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Case No: AC-2025-MAN-000273

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/10/2025

Before :

THE HONOURABLE MR JUSTICE SAINI

- -

Between :

THE KING **on the application of** **HYNOT LIMITED**	**Claimant**
- and -	
(1) SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO **(2) OIL AND GAS AUTHORITY/NORTH SEA TRANSITION AUTHORITY**	**Defendants**
- and -	
LIVERPOOL BAY CCS LIMITED	**Interested Party**

- -
- -

Merrow Golden (instructed by **Leigh Day**) for the **Claimant**
Charles Streeten and **Naomi Hart** (instructed by **Government Legal Department**) for the **First Defendant**
The Second Defendant did not appear and was not represented
Marie Demetriou KC and **Yaaser Vanderman** (instructed by **Linklaters LLP**) for the **Interested Party**

Hearing dates: 8 October 2025

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JUDGMENT

This judgment was handed down remotely at 2pm on Wednesday 15 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Saini :

This judgment is in 10 main parts as follows:

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V.	Ground 1(a): major accidents and disasters	paras.[37]-[43].
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X.	Conclusion	paras.[70]-[72].

I. Overview

1. This is a case about Carbon Capture and Storage ("CCS") under the Irish Sea. CCS is a process which involves capturing emissions before they reach the atmosphere and transporting them to depleted reservoirs or aquifers for permanent storage. It is an important part of the Government's strategy for transition to Net Zero. Government policy relating to CCS is set out in the document "Carbon Capture, Usage and Storage: A Vision to Establish a Competitive Market" (2023) (the "CCS Policy"). This sets out a number of the Government's objectives in harnessing CCS technology. The CCS Policy explains:

> "The UK's independent advisor on climate change, the Climate Change Committee (CCC), has said that CCUS [carbon capture utilization and storage] is a 'necessity, not an option' for the transition to net zero. Furthermore, the International Energy Authority (IEA) has said that CCUS is an essential component of a global transition to net zero, with an estimated 1 billion tonnes of storage capacity being required globally by 2030 for a net zero pathway consistent with 1.5 degrees.
>
> In a future net zero world, we will still need materials such as cement, steel, and chemicals. For many of these sectors, CCUS is the only viable route to decarbonise at the scale required for us to meet our targets. CCUS is key in creating new sustainable energy for the future. By using CCUS, we can generate more low carbon power and create a responsive clean energy system. CCUS can be used to decarbonise the production process for hydrogen and other low carbon fuels and to clean up our waste."

2. The Claimant company and the group of individuals behind it do not like CCS in relation to power generation. They oppose it because they believe that CCS in relation to power generation and 'blue' hydrogen production is a costly and time-consuming

distraction that will lock society into continued fossil fuel use and prevent investment in other more proven climate solutions. The Claimant is a Company Limited by Guarantee which was incorporated the day before this claim was filed. The name chosen by the incorporators of their company, "HyNot", reveals the nature of its opposition to what, as appears below, is loosely known as the "HyNet Cluster". The Claimant represents a campaign group which its director, Nicky Crosby, describes as being a loose group of campaigners from different environmental and climate campaign backgrounds, such as Frack Free Dee, Friends of the Earth, Extinction Rebellion, Chester Sustainability Forum, and CAFOD.

3. The Claimant challenges the decision of the First Defendant, the Secretary of State for Energy Security and Net Zero ("the Secretary of State") to agree to the grant of consent for the "HyNet Carbon Dioxide Transportation and Storage Project – Offshore" ("the Development"), which comprises 3 geological gas storage sites in the Liverpool Bay Area beneath the East Irish Sea. The proposal is designed to store 109 million tonnes of carbon dioxide and is a core part of the Government's legal commitment to Net Zero. It is expected to create 2,000 construction jobs. The Development (called the Liverpool Bay CCS project) is part of a nationally significant infrastructure development in the North West which will have a very significant regional and national economic impact. Liverpool Bay CCS Limited, the Interested Party ("the Developer"), obtained the storage permit pursuant to applications and intends to complete the Development.

4. In the documents before me the Development is also on occasion referred to as "the Project" and is part of what is called the transport and storage project ("the T&S Project"). As appears below, the use of the term "project" is apt to cause confusion in this case given that this term is also used to refer to a much wider project to which I will need to make reference. It is important to emphasise at the outset that there is a distinction between the Development and what is known as the "HyNet Cluster" which is made up of a number of elements and infrastructure in the same region which are being developed in parallel. For example, the HyNet Cluster not only comprises the infrastructure for carbon dioxide transport and storage but also envisages hydrogen production, a hydrogen transport network via underground pipelines, and hydrogen storage.

5. In the Statement of Facts and Grounds filed on 4 July 2025, the Claimant challenges: (1) the decision of the Secretary of State, on 17 March 2025, to agree to the grant of consent under the Offshore Oil and Gas Exploration, Production, Unloading and Storage (Environmental Impact Assessment) Regulations 2020 ("the EIA Regulations") for storage permit applications CS004A (Hamilton CS), CS004B (Hamilton North), and CS004C (Lennox CS) and the project work to be carried out within English waters subject to conditions ("the Decision"); and (2) the decision of the Second Defendant, the Oil and Gas Authority (trading as the North Sea Transition Authority ("the NSTA")), on 22 April 2025, to grant consent under the Offshore EIA Regulations for the Project on 22 April 2025 ("the NSTA Decision"). The NSTA has not taken any part in the proceedings and although its decision is challenged no properly formulated claim has been advanced against it. In these circumstances, I say nothing further about the challenge to the NSTA Decision and it remains unclear to me why the NSTA was joined to the claim.

6. By an Order dated 21 August 2025, Mould J categorised the claim as a Significant Planning Court claim and directed an oral hearing of the application for permission to apply for judicial review, with an oral judgment to follow at the hearing. I heard the permission application on 8 October 2025. On the conclusion of oral submissions, I indicated I would refuse permission. The time at which the hearing ended did not permit me to give an immediate judgment and I stated my reasons would be provided as soon as possible in writing. I turn to the grounds.

7. In her well-structured oral and written submissions, Merrow Golden, Counsel for the Claimant, advanced three grounds of challenge to the Decision:

   i) Ground 1: (a) there was a failure to assess major accidents and disasters ("MAD") effects and/or (b) a failure to carry out a lawful public consultation, as required under the EIA Regulations.

   ii) Ground 2: there was a failure to assess cumulative effects of the Development on climate, as required under the EIA Regulations.

   iii) Ground 3: there was a failure to comply with the requirements of the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 ("the Habitats Regulations").

8. Charles Streeten and Naomi Hart, Counsel for the Secretary of State, opposed permission on the merits but also submitted that permission should be refused because the claim was not brought promptly within CPR 54.5(1)(a). They argued that the claim was filed three months (to the day) after the Decision and approximately eight weeks after it was published, together with the NSTA Decision. This, they submitted, was not prompt, given the nature of the decisions challenged - that is, the grant of consent for major infrastructure development. Marie Demetriou KC and Yaaser Vanderman, for the Developer, adopted the submissions for the Secretary of State and provided helpful additional oral and written submissions dealing principally with the context in which the issues before me arise.

9. I am grateful to all Counsel for their excellent and concise submissions. I will not set out every argument made by them below but it will become clear that in substance I accepted the submissions for the Secretary of State and the Developer over those made for the Claimant. My judgment is perhaps longer than one would expect on a permission application, but the legal framework and factual background need to be set out in some detail in order to address the particular alleged public law errors relied upon by Ms Golden. There was also a large amount of factual material referred to by Counsel, and a substantial number of authorities were relied upon (although ultimately, save in respect of the *promptness* issue, it appeared to me that there was no dispute as to the law).

10. As I explain below, I refuse permission on the merits but, had it been necessary, I would also have refused permission because the claim was not brought promptly. I will deal with the matter of delay briefly in **Section IX** at the end of this judgment.

II. Statutory Framework

The Energy Act 2008

11. The Energy Act 2008 ("the Energy Act") establishes a licensing regime that governs the offshore storage of carbon dioxide. This formed part of the transposition into UK law of EU Directive 2009/31/EC on the geological storage of carbon dioxide. The Carbon Dioxide (Licensing etc.) Regulations 2010 transposed many other requirements of that Directive. The regime applies to storage in the offshore area, comprising both UK territorial sea and beyond, that is designated as a gas importation and storage zone under section 1(5) of the Energy Act. Anyone seeking to explore for or use a geological feature for the long-term storage of carbon dioxide in a UK offshore area must hold a Carbon Dioxide Storage Licence ("CS Licence") issued by the NSTA pursuant to section 18 of the Energy Act.

12. In addition to a CS Licence, a Crown Lease from The Crown Estate is required to undertake any intrusive exploration or appraisal (including the drilling of a well) or storage activities for all offshore areas, including the territorial sea adjacent to Scotland, as the right to store gas (including carbon dioxide) in the offshore area is vested in the Crown by virtue of section 1 of the Energy Act. The Crown Estate is a statutory body which acts on behalf of the Crown in its role as landowner within the area of the territorial sea and as owner of the sovereign rights of the UK seabed beyond territorial waters. The Crown Estate operates as a commercial landowner under the provisions of the Crown Estate Act 1961.

13. There are a number of legislative requirements for the procedures for granting CS Licenses, explained in detail in guidance issued by the NSTA entitled "Guidance on the application for a Carbon Dioxide Appraisal and Storage Licence". In short, and insofar as presently material, the NSTA must not grant any licence, consent or authorisation under the Energy Act without the agreement of the Secretary of State: (1) under the EIA Regulations; and (2) under the Habitats Regulations.

The EIA Regulations

14. The EIA Regulations are procedural in nature. Their purpose is, essentially, to require the collation and publication of, as well as consultation on, information regarding the likely significant effects of a project on the environment, prior to the taking of a decision on whether or not to grant consent for that project. "Project" has a defined meaning for the purposes of this regime. It means "the execution of construction works or other installations or schemes, and other interventions in the natural surroundings and landscape, where those activities fall under, or relate to the implementation of, a matter set out in Schedules 1, 2, or 3." Activities captured by section 17(2)(a) or (b) of the Energy Act (activities related to the geological storage of carbon dioxide) are Schedule 1 developments (see para. 3), as are pipelines with a diameter of more than 800mm and a length of more than 40km for the transport of carbon dioxide streams for the purposes of geological storage of carbon dioxide (see para. 5).

15. Regulation 4(1) of the EIA Regulations prohibits a developer from commencing a "project" without the consent of the NSTA. The NSTA cannot grant consent without the agreement of the Secretary of State (see regulation 4(2)). The Secretary of State must not agree to the grant of consent for a project unless an Environmental Impact Assessment ("EIA") has been carried out, or an EIA is not required pursuant to regulations 5, 6 or 7. Regulation 5 identifies projects that require an EIA with reference to Schedule 1 (projects that automatically require an EIA) and Schedule 2

(projects that must be screened and will require an EIA where they are likely to have significant effects on the environment). Under regulation 8, where a project requires an EIA, the developer must submit an Environmental Statement ("ES") containing the information listed in Schedule 6 (as relevant). The ES must be prepared by competent experts (see regulation 8(3)(a)). The information listed in Schedule 6 includes a description of the project (para. 1), a description of the reasonable alternatives studied by the developer (para. 2), a description of the current state of the environment (known as the 'baseline scenario' – see para. 3), and under para. 4 "an assessment of the likely significant effects of the project on the environment including those resulting from:

(a) the construction and existence of the project, including any demolition works necessary to implement the project;
(b) the use of natural resources, in particular land, soil, water and biodiversity, considering the sustainable availability of these resources;
(c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
(d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
(e) the cumulation of effects with other existing or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
(f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change;
(g) the technologies and the substances used."

(My underlined emphasis: relevant to Ground 1 and Ground 2, respectively)

16. Para. 5 of Schedule 6 requires the assessment under para. 4 to:

"(a) cover the likely significant effects on—

(i) population and human health;

(ii) biodiversity, with particular attention to species and habitats protected under any law of any part of the United Kingdom that implemented Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC on the conservation of wild birds;

(iii) land, soil, water, air and climate;

(iv) material assets, cultural heritage and the landscape;

(v) the interaction between the factors referred to in paragraphs (i) to (iv);

(b) cover the direct effects and any indirect, secondary, cumulative, short-term, medium-term and long-term,

> permanent and temporary, positive and negative effects of the project, including any effects on the environment in other countries;
>
> (c) cover the expected effects deriving from the vulnerability of the project to risks of major accidents or disasters;
>
> (d) take into account environmental protection objectives established in assimilated law or at national level."
>
> (My underlined emphasis: relevant to Grounds 1, 2 and 3)

17. The Secretary of State must, upon receipt of the ES from a developer, promptly serve notice on the developer specifying the authorities which the Secretary of State considers would be likely to be interested in the project, and the developer must promptly serve on each authority so specified a copy of the ES and other relevant documents and notify the Secretary of State of having done so (see regulations 11(1)-(3)). A notice stating that an application for consent has been made, setting out a summary of the project and that the project is subject to an EIA, as well as identifying where the ES and other relevant documents may be obtained (both online and in hard copy), must be published by both the developer and the Secretary of State (see regulations 11(3)(c)-(8)).

18. Under regulation 12(1), the Secretary of State may also, by notice, require a developer to provide further information (this provision is significant in the present claim). The Secretary of State is then under a duty, under regulation 12(3), to notify the developer "if" he "considers the further information ought to be made public because the information is directly relevant to reaching a conclusion on whether the project is likely to have a significant effect on the environment". The developer and the Secretary of State are then required to publish only that information.

19. A decision on whether to agree to the grant of consent is then to be taken by the Secretary of State under regulation 14, taking into account the ES, information obtained by or provided to the Secretary of State under regulation 12(3), any representations received pursuant to regulations 11 and 12, and any conditions that may be attached (see regulation 14(2)). The decision must set out the Secretary of State's conclusion on any significant effects of the project on the environment, including an explanation of how the matters in regulation 14(2) have been taken into account, any conditions the Secretary of State attached and a description of any features of the project or measures envisaged to avoid, prevent, reduce or offset any significant adverse effects on the environment. If the Secretary of State agrees that the NSTA may grant consent, the NSTA must then, within a reasonable time, decide whether to grant consent and notify the developer of its decision (see regulation 15).

The Habitats Regulations

20. Unlike the EIA Regulations, the Habitats Regulations are substantive in nature. In summary, they require an appropriate assessment of the implications of a plan or project for a European site or offshore marine site in view of the site's conservation objectives (see regulation 28(1)); and prohibit agreement to the plan or project unless,

in light of the conclusions of that assessment, the competent authority has ascertained that it will not adversely affect the integrity of the European site or offshore marine site (see regulation 28(5)).

21. For the purposes of regulation 28 of the Habitats Regulations, a relevant plan or project is defined to mean a plan or project which: "(a) is to be carried out on or in any part of the waters or on or in any part of the seabed or subsoil comprising the offshore marine area, or on or in relation to an offshore marine installation; (b) is likely to have a significant effect on a European offshore marine site or a European site (either alone or in combination with other plans or projects); and (c) is not directly connected with or necessary to the management of the site."

III. Principal events

22. The main events in respect of applying for consent for the Development and procedural steps can be summarised as follows (adopting the Developer's helpful table with some minor modifications):

27 Feb 2024	ES submitted
9 Mar – 30 Apr 2024	Consultation on ES (no public representations received)
1 Jul, 30 Aug and 18 Sep 2024	Further information requested by SoS
2 Aug, 2 Sep and 22 Oct 2024	Further information provided by Developer
12 Nov 2024	SoS issued reg.12(3) notice under the EIA Regulations
16 Nov – 16 Dec 2024	Further consultation period (one public representation received)
29 Jan 2025	Offshore Petroleum Regulator for Environment and Decommissioning (OPRED) recommends that SoS agree to the grant of consent by NSTA
17 Mar 2025	SoS agrees to grant of consent by NSTA
22 Apr 2025	NSTA decision to grant consent
24 Apr 2025	SoS publishes a notice notifying Developer of the Decision
21 May 2025	Claimant served a PAP letter
17 Jun 2025	Claimant issued the claim
4 Jul 2025	Claimant filed and served Statement of

	Facts and Grounds and evidence

23. The more detailed chronology concerning the matters in issue before me can be summarised as follows. In order to progress the Development, the Developer sought: (i) a marine licence under the Marine and Coastal Access Act 2009; and (ii) a storage permit in accordance with the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 for the storage of CO_2. This necessitated the submission of an ES, pursuant to the EIA Regulations under the process I have described in **Section II** above. The ES was submitted on 27 February 2024. It is a lengthy and detailed document: Volumes 1-3 run to 1,799 pages, together with a Non-Technical Summary that runs to 61 pages. I was taken to the material parts of the ES by Counsel in oral submissions and provided with a number of sections in pre-reading. The ES was produced following the submission of an EIA Scoping Report for the offshore elements of the Project on 30 September 2022. The Scoping Opinion was received on 27 January 2023. This helped to inform the proposed scope of the ES. Following submission of the ES, a consultation on the ES took place between 9 March 2024 and 30 April 2024. On 1 July 2024, OPRED sought further information on a number of issues; this covered 273 detailed questions over 48 pages. The Developer responded with answers on 2 August 2024. On 30 August 2024, OPRED asked the Developer to provide references to those parts of additional reports, plans or diagrams it had relied on for the purpose of the first response. The Developer responded with answers on 2 September 2024. On 18 September 2024, OPRED sought yet further information (some 117 detailed questions over 31 pages). The Developer responded on 22 October 2024. On 12 November 2024, the Secretary of State notified the Developer pursuant to regulation 12(3) of the EIA Regulations that further information would need to be made public. This was because such information was said to be directly relevant to reaching a conclusion on whether the Development was likely to have a significant effect on the environment. This information included over 50 of the Developer's responses to OPRED's questions and 10 technical notes, technical reports and appendices. This information was published and the public consultation took place between 16 November 2024 and 16 December 2024.

24. On 17 March 2025, the Secretary of State agreed to the grant of consent for the relevant storage permit applications, and the work to be carried out in English waters. On 22 April 2025, the NSTA granted consent for the same. These decisions were published on 24 April 2025.

IV. The Development and the HyNet Cluster

25. In this section I will summarise the nature of the Development, the consent for which has been challenged, and its relationship with other developments/projects which fall within what has been termed the wider 'HyNet' Cluster of projects.

The HyNet Cluster

26. 'HyNet' is a name applied to a cluster of standalone, but technically interconnected projects across the North West of England involving hydrogen production, hydrogen transportation, hydrogen use, carbon capture, carbon transportation, and carbon

storage, all located in an area of concentrated industry with an existing technical skill base.

27. The cluster involves proposals for industrial gas users, hydrogen production, power generation, hydrogen fuelling, hydrogen blending and other disparate developments, intended to transform the North West of England into the world's first low carbon industrial cluster by 2030. This involves a number of different projects. Unfortunately, the shorthand adopted by the parties for describing these projects was not always consistent. I have adopted that used by Mr Streeten and Ms Hart in their helpful summary.

HyNet: Offshore Carbon Transportation and Storage

28. One of the projects falling within the HyNet Cluster is the HyNet offshore carbon transportation and storage project – that is the Development with which this claim is concerned. It proposes to store approximately 109 million tonnes of carbon dioxide from industrial users in North Wales and the North West of England in three geological storage sites, encompassing an area beneath the East Irish Sea. The carbon dioxide will include that captured from existing industry in North Wales and North West England, as well as from new facilities, including the new hydrogen production facilities proposed as part of the HyNet Cluster. It encompasses the use of the depleted hydrocarbon reservoirs of the Hamilton, Hamilton North, and Lennox Fields (in an area approximately 12km to the north of the Welsh coastline and 2km west of the English Coastline). Pipeline and cable will be laid in the existing corridor connecting the Point of Ayr Terminal to the Douglas Offshore Platform.

29. The ES helpfully summarises the nature of the Development in the context of the T&S Project in more detail as follows:

> "The Applicant is developing the HyNet Carbon Dioxide Transportation and Storage Project (hereafter referred to as 'the Project'). The Project involves creating a system to transport and store carbon dioxide (CO2) while producing and distributing low carbon hydrogen. This is done by capturing CO2 emissions from industrial emitters, and hydrogen production using natural gas, and storing it. As part of the offshore components of the project, (hereafter referred to as 'the Proposed Development'), the existing offshore natural gas import pipeline from Point of Ayr (PoA) Gas Terminal will be repurposed to become a CO2 export pipeline and will transport the CO2 to the newly constructed Douglas CCS platform.
> From the Douglas CCS platform, CO2 will be transported along the re-purposed natural gas pipelines to the Hamilton Main platform for injection into the Hamilton Main reservoir, to the Hamilton North platform for injection into the Hamilton North reservoir, and to the Lennox platform for injection into the Lennox reservoir. The Proposed Development will also require new electrical and fibre optic transmission infrastructure seawards of Mean High Water Spring (MHWS), connecting the PoA Terminal to the offshore infrastructure."

HyNet: Main Onshore Carbon Dioxide Pipeline

30. Separate from, but related to, the offshore carbon transportation and storage project is the HyNet onshore carbon dioxide pipeline ("the Main Onshore Pipeline"). This comprises a 60.4km carbon dioxide pipeline (24km of which is repurposed natural gas pipeline) running from Cheshire to the Point of Ayr Terminal, together with associated infrastructure including Above Ground Installations and Block Valve Stations. The Main Onshore Pipeline was consented pursuant to the HyNet Carbon Dioxide Pipeline Order 2024 (as subsequently corrected) under a Development Consent Order ("DCO") made under Part 5 of the Planning Act 2008 on 20 March 2024, following an application by the Developer.

HyNet: Carbon Dioxide Pipeline Town and Country Planning Act 1990 Development

31. In addition to the Main Onshore Pipeline, a separate application for planning permission for development wholly within Wales was made to, and granted by, Flintshire County Council on 23 May 2024 (under reference FUL/000246/23). The development permitted is the retention and use of existing structures and plant forming part of the Point of Ayr gas terminal for the transportation of carbon dioxide, together with the construction and use of new infrastructure required for carbon dioxide service at the Point of Ayr. This development also includes the retention and use of the existing gas pipeline and associated cables from the Point of Ayr gas terminal to the Mean Low Water Spring Mark (where it connects with the offshore Project) for the transport of carbon dioxide and associated activities.

HyNet: Spur Pipelines

32. In addition to the main onshore carbon dioxide pipelines, a number of spur pipelines are proposed, requiring consent under the Town and Country Planning Act 1990 ("the 1990 Act"). These include:

- the Protos (West AGI) Spur Pipeline involving the construction of a new carbon dioxide spur pipeline to serve the Protos Resource Recovery park (for which an application for planning permission was made to Cheshire West and Chester Council under reference 25/00952/FUL on 25 March 2025);
- the Padeswood Carbon Dioxide Spur Pipeline connecting the Heidelberg Materials UK cement works at Padeswood (where a facility to capture 7,200,000 tonnes of carbon dioxide per year from the cement kiln was consented on 4 April 2025) to the Main Onshore Pipeline. An application for planning permission for this development has been submitted to Flintshire County Council but not validated; and
- the Runcorn Carbon Dioxide Spur Pipeline transporting carbon dioxide from the new carbon capture plant at Viridor's Energy from Waste Facility in Runcorn to the Main Onshore Pipeline at Ince, for which a forthcoming application for planning permission is anticipated.

HyNet: Hydrogen Production Plants

33. Another of the projects forming part of the wider HyNet Cluster is the construction of two hydrogen production plants, which are relied upon by the Claimant in this claim in support of Ground 2 in particular ("the HyNet Hydrogen Production Plants"). The HyNet Hydrogen Production Plants are located in the Stanlow Oil Refinery in Ellesmere Port. They comprise two phases, each of which includes a hydrogen production plant (with a combined capacity of producing 300,000 normal cubic metres per hour of hydrogen) as well as the associated utilities and tie-ins. The applicant for planning permission was Essar Oil (UK) Limited, who applied on 29 September 2021 for planning permission pursuant to section 70 of the 1990 Act. The proposal was 'EIA Development' for the purpose of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and, in accordance with regulation 9 of those regulations, an ES was produced in support of it, extracts of which are in material before me. Hybrid (i.e. part full part outline) planning permission was granted for the HyNet Hydrogen Production Plants by Cheshire and West Chester Council on 5 July 2024. I need to underline that the HyNet Hydrogen Production Plants are a separate and distinct project from the carbon dioxide transportation and storage Development, with which this claim is concerned. Whilst both form part of the wider cluster of projects by which it is proposed to transform the North West of England through projects supporting low carbon industry, the HyNet Hydrogen Production Plants are a standalone project, for which permission was sought by a different applicant, and for which planning permission had already been granted by July 2024, as I note above.

Keuper Underground Gas Storage Facility

34. Under Ground 1, the Claimant relies on a project called the Keuper Underground Gas Storage Facility Material Change 1. This is a reference to a proposed material change to the Keuper Underground Gas Storage Facility Order 2017. No application has yet been made for a change, with no expectation that an application will be submitted before 2026. The proposal is located at Holford Brinefield, Cheshire (approximately 3km due West of the M6 and some way from the East Irish Sea). It involves a proposed change of the consent to use 19 salt caverns as an Underground Natural Gas Storage facility to use as an Underground Hydrogen Storage Facility.

Hynet: Hydrogen Pipeline

35. In its Ground 1, the Claimant also refers to the HyNet North West Hydrogen Pipeline. This involves a proposal by Cadent Gas Limited for approximately 125km of new underground pipeline transporting low carbon hydrogen produced by EET Hydrogen at the Stanlow Manufacturing Complex to various industrial users and to blending points at Partington and Warburton for introduction into the existing gas network. No application for a DCO has yet been made.

36. The number of projects show that considerable care is required when reading and understanding references to the "HyNet Project" or the "HyNet Cluster" in the materials before me. The Decision under challenge (the Development for which consent was granted (i.e. the offshore pipeline and carbon dioxide storage project)) is sometimes defined as "the HyNet Project" but that might appear to include the wider cluster. For the purposes of these proceedings, the focus must be on the offshore pipeline and storage proposal, the Development for which the NSTA granted consent, with the agreement of the Secretary of State. I turn to the first ground.

V. Ground 1(a): failure to assess major accidents and disasters

37. As developed by Ms Golden, this first limb of Ground 1 is based on four sub-points. First, she argued that there has been no proper assessment of risks from major accidents and disasters ("MAD") related to the Development, as required under the EIA Regulations. It was said that no such assessment was carried out in the ES and whilst there was some attempt to gather more information via further information, that did not (fully or, in any reasonable sense) set out all such risks, expected effects and relevant mitigation and/or monitoring measures relied on so as to enable reasoned conclusions to be reached as to whether such effects would (subject to any mitigation) reach the "as low as reasonably possible" ("ALARP") standard. Second, she argued that that there has been no cumulative assessment of MAD risks. Ms Golden forcefully submitted that the Development formed a key part of the HyNet Project and the MAD risks associated with what she called the "wider project" also needed to be assessed. She relied on R (Finch) v Surrey CC [2024] UKSC 30 ("Finch"). I will return to Finch below. In particular, reference was made to the fact that Nicky Crosby of the Claimant specifically asked in her consultation response: "*(d) In light of the Finch ruling, what assessment has been made of the downstream effect of hydrogen leakage due to the project as a whole?*". Thirdly, it was said that the Keuper Underground Gas Storage Facility Material Change 1 (see [34] above) and the Hydrogen Pipeline (see [35] above) should have been included for cumulative assessment purposes. Finally, Ms Golden submitted that there appeared to have been no proper assessment of the risk of flooding at the Point of Ayr Terminal.

38. I do not consider any of these points to meet the low threshold of arguability - they have no realistic prospect of success. I will begin with what I understood to be uncontroversial propositions of law. Decisions on the inclusion (or non-inclusion) in an ES of information on a particular subject, or the nature or level of detail of that information, or the nature or extent of the analysis carried out, are matters of judgment for the Secretary of State: R (Gathercole) v Suffolk CC [2021] PTSR 359 at [53]-[55]. The same approach applies to the level of information provided through the EIA process judged as a whole: R (Suffolk Energy Action Solutions SPV Ltd) v Secretary of State for Energy Security and Net Zero [2023] EWHC 1786 at [57]-[61]. Provided they properly understand the requirements of the relevant legislation, it is for the Secretary of State to decide whether the information contained in the ES, together with any further information provided, is sufficient to meet the requirements of the legislation. That decision is subject to review only on classic Wednesbury principles. EIA legislation does not impose a standard of perfection and what is required is that the EIA provides an adequate basis for public consultation.

39. These propositions have not been called into question by Finch. That case concerned the interpretation of a specific aspect of the legislation as a matter of principle, not the adequacy of the assessment as a matter of judgment (see [64]). Indeed, as pointed out by Ms Demetriou KC, it is significant that at [56] Lord Leggatt was careful to make clear that where there is room for different decision makers, each acting rationally, to reach different answers, the court will not interfere unless the decision taken is "irrational". At [77]-[78] Lord Leggatt expressly recognised that generally the scope of an EIA falls within that "area of evaluative judgment". He explained that: speculation and conjecture have no place in the EIA process; whether there is sufficient evidence available to found a reasoned conclusion that a possible effect is "likely" is a matter

of judgment for the decision maker; in the absence of such evidence, there is no requirement to identify, describe, and try to assess a putative effect; and the same approach applies to the assessment of the nature and extent of an effect, even where a possible effect is regarded as "likely".

40. As I have set out above, the obligation to assess likely significant effects arising from the risk of MAD is found in Schedule 6 to the EIA Regulations. Specifically:

    a. Paragraph 4(d) which requires an ES to include an assessment of the likely significant effects of the project on the environment, "including those resulting from the risks to human health, cultural heritage or the environment (for example due to accidents or disasters)". By virtue of paragraph 5(c), that must cover the expected effects deriving from the vulnerability of the project to risks of major accidents or disasters; and
    b. Paragraph 6(d) which requires that the ES also include a description of the features of the project or measures envisaged in order to avoid, prevent, reduce, or offset likely significant adverse effects on the environment that "describes measures envisaged to prevent or mitigate the significant adverse effects of major accidents or disasters on the environment and details of the preparedness for and proposed response to such emergencies."

41. On the material before me, it is clear that these matters were expressly dealt with through the EIA process. Risks to human health, cultural heritage and the environment were considered both in the ES and in the Developer's response to the Secretary of State's request for further information under regulation 12. In the interests of brevity, I will identify one example although Mr Streeten took me in his submissions to several. So, in Volume 2, Chapter 9 of the ES: Shipping and Navigation considered the risks to human health and the environment resulting from the use of vessels throughout all phases of the Project. The significance of these risks was considered in Section 9.11 with Table 9.9 (entitled *Embedded Mitigation Measures Relevant to Shipping and Navigation*) identifying mitigation measures to be put in place to reduce these risks to as low as reasonably practicable. Further information was also provided in response to the Secretary of State's notice, given pursuant to regulation 12(1) on 1 July 2024. So, I note that the Navigational Risk Assessment (Appendix L) considered the potential loss of life and environmental consequences of pollution in various scenarios including vessel collision risk between a project vessel and a third-party vessel. Where MAD and their effects were scoped out that is clear on the face of the ES and that was a matter for the Secretary of State's judgment which the Claimant did not come close to showing was irrational.

42. In short, it cannot be properly argued that the risk, effects and mitigation of relevant and reasonably foreseeable MAD were ignored in the EIA process. The materials before me show that the Secretary of State, however, considered the information on some relevant aspects of the ES to be lacking or to require further clarity. He therefore requested further information on this subject in his further information requests of 1 July and 18 September 2024 which I have described above. This was provided and where the Secretary of State considered it ought to be made public because it was directly relevant to reaching a conclusion on whether the Project is likely to have a significant effect on the environment, it was published in accordance with the requirements of regulation 12. So, in response to questions 25 and 38 in the Secretary

of State's regulation 12(1) notice of 18 September 2024, further information regarding MAD arising from a diesel release and from carbon dioxide release was provided. This was then disclosed in accordance with the Secretary of State's notice under regulation 12(3).

43. I turn in more detail to Ms Golden's four sub-points:

a. As I have summarised it, the first point is that there has been no proper assessment of all MAD related to the development. There plainly has been an assessment of MAD and this is in substance a simple attack on the judgment reached by the Secretary of State as to the adequacy of the information provided through the EIA process. Her submissions identified no arguable public law error.

b. As to the second and third points, these are allegations that the assessment of MAD was not undertaken on a cumulative basis. What, in practice, is said to have been left out of account remained unclear to me by the end of the hearing. As I have sought to explain above, the Development involves the offshore transportation and storage of carbon dioxide. The risk of MAD that arises from that specific project has plainly been assessed. Beyond that, the HyNet Cluster involves a diverse range of other projects. By way of an illustration provided by Mr Streeten in his oral submissions, the Keuper Underground Gas Storage Facility is located 3km due West of the M6, many miles from the Irish Sea. The Claimant does not say what accident or disaster it envisages. In fact, I found it rather difficult to understand what the Claimant had in mind when it says the risk of cumulative effects from MAD from other developments and the Development should have been assessed together but, were not. Put simply, there is no evidence capable of founding a reasoned conclusion of a cumulative risk of MAD. Any attempt to identify such risks requires an exercise going beyond even speculation or conjecture.

c. As to the fourth point, this concerns the risks of MAD at the Point of Ayr Terminal. This was considered and addressed in the Decision, which explained that: "As noted in the sub-section on "CO2 leakage from pipelines", in addition to those located onshore at the Point of Ayr, the pipeline emergency shutdown valves will be installed at the Douglas CCS platform and at each of the satellite platforms. Each pipeline can therefore be individually shut-in, and it is unlikely that there will be large release of CO_2 from the pipelines. In the event of flooding at PoA terminal, an emergency shut down process will be in place. The applicant has provided information regarding the risk of flooding at the Point of Ayr Terminal within the Town and Country Planning Act 1990 (TCPA) application FUL/000246/23 which has been considered by the relevant onshore regulatory authorities". That was plainly a rational approach. The Secretary of State made no arguable legal error.

VI. Ground 1(b): failure to comply with consultation duties under the EIA Regulations

44. Under the second limb of Ground 1, Ms Golden argued that there was a failure to consult the public on the risks of MAD, and of other likely significant effects of the Project. On this basis, she argued that the Secretary of State breached the requirements of regulation 12(3) of the EIA Regulations. She submitted this failure in

turn "infected" the assessment of MAD risks and the lawfulness of the Decision, as his conclusion on likely significant effects needed to take into account "*any representations received*" through the consultation statutory requirements. Ms Golden argued that it is impossible to see how members of the public were expected to follow the analysis of MAD risks in the further information that was provided. She complained that various key documents and further assessments were relied upon, but were undisclosed, as were key prior responses that preceded those which were disclosed. To the extent further information was provided, she said it required a dedicated "paper chase" to be able to find it and piece it together. Ms Golden relied on Ms Crosby's witness statement in this regard.

45. I was not persuaded that these complaints established an arguable public law error. In short, I am satisfied that the Secretary of State complied with the consultation requirements as I address further below. However, this ground is plainly out of time (I will return to the wider timing/promptness issues in **Section IX** below). In respect of the alleged non-disclosure of documents/information, it is said that that the Secretary of State ought to have required additional further information to be published and consulted upon. That is, in substance, a challenge to the regulation 12(3) notice, dated 12 November 2024. The proper time to challenge this alleged error was at the time when the Secretary of State made the notice. It was a final and fully formed decision at that time (as opposed to the type of provisional decision where a claimant may wait until a final decision). No such challenge was brought. Not only was no challenge brought, but the Claimant did not even object to the Secretary of State's decision under regulation 12(3)(b) during the subsequent consultation period in November-December 2024. Indeed, it submitted a consultation response on 11 December 2024, and referred to aspects of the Developer's further information, but did not complain that further documents/information ought to have been provided under regulation 12. That was the appropriate time to do so and, if such a complaint had been accepted by the Secretary of State, any further information could have been disclosed to the public before a final decision was made. Having sat on this complaint until after the Decision was made, it is wrong in principle for the Claimant to be permitted to raise it for the first time in the High Court (with all of the attendant delay and prejudice that entails). Albeit in the context of whether a claimant had standing in the planning context, the Supreme Court in Walton v Scottish Ministers [2013] PTSR 51 explained that:

> "87. Ordinarily, however, it will be relevant to consider whether the applicant stated his objection at the appropriate stage of the statutory procedure, since that procedure is designed to allow objections to be made and a decision then to be reached within a reasonable time, as intended by Parliament."

46. In my judgment, the same logic applies in the present case. No complaint was raised at the appropriate time and it is not just that the Claimant be permitted to advance it now.

47. Aside from this point, I am not in any event persuaded there is any arguable complaint on the merits in relation to Ground 1(b). The obligation under Regulation 12(3) is to notify the developer if the Secretary of State receives further information during the

period between the service of the notice under Regulation 11(3)(c) and the NSTA's notification to the developer under Regulation 15, and the Secretary of State considers the further information ought to be made public because the information is directly relevant to reaching a conclusion on whether the project is likely to have a significant effect on the environment.

48. In my judgment, the Secretary of State complied with the duty under regulation 12(3) by sending the Developer a notice pursuant to that regulation on 12 November 2024. The Claimant's complaint under this ground rests on the false premise that the duty under regulation 12(3) required the Secretary of State to make public *in full* documents received following service of the notice under regulation 11(3)(c), even if only one part of that document was of direct relevance. That is not the case. The Secretary of State is not required to make all documents available, or to make any particular document available in full, but rather to provide such information (which may be drawn from the documents provided) as he considers ought to be made public because of its direct relevance to reaching a conclusion on whether the project is likely to have a significant effect on the environment. That is the test the Secretary of State applied, and his approach to it was plainly rational.

49. I would add that the complaint that the further information provided in relation to MAD risks required an unlawful "paper chase" is unarguable. The main case dealing with paper chases in the context of an EIA is Berkeley v Secretary of State for the Environment, Transport and the Regions [2001] 2 AC 603 (HL). In that case, relied upon by the Claimant, the Secretary of State argued that the environmental statement could be found "in its statement of case under the Inquiry Procedure Rules, read (by virtue of cross-referencing) with the planning authority's statement of case, which in turn incorporated the comprehensive officers' report to the planning sub-committee, which in turn incorporated the background papers such as the letters from the National Rivers Authority and the London Ecology Unit and was supplemented by the proofs of evidence made available at the inquiry" (see page 617). Unsurprisingly, the House of Lords considered this to be insufficient for the purposes of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988. Lord Hoffmann explained at page 617 that the legislation did not permit "a disparate collection of documents produced by parties other than the developer and traceable only by a person with a good deal of energy and persistence". These were extreme facts. In this case the facts are different - there was an ES and a request for further information as contemplated by the legislation. The Claimant's complaint in its Grounds is that the further information provided by the Developer was "*highly technical and detailed*" and "*completely unordered (by topic) with no signposting to guide the public*". In my judgment, that is not close to forming an arguable basis for a "paper chase" argument.

VII. Cumulative effects on climate change

50. Under this ground, Ms Golden argued that in order to fully and lawfully assess the Development's likely significant environmental effects, including any impacts on climate, the cumulative effects of the *entirety* of the HyNet Cluster relating to hydrogen production had to be assessed. She complained that the ES wrongly limited itself by including only two aspects of the wider HyNet Cluster when making a cumulative emissions assessment. In particular, it was said to be irrational not to include the HyNet Hydrogen Production Plants.

51. I do not consider this ground to be arguable. Again, I will begin with the uncontroversial legal principles. In Preston New Road Action Group v Secretary of State for Communities and Local Government [2018] EWCA Civ 9, the court addressed in some detail the correct approach to assessing secondary, indirect, or cumulative effects as part of the EIA process. See also Frack Free Balcombe Residents' Association v Secretary of State for Housing Communities and Local Government [2025] EWCA Civ 495 at [44]. Drawing on those cases, the following principles apply:

    a. It is "crucial" that the Court focuses on the specific project under consideration and the nature of the consent procedure for that project. An ES "is not expected to include more information than is reasonably required to assess the likely significant environmental effects of the development proposed, in light of current knowledge" (see Preston New Road at [67] - emphasis added).

    b. The existence and nature of "indirect', "secondary", or "cumulative" effects from such a project will always depend on the particular facts and circumstances of the project under consideration.

    c. There is an important distinction between consent for a free-standing project or development, which does not depend on any other project present and future, and a "multi-stage consent process" involving the grant of outline permission for major development, with subsequent reserved matters approvals. Whilst in the latter case, later phases of the development may properly be regarded as indirect, secondary, or cumulative effects of the outline consent, in the former the mere fact that there are or may be other projects (subject to their own consenting processes) does not mean the effects of those projects are the indirect, secondary or cumulative effects of the development for which consent is sought (see Preston New Road at [63] and [68]).

    d. The expression "indirect, secondary, cumulative…effects of the project" cannot be stretched to include effects that are not effects of the project at all (see Preston New Road at [68]).

    e. There is no obligation to assess impacts associated with hypothetical future activities (see Preston New Road at [65]-[66]). Conjecture and speculation have no place in the EIA process (see also Finch at [77]).

52. One particular illustration of these principles, relied upon by Mr Streeten and which is of relevance in this case, is R (Frack Free Ryedale) v North Yorkshire CC [2016] EWHC 3303 (Admin) at [39]. There, the court made clear that an argument that development involving the production of gas through hydraulic fracturing was an integral part of a more substantial project including a generating station at Knapton (for which permission had already been granted and where no further development or increased capacity was proposed) was rightly abandoned. That paragraph was subsequently relied upon, and formed the basis of the reasoning, in Preston New Road (see [61]). As is apparent from Frack Free Ryedale, it is wrong in principle to conflate different projects which may form part of a larger network (such as the HyNet Cluster) and to suggest that the effects of one project fall to be considered as if they were the effects of another.

53. As I have explained above, the Development in this case is the offshore carbon transportation and storage proposal for which consent was sought, and the environmental effects of which were assessed. The consent sought was not for a multi-phase scheme. In my judgment it was a rational approach for the ES to assess the indirect, secondary or cumulative effects of the Main Onshore Carbon Dioxide Pipeline and the Carbon Dioxide Pipeline TCPA developments together with the Development given their functional relationship (they are required for carbon dioxide transportation and are dependent on the Development for their utility). The overall emissions benefit figure (taking account of the cumulative emissions from the Development, together with the Main Onshore Carbon Dioxide Pipeline and the Carbon Dioxide Pipeline TCPA developments) is -109,730,517 tonnes of carbon dioxide equivalent ("tCO2e"). I was taken to a number of calculations in this regard by Counsel and do not need to address those further for the purpose of deciding on the arguability of this ground.

54. It was equally rational to approach matters on the basis that the environmental effects of the HyNet Hydrogen Production Plants were *not* to be taken into account, as this was a separate and distinct project, subject to its own consenting process and with its environmental effects separately assessed under its own EIA process. It is not in issue that the HyNet Hydrogen Production Plants are one of the many sources from which the carbon dioxide that will be sequestered in the geological stores may be derived. In short, emissions deriving from hydrogen production are not effects of the offshore carbon transportation and storage Development, whether indirect, secondary, or cumulative. That is a matter of causation.

55. I also agree with Mr Streeten that the fallacy underlying the Claimant's submissions is to suggest that because the Hydrogen Production Plants' emissions could be quantified for the purposes of securing consent for that development there could be a reasonably certain prediction as to the emissions for all of the industrial uses that will produce carbon dioxide to be stored as part of the Development. In reality, however, the Hydrogen Production Plants represent a very small percentage of the total. The overwhelming majority of the carbon dioxide that will be transported and stored under the Development will be derived from industrial sources from across North Wales and the North West of England. The nature and scale of those sources is, as yet, unknown. To seek to quantify those emissions would involve just the sort of speculation or conjecture disapproved in Finch.

VIII. Ground 3: failure to comply with the Habitats Regulations

56. Ground 3 as formulated in the Statement of Facts and Grounds ("the SFG") had a number of limbs, some of which were difficult to follow, and the way in which the points were put in the skeleton argument and oral submissions was somewhat different to the case in the SFG. Under this ground, and as originally formulated, the main argument was a complaint that there was no explanation as to why the expert scientific advice received by the Secretary of State from the Joint Nature Conservation Committee ("the JNCC") (as an expert statutory nature consultation body – "SNCB") was not accepted, and "cogent reasons" were not given for rejecting it. Reference was made to the fact that the JNCC had advised that it was not possible to conclude that there would be no adverse effect on site integrity ("AEOSI") arising

from the Development. Reliance was placed in particular on Wyatt v Fareham BC [2022] EWCA Civ 983 at [9].

57. The way the ground is now put following disclosure has been modified. Two SNCBs (JNCC and Natural England) disagreed with the Secretary of State's conclusions on AEOSI in relation to a single and rather narrow issue concerning the timing of certain works. The material I was taken to in the hearing by Mr Streeten shows that the Secretary of State carried out an appropriate assessment, and in doing so properly engaged with these SNCBs and their consultation responses. The applicable legal principles when considering regulations which implement the Habitats Directive were summarised in R (Mynnydd y Gwynt Ltd) v Secretary of State for Business, Energy, and Industrial Strategy [2018] PTSR at [8]. I will not repeat them.

58. The Claimant's submission appeared to be that the Secretary of State failed to take into account, or give a clear explanation for differing from, the representations made by the SNCBs. That is simply wrong on the facts. The representations from the SNCBs were summarised in the Table under section 16 of the detailed "appropriate assessment" carried out by OPRED (which ran to some 93 pages). That table contained a clear statement explaining how the Secretary of State had taken the advice from those SNCBs into account and it was not submitted to me that this statement could not be relied upon as accurate. I note that as regards the specific issues raised by the JNCC these were discussed extensively in correspondence and through various iterations of the appropriate assessment, a marked-up version of which was provided to me (it was appended to the Summary Grounds served some time ago). Ultimately, the outstanding areas of disagreement related to whether a full season's restriction for works within the Liverpool Bay SPA was required, to avoid the overwintering period (between 1 November and 31 March). The Secretary of State's position was that a condition (in the terms of condition 3) which stated "Cable installation between the new Douglas platform and satellite platforms should take place outside of the 'overwintering period' when common scoter and red throated diver are most abundant (this period will be November to March inclusive)" was sufficient to avoid adverse effects on the integrity of the Liverpool Bay SPA. The reasons for this were set out in the appropriate assessment which said: "There is sufficient confidence that vessel operations are adequately within the limits of the existing shipping operations and of such a transient and short duration as to not cause an adverse impact on the site's integrity".

59. The Claimant's challenge as it ultimately appeared in relation to this ground was no more than a challenge to the merits of the Secretary of State's judgment on the integrity issue, from which it is to be noted Natural Resources Wales did not differ. This was a plainly rational judgment arrived at with regard to the advice. Indeed, Ms Golden did not seek in her submissions to identify any aspect of the conclusion which was arguably irrational. Her submissions were, it seemed to me, complaints that more information should have been provided and not that the approach to the Habitats Regulation resulted in an irrational outcome. In particular, she ultimately orally submitted in her reply that the error was that a vessel management plan should have been disclosed to provide certainty on vessel movements. That is not a public law complaint with any basis under the Habitat Regulations. It is also far from the pleaded complaint in the SFG.

60. I will address two further points which appeared in the SFG but were not developed orally by Ms Golden (and I am not sure they were ultimately being pursued). As I understood a second limb of Ground 3 (SFG at [92]), it concerned the cumulative and in combination effects from MAD arising at disparate locations across the North West of England. As submitted by Mr Streeten, what possible relevance this could have to the question of adverse effects on the integrity of, for example, the Liverpool Bay SPA, was opaque. The Claimant has failed to particularise the actual risk feared as relevant to the Habitats Regulations.

61. The Claimant's final argument in the SFG under Ground 3 (SFG at [93]) was that it was irrational not to consult the public on the appropriate assessment produced by OPRED given the SNCBs' conclusions. Again, I am not sure this was still being pursued by Ms Golden. In any event, there is no statutory duty to carry out such a consultation for the purposes of any and every assessment, and the submission that it was irrational not to do so is untenable. It is, in effect, to seek to impose a duty where the legislation confers a discretion exercisable only "if he considers appropriate". The Secretary of State's position was that he had sufficient information to be satisfied that there would be no adverse effects upon the integrity of any relevant protected site. In those circumstances, it was rational to conclude further consultation with the public was unnecessary.

62. None of the ways in which Ground 3 was put in the SFG, or orally, identified an arguable public law error fit for further consideration at a substantive hearing. In short, the Secretary of State carried out an appropriate assessment, and in doing so properly engaged with relevant SNCBs and their consultation responses consistently with the governing legislation.

IX. Promptness and CPR 54.5(1)(a)

63. Although I have refused permission on the basis that none of the grounds meets the modest arguability test, had it been necessary, I would also have refused permission on the basis that the Claimant failed to act "promptly" within CPR 54.5(1)(a); and that is whether the grounds for making the claim first arose on 17 March 2025 or on 24 April 2025. I will outline the reasons for this conclusion.

64. The Decision was taken on 17 March 2025, and communicated to the NSTA and the Developer on that date. The NSTA Decision was taken on 22 April 2025 and both decisions were published on 24 April 2025. The Claimant's claim was not filed until 17 June 2025. That was three months to the very day after the Decision and approximately eight weeks after the NSTA Decision. Time for bringing a claim for judicial review runs from the date upon which the legally operative decision was taken, not from the date upon which the claimant is informed of it, albeit that the latter date may be relevant to the question of whether the claim was filed promptly: see R (British Gas Trading Limited) v Secretary of State for Energy Security and Net Zero [2023] EWHC 737 (Admin) (Singh LJ and Foxton J) at [135]- [138], citing the well-known case R (Presvac Engineering Ltd.) v Department of Transport (1991) 4 Admin LR 121 ("Presvac"). See also The Administrative Court Guide 2025 at [6.4.2.2].

65. The legally operative decision, being the Decision, was taken on 17 March 2025. That it took effect from that date, and before the NSTA Decision on 22 April 2025, was a matter of legal necessity under the statutory regime. The effect of the Decision was to

permit the NSTA to grant consent. Under the statutory regime, absent an effective decision by the Secretary of State, the NSTA would have had no power to take its own, subsequent, decision. Time for challenging the Decision plainly began to run, for the purposes of CPR 54.5, from 17 March 2025.

66. Ms Golden relied on R (Anufrijeva) v SSHD [2004] 1 AC 604 ("Anufrijeva") in support of her submission that time for challenging the Decision did not begin to run until 24 April 2025. I do not consider that case assists. Anufrijeva concerned the question of when a decision (in that case the withdrawal of income support from an asylum seeker) was legally effective as against the individual who was the subject of the decision. It established that a decision of that character takes effect against such an individual only when they are notified of it (see [26]). The present consent for a number of offshore geological gas storage sites, from which the Claimant envisages various environmental impacts could ensue, is of a wholly different character. In this case, the Decision concerned the Developer's application. It was the "individual concerned" and it was notified on 17 March 2025. The Decision was effective from that date. Thus, even if there are cases in which the approach in Presvac may fall to be modified in light of Lord Steyn's principle in Anufrijeva (that an administrative decision does not have the character of a legal determination until it has been notified to the person it concerns), this is plainly not such a case. I note in any event that this principle is subject to "debate in the literature": see Inclusion Housing Community Interest Company v Regulator of Social Housing [2020] EWHC 346 (Admin) per Chamberlain J at [68]. Applying Anufrijeva the decision was communicated to the Developer on 17 March 2025 and was legally effective from that date. That grounds for bringing a claim first arose on 17 March 2025 is apparent from the fact that, had the Developer challenged the Decision, time for doing so would have run from that date. Time did not begin to run for the Developer from one date, but from a later date for the Claimant. As I have said, the authorities are clear that time runs from the date the decision is legally effective, not the date the Claimant was informed of it.

67. It is not in dispute that even where a claim is commenced within three months from the date of the decision challenged, it may be out of time if the Claimant did not bring proceedings promptly (British Gas at [137]). In my judgment, in filing its claim on 17 June 2025, the Claimant failed to act promptly on the facts of this case. The primary obligation on a claimant is to apply promptly - the three-month period is in the nature of a backstop, not a target. A claimant cannot wait until the three-month period is about to expire and then seek to bring proceedings at the end of that period and argue that it has acted promptly: R (Greenpeace) v Secretary of State for Trade and Industry [1998] Env LR 415 per Laws J at 442. That, however, is what the Claimant has sought to do in this case. It filed ("protectively" i.e. without any pleaded case, which followed on 4 July 2025) on the last day of the relevant three-month period because the Claimant saw this as the target. In my judgment, the subject matter of the Claimant's claim demanded particularly prompt action. The Development involves major infrastructure. In England, underground gas storage facilities with a working capacity expected to be in excess of 43 million standard cubic metres are defined as Nationally Significant Infrastructure Projects under sections 14 and 17 of the Planning Act 2008. Such projects are subject to a requirement that they be challenged within 6 weeks of the relevant decision (see section 202 of the Planning Act 2008). Similarly, decisions under the Planning Acts must be challenged within six weeks under CPR 54.5(5). By virtue of the fact that it takes place within the UK's territorial waters,

theDevelopment does not fall within the scope of the Planning Act 2008 or CPR 54.5(5). Rather it requires consent from the NSTA under the EIA Regulations. Nevertheless, those timescales are in my judgment indicative of the need to act with particular speed where the proposal is to challenge a decision granting consent for a major infrastructure project. This is a case where very substantial third-party interests are involved. The material before me shows that the Claimant's conduct was dilatory throughout. Upon becoming aware, on 29 April, that a decision which it might wish to challenge had been taken on 17 March, the Claimant should have acted very speedily indeed to bring proceedings. That is not what happened. The Claimant failed to bring proceedings for another two months. Indeed, it did not send a letter before action for almost another three weeks, i.e. until 21 May 2025. And even after the Secretary of State sent an interim response to that letter on 28 May 2025, refusing to agree to the Claimant's position on limitation and reserving his position on promptitude, the Claimant failed to file for almost a further six weeks, filing only at the very end of the three-month period.

68. I was not persuaded that the reasons given by the Claimant for the delay were good reasons for failing to act promptly. The magnitude of the Development is not a good reason for delaying. Rather, challenges to major infrastructure call for particular urgency. Whilst the volume of documentation was substantial, that did not in my judgment justify the delay, especially in circumstances where the Claimant ultimately filed only on a protective basis, without a pleaded case. I consider that the Claimant was aware of all of the information it required to enable it to bring proceedings on the grounds pleaded approximately 8 weeks before it filed its 'protective' claim. Certainly, by the end of April 2025 it was aware of the essential substance of the grounds that would have been available to it, and that is all that was required (see British Gas at paras. [141]-[145]). Detailed disclosure normally follows the grant of permission for judicial review, which is the trigger for the duty of candour and cooperation with the court and is not necessary before a claim can be brought (see British Gas at [145]). There is no reason why the Claimant could not have filed (whether 'protectively' or with proper pleadings, to be amended if required) much sooner. It is apparent, however, that the Claimant took the position that it could simply wait until the last day of the three-month period to file. The courts have stated emphatically that that is not the case. Reference to the time required to follow the pre-action protocol is not a good reason for a delay in bringing proceedings.

69. For completeness, I should record that the Claimant argued that the CPR 54.5(1)(a) "*promptness*" requirement does not apply as the challenge involves EU-derived law and Uniplex (UK) Ltd C-406/08 [2010] 2 CMLR 47 was relied upon. In that case the CJEU found that the EU law general principles of effectiveness and certainty precluded a limitation provision based on "*promptness*": [37]-[43]. The Claimant is not saved by this argument. The Retained EU Law (Revocation and Reform) Act 2023 has removed the principle of supremacy of EU law in domestic law and provides that no general principle of EU law is part of domestic law after 2023: s.5(A1) and (A4) of the European Union (Withdrawal) Act 2018. Therefore, I cannot disapply the "*promptness*" requirement in CPR 54.5(1)(a) on the basis of the EU law general principles of effectiveness and certainty. These principles do not apply.

X. Conclusion

70. I refuse permission to apply for judicial review. For completeness, I should record that Mr Streeten invited me to apply a more demanding test of the Claimant at the hearing than the traditional *arguability* test familiar at the permission stage. He referred to Mass Energy Ltd v Birmingham City Council [1994] Env LR 298 at 307-308, 310-311; R v London Docklands Development Corporation, ex p Frost (1997) 73 P & CR 1999, 203-204; and R (Federation of Technological Industries) v Commissioners of Customs and Excise [2004] EWHC 254 (Admin) at [8]-[9]. Relying on these cases, he argued that the Claimant must satisfy a heightened test described as a "reasonably good prospect of succeeding" at a substantive hearing. The following facts were said to justify this more onerous hurdle: (1) the urgency (illustrated both by the categorisation of this claim as Significant under CPR 54D paras. 3.1 and 3.2 and by the measure of expedition ordered by Mould J); (2) the fact that a decision on permission has been adjourned to a hearing listed for half a day; (3) that the Court will have the benefit of extensive written and oral submissions from all three active parties; and (4) that the claim substantially affects the interests of a third party (the Developer).

71. I consider that there was substantial force in Mr Streeten's submissions. A court does retain the discretion to require more of a claimant in establishing the merits of its case at a hearing of the type convened before me concerning an urgent matter of national importance, where there has been substantial pre-reading, detailed skeletons and oral submissions over half a day from all relevant parties. The grant of permission in a planning case on the type of facts before me is in itself highly likely to cast a long shadow over a development of national interest, with substantial financing and construction arrangements involving many third parties. I can see the force of an argument that much more than mere arguability of a claim (such as establishing that the claim is more likely than not to succeed) should be required in circumstances where such prejudice will be caused. Uncertainty as to the legal position is itself highly prejudicial in commercial arrangements. However, I will say nothing further about this because, for the reasons I have given above, the Claimant does not even get over the modest threshold for permission as described in the Administrative Court Guide 2025 at [9.1.3]. The test I have applied is whether in the light of the evidence and arguments arguable grounds for seeking judicial review exist - these are grounds which would merit fuller investigation at a further oral hearing and which a defendant has not been able to show the court will definitely fail. In practice, that requires a claimant to show that there is an arguable ground of review which has a realistic prospect of success: see White Book Vol 1 (2025) at [55.4.2]. The Claimant did not meet that modest test in respect of any of its grounds, aside from its failure to act promptly.

72. Finally, I should record that I did not consider it necessary to consider the reliance by the Secretary of State and the Developer on section 31(3C) of the Senior Courts Act 1981 in relation to any of the grounds. Had arguability been established the Claimant would have faced an uphill struggle in opposing the application of this provision.