Rampion Extension Development Limited

The Applicant's Comments on Stakeholder Responses

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Table of Contents

1. INTRODUCTION

On 10th and 16th December 2024, the Secretary of State published submitted stakeholder responses to the Request for Additional Information made on the 25th November 2024 in relation to the Rampion 2 Offshore Wind Farm Extension Project (hereafter "the Proposed Development"). Rampion Extension Development Limited (hereafter "the Applicant") has provided comments on the stakeholder responses within this document.

2. THE APPLICANT'S COMMENTS ON STAKEHOLDER RESPONSES

The Applicant's comments on the stakeholder responses are made below. It is important to note that the Applicant has not commented on all stakeholders' responses, only those where the Applicant can provide further input in addition to points it has already made that it is considered will assist the Secretary of State in decision making.

The stakeholder responses are presented as follows:

- Table 2.1: The Applicants Comments on DLA Piper on behalf of National Grid Electricity Transmission Plc's Responses dated 06/12/2024
- Table 2.2: The Applicants Comments on the Marine Management Organisations Responses dated 06/12/2024
- Table 2.3: The Applicants Comments on Natural England's Responses dated 06/12/2024
- Table 2.4: The Applicants Comments on Natural England's Responses dated 11/12/2024
- Table 2.5: The Applicants Comments on Network Rail's Responses dated 06/12/2024
- Table 2.6: The Applicants Comments on the Winckworth Sherwood LLP on behalf of Susie and David Fischel Responses dated 06/12/2024

Table 2.1: The Applicants Comments on DLA Piper on behalf of National Grid Electricity Transmission Plc's Responses dated 06/12/2024

Stakeholders' Response to the SoS	Applicant's Comments
Introduction This document sets NGET's response to the Secretary of State's request for information dated 25 November 2024. It should be read in conjunction with NGET's Relevant Representation, Written Representation, answers to the Examining Authority's Written Questions, the "Commentary on the outstanding issues between the Applicant and National Grid Electricity Transmission Limited in relation to the Protective Provisions" document agreed with the Applicant and submitted by the parties at Deadline 6 ("**Issues Document**") and, in particular, NGET's Position Statement, which was also submitted at Deadline 6. **Update on Protective Provisions** NGET confirms that no further progress has been made in relation to Protective Provisions. The position therefore remains as set out in the Issues Document and NGET's Position Statement. **Summary of NGET's Position** NGET's position in relation to the Application may be summarised as follows:- a. Section 127 of the Planning Act 2008 is engaged. b. The Applicant's proposals to compulsorily acquire rights and impose restrictions over, and to take temporary possession of, any of NGET's land, and in particular Plots 34/25, 34/26, 34/27 and 34/28 ("the NGET Land"), would cause serious detriment to NGET's undertaking for the following reasons i. Other customers will be connecting to Bolney substation extension once it is built. ii. The Applicant's proposals to acquire rights in and impose restrictions on the NGET Land make it more difficult to site those customers' cables and equipment in this area and may have the effect of sterilising the land entirely for that purpose. iii. NGET needs to retain control and ownership of the NGET Land in order to facilitate those connections in the most economical and efficient manner. iv. Further, connections to the high-voltage electricity transmission network in England and Wales ("NETS") are a highly valuable resource. The existing customer connections process coordinates connections to the NETS. The process takes a whole system view rather than considering this issue only in terms of the needs of individual applicants. v. Allowing the Applicant to compulsorily acquire the rights and restrictions it seeks would unnecessarily interfere with the process and, in particular, with NGET's ability to carry out its part in co-ordinating connections. It may also prevent others from connecting to the transmission system or make such connections unnecessarily complex. vi. Granting the Applicant such powers also risks setting a damaging precedent that will have implications beyond this Application, as similar situations are likely to arise elsewhere. Many new sources of generation will be seeking to connect to the NETS across England and Wales over the coming years. Such connections are essential if the Government's ambition for the UK to accelerate its transition from fossil fuel generation to renewable energy is to be achieved. Economical and efficient co-ordination of these connections is therefore vital. This should take place through the existing connections process managed by the National Energy System Operator Ltd and not on an ad hoc basis via individual development consent applications. c. The serious detriment to NGET's undertaking that has been outlined above can only be addressed by including suitable protective provisions in the DCO. NGET has proposed that the use of powers of compulsory acquisition by the Applicant should be subject to NGET's consent. This restriction is well-precedented and appears in NGET's protective provisions in almost all DCOs, as well as protective provisions in favour of other statutory undertakers such as Network Rail. d. The Protective Provisions also provide that whenever NGET's consent, agreement or approval is required for the taking of any action by the Applicant, this must not be unreasonably withheld or delayed. To the extent that the Applicant considers a refusal by NGET to agree to the use of powers of compulsory acquisition to be unreasonable, it would be able to use the arbitration procedure in the DCO to resolve the dispute. NGET submits that this represents a reasonable balance between the interest of the Applicant and the protection of NGET's undertaking. e. In any event, the Applicant does not need the powers of compulsory acquisition it seeks, as it will obtain the rights it requires through the existing customer connections process. That process has been established specifically for the purpose of allowing such rights to be granted while also managing the issues explained in the preceding paragraphs. f. Finally, NGET requires adequate insurance, security and indemnity provisions. The NETS is critical national infrastructure and must receive the highest degree of protection. Risks associated with a third-party project should not be for NGET (and, by extension, bill payers) to bear or subsidise. The scope, nature, or extent of the potential liabilities or damages that may arise from the Applicant's actions or omissions is not currently clear or quantifiable and all possible scenarios or contingencies must therefore be covered. An uncapped indemnity is the most efficient and equitable way of addressing this. g. The Applicant has provided no justification either for its proposal to cap the indemnity at £25m or to for its contention that it should not be required to provide acceptable security. Given the potentially catastrophic consequences of damage to	The Applicant has sought to progress Protective Provisions with NGET but these are not yet agreed, the principal area of disagreement being whether the Applicant should retain the ability to exercise the Compulsory Acquisition powers being sought. The Applicant does not consider that NGET has demonstrated that the land rights sought by the Applicant would cause serious detriment to its undertaking for the purposes of section 127 of the Planning Act 2008. No compulsory acquisition powers are sought over NGET's existing operational land, which comprises the existing substation at Bolney. New rights are sought over adjacent land (the Unlicensed Works Rights) to connect to the proposed extended substation, and a cable easement is also required over non-operational land in NGET's ownership so as to route to the substation extension. There are other proposed connections by NGET's customer to the Bolney substation which may need to follow a similar easement route but this is nothing unusual and the protective provisions will allow NGET to approve the Applicant's final alignment and method statement for the works, as well as govern the inter-relationship with other electricity undertakers' works and apparatus. The Applicant is not aware that any of the other proposed connections into the Bolney substation are NSIPs. Furthermore, it understands that these connections are not scheduled to be made until after the Applicant's works have been constructed. There are unlikely to be any concurrent works and subsequent connections can be made once the final siting of the Applicant's apparatus is known. NGET has not identified why the protective provisions for its benefit, and those for other electricity undertakers, are insufficient to allow co-ordination of 'business as usual' customer protections across its retained non-operational land. Nor are concerns about setting precedent for other projects relevant to the particular circumstances of this draft DCO. The Applicant's project is an NSIP. It requires land rights over non-operational land owned by NGET and which are yet to have been secured. However the Applicant cannot accept restrictions on its ability to exercise its Compulsory Aquisition powers under the Order in the absence of a binding voluntary agreement being in place since this would prevent the Applicant from being able to build out the Proposed Development. The parties are currently in discussions to agree a property agreement, and are seeking to agree suitable wording to address NGET's concerns in relation to rights sought over its land. The agreement sought with NGET for this purpose will provide the Applicant with the binding rights it needs to ensure that it can connect to the substation. It will also provide further collaboration measures, and the Applicant has attempted to define the parameters of acting reasonably between both parties in respect of the above without impacting on each parties' operations or the ability of the Applicant to connect their project to the national electrical transmission network. The Applicant awaits further correspondence from the NGET on the matter. The aim being to still reach a suitable agreement. The Applicant is working with multiple parties and in a collaborative approach with NGET to allow the Bolney substation extension's increased connection capacity to be exploited once built. This reinforces the importance of each partyacting reasonably. The Applicant is not seeking to inhibit NGET in connecting third parties though needs to ensure it has sufficient rights to realise its project. In relation to insurance and indemnities, the Applicant has increased its offer to £50m for both respectively. NGET have not quantified the size of potential claim or provided justification for an uncapped indemnity and this would place an unacceptable commercial constraint upon the Applicant The project has to be able to seek finance with third party institutions and as such an uncapped indemnity is an unknown value which is commercially unpalatable, and also increases borrowing costs which in turn would not provide good value to the bill payer.

Stakeholders' Response to the SoS	Applicant's Comments
the NETS and the fact that it will be NGET and its customers who (through no fault of their own) will be exposed to the risk of vast economic loss, NGET submits that its proposed Protective Provisions should be preferred. The above points are set out in greater detail in NGET's Position Statement, which the Secretary of State is invited to review. NGET would, of course, be happy to answer any further questions the Secretary of State may have in relation to these or any other issues.	

Table 2.2: The Applicants Comments on the Marine Management Organisations Responses dated 06/12/2024

SoS Request Number	Topic	SoS Request	Stakeholders' Response	Applicant's Comments
4	Post-consent adaptive management	The Secretary of State notes the concerns raised by NE and the MMO throughout the Examination in relation to the efficacy of ornithological, marine mammal, fish, and benthic monitoring and mitigation. The Applicant, NE, and the MMO are requested to provide their views on the following possible Condition 18(5) of Schedules 11 and 12 (the Deemed Marine Licences ("the DML")): *"(5) In the event that the reports provided to the MMO under sub-paragraph (3) identify impacts which are unanticipated and/**or in the view of the MMO in consultation with the relevant statutory nature conservation body are significantly** beyond those predicted within the Environmental Statement, Habitats Regulations Assessment **and the Marine Conservation Zone Assessment** an adaptive management plan to reduce effects to within what was predicted within the Environmental Statement and the Habitats Regulations Assessment, unless otherwise agreed by the MMO in writing, must be submitted alongside the monitoring reports submitted under sub-paragraph (3). This plan must be agreed by the MMO in consultation with the relevant statutory nature conservation bodies to reduce effects to an agreed suitable level for this project. Any such agreed and approved adaptive management or mitigation should be implemented and monitored in full to a timetable first agreed in writing with the MMO. In the event that this adaptive management or mitigation requires a separate consent, the undertaker shall apply for such consent. Where a separate consent is required to undertake the agreed adaptive management or mitigation, the undertaker shall only be required to undertake the adaptive management or mitigation once the consent is granted."*	<u>As set out in paragraph 2.1.5 of page 6 of the MMO's response dated 06/12/2024:</u> This Condition was not specially requested by the MMO in our advice or review of the DCO but would **welcome the inclusion of this condition** as this is now being requested as standard across current Examinations. However, the MMO requests minor amendments to ensure all Marine Protected Areas are included: *"(5) In the event that the reports provided to the MMO under sub-paragraph (3) identify impacts which are unanticipated and/or in the view of the MMO in consultation with the relevant statutory nature conservation body are beyond those predicted within the Environmental Statement ~~and~~, the Habitats Regulations Assessment and the Marine Conservation Zone Assessment an adaptive management plan to reduce effects to within what was predicted within the Environmental Statement, ~~and~~ the Habitats Regulations Assessment and the Marine Conservation Zone Assessment, unless otherwise agreed by the MMO in writing, must be submitted alongside the monitoring reports submitted under sub-paragraph (3). This plan must be agreed by the MMO in consultation with the relevant statutory nature conservation bodies to reduce effects to an agreed suitable level for this project. Any such agreed and approved adaptive management or mitigation should be implemented and monitored in full to a timetable first agreed in writing with the MMO. In the event that this adaptive management or mitigation requires a separate consent, the undertaker shall apply for such consent. Where a separate consent is required to undertake the agreed adaptive management or mitigation, the undertaker shall only be required to undertake the adaptive management or mitigation once the consent is granted."* <u>As set out in paragraph 2.1.10 of page 7 of the MMO's response dated 06/12/2024:</u> The MMO have previously advised that an enhanced monitoring programme be put in place for Rampion 2, which could, for example, include obtaining measurements of the first eight piles (or eight of the first 12 piles), of each foundation type, to be installed. <u>As set out in paragraph 2.1.14 of page 8 of the MMO's response dated 06/12/2024:</u> In the updated Draft Piling Marine Mammal Mitigation Protocol (MMMP) Rev. C (REP6-219) the Applicant states in Paragraph 5.1.2 that "*the specific mitigation measure (or suite of measures) that will be implemented during the construction of Rampion 2 will be determined*	<u>In response to paragraph 2.1.5 of page 6 of the MMO's response dated 06/12/2024:</u> The Applicant has provided a response to the suggested wording of Condition 18(5), including a possible alteration to the phrasing. The Applicant notes that the amended wording as proposed by the MMO does not change the Applicant's position on this matter. Further, whilst the MMO notes that this condition is being requested 'as standard', a condition should only be included if it satisfies the test for imposition of a condition including that it serves a proper purpose. Should the Secretary of State be minded to impose a condition, the wording provided in the Applicant's Part 1 response should be preferred for the reasons set out in that response. In particular it should only be new significant effects beyond those predicted in the ES that should trigger adaptive management rather than any changes which are beyond those predicted, as was included in the Secretary of State's proposed wording. To do otherwise would risk delaying the project whilst the mechanics of complying with the conditions are worked through and increasing the costs to consumers through the imposition of additional adaptive mitigation to address non-significant effects which in the Applicant's view does not reflect the intention of the EIA Regulations nor the Critical National Priority status of the Project. <u>In response to paragraph 2.1.10 of page 7 of the MMO's response dated 06/12/2024:</u> Furthermore, it should also be noted that the Applicant has reviewed and updated both the Offshore In-Principle Monitoring Plan (Document Reference 7.18) and the In-Principle Sensitive Features Mitigation Plan (Document Reference 7.17) to reflect the requested monitoring of eight of the first 12 piles of each foundation type to be installed. These updated documents were provided at the deadline for Part 1 of the Request for Information. <u>In response to paragraph 2.1.14 of page 8 of the MMO's response dated 06/12/2024:</u> The MMO has requested that the effectiveness of the chosen noise abatement measures is modelled to inform the MMMP, this is unnecessary given that the total noise generated by the project will

SoS Request Number	Topic	SoS Request	Stakeholders' Response	Applicant's Comments
			in consultation with Natural England, following confirmation of final hammer energies and foundation types, collection of additional survey data (noise or geophysical data) and/ or acquisition of noise monitoring data, and/ or information on maturation of emerging technologies. This additional data and information will allow the noise modelling to be updated to feed into discussions on the appropriate mitigation measure(s) and the Final Piling MMMP". The MMO also requests that the effectiveness of the chosen noise abatement measures is also modelled to appropriately inform the MMMP.	be modelled and demonstrated to be within acceptable levels, and monitoring will be undertaken in accordance with the final Monitoring Plan.
7	Piling Restrictions	The Secretary of State notes that concerns were raised regarding underwater noise disturbance on black seabream and seahorses. The Applicant, NE, SIFCA, and the MMO should provide views on the following possible wording for a new Condition 26 of the DML: *"(26) -* ***No piling associated with the authorised development may be undertaken between*** *01 March to 31 July inclusive, unless otherwise agreed* ***in writing*** *by the MMO* ***in consultation with*** *the statutory nature conservation body."*	As set out in paragraph 3.1.4 of page 9 of the MMO's response dated 06/12/2024: Whilst new modelling has been presented in the Offshore In Principle Monitoring Plan Rev. E (REP6-221) using a 135 dB behavioural noise threshold, the mapped noise contours still showed an overlap of noise disturbance with the Kingmere MCZ from piling at the east and west locations. The MMO has previously raised the concern that piling at locations closer to the Kingmere MCZ is likely to increase the size of overlap/impacted area. We also highlighted that Figures 2-1 and 2-3 (Appendix H) presented the proposed piling exclusion zones for the mono-piling and for piling of multileg foundations, respectively, using a 20 dB reduction, based on the 135 dB single strike Sound Exposure Levels (SELss) threshold, but that the modelled noise contours have not been presented for review to support the proposed zoning plan and therefore the full spatial extent of the noise is not known. As set out in paragraph 3.1.5 of page 9 of the MMO's response dated 06/12/2024: In Section 9.2 of our Deadline 6 Response (REP6-302) the MMO requested that the modelled noise contours were presented for review in order to validate the proposed zoning plan. We further noted that modelling using the 135 dB threshold had been presented in Figures 5.16 and 5.17 which showed the predicted worst case and mitigated behavioural response impact ranges from the piling of monopile and multileg foundations. However, this modelling was based on the use of Double Big Bubble Curtain (DBBC) so only offered a maximum 15 dB noise reduction, rather than 20 dB. Given these and other inconsistencies raised, we maintain that the Applicant's zoning plan is not viable, and that no piling should be permitted during the Black Sea Bream breeding season. As set out in paragraph 3.1.6 of page 9 of the MMO's response dated 06/12/2024: The MMO assumes that the condition would be titled Piling restriction and suggests the following amendments to ensure it is in line with standard wording: "(26) - ~~There shall be no piling associated with the authorised development between the dates of~~ No piling associated with the authorised development may be undertaken between 01 March to 31 July inclusive, unless otherwise agreed ~~to~~ in writing by the MMO ~~and~~ in consultation with the statutory nature conservation body."	In response to paragraph 3.1.4 of page 9 of the MMO's response dated 06/12/2024: With respect to the MMOs comment on the noise modelling contours for the 20 dB reduction based on the 135 dB single strike SEL threshold to define the proposed piling exclusion zones, the same methodology that was used to inform the piling exclusions zones (as detailed in 8.54 Applicant's Response to Examining Authority's Written Questions – Fish and Shellfish Appendix H: Appendix H Noise Thresholds for Black Seabream [RP5-109]) has been consistent within both the in-principle sensitive features mitigation plan and Appendix H [RP5-109]. The proposed exclusion zones are defined using the modelling outputs to define areas within which mitigated piling to reduce received noise levels at the relevant MCZs are below the disturbance threshold of 135dB SELss. The remaining areas of the offshore array therefore become piling exclusion areas. In response to paragraph 3.1.5 of page 9 of the MMO's response dated 06/12/2024: With respect to the black sea bream associated with the Kingsmere MCZ, the Applicant maintains its position presented in the Applicant's Closing Statement [REP6-233] that there is no significant risk to adversely impacting black sea bream with the mitigations as proposed in the In-Principle Sensitive Features Mitigation Plan (Document Reference 7.17) in place. To reflect the commitment to use DBBC throughout the construction of the Proposed Development (commitment C-265) which result in a 15db noise reduction, a 15dB reduction was modelled for the entire piling campaign. A 20dB noise reduction has been modelled to reflect the afforded mitigation that will be implemented during the black bream spawning season (as delivered by both DBBC and another noise abatement measure). As stated in the In-Principle Sensitive Features Mitigation Plan (Document Reference 7.17) submitted with the Applicant's Part 1 response, the Applicant does not support the use of 135 dB threshold for Black Sea Bream. This threshold has therefore not been presented for mitigation proposed for the Black Sea Bream receptor. The Applicant notes that this is an outstanding area of disagreement with the MMO. In response to paragraph 3.1.6 of page 9 of the MMO's response dated 06/12/2024: The Applicant has responded to the Secretary of State in respect of the proposed condition 26 and the amendments proposed by the

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			The updates above ensure the MMO is the decision maker in discharging the condition and the wording meets the standard drafting 'five tests'.	MMO, which do not change the substance of the proposed condition, do not change the Applicant's position.
21/22	Monitoring of noise abatement effectiveness on Bottlenose Dolphin	The Secretary of State notes the concerns raised by NE in relation to the proposed noise abatement measures and marine mammals. The Applicant, NE, and the MMO are requested to provide their views on the following possible wording for Condition 11(1)(j) of the DML : "A monitoring plan which accords with the offshore inprinciple monitoring plan and is to detail proposals for preconstruction monitoring surveys, construction monitoring, postconstruction monitoring and related reporting;" NE and the MMO are requested to consider whether the drafting is sufficient to secure the monitoring of the effectiveness of noise abatement on bottlenose dolphin in a final Offshore Monitoring Plan. NE and the MMO are also invited to consider whether the drafting is sufficient to secure an updated pre-construction assessment should new information on the Coastal West Channel bottlenose dolphin population be published before piling commences.	<u>As set out in paragraph 5.1.3 of page 15 of the MMO's response dated 06/12/2024:</u> The MMO understands the outline monitoring plan should have sections detailing the required monitoring agreed at this stage noting that this will be further refined based on surveys and final design. The MMO notes that on many offshore wind DMLs the construction monitoring condition includes a standalone monitoring condition in relation to piling. The MMO is currently reviewing and updating this condition for the Nationally Significant Infrastructure Projects (NSIPs) currently going through Examination. We note that it is unlikely that this updated condition can be considered at this stage. However, it would be welcomed if the standard condition below was included in the DML, noting this has been amended to include the requests in Section 2 above and noise abatement: "*Construction monitoring* *17.(1) The undertaker must, in discharging condition 14(1)(b), submit details (which accord with the offshore in principle monitoring plan) for approval by the MMO in consultation with the relevant statutory nature conservation bodies, of any proposed monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The survey proposals must specify each survey's objectives. In the event that driven or part-driven pile foundations are proposed, such monitoring must include measurements of noise generated by the installation of at least eight of the first twelve piled foundations of each piled foundation type to be installed unless otherwise agreed in writing by the MMO, in consultation with the relevant statutory nature conservation bodies.* *(2) The undertaker must carry out the surveys approved under sub-paragraph (1), including any further noise monitoring required in writing by the MMO, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation bodies.* *(3) The results of the initial noise measurements monitored in accordance with subparagraph (1) must be provided to the MMO within six weeks of the first eight of each piled foundation. The assessment of this report by the MMO will determine whether any further noise monitoring is required. If, in the opinion of the MMO in consultation with the relevant statutory nature conservation body, the assessment shows significantly different impacts to those assessed in the environmental statement or failures in mitigation, all piling activity must cease until an update to the marine mammal mitigation protocol and further monitoring requirements have been agreed.* *(4) In the event that piled foundations are proposed to be used, the details submitted in accordance with the offshore in principle monitoring plan must include proposals for monitoring marine mammals and noise abatement mitigation used, unless otherwise agreed in writing by the MMO, in consultation with the relevant statutory nature conservation bodies".* The MMO defers to Natural England in relation to the effectiveness of noise abatement on specific species such as the Bottlenose Dolphin.	<u>In response to paragraph 5.1.3 of page 15 of the MMO's response dated 06/12/2024:</u> In its response to the Secretary of State's question 21 the Applicant confirmed that it was content with the condition as worded and that adaptive monitoring is secured by the In Principle Monitoring Plan. In their response to question 21 the MMO does not appear to have outlined any concerns with the wording of condition 11(1)(j). Instead, the MMO has sought to use this as an opportunity to introduce a new proposal to replace the existing condition 17 with alternative wording. No comments were sought by the Secretary of State on condition 17. Whilst the MMO propose that a 'standard' condition should be imposed to secure monitoring as a result of piling activity, the Applicant notes that any condition imposed must satisfy the tests for imposition of conditions, including that they serve a proper purpose. In this case construction monitoring is already secured by conditions 11(1)(j) and 17 of the draft DCO [REP6-007] and the requirement that surveys must be in accordance with the principles set out in the offshore in-principle monitoring plan. This document was updated as part of the Applicant's Part 1 response to the Secretary of State's Request for Information. The Applicant notes that the development consent orders for offshore wind farms that have included a condition in the form proposed have been located within or were likely to have significant effects on a designated Special Area for Conservation, of which marine mammals are a qualifying species, as a result of piling activity (Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024, Hornsea Four Offshore Wind Farm Order 2023, East Anglia One North Offshore Wind Farm Order 2022, and East Anglia Two Offshore Wind Farm Order 2022).This is not the case for Rampion 2 and the imposition of an equivalent condition on the deemed marine licence for this project is unreasonable, in view of the EIA conclusions. Further approval for and implementation of a piling marine mammal mitigation protocol is already secured via conditions 11(1)(l) and 12(5) of the draft DCO [REP6-007] In addition, the Applicant notes that the offshore in-principle monitoring plan already provides for adaptive management and monitoring, and refinement of mitigation measures should this prove necessary, which will be effective for marine mammals as well as those species specifically identified for monitoring. The Applicant therefore concludes that the MMO proposed condition is entirely unnecessary in principle. Should the Secretary of State be minded to amend or consider replacing the existing condition 17 the Applicant notes the following:

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			The MMO believes if the Offshore In-Principle Monitoring Plan includes information on the requirement for new information being included in the pre-construction assessment if published, then no update to the condition would be required. However, defers to Natural England on this point.	<u>Limb (1)</u> The wording of this limb is not dissimilar to the wording of the current condition 17, however it should refer to condition 11(1)(j), and there is no justification for including the text '*In the event that driven or part driven pile foundations are proposed*..': this is already addressed in offshore in-principle monitoring plan as amended and submitted as part of the Part 1 response to the Secretary of State and now includes a requirement to provide monitoring for 8 of the first 12 piles of each foundation type. No change to the existing wording of condition 17 is required. <u>Limb 2</u> This wording is unnecessary and confusing, as the details of the surveys and monitoring will already have been secured under limb (1) and approved by the MMO. Implementation of the approved scheme is secured under condition 12(5). No further change to condition 17 is therefore necessary. <u>Limb 3</u> The timing for submission of the results of monitoring for 8 of the first 12 piles is already secured through the offshore in-principle monitoring plan as described above, as is adaptive management. In view of the conclusions of the environmental statement, monitoring for marine mammals should only be required in the event that monitoring carried out pursuant to the offshore in-principle monitoring plan shows exceedance of predicted noise levels that give rise to new or different significant environmental effects for marine mammals beyond those assessed and reported in the environmental statement, or failures of mitigation that result in a significant effect occurring for this species where not assessed in the environmental statement. The Applicant further considers that a requirement to cease piling in the event that a new or different significant effect is identified is disproportionate in the context of the conclusions reported in the environmental statement and the requirement to implement a marine mammal mitigation protocol as noted above. The Applicant refers to its replies to previous submissions on the consequence of piling bans on the timely delivery of the project, and does not consider that there is any justification for the potential introduction of a further piling ban to address the impacts identified in the environmental statement for marine mammals. <u>Limb (4)</u> As noted above this limb is unnecessary as it duplicates condition 11(1)(l). The Applicant also notes that Natural England does not require an amendment to the offshore in-principle monitoring plan in respect of population changes for bottlenose dolphin.
-	Additional Comments	-	<u>As set out in paragraph 6.1.1 of page 17 of the MMO's response dated 06/12/2024:</u>	<u>In response to paragraph 6.1.1 of page 17 of the MMO's response dated 06/12/2024:</u>

SoS Request Number	Topic	SoS Request	Stakeholders' Response	Applicant's Comments
			The MMO notes that "shall" is used a number of times within the DML and would request that this is replaced with "must" to align with the conditions and be suitably enforceable	The Applicant notes the suggested wording change and is satisfied with the potential wording change from "shall" to "must" within the final DML.

Table 2.3: The Applicants Comments on Natural England's Responses dated 06/12/2024

SoS Request Number	Topic	SoS Request	Stakeholders' Response	Applicant's Comments
3	Great black-backed gull ("GBBG") cumulative effects assessment ("CEA")	The Secretary of State notes that the Applicant provided an updated GBBG CEA at Deadline 6, which NE did not have the opportunity to comment on. NE are therefore invited to provide its response to the Applicant's updated GBBG CEA and explanation. NE is also invited to provide an updated position as to whether it considers any monitoring and compensation measures are required, considering the updated GBBG CEA.	Please see Appendix 2 from Natural England's submission on the 6th December 2024.	Natural England within their Relevant Representations [REP3-080] raised concerns in relation to data gaps within the cumulative assessment presented by the Applicant within the ES Chapter [APP-053], mainly due to historic project having no quantitative data available to include within cumulative assessments. The Applicant therefore provided an updated cumulative assessment utilising the recent work completed by White Cross OWF (APEM,2024[1]) to estimate quantitative values for historic project, which was produced due to Natural England raising the same data gap concerns for cumulative assessments assessed by White Cross OWF. The Applicant is aware that other work has been completed by Mona OWF to derive quantitative values for historic projects, though this was not available to the Project at the point of drafting REP6-193. Additionally, the Applicant can confirm quantitative values for Mooir Vannin and LLYR Projects were not included within REP6-193 due to lack of publicly available data at the time of drafting. The Applicant maintains the position that it is unnecessary for quantification of impact values for historic values due to such impacts being part of the baseline environment given the age of such projects. The Applicant does however agree that the limitation of the assessment is instead due to the age of the baseline population for which impacts are assessed against (Furness, 2015[2]), though the Project is aware that this is an area of work Natural England are currently looking at updating. When considering the current trend of the UK Southwest and Channel Biologically Defined Minimum Population Scale (BDMPS) for great black-backed gull, the latest seabird counts (Burnell et al., 2023) would suggest a likely overall positive trend at the time during which baseline data for the Project was collected (2019 – 2021; APP-150). This is despite 10 OWF developments being operational for over 10 years and four being operational for five to 10 years. As stated by Natural England, the impact of the 2022 HPAI outbreak on the great black-backed gull is currently uncertain. However, as determined by Natural England's recommendation to DEFRA in relation to baseline characterisation of offshore renewable projects (Natural England, 2022[3]), as the Project's baseline data were collected prior to the outbreak of HPAI, the assessments provided by the Applicant should remain a valid representation of typical seabird distribution and density,

[1] APEM (2024). White Cross Offshore Windfarm: Cumulative gap analysis
[2] Furness, R.W. 2015. Non-breeding season populations of seabirds in UK waters: Population sizes for Biologically Defined Minimum Population Scales (BDMPS). Natural England Commissioned Reports, Number 164.
[3] Natural England (2022). Highly Pathogenic Avian Influenza (HPAI) outbreak in seabirds and Natural England advice on impact assessment (specifically relating to offshore wind). Natural England statement, September 2022.

SoS Request Number	Topic	SoS Request	Stakeholders' Response	Applicant's Comments
				which are also able to be assessed against the baseline populations prior to the outbreak. Additionally, the Applicant questions the relevancy of the Isle of Scilly SPA population trend noted by Natural England when considering EIA level impact predictions. Especially given the potential for an LSE on the Isle of Scilly SPA was ruled out based on lack of potential connectivity. The interaction between great black-backed gulls and the Project has focussed solely on the potential negative effects which may arise. However as previously noted within REP1-038, great black-backed gulls within this area have adapted to utilising the existing Rampion Wind Turbine Generators as roosting locations, despite any potential risk of collision posed by such infrastructure. The root cause of such behaviour is uncertain but would suggest some positive effect, otherwise there would be no reason for such behaviour to occur. Within the final section of Appendix 2 (titled Compensation Measures), Natural England suggest example measures which could be utilised for the compensation of GBBG. The Applicant has concerns regarding the example compensation measures suggested by Natural England, which appear to be more appropriate for terrestrially breeding gulls such as lesser black-backed gull. Apart from great black-backed gulls nesting in urban environments, the predominant natural breeding habitat of great black-backed gulls is rocky coastlines, islets, wetlands and coastal grassland. Installation of predator proof fencing in such environment is likely to be technically unfeasible and yield little benefit, as such habitat is already considered to provide limitation in access to any significant mammalian predators such as fox. Minor vegetation management might be possible in some areas but quantification of the amount of habitat management required to confidently compensate for a mortality value is likely to be infeasible in terms of compensation best practice requirements or may not provide additionality if already considered within designated site management plans. The Applicant retains the position that consideration of compensation for great black-backed gull is inappropriate for the reasons set out in the Applicant's closing statement [REP6-233].
4	Post-consent adaptive management	The Secretary of State notes the concerns raised by NE and the MMO throughout the Examination in relation to the efficacy of ornithological, marine mammal, fish, and benthic monitoring and mitigation. The Applicant, NE, and the MMO are requested to provide their views on the following possible Condition 18(5) of Schedules 11 and 12 (the Deemed Marine Licences ("the DML")): *"(5) In the event that the reports provided to the MMO under sub-paragraph (3) identify impacts which are unanticipated and/**or in the view of the MMO in consultation with the relevant statutory nature conservation body are significantly** beyond those predicted within the Environmental Statement, Habitats Regulations Assessment **and the Marine Conservation Zone Assessment** an adaptive management plan to reduce effects to within what was predicted within the Environmental Statement and the Habitats Regulations Assessment, unless otherwise agreed by the MMO in writing, must be submitted alongside the monitoring reports submitted under sub-paragraph (3).*	As set out in paragraph 2 of the response to SoS point 4, as dated 06/12/2024: We advise that the amendments to the condition provided in bold in the question are added to enable the MMO as the decision maker to make a reasonable decision, based on the significance of the unexpected impact. We note that the condition as worded only relates to the Environmental Statement and the Habitats Regulations Assessment. Given the potential for this project to impact upon the features of Marine Conservation Zones (MCZ's), we advise that the MCZ Assessment should also be included in the wording of this condition. As set out in paragraph 5 of the response to SoS point 4, as dated 06/12/2024:	In response to paragraph 2 of the response to SoS point 4, as dated 06/12/2024: The Applicant has provided a response to the suggested wording of Condition 18(5), including a possible alteration to the phrasing. The Applicant notes that the amended wording as amended by NE does not change the Applicant's position on this matter and has provided additional comments above in response to the MMO's response. In response to paragraph 5 of the response to SoS point 4, as dated 06/12/2024: Natural England have requested that the effectiveness of the chosen noise abatement measures is modelled prior to the completion of the construction of the project, this is unnecessary given that the total noise generated by the project will be

SoS Request Number	Topic	SoS Request	Stakeholders' Response	Applicant's Comments
		This plan must be agreed by the MMO in consultation with the relevant statutory nature conservation bodies to reduce effects to an agreed suitable level for this project. Any such agreed and approved adaptive management or mitigation should be implemented and monitored in full to a timetable first agreed in writing with the MMO. In the event that this adaptive management or mitigation requires a separate consent, the undertaker shall apply for such consent. Where a separate consent is required to undertake the agreed adaptive management or mitigation, the undertaker shall only be required to undertake the adaptive management or mitigation once the consent is granted."	Another key consideration is that there are some areas of monitoring, such as the monitoring of noise abatement systems, where data on efficacy is required prior to completion of the construction of the project as a whole. This is to ensure that the noise abatement systems achieve a figure in the region of 15db. If this is not achievable there is a risk that impacts on short-snouted seahorses from underwater noise generated by piling could be greater than predicted and that the conservation objectives of Beachy Head West MCZ could be hindered. We provided advice regarding this in our Appendix E5 submission at Deadline 5 [REP5-139]. We note that an update of the Principle Sensitive Features Mitigation Plan and Offshore In-Principle Monitoring Plan has been requested from the Applicant in point 5 pertaining to this. We note that underwater noise monitoring and mitigation is also relevant to marine mammals.	modelled and demonstrated to be within acceptable levels, and monitoring will be undertaken in accordance with the final Monitoring Plan. Additionally, the Applicant notes that modelling has been completed to show a 13dB reduction within the In Principle Sensitive Features Mitigation Plan (Document reference 7.17, as submitted with Part 1 of the Applicant responses), which demonstrates effective mitigation of impacts on the seahorse feature of the Beachy Head MCZ (no interaction with the 135db contours and threshold).
5	Post-consent monitoring of underwater noise from piling	The Secretary of State notes the concerns raised by NE and the MMO during the Examination in relation to uncertainties concerning the efficacy of double big bubble curtains (DBBC) as a noise abatement system. The MMO requested an enhanced scheme of monitoring to be put in place to obtain measurements from the first eight piles (or eight of the first 12 piles), of each foundation type to be installed, rather than the first four piles as proposed. The Applicant is requested to provide a revised In-Principle Sensitive Features Mitigation Plan and Offshore In-Principle Monitoring Plan with possible amendments which would take account of those concerns.	As set out in paragraph 1 of the response to SoS point 5, as dated 06/12/2024: Natural England supports the production of an updated 'In-Principle Sensitive Features Mitigation Plan and Offshore In-Principle Monitoring Plan'. We wish to highlight that given the complex and variable environmental conditions at the site and the uncertainties of the efficacy of Noise Abatement Systems (NAS) in these conditions, we also advised that the first eight piles (or eight of the first 12 piles), of each foundation type are monitored across a representative range of conditions. We refer you to our detailed advice on this matter in our Deadline 5 Appendix E5 response [REP5-139]. We specifically highlight our advice that this monitoring should be designed to consider if the noise levels are in line with the predictions made in the Environmental Statement and also if the NAS achieved a noise reduction in the region of 15dB, as stated by the Applicant. As set out in paragraph 2 of the response to SoS point 5, as dated 06/12/2024: We advise that this monitoring should be reflected within a condition in the DML to ensure that if the underwater noise levels from piling are significantly in excess of the agreed levels, piling would cease until additional mitigation is agreed and put in place. This condition is considered a standard requirement for offshore wind farms in relation to underwater noise impacts.	In response to paragraph 1 of the response to SoS point 5, as dated 06/12/2024: The Applicant notes that it has provided updated versions of the Offshore In-Principle Monitoring Plan (Document Reference 7.18) and the In-Principle Sensitive Features Mitigation Plan (Document Reference 7.17) within Part 1 of their response. The updated plans secure monitoring of eight of the first 12 piles of each foundation type to be installed. The Applicant considers that these two submitted documents provide for adaptive management. In response to paragraph2 of the response to SoS point 5, as dated 06/12/2024: The Applicant has provided a response above to the proposal by the MMO that a 'standard' requirement for additional noise monitoring should be implemented, which is also applicable to the NE response.
7	Piling Restrictions	The Secretary of State notes that concerns were raised regarding underwater noise disturbance on black seabream and seahorses. The Applicant, NE, SIFCA, and the MMO should provide views on the following possible wording for a new Condition 26 of the DML: *"(26) - **No piling associated with the authorised development may be undertaken between** 01 March to 31 July inclusive, unless otherwise agreed **in writing** by the MMO **in consultation with** the statutory nature conservation body."*	As set out in paragraph 1 of the response to SoS point 7, as dated 06/12/2024: **Kingmere MCZ - Black seabream** Natural England's advice throughout the examination was that the only measure that will prevent the conservation objectives of Kingmere MCZ being hindered due to underwater noise impacts on black seabream from piling, would be a full seasonal piling restriction from 01 March to 31 July inclusive. We would welcome the inclusion of this condition within the DML and confirm that should it be included then we would be able to advise that the conservation objectives of Kingmere MCZ will not be hindered. In relation to the wording of the condition, we advise that the amendments to the condition provided in bold in the question are made.	As set out in paragraph 1 and 2 of the response to SoS point 7, as dated 06/12/2024: The Applicant has previously provided a response regarding the proposed wording for condition 26 within the Applicant's Part 1 response. The Applicant's position here is not repeated. In response to paragraph 2 of the response to SoS point 7, as dated 06/12/2024: The Applicant notes that modelling has been completed to show that a 13dB reduction with the use of double bubble curtains demonstrates effective mitigation of impacts on the seahorse feature of the Beachy Head MCZ (no interaction with the 135db contours and threshold) (presented within the In Principle Sensitive Features Mitigation Plan [Document reference 7.17]).

SoS Request Number	Topic	SoS Request	Stakeholders' Response	Applicant's Comments
			As set out in paragraph 2 of the response to SoS point 7, as dated 06/12/2024: **Beachy Head West MCZ - Short-snouted seahorses** We welcome that this condition as worded would also cover a proportion (approximately half) of the key breeding time for seahorses. In relation to the rest of the year (outside of 01 March to 31 July inclusive), our advice remains that the Applicant would need to evidence that a reduction in the region of 15dB is deliverable within the 'worst-case' environmental conditions at the site, in order for Natural England to advise that the conservation objectives would not be hindered due to underwater noise impacts on short-snouted seahorses from piling activities.	
9	Securing trenchless crossings underneath Irreplaceable Habitats and SSSIs	The Applicant, NE, and SDNPA should provide views on the following possible drafting for a new Requirement 46 'Crossing Schedule', of the DCO: *"(1) No stage of the authorised development shall commence until a trenchless crossing plan showing the final locations and extent of each trenchless crossing in that stage and its compound has been submitted to and approved by the relevant planning authority* ***in consultation with the relevant SCNB.*** *(2) The trenchless crossings in the relevant stages shall be undertaken in accordance with the approved details."*	As set out in paragraph 1 of the response to SoS point 9, as dated 06/12/2024: Natural England's critical concern remains that the proposed mitigation measure of trenchless crossing may not be viable. Natural England notes that an outline crossing schedule was provided within the Outline Code of Construction Practice. We note that within this outline document it is stated that '*The final crossing schedule will be provided in each stage specific CoCP as per the* ***draft Development Consent Order (DCO)*** *(Document Reference: 3.1) requirements*'. We advise that, whilst this update should be provided, based on our review of the current version of this document, an update of this to include the final locations and extent of each trenchless crossing in that stage and its compound, would not be sufficient to address our outstanding concerns in relation to the crossing of irreplaceable habitats, SSSI's and sensitive landscape features within the South Downs National Park. As set out in paragraph 2 of the response to SoS point 9, as dated 06/12/2024: Natural England highlight that trenchless crossings are an essential mitigation measure in locations where the cable route will cross through protected areas (Climping Beach SSSI and South Downs National Park (particularly Michelgrove Park, Sullington Hill)) and irreplaceable habitats (such as ancient woodland). The use of trenchless techniques at the landfall location is also mitigation in relation to minimising the loss of irreplaceable marine chalk. As set out in paragraph 3 of the response to SoS point 9, as dated 06/12/2024: Throughout the pre-examination and examination phase, Natural England continuously advised that detailed feasibility assessments (supported with local ground investigation data) should be provided to evidence whether trenchless crossings are achievable at the sensitive locations. At the final Deadline (6) of the Examination Natural England's position remained that we considered there to be a major risk with the feasibility of the proposed trenchless drilling technique without detailed ground investigation at these sensitive sites. Natural England highlighted at Deadline 5 [REP5-140 and REP5-141] and Deadline 6 [REP6294 and REP6-292] that should it be demonstrated that trenchless techniques are not feasible then an alternative route will be required due to the irreplaceable nature of the habitats and the	As set out in paragraph 1, 2, 3, 4 and 5 of the response to SoS point 9, as dated 06/12/2024: The Applicant has sought to address Natural England's concerns around the viability of trenchless crossings, and this issue is captured as an area of disagreement in the Statement of Common Ground between the parties [REP5-097]. The Applicant has provided responses to these concerns throughout the Examination process (e.g. point 6.26 in [REP2-024], point 13 in [REP3-052]). In summary, the potential risks of trenchless crossings across the site have been considered by the relevant Chapters of the Environmental Statement and are assessed as Low. At the environmentally sensitive locations highlighted by Natural England, as an additional measure – wider than standard work areas have been proposed to ensure that the results of pre-construction site investigations can identify the optimal pathway for the trenchless crossings. The Applicant is confident that trenchless crossings are viable, and has provided case studies of trenchless crossings protecting environmental sensitivities in comparable terrain (point 3.5.6 in [REP2-024]). The Applicant maintains the response regarding a potential new Requirement wording as submitted to the Secretary of State on the 6th of December 2024.

SoS Request Number	Topic	SoS Request	Stakeholders' Response	Applicant's Comments
			need to avoid impacts. We believe this situation would likely require a material change to the Development Consent Order/deemed Marine Licence (DCO/dML) as written. As set out in paragraph 4 of the response to SoS point 9, as dated 06/12/2024: Whilst we welcome the opportunity to provide further advice to the local planning authority for these crossings once further information is available, we advise that the proposed wording for Requirement 46 should include reference to providing detailed feasibility assessments (supported with local ground investigation data) for the trenchless crossings through sensitive sites/features. As set out in paragraph 5 of the response to SoS point 9, as dated 06/12/2024: In addition to consideration of our points above, we also advise that should the Secretary of State be minded to proceed with this condition, approval by the relevant planning authority should be in consultation with the relevant SCNB. Please see our advised amendment provided in bold in the question.	

Table 2.4: The Applicants Comments on Natural England's Responses dated 11/12/2024

SoS Point	Subject	SoS Request	Stakeholders' Response	Applicant's Comments
18	Worst-case scenario for piling	The Secretary of State notes that NE has not had an opportunity to respond to the Applicant's response detailing the worse-case modelling which informed the Applicant's ES. NE is invited to comment on the Applicant's response (Question MM3.1) regarding the worst-case piling scenario.	As set out in paragraph 1 of the response to SoS point 18, as dated 11/12/2024: Natural England understand that the WCS for simultaneous/sequential piling is up to 4 monopiles per 24h (2 locations, 2 monopiles each) and 8 pin piles per 24h (2 locations, one multi-leg foundation each), as stated in point MM 3.1 [REP6-275]. We advised within point C24 our risks and issues log at Deadline 6 [REP6-296] that we considered this aspect of the WCS resolved. However, this was provided these scenarios were clearly modelled, labelled and assessed across all figures and documents, as MM 3.1 suggests. We noted in our Deadline 6 response on marine mammals [REP6-289] that simultaneous/sequential piling had not been considered in the bottlenose dolphin assessment, and that this specific element remained outstanding. As set out in paragraph 2 of the response to SoS point 18, as dated 11/12/2024: Whilst this information resolved part of the point in line C24 of our risks and issues log [REP6296], we noted that the second part of this comment on the WCS remained unresolved. This part related to the modelling locations rather than the piling scenario itself. Specifically, whether the east and west locations are the worst-case in terms of spatial extent of underwater noise impact, when considering marine mammal receptors. We advised that this may make a difference to the spatial scales over which noise impacts occur. We advise the response to Question MM3.1, does not appear to provide any further clarity on this point to enable us to close out this matter.	In response to paragraph 1 of the response to SoS point 18, as dated 11/12/2024: The WCS described by NE for simultaneous/sequential piling here is correct. With respect to the iPCoD assessment presented for bottlenose dolphins, for disturbance, the impact on vital rates (and thus potential population level effect) is expected to increase with increasing days of disturbance. Therefore, the consideration of single events per day will result in the worst case scenario (as it results in the highest number of piling days). As the conclusion from single events was for no significant effect, it is also concluded that the simultaneous events would result in no significant effect as it would result in a lower number of piling days. In response to paragraph 2 of the response to SoS point 18, as dated 11/12/2024: With respect to the use of the East and West modelling locations, these were considered the worst-case for the spatial extent of underwater noise given the distance between the two locations. While the South location may have a greater propagation distance compared to the West location, when considering the concurrent piling events, the South and East locations would have a greater area of overlap, resulting in the East and West locations having a greater total spatial extent. Therefore, the East and West locations are considered appropriate for the spatial assessments.

SoS Point	Subject	SoS Request	Stakeholders' Response	Applicant's Comments
19	Piling soft start and ramp up	The Secretary of State notes that the Applicant updated its draft Marine Mammal Mitigation Protocol ("MMMP") at Deadline 6 of the Examination to include explicit mention of a soft start and ramp up period for piling of 30 minutes. NE is invited to provide its response to the Applicant's updated MMMP.	As set out in paragraph 1 of the response to SoS point 19, as dated 11/12/2024: Natural England advise that the updates to the duration of the soft start and ramp up procedure are sufficient; however, we advise that the starting hammer energy should be no greater than 10% of the maximum hammer energy.	In response to paragraph 1 of the response to SoS point 19, as dated 11/12/2024: The Applicant notes that Natural England's request that the starting hammer energy should be no greater than 10% of the maximum hammer energy is not reflected in any current guidance, nor has it been adopted on other offshore wind projects. The Applicant considers that its updated soft start protocol (as detailed within the Draft Piling MMMP as submitted at deadline 6 [REP6-218]) satisfies all requirements and guidance and therefore it is appropriate without further alterations.
21/22	Monitoring of noise abatement effectiveness on Bottlenose Dolphin	The Secretary of State notes the concerns raised by NE in relation to the proposed noise abatement measures and marine mammals. The Applicant, NE, and the MMO are requested to provide their views on the following possible wording for Condition 11(1)(j) of the DML : "A monitoring plan which accords with the offshore in principle monitoring plan and is to detail proposals for preconstruction monitoring surveys, construction monitoring, postconstruction monitoring and related reporting;" NE and the MMO are requested to consider whether the drafting is sufficient to secure the monitoring of the effectiveness of noise abatement on bottlenose dolphin in a final Offshore Monitoring Plan. NE and the MMO are also invited to consider whether the drafting is sufficient to secure an updated pre-construction assessment should new information on the Coastal West Channel bottlenose dolphin population be published before piling commences.	As set out in paragraph 1 of the response to SoS point 21/22, as dated 11/12/2024: 1. Natural England advise that Condition 11(1)(j) of the DML7 as worded is not sufficiently specific to secure the monitoring of noise, or the monitoring of noise abatement measures in relation to bottlenose dolphin, marine mammals or any of the other species for which this monitoring is relevant. We advise that the key parameters of the monitoring of piling, including where they relate to noise abatement measures, should be secured within a specific condition within the construction monitoring section of the DML (see also point A18 of our risk and issues log tab on the DCO/DML [REP6-296]). We advise that it is standard procedure across offshore windfarm DML's to have a specific standalone condition in relation to securing the monitoring of noise generated from piling, which in this case extends to the monitoring of noise abatement measures. Natural England would therefore advise that a more specific condition is provided to secure this. We note such conditions usually include details such as (but not limited to) the number of piles of each foundation type that will be monitored, agreed timescales for the provision of the monitoring, and a provision for all piling activity to cease until further monitoring requirements have been agreed, if the impacts are, in the opinion of the MMO in consultation with the relevant statutory nature conservation body, significantly beyond those predicted/assessed.	In response to paragraph 1 of the response to SoS point 21/22, as dated 11/12/2024: As noted above in response to the stakeholder response from the MMO, the environmental statement identified no likely significant effects on marine mammals from underwater noise. Consequently no monitoring for these species is justified. Monitoring of overall noise levels arising from 8 of the first 12 piles of each foundation type is, however, secured in relation to other sensitive features through the offshore in-principle monitoring plan and in-principle sensitive features mitigation plan (as these documents were updated and submitted with the Applicant's Part 1 response to the Secretary of State's request for further information). These documents also secure adaptive management in response to noise monitoring. The Applicant has provided a response above to the MMO's proposal for imposition of a standalone condition dealing with monitoring for construction noise.

Table 2.5: The Applicants Comments on Network Rail's Responses dated 06/12/2024

Stakeholders' Response	Applicant's Comments
This submission is in response to the Secretary of State's letter dated 25 November 2024, whereby a request was made to provide an update on whether any agreement has been reached regarding respective Protective Provisions. This document sets out Network Rail's position. Prior to the examination closing Network Rail and the Applicant were negotiating the Protective Provisions and Framework Agreement. Negotiations were re-commenced after the examination closed. However, the Secretary of State is asked to note that there has been little progress regarding any agreements that would alter the need for Network Rail's standard protective provisions to be included in the DCO (if made). It remains Network Rail's position that its interests are not adequately protected, unless its standard form of protective provisions are included in any made DCO and the outstanding issues set out in the table submitted by the Applicant on 9 July 2024, remain the same. In addition, we would draw the Secretary of State's attention to	The Applicant has progressed the Protective Provisions and Framework Agreement for land rights with Network Rail but these are yet to be agreed and therefore the Applicant mustmaintain its ability to exercise Compulsory Acquisition powers in the absence of a voluntary land agreement. The applicant has agreed a Basic Asset Protection Agreement (BAPA) and has been seeking Business Clearance for the proposed crossings of the Network Rail's land. The voluntary land agreement seeks an option for an easement to cross Network Rail's land. As with other undertakers and utility owners the Applicant will be seeking to Horizontally Directionally Drill at a sufficient depth under Network Rail's land to avoid any impact to their operation or have a physical impact on their land. The Applicant is of the view (as upheld by recent examining authorities) that protective provisions included in the development consent order should be relevant and proportionate to the impact of the proposed development, which in this case is limited.

Stakeholders' Response	Applicant's Comments
section 127 (statutory undertakers land) of the Planning Act 2008, which sets out the requirements that need to be met, for the Secretary of State to be satisfied that the CPO powers can be sought over Network Rail's land/rights. Nevertheless, some progress has been made with the Framework Agreement, with only a couple of provisions left to be agreed upon, some of which are subject to Network Rail and the Applicant entering into a property agreement. The Applicant has previously advised that without a property agreement in place, they are unable to include Network Rail's standard Protective Provisions on the face of the draft Order/ Order (once granted) and nor are they able to agree provisions in the Framework Agreement, which relate to the exercise of their powers under the DCO. Network Rail has been trying to engage with the Applicant to have the heads of terms agreed for the property agreement (which will be an option for an easement), particularly, the consideration amount and the easement area. In the absence of agreed heads of terms, the property agreement has been delayed and has not yet been entered into. A basic property agreement has nevertheless been drafted and circulated to the Applicant recently for comments.	The Applicant cannot accept a commercial agreement with Network Rail that is unrealistic in relation to impact the proposals will have on their land and apparatusty. The Applicant must achieve value for the consumer and be commercially competitive. The level of payment Network Rail were seeking was considered too high and an alternative approach and value have been proposed. These negotiations are ongoing

Table 2.6: The Applicants Comments on the Winckworth Sherwood LLP on behalf of Susie and David Fischel Responses dated 06/12/2024

Stakeholders' Response	Applicant's Comments
1. Introduction 1.1. This is a written submission made on behalf of Susie and David Fischel (Fischels) in respect of the letter issued by the Secretary of State on 25 November 2024 seeking further information from particular parties (**Information Request Letter**). 1.2. The Secretary of State has requested an update on the progress of the Heads of Terms in relation to the compulsory acquisition of land. Paragraph 15 of the Information Request Letter states: 15. The **Applicant** should provide an update on the progression of Heads of Terms with Affected Persons in relation to the compulsory acquisition of land by voluntary means, and to submit an updated Land Rights Tracker. 1.3. While this item is directed at the Applicant, as Affected Persons the Fischels provide this response to assist the Secretary of State with understanding the Applicant's approach to progressing Heads of Terms, and the experience of Affected Persons in doing so. The primary reason for doing so is to ensure that the Fischels' experience of engagement with the Applicant is on the record, and that a balanced view of such engagement is provided. **2. Progression on Heads of Terms** **Engagement with the Applicant** 2.1. The main point that the Fischels wish to highlight is that for the past four months (since the close of the Examination on 6 August 2024) they have been requesting an updated draft Option and Easement agreement from the Applicant that takes into account feedback provided by the Fischels' lawyers on 31 July 2024. 2.2. While the Fischels have received emails promising updates since the close of the Examination, no such documents had been received until the week of this deadline, with the Applicant's lawyers finally providing the documents to the Fischels' lawyers on Monday 2 December 2024. The documents were therefore provided by the Applicant exactly one week after the Secretary of State issued the request for the Applicant to provide an update on the progression of Heads of Terms with Affected Persons and to submit an updated Land Rights Tracker. We expect the 2 Susie Fischel Rampion 2 Offshore Windfarm Response to Secretary of State Further Information Request Applicant's response due by 6 December 2024 will now include an update to the effect that the documents have been provided. 2.3. This sudden activity following a formal request from the Secretary of State reflects the Fischels' experience throughout the examination process: months of waiting for meaningful engagement, an undertaking, or documents from the Applicant, and then action from the Applicant shortly after being specifically requested to do so by the Examining Authority, then using that to update the Lands Rights Tracker and suggest that progress has been made.	The Applicant does not agree with the Land Interest's account of the latest discussions or the implication that the Applicant has not continued post-Examination to engage meaningfully to conclude an agreement with the Land Interest. To suggest that the Applicant has shown no interest in preparing a legal agreement which addresses the Land Interest's concerns, or that the Applicant has only progressed discussions as a reaction to requests for information from the Secretary of State is disingenuous and plainly incorrect. The Applicant does not wish to rehearse the detailed engagement log that can be found in the Land Rights Tracker, but would highlight the following points: - The negotiation of heads of terms and legal documentation is an iterative process and since the close of the Examination the Applicant has engaged with the Land Interest's land agent, and their solicitor, on both the heads of terms and on the draft Option agreement and draft deed of easement; - Ordinarily, parties would settle heads of terms before negotiating the legal agreements seeing as the heads of terms contain the key principles which are to then be captured in the drafting of the legal agreements. However in this case the Land Interest had previously requested, and had been provided with, the draft option agreement and deed of easement, therefore comments have been travelling between the parties' advisors on both the heads of terms and the legal agreements in parallel; - Updated draft legal documents were provided to the Land Interest's solicitors at the beginning of August which addressed a number of points previously raised by the Land Interest. The Land Interest's focus in their recent submissions on the fact that further updated draft legal agreements were not then provided until 2 December is misplaced and does not reflect the engagement that has taken place in the interim; - In particular, a 2 hour meeting was held with the Land Interest's agent in September 2024 with a view to settling the heads of terms. Following the meeting, the Applicant was informed that the Land Interest's solicitors would now negotiate these rather than the land agent as had previously been the case, and whilst the Applicant provided written comments on the heads of terms on 25th September it has still not received a response to these from any of the Land Interest's advisors; - Notwithstanding, the Applicant issued updated legal documents to the Land Interest's solicitors on 2 December. These updates took account where possible of points raised by the Land Interest. The Applicant had also during that period revisited its precedent legal documents generally to address points that had arisen in negotiations with affected parties and seek to ensure consistency of terms in the documentation for each landowners along the cable route (all points which were also discussed with the Applicant's Land Agent in September 2024); - The Applicant awaits comments on the legal documents and the heads of terms, and remains ready to negotiate these documents with the Land Interest with a view to reaching an agreement as soon as possible.

Stakeholders' Response	Applicant's Comments
2.4. The Land Rights Tracker, however, does not require the Applicant to explain what substantive progress has actually been made. Engagement is carried out by the Applicant, largely as a reaction to specific requests from the relevant authority (a fuller summary of correspondence since the close of the Examination is included at paragraph 2.13). This approach does not reflect an Applicant who is genuinely trying to efficiently and meaningfully engage with Affected Persons. The Fischels have been active and willing in their engagement to progress matters, even engaging lawyers right at the beginning of the Examination in February 2024 to facilitate discussion of the legal agreements, however this has not been reciprocated by the Applicant. 2.5. The significance of this approach to engagement is clear: paragraph 8 of the Department for Communities and Local Government "Guidance related to procedures for the compulsory acquisition of land under the Planning Act 2008" states "*Applicants should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored*" (**CAH Guidance**). 2.6. One such reasonable alternative to compulsory acquisition would be to try to reach agreement. As has been outlined in each of their submissions, the Fischels do not consider that a genuine attempt to reach agreement has been made by the Applicant, and the Applicant has shown no interest in preparing a legal agreement that actually takes the Fischels' concerns into account. 2.7. For compulsory acquisition powers over the Fischels' land to be included within the DCO as made, the Applicant has to demonstrate that the land is required for the development and that there is a compelling case in the public interest (see section 122 of the Planning Act 2008). There can be no compelling case in the public interest where the Applicant has before, and after an Examination neglected to make meaningful efforts to acquire land and rights over land by agreement. Compulsory acquisition is an option of last resort: the Applicant must have engaged constructively throughout all stages of the application. That simply has not occurred here. 2.8. The core of the Fischels' issue is that the Applicant is seeking wide powers of compulsory acquisition over their land having made no genuine or meaningful attempt to try to reach agreement with them. 2.9. The matter which is for serious consideration, therefore, is whether an Applicant is able to effectively avoid having to carry out meaningful engagement and override the requirements of the CAH Guidance purely on the basis that the country has overall need for such projects. The Fischels' experience of the Applicant's engagement is not unique, and it will be clear to the Secretary of State from the submissions made throughout the Examination that their experience is reflected by Interested Parties who have also struggled to make any progress towards voluntary agreements. The updates on the Land Rights Tracker throughout the Examination process further highlighted this. The Secretary of State will need to be satisfied in these circumstances that any decision to grant compulsory acquisition powers is reasonable, particularly given that the decision affects the Fischels' right to peaceful enjoyment of their property. 2.10. If the Applicant has not satisfied the requirements in order to grant compulsory acquisition powers over the Fischels' land, then the Secretary of State could: (a) generally remove the compulsory acquisition powers from the dDCO (of particular concern to the Fischels are article 25 (compulsory acquisition of rights and imposition of restrictive covenants) and article 33 (temporary use of land for carrying out the authorised project)); or (b) make the amendments to the dDCO set out in paragraph 4.4 of the Fischels' Deadline 6 submission, to remove the Fischels' land from the compulsory acquisition powers [REP6318] in either case, leaving the Applicant with all the necessary powers under the dDCO to proceed with the authorised project, subject to obtaining the required land and rights by agreement with the relevant landowners (under option (a)) or the Fischels (under option (b)). 2.11. We appreciate that this would be an unusual approach. However, it is an approach which is envisaged by the CAH Guidance at paragraph 16: "*There may be circumstances where the Secretary of State could reasonably justify granting development consent for a project but decide against including in an order the provisions authorising the compulsory acquisition of the land*". 2.12. The approach requested would recognise the need for the scheme while also giving due weight to the requirement to consult and avoid setting a precedent which risks de facto removing the requirement to engage those parties whose land is subject to compulsory acquisition under a Development Consent Order. If the dDCO is made in that form, the Applicant would have all the necessary powers to proceed with the authorised project, save that it would be obliged to do what it could and should have done at any point before the Secretary's of State's consideration of the DCO application, namely make genuine efforts to reach agreement with the relevant landowner(s).	The Applicant maintains that it has acted reasonably and meaningfully in negotiating with the Land Interest. Negotiation necessarily requires engagement by all parties and the Applicant hopes that it will receive the necessary mark up of the legal documentation shortly in order to agree the same. The Applicant is not aware that there is any outstanding information reasonably sought by the Land Interest in order to move forward with agreed legal documentation. The circumstances referred to by the Land Interest in paragraph 2.11 of their submissions are not made out and there is no justification for the exclusion of compulsory acquisition powers as sought in paragraph 2.10 of the submissions. To do so, in the absence of a binding agreement for the land rights required, would severely prejudice the Applicant's ability to deliver the project and realise its much needed benefits.

Stakeholders' Response	Applicant's Comments
Summary of correspondence since the close of the Examination 2.13. The Fischels' Deadline 6 submission sets out the correspondence between the parties until Deadline 6. The following is a summary of the correspondence that has occurred since then: a) 31 July 2024: the Fischels' lawyers provided the Applicant's lawyers with a table of their comments on the draft HoT document that was provided by the Applicant on 19 July 2024. Given the tight timeframe, and the fact that the document was generic and lacked detail, and that there remained significant areas of uncertainty, the Fischels' lawyers made clear in the cover email that the comments on the draft HoT were preliminary, and that the comments should be incorporated into the revised draft Option and Easement Agreement for the parties to discuss. b) 1 August 2024: the Applicant's lawyers replied to the Fischels' lawyers email of 31 July 2024 stating that they would discuss [the Fischels' table] with the Applicant, but that "*The draft agreements will be sent across today as we had prepared these but we can update once we have discussed your comments with our client*." c) 2 August 2024: the Applicant's lawyers emailed the Fischels' lawyers attaching the draft Option and Easement Agreement, noting in the cover email they were "*subject to further instruction from our client once we have reviewed your comments*". These documents did not incorporate any of the feedback provided by the Fischels' lawyers on 31 July 2024, however the comment set out here indicated to the Fischels and their lawyers that the documents would be updated shortly to incorporate the feedback provided by the Fischels. d) 7 August 2024: the Fischels' lawyers emailed the Applicant's lawyers thanking them for the draft Option and Easement documents, and stating "*We look forward to receiving revised drafts once you have taken instructions on our comments*." e) 25 September 2024: the Applicant's lawyers emailed the Fischels' lawyers with a copy of the table of comments on the HoT that the Fischels had prepared. The Fischels had raised 19 points in their table: the Applicant provided a short comment on 10 of those points. Despite all the correspondence and submissions from the Fischels stating that they wished to progress to discussion of the draft Option and Easement agreement (rather than focus time and money on the Heads of Terms, which had not progressed at all since the beginning of the Examination), the Applicant's lawyers asked "*we assume we are now agreeing the HoTs with you directly?*". f) 14 October 2024: Applicant's lawyers emailed Fischels' lawyers for an update on the above. g) 14 October 2024: the Fischels' lawyers responded to the above advising that they were awaiting instructions. h) 16 October 2024: the Fischels' lawyers emailed the Applicant's lawyers to reiterate the point from earlier correspondence that they would like to see updated draft Option and Easement Agreements, stating "*In lieu of further exchanges on the Heads of Terms, our client would like to see updated draft Option and Easement Agreements before we provide any further input, as per earlier correspondence*." The Fischels requested that the Applicant's lawyers provide an update on when they could expect to receive them (noting that the Applicant's lawyers email of 2 August 2024 had suggested that updated draft Option and Easement documents would be provided) i) 7 November 2024: the Fischels' lawyers emailed the Applicant's lawyers requesting an update on when they would be in a position to provide updated draft Option and Easement Agreements, for the Fischels to review j) 2 December 2024: the Applicant's lawyers emailed the Fischels' lawyers with updated draft Option and Easement agreement documents. 2.14. As outlined above, the draft documents have once again been provided to the Fischels just days before the deadline for the Applicant to provide an update to the Secretary of State on its negotiations with Affected Persons. 2.15. The Fischels intend to review and comment on the draft Option and Easement agreement, however it remains unclear why it has taken four months since the close of the Examination (or 10 months since the beginning of the Examination) for the Applicant to provide these documents. **3. New CPO Guidance** 3.1. The Secretary of State will be aware that the guidance on Compulsory Purchase was updated in October 2024 (**2024 CPO Guidance**). While we appreciate the 2024 CPO Guidance is not strictly applicable to the DCO process, it is relevant to the extent that it demonstrates the importance of engagement when seeking compulsory acquisition powers and the fact that it is increasingly necessary to draw the attention of the body seeking those powers to the importance of proper engagement as part of the planning process. 3.2. Notably, the CPO Guidance sets out in section 17 the requirement for negotiations and engagement prior to, and in parallel with, preparing and making a compulsory purchase order: the new guidance is clear that engagement must be sustained throughout the compulsory purchase process, using a variety of different engagement methods. We highlight this here where there has clearly been an issue with engagement, and we refer to paragraphs 2.5, 2.9, and 2.11 above where we set out the applicable DCO guidance in this case.	

Stakeholders' Response	Applicant's Comments
4. Conclusion 4.1. In terms of compulsory acquisition, the Fischels' view remains that the Applicant has not done enough to justify the inclusion of compulsory acquisition powers within the DCO and the use of those powers over the Fischels' land. If the Secretary of State is not satisfied that the Applicant has discharged its responsibilities in relation to engagement with Affected Persons, we would ask the amendments set out at paragraph 2.10 above are made. 4.2. Furthermore, an Applicant that wishes to minimise risk of an award of costs should make sure there is "constructive co-operation and dialogue between the parties at all stages" (emphasis added). We set out at the Compulsory Acquisition Hearing and in our Deadline 4, 5 and 6 submissions the unusually low and last minute effort made by the Applicant to reach a legal agreement and how it has failed to meet the requirements of the 2008 Planning Act and accompanying guidance to justify compulsory acquisition powers. On the basis of engagement following the close of the Examination, we continue to stand by that position here.	