



Frodsham Solar

Applicant Response to Interested Parties D5 Submissions

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1.0 INTRODUCTION

1.1 Purpose of this Document

1.1.1 This document provides the Applicant's responses to the submission made by Interested Parties at Deadline 5, as part of the examination of the application for development consent for the proposed Frodsham Solar project (the 'Proposed Development').

1.1.2 This response is issued at Deadline 6 in accordance with the ExA's Rule 8 Letter (PD-008) issued on the 16th December 2025.

1.2 Approach

1.2.1 The Applicant has provided responses to the submissions made by the following Interested Parties at Deadline 5:

- i) Cheshire West and Chester Council (CWCC or 'the Council'). Documents referenced in this report:
 - a. CWCC Deadline 5 submission letter 26 March 2026 **[REP5-046]**
 - b. CWCC Response to Second Written Questions (ExQ2) **[REP5-045]**
 - c. CWCC comments on Deadline 4 Submissions (26 March 26) **[REP5-048]**
- ii) Frodsham Town Council **[REP5-050]**
- iii) Cheshire Wildlife Trust **[REP5-051]**
- iv) Environment Agency **[REP5-052] to [REP5-054]**
- v) Essar Oil (UK) Limited **[REP5-055]**
- vi) Natural England **[REP5-056]**
- vii) National Grid Electricity Transmission PLC **[REP5-057] & [REP5-058]**
- viii) National Highways **[REP5-059]**
- ix) Canal & River Trust **[REP5-060]**
- x) Frodsham Wind Farm Limited **[REP5-061]**
- xi) INOVYN Chlorvinyls Limited **[REP5-062] & [REP5-063]**
- xii) SP Energy Networks **[REP5-064]**

xiii) The Royal Society for the Protection of Birds (RSPB) **[REP5-065]**

xiv) WSP UK Ltd on behalf of Liverpool Bay CCS Limited **[REP5-066]**

1.2.2 The documents submitted with the application and at previous examination deadlines are referenced using the reference number assigned by the Planning Inspectorate (PINS) i.e. [APP-XXX].

2.0 APPLICANT'S COMMENTS ON THE COUNCIL'S DEADLINE 5 SUBMISSIONS

2.1 Overview

2.1.1 The subsequent sections of this report respond to the following submissions made by the Council at Deadline 5

- i) CWCC Deadline 5 submission letter 26 March 2026 **[REP5-046]**
- ii) CWCC comments on Deadline 4 Submissions (26 March 26) **[REP5-048]**
- iii) CWCC Response to Second Written Questions (ExQ2) **[REP5-045]**

2.1.2 The Council also submitted a Green Belt summary table, noting that it still had to prepare responses in relation to ecology. Following Deadline 5 the Council provided an updated table to the Applicant. A final version which compiles the comments from the Applicant and the Council has been submitted into the examination **[EN010153/DR/8.46 P03]**.

2.1.3 The Applicant has been discussing outstanding matters with the Council since Deadline 5. One matter which has specifically been raised by the Council is in relation to otters and the discussion provided at paragraph 2.7.30 of REP4-052 relating to the impact of predator fencing around the fishing ponds which could restrict their food resource. In this paragraph the Applicant discusses how the ditches across the remainder of the Site, of which there is a significant number, would be retained and the habitats alongside them enhanced and that new scrapes would be created in proximity to the Lum. On this basis, it is considered that the retained access to waterbodies, and the habitat and associated water quality enhancements, would mitigate for any reduction in food resource loss due to the access restrictions in the NBBMA.

2.2 Applicant's Comments on CWCC Deadline 5 submission letter 26 March 2026

Action Point 33): CWCC to provide response on mitigation and compensation case law from the applicant.

2.2.1 The Applicant notes that Action Point 33 primarily arose as part of the discussion of the approach to the Habitats Regulations in respect of the NBBMA. It therefore welcomes the Council's update that it agrees that for HRA purposes the NBBMA is mitigation.

2.2.2 The Applicant's position is that outside of HRA, the NBBMA should be considered as mitigation in any event for the same reasons. The fact that the Applicant's proposals supersede and improve upon the Frodsham Wind Farm's proposals does not make them compensation.

2.2.3 The Applicant considers that its position is clear in respect of what it has proposed. No compensation is proposed, and the measures set out in the Design Parameters Statement, Works Plans, and the various Management Plans constitute, in the main, mitigation.

2.2.4 The exceptions to this are the enhancements created by the Proposed Development, which are set out in section 5.3 and 5.4 of the Planning Statement [REP5-014]. In respect of ecological matters, Chapters 7 [APP-040] and 8 [APP-041] of the ES clearly identify which measures are considered to be enhancement, as separate from mitigation.

Action Point 39): Update interaction between any DCO and any permission for the Runcorn spur in respect of the concern relating to the NBBMA

2.2.5 The Applicant notes that point 2 made by the Council under this topic indicates that the Council is in agreement with the approach being advocated by the Applicant, that is, in the event of a delay to the pipeline works not being completed ahead of the NBBMA that a robust mechanism is required to

prevent the pipeline works progressing in this ‘after scenario’ without appropriate HRA. The Applicant considers that the imposition of planning conditions on the pipeline permission, such as those suggested by the Applicant, would provide this robust mechanism.

- 2.2.6 In relation to point 4 made by the Council the Applicant has made its position clear in its Deadline 5 submissions (and its Deadline 6 submission below) that the proposed DCO requirement is not an appropriate way to resolve this matter.
- 2.2.7 In relation to point 5, the Council is suggesting that a tripartite agreement under section 106 of the Town and Country Planning Act 1990 could be used. The Applicant has sought LBCCS views on this approach, and LBCCS has rejected it. LBCCS do not consider a legal agreement to be the appropriate way ahead and have stated they would not enter into one.
- 2.2.8 On this point, the Applicant also notes the position set out in the National Planning Practice Guidance on the Use of Planning Conditions (paragraph 11): *It may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under section 106 of the Town and Country Planning Act 1990. In such cases the local planning authority should use a condition rather than seeking to deal with the matter by means of a planning obligation.*
- 2.2.9 LBCCS has confirmed to the Applicant that it has proposed planning conditions to the Council to seek to resolve this matter, and that the conditions are similar in approach to those put forward by the Applicant at Deadline 5. LBCCS has also confirmed to the Applicant that it will be making clear in its Deadline 6 submissions that it considers that the imposition of conditions on its consent is an appropriate way forward to ensure that no adverse effects on integrity will be caused.

2.2.10 As such, the Applicant continues to consider that the imposition of such conditions is (a) lawful, (b) required and crucially (c) can be presumed by the ExA to be something that will be applied to the LBCCS consent if it is granted.

Planning Performance Agreement – Post decision for discharging requirements

2.2.11 The Applicant is considering the draft PPA but at this stage sees no reason why it should not be able to complete in due course.

2.3 CWCC comments on Deadline 4 Submissions (26 March 26)

2.3.1 The Council submitted comments on a number of the Applicant’s application and control documents at Deadline 5, presented across a series of tables. In this section, the Applicant has responded only to those comments considered to raise substantive matters warranting a response.

Table 2-1: REP4-004 3.1 Draft Development Consent Order - P06

Ref	Document Para number	Document summary point	CWCC comments	Applicant’s Comments
			Please cross refer to CCWCs Deadline 3 submission [REP4-068] where necessary:	
D5.1.1.01	Part 1 Preliminary	Interpretation	<p>Part 1 Preliminary – definition of permitted preliminary works (PPW)</p> <p>CWCC note the applicant’s comments on PPW [REP4-052] referring to site clearance being controlled via the CEMP under Requirement 12(4). However, 12 (3) only refers to the ‘construction of any phase of the authorised development’ and CWCC is concerned that control over site clearance would not be triggered even though the carrying out of PPW would constitute ‘commencement’, and it would be covered by the CEMP, it would not fall within control without some amendments to 12(3).</p> <p>Possible re-wording might be (in bold):</p> <p><i>(3) The implementation and/or construction of any phase of the authorised development and any associated works (including site</i></p>	<p>The changes to Requirements 12 and 18 were made at Deadline 5.</p> <p>The Applicant is not fully clear on CWCC’s comment in respect of the Lum, but notes that the Lum is part of the authorised development.</p> <p>As such the various Requirements and approaches to permitted preliminary works would apply to that area in the same way as other parts of the Site.</p> <p>The Applicant does not consider it necessary to move site clearance to the top of the list of the PPWs.</p> <p>The Applicant also does not consider it is necessary to set out that site clearance (and the controls upon it) must take place before the other PPWs.</p>

Ref	Document Para number	Document summary point	CWCC comments	Applicant's Comments
			<p>clearance) must be carried out in accordance with the approved construction environmental management plan for that phase.</p> <p>Following discussion with the Applicant it is understood that rather than amending 12(3) as above, the approach would be (similar to Requirements 9 and 17) to add to Requirement 12(4) that:</p> <p><i>“phase” includes any permitted preliminary works comprising above ground site preparation for temporary facilities for the use of contractors and site clearance (including vegetation removal and demolition of existing buildings and structures), receipt and erection of construction plant and equipment to be utilised for Work No. 6C, and remedial work in respect of any contamination or other adverse ground conditions where this relates to Work No. 6C within a phase”</i></p> <p>The Applicant has indicated that similar amendments would be made to Requirement 18(4) in relation to PPW's.</p> <p>The Applicant has not yet responded to the suggestion that Requirement 12 (4) referring to elements of PPW as being commencement of development for the NBBMA, be extended to The Lum (currently</p>	<p>This is because, to the extent that any form of clearance is practically necessary before the other PPWs are carried out, the controls in the DCO kick in. As such, for example, the CEMP will be required to be approved before that site clearance can happen.</p> <p>As such, clearance of the site that is necessary in locations where PPWs are to take place, will be controlled to enable the clearance, and then the PPWs to take place.</p> <p>The Council's suggestion could have the effect of, for example, the filling of potholes on the Main Access Route not being able to be possible until site clearance at the other end of the Site has taken place. This is not necessary in environmental terms.</p>

Ref	Document Para number	Document summary point	CWCC comments	Applicant's Comments
			<p>in Work No. 6A but preferably denoted as a new Work No. 6D).</p> <p>In the definition of permitted preliminary works it is also suggested (k) site clearance be moved to the top of the list, and that the following works be only carried out after site clearance of the relevant phase or area of PPW:</p> <p>(d) receipt and erection of construction plant and equipment (<i>i.e. not just for Work No 6C as provide for in 1.2.1 of REP4-014</i>);</p> <p>(g) remedial work in respect of any contamination (<i>i.e. not just for Work No 6C as provide for in 1.2.1 of REP4-014</i>);</p> <p>(h) diversion and laying of apparatus;</p> <p>(l) access and highway improvements to create streets, roads, haul roads and access points.</p> <p>This is to ensure that the above works are not carried out in advance of the protections provided by triggering site clearance under the PPW, to the detriment of habitat requirements.</p> <p>CWCC's concerns in relation to the carrying out of PPW cover more than just the NBBMA.</p>	

Ref	Document Para number	Document summary point	CWCC comments	Applicant's Comments
D5.1.1.02	Part 3	Street Works	<p>Article 10 'power to alter layout'</p> <p>CWCC see no reason to include works outside the Order Limits in this DCO as this appears unnecessary.</p> <p>Paragraph 4.1.5 of the Outline CTMP [REP4-024] is clear that there <i>"is no requirement for any works to be undertaken to the public highway to facilitate access to the Site"</i>.</p> <p>Refer to CWCC's earlier comments in Appendix A of its Written Representations [REP1-048] and ISH1 agenda item 4a).</p>	<p>The Applicant's position on this matter is set out in its Summary of Oral Submissions at ISH1 [REP1-033].</p> <p>This is a precedented approach. Whilst at this stage the Applicant considers it unlikely that works will be required to the public highways outside of the Site, the detailed construction methodology may end up requiring it, and this provision allows for the DCO to be the one stop shop that the Planning Act 2008 regime was created for.</p> <p>The Council will approve any works that are so required, and so will have control over how they are carried out.</p>
D5.1.1.03	Schedule 1	Authorised development	<p>Work package 6. The biodiversity enhancement area by Marsh Farm and the Lum areas should be included in this work package, as previously represented at Item 4f of Appendix A CWCC Written Rep [REP1-048]:</p> <p>The Lum and Biodiversity Enhancement Area by Marsh Farm should be clearly included as separate Work packages, as they are acknowledged mitigation areas and should be controlled as such. this should either be a "Work Package 6D" or Work Package 6C should be expanded to include those. This is so that areas that the applicant is reliant on for non-breeding bird mitigation are secured.</p>	<p>The Applicant does not believe this is necessary. Marsh Farm and the Lum are just some of the areas that are the subject of the Applicant's green infrastructure proposals.</p> <p>The descriptions in Work No. 6A adequately cover what is proposed in those areas, and so the creation of a Work No. 6D would be duplication and is not necessary.</p>

Ref	Document Para number	Document summary point	CWCC comments	Applicant's Comments
			<p>CWCC note the Applicant's comments in REP3-041 in relation to CWCC's recommendation over the addition of new Work No 6D to include creation and maintenance of habitat works (new scrapes) by the LUM (Fig 2.2. Indicative Operational Layout) of APP-109 and new wetland area adjacent to the NBBMA (between fields A01 and A02)). CWCC maintain that identifying these habitat works under a separate Work Package 6D would be preferable. For example, it would assist in identifying that PPWs in connection with Marsh Farm and the LUM areas should be treated as commencement of development for the purposes of Requirement 12 (4).</p> <p>See CWCC's response to ExA Q2 (Q2.11.2) relating to PPWs.</p> <p>CWCC considers the drafting should be made clearer; and it is helpful to have the mitigation works listed separately from other works. A breakdown of the various mitigation areas in Work No. 6 would help achieve this.</p>	
D5.1.1.04	Schedule 2	Requirement 2 Commencement	<p>As submitted at Deadline 4 - CWCC notes the Applicant's Response to ExA First Written Questions (Q11.3.1) [REP2-005].</p> <p><i>"The Applicant does not consider that "begin" should be replaced with "commence". The use of the word "begin" is deliberate to</i></p>	<p>The Applicant maintains its position. It also notes that the time limit being related to 'begin' rather than 'commence' is also contained in the DCO for the Lower Thames Crossing project, one of the largest projects in the UK and one that the</p>

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			<p><i>ensure that the development consent can be kept alive where only permitted preliminary works have been undertaken, which would not be possible if 'commence' was used. This had precedent in the recent Cory Decarbonisation Project Order 2025, amongst others. The Applicant notes for context, however, that begin should be read in the context of section 155 of the Planning Act 2008, which defines development beginning by reference to a 'material operation' being carried out. As such, the development can be begun by permitted preliminary works, but those works in and of themselves must be a material operation. As such, the development would not be kept be alive by trivial works."</i></p> <p>The explanation at 5.2.7 of REP3-004 is noted, but CWCC's view is that the development consent should only be kept alive by virtue of commencement, and that carrying out PPW should not be sufficient. The background to this development is CNP and an urgent need for energy infrastructure, allowing a consent to be kept alive in this way seems to be counter to the context that the project is being considered against.</p>	<p>Government has consistently identified as key for national economic growth.</p> <p>The Applicant suggests that if its proposed approach can be acceptable for projects such as that, it should be acceptable for the Proposed Development.</p>
D5.1.1.05	Schedule 2	Requirement 2 Commencement (cont'd)	With regard to CWCC's earlier point about the Applicant providing notice of the date of commencement of development. This would	This has been added to the OCEMP at paragraph 2.4.7 [REP5-021] .

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			<p>assist in determining whether the development consent has been 'kept alive', rather than being an additional administrative burden (as referred to in REP3-041).</p> <p>Following discussion with the Applicant it is understood there will be an amendment to the oCEMP to require that the CEMP will require that notice of commencement of PPWs, NBBMA, SMA and SADA will be given to the LPA.</p>	
D5.1.1.06	Schedule 2	Requirement 3 Phasing and Final Commissioning	<p>Following discussion with the Applicant over the Council's comment from Deadline 3 that Requirement 3 be amended to "add requirement for notification of the gross electrical output capacity / export capacity of each phase (and the cumulative total) to be confirmed as part of the notice" it is understood there will be a line added to the oOEMP, rather than the DCO, to this effect.</p> <p>One example of the benefits of including such provision is to provide transparency to the local community, which in turn is liable to be useful in relation to the operation of the community benefit fund.</p>	This has been added to the OOEMP at paragraph 1.1.6 [REP5-023] .
	Schedule 2	Requirement 6 Detailed design approval	<p>CWCC's only outstanding comment in relation to Requirement 6 is the power cables, with a view to ensuring that these are in conduits, or some other arrangement to facilitate their removal on decommissioning. It is acknowledged that the Applicant has</p>	This is provided for in the OCEMP at paragraphs 4.1.70 to 4.1.75 [REP5-021] .

Ref	Document Para number	Document summary point	CWCC comments	Applicant's Comments
			<p>confirmed in REP3-041 (referring to REP1-033 as well) that DC cabling is installed in conduits. However, the preference would be to include provision for the details to be included as a detailed design approval requirement (and for all cabling).</p> <p>Following discussion with the Applicant it is understood that a line will be added to the oCEMP to include details of the construction methodology for the cabling and including information on how that methodology has sought to take account of the potential future requirement for decommissioning.</p>	
D5.1.1.07	Schedule 2	Requirement 8 Permitted preliminary works (PPW)	<p>CWCC considers that further control over the carrying out of PPW during sensitive periods/ months requires further clarification / discussion with the Applicant. The sensitive periods extend beyond those stated in the Applicant's submissions i.e. works between September and March should be restricted.</p>	<p>The Applicant considers that there are sufficient controls in place within Appendix 2-3, which requires a CEMP and LEMP to be prepared where there is to be clearance of any vegetation. Limitations are also set out in relation to protected species within Table 1 of Appendix 2-3 within the Terrestrial and Ornithology row.</p>
D5.1.1.08a	Schedule 2	Requirement 9 Landscape and ecology management plan (LEMP)	<p>In REP3-041 the Applicant stated the proposal was to insert drafting in Requirement 9(2)(g) for greater clarity, so that it refers to "measures to achieve a net gain in biodiversity".</p> <p>As referred to in Deadline 4 submission, and the Applicant's Response to ExA First Written Questions (Q11.3.7).</p>	<p>Noted. The Applicant considers that the position is clear. Where a PPW does not require a CEMP, the survey requirements are set out in Appendix 2-3. Where the PPWs to require a CEMP to be approved, the OCEMP sets out the survey requirements.</p>

Ref	Document Para number	Document summary point	CWCC comments	Applicant's Comments
			<p><i>"The Applicant confirms that the reference in Requirement 9(2)(g) does not mean that ecological surveys must be undertaken prior to permitted preliminary works.</i></p> <p><i>Some ecological surveys may be carried out as part of the permitted preliminary works (PPW). For all PPWs, with the exception of 'the temporary display of advertisements', Appendix 2-3 of the ES [REP1- 012] requires badger, otter and water vole surveys where the PPW lies within specified distances of badger setts or watercourses. For certain PPWs there is a requirement for a CEMP or LEMP to be prepared prior to undertaking works. In these instances ecological surveys must be undertaken in order to inform the preparation of these plans. Hence, surveys would be undertaken prior to these PPWs being carried out."</i></p> <p>CWCC consider that it is important to set out which PPW will need which surveys, and for this to be approved by CWCC.</p> <p>Following discussion with the Applicant it is understood that detail has been / or will be added to the oCEMP.</p> <p>The Applicant responded to say:</p> <p><i>"That change to Requirement 9(2)(g) has got lost in version control, and will be made given the response to the FWQ.</i></p>	

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			<p><i>On the surveys point, the requirements for surveys is set out.</i></p> <p><i>It is either in Appendix 2-3, or it is set out in the CEMP, and R12 sets out the PPWs which require the CEMP. If CWCC considers that they are needed for other aspects, please advise for which ones."</i></p> <p>CWCC intend to discuss this further with the Applicant.</p>	
D5.1.1.08b	Schedule 2	Requirement 9 Landscape and ecology management plan (LEMP)	<p>It is stated in paragraph 4.4.1 in the NBBMS [REP3-003], that on-going conservation management of the NBBMA is secured through this management strategy and its implementation pursuant to a Schedule 2 Requirement 9(j) of the draft DCO. However, there is no reference to an Adaptive Management Plan in this Schedule 2 Requirement 9(j) of the draft DCO and this should be clearly amended.</p>	<p>This is not required. Requirement 9(2)(k) requires the management regime for the NBBMA to be approved by CWCC, to be in substantial accordance with the ONBBMS, which requires that management to be adaptive.</p>
D5.1.1.09	Schedule 2	Requirement 12 Construction environmental management plan (CEMP)	<p>See paragraph 3.4 of CWCC's WR (REP1-048) regarding: 12 (2) adding the following: pre-construction updated habitat surveys; habitat constraints plan and precautionary measures.</p> <p>The Applicant has proposed details in the oCEMP; and CWCC intend to discuss this further with the Applicant to ensure it provides sufficient details of the pre-construction surveys needed, updated habitat</p>	<p>The Applicant considers the requirements for surveys are set out as necessary in the OCEMP.</p>

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			constraints plan and precautionary measures.	
D5.1.1.10	Additional requirement	Precedent - The Fenwick Solar Farm Order 2026 Schedule 2 Requirement 4	<p>CWCC acknowledge that the CEMP [REP4-027] makes provision for a community liaison group. However, the preference would be include a specific requirement for this. There is precedent via The Fenwick Solar Farm Order 2026 (Schedule 2 - Requirement 4):</p> <p><i>4.—(1) Prior to the commencement of the authorised development the undertaker must submit to the relevant planning authority for approval the terms of reference for a community liaison group whose aim is to facilitate liaison between representatives of people living in the vicinity of the Order limits and other relevant organisations in relation to the construction of the authorised development.</i></p> <p><i>(2) The community liaison group must be established prior to commencement of the authorised development and must be administered by the undertaker, and operated, in accordance with the approved terms of reference.</i></p> <p><i>(3) The community liaison group is to continue to meet until the date of final commissioning of the final part of the</i></p>	<p>The Applicant notes that there are also many precedents where there has not been a CLG requirement on the face of the DCO.</p> <p>The need for a CLG is clearly set out in the OCEMP (section 3.2) and the process for dealing with complaints is set out in pages 34-35.</p>

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			<p><i>authorised development unless otherwise agreed with the relevant planning authority.</i></p> <p>It is suggested that the wording be amended to include provision for a complaint handling protocol as well.</p> <p>It is understood that the Applicant does not propose to add this as a requirement. CWCC consider that given local community requests to be involved in the process (e.g. at ISH2), explicit provision in the DCO would be preferable.</p> <p>Other examples include 'The Tillbridge Solar Order 2025' (requirement 4) and 'The West Burton Solar Project Order 2025' (requirement 4).</p>	
D5.1.1.11	Schedule 2	Requirement 13 Operational environmental management plan (OEMP)	<p>Further to paragraph 3.4 of CWCC's WR (REP1-048] CWCC remain concerned at the potential scale and duration of replacement activities, and consider that the scale should be restricted to no more than 25% replacement in any 2 year period, and that the timing of such replacements be controlled to avoid sensitive seasons; with notification/approval triggers relating to the location, season and frequency of works above a given level.</p> <p>The Applicant's response to concerns over major replacement activity are set out in</p>	<p>Paragraph 2.4.10 of the OOEMP set out that that replacement works would be scheduled to avoid activities closest to the NBBMA during the core non-breeding bird period, noting that controls are in place within Tables 5-9, preventing certain works from being undertaken within specified distances of the NBBMA during sensitive periods.</p> <p>Furthermore, the Site is large enough to ensure that the scheduling of replacement campaigns can be undertaken to avoid impacts on sensitive areas during sensitive periods.</p> <p>The Applicant has invited CWCC to put forward specific proposals for any further clarity it wishes</p>

Ref	Document Para number	Document summary point	CWCC comments	Applicant's Comments
			<p>Items 5a (major replacements during the operational phase) and 5b(i) (access track impacts, removal and reinstatement) of the Written Summary of Applicant's Oral Submissions at Issue Specific Hearing 1 (ISH1) [REP1-033]. Whilst the Outline Operational Environmental Management Plan (oOEMP) [REP4-028] provides operational controls for maintenance and periodic replacements CWCC concerns above remain.</p>	<p>the Applicant to consider for the OOEMP, but considers that CWCC's suggested control is not needed, particularly given the conclusions of the Technical Note on Major Replacement Works [REP1-034].</p>
D5.1.1.12	Schedule 2	Additional requirement	<p>As referred to in the Deadline 4 submission, CWCC consider that an additional requirement relating to permissive paths would be appropriate; The Oaklands Farm Solar Park Order 2025 contains a requirement which could be adapted.</p> <p>The phasing of completion and the minimum number of days that the paths be accessible should be tailored to the Frodsham Solar scheme, and preferably less than 12 months and more than 264 days in the wording below.</p> <p>“Permissive path</p> <p><i>61.—(1) Where a phase of the authorised development includes the provision of a permissive path, the permissive path must be provided and open to the public within [12] months of the date of final commissioning in respect of that phase.</i></p>	<p>Updates to the OLEMP in this regard were made at Deadline 5 [REP5-031].</p>

Ref	Document Para number	Document summary point	CWCC comments	Applicant's Comments
			<p><i>(2) No phase of the authorised development which includes a permissive path may commence until written details of the route and maintenance provisions have been submitted to and approved by the local planning authority as part of the detailed design approval required by requirement 5(1).</i></p> <p><i>(3) The permissive path must be maintained and access by the public permitted for [264 days] a year (subject to closures for maintenance or emergencies) until commencement of decommissioning of the authorised development pursuant to requirement 22 (decommissioning and restoration)."</i></p> <p>Following discussion with the Applicant it is understood that (in conjunction the their response on ExAQ2 (Q2.11.8) the oLEMP will be updated with more detail on permissive paths.</p>	
D5.1.1.13	Schedule 2	Additional requirement	<p>CWCC maintain its preference for an Unexpected Contamination requirement as set out in response to ExQ1 (Q.3.2.12) [REP2-005].</p> <p>However, CWCC accept that unexpected contamination can be dealt with via an Unexpected Contamination Protocol in the oCEMP, oOEMP and oDEMP.</p>	<p>The Applicant notes that the requirement for a protocol to be produced is set out in the DCO Requirements. The detail of what that involves is set out in the OCEMP, OOEMP and ODEMP, and it is that detail which does not need to be repeated on the face of the DCO.</p>

Ref	Document Para number	Document summary point	CWCC comments	Applicant's Comments
D5.1.1.14	Schedule 2	Requirement 19 Skills and supply chain	<p>As noted in the Deadline 4 submission, CWCC consider that there is an issue with the timing of submission / approval. To be effective the plan needs to be implemented well before commencement of development. An alternative might be to require submission for approval [6] months prior to intended commencement of PPW or development. Submission needs to leave sufficient time for both the approval process, and implementation of the plan prior to commencement.</p> <p>Following discussion with the Applicant, it is understood that there is no intention to vary the requirement, with the explanation given in REP4-052. The explanation is noted, but it is considered that revised drafting would raise the profile/need for early / proactive engagement to make the most of the opportunities presented.</p>	<p>As set out in its previous submissions, the Applicant's view is that this is not required or precedented as, inherently, the Applicant will need to have begun the work on developing its proposals on skills and supply chain matters before submitting the plan, as otherwise the plan would not be able to have the detail setting out what is proposed.</p> <p>Having discussed this further with CWCC, the Applicant has updated the Outline Skills, Supply Chain and Employment Plan [APP-142] at Deadline 6 to make clear that the detailed plan submitted for approval must include a description of how it has developed its proposals in consultation with the organisations identified in the plan.</p>
D5.1.1.15	Schedule 2	Requirement 20 Decommissioning	<p>The Applicant's responses to earlier comments as set out in REP4-005 are noted. CWCC still consider that the decommissioning requirement (or possibly within the oDEMP [REP4-030]) should make provision for the following:</p> <ul style="list-style-type: none"> o Periodic review of commissioning end state (linked to monitoring of biodiversity) 	<p>The Applicant's responses to these points are contained in pages 17-18 of REP5-042.</p> <p>The period for completion of decommissioning is secured by the fact that Requirement 20(3) requires the DEMP to include a programme for approval, and sub-paragraph (4) requires decommissioning to be carried out in accordance with the approved plan, including the programme.</p>

Ref	Document Para number	Document summary point	CWCC comments	Applicant's Comments
			<ul style="list-style-type: none"> o Provision for seasonal biodiversity surveys prior to final DEMP o Retention of habitat mitigation areas included in 'end state' for hand-back to landowners; o Addition of a period of restoration aftercare measures and provisions to be included in the DEMP (prior to handover back to the landowner) o Period for completion of decommissioning. 	
D5.1.1.16	Schedule 2	Additional requirements	<p>As noted in the Deadline 4 submission: During ISH1 the ExA requested the Applicant to provide wording for a decommissioning bond/security/ funding on a without prejudice basis.</p> <p>The Applicant's suggestion (if such a provision is considered necessary) is to follow the Helios DCO example with a variation; and if the Secretary of State decides to follow the ExA's proposal for the Oaklands Farm Solar, other amendments are suggested. See Written Summary of Applicant's Oral Submissions at ISH1 [REP1-033].</p> <p>CWCC welcome the provision of some form of security requirement and consider that this is appropriate to give the local planning authority greater certainty over the funding of decommissioning and improved control</p>	See the Applicant's response to the ExA's Schedule of Changes also submitted at Deadline 6.

Ref	Document Para number	Document summary point	CWCC comments	Applicant's Comments
			<p>(either directly in the case of Oaklands Farm Solar, or indirectly in the case of Helios DCO). Provision of a security is considered to be in the public interest, as opposed to reliance on private landowner interest.</p> <p>Whilst CWCC would prefer to see the Oaklands Farm Solar type of requirement for Frodsham Solar, it is accepted that a provision similar to the Helios DCO would be beneficial too.</p> <p>It is considered that the point at which a security is required e.g. whether 15 years of operation is appropriate, depends to an extent on the particular funding circumstances. If reliance on income from the solar generation is needed, then 15 years would not seem appropriate to deal with the risk of an early failure of the project.</p>	
D5.1.1.17	Schedule 2	Additional requirements	<p>CWCC note the Applicant's comments in REP3-041 and REP4-052. However, as noted in the Deadline 4 submission and Appendix A to CWCC's Written Representations [REP1-048] (ISH1 Agenda Item 4g) an Hours of Working (construction, replacement activities & decommissioning) CWCC's preference is to see a requirement in the DCO relating to construction hours for the reasons previously given.</p>	<p>The Applicant's maintains its position on this matter.</p>

Ref	Document Para number	Document summary point	CWCC comments	Applicant's Comments
D5.1.1. 18	Schedule 2	Additional requirements	<p>The use of non-percussive piling should either be secured via inclusion in one of the existing requirements or an additional requirement if this is not addressed via the Design Parameters Statement [REP1-014]. CWCC note the Applicant's response in REP2-003, but with a view to minimising disturbance, and in a scenario where there is a defence against statutory nuisance, it would prudent to secure non-percussive piling, especially in relation to construction of the BESS, which is near to the Traveller sites.</p>	<p>The Applicant maintains its position on this matter – the Noise Impact Assessment clearly demonstrates that no significant effects will be caused even where percussive piling is utilised.</p>
D5.1.1.19	Schedule 2	Additional requirements	<p>Paragraph 3.7 of CWCC's WR [REP1-048] relating to additional Schedule 2 Requirements refers.</p> <p>CWCC note the Applicant's responses at REP3-041. CWCC's preference on</p> <ul style="list-style-type: none"> • Construction hours and • Unexpected contamination (possible addition to Requirement 17) • Decommissioning fund/security is well documented. <p>CWCC maintain the comments relating to:</p> <ul style="list-style-type: none"> • Provision for NBBMA management and monitoring, including period of post-decommissioning monitoring and mitigation to target state. • Undertaker to have pre-submission consultation requirement with consultation 	<p>The Applicant has set out its position on these matters elsewhere in this table, in REP3-044 and in REP5-041.</p>

Ref	Document Para number	Document summary point	CWCC comments	Applicant's Comments
			body prior to submission of application to discharge requirement. Whilst this may not be precedented in other DCO's it would potentially assist greatly in the process of discharging requirements.	
D5.1.1.20		Additional comments	See Appendix A to CWCC's WR [REP1-048] and ISH1 agenda item 5a). CWCC considers that the level of major replacement activity assessed in the Environmental Statement should be secured as an upper limit in the draft DCO) to ensure replacement activities avoid sensitive bird seasons (September to March).	The need to avoid sensitive bird seasons is already secured via the OOEMP. No upper level of replacements needs to be set out in the DCO, as the ES has not assumed any specific level. As set out in the Technical Note [REP1-034], with the control measures that are in place, no significant effects will arise, whatever the level of replacements.
D5.1.1.21	Schedule 2	Additional requirements	In combination issue in relation to Runcorn CO2 Spur pipeline In the absence of a legal agreement, the Council considers that one option may be to introduce a requirement in the DCO to restrict any further development, works or activities within the NBBMA (and the associated Cells 1 and 2 within the SADA), other than those permitted as part of the adaptive management under the oNBBMS [REP3-032] and those for the authorised development, for a given period following the NBBMA being notified/accepted to the Council as being functional. The period would need to be informed by the HRA which the applicant is currently updating. It is envisaged that this	The Applicant has set out its opposition to this suggestion in its response to SWQ 2.9.15 [REP5-041]. Adding to that, and further to its earlier Examination submissions, the Applicant does not consider it appropriate for this Critical National Priority project being delayed (and potentially missing its connection date) in response to a project that (a) has no certainty of coming forward, and (b) whose impacts can be controlled through its own planning permission. Such a Requirement fails all the tests for DCO Requirements in the context that the reasonable approach in planning (and indeed the lawful approach for the purposes of the Habitats

Ref	Document Para number	Document summary point	CWCC comments	Applicant's Comments
			<p>would in the order of 24 months from the NBBMA being established as functional.</p> <p>The above additional requirement / article 38 Planning permission etc of the draft DCO [REP2-002] would need to be drafted/amended to ensure the temporary restriction on development being carried out in the NBBMA would be enforceable, and this would need to restrict development carried during the relevant period under planning permissions granted before the coming into force of the Order, as well as those coming in after.</p> <p>It is understood that the Applicant disagrees with the inclusion of such a requirement.</p>	<p>Regulations) is to put controls on the pipeline consent.</p>
D5.1.1.22	Schedule 12	Procedure for discharge of requirements	<p>CWCC note the Applicant's comments and precedents referred to in REP3-041 (and REP4-052). CWCC maintain (especially given that there are a range of periods in the precedents referred to) that the timescale of 10 working days to submit representations pursuant to an appeal in paragraph 4(4) is too short and an extended period, preferably to 20 working days; or such longer period that the appointed person notifies, would be more appropriate.</p>	<p>The Applicant's maintains its position on this matter.</p>

Table 2-2: REP4-014 6.2 Env Statement: Vol 2 Appendix 2-3: Permitted Preliminary Works - P04

Ref	CWCC comments	Applicant Comment
D5.1.6.1	<p>In the reference to the Construction Environmental Management Plan (CEMP) it is stated in paragraph 1.2.1 that In accordance with Requirement 12 of the draft DCO a CEMP been submitted to and approved by the relevant planning authority prior to undertaking any of the following permitted preliminary works:</p> <p>i) above ground site preparation for temporary facilities for the use of contractors;</p> <p>ii) site clearance (comprising vegetation removal, demolition of existing structures or buildings and removal of plant and machinery);</p> <p>iii) receipt and erection of construction plant and equipment to be utilised for Work No. 6C; and</p> <p>iv) remedial work in respect of any contamination or other adverse ground conditions where this relates to Work No. 6C.</p> <p>It is not clear if items i and ii relate to the whole of the order limits and this should be clarified. In terms of iii, this should also apply to construction plan within range of the NBBMA that could have impacts on NBB. In terms of iv, this should also apply to the whole of the solar array, as badgers, breeding birds etc could be impacted by land remediation.</p>	<p>Items (i) and (ii) relate to the whole Order limits. Items (iii) and (iv) relate to Work No. 6C only. The Applicant considers this is clear from the DCO and the CEMP.</p> <p>In respect of (iii) the Applicant has updated Environmental Statement: Volume 2 Appendix 2-3 [as updated alongside this submission] to require a CEMP to be submitted and approved where these works are proposed within 110m of the NBBMA during the core non-breeding bird season, in line with the restrictions set out in Table 5-3 of the oCEMP.</p> <p>The Applicant considers that remedial work of any significant scale will be limited to the area of the NBBMA. To the extent that small scale remediation is required in the rest of the Site, appropriate controls are secured via Appendix 2-3.</p>
D5.1.6.2	<p>It is also not clear how vegetation removal relates to biodiversity net gain targets, if the time between habitat removal and replacement is extended and also if areas meant for retention are in fact, subject to vegetation removal and ground remediation.</p>	<p>The Applicant assumptions in respect of vegetation removal and reinstatement are set out in the BNG Report [REP4-038].</p> <p>The Council will be able to consider this matter against the detailed construction programme in approving the LEMP (pursuant to the recent amendments to Requirement 9) – the Applicant’s ability to meet the percentages set out in that</p>

		Requirement will need to take account of the rules of the Metric in respect of restoration.
D5.1.6.3	In Table 1- Permitted Preliminary Works Mitigation, the commitments “Avoid removal of any vegetation other than that essential to undertake the investigation works” and “Provision of a CEMP for works within the NBBMA pursuant to DCO Requirement 12.” Have been removed, as it is not clear why this is.	These items were removed as the CEMP will be required for these items, which incorporates such commitments. This is instead of these being commitments made in the absence of a CEMP.

Table 2-3: REP4-041 7.13 Outline Landscape and Ecology Management Plan - P05

Ref	CWCC comments	Status
D5.1.11.1	In paragraph 6.5.3, it is stated that the location of mammal gates should be shown on the detailed landscape drawings, and justification for the positioning and number of mammal gates would be provided within the LEMP. This is not quite as discussed with the applicant, who indicated that they could commit to clustering badger gates around sett areas and also place badger gates along known commuting routes and foraging areas in accordance with survey information.	Paragraph 6.5.3 has been updated to reflect this comment.
D5.1.11.2	In paragraph 6.6.49, it is stated that “The landscape design will involve targeted planting of trees and scrub to assist in screening or softening views of the Proposed Development from elevated vantage points, where appropriate to the operational requirements of the Proposed Development. Such planting will be designed to integrate with the surrounding landscape character and will only be introduced in locations where it would not adversely affect the established landscape context or result in material reductions in the operational efficiency of the Solar PV panels.” CWAC would assert that ecological factors should	Paragraph 6.6.49 has been updated to reflect this comment.

	<p>also be a qualifier in this statement, for any proposed landscaping. As the applicant responded in the Hearings regarding a response to a request for more landscaping by Active Travel Frodsham, landscaping would not be appropriate in locations where openness is of benefit. CWAC assert that in terms of ecology, openness should be retained as much as possible in proximity to the NBBMA and the Estuary/River boundary around Cells 1 and 2 and The Lum area and screening should be kept to a minimum.</p>	
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Table 2-4: REP3-026 7.5 Outline Construction Environmental Management Plan - P05

Ref	CWCC comments	Status
D5.1.13.1	<p>In Table 5-3 “Summary of the construction mitigation and management measures –Terrestrial Ecology & Ornithology”, it is stated under “Damage to badger setts or disturbance of badger using a sett” that “The detailed design shall account for the presence of badger setts and where practicable provide a 30m offset from proposed infrastructure, or a lesser distance where this can be justified. Where necessary, works will only proceed under an appropriate licence issued by Natural England.” This does not change the Council’s previous position.</p>	<p>The Applicant notes the Council’s comment. However, it is considered that the measures set out in the oCEMP will ensure that impacts on badger setts are avoided where possible and if this is not possible, that the necessary licences are obtained from Natural England.</p>

Table 2-5: REP4-012 Information to Inform Habitat Regulations (P05)

Ref	CWACC comments	Applicant Comment
D5.1.4.1	<p>It is stated in paragraph 3.1.9 of the document that the NBBMA and other habitat enhancements within the Solar Array will provide direct and indirect benefits to skylark through the enhancement and long-term management of the NBBMA and structural planting. It is not clear if the NBBMA will be less or more beneficial for Skylarks after the redesign. The literature</p>	<p>The Applicant highlights that skylarks are not a HRA issue, as the species is not a feature of, or in any way relevant to, the Mersey Estuary SPA. The section of the HRA (3.1) cited by CWACC is a general description of the Order Limits.</p>

	<p>quoted (viii Montag, H., Parker, G., & Clarkson, T. (2016) The Effects of Solar Farms on Local Biodiversity; A Comparative Study. Clarkson and Woods and Wychwood Biodiversity) concludes (7.1.32) that although skylarks were not found to utilise solar sites for nesting, they do incorporate them into their territorial boundaries and some of the sites may represent a valuable foraging resource for this species. An area of future research in this study is listed as “Investigation into the productivity of skylarks in the local landscape of a solar farm in order to investigate the hypothesis that skylark productivity is higher adjacent to solar farms due to the increase in foraging opportunities”, however, this is not proven in this study, as the report suggests. The response from CWAC was to do with the loss of nesting habitats and breeding pair territories, which is not addressed by this paragraph, or the referenced study.</p>	<p>Regardless, para 3.1.9 of the HRA [P05] refers more generally to the overall Order Limits in relation to skylarks, rather than specific benefits for skylarks from solely the NBBMA. For reference the paragraph is repeated below in full:</p> <p><i>It should be noted that the NBBMA and other habitat enhancements within the Solar Array (but not limited to) are not included within the overall total (hectares) of the SMA mitigation area. However, these areas will provide direct and indirect benefits to skylark through the enhancement and long-term management of the NBBMA (53.31 ha; supports 9 pairs of skylark) and structural planting throughout the Order Limits</i></p> <p>The Applicant fully accepts that there is no evidence of solar farms being used by skylarks for nesting and has not suggested skylarks will nest within the solar panelled areas of the Order Limits.</p> <p>See also the response to comment D5.1.4.2 below.</p> <p>The Applicant also notes also that, further to the Applicant's other submissions, Cell 2 incorporated within the NBBMA will be managed as grassland, as detailed in the Outline Non-Breeding Bird Mitigation Strategy [as updated alongside this submission]. Consequently, impacts on skylarks nesting within Cell 2 will now be completely avoided during both the construction and operational phases of the development. In principle this reduces the overall requirement for skylark mitigation. However, all measures are retained and therefore the overall effects of the Proposed Development on breeding skylarks are reduced. For the avoidance of doubt, Cell 2 will continue to be managed as grassland, as presented in the Outline Non-Breeding Bird Mitigation Strategy, as updated alongside this submission.</p>
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<p>D5.1.4.2</p>	<p>In the Solar Energy UK (2025) Solar Habitat 2025. Solar Energy UK report (ref ix) it is stated that the most frequently observed Red Listed species was skylark (<i>Alauda arvensis</i>), recorded during 59% of all bird surveys undertaken (Figure 9). T did not state whether or not these birds were nesting or just observed. It is not clear if the solar farms surveyed were a similar habitat type to the application site, or had a similar baseline of skylark territories, so again is not conclusive.</p>	<p>Whilst the provided Solar Habitat 2025 document does not include specific detail of observations, it clearly demonstrates how frequently skylarks utilise solar farms during the breeding season (as this is when the cited monitoring visits were undertaken). There is a wide and growing body of evidence that skylarks do use habitats within solar farms as part of a foraging resource whilst nesting nearby, and in fact may provide preferential resources (presumably due to removal of chemical input and increased invertebrate numbers). The Applicant therefore retains the position that the proposed skylark mitigation is proportionate and adequate.</p>
<p>D5.1.4.3</p>	<p>In paragraph 3.2.14 it states that the NBBMA will be subject to year-round dynamic conservation management by conservation professionals; again, this is not secured.</p>	<p>This is secured by virtue of Requirement 9(2)(j) and the measures set out in the outline NBBMS.</p>

Table 2-6: REP4-048 8.32 Outline Non-breeding Bird Mitigation Strategy - P04

Ref	CWCC comments	Status
D5.1.20.1	<p>In paragraph 1.1.4 it is stated that it is the Applicant’s intention that the NBBMA is managed by the RPSB, however should this not be possible, then a suitably experienced and reputable nature conservation organisation will be sought, which will be required to be agreed by Cheshire West and Chester Council and Natural England. References in this document to a nature conservation body should therefore be considered to mean RSPB or an approved alternative nature conservation body. CWAC note that this has not been yet confirmed, and that the RSPB have stated in their representation (REP4-067) that they require an expanded NBBMA, to include Cell 2 (currently proposed as solar panels and of an area of approx. 17ha) with significant design changes, before they can endorse the NBBMA and engage in being the delivery partner. CWAC would also query which other nature conservation organisations have been engaged so far, as an alternative plan, if the RSPB does not agree to take on the delivery and long-term management. It is a concern that there does not seem to be any alternative organisations with the same level of expertise that the RSPB would offer.</p>	<p>The Applicant has consistently stated that its preference is for the RSPB to manage the NBBMA and has engaged with them on that basis.</p> <p>As reported elsewhere in this submission, the Applicant has now updated the relevant application documentation to provide or Cell 2 to be included in the NBBMA.</p> <p>The Applicant considers that there is no ecological reason that the RSPB would not be involved in the NBBMA, but respects that RSPB needs to go through its internal approval process before commercially agreeing to take the NBBMA on.</p> <p>In light of the RSPB’s ongoing interest, the Applicant has not engaged alternative organisations at this stage. Nevertheless, it is secured to ensure that should the RSPB not ultimately be in a position to undertake the role an appropriate alternative body can be identified and approved.</p>
D5.1.20.2	<p>Please also see Council response to Question 2.5.5 of the ExA questions. In terms of On-Going adaptive management, Paragraph 4.4.5 states that management of the NBBMA will require regular visits and adaptive actions, based on conditions at the time. Actions will be undertaken where appropriate and will include, but are not limited to:</p> <ul style="list-style-type: none"> • Adjustment, modification and control of hydrological levels and regimes; • Island creation, extension, reduction, maintenance and reprofiling; 	<p>The Applicant notes CWAC’s concern but does not agree that adaptive management measures are unsecured, particularly in the context of Requirement 9(2)(j).</p> <p>At this stage, it is not possible to identify precisely whether adaptive management will be required or, if so, what form it would take. For that reason, the oNBBMS identifies a range of potential measures that may be needed to respond to site conditions and monitoring outcomes over time. Their inclusion does not mean they will automatically be implemented, nor that they could be undertaken without appropriate control.</p>

	<ul style="list-style-type: none"> • Vegetation management and control (i.e. clearing vegetation around scrapes and maintenance of open vistas); • Adjustment and adapting livestock-grazing management and regimes; • Localised ground works or reprofiling; and, • Implementation of reasonable design or layout refinements within the Order Limits, where necessary and considered proportionate. 	<p>Any such measures would be subject to the wider environmental controls secured through the certified documents, including the OEMP. Those controls include protections for ecological receptors, including breeding birds and water voles, as well as safeguards in relation to matters such as timing of works, working methods and surface water quality, where relevant.</p> <p>In addition, the detailed NBBMS must be submitted to and approved by CWAC before implementation. That approval process provides the mechanism for considering the appropriateness of any proposed adaptive management measure, including their justification, timing, methodology and any necessary links to other control documents.</p>
D5.1.20.3	<p>CWAC has concerns that some of these adaptive actions are significant and are not secured/linked back to any controlling mechanisms in other control documents. For example, island creation, extension, reduction or reprofiling could have significant impacts on non-breeding birds if carried out at a sensitive time of year with unregulated methodologies. Breeding birds and water voles would also be potentially impacted. In terms of “Implementation of reasonable design or layout refinements within the Order Limits, where necessary and considered proportionate.”, there is no indication as to what would be considered reasonable, the parameters for that judgment and how that would be controlled.</p>	<p>The same applies to any “reasonable design or layout refinements within the Order Limits”. This is not an unrestricted provision. It is intended to allow a limited and proportionate degree of flexibility in response to monitoring and site conditions. Any such refinement would need to remain consistent with the objectives of the NBBMA and would be subject to approval through the detailed NBBMS, as well as implementation within the control of the OEMP.</p> <p>Accordingly, the Applicant considers that the controls in place are robust and proportionate, whilst providing the flexibility for a range of adaptive measures to be implemented to maximise the likelihood of successfully delivering the proposed mitigation.</p>
D5.1.20.4	<p>Additions to qualify the Adaptive Management Plan in paragraphs 4.4.11 (scrub control and bare ground percentage measures, proportion of scrapes holding water during critical periods, maintenance of target water levels and minimum extent (hectares) of each habitat component) are welcomed.</p>	<p>The Applicant notes this comment.</p>

D5.1.20.5	In paragraph 4.4.12, it is stated that the precise thresholds and methodology, including the monitoring frequency and reporting will be defined within the final version of the NBBMS and associated AMP. It should be added in at this point that the final version would require approval from CWAC.	The approval of the final NBBMS is explicit within Requirement 9.
D5.1.20.6	It is stated in paragraph 4.4.1 in the NBBMS [REP3-003], that on-going conservation management of the NBBMA is secured through this management strategy and its implementation pursuant to a Schedule 2 Requirement 9(j) of the draft DCO. However, there is no reference to an Adaptive Management Plan in this requirement and this should be clearly inserted into the DCO.	This is not considered necessary. Requirement 9(k) requires the final mitigation strategy to be substantially in accordance with the outline NBBMS which clearly identifies the requirement for an Adaptive Management Plan within the final version of the mitigation strategy.
D5.1.20.7	Any further comments to be provided at Deadline 6 .	-

Table 2-7: REP4-39 Biodiversity Net Gain Report – P02

Ref	CWACC comments	Applicant Comment
D5.1.22.1	<p>Paragraph 2.3.9 states that the Cheshire and Warrington Local Nature Recovery Strategy (LNRS) has been published in November 2025, and as such, strategic significance has been with assigned following Table 7 of the Metric User Guide.</p> <p>The LNRS is enacted in the Environment Act 2021, along with statutory BNG and guidance on its use is only within the statutory BNG user guides and associated PPG. As pointed out in the BNG report, in 1.3.1, 1.3.6 and 1.4.2, the development is not subject to statutory BNG, as statutory BNG regime has not commenced for NSIP developments. Therefore, the metric should revert to classing both its baseline and post-development tabs as “formally identified in local</p>	The Biodiversity Metric User guide makes no distinction between the date of submission and publication of the LNRS. An extract of the relevant section of the Metric user guide (p27) is provided below.

	<p>strategy”, in line with the CWCC Ecological Network, as in the Interim Biodiversity Net Gain and Ecological Networks guidance note - March 2024.</p> <p>The relevant primary legislation for the statutory framework for biodiversity net gain is principally set out under Schedule 7A (Biodiversity Gain in England) of the Town and Country Planning Act 1990. This legislation was inserted into the 1990 Act by Schedule 14 of the Environment Act 2021 and was amended by the Levelling Up and Regeneration Act 2023. The TCPA 1990 does not include NSIP applications and the DCO process, which is enacted by the Planning Act 2008.</p> <p>Commencement for statutory BNG for NSIP’s is due to introduced in May 2026, with a biodiversity gain statement which is intended to have the same effect as if included in the relevant National Policy Statement. However, no details are available as of yet and there is no guidance on how the LNRS will work with NSIP BNG. As with the approach taken by DEFRA for statutory BNG under the TCPA and Environment Act, it is the date of submission that determines whether the legislation/policy should apply. This DCO application was submitted prior to the publication of the LNRS (25th November 2025).</p>	<p>Where a Local Nature Recovery Strategy (LNRS) has been published</p> <p>Where a Local Nature Recovery Strategy (LNRS) has been published, use the LNRS and descriptions set out in table 7 to assign strategic significance.</p> <p>Find out more about Local Nature Recovery Strategies</p> <p>Once an LNRS has been published, the baseline strategic significance values for habitat parcels in that area should always be scored as low.</p> <p>You may need to refer to multiple LNRS areas and make separate assessments for each habitat parcel (including separate assessments for on and off-site habitats).</p> <p>See guidance published by Local Government Association for worked examples of how strategic significance should be recorded in the transition period leading up to and after publication of a LNRS.</p> <p>As such, it is considered that the BNG calculations using the LNRS reflect current best practice guidance, notwithstanding responses to comment D5.1.22.2 below.</p> <p>The Applicant also considers that, had it not referenced the publication of the relevant LNRS, this would likely have been met with criticism from CWACC and CWT.</p>
<p>D5.1.22.2</p>	<p>Notwithstanding the above, in paragraph 5.1.9, it is stated that in line with the Cheshire and Warrington LNRS other neutral grassland habitats have been assigned ‘high’ strategic significance as they are considered to contribute towards unmapped LNRS measures G1.4, G1.6, G1.12. Table 7 of the Biodiversity Net Gain Statutory User Guide clearly states that only <u>mapped</u> actions can be applied in the BNG metric, as follows:</p> <p>This category can only be applied to post development interventions when:</p>	<p>This comment is noted and has been corrected within the updated biodiversity metric spreadsheet submitted at Deadline 6. In light of this response the overall biodiversity unit increase delivered by the Proposed Development has been calculated at +349.75 (+24%) habitat units and no change to hedgerow or watercourse units which remain at +41.95 units (+88.92%) and +12.74 units (+11.21%), respectively.</p> <p>There is no impact on trading rules which remain unmet in relation to reedbed.</p>

	<p>You should record that you have applied the published LNRS in your gain plan.</p> <ul style="list-style-type: none"> • the location of the habitat parcel has been mapped in the Local Habitat Map4 as an area where a potential measure has been proposed to help deliver the priorities of that LNRS; and • the proposed intervention is consistent with the mapped potential measure in the LNRS for the habitat parcel <p>Additionally, in principle, the site is within an LWS, so is part of a Core Area, where there are no mapped actions.</p> <p>When corrected (LNRS application is removed), the metric looks to report a reduction in habitat area units of 23.44 units.</p>	<p>The applicant concurs with CWCC that the unit increase remains in excess of 10%.</p> <p>An updated set of metric spreadsheets have been provided alongside this submission.</p>
<p>D5.1.22.3</p>	<p>Paragraph 2.3.12 states that habitats within the ‘Retained biodiversity area’ will be retained, enhanced or lost according to the below rules:</p> <ul style="list-style-type: none"> o Enhanced where it is other neutral grassland in poor condition, bramble scrub or mixed scrub in poor condition. Enhancement must be within the same habitat type to a maximum of moderate condition; or, o Retained where it is a medium distinctiveness habitat type or one of the above in moderate or good condition. Any other type is classed as lost; o Lost where it does not meet either above rules and recreated as other neutral grassland. <p>It is not clear why some areas have been selected as “Retained biodiversity areas” and the mapping provided (e.g. Figure 3 Proposed post-development created habitats Map 3) and some areas have not. In addition, the categorisation of these areas means that the habitats themselves are not shown in the aforementioned plans. This is the same for the “Solar Area” and “Solar Area - Access and Public Footpath Area”. In addition, the Skylark Mitigation Area also does not show which</p>	<p>Figures have been provided alongside the BNG report [REP4-38] to demonstrate the baseline habitats and those to be lost, retained or created as follows:</p> <p>Figure 1A:1 (a-e): Habitat Plan Figure 2: Proposed Retained Habitats Figure 3: Proposed Lost Habitats Figure 4: Proposed Post-Development Created Habitats</p> <p>Habitat classifications for post-development (Landscape) habitats are clearly described in Table 5.1 of the BNG Report, to which the figures are appended, and also within Table 1 of the Outline Landscape and Ecology Management Plan [REP5-031]. To be clear, the habitats mentioned are predicted to achieve the following:</p> <ul style="list-style-type: none"> • skylark mitigation area is predicted to achieve other neutral grassland in good condition

	<p>habitat it is classified as. Also, some footpaths, e.g. the footpaths proposed around Cell 1 and near the NBBMA are not mapped as such and this should be amended.</p> <p>In the same paragraph, it is stated that where a proposed habitat type overlays an existing one of the same type it has been input as retained (e.g., some proposed reedbed overlays existing reedbed); however, this seems to mean that proposed reedbed habitat for example, is actually retained, so is double-counted. This requires amendment/further explanation.</p>	<ul style="list-style-type: none"> the solar area is predicted to achieve modified grassland in moderate condition, or other neutral grassland in moderate condition where other neutral grassland (and hence suitable underlying ground conditions) are present currently. Where habitat is retained or lost is shown on Figures 2 and 3, respectively. the solar area access and footpath area is part of the Solar Area and treated as described above <p>It is clarified that where habitats are input as retained, they are only inputted as retained, and no double counting has occurred.</p>
<p>D5.1.22.4</p>	<p>In Table 5.1: Summary of Post Development Objectives – Habitats it is stated that some areas of other neutral grassland are proposed to achieve “good “condition. A recently published article in the Chartered Institute of Ecology and Environmental Management (Issue 131) “A standardised approach for Biodiversity Monitoring in Solar Farms: From development to application” by Hannah Montag, Hollie Blades, Guy Parker, Alona Armstrong, Adele Remazeilles, Fabio Carvalho and Miranda Jones), concluded that the most commonly found grassland beneath solar panels is modified grassland of poor condition. Although it is not clear as above, the proposed habitat type for some of the areas beneath the solar panels, Table 5.1 is Other Neutral grassland in moderate condition. This requires further explanation in light of this recent article. This also highlights the requirement for regular and meaningful biodiversity net gain monitoring.</p>	<p>The recent article published in CIEEM, referenced by CWAC in their comment, is acknowledged; however it is understood that this applies principally to solar farms established on formerly arable land subject to high levels of agricultural input. It should also be noted that the modified grassland in poor condition applies only to land directly under panels, with other higher value habitats possible to achieve in other areas of sampled solar sites (e.g., between or surrounding panels).</p> <p>The projected habitat condition has been made based on baseline conditions. As standard, the solar area (including land underneath, between and surrounding array strings) has been inputted as modified grassland in good condition.</p> <p>Only where baseline habitat types are already achieving other neutral grassland has this been selected for the post-development habitat type, on the basis that the soil conditions required (e.g., relatively low in nutrients, particularly phosphorous) are already present and that an uplift in condition can be achieved through targeted management.</p> <p>Management to achieve the targeted habitat types and conditions are provided within the Outline Landscape Environmental Management Plan (oLEMP) [REP3-014], alongside monitoring proposals.</p>

		As such, the Applicant remains confident that grassland condition has been correctly forecast in the submitted BNG calculations.
D5.1.22.5	In paragraph 6.2.3, it is stated that when taking into account the NBBMA and the remainder of the Site the Proposed Development achieves at least 10% increase in biodiversity units (habitats, hedgerows and watercourses). When excluding the NBBMA 10% is not achieved, however a measurable increase in biodiversity units (habitats and hedgerows) are recorded and the project design commitments (a minimum increase of 10 % in habitat and hedgerow units and no net loss in watercourse units) are met. It is not clear if The Lum and additional biodiversity area at Marsh Farm have also been taken into account, as they are mitigation areas for non-breeding birds, this is not a factor, as only no net loss (0%) is required. In addition, as previously represented, as there is an error in trading rules (as detailed in paragraphs 6.3.1 and 6.3.2) the net gain figures cannot be claimed. As per the statutory User guide and previous non-statutory metrics, if trading rules have not been satisfied then a net gain in biodiversity cannot be claimed unless trading rules are resolved.	<p>Due to the deviation from the embedded trading rules, the Applicant has not claimed a Biodiversity Net Gain in full compliance with the Statutory Biodiversity Metric, however has instead utilised the Statutory Biodiversity Metric to quantify biodiversity impacts and to demonstrate that the scheme delivers an overall uplift in biodiversity units. This approach is in line with paragraph 4.6.7 of NPS EN-1.</p> <p>The Applicant also considers that this is in line with precedent set by other recent solar NSIP developments, including Fenwick Solar Farm (EN010152) which did not meet trading rules in relation to open mosaic habitats on previously developed land, which similarly to reedbeds are a habitat of high distinctiveness. Several other NSIP solar projects not subject to statutory BNG requirements have also been consented without meeting trading rules, including Gate Burton Solar (EN010131) and Helios Renewable Energy Project (EN010140).</p>
D5.1.22.6	<p>General:</p> <p>Habitat type Coastal Floodplain Grazing Marsh although not mapped in this area on the DEFRA MAGIC map system, could be potentially present. See extract from UK Habs guidance below. Justification should be given as to why this habitat was not selected.</p>	<p>The Site has extensive flood defence embankments along the River Weaver, and as such is protected from flooding. While areas of the Site are periodically inundated, this is driven by rainfall and not by regular flooding from the River Weaver and other nearby watercourses. This is confirmed in the Outline Flood Warning and Evacuation Plan [REP4-042] which states as <i>'The water levels in the watercourses intersecting the site are controlled by an existing Environment Agency pumping station and the associated flood risk is very low'</i></p>

	<p>Status Priority Habitat</p> <p>Definition Periodically inundated pasture, or meadow with ditches that maintain the water levels, containing standing, brackish or fresh water.</p> <p>Landscape and ecological context The habitat can occur on the floodplains of rivers and also on reclaimed land behind sea walls. It may contain areas of Lowland meadow, Modified grassland and Other neutral grasslands. There may also be small areas of tall fen type habitats and-or scrub.</p> <p>communities.</p> <p>Exclusions Extensive areas of tall fen species, such as reeds.</p> <p>Species The ditches may be especially rich in plants and invertebrates.</p> <p>Back to Essential Secondary Code List</p>	<p>As such, due to disconnect from the floodplain the Site is not considered to meet the definition of Coastal and Floodplain Grazing Marsh.</p>
<p>D5.1.22.7</p>	<p>Annex 3 Rule 4 Note</p> <p>CWAC has already submitted representation on this in REP4-068 at Deadline 4, in table REP3-041 8.28 Applicant's Response to Written Representations (D4.3.3.01) and also in the CWAC response to the ExA Second Written Questions at Q2.4.3.</p> <p>Page 17 to 18 of Natural England's Statutory User Guide on the Biodiversity Metric, (already submitted into the Examination) states the following in terms of the use of Rule 4:</p> <p>"You should not use rule 4 for most projects. It may be used in exceptional ecological circumstances, occurring when:</p> <ul style="list-style-type: none"> • the site has optimal conditions (such as soil condition, hydrology, nutrient status) for restoration of a wildlife-rich or historic natural habitat, • and the project team has the expertise and resource to deliver the habitat with negligible risk of failure. <p>It can only be used where one or more of the following applies:</p> <ol style="list-style-type: none"> 1. Highly complex landscape scale habitat changes such as creation of heathland, heathland grassland mosaic or other mosaic habitats 	<p>The Applicant confirms it is not proposing to enact Rule 4, on the basis that BNG requirements are not statutory and the calculations are instead intended to allow a quantitative assessment of biodiversity impacts.</p> <p>The Rule 4 Note and comparison with the published case study does, however, demonstrate that deviation from the trading rules is acceptable in certain circumstances, and that the development could be considered to meet the criteria for Rule 4.</p> <p>The Applicant considers that it has addressed each of the three conditions within the Rule 4 note. For brevity, the full response is not repeated here, but a summary is provided as follows.</p> <ol style="list-style-type: none"> 1. Optimal conditions are met due to the proximity to the Mersey Estuary SPA, baseline waterbird use and specific hydrology of the Stie. The NBBMA could not easily be created in another area due to strategic location adjacent to the estuary. 2. Project expertise will be met due to the involvement of a suitably experienced conservation organisation required pursuant to the DCO. 3. Landscape change will be met due to the scale of habitat creation, both within the NBBMA and also wider

<p>2. River re-meandering, or 3. Large-scale restoration of natural processes</p> <p>Deviation from biodiversity metric trading rules can occur when there is a clear ecological justification for the habitat intervention which is not being reflected by the biodiversity metric tool.”</p> <p>In terms of optimal conditions, the applicant does not address this element as described by the user guide, in terms of soil condition, hydrology and nutrient status, but instead refers to a Natural England blog post, which references connectivity to other wildlife sites, which this site currently is. This development will reduce that connectivity between the Local Wildlife site and the Mersey Estuary, in reducing the area of land for protected species and qualifying species for the Mersey Estuary SPA. Therefore, this requirement is not met.</p> <p>In terms of expertise, the applicant references that the NBBMA will be managed by a suitably experienced nature conservation organisation. This is not yet secured and so this requirement is not met.</p> <p>The applicant then goes on to comment on landscape-scale changes, which is assumed to address points 1 to 3 of the user guide above. The applicant states that “the mitigation site in the Natural England blog post is described as ‘exceptionally large, at 275 hectares’. The Frodsham Solar Order Limits total approximately 337.5ha, with extensive landscaping provided across the Solar Array Development Area (246ha) and NBBMA (66.7ha). As such, the landscaped area for the Proposed Development considerably exceeds that of the Case Study Site and the Frodsham Solar Site must be considered to be of a landscape scale.” It is the Council’s position that the whole of the order limits cannot be classed to be the mitigation site, in particular, neither can the standard solar farm</p>	<p>solar array area which will provide a net benefit for biodiversity.</p> <p>While it is acknowledged that the SADA is included within this, it is clear that solar PV development can have benefits for local biodiversity and as such co-located landscaping can be counted as part of the overall mitigation package delivered by the Proposed Development. For the avoidance of doubt, the NBBMA is provided to deliver mitigation for wetland birds associated with the Mersey Estuary SPA. This does not mean that all mitigation and enhancements for all biodiversity are contained solely within the NBBMA.</p>
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	<p>landscaping proposed within it, as that is not its function and is not proposed to be utilised for mitigation, as per the applicant's proposal. The site in the Natural England blog refers to a development site of 107ha and a mitigation site of 275ha. The mitigation site for this development is almost three times the size of the development. In the Frodsham Solar Farm case, the development site is 337.5ha and the mitigation area (NBBMA) is 63ha, so the mitigation area is much smaller than the development area, so a wholly different scenario.</p> <p>In addition, the mitigation proposed is an enhancement of what was already provided by part of the Frodsham Windfarm Mitigation, as does not align with points 1, 2 or 3 of Natural England's User Guidance.</p>	
<p>D5.1.22.8</p>	<p>Annex 4 Reedbed classification note:</p> <p>As stated in CWCC response to ExA Questions Deadline 1 (REP2-005) at Q4.5.7 (i) and in response to ExA Second Written Questions at Q2.4.3, this note is discussed as follows.</p> <p>The secondary codes 504-waterlogged and 505-Inundated are stated as corresponding with the section of the f2f Reedbed definition that states "water table is above ground or at ground level for most of the year". This is not correct; these secondary codes are used to further define the level 2 primary code of "Wetland", of which the level 3 code is Reedbed and do not apply at the Level 3 stage in terms of definition. They can be used to define discrete areas within the level 3 code when mapping habitats, to provide further information regarding that habitat, but do not contribute to its definition. In addition, the definition of one of the exclusions of the Wetland category, has been incorrectly added to the definition of secondary code 504 "wet defined as water table within 40cm of the surface and soil contains free water for most of the year". Note that secondary code 504- Waterlogged, states that only small patches remain</p>	<p>It is incorrect to state that only definitive evidence of a reedbed is the presence of more than 5m of reedbed. The UKHabitat definition of reedbed clearly describes reedbed as <i>'Wetlands that are dominated by >5m wide stands of common reed and where the water table is at or above ground level for most of the year'</i> (emphasis added). It is clear both these criteria must be met to meet the definition of reedbed, and not other vegetation types in which common reed is found.</p> <p>It is acknowledged that some of the stands of common reed exceed 5m and so meet the first criterion; however it is maintained that the second criteria regarding the hydrological regime is not met for this specific area of habitat.</p> <p>The UKHabitat survey is a hierarchical system, whereby a habitat, in this case reedbed (code f2e) would be a subtype of fen marsh and swamp (f2), which is itself a subtype of wetland (f). Each of the previous broader habitat type definitions should be met to proceed to the next level.</p> <p>The highest of these levels, wetlands (f), is defined within the UKHab classification as <i>'a vegetated habitat that is waterlogged</i></p>

<p>wet during mid-summer, so does account for drying of reedbeds.</p> <p>The only definitive evidence of the classification of reedbed habitats, is the presence of more than 5m width of reedbed. This is the primary factor that should define the classification of the reedbed, in the absence of any other agreed evidence. Inclusions for the f2e reedbed habitat type are areas that meet the Common reed size threshold and that include both reed-filled ditches and reed-dominated vegetation extending on to dry land. Therefore, dry areas of reedbed are accepted into the f2e classification. The only exclusions to f2e are if parcels of common reed are less than 5m in width, and Common reedmace swamp, which note, do not include references to water levels. The size and reed species are the only robust definition factors that can be used to differentiate between the Reedbed habitat type and others and this should be used to classify whether or not areas of the site are reedbed, as defined by UK Habs,.</p> <p>Four areas of reedbed are singled out for assessment within Appendix C, with no justification as to why the other areas of Reedbed, as mapped in Figures 1a, 1c, 1d and 1e of the Biodiversity Net Gain Report (APP-143). On the basis of the coding of reedbed habitats as discussed above, it is not into concurred that the section of reedbed labelled Frodsham Windfarm East, is not reedbed, as the areas of reed are reported to exceed 5m in width.</p> <p>Although reedbed habitats are not associated with the bird species associated with the Estuary (although Teal have been recorded near to the Lum which has reedbed habitats) per se, in terms of wetland habitats and hydrology, the reedbed habitats will be complementary to the overall wetland network on and adjacent to the site that these species will be using. There are also bird species recorded on site not associated with the Estuary, that utilise the reedbed habitats.</p>	<p>(see 504) or inundated (see 505)'. As outlined within the Reedbed Note, these are defined as follows:</p> <p>504 – waterlogged: Water table at the surface with standing water for 50-70% of year with soil completely saturated. Only small patches remain wet in midsummer. Wet defined as water table within 40cm of the surface and soil contains free water most of year</p> <p>505 – Inundated: Water table distinctly above the level of substrate for most of the year.</p> <p>The level 2 category wetland (f), and of which reedbed (f2e) is a child, specifically <u>excludes</u> 'wet habitats where the water table is always within 40cm of the surface and the soil contains free water for most of the year (see g [grassland] or h [heathland and scrub])' and also 'Seasonally wet habitat, inundated for part of the year but becoming mesic [dry] in the summer'</p> <p>Additionally the wetland habitat other wetlands (f2f), a broad habitat that includes any habitats not captured in f2a-e, includes a specific exclusion of 'parcels dominated by common reed... where no part is inundated for most of the year' and suggests that instead broad habitat g3 (neutral grassland) should be used with secondary code 16 (tall forbs).</p> <p>It is therefore evident that there is provision within the UKHabitat survey methodology for areas to be dominated by reed, but to not meet the definition of reedbed.</p> <p>With regards to the second reedbed criterion (inundation) the area of habitat at this location has been visited several times over the course of ecological surveys in support of the Proposed Development, most notably during habitat surveys in August 2024 and also during the specific assessment made in October 2025. During both surveys it was found that the water table was not at the surface, and as such it was concluded that the habitat type cannot meet the definition of reedbeds, and should instead</p>
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		<p>be a grassland habitat type. The habitat area was hence re-classified as g3c other neutral grassland.</p> <p>The Applicant therefore remains confident of its habitat classifications.</p>
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Table 2-8: REP4-053 Cumulative Assessment of the Proposed Development with the CO2 Runcorn Spur Pipeline - Scenario 3 – Pipeline Construction After Development of Frodsham Solar

Ref	CWCC comments	Status
D5.2.2.1.	<p>In paragraph 1.1.3 the Applicant notes that for the reasons set out in the Technical Note on Pipeline Interactions [REP1-041], it is not considered that the After Scenario is a cumulative scenario as the Frodsham Solar project will exist and have created a new baseline.</p> <p>CWCC note the ExA has queried this (ExA Q2 – Q2.9.17); and CWCC await the Applicant’s response. However, where both projects are currently at the examination/determination stage, and the impacts of the various potential phasing options are uncertain, it is reasonable to expect consideration/assessment of a worst case scenario, and to address any potential Adverse Effect on Integrity of the Mersey Estuary SPA.</p> <p>This is a different and distinct situation, from one where a new project is presented post decision (or even implementation).</p>	<p>The Applicant responded to Q2.9.17 in the <i>Applicant Responses to ExA Second Written Questions with appendices (ExQ2)</i> [REP5-41]. The Applicant considers it entirely reasonable to assess a scenario that incorporates proportionate and realistic mitigation measures to avoid disturbance to the habitats within the NBBMA. This is the approach adopted in the <i>Technical Note on Pipeline Interactions</i> [REP1-041].</p> <p>As the Applicant has explained in its various submissions, it does not control the construction methods that may ultimately be used for the pipeline. However, it is reasonable to expect that the works would be carried out in a manner that avoids adverse effects on site integrity and that this should be secured through an appropriate planning condition. In that context, the Applicant’s assessment of a trenchless technique as part of the cumulative assessment scenario is entirely reasonable.</p> <p>The Applicant notes that it is entirely standard practice for cumulative/in-combination assessments to assume that some</p>

<p>D5.2.3.1</p>	<p>2.2.1 The outline Operational Environmental Management Plan (oOEMP) (REP3-002) has set out in paragraph 2.4.12 the procedure in the event that the Applicant is informed of FWF submitting a decommissioning scheme in line with Condition 48. It states:</p> <p>'If Cheshire West and Chester Council at any time notifies the Applicant that it has received a scheme for the demolition and removal of Frodsham Wind Farm under Condition 48 of the Frodsham Wind Farm consent, or that it has granted planning permission for re-powering of Frodsham Wind Farm then:</p> <p>if such notification occurs prior to the submission of a notification under paragraph 2.4.7, then that notification must take account of the information provided in the scheme/planning application submitted by Frodsham Wind Farm; and</p> <p>if such notification occurs after the submission of a notification under paragraph 2.4.7 and the Proposed Development replacement activities have not yet taken place, the Applicant must resubmit the paragraph 2.4.7 notification to take account of the scheme/planning application submitted by Frodsham Wind Farm for additional approval prior to commencing the Proposed Development replacement activities.'</p> <p>However, the Council would expect the Applicant to proactively liaise with the FWF and not be reliant on a notification from the Council.</p>	<p>The Applicant has amended the OOEMP to this effect to allow for it to liaise and notify the Council, but considers this should be as an alternative to the Council giving a notification to allow either party to notify.</p>
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<p>D5.2.3.2</p>	<p>Paragraph 2.2.4 states that given that no significant effects have been identified from replacement activities of the Proposed Development through the application of the OEMP mitigation measures, it is assumed that CWCC would impose similar requirements on FWF as part of the approval of the decommissioning scheme. This would ensure that no likely significant effects would arise.</p> <p>It has not been yet agreed by CWCC that no significant effects have been identified from major replacement activities of the Proposed Development.</p>	<p>This remains the Applicant’s position and, at present, the Applicant is not aware of the Council having identified any likely significant effects in relation to major replacement campaigns.</p>
<p>D5.2.3.3</p>	<p>In paragraph 3.1.2 it is stated that in this context, the existing baseline conditions remain unchanged until such time as Frodsham Wind Farm is decommissioned, which is assumed to be 2042 for the purposes of this assessment. Accordingly, the findings of the assessments presented in the Environmental Statement remain unchanged for the period up to 2042. The potential for change arises only post-2042, when the infrastructure from the wind farm and any associated mitigation currently in place are removed. CWAC agrees with this statement.</p>	<p>The Applicant notes this comment.</p>
<p>D5.2.3.4</p>	<p>In paragraph 3.4.1 it is stated that the decommissioning of the turbines would remove the potential for turbines to act as obstacles which birds may otherwise need to route around. However, the Frodsham Wind Farm Monitoring Reports conclude that, following five years of observation, activity patterns remained consistent with previous years and that numbers recorded were stable, with no overall decline in activity.</p>	<p>The Applicant’s understanding is that the report is referring to activity patterns during the period of monitoring. The monitoring report for Year 1 states in section 4.2.1 that “Most flights in and out of cell 6 were occurring to the north and north-west, with fewer flights apparently recorded to the north-east (when compared with data from 2014-2015), and this may indicate there is some behavioural avoidance of turbines.”.</p>

	<p>It is not clear to the Council whether this means that activity is similar prior to the building of the windfarm, or that activity is similar in all of the FWF monitoring year. this should be clarified.</p>	
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2.4 Applicant's Response to CWCC Response to Second Written Questions (ExQ2)

2.4.1 In this section, the Applicant comments on CWCC's responses to the ExA's second written questions. Comments are provided only where the Applicant considers that the Council's response raises a substantive point requiring further clarification or comment.

Q2.4.3 – Reedbed Classification

2.4.2 See Table 2-7 above.

Q2.4.5 – BNG Metric Rule 4

2.4.3 See Table 2-7 above.

Q2.4.9 – Mitigation for wintering wader species

2.4.4 It appears there may be some misinterpretation of Chapter 8.0 of the ES **[APP-041]**. The Skylark Mitigation Area is not identified as providing mitigation for wintering birds, although it is possible that they may use it. Table 8-20 summarises, amongst other points, the mitigation and residual effects of the Proposed Development on various ecological receptors. Breeding Birds (Skylark, Lapwing) appear on a single row, and the mitigation for these species is summarised in column 4 as the Skylark Mitigation Area (SMA), NBBMA and habitat enhancements. These are the collective measures that would provide mitigation for both species. This does not indicate that the SMA would necessarily provide mitigation for Lapwing. The detail presented earlier in the assessment describes the targeted mitigation provided for Lapwing at paragraph 8.8.41 and for Skylark at paragraph 8.8.44.

Q2.5.5 – Adaptive Management

2.4.5 See responses to references D5.1.20.2 and D5.1.20.3 within Table 2-5 above.

Q2.5.15 – Recreational Pressure

2.4.6 CWACC point out that recreational pressure can cause impacts to ecology. This point is not disputed, and the likelihood of that potential impact has been assessed. On the basis that impacts could occur, mitigation has been proposed, and measures such as monitoring are provided to ensure that any mitigation is effective and, if necessary, can be adapted.

2.4.7 This approach has been accepted by NE, and it is also noted that paragraph 3.22 of Appendix 1 (ExQ2) – Final HRA Screening June 2025 [REP5-049], provided by CWACC, states:

It should also be emphasised that recreational use is not necessarily a problem. Many Habitat sites are also National Nature Reserves or nature reserves managed by Wildlife Trusts and the RSPB. At these sites, access is encouraged, and resources are deployed to ensure that recreational use is managed appropriately. Bird abundances in many of these sites remain stable or, in some cases, are increasing despite high visitor numbers.

Q2.9.15 – Tripartite MoU

2.4.8 Please see the response to the Council's Cover Letter, above.

Q2.4.9 and 2.11.2 – PPW and Q2.9.13, 2.11.6 and 2.11.7 Requirements

2.4.9 Please see the Applicant's response to CWCC's comments on the DCO and other Deadline 4 submissions also submitted at Deadline 6.

3.0 RESPONSE TO OTHER THIRD PARTY D5 SUBMISSIONS

3.1.1 The subsequent sections of the report provide the Applicant's response to the submissions made by other third parties.

3.2 Natural England

3.2.1 Natural England confirmed in REP5-056 that the mitigation proposed within the NBBMA is sufficient to avoid an adverse effect on site integrity, and that incorporating Cell 2 into the NBBMA would constitute an additional enhancement. However, the response also noted that Natural England would have concerns if RSPB is not willing to proceed with the role of the organisation responsible for the management of the NBBMA.

3.2.2 In its response, Natural England confirmed it was satisfied that all matters raised, including those associated with cumulative and in-combination effects, disturbance and barriers to movement, the proposed approach to adaptive management, and the consideration of mitigation vs compensation, had been addressed. Natural England provided no comment on BNG.

3.2.3 Following Deadline 5, Natural England and RSPB met to discuss the project. Following the meeting, Natural England informed the Applicant that, based on the engagement with the RSPB, it had reviewed the advice given at Deadline 5 and could only conclude that there would be no likely adverse effects on integrity if Cell 2 was integrated into the NBBMA. On this basis, the Applicant has altered the extent of Work 6C and Work 1 to exclude the solar array from Cell 2 and to integrate this land into the NBBMA. As set out in the covering letter, the relevant documents have been amended to reflect this change.

3.2.4 A joint Position Statement between the Applicant, NE and RSPB has been submitted at Deadline 6 to reflect the parties' respective positions in light of the above.

3.3 The Royal Society for the Protection of Birds (RSPB)

- 3.3.1 The RSPB confirmed that it is confident that the proposed enhancements to Cell 3 will create a high-quality habitat for wintering birds but it considered it was necessary for the full extent of Cell 2 to be included in the NBBMA to avoid any risk of an adverse effect on the Mersey Estuary SPA arising from a net reduction in the overall area of Functionally Linked Land.
- 3.3.2 As noted above, the Applicant has amended the Proposed Development to reflect the requirement of the RSPB by integrating Cell 2 into the NBBMA.
- 3.3.3 In response to ExA question 2.5.5 the Applicant notes the comments provided in relation to the adaptive management plan. The oNBBMS has been updated to confirm that in-ditch predator fencing would be provided and that water would be maintained in the ditches surrounding Cell 3 where practicable. The other points raised in relation to the management of the NBBMA are elements which have been covered within the oNBBMS and will be detailed within the final NBBMS, and will be informed by the conservation organisation managing the NBBMA.

3.4 Cheshire Wildlife Trust

- 3.4.1 The following sections set out the Applicant's comments on the responses provided by Cheshire Wildlife Trust in their response to the ExA Second Written Questions **[REP5-051]**.

2.2.9 – Alternatives and HRA

- 3.4.2 As set out in earlier sections of this report, the Applicant has amended the Works Plans [as updated alongside this submission] to integrate Cell 2 into the NBBMA.
- 3.4.3 The Applicant highlights that the NBBMS has been developed to increase the habitat value and carrying capacity of Cell 3 to mitigate the loss of use of the FLL within the Order Limits. This is core to the strategy adopted. The NBBMS

also includes an adaptive management strategy to ensure the success of the mitigation area.

2.4.2 - Post works BNG summary

- 3.4.4 The Applicant notes disagreement on the application of post-works strategic development (reference 2.4.2) and has updated the BNG Metric accordingly. This matter largely accords with CWACC ref D5.1.22.2 in Table 2-7, with a detailed response provided there.

2.4.3 - Classification of reedbeds within the applicant's BNG assessment

- 3.4.5 The Applicant notes disagreement on the classification of reedbeds at Frodsham Windfarm East (reference 2.4.3). This matter largely reflects the comments made by CWACC at ref D5.1.22.8 in Table 2-7. A detailed response to this matter is provided there. The Applicant remains confident in its classification of reedbed.

2.4.5 - BNG metric Rule 4

- 3.4.6 The Applicant notes disagreement regarding of BNG Metric Rule 4 (reference 2.4.5). This matter largely reflects the comments made by CWACC at ref D5.1.22.7 in Table 2-7. A detailed response to this matter is provided there. However, it is further clarified that the Applicant is not proposing to enact Rule 4, on the basis that BNG requirements are not statutory and the calculations are instead intended to allow a quantitative assessment of biodiversity impacts.
- 3.4.7 The Rule 4 Note and comparison with the published case study does, however, demonstrate that deviation from the trading rules is acceptable in certain circumstances, and that the development could be considered to meet the criteria for Rule 4.

2.4.7 – Area of Skylark mitigation

3.4.8 As noted above, Cell 2 is to be included as part of the NBBMA. With that inclusion, the number of hectares provided overall is beyond 70 ha (without including the SMA area). The Applicant is not proposing the use of skylark plots as these are largely suited to arable (crop) land only, which is not part of the existing baseline and is not proposed for this species. Instead, grassland in the SMA and within the overall NBBMA (with the inclusion of Cell 2) will be managed appropriately to mitigate potential impacts to skylark, both directly (the SMA) and indirectly (the NBBMA).

3.4.9 It is also important to note that the methodology referenced by CWT is based on a prototype and relies on several assumptions. It does not take into account the breeding status of a bird i.e. whether it is “confirmed” as breeding, nor does it adequately consider site-specific management practices or the wider landscape context. There is increasing evidence that solar farms are being used as a core foraging resource by skylark and other ground nesting species (corn bunting for instance). It is the Applicants position that the combined provision of land within the NBBMA and SMA, together with the proposed management regime, is sufficient to mitigate impacts on skylark while potentially enhancing breeding productivity and success across the Order Limits.

2.4.11 – Mitigation for wintering waders

3.4.10 As set out in the RSPB’s latest response, it is the RSPB’s intention to manage the NBBMA. Through ongoing consultation with all relevant statutory consultees ahead of Deadline 6, Cell 2 now forms part of the NBBMA. The RSPB has stated that, if Cell 2 is included within the NBBMA, no AEoI would arise [**REP4-067; point D**] and as set out in the **Applicant, Natural England & RSPB Position Paper P01 [EN010153/DR/8.51]**.

3.4.11 The Applicant does not dispute the presence of SPA birds within any part of the Order Limits. However, the **Information to Inform Habitats Regulations**

Assessment P05 [REP4-012] strongly indicates that Cell 5 supports very infrequent, low numbers (insignificant) of SPA birds. On one occasion, the species listed in the question exceeded the 1% threshold (2%; curlew; Year 1 of surveys) over the three-year survey period. Irrespective, the proposed mitigation has been designed to account for SPA bird use across the entire Site, as identified through an extensive evidence base, including project specific site surveys and other desk-based records.

- 3.4.12 As referenced in the oLEMP Appendix B **[REP3-014]**, the existing habitats delivered as part of the mitigation for FWF are meeting its obligations. However, the Applicant has identified opportunities to enhance the habitats in Cell 3 so they offer even greater value to wetland birds. Creation of higher quality habitats which, in summary, can be controlled, retain water and therefore offer optimal foraging (wet grassland/muddy conditions) favoured by these species are not currently provided (nor can be under the existing Frodsham Wind Farm planning conditions). As such the Proposed NBBMA provides the opportunity to deliver a significantly better habitat for wetland birds.
- 3.4.13 With regard to management, the body responsible for managing the NBBMA will be agreed with Natural England and CWCC, and the confirmed position will be set out in the detailed NBBMS, which must be submitted for approval prior to the commencement of the authorised development. The Applicant is clear in its submissions that the RSPB is the preferred organisation, and it will continue to work with the RSPB should the RSPB continue to indicate its intention to fulfil that role.
- 3.4.14 The Applicant notes that the reliance on ‘no net loss’ and “like-for-like area replacement” reflects general planning guidance rather than the legal test under the Conservation of Habitats and Species Regulations 2017. The HRA requires an assessment of ecological and ornithological functionality and integrity, not a simple comparison of land area. In this case, the mitigation strategy delivers enhanced, actively managed habitat capable of supporting

SPA bird populations at a level consistent with the conservation objectives, and therefore does not give rise to an adverse effect on integrity

- 3.4.15 The Applicant notes CWTs position and CWTs disproportionate emphasis on size and habitat loss, whilst failing to recognise the importance of secured long-term habitat and area management by a reputable nature conservation body, which is a core principle of a successful bird conservation area.

2.5.5 – Adaptive management NBBMA

- 3.4.16 The oNBBMS already secures a comprehensive monitoring and adaptive management framework. The oNBBMS confirms 40-year monitoring of bird use (including SPA species), habitat condition and hydrology, overseen by a steering group comprising of relevant statutory consultees. Detailed thresholds, triggers and interventions will be secured through the AMP under Requirement 9(j), agreed with consultees prior to commencement of development.

2.5.7 and 2.5.8– NBBMA Mitigation/ Compensation

- 3.4.17 The Applicant notes that existing mitigation for the wind farm is currently meeting its minimum obligations but is not delivering the full ecological/ornithological potential on Cell 3, with clear opportunities for enhancement. The NBBMA will be managed to deliver suitable habitat for SPA bird species through the measures set out in Section 4.4 of the oLEMP; Appendix B [REP3-014] (including hydrological control and grazing management), and the final NBBMS will be agreed with key stakeholders to ensure appropriate alignment of objectives where necessary.
- 3.4.18 The Applicant maintains its position alongside Natural England and the RSPB, that the NBBMA proposals constitute mitigation, not compensation

2.5.12 – Avian Flu

- 3.4.19 The NBBMA represents enhancement of habitat, not simply a reduction in area, and is designed to provide a managed mosaic of wet and dry conditions that supports natural distribution of birds across the Site, meaning that birds are not artificially constrained to just one area.
- 3.4.20 The Applicant agrees with the position of the RSPB [REP4-067], which does not identify HPAI as a significant risk to bird species which utilise the area.

3.5 Environment Agency

- 3.5.1 The Applicant notes that all technical matters are now agreed with the EA, and this is reflected in their Deadline 6 submissions, and the SoCG.
- 3.5.2 The Applicant has submitted a revised drawing illustrating the indicative design proposals for crossing point CP22, this is accompanied by a technical note which demonstrates that the raised approach roads to the crossing will not increase flood risk elsewhere.
- 3.5.3 The Applicant is disappointed that a disapplication has not been agreed with the EA, as it considers that the level of information provided to them is of a similar level as provided by Applicants on other DCO projects where disapplication has been agreed by the EA.
- 3.5.4 However, given the EA's position, the Applicant has updated the draft DCO at Deadline 6 to remove the relevant disapplications and the EA Protective Provisions.

3.6 Frodsham Town Council

- 3.6.1 The Applicant notes the request by the Town Council for it and Frodsham Festival of Walks to be added as a consultee to Requirement 15. The Applicant considers that this would not be appropriate as such non-statutory bodies are not usually identified as a consultee in DCO Requirements.

3.6.2 As discussed at ISH2, if the LPA considers it appropriate to engage with these parties when considering the PRWOMP, it can do.

3.7 National Grid Electricity Transmission PLC, Essar Oil (UK) Limited and Frodsham Wind Farm Limited (and other Statutory Undertakers)

3.7.1 The Applicant notes that discussions remain on-going with these parties in respect of Protective Provisions, but all are close to completion. Whilst this will likely continue on post the end of Examination, updates will be able to be provided to the Secretary of State confirming the agreed position.

3.7.2 Although they did not make a submission at Deadline 5, the same applies to Cadent.

3.7.3 In the absence of agreement yet being reached, the Applicant continues to prefer its form of Protective Provisions in the draft DCO before the Examining Authority.

3.7.4 The Applicant considers that all other Protective Provisions within the DCO are either agreed (National Gas, SPEN, United Utilities, Drainage and Highways Authorities) or no comments have been received (British Pipelines Agency).

3.8 National Highways

3.8.1 Following further discussions with National Highways, the Applicant has made further tweaks to the Protective Provisions that are agreed with them.

3.8.2 Submitted at Deadline 6 is an agreed SoCG between the Parties which demonstrates that all matters are agreed between the Parties. This includes in respect of matters in relation to use of emergency vehicles of the bridges over the M56.

3.8.3 The agreement on the latter point is in light of Cheshire Fire and Rescue Service confirming that use of these bridges is not a requirement of CFRS in relation to accessing the proposed BESS, and that it's reference to 'two

access points' at Deadline 5 meant two access points to the BESS, not the wider development. The correspondence from CFRS confirming this has been appended to the updated OBSMP submitted at Deadline 6 and was shared with National Highways prior to the deadline, to inform the submitted SoCG.

3.8.4 Once National Highways have had a chance to review the Deadline 6 submissions, the Parties intend to submit a final, signed, version of the SoCG at Deadline 7.

3.9 Canal & River Trust

3.9.1 The Applicant made the changes requested by CRT in the DCO submitted at Deadline 5 and has tweaked this further at Deadline 6 to align fully with their Deadline 5 requests.

3.9.2 The Applicant has also updated the CTMP at Deadline 6 to commit to provide at least 5 days' notice of increased traffic numbers, as requested by CRT in its Deadline 5 submission.

3.10 INOVYN Chlorvinyls Limited

3.10.1 The Applicant acknowledges that this Party has considered it necessary to put forward amendments to the DCO in the absence of agreement between the parties having been concluded.

3.10.2 The Applicant can confirm that positive progress continues to be made in the discussions between the Parties and that it is expected that they will be able to complete shortly after the end of Examination, and the Secretary of State will be updated on this position. This agreed position should negate the need for any changes to be made to the DCO.

3.10.3 In the absence of agreement, however, the Applicant recognises that the ExA will need to make recommendations about the drafting of the DCO and to consider Inovyn's proposed DCO amendments.

- 3.10.4 In response to these, the Applicant considers that it is not true to say that the case has not been made out for Plots 5-03 and 5-4. The Applicant has set out its requirement for this land in the Pre-Application Land and Negotiations Tracker since the Application has been submitted.
- 3.10.5 In particular the Applicant notes that the land may be required to enable the connection of the Proposed Development to the grid. It is therefore likely to be critical for the operation of the Proposed Development and the benefits it seeks to bring, which the Applicant has shown in the Statement of Reasons to be compelling. The Applicant therefore does not consider that the Option 1 Approach presented by Inovyn is suitable.
- 3.10.6 The Applicant also considers that Option 2 is not suitable, as it imposes undue restrictions on the Applicant – if the case is made for the powers to be sought, that must be considered to override Inovyn’s private interests, which are not those of a statutory undertaker
- 3.10.7 If, however, the ExA considers that Inovyn’s interests do require some form of protection:
- in respect of article 19, the Applicant would suggest that the words ‘unless otherwise agreed by Inovyn Chlorvinyls Limited and Ineos Fluor Limited’ are added at the end of the proposed wording, to enable an agreed different position to be able to be reached without there being a breach of the DCO;
 - in respect of article 24, the words “unless otherwise agreed by Inovyn Chlorvinyls Limited and Ineos Fluor Limited’ to be added after ‘Furthermore..’, for the same reason; and
 - for similar reasons, the words ‘unless otherwise agreed by Inovyn Chlorvinyls Limited and Ineos Fluor Limited’ to be added at the end of both the first and second sentences proposed.

3.10.8 In respect of the proposed changes to article 23 (and in this regard the Applicant assumes, from the Inovyn Cover letter, that it should also be assumed that that the proposed change to article 21 in Option 1 would also apply in Option 2), the Applicant's position is that:

- full compulsory acquisition is required as plots 5-3 and 5-4 will also be used for green infrastructure alongside the overhead connection, which, in line with the Applicant's approach in the rest of the DCO (and practice in other DCOs) requires compulsory acquisition powers to ensure that the Applicant does not breach the requirements of an approved LEMP to install and maintain that landscaping;
- however, if the ExA does not consider the Applicant's case for permanent acquisition is made out:
 - the additions in article 21 would need to be made, but changes to the Land and Crown Land Plans do not also need to be made, as it is the DCO which sets the ambit of the powers that are granted;
 - the changes to the powers in article 30 and 31 suggested in Option 1 should not be made, to allow for the works to be implemented and which, ultimately, may, if allowed to be used first to construct, lead to a reduction in the extent of permanent powers required on the basis of the final 'as built' design (rather than using permanent powers from the outset, which would necessitate them being imposed over all of the land, to ensure that there are no risks to the works being able to be fully constructed, as discussed in section 5.4 of the Statement of Reasons [APP-018]); and
 - the changes to article 23 are generally accepted (although similarly there is not a need for changes to the Land and Crown Land Plans), however the Applicant would propose

amendments as follows to ensure commitments under the LEMP can be met:

- an additional paragraph (b) which states '*plant, maintain and replace landscaping, including trees*'; and
- for the (now) (c) to read: '*remain, pass and repass on foot, with or without vehicles, plant and machinery in connection with the exercise of the rights referred to in (a) and (b')*.

3.10.9 As noted above, the Applicant is confident that a position will be reached which will mean that the Secretary of State does not need to make changes to the DCO, but the above makes clear the Applicant's position in the interim in light of Inovyn's comments.

3.11 WSP UK Ltd on behalf of Liverpool Bay CCS Limited

3.11.1 In respect of matters in relation to cumulative/in-combination impacts, please see the discussion above. The parties are also working towards submitting an updated SoCG at Deadline 7.

3.11.2 The Applicant is also aware that LBCCS is, at this late stage in Examination, intending to submit Protective Provisions.

3.11.3 If LBCCS does this, it will have done so without any pre-engagement with the Applicant as to the content of the provisions. Despite them being mentioned in the SoCG since December (but not having been requested in advance of that date), LBCCS have not engaged on the content of Protective Provisions or any commercial terms since that period, notwithstanding the Applicant's clear position set out in its part of the SoCG.

3.11.4 However, whilst the Applicant is disappointed that these may be arriving at such a late stage in the process, it is committed to working collaboratively with LBCCS to try and find an agreed way forward (without prejudice to its ability

to make submission if an agreed way forward cannot be found). As a starting point, however, the Applicant's position is that if any protections were to be put on the face of the DCO, they should only 'bite' in the scenario where the LBCCS pipeline is actually in place prior to the Proposed Development commencing works.

3.11.5 This is because, prior to this, the Applicant should not be constrained as to the build-out of its scheme for a project that may not occur either at all, or at least until some time after the Proposed Development has been put in place. In such a circumstance, the LBCCS pipeline should need to be cognisant of the Proposed Development, as a statutory undertaking of critical national priority, in taking forward its construction and design, rather than the Proposed Development having to then be changed (e.g. removing panels) as a result of mechanisms in Protective Provisions applying.

3.11.6 A further update on this matter will be provided at Deadline 7.