

FIVE ESTUARIES OFFSHORE WIND FARM

10.41 APPLICANT'S SUMMARIES OF ORAL SUBMISSIONS – ISH5, ISH6, CAH3 AND ISH7

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DEFINITION OF ACRONYMS

Term	Definition
AIL	Abnormal Indivisible Load
BEIS	Dept. for Business Energy and Industrial Strategy (precursor to DESNZ)
BNG	Biodiversity Net Gain
CA	Compulsory Acquisition
CFWG	Commercial Fisheries Working Group
CNP	Critical National Priority
DCO	Development Consent Order
Defra	Dept. for Environment, Food and Rural Affairs
DML	Deemed Marine License
DWR	Deep Water Route
EA	Environment Agency
EACN	East Anglia Connection node
ECC	Essex County Council
EIA	Environmental Impact Assessment
ES	Environmental Statement
ExA	Examination Authority
FLCP	Fisheries Liaison and Coexistence Plan
GI	Green Infrastructure
HGV	Heavy Good Vehicles
ННА	Harwich Harbour Authority
HSE	Health and Safety Executive
IP	Interested Parties
ISH	Issue Specific Hearing
LBBG	Lesser Black Backed Gull
LEMP	Landscape and Ecological Management Plan
LGP	London Gateway Port Ltd.
LIR	Local Impact Report
LPA	Local Planning Authority

Term	Definition
MCA	Maritime Coastguard Agency
MDS	Maximum Design Scenario
ММО	Marine Management Organisation
MOD	Ministry of Defence
NE	Natural England
NGET	National Grid Electricity Transmission
NIP	Navigation and Installation Plan
NPS	National Policy Statement
OFLCP	Outline Fisheries Liaison and Co-existence Plan
OFTO	Offshore Transmission Owner
ОТВ	Outer Trial Banks
OTE	Outer Thames Estuary
OWF	Offshore Wind Farm
PLA	Port of London Authority
RSA	Road Safety Audit
RTD	Red Throated Diver
SAC	Special Area of Conservation
SCC	Suffolk County Council
SIP	Site Integrity Plan
SPA	Special Protection Area
TCE	The Crown Estate
TSO	Transmission System Operator
VE	Five Estuaries
VEOWF	Five Estuaries Offshore Wind Farm
WSI	Written Scheme of Investigation

1. ISSUE SPECIFIC HEARING 6 (ISH6)

TUESDAY 21 JANUARY AND WEDNESDAY 22 JANUARY 2025

1.1.1. This note summarises the submission made by Five Estuaries Offshore Windfarm Limited (the Applicant) at the Issue Specific Hearing 6 on 21 and 22 January 2025. This document does not purport to summarise the oral submissions of parties other than the Applicant; summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant's submissions.

1.2. AGENDA ITEM 3.0: GENERAL

- 1.2.1. Following a request from the ExA to clarify what the operational life of the Five Estuaries Offshore Windfarm will be, the Applicant explained that the operational life of wind farms is not fixed and is driven by fatigue, operational maintenance and expected life of the turbines. A warranty period also applies, however, the turbines can be inspected and the life of the turbine can be extended. The Applicant cannot specify a period as there is a need for flexibility. The 40-year period is the longest realistic operational period and the maximum design scenario. The Applicant further added that there is a requirement to submit the decommissioning plan under the Energy Act 2004 before operation.
- 1.2.2. The Applicant was asked to explain the decommissioning process, specifically when the obligation to submit the decommissioning plan under the Energy Act, how this plan evolves and explain the relevant provisions in this summary. The Applicant provides the following summary:
- 1.2.3. The Energy Act 2004 decommissioning provisions are set out sections 105 to 114. In summary, the Secretary of State may require a person who is responsible for an offshore renewable energy installation (which include offshore wind farms) to prepare a costed decommissioning programme and ensure that it is acted upon. The government Guidance, Decommissioning of Offshore Renewable Energy Installations under the Energy Act 2004 Guidance notes for industry (England and Wales)¹ (the "Guidance") notes at paragraph 5.1.2 that "the intention is, for BEIS to provide a "one stop shop" in relation to decommissioning of [offshore renewable energy infrastructure]".
- 1.2.4. The Guidance provides that the Energy Act imposes "a legal obligation on the responsible persons to prepare and carry out a decommissioning programme, and to ensure financial security is in place". The requirement to prepare decommissioning programme is set out in section 105. The Secretary of State can require anyone who is or is proposing to construct, extend, operate or use an offshore renewable energy installation or a related electricity line to submit a

¹ Published by the Department for Business, Energy & Industrial Strategy March 2019

² Paragraph 3.1.2

decommissioning programme for the installation. That requirement is effected by notice served on the appropriate person or persons (and can be served on more than one person, for example both a windfarm operator and the OFTO for the export cables). The Secretary of State may also require specified consultations to be carried out before the decommissioning programme is submitted.

1.2.5. As set out in the Guidance at paragraph 1.2.4

"The decommissioning programme submitted must include:

- a) measures to be taken for decommissioning the installation or line;
- b) an estimate of the expenditure likely to be incurred in carrying out those measures;
- c) provision for determining the times at which, or the periods within which, those measures will have to be taken;
- d) provision about restoring the place to the condition that it was in prior to construction (where it is proposed that the installation or line will be wholly or partly removed from that place);
- e) provision about continuing monitoring and maintenance (where it is proposed that the installation or line will be left in position or will not be wholly removed)."
- 1.2.6. The Secretary of State may also require other information to be submitted with the decommissioning programme and will specify a deadline for submission of all the required information. The Secretary of State can approve, modify or reject a programme.
- 1.2.7. The Guidance provides that section 105 notices requiring submission of a decommissioning programme will be issued after the consents for the project are granted:
 - "5.3.2 While the Secretary of State may issue a section 105 notice under the Act when a consent has been applied for and is likely to be issued, in practice, it is unlikely that a notice requiring the developer/owner to submit a decommissioning programme will be issued until at least one of the relevant statutory consents has been granted".

and provides in 5.2.2 that:

"BEIS expects that final drafts of decommissioning programmes should be submitted for approval no later than 6 months in advance of the start of construction, and that first drafts should be submitted no later than 12 months in advance".

1.2.8. The Secretary of State may approve a decommissioning programme (section 106) or reject it (section 107). Failure to submit a programme within the deadline is

- dealt with under section 107. The Secretary of State must conduct reviews of an approved decommissioning programme under section 108 of the Act.
- 1.2.9. The person who submitted the decommissioning programme (or any replacement) must ensure that the programme is carried as approved (section 109). It is an offence under the Act for a person to take any decommissioning measures unless in they are in accordance with the approved programme or have been agreed by the Secretary of State. If the programme is not carried out as approved, the Secretary of State may secure remedial action and recover the costs of that from the person concerned under section 110. The Guidance notes:

"Where a developer/owner fails to submit a decommissioning programme within the required timescale or does not follow the approved financial security programme or fails to decommission, the Secretary of State has powers to take remedial action and (where relevant) recover any expenditure incurred (see Annex A). Ultimately, failure to follow the requirements of an approved decommissioning programme could lead to the incurring of a criminal offence."

- 1.2.10. Once decommissioning has been carried out, a post-decommissioning report must be submitted to the Secretary of State to evidence that the site and surrounding area has been cleared in line with the approved decommissioning programme. The Secretary of State will consult on the post-decommissioning report to determine whether that the decommissioning has been carried out in accordance with the approved decommissioning programme and that arrangements are in place for any post decommissioning monitoring.
- 1.2.11. The Applicant notes that it is the explicit position of Government in the Guidance that the Energy Act process should form a "one-stop shop" for decommissioning of offshore windfarms. This includes agreements with The Crown Estate as landowner to avoid duplicating decommissioning requirements imposed on developers/owners⁴. The decommissioning programme which will be required under that Act includes the timing of the decommissioning to be undertaken, securing a limit on the operational life of the windfarm from before construction. The Applicant accordingly maintains that the DCO does not need to duplicate this regime and should not seek to do given the clear position of Government that the Energy Act is the appropriate mechanism for securing and controlling decommissioning.

³ Guidance paragraph 5.10

⁴ Guidance paragraph 3.5.1

1.3. AGENDA ITEM 3.1: EFFECTS FOR TERRESTRIAL TRAFFIC AND TRANSPORTATION

- 1.3.1. The ExA asked the Applicant to provide a brief update on any progress made or discussions that have taken place on traffic and transportation matters since ISH3. The Applicant provided the following summary:
 - (a) The Applicant has undertaken further discussions with both National
 Highways and Essex County Council Highways since Issue Specific Hearing
 3, and has made progress of addressing issues that have been raised during
 the Examination.
 - (b) The Applicant also attended a meeting with Suffolk County Council Highways at the end of November to discuss issues raised during the Examination.

NATIONAL HIGHWAYS

- (c) The Applicant and National Highways have met a number of times to progress various elements, such as the traffic and transport assessment, Protective Provisions and Abnormal Indivisible Loads (AIL). This included the most recent meeting on the 7th January to discuss the remaining comments related to the traffic and transport assessment parameters.
- (d) Following the meeting and provision of some additional information and clarifications, the remaining issues are related to:
 - (i) The use of and achieving a 1.5 car occupancy rate the Applicant has updated the Outline Workforce Travel Plan [REP5-039] submitted at Deadline 5 to further address this and is happy to discuss this once National Highways has reviewed the proposals;
 - (ii) Further analysis of accident clusters the Applicant understands the North Falls team is providing the same requested analysis to National Highways and therefore does not plan to duplicate this. Based on the analysis the Applicant has undertaken to-date, it is concluded that the increase in traffic associated with the Project would not exacerbate accidents at these locations; and
 - (iii) Background traffic growth the Applicant is reviewing the use of the growth factors provided by National Highways for the A120 junction capacity assessments, which will be provided to National Highways in the next couple of weeks.
- (e) The Road Safety Audit for the A120 / Bentley Road junction improvement has been undertaken and accepted by National Highways, which identified two minor points to address. A Designers Response has been prepared by Mott Macdonald on behalf of the Applicant addressing these points, and this is to be submitted to National Highways shorty for final sign off.

- (f) In terms of the comments raised by National Highways in relation to the Wix Bypass and delivery of AILs, the Applicant and National Highways are engaged in a joint work stream to agree the potential impact to the Bypass and whether any additional measures would be required.
- (g) Following a meeting on 20th January, a further joint discussion is proposed on the risk, likely impacts and controls measures. The Applicant understands that National Highways is content with the way in which the matter is being addressed and both parties are actively working together to find a satisfactory solution
- (h) The progress and current status of these discussions is set out in the Statement of Common Ground with National Highways (Revision A) [REP5-063] submitted into the Examination at Deadline 5.

ESSEX COUNTY COUNCIL

- (i) The Applicant met with Essex County Council on:
 - (i) 9th December 2024 with the Public Rights of Way team to discuss updates to the Public Access Management Plan [REP5-037];
 - (ii) 10th and 17th December 2024 to discuss the Applicant's updates to the Outline Construction Traffic Management Plan [REP5-035] and Outline Workforce Travel Plan [REP5-039]; and
 - (iii) 18th December 2024 to discuss comments by the local highway authority related to the proposed temporary speed limit reductions at two construction accesses and a haul road crossing.
- (j) As a result of these meetings, the Applicant has updated the draft DCO [REP5-008], the Outline Public Access Management Plan [REP5-037], the Outline Construction Traffic Management Plan [REP5-035] and the Outline Workforce Travel Plan [REP5-039], which were submitted into the Examination at Deadline 5.
- (k) The draft DCO [REP5-008] was amended to align with the temporary speed limits being sought by Essex County Council.
- (I) The Outline Public Access Management Plan [REP5-037] has been updated with additional text related to public liaison, safety for users and update to the naming of the public rights of way to include Parish names.
- (m) The Outline Construction Traffic Management Plan [REP5-035], has been updated with additional detail related to roles and responsibilities, HGV numbers and timings, coordination with North Falls, Abnormal Indivisible Loads and notifications, control measures, monitoring and enforcement and some changes to temporary speed limits.

- (n) The Outline Workforce Travel Plan [REP5-039], has been updated with additional detail related to workforce vehicle numbers and timings, coordination with North Falls, control measures, monitoring and enforcement.
- (o) A Statement of Common Ground with Essex County Council (Revision A) [REP5-054] was submitted into the Examination at Deadline 5, which includes the traffic and transport assessment, Outline Management Plans, the delivery of Abnormal Indivisible Loads and Ports.

SUFFOLK COUNTY COUNCIL

- (p) The Applicant met with Suffolk County Council on 25th November 2024 to discuss the comments it has raised during the Examination, related to the traffic and transport study area, the potential for use of Ports and roads within Suffolk, cumulative impacts, the delivery of Abnormal Indivisible Loads and the works at Orford Ness.
- (q) Following the meeting, the Applicant updated the Outline Construction Traffic Management Plan [REP5-035], with an additional reference stating the Applicant will undertake early engagement with the relevant highway authorities on the timescales and potential routeing for the planned AIL movements to minimise disruption. The Applicant has also prepared a Technical Note Use of Ports for Construction [REP5-072] to provide further information and justification for not preparing a Port Traffic Management Plan, which was submitted into the Examination at Deadline 5.
- (r) A Statement of Common Ground (SoCG) with Suffolk County Council (Revision A) [REP5-052] was submitted into the Examination at Deadline 5, which includes the delivery of Abnormal Indivisible Loads, Port Traffic Management Plan and the works at Orford Ness.

AGENDA 3.1(A): ROUTEING OF ABNORMAL INDIVISIBLE LOADS (AILS)

- 1.3.2. In relation to the available options for using AILs on A120, the Applicant confirmed that discussions are progressing with the relevant consultant and engagement is continuing with National Highways. The purpose of these discussions is not to have a final solution by the end of Examination but to provide a range of options (together with mitigation) so that there is confidence that a solution which is acceptable to National Highways is available. **Action point: the Applicant to provide an update on the impact of AILs on the Wix bypass at Deadline 6.**
- 1.3.3. The Applicant also noted that it is not at the stage of finalising the details in relation to the AILs, as the Applicant does not have the necessary information such as location of where the AILs will originate, size of loads, axle loading weights, and proposes, if there would be impact to the Suffolk road network to start discussions with Suffolk County Council at the appropriate time.. Additional

- drafting has been added to the outline Construction Traffic Management Plan [REP5-035] to provide greater clarity on this.
- 1.3.4. In relation to the points made by Essex County Council in their Deadline 5 submission [REP5-092] regarding limiting AIL movements to off-peak and night movements, the Applicant confirmed that they have updated the outline Construction Traffic Management Plan [REP5-035] with information on the routes and timings.
- 1.3.5. Following a request for an additional swept path analysis for the cable drum delivery vehicle in relation to a new road at Centurion Park on the B1033 south of the A120, the Applicant confirmed that it can provide this at Deadline 6. **Action point: the Applicant to provide a swept path analysis at Deadline 6.**

AGENDA ITEM 3.1(B): ROAD TRAFFIC SURVEYS AND PREDICTED TRAFFIC GENERATION DURING CONSTRUCTION, INCLUDING CUMULATIVE IMPACTS WITH OTHER PROPOSED DEVELOPMENTS

- 1.3.6. On the topic of junction capacity assessments, and specifically the evidence required to explain why a workforce occupancy rate of 1.5 people per car is a realistic assumption, the Applicant noted that the Applicant has been liaising with National Highways and their consultants on the assessment parameters.
- 1.3.7. In addition, the Applicant confirmed that further assessments will be undertaken for the three junctions on the A120 that are experiencing over 30 additional vehicle movements during the peak hour. The assessments will be carried out ahead of Deadline 6 and the Applicant will continue liaising with National Highways once the assessments are completed.

AGENDA ITEM 3.1(C): IMPACTS ON THE STRATEGIC AND LOCAL ROAD NETWORKS

1.3.8. The road safety audit for the A120 Bentley Road junction improvements has been carried out. The Applicant confirmed that this had been issued in draft to National Highways, who attended the audit in an observer capacity, and would be finalised imminently.

AGENDA ITEM 3.1(D)): A120/BENTLEY ROAD JUNCTION IMPROVEMENTS

- 1.3.9. In relation to providing an update on the road safety audit, the Applicant confirmed that the intention is to submit the joint position with National Highways and the outcome of the RSA. This was signed by National Highways on 29th January 2025 and provided as final. A copy was issued to Essex Highways on the same date.
- 1.3.10. The ExA asked the Applicant to explain the issues that were identified in the road safety audit that led to the designers' response. The Applicant explained that the first issue related to the AlLs transformer and the potential of oversail (which

means that a non-motorised user route would need to be temporarily closed / safety controls put in place while the movement took place). The second issue was a request for tactile paving for the non-motorised users crossing which is a point for detailed design.

AGENDA ITEM 3.1 (E): CONTROL AND MITIGATION MEASURES DURING CONSTRUCTION

1.3.11. In relation to providing an update on the discussions around the port traffic management plan with Suffolk County Council, the Applicant noted that, in addition to its response in [REP5-072], it requested that the ExA ask the ports to provide their views given that the ports will have their own considerations. In addition, in response to Suffolk County Council using East Anglia ONE and East Anglia TWO Offshore Windfarms as precedents for port management plans, the Applicant noted that these schemes are not fair comparisons as they are yet to be constructed and therefore the relevant issues have not yet arisen.

1.4. AGENDA ITEM 3.2: EFFECTS FOR NAVIGATION, SHIPPING AND THE FISHING INDUSTRY

- 1.4.1. The ExA asked the Applicant to provide a brief update on any progress made or discussions that have taken place on navigation and shipping matters since ISH3. The Applicant provided the following summary:
 - (a) Since the last set of hearings the Applicant has continued to engage with the relevant shipping stakeholders including MCA, Trinity House, PLA, Harwich Harbour Authority and London Gateway Port, making good progress in agreeing the content of the Navigation and Installation Plan [REP5-032] (NIP) and the outline Cable Specification and Installation Plan (CSIP) [REP4-019]. As confirmed through the various SoCGs the conclusions of the NRA are agreed and it is concluded that there would not be an unacceptable risk to the safety of navigation from Five Estuaries, following implementation of mitigation measures including the NIP and CSIP.
 - (b) A significant update to the CSIP was submitted at Deadline 4, setting out the commitments around the Deep Water Routes including cable installation, boulder and archaeology relocation, sediment disposal and cable crossings. A further update to the CSIP will be made at Deadline 6 reflecting comments received from interested parties, however the Applicant considers that the substantive commitments that protect the future operation of the Deep Water Routes ("DWR") and the Port of London are now secured.
 - (c) The Navigation and Installation Plan was updated at Deadline 5, addressing comments received from the PLA. It is understood that the only outstanding comment on the NIP (leaving aside questions of approval) relates to the control of the pre-construction surveys. The Applicant's position is that these surveys routinely happen through appropriate engagement and notices to

mariners and that requiring them to be controlled by the NIP is unnecessarily restrictive. It is proposed that suitable notification and consultation with the PLA for pre-construction surveys could be secured via protective provisions. On approval of the NIP, the Applicant has committed to consult and seek agreement with interested parties but ultimately the regulator is the MMO and the plan will therefore be submitted to them for approval.

- (d) Regarding PPs, the Applicant responded to the PLA with a revised version in early January, and is in the process of setting up a meeting with clients and lawyers to seek to progress the PPs as far as possible.
- (e) The Applicant has met with Harwich Haven Authority to discuss the SoCG and their response to the Rule 17 request. The request for protective provisions from HHA was reflected in the SoCG as being related to their statutory powers and functions where the ECC overlaps with their harbour limits. The Applicant's position is that any works within harbour limits would require a works licence to be issued by HHA and therefore the interests of the harbour are already suitable protected.
- (f) In summary, the Applicant has made significant commitments to ensure both the safety of navigation and the future commercial operation of the ports such that the examining authority can be satisfied that the project meets the relevant tests of NPS EN-3.

ITEM 3.2(1)(A): CABLE BURIAL, IN PARTICULAR WHERE THE EXPORT CABLE CORRIDOR (ECC) CROSSES THE SUNK AND THE TRINITY DEEP WATER ROUTES AND WITHIN THE MARGATE AND LONG SANDS SPECIAL AREA OF CONSERVATION

- 1.4.2. In relation to the commitment over burial depth raised in the Port of London Authority's ("PLA") Deadline 5 response [REP5-107], the Applicant confirmed that the Outline CSIP will be updated to ensure that the cables are installed at a level that does not impede the dredging of the DWRs to 22m below chart datum. The Applicant has been in discussion with the PLA about including some information on the profile of the slope between 22 and 19m. Action Point: the Applicant to provide an updated CSIP (covering the point in relation to the dredging depth of 22 metres chart datum) at Deadline 6.
- 1.4.3. In relation to pre-construction activities, the Applicant confirmed that the NIP is not intended to cover pre-construction surveys.
- 1.4.4. In response to the ExA's question in relation to the SoCG between the Applicant and London Gateway Port Limited [REP5-059], specifically whether the references in the CSIP to the 5% reduction in navigable depth would not apply to the DWR, the Applicant confirmed that this is correct and the Applicant is intending to address that in a further revision of the CSIP.

ITEM 3.2(1)(B): CONTROL AND MITIGATION MEASURES DURING CONSTRUCTION

- 1.4.5. In relation to the submissions made in the PLA's Deadline 5 response [REP5-107], the Applicant will come back in writing at Deadline 6. Action Point: the Applicant to provide comments to PLA's Deadline 5 response [REP5-107] at Deadline 6.
- 1.4.6. Responding to the request for the Applicant to commit to restrictions in the Outline Sediment Disposal Management Plan [REP4- 041] during the maintenance period (as well as construction) in the PLA's Deadline 5 response [REP5-107], the Applicant confirmed that the same commitments will be in place for the DWRs during the maintenance period as well.
- 1.4.7. However, upon reflection and review of the dML the Applicant's position is that the dML does not allow for disposal other than for construction, and therefore no update is required to the Sediment Disposal Management plan. Additional disposal during operation would be subject to a further marine licence.
- 1.4.8. Action Point: the Applicant to update the CSIP to commit to the disposal of sediment during maintenance operations (as well as construction) at Deadline 6.

ITEM 3.2(2): EFFECTS FOR THE FISHING INDUSTRY (WHICH WILL BE ADDRESSED UNDER AGENDA ITEM 3.6 IF REPRESENTATIVES OF THE FISHING INDUSTRY ARE NOT IN ATTENDANCE FOR ITEM 3.2)

- 1.4.9. The ExA asked the Applicant to provide a brief update on any progress made or discussions that have taken place on the topic of effects for the fishing industry since ISH3. The Applicant provided the following summary:
 - (a) In summary, since the ISH3, the Applicant has held two meetings with the Commercial Fisheries Working Group ("CFWG") and responded to some their concerns via update to the Outline Fisheries Liaison and Co-existence Plan ("OFLCP") [REP5-029].
 - (b) The first meeting with CFWG was on 11th December 2024 to discuss draft SoCG and OFLCP. The CFWG communicated in that meeting that they were not in a position to progress the SoCG and felt that previously raised concerns had not been sufficiently addressed by the Applicant.
 - (c) Following the meeting and in response to these concerns, the Applicant has made updates to the OFLCP [REP5-029]. The updates are shown in the latest version of the Outline FLCP, which was submitted to the Planning Inspectorate at Deadline 5 to address the concerns of the Harwich Harbour Fisherman's Association and CFWG.
 - (d) The key update was made in Section 4.3 under 'Cooperation Agreements' where it was clarified that any affected fishing fleet subject to residual

- significant impacts during the construction phase may seek to engage with the Applicant to enter an evidence-based cooperation agreement. The update was made to acknowledge CFWG concerns that assumptions in the ES around temporary lack of access to fishing grounds may alter based on their experience of other OWF projects.
- (e) The same updated document was shared with the CFWG on 13th January. Feedback from the CFWG was received on 15th January via emails. The feedback was broadly positive.
- (f) Following this, a second meeting was held with Harwich Harbour Fisheries Association on 17th January 2025 to discuss the CFWG feedback on the Outline FLCP updates.
- (g) It is noted that some member of the CFWF were not available to attend on that date but they had provided their comments by email.
- (h) Following this meeting, the Applicant agreed to further update the Outline FLCP as follows:
 - (i) Clarify that no fishing methods are excluded from being eligible to apply for disruption payments where significant effects occur. Harwich Harbour Fisheries Association confirmed this update was helpful and confirmed alignment with the evidence required to support application for disruption payments.
 - (ii) Describe the Project commitment to cable post-installation bathymetric surveys and sharing of survey findings with the CFWG / affected fishers via a CFWG meeting.
- (i) An update to the outline FLCP to include these clarifications will be submitted at Deadline 6 and it is expected that this will be the final update during the Examination, noting that this is an outline plan that will be developed further with the CFWG during the pre-construction period.
- (j) Finally, on the SoCG with the CFWG, a template for that document has been developed but the document has not been progressed. The Applicant remains happy to progress the SoCG for Deadline 6 but this will require input from the CFWG.
- 1.4.10. In relation to the challenges around getting the SoCG signed with six signatories made up of the CFWG and Harwich Harbour Fishermens' Association, the Applicant confirmed that providing a signed SoCG by the end of the examination should be manageable (for example if the execution process is done using counterparts). Following questions from the ExA on the format of the SoCG, the Applicant noted that the Applicant is happy to simplify the format provided that the relevant counterparty is happy for us to do this and will discuss it with them.

- 1.4.11. In response to the concerns raised by Harwich Harbour Fishermens' Association, the Applicant noted that the Applicant is not closing the array area to fishing and the assessment concludes there are no significant impacts to fishing. In addition, the Applicant does not understand drift netting to be currently taking place in the array area so referring to this as not being able to be carried out in an array is not relevant in this case. On the suggested impact on long-line fishing raised by the IP, the Applicant's data shows only 2 or 3 such operators within the array area. The Applicant is happy to have discussions with the Harwich Harbour Fishermens' Association on the points raised.
- 1.4.12. The Applicant confirmed that the offshore fisheries liaison officer is a separate role from the fisheries liaison officer which would be onshore. Offshore fisheries liaison officers would typically be on board of a vessel and operating offshore and are responsible for monitoring any fishing vessels in the area to alert them of the project related vessels and operations that are currently ongoing at that time. Offshore fisheries liaison officers could be retired fishermen. They would know the local area and be aware of how fishermen conduct their operations.
- 1.4.13. Following the ExA's question in relation to how the Applicant will remediate cable exposure, the Applicant explained that the approach will depend on the site location and the type of cable involved. For example, where an inter-array cable became exposed in an area of mobile seabed, then a "watch and see" approach may be appropriate. Alternatively, the cables may be reburied using a jetting tool. In an area of a hard seabed, it is very unlikely that the cable would become exposed because the seabed is not moving. Where the cable does become exposed, appropriate mitigation may require external protection. The process of remediation where there is cable exposure will be controlled via the marine licence.
- 1.4.14. The Applicant has already explained the reasons for the number of crossings in the Technical note Methodology for Determining MDS (Offshore) [REP2-027]. There are three existing assets that the Applicant understands will be in place in the arrays and, as a result, crossings will need to be installed. In terms of how installation works, the Applicant will firstly install a separation layer on top of the existing asset. Following this, the cable will be placed over the top perpendicular to the asset and concrete mattresses will be placed on top. The concrete mattresses protect the cable, which would be on top of the third party asset.
- 1.5. AGENDA ITEM 3.3: EFFECTS FOR LANDSCAPE, VISUAL AND SEASCAPE ITEM 3.3(A): DISCHARGING THE DUTY UNDER SECTION 245(6) OF THE LEVELLING UP AND REGENERATION ACT 2023, IE "...TO FURTHER THE PURPOSE OF CONSERVING AND ENHANCING THE NATURAL BEAUTY OF THE AREA OF

OUTSTANDING NATURAL 4 BEAUTY ..." FOLLOWING THE PUBLICATION OF THE DEFRA GUIDANCE (16 DECEMBER 2024)

1.5.1. The Applicant noted that it suggests producing a document which consolidates each parties' position on this topic would be beneficial. The Applicant fundamentally disagrees that the Applicant has misunderstood the relevant duty as has been submitted by SCC and confirmed that the Applicant's position will not change materially from what the Applicant has already submitted to the ExA at various deadlines. Action Point: the Applicant and SCC each to submit a legal submission consolidating previous submissions and setting out their position on this point at Deadline 6.

ITEM 3.3(B): DESIGN FOR SUBSTATION, VISUAL MITIGATION AND DESIGN GUIDE

- 1.5.2. In response to the ExA's question relating to the North Fall's Design Guide, the Applicant confirmed that there is no intention to submit a design guide during the examination, the Applicant will update the Onshore Substation Design Principles Document [APP-234], which will include further details about the approach to developing a design guide. Action Point: the Applicant to provide an updated Onshore Substation Design Principles Document [APP-234] at Deadline 6.
- 1.5.3. In response to the question by the ExA on the effectiveness of the orchard planting combined with hedgerows as a visibility screen to the substation, the Applicant noted that the nature of visibility on the northern side is contained and the receptors would be in close proximity. The main receptor is Grange Road where road users would see the northern elevation from the existing tree planting along the road, and which contains the view looking south towards the substation. In terms of the planting, the trees would grow to about 4m or 5m. This height would be sufficient because road users are close to the planting, and often in cars, so they will be positioned lower. Given that planting comes up to the road edge, once the trees are established and reached the required level of maturity, a 4m or 5m screen within close proximity to the road users will constitute an effective screen.
- 1.5.4. The Applicant further noted that the Applicant is preparing three cross-sections to show the relationship between visual receptors and how the mitigation planting would grow sufficiently to screen the onshore substation at years 5, 10 and 15.

 Action point: the Applicant to provide three cross-sections to show visual receptors on road users and how planting will be used around the substation at year 5,10 and 15 at Deadline 6. The Applicant to send the cross-sections to Essex County Council prior to the submission at Deadline 6.
- 1.5.5. With regard to the planting layout at Norman's Farm as shown on the plan on page 15 of OLEMP [REP2-022], specifically on the issue of access, the Applicant noted that discussions have continued with the relevant landowners and the

- Applicant has been working on various layouts that show how the Applicant could provide access. At the same time as providing access, the Applicant needs to ensure that that the screening function of the planting is not undermined.
- 1.5.6. The Applicant is not in a position to confirm what the final solution will be or show the location of the access point on the land plans until the detailed design stage. The Applicant has provided the plans to landowners for consultation. The Applicant is very happy and will continue to work with the landowners on this issue and securing various commitments in the OLEMP [REP2-022].
- 1.5.7. On providing access to allow the landowners to maintain buildings at Norman's Farm, without getting into detailed design, the Applicant noted that a gap could be left between the planting and the buildings to allow maintenance access so that the Applicant can maintain the planting and the landowner can maintain their buildings. (i.e. that the maintenance access area runs between the planting and building so that the separation allows for access to the 'back' of the buildings.
- 1.5.8. Action point: the Applicant to submit an updated OLEMP [REP2-022] and design commitments around the planting at Norman's Farm including access and share draft with T. Fairley & Sons Limited prior to submission at Deadline 6.

ITEM 3.3(C): CONSIDERATION OF THE DESIGN FOR THE PROPOSED ONSHORE SUBSTATION ZONE UNDER A SCENARIO FOR WHICH THE NORTH FALLS PROJECT DID NOT PROCEED

- 1.5.9. Responding to the ExA query on what the landscape and visual effect on the onshore substation would be for a standalone Five Estuaries Offshore Wind Farm, the Applicant noted that the critical part of mitigation planting is the outer perimeter which creates an effective screen as shown on the plan on page 15 of the OLEMP [REP2-022]. Whilst the mitigation planting serves both the Five Estuaries' and the North Falls' substations, if the North Falls substation was not included, the Applicant would still need to maintain that outer perimeter because it forms that effective screen for the Five Estuaries substation. The Applicant may be able to realign the internal planting to follow the existing field boundaries more closely, therefore, there would be some scope for change from the indicative OLEMP plans within that outer perimeter.
- 1.5.10. In relation to the Dedham Vale AoNB, the Applicant has submitted additional visualisations from agreed viewpoints at Deadline 5 which support the conclusion that there will be no cumulative effect in relation to Five Estuaries Offshore Wind Farm with the National Grid pylons because there is no visibility of the onshore substation from the viewpoints. The Applicant cannot cover every specific viewpoint across the whole area, but four viewpoints were selected from the relevant area which is already showing limited visibility as areas with less existing cover.

1.5.11. The Applicant confirmed that the visualisations that the Applicant has prepared show both the North Falls substation and the Five Estuaries substation, along with the National Grid proposals. There is some very limited visibility of the North Falls substation. The Five Estuaries substation is screened by landform which means that there is no visibility, even in winter. Whilst other developments may be seen, there will therefore be no effect associated with Five Estuaries. In addition, within the visualisations the maximum design scenario has been used and actual visibility might be less.

1.6. AGENDA ITEM 3.4: OFFSHORE ARCHAEOLOGY

- 1.6.1. The ExA asked the Applicant to provide a brief update on any progress made or discussions that have taken place relating to offshore archaeology to date and the Applicant provided the following summary:
 - (a) The assessment of impacts on offshore archaeology and cultural heritage are as submitted in the ES at Application, which concludes the significance of effects as minor to negligible and therefore not significant in EIA terms.
 - (b) Minor updates have been made to the Outline Marine Written Scheme of Investigation ("WSI") to address comments received from Historic England in their written representation and to ensure finds would not be relocated within the DWRs. The latest version was submitted as Revision C at Deadline 4 [REP4-025].
 - (c) Marine archaeological analysis and reporting of pre-construction surveys are secured as standard practice in the deemed marine licences, as is compliance with the WSI and established reporting protocols.
 - (d) Project meetings were held with Historic England on 9th September 2024 and 13th December 2024 although the coastal and maritime team did not attend.

ITEM 3.4(A): EFFECTS ON ARCHAEOLOGY WITHIN THE PROPOSED OFFSHORE CABLE CORRIDOR FROM THE PROPOSED DEVELOPMENT ALONE AND CUMULATIVELY WITH THE PROPOSED NORTH FALLS OFFSHORE WIND FARM

1.6.2. Responding to the ExA's concerns over the width of some sections of the offshore cable corridor (which would be potentially constrained by the archaeological exclusion zones), the Applicant explained that this issue was considered by the Applicant during the evaluation and consideration of a combined cable corridor with North Falls. The engineering exercises confirmed that there is a low risk of archaeology becoming a constraint to routing. The engineering exercise considered avoidance as the first form of mitigation which was applied in defining the route set out in the Application. Where avoidance is not possible then the Applicant will use micro siting within the corridor, and where necessary, other forms of mitigation. Such forms of mitigation include further investigation and

- relocation of finds where the receptor cannot be avoided. Depending on the type of the find, the find (if it is of interest) may be re-located to where there is no impact. These measures are secured via WSI.
- 1.6.3. The Applicant provided some clarification to the ExA that a commitment to has been made not to relocate find inside the Deep Water Routes. Outside of the DWRs, there would be no restriction from a shipping perspective. If something arose in DWR, the find would be relocated as close as reasonably possible to the original location, outside of the DWR.

ITEM 3.4(B): THE LEVEL OF IMPACT ON SEDIMENTS AND GEOARCHAEOLOGICAL POTENTIAL

1.6.4. Responding to Historic England's concern included in their Written Representations [REP2-053] that there has been insufficient evaluation in relation to the potential significant impacts on preserved paleochannels and deposits with high geoarchaeological potential undertaken to date, the Applicant noted that Historic England are referring to engineering investigations that were undertaken this summer and the Applicant implemented archaeological measures in carrying those out as a matter of good practice. These were not archaeological surveys and the Applicant considers that Historic England may have misunderstood the purpose and scope of these of these surveys. The surveys undertaken were not the pre-construction surveys which will provide the further detail sought. The pre-construction surveys would be done, most likely, at all turbine locations and other locations along the export cable corridor as secured through the DML and the WSI.

ITEM 3.4 (C): THE LEVEL OF INVESTIGATION IN RELATION TO GEOARCHAEOLOGICAL CORES

1.6.5. Responding to Historic England's concern included in their Written Representations [REP2-053] that nine geoarchaeological cores are insufficient in relation to the size and complexity of the project, the Applicant noted that Historic England have misunderstood the purpose of the surveys carried out in the summer. These engineering surveys were undertaken to inform the design process. The Applicant noted that discussions are ongoing with Historic England.

1.7. AGENDA ITEM 3.5: EFFECTS FOR FARMING

ITEM 3.5 (A): SUB-SURFACE INFRASTRUCTURE IMPACTS ON AGRICULTURAL ACTIVITY AND ITEM 3.5 (B): DRAINAGE

1.7.1. Responding to the ExA's question on the impact of the restrictive covenant in Schedule 7 of the dDCO [REP5-077] on routine agricultural operations, the Applicant confirmed that the restrictive covenant requires a written consent for any activity that will require penetration to depths below the surface greater than 0.6m. The purpose of the restriction is not to unduly restrict farming operations but to

protect the cable and prevent works that may cause damage to the cable, and harm to anyone excavating. The Applicant is not able to specify the exact depth of the cable in every location at this stage as the Applicant needs the flexibility to deal with ground conditions and constraints found on site.

- 1.7.2. Regarding the impact of the restrictive covenant on the landowners' ability to maintain and replace field drainage, the Applicant appreciates that drainage will need to be installed and maintained over time. The majority of the drainage systems will be located above the cables (given the depths that they are currently installed at) but this will depend on a case by case basis. The Applicant has provided indicative depths for the cables (the 0.9m depth of cover is the distance of the warning tape and 1.2m is provided as an indicative distance to the top of the cable ducting). The Applicant reinforced the need for flexibility as the Applicant cannot specify the depths given that drainage systems vary.
- 1.7.3. The Applicant further noted that the restrictive covenant of the type sought by the Applicant is standard protection for buried electrical cables and other buried infrastructure including pipelines and gas lines. Notifying any undertaker before undertaking works near their apparatus is standard practice, the undertaker is committing to the same in the Protective Provisions for other undertakers.
- 1.7.4. The Applicant noted that the voluntary agreements are the appropriate mechanism to capture the details of the processes for consent. Voluntary agreements can be bespoke and individually negotiated to capture specific concerns. They can also be updated to reflect changing circumstances given the time the obligation would be in place for whereas detailed wording imposed through compulsory acquisition cannot and is likely to become out of date and restrictive. A process drafted 40 years ago is unlikely to include email addresses for example.
- 1.7.5. In addition, the Applicant added that the Applicant is willing to include wording such as "consent not being unreasonably withheld or delayed" but does not consider it appropriate to add detailed wording on the process, please see the response included in the summary of ISH7 (section 3.3 of this document) as to why the Applicant considers that this is unnecessary. The Applicant notes that the Health and Safety Executive Guidance on excavating near underground services⁵ provides in paragraph 24:

"24 Anyone planning or undertaking work that may disturb underground services must contact the owners/operators of those services for information about the location and status of the services. Those owners and operators should in turn provide any relevant information about the location of services in the work area. Service owners and operators should be prepared to help locate and identify the

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⁵ Avoiding danger from underground services HSG47, Third edition, available at https://www.hse.gov.uk/pubns/priced/hsg47.pdf

- services (for example, by sending a representative to the site). Long-term plans or formal arrangements for co-operation may be needed with other utilities, local authorities and contractors who carry out road and footway excavation."
- 1.7.6. The guidance is clear that a person carrying out works "Wherever possible, you must consult owners/operators" before starting any emergency work and that "Plans alone are not sufficient to identify and locate services before starting work." The Applicant is therefore not seeking an unduly onerous restriction but the drafting reflects not only well-precedent covenant wording but also the requirements of safe working as set out by HSE which always require contact with assets owners before working in the vicinity of buried assets.
- 1.7.7. In response to the questions raised on the cable burial depth noted in James Fairley & Sons Response to ExQ2 [REP4-076], the Applicant explained that the 0.9 depth of cover is the distance of the warning tape and 1.2m is provided as an indicative distance to the top of the cable ducting. The Applicant will endeavour to reach a depth of burial of 1.2m, although in certain ground conditions, for example where there is a presence of very large rocks, this may not be practicable. The Applicant needs the flexibility to deal with a range of possible situations across the cable route. The Applicant notes that the HSE Guidance also states that "Most underground cables are laid in trenches between 450 mm and 1 m deep"8; the Applicant's depths are in alignment with depths HSE considers normal practice.
- 1.7.8. Following the ExA's question on mineral profiles that the Applicant will likely encounter on the cable route, the Applicant noted that the Applicant has carried out Minerals Resource Assessment [APP-235] on mineral profiles and there are no likely formations that would prevent the Applicant from installing the cables. However, the Applicant needs flexibility to deal with a range of situations (i.e. rock formations at surface or a large boulder) which would not be shown on geological formation mapping.
- 1.7.9. Action Point: the Applicant to provide a technical note to explain the cable burial approach and how the Applicant proposes to deal with removable objects and the 1.2 m general principle (subject to exceptions) at Deadline 6.

ITEM 3.5 (C): HAUL ROADS BETWEEN BENTLEY ROAD AND SITE FOR THE PROPOSED ONSHORE SUBSTATION, INCLUDING THE "ADDITIONAL LOOP" SOUTH OF ARDLEIGH ROAD

1.7.10. The ExA queried what supporting evidence in the form of survey data, including species identification, has been obtained to confirm G3A Lowland Meadow at the south of Ardleigh Road (obstacle OOX-31). Full details, including species lists, are

⁶ Paragraph 28

⁷ Paragraph 39

⁸ Paragraph 137

contained within the Habitat Survey Report] that was included as a technical appendix. There are also photographs of the area within the report. The Applicant noted that the walkover UK habitat classification assessment survey was undertaken in the relevant area including a condition assessment survey. The assessment was carried out during optimal time of the year so the Applicant was able to capture all of the species that would have been present. The Applicant is therefore confident that the classification is correct.

ITEM 3.5 (D): HEDGEROWS, INCLUDING PROPOSALS FOR HEDGEROW REINSTATEMENT

- 1.7.11. The ExA queried whether the information provided in the Onshore Biodiversity Net Gain Indicative Design Stage Report [APP-149] on hedgerow removal and reinstatement correlates directly with the hedgerows listed in schedule 12 of the draft DCO. The Applicate advised that the schedule in the draft DCO lists all of the hedgerows that are located along the entire width of the cable corridor. Therefore, the schedule includes more hedgerow than will actually be affected because it is not yet known precisely where in the corridor width any works to the hedgerow would be located. That detail will be informed by, amongst other things, preconstruction surveys of the hedgerows. The schedule does not specify the exact impact on any of the individual hedgerows it simply details the legal power to effect works on that hedgerow once the precise location is known (in other words, it is not dealing with the impact on that individual hedgerow which will be less than the whole width). Controls to minimise impacts to hedgerows are set out in the OLEMP.
- 1.7.12. The ExA queried how restoration of the substation site to agriculture following decommissioning would be achieved the Applicant noted it does not consider that it has committed to such restoration, rather that it is an option if possible at the time and having regard to the legislative requirements then in place. Action Point: the Applicant to revert to the ExA in writing on the commitments made in the OLEMP and how land would be returned to agriculture at Deadline 6. The Applicant has included the response below.
- 1.7.13. The Applicant notes there is an inconsistency between the wording in the OLEMP and the wider commitments in the project documents on decommissioning and will update the OLEMP at Deadline 6.
- 1.7.14. Following a question on the soil management plan, the Applicant confirmed that there will be a final soil management plan which will be separate to the Code of Construction Practice [REP5-033] but which is in accordance with the principles set out in the Code of Construction Practice.
- 1.7.15. On the issues raised in relation to the impacts of AILs on haul roads and soil structure and compaction, the Applicant noted that the haul road technical note has already been submitted which addresses this [REP4-036].

1.8. AGENDA ITEM 3.6: EFFECTS FOR SOCIO ECONOMIC AND RESIDENTIAL LIVING CONDITIONS

ITEM 3.6 (1): WAKE LOSS AND THE DEADLINE 4 SUBMISSIONS MADE BY EAST ANGLIA TWO LIMITED

- 1.8.1. The Applicant considers that the new Secretary of State should re-consider the interpretation of EN-3 paragraph regarding 'other offshore infrastructure' which was adopted by the previous Secretary of State in the Awel y Mor decision (of 20 September 2023) and to revert to the interpretation which was understood by the offshore wind industry prior to that time. The same language has been in place since the 2011 version of EN-3. The Applicant requests that the ExA supports this and recommends the Secretary of State fundamentally reviews the interpretation of EN-3 on this matter and follows the previous understanding i.e. that impacts on existing offshore wind farm projects are <u>outside</u> the ambit of those paragraphs.
- 1.8.2. The Applicant briefly highlights below why this is the correct interpretation.
- 1.8.3. Section 8 of EN-3 is entitled 'Offshore wind'. There are various paragraphs in the remainder of section 8 which address 'other offshore infrastructure and activities' (emphasis added). The nature of such infrastructure and activities is explained in paragraph 2.8.44, which states:
 - There may be constraints imposed on the siting or design of offshore wind farms because of the presence of other offshore infrastructure, such as oil and gas, Carbon Capture, Usage and Storage (CCUS), co-location of electrolysers for hydrogen production, marine aggregate dredging, telecommunications, or activities such as aviation and recreation.
- 1.8.4. The Applicant submits that the only fair and objective reading of this paragraph (which frames all the subsequent relevant paragraphs) is that existing offshore wind farm projects were <u>not</u> regarded as 'other offshore infrastructure'. That is why the word 'other' is used in the sub-heading. That is why offshore wind farms are not included in the list of examples and how it had been interpreted from 2011 onwards (under both sets of NPSs).
- 1.8.5. The remaining paragraphs in section 8 dealing with 'other offshore infrastructure are entirely consistent with this reading. The Applicant submits that the meaning of these paragraphs was and is clear and excludes other offshore wind farms.
- 1.8.6. In addition to the points just made, the Applicant would particularly highlight the paragraphs quoted and commented on below:
 - 2.8.203 Such engagement [referenced in immediately prior paragraphs] should be taken to ensure that solutions are sought that allow offshore wind farms and other uses of the sea to co-exist successfully.

This paragraph 2.8.203 makes no sense if 'other uses of the sea' includes other offshore wind farms. It is clear that this was not intended. If offshore wind farms were intended to be included this paragraph (and the entire section) would have to have been framed differently.

- 2.8.342 Where a proposed offshore wind farm potentially affects other offshore infrastructure or activity, a pragmatic approach should be employed by the Secretary of State.
- 2.8.343 Much of this infrastructure is important to other offshore industries as is its contribution to the UK economy.

These two paragraphs are intended to be read together. The reference to 'other offshore industries' makes it plain that these paragraphs cannot refer to other offshore wind farms.

- 1.8.7. The Applicant could submit a commentary on every relevant paragraph, but this should be sufficient.
 - -The Applicant submits that it is not reasonable for a widely accepted interpretation of a long standing policy wording, which reflects its plain meaning, should be radically re-interpreted by the previous Secretary of State in the way which took place in the Awel y Mor decision. The 2024 NPSs were consulted on twice (in 2021 and 2023) with the same language as the 2011 NPS, before being designated. There was substantial engagement by offshore wind developers and other stakeholders in these consultations. The second consultation process on the new NPSs closed on 23 June 2023 and the Awel y Mor decision was issued on 20 September 2023, with an outcome regarding wake loss which was not expected. Given that relevant wording regarding 'offshore infrastructure' stayed the same as the 2011 wording (in all relevant respects) and there was no suggestion in the consultation process that a different interpretation would be applied by the Secretary of State in decision making, it was reasonable to for offshore wind developers to assume the long-standing interpretation would continue to apply
- 1.8.8. The Applicant and other developers of new offshore wind farms are entitled to consistency in interpretation of an important issue like this. If a different interpretation had been proposed (or new language which made it explicit it was intended to apply to existing offshore wind farm projects), there would have been the most intense interest in the precise language in the new draft NPS, interpretation of that language and consideration of its consequences. A whole host of issues would have been raised in responses to the Secretary of State's consultations including:
 - (a) the fairness of bringing wake effects into the planning regime at all, when it is regulated through The Crown Estate leasing process;

- (b) the need for transitional arrangements to address a range of situations, including where an emerging project like East Anglia Two has been under no obligation to take account of Five Estuaries, Galloper and Greater Gabbard but now expects Five Estuaries to take account of it;
- (c) the complete absence of an industry agreed basis for the assessment of wake effects i.e. there are competing models and substantial areas of legitimate technical debate as to the applicability of specific models and modelling approaches to different situations;
- (d) the policy intent of bringing wake effects considerations into the planning process. Is the policy imperative to continue to maximise aggregate Annual Energy Production from new projects (the long standing position) to contribute to government targets or to minimise the impacts on existing projects? Or some mixture of the two, and if so applying what principles to balance the two?
- (e) the complete absence of industry technical consideration and consensus regarding techniques available to reduce wake effects from new projects on existing projects as part of project design. To date, this has never been a consideration in new project design. This is an area which would be the subject of intense technical debate, which is in any event profoundly hampered by questions of commercial confidentiality and relative project timings (as in this case). There are a whole range of difficulties which arise, none of which have been explored before, including, to pick one example from many, the situation where there are multiple existing wind farms in consideration each of which could advocate for a design outcome for the new project it claimed was appropriate, but where the differing design requests sought are conflicting;
- (f) whether DCO requirements can be framed to meet the normal policy tests of certainty, enforceability and overall reasonableness.
- 1.8.9. None of these complex and difficult issues was raised because no one had any reason to believe that a radically new interpretation might be applied.
- 1.8.10. The Applicant submits that the new Secretary of State should apply the original and widely accepted interpretation of EN-3 i.e. applications and Examinations would have been conducted very differently if this Awel y Mor interpretation has been accepted. This would restore the basis on which the entire offshore wind sector has proceeded in England and Wales since it began in the early 2000s. The Applicant repeats its previous submissions that issues regarding wake effects as between new and existing projects should be addressed outside the planning system.

- 1.8.11. Separate to the interpretation of EN-3, the Applicant confirms that wake effects are not an environmental effect for the purposes of Schedule 2 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. This is reflected in the consistent absence of wake effects being assessed in offshore wind farm applications (and onshore wind farm decisions). If wake effects are to be addressed within the planning system, it should not be through an artificial attempt to include them in the EIA process.
- 1.8.12. If the submissions above are not accepted, and the 'other offshore infrastructure' policies in EN-3 are taken to apply to existing offshore wind farm projects, then the interpretation and application of EN-3 becomes problematic given the text in question was not intended to apply to that situation and the Applicant submits would have been written differently if it had (as offshore wind farms affecting existing offshore wind farm projects would clearly have been a special case).
- 1.8.13. Without prejudice to its primary position set out above that the policies in EN-3 are not engaged with respect to wake effects between offshore wind farms, the Applicant (as it has in its submissions to date) emphasises the advice in paragraph 2.8.342 of EN-3 of employing a pragmatic approach. That paragraph is central to the advice to the Secretary of State as decision maker. Crucially, it applies to multiple offshore industries as is plain from paragraph 2.8.44 already quoted. The approach to pragmatism will necessarily be different depending on the other offshore industry in question. In the case of a newly proposed offshore wind farm potentially affecting existing offshore wind farm projects (and in the case of East Anglia Two it should be emphasised that it is not an operational project), the Applicant submits that the pragmatic approach is to:
 - (a) Acknowledge that this has been addressed through The Crown Estate leasing process, by the inclusion of buffer distances when new sea bed licences have been awarded;
 - (b) That The Crown Estate is a sophisticated stakeholder in this regard, which listens carefully to industry concerns on a wide range of issues;
 - (c) That there is no evidence that The Crown Estate was lobbied by industry generally concerning the buffer distances set for the Extensions round as regards wake effects. In other words, the risk that new projects would emerge through new licensing rounds, which would have a range of potential effects on existing projects (including wake effects) was widely known and understood;
 - (d) That Five Estuaries has respected the buffer distance for the Extensions round, being more than 5km away from East Anglia Two;
 - (e) That it would be unreasonable and unfair for East Anglia Two to benefit from a radically new interpretation of EN-3, when it was not subject to that

- interpretation itself as regards its impact on Galloper and Greater Gabbard as existing operational projects and Five Estuaries as a project with a sea bed agreement for lease, when its DCO was granted in March 2022;
- (f) That this approach has been generally accepted by the offshore wind industry prior to the Awel y Mor decision i.e. not requiring wake assessments or any related design obligation on the new project to reduce wake effects on existing projects.
- 1.8.14. Applying this approach, the Secretary of State would conclude that no assessment is required.
- 1.8.15. In response to the ExA's question on whether the Applicant has provided any assistance to East Anglia Two on their wake loss assessment, the Applicant noted that the Applicant has signposted East Anglia Two to what the Applicant understands would be the most relevant information that is in the public domain. However, there is other information which the Applicant has not provided, either because it not known yet (such as final turbine locations and details), or because it is commercially confidential.
- 1.8.16. In response to the ExA's question whether the Applicant intends to respond to any wake assessment submitted by East Anglia Two at Deadline 6, the Applicant explained that it was reserving its position.
- 1.8.17. The ExA asked if the Applicant understood East Anglia Two's concerns were more related to lighter rather than stronger winds. The Applicant would highlight that wake effects is a highly technical and complex issue and it cannot speak on behalf of East Anglia Two. The Applicant submits that there is no dispute that there will be wake effects and importantly that those effects will be in both directions (i.e. effects from East Anglia Two on Five Estuaries, as well as Galloper and Greater Gabbard as well as effects by Five Estuaries on East Anglia Two). The question is whether issues to do with wake effects between offshore wind farms at different stages of development and/or operation is a matter for The Crown Estate leasing decisions as has been accepted to date by the entire offshore wind sector or should be part of the planning decision making process and, if so, exactly how. The latter approach is deeply problematic for a wide range of reasons, as is apparent from the submissions already made by the Applicant and the various submissions made in relation to other projects in Examination.
- 1.8.18. Action Point: The Applicant to provide a note summarising how the process for awarding of leases for offshore wind farms takes place with the focus on EA 1 and 2, VE and North Falls (together with a map of where the relevant boundaries are) at Deadline 6.

ITEM 3.6 (3): LIVING CONDITIONS

Sub-item 3.6(3)(i): Proposed measures for mitigating construction noise, including at the junction of the A120 and Bentley Road

1.8.19. In response to the ExA question on the duration of works at Bentley Road, the Applicant confirmed that the works will take one week to complete as a one campaign.

Sub-item 3.6(3)(ii): Mitigating cumulative noise associated with the operation of the existing Ardleigh substation and the proposed substations for Five Estuaries, North Falls and the East Anglia Connection Node

- 1.8.20. In response to the ExA's question on why Lilley's farm has been included given that it is located outside of the 750 metres of any of the three projects' substations (beyond the distance specified for a complaint to require investigation), the Applicant noted that Lilley's Farm is not intended to be excluded from the protocol and the Applicant will update the Noise Investigation Protocol [REP5-088] to reflect this.
- 1.8.21. The ExA raised concerns in relation to the Noise Investigation Protocol [REP5-088], specifically the fact that a complaint will not be investigated if it arises from a location or area which has been monitored as part of an investigation under the protocol within the previous 12 calendar months where that previous investigation found that there was no exceedance of the Rating Level. The Applicant noted that these concerns will be considered with North Falls and National Grid and drafting revised.
- 1.8.22. In response to the ExA's question on whether the period of 60 days for the acoustic consultant to prepare the report and submit this to the LPA in accordance with the Noise Investigation Protocol [REP5-088] is excessive, the Applicant noted that the period of 60 days is necessary in order to develop the relevant mitigation measures which will include liaising with suppliers, engineers and designers.
- 1.8.23. The Applicant also noted that prior to using the protocol following the receipt of a complaint, the Applicant will undertake an initial walkaround to ensure there is not a clear and obvious reason for the complaint. E.g. equipment clearly not operating correctly. If it is not clear, the operator closest to the complainant will follow the protocol. The Applicant is happy to discuss the concerns including the speed of resolution raised with North Falls and National Grid.
- 1.8.24. In response to the Essex County Council's comment that three substations should respond collaboratively to a noise complaint, the Applicant noted that the purpose of the Noise Investigation Protocol [REP5-088] is to identify which substation is causing the complaint. If North Falls' substation or National Grid's substation are responsible for the noise complaint, the Applicant does not have control over how each project resolves the problem.

- 1.8.25. In relation to the steps that will be taken following the complaint, the Applicant noted that, as set out in the Noise Investigation Protocol [REP5-088], each substation should take an initial walkaround to ensure there is not a clear and obvious reason for the complaint. If it is not clear, the operator closest to the complainant will follow the protocol. The operator will determine whether the total noise limit has been exceeded or not. If the total noise has not been exceeded, then the individual limits have not been exceeded. If the total noise limit has been exceeded, then a detailed investigation will be required.
- 1.8.26. Action point: The Applicant to review and revise drafting in the Noise Investigation Protocol (in collaboration with North Falls and National Grid) to address the uncertainty over Lilley's Farm, clarify paragraph 6.5 and make the steps that will be taken when a complaint is made clearer. The Applicant to submit a revised Protocol by Deadline 7.

1.9. AGENDA ITEM 3.7: EFFECTS FOR OFFSHORE ECOLOGY

1.9.1. The ExA asked the Applicant to provide a brief update in writing in this summary on any progress made or discussions that have taken place on offshore ecological maters since ISH3. The Applicant's position is as follows:

FISH

- (a) Since the last ISH, the Applicant has held a meeting with the MMO on 6th December 2024, to discuss their concerns relating to spawning herring. The Applicant has subsequently submitted a second revision of the Herring Spawning Restriction Note [REP4-011] at Deadline 4, addressing queries raised by the MMO on the methodology used to calculate the peak herring spawning period, and subsequently define the piling restriction which is 25th November to 3rd January inclusive. The MMO are expected to provide written feedback on this note following the hearings.
- (b) With regard to queries raised by the MMO on whether sediment disposal and dredging activities would be carried out in a manner which will not impact herring spawning, the Applicant confirms that an Outline Sediment Disposal Management Plan [REP4-041] was submitted at Deadline 4, which sets out how disposal activities will be managed to mitigate against impacts to herring spawning grounds. Furthermore, the Applicant confirms that the removal of the use of Gravity Base Foundations from the project design envelope significantly reduces the area of seabed preparation required. The MMO are also expected to provide written feedback on these updates following the hearings.

BENTHIC ECOLOGY

(c) Overall, the Applicant maintains that there will be no adverse effect on integrity upon Margate and Longsands SAC considering the small amount of

cable protection that could be potentially used within the site. The Applicant maintains this position despite the position of Natural England that any impact automatically equates to an Adverse Effect on Integrity, noting the Triton Knoll decision referred to in the Applicant's response to ExQ2 which does not support Natural England's position. Therefore compensation is proposed on a without prejudice basis. A without prejudice compensation case has been submitted.

- (d) With regards to the specific compensation measures, the Applicant is in agreement with Natural England's position that should compensation be required, strategic compensation measures, such as an SAC extension is the preferred option. It is understood that the Defra guidance and ministerial statement is delayed but may be issued before the close of the Examination. The Applicant has also proposed project-led measures commensurate to both the without prejudice position and the minimal potential impact which could be delivered in lieu of the strategic measure by the project alone.
- (e) Updates have been made to the Margate and Longsands Benthic mitigation plan as requested by Natural England, to be clearer about the commitment of removal of cable protection within SAC, should any ultimately be required.

MARINE MAMMALS

- (f) Since the last ISH, The Applicant held a meeting with MMO and Cefas advisors on 6th December 2024 where points in relation to Underwater Noise were discussed. Following discussions, it is the Applicant's understanding that the MMO / Cefas have no major concerns in relation to the under water noise assessments carried out.
- (g) The Applicant has updated the Marine Mammal iPCoD Modelling Project Alone [REP5-071] at Deadline 5 to include mean and confidence intervals in response to Deadline 4 comments received by Natural England.
- (h) Overall, the Applicant maintains that the SIP sets out the process through which impacts to the Southern North Sea SAC will be managed to ensure there is no Adverse Effect on Integrity.

BATS

- (i) Offshore bat impacts are not an HRA issue, as there are no sites designated for bats within the vicinity of the project, neither offshore nor onshore. There can therefore be no potential impact on any conservation objective of any site for bats as no such sites are affected.
- (j) The Applicant reaffirms its position that the operation of the project will not result in significant adverse effects on migratory bats. The data cited in the German Hydrographic Authority response does not support the conclusion

- that the proposed development area is an important area for bats migrating between the UK and mainland Europe.
- (k) The Applicant has noted and welcomes Natural England's recent response at Deadline 5 [REP5-089]. This is reflective of much of the Applicant's position at Deadline 5 [REP5-074]. In particular, the likely ineffectiveness of any proposed mitigation, such as curtailment, due to the close proximity of existing offshore wind farms in the area. Both the Applicant and Natural England agree that there is currently a data gap around the behaviour of migratory bats.
- (I) As a result, the Applicant continues to engage with Natural England (meeting most recently on 14th January 2025), to seek to agree a potential approach to monitoring, or contributing to current research projects, which would help to further the knowledge base of migratory bats. The Applicant will continue to engage with Natural England on this nascent topic however, for the purposes of this project, offshore bat impacts were not assessed in the EIA for this project and the Applicant's position remains there is no evidence of any likely significant impact on them arising from this project.

OFFSHORE ORNITHOLOGY

COMPENSATION - KITTIWAKE

- (m) Discussions are ongoing with DBS regarding securing space within the kittiwake tower and the Applicant is confident that this can be secured, should it be required. This measure is proposed without prejudice given the agreed impact of 0.82 birds from Five Estuaries.
- (n) There is an agreement in principle in place with Dogger Bank South to acquire 50 nesting spaces from the Gateshead artificial nesting structure which is already built and in place. Although the Applicant does not agree that the project is materially contributing to the in combination totals nor is in agreement with the NE methodologies, this measure will more than compensate for any potential impacts.

RED THROATED DIVER (RTD)

(o) The Applicant's conclusion on impacts to RTD in the RIAA are that a maximum of 1.1 birds would be affected and that this would not have any population level consequences for RTD in the OTE SPA. This position is agreed with Natural England, however they have concerns regarding the impact to currently un-disturbed areas of the SPA, thereby reducing the distribution of RTD and, in their view, potentially affecting one of the conservation objectives for the site.

- (p) To address this concern the Applicant has committed to not cable laying within the SPA between November and March, a condition that reflects that found in the Neuconnect interconnector marine licence – a project which is currently under construction. In addition, the Applicant has committed to using a RTD best practice protocol for vessels, as advised by Natural England.
- (q) However, NE wish to extend this restriction beyond the SPA out to a 2km buffer. This buffer incorporates some of the busiest shipping areas in the country and which can confidently be described as already disturbed; any additional vessels associated with the Applicant's construction will therefore not increase the area of disturbance. Furthermore the Applicant has provided evidence in response to the NE RR C9 [REP1-051], that whilst displacement of RTD can be seen immediately within shipping lanes, RTD density increases immediately adjacent, suggesting that a 2km buffer is overly precautionary for the OTE SPA in any case.
- (r) The Array Area is outside the 2 km buffer from the SPA recommended by NE and therefore any works carried out in the array does not have connectivity with the SPA and is not subject to any restrictions.

ITEM 3.7(A) EFFECTS ON PROTECTED SPECIES, WITH PARTICULAR REGARD TO BATS

- 1.9.2. The ExA asked the Applicant to explain how the HRA Regulations apply with regard to harm to an individual protected species that is not a qualifying feature of any European site. The Applicant noted that bats are not a feature of a designated site within the vicinity of the project. The HRA Regulations refer to the integrity of an adverse effect on the sites and the conservation objective of the sites, not individual species. HRA does not apply to protected species where the are not connected to a designated site.
- 1.9.3. In relation to the legislative procedures, the Applicant noted that where there is disturbance or harm to a protected species, it is necessary to obtain a protected species licence. As far as the Applicant is aware, there is no submission that such harm or disturbance would arise in this case and Natural England has not requested that the Applicant needs a protected species licence. The Applicant doesn't believe a licence is needed, in any case however, these discussions would be outside of this process because environmental permits are not covered by the DCO.
- 1.9.4. In addition, the Applicant noted that the evidence presented to the ExA shows no likely significant effect in relation to bats.
- 1.9.5. In terms of ongoing discussions with Natural England on this topic, the Applicant met with Natural England in week commencing 13th January to discuss potential

arrangements for monitoring or research to contribute towards the data gaps. The Applicant's intention is to provide a proposal to Natural England prior to Deadline 6. This is subject to ongoing discussions with Natural England and currently there is no intention to undertake monitoring. If there was, monitoring would be undertaken pre-construction in accordance with a monitoring plan. However, if the Applicant was contributing to a research project, then this would sit outside of this process and wouldn't be secured through the DCO. The Applicant wishes to be very clear that this engagement and potential monitoring or contribution to research is not a mitigation under the EIA which must be secured as offshore impacts to bats were not scoped into the assessment and no likely significant effect to bats has been demonstrated by any party.

- 1.9.6. Responding to the ExA question relating to policy implications of harm to bats, the Applicant noted that there is no evidence that there will be harm to bats, therefore, no policy will be applicable. If (although the Applicant is wary of engaging in hypothetical scenarios) it was determined, on the basis of the evidence presented to the ExA, that there was going to be an effect on these species (an EIA issue), then this issue would go into the planning balance. The Applicant gain notes that no such evidence has been submitted to the Examination and no adverse effect on bats, of any magnitude, has been demonstrated.
- 1.9.7. The Applicant will continue to engage with NE on this issue but noted that Natural England agreed that there is insufficient detail to conclude that there is likely significant effect on bats.

ITEM 3.7(B): ASSESSMENT METHODOLOGIES

- 1.9.8. The ExA asked the Applicant to provide a brief update on any progress made or discussions with Natural England on assessment methodologies. The Applicant provided the following update:
 - (a) The Applicant has continued to engage with Natural England as far as possible on offshore ornithology matters, with a topic specific meeting held on 13th January 2025. In this meeting the Applicant provided an update on compensation measures and discussed the difference in approach to calculation of impacts and the quantum of compensation.
 - (b) At Deadline 4 Natural England proposed that the Applicant should include natal philopatry rates in its calculations for the quantum of compensation -These are the rates at which fledglings at a particular colony will leave that colony to breed at another site. Using these rates inflates compensation numbers to wholly unrealistic levels – for example for Razorbill, where Five Estuaries is calculated to impact 0.2 birds a year, using the Natural England approach, including philopatry rates would require compensation to result in 293 pairs . For another project currently in Examination using the NE approach has led to a compensation quantum greater than the entire

- assumed global population of Razorbill. The Applicant understands that Natural England are reviewing this advice, however it is demonstrative that the additive effect of layering excessive precaution at each stage of the calculations leads to outcomes that are unrepresentative and divorced from the actual impact and should not be applied. The Applicant's position is that its approach to the calculation of impacts and compensation are suitably precautionary whilst providing a more realistic and proportionate quantum.
- (c) The Applicant noted that it is unlikely to agree this point with Natural England. As far as the Applicant is aware, Natural England is only reviewing the methodology of compensation in relation to natal philopatry rates, not on the other points of disagreement.

ITEM 3.7(C): COMPENSATORY MEASURES

- 1.9.9. On the topic of methodological differences between NE and the Applicant, the Applicant noted that the Applicant's approach uses 50% displacement, 1% mortality which has been recommended in the plan-level HRA by The Crown Estate. NE approach is to use the precautionary 70% displacement, 2% mortality. There is considerable emerging evidence that the NE rates vastly overestimate the impacts from displacement (Trinder 2024, APEM 2022).
- 1.9.10. Action Point: The Applicant to provide a technical note consolidating the differences between the methodologies used by NE and the Applicant for calculations of compensation measures for Deadline 7. The note should include examples of decisions where the Secretary of State agreed with either methodology.
- 1.9.11. Following a request for an update on the LBBG compensation, the Applicant noted the following:
 - (a) The measures at Orford Ness and the Outer Trial Bank continue to progress, Discussions are ongoing with the Cobra Mist landowner for the Orford Ness site, and positive discussions have been had with TCE regarding securing rights to undertake predator eradication at OTB.
 - (b) The Applicant noted that the land and rights at the Outer Trial Bank are not secured at the moment but the Applicant does not see issues in securing the land in principle. TCE will provide a letter of comfort.
 - (c) It is expected that an update from TCE will be able to be submitted at Deadline 6. By the end of the Examination both measures will be included as options.
- 1.9.12. Responding to the ExA's request for an update on guillemot and razorbill, the Applicant noted that the updated roadmap and the Guillemot and Razorbill Implementation and Monitoring Plans submitted at Deadline 5 [REP5-025] which

set out that discussions are ongoing with other developers and third parties in the south west to deliver the proposed measures, should they be required. The without prejudice measures as proposed do not require any land and could be delivered either by the Applicant alone, in collaboration with other developers or as a more strategic measure across the south west. Given the very minimal potential impact from the project, the ExA can have confidence that, if required, the measure can be carried out to extent needed to compensate for the impact from the Five Estuaries Offshore Windfarm.

ITEM 3.7(D): BENTHIC AND AQUATIC ECOLOGY

- 1.9.13. On the topic of cable burial depth in the SAC, the Applicant noted that the burial depth has not been finally determined and will be determined at the final design stage. The depth is anticipated to be 1.5-2 metres but it could be 1 metre. The depth depends on seabed conditions.
- 1.9.14. On compensation, the Applicant's position is that (based on the evidence presented) the Applicant is not required to compensate in the SAC. However, if compensation will be required, Defra has committed publicly to provide compensation at a strategic level via setting the Marine Recovery Fund.
- 1.9.15. The Applicant confirmed that it has not received any request from the ports to bury the cable so as to allow dredging to 22 m below chart datum within the SAC as the SAC is outside the deep water routes. The Applicant noted that dredging to 22m is unlikely to be acceptable in the SAC in any case.
- 1.9.16. For clarity, the Applicant noted that the 19m and the 22m commitments that have been mentioned in relation to the deep water channels are levels, not depths. The Applicant has annexed an <u>indicative</u> plan showing an illustrative transect and the cable level relative to the seabed. That demonstrates how cable level in the deep water routes relates to the levels more generally and in the SAC.
- 1.9.17. Action Point: the Applicant to submit a brief technical note with plans on the use of the DWR and the pilot boarding station and how they operate (including a map and showing the area near the SAC) at Deadline 6.

1.10. AGENDA ITEM 3.8: EFFECTS FOR ONSHORE ECOLOGY

- 1.10.1. Action Point: the Applicant to review and update OLEMP [REP2-022] to ensure that the relevant figures are correctly identified at Deadline 6.
- 1.10.2. In response to the ExA question on including a reference to Essex GI Strategy and Standards within the DCO requirement relating to the OLEMP, the Applicant noted that there is a reference to Essex GI Strategy and Standards in the OLEMP at paragraph 2.4.1 [REP2-022] to inform the development of mitigation proposals post-consent, which will form the final LEMP. The Applicant asked that Essex County Council review this wording as the Applicant does not consider that

- including an addition wording to the requirement is necessarily where such commitment is already in the outline LEMP which will be a certified document.
- 1.10.3. Responding to the ExA's question on whether the plans (which will be submitted in accordance with Requirement 5 of the dDCO) can be specified at this stage, the Applicant noted that the Applicant is not in a position where it can specify which plans would be provided in that level of detail. The Applicant is willing to put the principles of what should be plans and the need to agree appropriate scales into the OLEMP to be agreed with the Essex County Council pre-submission, however, it would not be helpful to try and specify that in the requirement at this stage.
- 1.10.4. In response to Deadline 5 ECC comments [REP5-092] on the function and management of the orchard, the Applicant noted the following:
 - (a) The primary role of low trees in this location is for screening, as set out in the OLEMP Revision C [REP2-023], whilst also addressing underground and overhead constraints from existing and proposed cables in respect of tree height and rooting depth.
 - (b) The screening planting was recognised as an opportunity to create "Traditional orchard" being a Section 41 habitat of principle importance for the conservation of biodiversity in England. The definition of this habitat type is defined by the Joint Nature Conservation Committee, but to summarise:
 - (i) It is defined by habitat structure rather than vegetation type and can include trees, scrub, grassland, ponds, walls, hedgerows and hedgerow trees.
 - (ii) Traditional orchards comprise groups of fruit and nut trees at low densities in permanent grassland; and managed in a low intensity way.
 - (iii) Spacing of trees in traditional orchards can vary quite widely (from c.3m in some plum orchards to over 20m in some large perry pear and cherry orchards).
 - (c) Traditional orchards are therefore very different from orchards managed intensively for fruit or nut production. In this instance the trees would be managed to provide screening and thereafter to be of benefit to wildlife. The management of the orchard trees is not for fruit production and any while fruit production would be of great benefit to the local wildlife, the orchard would not be planned or managed to maximise fruit.
 - (d) The exact type of trees that will be included will be determined in the final design in consultation with Essex County Council.

- 1.10.5. Responding to Essex County Council's suggestion that other types of trees would be preferable to the orchard trees including Hazel Coppice, the Applicant noted that the primary function of planting is to provide screening. Hazel Coppice is routinely cut back to a low height as part of the management of the trees and that would adversely impact the screening function. The final decisions on which trees will be used will be determined at detailed design stage in consultation with Essex County Council as provided in the OLEMP.
- 1.10.6. The ExA asked the Applicant to confirm how much BNG is required in hectares for the Five Estuaries Offshore Windfarm having no regard to any works for North Falls. The Applicant noted that the Biodiversity Net Gain Indicative Design Stage Report [APP-149] provides BNG assessment in units instead of the geographical area since how many BNG units 1 ha can provides will vary depending on the condition of the habitat and the habitat that being provided. This cannot be expressed solely in hectares without having regard to habitat types and quality. The approach that the Applicant has taken is to assess the BNG losses and gains as a result of the Five Estuaries Offshore Windfarm Project, but the project's footprint is, in effect, the footprint of both Five Estuaries and North Falls Offshore Windfarms, because these are the powers that are being sought under the DCO. Therefore, the BNG assessment for Five Estuaries Offshore Windfarm is the reasonable worst case scenario.
- 1.10.7. Following discussion on the BNG calculations, the Applicant agreed that there is an error in inclusion of hedgerow on the drawing on sheet 19 of the Biodiversity Net Gain Indicative Design Stage Report [APP-149] in the baseline assessment, which the Applicant will correct but confirmed that the underlying data, calculations and conclusions remain valid.
- 1.10.8. Action Point: the Applicant to update drawing on sheet 19 in Biodiversity Net Gain Indicative Design Stage Report [APP-149] to correct an error at Deadline 6.

2. **COMPULSORY ACQUISITION HEARING 3 (CAH3)**

THURSDAY 23 JANUARY 2025

2.1.1. This note summarises the submission made by Five Estuaries Offshore Windfarm Limited (the Applicant) at the Compulsory Acquisition Hearing on 23 January 2025. This document does not purport to summarise the oral submissions of parties other than the Applicant; summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant's submissions.

2.2. AGENDA ITEM 3.1: CHANGES INCLUDED IN REVISION E OF THE BOOK OF REFERENCE SUBMITTED AT DEADLINE 5

- 2.2.1. The ExA asked the Applicant to give an explanation for the changes made to the Book of Reference (BoR) [REP5-009]. The Applicant provided the following summary:
 - (a) The Applicant submitted an updated Book of Reference [REP5-009] for Deadline 5 due to a change in landownership for plot 15-017. The Applicant was previously made aware of this change in ownership through engagement with the landowners, but the Land Registry title has only recently been updated.
 - (b) The Applicant identified category 2 interests for plots in existing plots that should also have been listed against plots 07-002, 07-003, 07-004, 07-005, 07-006, 07-008, 07-009 & 07-010. The category 2 interest is an existing interest and has been consulted with.
 - (c) There were also a number of category 3 interests which were incorrectly added to revision D of the Book of Reference [AS-063] due to a database error that extracted archived category 3 interests from the database into the Book of Reference. This issue has been corrected and these category 3 interests removed in revision E.
- 2.2.2. Following a summary of cases from Affected Persons attending CAH3, the Applicant noted the following:
 - (a) In relation to the width of the cable corridor, as previously noted, the Applicant is working in collaboration with North Falls Offshore Windfarm and seeking the ability to put in the second set of ducts for North Falls Offshore Windfarm. The 90-metre corridor will not be narrowed down at this stage; this is a matter for detailed design. Various constraints will be assessed at that stage including ecological surveys, archaeological surveys, root protection zones and others. It is standard practice across offshore windfarm DCOs that a wider corridor is narrowed down at detailed design.

- (b) On the topic of landscaping at Norman's Farm, the Applicant has made detailed submissions at ISH6. The Applicant does not accept, and it is not the Applicant's position, that the screening provided around the Five Estuaries Offshore Windfarm substation is for the North Falls Offshore Windfarm substation. The Applicant is aware that North Falls Offshore Windfarm are taking a different approach to landscape screening on the basis of the advice given to them by their advisers. The Applicant has already explained its position on landscaping at ISH6.
- (c) In relation to the concern raised by Cobra Mist Limited regarding plot [20-003] which overlays part of the access and the habitat area, the Applicant noted that it is happy to amend this plot in order to make it clearer which area relates to access and which relates to the habitat. The Applicant did not have the time to make the relevant changes since Deadline 5, but the Applicant continues to work on this.
- (d) In relation to any interference to existing operations at the Cobra Mist Limited's site, the Applicant does not accept that the rights that the Applicant is seeking would in any way impinge on the telecom's business use or any other existing operations and the Applicant is preparing a written response on this topic.
- 2.2.3. The ExA asked the Applicant to confirm the following: if Cobra Mist Limited enters into a voluntary agreement, how does this relate to the full suite of compulsory acquisition (CA) powers that the applicant is seeking. The Applicant noted that the reason why the developers seek the CA powers in the DCO is to secure the delivery of the project. If the voluntary agreement is breached (and the developer cannot get onto the land) or in the event of legal incapacity of the landowner (such as awaiting grant of probate) or insolvency, then developers need CA powers as a fallback. Where there is a signed voluntary agreement, the developer will operate through the voluntary agreement, but the developer is not legally prevented from using the CA powers. To avoid any doubt as to the developer's exercise of the CA powers, this needs to be addressed expressly within the voluntary agreement.
- 2.2.4. In relation to potential remedies available where there is a breach, the Applicant noted that this will be specified in the dispute resolution clause in the voluntary agreement.
- 2.2.5. With regard to the planting layout at Norman's Farm and the issue of access, the Applicant noted that discussions are ongoing and the Applicant has been working on various layouts (as set out in 10.20.8 Technical Note Screen planting options for Land Plot 17-024 [REP4-038]) that will be provided to the relevant landowners. Following this, negotiation of voluntary agreements will continue.
- 2.2.6. Action Point: In respect of the draft Heads of Terms (HOTs) with landowners and the inclusion of the "no objection" clause(s) relating to the Application

and the North Falls Offshore Wind Farm (North Falls) Application, review the wording of the HOTs and make a submission to the Examining Authority (ExA) advising on whether any wording changes have been/are to be made to address matters raised by the Affected Persons who attended CAH3.

- 2.3. AGENDA ITEM 3.2: SUMMARY OF CASES FROM AFFECTED PERSONS ATTENDING CAH3
- 2.3.1. Following the submission of the Applicant's Legal Note Compulsory Acquisition Case [REP4-037] the ExA sought clarification regarding section 122 of the Planning Act and CA Guidance, specifically whether it is open to the Secretary of State (SoS) to conclude that the CA powers sought in respect of plots 17-24 and 17-25 are not necessary for the construction and operation of Five Estuaries Offshore Windfarm.
- 2.3.2. Action Point: the Applicant to provide a legal note on the ability of the Secretary of State to exclude land from the compulsory acquisition powers when granting a DCO at Deadline 6.
- 2.3.3. The ExA asked the Applicant to provide a plan that shows the relevant CA area sought under the scenario where the CA powers are only granted in respect of the Five Estuaries Offshore Windfarm substation (excluding any collaboration with North Falls Offshore Windfarm).
- 2.3.4. Action Point: Further to the ExA's request, consider whether or not alternative plans will be submitted in relation to sheets 17 and 18 of the Land Plans for a scenario under which the Proposed Development proceeded without any collaboration with North Falls. Any such alternative plan being submitted on a without prejudice basis.
- 2.3.5. In relation to plot [17-006] which is required for the "additional loop" road, the ExA asked if this plot was excluded from CA powers, whether the Applicant would be able to gain access to the substation site (given that North Falls Offshore Windfarm have not included this "additional loop" in their Application).
- 2.3.6. Action point: Undertake a review of the Environmental Statement, as it relates to the proposed onshore substation zone, to establish whether the Proposed Development could be implemented without the "additional loop" in the haul road south of Ardleigh Road (Land Plot 17-006), with North Falls having not identified the need for such an additional loop in the haul route as the means for avoiding Lowland Meadow (obstacle OOX-31).
- 2.3.7. IPs made submission regarding the restrictive covenant contained in Schedule 7 in the dDCO which requires the landowners to obtain consent from the Applicant where works are undertaken 0.6m below ground within the protective easement of the cables. The Applicant noted that the Applicant needs to know if works are happening near cables and what these works are. The Applicant further noted that

the restrictive covenant of the type sought by the Applicant is standard protection for buried electrical cables and other buried infrastructure including pipelines and gas lines. Notifying any undertaker before undertaking works near their apparatus is standard practice and is required by HSE guidance as well.

- 2.3.8. In addition, the Applicant added that the Applicant is willing to include wording such as "consent not being unreasonably withheld or delayed" but does not consider it appropriate to add detailed wording on the process. Please see additional comments made in the summary of ISH6 as to the relevant provisions in the Health and Safety Executive Guidance.
- 2.3.9. In response to the submissions made on behalf of some landowners that seeking consent is unduly onerous and could incur reasonable costs, the Applicant is willing as advised to provide that consent may not be unreasonably withheld or delayed. On this the Applicant wishes to note the following points;
 - (a) The restriction sought is necessary in the interest of safety for the landowners in undertaking works as well as the Applicant. It is clearly undesirable that people undertake excavation works in the vicinity of high voltage electrical cables without input from the operator of those cables and some technically qualified review and control of the works proposed, the dangers which may therefore arise and how those should be avoided.
 - (b) The Application refers to the submission made in the summary of oral submissions to ISH6 which note that HSE guidance specifies the need to obtain consent for works near any buried utility, supporting the Applicant's submissions that this is the standard position for all buried utilities and the Applicant is not seeking an unusual restriction in this case.
 - (c) The Applicant entirely rejects that a consent obligation imposes an unfair burden on landowners and that the sums quoted for costs in any way reflect reality. The only example of costs in the amounts quoted by Mr Fell (£15,000) of which the Applicant's specialist land advisors are aware, are for the costs to divert gas apparatus which included detailed design approvals, method statements and connections needing to be made to operational assets; it was for not obtaining consent for works to drains in the vicinity of electrical cables, The Applicant does not accept that this is a reasonable or fair comparator, but rather submits that this sum is misleading the ExA as to any likely costs in this situation.
 - (d) This area of law is well established and there is judicial guidance on interpreting requirements for consent. The phrase "subject to consent, such consent not to be unreasonably withheld", or expressions with a similar effect, are frequently used in leases and tenancy agreements and there is a body of case law on how to interpret such words in that context (such as the House of Lords' judgment in *Ashworth Frazer Limited v Gloucester City*

- Council [2001] 1 WLR 2180; and International Drilling Fluids Ltd v Louisville Investments (Uxbridge) Ltd [1986] 1 Ch 513). In British Gas Trading Limited v Eastern Electricity, and also in Porton Capital Technology Funds and others v 3M UK Holdings Ltd and another [2011] EWHC 2895 (Comm) the High Court confirmed that principles developed in landlord and tenant cases are applicable to other situations. The principles of such case law would be applied to rights acquired compulsorily.
- (e) Applying this body of case law in the current context, the landowners could be reassured that if the Applicant (or later the OFTO) imposed unreasonably restrictive conditions/preconditions on the granting of its consent for the landowner to carry out works around the cables, that would be an unreasonable withholding of consent. For example, if the Applicant were to indicate that they would only grant consent in return for the payment of a fee which was in excess of than the Applicant's actual costs for dealing with the application, then this would be an unreasonable condition and so amount to an unreasonable withholding of consent (per *Dong Bang Minerva (UK) Ltd v Davina Ltd [1996] 2 EGLR 31*).
- 2.3.10. Action point: the Applicant to re-visit the wording of the restriction by Deadline 6. The Applicant to review any examples of wording that are provided by the landowners (at Deadline 6) and come back with an amended version/comments at Deadline 7.
- 2.3.11. The Applicant noted that discussions with Cobra Mist Limited are on-going and, on the topic of existing installation, the parties are discussing whether additional fencing may be required to prevent works straying into any other land that has existing operations. The Applicant has a meeting with Cobra Mist Limited on 6 February 2025.
- 2.3.12. Action Point; The Applicant to undertake a review of the Works Plans [AS-021] concerning the proposed compensatory habitat for Lesser Black Backed Gull at Orford Ness and submit revised Works Plans, clarifying the land required for: 1) the proposed compensatory habitat; and 2) accessing the compensatory habitat.
- 2.3.13. The Applicant noted that discussions are only taking place between the Applicant and Cobra Mist Limited. The voluntary agreement will only be sought in respect of Five Estuaries Offshore Windfarm. Any discussions or arrangements that may be happening between North Falls and Cobra Mist Limited are separate to this Application and the Applicant is not involved in those discussions.
- 2.3.14. The Applicant further noted that the Applicant understands all of the issues that have been raised by Cobra Mist Limited and the Applicant is confident that the Applicant can provide reassurance or drafting changes to address these. For

- clarification, the Applicant noted that the Applicant is not seeking exclusive rights of access.
- 2.3.15. On the topic of timescales, as set out in the LBBG EIA [REP4-013] the Applicant can confirm the works are expected to take around three weeks, outside of the bird nesting period. Maintenance is expected to be up to 10 days per year depending on the quantity of vegetation to be removed.

2.4. AGENDA ITEM 3.3: APPLICANT'S LAND RIGHTS NEGOTIATIONS UPDATE

- 2.4.1. The ExA asked the Applicant to provide an update with respect to its land rights negotiations with all of the parties listed in the Land Rights Tracker (other than for those parties who participated in Agenda item 3.2) since the beginning of the Examination. The Applicant confirmed that the Applicant received one additional signed HoTs and progressing the rest and there are no other substantive updates.
- 2.4.2. The Applicant confirmed that the Applicant had discussions with the Crown Estate (TCE) but the Applicant has not received the relevant documentation in relation to section 135 of the Planning Act 2008. The Applicant appreciates the ExA's suggestion to issue a Rule 17 Letter, however, the Applicant asked the ExA to wait until after Deadline 6 to issue a Rule 17 letter to TCE since the Applicant is currently chasing TCE.

3. ISSUE SPECIFIC HEARING 7 (ISH7)

THURSDAY 23 JANUARY 2025

- 3.1.1. This note summarises the submission made by Five Estuaries Offshore Windfarm Limited (the Applicant) at the Issue Specific Hearing 7 on 23 January 2025. This document does not purport to summarise the oral submissions of parties other than the Applicant; summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant's submissions.
- 3.2. AGENDA ITEM 3.1: DISCUSSION OF THE DRAFT DEVELOPMENT CONSENT ORDER (DDCO), INVOLVING THE APPLICANT AND OTHER INTERESTED PARTIES
- 3.2.1. The Applicant was asked to provide a summary of the substantive changes made to the dDCO since ISH4, most particularly with respect to the proposed Articles and Schedules 1 (Authorised Development) and 2 (Requirements). The Applicated provided the following summary:
 - (a) The Applicant considers that there has been no substantive amendment to the articles.
 - (b) In Schedule 2, part 1 requirement 2 was amended to add that the substation details to be approved to include colour and materials, and to explicitly provide landscaping is to be maintained for the life of the development. These changes were made at Deadline 3 in response to requests from ECC.
 - (c) The speed limits set out in Schedule 3 were amended at Deadline 5 to align with the details requested by and agreed with ECC as local highway authority.
 - (d) In the deemed marine licences (schedules 10 and 11) the sediment disposal management plan, a site integrity plan condition and a marine mammal condition were all added at Deadline 4 in response to comments, primarily from the MMO.
- 3.2.2. In response to the continuing requests to the ExA to include a Grampian type requirement in the DCO, the Applicant confirmed (as stated in its previous submissions on the topic) that the Applicant does not think that the requirement meets the relevant tests. The Applicant also noted that the arrangement of how electricity will be transferred onwards from the connection point is a matter for National Grid and not the Applicant. The Applicant has signed a connection agreement with National Grid. It is for National Grid to comply with this agreement. The Applicant strongly believes that the Applicant's position is NPS compliant, and that the proposed Grampian type condition would not be in accordance with the drafting of the NPS.

- 3.2.3. As requested by the ExA, the Applicant's position is set out in this summary and is supported by the opinion of King's Counsel submitted along with this summary (as Document 10.46 Opinion of King's Counsel) and referred to below.
 - (a) As set out in response to SCC's LIR in 10.26.1 Applicant's comments on Local Impact Reports [REP3-025], the Applicant submits that a Grampian requirement would fail the tests for planning conditions as applicable to DCO requirements pursuant to the MHCLG guidance 'Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects' (April 2024). The Applicant refers the ExA to the opinion of King's Counsel submitted which concludes that

"that imposition of the proposed requirement would be inappropriate and unjustified".

(b) The Applicant maintains its position that such a requirement is not necessary. As discussed at ISH1 and ISH2 the Applicant would not construct turbines as part of a multi-billion pound project unless it was confident that the project would be connected to the grid pursuant to its grid connection agreement with NGET. The lack of necessity is further demonstrated by the Sheringham and Dudgeon Extension Project decision. That project required substantial works by NGET to connect the project (a major extension to the Norwich Main substation) which did not have planning permission at the time of the ExA's report or the Secretary of State's decision. The Secretary of State could, in theory, have imposed a Grampian requirement linked to the impact (or otherwise) on the AoNB in that case, of the kind suggested by SCC, but did not do so. It is noted that King's Counsel in the opinion submitted herewith concludes:

"the draft requirement provided by SCC is both unnecessary and unreasonable in its specifics".

- (c) Second, with regard to precision and enforceability. SCC refers to a control by reference to when it is "clear the required connection to the National Grid will be provided". This test is extremely vague and would be unenforceable.
- (d) Third, reasonableness. The uncertainty created by this requirement is clearly unreasonable. The Applicant has multiple decisions to make when preparing its Contract for Difference bid, engaging with the supply chain, potentially placing orders for long lead times etc. It needs to know that it has an unfettered DCO in the usual way, otherwise it has the potential to adversely impact delivery. It is not justifiable to impose the kind of fetter proposed, even if it were better defined. Even if accepted at face value, the allegation of harm to the AoNB (which is not accepted) does not justify the type of requirement proposed. The opinion of King's Counsel advises that the

imposition of a requirement would not meet the test of reasonableness stating:

"the imposition of a requirement such as this is likely to delay the implementation of urgently needed CNP renewable energy infrastructure and/or hamper its delivery by putting VE Ltd. at an unfair commercial disadvantage compared to other schemes, it is difficult to see how the requirement could nevertheless be found to be reasonable".

- (e) In 10.28 Applicant's Responses to ExQ2 (question DCO.2.05) [REP4-039], the Applicant set out its position on the applicability of the NPS. NPS-EN1 provides:
- "4.11.5 The applicant must liaise with National Grid who own and manage the transmission network in England and Wales or the relevant regional DNO or TSO to secure a grid connection."
 - (f) The Applicant has received and accepted a grid connection offer from National Grid. The Application accordingly complies with EN1 and has not needed to take a commercial risk on the connection as it has done everything required of it. The Applicant has a signed grid connection agreement with National Grid – that is all it is required to have. It is for National Grid to determine how to deliver that connection and it is not reasonable to prevent delivery of this project because SCC does not support how National Grid currently propose to deliver grid upgrade works.
 - (g) King's Counsel notes in the opinion submitted with this summary that, in accordance with the NPSs, the Secretary of State will start with a presumption in favour of granting consent to applications for energy NSIPs, including electricity infrastructure NSIPs. EN1 is clear these are urgently needed:
- "3.3.58 Given the urgent need for new electricity infrastructure and the time it takes for electricity NSIPs to move from design conception to operation, there is an urgent need for new (and particularly low carbon) electricity NSIPs to be brought forward as soon as possible, given the crucial role of electricity as the UK decarbonises its economy.

. . .

- 3.3.62 Government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure."
 - (h) The requirement sought would have the potential to make the project less competitive at CfD, contrary to the NPS which recognises the urgent need for offshore wind and that CfD is "A key mechanism for increasing deployment of low carbon generation" (NPS EN1 at 2.4.2). The imposition of such a requirement would not align with the NPS. Adding in this artificial and

unnecessary delay is not in accordance with EN1. The ExA's attention is drawn to the conclusion which King's Counsel has set out on this point in the opinion submitted along with the summary that:

- "a decision to impose a requirement of the type suggested by SCC would be directly contrary to both NPS policy and guidance".
- (i) Despite the submissions made by ECC that the requirement is precedented, no examples have been provided and the Applicant cannot locate any requirement in a made DCO making it contingent on a grid DCO being granted.
- 3.2.4. With regard to the ongoing discussions between Essex County Council and Tendring County Council in relation to deciding which will be the discharging authority, the Applicant noted that it requires confirmation of any agreement between the Councils in order to make the necessary updates in the draft DCO.
- 3.2.5. The ExA queried how the approval process works where one local authority is acting as a discharging authority on behalf of another local authority. The Applicant noted that the discharging authority is not defined under the Planning Act 2008 and it is for each DCO to define the discharging authority. This is often used in highways DCOs where the Secretary of State is often defined as the discharging authority. Therefore the drafting can provide for whichever approach the Councils advise they wish to proceed with.
- 3.2.6. Responding to the ExA's question on whether the descriptions of Work No. 4 and Work No. 4A are correct because they only provide for one set of ducts (but not for the second set of ducts), the Applicant noted that, as explained in Explanatory Memorandum [RE3-008] at paragraph 2.25, the second set of ducts only start from Work No. 5. Seaward of this, each project is bringing its own ducts for offshore cables onshore, North Falls would be carrying out their own works, and the Applicant would not be carrying out a second set of landfall ducting work. Work No. 5 onwards is the point where the second set of ducts for the onshore cables would start. Action point: the Applicant to include approximate linear distances in the description of Work Nos. 4, 5 and 5A at Deadline 6.
- 3.2.7. On the topic of burial levels within the deep water routes (DWR), the ExA queried whether the relevant commitment needs to be secured as a standalone requirement or within the marine licence, the Applicant has already confirmed that the commitment to maintain the ability for dredging to 22m below chart datum will be secured via the CSIP and this will be done with a reference to a plan. As a result, there is no reason why the commitment needs to be secured as a standalone requirement or within the marine licence.
- 3.2.8. The Applicant further noted that if the ExA's concern is enforcement, then the Applicant's preference is for the commitment to be included in the marine licence

- since the MMO will more likely enforce via the marine licence rather than requirements but suggested that the ExA should get a view directly from the MMO on this.
- 3.2.9. The ExA's queried whether, in relation to requirement 3 (aviation safety) of the marine licence, reliance on the Navigation Order 2016 as the control is appropriate (particularly looking at the interpretation of territorial waters in the Navigation Order 2016), the Applicant noted that reference to compliance with this order was requested by the Ministry of Defence in REP2-055. A reference to this is normally requested by the Ministry of Defence and the Civil Aviation Authority in relation to offshore windfarms. Where the wind turbine is within the territorial waters, then it has to be marked and lit in accordance with this order. If the wind turbine is not located within the territorial waters, then other marking and lighting provisions in the marine licence will still apply, for example, the directions of the Trinity House but the direction commonly received by the MOD is to mark these as if they were in territorial waters so in practice the same standards are applied. Compliance with this order is included to preclude an objection from the Ministry of Defence and the Civil Aviation Authority.
- 3.2.10. In relation to requirement 5 (onshore substation works, design and landscaping) and requirement 10 (landscape and ecological management plan) of the dDCO, the ExA asked the Applicant to confirm whether the OLEMP would need to be amended if the Five Estuaries Offshore Windfarm is consented but North Falls Offshore Windfarm does not proceed. The Applicant confirmed that the relevant commitments would apply as drafted and could be delivered for Five Estuaries Offshore Windfarm Project without North Falls Offshore Windfarm Project coming forward (noting that planting may deviate from what is currently shown on the indicative layout in the OLEMP).
- 3.2.11. The ExA queried whether the site preparation works under the requirement 10 should be undertaken under the outline LEMP, the Applicant noted that requirement 10(3) does require that onshore site preparation works are undertaken in accordance with the outline LEMP. Together with the other updates to the OLEMP, the Applicant is also creating a list of commitments that need to apply to such works so that it is clearer that these do apply to these preparatory works ahead of the final LEMP being approved.
- 3.2.12. In addition, the Applicant noted that the site preparation works are limited in their extent and cover matters such as archaeological investigation that need to be carried out ahead of detailed design to inform that process. In relation to any diversions, the Applicant has not identified any major diversions that need to be carried out. The Applicant however requires powers to carry these put should the Applicant find something that the Applicant has not expected

- 3.2.13. In relation to the various updates made to the Code of Construction Practice (CoCP) at deadline 5 [REP5-033], the ExA queried whether this document should be treated as the 'final' version, or an outline given it has changed throughout Examination. The Applicant confirmed that it never intended that the CoCP submitted with the Application would be the 'final' version, rather it was always intended to be a 'full' document which would evolves throughout the examination not an outline. The fact that changes have been made to this document shows that the Examination process is working as intended to get engagement on this document, and that various comments from the parties are being incorporated manage potential impacts. The Applicant remains of the view that the final version will be submitted at the close of Examination which would become the certified document.
- 3.2.14. The Applicant further noted that the CoCP has already been updated to reflect some points arising in discussion of the Construction Practice Addendum which is a document that has been given to the landowners as part of the voluntary land negations. The landowners' specific points for each location, as and when they are negotiated, would not go back into the CoCP. The CoCP is a project wide document that is approved by the planning authority, it is not landowner specific. Therefore, the Applicant does not think that it would need to be revisited and updated as the individual negotiations ongoing would not change its content.
- 3.2.15. In addition, there are also a number of outlines in the CoCP for detailed plans that will come forward later, such as the soil management plan, which is secured by requirement 11.
- 3.2.16. In relation to requirement 9 (onshore archaeology) of the dDCO, the Applicant confirmed that they are in the process of seeking to agree an amendment to requirement 9 with Essex County Council (following receipt of suggested drafting from Essex County Council). The Applicant will continue discussions with Essex County Council following these hearings.

3.3. AGENDA ITEM 3.2: UPDATE WITH RESPECT TO THE PROTECTIVE PROVISIONS INCLUDED IN SCHEDULE 9 OF THE DDCO

- 3.3.1. On the topic of Protective Provisions (PPs) for National Highways, following a summary of the position provided by National Highways, the Applicant noted that there are outstanding commercial matters. In summary, the Applicant would prefer that commercial provisions were in a side agreement and National Highways would prefer them to be on the face of the DCO. The Applicant agreed with National Highways that that the parties are likely to be able to resolve the substance of commercial outstanding points before the end of the Examination.
- 3.3.2. The Applicant noted that the parties will aim to agree the PPs by Deadline 6. If PPs are not agreed by the next deadline, then a submission will be made letting

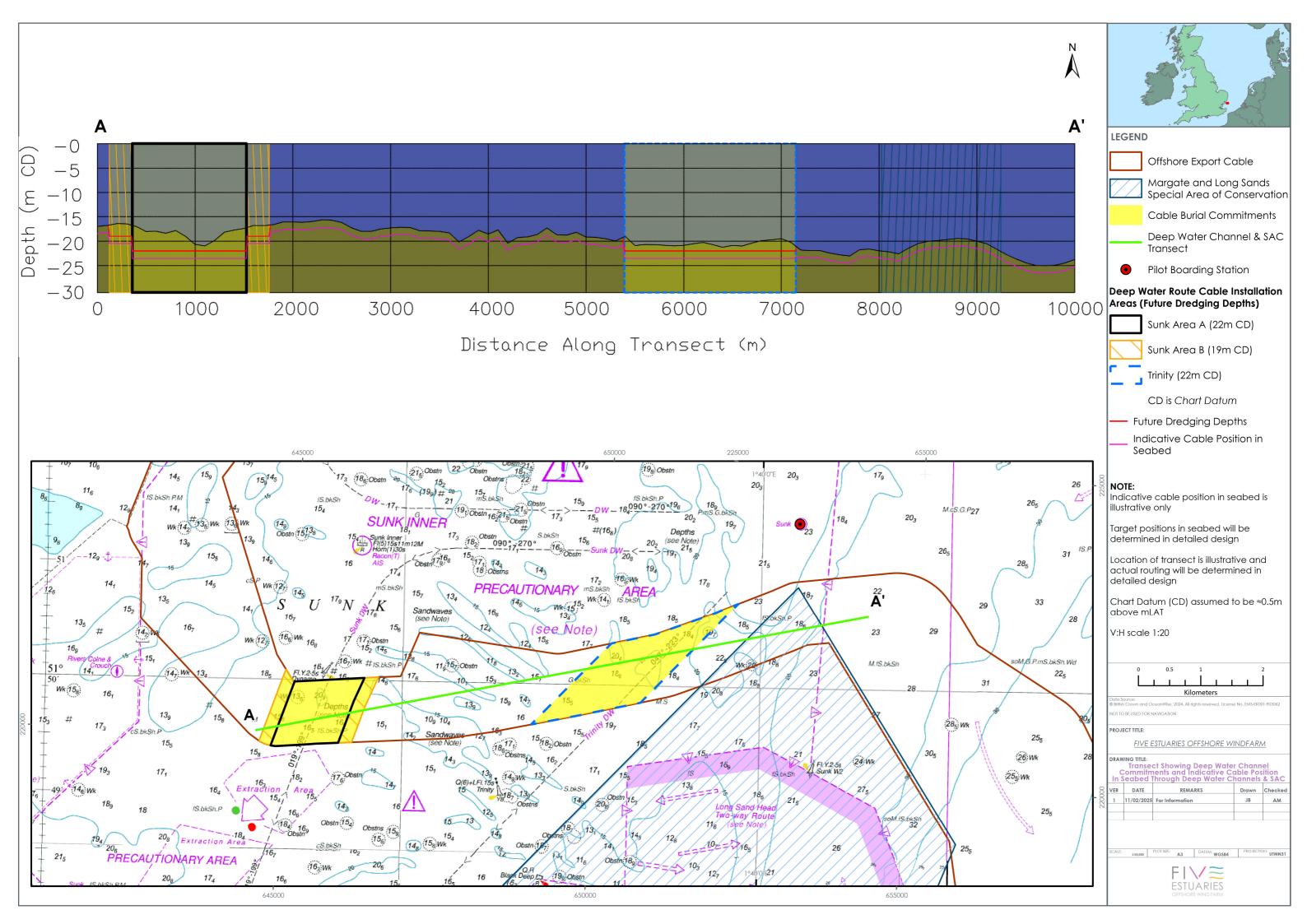
- the ExA know where the areas of disagreement are. Where possible the Applicant and National Highways will seek to agree a joint position on those.
- 3.3.3. PPs for the Port of London Authority (PLA), following a summary of the position provided by the PLA including three areas of disagreement (approvals, indemnity and remediation), the Applicant noted that the Applicant has set out its position on approvals in the written submissions [REP5-073]. In relation to the indemnity sought by the PLA, the Applicant noted that it asked the PLA to explain what they are seeking indemnity for since the project is not within the PLA's jurisdiction. In light of this, it is not clear what the indemnity would cover i.e. what losses would be incurred by the PLA. On the point of remediation, the Applicant has included some wording in the draft PPs for discussion and the Applicant is trying to set up a meeting with the PLA to have that discussion.
- 3.3.4. In relation to the point raised by the London Gateway Port (LGP) that they will not accept the removal of the PPs from the dDCO, the Applicant noted that there is a concern that the Applicant will end up in a position where all the relevant port authorities are seeking approval of the same plan. As a result, the Applicant may end up with overlapping protective provisions and a situation where the Applicant may not be able to process all of the relevant approvals within a reasonable time. Another challenge is resolving any conflicts between the ports. Therefore, the Applicant is uncomfortable with having multiple approvals of the same document.
- 3.3.5. The Applicant was asked by the ExA to provide an update on the negotiations concerning PPs. The Applicant provided the following high-level summary:
 - (a) Anglian Water the Applicant is negotiating bespoke PPs to ensure access to the Clacton Holland Haven Water Recycling Centre and protection for underground assets at Temporary Construction Compound at Manor Way. The draft is currently with Anglian Water.
 - (b) **Affinity Water** the Applicant is negotiating bespoke PPs and the draft is with Affinity Water.
 - (c) **Cadent Gas** the Applicant is negotiating bespoke PPs and the draft is with Cadent Gas. There are outstanding commercials points in discussions with North Falls, Cadent Gas and the Applicant. However, the Applicant considers these points to be commercial and not substantive.
 - (d) Environment Agency draft PPs have been updated following a meeting to include monitoring of sea defence and the Applicant is awaiting comments on that draft.
 - (e) **Essex County Council (highways)** draft PPs have been updated to address comments from Essex County Council and the Applicant is awaiting comments on the draft.

- (f) **Essex County Council (drainage)** the draft is largely agreed and there are outstanding commercials points under discussion. However, the Applicant does not consider these points to be irresolvable.
- (g) **National Grid Gas** the Applicant confirmed that there are no relevant assets so PPs will not be provided.
- (h) **Network Rail** the Applicant is awaiting comments from Network Rail.
- (i) North Falls the PPs are agreed.
- (j) **National Grid EACN** the draft PPs submitted at deadline 5 by National Grid reflects the ongoing discussion between the parties.
- 3.3.6. The ExA asked the Applicant to provide a written indication on the timescales around when the final position on PPs (what is agreed and what is not agreed). The Applicant will provide an update at Deadline 6.
- 3.3.7. The Applicant was asked by the ExA to provide an update on the negotiations concerning Protective Provisions with other Interested Parties not in attendance at ISH7, including TC Gunfleet Sands OFTO Limited. The Applicant noted that it has contacted TC Gunfleet Sands OFTO for a meeting. The Applicant noted that TC Gunfleet Sands OFTO have cables that go under Manor Road which provides access to the beach TCC at the landfall only. The rights that the Applicant is seeking would involve vehicular access over the existing access road, so the Applicant does not believe that bespoke PPs would be required. Action Point: the Applicant to provide an update on the status of discussion with TC Gunfleet Sands OFTO Limited at Deadline 6.
- 3.3.8. The ExA asked the Applicant to provide an update on the discussion with the Harwich Haven Authority on the PPs, the Applicant noted that the latest position is set out in the SoCG with Harwich Haven Authority submitted at Deadline 5 [REP5-057]. The Applicant has made its position clear in previous hearings. The Applicant will require and apply for a works license for any works undertaken within the harbour limits. This means that statutory duties of Harwich Haven Authority are sufficiently protected by the licensing regime and the ability to impose conditions on a licence in the normal way.
- 3.3.9. Action Point: the Applicant to provide the plan showing the extent of Harwich Haven Authority jurisdiction relative to the Order limits at Deadline 6.
- 3.3.10. On the issues raised in PLA's deadline 5 response [REP5-107] including concerns around the operation of the port and use of pilot boarding stations, the Applicant confirmed that the Applicant will respond to PLA's submissions at Deadline 6. For clarity, the Applicant noted that the locations of the pilot boarding stations are not within the PLA's jurisdiction. The pilot boarding station that is the closest to the

- export cable corridor is used by a number of ports in the area which includes the PLA, but also Harwich Haven Authority and others.
- 3.3.11. On the topic of the consultation process under the marine licence, specifically which parties the MMO will consult with, the Applicant noted that the MMO decides who to consult on any topic. It is best to be left to the MMO to make their own decision.
- 3.3.12. The ExA queried how any conflicts and inconsistencies between a document that is approved by the MMO and where a different version of the same document was approved by a party who had the benefit of the PPs would be resolved, the Applicant noted that the MMO issues one approval pursuant to the marine licences and this is why the Applicant is concerned over having multiple approvals. The Applicant cannot confirm what the resolution mechanism would be where there are conflicts but noted that the works are being carried out within the jurisdiction of the MMO, and therefore the MMO is the regulator and the appropriate approving authority.
- 3.3.13. Responding to the ExA's question on whether there are mechanisms to challenge the MMO decision issued pursuant to the marine licence, the Applicant noted that judicial review may be considered. However, a judicial review claim is concerned with how the decision is made and not the merits of the decision.
- 3.3.14. On the topic of approval of the draft CSIP, specifically why this was offered to the LGP and not PLA, the Applicant noted that the key distinction relates to the relevant jurisdictions. There are relevant works are within the jurisdiction of London Gateway Harbor Empowerment Order. The Harbour Empowerment Order for London Gateway extends through the Sunk Deep Water Route and over the Applicant's export cable corridor allowing LGP to undertake dredging in that area. In relation to the PLA, as already noted by the Applicant, the relevant works are outside of the PLA jurisdiction and therefore a distinction was made.
- 3.3.15. The Applicant confirmed that the Applicant will hold a meeting with the PLA to discuss the PPs and will extend the invitation to the LGP (if PLA are happy to do this) in order to continue discussions on the PPs.
- 3.4. AGENDA ITEM 3.3: UPDATE WITH RESPECT TO THE DRAFTING OF THE DEEMED MARINE LICENCES INCLUDED IN SCHEDULES 10 AND 11 OF THE DDCO
- 3.4.1. The Applicant was asked by the ExA to provide the following in writing: (a) an update on the negotiations with the Marine Management Organisation (MMO) and Natural England, with particular reference to areas of disagreement, relating to the drafting of the deemed Marine Licences and advise on when it is expected the negotiations with the MMO and Natural England will be included and (b) any MMO comments about the drafting of the deemed Marine Licences.

- 3.4.2. The Applicant's summary is as follows: TBC
 - (a) The Applicant has sought engagement with Natural England and the MMO on the drafting of the dML.
 - (b) Discussions with Natural England are ongoing and progress may be made up to Deadline 7 on minor drafting points, however it is likely there will be ongoing disagreement regarding a number of points, particularly the need for the Benthic Mitigation Plan to be resubmitted for approval and the inclusion of a condition requiring adaptive management for effects assessed through the EIA (see response to Natural England's Deadline 5 submission point A12).
 - (c) The Applicant has requested on a number of occasions a specific meeting on the dML with the MMO, however to date this has not been able to be arranged. The Applicant notes that the MMO were expected to submit further comments on the dMLs following Deadline 5, however in the submission accepted by the Examining Authority no further comments were included. Whilst it is expected that progress can continue to be made on minor drafting points, it is likely that there will be ongoing disagreement regarding the following points:
 - (i) Transfer of the benefit of the order
 - (ii) Materiality
 - (iii) Schedule 10 Part 2, Condition 11/Schedule 11, Part 2, Condition 12 Force Majeure.
- 3.5. AGENDA ITEM 3.4: EXA QUESTIONS RELATING TO SCHEDULE 12 (TREE PRESERVATION ORDERS AND HEDGEROWS)
- 3.5.1. The ExA confirmed that this item of the agenda will be dealt with through written questions.
- 3.6. AGENDA ITEM 3.5: CONSIDERATION OF THE "WITHOUT PREJUDICE" ADDITIONAL PARTS FOR SCHEDULE 13 (COMPENSATION) INCLUDED IN [REP5-090]
- 3.6.1. The ExA confirmed that this item of the agenda will be dealt with through written questions.

APPENDIX 1: DWC TO SAC TRANSECT INCLUDING DEEP WATER CHANNEL COMMITMENTS FOR ALL FUTURE DREDGING DEPTHS





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