



Frodsham Solar DCO – EN010153

Written summary of oral representations made at Examination Hearings held on 24, 25 and 26 February 2026 in relation to Compulsory Acquisition Hearing 1 and Issue Specific Hearing 2

Cheshire West and Chester Council

Submitted at Deadline 4

5 March 2026

INTRODUCTION

This document summarises the representations made orally by Cheshire West and Chester Council (**CWCC**) being the host authority for Frodsham Solar Farm DCO (**the Project**) promoted by Frodsham Solar Ltd (**the Applicant**) at Compulsory Acquisition Hearing 1 (**CAH1**) held on 24 February 2026 and Issue Specific Hearing 2 (**ISH2**) held on 24, 25 and 26 February 2026.

Michelle Spark (**MS**), Partner at Clarke Willmott LLP represented CWCC.

MS was joined by the following CWCC officer who made contributions and representations at CAH1:

- Paul Friston, Principal Planning Officer (**PF**)

MS was joined by the following CWCC officers who attended, made contributions and/or representations at ISH2:

- Paul Friston, Principal Planning Officer (**PF**);
- James Orme, Team Leader Asset & Network – Highways (**JO**);
- Alexander Malthouse, Asset Management Officer (PROW/Highways) (**AM**);
- Laura Hughes, Principal Natural Environment Officer (Team Leader) (**LH**); and
- Martin Doyle, Environmental Protection Officer (Team Leader) (**MD**).

COMPULSORY ACQUISITION HEARING 1 – 24 February 2026

MS and PF were in attendance at the request of the Examining Authority (**ExA**) to respond to queries raised.

Agenda Item 3d – Protective Provisions

- 1.1. In discussions between the Applicant and the ExA regarding protective provisions with Liverpool Bay CCS Limited, the ExA specifically asked CWCC to assist with some information regarding the planning application for the Runcorn Spur CO2 Pipeline.
- 1.2. The ExA asked CWCC to confirm the current status of the Runcorn Spur CO2 Pipeline application to which PF confirmed that the application is still pending and going through the consultation process and discussions with applicant. PF confirmed that he was not the case officer and did not have all of the details of the application.
- 1.3. The ExA asked if there was a planning performance agreement in place and MS confirmed that she didn't think so but that CWCC would check and confirm. The ExA also asked if there was a target timescale for determination and MS confirmed that CWCC would provide details and marked this as an action point.
- 1.4. In addition, the ExA had further questions in relation to Halton Borough Council and that part of the development went through its administrative area. The ExA asked if there were any joint arrangements between CWCC and Halton Borough Council or if they had agreed a joint protocol for the determination of the cross-boundary application. PF responded that he didn't think there was anything formal in place.

1.5. The ExA confirmed that this issue would be carried over to the action points.

ISSUE SPECIFIC HEARING 2 – 24 February to 26 February 2026

24 February 2026

Agenda Item 3a

- 2.1. The ExA acknowledged that CWCC raised the risk of ice throw from the wind farm and potential impacts on the solar development. Whilst it didn't pin it down to the BESS in itself, the indicative locations of the BESS locations are relatively close to the turbines. The ExA asked the Applicant if that risk had been taken into account.
- 2.2. The Applicant explained its position and that condition 42 on the Wind Farm planning permission had been discharged which required a scheme for mitigating ice throw from the turbines to be submitted and approved. The Applicant further explained the risk assessment to be undertaken for this application through detailed design.
- 2.3. PF advised that it didn't have any concerns regarding the information that the Applicant provided and that it was familiar with condition 42 and the information submitted for the Wind Farm. The ExA asked for CWCC to confirm that the condition had been satisfactorily discharged. PF confirmed that the report was approved as indicated by the Applicant and PF confirmed that it deferred to Cheshire Fire and Rescue Service regarding the assessment of risks and PF confirmed to the ExA it was happy.
- 2.4. The ExA then moved to deal with a point raised by CWCC in relation to the proximity of pipelines across the site and that CWCC's comment was subject to representation from the HSE. The Applicant explained the position and CWCC referred to the lack of consultation response from HSE and the fact that the order limits would be within several hazardous pipeline and hazardous installation zones including those on the Halton side.

Agenda Item 3b(ii)

- 2.5. The ExA explained that CWCC in its representations had stated that a construction traffic access plan would be helpful to understand the proposals. The Applicant explained that Outline CTMP had been updated to address the CWCC's concerns and was anything further needed. MS confirmed that CWCC would need to come back on this issue as CWCC hadn't had a chance to review the most up to date version of the oCTMP and it would come back and confirm in writing at the next deadline. An action point was noted from the ExA.

Agenda Item 3b(v)

- 2.6. There was a discussion regarding working hours for permitted works and PF advised that CWCC had put forward suggested wording in one of its previous submissions at

Deadline 2. From CWCC's perspective it would prefer the wording to be overt and on the face of the DCO rather than reliance on a control document to ensure simplicity and transparency in relation to the base hours. The suggested wording suggested was to add flexibility to vary from specific core hours. In addition, specific wording in a requirement dealing with working hours would pick up replacement activities during the operational stage and the preliminary works. These would all be in one place rather than spread out over various control documents and therefore on a practical level its easy to find and to see what the baseline is. PF confirmed that CWCC would come back on the amendments made to the control documents but its preference was for working hours to be overt on the face of the DCO.

Agenda Item 3b(vi)

- 2.7. The ExA explained that CWCC had raised concerns regarding where contractors were to park off site and asked the Applicant to confirm how contractor parking would be managed and maintained. The Applicant explained that parking was contained within the construction compounds and would be managed by a permit system and advocating car sharing through the use of minibuses to reduce site traffic and that site management would ensure that the system is being followed. CWCC had no comments following the Applicant's explanation.

Agenda Item 3c(i)

- 2.8. There was a discussion between the ExA and the Applicant regarding the provision of the visitor car park and the Applicant's position that if there is a need for the car park and this can be evidenced then it will provide it, if not then it will not and this will need to be approved by CWCC as part of the LEMP. PF was asked to comment generally on the provision on the car park and pointed out the public aspect benefit of providing it and the fact that the local community may be expecting it to be provided as part of the DCO – especially in consultation as part of the pre-application and application process. PF reserved CWCC's position on this until the revised wording has been put forward by the Applicant.
- 2.9. There was some discussion regarding emergency vehicles and access over PRowS and bridges and the ExA asked for confirmation from CWCC to check if there was a condition requiring an emergency response plan or access by emergency vehicles in relation to Frodsham Wind Farm (FWF). PF confirmed that he did not recollect so but would check and confirm.

Agenda Item 3c(iii)

- 2.10. There was discussion between the ExA and the Applicant regarding PRow user experience and the lack of visualisations in the application. CWCC was asked to comment on whether it thinks one visualisation in the SADA was sufficient. PF confirmed that CWCC did agree the representative viewpoints. PF referred to CWCC's earlier representations that it is important to assess the position as you are travelling through the rights of way and that the user experience will be as a journey and therefore it is almost impossible to get a true representation from one or even two or three visualisations. In hindsight, PF considered it would have been useful to have had more visualisations e.g. from some of the elevated areas looking across and down onto the solar panels. Although PF did not have the visualisation numbers

to hand, along the River Weaver there is another visualisation that does do that to some extent but within the site he was conscious that you have also got visualisation gaps where the pipeline easements are.

Agenda Item 3c(iv)

- 2.11. The ExA asked CWCC to confirm that it was satisfied with the wording and commitments quoted in the management plans relating to conditions surveys, maintenance, operation and decommissioning phases of the rights of way and PF confirmed that CWCC was satisfied generally but one point that PF wanted to make was for there to be clarity over where commitments are being made in relation to public rights of way versus permissive paths. CWCC have made some representations on this point previously and that commitments should be set out on the permissive paths management as well to ensure that everyone knows what is expected.

Agenda Item 3c(v)

- 2.12. The ExA explained that CWCC has encouraged the Applicant to secure longer term retention of the paths either as public rights of way or a continuing or longer term commitment by the landowners to retaining the permissive paths and access to them. The Applicant explained its position that permissive paths would cease to exist after decommissioning and in answer to the ExA's question as to whether CWCC was satisfied with this, PF confirmed that CWCC's position hadn't changed and it would be useful to have more clarity on the process and at the stage of decommissioning when the paths would cease to be permitted and how this would be communicated to the public when they have been able to use the path for 40 years and the landowner is left to deal with the scenario that they are handed back. PF explained that being clear on the transitional arrangements was important to CWCC.

Agenda Item 3c(vi)

- 2.13. The ExA advised that CWCC has concerns that the proposed development may cause access issues to the River Weaver but that the Applicant's position was that there would be enhancement. PF explained that it was CWCC's policy of encouraging use of the River Weaver for recreation and any limited access to it would be in conflict with that policy.

Agenda Item – 3d – Glint and Glare (i) (ii) and (iii)

- 2.14. There was discussion from the ExA and the Applicant regarding the glint and glare assessment and the different impacts in the pre-application documents from moderate impacts, however, for the application submission there were changes made to the angles of the panels to avoid moderate impacts on the residential receptors identified in the report. CWCC advised that it was satisfied with the levels portrayed in the latest assessment but was unclear as to why there had been changes which have now been explained. CWCC also requested clarity and further detail on the actual properties affected and the impact on them.
- 2.15. There was some discussion between the ExA and the Applicant regarding the impact on the traveller sites and discussion between the ExA and PF on the impact on the

traveller sites and where CWCC would put that impact. PF confirmed that it would be a minor adverse impact and not significant. PF also confirmed that CWCC considered the control documents to sufficiently mitigate the impacts identified.

- 2.16. The ExA then stated that CWCC was keen to see the mitigation for glint and glare and some anti-reflective costing mentioned on the face of the draft DCO and referred to precedent in the Oaklands DCO. Following the Applicant's agreement to make CWCC's suggested amendments to the requirement, CWCC had no further comments to make.

Agenda Item – 3d – Landscape and Visual (i) and (ii)

- 2.17. The ExA asked CWCC to confirm that the principal issue between the parties is the impact from the Frodsham War Memorial and PF confirmed that this was the case as well as issues from within the site and looking out as well. PF confirmed that this crossed over with public rights of way considerations.
- 2.18. The ExA raised a number of issues with the Applicant particularly over the Applicant's planting proposals in relation to CWCC's landscape strategy document and retaining an open character. CWCC was asked to provide its views. PF confirmed that in terms of applying CWCC's landscape guidance to the particular area there is probably a distinction to be made between the more open deposit cell areas and those parts of the site closer to the motorway, where there is currently some screening and scrub. CWCC's overall view, was that the mitigation and the landscaping that's been proposed in the blocks that have been referred to are serving the purpose that that the Applicant is intending to. It is important, in terms of the height of planting and impact on open character that the planting be managed and that hedgerows within the solar array development area and along the public rights of way are maintained at a level where that overall openness is retained.
- 2.19. PF confirmed to the ExA in response to its question that the oLEMP provides sufficient safeguards to control the height throughout the lifetime of the development. The ExA also asked PF to confirm his views on the potential removal of planting once the solar array is removed and PF confirmed that as well as the landscape issues you also have to consider the biodiversity aspects. PF thought that removal is not something that CWCC would be encouraging given that much of the planting is in blocks. PF confirmed that CWCC would see the retention as a longer term biodiversity benefit.
- 2.20. PF also confirmed that in relation to the decommissioning stage CWCC has made comments regarding understanding what was happening in terms of restoration and aftercare post removal of the solar array development. There is a point regarding at which point this is picked up in terms of biodiversity if there are major replacements towards the end of the development e.g. a few years before decommissioning, there may be a position where the biodiversity is not reaching its full potential to get to target state and there may be complications.
- 2.21. CWCC was asked if it would consult key stakeholders such as Frodsham Active in discharging requirements and PF said he would not want to overcommit to this but

would continue active engagement as far as possible to allow the local community to comment on the LEMP.

Agenda Item – 3d – Historic Environment – (i), (ii) and (iii)

- 2.22. The ExA explained that the Applicant was not going to consider the revised NPPF against this application but asked that be considered by the Applicant and the Council in relation to categorisation of harm or overall conclusions. Given the draft NPPF looks at harm and benefits, are there any benefits of the application.
- 2.23. The ExA asked CWCC for its comments and PF provided a response. In hearing what the Applicant said, I think the only point we would look at is whether the change from great weight to substantial weight is a new one. So, you know, terminology, it can be quite important, in terms of balancing. I think in terms of the changes in the assessment of the harm we would have identified the impacts as generally in relation to harm rather than less substantial harm in the new version, so not still not substantial harm. And I was going to say clearly not total loss. Although the ventilation shafts are probably coming potentially into that. Overall, in terms of its terminology, I think it still relates to being minor adverse, rather than significant.
- 2.24. The ExA asked the Applicant and CWCC to provide a tabulated summary or 'read across' of the Applicant's and CWCC's conclusions in relation to the effects of the development using the same terminology as NPS EN-1 and the NPPF – this would be an action point for both parties to respond by Deadline 5. PF confirmed he would be able to do so in discussion with the conservation officer.

Agenda Item – 3e – Green Belt - (i) and (ii)

- 2.25. The ExA asked CWCC to confirm that both parties agree very special circumstances apply and CWCC confirmed this is correct.
- 2.26. The ExA also asked CWCC to confirm that it disagrees that the land is grey belt and PF confirmed that this was correct particularly in relation to [NPPF para 143] purpose b) in relation preventing neighbouring towns merging in particular Runcorn and Frodsham acknowledging that there is some development on the site it is still largely free from existing development. The development would take up a substantial part of the gap between those two areas and can be seen as resulting in a loss of visual separation. CWCC consider this strongly contributing to the purposes of the Green Belt and therefore not grey belt. In addition, you have purpose a) as well with similar assessment.
- 2.27. The ExA queried CWCC's use of the term urbanization or urbanizing effect in its submissions; as being a term usually associated that with more town like development. Is that a term that the ExA should be using when reporting to the Secretary of State, or is it is it the presence of inappropriate development in and of itself?
- 2.28. PF confirmed that in using the term urbanization, or urban sprawl, to put it that way as well, one might normally be thinking about housing development. However, it can

extend to industrial and commercial developments, and the proposal is considered to fall into that sort of category; and is one of a spread of the same type of development across a wide area.

- 2.29. With reference to CWCC's relevant representations the ExA noted two points; the first being CWCC's opinion that the proposed development would result in substantial harm to the openness of the greenbelt, and the second point, that the proposed development would result in substantial landscape and visual harm to the openness of the Green Belt. The ExA sought clarification as to whether this referred to the visual dimension of openness as opposed to specifically landscape harm?
- 2.30. In response, PF commented that the consideration of openness transcends Green Belt policy. Setting aside discussion on openness in terms of Green Belt, there would be landscape harm because of the landscape character and the importance of the openness of this particular character area. The concept of openness shouldn't put in a box. That was one of the main points in terms of representations about the visual spatial harm [*in referring to Green Belt openness*]. There would be both visual impact and the spatial impact in terms of impact of openness.
- 2.31. In response to CWCC having any other comments on green belt policy, PF updated the ExA on progress with CWCC's Green Belt assessment as part of the local plan; the expectation being that the draft assessment will be available by the end of March early April. The ExA asked CWCC to proactively update them even if it is past a deadline.
- 2.32. The ExA sought clarification of CWCC's position in terms of weighing harms in the planning balance; with particular reference to the Green Belt assessment and consideration of Green Belt harm and any other harm in relation to consideration of very special circumstances. This being a point about avoiding double counting of harms when carrying out the planning balance. PF confirmed that in carrying out the green belt balancing exercise you would look at all of the harms not just Green Belt harms. That would include harm to the openness of the Green Belt. The ExA noted some of the harms might be considered in the overall planning balance in and of themselves, but PF confirmed in relation to the conclusion that there was substantial harm to openness of the Green Belt, it would not be appropriate to re-consider/include Green Belt openness when later carrying out the overall planning balance, as that had already been considered under the Green Belt [*very special circumstances*] test.

Agenda Item – 3f – Biodiversity and Ecology (i) to (x)

(i) NBBMA

- 2.33. The ExA specifically asked CWCC to confirm that the three main issues that remain are securing the long term management of the conservation body, concerns regarding potential in combination effects which may occur as a result of the Runcorn CO2 spur pipeline and the loss of functionality land, functionally linked land and the qualifying bird species associated with it. LH confirmed that this was correct in

addition to these points that there were concerns in terms of additional impacts with the proposed upgrading and extending of the public right of way network and also the methodology used to calculate the amount of mitigation area required.

- 2.34. The ExA explained that CWCC has submitted its representations Deadline 3a stating that it believes that the outline Non-breeding Bird Mitigation Strategy represents a strategy of compensation rather than mitigation, due to the proposal for the wholesale loss and reinstatement of the existing non-breeding bird mitigation area, as well as a loss of functionally linked lands in Cells one, two and five. CWCC states that it believes the applicant should have submitted a derogations case. The Applicant put forward its position disagreeing with CWCC on this and in response to the Applicant's statement, LH of CWCC confirmed that she respectfully disagrees with Mr Fern on that point. Cell 3 will be lost and reinstated, and the fact that it's lost means that it's not mitigation, it's compensation in terms of mitigation hierarchy. In terms of Frodsham wind farm mitigation, cells two and five, they will also be fully lost to the solar panel developments in terms of non-breeding bird functionality. As well, Cell 1, where non-breeding birds have been recorded around the northern sector, parts of that will also be lost and therefore that in my view, in terms of mitigation hierarchy this is compensation and not mitigation.
- 2.35. In response to the concerns raised by CWCC and others regarding repurposing an already in use mitigation area and consideration of additionality, the ExA understood the Applicant's position is that enhanced quality through specific habitat creation, such as scrapes and islands and marshy grassland, would increase the carrying capacity of the land such that additional mitigation is provided. The Applicant further explained its position and in response LH for CWCC, confirmed that CWCC still has concerns. CWCC doesn't doubt that the existing Cell 3 mitigation area for the wind farm can be uplifted in habitat value. However, it is CWCC's position that it has not been demonstrated that that is enough to compensate for the loss of cells 2 and 5 and the loss of, for example, areas on cell 1 where non-breeding qualifying species are using at the moment. In addition, the Frodsham Wind Farm mitigation package did not just include cells 2 3 and 5. Although the other areas are outside the Order Limits and possibly can't be controlled by the applicant, but to view it in simpler terms, it is not completing the assessments of whether that's enough mitigation for the loss.
- 2.36. It included embedded mitigation in terms of the gap in between the two turbine arrays so that non-breeding birds could fly from the estuary to their favoured cell 6, which is just to the south of this development. There is also an obligation for the Frodsham Wind Farm mitigation strategy to keep cell 6 as a dredge lagoon to keep it active for those birds. Therefore, the Frodsham Wind Farm mitigation strategy had other elements as well, some of which are outside the site.
- 2.37. In answer to the Applicant's comments on the use of cell 6, LH confirmed that there was no suggestion on the CWCC's part that there wouldn't be access from the estuary to cell 6, just that it would be reduced and changed. Looking at the ornithology surveys and non-breeding bird surveys, some of those birds are coming through cell 2 down to cell 6 through cell 5. So those pathways may be disrupted.

And in an additional point, just to clarify on the non-breeding bird concerns, they are only for the western array of the solar farm and The Lum.

- 2.38. In addition, the cells you can see they are highlighted within, within the order limits. The eastern array, as Mr Fearn for the Applicant pointed out, is kind of smaller fields, enclosed agricultural fields. And so there's no there's no concerns apart from the Lum area which is just coming into the eastern right adjacent to the to the river there. The only concerns that I have in terms of non-breeding birds are within those cells.
- 2.39. In response to the Applicant's position that the mitigation is at least adequate and in their view actually quite impressive (having discussed with the RSPB and Natural England), LH confirmed that it is CWCC's position that if there is a general acceptance that there's no methodology to calculate the mitigation area requirements, then the impact should be significantly reduced. Therefore, development of areas of cells 2 and 5 that are proposed for solar panel development should be rolled back to give that certainty that there is even with the mitigation strategy, the methodology isn't exact, that it doesn't matter too much because the area lost isn't as significant as it currently is at the moment.
- 2.40. There was then discussion between the Applicant and the ExA on the Cleve Hill approach to calculate the size of the non-breeding bird mitigation area.
- 2.41. LH provided a general comment that just because there isn't a methodology doesn't mean that we should accept the mitigation strategy as it is. And Natural England, in their response to the ExA's questions, have not accepted the approach. CWCC haven't accepted the approach. And just because there isn't an approach doesn't mean that that therefore means that the mitigation strategy is acceptable.
- 2.42. In addition, when asked by the ExA what CWCC would like to see in the strategy that is not there already, LH confirmed that it would be good to get an explanation of how the non cleve hill birds have been taken into account. In terms of we all accept that the, you know, the NBBMA is to be better quality, but how has the bird presence in the surveys and the desktop desk data been integrated into that that mitigation approach. It's not quite clear to us at the moment where the approach comes from. And again, on that basis, it is CWCC's opinion that the development should be rolled back from cells 2 and 5, because there isn't that security that that mitigation strategy is robust and that that is that is our stance on that at the moment.
- 2.43. In response to the Applicant's position on the wind farm mitigation, LH discussed an extract from the Frodsham Windfarm HCMP is to maintain the fields for the duration of a lifetime of the wind farm, in a condition that is favourable for wintering wader species, including golden plover, lapwing and curlew. So it's wintering wader species across the board. Not just those three identified by the Applicant. They are they are, you know, singled out as a specialist case, but that the wind farm is for the whole SPA species qualifiers.
- 2.44. LH responded to the question of openness and both the Applicant and Cheshire Wildlife's position and that she would agree with the Applicant that the species discussed like large open spaces and there will be a reduction in openness because

cells 2 and 5 will have solar panels on them. LH accepted that cell 6 was still attractive to birds and that the bird surveys demonstrate that to some extent. But that's not to say that those birds aren't going to cell 6 because they can fly over kind of open grassed areas in cells 2 and 5 and maybe stop off potentially and use that that habitat network of cells to 1, 2, 3 and 5 as, as a contiguous habitat area. And that's what potentially as well as cell 6's active dredging habitat status, the attractiveness of that cell 6 could well be. And it's CWCC's opinion that it is integrated because of cells 2, 5 and 3 altogether as one large habitat parcel.

- 2.45. In relation to the concerns raised by numerous parties regarding the panhandle area, LH set out that in the outlying non-breeding bird mitigation strategy paragraph 3.1.1, the Applicant writes that it's acknowledged not all areas of habitat within the NBMMA will provide optimal habitat, particularly the Eastern Panhandle between cell 3 and Marsh farm. CWCC would agree with that, I think it's approximately 4 or 5 hectares of land that's not as optimal as some of the other areas of the NBBMA. So it's not fully functional in that sense, we would agree.
- 2.46. LH then went on to respond to the Applicant's submission on long term management by the RSPB and stated that it is imperative that long term management is secured through a nature conservation organisation and that agreement is important to be secured upfront. As the mitigation area is so reduced and in, in that sense and the mitigation is dependent on that one area so much, the specialised long-term management is absolutely crucial to the success of that area. Therefore, CWCC would want to see that secured upfront rather than in principle agreements.
- 2.47. LH also confirmed that she would want to hear Natural England's view on long term management of the NBBMA.
- 2.48. There was some discussion re CWCC being named as a consultee in requirement 9(j) for the non-breeding bird mitigation area in the DCO. It was accepted by CWCC that as it was approving the final mitigation strategy and therefore it did not need to be a consultee as it was approver.
- 2.49. There was then a discussion on the potential impacts of the additional PRoWs on the sensitive ecological areas. In response to the Applicant's explanation regarding assessment in the ES and information to inform the HRA, LH confirmed that CWCC would want the Applicant to take a step back in terms of the footpath usage in that CWCC doesn't consider any assessments have been done of current usage and extent of users across the order limits and therefore it is not clear whether the mitigation proposed would be effective. LH understands the point about the bird screens, but there are there are different angles that birds are going across and to and from the estuary, across the all the order limits. So it's not clear that those screens will work to screen birds from all angles. CWCC have made comments and suggestions to overcome the main concerns which is footpaths A and B and realignment and therefore CWCC isn't suggesting the footpaths be deleted but realigned. LH stated that ideally due to CWCC's opinion about the lack of robustness of the mitigation strategy, any kind of new footpaths in new areas adjacent to areas where birds are using, like footpath B, for example, and adjacent to the NBMMA, CWCC would rather they weren't there, but we do consider that there are our

alternatives. CWCC would prefer that the footpaths could be configured so that they could be used for recreation but also reduce potential impacts to non-breeding birds.

- 2.50. In response to the Applicants points regarding screening and protection of the birds from recreational users, LH confirmed that whilst she understood the point made regarding screening lots of nature reserves have controlled access so for example no dogs are allowed that won't be the case here on these footpaths. The access wouldn't be controlled as sufficiently as a nature reserve would be. In addition, LH referred to CWCC's relevant representation at paragraph 7.2 whereby CWCC suggest alternative routes that still create loops and hopefully advantages for recreational users but also draw people away from the sensitive areas accepting that it is an attractive area to walk on but from a biodiversity perspective any disturbance needs not to be in doubt. LH also confirmed that this level of detail would be considered by CWCC at discharge of requirement stage but securing the principle upfront is important.

(ii) Skylark Mitigation Area

- 2.51. The ExA explained that the oLEMP covers the management and maintenance of the Skylark Mitigation area and asked that the Applicant to explain what management and maintenance would cover and how this would provide suitable habitat. The ExA asked the Applicant to confirm why it considered the Skylark Mitigation Area to be mitigation rather than compensation?
- 2.52. In response to the Applicant's points on the mitigation versus compensation issue, LH confirmed that as CWCC highlighted previously in some areas that skylarks are using at the moment will be lost and therefore it's compensation if actual land is provided for them rather than mitigation and just generally on the on the Skylark mitigation area issue. That area has not been surveyed for breeding birds, so it's not certain where the skylarks are using there at the moment. And that would have been useful information because if they aren't there at the moment, then the reason is why? We are next to the M56 there and underneath pylons which are kind of generally known to discourage such birds, but we welcome the information that Mr Fern will submit into the examination. In terms of the use of the rest of the site the bird surveys seem to suggest that the skylarks are in the northern area of the site. So the large open areas of cell 1, 2 and 3 and not in the smaller field areas of the kind of southern area of the eastern array which with the Skylark mitigation area is proposed in. So again, just the uncertainty there is whether that will be suitable location.

(iii) Cumulative and in-combination effects

- 2.53. There was some discussion by the ExA and the ExA set out the differences between the Applicant and CWCC on the cumulative or in combination effects of the Runcorn Spur Pipeline where effectively the NBBMA is laid out first and then has to be dug up again because the pipeline goes through it. CWCC's position is that should be assessed and the Applicant's position is that it is not for this application but for the applicant for Runcorn Spur Pipeline and they have to assess it.

- 2.54. The ExA suggested a Grampian style condition on the DCO as the Applicant has already committed to the NBBMA not being delivered first before the development commenced and he wondered whether this was an option in that the Runcorn Spur Pipeline would have to be delivered before the works to the NBBMA. The Applicant rejected this suggestion and stated reasons why.
- 2.55. MS for CWCC stated that CWCC understood the Applicant's position but there are some points which CWCC doesn't understand from the application and from the SoCG with Liverpool Bay CCS Limited, it has been made quite clear that the Applicant is in control of the land. The Applicant says that it cannot control the other application when if they are in control of the land, surely they do. MS clarified that CWCC was confused by this and obviously it did not know the details of private agreements and that CWCC completely takes the point that CWCC as determining planning authority for the Runcorn Spur Application can control that to some extent and MS understands that there is a standing objection from Natural England but that CWCC is trying to find a solution and that it is lack of assessment rather than trying to find a solution that is a concern.
- 2.56. There was some discussion between the ExA and all parties that the complication also arose because there were two applications awaiting to be determined. The ExA asked both parties to look at a solution and provide comments in writing so that the ExA can report to the Secretary of State on this issue and there will be 2 scenarios – one where the Runcorn Spur Pipeline application has been determined and the other where it has not.
- 2.57. MS confirmed that CWCC had put forward the use of a legal agreement on the basis that the Applicant controls the land. The Applicant had rejected this approach and therefore CWCC would have a think about controls and revert in writing at the next Deadline and reserve its position until the Applicant has provided more information.

(iv) BNG

- 2.58. There was an explanation from the Applicant regarding calculation of the biodiversity metric and the ExA invited CWCC to comment considering concerns raised in its representations. LH explained that the metric includes trading rules which is a basic function of the metric as in all previous metric versions including the statutory one, which makes sure that habitats are appropriately compensated for. The first metric submitted by the Applicant had a loss of around 62 units of reed bed when taking into account the trading rules and the most recent version had a loss of 12 units.
- 2.59. I appreciate the applicant stating that report is coming, which will be useful. I assume that's due to the declassification of one of the large areas of reed bed pointed out by the Applicant there. I disagree with the approach that that should be declassified in line with UK Habs. because it's the type and the width of reed that is the main kind of robust factor in terms of UK Habs to define reedbed habitat rather than the, the water inundation. We've assessed it but we disagree that the reed bed shouldn't be compensated for as, as per metric standard rules.

2.60. LH confirmed that the reduction of solar panels in areas where there whether we would resolve the issue and it's not clear why that can't be done.

(v) baseline ornithological surveys

2.61. LH stated that the concerns are generally that for the non-breeding bird surveys, some of the passage seasons were missed in some of the surveys, and in some of the survey years some areas weren't covered. And then for the breeding bird surveys, just the query about the skyline mitigation area not being surveyed.

(vi) proposed buffer distances

2.62. LH stated that just in terms of the otters. The only place where they were recorded was the NBBMA. So that was just a concern in the sense that that's obviously their feeding source at the moment. We had quite a productive meeting with the applicant last week in which they talked about kind of fish populations in the ditches that the otters will still have access to, which was useful in terms of food resource. And because it wasn't certain that the wetland area created at Marsh farm would have that food resource. Obviously, the fishing pools are quite well stocked at the moment, so you can understand why they go in there.

2.63. So then that just leaves in terms of what is the connectivity issue, how are they getting to the NBBMA, where are they going to and from? And we don't know that at the moment. There has been some suggestions, but if we could just expand on that to make sure that their range isn't reduced in any way that would be useful.

2.64. LH fully accepts that excluding large mammals, not just at the end, may act as a conservation measure. It's just whether the remaining area is enough for those badgers and otters we have. There's a population of badgers on there and they're quite limited because of where they are. [REDACTED]
[REDACTED]. So, in terms of disturbance and less access, that's a concern. But again, in the meeting last week, uh, Mr. Russell outlined different measures that will be, will be taken to kind of place mammal gates where they're required. Obviously, it's a massive area to exclude them, if you think about the solar array fencing to those populations of badgers.

2.65. So for the Badgers, LH thinks that we were getting towards the stage where we could kind of think about the detail more and kind of leave that to the final stage. Whereas the otters probably LH would need to see what was submitted in any updated information just to get that clarification. And then again, that would be potentially fine to leave to the to the detailed stage.

Agenda Item – 3g – Ground Conditions – (i), (ii), (iii). (iv), (v) and (vi)

2.66. Following a discussion between the ExA and the Applicant regarding the sufficiency of the characterisation of ground conditions and summary of the position by the

Applicant, CWCC confirmed that it was happy that the investigation into the ground conditions was satisfactory at this stage.

- 2.67. Further to a representation from Councillor Sumner, CWCC was asked if it wanted to respond to the concerns raised specifically relating to the risk and potential fire risk of chemicals being disturbed and the potential release for phosphine. PF confirmed that he would have to take the question away and revert back at Deadline 4 with CWCC's position.
- 2.68. CWCC was asked to confirm if it was satisfied with wording and approach in relation to unexpected contamination in the Outline Construction Environmental Management Plan. PF confirmed that CWCC would prefer to see a specific requirement in the DCO for unexpected contamination, and he understood that the Applicant has taken a different view on that. The reasoning from CWCC's point of view is that it will cover all the various stages from construction and operation through to decommissioning. However, if the control documents provide enough certainty, then CWCC is content. PF made the point that all of the relevant control documents need to be consistent and cover the relevant points e.g. if unexpected contamination is found then it crosses over from the construction stage to the operational stage. PF also made comment about CWCC needing to be informed about unexpected contamination and not left to the Applicant's discretion as to what was significant in this regard.
- 2.69. PF confirmed when asked by the ExA that CWCC was satisfied with the wording of the outline construction environmental management plan, the outline environmental management plan and the decommissioning plan in relation to potential leaching/contamination from the construction of the proposed development.
- 2.70. In response to a direct question from the ExA regarding the acceptability of the mitigation measures proposed for ground contamination, CWCC confirmed that in alignment with the Environment Agency it was content with what is proposed. PF also confirmed that it was within the normal experience of CWCC's Environmental Protection team to deal with the contamination and mitigation put forward by the Applicant.
- 2.71. In relation to the post construction monitoring proposals, CWCC had no comments to make on the Applicant's approach and defers to the Environment Agency for the water aspects rather than human health which is in the remit of CWCC.
- 2.72. In relation to concerns on the NBBMA from construction and operational traffic, CWCC had concerns regarding potential adverse impacts on biodiversity. LH, in response to the Applicant's explanation, clarified that CWCC's point was made in terms of major replacement activities in terms of it being a different impact to the initial construction because when major replacement activities will occur, the birds will be concentrated in the NBBMA and have no other areas to flock to if displaced. Therefore, LH was just making the point that from the Applicant's information it says that there will be no worse impacts than construction impacts, but CWCC was not convinced that this was the case because of the difference in where the birds are prior to construction and then after.

Agenda Item – 3h – The Water Environment – (i), (ii), (iii), (iv), (v), (vi) and (vii)

- 2.73. The ExA asked CWCC to confirm that the Cheshire Joint Emergency Planning Team was satisfied that there would be safe access and egress under flood conditions. PF advised that determining the safety or otherwise of the route was, he understood, to be outside the scope of the emergency planning team's expertise. The emergency planning team would be looking more at what happens in a flood event, rather than certifying routes are safe. PF confirmed that CWCC didn't have the expertise to say the access and egress was safe or not. PF confirmed that CWCC/emergency planning team was satisfied with the measures that the Applicant was putting in place in terms of the evacuation plan.
- 2.74. PF also confirmed that CWCC was aware of the issues in relation to safe access and egress and were satisfied with plans proposed by the Applicant. The ExA asked specifically for CWCC's Emergency Planning Team to confirm in writing whether the level of the refuge areas (at 6.52m AOD) was considered satisfactory.
- 2.75. In respect of a question put to CWCC regards to the adequacy of water monitoring post completion of construction and its intervals, CWCC deferred to the Environment Agency.

Agenda Item – 3i – Noise, Vibration, Dust and Nuisance – (i), (ii), (iii) and (v)

- 2.76. In relation to a specific point made by the ExA, it asked CWCC to confirm that its response to the noise levels that they were likely to be inaudible or discernible. The ExA asked for CWCC to confirm that it meant not discernible and MD confirmed that it was a typo and confirmed the ExA's understanding to be correct.
- 2.77. The ExA asked CWCC to confirm the current status of the traveller sites and PF confirmed that the southern site was subject to an enforcement notice. PF did not have date for compliance with the enforcement notice to hand, but he confirmed that the period had already passed. CWCC had two planning applications pending to rectify the alleged breach of planning control on both the northern and southern sites. The ExA asked PF to confirm the likely timescale for determination of these applications and PF confirmed that the time period had already extended beyond the statutory time period and the ExA asked for an update before the end of the Examination and for CWCC to proactively update the ExA as the examination progresses on this, as well progress with the Council's Green Belt Assessment.
- 2.78. There was discussion re noise at the traveller sites and CWCC was asked to provide comment on its position. MD confirmed that CWCC had no concerns re the predicted noise impact from the development to the traveller sites and CWCC was satisfied with the conclusion that the Applicant had reached that the travellers would not be adversely affected by operational noise. The ExA asked MD to confirm that the assessment took into consideration the public sector equality duty and MD advised that this was outside his remit. PF then in response to a direct question from the ExA regarding sufficient regard being had to the occupants of the traveller sites, PF advised that he had directed the Applicant to the Gypsy and Traveller Liaison officer on this application, but he didn't believe the Applicant had engaged with the officer. PF confirmed that he was not aware of the personal circumstances of the occupants

of the traveller sites, but in terms of the technical assessment, that the Council was happy.

- 2.79. In relation to the defence to statutory nuisance and article 8 of the draft DCO, MS explained directly in response to the ExA that CWCC's Environmental Protection team was slightly frustrated with the wide defence for construction, maintenance, operational and decommissioning stage for statutory nuisance which was not afforded to other commercial entitled. However, based on the fact that the wording in article 8 is reflected in other DCOs it was prepared to accept it. The ExA asked for the Council to confirm that its objection has been resolved and falls away. Following further exchange between the Applicant and the ExA the Applicant agreed to review the wording of article 8 and liaise with the Council over its concerns.
- 2.80. The ExA asked CWCC if it was satisfied with control over dust in relation to the traveller sites and PF confirmed that it was.

Agenda Item – 3i – Waste – (i), (ii) and (iii)

- 2.81. The ExA asked CWCC to confirm when there would be an update to the Cheshire West and Chester Council Waste Needs Assessment 2023. PF confirmed he would check and revert at Deadline 4.
- 2.82. The ExA asked CWCC to confirm if the Applicant's assessment of waste generated from the development and that there was sufficient recovery disposal capacity to accommodate the volumes of waste is correct? PF advised that he needed to consult colleagues to answer this. In answer to the ExA's specific question, PF confirmed that CWCC did not have any residual concerns regarding the Applicant's approach to waste during the construction and operational phase.