

FIVE ESTUARIES OFFSHORE WIND FARM

10.44 APPLICANT'S SUBMISSIONS ON S85 OF THE COUNTRYSIDE AND RIGHTS OF WAY ACT

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1. INTRODUCTION

- 1.1.1 This submission has been prepared in accordance with Action Point 9 from hearing ISH6. It brings together and, where appropriate, expands upon the Applicant's previous submissions.
- 1.1.2 This submission is supported by the opinion of King's Counsel which is submitted at Deadline 6 as document 10.46 Opinion of King's Counsel.
- 1.1.3 Five Estuaries (VE) is the proposed extension to the operational Galloper Offshore Wind Farm. The Project includes provision for the construction, operation, maintenance and decommissioning of an offshore wind farm located approximately 37 kilometres off the coast of Suffolk at its closest point in the southern North Sea; including up to 79 wind turbine generators and associated infrastructure making landfall at Sandy Point between Frinton-on-Sea and Holland-on-Sea, Essex, the installation of underground cables, and the construction of an electrical substation and associated infrastructure near to the existing Lawford Substation to the west of Little Bromley, Essex in order to connect the development to the National Grid.
- 1.1.4 All onshore connection infrastructure included in the Application would be located in the administrative area of Tendring District Council, within Essex County Council's administrative area.
- 1.1.5 An area of land in Suffolk is included in the Order Limits to provide compensatory habitat for lesser black backed gulls, which is within the national landscape, however the works in this area consist primarily of a fence, and it is the offshore turbines not these works which SCC have submitted have an effect on the AoNB and to which this submission relates.
- 1.1.6 No other part of the authorised development would be located within a national landscape.
- 1.1.7 The Applicant has applied for a consent envelope of up to 79 turbines, with a maximum tip height of 370 (reduced during Examination from 395m). The nearest turbine to the shore (and the Suffolk Coast and Heath AoNB, "SCHAoNB") would be at least 37km distant.
- 1.1.8 Th substation is sited near Little Bromley, approximately 2 km from the boundary of the Dedham Vale AoNB ("DVAoNB")

2. STATUTORY WORDING

2.1.1 The Applicant submits that careful consideration must be given to the wording of section 85. The shorthand which has been used in various IP submissions of referring this as simply 'the duty to enhance' risks leading the Examining Authority and Secretary of State into error if that shorthand is applied inappropriately.

2.2 APPLICABILITY OF SECTION 85

- 2.2.1 The relevant subsections of section 85 of the Countryside and Rights of Way Act 2000 as amended by section 245 of the Levelling-up and Regeneration Act 2023 provides:
 - 85.— General duty of public bodies etc.
 - (A1) In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty
 - (2) The following are relevant authorities for the purposes of this section—
 - (a) any Minister of the Crown,
 - (b) any public body,
 - (c) any statutory undertaker,
 - (d) any person holding public office.
- 2.2.2 It is not disputed that this section can apply to the determination of a DCO application. The DEFRA Guidance¹ explicitly includes such decision making as a potentially relevant function in the examples under "When to apply the duty", the Guidance provides;

"Relevant authorities will need to apply the duty when undertaking any function in relation to, or so as to affect, land in a Protected Landscape.

This may include:...

- decision making in respect of development management, planning applications and nationally significant infrastructure projects".
- 2.2.3 It is the Applicant's position that the Secretary of State is required in the circumstances of this Application to have regard to the potential for the proposed development to affect both the Suffolk and Coastal Heath AoNB and the Dedham Vale AoNB. It is agreed that any decision would likely be at risk of challenge if this was not considered. How this consideration should be applied and what is required to demonstrate compliance is understood by the Applicant to be the core of the disagreement between it and the relevant IPs.
- 2.2.4 It is not disputed that the undertaker is a statutory undertaker by virtue of holding a generation licence issue under section 6 of the Electricity Act 1989.

¹ Guidance for relevant authorities on seeking to further the purposes of Protected Landscapes, DEFRA 16 December 2024

- 2.2.5 However the Applicant is not the relevant authority for the purposes of section 85 in this case. The making of a DCO application is not the exercise or performance of a function as a statutory undertaker as it is not carried out under statutory powers. The Applicant does not have to be a statutory undertaker to make a DCO application. The relevant authority for the purposes of section 85 in the case is the Secretary of State as a Minister of the Crown, and the relevant function is the determination of the Application under the Planning Act 2008.
- 2.2.6 The Secretary of State in determining the DCO application is exercising the function of making a determination under the Planning Act 2008.

2.3 CONTEXT

2.3.1 Section 85 must be seen in the context of the 'function' being performed or exercised. It is not a standalone duty disconnected from that context and the rules and restrictions that apply to the exercise of that function. As the Applicant has submitted², the context here is the making of a planning determination. All of the normal requirements for such decision making still apply, including the statutory requirement that the decision is made in accordance with the NPS under section 104 of the Planning Act 2008. As noted by King's Counsel in his opinion submitted herewith.

"the duty is not to be regarded as overriding the decision-making framework created by the PA 2008 or other legislation which applies to the making of such decisions. The relevant authority must exercise a judgment in each case to determine what is reasonable and proportionate in fulfilling the duty."

- 2.3.2 This also means that the tests for the imposition of requirements and planning obligations also apply in the usual way.
- 2.3.3 The importance of context is clearly supported by the DEFRA guidance:

"Consideration of what is reasonable and proportionate in the context of fulfilling the duty is decided by the relevant authority and should take account of the context of the specific function being exercised." (emphasis added)

2.3.4 As noted by King's Counsel, that guidance in giving examples of how the duty should be applied demonstrates:

"the need for a context specific and proportionate judgment to be reached as to what is appropriate and justified in any individual case"4.

2.3.5 That the duty does not over-ride other statutory duties is also noted in the DEFRA Guidance:

"The duty does not prevent relevant authorities from undertaking their statutory functions and discharging their legal duties and other responsibilities. The duty is intended to complement these requirements by ensuring that the purposes for which Protected Landscapes are designated for are recognised in reaching decisions and undertaking activities that impact these areas." (emphasis added)

² Inter alia REP5-073 in response to SCC, REP3-024, REP3-025

³ Opinion of King's Counsel paragraph 97

⁴ Opinion of King's Counsel paragraph 100

- 2.3.6 While this duty is a strengthening of the prior wording requiring the regard to be had to the purposes, it does not take on a status over and above any other consideration. It is noted that the Guidance provides that designated purposes must be 'recognised', this is not the same as requiring that they must be enhanced or that they are given a particular weight in planning determinations. Rather the relevant example of what an authority should do is:
 - <u>as far as is reasonably practical</u>, relevant authorities should <u>seek to</u>
 <u>avoid harm</u> and <u>contribute to</u> the conservation and enhancement of the
 natural beauty, special qualities, and key characteristics of Protected
 Landscapes". (emphasis added)

2.4 "LAND IN AN AREA OF OUTSTANDING NATURAL BEAUTY" AND SETTING

- 2.4.1 No part of the onshore connection works is situated on land within a AoNB. That siting outside designated landscapes is one of the measures employed by the Applicant in designing the scheme to as to avoid direct impacts on and thereby seek to conserve designated landscapes.
- 2.4.2 The Applicant agrees that section 85 applies to proposals outside designated landscapes but notes that this can only be where they 'affect' the land within the designated landscapes. This is clear in statutory wording and supported by the DEFRA guidance which provides in 'The setting of Protected Landscapes' that:

"The duty also applies to functions undertaken outside of the designation boundary which affects land within the Protected Landscape".

- 2.4.3 The degree to which the proposed development 'affects' the designated landscapes is a key point of dispute, and the Applicant's case on that is set out in section 5 below.
- 2.4.4 Even if the development is found to be within the setting, the National Planning Policy Framework, (upon which most of the case law on the consideration of impacts to landscape in the planning context is based and which is submitted to be a relevant consideration for this application) is clear that it is not the setting itself that is being protected, but the impact of any changes on the designated areas. The setting is not important in its own right (a principle recently re-confirmed by the judgement in *R* (*Ardleigh Parish Council*) *v Tendring District Council* ⁵). The same should apply to the section 85 duty, it is only the impact within the designated area that is relevant.

2.5 "SEEK TO FURTHER"

2.5.1 The duty is to "seek to further" the purposes. It is not a duty to further those purposes. The words "seek to" must be given meaning. To read the statute without having regard to the inclusion of 'seek to' is to misinterpret the provision. The Secretary of State is not required to exercise his functions so as to achieve those purposes in every case, but is required to consider how they could be furthered.

⁵ [2024] EWHC 648 (Admin)

2.5.2 Section 85 is not outcome based; it does not require that every proposal which affects land in an AoNB conserves or enhances the AoNB. The statutory wording only requires that conservation or enhancement of the statutory purposes is <u>sought</u>, not achieved. It does not require that all possible measures, no matter how unrelated to the scale of impacts, are taken to conserve or enhance the AoNB. In the opinion submitted herewith, King's Counsel advises that:

"the duty as drafted does not mandate any particular outcome. It is not a duty to ensure the decision made furthers the statutory purpose, but instead to "seek to" further it. In that way it allows for a judgment to be made by the relevant authority as to whether (for example) to grant development consent for a development that does not itself further that statutory purpose. If achieving that objective would be unreasonable and/or disproportionate having regard to the specific facts of the case and other legitimate public interest objectives, then in my view the duty does not translate into a duty to achieve it nevertheless."

2.5.3 Section 85 does not create a legal duty to adopt an alternative that best furthers the statutory purposes. The submission by SCC that there is a least harmful configuration of turbines that that must be adopted to comply with duty is entirely unsupported by the language of the section (this point is considered further in section 5 below). Such an approach is based on an interpretation of the statute that is simply not supported by the wording, and creates a test which is not set out in the statute itself.

2.6 HARM

- 2.6.1 There is no reference to 'harm' in section 85. The Applicant and IPs have both referred to 'harm' in their submissions, and DEFRA refers to avoiding harm in the Guidance, but the Applicant considers that this is as a proxy to 'not conserving' simply for ease of use of language. It is noted that the guidance for carrying out LVIA ⁷ does not define 'harm' or provide guidance or methodology for establishing or quantifying 'harm' to a landscape.
- 2.6.2 The Applicant maintains its position that it is unreasonable for SCC to equate non-significant EIA impacts and 'harm'. The Applicant notes that King's Counsel does not support the position being taken by SCC in their submissions that non-significant EIA impacts can still amount to harm, considering that there is no logical basis to make this distinction. If an impact is harmful to a protected landscape it would be irrational for it also to be non-significant. It is the Applicant's submission that to argue that any effect, no matter how non-significant is harmful is to misuse language and to fail to have regard to the need to assess an impact in the context of its facts and circumstances.
- 2.6.3 The Applicant submits that 'harm' must be something more than a negligible or minor effect. Importantly, the SCC position in effect equates visibility and harm which the Application submits is an unreasonable position in the circumstances and is not supported by case law. In *Howell v Secretary of State for Communities and Local Government*⁸, the Court of Appeal stated that

⁶ Opinion of King's Counsel paragraph 98

⁷ Guidelines for Landscape and Visual Impact Assessment, Landscape Institute, 2013, 3rd Edition

^{8 [2015]} EWCA Civ 1189

"not every piece of development outside a designated area but visible from somewhere within it will harm the natural beauty of that area simply because it is visible from that location"

- 2.6.4 This case is considered further in section 5 below.
- 2.6.5 It is entirely unclear to the Applicant how an impact which has been assessed, and agreed by SCC, to be non-significant in EIA terms can still constitute harm. A non-significant effect does not require further control or mitigation yet SCC are submitting that the non-significant effects on the SCHAoNB does require mitigation (in the form of compensation through monetary contribution) because they amount to 'harm'. The Applicant submits that this is an illogical position.
- 2.6.6 This concept of harm, especially in relation to setting, is much better established in the context of heritage assets than landscape, however there is judicial authority that such heritage considerations should not be applied to landscape impacts on designated landscapes. In *Worthing Borough Council v Secretary of State for Levelling Up, Housing and Communities, Persimmon Homes (Thames Valley) Limited*¹⁰ the High Court considered submissions that, in considering the NPPF provisions on the need to give 'great weight' to the setting of a National Park, the heritage approach requiring that 'great weight' is given to harm in the balancing exercise, regardless of the level of impact actually assessed, did not apply to the landscape considerations¹¹. Rather the Court held that the correct approach is as set out in the Court of Appeal in Bayliss¹² that the weight to be attached to any landscape impact must be dependent on the individual facts and circumstances of that application;

"national policy guidance, very brief in nature on this point, has to be interpreted in the light of the obvious point that the effect of a proposal on an AONB will itself vary: it will vary from case to case; it may be trivial, it may be substantial, it may be major. The decision maker is entitled to attach different weights to this factor depending upon the degree of harmful impact anticipated. Indeed, in my view it would be irrational to do otherwise. The adjective "great" in the term "great weight" therefore does not take one very far. "13

- 2.6.7 The Applicant has made further submissions on the application of the Bayliss judgment to the Application below, but on this point simply notes that the Courts have clearly stated that cross-application of heritage approaches to considering the impact on setting is not appropriate for landscape, and that use of 'harm' as a concept in this case accordingly requires caution in its application.
- 2.6.8 In this submission the Applicant has maintained the drafting used in previous submissions where 'harm' is used as a proxy for 'not conserving' under section 85, but notes that it in doing so the Applicant does not submit or agree that any concept of 'harm' as applied to the setting of heritage assets should be applied in this case.

⁹ Paragraph 24

¹⁰ [2022] EWHC 2044 (Admin), which case considered NPPF policy for great weight be given to the conservation and enhancement of landscape and scenic beauty in an AONB.

¹¹ Paragraph 138

¹² Gerald David Bayliss v Secretary of State for Communities and Local Government [2014] EWCA Civ 347

¹³ Sir David Keene at paragraph 18

3. ASSESSMENT OF IMPACTS

3.1 SCHAONB

- 3.1.1 The Applicant has set out its position in previous submissions [PD4-006; REP2-039; REP3-024; REP3-024] and orally at ISH1, ISH2 and ISH6.
- 3.1.2 The Applicant has fully considered the likely significant effects of the VE array areas on the special qualities of the SCHAoNB in 6.2.10 Seascape, Landscape and Visual Assessment [APP-079] (pages 208-227 and Table 10.26). The conclusion of this assessment is that the VE array areas will not have significant adverse impacts on the natural beauty and special qualities of the SCHAONB.
- 3.1.3 The natural beauty indicators of the SCHAONB, which inform its special qualities, are set out in the SCHAONB Natural Beauty and Special Qualities Indicators report ('the 'Special Qualities Report') (EDF Energy, SCHAONB Partnership, Suffolk County Council, Suffolk Coastal District Council and Waveney District Council, 2016), and in Table 10.14 of 6.2.10 Seascape, Landscape and Visual Assessment [APP-079]. These include landscape qualities such as its intactness, condition and influence of existing influence of 'incongruous' features (such as power stations and military sites); scenic qualities such as its distinctive sense of place, striking landform, land cover, memorable views and sensory stimuli; the relative wildness and relative tranquillity of pockets of landscape associated with the coast and estuaries; as well as special qualities relating to natural heritage and cultural heritage.

3.2 ES ASSESSMENT OF SCHAONB SPECIAL QUALITIES

- 3.2.1 The ES assessment found that many of the SCHAoNB special qualities will not be affected as result of the proposed development, for example, qualities relating to the health and well-being of people that derives from access to recreational routes and semi-natural landscape; the strong sense of local identity, artistic associations and food culture; conservation schemes and ecosystem services. These are all special qualities that will continue to prevail regardless of the proposed development, which only has potential to result in effects on specific visual aspects of the scenic and landscape qualities of the SCHAoNB.
- 3.2.2 The ES assessment also found that the VE array areas will not result in any direct changes to the current pattern of elements that define the landscape character of the SCHAoNB. No physical attributes that define special qualities of the SCHAoNB will be changed. For example, SCHAoNB landscape qualities relating to the intactness of its physical landscape, features and elements, indicated by its close-knit seminatural landscapes, heath, acid grassland and protected species populations, would not be affected by the VE array areas.
- 3.2.3 Due to their location at considerable distance outside the SCHAoNB, the VE array areas impact only on the perception of character and qualities which is considered an indirect effect. Changes to the perceived character occur remotely, away from the proposed development, in views from parts of the SCHAONB, rather than 'on' or 'within' the landscape, which is therefore affected in terms of perceptual effects (rather than direct physical changes).
- 3.2.4 The special qualities which relate to the identified effects are those where the indicator relates to, or is supported by, an aspect concerning the visual contribution made by seascape to the SCHAoNB and the SCHAoNB's relationship with this seascape.

- 3.2.5 The interrelationship between the landscape and the sea is stated in the Special Qualities Report to contribute to 'Landscape Quality' as it also does to 'Scenic Quality'.
- 3.2.6 In relation to the 'Scenic Quality' indicator and its sub-element 'Striking Landform', this is informed by long distance and panoramic views out to sea and along the heritage coast, and these views also form an element of the visual interest in the patterns of land cover.
- 3.2.7 Views out to sea are also an element of the sensory factors discussed in the document, where large open vistas across heaths and along the coast out to sea form part of the memorable views alongside the 'Big Suffolk Skies'.
- 3.2.8 With the distance that the VE array areas lie off the Suffolk coast, the assessment establishes that there will remain a vast and open seascape with wide panoramic views, notwithstanding the potential visibility of the proposed VE WTGs.
- 3.2.9 The turbines would not interrupt or block views due to their location more than 37km offshore from the SCHAoNB coastline, and because they will only be seen on and indeed beyond the very distant skyline and not in front of or interrupting that skyline and the sweep of seascape leading up to it.
- 3.2.10 The largely undeveloped coastline and offshore areas are also cited, although again the established presence of energy development is acknowledged as forming a part of the established character, including both Sizewell A and B Power Stations, and the existing Greater Gabbard and Galloper Wind Farms. The SCHAoNB is in part characterised by its established and evolving energy development and this is not wholly harmful but both part of the story and future of the Suffolk Coast and the SCHAoNB.
- 3.2.11 In the special qualities assessment undertaken in the ES, the nature of the effects is reported alongside the magnitude of change and a determination is made as to their significance taking the contribution they make to the Natural Beauty.
- 3.2.12 Effects are assessed against each specific SCHAoNB indicator, meaning that the VE array areas may have effects on certain 'indicators' of quality, while having no effects on other 'indicators' of the same overall landscape quality.
- 3.2.13 An example of this, would be in relation to 'landscape quality' it effects the 'juxtaposition of elements' (part of visual quality), while having no effects on 'important areas of heath and acid grassland' (part of the landscape quality). Effects on one indicator of a special quality does not translate to a significant effect on the overall 'intactness of the landscape' as described in the main 'sub-factor' of landscape quality since in the above example, the VE array areas have no effect on the landscape fabric of the SCHAoNB, the critical indicator of 'intactness'.
- 3.2.14 The assessment is described with full narrative to draw out these distinctions and highlight the particular indicators of the special qualities that are affected and those that are not affected. Effects on special qualities are also summarised in Table 10.26 of 6.2.10 Seascape, Landscape and Visual Assessment [APP-079].
- 3.2.15 In summary, of the 35 indicators of special quality assessed, none have been found to be affected significantly, due the low or negligible magnitude of change that is assessed. Some of the indicators of special quality will be subject to no change.

3.2.16 The key special qualities that may be subject to low levels of change are the qualities relating to:

'Juxtaposition of elements in a relatively small area':

'Long distance and panoramic views including out to sea';

'Open vistas across heaths and along the coast, out to sea'; and

'Expansive views offshore emphasise sense of openness and exposure on open and exposed coastline'.

- 3.2.17 The effects of the VE array areas derive from changes to views from the low cliffs and parts of the shingle coast of the SCHAoNB out to sea, adding an additional element in the simple composition of shingle, sea and sky the juxtaposition of elements perceived from the coastal edge.
- 3.2.18 These are all visual qualities and are not related to 'landscape fabric' of the SCHAoNB. The fabric of the physical landscape is the key matter influencing natural beauty of AoNBs. The visual aspects of perceived character of areas outside the SCHAoNB are of lesser weight to the special qualities.
- 3.2.19 The SCHAONB is located 37.3km from the VE array area and in the northern and western extent of the northern array the closest WTG to the coast of Suffolk is expected to be a minimum of 38km from the SCHAONB at its closest point (Orford Ness). The majority of the SCHAONB coastline is however located beyond 40 km from the VE array areas. The northern parts of the SCHAONB extend for example to Southwold (47 km) and Kessingland (54.5 km), and the southern part of the SCHAONB extends to Felixstowe (49 km).
- 3.2.20 The majority of the WTG array will be viewed behind and in the same section of the view as the existing Greater Gabbard and Galloper offshore wind farms, thereby minimising the additional horizontal spread of WTGs.
- 3.2.21 The effect of the VE array area upon the Natural Beauty of the SCHAoNB is assessed and it is concluded that although the VE array areas may result in some not significant (moderate/minor) effects of low magnitude on the identified special qualities, the purposes of the SCHAoNB designation will not be compromised, nor the integrity of the SCHAoNB and its fundamental character. This SCHAoNB will remain an area of outstanding natural beauty and can accommodate the change that will be brought about by the VE array areas without significant effects to its baseline character and qualities.
- 3.2.22 The SLVIA has found that the VE array areas would not give rise to significant effects on views or the perceived character and qualities of the SCHAoNB, owing principally to its location at long distance offshore from the SCHAoNB coast of East Suffolk (over 37.3 km to the array areas), together with the position of the VE arrays subsumed behind operational wind farms and the limited additional lateral spread of the VE WTGs on the sea skyline (in which it will generally be beyond and to the east of the Greater Gabbard and Galloper wind farms).

3.3 GEOGRAPHIC EXTENT

3.3.1 The assessment also puts these effects on the special qualities of the SCHAoNB into an appropriate context in terms of location and duration of effects, whether or not they are temporary or reversible and their geographical extent.

- 3.3.2 The Suffolk Heritage Coast (Figure 10.6), which overlaps with the coastal areas and estuaries of the SCHAoNB, represents that part of the SCHAoNB most likely to experience effects arising from the VE array areas. Views of the VE array areas will primarily be experienced from the narrow strip where the coastal edges of Suffolk meet the sea, between Covehithe in the north, Orford Ness and Felixstowe; and from the coastal edges of Essex between Harwich and Clacton-on-Sea.
- 3.3.3 Effects on the special qualities of the SCHAoNB occur from geographically focused areas along the immediate coastal edges where these panoramic, long distances views offshore are available and an aspect of character and qualities.
- 3.3.4 Many of the landscapes where special qualities are experienced are contained to the narrow strip where the coastal edges of Suffolk meet the sea, between Covehithe in the north, Orford Ness and Felixstowe either from the shingle coast, occasional low cliffs and 'pockets' of coastal landscape associated with estuaries and marshes. These pockets of estuary and marshland are often very low-lying, situated inland from the coastal edge and visually contained, where open sea views are restricted.
- 3.3.5 Not significant adverse visual effects (moderate/minor) in EIA terms, are assessed as occurring from the northern parts of the SCHAONB between Southwold and Orfordness; but reduce to not significant (minor) in EIA terms from the southern parts of the SCHAoNB between Shingle Street (south of Orfordness) and Felixstowe, where the VE array areas are increasingly distant from the coastline and increasingly subsumed behind Galloper and Greater Gabbard wind farms.

3.4 VISIBILITY FREQUENCY

- 3.4.1 The SLVIA takes a precautionary approach in relation to 'frequency of effect'. The effects of the VE array areas are assessed based on optimum visibility conditions, as a worst-case. 'Excellent' visibility is not 'prevailing' in terms of its frequency across the year, therefore the VE WTGs will often be viewed in less than the optimum visibility conditions assumed and shown in the visualisations. Excellent visibility to distances beyond 40km from the coast has been identified in Met Office visibility data (Table 10.15) as occurring for only approximately 14% of the time (equating to approximately 52 days of the year).
- 3.4.2 Effects assessed in 6.2.10 Seascape, Landscape and Visual Assessment [APP-079] have not been downgraded either in magnitude or significance from variations in weather and visibility and how infrequently the effects will be experienced. Effects are based on the worst-case with clear visibility and need to be considered in context of the limited time effects will actually occur.
- 3.4.3 The range of distances from the viewpoints in Suffolk to the nearest point of the VE array areas is between 38.2km (Orford Ness, Viewpoint 9) to 49 km (Felixstowe Old Town, Viewpoint 11). Taking account of Met Office data, in the case of Viewpoint 11 at 49km, the visibility frequency likelihood is 8.9%. For Viewpoint 9 at 38.2km, the frequency is 20.9% (as the closest viewpoint within Suffolk). The full extent of the range of visibility frequency at viewpoints in Suffolk is therefore 8.9%-20.9%. The Applicant notes that for 79.1% of the time there would be no visibility, or only very poor visibility of the VE WTGs from the SCHAoNB coastline (based on Met Office visibility frequency data).

- 3.4.4 Based on the Met Office Data and its own field survey observations, the Applicant agrees with the advice of East Suffolk Council's Landscape Officer, that due to weather conditions and distance, it is often more likely that the VE WTGs will not be highly visible on the horizon.
- 3.4.5 The Applicant notes that the WTG blades would not face the SCHAoNB coastline during southwesterly winds. During these conditions the turbines would face into the wind, i.e. towards the south-west and facing into the Thames Estuary, presenting an oblique view towards the Suffolk coast. Given that SCHAoNB is predominantly to the north west of the array, it is winds from this direction that would result in the blades facing the coastline as described. These winds occur approximately 10% of the time. Nonetheless, on a worst-case basis all assessments have been based on the turbine blades facing the receptor.

3.5 SUFFOLK COUNTY COUNCIL'S REPRESENTATIONS ON SPECIAL QUALITIES

- 3.5.1 The Applicant notes that SCC assessed the potential effects of the maximum height wind turbines (399m) at 37km in its relevant representation (RR-107) in which it considered (para 12) that 'there will not be a significant effect on seascape and landscape or the Suffolk Coast and Heaths National Landscape Area'.
- 3.5.2 The Applicant subsequently reduced the maximum height of WTGs to 370m (above LAT) (AS-014 to AS-061), which further reduces the level of impact on the special qualities of the SCHAONB, and it was confirmed by SCC in its Local Impact Report (7.25), that 'the resulting visual effects on seascape and landscape of the SCHAONB and the Suffolk Heritage Coast would remain under the threshold for significance for EIA purposes'. SCC LIR (7.26) went on to highlight that the proposed development, both in isolation and accumulation 'may result in residual visual effects', however it has not clearly articulated which special qualities would be affected and how these qualities might be changed as a result of the proposed development.
- 3.5.3 The Applicant notes that SCC referred briefly to the special qualities that it considers would be affected in its Response to the Applicant's comments on its Local Impact Report at Deadline 4 (REP4-048), in which it stated 'the VE array areas would contribute to the erosion of the 'special qualities' of the SCHAONB, through the addition of further 'incongruous' features the intactness of the landscape, memorable views and the relative wildness would be further eroded'.
- 3.5.4 The Applicant highlights the 'intactness of the landscape', 'memorable views' and the 'relative wildness' as the relevant special qualities of the SCHAoNB referred to by SCC, and to its response in the Applicant's Comments on Deadline 4 Submissions (REP5-073), summarised as follows:

- 3.5.5 Intactness: the effect of the VE array areas relates to the visual aspect of intactness, and not the functional or ecological intactness of the SCHAONB. This visual intactness is one specific aspect of the special quality. The intactness of the seascape in which the VE array areas are located (SCT06 Offshore Waters) is assessed as 'medium to medium-low' susceptibility to change in the Suffolk Seascape Sensitivity Study (SCC / SCHAONB Partnership, 2020), which describes it is a busy seascape, containing shipping and the Greater Gabbard and Galloper offshore wind farms. Characteristic man-made elements are well represented in the seascape. The Applicant's assessment is that the VE array areas will be consistent with the existing character of this part of the seascape and will not result in a significant degree of fragmentation, visually, given the position of the VE WTGs primarily as an easterly extension to Galloper.
- 3.5.6 Memorable views: The VE array areas may introduce further visible elements in the sea views of the large open vistas across heaths and along the coast and out to sea, however the relatively low elevation of the heaths, simple form of the coastline, long distance and position of the VE WTGs mainly behind other windfarms, reduces the potential to compete with landmarks within the SCHAONB. Some of these landmarks at the coast are also modern structures, such as Sizewell A and B and the former military site at Orford Ness. Relatively subtle changes to the relationship of constituent features and visible elements in sea views will occur and the effect of the VE array areas on memorable views from the SCHAONB is assessed to be no greater than moderate/minor and not significant. Memorable views and views to landmarks including modern and historic structures will fundamentally continue to be experienced without significant changes.
- Relative wildness: Due to the location of the VE array areas 37km outside the 3.5.7 SCHAONB, no physical attributes contributing to wildness special qualities will be changed, which makes it unlikely to result in higher levels of change to the relative wildness of the SCHAONB. The VE array areas may only affect perceptual responses of wildness i.e. people's perception evoked by the physical presence of the WTGs offshore, such as the sense of remoteness, openness/exposure or enclosure/isolation. These have each been assessed in Chapter 10 Seascape. Landscape and Visual Assessment [APP-079] (p215-221) and it has been found that the changes arising from the VE array areas will not affect these qualities perceived within the SCHAONB to the degree that the qualities are substantially eroded and the effects are considered to be no greater than moderate/minor and not significant. SCHAONB special qualities relating to the relative wildness are also experienced from 'pockets of relative wildness associated with the coast, estuary and forests' (SCHAONB / SCC, 2016). These pockets are the low-lying estuaries and fens that are often visually contained by the intervening raised dunes and shingle landforms along their eastern edge. By definition, 'pockets' of relative wildness associated with the coast, estuaries and forests mean that the geographic extent of changes in relative wildness is not widespread and limited to 'pockets' of the landscape.

3.6 NATURAL ENGLAND'S REPRESENTATIONS ON SPECIAL QUALITIES

- 3.6.1 The Applicant notes that Natural England assessed the potential effects of the maximum height wind turbines (399m) at 37km in its relevant representation (RR-81), which identified (Table 1) effects on five viewpoints in the SCHAoNB as being potentially significant (between Dunwich Heath and Orford Ness) at the maximum WTG height scenario, however just one viewpoint was assessed as being potentially significant at the lowest WTG height (324m) (at Orford Ness). The Applicant subsequently reduced the maximum height of WTGs to 370m (above LAT) (AS-014 to AS-061), which will reduce the apparent height of the closest WTGs in the VE array areas and the subsequent level of impact on the special qualities of the SCHAONB.
- 3.6.2 Natural England have raised concerns about effects on two particular aspects of special qualities the "sense of enclosure and isolation" special quality; and the potential for further cluttering effects impacting the "landscape quality" special quality in their Relevant Representation (Appendix I) (RR-081), which the Applicant has responded to in its response to Natural England representation at Deadline 1 (Table 2.10 of REP1-051) and in the Applicant's Comments on Natural England's Deadline 4 submission (REP5-074).
- 3.6.3 The Applicant notes that Natural England have a particular concern at Orford Ness. The Applicant notes that this narrow strip of coast forms the closest point of the Suffolk Coast to the VE arrays but is not representative of the impacts from other locations set further back from Orford Ness or at longer distances to the north and south of the SCHAONB, and it is a location with limited public access. Wider views of Orford Ness also include other development influences, including structures associated with the former military use, tall communications masts and bleak, austere, foreboding character associated with its remoteness and years of military testing, bombing and disposal. The Applicant considers that these special qualities would still be appreciated by visitors, even with the addition of the further VE WTGs on the visible seaward horizon.
- 3.6.4 The Applicant has provided comments on the potential 'curtaining effect' in its response to Relevant Representations submitted at deadline 1 (REP1-049 and REP1-051). The Applicant's position is that the 'curtaining' effect is not significant given the retention of a gap between VE and East Anglia TWO in the majority of views; the very long distance of the viewpoints where the gap is narrowest; the relatively narrow additional increase in lateral spread of the VE WTGs; their introduction as elements that are similar to and mainly behind those that are present or consented; and their very long distances from the SCHAoNB on the sea skyline, all of which diminishes the potential 'curtaining' effect, and limits the cumulative effect to occurring in only the most optimum, infrequent, visibility conditions

3.7 DVAONB

- 3.7.1 Dedham Vale AONB is located to the north of the onshore substation at a minimum of approximately 2km as shown in the plan of Landscape Designations [APP-180, Figure 2.5]. The ZTV [APP-180, Figure 2.10b] shows that the majority of the DVAoNB would experience no visibility of the onshore substation. The ZTV also shows patchy visibility to the west of Lawford at a minimum of 2km and to the south of East Bergholt at a minimum of 4.6km. The limited levels and extents to which the onshore substation would be theoretically visible relates to the screening effect of the valley landform combined with the extent of vegetation and buildings. Site work has demonstrated that actual visibility is even more localised owing to the screening effect of mature tree cover and hedgerows which are a feature of this area.
- 3.7.2 The LVIA [APP-084] includes an assessment of Viewpoint 9: Essex Way, Dedham Road, selected to represent views from the closest part of the DVAoNB from which theoretical visibility might arise, to the west of Lawford. The visualisation in [APP-194, Figure 2.24] shows that the onshore substation, at a distance of approximately 2.6km, would not be visible from this viewpoint owing to the screening effect of intervening landform and tree cover. Site work along the extents of Dedham Road confirmed that adjacent tree cover would likely screen the onshore substation in the views of walkers and road-users in this area.
- 3.7.3 Visualisations for additional viewpoints are presented in Figures 10.34.10 to 10.34.13 [REP5-083, REP5-084, REP5-085, REP5-086] with a viewpoint location plan presented in Figure 10.34.9 (REP5-082]. These have been included to represent the views from the patch of theoretical visibility to the south of East Bergholt. The visualisations for the four additional viewpoints show Rochdale envelope 3D boxes to represent the Five Estuaries, North Falls and EACN onshore substations and include a model of the towers and lines for the Norwich to Tilbury OHPL, superimposed upon the baseline photographs. These visualisations demonstrate that there will be no visibility of the Five Estuaries onshore substation from these viewpoints owing to the screening effect of intervening landform and existing vegetation. The use of the Rochdale envelope means the maximum parameters of the AIS footprint and GIS height create an unrealistic worst-case scenario and actual visibility would be less than what is shown.
- 3.7.4 In terms of the setting of the Dedham Vale AoNB relative to the surrounding landscape, this is not defined in any documentation relating to the designation. The location of the onshore substation is considered to be outwith the setting of the AoNB. As described in the 'Dedham Vale AONB Natural Beauty and Special Qualities and Perceived and Anticipated Risks'

"Dedham Vale AONB is not a dramatic expansive landscape but a small, domesticated landscape".

Dedham Vale AoNB encompasses a valley landscape. As such, the valley landform creates a sense of enclosure which is further accentuated by the substantial extent of woodland, trees and hedgerows in the AoNB and surrounding areas. This means that, by the very nature of this lowland wooded valley, there is very little intervisibility with the surrounding landscapes, including the predominantly agricultural landscape to the south where the onshore substation would be located. This lack of association owing to the introverted character of the AoNB, means that the agricultural

landscape to the south does not play an important role in terms of setting to the AoNB.

3.7.5 Furthermore, the intervening area between the closest south-east boundary of the AoNB and the onshore substation is already influenced by development. The southern boundary is marked by the busy A137 (Harwich Road) with residential properties along this road and in the built-up area of Lawford to the east. There is also extensive development in the form of market gardening and light industry in the Foxash Estate which is located in this area to the immediate south of the A137 and the southern AoNB boundary

4. MEASURES TAKEN TO CONSERVE AND ENHANCE

4.1 SITE SELECTION

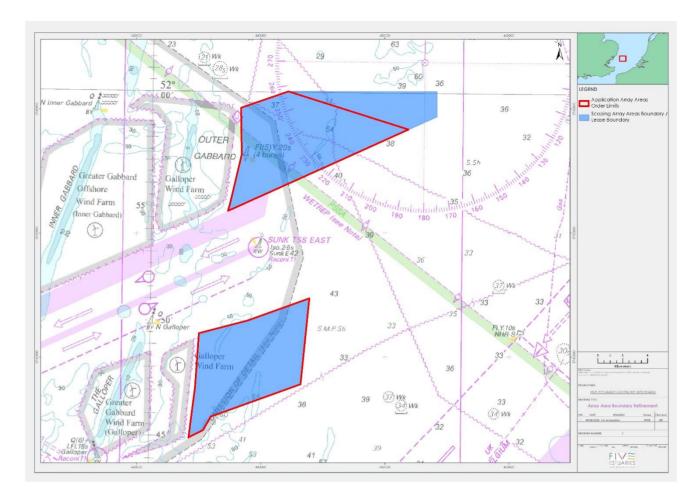
4.1.1 No part of the offshore or onshore connection works are situated within a designated landscape. That siting outside designated landscape is one of the measures employed by the Applicant in designing the scheme to as to avoid direct impacts on and thereby seek to enhance designated landscapes.

4.2 OFFSHORE

- 4.2.1 The array area was primarily defined by The Crown Estate in preparing for the leasing round. The Applicant is constrained by the area TCE offers for lease. Working within that area, the Applicant has taken a number of "reasonably practical" measures to "seek to avoid harm" to the protected landscape in terms of the Guidance.
- 4.2.2 The Suffolk Seascape Sensitivity Study (SCC / SCHAONB Partnership, 2020) describes the offshore waters in which the VE array areas are located a busy seascape, containing shipping and the Greater Gabbard and Galloper offshore wind farms. The VE array areas will form an extension to these existing Greater Gabbard and Galloper OWFs. The VE WTGs will be viewed next to and subsumed behind (to the east) of these existing WTG arrays, seen as a continuation of an existing effect in the seascape, rather than an entirely new or unfamiliar feature.

4.3 ARRAY REFINEMENT

- 4.3.1 The Northern array area reduced by removing an area from the lease area (shown shaded blue) to the eastern edge of the array site. The array site as applied for is shown by a red line in the figure below. The area had the greatest potential for impacts on shipping and would have allow turbines to spread across a larger field of view.
- 4.3.2 As described in 6.2.10 Seascape, Landscape and Visual Assessment [APP-079] (Table 10.18) the spatial extent of the windfarm site was reduced between EIA Scoping and PEIR, such that the offshore windfarm site now occupies 279.2 km2 compared to the 313.14 km2 at Scoping. The reduced spatial extent ensures that there is a reduction in the apparent lateral spread of WTGs when viewed from the SCHAoNB coastline, with a section of the northern array removed to help avoid filling in the 'gap' between existing wind farms as seen from the Suffolk coast.
- 4.3.3 The Applicant has limited the northerly spread of WTGs as far as practicable (and has reduced the maximum height of the WTGs), such that the effect of the VE array areas on the special qualities of the SCHAONB has been assessed as not significant in the ES and by other Interested Parties (East Suffolk District Council and Sussex County Council).



4.4 TIP HEIGHT REDUCTION

4.4.1 The maximum tip height of all turbines has been reduced from the originally proposed 424m, to 399m above LAT at Application, and now 370m above LAT. The Applicant has committed to reducing the maximum blade tip height of the VE WTGs to 370m (above LAT) (as per the Applicant's change request (AS-014 to AS-061)), which will result in a reduction in seascape and visual effects, including a reduction in the apparent height of WTGs within the northern VE array and the relative size difference with other WTGs in the area. The reduction in the maximum height of WTGs to 370m (above LAT) located at 37km would fall below the 'probable' significance threshold for a high sensitivity receptor identified in the Suffolk Seascape Study (White Consultants, June 2023), using the 'very approximate ratio' between WTG height and distance in Figure 2 of this study. The Applicant notes that Suffolk County Council considered that for 399m height WTGs the resulting effects on seascape, landscape and visual receptors, including the SCHAONB, would remain under the threshold for significance for Environmental Impact Assessment ("EIA") purposes.

The array area reduction and tip height reduction represent embedded mitigation measures which the Applicant has applied to inter alia prevent and reduce any potential for adverse impacts. These are the reasonable and practical steps required by the DEFRA Guidance.

4.4.2 The securing of these measures in design parameters of the project is also in alignment with the Guidance which states that for development management decisions, the relevant authority "should consider whether [such] measures can be embedded in the design of plans and proposals, where reasonably practical and operationally feasible". That such measures have been embedded demonstrates that the reasonable and practical steps which have to be taken to comply with the duty do not need to be in the form of an additional enhancement proposal in order to comply with the duty as is submitted by SCC (as that cannot be embedded).

4.5 ONSHORE

4.5.1 As required by the NPS14, and as set out in 6.1.4 Site Selection and Alternatives [APP-066] landscape impacts were considered at an early stage in identifying onshore locations. This ensured that, as is now required by the DEFRA Guidance, the Applicant sought to avoid harm to these designations as far as reasonably practicable. As noted in that chapter, the factors considered in identification of long list landfall zone options included at 4.8.4, 2nd bullet:

"Avoidance of direct significant impacts to landscape (AONBs and Heritage Coasts) and cultural heritage designations (Scheduled Monuments Conservation Areas, Listed Buildings, Registered Parks and Gardens, chartered wrecks and Registered Battlefield) where possible;"

- 4.5.2 The selection of the substation site had to have regard to the connection point provided by National Grid, however in selecting the site applied for the Applicant had regard to protected landscapes, including the Dedham Vale AoNB. The 'AREA OF SEARCH' shown in figure 4.10 shows the DVAoNB mapped as a key constraint on that search, demonstrating that from the early stages, the Applicant has sought to avoid and minimise impacts on the protected landscape.
- 4.5.3 The siting of the substation is screened by landform and not visible from the DVAoNB. The duty to seek to further the purposes is complied with.
- 4.5.4 The measures take demonstrate the 'reasonable and practicable steps, which are again embedded through the definition of the Order Limits, which have been taken and demonstrate compliance with the duty under section 85.

¹⁴ NPS EN1 at 5.10.19

5. STATUTORY REQUIREMENTS AND INTERPRETATION

5.1 SCHAONB

- 5.1.1 The Applicant entirely rejects the SCC submission that there is direct harm to the SCHAoNB. Even if harm were to be established (and the Applicant submits that SCC has only asserted harm based on insignificant theoretical visibility of some turbines and has not evidenced such harm to the Examination), it could only ever be indirect give that the elements of the authorised development which are alleged to create an effect are not situated within the AoNB.
- 5.1.2 The Applicant does not accept that there is direct harm to the setting of the AoNB from development at 37km distant. The setting of an AoNB cannot extend indefinitely or even as far as theoretical visibility in ideal weather conditions allows. The extent of the AoNB was selected for a reason and it is not reasonable or appropriate to curtail land at such a distance outside the protected landscape on the basis of limited theoretical visibility in the context of a long-range view already containing offshore windfarm development and which does not therefore materially change that view.
- 5.1.3 The Applicant does not accept that the planning decision on the proposed development 'affects' the SCHAoNB. The relevant elements of the development are located entirely outside the AoNB, is located at 37km distant at the closest point and has some limited theoretical visibility from the AoNB in ideal weather conditions only. For Viewpoint 9 at 38.2km, the frequency is 20.9% (as the closest viewpoint within Suffolk). The Applicant notes that for 79.1% of the time there would be no visibility, or only very poor visibility of the VE WTGs from the East Suffolk coast (based on Met Office visibility frequency data). The authorised development would also appear in the context of the existing, closer, offshore windfarm development. The SLVIA concludes there is no significant adverse effect on the AONB.
- 5.1.4 The Applicant has previously submitted that the term 'harm' is not defined or used within published guidance for the assessment of landscape and visual impacts (Guidelines for Landscape and Visual Impact Assessment, Landscape Institute, 2013, 3rd Edition). In the Applicant's advisors' professional judgement, 'harm' would most likely be associated as occurring where significant effects arise and equally, that it is unlikely that harm would arise where effects have been assessed as not significant in EIA terms. It is the Applicant's view that residual, non-significant effects cannot be considered harmful to the purposes of a designation. The fact that significant effects have been avoided does, in the Applicant's view, mean that the proposed development has minimised harm to the landscape.

5.2 PLANNING ACT 2008 SECTION 104

5.2.1 As noted in section 2 above, the Applicant submits, as supported by the DEFRA Guidance and the opinion of King's Counsel, that the context of the function being performed is of critical importance to the Examining Authority and Secretary of State in applying section 85. Section 85 does not displace or override other statutory functions. Section 104(3)¹⁵ requires that the Secretary of State must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.

104 Decisions in cases where national policy statement has effect

- (1) This section applies in relation to an application for an order granting development consent if a national policy statement has effect in relation to development of the description to which the application relates.
- (2) In deciding the application the Secretary of State must have regard to—
 - (a) any national policy statement which has effect in relation to development of the description to which the application relates (a "relevant national policy statement"),
 - (aa) the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009.
 - (b) any local impact report (within the meaning given by section 60(3)) submitted to the Secretary of State before the deadline specified in a notice under section 60(2),
 - (c) any matters prescribed in relation to development of the description to which the application relates, and
 - (d) any other matters which the Secretary of State thinks are both important and relevant to the Secretary of State's decision.
- (3) The Secretary of State must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.
- (4) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations.
- (5) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment.

¹⁵ Amendments to section 104 are due to be brought into force when the relevant provisions of Schedule 15 of the Environment Act 2021 are commenced, however these amendments will not affect the substance of the considerations set out in this paper.

- (6) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment.
- (7) This subsection applies if the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits.
- (8) This subsection applies if the Secretary of State is satisfied that any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.
- (9) For the avoidance of doubt, the fact that any relevant national policy statement identifies a location as suitable (or potentially suitable) for a particular description of development does not prevent one or more of subsections (4) to (8) from applying.
- 5.2.2 The issue of whether section 85 has been complied with in regard to an AoNB is not a matter which could result in the United Kingdom not complying with international obligations and subsection 104(4) is not considered to apply.
- 5.2.3 Subsection 104(6) provides that the Secretary of State may not decide an application in accordance with the NPS where doing so would be unlawful. The Applicant submits that this does not apply as the section 85 duty as imposed on the Secretary of State allows for him to exercise judgment and discretion in making determinations (being a part of the function being performed). An error on this point would be a failure to comply with a duty under subsection 104(5) not an unlawful decision under subsection (6).
- 5.2.4 Subsection 104(7) provides for the application of planning judgment and is a matter for the Secretary of State having regard to the recommendation of the Examining Authority. The Applicant however submits that, given the potential worst case impacts as assessed, which at worst are non-significant in EIA terms, the strong policy support, urgent need and the CNP status for the proposed development under the NPS, any adverse impact on the AoNB is not of such a level that it would outweigh the significant benefits of the proposal as set out the Planning Statement [APP-231].
- 5.2.5 The duty under section 85 is a duty imposed on the Secretary of State under an enactment (s104(5)). That duty is however to 'seek to further' the conservation and enhancement of the AoNB. The Applicant has submitted and maintains that it has taken all practical and reasonable steps to conserve the AoNBs and these are set out in section 4 below.
- 5.2.6 Section 85 is not a statutory provision that requires the determination of the Application other than in accordance with the NPS. The duty imposed on the Secretary of State is to 'seek to further' the conservation and enhance, as set above, the statutory wording it does not require any particular outcome.

- 5.2.7 The DEFRA Guidance is clear that the purpose of section 85 is to ensure that the duty 'complements', not displaces, existing duties. The SEPDEP¹⁶ decision, on an offshore windfarm application, found that the duty had been complied with in that case through siting and design of the application despite some adverse effects arising. The SEPDEP determination was made in accordance with the NPS under section 104, and having regard to section 85. The decision letter states:
 - "3.3. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision".
- 5.2.8 It is therefore submitted that it is clear that the need to ensure compliance with the section 85 duty does not mean that the Application cannot be determined in accordance with s104.

5.3 NATIONAL POLICY STATEMENTS

- 5.3.1 The following NPSs are considered to be relevant to the determination of the Application:
 - Overarching National Policy Statement for energy (EN-1).
 - National Policy Statement for renewable energy infrastructure (EN-3).
 - National Policy Statement for electricity networks infrastructure (EN-5)
- 5.3.2 The NPSs set out that the need for significant amounts of new large scale energy infrastructure is urgent¹⁷ and that applications for such infrastructure which includes the proposed development, should be assessed on the basis that the need is established and urgent¹⁸. EN-1 provides that

"Government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure¹⁹".

- 5.3.3 The proposed development, including the onshore connection infrastructure, is nationally significant low carbon infrastructure under the NPS and therefore is a critical national priority (CNP) development²⁰.
- 5.3.4 As required by the NPS²¹, the Applicant has assessed the impacts on landscape and seascape²², has applied the mitigation hierarchy in developing its proposal and has sought to avoid where that is not possible, minimise and mitigate any adverse effects. It has also assessed the potential cumulative impacts in the ES²³. The requirements for the CNP presumptions are therefore submitted to apply²⁴. This includes that any residual non-HRA and non-MCZ impacts remaining after the application of mitigation are:

¹⁶ Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Project DCO, Planning Inspectorate reference EN010109, Secretary of State Decision Letter dated 17 April 2024

¹⁷ NPS EN1 at 3.2.1, 3.3.58, 3.3.61

¹⁸ NPS EN1 at 3.2.6

¹⁹ NPS EN1 at 3.3.62

²⁰ NPS EN1 at 4.2.5, bullet 1

²¹ NPS EN1 at 4.2.11, 4.3.4, 4.3.5

²² NPS EN1 at 4.3.2, 4.3.3, NPS EN3 at 2.8.204, 8.8.208

²³ NPS EN1 at 4.2.13

²⁴ NPS En1 at 4.2.14

"unlikely to outweigh the urgent need for this type of infrastructure. Therefore, in all but the most exceptional circumstances, it is unlikely that consent will be refused on the basis of these residual impacts. The exception to this presumption of consent are residual impacts onshore and offshore which present an unacceptable risk to, or unacceptable interference with, human health and public safety, defence, irreplaceable habitats or unacceptable risk to the achievement of net zero. Further, the same exception applies to this presumption for residual impacts which present an unacceptable risk to, or unacceptable interference offshore to navigation, or onshore to flood and coastal erosion risk."²⁵.

- 5.3.5 Landscape impacts are not listed as an exception to CNP presumptions. While the NPS does not list the section 85 duty specifically, it does provide:
 - "...the Secretary of State will take as the starting point for decision- making that such infrastructure is to be treated as if it has met any tests which are set out within the NPSs, or any other planning policy, which requires a clear outweighing of harm, exceptionality or very special circumstances.²⁶

This means that the Secretary of State will take as a starting point that CNP Infrastructure will meet the following, non-exhaustive, list of tests...

- where development in nationally designated landscapes requires exceptional circumstances to be demonstrated;"27.
- 5.3.6 King's Counsel notes in his opinion that:

"There is nothing I have read that suggest the circumstances here could properly be categorised as exceptional"28.

- 5.3.7 The need to demonstrate exceptional circumstances does not arise in this case but the test is noted to demonstrate the very substantial presumption in favour of CNP infrastructure as having meet the requirements of other test which would include the section 85 duty, The NPS is explicit that in considering any 'harm', the Secretary of State is to start with a presumption that the relevant test has been met. This can clearly be applied to the duty of section 85 in the same way as it is applied to other statutory duties including for example harm to heritage assets which is given as an example in the list²⁹. The proposed development is not situated in a nationally designated landscape, however this example of the non-exhaustive list of tests that an application for CNP will be presumed to have met, clearly demonstrates that Government does not consider that impacts on a designated landscape should outweigh the urgent, established need for CNP.
- 5.3.8 The context for consideration of the effects of NSIPs on landscape is very clearly set out in NPS EN1 which states:

"Virtually all nationally significant energy infrastructure projects will have adverse effects on the landscape" 30 and

²⁵ NPS EN 1 at 4.215

²⁶ NPS EN1 at 4.2.16

²⁷ NPS EN1 at 4.2.17

²⁸ Opinion of King's Counsel paragraph 104(d)

²⁹ NPS EN1 at 4.2.17 bullet 4

³⁰ NPS EN1 at 5.10.5

"the aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate" 31.

- 5.3.9 The policy accordingly does not require that all adverse impacts on landscape are avoided, only that these are minimised where appropriate.
- 5.3.10 The Applicant considers that the project reasonably conserves the special qualities and features of the AoNBs and that reasonable efforts have been made to avoid or minimise significant adverse impacts on the AoNBs. As the relevant elements of the proposed development are located outside the designated landscapes, the relevant policy test is that:

"for projects outside the boundaries of these areas which may have impacts within them. In these locations, projects should be designed sensitively given the various siting, operational, and other

relevant constraints. The Secretary of State should be satisfied that measures which seek to further the purposes of the designation are sufficient, appropriate and proportionate to the type and scale of the development"³²;

"The duty to seek to further the purposes of nationally designated landscapes also applies when considering applications for projects outside the boundaries of these areas, which may have impacts within them. The aim should be to avoid harming the purposes of designation or to minimise adverse effects on designated landscapes, and such projects should be designed sensitively given the various siting, operational, and other relevant constraints. The fact that a proposed project will be visible from within a designated area should not in itself be a reason for the Secretary of State to refuse consent." (emphasis added)

"The scale of energy projects means that they will often be visible across a very wide area. The Secretary of State should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project"³⁴.

- 5.3.11 The adverse impact claimed by SCC is based on non-significant impacts from theoretical visibility of a small part of the offshore development at most 21% of the time. The Applicant submits that this cannot reasonably be held to be damaging, and cannot rise to the test of being so damaging it outweighs the need for the development as established under the NPS.
- 5.3.12 Further the Applicant submits that the measures sought by SCC, being poorly defined as:

"arrangements to contribute funding which could be secured through a planning obligation. This funding could be administered by the Suffolk and Essex Coast and Heaths National Landscape Partnership, and be required to contribute towards relevant objectives of the SCHAONB management plan" 35

³¹ NPS En1 at 5.10.6

³² NPS EN1 at 5.10.8

³³ NPS EN1 at 5.10.34

³⁴ NPS EN1 t 5.10.35

³⁵ SCC Deadline submission REP4 -048 at SCC.06

cannot be compliant with the NPS need for measures, where they are established to be needed (which is not conceded by the Applicant), to appropriate or proportionate as there is no meaningful way to determine that in absence of evidence of harm, a quantification of harm, definition of the measures and an explanation of how they address harm, and a costing for such measures.

5.4 SCC SUBMISSION ON 'LEAST HARMFUL' CONFIGURATION

- 5.4.1 The Applicant has shown regard to the statutory purpose of the SCHAoNB and sought to further its purposes, insofar as is possible around various siting, operational, viability constraints; and to avoid compromising the purposes of designation. The measures taken by the Applicant are proportionate and appropriate to the type and scale of development, being an offshore windfarm which therefore must include wind turbine generators.
- 5.4.2 The measures suggested by SCC, which require the Secretary of State to make a number of subjective judgments around what a 'least harmful' turbine size and number and the impacts of any configuration on the SCHAoNB would be is clearly not in accordance with the NPS policy. Such judgments would also not be underpinned by an assessment (as none has been submitted purporting to show differing levels of 'harm'), and there is no specialist guidance or methodology in place for assessing harm to a landscape on which any such assessment could be undertaken.

5.4.3 SCC have submitted:

"SCC considers that the harm is only minimised if the least harmful scenario is taken forward. Currently the Applicant still presents options of wind turbine heights/numbers on a sliding scale, with differing resulting levels of harm. SCC considers that the default position should be that only the least harmful option should be taken forward if that option is also able to achieve the objectives of the project. There may be a justification for greater level of harm than the minimum, for example for project delivery reasons but this would need to be clearly demonstrated. The greater the adverse effect caused by the project, the greater the implications for compliance with the s85 duty." 36

5.4.4 The SCC suggestion is not reasonable and practical as required by NPS EN-1 at 5.10.8, as it would not allow the project to achieve its aims and would be contrary to the NPS. Such an approach is not appropriate to the type of development and would seek to constrain the scale (by constraining what turbines can be used) based on an impact which the policy provides is outweighed by the urgent need for CNP infrastructure rather than the measures sought being appropriate to the scale as required by the NPS. King's Counsel has set out in his opinion (annexed) that:

"the duty created by section 85(A1) does not oblige the Secretary of State to impose requirements on a DCO to minimise the potential impacts on the AONB by reducing the scale of the proposed development" and

³⁶ REP4-048 at SCC.01

³⁷ Opinion of King's Counsel paragraph 12

"Given that this is CNP Infrastructure, any residual adverse effects that are found likely to occur are likely to be outweighed by the need case in all but the most exceptional circumstances." 38

5.4.5 Such a restriction on the turbines allowed would threaten the viability and deliverability of the proposed development by constraining what turbines could be used with no regard to what is the most efficient option for the wind resource of the site and what therefore provides the most benefit in terms of the optimisation of generation of the project. This would also have no regard to what foundations are appropriate for the site and how they are installed (which, in addition to be being a technical constraint on which turbines may be best suited to the site, influences other impacts of construction, including piling requirements which affect the creation of underwater noise), and what is available on the market at the time of procurement.

5.4.6 NPS EN-1 notes that

"reducing the scale or otherwise amending the design of a proposed energy infrastructure project may result in a significant operational constraint and reduction in function – for example, electricity generation output. There may, however, be exceptional circumstances, where mitigation could have a very significant benefit and warrant a small reduction in function.³⁹"

- 5.4.7 The Applicant submits that there are no exceptional circumstances which would warrant imposing a reduction in function in this case, further that such a reduction is 'small' cannot be known or quantified as SCC cannot advise what turbines they consider to be least harmful and what the generating capacity of such turbines would be. The effect could be material to the generation capacity of the project and it is not appropriate for such a decision to be imposed on the undertaker externally.
- 5.4.8 The approach suggested by SCC seeks to preference one, non-significant impact on landscape over all other considerations for turbine selection, including potentially reducing the benefits of the proposal for a CNP project. Such a restriction would clearly be non-compliant with the NPS requirement to have regard to "the various siting, operational, and other relevant constraints" in considering impacts on designated landscapes. The Applicant notes that King's Counsel has reached that conclusion in his opinion stating:

"the imposition of a requirement to minimise the potential impacts on the AONB by reducing the scale of the proposed development would not only be unnecessary to comply with the duty in section 85(A1), it would also be directly contrary to the policy in the NPS"41.

5.4.9 The Applicant therefore submits in the strongest possible terms that the constraint requested by SCC cannot be compliant with the NPS requirements for measures to mitigate impacts on the landscape to be *'reasonable'*⁴², *"appropriate and proportionate"*⁴³ and should not be imposed.

³⁸ Opinion of King's Counsel paragraph 104(d)

³⁹ NPS EN1 at 5.10.26

⁴⁰ NPS EN1 at 5.10.8

⁴¹ Opinion of King's Counsel paragraph 105

⁴² NPS EN1 at 5.10.6

⁴³ NPS En1 at 5.10.8

5.5 COMPLIANCE WITH SECTION 85

- 5.5.1 As has been set out above, the section 85 duty must be considered in the context of the function being carried. That context is a planning determination for a CNP NSIP, under section 104 and therefore in accordance with the NPSs. The NPSs explicitly consider that landscape impact on designated landscapes may arise from developments outside that designation, but that the aim should be to minimise any impacts⁴⁴, not avoid them entirely nor to require an artificial 'enhancement' in the form of a contribution for unspecified works in order to somehow offset such impacts.
- 5.5.2 As noted by King's Counsel in his annexed opinion:

"The section 85(A1) duty does not amount to a legal obligation to achieve an improvement to the AONB, or to avoid any and all harm.

The NPS does not impose a policy obligation to achieve an improvement to the AONB, or to avoid any and all harm."45

- 5.5.3 King's Counsel has set out why he does not consider the SCC reformulation of the duty as requiring "to be satisfied that as much as practicable has been done to further the purposes of the natural beauty of the national landscape" as correct.
- 5.5.4 The SEPDEP⁴⁷ decision found that the section 85 duty had been complied with in that case despite some adverse effects arising. There was no positive 'enhancement' plan outside of the measures taken and none was found to be required. The Secretary of State's decision letter⁴⁸ provides:
 - "4.55. The ExA ascribed seascape and visual effects minor negative weight in the planning balance [ER 17.5.7]. The Secretary of State agrees with this conclusion and ascribes this matter minor negative weight. In reaching this conclusion, the Secretary of State has considered the impact on the Norfolk Coast Area of Outstanding Natural Beauty ("AoNB"). The Secretary of State also notes the duty under s245 of the Levelling-up and Regeneration Act 2023 for public bodies to further the purposes of AoNBs and also notes the 2024 NPS EN-1 in this regard. The Secretary of State is satisfied that all possible steps have been taken to further the relevant purposes of the AoNB and comply with the statutory duty in this particular case.
 - 4.56. The Secretary of State concludes that the Applicant has taken reasonable precautions to avoid compromising the purpose of the designation. In reaching this conclusion, the Secretary of State has noted its additional assessment in relation to the impacts on the Norfolk Coast AoNB [ER 17.4.21] and the embedded mitigation it has proposed [ER 17.2.16]."
- 5.5.5 That decision therefore demonstrates that:
 - Minor adverse impacts in EIA terms on an AoNB do not mean that duty to seek to further is not complied with:

⁴⁴ NPS EN1 at 5.10.35

⁴⁵ Opinion of King's Counsel paragraph 107

⁴⁶ Opinion of King's Counsel paragraph 108

⁴⁷ Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Project DCO, Planning Inspectorate reference EN010109

⁴⁸ Secretary of State Decision Letter dated 17 April 2024

- The reasonable and practical measures taken to seek to conserve the AoNB can properly include siting and design measures, has have been applied in this case;
- A further 'enhancement' measure over and over the siting and design measures is not required to comply with the duty.
- 5.5.6 As in SEPDEP, it is submitted in this case that an insignificant adverse impact in and of itself does not mean that the duty to seek to further is not complied with or that some further enhancement measure outside the embedded mitigation is required.
- 5.6 APPROACH TO CONSIDERING LANDSCAPE IMPACTS
- 5.6.1 While there is no direct case law on the wording of the Section 85 duty as currently in force, there is judicial consideration of the approach to be taken to giving weight to landscape impacts in other enactments.
- 5.7 HOWELL V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT⁴⁹
- 5.7.1 In this case the Court of Appeal considered the statutory duty under section 17A of the Norfolk and Suffolk Broads Act 1988 which provides (in the relevant part) that:
 - "(1) In exercising or performing any function in relation to, or so as to affect, land in the Broads, a relevant authority shall have regard to the purposes of—
 - (a) conserving and enhancing the natural beauty of the Broads;
- 5.7.2 Subsection (2) provides that the Secretary of State and local planning authorities are a "relevant authority". The appeal concerned a proposal for a single wind turbine generator to be sited 750m to 800m outside of the Broads. Permission was refused by the local planning authority but granted on appeal, after a six day inquiry, by an inspector appointed by the Secretary of State. That grant was appealed, on grounds including a challenge to the process by which the Inspector reached the conclusion that the Broads would not be harmed. In rejecting the appellant's submission that the wording of the statute crates a presumption against harm to the statutory purpose the Court held:
 - "22. The other argument advanced on behalf of the appellant is that section 17A creates a presumption in favour of achieving the statutory purpose and against harm to it. Mr Harwood contends that the section 17A duty to have regard to the purpose of conserving the natural beauty of the Broads recognises the desirability of achieving that purpose. That amounts to a presumption of the kind suggested.
 - 23. I do not find either of these arguments persuasive. [...]
 - 24. A project on undesignated land may, of course, have such damaging effects on the natural beauty of the designated area that it conflicts with the statutory purpose. But that is a matter of fact and degree, par excellence a matter of planning judgment, aided by a site inspection. It is far from automatic: not every piece of development outside a designated area but visible from somewhere within it will harm the natural beauty of that area simply because it is visible from that location." (emphasis added)

⁴⁹ [2015] EWCA Civ 1189

- 5.7.3 The considerations of that case are of applicability here. The Court's determination that mere visibility of turbines outside the designated landscape is not automatically harmful is clearly of relevance to the current circumstances. The Applicant submits that simply because there may be some theoretical visibility of turbines does not amount to harm to the SCHAoNB. Neither does the statutory duty of the relevant authority in seeking to further the purpose amount to a presumption against any proposal which may cause some minor harm, and which must therefore be overcome with some further enhancement.
- 5.7.4 This judgment is clearly contrary to the position of SCC in particular. SCC's submission that non-significant effects are 'harm (which is not accepted by the Applicant) and must be offset through enhancement is not supported by the very clear statement quoted above that visibility does not automatically amount to harm. In any case, the case law sets out that a duty to conserve does not amount to a presumption against harm, it does not mean that any harm results in non-compliance and therefore creates the need for some offset measure as has been submitted by SCC⁵⁰ to overcome that.
- 5.7.5 On the DVAoNB, the Applicant notes there is no visibility and it submits there cannot possibly therefore be any harm.
- 5.8 GERALD DAVID BAYLISS V SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT⁵¹
- 5.8.1 This case concerned planning permission for the erection of wind turbines 800m outside an AoNB. The NPPF at that time required great weight to be weight to the "conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection". The Inspector found that the benefits of the proposed development outweighed the 'limited degree of harm to landscape considerations, including the natural beauty of the Frome Valley in the AONB'.
- 5.8.2 The Court held that in reaching his decision the Inspector had properly considered the impacts and was entitled to find that any harm to the AoNB was outweighed. The Court considered that the need to give special consideration or 'great weight' to the protection of the landscape does not mean that the actual impact of the specific development cannot be found to have little weight in the consenting decision:

"that national policy guidance, very brief in nature on this point, has to be interpreted in the light of the obvious point that the effect of a proposal on an AONB will itself vary: it will vary from case to case; it may be trivial, it may be substantial, it may be major. The decision maker is entitled to attach different weights to this factor depending upon the degree of harmful impact anticipated. Indeed, in my view it would be irrational to do otherwise"52.

⁵⁰ See for example REP4-048

⁵¹ [2014] EWCA Civ 347

⁵² Paragraph 18

- 5.8.3 The reasoning in Bayliss differs from the analysis since adopted in heritage cases where it has been held that, although the potential level of harm to a listed building will naturally vary from case to case, the duty to accord considerable weight to the harm in the balancing exercise, at whatever level it has been assessed, remains the same. This was considered in a later case (*Protect Dunsfold*)⁵³ where the Court held that for landscape, they were bound to follow the Court of Appeal's approach in Bayliss and not the heritage approach.
- 5.8.4 The Applicant submits that the experience of the landscape cannot reasonably be held to be harmed by the addition of a small number of turbines, which are theoretically visible only in ideal weather conditions, are set in the context of closer and more prominent wind farms, and at a minimum 37km distant. To adopt this position is equating any visibility with harm. Just because something is visible, does not mean that the special qualities of a national landscape are harmed and that this is an impact which requires to be mitigated (by which SCC is understood to mean compensated for in this case, as mitigation measures have already been applied through design).

5.9 SEEKING ENHANCEMENT THROUGH CONTRIBUTIONS

- 5.9.1 Section 85 imposes no legal duty to improve an AoNB, only to seek to further the purposes. The NPS does not require the enhancement of an AoNB as a policy outcome, but rather the appropriate mitigation of effects and balancing of any residual impacts in the planning balance, having regard to the considerable weight in favour provided as a starting point for CNP NSIPs.
- 5.9.2 SCC's position that non-significant adverse effects are a harm to the SCHAoNB for which compensation in the form of funding must be secured causes the Applicant considerable concern. This position appears to have no regard to the NPS or the tests for the imposition of requirements and planning obligations, that any measure so imposed must be necessary, reasonable and proportionate in scale and kind to the impact caused by the development.
- 5.9.3 Seeking compensation for non-significant effects would seem to the Applicant to risk turning the section 85 duty into, in effect, a tax on potential visibility from a protected landscape for all developers. That is not the intention of the legislation: the aim of protecting landscapes is not to provide a revenue stream for enhancement projects simply to forestall an objection on the basis of section 85 for 'failure' to enhance. This would also be contrary to the long established legal principle that planning permissions cannot be bought.
- 5.9.4 The Supreme Court has been clear that a contribution must be necessary to achieve a proper planning purpose in order for it to form a material planning consideration and be taken into account in a planning determination⁵⁴. It does not matter if the purpose for which the contribution is in itself worthy or of public benefit, it must serve a planning purpose in order to be imposed. In the same judgment, the Court quoted the well established principle that:

⁵³ Protect Dunsfold Ltd v Secretary of State for Levelling Up, Housing and Communities [2023] EWHC 1854 (Admin)

⁵⁴ R (on the application of Wright) (Respondent) v Resilient Energy Severndale Ltd and Forest of Dean District Council (Appellants) [2019] UKSC 53

"conditions, to be valid, must fairly and reasonably relate to the permitted development. The planning authority are not at liberty to use their powers for an ulterior object, however desirable that object may seem to them to be in the public interest."55.

5.9.5 This forms one of a series of criteria for defining material considerations referred to in the judgment as the *Newbury* criteria:

"A principled approach to identifying material considerations in line with the Newbury criteria is important both as a protection for landowners and as a protection for the public interest. It prevents a planning authority from extracting money or other benefits from a landowner as a condition for granting permission to develop its land, when such payment or the provision of such benefits has no sufficient connection with the proposed use of the land "56"

- 5.9.6 The Court held in that case that community benefits which had been secured by means of a planning obligation (section 106) agreement did not serve a planning purpose but rather acted as an inducement to the grant of planning permission. The Applicant considers that to avoid a similar error of law, any contribution which is sought under section 85 must meet all of the necessary tests and be for a proper planning purpose. The Applicant submits that the contribution sought by SCC does not and cannot meet these tests, and accordingly should not be imposed.
- 5.9.7 SCC have suggested that the "additional steps" which they submit should be taken could "contribute funding which could be secured through a planning obligation"⁵⁷. In order for planning obligation to be valid it must comply with the tests set out in the Community Infrastructure Levy regulations 2010, regulation 122 which provides:
 - 122.—(1) This regulation applies where a relevant determination is made which results in planning permission being granted for development.
 - (2) Subject to paragraph (2A), a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is—
 - (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.
- 5.9.8 The Applicant submits that an obligation to contribute to enhancement cannot be found to be <u>necessary</u> in terms of the CIL tests as the EIA has found no significant adverse effect on the SCHAoNB. Section 85 does not override the planning tests; the reference to enhancement in that section cannot justify section 106 obligations that are unconnected to the actual impacts of a development to be secured. Where there are no significant impacts, imposition of a section 106 to secure funding for enhancement cannot be justified as being necessary and directly related to the development.

⁵⁵ Paragraph 32 quoting Viscount Dilhorne in Newbury

⁵⁶ Paragraph 39

⁵⁷ REP4-046 at SCC.06

- 5.9.9 There is nothing in the NPS which would make the imposition of such a section 106 obligation necessary, rather that policy acknowledges that some residual adverse impacts on landscape are likely for CNP NSIPs and creates a presumption in favour of these impacts being outweighed by the need for the development. The NPS accordingly would not support a contribution being considered necessary in this case.
- 5.9.10 It cannot reasonably be argued that a contribution can be 'fairly and reasonably related in scale and kind to the development' given that the contribution is not defined and the value is not known. In any case, as a point of principle the Applicant submits that no contribution can be fairly related in scale and kind to the impacts of this development on the AoNB given that those impacts are assessed as non-significant.

6. CONCLUSIONS

- 6.1.1 It is the Applicant's position that given significant effects have been avoided, the proposed development has minimised harm to the landscape, and has included appropriate mitigation to minimise adverse effects, in line with NPS policy.
- 6.1.2 Section 85 only requires to relevant authority to seek to further the purposes of the protected landscape not to achieve any specified outcome.
- 6.1.3 There is no legal duty to 'enhance' a protected landscape, only to 'seek to'. That duty must be seen in the context of a planning function, the regard which must be had to the nature and scale of impacts, the mitigation already secured and the appropriateness and reasonable of any steps taken or which could be taken.
- 6.1.4 In seeking to further the purpose, the context the function as being the making of a planning decision must be applied, including all of the relevant tests for imposition of requirements and planning obligations.
- 6.1.5 The Applicant considers that it entirely possible and reasonable to reasonably conserve the special qualities and features of a designation, and thereby comply with section 85, through siting and design, as demonstrated by the SEPDEP decision.

DEDHAM VALE AONB

6.1.6 The project is not visible from within the Dedham Vale AoNB. The DVAoNB is according conserved as there is no adverse impact on it. That the section 85 duty is a positive one, does not require the decision maker to secure enhancement outside of any impact to justify such imposition. To do so would be contrary to planning law.

SUFFOLK AND COASTAL HEATHS AONB

- 6.1.7 The Applicant considers that the project reasonably conserves the special qualities and features of the Suffolk Coast and Heaths AoNB including the seascape. Reasonable efforts have been made to avoid or minimise significant adverse impacts on the SCHAONB, as far as the scope of the project allows, and that further measures, in the form of compensation, would not be proportionate.
- 6.1.8 The Applicant considers that it is more difficult for an offshore wind farm to enhance the natural beauty of a designation, which cannot readily be achieved through the siting and design of an offshore wind turbine array located outside the area of the designated landscape. The Applicant considers that it must be anticipated that any offshore wind farm NSIP will give rise to some degree of friction with the duty to seek to enhance natural beauty and is unlikely to be entirely consistent with objectives that seek to enhance natural beauty. This likelihood is recognised by the NPS which anticipates that NSIP scale projects are likely to have some residual landscape impacts.
- 6.1.9 Taking that context into account, the Applicant submits in conclusion that;
 - 1. Limited, theoretical visibility of the offshore turbines cannot be equated with harm;
 - 2. The assessment (and agreement of SCC to that assessment) of the landscape impact on the SCHAoNB as non-significant supports the Applicant's conclusion that the purposes of the AoNB are conserved;
 - 3. The Applicant has taken, and embedded into the Application, all reasonable and practical steps to avoid and minimise impacts on the AoNB; and
 - 4. The duty under section 85 is accordingly complied with.



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