

Our Ref: EN010153/DR/9.3

16 October 2026

Head of Energy Infrastructure Planning Delivery & Innovation
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FAO: Head of Energy Infrastructure Planning Delivery & Innovation

Application Reference: EN010153

Applicant's response to the Secretary of State's invitation to comment issued on 17 September 2026

I write on behalf of Frodsham Solar Ltd (the "Applicant") in response to the letter from the Department of Energy Security & Net Zero (DESNZ) dated 17 September 2026 inviting comment on the responses from the other Interested Parties to the Request for Information dated 25 August 2026 (the "RfI letter").

The Applicant has reviewed the submissions made by Interested Parties in response to the Secretary of State's request for further information dated 25 August 2026. Having considered these submissions, the Applicant wishes to provide the following comments in respect of the responses received from Shell UK Limited, dated 7 September 2026, Essar Oil UK Limited, dated 9 September 2026, Cheshire West and Chester Council (CWACC), dated 8 September 2026, and Liverpool Bay CCS Limited (LBCCS), dated 4 September 2026.

Shell UK Limited

The Applicant notes the submission made by Shell UK Limited in response to the RfI Letter. The Applicant can confirm that it specifically sought engagement with Shell at pre-application stage in respect of the Protective Provisions but had no response. The Applicant issued a Land Interest Questionnaire on 8 October 2024 to Shell UK Limited and also issued section 42 and section 56 notice correspondence to Shell UK Limited on 5 November 2024 and 10 July 2025 respectively.

Following viewing the recent correspondence, the Applicant reached out to Shell UK Limited on 14 September 2026 and has heard nothing from them since then. The Applicant confirms that the Protective Provisions for Shell UK Limited used, as starting point, oil company Protective Provisions from other oil company Development Consent Orders. The Applicant would respectfully suggest that, given this lack of engagement to date, the Secretary of State is able to make a decision without any need for delay.

Essar Oil UK Limited

Since Essar Oil UK Limited's submission, the two parties have continued to engage constructively with a view to reaching an agreed final form for the Protective Provisions. There remains only a couple of minor points left for the parties to resolve and the Applicant is confident that a final form of Protective Provisions will be agreed imminently. The Applicant will update the Secretary of State once the Protective Provisions have been agreed.

Liverpool Bay CCS Limited

The Applicant notes the submission made by LBCCS and, as set out in its previous submissions, confirms that the parties have 'agreed to disagree' in respect of the outstanding Protective Provisions. The Applicant maintains its position that its proposed Protective Provisions should be preferred.

Further to LBCCS's letter, the Applicant has reviewed the Ofgem matters referred to by LBCCS. It notes that, on 29 July 2026, Ofgem issued its Final Determination in respect of LBCCS's application for a Change in Scope of the Liverpool Bay CCS Transport and Storage System, submitted in February 2026.

The effect of this determination is that, whilst LBCCS is permitted to continue progressing the planning application for the Runcorn Spur Pipeline and engaging in the Frodsham Solar DCO process:

- i. LBCCS is under no obligation to construct the Runcorn Spur Pipeline;
- ii. the construction, commissioning and ongoing expenditure allowances associated with the Runcorn Spur Pipeline have been removed, with cost recovery limited to the specified development activities expressly approved by Ofgem; and
- iii. the Phase 2 Tranche C milestone dates and associated obligations have been removed from the relevant licence documents.

Ofgem acknowledges that a future change in scope could be made to bring the Runcorn Spur Pipeline back within the approved network. However, the current position demonstrates that LBCCS does not presently have the regulatory approval or associated funding allowances necessary to progress the construction of the Runcorn Spur Pipeline.

The Applicant considers that this provides further evidence that the Runcorn Spur Pipeline is likely to be constructed, if at all, after the Non-Breeding Bird Mitigation Area (NBBMA) has been established. This reinforces the Applicant's previously stated position that appropriate controls will be required through the Runcorn Spur Pipeline planning permission to ensure that any subsequent works affecting the NBBMA are subject to appropriate assessment and mitigation.

As set out in the Applicant's previous submissions, it is therefore important that CWACC, as the relevant local planning authority, retains appropriate controls to ensure that LBCCS adequately addresses any effects arising from construction of the pipeline following establishment of the NBBMA.

Cheshire West and Chester Council (CWACC)

Biodiversity Net Gain Requirements

The Applicant has previously set out in its Examination submissions why a separate Biodiversity Net Gain (BNG) Requirement is not considered necessary.

In summary, the habitat net gain proposals for the Proposed Development are intrinsic to the measures set out in the Outline Landscape and Ecology Management Plan (oLEMP). It is therefore appropriate for the detailed proposals to be considered and approved by CWACC in the context of the wider landscape and ecological outcomes sought through the oLEMP.

The Applicant does not consider that a separate BNG Requirement would provide any additional benefit in the non-statutory context within which the Proposed Development falls. The Applicant also notes that its approach is consistent with other DCOs which have sought to deliver biodiversity net gain prior to the introduction of the statutory regime for NSIPs.

In relation to the CWACC's comments concerning the reduction in the watercourse unit uplift from 10% to 7.5%, the Applicant confirms that, as explained in its Deadline 7 Cover Letter, the calculated uplift of 7.7% was derived from the biodiversity metric calculation excluding the NBBMA. The proposed minimum uplift of 7.5% in Requirement 9(2)(f) to the DCO reflects this calculation.

In respect of CWACC's further comments concerning the classification of reedbed habitats, the Applicant notes that its position on this matter has been clearly set out in its submissions during the Examination, including the supporting technical justification for the approach adopted. The Applicant has considered the CWACC's further representations but does not consider that these raise any new matters which warrant a change to its position. Accordingly, the Applicant maintains its previously stated position in respect of the classification of reedbed habitats and refers the Secretary of State to its earlier submissions on this matter.

CWACC sets out that in the absence of a specific BNG requirement that additional wording is added to the end of Requirement 9(2)(f) "and in accordance with the trading rules". The Applicant does not consider this addition is necessary to achieve the objective of achieving the committed net gains, particularly in light of the amendments made to the oLEMP at Deadline 7 where the Applicant has committed to achieving the relevant statutory biodiversity metric trading rules in respect of reedbed and scrub.

Off-Site Habitat Net Gain and Section 106 Agreements

The Applicant disagrees with CWACC's position in their submission that a section 106 Agreement is required to be completed prior to the Secretary of State's determination of the DCO application.

As set out in the most recent oLEMP, the Applicant's preferred approach is to achieve the necessary habitat net gain outcomes through on-site design refinement and habitat creation, including provision for reedbed and scrub habitats. The Applicant remains confident that the necessary provision for reedbed can be realised on-site following detailed design. Off-site provision would therefore only be pursued as a measure of last resort, should it prove necessary following detailed design and discussions with CWACC in connection with approval of the detailed LEMP.

The Applicant met with CWACC on 12 October 2026, during which this position was discussed. The Applicant explained that it did not consider it necessary to enter into a section 106 Agreement at the present stage, principally because the requirement for off-site provision has not yet been established and the nature, scale and location of any such provision cannot reasonably be determined until the detailed design has been progressed. The Applicant and CWACC agreed that a section 106 Agreement need not be completed prior to the Secretary of State's determination of the DCO application, on the basis of the Applicant will secure any necessary off-site habitat provision prior to the discharge of Requirement 9, as set out at the conclusion of this section.

The Applicant notes that Defra's guidance *Biodiversity net gain: nationally significant infrastructure projects*, published on 27 August 2026 in advance of the introduction of mandatory BNG for NSIPs on 2 November 2026, expressly recognises that the detailed design of infrastructure projects may evolve following the grant of development consent.

In particular, the guidance recognises that there may be uncertainty regarding the precise quantity and type of biodiversity units required and provides for biodiversity gains to be secured at appropriate stages following consent, having regard to the progression of detailed design and construction. The guidance envisages that, where justified by such uncertainty, residual biodiversity units may be secured after commencement of development, and in certain circumstances following construction, provided that all outstanding units are secured before the project commences operation.

Although the Proposed Development is not subject to the statutory BNG regime, the Applicant considers that this guidance provides a relevant and helpful indication of the Government's intended approach to securing biodiversity gains for major infrastructure projects, particularly where detailed design considerations may influence the nature and extent of the required provision.

As such, the Applicant considers it entirely appropriate that the need for, and form of, any section 106 Agreement should be determined at the detailed LEMP stage, once the extent to which the required habitat outcomes can be achieved on-site has been established.

During the meeting on 12 October 2026, CWACC explained that it has established standard forms of section 106 Agreement which may be used to secure the delivery of off-site biodiversity units through third-party habitat banks or other habitat gain sites, and to secure habitat creation and enhancement works on specifically identified off-site land.

The Applicant acknowledges that either approach may provide an appropriate mechanism for securing off-site provision, should such provision ultimately be required. The Applicant remains willing to engage constructively with CWACC regarding the most appropriate securing mechanism at the relevant stage of detailed design.

Crucially, the Applicant considers that the DCO already provides an appropriate and legally enforceable mechanism for securing the habitat net gain commitments. Requirement 9 requires the submission and approval of a detailed LEMP, which must be substantially in accordance with the oLEMP and demonstrate how the specified habitat, watercourse and hedgerow unit uplifts will be achieved.

The commitments are therefore not dependent upon the completion of a section 106 Agreement at the decision stage. They are secured through the DCO and the requirement for an approved detailed LEMP. The Applicant further notes that compliance with the terms of a DCO is legally enforceable under the Planning Act 2008, with section 161 providing that a failure, without reasonable excuse, to comply with the terms of an Order granting development consent constitutes an offence.

Accordingly, the Applicant maintains that there is no necessity for a section 106 Agreement to be completed prior to the determination of the DCO application. Any additional legal mechanism necessary to secure off-site habitat provision can be identified and put in place at the appropriate stage, should the need for such provision be established through the detailed design and LEMP approval process.

Following discussion of the above points, the Applicant and CWACC agreed that any section 106 Agreement, where it is required to secure off-site habitat provision, would most appropriately be dealt with at the detailed design stage. The Applicant commits to entering into such an agreement or putting in place another arrangement acceptable to CWACC, prior to the discharge of Requirement 9, should off-site habitat provision be required.

Long-Term Management of the NBBMA – RSPB

The Applicant notes CWACC's request for an update regarding the progress of discussions with the Royal Society for the Protection of Birds (RSPB) in respect of the long-term management of the NBBMA.

The Applicant provided an update to CWACC on this matter during the meeting held on 12 October 2026.

Whilst no formal agreement has yet been concluded, the Applicant confirms that it has maintained an ongoing dialogue with the RSPB, including providing updates regarding the progress of the DCO application and maintaining a constructive working relationship.

The Applicant understands that the RSPB continues to face resource constraints and anticipates that, should development consent be granted, the RSPB will be better placed to consider committing the resources necessary to progress discussions regarding its potential long-term management role.

The Applicant remains committed to working with the RSPB to facilitate the successful delivery and long-term management of the NBBMA and welcomes continued engagement and coordination with both the RSPB and CWACC should the DCO be granted.

Monitoring and Steering Group Arrangements

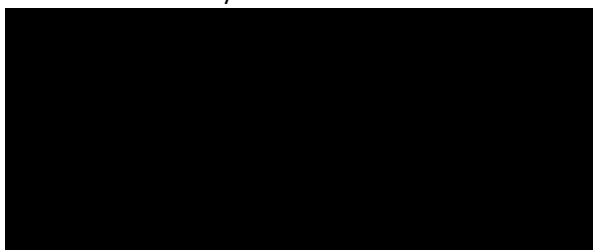
In respect of CWACC's comments regarding the monitoring of mitigation measures and the proposed steering group arrangements, the Applicant considers that these are matters of implementation detail which can appropriately be addressed through the preparation and approval of the detailed Non-Breeding Bird Mitigation Strategy (NBBMS) and detailed LEMP.

These documents will provide the opportunity for CWACC to review and agree the detailed monitoring arrangements, relevant performance indicators, intervention triggers, remedial measures and the operation of the proposed steering group.

The Applicant therefore considers that the existing DCO requirements provide an appropriate mechanism for securing these arrangements, with the necessary detail to be agreed with CWACC at the relevant stage following the grant of development consent.

Please do not hesitate to contact the undersigned or Andrew Russell (andrewrussell@axis.co.uk) if you have any questions or require any further information.

Yours sincerely



UK Development Lead on behalf of Frodsham Solar Limited (FSL)

FSL is a Cubico Sustainable Investments owned company