



**Cyfoeth  
Naturiol**  
Cymru  
**Natural  
Resources**  
Wales

Ein cyf/Our ref: CAS-295701-K8V4  
Eich cyf/Your ref: EN01066

Maes Y Ffynnon,  
Penrhosgarnedd,  
Bangor,  
Gwynedd  
LL572DW

ebost/email:  
northplanning@cyfoethnaturiolcymru.gov.uk  
Ffôn/Phone: 03000 65 4227

[connahsquay@planninginspectorate.gov.uk](mailto:connahsquay@planninginspectorate.gov.uk)

27/01/2026

Dear Sir/Madam,

**PROPOSED CONNAH'S QUAY LOW CARBON POWER PROJECT**

**PLANNING INSPECTORATE REFERENCE: EN01066**

**INTERESTED PARTY REFERENCE NUMBER: F589E8331**

**RE: NATURAL RESOURCES WALES' WRITTEN SUBMISSION FOR DEADLINE 1**

Thank you for your Rule 8 letter, dated 20 January 2026, requesting Cyfoeth Naturiol Cymru / Natural Resources Wales' comments regarding the above.

This letter comprises the following submission from NRW:

- a) Summary of our Relevant Representations (RR) – see [Annex A](#)
- b) Written Representations (WR) and summary – see [Annex B](#)

The comments provided in this submission, including the associated Annexes, comprise NRW's response as a Statutory Party under the Planning Act 2008 and Infrastructure Planning (Interested Parties) Regulations 2015 and as an 'interested party' under s102(1) of the Planning Act 2008.

Our comments are made without prejudice to any further comments we may wish to make in relation to this application and examination whether in relation to the Environmental Statement (ES) and associated documents, provisions of the draft Development Consent Order ('DCO') and its Requirements, or other evidence and documents provided by Liverpool Bay CCS Ltd. ('the Applicant'), the Examining Body or other interested parties.

Annex A contains a summary of our Relevant Representations (RR-027).

In Annex B we provide our Written Representations (WR), including a summary. The Written Representations are structured in a similar format to that of our Relevant Representations (RR-027).

We are not providing comments on other Relevant Representations at this stage but would be willing to provide comments at a later stage if the Examining Authority considers that would aid the examination.


The Rule 8 letter requested Initial Statements of Common Ground (SoCG) to be submitted at Deadline 1. NRW received copies of the draft SoCG from the Applicant on 17 and 30 July 2025. We are currently in active and ongoing engagement with the Applicant to progress this ahead of the next deadlines.

We also acknowledge that a “Notice of a proposed without prejudice Habitats Regulations Assessment (HRA) derogation in Wales” document has been submitted by the Applicant at Procedural Deadline A (ref. PDA-003). During Issue Specific Hearing 2 (14/01/26) the Examining Authority (ExA) confirmed that it is seeking comments from key Interested Parties (IPs) on this but acknowledged this is unlikely to be feasible in time for Deadline 1. We confirm that we will review this document and provide our comments to the ExA as soon as possible, but no later than Deadline 2, subject to this being acceptable.

In addition to being an interested party under the Planning Act 2008, NRW exercises functions under legislation including (but not limited to) the Environmental Permitting (England and Wales) Regulations 2016 (as amended), and Marine and Coastal Access Act 2009.

Please do not hesitate to contact me at [northplanning@cyfoethnaturiolcymru.gov.uk](mailto:northplanning@cyfoethnaturiolcymru.gov.uk) should you require further advice or information regarding these representations.

Yn gywir / Yours faithfully,

  
Cynghorydd Arbenigol Arweiniol, Cynllunio Datblygu / Lead Specialist Advisor, Development Planning  
Cyfoeth Naturiol Cymru / Natural Resources Wales

[CONTINUED]

## **ANNEX A**

### **SUMMARY OF NATURAL RESOURCES WALES' RELEVANT REPRESENTATIONS**

Annex A contains a summarised version of NRW's Relevant Representations submitted to the Examining Authority on 23 October 2025 (RR-027).

Please refer to NRW's full Relevant Representations and subsequent Written Representations for further details about our key concerns and other comments regarding the Proposed Development.

## SUMMARY OF NATURAL RESOURCES WALES' RELEVANT REPRESENTATIONS

### 1.0 Introduction

- 1.1 Our Relevant Representation (RR) identified key concerns relating to the following matters, in no order of priority:
1. Atmospheric pollution of the Dee Estuary Special Area of Conservation (SAC) /Site of Special Scientific Interest (SSSI) saltmarsh and Deeside and Buckley Newt Sites SAC/Connah's Quay Ponds and Woodlands SSSI oak woodland qualifying habitats during operation
  2. Direct loss of/damage to the saltmarsh qualifying habitat of the Dee Estuary SAC/SSSI during construction/demolition.
  3. Loss of functionally linked land for Dee Estuary Special Protection Area (SPA)/Ramsar site/SSSI bird features (curlew) during construction, demolition, and operation
- 1.2 The above matters are those that require amendments to the scheme, substantial additional information, or a revised Development Consent Order ('DCO'). The topic headings for these matters are marked "**Key Concern**" in Section 2.1.1 below.
- 1.3 We also provided comments in our full RR on matters that may need minor amendments, further information, and/or clarification. These are matters that we provide further details on in our Written Representations and/or can be addressed in our ongoing dialogue with the Applicant in the preparation of our Statement of Common Ground (SoCG).
- 1.4 In addition to being an interested party under the Planning Act 2008, NRW exercises functions under distinct legislation including (but not limited to) the Environmental Permitting (England and Wales) Regulations (EPR) 2016 (as amended) and the Marine and Coastal Access Act (MACAA) 2009.

### 2.0 NRW Key Concerns

#### ***1) Atmospheric pollution of the Dee Estuary SAC/SSSI saltmarsh and Deeside and Buckley Newt Sites SAC/Connah's Quay Ponds and Woodlands SSSI oak woodland qualifying habitats during operation***

##### Dee Estuary SAC/SSSI

- 2.1. The ES and Report to Inform Habitats Regulations Assessment (RIHRA) identify potential Likely Significant Effects (LSE) for nitrogen deposition (Ndep) on the Dee Estuary SAC Annex I saltmarsh features and the Dee Estuary SSSI saltmarsh feature. The RIHRA calculates the affected area to be 445ha in-combination and 245ha for the Proposed Development alone.
- 2.2. We acknowledge that the exceedance is small and at the lower end of the critical load (CLo) for the most sensitive type of saltmarsh (upper) but considering the current

exceedance of background Ndep CLo at this location we do not consider the proposed measures to be adequate.

- 2.3. We therefore advise that alternative mitigation/compensation measures should be proposed, as explained in our full RR, and would welcome further engagement with the Applicant regarding this.

Deeside and Buckley Newt Sites SAC/Connah's Quay Ponds and Woodlands SSSI

- 2.4. In-combination ammonia and nitrogen deposition would exceed the 1% Process Contribution (PC) of Critical Levels/Loads (Cle/CLo) thresholds within the Deeside and Buckley Newt Sites SAC, which also includes the Connah's Quay Ponds and Woodlands SSSI. The corresponding background Cle/CLo are already exceeded at this site and an additional area of approximately 31% of the Annex I oak woodland habitat of the SAC/SSSI would be affected by the new exceedance.
- 2.5. We note that there does not appear to be a feasible mechanism to reduce such pollution further within the scope of the project's design. Instead, facilitation of habitat management is proposed to directly mitigate potential changes in ground flora due to elevated levels of atmospheric nitrogen.
- 2.6. Further details should be submitted to provide assurance that this could be secured within the DCO and implemented effectively.

**2) *Direct loss of/damage to the saltmarsh qualifying habitat of the Dee Estuary SAC/SSSI during construction/demolition***

- 2.7. The Proposed Surface Water Outfall is located within the Dee Estuary SAC, SPA, Ramsar site and SSSI in an area confirmed as Annex I saltmarsh habitat, a qualifying feature of the Dee Estuary SAC and the Dee Estuary SSSI.
- 2.8. The Applicant estimates a <5m<sup>2</sup> area of permanent loss of saltmarsh habitat due to the Proposed Surface Water Outfall headwall extension, and approximately 650m<sup>2</sup> of temporary saltmarsh habitat loss during its construction.
- 2.9. Although the area of saltmarsh habitat which would be permanently lost is low, there would still be a net loss of this Annex I habitat type. The Applicant proposes offsetting this by enabling managed retreat of the embankment to create an approximately 1,200m<sup>2</sup> area for natural migration inland of the saltmarsh.
- 2.10. The Applicant considers this would 'offset' the impact on saltmarsh rather than represent 'compensation' in the context of the Habitats Regulations and considers it as mitigation for HRA purposes. However, the proposed area of new saltmarsh would be located outside of the SAC and hence lack its standard of statutory protection.
- 2.11. We acknowledge that such proposals could potentially be considered as mitigation for HRA purposes but consider that this would be subject to their effectiveness being

certain and that the mitigation measures will be in place *before* the commencement of the associated impacts on the affected site. We therefore advise that, if the offsetting measures are to be considered as mitigation, the new proposed saltmarsh site should be satisfactorily created and demonstrated to be functioning for its intended purpose in advance of the main works (Works 1) commencing.

- 2.12. There should be a firm commitment for a saltmarsh mitigation and monitoring plan, whereby the restoration timescales, targets and monitoring proposals are set out in more detail.
- 2.13. An assessment of whether the newly created saltmarsh would suffer from the significant adverse atmospheric impacts predicted elsewhere in the Dee Estuary SAC/SSSI should be completed.
- 2.14. Clarification should be provided on whether clearance of coastal saltmarsh within the Water Connection Corridor is proposed and, if so, the impact of this assessed.

**3) *Loss of functionally linked land for Dee Estuary SPA/Ramsar site/SSSI bird features (curlew) during construction, demolition, and/or operation***

- 2.15. The proposals would result in an intermediate to long-term loss of up to 26ha of Functionally Linked Land (FLL) used by the curlew feature of the Dee Estuary SPA, Ramsar site and SSSI. Additional land within the SPA/Ramsar site is to be secured for favourable dedicated curlew management to offset this loss, as outlined in the Curlew Mitigation Strategy (CMS).
- 2.16. We agree that, in principle, the proposals outlined in the CMS could enable the proposed offsetting land to be managed appropriately to encourage and support curlew feeding and roosting.
- 2.17. However, we note that the Applicant considers the proposals to involve mitigation, instead of compensation. We acknowledge that such proposals could potentially be considered as mitigation for HRA purposes but consider that this would be subject to their effectiveness being certain and the mitigation measures being in place before the commencement of the associated impacts. Without these safeguards in place, the offsetting measures would appear to represent compensation.
- 2.18. Furthermore, paragraph 3.5.5 of the CMS states that “*The land would be managed for 80 years (this being the standard HRA definition of ‘in perpetuity’) or until the Proposed Development is decommissioned, whichever is the sooner*”. A reference for this definition of in perpetuity should be provided.
- 2.19. We also advise that further clarifications and details should be provided for the CMS, as explained in our full RR.
- 2.20. The Offsite Net Benefit for Biodiversity and Green Infrastructure Strategy (NBB/GIS) include habitat management prescriptions for the offsetting land to be acquired as

part of 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, or the aims of the CMS.

[CONTINUED]

## ANNEX B

### NATURAL RESOURCES WALES' WRITTEN REPRESENTATIONS

Annex B contains NRW's full Written Representations and a summarised version, which were submitted to the Examining Authority on 27 January 2026.

#### Contents

1.0	Summary of Natural Resources Wales' Written Representations .....	9
2.0	Natural Resources Wales' Written Representations.....	13
2.1	Designated Sites for Nature Conservation .....	13
2.2	Protected Species .....	28
2.3	Marine Ecology.....	29
2.4	Air Quality .....	30
2.5	Water Environment and Flood Risk.....	31
2.6	Geology and Ground Conditions .....	32
2.7	Landscape .....	33
3.0	NRW's General Purpose .....	34
ANNEX B.1 – NRW Regulation and Permitting Services.....		35
1.	Environmental Permitting Regulations (EPR).....	35
2.	Marine Licensing: Regulatory Response .....	36
3.	Dee Conservancy Trust.....	36
4.	Disapplication of specific consents.....	37



## 1.0 Summary of Natural Resources Wales' Written Representations

- 1.1 Our Written Representations (WR) identify key concerns relating to the following matters:
1. Atmospheric pollution of the Dee Estuary Special Area of Conservation (SAC) /Site of Special Scientific Interest (SSSI) saltmarsh, Afon Dyfrdwy (River Dee) SSSI saltmarsh and Deeside and Buckley Newt Sites SAC/Connah's Quay Ponds and Woodlands SSSI oak woodland qualifying habitats during operation
  2. Direct loss of/damage to the saltmarsh qualifying habitat of the Dee Estuary SAC/SSSI during construction/demolition.
  3. Loss of functionally linked land for Dee Estuary Special Protection Area (SPA)/Ramsar site/SSSI bird features (curlew) during construction, demolition, and operation
- 1.2 The above matters are those that require amendments to the scheme, substantial additional information, or a revised Development Consent Order ('DCO').
- 1.3 We also provide comments in our full WR on matters that may need minor amendments, further information, and/or clarification. These are matters that we consider can be addressed in our ongoing dialogue with the Applicant in the preparation of our Statement of Common Ground (SoCG).

### **Summary of Key Concern 1: Atmospheric pollution of the Dee Estuary SAC/SSSI saltmarsh, Afon Dyfrdwy (River Dee) SSSI saltmarsh and Deeside and Buckley Newt Sites SAC/Connah's Quay Ponds and Woodlands SSSI oak woodland qualifying habitats during operation**

#### Dee Estuary SAC/SSSI saltmarsh, Afon Dyfrdwy (River Dee) SSSI saltmarsh

- 1.4 The ES Air Quality assessment (Appendix 8-D) and Report to Inform Habitats Regulations Assessment (RIHRA) identify potential Likely Significant Effects (LSE) for nitrogen deposition (Ndep) on the Dee Estuary SAC Annex I saltmarsh features and the Dee Estuary SSSI independent qualifying saltmarsh feature. The RIHRA calculates the affected area to be 445ha in-combination and 245ha for the Proposed Development alone, representing 17% and 10% of saltmarsh, respectively.
- 1.5 With the widespread albeit low level exceedance of the critical load for saltmarsh, Likely Significant Effects cannot be ruled out for the Annex I Atlantic salt meadows habitat within the Dee Estuary / Aber Dyfrdwy SAC / SPA / Ramsar site or impacts to the saltmarsh feature of the Dee Estuary SSSI and Afon Dyfrdwy (River Dee) SSSI.
- 1.6 There is a high proportion of upper saltmarsh and areas of transition to terrestrial habitat within the predicted area of exceedance, both of which are more sensitive to nitrogen deposition, and particularly vulnerable to the spread of coarse nitrophilous grasses. It is likely that deterioration of the Annex I Atlantic salt meadows habitat would be permanent as the diversity of saltmarsh plant species would be likely to decline.

- 1.7 We acknowledge that the exceedance would be small and at the lower end of the critical load (CLo) for the most sensitive type of saltmarsh (upper) but considering the current exceedance of background Ndep CLo already at this location, and size of the area affected, we welcome that mitigation is proposed. However, we do not consider the proposed measures to be adequate.
- 1.8 We therefore advise that satisfactory alternative mitigation/compensation measures should be proposed to address this impact and would welcome further engagement with the Applicant regarding this.

Deeside and Buckley Newt Sites SAC/Connah's Quay Ponds and Woodlands SSSI oak woodland

- 1.9 The ES Air Quality assessment and RIHRA also show that in-combination ammonia and nitrogen deposition would exceed the 1% Process Contribution (PC) of Critical Levels/Loads (CLe/CLo) thresholds within the Deeside and Buckley Newt Sites SAC, which also includes the Connah's Quay Ponds and Woodlands SSSI. The corresponding background CLe/CLo are already exceeded at this site and an additional area of approximately 31% of the Annex I oak woodland habitat of the SAC/SSSI would be affected by the new exceedance. Increased nitrogen deposition could alter species composition in a way which impacts negatively on the SAC/SSSI woodland features.
- 1.10 The Applicant proposes habitat management to counter the effects of the nitrogen deposition by funding local practitioners already engaged in woodland management at the site to enable them to maintain and enhance the condition and resilience of the woodland features.
- 1.11 Depending on the level of funding this could be a proportionate strategy. However, confirmation of the further details should be submitted in writing to clarify the exact proposals and provide assurance that they could be secured within the DCO and implemented effectively.
- 1.12 It is not clear whether tree screening to further reduce nitrogen/ammonia impacts at the site has been considered by the Applicant. We therefore advise that this should be considered in addition to the proposed funding for woodland management.
- 1.13 The proposed mitigation for nitrogen deposition does not address the potential impacts of the very slight exceedance over 1% (1.1%) of the ammonia critical level. Direct air concentrations of ammonia can impact lower plants, including lichens and bryophytes. We therefore advise that details of mitigation measures to address the slight ammonia exceedance should be submitted.

**Summary of Key Concern 2: Direct loss of/damage to the saltmarsh qualifying habitat of the Dee Estuary SAC/SSSI during construction/demolition.**

- 1.14 The Applicant estimates a <5m<sup>2</sup> area of permanent loss of saltmarsh habitat due to the Proposed Surface Water Outfall headwall extension, and an approximately 650m<sup>2</sup> of temporary saltmarsh habitat loss during its construction.
- 1.15 Although the area of saltmarsh habitat which would be permanently lost to the development is low, there would still be a net loss of this Annex I habitat type. The Applicant proposes offsetting this by enabling managed retreat of the embankment between the power station and Dee Estuary SAC/SPA/Ramsar site/SSSI to create an approximately 1,300m<sup>2</sup> area for natural migration inland of the saltmarsh, which we consider to be a sufficient area to offset these losses, in principle.
- 1.16 We note that the Applicant considers this would 'offset' the impact on saltmarsh rather than represent 'compensation' in the context of the Habitats Regulations and considers it as mitigation for HRA purposes. However, the proposed area of new saltmarsh would be located outside of the SAC and hence lack its standard of statutory protection.
- 1.17 If there is any reasonable scientific doubt as to the proposed measure being effective so as to prevent any adverse impact on the site, then NRW would not agree to these measures being deemed as "mitigation" as case law supports that these measures would be deemed compensatory instead.
- 1.18 Based on the submitted information, we consider that reasonable scientific doubt remains over the satisfactory implementation of the saltmarsh habitat regeneration proposals. Therefore, we are not able to assure the ExA that they could be deemed as mitigation measures at this stage and hence they should be considered as compensatory measures.
- 1.19 There should be a firm commitment (secured by DCO requirement) for a saltmarsh mitigation and monitoring plan, as per the curlew mitigation and monitoring plan to be secured by Requirement 11, whereby the restoration timescales, targets and monitoring proposals are set out in more detail.
- 1.20 Further information should also be submitted to allow us to consider the effectiveness of the proposals.

**Summary of Key Concern 3: Loss of functionally linked land for Dee Estuary Special Protection Area (SPA)/Ramsar site/SSSI bird features (curlew) during construction, demolition, and operation**

- 1.21 The proposals would result in an intermediate to long-term 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 and outlined in the Curlew Mitigation Strategy (CMS).

- 1.22 We agree that, in principle, the proposals outlined in the CMS could enable the proposed offsetting land to be managed appropriately to encourage and support curlew feeding and roosting, offsetting the loss of FLL for curlew.
- 1.23 However, as with the proposed saltmarsh creation, we note that the Applicant considers the proposals to involve mitigation, instead of compensation.
- 1.24 We acknowledge that such proposals, in principle, could potentially be considered as mitigation for HRA purposes but consider that this would be subject to their effectiveness being beyond reasonable scientific doubt such that there is no adverse impact on the site. However, we consider that reasonable scientific doubt remains over the satisfactory implementation of the replacement curlew habitat proposals. Therefore, we are not able to assure the ExA that the proposals could be deemed as mitigation measures at this stage and hence they should be considered as compensatory measures.
- 1.25 Further information should also be submitted to allow us to consider the effectiveness of the proposals.

[CONTINUED]

## **2.0 Natural Resources Wales' Written Representations**

- 2.0.1 The following paragraphs comprise our Written Representations (WR) as a Statutory Party under the Planning Act 2008 and Infrastructure Planning (Interested Parties) Regulations 2015 and as an 'interested party' under s102(1) of the Planning Act 2008.
- 2.0.2 In addition to being an interested party under the Planning Act 2008, NRW exercises functions under distinct legislation including (but not limited to) the Environmental Permitting (England and Wales) Regulations (EPR) 2016 (as amended) and the Marine and Coastal Access Act (MaCAA) 2009. For the purpose of clarity, comments from NRW's Regulation and Permitting Service are titled as such and include comments in Annex B.1. We note that the application is seeking to disapply the need for certain consents/licences/permits for which NRW is the competent authority. An agreement on this has yet to be reached but we would welcome discussion with the Applicant regarding these matters. We provide a comment on NRW's general purpose in Section 3.

### **2.1. Designated Sites for Nature Conservation**

- 2.1.1. We welcome that an updated Conservation Areas Management Plan would be prepared and submitted to Flintshire County Council (FCC) and NRW for approval prior to the commencement of operation of the Proposed Development. The updated Conservation Areas Management Plan would be secured by DCO Requirement 13 (Operational and Maintenance Environmental Management Plan (OMEMP)) and remain in place until completion of the decommissioning of the Proposed Development, unless otherwise agreed with FCC and NRW.
- 2.1.2. We have identified key concerns regarding potential impacts on the following designated sites for nature conservation within Wales:
- Dee Estuary (Wales) SAC, SPA, Ramsar site and SSSI – the application site is located within and immediately adjacent to these sites.
  - Afon Dyfrwdy (River Dee) SSSI – located 75m to the south-east.
  - Deeside and Buckley Newt Sites SAC and Connah's Quay Ponds and Woodland SSSI – located 1.5km to the south.
- These key concerns are detailed below, along with our other comments regarding designated sites for nature conservation.
- 2.1.3. Our following comments are based on the current submitted Report to Inform Habitats Regulations Assessment (RIHRA), as documented in APP-253. We note that an updated RIHRA is to be submitted that will consider six design changes that have recently been confirmed by the Applicant (AS-006) and accepted by the ExA, with comments on these requested by 18 February 2026. One of the design changes involves reductions in the proposed stack heights due to aeronautical requirements, so our following advice, on atmospheric emissions in particular, may be subject to change following our review of the updated RIHRA and supporting documents.

**Key Concern 1: Atmospheric pollution of the Dee Estuary SAC/SSSI saltmarsh, Afon Dyfrdwy (River Dee) SSSI saltmarsh and Deeside and Buckley Newt Sites SAC/Connah's Quay Ponds and Woodlands SSSI oak woodland qualifying habitats during operation**

Dee Estuary SAC/SSSI and Afon Dyfrdwy (River Dee) SSSI: saltmarsh feature

- 2.1.4. The ES Air Quality assessment (Appendix 8-D, APP-183) and Report to Inform Habitats Regulations Assessment (RIHRA) identify potential Likely Significant Effects (LSE) for nitrogen deposition (Ndep) on the Dee Estuary SAC Annex I saltmarsh features (Atlantic salt meadows *Glauco-Puccinellietalia maritimae*, and *Salicornia* and other annuals colonising mud and sand) and the Dee Estuary SSSI independent qualifying saltmarsh feature. The RIHRA calculates the affected area to be 445ha in-combination and 245ha for the Proposed Development alone (of 2,566.3ha of SAC saltmarsh); representing 17% and 10% of saltmarsh, respectively.
- 2.1.5. The River Dee and Bala Lake/Afon Dyfrdwy a Llyn Tegid SAC and Afon Dyfrdwy (River Dee) SSSI also support areas of saltmarsh. Saltmarsh is an independent qualifying feature of the Afon Dyfrdwy (River Dee) SSSI.
- 2.1.6. *Bupleurum tenuissimum*, slender hare's-ear, is also present at a number of locations along the Welsh bank of the Dee to the south of the application site. This species is listed in the Dee Estuary SAC conservation objectives as a Notable Species and is an Environment (Wales) Act Section 7 priority species.
- 2.1.7. With the widespread, albeit low level, predicted exceedance of the critical load for saltmarsh, Likely Significant Effects cannot be ruled out for the Annex I Atlantic salt meadows habitat within the Dee Estuary / Aber Dyfrdwy SAC / SPA / Ramsar site or impacts to the saltmarsh feature of the Dee Estuary SSSI and Afon Dyfrdwy (River Dee) SSSI.
- 2.1.8. There is a high proportion of upper saltmarsh and areas of transition to terrestrial habitat, both of which are more sensitive to nitrogen deposition, within the predicted area of exceedance.
- 2.1.9. The main threat of nitrogen deposition to coastal saltmarsh communities within the Dee is likely to be the spread of coarse nitrophilous grasses, primarily sea couch and common couch, at the expense of other more diverse saltmarsh plant communities or the transitional saltmarsh margins. These are naturally occurring plant communities, but they can be invasive and generally form dense, single species stands of vegetation where other plant species are outcompeted. The high proportion of upper marsh in the upper Dee estuary where the proposal is located is particularly vulnerable to the spread of such coarse nitrophilous grasses. The terrestrial saltmarsh transitions are also vulnerable to the spread of tall grasses due to nitrogen deposition. Deterioration of the Annex I Atlantic salt meadows habitat would likely be permanent as the diversity of plant species would be expected to decline.



2.1.10. The sea couch and common couch plant communities are listed in British Plant Communities, Volume 5 (by Rodwell, ed., 2000) as SM24 *Elymus pycnanthus* salt-marsh community (sea couch, the scientific name has now changed to *Elymus athericus*) and SM28 *Elymus repens* salt-marsh community (common couch).

2.1.11. The following SAC conservation objectives are relevant to this matter:

- i) the proportions of individual Atlantic salt meadow vegetation communities within the site are maintained.
- ii) the zonation of Atlantic salt meadow vegetation communities and their transitions to fresh water and terrestrial vegetation are maintained.
- iii) the relative abundance of the typical species of the Atlantic salt meadow vegetation communities is maintained.
- iv) the abundance of the notable species of the Atlantic salt meadow vegetation communities is maintained.

2.1.12 Based on the current RIHRA (APP-253), we acknowledge that the exceedance would be small and at the lower end of the critical load (CLO) for the most sensitive type of saltmarsh (upper) but considering the current exceedance of background Ndep CLO already at this location, and size of the area affected, we welcome that mitigation is proposed. However, we do not consider the proposed measures to be adequate, for the following reasons:

- 1) we do not consider the continuation of the management agreement for the 26ha of currently managed land following decommissioning of the old power station to be bespoke new mitigation for this impact. The extant management agreement is a legal requirement of the Section 36 consent for the existing Connah's Quay Power Station and was established to serve a wider conservation purpose at the site. This would be replaced by an updated version following decommissioning of the old power station in any case, as an embedded design measure, and we would expect this regardless of the identified air quality impact to the saltmarsh.
- 2) we understand that the managed realignment of 0.13ha (1,300m<sup>2</sup>) of land (previously 0.12ha), potentially creating new saltmarsh of this equivalent area is primarily proposed to offset the loss of up to 650m<sup>2</sup> of saltmarsh for the new surface water outfall. We do not consider an area of 0.13ha to be adequate for mitigating the effects of nitrogen deposition on the species composition of at least 245ha of affected saltmarsh (445ha in-combination). Furthermore, it is not clear whether the newly created saltmarsh would also suffer from similar atmospheric impacts as predicted elsewhere.

2.1.13 We therefore advise that satisfactory alternative mitigation/compensation measures should be proposed to address this impact and would welcome further engagement with the Applicant regarding this.

#### Deeside and Buckley Newt Sites SAC/Connah's Quay Ponds and Woodlands SSSI

2.1.14 The ES Air Quality assessment (APP-180) and RIHRA (APP-253) show that in-combination ammonia and nitrogen deposition would exceed the 1% Process

Contribution (PC) of Critical Levels/Loads (CLe/CLo) thresholds within the Deeside and Buckley Newt Sites SAC, which also includes the Connah's Quay Ponds and Woodlands SSSI. The corresponding background CLe/CLo are already exceeded at this site and an additional area of approximately 31% of the Annex I oak woodland habitat of the SAC/SSSI (Old sessile oak woods with Ilex and Blechnum in the British Isles) would be affected by the new exceedance. Increased nitrogen deposition could lead to a prevalence of nitrogen-loving vegetation, such as bramble, cleavers, and nettles. This could alter species composition in a way which impacts negatively on the SAC/SSSI woodland features.

- 2.1.15 We consider that the sensitive lower plant features of the Annex I oakwoods habitat at this site have already been lost due to historic air pollution. The site will since likely have been recolonised by relatively mobile, nitrogen tolerant epiphytic bryophytes and lichens.
- 2.1.16 Even if relevant background concentrations were to reduce below the critical level, it is unlikely that the sensitive rare bryophyte species, which are a key feature of old sessile oak woods, would naturally recover in this location. Examples of these species are now generally found further west, and it is not expected that they would be able to repopulate in the Connah's Quay vicinity.
- 2.1.17 Furthermore, the only reference to "Lower" plants in the Core Management Plan for the Deeside and Buckley Newt Sites SAC is in the "Vision for the site" which states *"There will be abundant dead and dying trees throughout the woodland providing habitat for invertebrates, fungi and lower plants"*.
- 2.1.18 Nevertheless, that is not to say that further atmospheric pollution impacts on the oak woodland feature of the SAC and SSSI, regardless of how small, should be considered acceptable.
- 2.1.19 The Applicant claims that process-orientated mitigation to reduce emissions is not feasible and therefore proposes habitat management to counter the effects of the nitrogen deposition.
- 2.1.20 Facilitation of habitat management is intended to directly mitigate potential changes in ground flora due to elevated levels of atmospheric nitrogen by physically removing nitrogen-loving vegetation to promote/restore desired species composition, in line with the designated feature and conservation objectives. This would be achieved by funding local practitioners already engaged in woodland management at the site to enable them to maintain and enhance the condition and resilience of the woodland features.
- 2.1.21 Depending on the level of funding this could be a proportionate strategy. However, confirmation of the further details should be submitted in writing to clarify the exact proposals and provide assurance that these could be secured within the DCO and implemented effectively. The mitigation management should continue for as long as the impact is anticipated.



- 2.1.22 It is not clear whether tree screening e.g. with poplar, to further reduce nitrogen/ammonia impacts at the site has been considered by the Applicant. We therefore advise that this should be considered in addition to the proposed funding for woodland management.
- 2.1.23 The proposed mitigation for nitrogen deposition does not address the potential impacts of the very slight exceedance over 1% (1.1%) of the ammonia critical level. Direct air concentrations of ammonia can impact lower plants, including lichens and bryophytes. We therefore advise that details of mitigation measures to address the slight ammonia exceedance should be submitted.
- 2.1.24 A Critical Level of  $3\mu\text{g}/\text{m}^3$  (for protection of higher plants, including forest ground flora) may be appropriate for assessing ammonia impacts at the Deeside and Buckley Newt Sites SAC/Connah's Quay Ponds and Woodlands SSSI in this case, rather than  $1\mu\text{g}/\text{m}^3$  if the site had a diverse and important bryophyte/lichen component. We would be willing to discuss this further with the Applicant.

#### Shotton Lagoons and Reedbeds SSSI

- 2.1.25 The ES (Chapter 11) reports a marginal exceedance of nutrient nitrogen deposition at this site's receptor (OE29). Chapter 11's assessment of impact dismisses this result based on the non-sensitive nature of the common tern breeding habitat at this site. Paragraph 11.6.154 goes on to state that the common terns are the only designated feature of this site sensitive to air quality. However, this is incorrect as the SSSI is also notified for its reedswamp vegetation (*Phragmites australis* reedbed), which is sensitive to ammonia at  $3\mu\text{g}/\text{m}^3$  CLe and nutrient nitrogen at 10-20 kgN/ha/yr CLo.
- 2.1.26 Although air quality impacts on this feature have not been assessed, we advise that these would be <1% CLo and hence can be considered insignificant.

#### **Key Concern 2: Direct loss of/damage to the saltmarsh qualifying habitat of the Dee Estuary SAC/SSSI during construction/demolition**

- 2.1.27 The proposals involve the construction of a new permanent outfall structure for surface water drainage discharge (the 'Proposed Surface Water Outfall') adjacent to the Existing Surface Water Outfall. The Proposed Surface Water Outfall is located within the Dee Estuary SAC, SPA, Ramsar site and SSSI in an area confirmed as Annex I saltmarsh habitat (Atlantic salt meadows, *Glauco-Puccinellietalia maritimae*), a qualifying feature of the Dee Estuary SAC. Saltmarsh is also a qualifying feature of the Dee Estuary SSSI.
- 2.1.28 Paragraph 11.3.19 of the ES, Chapter 11 estimates a <5m<sup>2</sup> area of permanent loss of saltmarsh habitat due to the Proposed Surface Water Outfall headwall extension. Paragraphs 11.6.11 and 11.6.19 of the ES, Chapter 11 refer to an approximately 650m<sup>2</sup> of temporary saltmarsh habitat loss during construction of the Proposed Surface Water Outfall. As paragraph 11.6.73 of the ES, Chapter 11 states that a loss

of up to 0.06ha (600m<sup>2</sup>) saltmarsh would occur, the correct areas of temporary and permanent saltmarsh loss should be clarified.

- 2.1.29 No information has been submitted regarding the discharge volumes of the Surface Water Outfall. Chapter 4.5, Table 6 of the Framework Construction Environmental Management Plan states *“the location, position and orientation of a new drainage outfall would be carefully determined and informed by a hydromorphological survey to minimise any adverse local impacts on river processes. Appropriate micro-siting of the outfall would minimise loss of bank habitat, the need for bed scour or hard bank protection and minimise localised flow disturbance or disruption to sediment transport processes.”* However, information about the predicted discharge volumes from the new surface water outfall is required to fully understand any potential scour impact on the saltmarsh habitat.
- 2.1.30 The conservation objective for the “Atlantic salt meadow” feature of the Dee Estuary SAC is to maintain it in favourable condition, the achievement of which includes the following relevant condition being met:
- the total extent of Atlantic salt meadow vegetation communities within the site is maintained.
- 2.1.31 Although the area of saltmarsh habitat which would be permanently lost to the development is low, there would still be a net loss of this Annex I habitat type. The Applicant proposes offsetting this by enabling managed retreat of the embankment between the power station and Dee Estuary SAC/SPA/Ramsar site/SSSI to create an approximately 1,300m<sup>2</sup> area for natural migration inland of the saltmarsh, which we consider to be a sufficient area to offset these losses, in principle.
- 2.1.32 We note that the Applicant considers this would ‘offset’ the impact on saltmarsh rather than represent ‘compensation’ in the context of the Habitats Regulations and considers it as mitigation for HRA purposes. However, the proposed area of new saltmarsh would be located outside of the SAC and hence lack its standard of statutory protection.
- 2.1.33 We have considered case law relating to this matter and offer the following advice. In the European case of *T.C Briels and Others v Minister van Infrastructuur en Milieu* (C-521/12) the CJEU considered whether a measure for the creation of an area equal to, or greater than the habitat to be lost would be considered as mitigation or compensation. In that judgement it was determined that *“the assessment carried out under Article 6(3) of the Habitats Directive cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all scientific doubt as to the effects of the works proposed on the protected site concerned”*. This judgement also noted that *“as a rule, any positive effects of a future creation of a new habitat which is aimed at compensating for the loss of area and quality of the same habitat type on a protected site, even where the new area will be bigger and of higher quality, are highly difficult to forecast with any degree of certainty and, in any event, will be visible only several years into the future...”*.

- 2.1.34 Therefore, following the reasoning within the *Briels* judgment, although, in principle, a measure of utilising replacement land may be considered mitigation in certain limited circumstances, if, in fact, its effectiveness, in terms of ensuring that there will be no adverse effect on the integrity of the site, is not beyond scientific doubt at the point of assessment, then it should be considered as a compensatory measure rather than mitigation.
- 2.1.35 Further, R. (on the application of Lee Valley Regional Park Authority) v Epping Forest DC [2015] EWHC 1571 (Admin), which references the judgement in *Briels*, highlighted that the creation of alternative habitat to offset loss within a protected site should be treated as compensation rather than mitigation.
- 2.1.36 The fact that the Applicant references other DCO's or local authorities which have treated replacement habitats as mitigation, does not by itself change the legal position as set out above and should not be relied upon to avoid an adverse assessment under Article 6(3) as each DCO application is fact specific and would be considered on its own merits.
- 2.1.37 We therefore acknowledge that such proposals, in principle and in very limited circumstances, could potentially be considered as mitigation for HRA purposes but consider that this would be subject to their effectiveness proving, at the point of assessment, that it is beyond scientific doubt there will be no adverse effect on the SAC. However, it is not currently clear whether this would be the case.
- 2.1.38 We further acknowledge that the Applicant has referred to the position taken in our Relevant Representations as to such proposals potentially being considered mitigation, however, we wish to highlight that at no point have we agreed that the proposed measures should be considered as mitigation rather than compensation.
- 2.1.39 Further to the above, we consider that reasonable scientific doubt remains over the satisfactory implementation of the saltmarsh habitat regeneration proposals, as explained below and, as set out above, the relevant case law favours these measures being compensatory in nature. Therefore, we are not able to assure the ExA that they could be deemed as mitigation measures and hence they should be considered as compensatory measures.
- 2.1.40 From comparing the proposed managed realignment site with existing and predicted changes to Mean High Water Spring tides, we note that the elevations of the proposed managed realignment site appear too high to support natural inundation of the tide. We therefore welcome the Applicant's proposed investigations to ensure that the ground levels of the managed realignment area are suitable for saltmarsh creation, and ground investigations to rule out contaminated land. Site investigations will need to ensure that the proposed site is in an appropriate location, including consideration of:
- Site elevations and position within the tidal range using LiDAR.
  - Potential contaminated land

- 2.1.41 If the realignment site is confirmed to be too elevated to facilitate natural inundation of the tide, it will need to be demonstrated that the levels can be satisfactorily altered to accommodate this. Alternatively, it may need to be considered whether other opportunities for the managed realignment of coastal defences have been identified in the relevant Shoreline Management Plan.
- 2.1.42 The Shoreline Management Plan policy at this location (Sub-cell 11A, Policy Unit 5.3) for the lifetime of the proposals is to Hold the Line, but it also notes the potential squeeze of internationally designated intertidal habitat and acknowledges possible localised managed realignment for habitat creation depending on studies undertaken. However, it also notes that any realignment / habitat creation may impact on channel morphology downstream, so this would need appropriate consideration. The Applicant should therefore give full consideration to any potential impacts to the estuary associated with their managed realignment proposals, including flood risk to the railway/other infrastructure (which may need discussion with other parties), as well as the environmental impacts of any potential changes to estuarine morphology. The Applicant should refer to NRW's "Marine and coastal physical processes assessments" (small-scale projects) guidance, available on our website, to assess the potential impact of the managed realignment on physical processes.
- 2.1.43 Further details to confirm whether the newly created saltmarsh would suffer from the significant adverse atmospheric impacts predicted elsewhere in the Dee estuary (see NRW Key Concern 1) should also be submitted.
- 2.1.44 In addition to the above, we advise that the following further information should be submitted to allow us to consider the effectiveness of these proposals:
- a firm commitment to removing the headwall extension to the surface water outfall on the future decommissioning of the new power station and removing the existing, redundant outfall for the old power station.
  - a scarce plant survey in the area of saltmarsh affected by temporary and permanent habitat loss (an NVC survey is for plant communities rather than individual plants and it is possible that rare and scarce species nearby could also be within the area affected; in particular, slender hare's ear *Bupleurum tenuissimum* is known to be present further upstream within the Dee estuary. This species is listed in the Dee Estuary SAC conservation objectives as a Notable Species and is an Environment (Wales) Act Section 7 priority species.
  - further details relating to the saltmarsh soils or turves to be temporarily stored during construction and the reinstatement methods applied, including the duration of soil storage and return of any turves to the marsh.
  - details of regular monitoring of saltmarsh recovery within the reinstated areas of temporary loss until those areas have fully recovered as saltmarsh.
  - regarding monitoring of the saltmarsh creation (ES Chapter 5, para. 5.2.25), initial monitoring should be focused on the establishment and development of the saltmarsh focusing on vegetation establishment and cover, and sediment accretion. The condition of the saltmarsh should be assessed once the saltmarsh has developed. Monitoring of the colonisation of the managed realignment site by saltmarsh plants should be conducted until the site is fully colonised.

- an outline alternative contingency plan in case the managed realignment site fails to successfully establish as saltmarsh, to ensure that adaptive measures are available to deliver the desired objective.

2.1.45 There should also be a firm commitment (secured by a DCO requirement) for a saltmarsh mitigation and monitoring plan, as per the curlew mitigation and monitoring plan to be secured by Requirement 11, whereby the restoration timescales, targets and monitoring proposals are set out in more detail.

2.1.46 Paragraph 3.1.8 of the ES, Appendix 11-C: Botanical Technical Appendix (APP-191) refers to a more extensive NVC survey undertaken in June and July 2000, but this data was not available at the time of writing. However, NRW has recently sent the results of its 2022 NVC survey of the Dee estuary, including the area adjacent to the application site, to the Applicant on 22/01/26. We therefore advise that the results of this are considered.

2.1.47 Regarding the works in the Water Connection Corridor (WCC), paragraph 11.3.19 of the ES, Chapter 11 (APP-049) states that works within the saltmarsh for the WCC *“would be temporary (three to five months in duration) and all habitat would be restored on completion of the works”*. However, Section 3.2.2 of the OLEMP (APP-250) appears to contradict this as it states: *“The temporary impacts are:*

- *Encroachment and clearance of coastal saltmarsh for proposed works within the Water Connection Corridor;”*

2.1.48 We sought clarification of this matter in our Relevant Representations (RR-027). We note and welcome the Applicant’s verbal confirmation during Issue Specific Hearing 2 (14/01/26) that there would be no loss of saltmarsh habitat from within the WCC. However, we advise that formal clarification of this matter should be provided in writing to the Examination.

**Key Concern 3: Loss of functionally linked land for Dee Estuary SPA/Ramsar site/SSSI bird features (curlew) during construction, demolition, and/or operation**

2.1.49. The proposals would result in an intermediate to long-term 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).

2.1.50. We have discussed this approach with the Applicant during the pre-application stage and agree that, in principle, the proposals outlined in the CMS could enable the proposed offsetting land to be managed appropriately to encourage and support curlew feeding and roosting, offsetting the loss of FLL for curlew.



- 2.1.51. We note that the distance of Gronant Fields from the application site is around 21km and confirm that proximity is not, in itself, determinative. Rather, the focus is on providing ecological equivalence and functional connectivity. The replacement habitat must be capable of supporting an equivalent or greater number of overwintering curlew, such that there is no adverse effect on the integrity of the Dee Estuary SPA or its Conservation Objectives.
- 2.1.52. However, as with the proposed saltmarsh creation, we note that the Applicant considers the proposals to involve mitigation, instead of compensation.
- 2.1.53. We refer again to European case law (notably *Briels v Minister van Infrastructuur en Milieu* (C-521/12) and *Edal Grace & Peter Sweetman v An Bord Plaenala* (C-164/17)). The matter of *Grace* specifically dealt with the question of a proposed measure being deemed mitigation or compensation when dealing with a project that will impact an SPA. Whilst it is acknowledged that this matter dealt with the availability of an area for a species to forage which fluctuated over the lifetime of a project (in contrast to the present application where a specified area of replacement land has been identified), the judgement nevertheless reinforced the position taken in *Briels* (as discussed above at para. 2.1.33 that *“it is only when it is sufficiently certain that a measure will make an effective contribution to avoiding harm, guaranteeing beyond all reasonable doubt that the project will not adversely affect the integrity of the area, that such a measure may be taken into consideration when the appropriate assessment is carried out”*).
- 2.1.54. The point regarding the uncertainty of the effectiveness of the proposed measures was further expanded on by the court in *Grace* where it was stated that *“...such uncertainty is the result of the identification of adverse effects, certain or potential, on the integrity of the area concerned as a habitat and foraging area and, therefore, on one of the constitutive characteristics of that area, and of the inclusion in the assessment of the implications of future benefits to be derived from the adoption of measures which, at the time that assessment is made, are only potential, as the measures have not yet been implemented.”* The court then went further to state that the benefits of such a measure would need to be foreseen with the requisite degree of certainty when a development was approved.
- 2.1.55. Furthermore, in the matters of *Royal Society for the Protection of Birds v Secretary of State for Communities and Local Government & others* [2014] EWHC 1523 (Admin) and *Murphy’s Application for Judicial Review, Re*, [2017] NICA 51, it was confirmed that FLL must be assessed under the same legal framework as the site itself. This will, therefore, be relevant to the HRA for this application given that the FLL here is situated outside of the SPA.
- 2.1.56. It is further noted that the proposed replacement land at Gronant Fields is already located within the boundary of the Dee Estuary SPA. We do not consider this fact to be determinative by itself but instead revert to the test with regards to certainty as discussed above.

- 2.1.57. It is noted that within the CMS (APP-254), at paragraph 4.3.9, the Applicant states that *“the habitat for the Curlew offsetting area will be established prior to commencement of construction works at the areas of the Main Development Area for which offsetting is required, to ensure that the mitigation provision is available prior to any displacement occurring”*. This is further addressed within the RIHRA which states that Requirement 11 of the draft DCO identifies that a Curlew Mitigation and Monitoring Plan (CMMP) must be developed, and enhancement measures must be in place prior to works commencing.
- 2.1.58. We therefore acknowledge that such proposals, in principle, could potentially be considered as mitigation for HRA purposes but consider that this would be subject to their effectiveness in preventing any adverse effect on the SPA, at the point of assessment, being beyond scientific doubt.
- 2.1.59. Further to the above, we consider that reasonable scientific doubt remains over the satisfactory implementation of the replacement curlew habitat proposals, as explained below. Therefore, we are not able to assure the ExA that the proposals could be deemed as mitigation measures at this stage and hence, following the case law, they should be considered as compensatory measures.
- 2.1.60 Furthermore, paragraph 3.5.5 of the CMS (APP-254) states that *“The land would be managed for 80 years (this being the standard HRA definition of ‘in perpetuity’) or until the Proposed Development is decommissioned, whichever is the sooner”*. A reference for this “standard HRA definition” of in perpetuity should be provided. There is no guarantee that curlew would return to the decommissioned brownfield land once the project has ceased to operate, so any mitigation/compensation should be permanent. This could potentially be achieved by a clause in the updated Conservation Areas Management Plan stating that at the end of the Proposed Development, or if the land is sold, the land should continue to be managed in accordance with the principles of the CMMP and that the new owner should demonstrate that they have the capability and funds to do so.
- 2.1.61 We also advise that the following clarifications and details should be provided for the CMS (APP-254):
- 1) Para. 2.4.2: Table 1 does not include historic data, only covers one year, and is likely to be too narrow in the range of months when curlew are found in significant numbers at the application site. Historic data held by the Applicant and Deeside Naturalists’ Society (DNS) should be referred to as these may show a greater range of months when significant numbers of curlew, and possibly other qualifying bird species, occur within the affected fields (i.e. August, September and October). Historic data may also provide longer-term trends in the numbers of curlew (and other bird features) using the FLL. This may be important when determining the effectiveness of management measures in the proposed curlew offsetting area.
  - 2) Para. 4.1.1: Groundwater monitoring should be applied at an early stage to determine the characteristics of groundwater changes at the curlew offsetting site and to inform future management of water levels. Water levels should be

quantified over a period of time, so that adjustments to management prescriptions can be made.

- 3) Para. 4.2.4 states that “*further surveys will be undertaken during the peak wintering months.*” We wish to be consulted on the results of these surveys and would welcome further engagement regarding the development of the Curlew Mitigation and Monitoring Plan.
- 4) Para. 4.3.2: Regarding reference to the winter period of October – March, curlew may start to arrive earlier in the season (August/September) depending on weather and breeding success. Using grazing animals would allow minimal disturbance towards the end of summer and therefore early returning curlew would be able to use the land.
- 5) Para. 4.3.6 states that one of the additional habitat management measures “*will be the creation of a network of foot drains which are a common habitat feature deployed to support diverse invertebrate assemblages and create suitable habitat conditions for waders.*” A reference or example should be provided to support this approach.
- 6) Para. 4.3.12: “*late in the season*” should be defined.
- 7) The Applicant has stated that management of the water tables, sward height and taller vegetation in the Secondary Curlew Area (Figure A-3) would provide additional habitat enhancement. Clarity should be provided on whether these areas would be managed on the same schedule of mowing/grazing and to the same standard as the core areas.
- 8) Figure A-3 indicates two field parcels of curlew feeding areas, presumably based upon one year’s data. NRW and WeBS hold historic data for the area that may reveal curlew feeding in other adjacent areas and should therefore be considered. Impacts on other designated bird species that may be affected by management decisions for curlew should also be assessed.
- 9) Section 4.4: There is likely to be a need for a longer-term initial monitoring period, e.g. minimum of 10 years. Monitoring should occur for the life of the project, so that management is adaptable to any change in populations and should contribute towards the Dee estuary WeBS count. Details of the monitoring arrangements and the feasibility of access to enable effective monitoring should also be provided.
- 10) A defined financial allocation should be set aside for management requirements. Oversight of the management plan from the Applicant’s perspective should be supported by a dedicated officer to enable effective management.

2.1.62 We advise that the Applicant considers whether the CMS and CMMP could be developed into a Gronant Fields Environmental Management Plan, which would be either separate to or part of the overarching updated Conservation Areas Management Plan, approved through a section 106 agreement or similar mechanism. As the replacement curlew habitat site is within the Dee Estuary SPA/Ramsar site/SSSI, the management plan may need to be regularised through a section 16 management agreement (Wildlife and Countryside Act) to ensure NRW’s future participation as a key stakeholder in management decisions for the life of the programme.



- 2.1.63 In relation to future monitoring, the site has historically been difficult to survey accurately as there is a busy road along the southern boundary and lack of close vantage points. We therefore recommend that consideration is given to the provision of new bird hides and/or screens, and safe access, provided that these would not disturb roosting and feeding birds using the site.
- 2.1.64 We would also encourage the Applicant to engage with local interested parties and expert practitioners in coastal habitat management for birds who have historically been familiar with the area, and establish a steering group for the curlew offsetting site's future management. Actions for the group could include:
- developing a delivery action plan, many aspects of which are already included in the CMS (APP-254), to ensure the land is optimised for curlew and potentially other qualifying species.
  - once the CMMP is instigated, holding annual meetings with the group to ensure management is directed at optimising conditions for curlew and any other target bird species.
- 2.1.65 The Offsite Net Benefit for Biodiversity and Green Infrastructure Strategy (APP-255) include habitat management prescriptions for the proposed curlew offsetting site to be acquired as part of the CMS (APP-254). While we generally concur with these proposals in principle, we advise that further details are needed and our main comments are summarised as follows:
- 'Grassland enhancement' should be viewed from the perspective of enhancing the land for target bird usage, rather than focusing specifically on grassland species diversity. It is important that the grassland is wet and provides invertebrate prey species for the target bird species; the land is designated as an SPA, Ramsar site and SSSI on this basis.
  - The grassland enhancement proposed in Figure 2 (Proposed Habitat Enhancement and Creation Measures) appears to require additional procurement of land to facilitate it. Clarification should therefore be provided on the feasibility and security of these measures.
  - The land is already designated as an SPA, Ramsar site and SSSI to maintain and enhance conditions for bird features. The woodland measures, although potentially useful in terms of screening the site to reduce disturbance to birds, are therefore not considered to be a priority at this site.
  - We would encourage the Applicant to manage the site during spring and summer months, to create breeding habitat for redshank and/or lapwing where this does not conflict with its principle aims for curlew. Measures applied at this site for other species could potentially contribute to demonstrating achievement of Net Benefit for Biodiversity. We can provide evidence of other bird species likely to benefit from enhanced management based upon previous observations.

***Noise and visual disturbance of interest features of the Dee Estuary SPA/Ramsar site/SSSI during construction/demolition***

- 2.1.66 Noise modelling and contour maps for 'site enabling works,' 'main civils works,' and 'plant installation works' show the potential for noise levels to exceed 65dB without

the use of any mitigation. However, we agree that with the use of suitable mitigation, noise levels will not exceed 60dB within the Dee Estuary SPA / Ramsar site. We note that additional measures to minimise noise are planned and will be finalised at the detailed design stage. Appropriate mitigation measures must be in place to ensure the predicted disturbance will not have an adverse effect on wintering waterbirds associated with the Dee Estuary SPA / Ramsar site. We therefore recommend that further noise modelling should be undertaken once the mitigation measures are finalised.

- 2.1.67 Noise modelling and contour maps for the WCC works show that, even with acoustic fencing, noise levels will reach over 85dB which will cause disturbance to bird features of the Dee Estuary protected sites. We therefore agree with the proposed mitigation for these works to be completed outside of the wintering season.
- 2.1.68 The Surface Water Outfall works are due to take place within the Dee Estuary SPA / Ramsar site and therefore will likely cause disturbance to the wintering wader and wildfowl features of these sites. We therefore agree with the proposed mitigation for these works to take place outside of the wintering season, to avoid this disturbance.
- 2.1.69 We note the statement in the RIHRA (para. 10.3.2) that increased light spillage may improve foraging efficiency for some qualifying species and the reference to a paper regarding this. Although, we do not consider a single study of one species (redshank) to provide robust enough evidence to support this statement, we concur with the overall conclusions regarding light spillage.

***Water quality impacts to the Dee Estuary SAC/SPA/Ramsar site/SSSI and River Dee and Bala Lake SAC/Afon Dyfrdwy (River Dee) SSSI during construction/operation/decommissioning***

*Construction/Decommissioning*

- 2.1.70 Although any proposed (but unspecified) control measures may theoretically provide mitigation for water quality impacts, no information has been provided to suggest these control measures will avoid the effect in the first instance. Therefore, we do not agree that the water quality impact pathway can be screened out at the Test of Likely Significant Effects (TLSE) stage. Since the measures proposed to be committed in a Construction Environmental Management Plan (CEMP) are considered as “*measures to reduce or avoid harm*,” they should not be discounted at TLSE but should be assessed fully in the Appropriate Assessment (AA) stage of the HRA process. We refer to the People Over Wind ruling for context and clarity (People Over Wind and Sweetman v Coillte Teoranta (C-323/17)). We do not consider that the Langton case (CO/2062/2020) regarding badger culling, as referred to by the Applicant, sets an appropriate precedent for screening out a water quality impact pathway for this application.
- 2.1.71 Information on the proposed activities that may be mitigated or avoided and their potential effect on the water quality of the Dee Estuary SAC/SPA/Ramsar site (and

potentially the River Dee and Bala Lake/Afon Dyfrdwy a Llyn Tegid SAC during a big tide or low flows), the impact pathways, and the specific mechanisms for mitigation should therefore be made available for assessment. We consider that the Competent Authority will need this information to undertake their HRA.

#### *Operation*

- 2.1.72 We do not agree with the RIHRA's conclusion that LSE can be screened out for all features for water quality during the operational phase.
- 2.1.73 The stated integral design makes no reference to the composition of wastewater discharge from the site during operations. The RIHRA states that the current and future practise is to treat sewage on site and discharge it with the cooling and process wastewater. In the absence of data regarding for the proposed waste water composition, we consider that there is reasonable scientific doubt that the discharge will have no adverse effect on the features of the Dee Estuary SAC/SPA/Ramsar site (and potentially the River Dee and Bala Lake/Afon Dyfrdwy a Llyn Tegid SAC during a big tide or low flows). Details of the composition of the proposed foul discharge should therefore be provided for consideration at the Appropriate Assessment stage of the HRA process.

#### *In-combination*

- 2.1.74 With reference to the advice above, water quality impacts should be taken to Appropriate Assessment for the construction, decommissioning, and operational phases. Other plans and projects (both current and future) should then be assessed for adverse effects at the Appropriate Assessment stage of the HRA process to determine in-combination effects for water quality.
- 2.1.75 Any in-combination effects of the cooling and process water discharge during the operational phase, the temperature plume (as previously advised), and water quality should be screened in as an impact pathway during the operational and construction/decommissioning phases (including toxic and non-toxic contaminants e.g., nutrients and sediments).

#### ***Introduction of invasive non-native species (INNS) to the Dee Estuary SAC/SPA/Ramsar site/SSSI and Deeside and Buckley Newt Sites SAC/Connah's Quay Ponds and Woodlands SSSI during construction/demolition***

- 2.1.76 While we agree with the overall approach outlined in ES Chapter 12, paragraphs 12.6.18 – 12.6.21 (APP-050), the mitigation and management measures contained in the 'Marine Invasive Non-Native Species Outline Management Plan' (ES Appendix 12F, APP-209) and the 'Marine Biosecurity Risk Assessment' (ES Appendix 12E, APP-208) would not adequately reduce the risks associated with the spread of marine INNS.

2.1.77 The following key details are absent from the Marine Biosecurity Risk Assessment but would have a material difference on the efficacy of the mitigation measures and assessment:

- the type and nature of vessels to be used,
- duration of the activity,
- location and nature of ports previously visited,
- INNS status of those ports, and
- whether the vessels have had recent antifouling treatment.

2.1.78 We therefore advise that a detailed biosecurity risk assessment for the marine element of the works should be submitted for approval, in consultation with NRW, once a suitable contractor is appointed and able to provide the above information, prior to any works commencing. This should be secured within the DCO requirements, potentially as part of Requirement 4 (2) b.

2.1.79 We note that the INNS impact pathway has been screened out of the RIHRA for the Deeside and Buckley Newt Sites SAC and Halkyn Mountain/Mynydd Helygain SAC. However, this does not appear to have considered biosecurity risks from infectious diseases such as chytrid. Since the works are within 2km of the Deeside and Buckley Newt Sites SAC, we advise that the HRA should consider such biosecurity risks.

2.1.80 We note reference to the Environmental Damage (Prevention and Remediation) (England) Regulations 2015, which apply in England. Please note that the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 (as amended) apply in Wales.

## **2.2 Protected Species**

Great crested newt, bat species, otter, water vole, hazel dormouse, and natterjack toad

2.2.1. Overall, we are largely satisfied with the survey and assessment in respect of great crested newts (GCNs), bat species, otter, water vole, hazel dormouse, and natterjack toad and agree with the conclusions of the ES. We also acknowledge that no protected species licences for the above species are currently likely to be required.

2.2.2. However, in respect of GCN we advise that the assessments should be based on a 1.6km dispersal distance as opposed to the 250m stated in the submission (please refer to: Section 6.2.3 of Guidelines for the Selection of Biological SSSIs. Part 2: Detailed Guidelines for Habitats and Species Groups: Chapter 18 Reptiles and Amphibians).

2.2.3. We note the identification of 1 no. pond confirmed to be supporting GCN (P2) and would welcome this record being submitted to the relevant Local Environmental Records Centre.

### Schedule 1 bird species (Wildlife and Countryside Act 1981, as amended)

- 2.2.4. We note that, if Schedule 1 bird species are found breeding within the working area, or close enough to it that works would result in disturbance of the breeding birds, works would stop immediately and the advice of an ornithologist obtained to ensure that measures are put in place to avoid disturbance occurring. This would be secured via Requirement 4 (CEMP).
- 2.2.5. Where buffer distances are required or need to be considered, reference should be made to Goodship, N.M. and Furness, R.W. (MacArthur Green) Disturbance Distances Review: An updated literature review of disturbance distances of selected bird species. NatureScot Research Report 1283, or alternative published references for species not listed in Goodship & Furness 2022.
- 2.2.6. The Applicant is reminded that disturbance to the nests, eggs or dependent young of Schedule 1 bird species listed in the Wildlife and Countryside Act 1981 (as amended) is not permissible unless licenced by NRW through a Schedule 1 disturbance licence.

## **2.3 Marine Ecology**

### Eels and fish

- 2.3.1. We welcome the commitment for eel screen upgrade works to meet current legislative requirements, including The Eels (England and Wales) Regulations 2009, comprising the removal of one existing 3mm screen and the installation of one new 2mm screen on each of the existing 28 intakes. This embedded design measure would be secured via Requirement 4 (CEMP) and any additional permits/licences required for the works to the intake structure.
- 2.3.2. ES, Chapter 12, para. 12.2.16 (APP-050) states: *“Furthermore, there is no evidence of any thermal impacts from existing discharge rates”* and on that basis thermal impacts from the discharge have been screened out for assessment. We advise that references should be provided to support this statement.
- 2.3.3. ES, Chapter 12, para. 12.2.22 (APP-050) states: *“The Applicant proposes to maintain the permitted abstraction and discharge parameters as far as reasonably practicable, e.g. abstraction would continue to be limited to periods around high water in line with the current abstraction licence.”* We welcome the intention to adhere to the conditions in the current abstraction licence but advise that further clarity is provided on what is meant by *‘as far as reasonably practicable’*, including the circumstances in which there would be deviation to abstracted and discharged parameters. It should also be confirmed that all parameters, if deviations occur, are within the worst-case scenario assessed in ES Chapter 12, Section 12.3 (APP-050).
- 2.3.4. ES, Chapter 12, para. 12.4.3 (APP-050): the bullet list of features contains the following errors/omissions which should be acknowledged:
- the Dee SSSI is also designated for European smelt,

- the River Dee and Bala Lake SAC is also designated for river/sea lamprey and bullhead,
- the River Dee SSSI is designated for salmon, sea lamprey, and European smelt. Brown/sea trout (*Salmo trutta*) are not a feature of the site but are protected under Section 7 of the Environment (Wales) Act 2015.

## 2.4 Air Quality

- 2.4.1. Based on the information submitted, we consider that the Proposed Development will require an Environmental Permit ('permit') to operate. Please note, however, that NRW's Permitting Service have not yet received a permit application in respect of the Proposed Development to date. Therefore, we have carried out a 'high-level' model review of the air quality information submitted in support of the above application. A 'high-level' model review consists of providing advice regarding the general assessment methodology of an air quality assessment (AQA) used and whether the correct guidance regarding key model input parameters has been followed.
- 2.4.2. We have undertaken a 'high-level' model review in this instance because this approach is considered to provide a suitable balance of offering the ExA greater assurances that the findings of the AQA are reliable. However, this approach also does not risk 'pre-determining' a future permit application.
- 2.4.3. Our previous advice regarding air quality has been addressed and generally we are satisfied with the AQA submitted. However, please see our following comments.
- 2.4.4. ES Chapter 8, Table 8-2 (Scoping Opinion Responses from the UK Health Security Agency) (APP-046), states: *"It is recommended that the air quality impacts assessment also include the diesel-powered back-up generators and associated pollutants."* The Applicant has responded that: *"Precise information on the number, size and type of back-up generator(s) has not been confirmed at this stage of the Project. As a reasonable worst-case assumption, the diesel generator(s) would only be used for short periods during testing and in the case of an abnormal event. Their use is, therefore, unlikely to have a significant effect on local air quality."* Reasonable evidence of the estimation of possible impact should be provided to support this statement.
- 2.4.5. It should be ensured that all relevant pollutants (including total amine emissions) that could be emitted from the stacks have been identified and assessed to inform the HRA (in line with published guidance).
- 2.4.6. Please note: this advice is provided without prejudice to any detailed assessment which will be undertaken by NRW's Permitting Service, as part of the permit application process, if required. There is a risk that a permit application may be refused, even if planning permission is granted for the Proposed Development.



## 2.5 Water Environment and Flood Risk

### Water Pollution

- 2.5.1. We note that a CEMP would be implemented for the construction stage. The Framework CEMP (APP-246) outlines the control measures for mitigating water quality impacts, taking into account Guidance for Pollution Prevention (GPP) documents GPP5 and GPP6. This would be developed into a detailed CEMP and supporting documents, secured post-consent as a requirement of the DCO.
- 2.5.2. Section 4.7 of the Framework CEMP states that a Drainage Management Strategy would be developed and provided in the final CEMP(s). The provision of the drainage management strategy documents to support the CEMP should be included in Requirement 4 or 7 of the DCO.
- 2.5.3. Regarding ES, Appendix 13B (Water Framework Directive Report, APP-211), on the basis of adherence to the commitments in the CEMP and associated documents, we agree with the conclusions of the Construction Phase Assessment for marine water quality that any impacts can be avoided or mitigated and so are unlikely to have a significant impact on any Water Framework Directive (WFD) quality elements. Likewise for the operational phase, we agree with the assessment of no deterioration in any WFD quality element relating to marine water quality and no likelihood of the prevention of any water quality objectives from being met.
- 2.5.4. The supporting Figure 13-1 (Surface Water Features, APP-132) does not appear to show all the WFD waterbodies reported in the WFD compliance assessment, only Swinchiard Brook. We therefore advise that an updated plan is submitted which clearly shows all the WFD waterbodies that have been identified in the assessment.

### Flood Risk

- ES, Chapter 13 (APP-051):

- 2.5.5. We note that there are no longer any works planned in the River Dee, aside from installation of new eel screens and minor repairs to existing inlets. We also note that a surface water outfall is proposed (para. 13.3.9). NRW should be consulted with further details of these works, to assess whether a Flood Risk Activity Permit (FRAP) or Marine Licence is needed, regardless of the requirement for in-channel works. A FRAP may be required for any works in, over, under or within 8m of a fluvial main river (including any defences on that main river), or 16m of a tidal main river (including any defences on that main river), or within a flood plain.
- 2.5.6. We note and welcome the inclusion of flood risk management elements in the CEMP. Works to divert existing culverted watercourses (para. 13.5.43) may require advice or consent from the Lead Local Flood Authority, or an Ordinary Watercourse Consent.

*- Appendix 13-C: Flood Consequences Assessment (APP-212)*

- 2.5.7. We have previously engaged with the Applicant regarding the hydraulic model developed for this proposal during the pre-application stage. We consider that the model is suitable to use for its intended purpose for this project/site.
- 2.5.8. The Flood Map for Planning identifies the application site to be at risk of flooding and mostly within Flood Zone 3 (Sea). The Repurposed CO2 Connection Corridor and Water Connection Corridor also fall within Flood Zone 3 (Rivers). We acknowledge that there is already a consented power station development at this site and are satisfied that the correct flood risks and flood risk zones relevant to the Proposed Development have been identified within the Flood Consequences Assessment (FCA).
- 2.5.9. We have agreed with the Applicant that the relevant design event for the site is the 0.5% (1 in 200 year) AEP tidal event, with allowance for climate change (70<sup>th</sup> percentile) over the lifetime of the development, including breach analysis where appropriate. We note that the proposed lifetime of the development is 30 years from a construction date in the 2030's, and on that basis, it was agreed that the 2074 climate change epoch would cover the lifetime of the Proposed Development. It was also agreed that the 2100 epoch would be analysed as a conservative approach to flood risk, as the normal lifetime considered for Highly Vulnerable Development is 100 years. TAN15 (2025) also requires the 95<sup>th</sup> percentile climate change scenario to be assessed in order to inform mitigation measures, and as a sensitivity test.
- 2.5.10. We advise that greater detail should be provided on the following aspects:
- Although the results of the 2100 epoch and 95<sup>th</sup> percentile model runs are included in Appendix 13-F (Hydraulic Modelling Report), we advise that these should be presented and summarised in the FCA so that the information is more readily available for decision makers.
  - As TAN15 requires the breach scenario to be considered as the design event, there should be a description of the existing flood defences and appropriate justification of why a breach/undefended scenario has not been included.
  - Analysis of flood risk in the 0.1% (1 in 1000 year) scenario (including climate change - central and upper end estimates) should be included in the FCA, as it is a requirement of TAN15.
  - During our previous hydraulic model review we noted that small areas of flood risk detriment were shown, albeit at a distance from the site: an explanation of these should also form part of the FCA, to address any detriment in terms of flood risk due to the project.

## **2.6 Geology and Ground Conditions**

- 2.6.1. We note that excavated material would be managed in accordance with the appropriate exemption and/or environmental permit or, if applicable, a Materials Management Plan (MMP) will be developed under the Contaminated Land:



Applications in Real Environments (CL:AIRE) Definition of Waste: Development Industry Code of Practice by the construction contractor.

- 2.6.2. We note that the extent of 'cut' will not be known until the detailed design and further ground investigations are completed. As all of the identified contaminated land locations are designated as 'cut', a detailed cut-and-fill plan should be produced to outline the nature and extent of existing ground materials/made ground excavations, as this could have a direct influence on the degree to which existing contamination could be mobilised and spread.
- 2.6.3. Clarification should also be provided on how the estimated radii of influence (RoI) relate to the designated contaminated land areas. This could be provided in a figure that shows the proposed cut, the RoI layer and the designated contaminated land areas. This would help to identify whether dewatering may be required in a particular contaminated land area and the estimated radius of influence.
- 2.6.4. Until further details on the cut-and-fill, local groundwater conditions and environmental quality of materials being excavated have been fully evaluated/finalised we maintain our previous advice that groundwater flows should be assessed as part of detailed site investigations, including the need to assess for the presence of private water supplies and the degree to which the current groundwater flow regime could be changed by the construction, operation and decommissioning of the proposed infrastructure, as much of it will be built in 'cut'.
- 2.6.5. The Stage 1, Tier 2 Generic Risk Assessment: Soil and Groundwater report (APP-221) is based on particular boreholes/borehole locations. Further site investigation is proposed (Figure 14.2, Potential Areas of Contamination, APP-141) and we welcome that this would be completed prior to construction of the Proposed Development.
- 2.6.6. The site investigations would likely be significant in scope given the number of contaminated land locations that are designated as Risk 3, 4 or 5. However, it is unclear how the Risk Assessment: Soil and Groundwater Report (APP-221) is aligned with the Potential Areas of Contamination illustrated in Figure 14.2 (APP-141) as there are some significant geospatial gaps. Clarification should therefore be provided on this as the conclusions of the Risk Assessment may be altered by the subsequent site investigations.
- 2.6.7. Operational contamination does not appear to have been included in the surface drainage design. We therefore advise that this is scoped in, or a robust justification provided if it is deemed not to be required.

## **2.7 Landscape**

- 2.7.1. Our landscape advice relates to the landscape character and visual amenity of the Clwydian Range and Dee Valley National Landscape (CRDVNL). This is the name for the legally designated Area of Outstanding Natural Beauty. At its closest point, the

Main Development Area is located approximately 10km from the National Landscape boundary.

- 2.7.2. We note that a change notification from the Applicant has recently been accepted by the ExA, which includes a proposed reduction in stack heights. Our following advice may therefore be subject to change following receipt of the formal change notification application and our review of updated supporting information.
- 2.7.3. We welcome that our previous advice has been reflected in the ES (Chapter 15, APP-053). However, we advise that higher resolution digital copies of the viewpoint photography should be made available for examination purposes, as the submitted versions suffer from pixelation, which is likely due to having been provided at a lower resolution.
- 2.7.4. The Zone of Theoretical Visibility (ZTV) analysis has been prepared for the tallest elements (the absorbers and HRSG stacks at 150m plus 8m Raised Ground Level (i.e. 158m above ordnance datum (AOD)) (Figure 15-8, APP-151)) and for the 'main site structures' modelled at 65m above ground level (Figure 15-7, APP-150). Based on the ZTVs, we note potential visibility of the development within the CRDVNL would primarily be confined to the ridgeline around and including Moel Famau. This area of potential visibility is captured within the extended LVIA Study Area.
- 2.7.5. Based on the above, and considering the relevant principles (reference numbers 27 – 29) to be secured and applied through the Design Principles Document, Table 1-2 (APP-264), we agree with the conclusion of the ES, Chapter 15 that, although there would be adverse visual effects within the CRDVNL, e.g. at Moel Famau, the effect on the visual amenity of people at this location would not be significant. We also agree that there would be no significant adverse effects on the special qualities of the CRDVNL.

### **3.0 NRW's General Purpose**

- 3.1 NRW is satisfied that this advice is consistent with its general purpose of pursuing the sustainable management of natural resources in relation to Wales and applying the principles of sustainable management of natural resources. In particular, NRW acknowledges that the principles of sustainable management include taking account of all relevant evidence and gathering evidence in respect of uncertainties, and taking account of the short-, medium- and long-term consequences of actions. NRW further acknowledges that it is an objective of sustainable management to maintain and enhance the resilience of ecosystems and the benefits they provide and, in so doing meet the needs of present generations of people without compromising the ability of future generations to meet their needs, and contribute to the achievement of the well-being goals in section 4 of the Well-being of Future Generations (Wales) Act 2015.

[CONTINUED]

## **ANNEX B.1 – NRW Regulation and Permitting Services**

### **1. Environmental Permitting Regulations (EPR)**

B.1.1 The Applicant will require an Environmental Permit to operate the proposed installation under the Environmental Permitting Regulations 2016. NRW has already been engaged in providing permit pre-application advice regarding this. Under the Control of Major Accident Hazards (COMAH) Regulations 2015, the Applicant will also be required to notify the COMAH Competent Authority (HSE/NRW) if hazardous substances exceed the thresholds set out in those regulations, which is still to be confirmed.

B.1.2 We consider that such a facility is “capable of regulation” under these regimes. However, noting the concerns raised by NRW on other environmental matters, there remain potentially considerable outstanding issues requiring resolution before all necessary consents could be assured, and we encourage the operator to consider these as a matter of priority:

- o as per NRW’s RR paragraphs 2.3.1, 2.3.6, 2.7.1, NRW’s input on air quality impact under planning regimes is limited to a “high level” model review, with further scrutiny anticipated as part of any EPR application. Given that the impact of the proposal (including on protected habitats/features) includes considerable air quality dimensions, the determining authority should fully satisfy themselves as to the air impact assessment validity, prior to making their recommendations. We would therefore advise caution over any potential proposal under the DCO to “defer out” impact matters to the EPR, especially given the comments made by NRW on the current level of scrutiny of the model. Key impacts (including potential mitigations/compensations) are contingent on air quality impact, so the scale of that impact must be understood and assured as comprehensively as possible prior to any consenting decision.
- o Noting previous comments that the facility requires EPR permitting and that NRW have provided EPR pre-application advice but have yet to receive an application, NRW’s Industry Regulation function would welcome submission of an EPR application as soon as reasonably practicable, and in accordance with a timeline indicated of the end of January 2026, with the objective of avoiding any potential inconsistency between planning/permitting regimes.
- o NRW’s Industry Regulation function notes the ongoing dialogue between the Planning Inspectorate (PINS), the operator, and other interested parties regarding the impact of the proposal on Designated Sites for Nature Conservation (SAC, SPA, Ramsar site and SSSI). We further note that any EPR consent would also be subject to comparable Habitats Regulations Assessment and its satisfactory conclusion and would therefore welcome work to resolve these issues, as it is likely there will be a high degree of commonality between the two regulatory regimes. We note and are informed by the procedural decision by PINS requiring the Applicant, without prejudice, to provide supporting documentation for derogation in respect of project impacts.

- B.1.3 A specific technical observation is made that while the application refers to “dispatchable, low carbon, power”, impacts modelling is on the basis of continuous (i.e. baseload or unrestricted) operation. This appears potentially inconsistent, with a possibility that project impacts (including but not limited to air quality) may be over-estimated if the operational envelope is unrealistically broad. Project impacts (and therefore required mitigations/compensations) may be capable of being further limited if operating parameters are critically scrutinised and set realistically.
- B.1.4 We note relevant representations by other stakeholders including local industry and Public Health Wales (PHW). As far as it may be in our remit, we consider the local industry interests to be capable of resolution. PHW are a statutory consultee in the EPR process, and we will consider any representations to us under EPR directly, including any comments mirroring those made to PINS, according to the specific legal requirements of the EPR regime.
- B.1.5 Regarding ES, Chapter 22, Table 22-8 (APP-060), please note that amine solvent may qualify under COMAH dependent on the type of solvent used.
- B.1.6 Regarding ES, Figure 22-1 (APP-167), please note that in September 2025 the COMAH competent authority received notification of a new lower tier COMAH establishment currently under construction at Weighbridge Road, Deeside Industrial Park, Deeside, Flintshire, CH5 2LL. However, to our knowledge the operator has not yet made an application to the Hazardous Substances Authority.

## **2. Marine Licensing: Regulatory Response**

- B.2.1 Works proposed under the DCO that are within Welsh Waters may require a marine licence under the Marine and Coastal Access Act (MaCAA) 2009, for which NRW is the licensing authority. The Applicant has noted that the project includes works to be carried out below mean high-water spring tides (MHWS) that will require a marine licence under the MaCAA. To date no marine licence application has been received. The Applicant has had an initial pre-application meeting on 27 November 2025 with the Marine Licensing Team which covered the nature of activities likely to require a marine licence, the supporting documents required for the application and the Applicant’s intended timing of application submission. A specific date for submission is not yet known.

## **3. Dee Conservancy Trust**

- B.3.1 The Dee Conservancy Harbour Authority’s comments concerning navigation and use of the Dee Estuary waterway, and use of land and riverbed owned by the Harbour Authority (NRW), are as follows.
- B.3.2 Draft DCO, Schedule 3, paragraph 1 (m) (APP-019): Regarding the proposed disapplication of the Dee Conservancy Act 1889, parts of this Act remain alive with regards to the ownership of riverbed and foreshore on the Welsh side of the Dee Estuary. The impact of disapplying the 1889 Act in relation to the parts of the DCO

application within the Dee Conservancy estate should therefore be assessed and clarified.

- B.3.3 ES, Chapter 3, para. 3.3.31 (APP-041): Existing land uses within the water corridor should include and recognise use of the Dee waterway by commercial fishers.
- B.3.4 ES, Chapter 5, para. 5.6.22 (APP-043): In a recent Uniper and NRW (Dee Conservancy) meeting it was agreed that the old wooden jetty will be referred to as the Tata Jetty, the five mooring piles next to the Tata Jetty, which are now owned and operated by NRW will be referred to as the Midway Berth, and the wider area will be known as Connah's Quay North Site.

#### **4. Disapplication of specific consents**

- B.4.1 The Consents and Agreement Position Statement (para. 1.5.9, APP-021) includes the following statement regarding the disapplication of specific consents:

*"The Applicant proposes to use the Draft DCO (EN010166/APP/3.1) to disapply the following prescribed consents. The Applicant has engaged and agreed with Natural Resource Wales to this approach prior to the submission of the application:*

- the requirement to obtain consent pursuant to section 28E (duties in relation to sites of special scientific interest) of the Wildlife and Countryside Act 1981.*
- the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the authority) to the Water Resources Act 1991.*
- section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1990; and*
- Regulation 5 (removal of hedgerows) of the Hedgerows Regulations 1997"*

- B.4.2 However, we are not aware of any engagement or agreement with NRW regarding the above prior to the submission of the application, or since then. Furthermore, please note that the latter two matters are not for agreement with NRW and instead should be pursued with the relevant determining authorities. We would welcome engagement with the Applicant regarding the matters that are relevant to NRW.