applicant has considered this and in the updated draft DCO submitted at Deadline 1, has replaced article 36(3)(c) with the following:</i></p> <p><i>“the transferee or lessee is an entity (whether that entity is a group company of the undertaker or any other entity) that is responsible for the on-going management of any part of Work No. 6, the identity of which has been agreed by the local planning authority following approvals given under Requirement 9”</i></p> <p><b>Article 39. Felling or lopping of trees and removal of hedgerows</b></p> <p>The ExA asked the Applicant to clarify why Article 39 did not specifically refer to the hedgerows identified in Schedule 9 of the dDCO. The ExA sought assurance that the powers to fell or lop trees and remove hedgerows were appropriately limited and that the drafting provided sufficient clarity and protection for important landscape features.</p> <p>Mr Fox, for the Applicant, explained that paragraph (5) of Article 39 refers to specific hedgerows identified, and that this provision was intended to ensure that only those hedgerows listed in Schedule 9 could be removed under the powers of the Order. This is a specific power identified</p>

#	Agenda item	Applicant's response
		<p>following the development of the application, with paragraph (4) then being a generic power to remove any other hedgerows.</p> <p>Similar to the discussion in respect of the Part 3 provisions above, this is a common approach to ensure that where the detailed design process identifies more hedgerows to be removed than was previously assumed, this is able to be done pursuant to the DCO, rather than needing any other approvals.</p> <p>Mr Fox went on to note that activities undertaken pursuant to this article will form part of the 'authorised development' as defined in article 2, and thus the DCO Requirements will apply to them, including Requirement 9, which requires details of hedgerows proposed to be removed, and existing trees to be retained, plus replacement proposals, to form part of detailed LEMPs submitted for approval.</p>
4f	<b>Schedule 1 – Authorised Development</b> Work No 1 Work No 2 Work No 3 Work No 4 Work No 6 Work No 7 Work No 8	<p>The ExA queried whether the power conversion system (PCS) unit listed Work No. 2, also needs to be included in Work No. 1. Mr Russell, for the Applicant, confirmed that from a technical perspective the PCS unit does not need to be listed in Work No. 1.</p> <p>The ExA queried inconsistencies in descriptions of drainage infrastructure between Work 2A(viii) and Work 2B (viii) and between Work 3A (xii) and 3B (xii). Mr Fox confirmed that these will be fixed. <b>Post hearing submission (ExA Action Point):</b> <i>This has been actioned in the updated DCO submitted at Deadline 1.</i></p> <p>A number of items were discussed in respect of the description of Work No. 6 – these are set out below and incorporate post hearing submissions:</p>

#	Agenda item	Applicant's response
		<ul style="list-style-type: none"> <li>• further to comments from CWaCC, the Applicant has reviewed the scope of Work No. 6A to consider if any wording needs to be added for its proposals at the Lum and Marsh Farm and considers no changes are necessary;</li> <li>• the Applicant has reviewed the descriptions in Work 6A – 6C to ensure there is no duplication of 'creation' but that there are consistent references to 'maintain' – this is reflected in the updated draft DCO submitted at Deadline 1; and</li> <li>• at the Hearing, Mr Russell, on behalf of the Applicant, set out that internal access tracks do fit under the auspices of 'green infrastructure works' as such tracks are required to ensure the green infrastructure can be built and maintained; and are needed to allow vehicles to travel from one solar development area to another without disturbing the landscaping and habitat creation measures that have been put in place (i.e. to protect it). That is the purpose of including them within that definition, not to suggest that such tracks would necessarily definitively be made of recycled materials or have EV charging points, as queried by the ExA.</li> </ul>
4g	<b>Schedule 2:</b> Requirements Applicant's Position on the Omission of Construction Hours as a Requirement	<p>The ExA queried why the dDCO didn't include specific construction hours, particularly for preliminary works. The ExA noted that establishing core working hours is common practice in many recent solar DCOs and suggested that including such a requirement could provide clarity and certainty for all parties. The ExA encouraged the Applicant and the local planning authority to discuss and, if possible, agree on appropriate wording for construction hours before Deadline 1</p> <p>Mr Matthew Fox, for the Applicant, explained that the omission of a construction hours Requirement was a deliberate drafting choice. He stated that 9 out of 12 recent solar DCOs didn't include such a requirement, indicating this was a recognised approach within the sector. Mr Fox described the issue as a drafting point rather than a substantive omission, suggesting that flexibility was preferred for managing construction activities and that inclusion in the OCEMP allows for that flexibility to be set out more clearly.</p>

#	Agenda item	Applicant's response
		<p>The ExA went on to ask:</p> <ul style="list-style-type: none"> <li>• what controls are in place to ensure CWaCC do not approve out of hours working which could cause likely significant effects; and</li> <li>• what working hours will be applied to the PPWs.</li> </ul> <p>Mr Fox, on behalf of the Applicant, confirmed that the approach to working hours was intended to be the same for the PPWs as it was for the main works, but that this would be made clear in the application documentation</p> <p><b>Post hearing submission (ExA Action Point):</b> <i>In respect of the first bullet point, the Applicant has put forward drafting in the updated OCEMP submitted at Deadline 1; and in respect of the second bullet point, working hours for the PPWs have been added to the updated Appendix 2-3 submitted at Deadline 1 (and thereby secured via Requirement 8).</i></p>
4h	<b>Schedule 12:</b> Procedure for the Discharge of Requirements	<p>Before beginning discussion of this point, the ExA made the point that it would like to see that the various references in the DCO to 'materially new or materially different effects than those reported in the environmental statement' compared to those in the environmental statement' be clear that this is only referring to new or different <u>worse</u> effects, i.e. allowing for the possibility of positive/beneficial changes from the conclusions of the ES.</p> <p>Mr Fox agreed, noting that such an approach has not been consistently supported by the Secretary of State but that it will put forward drafting to this effect based on precedents where it has been accepted. <b>Post hearing submission (ExA Action Point):</b> <i>This has been added to the updated draft DCO submitted at Deadline 1.</i></p>

#	Agenda item	Applicant's response
		<p>The ExA raised several points regarding the procedure for the discharge of requirements as set out in Schedule 12 of the dDCO, having regard to departures from Appendix 1 to PINS Advice Note 15 on drafting DCOs, querying whether the procedure provided an appropriate balance between the interests of the undertaker and the local planning authority.</p> <p>The ExA requested that these matters were discussed with CWaCC to ensure that both parties are agreed to its content, or it is clear where disagreements lie. At the Hearing, Mr Fox indicated that the Applicant would take all of these points away and provide an update at Deadline 1.</p> <p><b>Post hearing submission (ExA Action Point):</b> <i>The Applicant's position/update on discussions with CWaCC on each matter is set out below:</i></p> <p><b>Time periods in paragraph 2(1) and (2):</b> <i>CWaCC has indicated to the Applicant that the given 8 weeks' time period is acceptable.</i></p> <p><b>Paragraph 2(3) appearing to allow CWaCC to approve discharges which <u>do</u> allow for materially new or materially different effects to those reported in the ES:</b></p> <p><i>Following a review of other recently as made solar DCOs, the Applicant has noted that the drafting included in paragraph 2(3) of Schedule 12 to the draft DCO is well-precedented appearing in the following: Tillbridge Solar Order 2025, The Byers Gill Solar Order 2025, The East Yorkshire Solar Farm Order 2025, The West Burton Solar Project Order 2025, The Cottam Solar Project Order 2024, The Gate Burton Energy Park Order 2024 and The Longfield Solar Farm Order 2023. It is clear, therefore, that the Secretary of State has determined that this is an appropriate form of drafting in many cases and there is a clear assumption that, in line with their duties, the LPA in such circumstances would act sensibly and reasonably if this situation were to arise. One example of how this might arise in practice is if, upon completion of detailed design, there was a technique available to the Applicant to reduce the construction programme overall which led to a new short-</i></p>

#	Agenda item	Applicant's response
		<p><i>term significant impact on human receptors but led to an overall beneficial effect for another discipline such as ecology. The LPA might decide that on balance the new short-term noise impact might be acceptable in that scenario. Ultimately, the drafting in paragraphs 2(3) and 2(4) of Schedule 12 ensure that a decision taken in that scenario has to be taken actively by the LPA (as paragraph 2(4) is a deemed refusal provision if there is no determination in this scenario – unlike other parts of the Schedule).</i></p> <p><i>The Applicant has amended paragraph 2(4) of Schedule 12 so that the draft DCO fully aligns with the drafting in the other as made DCOs set out above. The overall effect of the amendments is to simplify the drafting and make it clearer that it is a deemed refusal provision.</i></p> <p><b><i>Time periods in paragraph 3:</i></b> <i>As of Deadline 1, the Applicant and CWaCC have not yet discussed this in detail, but expect to early in the New Year.</i></p> <p><b><i>Time period for appeal in paragraph 4(2)(a):</i></b> <i>The Applicant has updated the draft DCO at Deadline 1 to change this from six months to 42 days in line with the PINS Advice Note.</i></p> <p><b><i>Paragraph 4(3) (time period for appointed person to request more information):</i></b></p> <p><i>The Applicant has found that a period of five working days for the appointed person to request more information is well-precedented featuring in the following recent as made DCOs: Tillbridge Solar Order 2025, The East Yorkshire Solar Farm Order 2025, The West Burton Solar Project Order 2025, The Cottam Solar Project Order 2024, The Gate Burton Energy Park Order 2024 and The Longfield Solar Farm Order 2023.</i></p> <p><i>It is also much more preferable for both the LPA and the Applicant to have certainty in timescales about when they may expect a request for information (for the purposes of resourcing such a request from the LPA's perspective and programme deliverability from the Applicant's). This certainty is not provided by the ambiguous drafting set out in the PINS advice note.</i></p>



#	Agenda item	Applicant's response
		<p><i>Consequently, the Applicant has retained the five working day period in the draft DCO in paragraph 4(3) and has inserted additional text at the end of the paragraph setting out further detail about what the notification should include in order that there is more clarity about who needs to provide the information being requested and the deadline by which it is required.</i></p> <p><b><i>Fees under paragraph 5:</i></b> <i>As of Deadline 1, the Applicant and CWaCC have not yet discussed this in detail, but expect to early in the New Year. The Applicant notes that at the Hearing, discussion was held in respect of CWaCC seeking a PPA with the Application for the post-decision stage. Whilst the Applicant is amenable to the principle of agreeing such an Agreement, it considers that this is separate from the drafting in this paragraph, which needs to be settled irrespective of whether or not the PPA is agreed to ensure there is certainty on what the statutory 'backstop' position will be for the parties.</i></p> <p>Finally, the ExA also asked for clarification on whether Article 46 applied to requirements, as the applicant's drafting suggested otherwise. Mr Fox clarified that this article does not apply to the DCO requirements- this is set out in Article 46(1) and (3).</p>
4i	<b>Schedule 13 – 27:</b> Protective Provisions	<p>Protective Provisions were not discussed in detail on 2 December. However, at this point in proceedings Mr Fox did, however, to raise a specific matter in relation to the Environment Agency, where the Applicant is concerned that the Agency is requiring far more information at DCO stage than is usually required to secure agreement to the disapplication of needing to obtain a separate Flood Risk Activity Permit, which is usually given on the basis of agreed Protective Provisions being on the face of the Order.</p> <p>Mr Fox acknowledged that flood risk matters are of particular importance to the Proposed Development, but this has also been the case for multiple other DCOs, and the Applicant is unclear why a different approach is being taken for the Proposed Development. He went on to acknowledge and thank the Agency for the collaborative working it has done with the Applicant</p>

#	Agenda item	Applicant's response
		<p>which has enabled the vast majority of flood matters to be resolved, but that the Applicant would request that the EA is asked to explain why the disapplication position cannot move forward given the good progress that has been made.</p> <p>The ExA noted that they are particularly concerned to ensure that flood risk matters are resolved between the parties to enable the flood risk policy tests to be applied robustly and that it would expect the parties to work together to achieve this. Mr Fox responded to confirm that the Applicant has been, and will continue to, work with the Agency to get to a resolution on all matters, including disapplications.</p>

## PART B: SUBMISSIONS MADE ON WEDNESDAY 3 DECEMBER

#	Agenda item	Applicant's response
4j	<b>The ExA will seek a brief statement from Chesire West and Chester Council on any principle matters of disagreement it has with the applicant on its dDCO.</b>	<p>The ExA invited a brief statement from the host authority on principal areas of disagreement with the draft DCO.</p> <p>Michelle Sparke on behalf of CWACC confirmed progress but highlighted principal disagreements on Agenda 5 items: major replacement during operation, decommissioning, landscape impact and cumulative visual (including Frodsham Memorial view), and cumulative impacts with the HyNet hydrogen and Liverpool Bay CCS Limited CO<sub>2</sub> Spur Pipelines.</p> <p>Mr Fox, on behalf of the Applicant, noted ongoing the constructive dialogue with CWACC on these matters and proposed to deal with the agenda items later in the session and through written questions.</p>
4k	<b>The ExA will seek a brief statement from the applicant on any principle matters of disagreement it has with other parties on the dDCO.</b>	<p>The ExA sought the Applicant's summary of disagreements with other parties on the draft DCO and asked about the status of protective provisions (PPs).</p> <p>Mr. Fox, on behalf of the Applicant, provided a brief update on the position with Statutory Undertakers as matters stood on that day, setting out that positive progress is being made on Protective Provisions and related Side Agreements. He noted that most protective provisions were either agreed or very close to agreement, with only minor drafting points outstanding. Some parties had not yet engaged, but the Applicant was confident that several agreements would be reached by Deadline 2, and that updated draft DCO provisions would be submitted at Deadline 1 to facilitate this. Mr Fox also noted that, compared to other projects, the process was progressing well and did not expect major unresolved issues by the close of examination</p>

#	Agenda item	Applicant's response
		<p>As matters have moved on, the details in respect of each party for that update is not provided here, and the latest position is set out in the Tracker dealing with these points (further to Appendix E of the Rule 6 Letter) submitted at Deadline 1.</p> <p>At the invitation of the ExA, Mr Grant, on behalf of National Highways, clarified that their concerns regarding protective provisions in the draft DCO were not limited to the issue of bridges, setting out that NH's concerns are expressed in its fulsome Relevant Representation.</p> <p>Mr Fox, for the Applicant, acknowledged this and emphasised that the Applicant was working closely with National Highways to seek to resolve its concerns.</p>
5a	<p><b>OTHER PLANNING TOPICS</b></p> <p><b>Major replacements during the operational phase</b></p>	<p>The ExA outlined the need to properly understand the potential impacts of major replacement activities during operation, rather than relying on a broad assertion that such effects would be no worse than construction.</p> <p>The ExA asked the Applicant to set out (or explain how it has already considered) the plausible replacement activities that would be carried out, how their reasonable worst-case effects had been assessed, and the mitigation measures (and how they are secured) that would be utilised to ensure that no likely significant effects would arise. The ExA also expected the Applicant to explain the benefits of being able to undertake replacement activities so this can be balanced in the planning balance against the impacts of doing so. The ExA also questioned the 50% panel-replacement trigger for notifying CWACC, noting it may be too high and inviting a lower, impact-driven threshold and/or locational and seasonal controls near sensitive receptors.</p> <p>Mr Russell, responded on behalf of the Applicant, making the following points:</p> <p>The context of the Proposed Development is distinct from most other utility-scale NSIP solar schemes because of its specific locational characteristics. In particular, the access route to the</p>

#	Agenda item	Applicant's response
		<p>Site is purpose-built to accommodate heavy goods vehicles (HGVs). For many solar developments, community concerns frequently relate to traffic impacts during replacement activities as access routes are frequently along minor roads, passing residential areas or isolated residential properties. At Frodsham Solar, however, the nature of the access route mean such issues are not anticipated.</p> <p>HGVs associated with replacement activities would reach the Site via Junction 14 of the M56 and Junction 10 of the M53, before travelling along the A5117 and Pool Lane. These roads are specifically designed for HGVs serving nearby large industrial facilities. The remainder of the route comprises private access roads that already support HGV movements to Protos and the Frodsham Wind Farm. Importantly, none of these roads pass close to residential areas.</p> <p>It is also the case that the Applicant's vegetation proposals would be well established by years fifteen to twenty, which would reduce visual and setting effects compared with construction.</p> <p>Mr Russell, explained that a campaign to replace 50% of panels would generate only around five to ten percent of the heavy goods vehicle movements assessed at construction, depending on vehicle size and packaging, and given that the construction transport assessment found no material highway operation or safety impacts at full scale; reducing flows by roughly ninety percent supported a reasoned conclusion that impacts from replacement traffic would not exceed construction effects.</p> <p><b><i>Post hearing submission: In this context, in response to question (i) of the ISH1 Agenda under this item, the Applicant can confirm that it has assessed full replacement of the solar and battery infrastructure for the Proposed Development and considers that its assumption that this would be less than the construction phase to be robust.</i></b></p> <p><i>This is set out in the ES as follows:</i></p>

#	Agenda item	Applicant's response
		<ul style="list-style-type: none"> <li>• <i>Table 2-13 of the Environmental Statement: Volume 1, Chapter 2 – The Proposed Development (APP-035) sets out the indicative operational lifespan of the scheme's components and, in doing so, identifies the range of replacement activities expected over the life of the project. In practice, maintenance scheduling means it is highly unlikely that all components requiring periodic replacement would be replaced in one campaign. However, even in the unlikely event that this were to occur, the level of impact would remain lower than that experienced during the construction phase.</i></li> <li>• <i>Paragraph 2.6.7 of Environmental Statement: Volume 1, Chapter 2 – The Proposed Development (APP-035) states: "The replacement of components would be periodic throughout the lifetime of the scheme and would not involve the intensity of construction required at the outset of the project. As such, the magnitude of effect experienced during the replacement and maintenance works would be less than that assessed for the construction phase and relevant measures have been provided for in the outline Operational Environmental Management Plan (oOEMP) [EN010153/DR/7.7] to manage these impacts."</i></li> </ul> <p>He also noted that the Applicant considers that its approach to assessment is robust in the context of the scope of any replacement works, noting in particular that:</p> <ul style="list-style-type: none"> <li>• no new access tracks were envisaged for major replacement as the access tracks built during construction (indicatively shown on Figures 2.1. and 2.2 (APP-106);</li> <li>• panel mounting structures were not proposed to be replaced; and</li> <li>• noting <b>question (iii) of the ISH1 Agenda under this item:</b></li> </ul>

#	Agenda item	Applicant's response
		<ul style="list-style-type: none"> <li>○ no significant earthworks or below-ground works were anticipated for panel supports;</li> <li>○ the Proposed Development's cabling largely runs above ground attached to panels and enters conduits at row ends, so restringing within conduits would avoid excavation. Where cabling crosses watercourses it does so on bridge structures, so no underground works would be required in these locations;</li> <li>○ where any localised cabling works were to occur, this would occur in neutral or modified grassland rather than beneath hedgerows, trees or reedbeds; and</li> <li>○ any localised below-ground interventions would occur in neutral or modified grassland rather than beneath hedgerows, trees or reedbeds, and cabling would not pass beneath watercourses because conduits are carried on the bridge structures (<b><i>Post hearing submission: Wording to this effect has been added to the Design Parameters Statement</i></b>) He added that medium-voltage cables have a design life of about forty years and aren't expected to require replacement.</li> </ul> <p>He went on to describe that, in relation to indicative scale and duration, assuming four crews of five operatives each, a fifty percent replacement campaign would last up to six months and would be undertaken in confined areas rather than across the entire array at once.</p> <p>He explained (and in doing so answering <b>questions (vi) and (vii) of the ISH1 Agenda under this item</b>) that the Applicant's position is that the controls in the Outline Operational Environmental Management Plan already provide a sufficient framework to mitigate impacts across the ES topics (including when considering the 50% replacement notification provisions) and that the Applicant had proposed a fifty percent notification threshold out of caution to</p>



#	Agenda item	Applicant's response
		<p>guarantee dialogue and enable the Council to approve additional measures if necessary, particularly in light of uncertainties fifteen to twenty years ahead.</p> <p>Mr Russell then went on to explain that, in light of all of the above (and in doing so answering <b>question (iv) of the ISH1 Agenda under this item</b>), the Applicant is confident that the ES and HRA has properly considered replacement activities on the basis of them being no worse than construction effects, and that therefore the ExA's proposal in <b>question (v) of the ISH1 Agenda under this item</b> is not the appropriate starting point for considering the effects of replacement activities.</p> <p>In relation to particular key environmental topics (chapters 6 (LVIA) and 11 (Heritage) as noted in the Agenda) and ecology, Mr Russell noted that (and in doing so answering <b>question (ii) of the ISH1 Agenda under this item</b>):</p> <p>Chapters 6 and 11, assess the construction and operational stage of the Proposed Development as described in Environmental Statement: Volume 1, Chapter 2 – The Proposed Development (APP-035), which includes at Section 2.4 replacement activities.</p> <p>In relation to Chapter 6, paragraph 6.8.5 notes that “Much of the construction plant and equipment would be relatively low in height and would not be visually conspicuous over a wide area. Exceptions to this that would be more widely visible include the movement of plant and delivery vehicles along the Main Site Access and within the Solar Array Development Area, and the presence of cranes whilst structures are erected.”</p> <p>As set out at paragraph 2.6.7 the magnitude of effect experienced during the replacement and maintenance works would be less than that assessed for the construction phase. On the basis of the operational lifespan periods set out in Table 2-1 of the ES, a major replacement campaign is unlikely to be undertaken prior to year 10-15. By that time, the vegetation across the Site that has been planted and managed to screen the development would have matured. Accordingly, the</p>

#	Agenda item	Applicant's response
		<p>landscape and visual impacts of replacement works would be less than those of construction and therefore the construction phase assessment presents a worst case consideration of replacement activities on landscape and visual receptors.</p> <p>In relation to Chapter 11 paragraph 11.8.14 (which relates to archaeological remains) states that "once operational, the Proposed Development would not require any below ground works beyond occasional maintenance of the solar panels and other infrastructure within the previously impacted footprint. Therefore, no additional direct impacts are predicted."</p> <p>In a similar vein to the landscape and visual assessment, the screen planting that would have matured by the time a major replacement campaign takes place would only serve to reduce the non-significant setting impacts on heritage assets compared to the impact assessed at the construction phase.</p> <p>In respect of ecological receptors, it is noted that replacement activities are constrained to the panel rows and existing access tracks across neutral and modified grassland, with protection of hedgerows, ditches and retained habitats via established buffers. By the time of a replacement campaign, birds will be habituated to the operational solar farm and the NBBMA will be fully functioning.</p> <p>The oOEMP provides specific operational controls for maintenance and periodic replacements: works with potential to disturb wildlife are timed to avoid sensitive periods where possible, pre work ecological surveys are undertaken by a suitably qualified ecologist, and task lighting is controlled to avoid spill onto sensitive habitats.</p> <p>With respect to the Mersey Estuary SPA, the oOEMP places explicit seasonal and spatial controls around the NBBMA, requiring that any maintenance to arrays or transformers within 180 metres of the NBBMA between November and February only proceeds following agreement with the</p>

#	Agenda item	Applicant's response
		<p>ECoW, and that no works occur within the NBBMA without agreement from its managing organisation. The oOEMP further requires protected species surveys "prior to any significant replacements", with appropriate mitigation implemented.</p> <p>At the Hearing Mr Fox and Mr Russell then confirmed that given the matters discussed today, the Applicant will submit a Technical Note on Replacement Activities at Deadline 1 clearly setting out how each topic in the ES, and the HRA has considered replacement activities. This note will cover:</p> <ul style="list-style-type: none"> <li>• how the ES has considered the matters set out in <b>question (iv) of the ISH1 Agenda for this item</b> in the context of the baseline environment and the likely scope of works discussed above;</li> <li>• a discussion of the benefits of replacement activities being able to be undertaken;</li> <li>• HRA matters;</li> <li>• in light of the comments from the ExA, how the LVIA assessment has covered major replacements not just maintenance;</li> <li>• in light of the comments from CWaCC at the Hearing, explaining how maintenance should be considered in the context of Frodsham Wind Farm potentially needing to either decommission, or be re-powered in the period when the replacement activities are taking place; and</li> <li>• further to the comments of the Environment Agency at the Hearing, explaining that there is no fire safety risk during the replacement of the BESS (as Mr Fox explained at the</li> </ul>

#	Agenda item	Applicant's response
		<p>Hearing - the electricity to it will be switched off at the time the activities are taking place)</p> <p>Mr Fox confirmed that, in light of <b>question (x) of the ISH1 Agenda for this item</b>, the Applicant would propose that with the provision of this Technical Note, updates to each topic chapter of the ES are not required and that instead the Technical Note would become part of the definition of the ES as set out in Schedule 10 of the draft DCO. The ExA appeared to indicate that they were amenable to this approach.</p> <p><b><i>Post hearing submission (ExA Action Point):</i></b> <i>The aforementioned technical note, and updates to the draft DCO, are submitted alongside this submission at Deadline 1.</i></p> <p>In respect of questions <b>(viii), (ix) and (x) of the ISH1 Agenda for this item</b>, Mr Fox confirmed that the Applicant would review the Outline OEMP with CWaCC and review it more generally to consider if any further detail on controls for replacement activities need to be added to the plan.</p> <p>Mr Fox went on to say that the Applicant considers that the draft DCO does not need to provide a definition of major replacement activities or set a limit. Through its ES, Hearing submissions and the aforementioned Technical Note, it has been identified that the replacement of the whole solar and battery infrastructure of the Proposed Development would not lead to likely significant effects and thus are acceptable.</p>
5b	<b>Access track impacts, removal and reinstatement</b>	<p>The ExA introduced Agenda Item 5b by requesting that responses to the detailed questions be provided in writing.</p> <p>Mr Russell, for the Applicant, highlighted that the access tracks constructed during the construction phase would remain in place for the operational period and would also be used for the decommissioning period. The Applicant would not be removing any construction tracks at the end of the construction period, except for short sections of temporary access tracks, such as</p>

#	Agenda item	Applicant's response
		<p>those leading into the non-breeding bird mitigation area or into construction compounds and so have been considered as part of general construction activities within the application documentation, e.g. their permanent state would be as the flexibility allowed for by the Works Plans and controlled via the DCO Requirements. This approach was intended to minimise disturbance and environmental impact.</p> <p><b>Post hearing submission (ExA Action Point):</b> <i>Building on the high level points made by Mr Russell at the Hearing, the Applicant confirms that the answer to the ExA's questions in the Agenda are as follows:</i></p> <p>(i) <i>As noted above, the Applicant's proposal is that the access tracks shown on ES Figure 2-2 (APP-106) and described in paragraph 2.4.163 of Environmental Statement: Volume 1, Chapter 2 – The Proposed Development (APP-035) would be constructed during the construction phase and retained throughout the operational period. These same tracks would also serve the decommissioning works, after which they would be removed. Accordingly, there is no requirement for the access tracks to be temporarily reinstated and subsequently re-constructed to support a major replacement campaign or decommissioning activities.</i></p> <p><i>The parameters for these access tracks is set out in the Design Parameters Statement, and this has been updated at Deadline 1, to ensure that the 6.3m width referred to in chapter 2 is secured.</i></p> <p><i>Paragraph 2.4.171 of the ES notes that there may be a need for temporary access tracks during construction. If these are considered necessary, they would be short term, such as haul roads into the NBBMA, or short sections of track to facilitate access into compounds. These would be constructed in areas where other construction or decommissioning activities are taking place, for example in Works areas 1-3 and 7. Therefore, they are assessed as part of general construction activities within the application documentation, e.g. their permanent state would be as the flexibility allowed for by the Works Plans and controlled via the DCO</i></p>

#	Agenda item	Applicant's response
		<p><i>Requirements. This approach was intended to minimise disturbance and environmental impact.</i></p> <p><i>The use of these access tracks through the operational period has been considered as part of the operational phase assessments in the ES.</i></p> <p><i>(ii) The on-going use of access tracks are an embedded mitigation measure within the Proposed Development design. Furthermore, the environmental impacts from the construction of the access tracks has been minimised through:</i></p> <ul style="list-style-type: none"> <li><i>• re-use of the existing windfarm access tracks, both in relation to the main access to the solar array development area, and also the internal access tracks for the wind farm within the western half of the SADA;</i></li> <li><i>• routing the access tracks so they utilise existing access points into / across fields, thereby reducing loss of existing hedgerows and trees; and</i></li> <li><i>• routing access tracks so that existing crossing points of ditches are used where possible.</i></li> </ul> <p><i>At the point of decommissioning, there is an obligation in the Outline DEMP at paragraphs 2.4.2 and 2.4.3 to remove the access tracks and reinstate the land to its current condition. The measures set out in the Outline Decommissioning Environmental Management Plan (PD2-019) are designed to avoid significant effects on habitats and species, soil quality, the water environment, traffic, public rights of way, and waste. While some temporary disturbance to habitats adjacent to the access tracks may occur during removal works, these effects would be short term. In the longer term, the removal of the tracks and restoration of the land would deliver beneficial outcomes for habitats and species, soil quality, and the water environment.</i></p>

#	Agenda item	Applicant's response
		<p>(iii) <i>As with other aspects of decommissioning discussed under agenda item 5d, the restoration of land used by access tracks is subject to the requirements of paragraphs 2.4.2 and 2.4.3 of the Outline DEMP to enable that land to be able to be utilised as it is currently used. Furthermore, as set out in paragraph 5.3.5 of the Outline Soil Management Plan (APP-141) (which will then be followed through to the DEMP as set out in table 5-3 of the Outline DEMP) the soils access tracks composed of compacted stone will be dug out, and the soil beneath decompacted. Paragraph 5.3.7 goes on to state that there may be an opportunity to further improve soil quality (for example, by adding organic matter or re-seeding with appropriate species) as part of an agricultural aftercare program if the land is to revert to farming.</i></p> <p>(iv) The relevant mitigation measures discussed above are secured pursuant to Requirement 16 of the draft DCO which requires the detailed DEMP's to be submitted.</p>
5c	<b>Underground cable removal</b>	<p>The ExA invited the Applicant to explain its approach to the assessment and mitigation of the removal or retention of cabling and underground infrastructure</p> <p>Mr Russell, for the Applicant (and in doing so answering <b>question (i) of the ISH1 Agenda for this item</b>), explained that the base case is for cabling to be removed and recycled at decommissioning, with cables only left in place where the environmental impact of removal would outweigh the benefits. He confirmed that the Outline Decommissioning Environmental Management Plan had been updated at Procedural Deadline B to require that the detailed DEMP would include a benefit-impact analysis of removal vs retention of the cables and the proposed approach, allowing CWACC to understand the approach.</p> <p>From a design perspective Mr Russell noted that DC cabling is installed in conduits and located in grassland areas rather than beneath complex habitats or watercourses, and the high-voltage cables to the Frodsham SPEN Substation are above ground, reducing potential impacts.</p>



#	Agenda item	Applicant's response
		<p>He highlighted that the Outline Soil Management Plan includes measures for restoring soil profiles and safeguarding soil quality (which would be incorporated into the Detailed DEMP). He explained that ecology and water quality would be protected through best practice measures in the Decommissioning Environmental Management Plan, and that the regulatory position on waste licensing would be determined at the time of decommissioning, with the Applicant committed to obtaining any necessary licences or removing cables if required.</p> <p>He went on to confirm that cables and conduits are buried at depths that would not prevent agricultural activities being able to take place if retained post decommissioning.</p> <p>Mr Russell went on to confirm that (and in doing so answering <b>question (ii) of the ISH1 Agenda for this item</b>) that as per paragraphs 2.4.2 and 2.4.3 of the Outline DEMP, the Applicant intends to remove all other below ground infrastructure such as drainage and piling and that this activity would also be controlled through the mitigation measures in the detailed DEMP.</p> <p>Following discussion at the Hearing, Mr Fox, on behalf of the Applicant that it would:</p> <ul style="list-style-type: none"> <li>• review the ODEMP for Deadline 1 to ensure that it is clear that cables could be removed and that the measures in the plan should apply that wording;</li> <li>• review the OCEMP for Deadline 1 to ensure that it is clear that the installation method for cabling should account for potential removability requirements at decommissioning; and</li> <li>• following comments made by the EA at the Hearing, make clear that the costs/benefit analysis provided to CWaCC will explicitly accounting for groundwater impacts.</li> </ul> <p><b>Post hearing submission: (ExA Action Point):</b> <i>These updates have been made, and are reflected in the revised versions of the OCEMP and ODEMP have been submitted at Deadline 1.</i></p>

#	Agenda item	Applicant's response
5d	<b>Decommissioning end state</b>	<p>The ExA noted that the Outline Decommissioning Environmental Management Plan (oDEMP) sets out how environmental mitigation and monitoring will be delivered during decommissioning, and recognises the long operational duration before decommissioning is undertaken. The ExA highlighted the uncertainty that arises from changes in legislation, regulation, standards, and site condition over time, and suggested that it may be helpful to have a description of the anticipated end state of the site following decommissioning. The ExA proposed that this end state could be updated at appropriate intervals, to reflect changes in legislation and site condition, and to ensure that decisions made during design, construction, operation, and maintenance take decommissioning into account. The ExA invited the Applicant and the Council to respond to these suggestions and to consider whether interim updates or a progressive approach to the end state would be beneficial.</p> <p>Mr Russell, for the Applicant, responded by confirming that the oDEMP already sets out (at paragraphs 2.4.2 and 2.4.3) the base case for decommissioning, which is to remove all solar PV modules, mounting poles, above-ground cabling, inverters, transformers, base equipment, solar substation fencing, and other physical engineering works from the site. He explained that landscaping and habitat creation works (outside of grassland), including the NBBMA and permissive paths would remain, but that the Applicant does not control what happens after decommissioning, as this becomes a matter for the landowner. The arrangements in this plan with what is agreed with the landowners.</p> <p><b>Post hearing submission (ExA Action Point):</b> <i>At the Hearing the ExA asked the Applicant to set out its position as to potentially imposing controls on the landowners post decommissioning. In response, the Applicant's position is that:</i></p> <ul style="list-style-type: none"> <li>• <i>post decommissioning, planning and environmental law will still apply to the land that is currently in the Order limits. By the time the Proposed Development is decommissioned, habitats would be well established, and any change by the landowner to some other use of that land would require planning permission. For example, the NBBMA would be</i></li> </ul>

#	Agenda item	Applicant's response
		<p><i>functionally linked land, meaning that any change to it would involve having to achieve a positive HRA conclusion in order for planning permission to be granted. It is also noted that the draft DCO was amended at Procedural Deadline B to provide that the management of those parts of the NBBMA which fall within the boundary of the SSSI would become part of the management scheme for that SSSI, meaning any changes to those areas would require Natural England consent pursuant to the Wildlife and Countryside Act 1981. As such, any change to the 'end state' would be controlled in any event;</i></p> <ul style="list-style-type: none"> <li><i>the Development Consent Order is personal to the undertaker (save for any transfer of benefit undertaken) and does not 'run with the land' like a typical planning permission. Any enforcement action can therefore only be taken against the undertaker, not any third party;</i></li> <li><i>once the Proposed Development is decommissioned, there is no 'development' that is causing impacts and requires mitigation. It would not be appropriate for a DCO to impose restrictions on land where development is no longer in place; and</i></li> <li><i>there is no precedent for any DCO imposing obligations on landowners post decommissioning, noting that this was a subject extensively debated on the Sunnica solar DCO.</i></li> </ul> <p><i>As such, the Applicant strongly considers that it would not be appropriate for the DCO to impose such obligations on landowners.</i></p> <p>In response to questions from the ExA, Mr Russell confirmed that paragraphs 2.4.2 and 2.4.3 will be reviewed for Deadline 1, to consider if more clarity can be provided in relation to the removal position for other infrastructure such as bridges, new watercourse crossings/bridges and drainage, all of which are to be removed (with existing watercourse crossings/bridges being left</p>

#	Agenda item	Applicant's response
		<p>in situ). <b>Post hearing submission (ExA Action Point):</b> This is reflected in the updated oDEMP submitted at Deadline 1.</p> <p>In light of the ExA's opening remarks, Mr Russell went on to propose (and as previously discussed with CWaCC) that the oDEMP could include a commitment to provide an illustrative plan of the proposed end state as part of the detailed DEMP, and that the oDEMP would commit that such a plan must be updated to reflect changes in legislation and site condition, as necessary. <b>Post hearing submission (ExA Action Point):</b> This is reflected in the updated oDEMP submitted at Deadline 1</p> <p>Mr Russell noted that it was considered that it would not be possible to produce such a plan or description now, as part of the consenting stage, as any end state would be informed by the ultimate detailed design and maintenance activities undertaken post DCO consent.</p> <p>However, he agreed with the ExA's position that minimising impacts at decommissioning should be something which informs all stages of the development and operation of the Proposed Development, and that the Applicant would make commitments in such regard in updates to the Outline Construction and Operational Environmental Management Plans. <b>Post hearing submission (ExA Action Point):</b> This is reflected in the updated versions of those plans submitted at Deadline 1.</p> <p>In response to comments from CWaCC, Mr Russell also confirmed that when Frodsham Wind Farm is decommissioned, their mitigation commitments in respect of the area of the NBBMA will not fall away. Through the DCO and NBBMS, the Applicant has 'taken on' those mitigation requirements, alongside the additive measures proposed through its own proposals for the NBBMA.</p>
5e	<b>Decommissioning timing</b>	The ExA noted that Requirement 20 of the draft DCO requires decommissioning works to commence no later than 40 years after final commissioning, and that the oDEMP anticipates

#	Agenda item	Applicant's response
		<p>decommissioning to take between 12 and 24 months, undertaken in phases. The ExA highlighted the Council's request for provisions to address not only the end of the 40-year lifespan, but also scenarios where a relevant part of the site stops generating or storing electricity. The ExA asked whether DCO provisions are appropriate to avoid unnecessary delay in returning land to its previous uses, and whether it is necessary to limit the duration of any periods when adverse impacts are not offset by the benefits of electricity generation or storage. The ExA considered that there needed to be certainty of decommissioning works being completed to a programme (following CWaCC comments) and that not completing being avoided by simply not having a DEMP with a programme approved.</p> <p>Mr Fox, on behalf of the Applicant, noted that whilst the Applicant considers there are benefits in allowing a scheme to be able to have the opportunity to continue to generate electricity for its consented lifetime (as set out in item CWACC15.1 in PD2-027), it has considered this, and will put forward drafting in the Outline Operational Environmental Management Plan and Requirement 20 that will require decommissioning to happen prior to year 40, where electricity generation ceases.</p> <p>Mr Fox noted that this approach (which builds on that taken on Mallard Pass Solar Farm) was preferred to the wording in the Oaklands Solar Farm Order as it allows for flexibility in determining when it is considered that electricity generation has ceased, e.g. due to refurbishment of the substation by SP Energy Networks or force majeure events. In such cases, the Applicant proposed a system of notification to the Council, so that the Council is kept informed of the status of electricity generation and when decommissioning requirements would be triggered.</p> <p>CWaCC raised a point about the timing of habitat surveys at the decommissioning stage, suggesting that these should be undertaken earlier than might be implied by the Applicant's approach. Mr Russell, for the Applicant clarified that pre-decommissioning surveys would be required before any decommissioning works commence, as set out in the outline plan..</p>

#	Agenda item	Applicant's response
		<b>Post hearing submission: (ExA Action Point):</b> <i>The Applicant has submitted an amended OOEMP and amendments to the DCO Requirements at Deadline 1 to deal with this point, which secures the delivery of decommissioning (at the Applicant's risk) within a specific timeframe, and in accordance with an agreed programme.</i>
5f	<b>Decommissioning funding</b>	<p>Mr Fox, on behalf of the Applicant, acknowledged the point made by the ExA in its introduction of the Hearing on 2 December that notwithstanding recent discussions, Secretary of State determinations are made on the basis of the facts of individual cases and that for issues that are still prompting nuances in debate across different schemes, their determination on an issue in one case is not necessarily determinative of the principle of the point for every scheme.</p> <p>However, he considered that in the Applicant's opinion, in the case of seeking to impose a Requirement for a decommissioning bond, the concerns arising that lead to such a Requirement being sought are the same on nearly all solar DCOs, in that (with the exception of EdF and RWE projects) they are being brought forward by SPVs, that applicants seek to rely on statements in their Funding Statement to demonstrate that decommissioning is fundable; and that applicants usually have some form of decommissioning financial arrangements in their options with landowners.</p> <p>There are therefore limited differences across solar schemes to the factual context, and so the Secretary of State's decision in Oaklands, which confirmed that there is no National Policy Statement policy requiring such a Requirement, can be considered to equally apply to other schemes, such as the Proposed Development.</p> <p>Mr Fox also noted that concerns about changes in ownership (as expressed by CWaCC) are addressed by the requirement for Secretary of State consent for the transfer of benefit of the DCO, and that where consent is not required, it would be to reputable companies with electricity generation licences.</p>

#	Agenda item	Applicant's response
		<p>Mr. Fox also confirmed that, in respect of the Proposed Development, all of the agreed land Options require decommissioning security to be in place.</p> <p><b><i>Post hearing submission (ExA Action Point):</i></b> <i>By way of additional detail, the land Options require that the value of the security is based on two estimates from quantity surveyors, with the amount reviewed every ten years.</i></p> <p>In that context, Mr Fox confirmed that the Applicant's position is that it does not accept a DCO Requirement being imposed in respect of decommissioning funding and does not consider that the Proposed Development is of such a characteristic that it should set a new precedent for the industry.</p> <p>At the Hearing, the ExA acknowledged this, but asked that the Applicant still comment on the drafting proposed by the ExA, on a 'without prejudice basis to its wider position'. Mr Fox, for the Applicant confirmed that it will do this.</p> <p><b><i>Post hearing submission (ExA Action Point):</i></b></p> <p><i>The Applicant notes that on the same day as ISH, a DCO was made for the Helios solar project. This DCO includes the following drafting put forward voluntarily by the promoter of that project:</i></p> <p><i>No later than year 15 of operation the undertaker must notify the local planning authority that the undertaker has put in place the requisite decommissioning security in the form as required by the landowners.</i></p> <p><i>Notwithstanding that the Applicant continues to hold the position set out above that such drafting is not required (and so has not included this draft in the draft DCO submitted at Deadline 1), given</i></p>



#	Agenda item	Applicant's response
		<p><i>this decision has been made very recently, the Applicant acknowledges that it may be likely that a new precedent has been set for the market which Secretary of State wants to follow.</i></p> <p><i>If that is the case, the Applicant considers, on a without prejudice basis to its overarching position, that the Helios drafting could be adopted for the Proposed Development, save that it should end '....requisite security in a form as is required by any voluntary land agreement to which the undertaker is a party in respect of land within the Order limits.</i></p> <p><i>The Applicant also notes that notwithstanding the Helios decision, the Secretary of State may decide to go further than this and seek to impose a Requirement similar to that proposed by the ExA in Oaklands Solar Farm.</i></p> <p><i>Whilst the Applicant does not agree with this and considers such drafting should not be proposed, on a without prejudice basis it has provided proposed amends to that drafting, which the Applicant considers are necessary in drafting terms (but don't change the meaningful substance of the proposal) so that it reads as follows.</i></p> <ul style="list-style-type: none"> <li><i>• No phase of the authorised development may commence until the form and value of a decommissioning security for that phase has been submitted to and approved by the local planning authority.</i></li> <li><i>• Any decommissioning security approved under this paragraph shall be maintained until the date of completion of the decommissioning works to which that decommissioning security relates.</i></li> <li><i>• The value of the decommissioning security shall be reviewed by the valuer no less than every five years from the date of approval given under sub-paragraph (1) and the undertaker must increase or decrease the value of the security to reflect the results of the valuer's review, such review to take account of any variation, since the approval of the decommissioning security, or the previous review (as appropriate), in the estimated or actual costs of carrying out the decommissioning works, meeting all obligations under a</i></li> </ul>

#	Agenda item	Applicant's response
		<p><i>decommissioning environmental management plan approved under Requirement XX for the phase to which the decommissioning security relates, and complying with best practice prevailing at the time of each review.</i></p> <ul style="list-style-type: none"> <li><i>The undertaker may launch an appeal under paragraph 4 of Schedule 12 in respect of the relevant planning authority's consideration of a submitted decommissioning security under paragraphs (1) and (2) and where such an appeal is launched the Secretary of State must appoint the valuer as the appointed person under paragraph 4(2)(c)</i></li> <li><i>The undertaker may dispute the results of any review carried out under paragraph (3) and article 46 and Schedule 12 shall apply to such dispute.</i></li> <li><i>In this paragraph::</i>  <i>"decommissioning security" means a form of security that secures the costs of undertaking decommissioning works and meeting all obligations under a decommissioning environmental management plan approved under Requirement XX for the phase to which the security will relate; and</i>  <i>"valuer" means a suitably independent professional jointly appointed by the undertaker and the relevant planning authority prior to the first discharge of this Requirement but where an individual cannot be agreed, then this inability to agree should be considered to be a refusal of an application to discharge a Requirement for the purposes of article 46 and Schedule 12".</i> </li> </ul>
5g	<b>Peat deposits</b>	<p>In response to the ExA's introduction requesting that the Applicant provide clarification as to its approach to investigating peat deposits, the remaining uncertainties and proposed mitigation measures, Mr Gavin Campbell, Service Director for Land Quality at SLR Consulting (and Wardell Armstrong before they were purchased by SLR Consulting), on behalf of the Applicant, provided a detailed summary of the ground investigation data available for the site and adjacent areas, noting that data is available from project-specific investigations, third-party data from the Frodsham Wind Farm and the Runcorn CO<sub>2</sub> pipeline, and historic BGS borehole logs.</p>

#	Agenda item	Applicant's response
		<p>He explained that the Applicant had undertaken boreholes, trial pits, and soakaway tests. Various laboratory and fields tests were carried out during each investigation and groundwater level monitoring was carried out. The project-specific investigations were excavated to depths between 0.8 and 6m below existing ground level. None of these investigations proved peat beneath the Project.</p> <p>He summarised that there is a large geological database for the project reinforcing the Applicant's interpretation of where peat is/is not present. The results indicate that in this area there are two bands of peat (upper and lower). The upper peat is not proved beneath the Site of the Proposed Development, but is recorded south-west of the Site. The lower peat, where present, is at depth beneath the Site (likely 8 to 15 metres). The Applicant's interpretation of the results of the ground investigations indicates that there will be no, or only very limited potential for localised, peat disturbance with the proposed excavations and foundations required by the Project.</p> <p>He confirmed that, as requested, the Applicant would produce drawings summarising the known levels of the top of the peat in different locations, including both the upper and lower layers, and would indicate the locations of future ground investigations. Mr Campbell explained that mitigation measures were already in place, including the use of low pressure piling machinery and detailed site investigation prior to construction, and that further site investigation would be undertaken as part of the archaeological mitigation strategy.</p> <p>In relation to uncertainties, he noted that the uncertainties regarding the level of peat and the potential for it to be disturbed during the construction of the Project is a function of a number of factors including:</p> <ul style="list-style-type: none"> <li>• frequency of the site investigation points;</li> <li>• depth of the site investigation points;</li> <li>• method of site investigation;</li> </ul>

#	Agenda item	Applicant's response
		<ul style="list-style-type: none"> <li>• age, quality and accuracy of the site investigation information; and</li> <li>• likely depth of disturbance from the different construction activities.</li> </ul> <p>Mr Campbell noted that the Applicant considers that the frequency of ground investigations undertaken is appropriate to provide a good confidence level in the nature of the ground conditions beneath the Project and the absence of peat at shallow depth. He went to note that when the Applicant has completed the drawing referred to above, this will further demonstrate the general absence of peat interaction with the Project and reinforce the reasonable worst-case likely significant effects associated with the disturbance of peat during the construction phase. Ground investigation prior to construction for detailed design will include the investigation of those areas currently containing fewer ground investigation points.</p> <p>Finally, Mr Campbell noted that where peat is present at depth it is already preloaded and the amount of future compression or disturbance of any peat caused by the additional loading from the Project construction and permanent works will be small and insignificant.</p> <p>Mr Russell, for the Applicant, added, further to comments from CWaCC that the outline Written Scheme of Investigation commits to geoarchaeological investigations to ascertain the depth of buried peat and organic deposits, with the scope to be agreed in consultation with the Council and Historic England.</p> <p>Mr Fox, for the Applicant also noted that at Deadline 1, the Applicant will amend the definition of "ground conditions investigations and assessments strategy" in the Requirements to reference 'peat investigations'.</p> <p><b><i>Post hearing submission (ExA Action Point):</i></b> The plan requested by this item of the ISH1 Agenda has been submitted at Deadline 1 as part of a Technical Note on this issue submitted</p>

#	Agenda item	Applicant's response
		<p><i>alongside this submission, alongside the updated DCO which makes the change referred to above.</i></p> <p>Finally on this point, the ExA asked the Applicant to confirm whether the below ground level parameters included in the Design Parameters Statement are in reference to existing ground levels or proposed ground levels. Mr Russell, for the Applicant stated that the Applicant would take this away.</p> <p><b><i>Post hearing submission (ExA Action Point):</i></b> <i>The Applicant can confirm that the levels are in reference to existing ground levels. The Design Parameters Statement has been updated at Deadline 1 to make this clear.</i></p>
5h	<b>Ground conditions at the non-breeding bird mitigation area</b>	<p>At the Hearing a number of sub-topics were considered. This note considers them using the bold headings below, supplementing the oral submissions with further detail where required.</p> <p><b>Works Programme and Mitigation Measures</b></p> <p>This can be summarised as follows:</p> <p>Details of the Non Breeding Bird Mitigation Area are provided in pages 2-53 to 2-58 of Environmental Statement: Volume 1 Chapter 2: The Proposed Development [APP-035]. The works involve forming a number of depressions close to the natural water table to generate wetland habitat. The results of the ground investigations have been used to inform water balance modelling demonstrating that such wetland can be formed.</p> <p>Two earthworks options are discussed in [APP-035] with the selected method of construction to be confirmed in the detailed LEMP and the associated Non Breeding Bird Mitigation Strategy submitted for approval under the DCO Requirements. Both strategies involve the treatment of New Zealand Pygmyweed contaminated ponds to the north of the Non Breeding Bird Mitigation</p>

#	Agenda item	Applicant's response
		<p>Area; "cut and fill" earthworks to form a number of areas of lower ground level in the central part of the area forming a series of scrapes, areas of wet grassland and islands for the safe roosting of wetland birds; and drainage infrastructure to enable the water levels to be managed. Environmental Statement: Volume 2: The Proposed Development Appendix 10-2 Remediation Technical Concept Note – Cell 3 [APP 098] sets out the principles and work requirements associated with the creation of the Non Breeding Bird Mitigation Area, including the potential requirements for stabilisation of soils.</p> <p>The Applicant has summarised the ground investigations carried out in the Non Breeding Bird Mitigation Area and the ponds to the north in Appendix G of Environmental Statement: Volume 2 Appendix 10-1: Stage 1 Geo-Environmental Assessment Part 2 [APP-097]. Based on the results of the contamination assessments to date and following consultation with the Environment Agency, the Applicant concludes that the construction operations to form the NBBMA could be undertaken using a Deposit for Recovery (DfR) Permit from the Environment Agency or by using the Definition of Waste Code of Practice (DoWCoP), noting that detained ground investigation and risk assessment would need to be carried out to design the remedial works.</p> <p>The low strength of the materials to be moved to construct the Non Breeding Bird Mitigation Area is geotechnically challenging from an earthmoving perspective. Because of this, the Applicant has obtained specialist input from the civil engineering contractor who constructed the adjacent Frodsham Wind Farm and associated ecological mitigation on the basis that they have undertaken earthworks in the dredgings and understand the construction challenges and earthworks method of works to effectively manage the process. For example, to minimise construction difficulties from repetitive articulated dump trucks, it is preferred to use specialist equipment comprising multiple tracked conveyer belts to distribute excavated soils from central excavation to deposit areas; low ground pressure dozers and/or small capacity low ground pressure Hydrema dumpers.</p>

#	Agenda item	Applicant's response
		<p>The Applicant has obtained specialist advice on works sequencing from the experienced civil engineering contractor, and the indicative sequence that could be used is as follows:</p> <p><b>A. PRE-CONSTRUCTION PHASE</b></p> <ul style="list-style-type: none"> <li>i. Preparation of Sub-contract/DCO Requirement documents i.e. Risk Assessment Method Statement, Utilities Clearances pursuant to DCO Protective Provisions, CDM Construction Phase Plan, CWaCC Approval of Detailed Construction Environmental Management Plan &amp; Traffic Management Plan;</li> <li>ii. Lead-in period for specialist low ground pressure (LGP) plant;</li> <li>iii. Finalise New Zealand Pygmyweed (NZPW) Treatment provision, permitting and disposal route for treated water.</li> </ul> <p><b>B. CONSTRUCTION PHASE</b></p> <ul style="list-style-type: none"> <li>i. Mobilise plant &amp; equipment to site;</li> <li>ii. Establish temporary site compound &amp; parking, site offices, welfare, stores &amp; fueling;</li> <li>iii. Establish survey control and erect temporary fencing;</li> <li>iv. Vegetation clearance and offsite removal;</li> <li>v. Pump out ponds and water treatment;</li> <li>vi. Remove NZPW-contaminated soils and offsite removal;</li> <li>vii. Water management within ponds prior to filling;</li> <li>viii. Install temporary access tracks and protected crossings;</li> <li>ix. Excavate soils from central area of Cell3 and deposit soils in final selected deposit areas (ponds north of Cell 3 and/or remaining parts of Cell 3), generally working west to east, with stabilisation of soils as needed;</li> <li>x. Construct cut-off trench, remove protected crossings, install French drains &amp; sluice gate (as per final design);</li> </ul>



#	Agenda item	Applicant's response
		<p>xi. Remove fencing, strip out compound and access track; i. Demobilise site offices, welfare, stores &amp; fueling.</p> <p>In terms of mitigations, the Applicant has specifically considered this within its ES assessments. For example:</p> <ul style="list-style-type: none"> <li>• water pollution – paragraph 9.9.4 of Chapter 9: Flood Risk and Surface Water specifically identifies the risks from earthworks associated with the construction of the NBBMA and the clearance, removal and disposal of the New Zealand Pigmyweed in the NBBMA, and ground water impacts from excavation works in the NBBMA; and</li> <li>• contamination – specific investigations undertaken to understand the contamination within the are proposed for the NBBMA. Assessments presented in Chapter 10 Ground Conditions are specifically targeted at the NBBMA.</li> </ul> <p>The oCEMP contains control measures for generic impacts associated with matters such as dust, water pollution, ecological impacts, noise, contamination. However, specific measures are also identified for the NBBMA construction works, for example the oCEMP identifies specific requirements for a Construction Groundwater and Surface Water Management Plan (GSWMP);and a ground water risk assessment to be undertaken prior to works being undertaken in Cell 3; and specific noise mitigation requirements identified for works within specific distances from the boundary of the NBBMA. The Outline Soil Management Plan also contains a series of measures specifically related to the creation of the NBBMA.</p> <p><b>Unexploded Ordnances (UXO)</b></p> <p>In response to questioning from the ExA, Mr Fox, on behalf of the Applicant, confirmed that the Applicant had not specifically assessed the noise impacts of the detonation of unexploded bombs. He noted that not only was this not usual practice (notwithstanding the number of reported bombings), but that also because any impacts would be able to be carefully managed pursuant</p>

#	Agenda item	Applicant's response
		<p>to the UXO management plan required by the DCO, which would apply standard mitigation measures to ensure impacts to sensitive receptors could be avoided.</p> <p>Mr Russell, for the Applicant, clarified that it is not possible to estimate the exact number of UXO devices that might be encountered, but the risk assessment methodology is well established and was successfully implemented for the adjacent Frodsham wind farm. The Applicant stated that the magnitude of impact from UXO is assessed as negligible to minor, given the embedded mitigation measures and standard good practice. If a UXO is found, the management plan would set out the steps to be taken, including health and safety protocols and consideration of impacts on birds and noise (e.g., timing controlled explosions to avoid nesting periods).</p> <p>Mr Fox agreed with the ExA that the Outline CEMP will be updated to set out more detail on what the UXO management plan should include to manage the aforementioned risks.</p> <p><b>Materials and Gas Interactions</b></p> <p>In response to questions from the ExA, Mr Russell, on behalf of the Applicant, confirmed that:</p> <ul style="list-style-type: none"> <li>• hydrocarbons were present only at low levels and none in free phase, and no significant mitigation was required (10.6.47 – 10.6.48 Environmental Statement: Volume 1 Chapter 10: Ground Conditions (APP-043);</li> <li>• asbestos was detected below the limit of detection, so no special method mitigation is needed for the protection of works in relation to asbestos other than standard PPE (10.6.46 Environmental Statement: Volume 1 Chapter 10: Ground Conditions (APP-043) ; and</li> <li>• hazardous waste could be disposed of at local facilities, and only nominal volumes would be expected to be produced; and</li> </ul>

#	Agenda item	Applicant's response
		<ul style="list-style-type: none"> <li>as secured by the outline Construction Environmental Management Plan updated at Deadline 1, ground gas monitoring would be undertaken if sealed buildings were constructed, but in any event most structures would be raised above ground.</li> </ul> <p>Mr Russell, went on to say that the Applicant would revert in writing to supplement the above and to provide a response to the ExA's questions in terms of risk of contamination mobilisation as a result of groundwater movement, management measures if hydrocarbons are encountered; how PH levels will be reduced (and to what extent reducing the PH level matters in order for the Applicant's grassland proposals to establish) and how toxic effects to ecology have been considered in the application (and why ecotoxicology modelling is not required).</p> <p><b><i>Post-hearing submission (ExA Action Point):</i></b> <i>The Applicant's responses to these points are set out in Appendix 2 to this submission.</i></p> <p><b>Overarching Programme for the Proposed Development</b></p> <p>The discussion on this Agenda Item ended with a discussion on the overarching point of whether the Applicant had considered that dealing with the matters discussed in this item might mean that the works to establish the NBBMA may take longer than one of the seasonally restricted windows that have been given to establish them (thus meaning that the works would have move into a second window a year later).</p> <p>Mr. Fox, on behalf of the Applicant indicated that in general terms, this would have little effect on the ES and HRA assessments; it would just mean that some impacts would occur a year later. However, he acknowledged that the position with the traffic assessment is not as simple as this, as there will be a need to account for moving traffic movements into a different year in the future baseline. As such, he committed that the Applicant would submit a Traffic Technical Note into the Examination to deal with this point.</p>

#	Agenda item	Applicant's response
		<b>Post hearing submission (ExA Action Point):</b> <i>This note has been produced and has been submitted at Deadline 1 alongside this submission.</i>
5i	<b>National Character Areas (NCA) (in relation to the landscape)</b>	<p>The ExA stated that discussion on National Character Areas would be taken in writing. The below text is therefore the Applicant's submissions with regards to this item:</p> <p><u><i>Please could the applicant provide further justification for why it considers that effects on NCAs would be less than on local character areas? Is the applicant's approach supported by relevant guidance? Are the relative size and scale of the areas the only consideration?</i></u></p> <p><b>Rationale for Scoping Out NCAs</b></p> <p>GLVIA Third Edition explains that, within the UK, landscape character assessment operates through a hierarchy of scales, ranging from broad national or regional assessments to progressively finer-grained local assessments (paragraph 5.12). Paragraph 5.13 advises that, in preparing an LVIA, it is necessary to review the scale and level of detail of the available baseline character assessments and to consider their suitability for the task, noting that larger-scale assessments can often provide valuable contextual information. Paragraph 5.14 emphasises that it is essential to decide at the outset what scale of character assessment information is required to provide an appropriate basis for the LVIA, and makes clear that national assessments, on their own, are unlikely to be helpful, as they are generally too broad and generalised for the specific purpose of assessing a particular development. This guidance provides the context for the process that has been followed in the LVIA.</p> <p>NCAs cover very large geographic areas and are not sensitive to the type of localised change represented by the Proposed Development. This is particularly evident in relation to the relevant NCA in this case – the Mersey Estuary NCA, which extends from Manchester to Liverpool and from the M56 motorway to the East Lancashire Road. This NCA contains a wide variety of land uses including settlements, heavy industry, port operations, major road and rail corridors, large</p>

#	Agenda item	Applicant's response
		<p>scale energy generation and transmission infrastructure, as well as extensive estuarine marsh – all set within the distinctive geography / topography of a large estuary. Within such a geographically extensive and diverse landscape, the contribution of a low-profile solar array at the edge of one localised part of the estuary would be extremely small and would not result in any noticeable change to the character of the NCA as a whole.</p> <p>The appropriate scale for meaningful assessment is the level of the local landscape character areas. These reflect the landscape units within which actual perceptible change <i>to character</i> can occur.</p> <p><b>Agreement with CWaCC</b></p> <p>During post scoping consultation CWaCC confirmed that the local landscape character areas defined in the CWaCC Landscape Strategy represent the correct units for assessment. CWaCC also agreed that a detailed assessment at the NCA scale would not provide additional clarity and that referencing NCAs within the LVIA solely for wider context was appropriate.</p> <p><b>Use of Both the Landscape Character Assessment and the Renewable Energy Sensitivity Study</b></p> <p>The LVIA has not relied solely on the CWaCC Landscape Character Assessment. It has also taken account of the CWaCC Renewable Energy Sensitivity Study, which provides a further layer of landscape-based evidence on sensitivity to solar development across the local authority area. The sensitivity study assesses how the characteristics of each local landscape character area respond to ground mounted solar development and emphasises the importance of scale, landform, openness, existing infrastructure and landscape context. This additional evidence base reinforces the conclusion that the effects of the Proposed Development are most appropriately considered at the local character area scale rather than at the scale of the NCA.</p>

#	Agenda item	Applicant's response
		<p><b>Treatment of NCAs in the LVIA</b></p> <p>Although a detailed NCA level assessment has been scoped out, the LVIA summarises the NCAs in Section 6.6 to provide high level context (consistent with the approach advocated in GLVIA). The detailed assessment is then undertaken at the local landscape character area level, which is the correct and proportionate scale for evaluating potential effects.</p> <p><b>Conclusion</b></p> <p>The scoping out of NCAs is proportionate and justified. The very large scale and diverse composition of the Mersey Estuary NCA mean that it is not an appropriate assessment unit for a development of this type and scale. The LVIA properly relies on local character areas and the renewable energy sensitivity study, both of which provide the correct level of detail for assessing perceptible change. The approach remains robust and agreed with CWaCC.</p> <p><u><i>Recognising that NCAs are sensitive receptors within their own right, please could the applicant set out, with clear justification and reasoning, the potential effects of the proposed development on NCAs?</i></u></p> <p><b>Relevant NCA and Its Geographic and Functional Scale</b></p> <p>The Proposed Development lies within the Mersey Estuary National Character Area. This NCA extends from Manchester to Liverpool and from the M56 motorway to the East Lancashire Road. It contains a very broad mix of land uses including heavy industry, energy generation and transmission infrastructure, port facilities, major transport corridors and extensive estuarine marshland. The geographic extent and variety of the NCA are essential factors in judging any effect at this scale.</p>

#	Agenda item	Applicant's response
		<p><b>Sensitivity of the NCA</b></p> <p>NCA's can be regarded as sensitive receptors in a strategic sense. Their sensitivity is based on the presence of valued environmental patterns, distinctive landform, ecological features and cultural associations. However, sensitivity at the NCA scale relates to very generalised qualities rather than to the specific capacity of a location within the NCA to accommodate development.</p> <p>For the Mersey Estuary NCA, sensitivity to change must be understood in the context of:</p> <ul style="list-style-type: none"> <li>• extensive existing industrial and energy related land uses</li> <li>• major transport and utilities corridors</li> <li>• large established structures including pylons, substations and chemical industry installations</li> <li>• a long history of human intervention and infrastructure expansion along the estuarine corridor</li> <li>• a pattern of varied and often contrasting landscape conditions across the NCA</li> </ul> <p>This baseline indicates that, while the NCA has recognisable landscape character, it exhibits lower susceptibility to further energy related development in areas where large-scale built infrastructure is already prevalent. This aligns with the CWaCC Renewable Energy Sensitivity Study, which recognises that sensitivity must be interpreted at local character area level and that landscapes containing significant infrastructure generally have a greater capacity for additional energy development.</p> <p><b>Baseline Character Relevant to the Proposed Development</b></p>

#	Agenda item	Applicant's response
		<p>Key characteristics of this NCA that frame the likely effects include:</p> <ul style="list-style-type: none"> <li>• strong presence of industrial and energy installations</li> <li>• large scale utilities including pylons and substations</li> <li>• major road and rail infrastructure including the M56</li> <li>• wide estuarine marshes interspersed with developed edges</li> <li>• a mixture of rural, urban and industrial influences across the NCA</li> </ul> <p>The Proposed Development is located within an area of the NCA that is already defined by major transport and utility infrastructure.</p> <p><b>Likely Nature and Magnitude of Effects at the NCA Scale</b></p> <p>The effect of the Proposed Development at NCA scale is limited for the following reasons:</p> <ul style="list-style-type: none"> <li>• <b>Scale of the development relative to the NCA</b> The NCA covers more than 60 kilometres from east to west. The Proposed Development occupies a very small proportion of this and does not influence the NCA's defining landform or large scale patterning.</li> <li>• <b>Low profile and contained nature of the solar arrays</b> The panels are approximately 4 metres in height and do not influence skyline composition or the dominant landform features that define the estuarine landscape.</li> </ul>



#	Agenda item	Applicant's response
		<ul style="list-style-type: none"> <li>• <b>Location within an area already characterised by infrastructure</b> The Proposed Development lies adjacent to the M56 corridor and in proximity to pylons, wind turbines and industrial facilities. Within this part of the NCA the introduction of additional energy related structures represents a continuation of existing patterns rather than a shift in character.</li> <li>• <b>No effect on defining characteristics of the NCA</b> The estuarine landform, tidal marshes, major transport routes and industrial clusters all remain entirely intact. The development does not modify, obscure or diminish any of the elements that define the NCA.</li> </ul> <p>These factors all indicate a <b>low magnitude of change</b> at NCA scale.</p> <p><b>Overall Effect on the NCA</b></p> <p>The very large and diverse geographic coverage of the Mersey Estuary NCA, the presence of substantial existing industrial and energy infrastructure – all point towards <b>low</b> susceptibility and <b>low</b> sensitivity to change.</p> <p>The low height and typically contained nature of the Proposed Development and the consistency rather than contrast with defining NCA characteristics, indicates that the scale of change introduced by the Proposed Development is <b>low</b>.</p> <p>Therefore the overall effect on the NCA is assessed as <b>minor</b> and <b>not significant</b>.</p> <p><b>Conclusion</b></p>

#	Agenda item	Applicant's response
		Although NCAs are recognised as sensitive receptors at a broad strategic level, the characteristics and diversity of the Mersey Estuary NCA mean that it is not susceptible to a material change as a result of the Proposed Development. None of the NCA's defining landscape characteristics would be altered, and the Proposed Development would be absorbed within an established infrastructure corridor. For these reasons the effect on the NCA is <b>minor</b> and <b>not significant</b> .
5j	<b>Residential visual amenity assessment (RVAA)</b>	<p>The Examining Authority indicated that its queries in respect of Residential Visual Amenity Assessment would be taken in writing. The below text is therefore the Applicant's submissions with regards to this item:</p> <p><u>Please could the Applicant comment, with reasoning, on the level of glint and glare (for example in terms of intensity and duration) that could reasonably be considered to make a property an unattractive and unsatisfactory place to live? Please could CWCC comment?</u></p> <p>The question invites comparison between glint and glare and the Residential Visual Amenity Assessment. These are two distinct matters that should not be conflated.</p> <p><b>Distinction Between RVAA and Glint and Glare Assessments</b></p> <p>The RVAA considers whether the overall visual environment of a home becomes so altered and dominated by a development that the property becomes unattractive or unsatisfactory to live in. It concerns the continuous and day to day character of views.</p> <p>Glint and glare concerns angle dependent reflections that only occur when the sun, the panel surface and the receptor align. These reflections are typically short in duration and intermittent – restricted to specific times on specific days of the year. They do not materially change the</p>

#	Agenda item	Applicant's response
		<p>composition or character of a residential view. For this reason, glint and glare is not assessed within an RVAA and the two assessment processes have different purposes.</p> <p><b>When Could Glint and Glare Affect Living Conditions</b></p> <p>In order for glint and glare to affect living conditions there would need to be sustained and materially disruptive reflections. This would require reflections that are sufficiently intense, frequent and prolonged to interfere with normal domestic activity, such as repeated visual discomfort or the need to routinely alter behaviour inside the home. Levels of this order are far beyond the variability of sunlight reflection encountered in normal residential environments.</p> <p><b>Predicted Effects for the Proposed Development</b></p> <p>The Glint and Glare Assessment shows that predicted reflections are low in intensity, short in duration and intermittent. They occur only under limited sun angle conditions on certain days in certain months. The modelled outcomes fall within the low impact category. These predictions are highly conservative because the modelling outputs assume clear skies, unobstructed sightlines and maximum theoretical visibility. In reality, existing and proposed planting together with variability in local weather conditions would further reduce the frequency, duration and visibility of any reflections.</p> <p><b>Conclusion</b></p> <p>The predicted glint and glare effects do not approach a threshold at which living conditions could be affected. They do not alter the residential visual environment in any continuous or material way. Separately as part of the LVIA process, it has been concluded that no residential property would experience effects that come anywhere close to approaching the Residential Visual Amenity Threshold in respect of changes in view.</p>

#	Agenda item	Applicant's response
		<p>The proposed development would not render any property unattractive or unsatisfactory to live in as a result of glint and glare.</p> <p><u>Please could the Applicant clarify the level of glint and glare at residential receptors along Ship Street in the vicinity of Viewpoint 3? Are similar levels anticipated at any other residential receptors?</u></p> <p>Ship Street is placed within the low impact category in the Environmental Statement: Volume 2 Appendix 4-3: Glint and Glare Assessment (APP-056). The low impact category references glint and glare exposure of up to 60 minutes per day. It should be noted however that this is simply the upper limit of that category. It is not a prediction that receptors on Ship Street will experience 60 minutes per day of reflection.</p> <p><b>Actual Modelled Durations for Ship Street</b></p> <p>The modelled data that sits behind the glint and glare assessment shows that there would be significantly lower durations of exposure than the category limit of 60 minutes. The data indicates:</p> <ul style="list-style-type: none"> <li>• Duration at the 95th percentile would typically be between 5 and 10 minutes per day for Ship Street receptors</li> <li>• The Median duration sits somewhere between 2 and 3.5 minutes per day for Ship Street receptors</li> <li>• The Maximum duration for a Ship Street receptor on a single day is approximately 35 minutes</li> </ul>

#	Agenda item	Applicant's response
		<ul style="list-style-type: none"> <li>The next longest duration is approximately 22 minutes</li> </ul> <p>As stated previously, these values reflect conservative assumptions including clear skies and unbroken sightlines.</p> <p><b>Real World Visibility at Ship Street</b></p> <p>Actual exposure to reflections would be lower than the modelled results because:</p> <ul style="list-style-type: none"> <li>substantial existing vegetation stands between the properties and the Proposed Development. This will block or filter the light along many of the 'lines of sight' between panels and receptor properties</li> <li>all potential reflection periods fall in summer when vegetation is in full leaf and thus at maximum screening effectiveness</li> <li>results assume worst case clear conditions whereas in reality cloud cover, haze and moisture will commonly reduce or eliminate reflections</li> </ul> <p>The Examining Authority is invited during its visits to site to observe the extent and distribution of established vegetation on both the northern and southern sides of the M56 in the vicinity of Ship Street. It will be evident that this vegetation will provide significant filtering of views between the Ship Street properties and the proposed solar arrays.</p> <p><b>Comparison with Other Residential Locations</b></p> <p>Ship Street represents the highest predicted potential exposure among the residential receptors assessed. No other residential receptor approaches these durations and all fall within the low category with substantially lower values.</p>

#	Agenda item	Applicant's response
		<p><b>Conclusion</b></p> <p>Assessed reflections at Ship Street are seasonal in nature, are limited in duration, are modelled very conservatively with an assumption of permanently clear skies and would be further reduced in practice through vegetation. No similar levels occur elsewhere and no residential receptor would experience effects that could affect amenity to an extent that is anywhere approaching an RVAA threshold.</p>
5k	HyNet Pipeline Runcorn Dioxide Pipeline  Hydrogen and Carbon Spur	<p>Following the ExA's introduction to this item, Mr Fox confirmed that (in answer to <b>questions (i) and (ii) of the ISH1 Agenda for this item</b>):</p> <ul style="list-style-type: none"> <li>the planning application for the Runcorn Spur Pipeline has been submitted and constitutes the latest information for the project and all the information that is available in terms of how that development will be constructed operated and decommissioned (noting the bullet point on this in <b>question (iii) of the ISH1 Agenda for this item</b>). This was used to help inform the response to CWaCC on this point at Procedural Deadline B (item CWACC16.1 of PD2-027) and the technical note referred to below; and</li> <li>Cadent has announced a pause in the Hynet Hydrogen Pipeline, meaning that a DCO application may not be brought forward in 2026. No further information is available than at the time of submission of the DCO application, which constituted a PEIR and information accompanying targeted consultation.</li> </ul> <p>Mr Fox confirmed (and in so doing answering <b>questions (iii) (the first part) to (iv) of the ISH1 Agenda for this item</b>) that a SoCG is being brought forward with Liverpool Bay CCS Limited (and that discussions are on-going with them and CWaCC in respect of the progress of their live planning application) which will be submitted at Deadline 1 and kept up to date through</p>

#	Agenda item	Applicant's response
		<p>Examination. That SoCG will set out the parties' respective positions on co-ordination and reflects the long-term discussions that have been taking place between the parties.</p> <p>In respect of Cadent, he read out an agreed position statement between the parties in respect of this matter:</p> <p><i>Cadent is developing its proposals for the HyNet North West Hydrogen Pipeline and the Applicant and Cadent are in discussions as to how to manage that interaction, particularly in relation to the interaction between the installation of the pipeline as part of that project and the environmental mitigation forming part of the Proposed Development. The OCEMP recognises and secures this and Cadent is content with the provisions within it, including the proposed Working Group. On the basis of this, Cadent considers that a SoCG is not needed between the Parties, as the only remaining point relates to Cadent's Protective Provisions in respect of existing assets, where commercial discussions are continuing and the Applicant will be able to update on progress as required by the Rule 6 Letter.</i></p> <p>At the Hearing, Mr Fox and Mr Russell, for the Applicant, in that aforementioned context, set out the Applicant's principled position on this matter in terms of what has been and can be assessed by the Applicant, what can be secured through the DCO and how matters need to progress in the context of the matters set out in <b>question (iii) of the ISH1 Agenda for this item.</b></p> <p>Mr Fox confirmed that this position would be set out in detail in the separate 'Technical Note on Pipeline Interactions' submitted at Deadline 1 (which also includes within it the plan requested by the ExA in the agenda) and so his statements at the Hearing are not repeated here.</p> <p><b>Post hearing submission (ExA Action Point):</b> <i>This technical note has been submitted at Deadline 1.</i></p>

#	Agenda item	Applicant's response
		<p>At the Hearing, Mr. Fox separately addressed the bullet point in question (iii) of the ISH1 Agenda for this item referencing National Grid Electricity Transmission plc ('NGET') and regarding access to and protection of their assets, whilst a number of projects are taking place in the vicinity of their assets. He noted that NGET's interests are protected by the Protective Provisions for its benefit in the draft DCO. NGET would be able to require co-ordination as part of giving approvals pursuant to these Protective Provisions. Similar provisions would be in force for the Cadent Hydrogen Pipeline DCO, and we assume that NGET are seeking similar protections to be put in place for the Runcorn Spur Pipeline project. As such, no SoCG is required for NGET.</p> <p>Finally, Mr Nick Grant, on behalf of National Highways, noted that further work by National Highways on the cumulative position would be submitted in due course, but in any event requested that National Highways be added to paragraph 7.1.5 of the Outline Construction Traffic Management Plan as being a party that could request more developers to be added to the proposed Construction Traffic Management Plan Working Group asked that a wider list of other developments be included in the cumulative road and traffic impacts assessment.</p> <p>Mr Fox, on behalf of the Applicant, confirmed their agreement to this approach. <i>Post hearing submission (ExA Action Point): The Outline CTMP has been updated to account for this at Deadline 1.</i></p>



### Appendix 1: Justification for Access Points included in Schedule 5 of the Draft DCO

<i>(1) Area</i>	<i>(2) Street</i>	<i>(3) Description of means of access</i>	<i>Reasons for Access</i>
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Provision of a permanent means of access to the authorised development between points marked A3-1 and A3-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans	Provide access from Alder Lane (existing track through the Site) west onto a proposed access track leading to solar panel area A02 as shown on Figure 2-2 of Environmental Statement: Volume 3 Chapter 2 Figures (APP-106).
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Provision of a permanent means of access to the authorised development between points A5-1 and A5-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans	Provide access from Alder Lane (existing track through the Site) west onto a proposed access track leading to solar panel area A04 as shown on Figure 2-2 of Environmental Statement: Volume 3 Chapter 2 Figures (APP-106).
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Provision of a permanent means of access to the authorised development between points A6-1 and A6-2 on sheets 3 and 4 of the street works, public rights of	Provide access from Alder Lane (existing track through the Site) east onto a proposed access track leading to solar panel area A03.2 as shown on Figure 2-2 of Environmental Statement: Volume 3 Chapter 2 Figures (APP-106).

		way, vehicular usage and access plans	
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108	Provision of a permanent means of access to the authorised development between points marked A7-1 and A7-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans	Provide access from Alder Lane (existing track through the Site) west onto a proposed access track leading to solar panel area A04 as shown on Figure 2-2 of Environmental Statement: Volume 3 Chapter 2 Figures (APP-106).
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108 and Public Right of Way Frodsham FP91	Provision of a permanent means of access to the authorised development between points A8-1 and A8-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans	Provide access from Alder Lane (existing track through the Site) north onto a proposed access track leading to solar panel area A03.2 as shown on Figure 2-2 of Environmental Statement: Volume 3 Chapter 2 Figures (APP-106).
Cheshire West and Chester Council	Alder Lane – Public Right of Way Frodsham RB108 and Public Right of Way Frodsham FP91	Provision of a permanent means of access to the authorised development between points marked between points A9-1 and A9-2 on sheets 3 and 4 of the street works, public rights of way, vehicular usage and access plans	Provide access from Alder Lane (existing track through the Site) east onto a proposed access track leading to solar panel areas B01 to B18 shown on Figure 2-2 of Environmental Statement: Volume 3 Chapter 2 Figures (APP-106).
Cheshire West and Chester Council	Public Right of Way Frodsham FP81	Provision of a permanent means of access to the authorised development	Provide access from footpath FP81 (existing track through the Site) west onto a proposed access track leading to solar panel areas B01 to B18 shown on Figure 2-2 of

		between points A10-1 and A10-2 on sheet 4 of the street works, public rights of way, vehicular usage and access plans	Environmental Statement: Volume 3 Chapter 2 Figures (APP-106).
Cheshire West and Chester Council	Public Right of Way Frodsham FP81	Provision of a permanent means of access to the authorised development between points marked between points A11-1 and A11-2 on sheet 4 of the street works, public rights of way, vehicular usage and access plans	Provide access from footpath FP81 (existing track through the Site) east onto a proposed access track leading to solar panel areas B01 to B06 shown on Figure 2-2 of Environmental Statement: Volume 3 Chapter 2 Figures (APP-106).

## **Appendix 2: Response to Actions in Agenda Item 5h**

### **1.0 CONSIDERATION OF RISK OF CONTAMINATION MOBILISATION DUE TO GROUNDWATER MOVEMENT**

- 1.1.1 Table 10-2 of Environmental Statement: Volume 1 Chapter 10: Ground Conditions (APP-043) identifies that resting groundwater levels sit at 3.2m below ground level (bgl), with perched groundwater identified at shallower depths (0.5-2.0m) bgl.
- 1.1.2 As the proposed works within the dredgings in the NBBMA during the construction phase would generally be limited to the top 0.5 to 1m of material (ref 2.3.4 of oSMP [APP-141]) there would be low potential for interaction with resting groundwater which sits at 3.2m bgl (in the Secondary Tidal Flat Deposits or Glaciofluvial Deposits Aquifer).
- 1.1.3 As such, there is only a low potential for interaction with resting groundwater due to the depth of proposed excavations in Cell 3. If encountered, dewatering of excavations will occur which would reduce the potential for contaminant migration. If groundwater is encountered when excavating, groundwater management practices will be adopted. Dewatering practices may include a series of cut-off trenches and pumping employing best engineering practices (Table 5.5 of oSMP [APP-141]).
- 1.1.4 Seasonal programming due to the restrictions on working within Cell 3 between November and March inclusive will ensure major soil movements associated with the creation of the NBBMA occur in drier periods. Accordingly, the work to create the NBBMA, which would be the most significant earthworks activity on the Site, would be undertaken outside the winter period.

- 1.1.5 Groundwater within the bedrock Principal Aquifer will not be disturbed. The widespread presence and associated thickness of alluvial/Tidal Flat Deposits which includes cohesive stratum plus underlying glacial till would limit the migration of mobile contaminants to bedrock from the overlying made ground and superficial deposits.
- 1.1.6 Leachable contamination encountered within the soils to be excavated within the NBBMA are not considered likely to have a significant impact on the surrounding perched groundwater and an impact on groundwater in the longer term. This is because the results from the previous intrusive investigation of the NBBMA (including analysis of soil, soil leachate, groundwater and surface water during ground investigations spanning February 2024, June 2024, October 2024 and February 2025), indicate that soils within MSCDDG Cell 3 are likely to already be in chemical continuity with groundwater.
- 1.1.7 Paragraphs 10.6.50 to 10.6.55 of the Environmental Statement: Volume 1 Chapter 10: Ground Conditions [APP-04]) summarise the presence of leachable contaminants within dredging materials (i.e. those materials where the NBBMA will be created) as follows: exceedances of metals and the PAHs recorded within the perched groundwater were comparable (within the same order of magnitude) to those recorded within soil leachate (ref: Appendix G: ES Vol 2 Appendix 10-1 Stage 1 Geo-Environmental Assessment [APP-096]). Similarly, contaminants within the groundwater sampled from the NBBMA<sup>1</sup> were reported within both groundwater in the NBBMA and surface water.

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<sup>1</sup> Including exceedances of ammonia, copper, lead, mercury, nickel, zinc and to a lesser extent cadmium were reported within both the groundwater and surface waters within the NBBMA. No exceedances of hydrocarbons were reported and concentrations of VOCs and PCBs were below analytical detection limits in both instances.

- 1.1.8 However it is also the case that the dredgings within the MSCDDG Cells have been in-situ for between 60 and 80 years where infiltration and leaching will have already taken place (as evident by chemistry of shallow groundwater and surface water where sampling and analysis has been undertaken) (Section 9.9.2 of ES Vol 2 Appendix 10-1 Stage 1 Geo-Environmental Assessment [APP-096]. This further reduces the potential for the leaching of chemicals from the soils resulting in a reduction in groundwater quality.

***Investigation and Monitoring***

- 1.1.9 Supplementary Site investigation and risk assessment of groundwater quality will be undertaken as set out in the oCEMP (as updated alongside this submission). This will inform a detailed risk assessment of groundwater quality associated with the works in the NBBMA. Should this identify the need, a remediation strategy would be implemented such as the measures set out in Environmental Statement: Volume 2 Appendix 10-1: Stage 1 Geo- Environmental Assessment [APP-096], described in more detail below.
- 1.1.10 A groundwater and surface water monitoring plan (GWSWMP) will also be prepared as part of the final CEMP. This will set out measures for the site wide management of surface water, rainfall run off, ground water, and site drainage. This will include a Method Statement and Monitoring Plan for all excavation works within the NBBMA implemented to support the Construction Phase as set out in Table 5-4 of the oCEMP.

- 1.1.11 The GWSWMP will include establishment of a water quality baseline prior to the construction works commencing, with confirmatory water quality data obtained at agreed periods during, and immediately following completion, of the works. This will ensure the construction phase does not have a detrimental effect on water quality, confirm that no remedial measures are required and ensure that any pollution events (potentially offsite) are identified. The GWSWMP will focus on the NBBMA where significant earthworks will take place but will also include a programme of monitoring of groundwater and surface water over the remaining areas of the Site where dredging materials are to be excavated and disturbed. It is considered that the proposed monitoring will be undertaken over an agreed period during and following completion of construction, long-term monitoring beyond one year after construction is not considered likely to be required.

***Management of Remediation***

- 1.1.12 Environmental Statement: Volume 2 Appendix 10-2: Remediation Technical Concept Note – Cell 3 [APP-098] recognises the possible need for remediation. The note describes the characteristics of the soils and groundwater in Cell 3 and states that, based on the available results, if the risk assessment indicates the need for remediation, stabilisation is likely to be suitable and is acknowledged as a commonly used remedial method to reduce the leaching potential of any contaminants present. Paragraph 10.1.12 of Environmental Statement: Volume 1 Chapter 10: Ground Conditions [APP-043] sets out the following:

*For both options [referring to the options of creating the NBBMA], the associated reuse of materials is proposed to be undertaken by means of using a Materials Management Plan (MMP) under the Definition of Waste Code of Practice (DoWCoP). NBBMA Option 1 would be undertaken via a hub and cluster arrangement with NBBMA Option 2 to be undertaken via Site of Origin. Both options would be undertaken following soils remediation to be completed under a Remedial Strategy*

*that would be approved by statutory consultees prior to undertaking the works. If for any reason it is not possible to undertake the works using the MMP, then a Deposit for Recovery (DfR) Permit would be obtained and the works undertaken under the requirements of that permit.*

- 1.1.13 There will be a requirement for a detailed controlled water risk assessment to be provided for the MMP or the DfR Permit. If deemed necessary following the groundwater risk assessment, a remediation and groundwater and surface water monitoring programme may be required. The MMP or the DfR Permit would detail recovery, segregation, testing and replacement works and this would be approved by the regulators prior to implementation.
- 1.1.14 Any remedial works would be subject to detailed assessments to both inform the design of the methods (e.g. remedial options appraisal and treatability trials), remedial endpoints/targets (groundwater risk assessment), method statements and action plans, verification monitoring and verification. Any remedial works would be subject to regulatory approval by the EA prior to commencement.

***Unexpected Contamination***

- 1.1.15 An Unexpected Contamination Protocol will be developed and included in the final CEMP, setting out procedures for assessment and remediation if contamination is identified, as set out in the outline CEMP. Any contamination identified will be investigated and risk-assessed, with remediation strategies and verification implementation plans developed as required. If analysis confirms contamination above relevant screening values (for human health or environmental risk), a suitable remediation or management plan will be devised before work resumes. This could include segregating the material for treatment or disposal or implementing in-situ remediation if feasible. These measures would protect groundwater from any unexpected contamination identified during the works.



## **2.0 MANAGEMENT APPROACH IF HYDROCARBONS ENCOUNTERED**

- 2.1.1 Environmental Statement: Volume 1 Chapter 10: Ground Conditions [APP-043] sets out that olfactory evidence of hydrocarbons were reported from the site investigations within the former dredging deposit ground cells, including Cell 3 where the NBBMA is proposed. None of the soil samples have exceeded corresponding Generic Assessment Criteria (GAC) for human health or equivalent Environmental Quality Standard (EQS) for assessment of water quality. No observations of hydrocarbon staining, or hydrocarbon free phase product was recorded within any of the exploratory hole logs.
- 2.1.2 Environmental Statement: Volume 2 Appendix 10-1: Stage 1 Geo-Environmental Assessment [APP-096 & APP-0997] provides additional information on site investigation data. Paragraph 9.7.1 notes the potential for hydrocarbon contamination but notes that the hydrocarbon odours were identified in the black clays which would be left in situ as are at depth which is not proposed for excavation (reported from a minimum depth of 1.1m below ground level).
- 2.1.3 On the basis that there is no widespread free phase hydrocarbon identified, and that the hydrocarbon identified is below GAC, it is not anticipated that any soil remediation is required in relation to hydrocarbons.
- 2.1.4 The measures set out in Table 5-5 of the oCEMP are therefore considered appropriate for the risks identified, which include:
- i) Foundation Works Risk Assessment (FWRA)
  - ii) Piling Risk Assessment (PRA)
  - iii) Groundwater risk assessment
  - iv) Materials Management Plan (MMP) / Deposit for Recovery (DfR)
  - v) Confined spaces working protocol
  - vi) Specification of personal protective equipment (PPE)

- 2.1.5 The oCEMP also provides for an Unexpected Contamination Protocol (UCP) which will detail the procedures for risk assessment, reporting, remediation, and verification should unexpected contamination be encountered during construction.

### **3.0 APPROACH TO REDUCING PH LEVELS FOR NEUTRAL GRASSLAND ESTABLISHMENT IN NBBMA**

- 3.1.1 The existing grassland on Cell 3, Cell 2 and Cell 5 has been classified as 'other neutral grassland' within the habitat surveys undertaken for the Proposed Development (Environmental Statement: Volume 2 Appendix 7-1: Habitats Baseline Report (APP-075)). The classification of the grassland is established through the species identified during the survey, and whilst the pH of the soil will influence the species present, the classification as 'neutral grassland' is not dictated by the specific pH of the soil.
- 3.1.2 On the basis that neutral grassland has successfully established historically on the dredging deposits this has been prescribed as the grassland type within the Illustrative Environmental Masterplan contained within Appendix A of the Outline Landscape and Ecology Management Plan (PD2-023). Wet (marshy) grassland is prescribed within the central area of the NBBMA where wetter ground conditions are proposed to be created. The species mix for these areas will be determined at the point of detailed design, with input from the management organisation responsible for the ongoing management of the NBBMA.

3.1.3 The specific type of grassland within the wetland areas is not the key factor to achieve the objectives for this area, which is to provide habitat for non breeding birds, rather it is the creation and maintenance of wet soils and grassland with specific sward heights to encourage use by birds. Nonetheless, within the Non Breeding Bird Mitigation Strategy (Appendix B of the Outline Landscape and Ecology Management Plan (PD2-023)), the proposed target for the grassland in these wetland areas is for National Vegetation Classification (NVC) MG4 and MG8 grasslands, defined more by nutrient status than pH.

3.1.4 As such it is not proposed to undertake any treatment to modify the pH of the soils in the NBBMA and therefore there is no impact on programme.

#### **4.0 ECOTOXICOLOGY**

4.1.1 Within ISH1 reference was made to paragraph 8.8.4 of the Environmental Statement: Volume 2 Appendix 10-1: Stage 1 Geo-Environmental Assessment [APP-096 & APP-097], with the ExA querying why the Applicant considered detailed ecotoxicological modelling was not warranted.

4.1.2 This section of the report refers to the historic assessment undertaken for the Frodsham Wind Farm and is not an assessment undertaken by the Applicant. However, it was reported within the desk study as the findings and approach taken to this matter is considered relevant to the Proposed Development.

4.1.3 The basis for not undertaking ecotoxicological modelling is set out in paragraph 8.8.2 and 8.8.3 of the Stage 1 Geo-Environmental Assessment. The applicant in that assessment considered the contamination burden on the wading birds was relatively low and unlikely to cause acute toxicity because:

- i) The type of invertebrates that wading birds feed on are often highly tolerant of poor water quality and hence can thrive in such conditions;
- i) Such invertebrates have short life cycles which does not allow time for contaminants to bioaccumulate within their tissues;
- ii) The wading birds will be present only seasonally; and,
- iii) The contaminant levels within soils on Cell 3 were considered as low.

4.1.4 The Applicant still stands by this conclusion. As per the measures that were put in place for Frodsham Wind Farm, the Applicant is proposing monitoring and review measures for the NBBMA that will include water quality monitoring within surrounding surface watercourses, and surveying such as invertebrate abundance monitoring.