



**CHESHIRE WEST AND CHESTER COUNCIL**

**Frodsham Solar DCO - EN010153**

**Cheshire West and Chester Council's response to the  
Report on the Implications for European Sites for Frodsham Solar (RIES) (25 March 2026)**

**Submitted at Deadline 6 – 22 April 2026**

This document represents a table of responses by Cheshire West and Chester Council (**CWCC**) to the Examining Authority's RIES questions in respect of Frodsham Solar Ltd's (**the Applicant**) application for development consent for Frodsham Solar Farm DCO (**the Project**). CWCC's comments for Deadline 6 (22 April 2026) are entered in the right-hand column.

**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	CWCC comment
<b>Mersey Estuary SPA and Mersey Estuary Ramsar site</b>				

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. 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. 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. CWCC [REP3-046] requested that functionality should also reflect the Frodsham Windfarm (FWF) mitigation requirements namely:</p> <ul style="list-style-type: none"> <li>• creation and maintenance of low-sward grassland with shallow wader scrapes and seasonal open water across Cell 3.</li> </ul>	<p><a href="#">RQ1: Does CWCC consider that there is a potential for an AEoI 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?</a></p>	<p><b>Yes;</b></p> <p>a) CWCC have stated at various points including Paragraph 7.43 in CWCC comments on the Applicant’s comments on CWCC’s RR (REP3-046) and CWCC’s Responses to the Examining Authority’s (ExA’s) second written questions (ExQ2) (REP5-045) for Q2.2.9, that it does not consider the NBBMA fully functional, until the grassland and associated invertebrate resource is fully re-established, providing resource for all SPA qualifying species, rather than just those that are able to utilise the muddy wetland edges i.e. rather than immediately after NBBMA works are complete. In the RSPB Responses to the Examining Authority’s (ExA’s) second written questions (ExQ2) (REP5-065) Q2.2.9, “Importance of Cell 2 Grassland for SPA Species”, they go into this in more detail, stating some species require certain invertebrates for their food resource, which will be temporarily disrupted by the remodelling of Cell 3 for the new NBBMA. Therefore, “functional” cannot be considered to be immediately after works are finished and will take time to fully provide the food resource required for these species (golden plover and lapwing).</p> <p>There is a likely risk that if works begin on the solar development prior to the NBBMA becoming functional, that there will be a significant time period where impacts on SPA birds will not be fully mitigated for. Note that if Cell 2 were to be included within the NBBMA, as has been discussed, that this will provide</p>
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		<ul style="list-style-type: none"> <li>• 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.</li> </ul> <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. 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. CWCC's concerns remain unresolved at D4 [REP4-066].</p>		<p>(albeit a smaller area than the NBBMA) a continuous, established invertebrate resource and so the impact is reduced.</p> <p>b) The NBBMA will not provide for a period of time, the mitigation requirements of Cells 2 and 5 of the Frodsham Windfarm (Grassland provision element of Cell 3 aims and provision of a short sward grassland (between 5cm and 8cm) throughout the fields during the period between the beginning of October (i.e. at the end of the growing season) and the end of the following March).</p>
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<p>3.1.3</p>	<p>Potential loss of FLL – assessment methodology, data presentation and survey coverage – construction and operation</p>	<p>NE [RR-012] noted that table 4.2 of the HRA Report [APP-125] incorrectly compared peak numbers to national and international 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. 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. 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. 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</p>	<p><a href="#">RQ2: Can NE and CWCC provide an update on their positions on this matter in light of the applicant’s D4 submissions [REP4 012] [REP4-052]?</a></p> <p><a href="#">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?</a></p>	<p>RQ2: The Applicant states at Paragraph 2.7.14 [REP4-052] (Applicant's Response to Interested Parties' Deadline 3 and Deadline 3A Submissions) that survey coverage was adjusted between years so that all relevant areas of the Site were surveyed within the overall programme. It is not clear what this means and CWCC would assert that all areas of the Site should have been covered in each year, for a consistent and robust dataset. The Applicant also asserts that the core non-breeding period was consistently surveyed across three consecutive winters, however, this is only true for the western array area. All other areas of the site only had one or two years of non-breeding bird surveys. Also note that the full passage seasons were not surveyed.</p> <p>RQ3: Yes, CWCC maintains that the field survey effort was not adequate to sufficiently assess potential effects on passage qualifying species. Ideally, further non-breeding bird surveys should have been carried out, for the whole Site, through full passage periods. However, CWCC does note that some further desktop data was obtained for the passage seasons. Note that in the absence of robust survey data, that the precautionary principle should be engaged and the SADA development area reduced.</p> <p>Note that if Cell 2 were to be included within the NBBMA, as has been discussed, this would assist with this concern, as this would be in part enacting the precautionary principle by reducing the development area.</p>
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		<p>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. NE's D4 [REP4-069] submission confirmed the issue was resolved. CWCC's concerns remain unresolved at D4 [REP4-068].</p>		
3.1.5	<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. 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. 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. 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],</p>	<p>ExQ2 Q.2.2.9 [PD-016] seeks comments on the potential of incorporating Cell 2 into the NBBMA.</p>	<p>Please see CWCC response at (REP5-045) CWCC Response to Second Written Questions (ExQ2).</p>

		<p>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. The applicant's response [REP3-041] explained why it does not consider layout amendments necessary. NE's D4 submission confirmed the issue was resolved. CWCC's concerns remain unresolved at D4 [REP4-068].</p>		
3.1.6	<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. 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 [PD2-027] considered it likely that the site would remain in an improved condition for non-breeding birds compared with the current</p>	<p><a href="#">RQ5: Please can CWCC provide an update on its position on this matter in light of the applicant's D4 submission [REP4 052].</a></p>	<p>CWCC assumes that the ExA is referring to D3B2.07.04 of [REP4-052] Applicant's Response to Interested Parties' Deadline 3 and Deadline 3A Submissions. CWCC acknowledges that the Applicant states that they have no control of the land once it is handed back to the landowner.</p> <p>It is acknowledged that the DEMP includes reference to a programme agreed with CWCC if mitigation areas are to be lost after decommissioning, but as it is known that these areas will be effectively lost after decommissioning, as the Applicant has no control over the land at that point, this should be addressed at this stage. The impacts are also potentially significant enough that they require assessment at this stage.</p> <p>The Applicant should further assess impacts of decommissioning, taking into account the following;</p>

		<p>baseline. 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. 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]. CWCC's concerns remain unresolved at D4 [REP4-068].</p>		<p>As previously represented, at decommissioning, all SPA birds will be concentrated in one area, making the impacts of decommissioning different to construction, in that works near to the NBBMA will have more impact than they did during construction and opportunities for qualifying bird species to use other areas of the site if disturbed on the NBBMA are very limited at that stage.</p> <p>Phasing and timings of works could help to address the situation, with decommissioning works on Cells 1, 2 and 5 taking place in June-August, at least 2 years prior to handback of the NBBMA to the landowner. This will give birds a chance to recolonise the previously developed areas, which will go towards mitigation for the impact of loss of the NBBMA when handed back to the landowner.</p> <p>The SSSI is only a small part of the NBBMA and it is not clear why, if this area can be retained after the decommissioning period, then why can't the rest of the NBBMA be retained.</p>
3.1.8	Potential loss of FLL – assessment of canal pools – construction and operation	<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). CWCC [RR-037] also raised concerns over the optionality for the canal pools and how NZPW would be managed if removal did not occur. NE [RR-012] stated it expected</p>	<p><a href="#">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</a></p>	<p>CWCC raised the point about the removal of NZPW in REP3-046 (page 19):</p> <p>“ .....ii) Paragraph 4.2.6 in the Non-breeding Bird Mitigation Strategy of Appendix B to the oLEMP [REP1-028]</p> <p><i>“The Canal Pools will be removed and partially reinstated, to eradicate and assist with future management of NZPW”</i></p> <p>It is noted in paragraph 4.3 following that removal is a preferred option, but the thrust of the documentation suggests</p>

		<p>to provide further advice on potential management options for the canal pools, noting that an assent application would be submitted by the applicant. 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. 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. 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). NE [REP4-069] confirmed this matter is resolved. CWCC's concerns remain unresolved at D4 [REP4-068].</p>	<p>R13(2)(a) and DEMP R20(3)(d).</p>	<p>removal is a key part of the strategy (and it is not clear how management of NZPW would be achieved in the absence of removal, given that this has been an ongoing management issue for several years.”</p> <p>It should be noted (and hopefully clarified/corrected) that the current version of the SoCG with NE [REP5-033] states in point 10 in relation to the following issue</p> <p>“NE seeks further assessment of Canal Pools’ bird use and effective management of New Zealand Pigmy Weed”. that:</p> <p>“The Information to Inform Habitats Regulations Assessment has been updated to include additional assessment of the use of the canal pools by SPA birds. <b>The oNBBMS sets out the approach to the retention of the pools in the SSSI</b> and the requirement for the management of New Zealand Pigmy Weed. The requirement for an Invasive Non Native Species (INNS) Management Plan, and specifically a New Zealand Pygmyweed Control and Management Strategy for the NBBMA, is controlled via the oCEMP. NE references NE40, NE45 are resolved”. (<i>our emphasis</i>)</p> <p>However, CWCC note that in the current oNBBMS [REP5-039] it is stated that the Canal Pools will be <b>removed (and partially reinstated)</b>:</p>
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				<p>“Re-engineering of the Canal Pools</p> <p>The Canal Pools will be <b>removed and partially reinstated</b>, to eradicate and assist with future management of NZPW (See also Section 4.3). An appropriately experienced specialist contractor will be contracted in order to determine the likely most effective approach to eradication during re-engineering of the Canal Pools (including managing contamination risk).” <i>(our emphasis)</i>.</p> <p>Also, in the current Information to inform the HRA [REP4-013] at 3.2.11 it is confirmed:</p> <p>“A series of existing pools, referred to as ‘The Canal Pools’ will be <b>infilled</b> to support the eradication of New Zealand Pigmyweed (NZPW). Some of the Canal Pools are located within Mersey Estuary SSSI (see paragraph 3.2.17); these pools will be reinstated in their existing footprint and fitted with sluices to enable conservation focussed water-level control”. <i>(our emphasis)</i></p> <p>and at 8.2.32:</p> <p>“As part of the NBBMA creation, the Canal Pools will be removed and subsequently partially reinstated to allow for the eradication and long-term management of New Zealand Pygmyweed (NZPW), pursuant to a New Zealand pygmyweed control and management strategy, which is required to be developed by a DCO Requirement.”</p>
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				On the basis of the removal/infilling and partial reinstatement, and the with the controls set out in the draft DCO, CWCC consider that the initial concerns about the ability to eradicate and subsequently manage NZPW with the pools potentially being retained can be overcome and CWCC's concern is resolved.
3.1.9	Potential loss of FLL – suitability of NBBMA - construction and operation	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. 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. 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. The applicant's updated oNBBMS (within the oLEMP [PD2-023]) included a Water	<a href="#">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].</a>	There is no further meaningful explanation from the Applicant on this point at [REP4 052], so CWCC's position is unchanged; the NBBMA is not adequate and the methodology to calculate the area of mitigation required for the solar farm and windfarm mitigation is not robust.  Releasing windfarm mitigation land currently proposed for solar panels to expand the NBBMA, would follow the precautionary principle and allay some of CWCC's concerns.

		<p>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. 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. In its response [REP4-052], the applicant stated that Cleve Hill calculations are used only for the grassland-wader guild (lapwing, golden plover, curlew) and are not relied upon as the sole measure of mitigation adequacy. The applicant [REP4-052] explained that other SPA species are addressed through broader habitat design and management within the mitigation package. Further justification was also provided for why the NBBMA is considered sufficient. NE [REP4-069] reviewed the additional information and confirmed that its main concerns had been addressed, agreeing with the HRA conclusion [REP3-006] that FLL loss would not result in AEol, subject to</p>		
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		mitigation being secured in the DCO. CWCC [REP4-068] and CWT's [REP4-075] concerns remain unresolved at D4.		
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. 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>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</p>	<a href="#">RQ8: Please can CWCC provide an update on its position on this matter in light of the applicant's D3 submission [REP3 041].</a>	<p>In terms of specific further responses provided by the Applicant regarding noise in the D3 submission [REP3 041], paragraph 4.6 (RR7.13), CWCC's response is as follows;</p> <ol style="list-style-type: none"> <li>i. The Applicant seems to be suggesting that the proposed development will impact on flight lines, supporting CWCC's issue.</li> <li>ii. Although there will be uninterrupted flight lines from the NBBMA to Cell 6, these are not directly to the favoured part of Cell 6 (eastern corner where the lagoon is present) as currently and there will a reduced area of uninterrupted flight lines than are present currently. As previously represented, part of the embedded windfarm mitigation was to create an undeveloped gap between wind turbine arrays and provide undisturbed access from the Estuary to the rest of the Marsh. The Applicant has referenced examples of SPA birds flying over industrial areas at Seaforth Docks, at Seaforth Nature Reserve at AS-039, however, there are only 4 wind turbines between the Reserve and the Estuary directly to the west, with an estuarine SPA/SCA/RAMSAR directly connected to the north and buildings behind the reserve, rather than in-between the reserve and the Estuary. The large pools, which it is assumed are being used to compare to Cell 6, are only 200m from the Estuary with no developed land in-between (Cell 6 lagoon being approx. 850m from the</li> </ol>

		<p>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. 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. 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>Estuary, with proposed solar panels in-between). Therefore, this comparison is discounted.</p> <ul style="list-style-type: none"> <li>iii. Flight lines have been looked at in terms of general patterns from the Applicant's bird survey data (Appendix 8.1 Ornithology, so although the Applicant asserts flight lines are not regular, the CWCC response is based on the evidence provided by the Applicant, including the main flight patterns observed.</li> <li>iv. If most of the construction in Cells 1, 2 and 5 was in close proximity to the wind turbines, as the Applicant asserts, there would not be an issue, however, this is not the case. The SADA extends considerably beyond the eastern Frodsham Wind Turbine array, to the west and north towards the Estuary, in Cells 1, 2 and 5.</li> <li>v. It is stated that there is no evidence to indicate that construction activity would affect flight activity for commuting wetland birds. However, on the contrary, there is no evidence to say that this would not be the case. Therefore, the precautionary principle should be followed i.e. reduce the developable area in the areas in question. Note that if Cell 2 were to be included within the NBBMA, as has been discussed with the Applicant, this would reduce the area of land subject to construction from Cell 6 to the Estuary to approx. 380m, which would reduce the potential impact.</li> </ul>
3.1.12	Potential disturbance to overflying birds and access to other	CWCC [RR-037] and CWT [REP1-068] stated that the applicant has not sufficiently assessed behavioural impacts on birds, including access to habitats,	<a href="#">RQ9: Please can CWCC and CWT confirm whether the wording of</a>	The anti-reflective coating would assist in lessening any potential impacts on birds landing

	<p>habitats (scale, glint and glare, openness) impacts on designated sites and FLL – operation</p>	<p>potential glint and glare effects, narrowing of development-free corridors, and the overall scale of the solar development's influence on bird movements. 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 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. 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. The applicant's response [PD2-027] stated that NE agrees with its conclusions and maintains that glint and glare would not cause significant effects. 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. CWCC [REP3-046] reiterated that the applicant</p>	<p><a href="#">Requirement 6(1)(h) of the dDCO [REP4-004] is satisfactory in terms of the anti-reflective coating to be used on solar modules and to specify if they have outstanding issues in relation to this matter.</a></p>	<p>on panels and visual glint and glare impact on flight lines.</p> <p>-However, the wider issue still remains that the presence of solar panels may change flight lines and displace birds, due to the fact that they cannot utilise this land in conjunction with their target land and that the area as a whole is not as usable for birds as it was previously, with less contiguous habitat present. The Frodsham Windfarm embedded mitigation included an undeveloped gap between the turbine arrays to provide free access from the Estuary to the rest of the Marsh. There is a potential that birds are likely to choose to fly over uninterrupted flight paths, rather than those that have been developed.</p> <p>The Applicant has referenced examples of SPA birds flying over industrial areas at Seaforth Docks, at Seaforth Nature Reserve at AS-039, however, there are only 4 wind turbines between the Reserve and the Estuary directly to the west, with an estuarine SPA/SCA/RAMSAR directly connected to the north and buildings behind the reserve, rather than in-between the reserve and the Estuary. The large pools, which it is assumed are being used to compare to Cell 6, are only 200m from the Estuary with no developed land in-between (Cell 6 lagoon being approx. 850m from the Estuary, with proposed solar panels in-between). Therefore, this comparison is discounted.</p> <p>Note that if Cell 2 were to be included within the NBBMA, as has been discussed, this would reduce the area of developed land between Cell</p>
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		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. 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 raised by CWCC [REP4-068] and CWT [REP1-068] remain unresolved at D4.		6 to the Estuary to approx. 380m, which would assist with the potential impact.
3.1.13	Potential loss of FLL – vehicular recreational disturbance and displacement impacts on the functionality of the NBBMA – operation and decommissioning	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. 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	<a href="#">RQ10: Please can the applicant and CWCC provide an update on their positions on this matter. What further information would CWCC expect from the applicant within the examination?</a>	In response to the Applicant’s Technical Note on Major Replacement Works [REP1-034], CWCC identified that [REP 4-068] that:  “The remaining issue that has not been assessed, has already been raised in Appendix A CWAC Written Rep (REP1-048) which is that at the point of major replacement, the qualifying bird species will have significantly less areas on which to displace to if disturbed, due to the loss of Cells 1, 2 and 5 to development.”  CWCC also made the point that the:  “... level of major replacement of 50% and 6 months of work is too high, due to the fact that this will mean that some of the works will take 70 CWCC D4 - CWCC’s comments on Deadline 3

		<p>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. 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]. 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. NE [REP4-069] record this matter as resolved. 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 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>submissions place in the autumn or spring passage seasons, for which the Mersey Estuary is designated for and therefore campaigns should involve no more than 20% of the panel replacement at any one time, and no more than one campaign in every 24 months.”</p> <p>The inclusion of Cell 2 in the NBBMA (as now expected to be confirmed by the Applicant for Deadline 6) is a welcome addition with regard to providing additional area for birds to locate if displaced.</p> <p>CWCC has also represented on scheduling work to take place outside of sensitive non-breeding bird season (September to April).</p> <p>With regard to further information provided by the Applicant, it would assist to have more details of the elevational differences between the accesses used for construction and the cells/part of the NBBMA likely to be impacted.</p> <p>Inclusion of Cell 2 in the NBBMA ought to be addressed in the assessment.</p>
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3.1.14	Potential loss of FLL – impact of footpaths on the functionality of the NBBMA – operation	<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. 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. 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. 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]</p>	<p><a href="#">RQ11: Please can CWCC provide an update on its position on this matter in light of the applicant’s D4 submission [REP4 052].</a></p>	<p>CWCC’s position has not changed in terms of proposed Footpath B, proposed along the north-eastern and north-western boundaries of Cell 1, as previously represented, as there is no current footpath nearby and this is adjacent to an area well-used by birds according to the bird survey data (north-eastern Cell 1 boundary from turbine 15 northwards and the northern tip of Cell 1 that protrudes out into the River Weaver). In particular, the area of concern is along the northern half of the north-eastern boundary of Cell 1, past the wind turbine (T15) at field 1 and 2 and the northern tip of Cell 1 that protrudes out into the River, as shown in Figure 4 Proposed Development Areas - With Cells in the Habitat Regulations Assessment (REP3-006). As previously represented, screens are a mitigation measure when the impact is known, rather than a blanket measure when impacts are not known, because no baseline on usage of footpaths has been carried out. There is no footpath on or near to proposed Footpath B currently, so the precautionary principle means that the footpath should be reduced southwards to stop at turbine T15 and removed from the Manchester Ship Canal and be re-routed around less sensitive areas (e.g. between the two solar panel arrays proposed on Cell 1), as CWCC previously suggested at pages 29 and 30 of the CWCC Written Rep (REP1-048).</p> <p>As has been discussed, if Cell 2 were to be included within the NBBMA as suggested, there would be less concerns regarding Footpath A adjacent to Cell 3, as this is adjacent to Cell 2, giving an area for birds to flush to nearby, if disturbed by footpath users and enacting the</p>
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		<p>acknowledged the Goodship &amp; 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 explanation of how disturbance risks would be managed without needing to remove or realign the footpaths. 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. CWCC [REP3-046] disagreed with the applicant's position, stating that applying Goodship &amp; 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. 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>precautionary principle for this particular element. Concerns remain if this is not the case.</p>
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3.1.16	Assessment of passage redshank as a qualifying feature of the Mersey Estuary SPA – all phases	<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 AEoI 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 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</p>	<p><a href="#">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].</a></p>	<p>Part of the Applicant's statement in response to ExA 1<sup>st</sup> questions at Q5.1.7 (AS-038), that the construction programme will be sequenced so that all higher-noise activities within the Western SADA (Cells 1, 2 and 5) are undertaken outside the identified sensitive non-breeding bird sensitive period (November–February), does not consider the passage seasons (and explicitly excludes them) so it is not certain how this will account for Redshank on passage. It is this kind of issue were separate assessment of wintering and passage qualifying bird species, as requested by CWCC, would have assisted.</p> <p>Neither will the NBBMA will be ready for the passage season; as stated in 2.4.4 of the Outline Non-breeding Bird Mitigation Strategy (REP5-039), the NBBMA will take approx. 6 months to construct, so will inevitably not be available for some of the passage season.</p> <p>-The possible inclusion of Cell 2 in the NBBMA does help this issue, as Redshank were recorded using Cell 2 in the wintering period and possibly may extend their usage of the new NBBMA (designed to be more attractive to SPA qualifying birds in <b>spring</b> season) in conjunction with Cell 2, during passage periods. However, this does not resolve the issue of assessment and construction period controls, as above.</p>
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		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. Matters raised by CWCC remain unresolved at D4 [REP4-068].		
3.1.17	Potential loss of FLL – management of the NBBMA – all phases	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. 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. 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. 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. 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	ExQ2 [PD-016] seeks CWCC, CWT, RSPB and NE’s views on this matter.	Please see CWCC response at (REP5-045) CWCC Response to Second Written Questions (ExQ2).

		<p>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> <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. 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. The applicant [REP4-052] stated that the updated NBBMS now includes regular monitoring of bird use, including SPA species. 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. 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. RSPB [REP4-067] confirmed willingness to take on the management role subject to an appropriate agreement and funding</p>		
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		<p>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"> <li>• AMP agreed with RSPB, fully funded and enforceable;</li> <li>• clear habitat objectives, water-level management, disturbance-reduction measures;</li> <li>• permanent predator exclusion fencing; Report on the Implications for European Sites for Frodsham Solar 30</li> <li>• increased wet features in line with best practice, assurance of sufficient freshwater availability; and</li> <li>• incorporation of all of Cell 2 into an expanded NBBMA.</li> </ul> <p>RSPB [REP4-067] stated that, subject to these requirements, an enlarged NBBMA could support the applicant's conclusion of no AEoI on the SPA and provided examples of successful RSPB managed mitigation sites. 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 –	NE [RR-012], CWCC [RR-037], and CWT [RR-019] raised concerns about potential overlap between the Runcorn Spur Pipeline footprint and the NBBMA. NE [RR 012] noted that although the in-combination assessment considered	ExQ2 [PD-016] seeks the applicant's and IPs views on how this matter can be resolved.	Please see CWCC response at (REP5-045) CWCC Response to Second Written Questions (ExQ2).

	<p>construction and operation</p>	<p>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. NE [RR 012] and CWCC [RR-037] also queried how any agreements between developers would be secured. 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 the fact that wetland creation in Cell 3 does not depend on groundwater inflow from the north. 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. The applicant's response [PD2-027] set out three sequencing scenarios:</p>		
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		<ul style="list-style-type: none"> <li>• <b>Scenario 1:</b> Pipeline constructed before the NBBMA;</li> <li>• <b>Scenario 2:</b> Pipeline constructed concurrently with the NBBMA; and</li> <li>• <b>Scenario 3:</b> Pipeline constructed after the NBBMA (not assessed in the Runcorn Spur Pipeline HRA, which assumes works in Cells 1–3 occur before NBBMA creation).</li> </ul> <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 AEol on the SPA, secured through its own planning permission. 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. 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</p>		
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		<p>cumulative effects if appropriate mitigation were required of the pipeline developer.</p> <p>Concerns raised by CWCC and CWT remain unresolved at D4.</p>		
3.1.19	<p>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>	<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. 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</p>	<p>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.</p>	<p>Please see CWCC response at (REP5-045) CWCC Response to Second Written Questions (ExQ2).</p>

		<p>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"> <li>• there are no feasible alternative solutions that would be less damaging or avoid damage to the site(s);</li> <li>• the proposal needs to be carried out for imperative reasons of overriding public interest; and</li> <li>• the necessary compensation measures can be secured.'</li> </ul> <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</p>		
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		<p>therefore be provided. 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]. 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).</p>		