



**Written Representation  
for the  
Royal Society for the Protection of Birds**

**Submitted for Deadline 1**

**27 January 2026**

**Planning Act 2008 (as amended)**

**In the matter of:**

**Application by Uniper UK Limited for an Order  
Granting Development Consent for the Connah's Quay Low Carbon Power  
Project**

**Planning Inspectorate Ref: EN010166**

**RSPB Registration Identification Ref: [REDACTED]**

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## 1. Introduction

### The RSPB

- 1.1. The Royal Society for the Protection of Birds (the RSPB) was set up in 1889. It is a registered charity incorporated by Royal Charter and is Europe's largest wildlife conservation organisation, with a membership of over 1.1 million<sup>1</sup>. The principal objective of the RSPB is the conservation of wild birds and their habitats. The RSPB therefore attaches great importance to all international, EU and national law, policy and guidance that assist in the attainment of this objective. It campaigns throughout the UK and internationally for the development, strengthening and enforcement of such law and policy. In so doing, it also plays an active role in the domestic processes by which development plans and proposals are scrutinised and considered, offering ornithological and other wider environmental expertise. This includes making representations to, and appearing at, public inquiries and hearings during the examination of applications for development consents.

### The RSPB's interest in energy development

- 1.2. The UK is of outstanding international importance for its passage and wintering waterbirds, which rely on a network of estuaries and wetlands as stopover and wintering sites. The UK's estuaries provide relatively mild climatic conditions and nutrient rich habitats providing rich feeding and roosting opportunities for wintering waders and wildfowl. In many cases they are also important for breeding waterbirds, seabirds and other species.
- 1.3. Development proposals which threaten coastal habitats and the wildlife they support are of primary interest to RSPB. The current proposal, the Connah's Quay Low Carbon Power Project ("CQLCP") situated in close proximity to an internationally important wildlife site and having both direct and indirect impacts on that site (and others) and its wildlife is of concern to RSPB, the nature of these concerns is described within.

### Scope of Written Submission

- 1.4. This Written Submission covers the following:
- The nature conservation importance of the waterbirds affected by the Connah's Quay Low Carbon Power Project
  - Nature conservation legislation and policy background
  - Ornithology
  - Derogation case: the RSPB's approach to evaluating compensation measures under the Conservation of Habitats and Species Regulations 2017 (as amended)
  - RSPB comments on the Applicant's current compensation proposals
- 1.5. In compiling this Written Representation, the RSPB has considered the currently submitted application documents, including the following:

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<sup>1</sup> <https://www.rspb.org.uk/about-us/annual-report> Accessed 24 January 2026.

- APP-049 6.2.11 CQLCP Chapter 11 Terrestrial and Aquatic Ecology Rev 00
- APP-189 6.4 CQLCP Appendix 11A Ecological Impact Assessment Methodology Rev 00
- APP-190 6.4 CQLCP Appendix 11B Terrestrial and Aquatic Ecology Baseline Surveys Rev 00
- APP-193 6.4 CQLCP Appendix 11D Ornithology Technical Appendix Redacted Rev 00
- APP-194 6.4 CQLCP Appendix 11D CONFIDENTIAL Ornithology Technical Appendix Rev 00
- APP-250 6.9 CQLCP Outline Landscape and Ecological Management Plan Rev 00
- APP-253 6.12 CQLCP Report to Inform Habitats Regulations Assessment Rev 00
- APP-254 6.13 CQLCP Curlew Mitigation Strategy Rev 00
- APP-255 6.14 CQLCP Offsite Net Benefit for Biodiversity and Green Infrastructure Strategy Rev 00

1.6. We have also considered the recently submitted:

- AS-006 Uniper UK Limited Change Notification
- AS-007 Uniper UK Limited Change Notification – Appendices
- PDA-003 Notice of a proposed without prejudice Habitats Regulations Assessment (HRA) derogation in Wales

1.7. Our comments are made without prejudice to any further comments we may wish to make in relation to this application and Examination.

## 2. The nature conservation importance of the waterbirds affected by the Connah's Quay Low Carbon Power Project

### Introduction

- 2.1. As set out in section 1, the UK is of outstanding international importance for its wintering waterbirds. As with all Annex I and regularly occurring migratory species, the UK has responsibility under the Birds Directive<sup>2</sup> to secure the conservation of these important waterbird populations.
- 2.2. As set out in our Relevant Representation (RR-036), the RSPB is particularly concerned regarding the impacts on the following designated sites:
- Dee Estuary Site of Special Scientific Interest (SSSI)
  - Dee Estuary Special Protection Area (SPA)
  - Dee Estuary Special Area of Conservation (SAC)
  - Dee Estuary Ramsar site
- 2.3. Of these protected sites our primary focus in this Written Representation is the Dee Estuary SPA, which lies immediately adjacent to the project.

### Conservation Objectives

- 2.4. The Conservation Objectives for the Dee Estuary SPA<sup>3</sup> state, subject to natural change to:

“Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or 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 each of the qualifying features
  - The distribution of the qualifying features within the site.”
- 2.5. These objectives are referred to in the Conservation of Habitats and Species Regulations 2017. They must be considered when a Competent Authority is required to make a Habitats Regulations Assessment including an appropriate assessment, under the relevant parts of legislation. We explore this in section 3.

### Supplementary Advice on Conservation Objectives

- 2.6. Natural England's Supplementary Advice on the Conservation Objectives for the SPA identifies, for each SPA feature, key attributes and targets. Attributes are the ecological characteristics or requirements of the classified features within the SPA and deemed to best describe the site's ecological integrity. If safeguarded this will enable achievement

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<sup>2</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version) (the Birds Directive).

<sup>3</sup> European Site Conservation Objectives for the Dee Estuary SPA, Natural England 21 February 2019

of the Conservation Objectives and favourable conservation status for all the designation features, including any assemblage feature.

2.7. For each qualifying feature, targets are typically set in respect of the following attributes (as appropriate):

- Population abundance;
- Extent of habitats and spatial distribution;
- Disturbance caused by human activity;
- Food availability.

2.8. The RSPB considers these attributes and targets are particularly relevant to consideration of the CQLCP as they respectively relate to:

- the population levels at which the features should be maintained or restored to;
- the need to:
  - maintain or restore safe passage of birds moving between their feeding and/or roosting areas;
  - reduce/avoid disturbance to foraging, feeding, moulting and/or roosting birds;
  - maintain the extent, distribution and availability of suitable habitat which supports the feature; and
  - maintain or restore the distribution, abundance and availability of key food and prey items.

2.9. The RSPB considers these attributes and targets are directly relevant to the consideration of whether an SPA's conservation objectives to maintain or restore site integrity can be met and the SPA achieve favourable conservation status for all its features including, where appropriate, the waterbird assemblage throughout the lifetime of the development and any subsequent period where its impacts continue to affect the SPA features.

### 3. Nature conservation legislation and policy background

#### Introduction

- 3.1. Below we summarise the RSPB's understanding of the key nature conservation legislation and related policy background relevant to the RSPB's concerns.

#### The Conservation of Habitats and Species Regulations 2017

- 3.2. SACs and SPAs are protected as “European sites” under provisions within the Conservation of Habitats and Species Regulations 2017 (Habitats Regulations)(as amended)<sup>4</sup>.
- 3.3. The Habitats Regulations set out the sequence of steps to be taken by the competent authority (here the Secretary of State for Energy Security and Net Zero (DESNZ)) when considering authorisation for a project *likely to have an effect* on a European site and its species before deciding to authorise that project. These are as follows:
- Step 1: consider whether the project is directly connected with or necessary to the management of the SPA and its species (regulation 63 (1)). If not –
  - Step 2: consider, on a precautionary basis, whether the project is likely to have a significant effect on the SPA and its species, either alone or in combination with other plans or projects (the Likely Significance Test) (regulation 63 (1)).
  - Step 3: make an appropriate assessment of the implications for the SPA and its species in view of its conservation objectives with the aims and objectives of the requirements including the National Sites Network management objectives (reg 16A) to also be considered. There is no requirement or ability at this stage to consider extraneous (non-conservation e.g. economics, renewable targets, public safety etc) matters in the appropriate assessment (regulation 63 (1)).
  - Step 4: consider whether it can be ascertained that the project will not, alone or in combination with other plans or projects, adversely affect the integrity of the SPA and its species, having regard to the manner in which it is proposed to be carried out, and any conditions or restrictions subject to which that authorisation might be given (the Integrity Test) (regulation 63 (6)).
  - Step 5: In light of the conclusions of the assessment, the competent authority shall agree to the project only after having ascertained that it will not adversely affect the integrity of the SPA, alone or in combination with other plans or projects (regulation 63 (5)).
  - Step 6: only if the competent authority is satisfied that, there being no alternative solutions and the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to (regulation 64(2)), may be of a social or economic nature), they may agree to the plan or project notwithstanding a negative assessment of the implications for the European site (regulation 64 (1)).
  - Step 7: in the event of the no alternative solutions and imperative reasons of overriding public interest tests being satisfied, the Secretary of State must secure that any and all necessary compensatory measures are taken to ensure

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<sup>4</sup> The Conservation of Habitats and Species Regulations 2017:  
<https://www.legislation.gov.uk/uksi/2017/1012/contents>.

that the overall coherence of the National Site Network is protected (regulation 68) taking account of the National Site Network management objectives.

### SPA and SAC Conservation Objectives

- 3.4. Under the Habitats Regulations, a site's Conservation Objectives are intrinsic to the Integrity Test when considering whether to grant consent for a plan or project – see Habitats Regulations 63(1).
- 3.5. In order to understand the Conservation Objectives and the Supplementary Advice in the context of Regulation 63(1) it is important to remind oneself of the role of SPAs within these legislative requirements. These protected sites are part of the requirement for special conservation measures in order to ensure that their contribution to national and international “conservation status” of the species<sup>5</sup> is maximised, as set out in the headline words at the start of all Conservation Objectives:

“Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring...”

- 3.6. The Conservation Objectives are to be an articulation of the contribution that it is appropriate for the SPA to make in an enduring way. It would be inconsistent with the purposes of the protection and the role of SPAs to have SPA Conservation Objectives (or the interpretation of them) aiming for lower populations particularly since so many sites were designated at a time when populations were not in favourable condition.

### Appropriate assessment

- 3.7. As part of the assessment requirements, regulation 63, Habitats Regulations require the application of the precautionary principle. Meaning that if it cannot be excluded, on the basis of objective scientific information, that it is likely to have a significant effect on an SPA or SAC and its species an appropriate assessment will be required: see *Waddenzee*.<sup>6</sup>
- 3.8. Following that appropriate assessment, a project may only be granted consent if the competent authority is convinced that it will not have an adverse effect on the integrity of the European site(s) and their species of concern, having applied the precautionary principle and taken account of the conservation objectives for those European sites and their habitats and species. *Waddenzee* confirmed that where doubt remains as to the absence of adverse effects on the integrity of the European site, approval should be refused<sup>7</sup> (subject to the considerations of alternative solutions, imperative reasons of overriding public interest and the provision of compensatory measures as set out in regulations 64 and 68).

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<sup>5</sup> Please see points below on the management objectives of the National Sites Network and the requirements for SPAs to ensure that the species are maintained and/or restored across their natural range.

<sup>6</sup> CJEU Case-127/02; [2004] ECR-7405 at [45].

<sup>7</sup> [56]-[57].



- 3.9. An appropriate assessment requires all aspects of the project which could affect the European site, its species and its conservation objectives to be identified in the light of the best scientific knowledge in the field.<sup>8</sup> The competent authority, “taking account of the conclusions of the appropriate assessment of the implications...for the site concerned, in the light of the conservation objectives, are to authorise such activity only if they have made certain that it will not adversely affect the integrity of the site. That is the case where no reasonable scientific doubt remains as to the absence of such effects”<sup>9</sup>.

### Environmental Impact Assessment

- 3.10. The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended)<sup>10</sup> state that development consent cannot be granted for Environmental Impact Assessment (EIA) development unless the decision-maker has taken into account environmental information including an environmental statement which describes the significant effects, including cumulative effects, of the development on the environment. This will include effects on all wild bird species whether SPA species or not.
- 3.11. Energy developments such as CQLCP have the potential to impact on birds through direct or indirect habitat loss, disturbance from construction activities, displacement during the operational phase (resulting in loss of foraging/roosting areas) and impact on bird flight lines (i.e. barrier effect) and associated increased energy use by birds for commuting flights between roosting and foraging areas. These potential impacts have been taken into account by the RSPB and its remaining concerns with the project is set out below, in the context of the legislative provisions summarised above, in particular those relating to appropriate assessment.

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<sup>8</sup> [61].

<sup>9</sup> [59].

<sup>10</sup> The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017: <http://www.legislation.gov.uk/ukxi/2017/572/contents/made> Accessed 24 January 2026.

## 4. Ornithology

### Our headline concerns

- 4.1. Our Relevant Representation (RR-036) set out our headline concerns with this project. The RSPB's main interest is the potential impacts of CQLCP on nationally and internationally protected sites, as well as its potential to deliver tangible goods for nature recovery. We aim to ensure the project avoids negative impact first, then minimises impacts where they are unavoidable, and then compensates as a last resort (subject to justification under the appropriate policy/legislation).
- 4.2. We are aware of very significant environmental concerns with CQLCP including those set out in the Relevant Representations of Natural England (RR-027) and Natural Resources Wales (RR-028). We support these concerns and will be reviewing the Applicant's responses to these during the Examination.
- 4.3. Currently the RSPB's principal areas of concern regarding the potential effects of the project on the noted important sites and features are as follows:
  - Potential noise and visual disturbance to waterbird features
  - Potential loss of habitat frequented/used by waterbird features within the Main Development Area

### Potential noise and visual disturbance to waterbird features

- 4.4. We are concerned over the potential disturbance to nearby roosts and feeding areas, particularly during construction but also during operation. We welcome the proposed mitigation measures to address noise and visual disturbance, although it currently remains unclear as to what the full extent of mitigation will be and hence the likely efficacy.
- 4.5. We understand that additional measures to minimise noise are likely to be required and will be considered at the detailed design stage. It is essential that appropriate mitigation measures are in place to ensure the predicted disturbance will not have an adverse effect on the waterbird features.
- 4.6. We will seek further clarity on disturbance mitigation measures during the Examination process.

### Potential loss of habitat frequented/used by waterbird features.

- 4.7. Chapter 11 of the Environmental Statement (ES) (APP-049) identifies that habitat loss will occur within the Main Development Area. The western part of the fields at the Main Development Area will be used as a 'laydown area' during construction and will be reinstated into pasture on completion of works. The remainder of the fields will form part the new power station footprint, resulting in permanent habitat loss. This will have a direct impact on birds during and after construction. In total the ES identifies some 11 ha is likely to be temporarily lost and 15 ha permanently lost.

- 4.8. The fields are used by a significant number of over-wintering birds associated with the Dee Estuary, most notably Curlew (regularly supporting more than 1% of the qualifying non-breeding Curlew population of the SPA/Ramsar site). As such part of the proposed development site has been determined/identified as being functionally-linked to the SPA. We agree with this assessment.
- 4.9. Please see section 6 which expands on the loss of functionally-linked land and the Applicant's proposed Curlew Mitigation Strategy (APP-254).
- 4.10. In addition to the loss of functionally-linked land there is also direct loss of saltmarsh habitat (some 0.065ha) within the Dee Estuary SPA/SAC/Ramsar site during the construction works. We defer to submissions by Natural England and Natural Resources Wales on this issue.
- 4.11. The Application site is adjacent to Oakenholt Saltmarsh part of the RSPB Dee Estuary Reserve. We are concerned about potential implications on existing access arrangements for RSPB staff to Oakenholt Saltmarsh through the MDA during construction works. We raised this matter with the Applicant during a site meeting on 24/07/2024 and we were assured that access rights to Oakenholt Saltmarsh would be maintained. We trust that any potential disruption to access will be kept to a minimum and anticipate further discussions with the Applicant.

## 5. Derogation case: the RSPB's approach to evaluating compensation measures under the Conservation of Habitats and Species Regulations 2017 (as amended)

### Introduction

- 5.1. We note the arguments set out in the Applicant's submission supporting the delivery of 'mitigation' for the loss of land functionally linked to the SPA. We dispute this treatment and regard the potential loss of this land should be treated under the Habitats Regulations as a compensatory measure, assuming the Habitats Regulations tests are satisfactorily addressed. We address these tests in section 3. We note that Natural England and Natural Resources Wales (RR-026, RR- 027) also conclude that the Applicant's 'offsetting measures' better represent compensation. We anticipate further discussion on this matter at the Examination.
- 5.2. The Applicant has recently submitted a Notice of a proposed without prejudice Habitats Regulations Assessment (HRA) derogation in Wales (PDA-003).
- 5.3. For the benefit of the Examination this section sets out the RSPB's approach to evaluating compensation measures. It includes our general approach to assessing compensation proposals and the level of detail we consider is required in order to evaluate compensation proposals as part of the Examination process.
- 5.4. Section 6 following sets out, as far as currently practicable, the RSPB's more detailed comments on the Applicant's specific proposals to address the loss of functionally linked land.

### The RSPB's approach to assessing compensation proposals

- 5.5. The RSPB has reviewed both the EC<sup>11</sup> and Defra<sup>12</sup> guidance on compensatory measures. Both are in broad alignment as to the principles to adopt when considering compensatory measures. This review also draws on the RSPB's experience evaluating and negotiating compensation proposals under the Habitats Regulations by developers across various sectors. As the EC Guidance is fuller, we have used that as our primary reference, while drawing out any additional points made in the Defra guidance since it is UK focused.
- 5.6. In Table 1, we summarise the EC's criteria for designing compensatory measures and annotate them with additional commentary based on the RSPB's experience of the principles that should be applied when assessing compensatory measures. We will use the combination of the EC guidance and the RSPB's experience in this field to assess compensatory measures put forward by scheme proponents.

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<sup>11</sup> EC (2018) Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (21/11/18) C(2018) 7621 final. Due to the further details this EU guidance provides, we believe it is important to also consider along with the Defra guidance

<sup>12</sup> Defra (2021) <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>. Accessed 24 January 2026.

**Table 1: Criteria for designing compensatory measures**

EC criteria	EC guidance summary (emphasis added)	RSPB additional commentary
<b>Targeted</b>	<p>Measures should be the <b>most appropriate to the impact predicted and focused on objectives and targets addressing the Natura 2000 elements affected.</b></p> <p><b>Must refer to structural and functional aspects of site integrity and habitats/species affected.</b></p> <p><b>Must consist of ecological measures:</b> payments to individuals/funds are not appropriate.</p>	<p>Clear objectives and success criteria must be established for the compensation measures.</p> <p>Must address the ecological functions and processes required by impacted species/habitat. Requires shared understanding and agreement on what the impacts are i.e. need to agree nature, magnitude including that they will continue for as long as the project's impacts. This includes the time likely to be required for the SAC/SPA to recover from those impacts in the case of proposals that are in place for a specified time period.</p> <p>This is in order to define objectives for compensation measures and to set out the success criteria to determine whether those objectives have been/are being achieved.</p>
<b>Effective</b>	<p><b>Based on best scientific knowledge available alongside specific investigations for the location where the measures will be implemented.</b> Must be <b>feasible and operational in reinstating the conditions needed to ensure the overall coherence</b> of the Natura 2000 network.</p> <p><b>Measures where no reasonable guarantee of success should not be considered.</b> The likely success of the compensation scheme should influence final approval of the plan or project in line with the prevention principle.</p> <p><b>The most effective option, with the greatest chance of success, must be chosen.</b></p> <p><b>Detailed monitoring required</b> to ensure long-term effectiveness with remediation provisions if shown to be less effective.</p>	<p>Scientific evaluation of proposed measures must be carried out before consent is granted to avoid agreeing to measures that is/are not effective or technically feasible. This should include appropriate baseline survey and assessment.</p> <p>Compensation must address the impacted SPA/SAC (or Ramsar site) feature to ensure overall coherence of the network for that feature is maintained. Substitution is not acceptable.</p> <p>Must be clearly defined timescales for delivery and measuring success (See success criteria under Targeted above).</p> <p>Monitoring must directly relate to the target species or habitat and the relevant ecological functions and processes.</p> <p>The compensation measures should be provided in perpetuity in</p>

EC criteria	EC guidance summary (emphasis added)	RSPB additional commentary
		<p>line with obligations to ensure the overall coherence of the National Site Network is maintained.</p> <p>Where it is not possible to devise compensatory measures to offset the adverse effects on site integrity, the project should not proceed.</p>
Technical feasibility	Design must follow <b>scientific criteria and evaluation</b> in line with best scientific knowledge and take into account the specific requirements of the ecological features to be reinstated.	See <b>Effective</b> above.
Extent	<p>Extent required <b>directly related to:</b></p> <ul style="list-style-type: none"> <li>- the <b>quantitative and qualitative aspects inherent to the elements of integrity likely to be impaired</b></li> <li>- <b>estimated effectiveness of the measure(s)</b></li> </ul> <p>Therefore, ratios best set on a case-by-case basis. Ratios should generally be well above 1:1. Ratios of 1:1 or below only considered when shown measures will be fully effective in reinstating structure and functionality in a short period of time.</p>	<p>Based on an assessment of the necessary ecological requirements to restore species' populations and the related habitat structure and functions identified in the compensation objectives. Determining the minimum appropriate quantity will require an understanding of the quality of the compensation measures and how effective they will be in reinstating the required structures and functions.</p> <p>Any identified uncertainty in success should be factored in to increased ratios.</p> <p>Ratios need to be used where they make ecological sense and will help secure a successful outcome by providing more of something. Simply multiplying capacity to address uncertainty risks giving a false level of confidence.</p> <p>If there is no reasonable guarantee of success that measure should not be considered (see <b>Effective</b> under EC criteria).</p>
Location	<p><b>Located in areas where they will be most effective</b> in maintaining overall coherence of the Natura 2000 network. Pre-conditions to be met include:</p> <ul style="list-style-type: none"> <li>- <b>must be within same range/ migration route/wintering areas for bird species and provide functions comparable</b></li> </ul>	While the preference is for compensation measures as geographically close to the location of the damage, it is important to consider whether or not the compensation measures will be subject to pressures impacting their efficacy in that location e.g. prey availability, disturbance,

EC criteria	EC guidance summary (emphasis added)	RSPB additional commentary
	<p><b>those justifying selection of original site esp. geographical distribution;</b></p> <ul style="list-style-type: none"> <li>- <b>must have/be able to develop the ecological structure and functions required by the relevant species</b> (or habitat)</li> <li>- <b>must not jeopardise integrity of any other Natura 2000 site.</b></li> </ul> <p>Spatial search hierarchy starting as close as possible to the impacted Natura 2000 site and working out from there.</p>	<p>and/or other impacts from the same or similar developments.</p> <p>Therefore, compensation measures should be located so as to maximise proximity while minimising external pressures that may reduce likelihood of success.</p> <p>Compensation measures proposed to benefit one SPA/SAC/Ramsar site feature must not result in damage to the integrity of any other SPA/SAC/Ramsar site and their features.</p>
Timing	<p>Case by case approach but <b>must provide continuity in the ecological processes essential to maintain the structure and functions that contribute to the Natura 2000 network coherence.</b> Requires <b>tight co-ordination between implementation of the plan or project and the compensation measures.</b></p> <p>Factors to consider include:</p> <ul style="list-style-type: none"> <li>- <b>no irreversible damage to the site before compensation in place</b></li> <li>- <b>compensation operational at the time damage occurs.</b> If not possible, over-compensation required</li> <li>- <b>time lags only admissible if will not compromise objective of “no net loss” to coherence of Natura 2000 network;</b></li> <li>- May be possible to scale down in time depending on whether the negative effects are expected to arise in short, medium or long term.</li> </ul> <p><b>All technical, legal or financial provisions must be completed before plan or project implementation starts</b> to prevent unforeseen delays that compromise effective compensation measures.</p>	<p>Compensation measures should be fully functional before any damage occurs to ensure the overall coherence of the National Site Network is protected. This requires careful alignment of the timelines for implementing the plan or project and the compensation measures.</p> <p>Suggested time lags in delivering fully functional compensation will need to be carefully considered and can only be accepted where this will not compromise the continuity of essential ecological processes,</p> <p>Any effect of delay should be factored into the design and additional compensation measures provided (see also <b>Extent</b> above).</p>

EC criteria	EC guidance summary (emphasis added)	RSPB additional commentary
Long-term implementation	<b>Legal and financial security required for long-term implementation and for protection, monitoring and maintenance of sites to be secured before impacts occur.</b>	<p>Legal rights to secure and implement the compensation measures must be in place prior to consent being granted.</p> <p>And robust financial guarantees are required to fund implementation, monitoring and any necessary remediation measures.</p> <p>In line with Government policy, the Government should commit to including compensation measures, once delivered, within the National Site Network.</p>

5.7. The current Defra guidance (aimed at competent authorities) reinforces some of the points above:

- Must be confident the measures will fully compensate for negative effects.
- The measure is technically feasible based on scientific evidence and previous examples.
- Whether the compensation measure is financially feasible.
- Compensation should be no more than is needed (to protect the coherence of the National Site Network).
- How the compensation will be carried out, including how it will be managed and monitored over time, and how it has been secured.
- How long the compensation measure will take to reach the required quality.
- Should make sure the compensation measures will remain in place all the time they are needed.
- Must put in place all necessary legal, technical, financial and monitoring arrangements.
- Compensation measures should usually be in place and effective before the negative effect is allowed to occur.

5.8. Overall, this can be expressed in another way to help identify ecologically effective compensation and the options to deliver it:

- Understanding and defining what is ecologically effective compensation for a given feature i.e. what is needed to address the ecological functions affected by the predicted impact(s) e.g. provision of additional habitat;
- Identifying the potential options to provide ecologically effective compensation in principle and agreeing the scale of compensation required to protect the overall coherence of the National Site Network for the impacted feature taking account of the management objectives for that Network. This should consider factors affecting the likely success of the compensation measure in order to identify appropriate search criteria;



- Applying a hierarchical search for suitable locations to carry out those options to determine where they might be feasible.

## 6. RSPB detailed comments on the Applicant's specific compensation proposals

### Introduction

- 6.1. The proposals would result in temporary and permanent habitat loss of up to 26ha of Functionally Linked Land (FLL) used by the Curlew feature of the Dee Estuary SPA, Ramsar site and SSSI within the Main Development Area. Offsetting measures, comprising additional land within the SPA/Ramsar site to be secured for favourable dedicated Curlew management, are proposed to offset this loss and outlined in the Curlew Mitigation Strategy (CMS) (APP-254). The Applicant regards these as mitigation measures, but as stated above we regard these as compensatory measures.
- 6.2. As context we would highlight breeding Curlew are rapidly declining across their biogeographic range and require urgent conservation measures in the UK. There is currently widespread concern amongst conservationists over the species. Action is being taken at different levels, but at the site protection level recent expert analysis has confirmed that the current SPA provision for Curlew is inadequate both in terms of population numbers and ecological provision<sup>13</sup>. A review of existing SPA boundaries, including the Dee Estuary SPA, has been recommended to identify and protect further areas used for feeding and other functional needs by Curlew.

### Functionally Linked Land

- 6.3. Baseline Ornithology Surveys (November 2023 – October 2024) indicate that part of the Main Development Area supported a significant number of overwintering Curlew (greater than 1% of the qualifying non-breeding Curlew population of the SPA/ Ramsar site). The Curlew favour permanent pasture that will be subject to temporary and permanent habitat loss. The western part of the fields at the Main Development Area will be used as a 'laydown area' during construction and will be reinstated into pasture on completion of works. The remainder of the fields will form part the new power station footprint, resulting in permanent habitat loss. This will have a direct impact on birds during and after construction. In total the CMS estimates some 11ha is likely to be temporarily lost and 15ha permanently lost. However, there is some disparity over the habitat loss figures in the ES. 11.6.48 states...a temporary loss of 10.03ha and a permanent loss of 12.45ha grassland habitat (figures used in RR-036).
- 6.4. We note that the Baseline Ornithology Surveys of the Main Development Site only present one year's worth of curlew data for the Functionally Linked Land. Furthermore, Table 1 of the CMS does not include historic data. We consider there is a need for further information to assess the effects on birds that frequent this area over a longer time period/time scale to better understand the number and frequency of Curlew usage and other designated bird species that may be affected by the habitat loss.

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<sup>13</sup> Grady, S., Anthony, S., Cohen, S., Douse, A., Lindley, P., Mountford, E. and Owens, R. (eds) – on behalf of the UK SPA & Ramsar Scientific Working Group. 2025. The status of UK SPAs in the 2000s: the Third Network Review summary of advice and options. JNCC, Peterborough.

- 6.5. We recommend that the Applicant presents historic data including that held by Deeside Naturalists' Society (DNS) to help bridge the gap by revealing a greater range of months when significant numbers of Curlew, and possibly other qualifying bird species, that occur within the affected fields. This will also help inform offsetting measures for Curlew and other species that might be affected.

#### Site selection

- 6.6. We acknowledge that the Applicant is proposing to deliver compensatory habitat for Curlew at Gronant Fields which has potential to benefit wintering Curlew and other species of waterbirds in the Dee Estuary SPA. The CMS states that the preferred option is to deliver 26ha of habitat creation and improvements within 56.3ha of land. It is important to note that this land is designated as part of the Dee Estuary SPA, Ramsar site and SSSI.
- 6.7. Wintering Curlew are highly site faithful, frequenting the same site year after year, and do not readily adopt new feeding areas some distance away. Gronant fields could be considered to be overly distant (21.3km) from the Main Development Area. Curlews from the inner estuary at Connah's Quay impacted by the development might not benefit from the compensatory habitat arrangements owing to their site fidelity.

#### Alternatives

- 6.8. Gronant fields was selected out four potential sites mentioned in the CMS. The other sites being at Thurstaston, Greenfield and Bagillt Fields. We consider coastal fields closer in proximity to the Main Development Area (MDA) deserve further consideration for Curlew Mitigation such as Bagillt Fields (3.8km from MDA) and Greenfield (9km from MDA). These sites are adjacent to the estuary and are already utilised by wintering waders. There is still scope to manage these areas to benefit Curlew through appropriate habitat management prescriptions including the screening of the Wales Coast Path to reduce disturbance.
- 6.9. Wet features would be relatively easy to create such as scrapes, ditches, and shallow pools, which would further enhance the value for wintering waders in providing feeding areas as well roosting areas during high tide. Fencing to restrict access by the public would also be needed and potentially some screening (which may only need to be temporary) to encourage waders to utilise the site as quickly as possible.
- 6.10. Unfortunately, details of the site at Thurstaston located on the Wirral have not been provided in the CMS (estimated distance 12km from MDA).
- 6.11. In conclusion we would strongly advocate further consideration of Greenfield and Bagillt Fields (undesignated land) as compensatory habitat.

#### Management

- 6.12. The Applicant proposes several management prescriptions to provide suitable foraging and roosting opportunities for Curlew. There is limited information about Gronant Fields. The baseline ecological information appears incomplete with regard to the

current nature conservation value as it lacks a detailed botanical and invertebrate surveys. Further assessment of impacts of CMS on existing nature conservation interest, would be required once the ecological baseline is established.

- 6.13. The CMS appears to deviate from the original intention of creating scrapes (as mentioned in 3.1.1) and instead focuses on the creation of a network of foot drains.
- 6.14. The CMS implies that wildlife habitat created will be managed for 80 years or until the Proposed Development is decommissioned. We consider it would be far more desirable for any mitigation/compensation should be permanent. As it would be difficult to predict whether Curlew would return/reoccupy the decommissioned brownfield land once the project has ceased to operate. It is essential that compensation habitat will be fully functional before construction begins and we would seek reassurance that the Applicant is able to commit to this.

### Monitoring

- 6.15. We have the following observations on the proposed monitoring programme, described in Section 4.4 of the CMS:
- The number of monthly visits should be increased to capture the arrival and build-up of post breeding Curlew, which can occur from June onwards. We recommend the monthly visits should be carried out from June to April
  - The length of monitoring also needs further consideration such as increasing the initial monitoring period of five years to 10 or more years. Furthermore, long term monitoring should be undertaken for the remainder of the lifetime of the project to help inform appropriate/adaptive management measures.
- 6.16. In the event that the application is consented, the RSPB would wish to be involved in discussions on the delivery and monitoring of necessary mitigation, compensation and enhancement measures.

### Offsite Net Benefit for Biodiversity and Green Infrastructure Strategy

- 6.17. The Offsite Net Benefit for Biodiversity and Green Infrastructure Strategy (NBB/GIS) contain habitat management prescriptions for the offsetting land (30.30ha) at Gronant Fields alongside the CMS (26ha).
- 6.18. As with the CMS this land is designated as part of the Dee Estuary SPA, Ramsar site and SSSI. It should therefore be ensured that the proposed NBB/GIS measures would not conflict with maintaining and enhancing suitable habitat conditions for the bird features of these sites. Furthermore, the proposed measures should not conflict with the aims of the CMS.

### Potential conflict of conservation objectives

- 6.19. Some habitat creation and enhancements could be at odds with other conservation objectives for example tree planting, woodland/scrub creation and hedge planting could

potentially conflict with the habitat requirements of Curlew which require open vistas to avoid/detect predators. The creation of woodland, hedges and scrub would potentially provide cover for predators.

#### Change notification request

- 6.20. There are six proposed changes to the application which were announced at the preliminary meeting on 13th January 2026 and subsequently published recently (AS-006). Some of these changes have potential implications on the NBB calculations, including the following:
- Proposed Change 2: Alignment of the CO2 Connection Corridor Landscape Plan with the HyNet CO2 Pipeline Project
  - Proposed Change 3: Land Designation Adjustment (wrt re-classification of retained habitats in development area)
  - Proposed Change 5: Contractors' Facilities Relocation
  - Proposed Change 6 – Proposed Hardstanding Expansion at Connah's Quay North Jetty
- 6.21. It is important that the NBB calculations are revised in light of the Change Notification.
- 6.22. We may make further comment on this matter when more information, such as the Off-Site NBB Plan, is made available.