



UK Government

Habitats Regulations Assessment for an Application Under the Planning Act 2008

Frodsham Solar Farm

Regulation 63 of the Conservation of Habitats
and Species Regulations 2017



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Contents

1.	Introduction	1
1.1	Background	1
1.2	Habitats Regulations Assessment	2
1.3	Site Conservation Objectives	3
1.4	The Report on the Implications for European Sites ("RIES") and Statutory Consultation	5
1.5	Documents Referred to in the HRA	5
2.	Project Description	7
2.1	Project Details	7
2.2	Changes to the Application During Examination	7
3.	Stage 1: Screening for Likely Significant Effects ("LSEs")	9
3.1	Protected Sites	9
3.2	Likely Significant Effects from the Project Alone	12
3.3	Likely Significant Effects from the Project In-Combination	12
3.4	Likely Significant Effects Conclusion	13
4.	Stage 2: Appropriate Assessment	14
4.1	Appropriate Assessment: Mersey Estuary SPA and Ramsar site	15
4.2	In-Combination Assessment	23
4.3	Appropriate Assessment Conclusion	24
5	Transboundary assessment	25
6	Conclusion	26

List of abbreviations

Term	Abbreviation
Adverse Effect on Integrity	AEoI
Appropriate Assessment	AA
Adaptive Management Plan	AMP
Battery Energy Storage Systems	BESS
Cheshire West and Chester Council	CWCC
Cheshire Wildlife Trust	CWT
Deadline	DL
Development Consent Order	DCO
Environmental Statement	ES
European Economic Area	EEA
Examining Authority	ExA
Functionally Linked Land	FLL
Habitat Regulations Assessment	HRA
Hectares	ha
Interested Parties	IPs
Joint Nature Conservation Committee	JNCC
Likely Significant Effect	LSE
Megawatts	MW
Nationally Significant Infrastructure Project	NSIP
National Site Network	NSN
Natural England	NE
New Zealand Pigmyweed	NZPW
Non-Breeding Bird Mitigation Area	NBBMA
Outline Construction Environmental Management Plan	oCEMP
Outline Decommissioning Management Plan	oDEMP
Outline Operational Environmental Management Plan	oOEMP
Relevant Representation	RR
Report on the Implications for European Sites	RIES
Royal Society for the Protection of Birds	RSPB
Solar Photovoltaic	PV

Special Areas of Conservation	SACs
Special Protection Areas	SPAs
Statement of Common Ground	SoCG
Statutory Nature Conservation Body	SNCB
Supplementary Advice on Conservation Objectives	SACO
The Applicant's Information to Inform Habitats Regulations Assessment	The HRA Report
The Conservation of Habitats and Species Regulations 2017	the Habitats Regulations
The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019	The 2019 Regulations
The Convention on Wetlands of International Importance 1972	The Ramsar Convention
The Examination Authority's Recommendation Report	The ExA's Report
The Planning Inspectorate	PINS
The Secretary of State for Energy Security and Net Zero	The Secretary of State
Unexploded Ordinance	UXO
United Kingdom	UK
Zone of Influence	ZoI

1. Introduction

1.1 Background

This is a record of the Habitats Regulations Assessment (“HRA”) that the Secretary of State for Energy Security and Net Zero (“the Secretary of State”) has undertaken under the Conservation of Habitats and Species Regulations 2017¹ (“the Habitats Regulations”) as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (“the 2019 Regulations”) in respect of the Development Consent Order (“DCO”) for the Frodsham Solar Farm Project and its associated infrastructure (the “Project”). The Examining Authority (“ExA”) defines this as the “Proposed Development”. It is defined as the “Project” within this HRA for consistency with the terminology of the Habitats Regulations. For the purposes of these Regulations, the Secretary of State is the competent authority.

The Project comprises the construction, operation and maintenance, and decommissioning of a solar photovoltaic (“PV”) array electricity generating facility. The Project includes solar PV panels, a Battery Energy Storage System (“BESS”), and associated grid connection infrastructure which will allow for the generation and export of electricity (up to 147 megawatts (“MW”), at any time). Additionally, the Project is proposing a private wire connection, that local industries could use to improve decarbonisation. The Applicant states that it would be able to maintain the 100MW grid connection agreement with National Grid, whilst supplying any surplus via this wire. The operational design life of the Project is 40 years.

The Project constitutes a Nationally Significant Infrastructure Project (“NSIP”) under sections 14(1)(a) and 15 of the Planning Act 2008 because it involves the construction or extension of a generating station in England with a capacity exceeding 50MW (the relevant threshold at the time that the application for the Project (“Application”) was submitted) and does not fall within the statutory exclusions for offshore or wind generating stations.

The Application was accepted by the Planning Inspectorate (“PINS”) on 27 June 2025, and three Inspectors were appointed as the Examining Authority (“ExA”) for the Application. The Examination of the Application began on 02 December 2025 and concluded on 30 April 2026. The ExA submitted its report of the Examination including its recommendation (“the ExA’s Report”) to the Secretary of State on 29 July 2026. Numbered references to the ExA’s Report are presented in the format “[ER *.*.]” and [ER C.*.*] when referencing Appendix C of the ExA’s Report

This HRA also considers potential effects of the Project on protected sites in European Economic Area (“EEA”) States. This is described in more detail in Section 5 of this document.

¹ <https://www.legislation.gov.uk/ukxi/2017/1012/contents>

1.2 Habitats Regulations Assessment

The Habitats Regulations aim to ensure the long-term conservation of certain species and habitats by protecting them from possible adverse effects of plans and projects. In the UK, the Habitats Regulations apply as far as the 12 nautical miles limit of territorial waters.

The Habitats Regulations provide for the designation of sites for the protection of habitats and species of international importance. These sites are called Special Areas of Conservation (“SACs”). The Regulations also provide for the classification of sites for the protection of rare and vulnerable birds and for regularly occurring migratory species within the UK and internationally. These sites are called Special Protection Areas (“SPAs”). SACs and SPAs together, referred to as European sites in legislation, form part of the United Kingdom (“UK”) National Site Network (“NSN”).

The Convention on Wetlands of International Importance 1972 (“the Ramsar Convention”) provides for the listing of wetlands of international importance. These sites are called Ramsar sites. They are afforded the same level of protection as sites within the NSN following amendments to the 2017² Habitat Regulations by the Planning and Infrastructure Act 2025. Sites within the NSN and Ramsar sites will be collectively referred to in this document as “protected sites”.

Regulation 63 of the Habitats Regulations provides that:

...before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, [the competent authority] must make an appropriate assessment of the implications for that site in view of that site’s conservation objectives.

And that:

In the light of the conclusions of the assessment, and subject to regulation 64 [IROPI], the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

This Project is not directly connected with, or necessary to, the management of a protected site [ER 3.1.3]. The Habitats Regulations require that, where the Project is likely to have a significant effect (“LSE”) on any such site, alone or in-combination with other plans and projects, an appropriate assessment (“AA”) is carried out to determine whether or not the Project will have an adverse effect on the integrity (“AEol”) of the site in view of that site’s conservation objectives. In this document, the first stage assessment of LSEs and, where required, the second stage AA

² <https://www.legislation.gov.uk/uksi/2017/1012/regulation/63>

to determine whether there is an AEoI of a protected site, are collectively referred to as the Habitats Regulations Assessment (“HRA”).

The Secretary of State has had regard to relevant guidance on the application of the Habitats Regulations including the PINS (2024) Advice Note³, European Commission guidance⁴, as well as joint guidance by DEFRA, Natural England (“NE”), the Welsh Government, and Natural Resources Wales (2021) on ‘Habitats Regulations Assessment: protecting a European site’⁵.

1.3 Site Conservation Objectives

Where an AA is required in respect of a protected site, Regulation 63(1) of the Habitats Regulations requires that it be an AA of the implications of the plan or project for the site in view of its conservation objectives. Government guidance also recommends that in carrying out the LSE screening, applicants must check if the proposal could have a significant effect on a protected site that could affect its conservation objectives.

DEFRA Guidance indicates that disturbance to a species or deterioration of a protected site must be considered in relation to the integrity of that site and its conservation objectives⁶. It states that *“the integrity of a site is the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was designated”*.

Conservation objectives have been established by NE. When met, each site will contribute to the overall favourable conservation status of the species or habitat feature across its natural range. Conservation objectives outline the desired state for a protected site, in terms of the interest features for which it has been designated. If these interest features are being managed in a way which maintains their nature conservation value, they are assessed as being in a ‘favourable condition’. An AEoI is likely to be one which prevents the site from making the same contribution to favourable conservation status for the relevant feature as it did at the time of its designation. There are no set thresholds at which impacts on site integrity are considered adverse. This is a matter for interpretation on a site-by-site basis, depending on the designated feature and nature, scale, and significance of the impact.

NE has issued generic conservation objectives, which should be applied to each interest feature of the site. Supplementary advice on conservation objectives (“SACOs”) for each site underpins these generic objectives to provide site-specific information and give greater clarity to what might

³ [Nationally Significant Infrastructure Projects: Advice on Habitats Regulations Assessments - GOV.UK](#)

⁴ <https://op.europa.eu/en/publication-detail/-/publication/11e4ee91-2a8a-11e9-8d04-01aa75ed71a1>

⁵ <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

⁶ <https://www.gov.uk/guidance/appropriate-assessment>

constitute an adverse effect on a site interest feature. SACOs are subject to availability and are currently being updated on a rolling basis.

Where supplementary advice is not yet available for a site, NE advises that HRAs should use the generic objectives⁷ and apply them to the site-specific situation. For SPAs, the overarching objective is to avoid the deterioration of the habitats of qualifying features, and the significant disturbance of the qualifying features, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving the aims of the Habitats Regulations. This is achieved by, subject to natural change, maintaining and restoring:

- the extent and distribution of the habitats of the qualifying features;
- the structure and function of the habitats of the qualifying features;
- the supporting processes on which the habitats of the qualifying features rely;
- the populations of the qualifying features; and
- the distribution of the qualifying features within the site.

For SACs, the overarching objective is to avoid the deterioration of the qualifying natural habitats and the habitats of qualifying species, and the significant disturbance of those qualifying species, ensuring the integrity of the site is maintained and the site makes a full contribution to achieving favourable conservation status of each of the qualifying features. This is achieved by, subject to natural change, maintaining and restoring:

- the extent and distribution of the qualifying natural habitats and habitats of qualifying species;
- the structure and function (including typical species) of qualifying natural habitats;
- the structure and function of the habitats of qualifying species;
- the supporting processes on which qualifying natural habitats and habitats of qualifying species rely;
- the populations of qualifying species; and
- the distribution of qualifying species within the site.

The conservation objectives and, where available, SACOs have been used by the Secretary of State to consider whether the Project has the potential to have an AEoI of sites, either alone or in-combination with other plans or projects. The conservation objectives for the European sites and features for which an LSE was identified by the Applicant are set out in Section 6.4 of the HRA Report [REP7-007].

The SACOs relevant to this HRA Report, as published by NE and the Joint Nature Conservation Committee ("JNCC"), are referenced in Table 1 of this document.

⁷ <http://publications.naturalengland.org.uk/publication/6734992977690624?cache=1656417868.31>

1.4 The Report on the Implications for European Sites (“RIES”) and Statutory Consultation

Under Regulation 63(3) of the Habitats Regulations the competent authority must consult the appropriate Statutory Nature Conservation Body (“SNCB”) and have regard to any representation made by that body within such reasonable time as the authority specifies. NE is the SNCB for England and for English waters within the 12 nm limit.

The ExA, with the support of the PINS Environmental Services Team, produced a Report on the Implications for European Sites (“the RIES”) [PD-021]. The purpose of the RIES was to compile, document, and signpost information submitted by the Applicant and IPs during the Examination (up to Deadline (“DL”) 4 [ER.C 2.1.1]). It was issued to ensure that Interested Parties (“IPs”), including NE as the SNCB under Regulation 5 of the Habitats Regulations, had been formally consulted on Habitats Regulations matters in respect of the Application for the Project during the Examination.

The RIES was published on the PINS NSIP website and the ExA notified IPs that it had been published. Consultation on the RIES was undertaken between 31 March 2026 and 22 April 2026, with comments received at DL 6 from the Applicant [REP6-003], NE [REP6-050], Cheshire West and Chester Council (“CWCC”) [REP6-046] and Cheshire Wildlife Trust (“CWT”) [REP6-051].

These comments have been taken into account in this HRA.

1.5 Documents Referred to in the HRA

The ExA’s recommendation was that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the Secretary of State to fulfil their duties of consultation under regulation 63(3) of the Habitats Regulations [ER C 2.1.2]. For the avoidance of doubt, the Secretary of State considers all representations made by all IPs on HRA matters throughout the entirety of the Examination process. The Secretary of State does not rely solely on consultation on the RIES to inform her conclusions on matters relevant to the HRA, but she does consider that the RIES can formally support her duties to consult on AAs.

This HRA Report has taken account of, and should be read in conjunction with, the documents produced as part of the Application and Examination, which are available on the PINS NSIP website⁸. These are, in particular, but not limited to:

- the ExA’s Report;
- the RIES [PD-021];
- the Applicant’s Information to Inform Habitats Regulations Assessment (“HRA Report”) [REP7-007];

⁸ [Frodsham Solar - Project information](#)

- Outline Non-Breeding Bird Mitigation Strategy provided within the outline Landscape and Ecological Management Plan (“oLEMP”) [REP7-033];
- the Environmental Statement (“ES”) [APP-041] (and as updated in Examination); and
- the Statement of Common Ground (“SoCG”) with NE [REP7-035].

Plus, all other information submitted during the Examination and during the Secretary of State’s consideration of the Application. The final signed SoCG between the Applicant and NE [REP7-035] was submitted at DL 7. The SoCG confirmed that all HRA matters were agreed between the two parties, and that there were no HRA matters outstanding between them in respect of the Project.

The Secretary of State considers that sufficient information has been provided to inform an assessment in line with her duties under the Habitats Regulations.

2. Project Description

2.1 Project Details

As noted in Section 1.1 the Project comprises the construction, operation (including maintenance and repair) and decommissioning of a solar PV electricity generating facility. The Project is located wholly in England, in Cheshire; within the CWCC administrative area. The Project location is shown in the Location Order Limits and Grid Coordinates Plans [AS-005] and final versions of the Land and Crown Land Plans [REP4-002].

The Order Limits comprises approximately 365 hectares (“ha”) with the western half of the site predominately made up of dredge deposit cells. These cells have been restored to agricultural use and habitat for birds. The central site is former agricultural land with a number of ditches and drainage channels used to maintain the water level on the Frodsham and Helsby Marshes. The eastern side of the site is made up of open fields, enclosed by hedgerows and trees [ER 1.2.2.].

The Project will also make use of several dredging deposit cells that arose from early maintenance operations relating to the Manchester Shop Canal. The Cells have been restored to agricultural use and habitat for birds [ER.1.2.2].

The Project is described in detail in ES Chapter 2 [APP-035]. The key components of the Project comprise the below elements as noted in the ExA Report [ER 1.2.6]:

- Work No. 1 – a ground mounted solar photovoltaic generating station.
- Work No. 2 – a battery energy storage system compound.
- Work No. 3 – works in connection with an onsite substation and associated works.
- Work No. 4 – connection works from Work No.3.
- Work No. 5 – works to lay electrical cables and communication cables.
- Work No. 6 – works to create, enhance and maintain green infrastructure.
- Work No. 7 – construction, maintenance and decommissioning compounds.
- Work No. 8 – access and highway improvements and use, comprising works to create, improve, repair or maintain streets, roads, haul roads and access points.

2.2 Changes to the Application During Examination

No formal change requests were submitted by the Applicant during Examination, however the proposed changes regarding the Non-Breeding Bird Mitigation Area (“NBBMA”) to include the whole of Cell 2 (as discussed further in section 4.1.3 below) whilst not constituting a material change to the proposed development, would have an impact on the overall composition of the

Project and its implementation if consented. This amendment may also result in a minor reduction in the overall electricity generation from the project by 13MW [ER 3.2.90].

3. Stage 1: Screening for Likely Significant Effects (“LSEs”)

3.1 Protected Sites

Under Regulation 63 of the Habitats Regulations, the Secretary of State must consider whether the Project will have an LSE on a protected site, either alone or in-combination with other plans or projects. The purpose of this section is to identify any LSEs on protected sites that may result from the Project and to record the Secretary of State’s conclusions on the need for an AA.

Section 6 of the HRA Report [REP7-007] sets out the methodology applied to determine what would constitute a ‘significant effect’.

The European sites and qualifying features that were considered in the Applicant’s screening assessment of LSE are presented in Table 6-2 of the HRA report. The sites considered in the Applicant’s screening exercise were:

- Mersey Estuary SPA (72m northwest of the Project)
- Mersey Estuary Ramsar site (72m northwest of the Project)
- Midland Meres & Mosses- Phase 1 Ramsar (6.7km southeast of the Project)
- Midland Meres & Mosses- Phase 2 Ramsar (7km southeast of the Project)

The locations of these sites relative to the Project are depicted on Figures 2a and 2c of the HRA Report, respectively, and have been copied as Figure 1 and 2 below. The ExA put questions to the Applicant regarding the screening approach in relation to the following potential effect pathways [PD-009]:

- The impact pathways resulting from UXO works taking place during construction, particularly for disturbance and displacement of qualifying bird species. This was addressed by the Applicant at DL 3 with further consideration given in the HRA Report [REP3-006];
- The hydrological impacts on Functionally Linked Land (“FLL”) which appeared to be lacking in the HRA Report. The Applicant responded at DL 2 showing where this impact had been considered both in the HRA Report and the ES [REP2-003] and referenced the updated water balance modelling provided in Appendix B to the oLEMP [PD2-023] which demonstrated that groundwater exchange or abstraction of water from surrounding ditches was not required to maintain water level.

The ExA was satisfied with the Applicant’s response for both issues [ER C.6.1.6].

The ExA noted no further concerns were raised in relation to the Applicant’s approach to screening [ER C.6.1.7] and the Secretary of State is content that the applicable protected sites have been identified.

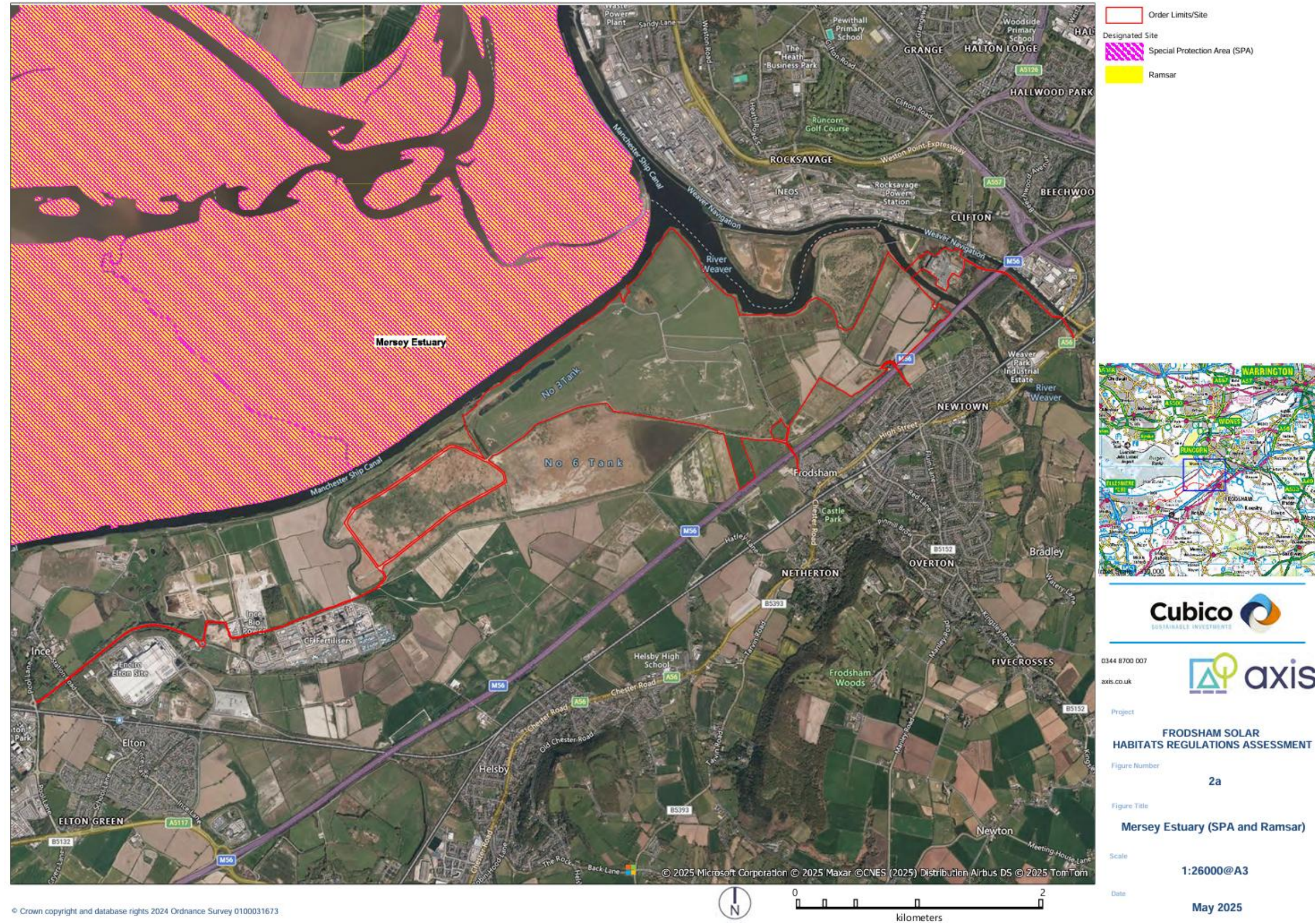


Figure 1: The Project location (outlined in red) in relation to the Mersey Estuary SPA and Ramsar Site

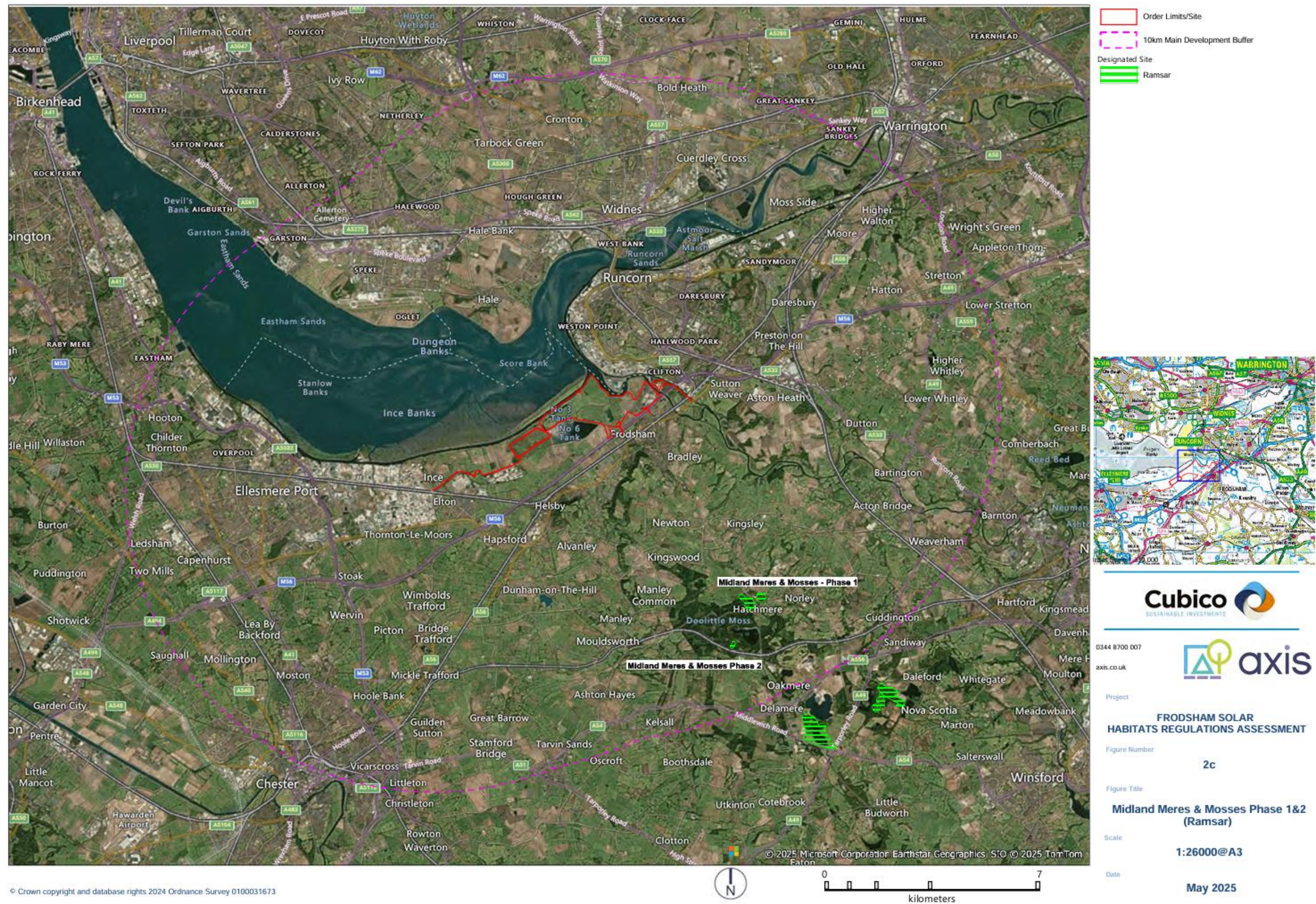


Figure 2: The Project location (outlined in red) in relation to the Midland Meres & Mosses Phase 1 & 2 Ramsar site

3.2 Likely Significant Effects from the Project Alone

Section 7 of the HRA Report detailed the potential impacts from the Project, along with the potential geographical extent of effects. Table 7.1 of the HRA Report listed the sites and qualifying features and the impact pathways which could affect them [ER C.5.1.3].

The impact pathways considered by the Applicant to have the potential to result in LSE are:

- habitat degradation due to changes in air quality;
- habitat degradation due to changes in water quality;
- loss of FLL used by qualifying bird species;
- disturbance or displacement of qualifying bird species from FLL;
- disruption to bird flight paths due to glint and glare effects;
- disturbance and displacement impacts to qualifying bird species from UXO detonations during construction.

The Applicant's screening conclusions for each site, feature and effect pathways identified are presented in section 7 of the HRA Report with a screening summary being presented in Table 7.2.

The HRA Report concluded no LSE from the Project alone on any of the qualifying features of:

- Midland Meres and Mosses Phase 1 Ramsar site;
- Midland Meres and Mosses Phase 2 Ramsar site.

The Applicant concluded that LSE could not be ruled out for the following sites:

- Mersey Estuary SPA;
- Mersey Estuary Ramsar site.

The Secretary of State agrees with the recommendations of the ExA [ER C.8.1.4] and concludes that LSE cannot be excluded for Mersey Estuary SPA and Ramsar site, when the Project is considered alone. These sites are taken forward to the AA to consider whether the Project will result in an adverse effect upon the integrity of these sites.

3.3 Likely Significant Effects from the Project In-Combination

Under the Habitats Regulations the Secretary of State is obliged to consider whether other plans or projects in-combination with the Project might affect protected sites. The Applicant noted the potential for in-combination effects with other plans or projects in relation to habitat loss, disturbance and degradation of FLL, as such an in-combination assessment was carried out within the HRA report in Section 8.

During Examination NE made comments in their Relevant Representation (“RR”) [RR-012] regarding the in-combination assessment, noting two projects that it said should be considered further; Hynet Hydrogen Pipeline and Runcorn Spur Pipeline. The Applicant updated the HRA Report to include these [AS-017].

It is noted in Section 8 of the HRA Report that NE had advised that Hobb Lane Solar should be taken through to AA in relation to impacts on FLL [REP7-007]. The Applicant went into detail as to why they considered the pathway to have no LSE which NE did not comment further on.

No in-combination LSE were identified for the sites and qualifying features where LSE were excluded from the Project alone. In-combination effects have been excluded for the Midland Meres and Mosses Phase 1 and 2 Ramsar sites due to the separation distance from the Project and the absence of any hydrological connectivity (with all local watercourses draining away from the Ramsar sites toward the Mersey Estuary and Manchester Ship Canal). On the basis of this rationale there are no plausible pathways through which these pressures could affect the designated features of those Ramsar sites [ER C.7.1.7]. The Secretary of State agrees. No additional plans or projects have been highlighted by IPs during or post Examination [ER C.7.1.8].

3.4 Likely Significant Effects Conclusion

The Secretary of State has considered the potential effects of the Project on all qualifying features of the protected sites identified, taking into account the sites’ conservation objectives, to determine whether there will be an LSE.

Based on the information before her, the Secretary of State concludes that LSE from the Project, alone and in-combination with other plans or projects, cannot be ruled out. Table 1 (Appendix A) summarises the protected sites and features for which the Secretary of State considers that significant effects cannot be excluded, either alone or in-combination. All the qualifying features and effects that have been considered in the screening of LSE, including those screened out, are given in Table 7.2 of the HRA report [REP7-007].

4. Stage 2: Appropriate Assessment

The requirement to undertake an AA is triggered when a competent authority determines that a significant effect on a protected site either alone or in-combination with other plans or projects cannot be ruled out for a plan or project. Guidance issued by DEFRA⁹ states that the purpose of an AA is to assess the implications of the plan or project in respect of the site's conservation objectives, either individually or in-combination with other plans and projects, and that the conclusions should enable the competent authority to ascertain whether the plan or project will adversely affect the integrity of the site concerned. The focus is therefore specifically on the species and/or habitats for which the protected site is designated.

Regulation 63(6) of the Habitats Regulations states that:

“In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.”

The purpose of this AA is to determine whether an AEoI on the features of the protected sites identified in Table 1 of this HRA, as a result of the Project alone or in-combination with other plans or projects, can be excluded in view of the site's conservation objectives and using the best scientific evidence available.

In accordance with the precautionary principle embedded in the integrity test and established through case law, the Secretary of State may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the protected site, and this must be demonstrated beyond all reasonable scientific doubt.

The Secretary of State has undertaken an objective scientific assessment of the implications of the Project on the qualifying features of the protected sites identified in her screening assessment, using the best scientific evidence available. The assessment has been made in light of the conservation objectives of the relevant sites.

⁹ <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

4.1 Appropriate Assessment: Mersey Estuary SPA and Ramsar site

The Applicant's HRA Report [REP7-007] provided an assessment of the following effect pathway for the Mersey Estuary SPA and Ramsar site (for the qualifying features listed in Table 1):

- habitat degradation due to changes in water quality (all phases);
- habitat degradation due to changes in air quality (all phases);
- loss of FLL (construction and operation);
- disturbance or displacement (all phases);
- disruption to bird flight paths due to glint and glare effects (operation);
- disturbance and displacement impacts to qualifying bird species from UXO detonations during construction.

4.1.1 Changes in Water Quality

The Applicant considered the impacts of changes in water and air quality within Sections 8.3 and 8.4 respectively.

For water quality there was concern raised briefly during Examination in relation to the potential for the spread of an invasive non-native species, New Zealand Pigmyweed ("NZPW") (*Crassula helmsii*). The Applicant detailed secured control measures, pollution-prevention measures and targeted species treatment with the aim to eradicate NZPW, that were secured within the dDCO and control documents. By close of Examination there were no outstanding concerns with the potential impacts on water quality to the Mersey Estuary SPA and Ramsar site.

The Secretary of State agrees with the conclusions made by the ExA [ER C.13.1.4] regarding water quality due to the securement of control measures within the outline Construction Environmental Management Plan ("oCEMP") [PD2-015], outline Operational Environmental Management Plan ("oOEMP") [PD-017] and outline Decommissioning Environmental Management Plan ("oDEMP") [PD2-019] as well as inclusion of requirement 12(a) within the dDCO and therefore concludes no AEoI from this pathway for the Mersey Estuary SPA or Ramsar site.

4.1.2 Changes in Air Quality

The Applicant considered there was a potential for impact to the Mersey Estuary SPA and Ramsar site from the creation of dust through construction [REP7-007]. The Applicant proposed the implementation of standard best-practice dust controls secured through the oCEMP, oOEMP and oDEMP which would mitigate the impacts anticipated. Combined with the low baseline pollutant concentrations, the spatial separation from designated estuarine habitats and the limited sensitivity of the FLL to airborne deposits, the Applicant concluded no AEoI for the two sites from the pathway of air quality. This was not disputed during Examination [ER C.13.1.3].

The Secretary of State agrees with the conclusions made by the ExA [ER C.13.1.4] regarding air quality due to the securement of control measures and the location of the works in relation to

the sensitive sites. The Secretary of State therefore concludes no AEoI from this pathway for the Mersey Estuary SPA and Ramsar site.

4.1.3 Habitat Loss (Loss of FLL)

The Applicant discussed the impacts of habitat loss of FLL in Section 8.2 of the HRA Report [REP7-007] and concluded that with the proposed NBBMA and the securement of mitigation within the outline Non-Breeding Bird Mitigation Strategy (oNBBMA") [REP7-033] that there would be no AEoI on the Mersey Estuary SPA and Ramsar site for any qualifying features.

During Examination, several IPs raised concerns regarding this conclusion and requested additional information and commitments from the Applicant, many of which remained unresolved at the end of the process. In relation to the potential for AEoI the concerns raised and discussed by the ExA were:

- Definition of FLL;
- Reliance on land outside the Order limits;
- Species coverage in assessment and basis for mitigation;
- Potential loss of FLL through impacts to SSSI and overlapping features;
- Assessment of canal pools and their suitability as a water source for Cell 3;
- Suitability of the NBBMA;
- Vehicular recreational disturbance and displacement impacts on functionality of the NBBMA;
- Impact of footpaths on the functionality of the NBBMA and disturbance to qualifying bird features;
- Whether the proposed mitigation areas should be considered compensation;
- Management of the NBBMA;
- Functionality of the NBBMA;
- Assessment methodology;
- Potential loss of FLL through disturbance and placement of qualifying bird species as a result of decommissioning.

The Secretary of State has reviewed these topics and the extensive discussions had during the Examination and agrees with the ExA on all of these topics. Given the high level of engagement on four of these topics, the Secretary of State considers it appropriate to comment further on the following:

- Management of the NBBMA;
- Functionality of the NBBMA;
- Assessment methodology;
- Potential loss of FLL through disturbance and placement of qualifying bird species as a result of decommissioning.

Management of the NBBMA

During Examination, several parties raised concerns over the management of the NBBMA. NE [RR-012] stated that a suitably qualified conservation management body was essential to deliver habitat modification, screening and access controls and until this was resolved NE could not

agree to the conclusions of no AEol. This was also raised by CWCC [RR-037], RSPB [REP4-067] and CWT [REP4-075].

While the Applicant did state that they were in discussion with RSPB and provided the ExA with a letter of intent to support this [PD2-027], in addition the Applicant updated the oNBBMA [PD2-023] to specific that a nature conservation organisation would manage the NBBMA, secured via Requirement 9(j) of the dDCO, with the Adaptive Management Plan ("AMP") to be prepared in consultation with NE, CWCC and RSPB.

While CWCC and CWT stated that they considered there needed to be evidence of a firm agreement prior to decision, NE confirmed at DL 4 [REP4-069] that with the updates to the HRA Report [REP4-052] and the oNBBMS that they were satisfied that the Applicant's amendments would ensure an appropriate conservation body would be appointed, even if it was not the RSPB.

The ExA requested that the RSPB [PD-017] provide clarity on the process of negotiations regarding this as well as their position on the NBBMA and oNBBMS which the RSPB provided at DL 4 [REP4-067]. They confirmed they were willing to take on the role of manager of the site subject to an appropriate agreement and funding package being in place, but that no formal agreement would be accepted until their final proposals were secured. The proposals set out by RSPB were:

- The AMP agreed with RSPB;
- Clear habitat objectives, water level management, disturbance-reduction measures;
- Permanent predator exclusion fencing;
- Increased wet features in line with best practices, assurance of sufficient freshwater availability;
- Incorporation of all of Cell 2 into an expanded NBBMA.

At DL 5, the Applicant provided a response to the ExQ's [REP5-041] detailing how they have met or intend to meet these requirements, and where the Applicant did not agree with the RSPB's requests, such as at the expansion of the NBBMA, they provided justification to support their position.

The ExA, as discussed previously, noted by the varying positions of the Applicant, NE and RSPB and so requested that they provided a unified response to their next request for information [PD-017] regarding the position on AEol conclusions and the NBBMA suitability.

The Applicant, NE and RSPB drafted a joint position paper [REP6-041] that provided views on two potential scenarios; Scenario 1, that the NBBMA is delivered as was currently set out at DL 5, and Scenario 2, where the NBBMA is delivered as in Scenario 1 along with the removal of Work 1 from Cell 2 which would be then incorporated into the NBBMA. NE and RSPB both agreed that a conclusion of no AEol could not be reached via Scenario 1 and that Cell 2 must be utilised fully to be able to fully mitigate against the impacts to the site. The Applicant's response within the position paper was that they considered the current NBBMA to be sufficient in size to mitigate against AEol for the two protected sites and that there would be a loss of 13MW of capacity of the Project if scenario 2 was followed. However, they concluded that, given there were strong conservational benefits, and it would support their conclusion of no AEol, the Applicant agreed to remove Cell 2 from the Solar Array Development Area ("SADA"). The

additional mitigation was agreed at DL 7 with an update to the oNBBMS [REP7-033]. The RSPB also responded directly to the ExQ's [AS-041] to state that given the Applicant's amendments to the oNBBMS, RSPB were content to be considered the managing conservation body for the NBBMA.

The ExA concluded that CWCC, RSPB and NE would have control over the content of the final NBBMA to ensure an appropriate nature conservation body would be in place to manage the site. They considered this, along with the amendments to the NBBMA, to be sufficient to avoid any AEoI of the protected sites.

The Secretary of State agrees with the conclusions made by the ExA regarding the management of the NBBMA due to the securement of the mitigation within the oNBBMS and the extension of the NBBMA. The Secretary of State therefore concludes no AEoI from this pathway for the Mersey Estuary SPA and Ramsar site, considers the management of the NBBMA to be sufficiently secured, and that the inclusion of the entirety of Cell 2 within the mitigation area would result in no AEoI as a result of loss of FLL for the Mersey Estuary SPA and Ramsar site.

Functionality of NBBMA

NE raised the topic of functionality for the NBBMA site [RR-012] and agreed with the Applicant that the definition of "functional" would be once all of the following have been achieved:

- All physical works within the NBBMA are completed;
- The entire NBBMA area is available to support SPA bird species for which it is design;
- The entire NBBMA is free from construction-related disturbance.

CWCC did not agree with this definition [REP6-046] and considered there to be a potential lack of land for qualifying bird species to use while this site was being established.

At DL 7, the Applicant confirmed it would include the entirety of Cell 2 as part of the NBBMA to provide additional mitigation for bird species after NE and RSPB concluded that there would be the potential for AEoI without this [REP6-041]. It was also noted that this addition would also provide an already functional area to the site to bridge the gap during the construction of the NBBMA. CWCC maintained their concern at the end of Examination [REP7-037] but noted that the inclusion of Cell 2 was a step in the right direction.

The ExA was content with the Applicant's approach to functionality and noted that the definition used had been agreed with NE and that the Applicant had also included a requirement within the dDCO (Requirement 12) preventing works taking place until the NBBMA is functional. Given the decision to include the entirety of Cell 2, the ExA concluded that they agreed with the Applicant and NE's conclusion of no AEoI.

The Secretary of State agrees with the conclusions made by the ExA regarding the functionality of the NBBMA and notes NE's confirmation that they agree with the Applicant's definition of functional. The Secretary of State notes that the NBBMA has been expanded to include all of Cell 2 which will add additional functionality to the site. The Secretary of State therefore concludes no AEoI from this pathway for the Mersey Estuary SPA and Ramsar site.

Assessment methodology

NE noted issues regarding the presentation of the results within the HRA Report and that the Applicant had made incorrect comparisons of peak values for bird species [RR-012]. In addition, they requested that the HRA Report and mitigation plans consider all relevant SPA birds, not just lapwing, curlew and golden plover. CWCC [REP1-048] and CWT [REP1-068] also raised concerns regarding the data, stating it was insufficient in regard to survey and species coverage and that for species coverage only a small number of species had been used to inform the NBBMA area.

The Applicant updated the HRA Report [PD02-009] to amend the errors noted by NE and to include additional analysis regarding peak counts. The Applicant also updated the HRA Report with further details on how mitigation would benefit all affected SPA species to ensure all species were appropriately considered [PD2-027].

In response to CWCC and CWT, the Applicant justified their approach in their response, stating that survey coverage was adjusted between years to ensure all relevant areas were surveyed within the programme, and that the core non-breeding period (October to March) was consistently surveyed over three years, which exceeded NE guidance [REP2-003].

CWCC responded [REP3-046] that they did not agree and stated that early autumn and late spring were not covered each year, meaning full passage seasons were not surveyed. This was commented on again by the Applicant [REP4-052] who provided a revised HRA Report with additional bird data analysis, including the latest Wetland Bird Survey counts and coverage of the autumn passage season. It is noted that NE confirmed this issue was considered resolved at DL 4 [REP4-069]. CWCC maintained this disagreement [REP7-037].

The ExA, notwithstanding the outstanding concerns raised by CWCC, concluded that given the agreement from NE on the survey effort and coverage of the site and the justification provided by the Applicant, that the survey and assessments were sufficient to support the Applicant's conclusions of no AEol.

The Secretary of State agrees with the conclusions made by the ExA regarding the Applicant's assessments and notes NE's agreement with the updated HRA Report at DL 4 in relation to the methodology amendments. The Secretary of State therefore concludes no AEol from this pathway for the Mersey Estuary SPA and Ramsar site.

Potential loss of FLL through disturbance and placement of qualifying bird species as a result of decommissioning

CWCC raised concerns [REP5-025] that during decommissioning of the Project, the land used for the NBBMA would be returned to the landowner after decommissioning and there would be the potential for AEol due to the loss of the managed mitigation area. CWCC proposed that to mitigate against this, any decommissioning of the mitigation areas should be carried out two years prior to the handover of land back to the owner.

The Applicant did not agree to this proposal but noted that the SADA would be decommissioned first and the land would be restored to how it is now, and that it would be available for use by the bird populations. They also noted while the long-term management of the area could not be guaranteed after decommissioning, they anticipated it would be in an improved condition for non-breeding birds compared to the current baseline [PD2-027].

The Applicant also updated Table 5-3 of the oDEMP [REP7-021] which now requires the Applicant to agree the programme of works for the decommissioning of any mitigation area at least 12 months prior with CWCC.

The ExA concluded that notwithstanding the outstanding concerns of CWCC, the eventual return of the NBBMA to its original use would be a legitimate outcome and is content with the arrangements reached by the end of examination for the scheduling of decommissioning activities, as secured by the oDEMP [REP7-021]. The ExA concludes no AEoI as a result of decommissioning activities [ER C.13.1.136].

The Secretary of State agrees with the conclusions made by the ExA regarding the decommissioning management plan for the NBBMA due the Applicant's amendments to the oDEMP and that it is secured via Requirement 20 of Schedule 2 of the DCO. The Secretary of State therefore concludes no AEoI from this pathway for the Mersey Estuary SPA and Ramsar site.

The Secretary of State considers the NBBMA to be sufficient in size and design to mitigate against the anticipated impacts of the construction and operation of the Project and is comforted by the control mechanisms within the oNBBMS to ensure that an appropriate conservation body will be in place to manage the site and within the oDEMP to ensure the decommissioning phase is carried out in a way to reduce the impact to the qualifying bird species.

Based on the information before her, and in agreement with the ExA [ER.C.13.1.136] and NE [REP6-050] [REP7-035], the Secretary of State is satisfied that the Project alone will not adversely affect the integrity of the Mersey Estuary SPA and Ramsar site as a result of loss of habitat.

4.1.4 Disturbance and Displacement of qualifying species

The Applicant discussed the impacts of Disturbance and Displacement in section 8.3 and 8.5 of the HRA Report [REP7-007] and concluded that with control measures secured within the oCEMP, oOEMP and oDEMP, there would be no AEoI on the Mersey Estuary SPA and Ramsar site for any qualifying features.

Disturbance and displacement were discussed throughout Examination in relation to various anticipated impacts, including:

- Noise disturbances
- Visual disturbances
- Unexploded Ordinance ("UxO") detonations

Noise disturbances

NE [RR-12] requested additional information to support the Applicant's conclusions in the HRA Report stating that no noise disturbances were anticipated within the SPA and Ramsar Site boundaries. In their request they also advised the Applicant that there were no prescribed thresholds for noise disturbances and that it should be considered further in the AA.

The Applicant updated the HRA report [PD2-009] in response to the comments put forward by NE and NE later confirmed they were content with the amendments, and no further work was needed in relation to noise disturbances [REP4-069].

CWCC [RR-037] raised concern regarding the assessment of noise in relation to the impact of flight paths and requested that the applicant provide further assessment and clarification on the impacts of construction noise, taking into account the different elevations between cells. In response to this, the Applicant [REP3-041] stated that it disagreed with CWCC and in line with agreement from NE [REP1-056] considered that the construction impacts on non-breeding birds had been fully assessed.

CWCC maintained their position at the end of Examination [REP7-028].

The ExA concluded that, notwithstanding the position of the CWCC, with the mitigation secured and the agreement of NE with the Applicant's assessment, there would not be an AEol on the Mersey Estuary SPA and Ramsar site as a result of noise disturbances [ER C.13.1.169].

The Secretary of State agrees with the conclusions made by the ExA regarding noise disturbance due to the distance between the construction activities and the protected sites and the assessment provided by the Applicant. The Secretary of State therefore concludes no AEol from this pathway for the Mersey Estuary SPA and Ramsar site.

Visual disturbances

NE [RR-12] welcomed the proposed sensitive lighting strategy and that construction lighting would be directed away from the NBBMA and FLL, however they requested that this be applied across the entire development area rather than just the NBBMA. The Applicant updated the HRA Report [PD2-009] to confirm this had been adopted site-wide and added it as a requirement to the oCEMP [PD2-015], oOEMP [PD-017] and oDEMP [PD2-019].

NE confirmed that this matter was resolved at DL 4 [REP4-069].

CWCC [RR-037] raised concerns about visual impacts on qualifying bird species during construction, including potential flight path disruptions and insufficient assessment of elevation differences between cells and their visual effects on the NBBMA. The Applicant responded [REP3-041] showing evidence that they had considered and assessed this within the HRA Report and noted that NE had agreed with their assessment at DL 1 [REP1-056]. The Applicant concluded that there is no evidence that birds flying over Cells 1, 3 and 5 would be disturbed during construction.

CWCC maintained their position at the end of the Examination [REP7-028].

The impacts of glint and glare were also discussed during the Examination as CWCC [RR-037] and CWT [REP1-068] both raised that they did not consider the Applicant's assessment of behavioural impacts on birds arising from the solar panels to be sufficient. CWCC raised that the solar panels could be mistaken for water and could cause a change in bird movements in the area. They also noted that the Glint and Glare Assessment [APP-056] excluded ecological receptors and that the HRA Report did not assess the landscape-scale implications of a large solar array.

The Applicant responded [PD2-027] stating that NE agreed with its conclusions and maintained that glint and glare would not cause significant effects due to the embedded mitigation measures such as low-profile panels and with non-reflective coatings.

CWCC [REP3-046] reiterated that they did not consider the Applicant's assessment of landscape-scale effects to be sufficient and referenced that the Frodsham Windfarm ES had retained undeveloped corridors to protect flight path and that more could be done given the cumulative effect of reducing FLL and altering current bird movement patterns. At DL 4 [REP4-004] the dDCO was updated to include Requirement 6(1)(h) which would require the detailed design of the anti-reflective coating to be used on the solar modules in Work No. 1 to be submitted and approved in writing by the local planning authority and NE. This did not resolve the concerns raised by CWCC [REP4-068] and CWT [REP1-068].

CWCC's final position on this issue [REP6-046] was that while the anti-reflective coating would lessen the impact on birds landing on the panels, the wider issue that the panels could change flight lines and displace birds into areas that they are not able to use due to the less contiguous habitat now present. CWCC noted that if Cell 2 were to be full incorporated into the NBBMA this would reduce the area of developed land which may reduce the impact. At DL 7 it was confirmed that the whole of Cell 2 would be incorporated [REP7-033].

The ExA acknowledged CWCC's position and the agreement between the Applicant and NE in regard to visual disturbances. Noting the mitigation proposed for lighting and visual disturbance effects that is secured within several documents, the ExA was content that there will be no AEoI as a result of visual disturbance on the Mersey Estuary SPA and Ramsar Site [ER. C.13.1.175].

In regard to glint and glare the ExA was satisfied that the proposed and secured mitigation would be sufficient to avoid any operational disturbance of over flying birds and their access to other habitats [ER C.13.1.186].

The Secretary of State agrees with the conclusions made by the ExA regarding visual disturbance due to the mitigation measures secured within the oNBBMS, oCEMP, oLEMP, oOEMP and the oDEMP, each of which has been secured within Schedule 2 of the DCO. The Secretary of State therefore concludes no AEoI from this pathway for the Mersey Estuary SPA and Ramsar site.

UXO detonations

The ExA [PD-009] requested the Applicant to confirm whether the HRA Report had considered the impact pathways from UXO detonations on the protected species of the Mersey Estuary SPA and Ramsar site.

The Applicant confirmed [REP2-003] that the HRA Report did not consider the UXO, noting that an UXO Management Plan would be developed to manage impacts arising from unplanned detonations, and the oCEMP [REP1-020] was updated to ensure that the management plan would demonstrate how it had taken into account ornithological receptors in relation to UXO.

The Applicant updated Section 8.2 of the HRA Report at DL 3 [REP3-006] to include considerations of the UXO impacts within the AA that concluded no AEol on any qualifying features of the Mersey Estuary SPA and Ramsar site. NE [REP5-056] confirmed it agreed with the Applicant's conclusion and that the mitigation secured within the HRA Report and oCEMP was sufficient.

The Secretary of State agrees with the conclusions made by the ExA regarding UXO detonations the mitigation secured within the oCEMP and the commitment within that plan to produce an UXO Management Plan prior to any UXO detonation activities [ER C.13.1.193]. The Secretary of State therefore concludes no AEol from this pathway for the Mersey Estuary SPA and Ramsar site.

4.1.5 Secretary of State's conclusions for AA Alone

In the AA of the HRA Report, the Applicant stated [REP7-007] that there would not be an AEol on Mersey Estuary SPA and Ramsar site. At the end of Examination both the ExA [ER C.14.1.2] and NE [REP6-050] agreed with the HRA Report and the conclusion of no AEol.

The Secretary of State considers that the effects of this Project can be managed appropriately via the mitigation measures outlined in the oCEMP [REP7-017], oLEMP [REP7-025] and the oNBBMA [REP7-033].

Based on the information before her, and subject to the mitigation measures as secured in the final Order (Requirements 6, 9 and 12 within Schedule 2), the Secretary of State is satisfied that the Project alone will not adversely affect the integrity of the qualifying features of the Mersey Estuary SPA and Ramsar site.

4.2 In-Combination Assessment

The Applicant identified several plans and projects to consider as part of their in-combination assessment, but for the purpose of their HRA Report [REP7-007] they short listed nine plans and projects that had the potential to affect the conservation objectives of the two protected sites. These are within Section 8.6 of the HRA Report.

As detailed in Section 8.8 of the HRA Report [REP7-007] the Applicant considered the magnitude of effects and the commitment to habitat reinstatement along with the adoption of best-practice mitigation across all projects to reduce the cumulative impacts on the Mersey Estuary SPA and Ramsar site. With the mitigation measures secured, the Applicant concluded there would be no potential for significant in-combination effects. Both the ExA [ER C.14.1.2] and NE [REP6-050] agreed with the Applicant's conclusions.

Based on the information before her the Secretary of State is satisfied that the Project, in-combination with other plans or projects, will not adversely affect the integrity of the qualifying features of the Mersey Estuary SPA and Ramsar site.

4.3 Appropriate Assessment Conclusion

The Secretary of State has carefully considered all the information available to her, including the recommendations of the ExA, the advice of NE as the SNCB, the views of all other IPs, and the Applicant's case to determine whether the Project, either alone or in-combination with other plans or projects, will result in an AEoI.

Based on the available information and subject to the mitigation measures secured in the final Order, the Secretary of State is satisfied that the Project, either alone or in-combination with other plans or projects, will not adversely affect the qualifying features of Mersey Estuary SPA and Ramsar site. The Secretary of State is satisfied that further tests set out in the Habitats Regulations are therefore not required to be considered.

5 Transboundary assessment

A transboundary screening under Regulation 32 of the EIA Regulations [OD-002] was undertaken by the ExA on behalf of the Secretary of State on 10 July 2023 following the Applicant's request for an EIA Scoping Opinion [ER.2.7.1]. A second screening was published on 28 August 2023 [OD-002]. The ExA was satisfied that the Project would not have an LSE on transboundary sites [ER.2.7.3].

The Secretary of State has not been presented with any evidence to demonstrate that transboundary impacts would have an AEol on any transboundary site. As such, the Secretary of State is satisfied that the Project, either alone or in-combination with other plans or projects, would not have an AEol on any transboundary site. The Secretary of State is satisfied that further stages of a transboundary assessment are therefore not required.

6 Conclusion

The Secretary of State has carefully considered all information presented within the Application, during the Examination, and the representations made by NE and all IPs, along with the ExA's Report.

The Secretary of State concludes that LSEs cannot be excluded at two protected sites, when the Project is considered alone or in-combination with other plans or projects. These were the Mersey Estuary SPA and Ramsar site. These LSEs were taken forward to consider whether the Project would result in an AEoI of the protected sites.

Having considered the information available and having made a full assessment of the potential for an AEoI of each of the protected sites for which the potential for LSE was identified, taking into account the views of the Applicant, NE, all IPs, as well as the ExA, the Secretary of State concludes that an AEoI can be excluded beyond reasonable scientific doubt, subject to the measures secured through the final Order.

Annex 1

Table 1: European sites and features for which LSE could not be excluded and were identified by the applicant

Protected site	Qualifying feature(s)	Conservation Objectives and SACOs	Effect Pathway
Mersey Estuary SPA	Teal (<i>Anas crecca</i>) Pintail (<i>Anas acuta</i>) A054, nb Golden plover (<i>Pluvialis apricaria</i>) A140,nb Dunlin (<i>Calidris alpina</i>) A672, nb Black-tailed godwit (<i>Limosa limosa islandica</i>) A616, nb Redshank (<i>Tringa totanus</i>) A162, nb Shelduck (<i>Tadorna tadorna</i>) A048, nb Waterbird assemblage	See footnote ¹⁰	Loss of functionally linked Land during construction and operation Disturbance/Displacement during all phases Water Quality degradation during all phases Air quality during all phases Glint and glare during operation
Mersey Estuary Ramsar Site	Teal (<i>Anas crecca</i>) wintering Pintail (<i>Anas acuta</i>) wintering	N/A	

¹⁰

<https://designatedsites.naturalengland.org.uk/ConservationAdvice.aspx?SiteCode=UK9005131&SiteName=mersey%20estuary&SiteNameDisplay=Mersey%20Estuary%20SPA&countyCode=&responsiblePerson=&SeaArea=&IFCAArea=&HasCA=1&NumMarineSeasonality=7&SiteNameDisplay=Mersey%20Estuary%20SPA>

Frodsham Solar Farm Habitats Regulations Assessment

	Dunlin (<i>Calidris alpina</i>) wintering Black-tailed godwit (<i>Limosa limosa islandica</i>) Redshank (<i>Tringa totanus</i>) passage & wintering Shelduck (<i>Tadorna tadorna</i>) wintering Waterbird assemblage wintering		
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