



Frodsham Solar

Written Summary of Applicant's Oral Submissions at the Issue Specific Hearing 2



March 2026

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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 (ISH2) held on 24 to 26 February 2026 in relation to the application for development consent (Application) for the Frodsham Solar Farm (the Proposed Development), as well as clarifications to those submissions following the Hearings.
- 1.2 In light of the large number of Action Points arising from Issue Specific Hearing 2, the Applicant has responded to them in a separate ISH2 Action Points response document, also submitted at Deadline 4. As such, references in this document to 'this is reflected in Action Point ISH2-APX', reflect that the relevant matter was included in the ExA's Action Points and that the Applicant has made further submissions in response to them in that separate document.
- 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 24 FEBRUARY

#	Agenda item	Applicant’s response
3a	<p>Human Health, Fire Risk, Safety and Security</p> <ul style="list-style-type: none"> i. Clarifications ii. Cheshire Fire and Rescue Service’s position iii. implications of ice throw etc from nearby wind turbines February 2026 iv. hazardous pipelines 	<p>i. Clarifications</p> <p>The ExA queried the Applicant’s BSMP wording at page 31, asking whether the word “automatic” should instead read “automated”.</p> <p>Mr Fox, Senior Associate at Pinsent Masons LLP, on behalf of the Applicant, confirmed this was a typographical error and that the Applicant would correct it in the next iteration of the outline BSMP at Deadline 4.</p> <p>The ExA then asked whether the national guidance referred to by the Applicant’s expert (the “NFCC guidance”) would necessitate updates to the BSMP.</p> <p>Mr Gregory, Battery Safety and Testing Consultant, for the Applicant, explained that the outline BSMP was drafted with all relevant guidance in mind and, where additional content has been produced since the original draft, the Applicant has been integrating those updates so the current draft reflects the current requirements and integrated safety standards.</p> <p>The ExA noted that, as the Applicant is updating the outline BSMP, it should make clear that the most recent guidance has been reflected (including the corrected typo and reference to final-form guidance) (now reflected in Action Point ISH2-AP2). Mr. Fox agreed that these changes would be made.</p> <p>ii. Chesire Fire and Rescue Service’s position</p> <p>The ExA noted that the Applicant’s written response to CWACC’s Relevant Representation referenced a meeting with Cheshire Fire and Rescue Service, but the ExA had not received any direct submission from that service and sought a direct written statement confirming their position.</p> <p>Mr Fox confirmed that the Applicant will seek to elicit a direct response from Cheshire Fire and Rescue Service and provide this to the Examination (now reflected as Action Point ISH2-AP1)</p>

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		<p>Mr Gregory also summarised the Applicant's engagement history with the fire service, noting that engagement is described in the outline BSMP (including at section 1.5 and at section 4.3.8 referencing a meeting on 16 October).</p> <p>Mr Gregory emphasised that the scheme aligns with guidance and that the final plan will account for all relevant guidance, and that the fire service has been engaged throughout and will be consulted on the plan.</p> <p>iii. Implications of ice throw etc from nearby wind turbines February 2026</p> <p>The ExA raised CWACC's Local Impact Report concern about the potential risk of ice throw from the wind farm and potential impacts on the Proposed Development, noting that the indicative BESS location is close to the wind farm.</p> <p>Mr Fox responded for the Applicant that the issue of ice throw was explored during the planning stage of the Frodsham Wind Farm. MF referred to Condition 42 of the wind farm planning permission, which requires a mitigation scheme for ice throw to be approved by the LPA and implemented. Mr Fox stated that this condition has been discharged, and the discharge report indicated turbine control systems detect ice build-up and shut down turbines if unsafe ice is detected. Accordingly, Mr Fox stated the risk of ice throw to the Proposed Development is negligible.</p> <p>The ExA asked whether the Applicant could provide a copy/specification of the control mechanism referred to.</p> <p>Mr Fox confirmed the Applicant will submit that information, noting it was part of the planning condition discharge package (now reflected as Action Point ISH2-AP3).</p> <p>The ExA also asked about a broader scenario where there is a wind farm fire and components falling from the turbines. The ExA also queried whether the Applicant's firefighting provision would cover those scenarios external to the Applicant's control that might nevertheless impact operations.</p> <p>Mr Gregory replied that risk assessment will be undertaken at detailed design stage, noting that the design of the BESS compounds are currently indicative; the risk assessments will confirm final positions, and credible risks (including those outside the Applicant's direct control) will be assessed as part of that process. Based on consequence modelling, the final volume of water required would accommodate any credible emergency scenario that might occur. Large-scale testing is mandatory and is used to ensure fire does not propagate. At detailed design the "worst credible event" will be defined and the required water volume established.</p>

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		<p>iv. Hazardous pipelines</p> <p>On the issue of hazardous pipelines in the vicinity of the Proposed Development the ExA made clear that it regarded this as a matter requiring particular care. The ExA noted that, notwithstanding references to pre-application engagement, the Examination had not yet received a direct submission from the Health and Safety Executive (HSE). Given HSE's status as a prescribed body, the ExA explained that its position must be reported to the Secretary of State and, accordingly, the Examination needed a clear and authoritative statement confirming whether HSE had identified any safety concerns arising from the presence of the pipelines and the proposed works.</p> <p>Mr Fox confirmed the Applicant engaged with HSE during the pre-application stage and confirmed that the scheme would trigger planning guidance if within consultation zones. Mr Fox further explained that, in the Applicant's understanding, the relevant work (Work No. 4B") is outside of the pipeline release zone and no scenarios have been identified that would lead to battery-related leakage affecting pipelines. The protective provisions include protections for pipeline operators, and the Applicant considers that between the BSMP (once finalised), safety standards and the protective provisions, pipeline interactions are not an issue.</p> <p>The ExA nevertheless requested evidence setting out HSE's position (reflected in Action Point ISH2-AP4). Mr Fox noted that HSE had responded at statutory consultation and the Applicant had provided a response to this [APP-030]. He noted also that HSE's Land Use Planning advice is focussed on risks arising predominantly from being present within consultation zones, which would not arise in the case of the Proposed Development give its nature.</p> <p>The ExA considered document Essar's Written Representation [REP1-069] referring to uncertainty about pipeline locations and the risk of encroachment into their protective strip.</p> <p>Mr Fox explained that this is likely because Essar, in common with other statutory undertakers, have records of the corridors where pipelines are understood to be but not necessarily exact locations within those corridors. The Applicant has accounted for this by providing for offsets from these corridors and by providing Protective Provisions.</p> <p>The ExA, referring to [APP105] Figure 1-6 showing the location of utilities queried (i) the relationship between "Shell - Essar" shown on the key (ii) missing or unclear hatched areas on the drawing (iii) consistency between plan depiction and protective provisions for all relevant undertakers (reflected in Action Point ISH2-AP5).</p>

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		<p>Mr Fox explained that on (i) some pipelines involve joint operations (for example Essar may own a pipeline through which Shell oil flows or vice versa). He agreed that the Applicant would take way to review the drawing and its consistency with protective provisions across all relevant operators, and to clarify missing hatch patterns in the key.</p> <p>Councillor Richard Lofts from Frodsham Town Council questioned the applicant about response time in the event of a fire.</p> <p>Mr Gregory on behalf of the Applicant explained that while they cannot speak for Chesire Fire Rescue Service operationally, large-scale fire testing and design (including adequate spacing) is mandatory. With early detection, alerting and design measures this means CFRS are present in an observation capacity. Mr Gregory confirmed the Applicant has supplied testing data to CFRS and that local emergency response plans can be validated against that evidence (which is secured via the Outline BSMP and its associated DCO Requirement).</p> <p>There was then discussion at the Hearing in respect of access routes for emergency vehicles to attend a BESS fire, following comments from Interested Parties including National Highways' concern about such vehicles using Brooks Furlong prior to surveys being carried out to confirm that Brooks Furlong bridge can support such use.</p> <p>Mr Russell, Director at Axis, on behalf of the Applicant, confirmed that it is the Applicant's intention that the main construction and operation access route into the site would be suitable for emergency vehicles and that it would be maintained to ensure that this would be the case throughout the operation of the Proposed Development.</p> <p>The Applicant has expanded on this further in response to Action Point ISH2-AP6 and in updates to the relevant management plans at Deadline 4.</p>
3b – Traffic, Transport and Navigation		
3b	<p>Traffic, Transport and Navigation</p> <p>i. cumulative effects of construction traffic and abnormal loads with other projects during the construction phase and replacements during the operational phase</p>	<p>The ExA asked the Applicant to update the Examination on the latest position regarding cumulative construction traffic and the movement of abnormal loads, including how the Applicant's assessment interacted with other projects in the area.</p> <p>Mr Fox confirmed that the Applicant's starting point remains that it stands by its existing assessment of cumulative construction effects. The Applicant understood National Highways had been undertaking work in the background, but the Applicant had not received any further material update since the submissions already before the Examination. Accordingly, the Applicant's position IS that the assessment and conclusions remain as previously presented. Supporting that position, Duncan Carter, Associate at Axis Planning, (for the Applicant) explained that the Applicant's cumulative assessment did not take a narrow</p>

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		<p>approach, but instead considered the reasonable worst case of overlapping peak construction activity across the full suite of HyNet projects, including the scenario where the Proposed Development's peak construction coincides with other schemes.</p> <p>The ExA asked whether there had been progress in establishing a working group to coordinate abnormal loads between projects.</p> <p>Mr Fox confirmed that the Applicant has made that commitment. However, such coordination is inherently post-consent in timing and is intended to respond to the evolving picture in the area, including changes to the delivery of other projects.</p>
	<p>ii. construction traffic access plan (CTMP)</p>	<p>The ExA asked how the Applicant responds to CWACC's comments in relation to the CTMP.</p> <p>Mr Fox explained that, in the Applicant's understanding, CWACC's comments were directed at a previous version of the CTMP. Mr Friston from CWCC confirmed that they would review the documents and respond at Deadline 4.</p> <p>In response to the discussion at the Hearing, Mr Russell, on behalf of the Applicant, confirmed that the CTMP would be updated at Deadline 4 to include a visual plan of the proposed construction traffic access routes for the Proposed Development.</p>
	<p>iii. potential ecological impacts to the Non-Breeding Bird Mitigation Area (NBBMA) from construction and operational traffic</p>	<p>Construction- related traffic noise is substantially below recognised disturbance thresholds for birds (~0.9 dB). Timing and sequencing of works follow the measures set out in the oCEMP, ensuring that highly sensitive periods are avoided, for example, the scheduled construction windows for the Eastern and Western SADA. These activities will be undertaken under the supervision of an Ecological Clerk of Works (ECoW), with additional screening applied where deemed necessary.</p> <p>Construction traffic will predominantly use existing access routes, where a reasonable degree of habituation by local bird populations can be assumed. Furthermore, evidence from the literature indicates that vehicles are considerably less disturbing to birds than pedestrian-based stimuli (literature cited and submitted: Cutts et al., 2009; Guay et al., 2014; McLeod et al., 2013 (alongside the references required by Action Point ISH2-AP38).</p> <p>Maintenance and decommissioning traffic movements will be less than construction and through the measures set out in the oOEMP (including where large scale replacement activities are required) and the adaptive management measures set out in the outline NBBMS, disturbance risks will be able to be managed.</p>
	<p>iv. closure of the River Weaver</p>	<p>The ExA raised navigation matters in the context of temporary closure of the River Weaver, focusing on the relationship between the Environmental Statement's assumed closure duration (around two weeks) and the broader drafting of the DCO power (Article 20), which permits closure for "as long as reasonably necessary".</p>

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		<p>Mr Fox explained that the drafting is based on precedent Orders and is intended to preserve flexibility, because the precise sequencing and duration of works may depend on detailed methodology at the time. Mr Fox emphasised that the Applicant's working assumption remains that closure would be approximately two weeks (and likely less), and that the Applicant would provide three months' notice to recreational users to allow adaptation. Mr Fox also pointed to safeguards within Article 20(2) which require the undertaker to ensure that no more of the river is closed than is reasonably necessary (Article 20(2)(a)) and to use best endeavours to minimise delay and interference (Article 20(2)(b)).</p> <p>However, Mr Fox acknowledged the ExA's concern about divergence between the assumed ES duration and the DCO wording and confirmed the Applicant would consider whether alternative drafting could bring the provisions closer together without undermining the necessary flexibility (now reflected in Action Point ISH2-AP9).</p> <p>The ExA asked further about whether users could divert to the Weaver Navigation and if there would be any depth differences between the two watercourses which could preclude that alternative route being used.</p> <p>Mr Fox explained that use of the relevant stretch of the River Weaver is understood to be limited to kayaking and sailing rather than large scale vessels (given the locks and barriers at either end of this stretch of the river).</p> <p>The Applicant has considered this issue further in its response to Action Point ISH-AP19.</p> <p>The ExA also queried whether a marine licence might be required in relation to the crossing of the river. Mr Fox on behalf of the Applicant confirmed that it is the Applicant's position that no works are required in the UK marine area, and therefore no marine licence is required. The MMO has not demurred from this view.</p>
	<p>v. control of working hours for permitted preliminary works</p>	<p>The ExA asked for an update on control of working hours for permitted preliminary works.</p> <p>Mr Fox explained that the Applicant's position remains that working hours are secured through the relevant application documentation (namely ES Appendix 2-3) and, through this, Requirement 8 of the Draft DCO. Such control does not need to be duplicated on the face of the DCO.</p>
	<p>vi. contractor parking</p>	<p>The ExA queried how contractor parking would be monitored and managed.</p>

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		<p>Mr Russell explained that the Applicant's approach is to provide parking within the contractor compounds and manage demand through a permit system. Mr Russell stated that those without permits would not be able to park on-site, and the Applicant would use management measures such as car sharing and minibuses. Off-site parking could also be provided if required, and that complaints would be followed up by site management so that overspill onto surrounding roads is avoided.</p> <p>Mr Russell also provided details of the expected balance between parking spaces and workforce numbers, noting that approximately 208 spaces are proposed across compounds against an average weekday workforce of approximately 234. It was noted that during peak construction the higher number of workforce (331 workers) would be managed through the permit system and management measures set out above.</p> <p><i>Post Hearing Note: The Applicant has updated the Outline CTMP at Deadline 4 to say more about monitoring and remediating any issues that may arise from construction related car parking.</i></p>
3c. Non- motorised users and public rights of way (PROW)		
3c	<p>Non-motorised users and public rights of way (PROW)</p> <p>i. structural surveys of PROWs over bridges for proposed to be used by emergency vehicles and for visitor car park access</p>	<p>The ExA asked the Applicant to summarise its position on the need for structural surveys of PROWs over bridges that have been discussed in the context of (a) emergency vehicle access and (b) access arrangements associated with the potential visitor car park. In response, Mr Fox explained that the Applicant has been in ongoing discussion with National Highways (NH) in relation to the relevant bridges, including Brook Furlong Bridge and Weaver Lane Bridge, and that NH's position is that surveys should support any proposal which would constitute a change of use or increased use.</p> <p>Mr Fox emphasised that the Applicant does not agree that the position necessarily amounts to a change of use in the way suggested. In particular, there is clearly not a change of use to Brook Furlong Bridge. Mr Fox also explained that if the Applicant were to refine its proposals such that Weaver Lane Bridge were used on a cycle-only basis, the Applicant's view is that this should not, of itself, necessitate surveys and works to the bridges.</p> <p>However, Mr Fox set out that the Applicant accepted that NH is not expected to change its position and, accordingly, the Applicant would adopt a pragmatic approach to enable progress and will amend the NH Protective Provisions so that, before the Applicant can utilise any DCO mechanism that would facilitate a change of use (and/or implement the visitor car park in a way that would increase bridge use), structural surveys would need to be undertaken. Mr Fox explained that if such surveys identify works are required, the Applicant would then take a view on whether it is necessary to proceed with those works and whether the relevant bridge should be relied upon.</p> <p>Mr Fox then addressed emergency vehicle access and noted that the DCO does not in fact need to include bespoke wording to "authorise" emergency vehicles to use the route, as emergency vehicle usage of restricted byways is already authorised</p>

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		<p>by section 34(4) Road Traffic Act 1998. Mr Fox therefore stated that the Applicant's starting point is that emergency vehicles are allowed to use the route, and that the specific DCO wording is not needed, while recognising that further discussions are required.</p> <p>The ExA then queried what vehicles can use the route where it is a restricted byway. Mr Fox explained that, under the Countryside and Rights of Way Act 2000 (section 48), restricted byways are for use "other than mechanically propelled vehicles" (i.e. non-motorised use). Mr Fox acknowledged that cars appear to use the route currently in practice but confirmed that private motor vehicle use would be unlawful without a change of status. However, he confirmed that emergency vehicles may nevertheless use the route pursuant to the Road Traffic Act 1998.</p> <p>The ExA asked for clarification whether surveys are therefore only required to enable private car access to the visitor car park rather than emergency use. Mr Fox noted that the Applicant had proposed amendments to the DCO in relation only to the former, but acknowledged that NH consider this should apply in both instances.</p> <p>Mr Fox then explained that, if works are ultimately necessary, the Applicant wishes to understand what baseline survey information National Highways already holds. The Applicant understands the bridges are subject, pursuant to DRMB, to periodic inspection regimes (a general survey approximately every two years and a more detailed survey approximately every six years), and that having access to existing survey/inspection information would assist the Applicant in understanding the baseline and what further steps may be proportionate.</p> <p>Mr Fox also explained that, in relation to the visitor car park, the Applicant had met with CWACC the previous week and that any provision of the car park would be subject to the Applicant reaching a position with National Highways through the Protective Provisions. The Applicant proposes to update the oLEMP so that, if no bridge works are required, the LEMP would provide for delivery of a visitor car park within two years of opening, subject to monitoring demonstrating a need.</p> <p>Mr Fox explained that the car park is intended to respond to the practical issue of increased visitor car use (including existing informal parking), and is not, in and of itself considered to be a planning benefit. He went on to say that it is a nice to have, management measure, and the ExA could therefore treat it as such in its recommendations.</p> <p>National Highways set out their position and identified two distinct bridge issues. First, the change of use point. National Highways stated it welcomed the Applicant's acknowledgement of the point, had reviewed proposed amendments to the</p>

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		<p>PPs, and considered the approach potentially workable, subject to further detailed review. NH indicated they expected to provide a further update by Deadline 4.</p> <p>The second issue National Highways addressed was emergency access. NH explained that its concern is not the lawfulness of emergency vehicles using the route, but the structural ability of the bridges to accommodate that use, and the increased likelihood that the bridge would need to be used given the Proposed Development. NH noted that the battery safety management plan refers to Brook Furlong and Weaver Lane as alternative emergency access routes and stated that, if the bridges are being relied upon in emergency planning, an up-to-date structural survey is required.</p> <p>The ExA then asked whether any part of the Applicant's Environmental Statement relies on access over the bridge for emergency vehicles. In response, Mr Fox indicated that the Applicant would remove reference to Weaver Lane from the OBSMP. Mr Fox explained that the position ultimately turns on whether Cheshire Fire and Rescue Service is content with access arrangements using the Main Access Route only, or if Brooks Furlong is also required.</p> <p>The Hearing then addressed the relevance of weight limits on the two bridges. Mr Fox explained that understanding any weight limit for Brook Furlong Bridge is part of understanding baseline position and noted that, on the Applicant's view, any emergency use would be rare.</p> <p>National Highways responded that weight limits are not determinative because they are often "as built" figures and the true capacity needs to be understood. Mr Fox responded that the Applicant's immediate request is to understand the baseline (including what the as-built position was and the latest survey results), accepting that baseline information does not itself resolve the issue but is an essential context for what is achievable. NH confirmed it could provide information but stated that this would not resolve the matter without an up-to-date structural survey.</p> <p>The ExA also asked NH to confirm when the bridges were last surveyed and whether there is signage restricting weight; NH indicated it would check and provide information. NH also confirmed that while it had no reason to doubt emergency vehicles could lawfully use the bridge, its concern is the increased likelihood of use and the safety risks, including the possibility of collapse and associated liability.</p> <p>The ExA asked National Highways whether it wanted surveys within the Examination period. National Highways stated that if the bridge is proposed as an emergency route, the survey should be undertaken during the Examination. The ExA then</p>

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		<p>asked the Applicant whether this is possible. Mr Fox explained that the Applicant would need to consider if this is actually necessary in the context of Cheshire Fire and Rescue Service input and engage with NH on timing.</p> <p>Further details are set out in the responses to Action Points ISH-AP11 and ISH2-AP12 and by other parties in response to ISH2-AP13 and ISH2-AP14.</p> <p>The ExA also explored, for context, the Applicant's characterisation of the visitor car park as a "nice to have" and how any such benefit should be weighed if delivery is uncertain. Mr Fox confirmed the Applicant's position that it will deliver the car park unless monitoring shows it is not necessary, representing a change from a previous position of "it might be done". Mr Fox explained the car park would respond to the practical reality of increased visitors arriving by car.</p> <p>The ExA noted the visitor car park is listed in the DCO Schedule 1 as Work No. 6 and asked what changes would be required to this section of the DCO if a car park was not provided.</p> <p>Mr Fox explained that Schedule 1 provides the power to build the car park (not an obligation). Whether or not the car is brought forward is a matter for the Requirements and the OLEMP.</p> <p>Mr Friston on behalf of CWACC raised a perception point that the local community might expect the visitor car park as presented as part of the application, and sought on the Councils approval process as to when monitoring would justify the car park. Mr Fox confirmed the updated wording in the OLEMP will make the position clear as noted above.</p> <p>Finally, the ExA queried whether the visitor car park should be taken into account when attributing positive weight to improvements to leisure and access. MF explained that the Applicant's case on leisure and access benefits is advanced irrespective of the car park and that the car park is a management measure and was not promoted facilitating benefits. Mr Russell, on behalf of the Applicant, added that the permissive routes and improvements to PRoW arose through the Applicant's design process and community input and form a key part of the Proposed Development design, whereas the car park came later in that dialogue.</p>
	<p>ii. Temporary ProW closures including impacts to the National Cycle Route 5 and the need or a communication plan.</p>	<p>The ExA asked the Applicant to explain how temporary Public Rights of Way (PRoW) closures would operate in practice, including the impacts on National Cycle Route 5 and whether a clearer communication plan is required setting out closures, diversions and likely durations.</p> <p>For the Applicant, Mr Russell explained that the approach to National Cycle Route 5 is described in section 4.2 of the outline PRoW Management Plan (oPROWMP). For the relevant NCR5 section (RB40), Mr Russell described that the Applicant's</p>

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		<p>approach during construction hours would be that RB40 is closed to pedestrians and horse riders but remains available to cyclists; outside construction hours it would be open to all user types. Mr Russell explained that the Applicant proposes temporary gates at each end of the relevant section and banksmen controlling access (by radio coordination) so that users can pass safely while construction activities are underway. Mr Russell confirmed this is the approach that was also adopted during the construction of the Frodsham Wind Farm.</p> <p>Mr Russell also acknowledged concerns raised by Frodsham Access Travel Team about wanting to get the entirety of the marshes into a state which they are useable, not just the routes within the Proposed Developments Order limits. Mr Russell described the commitments that are set out in the OPROWMP in respect of NCN5 and other routes in the Order limits. Mr Fox added that the Applicant has proposed a number of improvements, to existing and new permissive paths, which are proportionate to the Project impacts but the Proposed Development is not here to fix all issues in this part of the world.</p> <p>The ExA then asked the Applicant to explain the proposed permanent stopping up and rerouting powers within the DCO, including why stopping up is necessary and what temporary and permanent arrangements would be put in place.</p> <p>Mr Fox on behalf of the Applicant explained that Article 13(1) of the Draft DCO must be read together with Article 13(2) and, on that basis, the undertaker cannot permanently stop up a PRoW until a suitable substitute PRoW is provided. The rationale for the proposed stopping up and rerouting provisions in this case is that the definitive map alignment does not reflect the route on the ground. The Applicant characterised this as a “tidying up” or correction exercise intended to ensure the legally recorded route aligns with the route that people can actually walk. All other permanent closures and re-provision in the DCO are to provide for an ‘upgrade’ in the type of PRoW that they are – legally this can only be done through a stopping up and re-provision.</p> <p>He emphasised that in the DCO there are no proposals to permanently stop up a Public Right of Way without a replacement being in place, and that replacement being in place before the existing is closed, as can be seen when article 13(1)-(6) are read together.</p> <p>Mr Russell provided a further example of this correction-based approach, referring to the essential RB102 route shown as a brown line on the definitive map. Although the definitive map shows that alignment, it does not exist as a usable route on the ground. AR stated that the DCO provisions therefore allow the route to be re-routed so that it is officially recorded along the walkable route that exists on the ground, describing this as a correction rerouting.</p> <p>The ExA asked the Applicant to confirm whether, throughout construction, there would remain access for the public on RB102. Mr Russell confirmed that there would be public access throughout the construction phase.</p>

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		<p>Mr Russell explained that the Applicant's proposals need to be understood in the context of other PRow changes in the vicinity during the construction phase: AR stated that the closure of RB103 and RB89 would affect the ability to undertake a circular route connecting with RB97 and RB101. However, AR explained that east-west passage would still be possible via RB97 and RB101 and, on that basis, the Applicant considered the overall impact to connectivity to be limited. Mr Russell directed the ExA to Sheet 3 of 5 Street Works, Public Rights of Way, Vehicular Usage and Access Plans [AS-008] as showing the relevant arrangements.</p> <p>The ExA asked whether the Applicant could provide a more straightforward plan or map outlining alternative routes and intended durations. Mr Russell confirmed that the Applicant can prepare a simpler plan to explain temporary and permanent route alternatives. This is reflected in Action Point ISH2-AP15.</p> <p>A representative of the Peak and Northern Footpaths Society (Linda Smith) then raised two points: first, that as public consultees the Footpath Society would expect to be consulted on changes to the PRow network; and second, whether there would be an opportunity to review the detailed PRow management plan.</p> <p>Mr Fox responded that the Applicant would take the point away, noting that the detailed PRow management plan will be approved by CWACC and that, while the Council could consult local groups if it wishes, it would be unusual for a DCO to name specific action groups for consultation. This is reflected in Action Point ISH-AP16</p> <p>The ExA then asked how often vehicles would need to be used on PRow and queried the scope of Article 14(7) in relation to motor vehicles.</p> <p>MF explained that, based on the assumptions in Chapter 2 of the Environmental Statement, vehicle use of PRow during operation would be expected to be materially lower than during construction. MF explained that Article 14(7) is drafted deliberately broadly (including to cover HGVs if required) and that the safety of PRow users would be managed through the outline Operational Environmental Management Plan and the outline PRow management plan. Mr Fox also clarified that the Applicant's intention is that the relevant safety measures in the PRow management plan would also apply during the maintenance period. Mr Fox referred to Table 5-2 of the outline OEMP (page 40). The ExA asked whether, if an HGV needs to be used during the maintenance phase, a banksman would be used in the same way as during construction. MF confirmed that this is the intention and stated the Applicant would review the outline OEMP to make sure the linkages to the PROWMP measures during the operational phase are clear.</p> <p>Post Hearing Note: These updates have been made at Deadline 4.</p>

#	Agenda item	Applicant's response
		<p>The ExA then raised a query about when the restoration of PRoWs used by HGVs during maintenance would be restored, emphasising that this should be as soon as possible after use, not after the 'phase' of work is complete. This matter is reflected in Action Point ISH2-AP17.</p> <p>The ExA then queried how the Applicant could say it will keep PRoW closures to a minimum in the context of the proposals set out in the OPROWMP.</p> <p>Mr Russell responded that the Applicant has gone to lengths to keep routes open, including through the use of banksmen, and that the intention is to keep the vast majority of routes open where possible, and noting that with the exception of specific measures set out in the OPROWMP, any closures would be limited to construction working hours (e.g. FP93 and FP99).</p> <p>This is discussed further in Action Point ISH2-AP18.</p>
	<p>iii. PRoW user experience within the solar array development area (SADA) during operation</p>	<p>The ExA asked whether further visualisations could be provided to assist Interested Parties in understanding the user experience of passing through the Solar Array Development Area (SADA) during operation, noting that the photomontage referenced at the hearing was Figure 6-45(xi), Viewpoint 18 in APP-118.</p> <p>On behalf of the Applicant, Mr Mason, Director at Axis, explained that there are not many viewpoints that pass directly through the SADA and that, in the Applicant's view, the viewpoints already provided are representative of the experience users will have when travelling along PRoW through the development.</p> <p>Mr Mason explained that the Applicant's design intentionally provides wide corridors through and alongside the array, and that the experience will be varied: in some places users will be alongside tall existing hedgerows; elsewhere they will experience more open landscapes.</p> <p>Mr Mason referred to the Design Approach Document as explaining corridor widths and how the scheme is arranged to balance panel areas and non-panel corridors. Mr Mason also emphasised that the viewpoint material should be read alongside those wider design documents and figures because the Applicant's intent is not a single uniform condition across the SADA but a range of experiences along the PRoW network.</p> <p>Mr Fox also noted APP-109 Chapter 6 Figure 5-6(e) to assist with this point which shows how the viewpoints selected by the Applicant correlate to PRoWs in the Order limits, noting that there is very limited provision for PRoW passing through the SADA, and that this is therefore reflected in the choice of viewpoints.</p>

#	Agenda item	Applicant's response
	<p>iv. PRoW condition surveys and maintenance during the construction, operational and decommissioning phases</p>	<p>The ExA asked the Applicant to explain how it will manage PRoW condition throughout the life of the project and whether an initial baseline condition survey is intended.</p> <p>For the Applicant, Mr Russell explained that a number of commitments are already set out across the Applicant's outline management documentation, including:</p> <ul style="list-style-type: none"> • an obligation that damage to PRoW surfacing resulting from construction will be repaired prior to commissioning (identified by AR as paragraph 4.1.4 of the oPROWMP); • measures set out in Table 5-7 of the outline CEMP addressing "Damage to PRoW", including improving PRoW within the Order limits at the end of construction to repair damage and potholes and undertaking improvements where routes are periodically flooded or become impassable due to mud; • the full PRoW Management Plan will set out the approach to be adopted to monitor and review the status of PRoW within the Order Limits and the maintenance schedule for improvements or upgrades; • the oOEMP identifies that regular inspections of PRoW routes within the site and monitoring of public feedback regarding accessibility and signage quality would be undertaken; • a commitment to agree permissive path details and a maintenance regime for PRoW and permissive paths through the final LEMP with CWACC (paragraph 6.5.23). <p>Mr Russell acknowledged the ExA's question about whether an initial baseline condition survey is explicitly included, and indicated that if it is not currently explicit, it will be added. This is discussed further in Action Point ISH2-AP19.</p> <p>In addition, the ExA queried how safety measures (including banksmen) apply outside of construction.</p> <p>Mr Fox clarified that the Applicant's intention is that, where maintenance requires vehicles (including larger vehicles for pre-planned maintenance events) to use PRoW routes during the operational phase, the same principle of banksmen-controlled access and user safety measures would apply; those arrangements would be set out clearly in the OEMP, as noted above.</p>
	<p>v. PRoW status post-decommissioning</p>	<p>The ExA encouraged the Applicant to consider whether longer-term commitments could be secured in relation to permissive paths, and asked what would happen to permissive routes after decommissioning.</p> <p>Mr Fox on behalf of the Applicant explained that is not within the Applicant's control and is not an appropriate use of the planning system (noting the Applicant's submissions on this in page 47 of REP1-033).</p>

#	Agenda item	Applicant's response
		<p>Mr Fox acknowledged the Applicant is not creating a post-lifetime benefit, but the benefit is there while scheme is in place. The definitive PRow across the site would be retained, and at the end of the decommissioning process, any damage caused by the decommissioning works would be repaired. As set out at paragraph 2.4.7 of the oDEMP the landowner may or may not retain the permissive paths created across the Site following decommissioning.</p> <p>Mr Friston on behalf of CWACC set out the Councils position hasn't changed and they want more clarity of the process of what stage during decommissioning things happen.</p> <p>Mr Fox reiterated that the Applicant cannot commit that permissive paths will remain available post-decommissioning because that would be a matter for the landowner and is not. The Applicant has included wording in the DCO, in line with precedents to say that the permissive paths authorised via the DCO and LEMP are no longer available to the public pursuant to the DCO. However, there is nothing to prevent landowners from continuing to allow permissive usage if they so desired.</p> <p>Further to the CWCC comment, Mr Fox confirmed that the Applicant would update the ODEMP to ensure there is clear communication as to what is happening to permissive paths at decommissioning.</p>
	<p>vi. Access to the river weaver for recreation</p>	<p>The ExA asked the Applicant to clarify what is meant by "access to the River Weaver" in the context of recreation.</p> <p>On behalf of the Applicant, Mr Fox clarified that the Applicant's references to "access" concern access to the banks for walking and recreation, rather than navigation by vessel. Mr Fox stated that the Applicant's position is that nothing in the Proposed Development would prevent people from accessing the River Weaver itself as they currently do, save for limited temporary restrictions associated with particular works</p>
<p>3d Landscape and Visual effects (including historic environment and glint and glare)</p>		
<p>3d</p>	<p>Landscape and Visual effects (including historic environment and glint and glare)</p> <p>Glint and Glare</p> <p>i. clarifications</p>	<p>i. Clarifications</p> <p>The ExA opened this item by referring to points raised by the Council regarding the glint and glare (GG) assessment, notably whether 15 or 16 dwellings would be affected</p> <p>Mr Sutton, Technical Consultant at Pager Power, for the Applicant, clarified that the actual number of receptors experiencing any level of GG effect is higher than 15 or 16. MS explained that:</p>

#	Agenda item	Applicant’s response
	ii. assessment of impacts including traveller sites iii. how mitigation would be secured	<ul style="list-style-type: none"> • 31 dwellings would experience <i>low</i> impacts; and • of these, 16 dwellings would experience GG exposure for less than 3 months per year, and less than 60 minutes per day; while • for 15 dwellings, exposure would be for more than 3 months per year, though still well below 60 minutes on any day. <p>The ExA then requested that the Applicant provide a plan or list identifying the specific dwellings within each category, explaining the level and duration of effect. This is reflected in Action Point ISH2-AP21.</p> <p>The ExA then queried an apparent inconsistency between the Applicant’s position that only low impacts are predicted and material within APP-067 (residential properties appendix) which appeared to show moderate impacts on image 3.</p> <p>In response, Mr Mason (for the Applicant) explained that earlier iterations of the glint and glare work had indicated moderate effects in the modelling outputs, but subsequent iterations, following refinement and mitigation through design, showed that the effects no longer reached the moderate threshold. Mr Mason explained that the references to “moderate” were a legacy from the earlier iteration and should not be read as reflecting the latest modelling position.</p> <p>Mr Sutton confirmed the Applicant’s position that no moderate glint and glare impacts remain towards any dwellings. The ExA requested that APP-067 / Appendix 6.4 be updated to remove legacy references. This is reflected in Action Point ISH2-AP22.</p> <p>Mr Russell for the Applicant, added that the CWACC’s description of this as a legacy issue was fair, explaining that at scoping stage a preliminary glint and glare exercise indicated moderate effects; later versions incorporated mitigation through changes to the orientation/angle of panels, which avoided those impacts. Mr Russell referred the ExA to the Applicant’s earlier written explanation on this topic (referenced in the ISH1 written summary response - REP1-003 issue 5J) as providing additional reassurance on how effect categories relate to lived amenity. CWACC confirmed it accepted the Applicant’s explanation.</p> <p>ii. Assessment of impacts including traveller sites</p> <p>The ExA asked whether the Applicant’s glint and glare assessment had covered the traveller sites referenced in the examination.</p> <p>Mr Fox, on behalf of the Applicant clarified, first, that the traveller sites referred to were not authorised and were described as being in breach of planning control and subject to enforcement. However, Mr Sutton on behalf of the Applicant confirmed that</p>

#	Agenda item	Applicant's response
		<p>the Applicant had nevertheless undertaken modelling for the traveller site location and the Applicant's position is that there is no glint and glare impact at that location, due to screening. Mr Sutton indicated that the Applicant could provide this information at Deadline 4.</p> <p>Following later discussion at the Hearing, although it was initially considered this would be done through a separate note, the GHG study has been updated to account for this and other queries raised by the ExA (as reflected in Action Point ISH2-AP25).</p> <p>iii. How mitigation would be secured</p> <p>The ExA then turned to how the Applicant proposes to secure the mitigation relied upon for glint and glare. In particular, the ExA asked about the role of anti-reflective coating and queried why the Applicant resisted putting an explicit requirement on the face of the DCO.</p> <p>Mr Fox initially explained that the Applicant's concern is that requiring every mitigation feature to be embedded expressly in the DCO risks creating a "slippery slope" and undermines the well-established approach whereby detailed controls are secured through management plans and requirements. Mr Fox indicated that anti-reflective coating is already controlled through the Applicant's Design Parameters Statement and Requirement 6(2) of the DCO.</p> <p>However, following follow-on questions from the ExA on a number of matters, Mr Fox set out that the Applicant would concede the point, and add anti-reflective coating into Requirement 6 in the DCO to be submitted at Deadline 4. This is reflected in Action Point 2 ISH2-AP23.</p> <p>Glint and glare on the M56 – panel tilt, foundations and the risk of subsidence</p> <p>The ExA queried whether the assumed tilt angle for solar panels (relevant to glint and glare outcomes) could be affected by subsidence or changes in ground conditions, and whether this could, in turn, alter the glint and glare position.</p> <p>Mr Russell explained on behalf of the Applicant that the detailed design process will be informed by the nature of the foundations at different parts of the Site. AR added that the tilt angle of panels can be recorded and monitored over time, providing an additional layer of assurance in operation.</p> <p>Mr Fox supplemented this by explaining that tilt angles are secured through the Design Parameters Statement and DCO compliance mechanisms. Mr Fox indicated that, if the ExA sought further reassurance, the Applicant could include an express commitment within the Outline OEMP to monitor tilt angles going forward. This query is reflected in Action Point ISH2-AP7).</p>

#	Agenda item	Applicant's response
	<p>Landscape and Visual</p> <ul style="list-style-type: none"> i. clarifications ii. post-decommissioning state 	<p>i. Clarifications</p> <p>The ExA raised several points of clarification on the Design Parameters Statement, including potential inconsistencies in the drafting of Table 1 (page 8) concerning panel tilt/slope and the degree of design flexibility. The ExA asked whether the statement meant a fixed angle between 5° and 40° or something different.</p> <p>Mr Russell clarified that the Applicant's intent is that the maximum fixed angle sits between 5° and 10°, with the ability for the tilt to be varied by 5°. The ExA requested that the text be adjusted to make this clear.</p> <p>The ExA also asked for a key and clearer description on Figure 1 of the Design Parameters Statement (AO5 being part blue and part white) and requested that the drafting make explicit that references to AO5 relate to the part shown in blue. Mr Russell confirmed the Applicant can amend that.</p> <p>These matters are discussed further in the response to Action Point ISH2-AP24.</p> <p>The ExA then asked where the tilt constraint (relevant to glint and glare mitigation) is secured in the DCO. Mr Fox explained it is secured through the Design Parameters Statement and Requirement 6.</p> <p>The ExA also queried why footprint information for Works 2A/2B was not set out in the Design Parameters Statement (page 11, Table 2).</p> <p>Mr Fox explained the maximum extent is shown on the Works Plans which accounts for all aspects of the BESS Compound (such as car parking and ancillary infrastructure, not just the elements noted in the Design Parameters Statement), and Mr Russell indicated some elements are illustrated on plans rather than defined in the table. The ExA pressed why maximum extent could not be included; Mr Russell indicated it could but the Applicant was trying to keep documents to a minimum. Mr Fox went on to note that the limits of deviation on the Works Plans are secured via article 4(2) of the draft DCO.</p> <p>ii. Post-decommissioning state</p> <p>The ExA explored the relationship between the Applicant's mitigation strategy (including approximately 5 km of native trees/shrubs) and the Council's landscape strategy guidance, noting a statement in the guidance suggesting that blanket screening is not appropriate in open marsh landscapes (RE3-014 page 11, paragraph 2.3.5).</p>

#	Agenda item	Applicant's response
		<p>Mr Mason (for the Applicant) explained that the Applicant has been conscious of the tension identified in the Council's guidance. He stated that the Applicant does not propose blanket screening across an open marsh, and that the Site is not a typical, uniform marsh landscape; rather, it is a highly modified landscape where openness varies and where there are existing industrial and infrastructure influences. Mr Mason explained the Applicant has designed mitigation belts deliberately to soften views while still allowing views through in places, maintaining the open character where appropriate and balancing retention of longer-distance views (towards Helsby) against the need to reduce the visual prominence of arrays in sensitive locations.</p> <p>The ExA questioned whether the Council would have considered those baseline characteristics when preparing its guidance. Mr Mason explained that the guidance itself acknowledges fragments of marshland and a heavily modified landscape with historic industrial use, and that the Applicant's planting is not ornamental but intended to reinforce existing character and provide softening without creating inappropriate tall screens across the marsh.</p> <p>The ExA then queried specific species listed in the oLEMP (noting oak as a taller species). Mr Mason explained that taller planting relates primarily to the southern edge near the motorway, while within the Site the planting is more scrub-based. When asked if the planting is appropriate, Mr Mason stated the proposals comply with guidance recommendations, recognising there is an inherent tension but that the Applicant's approach is balanced.</p> <p>The ExA asked whether, at decommissioning, it would be better for planting to be removed to return to original state. Mr Mason stated that for the most part planting would remain appropriate; in some limited locations a case might be made to remove some woodland, but where the planting serves a long-term role (e.g. near the motorway) it is likely beneficial to retain.</p> <p>CWACC confirmed that, in applying the guidance, it distinguishes between open deposit areas and areas around the motorway where tall screening already exists, and that overall it considered the Applicant's proposals serve their intended purpose. CWACC confirmed the oLEMP provides sufficient safeguards through the lifetime of the development and would not encourage removal post-decommissioning as it is considered a long term biodiversity benefit.</p> <p>The ExA also queried how post-decommissioning benefits should be weighed, referring to paragraph 4.7.4 of APP-128 (Planning Statement) and noting a potential tension that longer-term benefits may be lost when the land is handed back.</p> <p>Mr Fox clarified the Applicant's position that landscaping will be in place at hand back, but post-decommissioning decisions are for the landowner (subject to other regulatory regimes). Mr Russell also noted that, in BNG terms, a 30-year period is given significant weight, and the Proposed Development provides a 40 year term.</p>

#	Agenda item	Applicant's response
		<p>Frodsham Active Travel Team raised concerns about views from elevated areas and suggested additional tree planting could further screen arrays. Mr Russell responded that the Applicant has engaged extensively, and that while the Applicant has incorporated many suggestions, it does not consider the proposed additional planting across the western elevated areas is justified, as the Proposed Development does not meet EN-1 paragraph 5.10.26 and the "exceptional circumstances" threshold. Mr Mason also emphasised that extensive new tree planting on elevated western areas would materially increase the tension identified in the Council guidance. Whilst vegetation the Applicant is proposing has that tension the Applicant is proposing this in low level areas. The Applicant has considered these proposals and takes the view that the limited benefit which would arise (softening the view from the hill) is less of a benefit than the harm it inflicts on the Site.</p>
	<p>Historic Environment</p> <ul style="list-style-type: none"> i. policy ii. categorisation of harm to heritage assets iii. public benefits 	<p>i. Policy</p> <p>The ExA first raised a plan issue (AS-011 sheet 3) and queried an apparent omission of a ventilation shaft.</p> <p>Mr Russell explained this was an omission on that drawing and clarified that the correct figures for heritage assets are within the Chapter 11 Figures [APP-23] where these shafts are shown. The ExA queried whether AS-011 formed part of the controlling mechanisms in the DCO. Mr Fox confirmed that the DCO refers to the ES chapters/appendices/figures for control, not AS-011, which is submitted to help compliance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure Regulations) 2009, and that the Chapter 11 figures are the relevant secured set of drawings for heritage.</p> <p>The ExA then raised policy considerations, noting the consultation on the draft NPPF and the possibility that a new NPPF could be published during the examination period. The ExA asked the Applicant to provide a response based on the current draft position so that, if it is adopted, the ExA can report the implications to the Secretary of State without further consultation delay.</p> <p>Mr Fox stated the Applicant's concern that draft NPPF documents often differ materially from final versions and therefore, in the Applicant's view, the draft is not a material (and as clarified in response to the ExA) or important and relevant consideration at this time.</p> <p>However, he acknowledged that the ExA wishes for the Applicant to engage with the revised policy proposals in respect of heritage matters.</p> <p>Mr Russell then gave the Applicant's preliminary interpretation: the overarching policy tests remain similar with nuances; including the need to articulate degree of harm, removal of the phrase 'less than substantial' and terminology changes (e.g. "great weight" to "substantial weight") appear to be language alignment rather than substantive change.</p>

#	Agenda item	Applicant's response
		<p>ii. Categorisation of harm to heritage assets</p> <p>The ExA sought clarity on how the Applicant's terminology aligns with CWACC's terminology and NPPF language, noting the need for a clear read-across between ES descriptors (e.g. "minor adverse") and planning policy concepts (e.g. "less than substantial harm").</p> <p>The ExA indicated it would be helpful if the Applicant could set out in writing what terminology it has used so that the ExA can translate between the Applicant's and Council's language consistently and introduced the table it had produced to help understand the party's positions on heritage matters.</p> <p>Mr Fox suggested that the ExA's proposed table exercise and the Applicant's note on draft NPPF implications to its heritage conclusions could be dealt with at Deadline 5. This is noted in Action Point ISH2-AP27.</p> <p>iii. Public benefits</p> <p>The ExA asked whether there would be any tension between the provision of mitigation and the setting of heritage assets. Mr Russell stated that there would not be such a tension affecting the Applicant's setting judgements, and that the judgements made (less than substantial harm at the lower end of the scale) would not be altered by the mitigation approach.</p> <p>The ExA also referred to APP-044 and queried whether leaving the NBBMA in place post-decommissioning could give rise to harm to setting.</p> <p>Mr Russell responded that it would not. CWACC agreed with the Applicant's position</p>
3e.	Green Belt	
3e	<p>Green Belt</p> <p>(a) clarifications</p> <p>(b) planning policy considerations</p>	<p>Agreement on Very Special Circumstances (VSC) and the role of paragraph 155</p> <p>The ExA first confirmed that both the Applicant and CWACC agree that Very Special Circumstances (VSC) exist to justify the Proposed Development in the Green Belt. Both parties confirmed that they do.</p>

#	Agenda item	Applicant's response
		<p>The ExA then explored why the Applicant continued to advance its paragraph 155 case (grey belt / not inappropriate development) if VSC are agreed.</p> <p>On behalf of the Applicant, Mr Adams, Director at Axis, explained that the key difference between the parties is the Applicant's position that the land does not strongly contribute to Green Belt purposes (a), (b) or (d) in paragraph 143 of the NPPF applying the "tests" set out in the Planning Practice Guidance and that the application of policies relating to assets listed in footnote 7 (other than Green Belt) does not provide a strong reason for refusing or restricting development, , and thus the land meets the definition of Grey Belt.</p> <p>Mr Adams explained that, following on from this, the Applicant contends that the paragraph 155 tests are met and that, on that basis, the development is not inappropriate development. He explained that paragraph 153 must then be read together with footnote 55 applies such that substantial weight need not be given to harm to the Green Belt, including openness where development is not inappropriate (APP-128 Section 1.4 Appendix A: Green Belt Assessment).</p> <p>Mr Adams also emphasised that the Applicant's Green Belt case was written to step through the policy "in case" the ExA disagreed, and that the Applicant is not treating the paragraph 155 point as a significant argument in circumstances where VSC are now common ground.</p> <p>CWACC confirmed its disagreement with the Applicant's Grey Belt position, explaining that in its view the Site strongly contributes to Green Belt purposes (including preventing neighbouring towns from merging), remains largely free from development and forms a substantial part of the gap between settlements, providing visual separation.</p> <p>Later on in these discussions, Mr Fox went on to clarify that the Applicant's case has been made on the basis of the application of the order in which policy requires Green Belt policy to be applied:</p> <ul style="list-style-type: none"> • firstly whether the development is 'inappropriate' in the Green Belt, hence determining why the Site is Grey Belt, and meets the para 155 tests; • the Applicant considers the site is Grey Belt and the para 155 tests are met, but if the ExA/SoS disagrees, then the development must be considered 'inappropriate development', and in the first instance, the Applicant states that the CNP presumption would apply, and then • lastly, it is only in the case that the ExA/SoS considered that the tests for CNP status were not made out, that the question of very special circumstances outweighing harms that needs to be considered. <p>The Applicant's arguments therefore need to be seen in that context.</p>

Footnote 55 and whether openness is “disengaged” if development is not inappropriate

The ExA then tested the Applicant's interpretation of footnote 55 to paragraph 153 (substantial weight to harm to the Green Belt, including openness, “other than” where development is not inappropriate). The ExA asked whether the Applicant was suggesting that satisfying paragraph 155 disengages the openness test.

On behalf of the Applicant, Mr Adams explained that, where development is not inappropriate (on the Applicant's case, because the paragraph 155 tests are met), the decision-maker is not required to apply the policy requirement to give substantial weight to Green Belt harm.

Mr Russell added that Planning Practice Guidance expressly addresses how harm (including openness) is to be treated where development is not inappropriate, and that the Applicant's case is therefore that if the ExA agrees with the paragraph 155 route, the policy requirement to give substantial weight to harm (including openness) is excluded. Mr Russell explained that the Applicant is inviting the ExA to consider the policy in a tiered manner: first, whether paragraph 155 applies; and if not, then proceed on the basis that VSC exist (as agreed).

Avoiding double counting and the relationship between Green Belt “openness” and landscape/visual openness

The ExA explored CWACC's wording in the Statement of Common Ground and CWACC's local impact material, noting potential overlap between “substantial harm to the openness of the Green Belt” and “substantial landscape and visual harm to the openness of the Green Belt”, and raised a concern to avoid double counting.

CWACC explained that it sees openness as a concept that can transcend Green Belt policy and that it is concerned with both visual and spatial dimensions, including the landscape character emphasis on openness.

To assist with a clear read-across for reporting, the ExA provided a suggested table format and asked that the Applicant and CWACC set out their conclusions in consistent terminology so differences (if any) can be clearly identified. The Applicant indicated that, alongside a short note on draft NPPF implications to Green Belt matters, the read-across exercise could be provided by Deadline 5 (as noted in Action Point ISH2-AP28).

Mr Russell also noted that “openness” can be relevant both in Green Belt policy terms and in landscape and visual assessment terms (a “Venn diagram” overlap). He emphasised that his main concern was ensuring that double counting is avoided, i.e. by counting openness (and related effects) first within the Green Belt “gateway” test (including the VSC

#	Agenda item	Applicant's response
		<p>assessment, if engaged) and then re-counting the same effects again in the overall planning balance, particularly where openness and similar effects will already be considered under other topic headings such as landscape and visual impact.</p> <p>The Green Belt balancing exercise applies only where development is found to be inappropriate, requiring very special circumstances to be demonstrated by weighing harm against benefits. However, if the Examining Authority concludes that the site is grey belt and the NPPF paragraph 155 tests are met, or that the proposal is CNP Infrastructure, that Green Belt balancing exercise will not have been undertaken. In those circumstances, it is necessary and appropriate for the benefits and harms to be assessed through the overall planning balance, outside the Green Belt assessment, taking account of other material considerations.</p> <p>The ExA examined Table 1 in Appendix A to the Planning Statement (APP-128) and asked which of the listed benefits fall under the Critical National Priority rationale in NPS EN-1/EN-3 (i.e. national need for renewable energy / energy security).</p> <p>On behalf of the Applicant, Mr Adams confirmed that only the first two benefits (national need for renewable energy and national need for energy security) fall under the CNP banner, and that the other items listed are "other benefits".</p> <p>Mr Fox emphasised however, that 'falling under CNP banner' should be seen as meaning only that those benefits are aligned with what the Government has determined to be a matter of critical national priority in policy terms, not that they should be seen in the VSC arguments as being a follow on from the Proposed Development having CNP 'status'. As noted above, the ExA only needs to consider if VSCs outweigh harms if it considers CNP status doesn't exist (as such a status assumes that VSCs are made out).</p> <p>Table 1 is provided within the Green Belt Assessment, on the basis of if the Examining Authority concludes that the development is inappropriate development in the Green Belt (either because the Paragraph 155 tests have not been met; or because the proposed development is not CNP Infrastructure). It provides a Green Belt Balancing exercise to determine whether the benefits demonstrably outweigh the harm and consequently very special circumstances are required to justify inappropriate development.</p> <p>The ExA queried whether the table's reference to Green Belt encroachment as "purpose C" was appropriate. Mr Adams indicated that referring to Green Belt purposes in that manner may have been overly cautious and that, in hindsight, the encroachment point may be better treated as part of openness rather than a standalone "purpose C" label.</p> <p>It was also noted during the Examination Hearing that Residential Amenity impact in effect has two elements. The impact from noise and dust during the construction phase of the development; and separately the impact from glint and glare during</p>

#	Agenda item	Applicant's response
		<p>the operational phase of the development. Table 1 has combined these two issues as one (Residential Amenity (Construction)), and on reflection these should be listed as separate issues, both of which, following the mitigation proposed, would have very limited effect, and be given very limited weight.</p> <p>The ExA asked that the Applicant update Appendix A to the Planning Statement at Deadline 5, as reflected in Action Point ISH2-AP28.</p> <p>Reversibility / decommissioning and land rights</p> <p>The ExA asked the Applicant what weight it attributes (in Green Belt terms) to the reversibility of the development at decommissioning.</p> <p>On behalf of the Applicant, Mr Adams stated that duration and reversibility are relevant factors when assessing harm to openness (alongside spatial, visual and perceived impacts). He noted the DCO is for 40 years and said that reversibility is an important consideration in that context.</p> <p>The ExA raised CWACC's point that despite the 40-year term, CNP definitions could imply lifetime extension, and asked the Applicant to respond. The Applicant stated it disagrees because the DCO includes a requirement to decommission within 40 years and any change would require a fresh consent process.</p> <p>The ExA then probed why permanent acquisition of land/rights is sought rather than time-limited rights. Mr Fox, on behalf of the Applicant explained that compulsory acquisition cannot practically be time-limited in the way suggested, while acknowledging the point would be taken away and responded to. This is reflected in Action Point ISH2-AP26.</p>
<p>3f Biodiversity and Ecology (including Habitats Regulations Assessment (HRA) aspects</p>		
<p>3f</p>	<p>i. NBBMA including but not limited to:</p> <ul style="list-style-type: none"> • interested parties' positions on Adverse 	<ul style="list-style-type: none"> • interested parties' positions on Adverse Effects on Integrity (AEoI) to the Mersey Estuary Special Protection Area (SPA) and Ramsar

#	Agenda item	Applicant's response
	<p>Effects on Integrity (AEol) to the Mersey Estuary Special Protection Area (SPA) and Ramsar</p> <ul style="list-style-type: none"> • whether the NBBMA should be considered mitigation or compensation • the concept of repurposing an already 'in use' mitigation area and consideration of additionality • appropriateness of the application of the Cleve Hill approach to calculate the size of the NBBMA and exploration of alternative methods • shape of the NBBMA including the 'panhandle' area • NBBMA requirement in the draft Development Consent Order (DCO) • long-term management and monitoring 	<p>The ExA sought to understand each party's position on whether the Proposed Development would result in Adverse Effects on Integrity (AEol) to the Mersey Estuary SPA and Ramsar, and how the Applicant's mitigation proposals are intended to address the HRA pathway.</p> <p>On behalf of the Applicant, Mr Fearn, Managing Director at Avian Ecology, long-time birder of Frodsham Marshes and author of upcoming industry guidance on solar farm impacts to skylarks, explained that the Applicant's position is that the Proposed Development delivers an ambitious mitigation package and that the NBBMA is designed to be functional in advance of effects arising from the authorised development, so timing is critical. Mr Fearn emphasised that the mitigation strategy is intended to be effective because it is delivered in advance of the relevant impacts and is targeted at the qualifying interest features driving the HRA conclusions.</p> <ul style="list-style-type: none"> • whether the NBBMA should be considered mitigation or compensation <p>The ExA explored the competing submissions as to whether the NBBMA should properly be treated as mitigation (within the HRA framework) or compensation requiring a derogation case.</p> <p>For the Applicant, Mr Fearn explained that the Applicant considers the NBBMA to be mitigation rather than compensation because it is intended to be in place and functioning in advance of the relevant effects and because the relevant habitats are not permanently lost; rather, works and land management are proposed outside of season so that function is maintained and restored. Mr Fearn reiterated that "timing is critical" to the mitigation characterisation and that the Applicant's commitments to establishment and functionality ahead of construction effects are central to the Applicant's case.</p> <p>On behalf of the Applicant, Mr Fox added that the characterisation of mitigation and compensation is also a matter of law within the HRA framework. MF indicated the Applicant could provide a concise written note setting out the Applicant's legal position and the principles it relies upon. This is reflected in Action Point ISH2-AP31.</p> <ul style="list-style-type: none"> • Repurposing an already 'in use' mitigation area and consideration of additionality <p>The ExA explored the Applicant's proposal to repurpose land already used as mitigation for the existing wind farm and whether the Applicant's approach provides additionality.</p> <p>For the Applicant, Mr Fearn explained that the Applicant's approach is not based solely on gross land take but on delivering a quality uplift through active management. Mr Fearn described the Applicant's case as being that the NBBMA proposals are not simply a relabelling exercise: they involve materially different outcomes through engineered and managed wetland</p>

#	Agenda item	Applicant's response
	<ul style="list-style-type: none"> potential impact of additional PRoWs 	<p>conditions (including water level management, scrapes and wet grassland) supported by an ongoing management regime intended to maintain suitability throughout the non-breeding period.</p> <p>The Applicant explained that engagement has taken place with Natural England, RSPB and CWACC on the Applicant's qualitative led approach.</p> <ul style="list-style-type: none"> Appropriateness of the Cleve Hill approach to calculate the size of the NBBMA and exploration of alternative methods <p>The ExA considered the Applicant's use of a bird-day calculation approach (as used for Cleve Hill) and asked about its limitations and whether alternative approaches could provide greater certainty.</p> <p>For the Applicant, Mr Fearn explained that the relevant calculation methodology is set out in the Applicant's NBBMA Mitigation Strategy and was used as a structured starting point in the absence of agreed metrics. Mr Fearn acknowledged that metrics have limitations and are not uniformly applicable across species. The Applicant has combined quantitative approaches where applicable with qualitative professional judgement, supported by survey data and the Applicant's commitment to manage the NBBMA to a high standard over the Project Lifetime.</p> <p>The ExA asked the Applicant whether there were any alternative approaches to the Cleve Hill (bird-day) methodology for calculating the size of the Non-Breeding Bird Mitigation Area (NBBMA). Mr Fearn, for the Applicant, explained that there are no accepted alternative approaches of which he is aware that would provide materially greater certainty. Mr Fearn noted that while techniques such as ecological sampling (for example, biomass sampling) could in theory be considered, they would not provide any additional clarity beyond the approach the Applicant has adopted.</p> <p>On behalf of the Applicant, Mr Fox drew attention to the Applicant's outline NBBMA Mitigation Strategy (specifically paragraph 2.6.7), emphasising that the Applicant's approach is not solely based on bird-day calculations. Mr Fox explained that the bird-day methodology is one part of a broader package, which should be considered as a whole, alongside design measures, habitat engineering, and secured long-term management commitments.</p> <p>Building on that, Mr Fearn explained that the ExA's focus on bird-day calculations needed to be understood in context: the Applicant had never intended the Cleve Hill methodology to be the sole basis for demonstrating adequacy. Rather, the Applicant used the Cleve Hill approach as a means of providing a quantitative perspective where no universally accepted metric exists, and then built on it through qualitative assessment and the design of a management regime intended to deliver</p>

#	Agenda item	Applicant's response
		<p>additionality and resilience over time. Mr Fearn emphasised that the core of the Applicant's case is not "numbers alone" but guaranteed availability and quality of resource through active management.</p> <p>Mr Fearn then addressed the importance of engineering and management to deliver that additionality. He explained that Cell 3 currently contains scrapes and is largely rain-water fed, meaning habitat suitability can vary significantly between years depending on conditions. Mr Fearn noted that the non-breeding period extends beyond winter to include spring and autumn passage, and that a rain-fed system can be unreliable following dry periods. In this context, Mr Fearn explained that Cell 3 is presently very dry and can require substantial wetting before providing good foraging conditions. The Applicant's proposals, he said, are therefore not simply about grazing or broad habitat designation: they involve providing an active water source and water management, with "hands-on" management to maintain suitable wetness and sward conditions throughout the relevant period and across the lifetime of the mitigation. Mr Fearn described this as materially different from the current baseline condition and management of Cell 3.</p> <p>The ExA queried whether Natural England accepts the Cleve Hill approach and asked the Applicant to address submissions that Natural England does not agree with relying on Cleve Hill.</p> <p>Mr Russell, for the Applicant, explained that the Applicant's consultation with Natural England has been extensive and is set out in the SoCG (Table 1). Mr Russell explained that Natural England had indicated it wanted to see more than the Cleve Hill approach alone, and the Applicant accepted that point. Mr Russell reiterated that the Cleve Hill approach was used to provide a quantitative lens but the Applicant has been cautious about its use and has supplemented it with additional qualitative and management-based evidence.</p> <p>The ExA asked CWACC what it would want to see. CWACC stated that it sought a clearer explanation of how species not captured by the Cleve Hill bird-day method have been taken into account, and how that data has been integrated into the mitigation approach. Mr Russell responded by drawing attention to Table 8-2, which the Applicant said lists all relevant species and explains how each has been considered within the strategy.</p> <p>Mr Fearn then clarified how the Applicant's methodology has been applied in species terms. He explained that the mitigation strategy identifies that Cells 2 and 5 are predominantly managed for a small number of key species (golden plover, lapwing and curlew, i.e., those SPA species which are, in part, dependent on grassland habitats). Mr Fearn stated that the bird-day calculations were applied to the species for which the method is applicable; for the remaining key species, the Applicant's approach is to apply the full mitigation package through habitat management. Mr Fearn emphasised that the methodology is only applicable to certain species and, therefore, the Applicant's wider approach is necessarily multi-layered.</p>

#	Agenda item	Applicant's response
		<p>The ExA raised a further question about whether the relevant species described by Mr Fearn are birds of open spaces and whether they will flee in response to changes. Mr Fearn explained that the relevant species are birds of open spaces and prefer larger open areas, and that the Applicant's strategy is intended to ensure sufficient openness for predator detection, space to react and move, and suitable foraging conditions. Mr Fearn explained that the NBBMA works involve re-engineering within a man-made and heavily modified landscape, and that in comparable UK environments (including industrial waterfront and dockland contexts), these species do utilise open habitat in industrial settings where openness is maintained to an appropriate degree. Mr. Fearn also added that the NBBMA is evidently sufficiently 'open', in that it is directly comparable to the other cells within Frodsham Marsh which have historically (and in the case of Cell 6 – outside the Order Limits - continue to be) favoured by SPA wetland birds.</p> <p>The ExA asked whether birds would have an issue with being in close proximity if habitat is concentrated. Mr Fearn responded that the relevant species routinely form very large flocks and are comfortable in close proximity, provided there is sufficient space for foraging and movement. He acknowledged the general principle that the birds require adequate space to forage, but maintained that the space and function proposed would remain suitable as it is directly comparable to use of cells historically and currently (Cell 6).</p> <ul style="list-style-type: none"> • Shape of the NBBMA including the “panhandle area” <p>The ExA asked the Applicant to address concerns about the shape and configuration of the NBBMA, with particular reference to the “panhandle” area shown on Figure 2-3b (APP-205). The ExA's line of questioning focused on whether the configuration and the components shown within the red line boundary are functionally appropriate for SPA/Ramsar non-breeding birds, and whether the Applicant's calculations and assumptions reflect the correct land parcels and habitat suitability.</p> <p>On behalf of the Applicant, Mr Fearn explained that the figure referenced is slightly incorrect, and clarified that a farm area shown on the plan is not included within the Applicant's calculations. Mr Fearn stated that Natural England has accepted the Applicant's position in that regard. He explained that, for the purposes of the mitigation calculations and functional assessment, the relevant area is the grassland within the red line boundary, and that the reason a particular part of the area shown is excluded from the calculations is because it comprises a bank that is entirely unsuitable for the relevant mitigation purpose, being steep and therefore not functional habitat for the target SPA birds. Mr. Fearn added that the panhandle area, as included in the NBBMA, provides suitable habitat for SPA birds and is anticipated to be used, albeit it is accepted to be of lower quality than other parts of the NBBMA.</p>

#	Agenda item	Applicant's response
		<ul style="list-style-type: none"> • NBBMA requirement in the draft Development Consent Order (DCO) <p>For the Applicant, Mr Fox explained that the Applicant's position is that the delivery and management framework is secured through the DCO requirements and an approvals process involving the relevant conservation bodies and CWACC. long-term management and monitoring potential impact of additional PRowS</p> <p>The ExA sought clarity on how long-term management will be secured, including clarity on progress with RSPB.</p> <p>Mr Fox, for the Applicant, explained that engagement with RSPB on management remains ongoing, that following a positive meeting in the week prior to Hearing, it is understood they will respond to the ExA's Rule 17 letter. However, the Applicant does not expect to be able to provide a signed off plan within the Examination timetable and so the Applicant will need to make its recommendation on that basis. He explained that the Applicant would be amending the NBBMS at Deadline 4 to provide that RSPB would be the Applicant's preference for the 'nature conservation body' already committed to, but that if this was not possible, then any other nature conservation body would have to be approved by CWaCC and Natural England. This will ensure that the Proposed Development is not entirely beholden to RSPB whilst ensuring that management is taken on by a nature conservation body.</p>
	<p>ii. Skylark Mitigation Area (SMA) including but not limited to:</p> <p>(c) size and location</p> <p>(d) baseline surveys</p> <p>(e) long-term management and monitoring</p> <p>(f) farmland birds requirement</p>	<ul style="list-style-type: none"> • Size and location of the Skylark Mitigation Area (SMA) <p>The ExA introduced the Skylark Mitigation Area (SMA) agenda item and noted that delivery, management and monitoring of the SMA would be secured through the outline Landscape and Ecology Management Plan (oLEMP), with the SMA section cross-referring to wider grassland management provisions.</p> <p>On behalf of the Applicant, Mr Fearn explained that the SMA (referred to as approximately 5.6 hectares) is proposed to be converted from arable/crop-rotation land to permanent grassland to provide favourable ground-nesting habitat for skylarks. Mr Fearn described the intended outcome as a meadow-type habitat, managed through conservation-sympathetic mowing and/or grazing regimes.</p> <p>Mr Russell directed the ExA to the relevant SMA section 6.1 in the oLEMP and explained that it cross-refers back to the wider grassland mitigation requirements, including how the meadow would be managed, cut and maintained to keep it in an optimum condition.</p> <p>The ExA then identified an apparent inconsistency between documents as to the SMA area: the Information to Inform the HRA (REP3-006) was said to refer to 30 hectares, whereas the oLEMP (REP3-014) and ES Chapter 8 refer to 5.58 hectares. The ExA asked the Applicant to confirm which figure the Environmental Statement conclusions were based upon.</p>

#	Agenda item	Applicant's response
	<p>in the draft DCO</p>	<p>Mr Russell stated he would check the calculations and suggested the discrepancy likely arose from earlier consultation/pre-application stages where a larger potential area had been discussed. Mr Fox then clarified that ES Chapter 8 and the latest oLEMP refer to 5.58 hectares, and that the 30-hectare reference is likely a typographical/legacy error in the HRA material, which the Applicant would correct.</p> <p>The ExA also asked whether the necessary landowner agreements are in place for establishment of the SMA. The Applicant confirmed that agreements are in place.</p> <p>Finally, the ExA asked whether the SMA timetable aligned with the NBBMA. AR confirmed the Applicant has committed to deliver the SMA in advance of starting the NBBMA works.</p> <ul style="list-style-type: none"> • Baseline surveys <p>The ExA asked what methods had been employed to determine that the SMA (assuming 5.58 hectares) is sufficient and queried the evidential basis, given concerns raised about the SMA being close to the M56 and pylons and questions about whether the location reflects where skylarks were recorded. This is also considered in Action Point ISH2-AP36.</p> <p>On behalf of the Applicant, Mr Fearn explained that skylark mitigation is commonly delivered through two broad approaches: (i) skylark plots within arable landscapes (small open areas distributed within working fields), and (ii) creation of a high-quality, more natural grassland habitat (the method adopted for the SMA). Mr Fearn explained the rationale for the grassland approach: it increases prey availability (invertebrates) and importantly supports breeding productivity by providing conditions where nests are less likely to be destroyed by modern farming cycles, thereby helping maintain conservation status at an appropriate scale rather than seeking a strict "pair-for-pair" outcome.</p> <p>In response to CWACC and CWT concerns about limited site-specific survey evidence for the SMA parcel, Mr Fearn acknowledged the point but stated that there are published methods for assessing skylark habitat suitability and likely capacity, and that survey findings can be a snapshot that varies year-to-year with crop rotation. Mr Fearn referred to published methodologies (including guidance associated with Harry Fox and an emerging "Aventis" metric) and explained the Applicant's view that crop type and management can be a reliable indicator of likely suitability.</p> <p>Mr Fearn also explained that the SMA is only the dedicated mitigation parcel for skylarks and does not mean skylarks will not continue to use other parts of the Order limits, noting that grassland management elsewhere (including within the NBBMA areas and retained open areas) can continue to provide foraging habitat. Mr Fearn referred to research suggesting skylarks</p>

#	Agenda item	Applicant's response
		<p>are frequently recorded at solar farms for foraging (often along fringes) due to reduced arable intensity and increased invertebrate availability.</p> <p>There was some discussion at the Hearing as to whether the Skylark Mitigation Area should be considered as mitigation or compensation, particularly in the context of the recent Five Estuaries decision which refers to farmland bird compensation measures.</p> <p>Mr Fearn, on behalf of the Applicant, confirmed that the SMA should be considered as mitigation, in line with other solar schemes across the UK. This is discussed further in Action Point ISH2-AP37.</p> <ul style="list-style-type: none"> • Long-term management and monitoring <p>The ExA asked whether there is a success criterion against which successful SMA mitigation would be measured. Mr Fearn explained that success is primarily about maintaining the quality of the grassland habitat through the oLEMP management regime. He stated that there is no proposal for routine skylark nest surveys because locating nests is difficult and population counts can be variable; however, the measures proposed are widely adopted and well researched for conservation outcomes, and the Applicant has a high degree of confidence provided habitat quality is maintained.</p> <p>The ExA asked whether proximity to the M56 and pylons had been considered. Mr Fearn confirmed it had and indicated the Applicant would submit supporting research (including on skylarks and pylons and on vehicle disturbance) to the Examination. This is noted in Action Point ISH2-AP38.</p>
	<p>iii. cumulative and in-combination effects of other developments to the proposed mitigation areas</p>	<p>The ExA sought an explanation of how the Applicant had considered cumulative and in-combination effects on the proposed mitigation areas (including the NBBMA and SMA), particularly in the context of other projects which may come forward in the same area. The ExA focussed on the pipeline proposals promoted by Liverpool Bay CCS Limited (LBCCS), referred to during the hearing as the "Runcorn Spur Pipeline", and asked the Applicant to address how its mitigation would operate depending on the order in which the schemes are delivered, with reference to the 'Scenarios' identified in the Applicant's Technical Note on Pipeline Interactions [REP1-041].</p> <p>On behalf of the Applicant, Mr Fox explained that the Applicant had considered the practical implications of each scenario but emphasised that, in principle, the Applicant's DCO cannot and should not be made contingent on the programme of a different promoter. Mr Fox stated that the Applicant therefore does not accept any suggestion of a "Grampian-style" restriction which would prevent implementation of the Proposed Development (or delay establishment of the NBBMA) until the Runcorn Spur Pipeline is delivered, or until LBCCS has produced its own mitigation proposals.</p>

#	Agenda item	Applicant's response
		<p>Mr Fox explained the Applicant's position on cumulative interaction as follows:</p> <ul style="list-style-type: none"> • the Applicant does not control LBCCS's programme, construction methodology or decision-making, and cannot therefore be held responsible for ensuring the pipeline is delivered in a particular sequence or timeframe. • if another scheme is consented and later comes forward in a way that interacts with, disturbs or compromises the mitigation areas, it is the responsibility of that other promoter to assess and mitigate its own impacts, consistent with standard EIA/HRA principles. • once established, the NBBMA should be treated as a functioning ecological resource; where later works would compromise it, those later works must be designed to avoid impacts, or deliver their own mitigation to address any effects they cause. <p>The Applicant also addressed the practical difficulty for CWACC in determining two live applications without knowing which would be constructed first.</p> <p>In that context, Mr Russell explained that the Runcorn Spur Pipeline application (as submitted) specifies and assesses only a single sequencing assumption, namely that it would be delivered before the Applicant's project and thus the permission could be granted on the basis of its assessment.</p> <p>Mr Fox then suggested that, if CWaCC was nervous about imposing such a condition, it could impose a condition/requirement which provides that, if the pipeline is to be delivered after the Applicant's project (and after establishment of the mitigation areas), the pipeline promoter must undertake an updated reassessment of its impacts for EIA and HRA purposes (and implement any additional mitigation identified), so that the pipeline decision remains robust regardless of sequencing.</p> <p>It was suggested by CWACC that, because the Applicant controls land, it may be able to influence sequencing. In response, Mr Russell clarified that a land agreement is not the same as planning control, and the latter cannot rely on private matters to regulates matters that need to be regulated or for statutory duties to be discharged.</p> <p>These matters are dealt with further (including the ExA's suggestion of the Applicant undertaking forward delivering of the pipeline within the NBBMA if the pipeline project is otherwise delayed) in the response to Action Point ISH2-AP39.</p>
	<p>iv. Biodiversity Net Gain (BNG) proposals and calculations,</p>	<p>The ExA then turned to the Applicant's BNG proposals and calculations, and in particular the points raised by CWACC and Cheshire Wildlife Trust about the Applicant's treatment of reedbed as a priority habitat within the BNG metric.</p>

#	Agenda item	Applicant's response
	specifically the consideration of reedbed priority habitat	<p>On behalf of the Applicant, Mr Stevens, Principal Ecologist at Avian Ecology, explained that the Applicant is in the process of producing a fully updated BNG report and metric outputs, to be submitted at Deadline 4</p> <p>Mr Stevens noted that reedbed is a key area of challenge. Mr Stevens explained that although the Proposed Development will deliver real ecological enhancement through reedbed-type habitats, the BNG metric applies strict priority habitat trading rules. As a result, some ecological uplift cannot be fully "counted" within the metric, even where the improvements are demonstrably beneficial in ecological terms.</p> <p>Mr Fox, on behalf of the Applicant reiterated that, at project level, the scheme delivers overall net gain in biodiversity, and that the Metric has been used to prove that quantitatively (and as encouraged by the NPS). However the Applicant accepts that it has not, technically, met the definition of 'Biodiversity Net Gain' as it is not fully compliant with the Metric rules in relation to reedbed and the rule that at least 10% of the Proposed Development's habitat, hedgerow and watercourse units must come from outside the non-breeding bird mitigation area.</p>
v.	baseline ornithological surveys	<p>The ExA invited parties to comment on the adequacy of ornithological survey data.</p> <p>For the Applicant, Mrs Doneo explained that the survey dataset was:</p> <ul style="list-style-type: none"> • Multi-seasonal, covering winter, migration and breeding periods; • Supported by third-party datasets (including WeBS and local bird group data); and • Designed to be conservative, particularly in assumptions about displacement and disturbance.
vi.	proposed buffer distances	<p>The ExA queries concerns surrounding mammal-movement pathways (otters and badgers).</p> <p>Mr Fearn, on behalf of the Applicant explained that mammal gates are included across the Proposed Development to ensure mammal movements is not obstructed. Furthermore the green infrastructure provision within the Proposed Development will be of benefit to species such as otters. However, fencing is proposed in the NBBMA to exclude public, mammal and otter access for the benefit of the ornithological receptors. Mr Russell confirmed that wording currently exists in the OLEMP regarding determining the location of mammal gates based on surveys but that updates to the OLEMP would be made at Deadline 4 that CWACC will agree the final locations of mammal gates.</p>
vii.	potential impacts to Local Wildlife Sites	<p>The ExA confirmed this item would be addressed through written questions.</p>

#	Agenda item	Applicant's response
	viii. lake effect and the reliance on the use of an anti-reflective coating	<p>The ExA asked about the risk that solar panels may attract birds by mimicking water ("lake effect").</p> <p>Mr Fearn stated that:</p> <ul style="list-style-type: none"> • There is no recorded evidence of birds colliding with solar panels due to lake effect; • Literature indicates there is an extremely low risk; • Antireflective coating (ARC) further reduces the already low likelihood of glint/glare and lake-effect confusion; • ARC is already secured through the design parameters statement and Requirement 6(2).
	ix. proposal for disapplication of section 28E of the Wildlife and Countryside Act 1981 within the draft DCO	<p>The ExA queried why the draft DCO seeks to disapply section 28E and highlighted an apparent discrepancy between the draft DCO and a statement in ES Chapter 8.</p> <p>Mr Fox confirmed that the DCO drafting has remained consistent since submission and the discrepancy originated from an appendix error, not from the DCO itself where the disapplication is sought and Natural England's section 150 consent is required.</p> <p>The Applicant does not understand Natural England to have any concerns with granting this disapplication.</p>
	x. potential noise effects from any controlled unexploded ordnance detonations	<p>The ExA asked about the evidence base for predicting noise from any controlled unexploded ordnance (UXO) detonations near the marshes.</p> <p>For the Applicant, Ms Doneo explained that direct studies are limited, but the Applicant used relevant comparable detonation data to model decibel levels. Mr Fox clarified that, in HRA terms, potential impacts were assessed as unlikely to be significant given mitigation measures in place, but had to be referenced in Stage 1 of the HRA process in light of the People over Wind judgment. Through the proposed UxO Management Plan, the timing of detonations can be restricted to avoid sensitive periods, particularly SPA non-breeding bird peaks and that mitigation measures are secured in the relevant management plans.</p>
3g – Ground conditions		
3g	Ground Conditions	The ExA question whether the Applicant's ground characterisation and site investigation work was sufficiently robust, particularly given the representations alleging contamination within the historic cells and the proximity of the indicative BESS locations.

#	Agenda item	Applicant's response
	<p>i. adequacy of the characterisation of ground conditions</p>	<p>Mr Wayland, Partner at Smith Grant, for the Applicant explained (with further detail added in these Post-Hearing submissions):</p> <ul style="list-style-type: none"> • The assessment and characterisation of ground conditions across the Site has been completed as per the requirements of Land Contamination Risk Management (LCRM) Guidance through the completion of a detailed desk-based Stage 1 Geo-Environmental Report [APP-096 + APP-097]. This has included a detailed review of historical mapping, mapped geology and environmental records and consultation with CWAC. • As part of this reporting, a detailed review of two previous phases of site investigation works relating to the Frodsham Wind Farm which were undertaken in 2014 and 2015 were reviewed, along with more recent investigation works relevant to this application in 2024 within Cell 3 and the land to the east of Brook Furlong (the Wildfowlers Land) and in 2025 with the areas of the proposed Battery Storage (BESS). • In total, 66 site investigation entries exist and have been reviewed across the Site with entries ranging from cable percussion boreholes, window sampler entries and mechanically excavated trial-pits. This is considered to cumulatively provide very good spatial coverage to allow the detailed characterisation of ground conditions. It is acknowledged that the findings relate to conditions at each specific location and there is potential for variability in ground conditions between entries, however given the homogenous nature of the dredging deposits then significant differences in ground conditions to those already characterised are not expected. • A summary of each investigation is presented in Section 6 of the Stage 1 Geo-Environmental Report [APP-096 + APP-097] with all investigation entries shown in Drawing D02 - 'Exploratory Hole Locations made during previous investigation. • The findings of the site investigation entries have allowed for a detailed characterisation of ground conditions as presented in Section 7 'Site Characterisation of Ground Conditions' within the Stage 1 Geo-Environmental Report. [APP-096 + APP-097] • Extensive chemical testing which has included a combination of soils (solid and leachate), groundwater and surface water has been undertaken as part of the existing site investigation works with a detailed summary of the testing undertaken presented in Section 8 'Site Characterisation of Contaminant Sources' within the Stage 1 Geo-Environmental Report [APP-096 + APP-097] to inform the Conceptual Site Model. • Chemical testing included hydrocarbons / PAHs / Phenol / Heavy Metals / Asbestos / PCBs and Volatile Organic Compounds (VOCs) <p>This suite of testing is considered appropriate based on the expected contaminants as identified within the preliminary conceptual site model. In total, approximately 53 samples have been submitted for soil testing, 12 for soil leachate, 11 of groundwater and 8 of surface water.</p>

#	Agenda item	Applicant's response
		<p>During the Statutory Consultation, concern was raised by Cllr Sumner regarding the potential for dumped industrial waste within the area of the proposed BESS, specifically for the compounds arsenic, vinyl chloride and carbon tetrachloride (VOCs). No evidence of this had been identified as part of the detailed Phase I desk study and no evidence was provided to confirm this. Regardless, the applicant instructed a proposed scope to be produced, no comments were received from Cllr Sumner and this investigation was implemented.</p> <p>The Site investigation was duly undertaken as reported in Appendix J of the Stage I Geo-Environmental Report [App-097]. <i>Post Hearing Note: It is noted that this investigation involved soil samples being collected from 2 boreholes within the footprint of each potential BESS Site at depth intervals of 0.5, 1, 2 and 3m bgl. Samples were submitted for arsenic and the Volatile Organic Compound (VOC) Target Suite – a suite of 61 VOC compounds which include the contaminants of concern of vinyl chloride and carbon tetrachloride. Soil concentrations were compared to published Generic Assessment Criteria (GACs) based on both a commercial land use scenario (to account for construction/site workers) and Public Open Space in a Residential Setting (to assess human health risks to members of the public). Concentrations of all the contaminants were below the GAC values by one to two orders of magnitude and in most cases were below analytical detection limits. This demonstrates that absence of these contaminants of concern and the absence of a ‘source’.</i></p> <p>No objections or concerns have been raised regarding the characterisation of ground conditions following Relevant Representation by the EA or CWACC [see RR-024 + RR-037].</p> <p>For the Applicant, Mr Fox explained that contamination management is secured for all relevant phases and that the Applicant's approach is supported by the Environment Agency and CWACC. Mr Fox emphasised that the detailed strategy would be secured through the DCO approval mechanism, noting that the relevant requirement (Requirement 17) will require approval by CWACC and the Environment Agency.</p> <p>In response to questioning from Cllr Sumner in terms of testing having only been carried out at the edge of the disposal ‘tanks’, Mr Wayland explained that the site investigation was scoped by reference to LCRM guidance and is based on the Source-Pathway-Receptor or Contaminant Linkage approach. All three elements (source-pathway-receptor) are required for there to be a credible risk which would require either further investigation and risk assessment and if determined necessary, remediation He clarified that, for consistency, the Applicant refers to the historic features as “cells” (rather than “tanks”).</p> <p>Mr Wayland explained that the principal concern raised related to potential interaction between ground conditions and a hypothetical BESS fire scenario: therefore the investigation was targeted to the indicative BESS areas (as shown on the plan in APP-097 Appendix J), and testing was undertaken to 3m depth. Mr Wayland explained that, when the scope was set, the Applicant consulted internally (including with fire safety expertise) and was advised that heat transfer would primarily be upward</p>

#	Agenda item	Applicant's response
		<p>rather than downward, supporting the 3m depth approach. Mr Wayland stated that the investigation did not identify a source of contamination of the type alleged.</p> <p>Clr Lucy Sumner expressed concern that sampling locations (particularly if located at the edges) might not reflect conditions elsewhere within the cells and suggested contaminants might be present at higher concentrations in other locations. Mr Wayland responded that the investigation approach was driven by the credible source-pathway-receptor model and reiterated the key point: to have a credible risk to human health from a BESS fire interacting with subsurface materials there must be a source of those materials and the testing undertaken did not identify such a source beneath the BESS.</p> <p><i>Post Hearing Note – it is noted that the locations of the BESS are controlled by the Works Plans, and so it is also the case that there will be no 'pathway' within the other areas of the cells, as the BESS cannot be located in those locations.</i></p> <p>The ExA tested Mr. Wayland's reliance on assumptions regarding heat transfer and lateral movement. Mr Wayland indicated he was not a fire expert and did not seek to offer fire dynamics evidence but reiterated that without an identified contamination source (which has not been identified in testing) there is no credible risk.</p> <p>This is discussed further in Action Point ISH2-AP42.</p>
	<p>ii. soil testing proposals</p>	<p>The ExA then moved to soil testing proposals, referring to Draft DCO [APP-015] Schedule 2, Requirement 17.</p> <p>The ExA noted that a number of Interested Parties had raised potential contaminants and asked the Applicant to confirm whether testing had covered all substances raised.</p> <p>For the Applicant, Mr Wayland explained that the investigation involved 53 soil samples, but that not every sample was submitted for the full analytical suite.</p> <p>The ExA requested that the Applicant provide more information on how it had considered substances raised by Interested Parties. This is dealt with in Action Point ISH2-AP43.</p> <p>The ExA also asked for confirmation that investigations under Requirement 17 would need to be approved. Mr Fox confirmed approval would be by CWACC and the Environment Agency pursuant to the definition of the strategy under Requirement 2.</p>
	<p>iii. article 19 of the draft DCO authority to survey and investigate</p>	<p>The ExA had no questions on this point at the hearing.</p>

#	Agenda item	Applicant's response
	<p>the land without digging trenches February 2026</p>	
	<p>iv. approach to unexpected contamination</p>	<p>The ExA asked whether parties were satisfied with the approach to unexpected contamination and tested how the controls apply across phases.</p> <p>Mr Friston on behalf of CWACC made comments in respect of some of the wording in the protocols that had been added to the various Management Plans.</p> <p>On behalf of the Applicant, Mr Fox indicated that the Applicant would make the necessary tweaks to the Management Plans to resolve the Council's concerns. This is referred to in Action Point ISH2-AP45.</p> <p>Mr Friston on behalf of CWACC welcomed the proposed changes and reiterated the preference for a DCO requirement dealing with these matters, but accepted that the measures are within the management plans provided they are consistent.</p> <p>The ExA asked how the DCO accounts for construction causing new leaching and who is responsible if that occurs. Mr Fox, on behalf of the Applicant, explained that the approach to contamination is secured through the approved strategy and ongoing checks; post-construction monitoring can be included in that strategy.</p> <p>Mr Russell added that the DEMP includes provisions for unexpected contamination and that there are multiple mechanisms requiring submissions to CWACC to ensure their concerns are considered. It was confirmed that compliance with the approved plans remains an obligation on the undertaker for as long as is necessary, including beyond decommissioning as compliance with management plans is a personal obligation on the undertaker pursuant to the DCO.</p>
	<p>v. adequacy of proposed mitigation measures</p>	<p>The ExA asked the Environment Agency and CWACC whether they had any outstanding concerns with the mitigation measures proposed for ground conditions. Both the Environment Agency and CWACC confirmed they were content with what is proposed.</p> <p>The ExA asked whether anything in the Applicant's proposed methodologies which sits outside "normal" contaminated land procedures. Mr Fox, on behalf of the Applicant, confirmed that the methodologies were normal procedures.</p> <p>Mr Wayland went on to explain that the contaminants discussed are standard and routine and that there are well practised remedial techniques which would be used as necessary. Mr Wayland confirmed there are no novel or rarely used remediation methods proposed.</p>

#	Agenda item	Applicant's response
		<p>Mr Wayland confirmed that relevant standards and guidance would be followed (including reference to CL:AIRE guidance and other standard approaches). Upon questioning from the ExA, Mr Fox and Mr Russell confirmed that the Applicant would review the Management Plans to ensure appropriate references to guidance are given (Action Point ISH2-AP46).</p> <p>The ExA also asked how the Applicant can be confident the reasonable worst-case scenario has been assessed in the ES. Mr Russell for the Applicant explained that the ES assesses likely significant environmental effects based on the available investigation information and reasonable worst-case assumptions. Nothing out of the ordinary was identified and the technical note supports the approach.</p>
	<p>vi. adequacy of post construction monitoring proposals</p>	<p>The ExA asked the Applicant to explain postconstruction contamination monitoring for impacts to groundwater and why the proposed approach is appropriate.</p> <p>For the Applicant, Mr Wayland explained that no specific details of the post-construction monitoring proposals have been made to date but as detailed in Table 5-4 of the Outline Operational Environmental Management Plan post-construction monitoring will be developed. <i>Post Hearing Note: At the Hearing, reference was made to the Drainage Strategy, but this will in fact be part of the detailed OEMP.</i> The results of the laboratory analysis of water samples will be tabulated and provided to the Council or Environment Agency if requested or sent automatically in the event of a pollution incident.</p> <p>The ExA confirmed that detail will sit in the final plan and will be subject to approval by the Environment Agency and CWACC. CWACC confirmed it had nothing further to add, and the Environment Agency confirmed it was content with the wording and information provided.</p>
<p>3h – Water Environment</p>		
<p>3h</p>	<p>i. disapplication of Flood Risk Activity Permits</p>	<p>The ExA asked the Applicant to update the Examination on discussions with the Environment Agency (EA) regarding the Applicant's approach to the proposed disapplication of Flood Risk Activity Permits and the level of detail the EA considers acceptable for the relevant approvals.</p> <p>On behalf of the Applicant, Mr Fox explained that the Applicant had a helpful call with the EA and that a way forward had been identified. Mr Fox stated that there is an agreed approach in principle, but the EA will need to review the detailed information the Applicant provides in response to the EA's requests. The Applicant will update the ExA, noting the importance of ensuring the position aligns with relevant advice and correspondence.</p> <p>The EA confirmed that the Applicant's summary was accurate and stated that it had reviewed further material (including plans) and would provide a written update at Deadline 4, with the intention of agreeing a way forward and providing further detail in its written response.</p>

#	Agenda item	Applicant's response
	ii. cable crossings of the River Weaver	<p>The ExA referred to the diagram for the proposed overhead line crossing of the River Weaver (REP3-041 Appendix A) and asked the EA to confirm whether its concerns regarding height clearance had been addressed and whether the drawing was satisfactory.</p> <p>The EA's Flood Risk specialist explained that they had reviewed the information provided and considered it adequate for the EA's concerns, noting it would provide fuller detail at Deadline 4. The EA indicated that the proposals address its previous concerns.</p> <p>The ExA asked whether it had been established that a permit is required and whether any issue would inhibit granting.</p> <p>The EA confirmed that a permit would be required and stated that acceptability turns on methodology, but the proposals set out were acceptable in principle.</p> <p>Mr Fox noted that if disapplication were not achieved, the position would be controlled through the FRAP route. The EA confirmed that relevant wording in REP3-041 was appropriate.</p>
	iii. position of bridge abutments and soffit levels	<p>The ExA asked for an update on the Applicant's position regarding crossing points (referred to as crossing point 22 and crossing point 17).</p> <p>The EA explained that for crossing point 22, the Applicant had responded and provided further detail (including a level noted as 5.3 AOD). The EA indicated it had reviewed later submissions and would provide written comment at Deadline 4. The EA's key point was that it would expect the relevant commitment/wording to soffit height to be secured in the appropriate control documents, not only within the Statement of Common Ground.</p> <p>Mr Fox confirmed the Applicant was discussing this with the EA and accepted that any securing mechanism would need to be more than just through the SoCG. This is discussed further in Action Point ISH2-AP48.</p> <p>For crossing point 17, the EA stated its understanding that concerns had been addressed and that there were no outstanding concerns, with confirmation to be provided in writing.</p>
	iv. safe access and egress under flood conditions	<p>The ExA asked for confirmation of positions on evacuation/safe access arrangements under flood conditions and whether the updated flood plan and evacuation arrangements were agreed.</p>

#	Agenda item	Applicant's response
		<p>CWACC confirmed that the flood warning and evacuation plan had been updated in response to its points and that CWACC was satisfied with the measures put forward, while noting that assessment of whether a particular route is "safe" is not within CWACC's technical expertise.</p> <p>The ExA queried where finished floor levels are secured.</p> <p>For the Applicant, Mr Aled Williams, Consultant at Water Co, explained that the emergency refuge areas sit above the agreed level and the finished floor level would be a minimum 6.52m AOD. This is secured within Table 1 of the Design Parameters Statement.</p> <p>Discussion on flood refuge sites prompted a question from Frodsham Town Council on public safety. Mr Williams for the Applicant clarified the refuge access arrangements and that the refuge areas are for solar maintenance staff rather than for general public use. Mr Russell confirmed that permissive paths would be closed if a flood warning is received.</p>
	<p>v. post-construction water quality monitoring</p>	<p>The ExA queried whether the proposed post-construction water quality monitoring period (six months after construction and then monthly during major replacement activities) is adequate, noting the EA's concern that seasonal conditions (e.g. dry periods) could affect detection of leaching pathways.</p> <p>For the Applicant, Mr Russell explained that six months was considered an appropriate timescale and noted the Applicant understood neither the EA nor CWACC had disagreed. Mr Fox added that if a longer period is required, the Applicant is willing to amend the monitoring duration.</p> <p>The EA stated it would take the point away.</p>
	<p>vi. management of contaminated fire water</p>	<p>The ExA asked whether the EA had any outstanding concerns regarding the management of contaminated fire water, noting the Applicant had updated the BSMP.</p> <p>The EA confirmed it was content with much of the updated position but raised two points for clarification: (i) how substation drainage is secured; and (ii) clarification on how damaged or end-of-life batteries would be stored and where.</p> <p>Mr Fox referred to the outline drainage strategy and associated measures (REP3-034 section 2.7) (and associated DCO Requirement) secures the drainage design.</p>

#	Agenda item	Applicant's response
		<p>Mr Russell explained that the BSMP contemplates a post-incident recovery plan developed in line with input from the fire authority, and that removal and disposal arrangements for end of life batteries will be included within the final BSMP.</p> <p>Mr Fox confirmed that the ES has considered the relevant construction works and impacts.</p>
	<p>vii. location of construction compounds</p>	<p>The ExA examined the location of construction compounds with reference to Figure 1-3 of APP-105 and Figure 2-1 of APP-106. The ExA noted that three compounds are in Flood Zone 3 and asked what management procedures would prevent materials stored in compounds from impeding flood flows.</p> <p>Mr Russell explained that relevant measures are set out in the OCEMP in this regard, but that these would be added to the Outline Flood Warning Evacuation Plan. This is discussed further in Action Point ISH2-AP51.</p> <p>In response to a question from the ExA, Mr Russell explained that “marginally raised” refers to using only as much stone as necessary to create hardstanding and that raising is typically very minimal. Mr Williams added that while the specific compound raising was not modelled as a standalone scenario, but in the context that land raising across the site was modelled and showed no material impact on flood risk, the Applicant considered that minimal raising would not alter that conclusion. This discussed further in Action Point ISH2-AP51.</p>
3i Any other matters that the ExA wishes to raise		
3i	<p>Any other matters that the ExA wishes to raise including but not limited to:</p> <p>Noise, Vibration and Nuisance</p> <ul style="list-style-type: none"> i. clarifications ii. traveller sites, including PSED iii. piling iv. nuisance – Article 8 of draft DCO 	<p>i. Clarifications</p> <p>Questions here were directed to CWaCC.</p> <p>ii. Traveller sites including PSED</p> <p>The ExA then tested the basis of CWACC’s statement that an earlier acoustic assessment was “not valid”, and whether the Applicant had taken account of the insulation properties of caravans had been factored into the assessment.</p> <p>For the Applicant, Mr Russell explained that the Applicant’s assessment was deliberately undertaken against a conservative benchmark: it assessed sleep-time noise impacts on an open window basis, which is more stringent than would typically be applied for conventional housing, as it therefore assumes no barrier to noise at all. Mr Fox added that, because the assessment is effectively undertaken on an “open window / no barrier” basis (as noted in sections 6 and 7), it is not necessary to model the insulation properties of a caravan separately. At the Hearing Mr Russell noted that footnote 3 in table 6.2 appears in error,</p>

#	Agenda item	Applicant's response
		<p>however, on further review, it is considered that there is missing text – footnote 3 should have text which matches footnote 3 in table 6.1.</p> <p>CWACC's noise specialist confirmed that CWACC had requested confirmation that caravans were properly accounted for and that additional monitoring had been undertaken as part of the revised noise assessment. CWACC stated that this gave it confidence that predicted noise levels were appropriate and that background conditions at the site were reflected, and CWACC was satisfied with the Applicant's conclusions.</p> <p>The ExA then asked whether this discussion engaged the Public Sector Equality Duty (PSED). CWACC indicated that PSED was not within the noise specialist's remit, but stated that CWACC had asked the Applicant to engage with the liaison officer and did not believe that had happened. CWACC nevertheless indicated that, on the wider consideration of the nature of the caravans and likely occupancy and personal circumstance they did not have any issue.</p> <p>The ExA asked what consultation the Applicant had undertaken with occupiers of the traveller sites, and how the ExA could be satisfied those occupiers had been consulted.</p> <p>Mr Fox, on behalf of the Applicant explained that the Applicant did not undertake bespoke consultation specific to the traveller sites, but that occupiers would have received communications as part of the statutory pre-application consultation process. Mr Russell also noted that he walked onto the site and spoke to an individual at the traveller site to describe the proposals, and that there was limited interest expressed. This is explored further in Action Point ISH-AP54.</p> <p>The ExA then asked about the monitoring location selected at the traveller site, noting a close-boarded fence and questioning why the monitoring point had been placed at location "D". Mr Russell acknowledged that a close-boarded fence can provide some noise reduction but explained it was not an acoustically designed barrier; he stated that location "D" was selected as a safe and practical location to leave equipment, and that the Applicant maintains a high level of confidence in the assessment. CWACC confirmed they were satisfied.</p> <p>Frodsham Town Council asked how the noise monitoring was undertaken and how modelling was completed. Mr Russell explained that monitoring locations were set out on a plan and that modelling uses equipment noise sources placed at distance to receptors. Frodsham Town Council indicated it was satisfied with that explanation</p> <p>iii. Piling</p>

#	Agenda item	Applicant's response
		<p>The ExA then asked the Applicant to clarify how the Applicant's position that percussive piling methods can be used sits with Natural England's submission [REP2-008] that non-percussive piling should be required as that appears to have formed the basis of assessment.</p> <p>Mr Russell explained that the Applicant's noise assessment includes mini piling and draws on British Standard source data for piling equipment noise levels on the basis of percussive piling techniques (see table 5-1 and Appendix 4). As such the conclusions of the Noise Impact Assessment (and the follow through on the ES and HRA conclusions to ecology) [APP-054] take account of piling with such techniques. Non percussive methods are mentioned only in the context of explaining mitigation measures that <u>could</u>, but the assessment does not rely on such measures being deployed.</p> <p>The ExA also pointed to a reference in the Applicant's Response to Relevant Representations to "trenchless" methods and Mr Russell clarified that this was intended to refer to methods described within the Runcorn Spur Pipeline application, rather than the Applicant's piling proposals.</p> <p>iv. Nuisance – article 8 of the draft DCO</p> <p>The ExA asked CWACC to clarify its position on the Applicant's proposed disapplication of statutory nuisance controls under Article 8.</p> <p>CWACC explained that it had some frustration with the drafting but accepted it is precedent wording and would confirm its final position in writing.</p> <p>The ExA then asked the Applicant whether the disapplication of nuisance should extend across the operational period.</p> <p>Mr Fox explained that he would need to check precedent drafting but indicated it may be possible to amend Article 8(1)(a) by deleting reference to operation and use.</p> <p>This is considered further in Action Point ISH2-AP57.</p>
	<p>Air Quality including Dust i. mitigation</p>	<p>The ExA referred to the Applicant's construction dust assessment wording (7.2.4 page 38) and asked whether the Applicant's commitment to a stakeholder communications plan should be secured more explicitly in the DCO (including whether it should be reflected in Requirement 12).</p> <p>Mr Fox explained that the Applicant had not proposed a separate stakeholder communications plan on the basis that communications commitments are already contained within the outline oCEMP, but that it would be prepared to amend</p>

#	Agenda item	Applicant's response
		Requirement 12 to require it, and to update the OCEMP to ensure that the plan includes measures in respect of communicating with the travellers sites. This is noted in Action Point ISH2-AP55.
	<p>Waste</p> <ul style="list-style-type: none"> i. adequacy of estimation of waste quantities during construction and operation (replacement) ii. design of Solar PV Modules and other plant to maximise reuse and recycling iii. capacity of waste management infrastructure 	<p>The ExA then moved on to waste matters more generally. The ExA noted that there is no standalone waste chapter in the Environmental Statement, but that Chapter 2 (APP-035) includes provisions on waste. The ExA also recalled that, when the application was accepted, Section 51 advice was issued and the Applicant responded by way of document A001, which refers to the Cheshire West and Chester Waste Need Assessment 2023 (prepared to support the emerging local plan).</p> <p>The ExA noted that CWACC had previously indicated there may be an update to the 2023 needs assessment and asked when any update might become available. CWACC explained it would need to confirm this and would come back in writing.</p> <p>The ExA then turned to National Policy Statement EN-1, and in particular paragraph 5.15.8, which expects applicants to include an assessment of the impact of waste arising from the development on the capacity of waste management facilities to deal with other waste arising in the area for at least five years of operation. The ExA indicated that a five-year assessment was not readily identifiable within A001 and asked the Applicant to clarify how this requirement had been addressed.</p> <p>On behalf of the Applicant, Mr Fox responded first by referring to the capacity element of the needs assessment, which identifies sufficient capacity extending to 2045 (i.e. well beyond five years), and stated that this evidences capacity over a period materially exceeding the minimum period referenced in EN-1.</p> <p>Mr Russell then explained that the Applicant's tables provide an operational waste assessment, with tonnages derived from the replacement assumptions used consistently across the Applicant's climate change and transport assessments. This operational assessment necessarily covers the first five years and, further, that the Applicant has also presented waste figures over the full 40-year lifetime of the scheme. Mr Russell referred to the table setting out landfill / energy recovery tonnages over the 40-year term, and explained that the Applicant had also identified relevant energy-from-waste recovery facilities capable of accommodating the non-hazardous waste streams expected to arise.</p> <p>In response to a query from the ExA about NPS EN-1 5.15.14's provision that proposals should seek to minimise the volume of waste arisings, Mr Russell confirmed that the replacement assumptions set out in the ES are correct, and that the reference to solar panel replacement in the response to FWQ9.6.2 [REP2-003] was an error.</p>
	<p>Private wire connection</p> <ul style="list-style-type: none"> i. updates on negotiations 	The ExA asked whether there were updates on private wire negotiations.

#	Agenda item	Applicant's response
	ii. clarification on associated development	<p>Mr Fox explained that the Applicant remains an active member of Net Zero North West and noted that the Applicant has received a letter of support in that context [PD1-005]. The discussions with potential tenants on the Protos Site remain ongoing and positive and a specific commercial proposal has now come forward that could utilise electricity generated by the Proposed Development. The Applicant is progressing negotiations on this proposal, but they are at an early stage, and are unlikely to conclude before the close of the Examination.</p> <p>The ExA asked how priority would operate between export to the national grid and private wire. Mr Fox explained that this would be determined in the final agreement with SPEN and National Grid.</p>