

Date: 4 March 2025

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North Falls Case Team  
Planning Inspectorate  
Via Portal

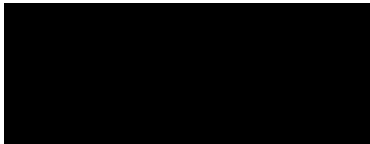
Dear Case Team,

**NORTH FALLS OFFSHORE WIND FARM (EN010119)**  
**SUFFOLK COUNTY COUNCIL (IP reference: 20050784)**  
**SCC DEADLINE 2 SUBMISSIONS**

Please find attached Suffolk County Council's Deadline 2 submission, titled 'SCC D2 Response to ExQ1'.

If I can be of any further assistance, please do not hesitate to contact me.

Yours faithfully,



**Graduate Project Officer**  
Programme Management Office (PMO)  
Growth, Highways & Infrastructure  
Suffolk County Council



## **Suffolk County Council (20050784)**

### **Answers to Examining Authority's First Written Questions (ExQ1)**

### **North Falls (EN010119)**

Deadline 2

4 March 2025

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## 1 Glossary of Acronyms

<i>AIL</i>	<i>Abnormal Indivisible Load</i>
<i>(SCH)AONB</i>	<i>(Suffolk Coast and Heaths) Area of Outstanding Natural Beauty</i>
<i>CNP</i>	<i>Critical National Priority</i>
<i>CROWA</i>	<i>Countryside and Rights of Way Act</i>
<i>DCO</i>	<i>Development Consent Order</i>
<i>EA1N</i>	<i>East Anglia ONE North</i>
<i>EA2</i>	<i>East Anglia TWO</i>
<i>EIA</i>	<i>Environmental Impact Assessment</i>
<i>ExA</i>	<i>Examining Authority</i>
<i>ExQ1</i>	<i>Examining Authority’s First Written Questions</i>
<i>LBBG</i>	<i>Lesser black-backed gull</i>
<i>LGA 1972</i>	<i>Local Government Act 1972</i>
<i>LIR</i>	<i>Local Impact Report</i>
<i>LPA</i>	<i>Local Planning Authority</i>
<i>NE</i>	<i>Natural England</i>
<i>NF(OWF)</i>	<i>North Falls (Offshore Wind Farm)</i>
<i>NPS</i>	<i>National Policy Statement</i>
<i>NSIP</i>	<i>Nationally Significant Infrastructure Project</i>
<i>OCTMP</i>	<i>Outline Construction Traffic Management Plan</i>
<i>OWF</i>	<i>Offshore Wind Farm</i>
<i>PA 2008</i>	<i>Planning Act 2008</i>
<i>PCPA 2004</i>	<i>Planning and Compulsory Purchase Act 2004</i>
<i>PINS</i>	<i>Planning Inspectorate</i>
<i>PRoW</i>	<i>Public rights of way</i>
<i>SECHNLP</i>	<i>Suffolk &amp; Essex Coast &amp; Heaths National Landscape Partnership</i>
<i>SLVIA</i>	<i>Seascape, Landscape and Visual Impact Assessment</i>
<i>SMO</i>	<i>Special Movement Order</i>
<i>SoS</i>	<i>Secretary of State</i>
<i>STGO</i>	<i>Special Types General Order</i>
<i>TCPA 1990</i>	<i>Town and Country Planning Act 1990</i>
<i>TTSA</i>	<i>Traffic and Transport Study Area</i>
<i>WTG</i>	<i>Wind turbine generator</i>

<i>“The Council” / “SCC” refers to Suffolk County Council</i>
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## **2 Purpose of this Submission**

This document has been prepared by Suffolk County Council (“SCC”) in response to the Examining Authority’s First Written Questions (“ExQ1”) and is based on a template provided by the Planning Inspectorate case team. For ease of use, questions which are not addressed to Suffolk County Council have been deleted and where another authority is the Lead Authority, this has been attributed. Examination Library references have been used throughout to assist readers.

### 3 Answers to Examining Authority's First Written Questions (ExQ1)

ExQ1	Question to:	Question:	Local Authority Answer
<b>1 General and Cross-topic Questions</b>			
1.1 General			
Q1.1.4	Local Authorities (LAs)	<b>Development Plan policies</b> Confirm that you are content with the Applicant's policy analysis. The local planning authorities in responding to this question should also advise on whether there have been any changes to the Development Plan operative in their respective areas following the submission of the Application for the Proposed Development and/or as to whether any changes are anticipated prior to 28 July 2025, the latest date by which the Examination must be completed.	Suffolk County Council is not aware of any upcoming changes to the development plan in Suffolk which would be relevant to the proposed development prior to 28 July 2025. SCC defers to the Essex local planning authorities <sup>1</sup> ("LPAs") on the topic of the Applicant's policy analysis, insofar as it relates to the development plan in Essex. Because the proposed development does not fall within Suffolk, SCC is content that the policy analysis does not consider development plan policies in Suffolk.
Q1.1.5	LAs	<b>Neighbourhood Plans</b> In addition to the Ardleigh Neighbourhood Plan, are there other any relevant made or emerging neighbourhood plans that the ExA should be aware of? If there are, please:	(i) The proposed development is not located within any Neighbourhood Planning Areas in Suffolk, so Suffolk County Council cannot identify any further Neighbourhood Plans of relevance. (ii) Not applicable. (iii) As a general point about the weight to be given to neighbourhood plans, SCC would note that they are part of the

<sup>1</sup> As with paragraph 1(1) of the Town and Country Planning Act 1990, references to a local planning authority are references to both the county planning authority and the district planning authorities.

ExQ1	Question to:	Question:	Local Authority Answer
		<p>(i) Provide details, confirming their status and, if they are emerging, the expected timescales for their making.</p> <p>(ii) Provide copies of the relevant parts of any made plan or emerging plan.</p> <p>(iii) Indicate the weight that you consider should be given to these documents.</p> <p>(iv) Please also provide an update as regards the status of the Ardeigh Neighbourhood Plan and whether there have been any changes to relevant policies.</p>	<p>local development plan framework in much the same way as a district council's local plan is, or indeed a county council's minerals and waste local plan.</p> <p>However, as the Examining Authority ("ExA") will be aware, the local development plan does not have direct application to the Planning Act 2008 ("PA 2008") regime. Section 38 of the Planning and Compulsory Purchase Act 2004 ("PCPA 2004"), which imposes the requirement for determinations to be made in accordance with the development plan, only applies to determinations made under 'the planning Acts', which as defined in section 117, does not include the Planning Act 2008.</p> <p>The Planning Act 2008 does not directly refer to the development plan (except in relation to amendments to the PCPA 2004, which are irrelevant to Nationally Significant Infrastructure Projects ("NSIPs")).</p> <p>However, policies of the development plan could be considered to be matters which are both important and relevant for the purposes of section 104 of the Planning Act 2008. The extent to which the development plan, including neighbourhood plans, are important and relevant will be a matter of planning judgement.</p> <p>The decision-maker is likely to have to consider (among other issues) the degree to which the specific policy addresses the issues of the present case, the extent to which they are in conflict with the National Policy Statements ("NPSs"), and how up-to-date they are.</p> <p>Some neighbourhood plans in Suffolk do include policies which seek to protect the Suffolk Coast and Heaths Area of Outstanding Natural Beauty ("SCHAONB"), but SCC does not consider that they are necessary to consider for this proposed development separately to the policy and legal protection afforded to AONBs by the NPSs and legislation such as the Countryside and Rights of</p>

ExQ1	Question to:	Question:	Local Authority Answer
			Way Act 2000. This is both due to the limited territorial extent of neighbourhood plans in relation to this development, and because the policies in the NPSs are more specific and relevant to the decision at hand than policies in the neighbourhood plans.
Q1.1.6	LAs	<b>Updates on other development</b> Provide an update on any planning applications that have been submitted or any permissions that have been granted following the submission of the Application for the Proposed Development which could either affect the Proposed Development or be affected by the Proposed Development and whether those developments would affect the conclusions reached in the Environmental Statement (ES).	No planning permissions which would be relevant to the proposed development have been granted by SCC since the submission of the application for the proposed development.
1.2 Environmental Statement (General)			
1.3 Need and benefits			
1.4 Code of Construction Practice			
Q1.4.2	LAs	<b>Outline Code of Construction Practice</b> The OCCoP [APP-248] provides the strategy for the mitigation and control of potentially adverse effects arising from the onshore construction activities. Please confirm whether you are satisfied that the Outline Code of Construction Practice is sufficiently robust, precise and	SCC defers to the LPAs in Essex on this matter.

ExQ1	Question to:	Question:	Local Authority Answer
		enforceable to provide effective mitigation of potential adverse effects.	
Q1.4.3	LAs	<p><b>Works outside of general working hours</b></p> <p>Paragraph 51, OCCoP [APP-248], in the context of when work is required outside of the working hours specified in Paragraph 46, includes that <i>“The relevant local planning authorities will be advised of the likely timetable of works”</i>.</p> <p>Is it sufficient for the LA to be advised of the likely timetable for these works or should this be changed so that works, outside of the hours specified in Paragraph 46, are to be agreed with the relevant planning authority in writing in advance and must be carried out within the agreed times?</p>	<p>SCC defers to the LPAs in Essex on this matter.</p> <p>Notwithstanding this, SCC would observe that for NSIPs in Suffolk, SCC would usually seek that works outside of specified working hours are agreed with the LPAs. This is so that the LPAs (noting that the district LPA is the enforcing authority for Development Consent Orders (“DCOs”)) can be assured that the project will not result in environmental impacts greater than those assessed as part of the environmental statement.</p>
Q1.4.5	LAs and Parish Councils	<p><b>General working hours and working hours in proximity to residential properties</b></p> <p>Paragraph 46, OCCoP [APP-248], states the working hours as “Construction work for the onshore works must only take place between 0700 hours and 1900 hours Monday to Saturdays, with no activity on Sundays and bank holidays, except as specified below.”</p> <p>Are you content with the working hours proposed or whether tighter working hours should be sought in certain locations that affect residential properties?</p>	SCC defers to local authorities in Essex on this matter.



ExQ1	Question to:	Question:	Local Authority Answer
2	Agriculture and other land uses, ground conditions and soils		
3	Alternatives		
4	Aviation		
5	Climate Change and Resilience		
6	Compulsory Acquisition		
7	Cumulative Impacts		
8	Design		
9	Draft Development Consent Order (DCO)		
9.1 Articles			

ExQ1	Question to:	Question:	Local Authority Answer
9.2 Schedule 1 – Authorised Development			
Q9.2.7	LAs	<p><b>Requirement 5 Substation works</b></p> <p>(i) Please confirm that you are content with the Design Vision [APP-234] and the Design Process – Post-DCO Consent shown in Section 1.6 of that document required to develop the detailed design for approval under R5?</p> <p>(ii) Does R5 provide sufficient control for all design aspects?</p> <p>(iii) Should the Design Vision be a separate certified document within Schedule 12 Part 3 of the dDCO [AS-022]?</p> <p>(iv) The Design Vision paragraph 1.4.3 refers to the production of a Design Guide to inform the detailed design proposals. Should the production of that Design Guide be specifically secured by the dDCO?</p>	SCC defers to the LPAs in Essex on this matter.
Q9.2.17	The Applicant, LAs	<p><b>Requirement 19 Onshore build options</b></p> <p>R19(1) appears to be designed to restrict the authorised development to one only of Build Option 1, 2a or 2b.</p> <p>(i) There would seem to be a typographical error as the clause uses “and” instead of “or” between 2a and 2b and there is no “or” between 1 and 2a. Please review and amend accordingly.</p>	SCC defers to the LPAs in Essex on this matter.

ExQ1	Question to:	Question:	Local Authority Answer
		<p>(ii) Following notification to the LA under R19(2) should it be specified that thereafter no other option may be commenced?</p> <p>(iii) Please explain how it is intended that R19 should operate in the event that the VEOWF DCO were to be made and commence development before NFOWF, or alternatively, that the NFOWF DCO were to be made and commence development first. Does the Requirement need amendment to preclude other options in those circumstances, or is it sufficiently robust as it stands?</p> <p>(iv) To provide clarity in the event that Build Option 1 is the chosen option, should a revised set of Onshore Works Plans also be submitted to the relevant local planning authority to indicate precisely the land required to implement that 'lesser' option in land-take terms?</p>	
9.3 Schedule 3 – Traffic Regulation			
9.4 Schedule 8 – Deemed Marine Licence under the 2009 Act – Generation Assets			
9.5 Schedule 9 – Deemed Marine Licence under the 2009 Act – Transmission Assets			
9.6 Schedule 10 – Deemed Marine Licence under the 2009 Act – Transmission Assets (Offshore Converter Platform)			

ExQ1	Question to:	Question:	Local Authority Answer
9.7 Schedule 15 – Compensation to protect the coherence of the National Site Network			
9.8 Other matters			
<b>10 Ecology</b>			
10.1 Baseline/information			
Q10.1.2	Natural England Relevant Councils	<b>Baseline Information – Stour and Orwell SPA and Ramsar</b> (i) Are NE/Relevant Councils satisfied that the full features/basis of the Stour and Orwell SPA/Ramsar are recognised by the Applicant? (ii) If not the ExA requests updated background information explaining the full features/basis to inform the overall Examination. (iii) For the Stour and Orwell Ramsar - the ExA notes that this has been screened out for Habitat Regulation Assessment (HRA) purposes by the Applicant. However, there are bird varieties which are qualifying species akin to the SPA. Therefore, do NE/Relevant Council's agree with the screening out of the Ramsar site from HRA? State your reasons why either way.	SCC defers to the LPAs in Essex on this matter.

ExQ1	Question to:	Question:	Local Authority Answer
Q10.1.6	<p>The Applicant</p> <p>Natural England (NE)</p> <p>Nature Scotland (NS)</p> <p>Suffolk County Council (SCC)</p> <p>Relevant Local Authorities</p> <p>IPs</p>	<p><b>Cumulative impacts/Co-ordination/In-combination assessments</b></p> <p>The ExA highlights the variance between different relevant project design life spans referred to in the wider vicinity. The North Falls the project lifespan is stated to be 30 years, for Five Estuaries 20-40 years, and National Grid Electricity Transmission 40 years, respectively.</p> <p>Moreover, the ExA acknowledges that Suffolk County Council (SCC) have stated in their RR that they are seeking a “<i>coordinated approach between different proposed offshore windfarm projects and multi-purpose interconnector projects within the vicinity of this project</i>” (including the Norwich to Tilbury project).</p> <p>The ExA also notes the ‘golden rules’ stated to be applied for site selection, including The Crown Estate’s Cable Route Protocol, the national grid’s Horlock Rules (for the siting of substations) and Holford Rules (for the siting of transmission infrastructure), as well as NPS EN-1, EN-3 and EN-5 and other relevant planning considerations which are presented in ES Appendix 4.1 (Document Reference: 3.3.1.1).</p> <p>That said, the cumulative impacts of the Proposed Development and two other</p>	<p>(i) SCC defers to the Essex LPAs on matters of onshore ecology because the proposed development would have no onshore ecological impacts within Suffolk. SCC would defer to Natural England (“NE”) on matters of offshore ecology.</p> <p>(ii) Question not for SCC</p> <p>(iii) Although SCC would defer to NE on matters of offshore ecology, SCC’s LIR <a href="#">[REP1-074]</a> does raise an issue related to migratory bats at paragraphs 6.1-6.4 and 6.6-6.10. SCC notes in the LIR that Five Estuaries has committed to providing monitoring of migratory patterns of Nathusius’ pipistrelle and SCC would encourage the applicant of this development to pursue a joint approach.</p>

ExQ1	Question to:	Question:	Local Authority Answer
		<p>associated Nationally Significant Infrastructure Projects – Five Estuaries and the East Anglian Connection Node as part of the Norwich to Tilbury upgrade are cited as not being properly considered by IPs (including the RR of Tendring District Council). They suggest greater integration on all NSIP projects could negate the need for onshore transmission.</p> <p>(i) <b>Applicant/NE/SCC/IPs</b> – Clarify if the Applicant’s cumulative impact assessments properly factor scheme variance between operational and decommissioning stages?</p> <p>(ii) <b>Applicant</b> –when are any updates expected giving a further assessment of the effects of the variance? Explain any position to the contrary of not providing updates.</p> <p>(iii) <b>SCC/Relevant Planning Authorities</b> - Have your overarching preferences been met with respect to ecological impacts including avoidance, mitigation, and compensation triggers/outcomes? If not explain the specific reasons why.</p>	
10.2 Ecological Enhancement			
Q10.2.1	<p>The Applicant</p> <p>All relevant Councils</p>	<ul style="list-style-type: none"> <li><b>Ecological Enhancement/ BNG Strategy</b></li> </ul>	<p>SCC defers to the Essex LPAs on matters relating to onshore ecology.</p>

ExQ1	Question to:	Question:	Local Authority Answer
	IPs	<p>The ExA notes the content of the submitted BNG Strategy, July 2024 [APP-257]. The statutory provisions relating to BNG in Nationally Significant Infrastructure Projects (NSIPs) (i.e. section 99 and Schedule 15 of the 2021 Act) are not yet in effect and are not anticipated to come into effect until late 2025.</p> <p>Nonetheless, biodiversity interests and the wider policy/ statutory context those interests sit within, remain important and relevant considerations whereby significant enhancement could still potentially be secured. In that the context:-</p> <ul style="list-style-type: none"> <li>•</li> <li>(i) The report sets out the strategy of assessing and securing BNG for ‘onshore’ elements on land and a minimum 10% BNG delivery is referred to. The figure is low. Could a more ambitious percentage figure not be pursued? What are the precise reasons why a more ambitious upper/lower figure band has not been utilised the starting point.</li> <li>(ii) Can the Applicant set out how potentially it could further boost and achieve meaningful overall biodiversity enhancements</li> </ul>	

ExQ1	Question to:	Question:	Local Authority Answer
		<p>above the minimum 10% level it is referring to? Is it technically/financially possible to do that? If not, state why not.</p> <p>(iii) Explain what scope remains for the proposed DCO Scheme to further complement existing ecological and biodiversity initiatives within the local areas the scheme passes through. If relevant local/ regional or national initiatives have not been fully considered to date, provide an update on how potential integration could be achieved.</p> <p>(iv) Does the Applicant agree that s106 (Town and Country Planning Act 1990) obligation/agreement use involving a commuted sum mechanism or other bespoke mechanisms via s111 (Local Government Act 1972) to facilitate local biodiversity enhancements may be a feasible/ suitable option available? If not explain why not.</p>	
Q10.2.2	<p>The Applicant</p> <p>All relevant Councils</p>	<ul style="list-style-type: none"> <li>• <b>Ecological enhancement/BNG Strategy</b></li> <li>• The ExA highlights that the UK Biodiversity Action Plan was superseded but relevant woodland priority status remains under</li> </ul>	<p>SCC defers to the Essex LPAs on matters relating to onshore ecology.</p>



ExQ1	Question to:	Question:	Local Authority Answer
	IPs	<p>the Natural Environment &amp; Rural Communities Act 2006 (NERC) Sect 40 with a “Duty to conserve and enhance biodiversity” and Sect 41 – “List of habitats and species of principle importance in England”.</p> <ul style="list-style-type: none"> <li>•</li> <li>• The Forestry Commission via its representation have suggested further woodland planting, with maintenance being secured for a period of 10 years. Hedgerows, individual trees and woodlands within a development site should also be considered in terms of their overall connectivity between woodlands affected by the development.</li> <li>•</li> <li>• For example, the creation of some larger woodland blocks and hedgerow/hedgerow trees between the existing woodland blocks on site, to ensure maximum gains to increase habitat connectivity and benefit biodiversity across the whole site, not solely in specific areas just to be used as screening could be undertaken. This could involve bunded areas also.</li> <li>•</li> <li>• The ExA is seeking the Applicant to fully explore such options within the Examination period alongside the subsequent mechanisms of delivery with the overarching aim of maximising nature recovery.</li> </ul>	

ExQ1	Question to:	Question:	Local Authority Answer
Q10.2.3	<ul style="list-style-type: none"> <li>• All relevant Council's (including</li> <li>• Suffolk County Council/</li> <li>• East Suffolk District Council/</li> <li>• Essex County Council)</li> <li>• Essex Wildlife Trust</li> <li>• RSPB</li> <li>• Natural England</li> <li>• Forestry Commission</li> <li>• National Trust</li> <li>• Marine Management Organisation</li> <li>• IPs</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Ecological Enhancement/ BNG Strategy</b> <ul style="list-style-type: none"> <li>(i) All relevant Council's (including Suffolk County Council/East Suffolk District Council/Essex County Council)/Essex Wildlife Trust/RSPB/NE/Forestry Commission/National Trust/IPs submit your views on seeking any further ecological enhancement/ facilitating BNG, or wider environmental gains inclusive of any future proofing (even if dual purpose for meeting wider design principles, climate change/adaption and resilience purposes) which may be desirable including regard expected local climatic conditions.</li> <li>(ii) Submit your views on boosting the level of BNG or other ecological enhancement proposals that could be delivered factoring all relevant local initiatives and scope to secure betterment. This may be linked to existing development plans, planned revisions to those, or stand-alone initiatives.</li> <li>(iii) Explain what scope remains for the scheme to further complement existing ecological enhancement initiatives within the local areas the scheme passes through; or which may</li> </ul> </li> </ul>	<p>(i) Notwithstanding that SCC defers to the Essex LPAs on matters relating to onshore ecology, it is relevant to this point that SCC considers that enhancement measures are likely to be required to satisfy the revised duty under s.85 of the Countryside and Rights of Way Act 2000 in relation to the SCHAONB. More information on SCC's position on the s.85 duty can be found at paragraphs 7.31-7.38 of its LIR <a href="#">[REP1-074]</a>. Though the s.85 duty is focussed on a landscape designation, SCC consider it likely that measures which seek to enhance the AONB would also provide an opportunity for ecological enhancement.</p>

ExQ1	Question to:	Question:	Local Authority Answer
		<p>be relevant to in-combination considerations; or wider ecological enhancement possibility.</p> <p>(iv) If relevant local/ regional or national initiatives have not been fully considered to date, provide an Examination update on how potential integration could be achieved.</p> <p>(v) The ExA specifically highlights that the scheme is projected to deliver a net loss for watercourses. Thus, further consideration should be given to BNG for watercourses in tandem with the above.</p> <p>(vi) <b>NE</b> – Biodiversity credits. The ExA acknowledges the Applicant's intention that if 'bespoke' mechanisms of off-site habitat enhancement or creation cannot be achieved in area habitat and hedgerow modules through consultation with relevant bodies and stakeholders on or off-site, biodiversity credits could be purchased through NE's register. Is there confidence from NE that scope for such contingency can/should be reasonably relied upon in those circumstances?</p> <p>(vii) <b>The Applicant</b> – Does the Applicant consider the use of the register to be 'likely'? What is the expected</p>	

ExQ1	Question to:	Question:	Local Authority Answer
		probability, at this stage, of the register mechanism being required and is it the Applicant's preferred/expected position to rely on the register mechanism or not? The Applicant is invited to demonstrate the likelihood/need for such an option being utilised within the Examination period.	
10.3 Habitats Regulations Assessment			
Q10.3.9	<p>The Applicant</p> <p>Five Estuaries Offshore Windfarm</p> <p>All relevant Councils</p> <p>National Trust</p>	<p><b>Compensation - all ornithology</b></p> <p>NE/RSPB RR's combined consider that compensation measures would be required for the following species: 1. Lesser Black Backed Gull (LBBG); 2. Kittiwake; 3. Northern Gannet; 4. Guillemot; 5. Razorbill; and 6. Red-throated Diver, should the Secretary of State decide to consent the Application as it is currently proposed.</p> <p>The Applicant has identified potential compensation measures for impacts on the following species: - Kittiwake (due to collision risk impacts on the Flamborough and Filey Coast SPA) - Guillemot and Razorbill (due to displacement impacts on the Flamborough and Filey Coast SPA) - LBBG (due to collision risk impacts on the Alde-Ore Estuaries SPA); and Red-</p>	<p>(iii) From SCC's perspective, it would have been helpful for lesser black-backed gull ("LBBG") compensation measures to have been included as part of the application for the proposed development. This would have allowed consideration of the compensation measures alongside the project by reason of which they would be necessary. However, Schedule 15 of the draft DCO (which provides for LBBG compensation in future) is drafted in such a way that the parts of the development which would impact LBBGs (i.e. Work No. 1) could not be built unless compensation measures had been in place for three breeding seasons.</p> <p>As a minor drafting point, SCC would invite the applicant to consider whether the definition of "relevant planning authority" in Schedule 15 should be amended to encompass the district LPA for the area in which the compensation measure is to be located. As presently drafted, Schedule 15 will inherit</p>

ExQ1	Question to:	Question:	Local Authority Answer
		<p>Throated Diver (due to displacement impacts on the Outer Thames Estuary SPA).</p> <p>All of those compensation measures, with the exception of those for LBBG, are proposed on a “without prejudice” basis. Nonetheless, the ExA notes that the compensation proposals (on a without prejudice basis or otherwise) do not appear to be sufficiently advanced at this stage.</p> <p>Notwithstanding any potential HRA outcome, the ExA requests that compensation proposals are updated to allow due analysis/comment within the Examination period itself. This is to enable the likelihood of compensation effectiveness to be properly evaluated as well as ensuring potential choices have a holistic basis. The following information is therefore required: -</p> <p>(i) The precise/detailed ecological compensation package expected to be committed to for all relevant species including location/design/how effective delivery would be secured against any delivery risks (collaboration with other windfarm operators and potential operators in the vicinity is also invited to be committed to). Alongside existing Ramsar/SPA/SAC</p>	<p>its definition from article 2 of the DCO which provides that “relevant planning authority” means Tendring District Council, or any successor to it as the planning authority for the land in question’. It is not clear to SCC what the intention is given that 3(1) of Schedule 15 refers to ‘the relevant planning authority <u>for the compensation measure</u>’, (emphasis added) which might not be Tendring District Council.</p>

ExQ1	Question to:	Question:	Local Authority Answer
		<p>site management obligation expectations.</p> <p>(ii) The precise mechanisms by which ‘all’ detailed ecological compensation proposals evidenced to the Examination would be formally secured within the DCO ‘if’ the ExA recommended this being undertaken to the Secretary of State.</p> <p>(iii) Confirmation from relevant Councils (host Councils, or otherwise, including East Suffolk Council) of the sufficiency of the mechanism and details committed to accounting for collaboration with them where it is appropriate and beneficial to wider ecological interests.</p> <p>(iv) <b>All relevant Councils (including East Suffolk Council) /Five Estuaries Offshore Windfarm</b> make whatever comments you deem to be necessary on the scheme’s compensation proposals. This would include any suggestions to maximise optimal wider natural resource/nature recovery outcomes.</p>	
Q10.3.17	<p>The Applicant</p> <p>Natural England</p> <p>Local Authorities</p>	<p><b>Compensation/ecological enhancement - all relevant species/dDCO</b></p> <p>The ExA acknowledges the species and the extent of the provisions within Schedule 15 of the dDCO [APP-005] pertaining to ‘compensation</p>	<p>(iv) SCC does not understand that the applicant is currently proposing a further compensation or enhancement package in the form of an agreement under s106 of the Town and Country Planning Act 1990 (“TCPA 1990”) or s111 of the Local government</p>

ExQ1	Question to:	Question:	Local Authority Answer
		<p>to protect the coherence of the national site network’ as well as their subsequent limitation.</p> <ul style="list-style-type: none"> <li>(i) If any further compensation strategy documentation is accepted or sought either by the ExA or the SoS through necessity, how would such provision be formally secured and delivered by the dDCO?</li> <li>(ii) Does the dDCO allow sufficient flexibility for any fuller without prejudice compensation package to be secured and delivered if it is required?</li> <li>(iii) The ExA’s considerations of such provisions would also extend to the nature of financial contribution mechanisms indicated as being potential options which would be reliant on secondary legislation yet to be issued by Government. In light of that situation has potential s106 Town and Country Planning Act 1990 or s111 of the Local Government Act 1972 or similar bespoke obligation/agreement use been fully factored as potential options for both compensation and ecological enhancement? If not state why not.</li> <li>(iv) NE/Local Planning Authorities do you have any comments to make on this issue?</li> </ul>	<p>Act 1972 (“LGA 1972”). However, if one is required, SCC would be happy to be party to such an agreement if it would be necessary to deliver measures within Suffolk. In particular, if any measures which seek to further the purposes of the SCHAONB are proposed, it is likely that SCC will need to be a party because it hosts legal and budget functions on behalf of the Suffolk &amp; Essex Coast &amp; Heaths National Landscape Partnership (“SECHNLP”).</p>

ExQ1	Question to:	Question:	Local Authority Answer
<b>11 Flood Risk, groundwater and surface water</b>			
<b>12 Historic Environment &amp; Archaeology</b>			
<b>13 Human Health</b>			
<b>14 Landscape, Visual and Seascape Effects</b>			
Q14.1.3	The Applicant, Suffolk & Essex Coast & Heaths National Landscape Partnership (SECHNLP)	<p><b>Duty to seek to further the purpose of conserving and enhancing the natural beauty of the area</b></p> <p>In its RR, SECHNLP [RR-316] refers to the obligation on relevant authorities to seek to further the purposes of an AONB when undertaking activities, as written in section 245 of the Levelling Up and Regeneration Act (2023). SECHNLP consider this an active duty. Please explain how this duty to further the purpose of conserving and enhancing the natural beauty of the area could be considered compatible with OWF proposals.</p>	<p>SCC strongly holds the view that this duty is compatible with Offshore Wind Farm (“OWF”) proposals. SCC considers the duty applicable to OWF proposals as evidenced by the wording of the legislation, relevant DEFRA guidance and EN-1. The wording of the duty does not specify that proposals must be within the boundary of a Protected Landscape for the obligation to comply with the duty to apply. Rather, the duty applies to a relevant authority “in exercising or performing any functions in relation to, or so as to affect land in an area of outstanding natural beauty”. SCC considers that the finding of non-negligible adverse effects is sufficient to satisfy the condition that the Secretary of State (“SoS”) would be exercising a function so as to affect land in an AONB in consenting the proposed development. In the case of the North Falls OWF, moderate/minor adverse effects on the SCHAONB have been found in the Applicant’s Seascape, Landscape and Visual Impact Assessment (“SLVIA”) [<a href="#">APP-043</a>]. As</p>



ExQ1	Question to:	Question:	Local Authority Answer
			<p>these effects are well above the threshold of non-negligible in magnitude, SCC considers it clear that the duty is engaged in relation to the proposed development.</p> <p>DEFRA guidance is clear that proposals outside of the boundaries of designated landscapes may engage the duty. The guidance includes the following in the list of when to apply the duty:</p> <ul style="list-style-type: none"> <li>• <i>“functions outside of a Protected Landscape which may have an effect on land in a Protected Landscape”</i></li> <li>• <i>“decision making in respect of development management, planning applications and nationally significant infrastructure projects”</i></li> </ul> <p>Paragraph 5.10.8 of EN-1 echoes this point, stating <i>“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”</i></p> <p>Since it is clear from the Applicant’s assessment that its proposal will adversely affect and impact land within the SCHAONB, the decision on whether to grant development consent for the proposed development must demonstrate compliance with the duty in relation to the SCHAONB.</p> <p>SCC also holds the view that the duty is compatible with OWF proposals in practical terms; that is to say that it is possible for promoters of OWF proposals to undertake measures which are “sufficient, appropriate and proportionate” (paragraph 5.10.8 of EN-1). SCC refers the ExA to paragraphs 7.31 to 7.38 of SCC’s LIR <a href="#">[REP1-074]</a> for SCC’s detailed position on what type of measures</p>

ExQ1	Question to:	Question:	Local Authority Answer
			the Applicant could explore to show compliance with the duty whilst meeting these criteria. SCC also suggests that the Applicant should engage with SECHNLP regarding possible measures to be undertaken as per the Defra guidance which states that those persons subject to the duty should address the question: <i>“Has the relevant Protected Landscape team been approached for their view on whether or not measures help to deliver the Protected Landscape’s Management Plan and further the purposes of the designation?”</i>
Q14.1.5	The Applicant, and other IPs	<p><b>Impact on AONB and Heritage Coast</b></p> <p>The ExA notes Natural England’s concern that NFOWF has the potential to significantly impact the special qualities of the Suffolk Coast and Heaths Area of Outstanding Natural Beauty (SCHAONB) and Suffolk Heritage Coast (SHC), in particular when acting cumulatively with other existing, consented and proposed OWF projects.</p> <p>(i) To what extent is the Applicant satisfied that the assessment provided is robust, and what further information does it expect to provide in this regard.</p> <p>(ii) Please set out how, in your view, whether or not the proposals comply with local and national policy, in particular the obligation on relevant authorities to 'seek to further the purposes of an AONB' when</p>	<p>(ii) This answer focuses on the obligation on relevant authorities to ‘seek to further the purposes of an AONB’. SCC’s position is that the proposals do not as yet comply with that obligation. To explain why, it is necessary to set out in some detail how SCC interprets the duty in the context of national policy and the operation of the Planning Act 2008 regime. For the convenience of readers of this response, the full answer to this question is set out as <b>Annex 1</b> of this submission.</p>

ExQ1	Question to:	Question:	Local Authority Answer
		undertaking activities, required by section 245 of the Levelling Up and Regeneration Act (2023). Please refer to relevant Defra guidance published 16 December 2024 where relevant.	
Q14.1.7	The Applicant and Local Authorities, and other IPs	<ul style="list-style-type: none"> <li>• <b>Mitigation Planting at 15 Years – Onshore Substation</b></li> <li>• The LVIA identifies beneficial effects of planting after 15 years. VP02 and VP03 reduce in impact at the 15 year point to minor and not significant, and moderate respectively [APP-044]. Please provide further comment on the benefits, especially with regard to winter months. Please distinguish between the mitigation and screening of planting which seeks to obscure the view of the proposed OnSS and how this effects the open agricultural character of the landscape.</li> </ul>	SCC defers to the Essex LPAs on landscape impacts relating to the onshore substation.
Q14.1.8	The Applicant and other IPs	<ul style="list-style-type: none"> <li>• <b>Onshore Substation – Screening impact on surrounding residential receptors</b></li> <li>• The ExA is aware of a difference in approach to screening of the proposed OnSS within the VEOWF proposal and that of NFOWF. Please set out the principal differences and any rationale for the approach, as well as any measures taken to incorporate elements within either scheme which would mitigate these visual impacts.</li> </ul>	SCC defers to the Essex LPAs on landscape impacts relating to the onshore substation.

ExQ1	Question to:	Question:	Local Authority Answer
Q14.1.11	The Applicant and Local Authorities	<p><b>Suffolk Seascape Sensitivity Study to Offshore Wind Farms</b></p> <p>SCC states that at previous consultation stages, it was concerned that the proposed development had not addressed the potential harm on the Suffolk Coast &amp; Heaths National Landscape [RR-318] It has referred to 2 no. commissioned studies (Suffolk Seascape Sensitivity Study to Offshore Wind Farms and a 2023 addendum). Its conclusion, based on the assessment is that SCC finds that there is not likely to be a significant effect on seascape and landscape or the SCHNLA. Please can a copy of the Assessment be submitted to the ExA, together with any necessary supporting information or narrative.</p>	<p>SCC has attached the Suffolk Seascape Sensitivity Study to Offshore Wind Farms and its 2023 addendum to its LIR [<a href="#">REP1-074</a>] as appendices J and K respectively. Following the conclusions of these studies, SCC held the position that it is not likely for there to be significant visual effects from offshore windfarms of the turbine height and distance offshore as proposed by the Applicant. This position did not rule out the possibility of significant visual effects arising from the offshore turbines and it is explained in paragraph 7.20 of SCC's LIR [<a href="#">REP1-074</a>] the basis upon which SCC concurred with the conclusion of the study. SCC considers the Applicant's SLVIA [<a href="#">APP-043</a>] to be a more robust source of evaluation of the visual effects of the proposed development given its focus on the particular variables of the project as opposed to the broad scope of the Seascape Sensitivity Study and its addendum.</p> <p>SCC's position in relation to the findings of significant effects on several viewpoints within Suffolk and the SCHAONB can be found in section 7 of its LIR, such as at paragraph 7.16. SCC also takes issue with the Applicant's methodology regarding its assessment of effects on the SCHAONB as detailed in paragraphs 7.18 and 7.19 of its LIR [<a href="#">REP1-074</a>]. The Applicant appears to aggregate the magnitude of effects upon the special qualities of the SCHAONB to reach a single conclusion on the magnitude of change regarding the SCHAONB as opposed to assessing the magnitude of change, and the significance of the impact, for each special quality indicator. SCC does not believe that one can claim that a negligible effect on one special quality can in any way dilute, reduce, or otherwise affect the magnitude of impact on another special quality indicator of the SCHAONB. Regarding the</p>

ExQ1	Question to:	Question:	Local Authority Answer
			<p>cumulative effects assessment of the SCHAONB ([<a href="#">APP-043</a>], table 29.21), it is not clear to SCC why the intensification of effects caused by the proposed Five Estuaries and East Anglia TWO offshore wind farms do not affect the cumulative assessment of magnitude of impact, despite the Applicant's claim of taking a precautionary approach. SCC agrees with the assessment's claim that the intensification is a matter of degree but queries why this degree is stated to be the same cumulatively as the conclusion reached when considering the magnitude of impact of the North Falls Offshore Wind Farm ("NFOWF") alone.</p>
Q14.1.15	Local Authorities	<ul style="list-style-type: none"> <li>• <b>Public Rights of Way (PROW) - Mitigation</b></li> <li>• The approach to mitigation for impact on the PROW network is set out in the Outline Public Rights of Way Management Plan (OPRoWMP) [APP-252] covering a temporary closure and diversion process. Please provide commentary on the approach, including <ul style="list-style-type: none"> <li>(i) Is sufficient information provided to identify/locate PROWs to provide required notices?</li> <li>(i) Is sufficient notice of temporary diversions provided, including the recipients of notices?</li> </ul> </li> </ul>	<p>SCC defers to the Essex LPAs because no public rights of way ("PRoW") in Suffolk are affected by the proposed development.</p>
<b>15 Navigation and Shipping</b>			

ExQ1	Question to:	Question:	Local Authority Answer
<b>16 Socio-economic Effects</b>			
Q16.1.6	The Applicant and Local Authorities	<b>Supply Chain Plan</b> <ul style="list-style-type: none"> <li>(i) Is there a draft Supply Chain Plan available [APP-045]?</li> <li>(ii) Are the local authorities satisfied with the proposals in respect of the Supply Chain?</li> </ul>	<p>(ii) SCC has set out its detailed position on what it expects in terms of the Applicant's approach to activities with Suffolk's supply chain in paragraphs 9.19, 9.20, 9.43 and 9.44 of its LIR [REP1-074]. However, a brief summary of SCC's position is provided here. SCC is pleased that the Applicant identifies the strengths of Suffolk's supply chain in its OSEP (section A.2, [APP-253]). SCC is also satisfied that the Applicant recognises the increasing challenges to Suffolk's supply chain (section 2.3, [APP-253]) and expects the Applicant to adapt its approach to activities with Suffolk's supply chain accordingly, especially in regards to activities undertaken by other NSIPs in Suffolk such as Sizewell C. SCC expects the Applicant to be including Suffolk's supply chain in the term "local supply chain" in the OSEP in relation to commitments to promote opportunities in and engage the supply chain on proposed activities to boost skills and recruitment (table 8.3, [APP-253]).</p>
<b>17 Terrestrial Traffic and Transportation</b>			
Q17.1.2	National Highways, Essex County Council, Suffolk County Council and any other IP	<ul style="list-style-type: none"> <li>• <b>Assessment of onshore traffic and transport impacts</b></li> </ul> <p>Do you consider that the Outline Construction Traffic Management Plan (OCTMP) [APP-251] and the proposed approval as the CTMP under Requirement 9 of the DCO [APP-005] addresses all relevant issues, including cumulative effects,</p>	<p>SCC has made several representations (in response to statutory consultation (table 1.1, [APP-168]), in relevant representation [RR-318] and in its LIR [REP1-074]) regarding the need for assessment of the proposal's onshore traffic and transport impacts resulting from offshore activities. SCC also believes that a travel plan for the Applicant's offshore activities would be beneficial in promoting sustainable transport. SCC notes and supports the scoping opinion provided by the Planning Inspectorate ("PINS") ([APP-</p>

ExQ1	Question to:	Question:	Local Authority Answer
		<p>from the assessment of onshore traffic and transport impacts for the Proposed Development, as set out in ES Chapter 27 [APP-041] and Appendix 27.1 Transport Assessment [APP-165]?</p> <ul style="list-style-type: none"> <li>•</li> </ul> <p>If not, what are your concerns and how might they be addressed?</p>	<p><a href="#">260</a>], sections 5.9.1 and 5.9.3) which recommends including assessment of onshore traffic associated with offshore construction. While SCC recognises that the port(s) for the Applicant's offshore activities has not yet been chosen, it considers it possible for the Applicant to assess a reasonable worst-case scenario of impacts on a port to give some indication of what the onshore traffic impacts may be as a result of offshore activities. SCC notes that the scoping out of this impact was agreed with National Highways and Essex County Council (table 1.1, <a href="#">APP-168</a>). SCC does not agree with this scoping decision as the relevant highways authority for Suffolk and is concerned about the possible magnitude of impact given the proximity of Suffolk to the offshore array area. In lieu of such an assessment, SCC has recommended a requirement for a Port Traffic Management and Travel Plan in its LIR <a href="#">REP1-074</a> with examples from the consented East Anglia ONE North ("EA1N") and EA2 OWFs appended to that document.</p> <p>SCC has also recommended the production of a dedicated workforce travel plan for onshore construction and operational traffic to promote sustainable travel (paragraphs 8.17 and 8.39 of SCC's LIR <a href="#">REP1-074</a>). Though the onshore elements of the proposed development are in Essex, it is anticipated that part of the workforce will originate in Suffolk given its proximity to the onshore works and so it is in SCC's interest for sustainable travel strategies and monitoring to be implemented insofar as it relates to the workforce originating from Suffolk.</p> <p>SCC has given its detailed position on why the provisions of the Outline Construction Traffic Management Plan ("OCTMP") are insufficient to mitigate the potential impacts arising from abnormal indivisible load ("AIL") deliveries in paragraphs 8.20 to</p>

ExQ1	Question to:	Question:	Local Authority Answer
			<p>8.31 of its LIR <a href="#">[REP1-074]</a>. SCC's concerns can be summarised as relating to the insufficient required notice period, the lack of commitment to an engagement and assessment period prior to notification and the unnecessary impacts which can occur to road users as a result of these concerns. SCC notes section 5.9.7 of the scoping opinion provided by PINS <a href="#">[APP-260]</a> which refers to AILs and recommends a worst-case assessment of deliveries and to secure mitigation measures. The OCTMP currently fails to reflect this and nor does the AIL access report <a href="#">[APP-166]</a>. This report refers to Special Movement Order ("SMO") routes from Harwich and routes from Hull for shunt reactors, though these details are not secured in a control document but does not name routes for other Special Types General Order ("STGO") AILs, nor are indicative numbers, timetables or axle weights given. SCC believes that the OCTMP should be updated to address its concerns, including commitments to engage relevant stakeholders early (preferably at least six months in advance) to identify potential impacts and how they can be mitigated, including whether alterations to the route would reduce impacts on road users. The Applicant should also commit to undertaking route assessments in a similar timeframe for the same reasons and to ensure that the proposed routes are fit for purpose so that late changes to the route and subsequent delays are avoided.</p> <p>Due to the exclusion of the A12 from the TTSA, there are no monitoring activities regarding traffic utilising the A12 in the OCTMP meaning there is neither assessment nor control over the impact this proposal will have on the A12. SCC, as the highways authority for Suffolk, has made several representations (in response to statutory consultation (table 1.1, <a href="#">[APP-168]</a>), in relevant representation <a href="#">[RR-318]</a> and in SCC's LIR <a href="#">[REP1-074]</a>) on its interest regarding impacts on the A12 as they relate to</p>



ExQ1	Question to:	Question:	Local Authority Answer
			<p>residents and businesses in Suffolk who rely on the vital connection to Essex and beyond. In conjunction with this, SCC notes that several other NSIPs will be using the A12 at the same time as the Applicant including Sizewell C, Norwich to Tilbury, Bramford to Twinstead, Five Estuaries, EA1N and EA2. Therefore, there are growing cumulative pressures on the A12 and SCC has not seen evidence to suggest that cumulative significant effects are not likely. Given the A12's importance to Suffolk, SCC would like to see adequate assessment and monitoring measures which ensure that impacts on the A12 are at acceptable levels and do not exceed the levels assessed.</p>

## **Annex 1: SCC's Full answer to ExQ1 14.1.5**

### **Question 14.1.5 – Impact on AONB and Heritage Coast**

*The ExA notes Natural England's concern that NFOWF has the potential to significantly impact the special qualities of the Suffolk Coast and Heaths Area of Outstanding Natural Beauty (SCHAONB) and Suffolk Heritage Coast (SHC), in particular when acting cumulatively with other existing, consented and proposed OWF projects.*

(i) *To what extent is the Applicant satisfied that the assessment provided is robust, and what further information does it expect to provide in this regard.*

(ii) *Please set out how, in your view, whether or not the proposals comply with local and national policy, in particular the obligation on relevant authorities to 'seek to further the purposes of an AONB' when undertaking activities, required by section 245 of the Levelling Up and Regeneration Act (2023). Please refer to relevant Defra guidance published 16 December 2024 where relevant.*

### **SCC's answer**

(ii) This answer focuses on the obligation on relevant authorities to 'seek to further the purposes of an AONB'. SCC's position is that the proposals do not as yet comply with that obligation. To explain why, it is necessary to set out in some detail how SCC interprets the duty in the context of national policy and the operation of the PA 2008 regime.

It can be noted that the Secretary of State (here meaning the Secretary of State for Environment, Food and Rural Affairs) is empowered by s.85(1A) Countryside and Rights of Way Act ("CROWA") 2000 to make regulations which "make provision about how a relevant authority is to comply with the duty under subsection (A1)" but at present no such regulations have been made. The Defra guidance issued in December 2024 (discussed below) is guidance and carries weight as such but it does not have any statutory under-pinning.

There is also guidance on the new duty in EN-1 and this guidance (being in a National Policy Statement) does have statutory under-pinning by virtue of s.5(1) PA 2008. Obviously, as guidance, it needs to be read in the context of the statutory duty itself and it cannot change the terms of that duty. As with all such guidance, it is important to read it as a whole.

It is significant, when considering the advice in para 5.10.7 and in para 5.10.8 of EN-1, that no distinction is drawn as regards what the Secretary of State needs to be satisfied about irrespective of whether a development is located within a designated landscape or outside of it. In both cases, the advice is that "[T]he Secretary of State should be satisfied that measures which seek to further purposes of the designation are sufficient, appropriate and proportionate to the type and scale of the development." This lack of distinction reflects the terms of the duty, which is identical whether a development is within an AONB or is outside and "affects" an AONB. The expectation that measures are "sufficient" inevitably raises the question of 'sufficient for what purpose?' and that can only sensibly mean sufficient to enable the duty to be discharged. Measures which fall short of allowing the Secretary of State to be satisfied of that outcome will not be "sufficient".

Para 5.10.34 of EN-1 repeats the point that the duty applies to projects outside of protected landscapes which may have impacts within them. The immediately following sentence cannot be read as seeking to

depart from the statutory duty. Its statement that “The aim should be to avoid harming the purposes of the designation or to minimise adverse effects on designated landscapes...” has to be read in the context of a requirement to “seek to further the purpose of conserving and enhancing the natural beauty of the [designated landscape].” The avoidance of harm or the minimisation of adverse effects will not be sufficient if nothing has been done to “seek to further” the purpose of conserving and enhancing natural beauty. Avoidance of harm or the minimisation of adverse effects may have sufficed under the previous “have regard” duty, but in the absence of any action seeking to further the purpose of conserving and enhancing natural beauty, those aims alone cannot now be regarded as sufficient to meet the new duty.

The recent Defra guidance is clear that *“The duty is an active duty, not passive, which means:*

- *a relevant authority should take appropriate, reasonable, and proportionate steps to explore measures which further the statutory purposes of Protected Landscapes*
- *as far as reasonably practicable, relevant authorities should seek to avoid harm and contribute to the conservation and enhancement of the natural beauty, special qualities, and key characteristics of Protected Landscapes*
- ...
- *for... development management decisions affecting a Protected Landscape, a relevant authority should seek to further the purposes of the Protected Landscape – in so doing, the relevant authority should consider whether such measures can be embedded in the design of plans and proposals where reasonably practical and operationally feasible...”*

The second bullet point of the guidance confirms the position that the discharge of the duty requires more than merely seeking to avoid harm. That is part of what is expected, but the guidance also expects those persons subject to the duty to seek to contribute to the conservation and enhancement of natural beauty and special qualities of the Protected Landscape, “as far as is reasonably practical”. This latter phrase echoes the advice that measures to that end should be “sufficient, appropriate and proportionate” in para 5.10.8 of EN-1.

Obviously, a judgment is required as to whether a person subject to the duty has gone “as far as is reasonably practical” in seeking to further the purpose of conserving and enhancing the natural beauty of the SCHAONB, and that judgment will be informed by the function that is being exercised. Both the Applicant<sup>2</sup> and the Secretary of State are relevant authorities for the purposes of the duty in relation to this application for development consent. Where that function rests with the promoter of a project it is reasonable to look at the nature of that project and what it is feasible for the promoter to do, having regard to the effects of the project on the SCHAONB.

Consequently, it is necessary to explore (as per the Defra guidance) whether anything can be reasonably and practically done to seek to further the purpose of conserving and enhancing the natural beauty of the SCHAONB, in the context of the NF project. Whilst SCC notes that the Applicant has taken steps in the location of the North Falls (“NF”) array areas and in the design (and height) of the Wind Turbine

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<sup>2</sup> The applicant is a “statutory undertaker” within s.85(3) CROWA 2000 because the Applicant is at present a deemed statutory undertaker within Part 11 of the Town & Country Planning Act 1990 by virtue of being a person holding an electricity generation licence (Licence No. 12435947 issued on 5 August 2021) under s.6(1) Electricity Act 1989 and so falling within the definition of a deemed statutory undertaker in s.262(6) TCPA 1990.

Generators to minimise the impacts on the SCHAONB, nonetheless, the assessment in the SLVIA that there will be adverse effects is an assessment which reflects those steps. The question now, in the light of the conclusions set out in the SLVIA, is therefore whether the Applicant has gone “as far as is reasonably practical” to explore measures to further the purpose of conserving and enhancing the natural beauty of the SCHAONB.

SCC is unpersuaded that the Applicant has indeed gone as far as is reasonably practical. The measures cited by the Applicant in its explanation of compliance with paragraph 5.10.34 of EN-1 as part of its NPS accordance table [REP1-053] are changes to the project configuration to reduce potential effects on the SCHAONB. However, the Applicant does not address the fact that its own SLVIA identifies moderate/minor residual adverse effects on the SCHAONB, including a medium magnitude of change on some special qualities with high sensitivity, which is significant in Environmental Impact Assessment (“EIA”) terms, and so necessarily does not conserve (let alone enhance) the natural beauty of the SCHAONB. It should be noted that the findings of the SLVIA account for the cited changes to the offshore elements. In the NPS accordance table, the Applicant also advances the proposition that it is not incumbent on it to do anything about those adverse effects, on the basis that in EIA terms they are “not significant” effects. This, of course, is not to the point in the context of the “active” duty in s.85(A1) CROWA 2000, which is not concerned with EIA impacts.

SCC does not consider that the presumption in paras 4.2.16 and 4.2.17 of EN-1 regarding Critical National Priority (“CNP”) infrastructure is applicable to the discharge of the new duty in s.85(A1) CROWA 2000, as is implied by the Applicant in its compliance statement for para 5.10.34 of EN-1 [REP1-053]

EN-1 does give specific advice on how both applicants and the Secretary of State should approach compliance with the new duty in s.85(A1) CROWA 2000 (in particular at paras 5.10.7, 5.10.8, and 5.10.34). Nowhere in that text is there a reference to the CNP presumption being applicable to compliance with the duty. That is unsurprising because the duty is an active duty to seek to further the purpose of conserving and enhancing the natural beauty of the AONB rather than a duty to balance harms against benefits. If an applicant subject to the duty has not sought to further that purpose, there cannot be any presumption that the statutory duty has been met. The language of EN-1 cannot usurp the need to meet a statutory requirement and nor does it seek to do so. The advice on the CNP presumption includes (at para 4.2.10) that “Applicants for CNP infrastructure must continue to show how their application meets the requirements in this NPS... as well as any other legal and regulatory requirements”.

In any event, the presumption only operates if the Secretary of State is satisfied that the requirements in paras 4.2.10 to 4.2.13 of EN-1 “have been met” (para 4.2.14). In other words, meeting “other legal requirements” is a pre-condition to the operation of the CNP presumption. In addition, as well as the requirement (above) in para 4.2.10, para 4.2.12 requires that “Applicants should set out how residual impacts will be compensated for as far as possible.” In this case the Applicant has not sought to provide any compensation (or offsetting) for the residual impacts on the SCHAONB that are identified in the SLVIA. The measures that the Applicant has taken to minimise the adverse impacts (in terms of the locations, positioning, and heights of the wind turbine generators (“WTGs”)) are already reflected and taken into account in the SLVIA and its identification of residual impacts is reached in the light of those measures. They cannot therefore be relied on as addressing the residual impacts. Thus, the pre-conditions for operation of the CNP presumption in relation to the s.85(A1) duty are not satisfied in any event.

In conclusion, SCC's position is that, as matters stand, the Applicant has failed to satisfy the new statutory duty in s.85(A1) CROWA 2000 and, if that remains the case during the Examination, SCC does not consider that the Secretary of State will be able to conclude that the Applicant has sought to further the purpose of conserving and enhancing the natural beauty of the SCHAONB. In terms of the guidance in EN-1 at para 5.10.8, the Secretary of State will not be able to be satisfied that the Applicant has proposed "measures which seek to further the purposes of the designation" and, necessarily, there will be a failure to provide measures which are "sufficient, appropriate and proportionate to the type and scale of the development". In those circumstances, SCC considers that the Secretary of State will not be able to be satisfied as regards the discharge of his own duty under s.85(A1) CROWA 2000, without first requiring some further action by the Applicant.

For the purpose of this answer, which is directed only to the duty in s.85(A1) CROWA 2000, SCC has not addressed the wider question of whether the non-compliance (at present) that it has identified with para 5.10.8 of EN-1 has implications for whether the application can be seen to be in accordance with EN-1, when taken as a whole, and so has not addressed the consequential implications for compliance with section 104(3) of the Planning Act 2008. Such matters go beyond the question of compliance with the duty in s.85(A1) CROWA 2000. SCC very much hopes that the Applicant will reflect on its position in the light of these submissions and will engage actively with SCC and with the Suffolk and Essex Coast & Heaths National Landscape Partnership on measures that can be taken, potentially on a 'without prejudice' basis, to address the duty in s.85(A1) CROWA 2000 during the remainder of the Examination. However, SCC does note, in any event, that s.104(3) PA 2008 is subject to s.104(5) PA 2008, and that the duty in s.85(A1) CROWA 2000 is a duty on the Secretary of State contained in an enactment within the scope of s.104(5) PA 2008. Thus, were the Secretary of State to conclude that the duty in s.85(A1) CROWA 2000 has not been met, there would be no imperative to determine the application in accordance with EN-1, even if it were to be concluded that the application is in accordance with it.