

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

05/06/2026

Dear Sir/Madam,

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

**PROJECT PLANNING INSPECTORATE REFERENCE: EN010166**

**INTERESTED PARTY REFERENCE NUMBER: [REDACTED]**

**RE: NATURAL RESOURCES WALES' WRITTEN SUBMISSION FOR DEADLINE 7**

This letter comprises the following submission from NRW:

- Comments on the Applicant's Responses to the Examining Authority's Report on the Implications for European Sites (RIES) – see [Annex A](#)
- Clarification of Natural Resources Wales' (as Dee Conservancy) Position Regarding the Proposed Disapplication of Certain Provisions of The Dee Conservancy Harbour Revision (No. 2) Order 2023 – see [Annex B](#)

The comments provided in this submission 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. In addition to being an interested party under the Planning Act 2008, NRW exercises functions under legislation as detailed in the cover letter of NRW's Deadline 1 Written Representations [REP1-073].

We have reviewed the Applicant's Deadline 6 submissions and subsequent documentation to the best of our ability within the time available prior to the close of the examination. The comments set out below represent our position based on a proportionate review of the information currently available and the limited time for review. They are provided without prejudice to any further comments we may wish or be required to make in respect of this application.

Regarding the Statement of Common Ground, although this was not signed by NRW at Deadline 6 [REP6-060] we can confirm that we are content with the version submitted and have therefore signed a copy of the same version. Where subject matters were not agreed at Deadline 6 this remains the case for Deadline 7. However, to assist the Examining Authority, where there has been some movement in our position this has been reflected in our submission below (Annex A).

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 this submission.

Yours faithfully,

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

[CONTINUED]

**ANNEX A – NRW COMMENTS ON THE APPLICANT’S RESPONSES TO THE EXAMINING AUTHORITY’S REPORT ON THE IMPLICATIONS FOR EUROPEAN SITES (RIES)**

| <b>RIES Question Ref.</b> | <b>Question to</b> | <b>Applicant Response [REP6-088]</b>  | <b>NRW Response:</b>  |
|---------------------------|--------------------|---|---|
| RQ.3                      | Applicant          | <p>NRW identified five cumulative schemes, of which ICT Paper Mill and Padeswood Cement Works have been considered quantitatively within the Application documents.</p> <p>The air quality assessments related to the other emerging schemes identified by NRW have been reviewed and further detail is included in the Additional Operational Air Quality Considerations (EN010166/APP/9.38) which has been referenced and considered within the RIHRA (EN010166/APP/6.12).</p> <p>Based on the analysis undertaken in the Additional Operational Air Quality Considerations (EN010166/APP/9.38), no new or different adverse effects on integrity of Habitats sites have been identified beyond those set out within the RIHRA (EN010166/APP/6.12).</p> | <p>Regarding Item 3.6 of our Statement of Common Ground (SoCG), we note that the Applicant has proposed mitigation measures relying on the spatial extent of the in-combination nitrogen deposition (Ndep) effect (445 ha) (ref. para. 10.3.22, RIHRA, REP6-049].</p> <p>In the Additional Operational Air Quality Considerations report [REP6-091], the Applicant acknowledges that the contribution from Enfinium Parc Adfer, Deeside Power, Arrow AD and Knauf Rock Mineral Wool (RMW) Facility have not been modelled in a cumulative scenario.</p> <p>The Applicant states that the <i>“Dee Estuary SAC is most impacted by emissions from sources in the Deeside Industrial Park (i.e. the emerging schemes) at its most easterly extent”</i> and that <i>“At the eastern extent of the Dee Estuary SAC, the contribution of the Proposed Development to the total cumulative impact of nitrogen deposition rate and ammonia concentrations is negligible”</i>.</p> <p>The Air Quality Assessment (AQA) submitted for the Knauf RMW application predicts a nitrogen deposition (Ndep) contribution to the saltmarsh feature alone of 1.8% of the critical load and 4.2% of the critical load in-combination with other sources (including Connah’s Quay power station and those listed as not modelled by the Applicant above).</p> |

| RIES Question Ref. | Question to | Applicant Response [REP6-088] | NRW Response:  |
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|                    |             |                               | <p>A brief review of the Knauf AQA contour plots does indicate that the maximum impact from the Knauf installation alone is predicted to be in the easternmost extent of the Dee Estuary SAC. However, the area of SAC predicted to receive Ndep above 1% is calculated to extend to 301 ha, indicating a potential overlap with areas affected by the Connah's Quay power station Ndep contribution that may not be negligible. The Knauf RMW application predicts the in-combination area of Ndep impacting Atlantic salt meadows, greater than 1% of the critical load, to be 1,167 ha.</p> <p>Therefore, whilst we acknowledge that the inclusion of additional sources will not change the Connah's Quay power station proposal's contribution to Ndep alone, the Knauf RMW application which claims to include all sources, gives a clear indication that the inclusion of the aforementioned additional sources would be likely to significantly increase the area of saltmarsh where Ndep is expected to be greater than 1% of the critical load.</p> <p>NRW have not yet undertaken a detailed review of the Knauf RMW application's air quality application and therefore cannot comment on the validity of the findings.</p> <p>Plate 2 of the Additional Operational Air Quality Considerations document [REP6-091] presents a "<i>FEED 2 Abated Scenario, Nitrogen Deposition Process Contribution</i>" contour map that contradicts the reported maximum figures</p> |

| RIES Question Ref. | Question to | Applicant Response [REP6-088]   | NRW Response:   |
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|                    |             |   | in Appendix 8-D: Air Quality Operational Assessment report. Clarification should be sought on why the contour plot does not show equivalent values as those presented in the Air Quality Operational Assessment tables.                           |
| RQ.4               | Applicant   | <p>Further consideration of Enfinium Parc Aadfer ERF Carbon Capture project is provided in the Additional Operational Air Quality Considerations (EN010166/APP/9.38), which has been referenced and considered within the RIHRA (EN010166/APP/6.12).</p> <p>The dispersion modelling assessment for this scheme was submitted in August 2025 and validated after the finalisation of the Original ES cumulative assessment (Chapter 24: Cumulative and Combined Effects [APP-062]) on 31 March 2025 and was therefore not available to the Applicant at the time the quantitative cumulative effects assessment was undertaken. However, a qualitative assessment is included in the Additional Operational Air Quality Considerations (EN010166/APP/9.38).</p> | Please see our comments for RQ.3 above regarding in-combination air quality assessment.   |
| RQ.15              | Applicant   | The Applicant confirms that both Natural Resources Wales and Natural England agree with the approach to applying the 1% criteria for identification of functionally linked land. The Applicant prepared the Further Information on Wetland Bird Count Data Report [REP6-065] to provide further evidence that the only qualifying   | We welcome that the Applicant has now provided the additional data collected by the Deeside Naturalists' Society (DNS). However, we note the Applicant's confirmation that this does not contain survey information from within the Order limits. |

| RIES Question Ref. | Question to | Applicant Response [REP6-088]   | NRW Response:  |
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|                    |             | <p>ornithological feature to have been recorded at numbers exceeding &gt;1% of the cited SPA population within the Order limits is curlew. The Applicant also confirms that the first year of project specific data is included as an Annex to Appendix 11-C: Botany Technical Appendix [REP3-016] starting on e-page 270. These data together provide suitable evidence to support the Applicant's position, and no further data is considered necessary to justify this. Furthermore, the Applicant highlights the following discussion with Natural Resources Wales prior to the submission of the DCO Application:</p> <ul style="list-style-type: none"> <li>• On 18 June 2024, the Applicant and Natural Resources Wales discussed whether the 2022/2023 Aspect Ecology Surveys (reported in Appendix 11-C: Botany Technical Appendix [REP3-016]) and the 2023/2024 surveys reported in Appendix 11-D: Ornithology Technical Appendix (EN010166/APP/6.4) would be suitable in providing two years' worth of project specific data. No concerns were raised by Natural Resources Wales during this discussion, who noted that the findings are in line with expectations.</li> </ul> <p>Natural Resources Wales have requested existing data from the Applicant, which until they have had the opportunity to review, are unable to agree with</p> | <p>Regarding the collection of bird survey data, we note the Applicant's reference to a meeting with NRW on 18 June 2024, which according to our records occurred on 18 July 2024. We wish to clarify that we advised that two years' of survey data should be collected and, based on the information available at that time, considered the Applicant's approach to this could be acceptable in principle, but this was prior to the data being available for review and verification.</p> <p>We understood that the two datasets within the Order limits from Aspect Ecology and AECOM would provide sufficient data to cover two years' of survey effort by covering the same survey areas.</p> <p>The Applicant has since confirmed to us that both the Aspect Ecology and AECOM surveys of the Functionally Linked Land (FLL) are of the same area with the results of the Aspect Ecology report summarised in para 4.4.6, which states: "<i>Of the ten species listed, seven were recorded in the estuary in significant numbers: Redshank, Shelduck, Teal, Pintail, Oystercatcher, Dunlin and Black-tailed Godwit. The remaining three species were recorded only in relatively small numbers: Curlew, Knot and Grey Plover. All of these species were typically spread throughout the estuary, and only three were recorded within the nature reserve in significant numbers, all during the autumn: Teal, Pintail and Black-tailed Godwit. None of these species make use of the site itself.</i>"</p> |

| RIES Question Ref. | Question to | Applicant Response [REP6-088]  | NRW Response:  |
|--------------------|-------------|--|--|
|                    |             | <p>the Applicant's conclusion on whether the land at the Main Development Area is functionally linked for any other species features. The data requested includes that collected by the Deeside Naturalists Society (DNS).</p> <p>In response to Natural Resources Wales's position, the Applicant can confirm that the data provided by the DNS has been included within Appendix 11-D: Ornithology Technical Appendix (EN010166/APP/6.4), however contrary to Natural Resources Wales's understanding there is no data for the Order limits collected by the DNS.</p> <p>As recorded in the Final Statement of Common Ground (SoCG) between the Applicant and Natural England (EN010166/APP/8.16), Natural England have confirmed they consider that sufficient information has not been provided to justify that other qualifying ornithological features could be present in numbers exceeding &gt;1% of the cited SPA population within the Order limits.</p> | <p>We also note that, in relation to the Aspect Ecology surveys, paragraph 6.1.4 of the Further Information on Wetland Bird Count Data Report [REP6-065] states that: "<i>ornithological surveys undertaken between April 2022 and February 2023 also recorded up to 42 Curlew using the Order limits. As with the surveys undertaken between November 2023 and October 2024, all other observations of qualifying bird species were recorded from areas outside of the Order limits, particularly the Connah's Quay Nature Reserve Compartments 1 and 2.</i>"</p> <p>If that is the case we are satisfied that this would address our concerns regarding the bird survey data provided for the Proposed Development site.</p> |
| RQ.23              | Applicant   | <p>The area of salt meadow affected by 'in combination' nitrogen deposition was calculated as the area that lies within the 0.1 kgN/ha/yr contour line on isopleth mapping presented in Appendix E, Figure E1: Nitrogen Deposition within Saltmarsh of the RIHRA (EN010166/APP/6.12), as the area within this contour exceeds 1% of the minimum</p>  | <p>Please see our comments for RQ.3 above in relation to the contour plot.</p>   |

| RIES Question Ref. | Question to          | Applicant Response [REP6-088]   | NRW Response:   |
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|                    |                      | critical load for saltmarsh (10 kgN/ha/yr). This zone is identified by the purple areas on the image below which is an adaptation of Figure E1 for clarity and is included in full within Appendix B.   |   |
| RQ.28              | Applicant<br><br>NRW | <p>The Applicant and Natural Resources Wales have discussed this matter further and the Applicant has updated the RIHRA (EN010166/APP/6.12) at Deadline 6 to move the water quality assessment to the Appropriate Assessment stage. This does not change the conclusions of the RIHRA (EN010166/APP/6.12) but only where the assessment is located within the report itself.</p> <p>This matter is recorded as not agreed in the Final Statement of Common Ground between Uniper and Natural Resources Wales (EN010166/APP/8.2) as Natural Resources Wales have not had an opportunity to review the updated RIHRA (EN010166/APP/6.12).</p> | <p>In relation to Items 3.15 and 3.16 of our SoCG, we have reviewed the updated RIHRA [REP6-049] and acknowledge the Applicant's identification of the relevant marine water quality activities and impact pathways from their proposal. Based on the background information provided about the proposed activity, we advise that the impact pathways to potential adverse effect have been adequately considered. Appendix B (Table B-1) of the RIHRA should be updated to show that the pathway to effect for water quality requires assessing at the HRA Stage 2 (Appropriate Assessment).</p> <p>We also acknowledge the Applicant's identification of possible avoidance measures and their outline mitigation measures.</p> <p>However, the information provided about both the construction and operational phases of the proposal does not assess the specific impacts on the identified features. We are therefore unable to ascertain the effects on site integrity for any of the sites identified with relevant habitats or features. The information provided is therefore insufficient to enable an understanding of the potential for adverse effect from the proposed activity and we consider that sufficient uncertainty remains to conclude no AEol.</p> |

| RIES Question Ref. | Question to | Applicant Response [REP6-088]  | NRW Response:  |
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|                    |             |  | <p>Further information and assessment should be provided about these effects. For example (but not limited to), an assessment of the polluting substances, the potential concentration (credible worst case scenario) of those substances at the point of impact, the effects on water quality and the impacts of those effects on the identified and relevant qualifying habitats or features should be completed for the Appropriate Assessment of the HRA.</p> <p>Once these effects have been assessed, the relevance and efficacy of the proposed mitigation (and avoidance) proposals can then be assessed in the context of the effects to enable a determination of whether a conclusion of no AEol can be upheld.</p> |
| RQ.34              |             | <p>a) The location of the outfall pipe would be entirely within the Surface Water Outfall Area as shown in Annex G of Appendix 13-D: Outline Surface Water Drainage Strategy [REP4-038]. The length of pipe that would be buried within the Dee Estuary SAC is approximately 35 m until reaching the proposed headwall. Annex G is provided in full in Appendix C, however, a zoomed in image of the relevant map is provided below [see Applicant's responses to the RIES, REP6-088] with the proposed drainage infrastructure shown in blue and the existing drainage infrastructure shown in black. With the exception of the headwall all infrastructure shown in this image is sub-surface:</p> | <p>a) We note that the Applicant has provided information about the outfall pipe at Deadline 6 and have no outstanding concerns about this.</p> <p>b) We welcome the additional text and addition of the Geomorphological Walkover Survey to Appendix H of the RIHRA.</p>  |

| RIES Question Ref. | Question to          | Applicant Response [REP6-088]  | NRW Response:  |
|--------------------|----------------------|--|--|
|                    |                      | <p>b) The Applicant has updated the RIHRA (EN010166/APP/6.12) at Deadline 6 to include reference to the Geomorphic Walkover Survey Report which is now also included as Appendix H.</p>  |  |
| RQ.36              | Applicant<br><br>NRW | <p>The Applicant provided an updated Outline Saltmarsh Implementation and Monitoring Plan (EN010166/APP/6.16) at Deadline 6 to address the comments raised by Natural Resources Wales in Comments on any submissions received by Deadline 3 [REP4-091]. The Applicant also responded to each of the comments in turn within the Applicant's Response to Deadline 4 Submissions [REP5-062] in References 1 to 23 of Table 1. Natural Resources Wales have also provided correspondence prior to Deadline 6 agreeing with the Applicant's responses provided to points 18, 19 and 20.</p> <p>The Applicant has also provided clarity to Natural Resources Wales on the purpose and coverage of the Saltmarsh Method Statement.</p> | <p>Regarding Item 3.9 of our SoCG, the Applicant has updated the Outline Saltmarsh Implementation and Monitoring Plan for Deadline 6, taking our advice into account.</p> <p>Our comments regarding the Outline Saltmarsh Implementation and Monitoring Plan submitted at Deadline 6 [REP6—054 and 055] are as follows:</p> <p>Paragraph 2.1.1: We advise that confirmation should be included that there would also be no temporary loss of saltmarsh if the proposed surface water outfall is not required, as we understand that the Outline Saltmarsh Implementation and Monitoring Plan also addresses temporary loss.</p> <p>Paragraph 8.1.4: It should be made clear that the steering group will “agree trigger levels requiring corrective action to take place.”</p> <p>Where relevant parties are being asked to provide resources to support steering groups, we would expect provisions of the Order to enable the costs of such involvement to be recovered.</p> |

| RIES Question Ref. | Question to | Applicant Response [REP6-088]   | NRW Response:   |
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|                    |             |   | <p>The Applicant has also indicated to us verbally that they will provide further information regarding collation of tidal current velocity data at Deadline 7. This would help inform culvert/breach design and potential adaptive management if the breach needed to be altered.</p> <p>We are satisfied with the other tracked changes made in the document.</p>   |
| RQ.46              | Applicant   | <p>The Applicant has made a number of updates to the Outline Curlew Implementation and Monitoring Plan (EN010166/APP/6.13) which address comments from Natural Resources Wales and the Royal Society for the Protection of Birds (RSPB). These changes include:</p> <ul style="list-style-type: none"> <li>• Introducing flexibility on the Phase 3 enhancement measures to note these could include the provision of several larger shallow flashes instead of a network of footdrains;</li> <li>• Recognition of provision of cattle grazing where it is viable;</li> <li>• Extending the monitoring to cover each month of the year (rather than August to April inclusive);</li> <li>• Clarification on the definition of ‘in perpetuity’;</li> <li>• A summary of data collected between October 2015 and October 2017 and March 2022 to December 2025; and</li> </ul> | <p>Regarding Items 3.11 and 3.12 of our SoCG, we acknowledge the additional detail and amendments included within the updated Outline Curlew Implementation and Monitoring Plan [REP6-050 and 051] following our previous advice.</p> <p>Our comments on the Outline Curlew Implementation and Monitoring Plan which was submitted by the Applicant at Deadline 6 are as follows:</p> <p>Paragraph 6.2.3 states that the “<i>enhancement would likely be in the form of a network of created linear foot drains (or similar wet feature creation)</i>.” We advise that clarification should be provided on when linear foot drains or similar wet feature creations would not be included in enhancement, and therefore why they are not a certainty in the enhancement.</p> <p>Paragraph 7.1.1: We welcome the commitment to ten years of monitoring and advise that all bird species using the site</p> |

| RIES Question Ref. | Question to | Applicant Response [REP6-088]   | NRW Response:  |
|--------------------|-------------|---|--|
|                    |             | <ul style="list-style-type: none"> <li>• Clarification that the last cut would be undertaken no later than October in any given year (if a cut is deemed necessary).</li> </ul> | <p>should be recorded during the monthly visits, not just curlew. An understanding of which species are present, and their abundance will help inform the adaptive management as different species will have differing preferred habitats and environments.</p> <p>Section 7.2: Alongside ground investigations, we maintain that invertebrate prey resource investigations should be completed to assess whether the carrying capacity of the Gronant Fields site is suitable for an increased population of curlew.</p> <p>Paragraph 8.1.6 states “<i>The Curlew Steering Group will cease to exist until the Proposed Development is decommissioned and removed.</i>” This appears to be an error and should be amended to accurately reflect when the steering group will exist.</p> <p>Appendix C: Gronant Fields Environmental Appraisal - 5.3.36: We advise that the enhancement works should occur outside of the wintering period to avoid noise and visual disturbance to any wintering features of the SPA and Ramsar site currently using the Gronant Fields site, as well as any species that begin utilising the site as a result of reduced sward height.</p> <p>Finally, data presented by the Applicant in the Outline Curlew Implementation and Monitoring Plan and WeBS data shared with them shows that, while in small numbers, the</p> |

| RIES Question Ref. | Question to          | Applicant Response [REP6-088]   | NRW Response:   |
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|                    |                      |   | Gronant Fields site does support a low number of species associated with the Dee Estuary SPA.   |
| RQ.51              | NRW<br><br>Applicant | The Applicant and Natural Resources Wales have been in discussion on this matter. The Applicant has included a financial contribution to Flintshire County Council (FCC) within the Deed of Development Consent Obligation (EN010166/APP/9.25) for management of saltmarsh throughout the operational life of the Proposed Development. The value of this contribution has been informed by ongoing discussions with Natural Resources Wales (NRW). | <p>Regarding Item 3.6 of our SoCG, we note the Applicant’s proposal for a Section 106 agreement to secure a Nitrogen Management Plan and associated funding for saltmarsh management measures in respect of potential nitrogen deposition effects on the Dee Estuary SAC.</p> <p>The Applicant considers the associated saltmarsh management measures, which are currently undefined, to constitute mitigation. As set out in our previous Written Representations and Deadline 5 submissions, for measures to be relied upon as mitigation within the HRA, they must be sufficiently certain and effective such that adverse impacts on site integrity can be excluded beyond reasonable scientific doubt. Our previous submissions remain our position on this matter.</p> <p>The Applicant has shared some draft examples of possible management interventions that could be explored further, and we provided our initial feedback to these on 03/06/26.</p> <p>We disagree with aspects of the Applicant’s Response to Deadline 5 submissions [Ref. A1.1 – A1.8, Table 2, REP6-086] and refer the ExA to our previous detailed submissions on the matter. Amongst other matters, 10 kgN/ha/yr is the assigned critical load for the Dee Estuary saltmarsh feature. A critical load is defined as “A quantitative estimate of</p> |

| RIES Question Ref. | Question to | Applicant Response [REP6-088]  | NRW Response:   |
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|                    |             |  | <p><i>exposure to one or more pollutants below which significant harmful effects on specified sensitive elements of the environment do not occur according to present knowledge".</i></p> <p>The critical load is a threshold used to minimise the risk of ecological change, whereas “tipping points” often refer to abrupt, potentially irreversible shifts in ecosystem state.</p> <p>There is no known quantitative value for a “tipping point” for saltmarsh nitrogen enrichment (which is likely to be site specific, taking into account other factors). These could theoretically be higher than the critical load on a case-by-case basis. The Critical Load should be set below the tipping point to ensure it is protective.</p> |
| RQ.55              | NRW         | <p>The Applicant believes this matter is agreed. The Applicant has provided feedback on the commentary provided by Natural Resources Wales on the draft management prescriptions that are included in the draft Deed of Development Consent Obligations (EN010166/APP/9.25). The Applicant and Natural Resources Wales have exchanged a number of emails on this matter, which is also recorded as agreed in the Final Statement of Common Ground between Uniper UK Limited and Natural Resources Wales (EN010166/APP/8.2) submitted at Deadline 6. Please see ID 3.7.</p> | <p>Regarding Item 3.7 of our SoCG, we welcome the amendments made to the updated draft Deed of Development Consent Obligations for the woodland management measures at Wepre Park, which reflects our advice to the Applicant prior to Deadline 6.</p> <p>Regarding the saltmarsh management measures (Item 3.6 of our SoCG), we note that the updated draft Deed of Development Consent Obligations contains the advice we provided at Deadline 6 in response to RQ.51 [REP6-098]. We note that justification for establishing the amount of proposed funding has also been included in the updated RIHRA [REP6-049].</p>  |

| RIES Question Ref. | Question to | Applicant Response [REP6-088]   | NRW Response:  |
|--------------------|-------------|---|--|
|                    |             |   | <p>We have no evidence to support or disagree with the Applicant's justification for defining the area and extent of saltmarsh to be subject to appropriate management measures, nor the level of funding proposed, as outlined in the RIHRA [REP6-049].</p> <p>Please refer to our comment for RQ.3 above regarding the extent of saltmarsh that could be affected by the development and its role in the Applicant's calculation of funding to be allocated for management measures.</p> |
| RQ.56              | NRW         | The Applicant believes this matter is agreed as noted in the Final Statement of Common Ground between Uniper UK Limited and Natural Resources Wales (EN010166/APP/8.2) submitted at Deadline 6. Please see ID 3.13. | Regarding Item 3.13 of our SoCG, except for our outstanding advice on barge movements (please see our response to RQ.58, REP6-098), we are satisfied with the Applicant's approach and conclusion for noise disturbance on the qualifying features of the Dee Estuary SPA and Ramsar site during construction. Please see our response to RQ.56 [REP6-098] for further details.  |
| RQ.58              | NRW         | The Applicant believes this matter is agreed as noted in the Final Statement of Common Ground between Uniper UK Limited and Natural Resources Wales (EN010166/APP/8.2) submitted at Deadline 6. Please see ID 3.13  | Regarding Item 3.13 of our SoCG, please see our response to RQ.58 [REP6-098] for further details regarding our advice on noise and visual disturbance from increased barge movements.  |

## **ANNEX B – CLARIFICATION OF NATURAL RESOURCES WALES’ (AS DEE CONSERVANCY) POSITION REGARDING THE PROPOSED DISAPPLICATION OF CERTAIN PROVISIONS OF THE DEE CONSERVANCY HARBOUR REVISION (NO. 2) ORDER 2023**

Further to the final Statement Of Common Ground between the Applicant and the Dee Conservancy dated May 2026, which was submitted by the Applicant at Deadline 6 (the Final SoCG), NRW (as the Dee Conservancy authority) wishes to clarify its position regarding the proposed disapplication of certain provisions of the Dee Conservancy Harbour Revision (No.2) Order 2023<sup>1</sup> (Dee HRO), via article 9 of, and Schedule 3 to the draft DCO. This further submission relates to item 5 of the SoCG, which confirms that certain aspects of the draft DCO are not agreed by the parties.

Article 49 of the draft DCO would enable the undertaker to temporarily interfere with the River Dee and public rights of navigation. Article 49(1)(c) in particular provides that the undertaker may temporarily close any part of the river within the Order limits to navigation. Schedule 3 to the draft DCO lists legislation to be disapplied in connection with the construction, maintenance, operation or decommissioning of the project, this includes the Dee HRO. Specifically, it provides that the following provisions are excluded and do not apply insofar as inconsistent with a provision of, or a power conferred by, the Order:

*“Articles 12 (general byelaws), 13 (general directions to vessels), 14 (publication of general directions), 15 (special directions), 16 (failure to comply with directions), 17 (enforcement of special directions), 18 (master’s responsibility in relation to directions), 26 (restriction of works and dredging), 27 (control of certain operations and works of statutory undertakers), 28 (licensing of works) and 31 (lights on tidal works during construction) of the Dee Estuary Conservancy Harbour Revision (No. 2) Order 2023”.*

The provisions of the Dee HRO cited apply in relation to the “estuary”, which is defined by article 2(1) of the Dee HRO to include the water, seabed and adjacent channels below the high-water mark, stretching from the tidal limit at Chester Weir out to the estuary mouth (and therefore includes the river Dee within the meaning of the draft DCO).

The effect of the disapplication proposed is that, if the DCO is made, the undertaker would not be subject to a number of the rules that apply to all other users of the estuary, and which are conducive to the safety of navigation within the estuary. This includes the duty to comply with byelaws, general and special directions, amongst others. NRW sees no reason why a vessel should not be required to comply with these provisions. No justification has been provided by the Applicant for the wide nature of the disapplication sought. NRW notes, in this regard, that article 49 of the draft DCO would only authorise the undertaker to temporarily close to navigation such part of the river as is located within the Order limits, which is, on any understanding, only a very small extent of the wider estuary.

Furthermore, whilst the protective provisions contained in Part 4 of Schedule 13 to the draft DCO are welcomed, the primary purpose of these is to control the way in which the

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<sup>1</sup> <https://www.legislation.gov.uk/ukSI/2023/690/contents/made>

powers conferred by article 49 of the draft DCO are exercised by the undertaker. The protective provisions are no substitute for the controls afforded by the provisions of the Dee HRO disapplied by article 9 and Schedule 3 to the draft DCO.

Therefore, whilst NRW, in its role as the Statutory Harbour and Local Lighthouse Authority for the Dee Conservancy, acknowledges the protective provisions contained within Part 4 of Schedule 13 to the Draft DCO [APP-019], it is not accepted that these provisions provide sufficient protection such that could justify the proposed disapplication of statutory powers applying to the estuary.

Accordingly, NRW maintains its objection to the proposed disapplication of the provisions of the Dee HRO, in the terms currently provided for by the draft DCO. In these circumstances, NRW considers that section 145(2) of the Planning Act 2008 applies. This provides that:

*“(2) An order granting development consent may include provision changing the powers or duties of a harbour authority only if–*

- (a) The development to which the order relates is or includes the construction or alteration of harbour facilities, and*
- (b) The authority has requested the inclusion of the provision or has consented in writing to its inclusion.”*

NRW notes that (b) is not currently satisfied in this case, on the basis that NRW has neither (a) requested the inclusion of article 9 (read with Schedule 3) of the draft DCO, being the provision which changes its powers or duties under the Dee HRO, nor (b) consented in writing to the inclusion of such provision.

Finally, Article 2 of the DCO states that *“Dee Conservancy” means the statutory conservancy and navigation authority for the River Dee (as established under the Dee Conservancy Act 1889(b)) and includes its role as Competent Harbour Authority and Local Lighthouse Authority for its statutory area”*. We can confirm that NRW is not the Competent Harbour Authority for Pilotage within the Dee Conservancy. The definition could also usefully reference the Dee HRO.