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Subject: Hornsea Project Three (UK) Ltd response to Deadline 5 (Part1)
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[D5_HOW03_Appendix 1_Transport Assessment_Appendix G.pdf](#)
[D5_HOW03_Appendix 2_Preliminary Trenching Assessment.pdf](#)
[D5_HOW03_Appendix 3_OCSIP.pdf](#)
[D5_HOW03_Appendix 4_ISH2_ornithology_clarifications.pdf](#)
[D5_HOW03_Appendix 5_Migratory Seabirds Clarification.pdf](#)
[D5_HOW03_IP_WR.pdf](#)
[D5_HOW03_SoComm.pdf](#)
[HOW03 Guide to the application.pdf](#)
[HOW03_Shell_Position Statement.pdf](#)
[HOW03_SOCC_MCA V1.3.pdf](#)
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Dear Kay, K-J

We are pleased to enclose Ørsted Hornsea Project Three (UK) Ltd ("the Applicant") response to Deadline 5, Wednesday 23rd Jan 2019. These documents have been prepared by the Applicant and have been produced in response to the Examining Authority's (ExA) letter of 9 October 2018 ("the Rule 8 letter").

These documents are being issued over a series of emails, each email containing a pdf file or files. The **last** email to be issued by the Applicant will contain a supporting file tracking sheet – to help the ExA ensure that it has received each email transmission.

Please acknowledge safe receipt of these documents.

If we can be of any assistance in that regard, please do not hesitate to contact myself or Andrew Guyton.

Best regards,
Dr Dominika Chalder PIEMA
Environment and Consent Manager



Environmental Management UK | Wind Power
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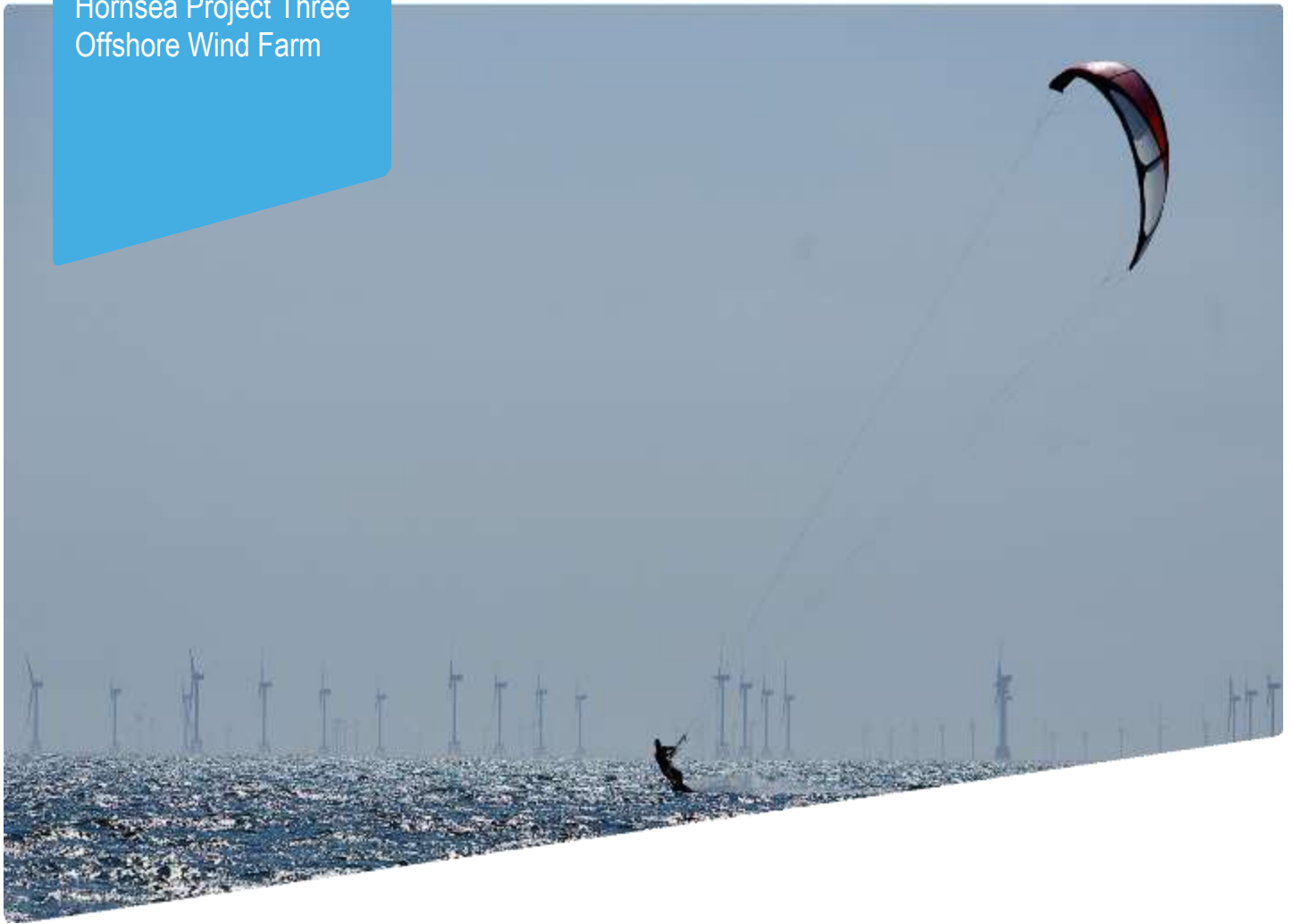
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Hornsea Project Three
Offshore Wind Farm



Hornsea Project Three Offshore Wind Farm

Applicant's comments on Written Representations and
Responses submitted by Interested Parties at Deadline 4

Date: 23rd January 2019

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Front cover picture: Kite surfer near a UK offshore wind farm © Ørsted Hornsea Project Three (UK) Ltd., 2019.

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1. Introduction

- 1.1 Following further submissions of Written Representations by Interested Parties at Deadline 4, the Applicant has taken the opportunity to review each of the Written Representations received by the Planning Inspectorate. Details of the Applicant's responses to each of those representations are set out within this document in subsequent sections below.

2. Applicant's Comments on Written Representations

Oulton Parish Council Written Representation (REP4-123)

Interested Party Written Representation	Applicant's Response
Oulton Parish Council (OPC) welcomes this opportunity to comment on the current status of the planning issues in relation to the Main Construction Compound at Oulton. Since Deadline 3 the Parish Council has met with NCC Highways and has had some significant email exchanges of information with the Applicant. OPC has also read the updated Appendix 20 to Deadline 1 – Main Construction Compound Briefing Note, now re-named as Appendix 1 to Deadline 3. The comments that follow are based on information gathered from these sources. 1. In a very recent email from the Applicant, their current position on the access route to the Main Construction Compound was stated thus: “Given the feedback from NCC and landowners, the availability of an existing road, the potential environmental impacts associated with any of the Option ‘R’ scenarios and the interaction with other cumulative projects, we maintain our position that, Option 1: Passing Places remains the preferred access option to the main construction compound.” OPC is forced to conclude from this that the range of alternative possibilities within Option R is no longer being seriously pursued, and so we must engage actively with the issues raised by Option 1: Passing Places.	The Applicant would refer to the Statement of Common Ground between Hornsea Project Three and Norfolk County Council (REP4-019), which sets out the current position in respect to the main construction compound access strategy. This confirms that Option 1: Passing Places, the Applicant's proposed access strategy, has been identified as acceptable in principle by Norfolk County Council (NCC) subject to the provision of additional information which has been provided in Appendix 32 submitted at Deadline 4 (REP4-053). As such, the Applicant is now seeking approval in principle from NCC for the Option 1: Passing Places access strategy and accompanying link drawings included as Annex A of Appendix 32 submitted at Deadline 4 (REP4-053). Once approved, the outline scheme will be included in the Outline CTMP to be updated and submitted prior to the end of the Examination. Option 1: Passing Places will then be progressed during detailed design (post-consent) in consultation with NCC.
2. In Appendix 1 to Deadline 3 we are provided with significant details	Paragraph 6.27 of Appendix 1 of Deadline 3 (REP3-010) confirms the cable

Interested Party Written Representation	Applicant's Response
about the pattern of cable drum deliveries to the Oulton compound, over a period of (at least) 2 years and 6 months. Over this period a total of 1,121 cable drums will be required to be delivered to Oulton, arriving at the port in shipments of 36 at a time, at 3-5 week intervals. They will then be delivered - each on its own low-loader - at a rate of 8-12 a day, over the subsequent 3 – 5 days. During the intervening weeks, before the next delivery week starts, these 36 cable drums will then have to leave the Oulton compound, again each on its own low-loader, and make its way to an appropriate work front on the cable corridor. This density of cable drum abnormal load traffic will continue, week after week, over the 2 years and 6 months of the active onshore construction period. This of course is in addition to the other 94 HGV traffic movements projected to be going in and out of the compound daily. It should be noted that, if delivery is every 5 weeks, the project would over-run the 30 months construction period. Orsted has never mentioned to us how, and when, the empty drums are to be transported back to Oulton and then, probably, back to the port for return to the manufacturer. These would be HGV movements over and above any that we are aware of in the documentation. The sheer density of low-loader deliveries, in and out, and then out again to the cable corridor, is going to be relentless, and given the nature of these abnormal loads, is going to cause maximum disruption to all other road users on the southern end of Oulton Street. This of course will all be happening 'alongside' all the other daily construction traffic HGV movements anticipated by the project, not to mention the similar cable drum traffic generated by the Vattenfall project - and of course all existing agricultural, commuter and other traffic. This scenario is going to be worse	drum vehicles are included within the 118 two way HGV daily movements presented, stating 12 of the 59 arriving HGV's would be abnormal cable drum deliveries over a 5 day period, with the 12 original cable drum vehicles leaving the compound as a normal HGV vehicle having unloaded the shipment. The cables drums have been defined as an inbound abnormal load movement. The movement of the cable drum waste barrel will not be transported as an abnormal load, but instead allows for the drum to be repositioned on the low loader to travel away from the individual work area. Although it is possible the empty cable drums would be transported back to the main construction compound, these have been factored into the HGV movements already proposed to serve the main construction compound. As such, the amount of HGV activity associated with Hornsea Three is not planned to increase and is accurately recorded within the documentation submitted to date. The submission of the VISSIM model as Appendix 33 of Deadline 4 (REP4-054), confirms the journey time delay resultant from the movement of all Hornsea three construction traffic movements along The Street, confirming that this will not lead to excessive journey time delay, with a maximum delay for existing road users of no more than 35 seconds for normal construction traffic activities and no more than 57 seconds for an abnormal load coinciding with the maximum traffic levels recorded and simulated along the Street. Such an event is unlikely to occur given the movement pattern of abnormal loads is expected to coincide during periods when background traffic levels are low on the whole highway network outside of these periods. It is noted that in subsequent email correspondence, OPC have raised points regarding the parameters used for the VISSIM modelling. In order to aid the ExA, the Applicant has summarised the key

Interested Party Written Representation	Applicant's Response	
even than we imagined, and it is hard to conceive of how the residents of the Old Railway Gatehouse will survive.	points raised by OPC as well as the Applicant's response as follows:	
OPC must state that the relentless intensity of this cable drum –and other – HGV traffic has come as a considerable shock. Whilst references are made throughout the documents to the possibility of a 2 x 4 year “construction window” for the project, if delivered in 2 phases, the Applicant is now stressing to OPC that the “active” construction period would only ever be over a period of 30 months, whether phased or not.	Summary OPC point of concern/clarification	Applicant' response
	Clarification of the speed limits along The Street. OPC noted that the VISSIM modelling has been used with varying speeds. Feedback from NCC has been inconsistent as to whether a 30 mph speed limit at this location would be acceptable.	Appendix 33 utilises a constant 40kmph (just under 30 mph) speed for the street. The speeds only change due to reduced speed areas (passing bays and railway gatehouse). Our speeds are based on speeds survey results (data included in appendix) along the Street and B1149. Given the road geometry and the passing bay arrangement, the simulation with the passing bays correctly models the effect along the street and the vehicle speeds are considered representative. NCC have recently confirmed that a temporary 30 mph speed restriction between the B1149 and the main construction compound entrance would be acceptable. The Applicant will incorporate this into the final design of Option 1: Passing Places to be included within the Outline CTMP, but it is not considered that this would alter the outcomes of conclusions as presented thus far for the access strategy, and in particular the findings of the VISSIM modelling.
It is hard to imagine how the impact of the compression of all these cable drum deliveries and HGV traffic into that timeframe can be absorbed locally.	Clarification on the location used for the Potato Store application, and thus the distribution of the traffic flows along The Street. OPC identified that the VISSIM modelling assumes vehicles from the proposed Potato Store entering/exiting halfway along The Street at Docking Farm, and suggested that all traffic should be using the full length of The Street to Street Farm.	Traffic generated (average Daily Movement Tractors - 22 and HGV's 10) by EF Harrold Potato Farm has been extracted from the access and design statement recently approved for the site by the local authority. Within Appendix 33 (REP4-054), this traffic was applied via Dorking Farm. However, in light of the comments from OPC, the Applicant has prepared Appendix 8, submitted at Deadline 5, which redistributes the daily EF Harrold Potato Farm traffic flows along the Street to Street Farm. It should be noted that the Design and Access

Interested Party Written Representation	Applicant's Response	
		Statement submitted as part of the Potato Store Application states at Para 5.2; <i>.....All tractors and trailers and goods vehicles will enter and exit the site via the existing main entrance with its good visibility splays in both directions along Oulton Street. There have been no reported problems with the existing access. The slight reduction in the intensity of its use by HGV's during harvest will improve this situation.....</i> <i>.....The proposal will not increase the traffic movements as cropping is unaltered. The proposal will help spread out traffic movements throughout the year rather than a high level at harvest.....</i> Therefore as the Applicant completed traffic surveys during the defined EF Harrold peak operating period and the application was approved on the basis of no traffic increase, By applying an increased traffic movement (over and above October recorded traffic data) for the potato store, the VISSIM model inputs are considered to be a worst-case, over estimate, of the anticipated potato store operation along the Street.
	Clarification on the timing of the modelling. OPC raised concerns that the peaks utilised in the assessment (AM peak of 07.45 – 08.45; PM peak of 17.15 – 18.15) did not reflect other peaks which may be generated at other times of the day by rural agricultural traffic that can occur as early as 06.15 or late as 21.00.	The Applicant confirms that the assessments have been carried out in accordance with industry standards considering peak times for traffic movements. The Applicant has, on top of this, then applied additional traffic for the potato store (regardless of Section 5.2 in the DAS for the Potato Store application), increased traffic to accommodate further agricultural traffic and then applied traffic by Hornsea Three and Norfolk Vanguard. It is therefore considered that the assessment presented within updated VISSIM modelling provided as Appendix 8 at Deadline 5, is appropriate. Notwithstanding this, the Applicant notes that no significant effects would be expected at the potential

Interested Party Written Representation	Applicant's Response	
		peaks identified by OPC (comprising 06.15 and 21.00).
	Clarification as to the inclusion of Norfolk Vanguard staff traffic flows. OPC noted that although Norfolk Vanguard's HGV movements have been included, the staff vehicle movements appear not to have been included.	The Applicant would notes that although Norfolk Vanguard's HGV traffic was included within the VISSIM modelling, the staff movements were omitted in error. This has been corrected in the updated Appendix 33 submitted as Appendix 8 at Deadline 5. The VISSIM modelling output result, taking account of the increased traffic from the Norfolk Vanguard Staff traffic movements and EF Harold potato store traffic redistribution increased the journey delay by 1 second and not considered to be significant.
	The use of priority signage.	The Applicant would note that in addition to the priority signage at the Old Railway Gatehouse, additional priority markers are used along the Street to model the operation of passing bay arrangement. This has formed part of the Option 1: Passing Places design discussed and approved in principle by NCC.
	Concerns regarding the potential for traffic to back up onto the B1149 during abnormal load movements.	The VISSIM model has been prepared with the abnormal vehicle travelling along the Street coinciding with the maximum traffic flow, the delay which is experience as a result of this movement is not considered to be excessive. Whilst the movement of the abnormal load is subject to approval by NCC and the policy (as appropriate), we would expect NCC to request these movements take place outside of the traffic peak periods. Furthermore, it is noted that priority will be given to abnormal loads travelling up The Street and therefore this will not present queue back at the B1149 / The Street junction. The vehicle will be under escort which will allow the control of traffic to be maintain throughout the full journey to the main construction compound.
	Size of abnormal loads and the	The Applicant would refer to the response to 3(d)

Interested Party Written Representation	Applicant's Response	
	implications of traffic movements.	below.
	Nature (temporary or permanent) of the widening close to the Docking Farm entrance	The proposed widening at the Docking Farm bend is a safety audit requirement (see REP3-010). The Applicant will engage with NCC to confirm, but expects these works to be temporary with reinstatement at the culmination of the use of the main construction compound.
3. As they indicated at Deadline 3, the Applicant has now produced a VISSIM traffic simulation, modelling traffic flows on the southern end of Oulton Street, including the construction traffic generated by Hornsea Project Three. We hope that this also includes the projected traffic generated by Vattenfall's Norfolk Vanguard - and Boreas. OPC has not yet had sight of this simulation, but its initial findings were discussed at our meeting with NCC. On the basis of that discussion, OPC would like to make the following observations: (a) It was indicated that the simulation had generated an "average 32-second delay" in journey time, over the existing time taken to travel the southern end of Oulton Street. OPC would like to know how this "average"	Appendix 1 submitted at Deadline 3 (REP3-010) and Appendix 32 submitted as part of Deadline 4 considers the effects of all Hornsea Three construction traffic along The Street and including the junction with the B1149. The stage one safety audit presented in Annex A of Appendix 1 at Deadline 3 (REP3-010) has been undertaken considering the movement of all traffic as existing or planned (as a result of Hornsea Three) along the Street. All recommendations contained within the stage one safety audit have been addressed and therefore met in accordance with the design process adopted by NCC. The Applicant has submitted the VISSIM modelling report as Appendix 33 to Deadline 4, and an updated version as Appendix 8 to Deadline 5. Taking both documents into account, the Applicant would note the following: a) The VISSIM simulation model has been applied to account for the existing traffic flows recorded along The Street in October 2018. This coincides with a peak month of operation at the Potato Store. In addition, extra traffic flows have been applied on the highway network to simulate an increased activity for agricultural vehicles with design speeds applied as recorded. VISSIM also considers traffic added as a result of Hornsea Three and Norfolk Vanguard. b) The VISSIM modelling tool is an industry recognised method to	

Interested Party Written Representation	Applicant's Response
has been derived e.g. whether it has been assessed over a 24-hour, 5-day or 7-day period. The only average with any meaningful use at all would be an average achieved by considering only traffic numbers and types using the road on weekdays and during daytime hours that include the full range of commuter and agricultural harvest traffic - as well as factoring in the vehicles generated by the Vattenfall project. Including any quiet times (e.g. nights) would only exacerbate the distortion necessarily created by any reference to an average. (b) We would also question the very limited usefulness of using the concept of an "average" delay at all. No human receptor - be they tractor driver or commuter car driver - actually ever experiences an "average" delay to their journey. What they actually experience is, say, a 15-minute complete stoppage while the road is closed to let 3 low-loaders carrying cable drums through, or a 5-minute delay in trying to get onto the Holt Road because of a backing-up on Oulton Street while several HGVs (construction and agricultural) are trying to turn off the Holt Road, across the stream of traffic. The sheer variety of different farming operations (local and contracted), residential and commuter traffic, construction traffic from 2 major projects, and vehicles generated by local businesses, services and significant summer tourism means that Orsted will never be able to choreograph this traffic in a way that will be able to smooth out regular and frustrating inconvenience to other road users. (c) In addition, it must be established whether Orsted have factored into their data inputs for the VISSIM the introduction of a (temporary, for several years) 30 mph speed restriction, as was discussed at our meeting with NCC. Such a speed limit is deemed necessary by Highways in order to cope safely with the different skid resistances arising from the mixed surface provided by creating lengthy Grasscrete passing places directly	consider delay on the highway and the effects of introducing additional traffic and highway measures. The VISSIM simulation is tested and verified in line with recorded data to benchmark a specific point in time to then consider future variations to the highway link. The use of VISSIM is considered appropriate to consider the effects of traffic movements in this location. c) The VISSIM model report issued as Appendix 33 at Deadline 4 and Appendix 8 at Deadline 5 defines the criteria applied to individual vehicle types breaking down the design criteria of light, heavy, agricultural and abnormal load vehicles. The effects of applied surfaces have been a consideration for the safety audit submitted as Annex A of Appendix 1 at Deadline 3 (REP3-010) which has raised no safety concerns with the materials defined. d) In discussion with NCC the Applicant has highlighted there are specific locations where the 4.4m cable drum is unable to access the works access and a reduced vehicle cable drum and vehicle would be used. The final vehicle route and sizing for all abnormal loads is subject to a separate approval process and would be considered as part of the detailed CTMP in due course. Traffic sensitivity and variations in flows have already been applied to the vehicle movements by adopting the vehicle distribution from the updated Transport Assessment (REP1-162), Para 1.6.2.25 states; <i>For assessment purposes only, it has been assumed that approximately double the proportion of HGVs would originate from the above six links and thus allows for day-to-day variances along them. This effectively doubles the total number of HGVs generated by the proposals when all road links are considered together as it</i>

Interested Party Written Representation	Applicant's Response
alongside a single-lane standard roadway. In current conditions, it is entirely possible for a passenger car to drive down the southern end of Oulton Street, from Saltcarr Farm to the Holt Road in 55 - 60 seconds. This allows for slowing to 30 mph to cope with the 'hump' and the bend, and passing safely the occasional oncoming car. It allows for safely driving at 50 mph where possible. If one drives that same road at a maximum of 30 mph, then it adds approx. 20 seconds to the total journey time. Have Orsted factored into their inputs for the VISSIM therefore, that every single journey for any PCU will take 20 seconds longer, whether it is delayed by additional construction traffic or not? (d) At our meeting with NCC, we were surprised to learn that the Applicant had that morning submitted to them an entirely new suggestion viz: a reduction in the size and therefore the width of the cable drums, from 4.4m to 3.5m. With reduced drum size comes less cable. We pointed out that this would inevitably entail, given that the length of the cable corridor remains constant, an increase in the number of cable drums requiring delivery to Oulton. This was agreed, and NCC will be requesting therefore new figures from Orsted, on the increased number of low-loader deliveries that will now be needed. This revision will also necessitate a change to the VISSIM. (e) We have gone into detail on these issues in an attempt to illustrate 2 simple points: • that only with accurate input data will anything like useful information come out of such a model; • that statistical smoothing necessarily distorts the real experience of	<i>effectively approximately doubles the number of HGVs on each link and through each junction. Although this would not happen in practice (because an increase from one origin would be offset by a decrease from another origin), it allows for a robust assessment that allows for day-to-day variances when individual links and junctions are considered"</i> As such, it is considered that the maximum design scenario has been assessed and allows for such variation as may be expected should smaller cable drums need to be utilised at discreet locations along the onshore cable corridor. e) The VISSIM modelling has been verified in line with industry standards.

Interested Party Written Representation	Applicant's Response
traffic congestion and dysfunction on the ground.	
4. On other matters, OPC remains highly concerned about: - the core working hours for the compound; - generators and lighting; - the lack of commitment to pre-ducting for a phase two.	The Applicant would refer to the comments on OPC's written representations REP3-082 and REP3-083 submitted at Deadline 4 which signposts to the following responses relevant to the two of the matters identified: - Core working hours are discussed in the Applicant's response to the ExA's first written questions submitted at Deadline 1 (REP1-122), Q.1.11.16, 1.12.6 and Q1.7.11; as well as the Applicant's response to the ExA's second written questions submitted at Deadline 4 (Q2.12.6); - The use of generators is discussed in the Applicant's response to the ExA's second written questions (REP4-012, Q2.12.8), with proposed changes then transposed into the Outline Code of Construction Practice (REP4-023). In respect to lighting, the Applicant would refer to paragraph 4.1.4.3 and 4.1.7.6 of the Outline Code of Construction Practice (REP4-023) which provides specific parameters in respect to lighting at the main construction compound. Principles specific to the permanent above ground infrastructure (the onshore HVDC converter/HVAC substation, and the onshore HVAC booster station) are set out in Appendix 5 submitted at Deadline 4 (REP4-026). Design flexibility (including the approach to ducting for elements of Phase two as part of the Phase one construction works) are discussed in the Written summary of Applicant's oral case put at Issue Specific Hearing 1 (REP3-003), in particular the paragraphs starting 3.54.

Interested Party Written Representation	Applicant's Response
5. Finally, OPC is forced to observe that the number and scope of the continuing changes to Orsted's "plans" for this project are breathtaking. It is hard for us to have confidence in a situation like this, where the "facts" change beneath our feet, seemingly on a weekly basis, and we can develop no stable picture of the construction process that is about to impact severely on our community, whether we like it or not, over a period of many years	The Applicant would note that the Working Group was set up with Oulton Parish Council as a way of communicating with members on the ongoing development of an access strategy for the main construction compound. Through this mechanism the Applicant has sought to provide OPC with information on how the construction compound and its access would function. The fundamental details of the planned use of the main construction compound have not changed during this process, although clarification or additional information has been provided in response to the ongoing discussions. As set out in section 3.2 of Volume 1, Chapter 3: Project Description of the Environmental Statement (APP-058), the nature of offshore wind projects, means that the level of detail request by OPC, is in some instances not yet available. Some of this detail, for example the detailed timing and natures of abnormal load movements will be determined during detailed design, and captured within the detailed CTMP to be developed and agreed with the local highways authority post-consent. The Applicant continues to engage with OPC and where possible address ongoing queries.

National Grid Written Representation (REP4-135)

Interested Party Written Representation	Applicant's Response
1. INTRODUCTION AND SUMMARY 1.1 National Grid Electricity Transmission Plc ("NGET") and National Grid Gas Plc ("NGG") (together "National Grid") have submitted a combined relevant representation and written representation to the Examining Authority ("ExA") and provided further written updates in lieu of attendance at hearings to date. National Grid has also provided responses to written questions directed to it by the ExA. 1.2 National Grid has and continues in discussion with the Applicant regarding the detail of protective provisions and other terms for National Grid in order to safeguard its existing apparatus in a manner acceptable to National Grid. Whilst these discussions have been progressing, National Grid, in the interests of expediency and costs, has not yet appeared at hearings or submitted detailed comments on the dDCO (at Deadline 3). 1.3 Unless or until final agreement with the Applicant is reached, National Grid objects to: (a) the form of protective provisions included in the dDCO without further changes; (b) acquisition of any land or any right or interest in land owned by NGET in and around Norwich Substation ("Substation"). The retention of the Substation free of or free of the effect of compulsory rights sought by the Applicant is necessary to ensure that it is able to meet its statutory duties and functions including the connection of other customers to the Substation and for the transmission/distribution of electricity to/from the wider National Electricity Transmission System ("NETS").	Noted.
2. NATIONAL GRID APPARATUS 2.1 NGET has high voltage electricity overhead transmission lines, a high voltage	Noted.

Interested Party Written Representation	Applicant's Response
substation and high voltage underground cables within the onshore Order Limits: (a) Substation Norwich 400kV (b) Overhead Lines (i) 4VV (400kV) overhead line route - Norwich Main to Walpole 1; (ii) Norwich Main to Walpole 2; (iii) 4YM (400kV) overhead line route - Bramford to Norwich Main 1; (iv) Bramford to Norwich Main 2; (v) PHC (132kV) overhead line - Norwich Main to Trowse 1; (vi) PGG (132kV) overhead line - Norwich Main to Trowse 3. (c) Underground Cable Norwich Main – PHC001 2.2 NGG has high pressure gas transmission pipelines and above ground installations ("AGI's") within or in close proximity to the onshore Order Limits: (a) Above Ground Installations (i) Little Barning; (ii) Felthorpe. (b) Gas Transmission Pipelines (i) Feeder Main 02 - Bacton to Brisley; (ii) Feeder Main 03 - Bacton to Roudham Heath; (iii) Feeder Main 04 - Bacton to Gt Ryburgh; (iv) Feeder Main 27 - Bacton to Kings Lynn.	

Interested Party Written Representation	Applicant's Response
2.3 This apparatus forms an essential part of the UK's gas and electricity transmission network and has an important role to play in maintaining the supply of electricity to the NETS and transmission around the gas network. This apparatus is crossed by the Applicant's proposed onshore electricity export cable route or will be laid or require working in close proximity to this apparatus.	
3. ISSUES 3.1 It is not appropriate for the Order to authorise the overriding of any National Grid rights or interests associated with this apparatus (including the overriding/extinguishment of any existing easements). Such rights are required by National Grid for safety and operational purposes and to ensure that its apparatus can be properly inspected, maintained, renewed and repaired at all times. The acquisition of these rights or the overriding/extinguishment of any easements could jeopardise National Grid's ability to meet its statutory functions and licence obligations. The Applicant's acquisition of any such land and/or rights should therefore be subject to any existing National Grid interests in this regard. <u>Existing Apparatus</u> 3.2 The parties have been in discussion and are seeking to agree protective provisions and an associated agreement to reflect this position. The protective provisions will also: (a) importantly need to control the notice and method of working near National Grid apparatus for safety reasons and be in compliance with National Grid safety guidance policies for development: (i) near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines"; and (ii) working in the vicinity of National Grid high pressure gas pipelines and	National Grid's comments relating to its existing apparatus are noted and the Applicant confirms that it is not intending to override or extinguish any existing easement relating to National Grid's apparatus. Protective provisions relating to National Grid's existing apparatus are contained within Part 2 of Schedule 9 to the dDCO (submitted for Deadline 4) and these provisions deal with the matters referred to in paragraph 3.2 of National Grid's representation. The Applicant has been discussing the provision of a form of security to support indemnities with National Grid as part of a separate agreement which would contain terms that were commercially advantageous to both parties. However, the Applicant does not consider that it is appropriate or necessary for a requirement to provide security for an indemnity to be included in the DCO in order for the Secretary of State to be satisfied that there will be no serious detriment to the carrying on of National Grid's undertaking in accordance with s127 of the PA 2008. The Applicant confirms that compulsory acquisition powers are not sought over land within the operational fence line boundary of the substation as works within the substation are covered by the connection agreement.

Interested Party Written Representation	Applicant's Response
associated installations T/SP/SSW22 "Safe working — requirements for thirdparties" and HS (G) 47 "Avoiding danger from underground services"; and (iii) need to provide indemnities for any damage caused by the authorised works to National Grid apparatus. Any such indemnities will need to be backed up by an acceptable form of security and appropriate insurance to ensure the indemnities provide adequate certainty for protection of National Grid's assets. <u>Substation</u> 3.3 National Grid's understanding is that the Applicant is not seeking compulsory acquisition rights in land within the operational fence line boundary of the Substation, associated with works for the connection to the Substation. 3.4 If this position changes then NGET would object to the compulsory acquisition of its land and/or rights within the operational boundary of the Substation as this land is required for operational purposes of NGET and will or has the potential to cause serious detriment to the carrying on of NGET's undertaking. 3.5 Rather, the Applicant's ability to connect its Project to the Substation is properly dealt with: (a) by way of a connection agreement (entered into between the parties), setting out the terms for connection to and use of the Substation; and (b) in light of National Grid's obligations to connect their customers under the Connection and Use of Systems Code (CUSC). 3.6 CUSC, sets out the contractual framework for connection to and use of NGET's high voltage transmission system. NGET is obliged to prepare and comply with CUSC, under the terms of its transmission licence (as required by the governing legislation of the Electricity Act 1989). 3.7 Under section 2 of CUSC, NGET undertakes to enter into an interface agreement	The Applicant has applied for compulsory acquisition powers over the agricultural land surrounding the substation and over the private access road to the substation. The Applicant requires sufficient flexibility in respect of the location of the routing of the cables into the substation as it has not yet been determined by National Grid which bays within the substation will be used for the connection. The Applicant has been discussing the terms of a voluntary property agreement with National Grid in respect of this land and heads of terms are substantially agreed. However, in order to ensure the deliverability of Hornsea Three the Applicant is not able to remove or restrict its compulsory acquisition powers over this land until such a voluntary agreement is in place. As the land is in agricultural use, and protective provisions will apply in respect of any apparatus belonging to National Grid and to ensure access is maintained, the Applicant does not consider that the use of compulsory acquisition powers in respect of this land will cause serious detriment to the carrying on of National Grid's undertaking and the test set out in s127 of the PA 2008 can be satisfied. The parties continue to negotiate and the Applicant hopes that resolution will be reached prior to the end of the examination.

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(where required by the relevant connection agreement) in relation to connection sites, in a form to be agreed between the parties but based substantially on the forms set out in the CUSC. In the case of the Substation, this agreement (to be entered into at a future date) will provide the Applicant with appropriate rights for connection at the time of construction (in line with the agreed connection agreement) and deal with arrangements relating to the installation and retention of the Applicant's assets and facilities and their subsequent use, including modifications, alterations, relocation, removals, rights of access and servicing and use of assets. 3.8 Subject to the other provisions of the CUSC, the connection agreement and the 'Grid Code' (which covers all material technical aspects relating to the planning, operation and use of the NETS), section 2 of CUSC also provides the Applicant with the right for its equipment to remain connected to the substation for the duration of the connection agreement. 3.9 Any unlicensed works of the Applicant within the Substation will be carried out in accordance with and subject to the connection agreement. 3.10 Any compulsory acquisition of land and/or rights within the operational fence line boundary of the Substation is not necessary or justified. 3.11 Other NGET operational land, in the immediate vicinity of the Substation, is subject to compulsory acquisition powers in the dDCO over a wide area bounding all sides of the Substation. NGET understands that this is to provide the Applicant with the widest parameters and therefore maximum flexibility within which to site its cables, and presumably for working, prior to entering the operational fence line boundary of the Substation. 3.12 There is also no justification for the exclusive compulsory acquisition of land and/or rights associated with the Project over such a wide area of land and for such a long duration of time and in circumstances where NGET needs to maintain its own	

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access to and use of the land for its own statutory purposes and the rights cannot be secured by compulsion without serious detriment to the carrying on of NGET's undertaking. 3.13 The compulsory acquisition of such land is not justified or necessary and does not meet the standards required to address the matters under consideration by the Secretary of State in Section 127 of the Planning Act 2008. As such, NGET requires that the application of these compulsory acquisition powers is sufficiently reduced to within identifiable corridors acceptable to NGET. 3.14 In lieu of the exercise of compulsory acquisition powers, NGET is prepared to enter into an option agreement to grant an easement and/or sub-surface lease over this land on an agreed alignment (in conjunction with NGET's continued use where appropriate and subject to concluding of negotiations on reasonable terms with the Applicant) for the connection and access for carrying out the unlicensed works.	
4. MATTERS AGREED/NOT AGREED <u>Protective provisions</u> 4.1 The form of protective provisions included in the dDCO is not agreed by National Grid. National Grid requires the provision of security and insurance to support the indemnity. 4.2 National Grid understands that the Parties are in agreement as to arrangements for the provision of security and insurance. These arrangements are yet to be put in place between the Parties. 4.3 Unless or until suitable arrangements are in place, National Grid reserves it right to make further comments on the dDCO and in particular to seek the inclusion of security and insurance provisions.	As set out above, the Applicant's intention is to ensure that arrangements relating to security and insurance are dealt with by way of separate agreement between the parties. Similarly, the Applicant intends that rights over land are obtained by agreement, but in order to ensure deliverability of the nationally significant infrastructure project, reserves the right to maintain compulsory powers should such agreement not be reached. The parties continue to negotiate and the Applicant hopes that resolution will be reached during the examination.

Interested Party Written Representation	Applicant's Response
<u>Substation</u> 4.4 NGET does not agree to the inclusion of wide compulsory acquisition powers in the dDCO in respect of its land and rights in and around the Substation. 4.5 NGET remains engaged with the Applicant to reach agreement on a corridor(s) and appropriate terms for the crossing over or under NGET's land, and has been working with the Applicant in that regard. 4.6 The Parties are in a process of seeking to settle heads of terms in respect of the land documents (principally an option agreement and sub-surface lease) in a form that grants necessary rights in its land whilst suitably safeguarding NGET's land holdings. This arrangement is to operate in lieu of the application of compulsory acquisition powers in the dDCO.	
5. EXAMINATION 5.1 Should it not be possible to reach agreement, National Grid wishes to reserve its position to submit further detailed representations on matters not agreed. 5.2 National Grid also reserves its right to appear at Issue Specific Hearing 6 into the dDCO to be held on 30 January 2019 and/or at the Compulsory Acquisition Hearing on 31 January 2019 and any later hearings.	Noted.

Cadent Gas Ltd Written Representation (REP4-136)

Interested Party Written Representation	Applicant's Response
1.1 We are instructed by Cadent Gas Limited (Cadent), who have made representations in respect of this Application. 1.2 The purpose of this Statement is to provide details of the current status of matters agreed/not agreed with the Applicant, a summary of which is provided in Section 5 below. 1.3 As a responsible and regulated statutory undertaker, Cadent's primary concern is to meet its statutory obligations and ensure that any third party development does not therefore adversely impact upon those statutory obligations. 1.4 The current dDCO dated 7 November 2018 contains a set of protective provisions at Schedule 9 Part 3 for the protection of Cadent as a gas undertaker. This form of protective provisions is not currently agreed by Cadent without further changes. 1.5 Discussions between the Applicant and Cadent have been on going throughout the examination process in relation to matters not agreed. The following matters either remain in discussion between the Applicant and Cadent or are not yet agreed: a) Indemnity; b) Security; c) Insurance; and d) Expenses. 1.6 This Statement sets out an overview of the concerns that Cadent has in relation to these outstanding matters. For reasons explained, without further changes resulting in a form of protective provisions acceptable to Cadent and/or an arrangement with the Applicant, Cadent is not satisfied that the form of protective provisions contained in the current dDCO provides sufficient measures to enable it to operate efficiently and has the potential to expose Cadent to irrecoverable costs and losses. The dDCO therefore prejudices Cadent's ability to meet its	Noted.

Interested Party Written Representation	Applicant's Response
statutory and licence requirements pertaining to its undertaking without causing unacceptable impacts. 1.7 In this regard, appended at Appendix 1 is a form of template protective provisions sought by Cadent when dealing with promoters of DCOs in response to potential impacts on its network. With the exception of the matters described in this Statement, the proposed protective provisions in the dDCO are acceptable to Cadent as providing adequate measures in accordance with these template provisions. 1.8 Unless or until Cadent's concerns are addressed, Cadent asks for the Examining Authority to have regard to the content of this Statement as part of its recommendation to the Secretary of State. In addition, Cadent reserves its right to and currently intends to appear at Issue Specific Hearing 6 into the dDCO to be held on 30 January 2019. 1.9 Cadent reserves its right to add to or expand on this Statement and to address any other matters or points raised by the Applicant in response to this Statement and/or matters pertaining to the protection of Cadent's apparatus affected by the Application.	
2.BACKGROUND 2.1 Cadent is a licensed gas transporter under the Gas Act 1986 with statutory responsibilities for the safe and efficient distribution of gas through significant assets throughout the UK. Cadent's primary duties are to operate, maintain and develop its networks in an economic, efficient and coordinated way. Cadent is required to comply with the terms of its gas distribution licence and is regulated by Of GEM, the Office of the Gas and Electricity Markets. 2.2 As money spent and costs incurred by Cadent are ultimately passed on to consumers in their energy bills, one of Cadent's duties is to ensure that it conducts itself in an efficient and cost effective way. Cadent is therefore also concerned to ensure that it is suitably protected and indemnified by promoters from the financial implications of their commercial schemes.	Noted. Section 138 of the PA 2008 requires the Secretary of State to be satisfied that a provision in a DCO for the extinguishment of a relevant right must be necessary for the purpose of carrying out the development. The Applicant refers to Article 29 (statutory undertakers) of the dDCO (submitted for Deadline 4) is subject to the protective provisions in Schedule 9. The protective provisions for the benefit of Cadent set out in Part 3 of Schedule 9 state that the Applicant cannot acquire or override any apparatus or land interest belonging to Cadent with consent (paragraph 6). Paragraph 7(2) of the protective

Interested Party Written Representation	Applicant's Response
2.3 Any damage to gas assets or their coating can affect its integrity and can result in failure of the gas pipeline or main with potential serious, hazardous consequences for individuals and/or property located in the vicinity of the gas pipelines or mains if they were to fail. It could also lead to loss of supply for individuals and business premises in the vicinity of the pipeline. 2.4 Cadent is required to comply with a number of industry safety standards and legal requirements in the fulfilment of its licence responsibilities, further details of which are set out in Section 3 below. Consequently, Cadent is required to ensure that its network is maintained in an efficient state, in efficient working order and in good repair. Cadent is therefore required to keep its network whole and to maintain safety standards. This includes addressing the adverse impacts of third party development on its network. 2.5 Cadent therefore reasonably expects to be kept or made whole again during and following the canying out and operation of any third party development, either by way of the physical replacement of alternative apparatus or, where acceptable, in monetary compensation. As part of measures designed to meet this objective, Cadent requires adequate protection which includes a means of recovering of all of its properly incurred costs, expenses and losses caused by or on behalf of the third party promoter. This follows the widely understood and accepted principle of 'equivalence' but for which those costs, expenses and losses will be incurred by Cadent. 2.6 Section 138 of the Planning Act 2008 provides that a development consent order may include provision for the extinguishment of a relevant right, or removal of relevant apparatus of a statutory undertaker, only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates. The Secretary of State will balance the need for and national benefits of the Applicant's project against the impact on the statutory undertaker's ability to retain and operate a safe network in an efficient manner. Part of that determination considers the provision of measures for the benefit of the undertaker to be properly made whole again and properly compensated. It is expected that the Secretary of State will weigh heavily in this balance, instances where the	provisions, which relates to the relocation of apparatus, is only triggered where the purpose is for "executing any works comprised in the authorised development". Paragraph 7(2) also states that no apparatus can be removed or right extinguished until alternative apparatus has been provided. The Applicant therefore considers that the test set out in s138 of the PA 2008 has been satisfied.

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third party project does not provide equivalence for the undertaker. 2.7 Cadent has the following apparatus within the onshore Order Limits which is transcended by the Applicant's project: <table><tr><td>611077</td><td>339985</td><td>4" ST</td><td>IP</td></tr><tr><td>620098</td><td>303518</td><td>324mm- ST</td><td>HP</td></tr><tr><td>620826</td><td>303496</td><td>324mm- ST</td><td>IP</td></tr><tr><td>616841</td><td>305339</td><td>324mm- ST</td><td>HP</td></tr><tr><td>616842</td><td>305278</td><td>180mm PE (IN 8" ST)</td><td>MP</td></tr><tr><td>618734</td><td>303541</td><td>324mm- ST</td><td>IP</td></tr><tr><td>621016</td><td>302997</td><td>324mm-ST</td><td>HP</td></tr><tr><td>620793</td><td>303452</td><td>12"-ST</td><td>IP</td></tr><tr><td>622167</td><td>303004</td><td>324mm-ST</td><td>HP</td></tr><tr><td>621708</td><td>302561</td><td>324mm- ST</td><td>HP</td></tr></table> 2.8 Cadent does not object to the principle of the Applicant's project but, for the reasons explained in this Statement, is of the view that the current dDCO is deficient in that it does not yet contain protective provisions which would enable Cadent to satisfactorily meet its	611077	339985	4" ST	IP	620098	303518	324mm- ST	HP	620826	303496	324mm- ST	IP	616841	305339	324mm- ST	HP	616842	305278	180mm PE (IN 8" ST)	MP	618734	303541	324mm- ST	IP	621016	302997	324mm-ST	HP	620793	303452	12"-ST	IP	622167	303004	324mm-ST	HP	621708	302561	324mm- ST	HP	
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requirements to operate a safe network without the risk of incurring irrecoverable costs, expenses and losses which would not arise but for the Applicant's project and therefore impacting its efficiency requirements. In its current form the dDCO does not meet the requirements of Section 138 of the Planning Act 2008.	
3. SUMMARY OF REGULATORY FRAMEWORK 3.1 The Applicant's project transcends High Pressure (HP), Intermediate Pressure (IP) and Medium Pressure (MT) Cadent assets. 3.2 As part of the relevant regulatory framework, Cadent is required to comply with the Pipelines Safety Regulations 1996, which derive from the Health and Safety at Work Act 1974. 3.3 The Pipelines Safety Regulations 1996 require that pipelines are designed, constructed and operated so that the risks are as low as is reasonably practicable. In judging compliance with the Regulations, the Health & Safety Executive (HSE) expects duty-holders to apply relevant good practice as a minimum. The category of pressure also has a bearing on the application of certain statutory requirements, for example, creating offences enforceable by the HSE in the case of certain HP mains. 3.4 In the case of HP assets, established national standards and protocols for gas pipelines assist the HSE in ascertaining whether the risks incurred in working with such pipelines have been mitigated as much as reasonably practicable. The following standards are relevant to HP mains: (a) IGEM/TD/1: Steel Pipelines for High Pressure Gas Transmission (Pipeline over 16 bar). (i) This Standard applies to the design, construction, inspection, testing, operation and maintenance of pipelines and associated installations, designed after the date of publication. It sets out engineering requirements 'for the safe design, construction, inspection, testing, operation and maintenance of pipelines and associated installations, in accordance with current knowledge.'	Noted. The protective provisions set out in Part 3 of Schedule 9 of the dDCO (submitted for Deadline 4) (REP4-003 and REP4-004) require the Applicant to comply with the requirements of TSP/SSW/22 'Safe Working in the Vicinity of Cadent HP pipelines and the HSE's guidance document HS(G)47 Avoiding Danger from Underground Services (paragraph 9(12) of Part 3).

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(ii) This Standard is intended to protect from possible hazards members of the public and those who work with pipelines and associated installations, as well as the environment, so far as is reasonably practicable. It is also intended to ensure that the security of gas is maintained. (b) TSP/SSW/22 'Safe Working in the Vicinity of Cadent HP pipelines' This specification manages industry protection of plant. (ii) It is aimed at third parties carrying out work in the vicinity of Cadent high pressure gas pipelines (above 7 bar gauge) and associated installations and is provided to ensure that individuals planning and undertaking work take appropriate measures to prevent damage. (iii) It states that "any damage to a high pressure gas pipeline or its coating can affect its integrity and can result in failure of the pipeline with potential serious hazardous consequences for individuals located in the vicinity of the pipeline if it were to fail". The requirements in this document are in line with the requirements of the IGE (Institution of Gas Engineers) recommendations IGE/SR/18 Edition 2 - Safe Working Practices To Ensure The Integrity Of Gas Pipelines And Associated Installations, and the HSE's guidance document HS(G)47 Avoiding Danger from Underground Services. 3.5 The industry standards referred to above have the specific intention of protecting: (a) the integrity of the pipelines and thus the movement of gas; (b) the safety of the area surrounding a major accident hazard pipeline; (c) the safety of personnel involved in working with major accident hazard pipelines. 3.6 Cadent has a statutory duty under its Gas Transmission Licence to ensure that these Regulations and protocols are complied with. Cadent requires specific provisions in place for an appropriate level of control and assurance that the industry regulatory standards will be complied with in connection with works to connect to and in the vicinity of the HP main.	

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3.7 Cadent otherwise requires the provision of measures to ensure that all of the assets within its network are maintained in an efficient state, in efficient working order and in good repair. It achieves this by requiring third parties working in proximity of or directly involving its assets to adhere to asset protection measures. In the case of development consent orders, this is addressed through protective provisions, supplemented with other arrangements put in place between the Applicant and Cadent if necessary. Adherence to these measures is as much for the benefit of the third party as a means to minimise the risk of adverse impact on the integrity of Cadent's network, thereby avoiding or minimising the potential for loss that Cadent expects to recover from the third party.	

Interested Party Written Representation	Applicant's Response
4. SUMMARY OF ISSUES <u>Indemnity</u> 4.1 The current dDCO contains protective provisions for the protection of Cadent at Schedule 9 Part 3 which include at Paragraph II(1) to II(4) indemnity provisions which are acceptable and in accordance with Cadent's template provisions at Paragraph II(1) to I I(4) (attached as Appendix 1). 4.2 However, we understand in discussion with the Applicant that it also desires a cap on this indemnity to Cadent, the reasons for which are not clear. 4.3 Cadent contends that a cap on the Applicant's indemnity is inconsistent with the principle of equivalence and is therefore not appropriate for the following reasons: a) Cadent is receiving no direct benefit from the proposed development and therefore should not be put to any cost in respect of it; b) Cadent is a statutory undertaker with responsibilities and a duty to its regulator and the general public to conduct itself in an efficient and cost effective way. It therefore requires equivalence in monetary terms arising from the impact of the proposed development, where it is not otherwise compensated in physical terms by virtue of the reprovion of alternative apparatus; c) It is therefore entirely reasonable for the Applicant to be responsible to Cadent for the full extent of any losses (including consequential losses and any losses to its customers) to which Cadent is put by reason of execution of works which are entirely within the Applicant's control; and d) As a means to properly and appropriately incentivise the Applicant to adhere to all appropriate standards, codes and details relevant to the execution of its development in the proximity of and in relation to Cadent's apparatus. The protective provisions are of equal benefit to the Applicant in that they provide a mechanism within which to work with Cadent to mitigate	The Applicant notes Cadent's comments, and confirms that it has been in discussions with Cadent regarding potential caps to liability via a side agreement with contains commercially advantageous terms for both parties. A cap is suggested as this would allow the Applicant, which is also a statutory undertaker, to quantify potential risks for the project. This approach is regularly agreed with statutory undertakers in respect of nationally significant infrastructure projects and other infrastructure projects. It is reasonable because, as those statutory undertakers often recognise, the protective provisions provide an adequate mechanism to achieve equivalence and limit risk of costs to the statutory undertaker to a very low level. The Applicant disagrees that the decision in the Eggborough DCO provides a suitable equivalent to Cadent. As set out in the extract of the Secretary of State's report of that decision provided by Cadent at paragraph 4.5, the one factor mentioned for giving an uncapped indemnity was that the Canals and Rivers Trust is a charitable organisation. As such, it is clear that this was a key factor in that decision. The Eggborough decision is a single exception to the normal approach to capped indemnities, distinguishable owing to the charitable status of the statutory undertaker in that case. On the basis that an uncapped liability is required by Cadent, the Applicant has asked Cadent to limit the scope of consequential losses.

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the potential for damage to Cadent's assets and consequential losses through appropriate design, working arrangements and 4.4 The principle of equivalence was recognised and accepted in the recent decision to grant development consent for Eggborough CCGT (ENO10081), where both the Examining Authority and the Secretary of State supported the Canal and River Trust (CRT) on the issue of indemnity caps and consequential losses. The Examining Authority's conclusion at paragraph 8.5.30 of its Recommendation and Report dated 27 June 2018 (attached as Appendix 2) was that such a cap placed an unreasonable and unjustified burden on CRT, who face a risk of meeting potential costs and losses through no fault of its own". It was also concluded at paragraph 8.5.31 that the CRT should be "within its reasonable rights to claim for foreseeable consequential losses as a result of the construction of the Proposed Development". This reasoning was agreed with by the Secretary of State in his Decision Letter dated 20 September 2018 (attached as Appendix 3), 4.5 The decision of the Secretary of State follows the Examining Authority's Recommendation which at paragraph 8.5.26 (Appendix 2) set out the CRT's case that such an indemnity cap would be unacceptable <i>"because, amongst other things, it is a registered charity with finite resources, that it is receiving no benefit from the Proposed Development, and its statutory function as a navigational authority warrants protection from <u>any</u> such financial cost"</i> (our emphasis added). 4.6 Whilst the Examining Authority noted the charitable status of the CRT, in our view there is nothing in its Report and Recommendation or in the Secretary of State's Decision Letter which indicates that this status was the key material consideration or a determinative factor in the decision not to impose indemnity caps. Rather, it is clear from the rationale that the statutory undertaker status of the CRT was a material factor in the Secretary of State's decision that the CRT warrants protection from any financial costs of the third party project. There is therefore no reason why the same principle should not apply in the case of Cadent, as statutory undertaker with statutory functions in relation to a gas network.	This was permitted by the Secretary of State in his decision on the Hinkley Point C Connection DCO, where consequential losses incurred by Network Rail were limited to those which related to agreements with rail operators that were disclosed to the undertaker. A similar provision could be included in the dDCO to limit consequential loss to known amounts notified to the Applicant. A similar approach was also adopted by the Secretary of State in the Keuper Gas Storage DCO in relation to protective provisions for the benefit of Holford Gas Storage Limited. Again, this is a reasonable approach and demonstrates the Applicant's attempts to accommodate Cadent's position. The nexus between indemnities and safety asserted by Cadent is unclear and not made out. Given Cadent's responsibilities cited in its representations, and those of the Applicant pursuant to the DCO, it is clear that any works required to be undertaken to Cadent's apparatus would be undertaken to the appropriate standards, regardless of who bears the cost. The Applicant's position in respect of capped indemnities and consequential loss would not undermine safety in any way. Notwithstanding these points of difference, the parties continue to negotiate and believe that resolution will be reached during the examination.

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4.7 The statutory and licence requirements on Cadent to maintain in an efficient state, in efficient working order and in good repair, mean that losses can arise from damage caused to Cadent's assets. Safety is therefore a paramount consideration and a requirement that Cadent must be able to address to meet its statutory obligations. These requirements will clearly have an impact on its financial outlay for which its regulator requires Cadent to act responsibly and to recover its losses from third parties as part of its obligations to provide a distribution network. Cadent must seek to discharge its obligations in an efficient way which includes the avoidance or minimisation of costs and losses that it might incur in operating and maintaining its network and delivering services to customers. A cap on recovery under an indemnity to Cadent from the Applicant would expose Cadent to irrecoverable losses that would not otherwise be incurred by it in the ordinary course of its operations. In other words, but for the Applicant's development, Cadent would not be put to such loss. It should not be for Cadent to bear liabilities in excess of an indemnity cap where such liabilities are caused by commercial schemes. 4.8 We are not aware that the Applicant contests in any way the significance of Cadent's safety requirements. We highlight however that the principle that safety is paramount has been confirmed by the Secretary of State in the determination of the North London Heat and Power Project (EN010071). As part of a Minded To Approve Letter dated 26 January 2017 (attached as Appendix 4), he agreed to amend the protective provisions drafted by the promoter, the North London Waste Authority, relating to deemed consent provisions, on the basis that they had "<i>the potential to undermine safe working</i>" (at Annex 2 to the Letter). This was in response to National Grid's contention in its letter dated 5 January 2017 (attached as Appendix 5) that safety is paramount even if the undertaker's actions may delay the delivery of the project, so long as that approval is not unreasonably withheld. Whilst in a different context, this provides a strong indication of the importance of protection for such statutory undertakers notwithstanding the national interest in delivering infrastructure projects. The incorporation of these changes was confirmed in the Secretary of State's Decision Letter dated 24 February 2017 (attached as Appendix 6).	

Interested Party Written Representation	Applicant's Response
<u>Security</u> 4.9 The current dDCO does not include security provisions. Security provisions are included within Paragraph 11(5) of the template protective provisions at Appendix I. We understand that the Applicant is in principle agreeable to providing security, however provisions are not presently secured between the Parties. 4.10 The principle of requiring security in support of an indemnity is not exceptional and is generally common place. Security is in essence demonstration and provision of suitable means to perform the indemnity, but for which the indemnity itself provides limited benefit as there remains a risk of non-performance by a promoter. This can be particularly important where the relevant indemnifying party has limited funds and/or whose identity may change before construction of the works. The provision of security provides a source of recourse for Cadent, reflecting the low asset value of the project company in its early phases of pre-construction and construction. The provision of security is necessary to ensure that Cadent has a means of meaningful recovery, particularly during these phases and before the project company has accumulated value by virtue of the constructed asset, typically at the point that construction is significantly advanced if not completed and becomes operational. In this case, the current low asset value of the project company is recognised by the Applicant in its own Funding Statement (Paragraph 1.4.1.2). 4.11 Cadent typically requires the provision of security in the course of its dealings with third parties carrying out works in proximity of or works to its apparatus. This approach is consistent with the approach of other undertakers, including undertakers of other regulated industries including electricity, water and highways. There is no reason why this approach should not apply equally in relation to an application for development consent. Cadent's position is that it should not be exposed to a higher level of risk under a DCO than it would ordinarily accept under any other proposal by a third party.	The Applicant has been willing to discuss the provision of security in a separate side agreement that contains commercial advantageous terms for both parties, however, the Applicant considers that it is not reasonable or necessary for security provisions to be included within the dDCO as this creates an unnecessary burden on the Applicant or any other party exercising rights under the DCO (such as another statutory undertaker). The drafting proposed by Cadent would mean that Cadent could prevent a nationally significant infrastructure project from proceeding due to financial as opposed to safety grounds. Whilst the Applicant agrees that the provision of security for an indemnity is not exceptional in a commercial agreement, it is the Applicant's position that it is unusual for security to be required in respect of a liability for damage in relation to the exercise of statutory powers. For example, there is no statutory requirement for an undertaker to provide security to support the liability for damages or loss under section 82 of the New Roads and Street Works Act 1991. The Applicant refers to paragraph 18 of DCLG's Guidance related to procedures for the compulsory acquisition of land (December 2013) and notes that the purpose of the Funding Statement (REP1-229) is to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made. It is not intended to demonstrate how the Applicant

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4.12 Cadent acknowledges that at the stage at which applications for development consent are typically promoted, applicants need some flexibility as to the form of such security. Cadent therefore provides the option of parent company guarantee, bank bond or letter of credit as reflected in the definition of "acceptable security" in Paragraph 2 of the template protective provisions at Appendix 1. Cadent also accepts that it is reasonable that security is provided to a limit or threshold in order that the third party promoter can realistically secure security in one of these forms. 4.13 At such an outline stage of design, applicants for development consent are rarely able to provide sufficient details to Cadent to enable a detailed assessment of the upper level of exposure to damages/or loss. Cadent therefore imposes a limit on security at a level that it considers (based on experience) to be typical of the upper level of losses that could be incurred in the event of a significant or catastrophic event. However, this cannot be taken as an absolute upper limit of any losses which may be incurred for the purposes of the indemnity but is considered a reasonable level to provide a reasonable level of cover. 4.14 We note that the required funding statement has been submitted as part of the Applicant's application for development consent. The principal function of the funding statement in the development consent process is in order to demonstrate to the Examining Authority that a proposed project is capable of assembling land and constructing the project. The funding statement reflects how the construction and compulsory acquisition of rights will be funded and provides no guarantee to a statutory undertaker such as Cadent of the availability of funds in the project company, particularly in the early phases of its construction, to pay out any loss that Cadent suffers and claims for under the indemnity. Consequential losses arising from accidental damage can be substantial and are not anticipated by the funding statement and may include, but are not limited to loss of supply, including claims from shippers, compensation to consumers and the impact to communities/consumers of loss of supply during winter months. The level of loss incurred is typically linked to the duration over which that loss continues to occur and is dependent upon such factors as the time needed in which to repair,	will fund any damage or loss caused to third party apparatus during construction. The Applicant acknowledges that the dDCO requires security to be put in place prior to the exercise of compulsory acquisition powers. However, this is in recognition of the fact that liability to landowners arises automatically on the exercise of such powers and that such powers could be exercised in advance of the commencement of construction of Hornsea Three. In contrast, liability under the protective provisions only arises where damage or an interruption to service is caused as a result of construction, use or maintenance of the authorised development. The Applicant refers to paragraph 1.3.1.1 of the Funding Statement which states that the estimated construction costs for Hornsea Three are approximately £5-8 billion. The Applicant therefore does not agree with Cadent's contention that it will have "limited funds" at the commencement of construction.. The Applicant is not aware of the principle of security for the indemnity provided to statutory undertakers being considered by the Secretary of State before. In any event, the Applicant does not consider that the provision of security is necessary to satisfy the tests set out in s127 and s138 of the PA 2008. The Applicant notes that Cadent has provided no evidence to support the amount of the security it is seeking. Notwithstanding these points of difference, the parties continue to

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the time of year and market fluctuations in relation to the price of gas. 4.15 Cadent is also mindful that the dDCO includes powers that allow the benefit of the development consent to be transferred to another entity following the grant of development consent subject to Secretary of State approval. 4.16 The issue for Cadent is one of greater certainty of performance under the indemnity consistent with normal and common practice. The way in which this can be secured is by way of the provision of acceptable security in conjunction with the provision of an indemnity.	negotiate and believe that resolution will be reached during the examination.
<u>Insurance</u> 4.17 The current dDCO does not include insurance provisions. Insurance provisions are included within Paragraph 11(5) of the template protective provisions at Appendix 1. We understand that the Applicant is in principle agreeable to providing insurance, however provisions are not secured. 4.18 The principle of third parties carrying insurance is also a further typical requirement of Cadent where they are operating on or near to Cadent's apparatus. The nature of Cadent's asset base is such that its requirement for third party liability insurance also reflects the potential for high levels of loss attributable to an event causing explosion or another catastrophic event leading to significant harm to or loss of life or property or a disruption in the distribution of gas to provide heat and warmth to communities or power and energy to local businesses. Insurance provides Cadent with the assurance that the Applicant is carrying a level of cover that will provide recompense for the range of losses that might be incurred by events that are not otherwise planned for or ordinarily expected to be incurred by the Applicant as part of the delivery of its proposed development. 4.19 As with security, Cadent acknowledges that it is reasonable to accept an upper limit on insurance cover in order that policies can be secured by the third party promoter in the market.	The Applicant notes Cadent's position and confirms that this point is subject to agreement between the parties in the separate agreement currently under discussion.

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Again, there remains the risk to Cadent that losses may exceed the level of cover for which the uncapped indemnity is still required. 4.20 Cadent adopts as similar approach to calculation of an upper level of cover for insurance as with security.	
<u>Expenses</u> 4.21 The current dDCO contains at Paragraph 10 of Part 3 to Schedule 9 provisions relating to expenses which are in accordance with Paragraph 10 of the template protective provisions at Appendix 1 and are acceptable to Cadent. 4.22 Cadent however understands that the Applicant may require a qualification to these provisions, whereby Cadent is required to notify the Applicant of the estimate of any costs prior to incurring such costs. After the submission of an invoice or request for payment, the Applicant would then have a specified period of time to challenge Cadent as to the invoice amount, but otherwise is required to make payment in the first instance. 4.23 Cadent is currently in discussions with the Applicant regarding these changes. While Cadent is content to provide estimates, this cannot be at the expense of dealing with urgent and/or emergency and safety works or complying with other timescales set out in any other provisions of the dDCO and any such estimates must not place a limitation on future recovery. Cadent is otherwise willing to provide estimates where time permits before it needs to incur expenses. Any concerns that the expenses have not been properly incurred should not delay or prevent payment; the Applicant can contest the level of expenses with Cadent directly and, where not resolved, any dispute can be determined by arbitration and reimbursed in accordance with that determination.	The Applicant notes Cadent's position and confirms that this point is subject to discussion between the parties.
5. MATTERS AGREED/NOT AGREED	Noted, the Applicant refers to its comments above regarding the

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5.1 The form of protective provisions included in the dDCO is not agreed by Cadent. Cadent requires the provision of security and insurance to support the indemnity. 5.2 Cadent understands that the Parties are in agreement as to arrangements for the provision of security and insurance. These arrangements are yet to be put in place between the Parties. 5.3 Unless or until suitable arrangements are in place, Cadent reserves it right to make further comments on the dDCO and to seek the inclusion of security and insurance provisions in the dDCO. 5.4 Cadent is otherwise content with the balance of the protection measures in the dDCO for the benefit of Cadent, which includes an uncapped indemnity and the payment of anticipated and incurred expenses on demand.	matters raised by Cadent.

Ray Pearce Written Representation (REP4-141)

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We live adjacent to the planned crossing point of the transmission cables from the Hornsea Project Three, Norfolk Vanguard Project and Norfolk Boreas Project wind farms. We have submitted our written evidence to both panels. As 'Interested Parties' we are of the opinion that the continuance of individual developers making requests for connections to the National Electricity Transmission System (NETS), without an independent co-ordination body, is a fundamental failing of the infrastructure planning for off-shore renewable energy provision. We contend that the current situation with National Grid (NG) plc, a for profits company, allocating NETS connections on a "first come, first served" process	The Applicant notes the representation and would refer to the following documents which address matters relating to the connection point for Hornsea Project Three: • Applicants Comments on Relevant Representations submitted at Deadline 1 (REP1-131) – response to RR-019; • National Grid's response to the ExA's written questions submitted at Deadline 1 (REP1-070); • Applicant's comments on responses to the ExA's written questions submitted by Interested Parties at Deadline 1, submitted at Deadline 2 (REP2-005) – responses to Q1.1.11 and Q1.1.12; and

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(as described in our individual submissions) will be more damaging to the environment than an organised and co-ordinated plan to meet future electricity demands would be. NG know when and where current power stations will be decommissioned and therefore where shortfalls in power provision are likely to be. It is incomprehensible to us that the current system of first come first served, as close to where NG have capacity to take up any new power generation, is acceptable. It is also clear in our exchanges with NG that they do not intend to either invest in any new substations, or upgrade any existing substations, on the NETS to accept the renewable off-shore energy; Walpole substation being a casing point for the acceptance of Hornsea Three. We wonder why NG has not been invited to contribute to the examination process for either Vanguard or Hornsea Three considering their contribution to the plans and, as of April 2019, their intent to devolve the management of power transmission to a new company? Both Vattenfall, for Norfolk Vanguard and Boreas Projects, and Ørsted for Hornsea Project Three, are foreign companies with a vested interest in making profits for their shareholders (Vattenfall being 100% owned by the Swedish Government). It is therefore astonishing that the UK's responsible company, NG plc, has such an out dated licence to govern NETS connections, issued when the National Grid was denationalised at the end of the 1980's. There are alternatives to how off-shore generated renewable energy can be brought on-shore, as we have provided in our responses to both companies' PEIRs. A simple off-shore extension to the NETS, outside of any Marine Conservation Zones, with collecting substations on platforms similar to those proposed by both projects for their wind farms, could easily be designed and constructed. Off-shore wind farm developers could then pay a connection levy to access the "Off-shore Ring Main" (ORM) which would cover the cost of construction and may even generate a profit for the UK.	Applicant's comments on written representations and responses submitted by Interested Parties at Deadline 1, submitted at Deadline 2 (REP2-004) – response to Ray and Diane Pearce.

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Developers would save all the costs of design and construction for individual on-shore transmission systems making such a project very attractive. A graphic of our suggested ORM is attached. We implore the Planning Inspectorate to take a view on the connection issue and bring to the attention of the Secretary of State for the Environment that successive off-shore developers will continue to apply for consent to bury transmission cables, criss-cross across the UK countryside, with an increasing number of transmission systems. The cost to the environment in Norfolk alone, will be unprecedented. Also, and more importantly, leaving the allocation of NETS connection on a first come first served, with an outdated licence, under the governance of NG is untenable. We understand that this multifaceted issue is difficult but, in all earnest, the UK countryside will suffer irrevocably if the future of off-shore renewable energy transmission is merely left to chance.	