



Planning
Inspectorate

REPORT on the IMPLICATIONS for EUROPEAN SITES

Proposed Frodsham Solar

An Examining Authority report prepared with the support of the
Environmental Services Team

Planning Inspectorate Reference: EN010153

25 March 2026

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1 INTRODUCTION

1.1 Background

- 1.1.1 Frodsham Solar Limited ('the applicant') has applied for a Development Consent Order (DCO) under section 37 of the Planning Act 2008 (PA2008) for the proposed Frodsham Solar Project ('the proposed development'). On behalf of the Secretary of State (SoS) for Energy Security and Net Zero (DESNZ), an Examining Authority (ExA) has been appointed to conduct an examination of the application. The ExA will report its findings and conclusions and make a recommendation to the relevant SoS as to the decision to be made on the application.
- 1.1.2 For applications submitted under the PA2008 regime, the relevant SoS is the competent authority for the purposes of The Conservation of Habitats and Species Regulations 2017 ('The Habitats Regulations'). The findings and conclusions on nature conservation issues reported by the ExA will assist the SoS in performing their duties under The Habitats Regulations.
- 1.1.3 This Report on the Implications for European sites (RIES) documents and signposts the information in relation to potential effects on European sites that was provided within the DCO application and submitted during the examination by the applicant and interested parties (IPs), up to 13 March 2026. This RIES does not take into account deadline 5 (DL5) submissions to the examination (26 March 2026). It is not a standalone document and should be read in conjunction with the examination documents referred to. Where document references are presented in square brackets [] in the text of this report, that reference can be found in the Examination Library published on the 'Find a National Infrastructure Project' website by following the link below:
<https://national-infrastructure-consenting.planninginspectorate.gov.uk/published-documents/EN010153-000166-Frodsham%20Solar%20-%20Examination%20Library.pdf>
- 1.1.4 For the purpose of this RIES, in line with The Habitats Regulations and relevant Government policy, the term 'European sites' includes Special Areas of Conservation (SAC), candidate SACs, proposed SACs, Special Protection Areas (SPA), potential SPAs, listed and proposed Ramsar sites and sites identified or required as compensatory measures for adverse effects on any of these sites. For ease of reading, this RIES also collectively uses the term 'European site' for European sites as defined in The Habitats Regulations 2017 and 'European Marine Sites' defined in The Offshore Marine Habitats and Species Regulations 2017, unless otherwise stated. The 'UK National Site Network' refers to SACs and SPAs belonging to the United Kingdom already designated under the Directives and any further sites designated under The Habitats Regulations.
- 1.1.5 This RIES is issued to ensure that IPs including the Appropriate Nature Conservation Body (ANCB), Natural England (NE), are consulted formally on

Habitats Regulations matters. This process may be relied on by the SoS for the purposes of regulation 63(3) of The Habitats Regulations.

- 1.1.6 It also aims to identify and close any gaps in the ExA's understanding of IPs' positions on Habitats Regulations matters, in relation to all European sites and qualifying features as far as possible, in order to support a robust and thorough recommendation to the SoS.
- 1.1.7 Following consultation, the responses will be considered by the ExA in making their recommendation to the SoS and made available to the SoS along with this report. The RIES will not be revised following consultation.

1.2 Documents used to inform this RIES

- 1.2.1 The applicant's Habitats Regulations Assessment (HRA) Report ('the HRA Report') comprised the following document(s):
 - Information to inform Habitats Regulations Assessment (the HRA Report) [APP-125] and updated as [AS-017, PD2-009, REP3-006 and REP4-012]; and
 - Outline Non-Breeding Bird Mitigation Strategy (oNBBMS) provided within the outline Landscape and Ecological Management Plan (oLEMP) [APP-144] and updated [PD2-023, REP1-028] and provided as a standalone document [REP3-032].
- 1.2.2 In addition to the HRA Report, the RIES refers to representations submitted to the examination by IPs, Issue Specific Hearing (ISH) documents, Statements of Common Ground (SoCG) and other examination documents as relevant. All documents can be found in the Examination Library.
- 1.2.3 During pre-examination, the ExA issued a section 89(3) letter to NE [PD-002] seeking whether it agreed with the applicant's HRA conclusions. NE's response [AS-030] outlined its concerns with the HRA. NE considered the mitigation proposals inadequate due to insufficient evidence that the proposed habitats could support displaced SPA birds or be managed sustainably in the long term. NE noted that although the HRA identifies the correct sites and pathways, further information and corrections were required regarding qualifying features, and NE stated that it remained unsatisfied with the HRA's methodology and data, as outlined in its relevant representation (RR) [RR-012].
- 1.2.4 The ExA issued an additional section 89(3) letter to the applicant [PD-005] requesting that it provided the information requested by NE along with a schedule outlining when relevant information should be addressed. This led to a series of updated documents being submitted by the applicant during pre-examination to address the matters raised by NE. This RIES refers to all iterations of the HRA Report and supporting documentation, and signposts where relevant updates have been undertaken.

1.3 RIES questions

- 1.3.1 This RIES contains questions predominantly targeted at the applicant, NE, Cheshire West and Chester Council (CWCC) and Cheshire Wildlife Trust (CWT) which are drafted in **blue, bold text**.
- 1.3.2 The responses to the questions posed within the RIES and comments received on it will be of great value to the ExA in understanding IPs' positions on Habitats Regulations matters. It is stressed that responses to other matters discussed in the RIES are equally welcomed. In responding to the questions, please refer to the ID number.
- 1.3.3 In responding to the questions in tables 2.2 and 3.1, please refer to the ID number in the first column.
- 1.3.4 Comments on the RIES are timetabled for DL6 (22 April 2026).

1.4 HRA Matters Considered During the Examination

- 1.4.1 The examination to date has focussed on the following matters:
- the impact pathways and qualifying features considered in the applicant's screening of likely significant effects (LSEs);
 - the adequacy of the applicant's baseline data;
 - the applicant's definition and assessment of functionally linked land (FLL);
 - the applicant's approach to assessing noise and visual disturbance impacts;
 - the applicant's conclusions of adverse effects on integrity (AEoI) on the Mersey Estuary SPA and Ramsar site;
 - the applicant's approach and conclusions on the assessment of in-combination effects on the Mersey Estuary SPA and Ramsar site;
 - whether the proposed mitigation areas should be considered compensation areas;
 - hydrological aspects and water management of the mitigation area and potential impacts on FLL; and
 - control of invasive non-native species.

2 LIKELY SIGNIFICANT EFFECTS

2.1 European sites considered

Introduction

- 2.1.1 The proposed development is not connected with or necessary to the management for nature conservation of any European site.
- 2.1.2 The scope of the assessment is described in section 6 of the HRA Report [APP-125] updated at D4 [REP4-012]. The applicant identified European sites within 10km of the DCO boundary.

Sites within the UK National Site Network (NSN)

- 2.1.3 The applicant's HRA Report [APP-125] updated at D4 [REP4-012] identified four European sites within the UK National Site Network for inclusion within the assessment. These are listed in table 5-1 of the HRA Report [APP-125] and are as detailed in table 2.1 below.

Table 2.1: European sites in the UK NSN identified in the applicant's HRA Report [APP-125]

Name of European site	Distance from proposed development (metres)
Mersey Estuary SPA	72m northwest
Mersey Estuary Ramsar site	72m northwest
Midland Meres and Mosses Phase 1 Ramsar site	6,700m southeast
Midland Meres and Mosses Phase 2 Ramsar site	7,000m southeast

- 2.1.4 The locations of these sites relative to the proposed development are depicted on figures 2a and 2c of the HRA Report [APP-125] updated at D4 [REP4-012], respectively.
- 2.1.5 No additional UK European sites have been identified by IPs for inclusion within the assessment in the examination to date.
- 2.1.6 NE confirmed [REP2-009] that it agreed with the identified European sites for inclusion in the assessment.

Non-UK sites

- 2.1.7 The applicant has not identified any potential impacts on European sites in other European Economic Area (EEA) States.
- 2.1.8 Only sites within the UK NSN are addressed in this RIES.

2.2 Potential impact pathways

- 2.2.1 Section 5.6 of the HRA Report [APP-125] updated at D4 [REP4-012] detailed the potential impacts from the proposed development, along with the potential geographical extent of effects. Table 5-2 of the HRA Report [APP-125] updated at D4 [REP4-012] listed the sites and qualifying features and the impact pathways which could affect them.
- 2.2.2 NE [RR-012] stated that it was satisfied that the correct potential impact pathways had been identified.
- 2.2.3 The following impact pathways were scoped in for assessment by the applicant and are set out in section 5.6 of the HRA Report [APP-125] updated at D4 [REP4-012]:
- habitat degradation due to changes in air quality;
 - habitat degradation due to changes in water quality;
 - loss of FLL used by qualifying bird species and waterbird assemblage;
 - disturbance or displacement of qualifying bird species from FLL; and
 - disruption to bird flight paths due to glint and glare effects.
- 2.2.4 The HRA Report [APP-125] updated at D4 [REP4-012] assessed the potential impacts during construction, operation and decommissioning. Paragraph 5.6.1 of the HRA Report states that decommissioning impacts are likely to be similar to, or less than, those identified during construction.
- 2.2.5 In ExQ1 (Q5.1.12 [PD-009]), the ExA queried whether unexploded ordnance (UXO) detonations and hydrological impacts to FLL should have been scoped in as impact pathways. See table 2.2 of this RIES for further details.

2.3 In-combination effects

- 2.3.1 Section 6.8 of the HRA Report [APP-125] updated at D4 [REP4-012] detailed the applicant's approach to assessing in-combination effects. The projects included in the in-combination assessment were detailed in section 6.8 of the HRA Report [APP-125] updated at D4 [REP4-012] and their locations depicted on ES figure 4-3 [APP-108].
- 2.3.2 NE [RR-012] noted in relation to in-combination effects that the DCO for Hynet Hydrogen Pipeline was due to be submitted in 2025 and recommended that the in-combination assessment considers this development. Additionally, NE [RR-012] noted that the Runcorn Spur Pipeline has now been submitted to CWCC and Halton Borough Council and has concerns regarding the overlap of the footprint of the pipeline route and the non-breeding bird mitigation area (NBBMA). NE [RR-012] and CWCC [RR-037] queried the potential overlap of the projects and how this could be considered in the in-combination assessment. The applicant updated the assessment [AS-017] to include the Hynet Hydrogen Pipeline. The assessment and potential overlap of the proposed development and the Runcorn Spur Pipeline has been discussed

throughout the examination to date. Further detail is provided in table 3.1 of this RIES.

- 2.3.3 No additional plans or projects have been highlighted by IPs in the examination to date.

2.4 The applicant's assessment

- 2.4.1 The applicant's conclusions in respect of screening are presented in section 5.6 of the HRA Report [APP-125] updated at D4 [REP4-012].

Sites for which the applicant concluded no LSE on all qualifying features

- 2.4.2 The applicant concluded that the proposed development would not be likely to give rise to significant effects, either alone or in combination with other projects or plans, on all qualifying features of the following European sites:
- Midland Meres and Mosses Phase 1 Ramsar site; and
 - Midland Meres and Mosses Phase 2 Ramsar site.
- 2.4.3 NE [RR-012] confirmed it agreed with the applicant's conclusion of no LSEs in respect of the above European sites.

Sites for which the applicant concluded LSE on some or all qualifying features

- 2.4.4 The applicant concluded that the proposed development would be likely to give rise to significant effects, either alone or in combination with other projects or plans, on one or more of the qualifying features of:
- Mersey Estuary SPA; and
 - Mersey Estuary Ramsar site.
- 2.4.5 The qualifying features and LSE pathways screened in by the applicant are identified in annex 1, table A1.1 of this RIES.
- 2.4.6 The applicant's decision to exclude certain LSE impact pathways were disputed by IPs and questioned by the ExA during examination. See section 2.5 of this RIES for further details.

2.5 Examination matters

- 2.5.1 Matters raised to date, or those for which the ExA seeks clarity, in relation to LSEs screened out or not considered by the applicant are summarised in table 2.2 below.

Table 2.2: Issues raised in the examination to date by the ExA and IPs in relation to the applicant's screening of LSEs (alone and in-combination)

ID	Potential impact pathway	Details of issue	ExA observation or question
Mersey Estuary SPA and Mersey Estuary Ramsar site			
2.2.1	Disturbance and displacement impacts to qualifying bird species from UXO detonations – construction	<p>ES Appendix 10-1 Stage 1 Geo-Environmental Assessment [APP-096] identified the potential for UXO at the site.</p> <p>The ExA [PD-009] requested that the applicant confirm whether the HRA Report [APP-125] had considered the potential impact pathways from UXO detonations on European site qualifying features and to provide an assessment where there is potential for an AEoI on European site qualifying features.</p> <p>The applicant's response confirmed that the HRA Report [APP-125] had not taken into account impacts from possible detonations as it is not considered that AEoI would arise. The HRA Report was updated at D3 [REP3-006] to make reference to this and to provide consideration of UXO within the appropriate assessment.</p> <p>Further information relating to the appropriate assessment of this impact pathway is provided in table 3.1 of this RIES.</p>	n/a – matter resolved
2.2.2	Hydrological impacts on FLL from hydrological connections – construction and operation	The ExA (Q5.1.11 [PD-009]) noted that potential hydrological impacts on the surrounding FLL from the proposed re-engineering of Cell 3 during both construction and operation had not been addressed in the HRA Report [APP-125] and requested that the hydrological impacts on FLL from hydrological connections should be considered as an impact pathway in the HRA Report.	n/a – matter resolved

	<p>The applicant's response stated that the HRA Report [APP-125] considers risks associated with ground disturbance and groundwater connections and further to this, the assessment provided in ES chapter 9 [APP-042] found that with incorporated mitigation applied, there would be no overall change in flood risk or hydrology elsewhere.</p> <p>The applicant also provided reference to the updated water balance modelling provided in appendix B to the oLEMP [PD2-023] which demonstrates that groundwater exchange or abstraction of water from surrounding ditches is not required to maintain water level.</p>	
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2.6 Summary of examination outcomes in relation to screening

- 2.6.1 ExA's understanding of the applicant's, NE's and IP's current positions in relation to LSEs is set out in annex 1, table A1.1 of this RIES.
- 2.6.2 Of the matters detailed in table 2.2 of this RIES, the applicant has agreed during the examination that an LSE should also be screened in for the disturbance and displacement of qualifying bird species associated with the detonation of UXOs (falling under the disturbance and displacement impact pathway).

3 ADVERSE EFFECTS ON INTEGRITY

3.1 Conservation Objectives

- 3.1.1 The conservation objectives for all of the European sites for which an LSE was identified by the applicant at the point of the DCO application were included within the HRA Report [APP-125] updated at D4 [REP4-012].

3.2 The applicant's assessment

- 3.2.1 The European sites and qualifying features for which LSE were identified were further assessed by the applicant to determine if they could be subject to AEol from the proposed development, either alone or in combination. The outcomes of the applicant's assessment of effects on integrity are summarised in section 7 of the HRA Report [APP-125] updated at D4 [REP4-012].

Mitigation measures

- 3.2.2 The HRA Report [APP-125] updated at D4 [REP4-012] identified mitigation measures in section 6. These were taken into account in the applicant's assessment of effects on integrity.

Sites for which the applicant concluded no AEol

- 3.2.3 The applicant concluded that the proposed development would not adversely affect the integrity of any of the European sites and qualifying features assessed, either alone or in combination with other projects or plans.
- 3.2.4 The applicant's conclusions in respect of the Mersey Estuary SPA and Ramsar site were disputed by IPs and questioned by the ExA during the course of the examination. See section 3.3 of this RIES for further details.

3.3 Examination matters

- 3.3.1 NE at D4 [REP4-069] confirmed that AEol can be excluded for the Mersey Estuary SPA and Ramsar Site. CWCC, CWT and the Royal Society for the Protection of Birds (RSPB) disputed the applicant's conclusions on AEol. Matters raised in the examination to date, or for which the ExA seeks clarity, in relation to AEols are summarised in table 3.1 below.

Table 3.1: Issues raised in the examination to date by the ExA and IPs in relation to the applicant's assessment of effects on integrity (alone and in-combination)

ID	Potential impact pathway	Details of issue	ExA observation or question
Mersey Estuary SPA and Mersey Estuary Ramsar site			
3.1.1	Potential loss of FLL – functionality of the NBBMA – construction and operation	<p>NE [RR-012] and CWCC [RR-037] stated that the NBBMA must be fully constructed and functional before any further construction works occur in the solar array development area (SADA). NE [RR-012] provided its definition of “functionality” and confirmed it would work with the applicant to establish success criteria to determine when habitat creation is capable of supporting the required SPA bird populations.</p> <p>The HRA Report [APP-125] originally stated that NBBMA construction would take place outside the peak sensitive period for non-breeding birds (March onwards). NE [RR-012] highlighted that significant numbers of most SPA species are present in both March and October and requested further assessment of impacts from any NBBMA works during these months.</p> <p>The applicant updated the outline Construction Environmental Management Plan (oCEMP) [REP1-021] and HRA Report [PD2-009] to reflect NE’s recommendations, including consideration of bird use in the months adjacent to the core non-breeding period. NE [REP3-036] subsequently confirmed this matter was resolved.</p> <p>CWCC [REP3-046] requested that functionality should also reflect the Frodsham Windfarm (FWF) mitigation requirements namely:</p> <ul style="list-style-type: none"> • creation and maintenance of low-sward grassland with shallow wader scrapes and seasonal open water across Cell 3. 	<p>RQ1: Does CWCC consider that there is a potential for an AEol on the Mersey Estuary SPA and Ramsar site if its requested requirements regarding the definition of functionality of the NBBMA are not addressed by the applicant?</p>

		<ul style="list-style-type: none"> • maintenance of the fields over Cells 2 and 5 in favourable condition for wintering waders (including golden plover, lapwing, curlew) for the lifetime of the development. <p>CWCC [REP3-046] stated that the NBBMA should provide the requirements as above (in relation to land within the NBBMA), prior to any works starting on the SADA.</p> <p>The applicant's D4 response [REP4-052] stated that the point at which the NBBMA is considered functional has been agreed with NE and that birds would use the area once disturbance sources are removed.</p> <p>CWCC's concerns remain unresolved at D4 [REP4-066].</p>	
3.1.2	Potential loss of FLL – definition and assessment of FLL – all phases	<p>NE [RR-012] disagreed with the definition of FLL used in the HRA Report [APP-125]. NE [RR-012] advised that determining the importance of land to the SPA population requires calculating the proportion of the SPA population supported by the site. For example, if the SPA population exceeds 1%, it is significant and requires further assessment.</p> <p>NE [RR-012] also advised that impacts must be assessed across the whole development and that the HRA should treat the entire SADA as FLL.</p> <p>The applicant updated the HRA Report [PD2-009] to include additional data analysis and to identify areas where usage exceeds 1% of the SPA population for further assessment. In its response to RR's [PD2-027], the applicant stated it had adopted a precautionary approach by assuming the entire Order limits area is, or could be, FLL for the purposes of the HRA.</p> <p>NE [REP3-036] confirmed the issue was resolved.</p> <p>CWCC [REP3-046] agreed with the updated approach.</p>	n/a – matter resolved
3.1.3	Potential loss of FLL – assessment	<p>NE [RR-012] noted that table 4.2 of the HRA Report [APP-125] incorrectly compared peak numbers to national and international</p>	RQ2: Can NE and CWCC provide an

	<p>methodology, data presentation and survey coverage – construction and operation</p>	<p>thresholds and advised that the assessment must assess the impact on the integrity of the SPA population, not the national population. NE [RR-012] also requested clearer presentation of survey data to identify species requiring further assessment and potential mitigation.</p> <p>CWCC [REP1-048] and CWT [REP1-068] raised that the non-breeding bird survey data was not suitably robust due to gaps in site coverage, missing months, and methodological flaws. CWCC [REP1-048] stated that, as a result, impacts are underestimated and the NBBMS is inadequate. The ExA (ExQ1 Q5.0.1 [PD-009]) requested the applicant to justify why the surveys were considered robust and sufficient for the purposes of HRA.</p> <p>The applicant [REP2-003] stated that survey coverage was adjusted between years to ensure all relevant areas were surveyed within the programme, and that the core non-breeding period (October–March) was consistently surveyed over three years, exceeding NE guidance. The HRA Report [PD2-009] was updated to address NE’s comments and include additional analysis.</p> <p>CWCC [REP3-046] maintained that early autumn and late spring were not covered each year, meaning full passage seasons were not surveyed. The applicant’s D4 submission [REP4-052] further justified the survey effort and provided a revised HRA Report [REP4-012] with additional bird data analysis, including the latest WeBS counts and coverage of the autumn passage season.</p> <p>NE’s D4 [REP4-069] submission confirmed the issue was resolved. CWCC’s concerns remain unresolved at D4 [REP4-068].</p>	<p>update on their positions on this matter in light of the applicant’s D4 submissions [REP4-012] [REP4-052]?</p> <p>RQ3: Does CWCC maintain that the assessment of impacts to non-breeding birds are not supported by adequate survey effort and potential effects on passage qualifying species have not been sufficiently assessed? What further information would CWCC expect from the applicant within the examination?</p>
<p>3.1.4</p>	<p>Potential loss of FLL – reliance on land outside of the Order limits –</p>	<p>CWCC [RR-037] raised concerns that the western solar array extends across the existing FWF area, its mitigation area and up to the boundary of the existing non-breeding bird mitigation area in Cell 3. CWCC [RR-037] stated that risks reducing available FLL for qualifying species,</p>	<p>RQ4: Can NE provide comments on the applicant’s approach of considering land</p>

	<p>construction and decommissioning</p>	<p>disrupting connectivity across remaining FLL, and increasing reliance on a smaller mitigation area.</p> <p>In response [PD2-027], the applicant stated that connectivity is maintained between the NBBMA, the estuary, and supporting parcels such as Cell 6. The applicant [PD2-027] stated that Mersey Estuary SPA and Ramsar site bird species operate at the estuary scale, routinely moving between multiple supporting areas, and that there is no evidence that solar arrays prevent birds from flying over them. The applicant [PD2-027] added that mitigation covers the full loss of SPA species habitat across the Order limits.</p> <p>CWCC [REP3-046] accepted that qualifying species operate at the estuary scale but rejected reliance on areas outside the Order limits to justify reduced functionality within the site. CWCC [REP3-046] reiterated its position in its comments on the D1 and D2 submissions.</p> <p>The applicant [REP4-052] stated that it does not rely on off-site habitats for mitigation, and references to external areas are only to explain how SPA birds use the wider estuary system. The applicant [REP4-052] stated that excluding wider estuary habitat use would misrepresent impacts on the Mersey Estuary population.</p> <p>CWCC’s concerns remain unresolved at D4 [REP4-068].</p>	<p>outside of the Order limits, to inform its conclusions of functionality within the site?</p>
<p>3.1.5</p>	<p>Potential loss of FLL – species coverage in assessment and basis for mitigation – construction and operation</p>	<p>NE [RR-012] requested that the HRA Report and mitigation plans consider all relevant SPA bird species, not just lapwing, curlew, and golden plover.</p> <p>The applicant’s response [PD2-027] stated that the NBBMA follows the FWF precedent focused on these species, but that the proposed habitat mosaic would also provide suitable foraging and roosting opportunities for all SPA qualifying assemblage species recorded within the SADA. Table 8.2 of the HRA Report [PD2-009] was updated with further detail on how mitigation would benefit all affected SPA species.</p>	<p>ExQ2 Q.2.2.9 [PD-016] seeks comments on the potential of incorporating Cell 2 into the NBBMA.</p>

		<p>The applicant also stated [PD2-027] that habitat creation within the NBBMA represents an expansion of suitable habitat for most SPA species, and that formal mitigation is only required for a small subset of species, with the remainder benefiting from the scheme.</p> <p>CWCC [REP3-046] disagreed that mitigation is considered only necessary for a small number of SPA species as the Cleeve Hill calculation methodology that was used to inform the area of NBBMA, does not include all SPA species. In response to ExQ1 Q4.4.2 [PD-009], CWCC [REP2-005] rejected the applicant’s approach and stated that to progress the issue, the applicant should amend the proposed layout releasing back the existing mitigation areas to enable a less risky approach. Mr Smith’s D2 submission [REP2-014] and the RSPB’s D4 submission [REP4-067] also proposed that the NBBMA should incorporate the entirety of Cell 2.</p> <p>The applicant’s response [REP3-041] explained why it does not consider layout amendments necessary.</p> <p>NE’s D4 submission confirmed the issue was resolved.</p> <p>CWCC’s concerns remain unresolved at D4 [REP4-068].</p>	
<p>3.1.6</p>	<p>Potential loss of FLL – disturbance and displacement of qualifying bird species – decommissioning</p>	<p>CWCC [RR-037] raised concerns that because the land would return to landowners after decommissioning, long-term retention of landscaping improvements cannot be assumed. CWCC [RR-037] stated that qualifying bird species may become dependent on the NBBMA and that the adverse impacts at decommissioning have not been fully assessed as impacts could be greater than during construction. CWCC [RR-037] suggested that long-term retention of the NBBMA could address this.</p> <p>The applicant’s response [PD2-027] stated that the SADA would be restored to its current condition after decommissioning. While long-term management of the NBBMA cannot be guaranteed, the applicant [PD2-</p>	<p>RQ5: Please can CWCC provide an update on its position on this matter in light of the applicant’s D4 submission [REP4-052].</p>

		<p>027] considered it likely that the site would remain in an improved condition for non-breeding birds compared with the current baseline.</p> <p>The applicant also updated the draft DCO [REP1-004] so that management of the NBBMA within the Site of Special Scientific Interest (SSSI) boundary forms part of the SSSI management scheme under the Wildlife and Countryside Act 1981, ensuring long-term application of management prescriptions unless NE agrees to vary them.</p> <p>An updated outline Decommissioning Environmental Management Plan (oDEMP) [PD2-019] was provided to address some of CWCC's concerns. In response to ExQ1 Q1.0.7 [PD-009], CWCC [REP2-005] set out its remaining concerns and suggested solutions. The applicant responded to these at D4 [REP4-052]. CWCC reiterated its outstanding concerns on the above matters at D3a [REP3-046].</p> <p>CWCC's concerns remain unresolved at D4 [REP4-068].</p>	
3.1.7	<p>Potential loss of FLL – impacts to SSSI and overlapping features – construction and operation</p>	<p>NE [RR-012] requested clarification in the HRA Report [APP-125] that works within the Mersey Estuary SSSI are not part of the project's mitigation proposals but are obligations on the SSSI owner or occupier. NE [RR-012] and CWCC [RR-037] also sought clarity on the extent of SSSI land within the red line boundary and how it may be affected by the oNBBMS, given the overlapping bird features. NE [RR-012] further queried whether the water storage area in appendix B of the oLEMP [APP-144] includes SSSI land and stated that SSSI area should not be counted within mitigation calculations, as their management is already required under SSSI duties.</p> <p>The applicant updated the oNBBMS [REP3-033] to clarify the nature of works within the SSSI, confirm that SSSI features would be retained, and explain how SSSI management contributes (or does not contribute) to the project's mitigation.</p> <p>NE [REP4-069] confirmed this matter is resolved.</p>	<p>No further questions at this stage.</p>

		<p>CWCC’s concerns remain unresolved at D4 [REP4-068].</p>	
<p>3.1.8</p>	<p>Potential loss of FLL – assessment of canal pools – construction and operation</p>	<p>NE [RR-012] noted that table 6.1 of the HRA Report [APP-125] presents peak bird counts for the canal pools but does not draw any assessment from these results. NE [RR-012] requested further assessment of SPA bird use of the canal pools and effective management of New Zealand Pigmy Weed (NZPW).</p> <p>CWCC [RR-037] also raised concerns over the optionality for the canal pools and how NZPW would be managed if removal did not occur.</p> <p>NE [RR-012] stated it expected to provide further advice on potential management options for the canal pools, noting that an assent application would be submitted by the applicant.</p> <p>At D1 NE stated [REP1-056] that it welcomed the updated information on the approach to NZPW eradication provided in the oNBBMS [PD2-023] and would expect that detailed information with regard to these works will be provided within the detailed NBBMS.</p> <p>The applicant updated the HRA Report [PD2-009] to include additional assessment of SPA bird use of the canal pools. The draft SoCG at D3 with NE [REP3-036] also outlined the agreed approach to retaining the pools within the SSSI and managing NZPW.</p> <p>The HRA Report [REP3-006] was updated at D3 to capture these discussions. The dDCO [REP4-003] includes the need for an invasive non-native species management plan in the CEMP R12(2)(a), Operational Environmental Management Plan (OEMP) R13(2)(a) and DEMP R20(3)(d).</p> <p>NE [REP4-069] confirmed this matter is resolved.</p> <p>CWCC’s concerns remain unresolved at D4 [REP4-068].</p>	<p>RQ6: Please can CWCC provide an update on its position on this matter in light of the applicant’s DCO update at D4 [REP4-003] which includes the need for an invasive non-native species management plan in the CEMP R12(2)(a), OEMP R13(2)(a) and DEMP R20(3)(d).</p>

<p>3.1.9</p>	<p>Potential loss of FLL – suitability of NBBMA - construction and operation</p>	<p>NE [RR-012], CWCC [RR-037], and CWT [REP1-068] stated that insufficient detail had been provided to demonstrate that habitat loss mitigation for SPA species is adequate.</p> <p>CWCC’s written representation [REP1-048] stated that replacing larger mitigation areas with a smaller, higher-quality area is flawed because it reduces space for displaced birds, increases vulnerability to disease, and diminishes the extent and resilience of FLL. NE [RR-012] and CWCC [RR-037] also stated that there is inadequate evidence that Cell 3 could support both existing birds and those displaced from the SADA. NE requested clarity on the proportion of the NBBMA currently unsuitable for birds to better understand the enhancement potential.</p> <p>NE further noted limited opportunities to reliably increase wetness across the site and requested that the oNBBMS [APP-144] explain how water would be managed, including how sufficient water levels and water-storage capacity would be maintained.</p> <p>The applicant’s updated oNBBMS (within the oLEMP [PD2-023]) included a Water Balance Report (Annex 4) and additional analysis on SPA species’ use of the site and the suitability of proposed mitigation. The oNBBMS was updated with more detail on how the NBBMA would be created and managed.</p> <p>CWCC [RR-037] and CWT [REP1-068] questioned the use of the Cleve Hill method to calculate the area of land required for the NBBMA, arguing that if habitat quality is not accounted for, adequacy of mitigation cannot be demonstrated. As detailed above in 3.1.5 of this table, CWCC stated [REP2-005] that the applicant should amend the proposed layout releasing back the existing mitigation areas to enable a less risky approach. Mr Smith [REP2-014] and the RSPB [REP4-067] proposed that the NBBMA should incorporate the entirety of Cell 2.</p>	<p>RQ7: Please can CWCC and CWT provide an update on their positions on this matter in light of the applicant’s D4 submission [REP4-052].</p>
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3.1.10	Potential noise disturbance impacts to designated sites and FLL – construction and operation	<p>NE [RR-012] requested appropriate noise data to support the HRA Report's [APP-125] conclusion of no noise disturbance being anticipated within the SPA and Ramsar site boundary. NE [RR-012] further stated that it does not prescribe specific noise thresholds for determining a significant effect, and detailed that a change in noise of more than 3 decibels (dB) does not necessarily need mitigation, it just means that noise should be considered further within an appropriate assessment. NE [RR-012] stated that bird's reaction to noise is site and species specific and recommended that the HRA was updated to reflect this.</p> <p>NE [RR-012] additionally requested mapping of predicted noise contours in 5dB increments from 55dB upwards for both LAeq and LAmx levels to clearly display how much of an SPA (or area of FLL) would be affected by different noise levels compared to the baseline. Further to this NE requested protocols for monitoring bird responses and adaptive management.</p>	<p>RQ8: Please can CWCC provide an update on its position on this matter in light of the applicant's D3 submission [REP3-041].</p>

		<p>CWCC [RR-037] raised concern over noise impacts during construction, with concerns including the impacts of flight path disruption not being taken into account as well as the phasing of the scheme in relation to the functional level of the NBBMA and requested further assessment and clarification on the impacts of construction noise. CWCC [RR-037] noted that information on elevational differences between the cells and the resulting impacts on the NBBMA in terms of noise do not appear to have been fully assessed to conclude whether impacts are positive or negative.</p> <p>The applicant's response to CWCC [REP3-041] stated that the applicant disagrees with CWCC and considers that construction impacts on non-breeding birds have been fully assessed and are addressed through the proposed mitigation.</p> <p>The applicant's HRA Report [PD2-009] was updated to resolve the above requests from NE. NE [REP4-069] consider this matter resolved. Matters raised by CWCC remain unresolved at D4 [REP4-068].</p>	
<p>3.1.11</p>	<p>Potential lighting and visual disturbance impacts to designated sites and FLL – all phases</p>	<p>NE [RR-012] welcomed the principles set out in the proposed sensitive lighting strategy, and that construction lighting would be directed away from the NBBMA and FLL but stated that the lighting strategy should be applied across the entire development area, not just the NBBMA.</p> <p>The applicant updated the HRA Report [PD2-009] to confirm site wide adoption of the sensitive lighting strategy and added this requirement to the oCEMP [PD2-015], oOEMP [PD2-017], and oDEMP [PD2-019].</p> <p>NE [REP4-069] consider this matter resolved.</p> <p>CWCC [RR-037] raised concerns about visual impacts on qualifying bird species during construction, including potential flightpath disruption, the relationship between scheme phasing and NBBMA functionality, and insufficient assessment of elevation differences between cells and their visual effects on the NBBMA.</p>	<p>No further questions at this stage.</p>

		<p>The applicant’s response [REP3-041] provided rationale as to how elevation has been considered and assessed within the HRA and referenced NE’s agreement with the approach and stated that the applicant does not accept that birds flying over Cells 1, 2 and 5 would be disturbed during construction. Rationale included:</p> <ul style="list-style-type: none"> • Cell 3 would be functional prior to commencement of construction in these cells. The availability of the NBBMA for non-breeding birds would inevitably alter flightlines as birds would primarily be commuting to or from the NBBMA and Cell 6. There would continue to be uninterrupted flight lines between the Mersey Estuary SPA and Ramsar site and SSSI to both the NBBMA and Cell 6; • there is no evidence to suggest that current flight activity across Cells 1, 2 and 5 is in any way regular (ie a fixed flight line), rather reactive to conditions at the time; • birds in flight are already avoiding wind turbines in Cell 5 (and Cell 1). Most of the construction within Cells 1, 2 and 5 will be in relatively close proximity to wind turbines; and • there is no evidence to indicate that construction activity would affect flight activity for commuting wetland birds. <p>Matters raised by CWCC remain unresolved at D4 [REP4-068].</p>	
<p>3.1.12</p>	<p>Potential disturbance to overflying birds and access to other habitats (scale, glint and glare, openness) impacts on</p>	<p>CWCC [RR-037] and CWT [REP1-068] stated that the applicant has not sufficiently assessed behavioural impacts on birds, including access to habitats, potential glint and glare effects, narrowing of development-free corridors, and the overall scale of the solar development’s influence on bird movements.</p> <p>CWCC [RR-037] highlighted that Cell 6, outside but adjacent to the Order limits, supports high numbers of qualifying bird species. CWCC is concerned that solar panels in western Cells 2 and 5 could disrupt</p>	<p>RQ9: Please can CWCC and CWT confirm whether the wording of Requirement 6(1)(h) of the dDCO [REP4-004] is satisfactory in terms of the anti-reflective</p>

	<p>designated sites and FLL – operation</p>	<p>flightpaths between the Estuary and Cell 6 due to glint and glare or birds mistaking panels for water. CWCC [RR-037] noted that the Glint and Glare Assessment [APP-056] exclude ecological receptors and that the HRA Report [APP-125] does not sufficiently consider the landscape-scale implications of a large solar array and considered that even intermittent exposure may be significant due to scale.</p> <p>CWCC [RR-037] also stated that development could disrupt connectivity between Cells 2, 3, 5, and Cell 6, fragmenting FLL through visual disturbance and reducing available landing areas. CWCC stated that operational impacts on Cell 6, and therefore on FLL as a whole, have not been properly assessed.</p> <p>The applicant’s response [PD2-027] stated that NE agrees with its conclusions and maintains that glint and glare would not cause significant effects.</p> <p>NE’s position on glint and glare within its RR [RR-012] is marked as ‘green’ due to embedded mitigation measures such as low-profile panels that have non-reflective coatings.</p> <p>CWCC [REP3-046] reiterated that the applicant has not addressed landscape-scale effects and referenced the FWF ES, which retained undeveloped corridors between the Estuary and Cell 6 to protect flightpaths. CWCC stated that the proposed development would reduce FLL without adequate compensation, limit access to favoured habitats inside and outside the Order limits and significantly alter current bird movement patterns.</p> <p>The dDCO was updated at D4 [REP4-004] to include Requirement 6(1)(h) which requires the detailed design of the anti-reflective coating to be used on the solar modules in Work No. 1 to be submitted and approved in writing by the local planning authority and NE. Matters</p>	<p>coating to be used on solar modules and to specify if they have outstanding issues in relation to this matter.</p>
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		raised by CWCC [REP4-068] and CWT [REP1-068] remain unresolved at D4.	
3.1.13	Potential loss of FLL – vehicular recreational disturbance and displacement impacts on the functionality of the NBBMA – operation and decommissioning	<p>NE [RR-012] stated that intermittent human disturbance during operation should also account for vehicles. NE agreed that the proposed measures to manage recreational pressure were sufficient but requested that recreational disturbance incidents be recorded during monitoring, with any additional measures delivered through the Adaptive Management Plan (AMP) to ensure long-term effectiveness.</p> <p>CWCC [RR-037] stated that part-decommissioning will occur when the solar panels require replacement part way through the operational phase of the proposed development. CWCC raised that the NBBMA will be vulnerable to disturbance and the impact of the construction traffic routed along the southern boundary of Cell 3 (for replacement activities) has not been taken into consideration in the HRA.</p> <p>The applicant updated the HRA Report [PD2-009] to include vehicle presence and added requirements for monitoring recreational disturbance and adaptive management to the oOEMP [PD2-017].</p> <p>The applicant’s response [PD2-027] to CWCC stated part-decommissioning and replacement works were anticipated in the assessment and detailed that the updated HRA Report [PD2-009] treats these activities as short construction phases. The response further stated that disturbance and displacement effects near the NBBMA have therefore been considered and detailed embedded mitigation measures to avoid impacts to qualifying bird species.</p> <p>NE [REP4-069] record this matter as resolved.</p> <p>CWCC [REP3-046] stated that extensive discussions regarding major replacement and decommissioning have taken place because of discussions during ISH1 and that these should be assessed and updated within the HRA. CWCC stated that it does not agree with the</p>	<p>RQ10: Please can the applicant and CWCC provide an update on their positions on this matter.</p> <p>What further information would CWCC expect from the applicant within the examination?</p>

		<p>current assessment and conclusions on this matter. [REP4-068] captures further discussions on major replacements during the operation phase with CWCC requesting further assessment in relation to impacts of major replacement on the NBBMA.</p>	
<p>3.1.14</p>	<p>Potential loss of FLL – impact of footpaths on the functionality of the NBBMA – operation</p>	<p>CWCC [RR-037] remains concerned that the expanded path network, particularly new routes near sensitive areas such as the NBBMA and River Weaver margins, could cause unacceptable disturbance. CWCC considers the applicant’s proposed mitigation insufficient.</p> <p>CWCC [RR-037] stated that new and upgraded footpaths would increase human disturbance to non-breeding bird species and that proposed buffers do not align with distances recommended in the guidance Goodship, N.M. and Furness, R.W. (MacArthur Green) Disturbance Distances Review: An updated literature review of disturbance distances of selected bird species. NatureScot Research Report 1283.</p> <p>CWCC [RR-037] suggested removing footpaths A and B or rerouting them further from the NBBMA, Cell 1, and the Mersey Estuary. CWCC also stated that if long stretches of bird screens are required, this indicates significant impacts and that wider buffers, not screens, should be used as avoidance measures. CWCC further noted that screens only mitigate visual disturbance for birds already on the Estuary side, not those within the site.</p> <p>The applicant’s response [PD2-027] stated that disturbance from increased access has been fully recognised, assessed, and mitigated within the HRA and ES. It explained the alignment of footpaths A and B as avoiding the most sensitive margins and highlighted mitigation measures within its control. The applicant [PD2-027] acknowledged the Goodship & Furness guidance but stated that it is not universally applicable and that its approach focuses mitigation on the most disturbance-sensitive species. The applicant provided further</p>	<p>RQ11: Please can CWCC provide an update on its position on this matter in light of the applicant’s D4 submission [REP4-052].</p>

		<p>explanation of how disturbance risks would be managed without needing to remove or realign the footpaths.</p> <p>Regarding bird screens, the applicant [PD2-027] stated these form part of a wider embedded mitigation package and are not used in isolation. It also noted that screens do not affect birds in flight and that assessment therefore focused on settled usage, which is most relevant to SPA and Ramsar site conservation objectives.</p> <p>CWCC [REP3-046] disagreed with the applicant’s position, stating that applying Goodship & Furness guidance distance standards would help identify impacted areas. CWCC provided additional rationale for realigning the paths and expressed concern over the applicant’s lack of engagement with its suggestions. CWCC requested a detailed assessment of Public Rights of Way changes within an updated HRA Report.</p> <p>In its D4 submission [REP4-052], the applicant maintained that disturbance from paths has been properly assessed and that bird screens are precautionary measures designed to reduce disturbance to acceptable levels while still delivering community access benefits. CWCC’s concerns remain unresolved at D4 [REP4-068].</p>	
<p>3.1.15</p>	<p>Disturbance and displacement impacts to qualifying bird species from unexploded ordnance detonations – construction</p>	<p>ES Appendix 10-1, Stage 1 Geo-Environmental Assessment [APP-096] identified the potential for unexploded ordnance UXO at the site.</p> <p>The ExA (ExQ1 Q5.1.12 [PD-009]) requested the applicant to confirm whether the HRA Report [APP-125] had considered the potential impact pathways from UXO detonations on European site qualifying features and to provide an assessment where there is potential for an AEol on European site qualifying features.</p> <p>The applicant’s response [REP2-003] confirmed that the HRA had not taken into account impacts from possible detonations as it is not considered that AEol would arise. The applicant detailed that pursuant</p>	<p>ExQ2 2.5.16 [PD-016] seeks a response from the applicant in relation to this matter.</p>

		<p>to the UXO Management Plan which would be developed alongside the CEMP, standard measures would be put in place to manage impacts arising from unplanned detonations that would need to take place. The oCEMP [REP1-020] was updated at D1 to ensure that the management plan would need to demonstrate how it has taken into account ornithological receptors. The HRA Report was updated at D3 [REP3-006] to make reference to this and to provide consideration of UXO within the appropriate assessment. The updated assessment concluded that potential UXO risks during construction of the proposed development would not result in significant disturbance of SPA and Ramsar site qualifying features and would not result in AEol.</p>	
<p>3.1.16</p>	<p>Assessment of passage redshank as a qualifying feature of the Mersey Estuary SPA – all phases</p>	<p>The ExA (ExQ1 Q5.1.7 [PD-009]) requested that NE, CWCC and the applicant confirm if passage redshank is a qualifying feature of the Mersey Estuary SPA and whether the assessment of possible AEol should clearly address the wintering flock and passage flock separately. The applicant stated [REP2-003] that redshank is a qualifying feature of the Mersey Estuary SPA and Mersey Estuary Ramsar site and detailed that the species is considered as part of the assessments. The applicant further stated that it is not possible to distinguish between passage birds and wintering birds and so separate consideration is not possible. NE [REP2-009] stated that it was satisfied with the assessment of redshank within the HRA Report [PD2-009] and that there is no requirement for separate assessment of passage and wintering birds. CWCC [REP2-005] requested that redshank on passage should appear within the HRA Report and that addressing the passage and wintering redshank separately would enable full consideration to take place. The applicant responded [AS-038] stating that the applicant has assessed redshank throughout the non-breeding season using survey data and historical WeBS records and further stated that survey periods</p>	<p>RQ12: Can CWCC provide an update on this matter in light of NE’s submission [REP2-009] and the applicant’s comments in [AS-038].</p>

		<p>have been transparently reported, and the area is already well monitored. The response detailed that the NBBMA will be in place and operational before construction begins, as agreed with NE and that higher-noise works within the western SADA will be scheduled outside the sensitive November–February period and only once the NBBMA is established. If any works occur during this window, an Ecological Clerk of Works (ECoW) will oversee activities and apply the agreed mitigation measures.</p> <p>Matters raised by CWCC remain unresolved at D4 [REP4-068].</p>	
3.1.17	Potential loss of FLL – management of the NBBMA – all phases	<p>During the course of the examination NE [RR-012], CWCC [RR-037] and RSPB [REP4-067] each set out requirements for the long-term management of the NBBMA.</p> <p>The HRA Report [APP-125] proposes a dynamic AMP for the NBBMA but does not specify who would manage the area in the long term.</p> <p>NE [RR-012] stated that a suitably qualified conservation management body is essential to deliver habitat modification, screening, and access controls. Without confirmation of such a body, NE could not agree with the HRA’s conclusions. NE requested that the HRA define the mitigation criteria and monitoring requirements.</p> <p>CWCC [RR-037] agreed that long-term specialist management is essential to protect the integrity of the designated site but noted that no commitment had yet been secured.</p> <p>The applicant [PD2-027] stated it was in discussion with RSPB to manage the NBBMA and provided a letter (appendix D, EN010153/DR/8.5) confirming RSPB’s intent. NE [REP1-056] welcomed this progress and stated that without a conservation body the mitigation package would be unsupported. NE also welcomed the AMP and recommended that the detailed AMP form part of the detailed NBBMS.</p>	ExQ2 [PD-016] seeks CWCC, CWT, RSPB and NE’s views on this matter.

	<p>The applicant updated the oNBBMS [PD2-023] to specify that a nature conservation organisation would manage the NBBMA, secured via Requirement 9(j) of the dDCO, with the AMP to be prepared in consultation with NE, CWCC and RSPB.</p> <p>CWCC [REP3-046] and CWT [REP4-075] stated that an agreement with a conservation body must be evidenced now, given the NBBMA's importance. They recommended measurable functionality targets and stated that monitoring bird surveys should underpin assessments of NBBMA success.</p> <p>The applicant [REP4-052] stated that the updated NBBMS now includes regular monitoring of bird use, including SPA species.</p> <p>At D4, NE [REP4-069] welcomed updates to the HRA Report and oNBBMS and was satisfied that they provide sufficient certainty of securing an appropriate conservation body, even if discussions with RSPB do not progress. NE records this issue as resolved.</p> <p>The ExA issued a Rule 17 request to RSPB [PD-014] seeking clarity on negotiations, RSPB's position on the NBBMA and oNBBMS, and evidence of suitability.</p> <p>RSPB [REP4-067] confirmed willingness to take on the management role subject to an appropriate agreement and funding package. It stated that formal agreement cannot be reached until final proposals are secured through planning. RSPB [REP4-067] broadly supported the NBBMA as a significant enhancement, however set out additional requirements, including:</p> <ul style="list-style-type: none"> • AMP agreed with RSPB, fully funded and enforceable; • clear habitat objectives, water-level management, disturbance-reduction measures; • permanent predator exclusion fencing; 	
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		<ul style="list-style-type: none"> • increased wet features in line with best practice, assurance of sufficient freshwater availability; and • incorporation of all of Cell 2 into an expanded NBBMA. <p>RSPB [REP4-067] stated that, subject to these requirements, an enlarged NBBMA could support the applicant’s conclusion of no AEol on the SPA and provided examples of successful RSPB managed mitigation sites.</p> <p>Matters raised by CWCC, CWT and RSPB remain unresolved at D4 [REP4-068].</p>	
3.1.18	Disturbance and displacement and potential loss of FLL from in-combination effects – construction and operation	<p>NE [RR-012], CWCC [RR-037], and CWT [RR-019] raised concerns about potential overlap between the Runcorn Spur Pipeline footprint and the NBBMA.</p> <p>NE [RR 012] noted that although the in-combination assessment considered construction-stage effects, it was unclear how the two schemes would be sequenced. NE stated that if pipeline works occurred while the NBBMA was required to support SPA birds, noise and visual disturbance could prevent use of the mitigation area. NE requested assessment of how pipeline works could hinder NBBMA effectiveness, advised constructing the pipeline before the NBBMA, and sought consideration of operational impacts and potential effects on the NBBMA construction programme.</p> <p>NE [RR 012] and CWCC [RR-037] also queried how any agreements between developers would be secured.</p> <p>The applicant submitted a Technical Note on Pipeline Interactions [REP1-041], outlining likely effects under different phasing scenarios and the mechanisms available to control cumulative impacts. The applicant [PD2-027] stated that the pipeline would not undermine the success of the NBBMA due to its routing, construction techniques, and</p>	ExQ2 [PD-016] seeks the applicant’s and IPs views on how this matter can be resolved.

	<p>the fact that wetland creation in Cell 3 does not depend on groundwater inflow from the north.</p> <p>The applicant updated the HRA Report [PD2-009] with additional data for the Runcorn Spur Pipeline and Hynet Hydrogen Pipeline. NE [REP4-069] records the matter as resolved.</p> <p>The applicant’s response [PD2-027] set out three sequencing scenarios:</p> <ul style="list-style-type: none"> • Scenario 1: Pipeline constructed before the NBBMA; • Scenario 2: Pipeline constructed concurrently with the NBBMA; and • Scenario 3: Pipeline constructed after the NBBMA (not assessed in the Runcorn Spur Pipeline HRA, which assumes works in Cells 1–3 occur before NBBMA creation). <p>The applicant [PD2-027] stated that CWCC would need to impose planning controls requiring Scenario 1 or 2, or if Scenario 3 occurred, the pipeline developer must provide mitigation ensuring no AEoI on the SPA, secured through its own planning permission.</p> <p>CWCC [REP3-046] noted expected passage-season disturbance impacts and remained concerned that cumulative effects, particularly if the pipeline were built after NBBMA establishment, had not been fully assessed. CWCC stated that relying on planning conditions or on the pipeline developer to provide adequate mitigation was not appropriate or sufficiently secure. CWCC provided further detail at D3 [REP3-046] on concerns with all three scenarios.</p> <p>At D4 [REP4-052], the applicant stated that assessing Scenario 3 from the perspective of pipeline-after-solar was the wrong approach but nonetheless provided an assessment of Scenario 3 [REP4-053], concluding that pipeline construction after NBBMA establishment could proceed without likely significant cumulative effects if appropriate mitigation were required of the pipeline developer.</p>	
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		Concerns raised by CWCC and CWT remain unresolved at D4.	
3.1.19	Potential loss of FLL - whether the proposed mitigation areas should be considered compensation areas and the need for a without prejudice derogations case – all phases	<p>Due to a lack of agreement on the HRA’s conclusions of AEoI on Integrity of the Mersey Estuary SPA and Ramsar Site between the applicant, NE, CWCC and CWT, the ExA included at D3 (28 January 2026) the option for the applicant to submit a without prejudice derogations case. The applicant [REP3-031] referenced agreement with NE of no AEoI on the Mersey Estuary SPA and Ramsar Site as rationale for not providing a derogations case.</p> <p>CWCC [REP3A-001] provided comments on the need for a without prejudice derogations case and stated that not all the matters raised by NE which were contingent on the conclusions of no AEoI had been resolved. CWCC [REP3-046 and REP3A-001] raised that it considers that the NBBMS represents a strategy of compensation rather than mitigation. CWCC stated that it has not been demonstrated that the NBBMA in its current form would be adequate to compensate for the loss of FLL and the qualifying bird species associated with it, and therefore, it cannot be demonstrated that there would be no AEoI. CWCC requested further explanation from NE on the acceptability of the applicant’s approach in providing adequate mitigation without an accepted methodology for doing so. In respect of the NBBMS comprising compensation rather than mitigation, CWCC stated: ‘this is demonstrated by the proposal for the wholesale loss and reinstatement of the existing NBBMA, as well as loss of functionally linked land in Cells 1, 2 and 5 (including existing FWF “mitigation” cells). Where adverse effects on the integrity of one or more of the internationally important sites cannot be avoided or mitigated, a successful derogation case will be necessary for the development to proceed. This includes satisfying the following legal tests:</p> <ul style="list-style-type: none"> • there are no feasible alternative solutions that would be less damaging or avoid damage to the site(s); 	ExQ2 Q.2.5.7 and Q.2.5.8 [PD-016] seeks responses from NE, CWCC, CWT, RSPB and the applicant on this matter.

		<ul style="list-style-type: none"> • the proposal needs to be carried out for imperative reasons of overriding public interest; and • the necessary compensation measures can be secured.’ <p>CWT [REP3A-002] also considered the applicant should submit a without prejudice derogations case on the basis of a lack of evidence to support the conclusions of no AEol on the Mersey Estuary SPA and Ramsar site. CWT further stated that as the NBBMA will be fully reengineered and Cells 1, 2, and 5 will be lost, it considers the works to be compensation rather than mitigation and a without prejudice derogations case should therefore be provided.</p> <p>The issue of whether the NBBMA proposal should be classified as mitigation or compensation according to the HRA was discussed at ISH2 and the applicant subsequently provided case law examples at D4 outlining the applicant’s rationale for the NBBMA to comprise mitigation, rather than compensation. ExQ2 Q.2.5.7 and Q.2.5.8 [PD-016] seeks responses from NE, CWCC, CWT and RSPB on this matter in light of the further information provided at D4 [REP4-055].</p> <p>ExQ2 Q.2.5.4 [PD-016] requested that if agreement between NE, RSPB, CWCC and CWT cannot be reached on the potential for AEol to the Mersey Estuary SPA and Ramsar site, the applicant should submit a without prejudice derogations case to the examination by D6 (22 April 2026).</p>	
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3.4 Summary of examination outcomes in relation to adverse effects on integrity

- 3.4.1 To date in the examination, the matters identified in table 3.1 of this RIES in respect of disputed AEoIs remain unresolved. The ExA seeks responses from the applicant, NE, CWCC and CWT where indicated, to provide clarity on the outstanding matters.
- 3.4.2 The ExA included at D3 (28 January 2026) the option for the applicant to submit a without prejudice derogation case. The applicant provided the following response [REP3-031]:
- ‘Annex A of the Rule 8 letter states that a Habitats Regulations without prejudice derogation submission should be provided at D3, if required. NE has confirmed, in its response to the ExA’s Written Question Q5.1.3 [REP2-009], that it agrees with the applicant’s conclusions regarding likely significant effects and that there would be no AEoI of the Mersey Estuary SPA and Ramsar site’.
- 3.4.3 The ExA would like clarification on NE’s precise position on a number of matters it raised to avoid AEoI to the Mersey Estuary SPA and Ramsar site. ExQ2 Q2.5.2 [PD-016] seeks a precise position clarification on these matters from NE.
- 3.4.4 CWCC [REP3A-001], CWT [REP3A-002] and the RSPB [REP4-067] stated that AEoI could not be ruled out this stage and CWCC and CWT consider that a without prejudice derogations case should be provided. ExQ2 Q.2.5.4 [PD-016] requested that if agreement between NE, RSPB, CWCC and CWT cannot be reached on the potential for AEoI to the Mersey Estuary SPA and Ramsar site, the applicant should submit a without prejudice derogations case to the examination by D6 (22 April 2026).
- 3.4.5 The ExA’s understanding of the applicant’s, IPs and the ANCB’s current positions in relation to AEoIs is set out in Annex 1 of this RIES.

4 CONCLUDING REMARKS

- 4.0.1 This RIES is based on information submitted throughout the examination by the applicants and IPs up to D4 (5 March 2026), in relation to potential effects on European sites. It should be read in conjunction with the examination documents referred to throughout.
- 4.0.2 The RIES has identified gaps in the ExA's understanding of IPs' positions on Habitats Regulations and comments on the RIES will be of great value to the ExA in order to support a robust and thorough recommendation to the SoS. In particular, the ExA seeks:
- responses to the questions identified in sections 1 to 5 of this RIES (in particular tables 2.2 and 3.1); and
 - confirmation whether the ExA's understanding of screening and adverse effects conclusions at point of RIES publication (table (A.1.1 and A.1.2) in annex 1) is correct.
- 4.0.3 Comments on the RIES must be submitted for D6 (22 April 2026).

ANNEX 1 EXA'S UNDERSTANDING OF POSITION AT POINT OF RIES PUBLICATION

4.0.4 The tables in this annex summarise the ExA's understanding of the applicant's screening exercise and assessment of effects on integrity, and agreement with the relevant ANCB and IPs at time of publication of this RIES.

Key to tables:

C = Construction

O = Operation

D = Decommissioning

✓ = LSE or AEoI cannot be excluded

X = LSE or AEoI can be excluded

Y = Yes

N = No

? = Unclear

n/a = not applicable

Table A1.1: Mersey Estuary SPA and Ramsar site

Note that the conclusions recorded in the table below apply to impacts from the proposed development alone and in combination, unless otherwise stated.

Feature	Potential impact (C, O and D unless otherwise stated)	LSE?		AEoI?		
		Applicant's conclusion (alone or in combination)	Agreement with ANCB/IPs?	Applicant's conclusion (alone or in combination)	Agreement with ANCB?	Agreement with IPs?
Mersey Estuary SPA: <ul style="list-style-type: none"> • Teal (non-breeding) • Pintail (non-breeding) • Golden plover (non-breeding) 	Loss of FLL (C and O)	✓	Y [RR-012]	X	Y [REP4-069]	N – CWCC [RR-037], CWT [REP1-068], RSPB [REP4-067]
	Disturbance/displacement	✓	Y [RR-012]	X	Y [REP4-069]	N – CWCC [RR-037], CWT [REP4-075], RSPB [REP4-067]
<ul style="list-style-type: none"> • Dunlin (non-breeding) • Black-tailed godwit (non-breeding) 						

Feature	Potential impact (C, O and D unless otherwise stated)	LSE?		AEol?		
		Applicant's conclusion (alone or in combination)	Agreement with ANCB/IPs?	Applicant's conclusion (alone or in combination)	Agreement with ANCB?	Agreement with IPs?
<ul style="list-style-type: none"> • Redshank (non-breeding) • Waterbird assemblage (non-breeding) Mersey Estuary Ramsar site: <ul style="list-style-type: none"> • Dunlin (wintering) • Pintail (wintering) • Black-tailed godwit (passage) • Redshank (wintering and passage) 	Water quality degradation	✓	Y [RR-012]	X	Y [REP4-069]	Y
	Air quality	✓	Y [RR-012]	X	Y [REP4-069]	Y
	Glint and glare (O)	✓	Y [RR-012]	X	Y [REP4-069]	N – CWCC [RR-037]

Feature	Potential impact (C, O and D unless otherwise stated)	LSE?		AEol?		
		Applicant's conclusion (alone or in combination)	Agreement with ANCB/IPs?	Applicant's conclusion (alone or in combination)	Agreement with ANCB?	Agreement with IPs?
<ul style="list-style-type: none"> • Shelduck (wintering and passage) • Teal (wintering) • Waterbird assemblage (wintering) 						

Table A1.2: Midland Meres and Mosses - Phase 1 Ramsar site & Midland and Meres and Mosses - Phase 2 Ramsar site

Note that the conclusions recorded in the table below apply to impacts from the proposed development alone and in combination, unless otherwise stated.

Feature	Potential impact (C, O and D unless otherwise stated)	LSE?		AEol?		
		Applicant's conclusion (alone or in combination)	Agreement with ANCB/IPs?	Applicant's conclusion (alone or in combination)	Agreement with ANCB?	Agreement with IPs?
Midland Meres and Mosses - Phase 1 Ramsar site: <ul style="list-style-type: none"> Open water transition fen ('mere'), lowland raised bog ('moss') and associated habitats 	Loss of FLL (C and O)	X	Y [RR-012]	n/a	n/a	n/a
	Disturbance/displacement	X	Y [RR-012]	n/a	n/a	n/a

Feature	Potential impact (C, O and D unless otherwise stated)	LSE?		AEol?		
		Applicant's conclusion (alone or in combination)	Agreement with ANCB/IPs?	Applicant's conclusion (alone or in combination)	Agreement with ANCB?	Agreement with IPs?
<ul style="list-style-type: none"> Wetland invertebrate assemblage Wetland plant assemblage Midland Meres and Mosses - Phase 2 Ramsar site: Higher plants: <ul style="list-style-type: none"> Calamagrostis stricta Carex elongata Cicuta virosa Thelypteris palustris Lower plants: <ul style="list-style-type: none"> Sphagnum pulchrum 	Water quality degradation	X	Y [RR-012]	n/a	n/a	n/a
	Air quality	X	Y [RR-012]	n/a	n/a	n/a

Feature	Potential impact (C, O and D unless otherwise stated)	LSE?		AEol?		
		Applicant's conclusion (alone or in combination)	Agreement with ANCB/IPs?	Applicant's conclusion (alone or in combination)	Agreement with ANCB?	Agreement with IPs?
<ul style="list-style-type: none"> • Dicranum undulatum Species with peak counts in spring/autumn and winter: <ul style="list-style-type: none"> • Shoveler (passage) • Cormorant (winter) • Bittern (winter) • Water rail (winter) Nationally important invertebrate species occurring on the site:						

Feature	Potential impact (C, O and D unless otherwise stated)	LSE?		AEol?		
		Applicant's conclusion (alone or in combination)	Agreement with ANCB/IPs?	Applicant's conclusion (alone or in combination)	Agreement with ANCB?	Agreement with IPs?
<ul style="list-style-type: none"> • Limnophila heterogyna • Atylotus plebeius • Hagenella clathrate • Limnophila fasciata • Carorita limnaea • Glyphipteryx lathamella • Trichiosoma vitellinae • Eilema serica • Brachythops wusteneii • Pachinematus xanthocarpos 						

Feature	Potential impact (C, O and D unless otherwise stated)	LSE?		AEol?		
		Applicant's conclusion (alone or in combination)	Agreement with ANCB/IPs?	Applicant's conclusion (alone or in combination)	Agreement with ANCB?	Agreement with IPs?
<ul style="list-style-type: none"> • Sittcus floricola • Lampronia fuscata • Hybomitra 						