



N O R T H F A L L S

Offshore Wind Farm

Applicant's Written Summary of Oral Submissions at the Issue Specific Hearing 2 (ISH2)

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1. INTRODUCTIONS

1.1 Background

1.1.1 Issue Specific Hearing 2 (**ISH2**) was held on 8, 9 and 10 April 2025. The hearing was held so that the Examining Authority (ExA) could hear evidence and ask questions in respect of various offshore and onshore environmental topics and provided an opportunity for registered Interested Parties (**IPs**) to make oral representations about the DCO application. The Applicant notes that each IP making an oral submission was requested to provide a written summary note to the ExA for Deadline 4 (25 April 2025).

1.1.2 The Applicant was represented by:

1.1.3 Gary McGovern (Partner, Pinsent Masons LLP, solicitors for the Applicant), Claire Brodrick (Legal Director, Pinsent Masons LLP), David Reid (Engineering Manager, North Falls Offshore Wind Farm), Daniel Harper (Consents Manager, North Falls Offshore Wind Farm), Gordon Campbell (Principal Environmental Consultant, Royal HaskoningDHV), Paul Macrae (Director of Landscape Planning, LUC), Dr. Helen Riley (Principal Ornithologist, Royal HaskoningDHV), Gemma Keenan (Principal Environmental Consultant, Royal HaskoningDHV), Alex Winrow-Giffin (Marine Environmental Consultant and Surveyor at Brown & May Marine), Adam Foster (Head of Renewables, Anatec Ltd.), and Sara Xoubanova (Global Advisory Services Lead, Brown & May Marine).

1.1.4 Ten IPs spoke at ISH2:

1.1.4.1. Graham Gundy, Zachary Farndon, Clara Pearson, Tim Outlaw and Michael Bedford (KC) on behalf of Suffolk County Council;

1.1.4.2. Mark Woodger, Carol Wallis, Eleanor Storey, Susan Moussa and Sue Hooton on behalf of the Essex County Council;

1.1.4.3. Jane Marshall, James Blyth and Zoe Fairley on behalf of Ardley Parish Council;

1.1.4.4. Barbara Moss-Taylor, on behalf of the Environmental Agency;

1.1.4.5. Francis Tyrrel on behalf of London Gateway Port Limited (London Gateway);

1.1.4.6. Julie Russell on behalf of Port of London Authority (Port of London);

- 1.1.4.7. Trevor Armstrong on behalf of Harwick Harbour Fishermen's Association (HHFA);
- 1.1.4.8. Louis Fell of Brockthorpe Consultancy Ltd, on behalf of Strutt & Parker (Farms) Ltd and Liana Enterprises Ltd;
- 1.1.4.9. Nick Salter on behalf of the Maritime and Coastguard Agency;
and
- 1.1.4.10. Simon Amstutz on behalf of Suffolk and Essex Coast and
Heaths National Landscape

1.2 Purpose of Document

- 1.2.1 This document sets out the Applicant's response to the comments made at ISH2. Where the Applicant has made commitments on the topic, the relevant application documentation is identified.

1.3 Written Summary of the Applicant's Oral Submissions made at the Issue Specific Hearing 2 (ISH2)

Agenda Item	Summary of the Applicant's Oral Submissions
3.1 Draft Development Consent Order (draft DCO)	
Articles – Part 2 Principal powers <i>Article 2 – Interpretation</i> 3.1.1 The objections raised by the Port of London Authority (PLA) to the definitions of 'commence' and 'maintain' including any related proposed drafting amendments to Article 2 and/or Schedule 14 protective provisions.	<p>The ExA asked for the Port of London to explain their concerns in relation to Article 2 definitions.</p> <p>Ms Russell for the Port of London stated that they were concerned with how commencement had been defined, and protective provisions should be used to address concerns.</p> <p>Mr McGovern for the Applicant responded the PLA's concern related to how "commencement" sat in the context of pre-construction surveys in the protective provisions proposed by the port, while Article 2 definitions apply to the DCO at large. Article 2 must remain the way it is as it governs the whole of the order including to inform all of the management plans. Mr McGovern referred to the Applicant's Deadline 3 response [REP3-037] where it was confirmed that the port authorities would be consulted as a matter of course in the context of preparing pre-construction surveys. Mr McGovern reiterated the Applicant's position that they do not agree with the need for related protected provisions for the PLA.</p> <p>The ExA asked if the Port of London had a similar issue with the definition of maintenance.</p> <p>Ms Russell for the Port of London explained that this was a separate issue based on the inclusion of 'adjusting and altering' within the definition, stating that this would be unacceptable for the Port of London.</p>

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	<p>Mr McGovern responded that the definition used in the draft DCO followed the definition used in Five Estuaries. Mr McGovern then confirmed the Applicant's position that the definition governs all of the DCO and DML and so the Applicant is opposed to any change. Mr McGovern also highlighted that the definition was not open-ended but constrained by other commitments.</p> <p>Following discussions in recent weeks with the Ports, the Applicant confirmed that a package will be submitted and Deadline 4 to secure the commitment to the necessary cable burial depth within the Deep Water Routes, including an outline cable specification and installation plan (oCSIP) [Document Ref 9.53 (rev 0)]</p> <p>Mr McGovern also confirmed the Applicant would set out in full its position as to why protective provisions are not necessary for the Ports, at Deadline 4. See the Applicant's submissions on protective provisions and the ports [Document Ref: 9.58].</p>
<p><i>Article 5 – Benefit of the Order</i></p> <p>3.1.2 The objections raised by the Marine Management Organisation (MMO) in relation to the process of transferring and/or granting the deemed marine licences (DMLs) outlined in the draft DCO at Article 5 in</p>	<p>The ExA referred to the Marine Management Organisations (MMO) concerns in [REP2-043] in relation to Article 5, Benefit of the Order. The ExA acknowledged that the MMO were not in attendance and asked the Applicant whether there was anything further to add on this issue.</p> <p>Mr McGovern responded identifying the Applicant's response to the MMO's submissions [REP1-045] and [REP3-038]. Mr McGovern also drew the ExA's attention to paragraph 6.23 of the Rampion 2 Decision Letter where the MMO had made similar points and in doing so had expressly asked the Secretary of State to consider their arguments as a 'test case'. Mr McGovern noted that both the Examining Authority for Rampion 2 and the Secretary of State had expressly considered the MMO's detailed submissions but ultimately disagreed with the MMO approach. Mr McGovern</p>

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<p>the light of the existing statutory regime set out in section 72 of the Marine and Coastal Access 2009 Act and the overall effect on the ability of the MMO to record and enforce the marine licensing regime in respect of any transferred or granted DML.</p>	<p>said that this showed that the same points had been made by the MMO, considered and found against, and should not be taken further in the North Falls Examination.</p> <p>The ExA asked the Port of London to explain why it is seeking the notification of any sale, agreement or other transaction under Article 5.</p> <p>Ms Russell for the Port of London stated that it was the Port's concern that they would be left out of a decision to transfer the order.</p> <p>Mr McGovern responded by drawing attention to the absence of notification provisions in the Five Estuaries Article 5, and that it was the same position here. Mr McGovern explained that this meant that no amendment was required.</p> <p>The ExA asked the Port of London Authority to explain their concern with not being notified of a transfer.</p> <p>Ms Russell responded that the concern was with the potential for an impact on ability to trade if there are changes to deep water routes. Ms Russell stated that the Port of London's position was not for a change to Article 5 but for protective provisions.</p> <p>Mr McGovern responded that any conditions and requirements transferred would continue to be enforceable against any new undertaker. The commitments would remain around burial depth for any future undertakers.</p>

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<p><i>Article 6 – Application and modification of legislative provisions</i></p> <p>3.1.3 The progress of any discussions with the Environment Agency (EA) on this article including the disapplication of the provisions of the Environmental Permitting Regulations in respect of flood risk activity permits required for the crossings of main rivers and whether an 'in principle' agreement or protective provisions has now been agreed.</p>	<p>The ExA asked the Environment Agency to provide more information on Q 6.1.13 and explain why they sought specific protection.</p> <p>Ms Moss-Taylor explained that specific protection was important as it would apply to crossing of rivers, the proposed haul road and sea defences.</p> <p>Ms Brodrick responded that the Applicant has been working with the Five Estuaries team to negotiate agreed forms of protective provisions with all statutory undertakers including the Environment Agency on the basis that the cable corridor onshore for both projects follows the same route, and so consistent provisions would be used across the two projects. Ms Brodrick explained that the Applicant had been involved in the negotiation of the protective provisions with the Environment Agency during the Five Estuaries Examination. Ms Brodrick stated that protective provisions had been agreed with the Environment Agency and were included in the final draft DCO submitted by Five Estuaries prior to the close of the Five Estuaries Examination.</p> <p>The Applicant confirmed it would amend the protective provisions for the Environment Agency in the draft DCO to reflect the agreed provisions included in the final draft DCO for Five Estuaries at Deadline 4 [Document Ref: 6.1 (Rev 5)]. Ms Brodrick stated that she was not aware of any additional amendments to the agreed protective provisions required specifically for the North Falls project but that the Applicant remains willing to discuss that point with the Environment Agency if necessary.</p>
<p>Articles - Part 3 – Streets</p>	<p>The ExA asked Essex County Council to explain the reason for extending the 28-day period to 56 days.</p>

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<p><i>Article 12 – Temporary restriction on the use of streets</i></p> <p>3.1.4 Whether the 28-day period in Article 12(6) within which a street authority is required to notify the undertaker of its decision is necessary and reasonable.</p>	<p>The Essex County Council responded that the 28 day period would be particularly onerous to get a response back to the undertaker, and they are concerned that if a response is not received by the required date consent would be automatically granted.</p> <p>Ms Brodrick responded that although 28 days is considered as sufficient and is the standard approach in DCOs, the Applicant will amend the time periods in Article 12 and Article 14 of the draft DCO at Deadline 4 to align with the Five Estuaries drafting, by extending the time period to 56 days. [Document Ref: 6.1 (Rev 5)].</p>
<p><i>Article 14 – Traffic Regulation</i></p> <p>3.1.5 Whether the 28-day period in Article 14(15) within which a traffic authority is required to notify the undertaker of its decision is necessary and reasonable.</p>	<p>(as above)</p>
<p>Schedule 1 - Part 3 Requirements</p>	<p>The ExA asked if the Essex County Council were content with the wording of Requirement 5, especially in the instance of securing the Design Guide.</p>

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<p><i>Requirement 5</i></p> <p>3.1.6 Whether the list of details to be submitted pursuant to requirement 5(1) should include reference to the delivery of landscaping and ecological enhancements to ensure the landscaping, Biodiversity Net Gain (BNG) and Green Infrastructure (GI) delivery is part of the onshore substation design as set out in the Design Vision.</p>	<p>The Applicant notes that Essex County Council responded that it was content with the current wording and confirmed that it considered that the Design Guide itself did not need to be directly secured by the DCO. As such ECC did not have any outstanding concerns with the requirement.</p>
<p>3.1.7 Whether the provision of the Design Guide referred to in the Design Vision should itself be directly secured by the draft DCO.</p>	<p>(as above)</p>

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<p><i>Requirement 11 – Onshore archaeology</i></p> <p>3.1.8 The progress of the applicant's consultation with Historic England as regards the drafting of requirement 11.</p> <p>3.1.9 Whether any amendments are needed to requirement 11 to ensure consistency of the draft DCO with the Five Estuaries Offshore Windfarm (VEOWF) draft DCO on this topic.</p>	<p>The ExA asked the Applicant if the drafting of Requirement 11 had been agreed with Historic England.</p> <p>Ms Brodrick responded that the requirement will be updated in line with the Five Estuaries drafting at Deadline 4 [Document Ref: 6.1 (Rev 5)]. Additional wording will be added to sub-paragraph 3 and more substantial changes will be made to sub-paragraph 4. Ms Brodrick noted that the draft documents referred to in the sub-paragraphs were with Essex County Council for review and so further amendments may be required. The new sub-paragraph 5 will be added and be consistent with the equivalent provision in Five Estuaries draft DCO.</p>
<p>3.1.10 Whether the draft DCO requirements would secure adequate measures to ensure that archaeological, geoarchaeological and paleoenvironmental</p>	<p>The ExA asked the Essex County Council if they sought further changes to this safeguard.</p> <p>The Applicant notes that Essex County Council confirmed that whilst they were not happy with the level of intrusive investigation, they were content with the wording of sub-paragraph 5 as it will allow adequate post consent investigation.</p>

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remains would be appropriately safeguarded.	Ms Brodrick noted that a commitment to post-consent surveys and trial trenching will be set out in the Archaeological Mitigation Strategy and an updated Outline Onshore Written Scheme of Investigation, which are currently in draft and with Essex County Council for comment.
<p><i>Requirement 19 – Onshore build options</i></p> <p>3.1.11 The intended purpose and scope of requirement 19.</p>	<p>The ExA invited the Essex County Council to provide their opinion of Requirement 19 and whether amendments would be required.</p> <p>In response to comments from Essex County Council regarding the definitions of Build Options 1 and 2, Ms Brodrick acknowledged that there may be some confusion over the different definitions used in the North Falls and Five Estuaries draft DCOs but that the full suite of DCO application documents for North Falls had been drafted using those references, and so it would not be a simple change to make, therefore the Applicant is not proposing to amend the definitions.</p> <p>Ms Brodrick also explained that the DCO is seeking consent for both build scenarios. The works plans will be certified and fixed at the time the DCO is made, and it is therefore not proposed that they will be update post-consent. All management plans secured by the DCO would contain the relevant information depending on which build option is used. It is considered that the requirement to discharge and produce the final management plans will allow for Essex County Council to have certainty over what option will be built.</p>
3.1.12 Whether any amendments to this requirement are sought by the discharging authority.	The ExA referred to the Explanatory Memorandum [APP-006] and the Applicant's response to ExQ9.2.17. The ExA asked the Applicant to further explain its position that it was not appropriate to include drafting which would, after giving notification that it intended to commence one build option, prohibit the Applicant from commencing the other.

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	<p>Ms Brodrick responded that the rationale behind the obligation to notify is to give certainty to relevant parties of the build option selected, however there might be circumstances which require reconsideration of the build option, and so a complete prohibition on changing the option would not be appropriate. This requirement is intended to be a pre-commencement notification requirement only.</p> <p>Ms Brodrick drew attention to a further amendment to the Five Estuaries draft DCO which carves out Bentley Road works (equivalent Work No. 9 in the North Falls draft DCO) from the pre-commencement restriction in this requirement so these works could be carried out prior to confirmation of which build option will be used. In response to a clarifying question from the Ardleigh Parish Council, Ms Brodrick explained that carrying out the Bentley Road works could occur before a decision was made on the build option, not before the DCO was made.</p> <p>Ms Brodrick noted the draft DCO will be updated at Deadline 4 to align with the Five Estuaries drafting and carve the Bentley Road works from the restriction in the requirement as outlined above [Document Ref: 6.1 (Rev 5)].</p>
<p><i>Requirements 8: Code of Construction Practice, 12: Ecological Management Plan, 14: European Protected Species; onshore, 15: Groundwater Monitoring, 22: Operational Drainage Strategy, 23: Horizontal</i></p>	<p>The ExA invited the Environment Agency to explain why they consider that they should be a listed consultee for these requirements, noting the Environment Agency was not a named consultee for the equivalent requirements in the Five Estuaries DCO.</p> <p>Ms Moss-Taylor for the Environment Agency responded that these requirements (and particularly Requirement 8) are within their authority insofar as they relate to water crossings, contaminated land, invasive species and flood risk.</p>

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<p><i>Directional Drilling (HDD) Method Statement</i></p>	<p>The ExA requested that the Environment Agency provide further explanation on this point at Deadline 4 via written submission.</p> <p>Ms Brodrick responded that the Applicant did not propose to add the Environment Agency as a consultee for any specific requirements in the draft DCO, but that updates had been made to various outline management plans which includes consultation with the Environment Agency in relation to the production of further, more detailed documents or plans relevant to the topics raised by the Environment Agency. As such the Applicant considers that the obligation to consult in relation to those topics is sufficiently addressed. Therefore, there is no need to duplicate in the requirements an obligation to consult that is already covered in the outline management plans and in the protective provisions. Ms Brodrick also stated that the DCO does not typically refer to all potential consultees in the drafting of a specific requirement and that the relevant consultees would be consulted as a matter of course by the discharging authority when reviewing and approving any management plans produced in accordance with the DCO requirements.</p>
<p>3.1.14 The draft requirement proposed by the Port of London Authority (PLA) to ensure that a dredged depth of the Deep Water Routes to a depth of 22 metres below Chart Datum is not precluded or impeded.</p>	<p>The ExA identified [REP2-042] where London Gateway stated that they are of the view that a requirement must be added to the draft DCO to ensure the seabed can be dredged to a depth of 22m Chart Datum, providing draft wording for a requirement to be added to Schedule 1, Part 3. Similarly, the Port of London had made a similar point at Deadline two [REP2-057]. The ExA requested an update on the progress of this issue following a technical meeting scheduled for 19 March 2025.</p> <p>Ms Russell on behalf of the Port of London confirmed that the meeting had taken place and that they are reviewing the plans provided following the meeting. Ms Russell stated that it was critical for</p>

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	<p>water depths of 22m to be maintained by the Applicant and there must be certainty within the DCO that this will be the case.</p> <p>Mr Tyrell on behalf of London Gateway also emphasised the importance of the 22m dredge depth and that the DCO should secure this commitment. Mr Tyrell also stated that London Gateway had a statutory power to dredge in the area and should be dealt with directly.</p> <p>Mr McGovern confirmed the Applicant's commitment in principle to a cable burial depth sufficient to allow future dredging to 22m Chart Datum. Mr McGovern stated that discussions were ongoing and an Outline Cable Specification and Installation Plan (CSIP) would be provided at Deadline 4. [Document Ref: 9.53 (Rev 0)] He confirmed it is the Applicant's position, as at the date of the hearing, that the CSIP is secured by a condition in the Deemed Marine Licence and so securing the cable depth through a requirement in the DCO or protected provision is not necessary.</p> <p><i>Post-hearing note: The Applicant has considered the ports' request for a DCO requirement further and, in an effort to resolve matters with the ports, its position has now changed and the Applicant has proposed drafting for a new requirement 2(3) in Schedule 1, Part 3 of the DCO to secure the cable burial depths in the Deep Water Routes [Document Ref: 6.1 (Rev 5)].</i></p> <p>The ExA requested that the Applicant meet with the Port of London and London Gateway to resolve the issue. <i>Post-hearing note: The Applicant has a meeting scheduled with the ports w/c 28 April.</i></p> <p>Mr McGovern confirmed that the wording of DML condition 22(h) (in Schedule 9 of the DCO) would be amended to refer to the final CSIP being in accordance with the Outline CSIP. [Document Ref: 6.1 (Rev 5)].</p>

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	<p>Ms Russell clarified that the dredge depth was fundamental and so needed to be secured by a requirement in the DCO, rather than relying on the DML or an Outline CSIP.</p> <p>Mr McGovern responded that written submissions would address this at Deadline 4 [Document Ref: 9.58], and that the Applicant would continue discussions with the Ports on this matter post Deadline 4.</p>
<p>3.1.15 The drafting of any proposed requirement or condition that might be included within the draft DCO and DMLs relating to the removal of the Galloper Recommended Route as a prerequisite to the grant of consent.</p>	<p>The ExA stated that they had questions for the MCA on the Galloper Recommended Route and asked the Applicant if they had anything to add to the need for and drafting of the proposed requirement.</p> <p>Mr McGovern responded that the topic would be better discussed with the MCA present. Mr McGovern stated that the Applicant were looking to arrange a meeting with the MCA following the hearing to push towards progressing with the administration for the removal of the Galloper Route.</p>
<p>Schedule 3 - Traffic Regulation - Part 3 Speed limits</p> <p>3.1.16 Whether any amendments are required in relation to speed limits</p>	<p>The Applicant notes that Essex County Council confirmed that there were no further amendments required.</p>

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to ensure consistency with the VEOWF draft DCO.	
<p>Schedules 8, 9 and 10 – Deemed Marine Licences</p> <p>3.1.17 The progress of discussions with Natural England (NE) and the MMO regarding the drafting of the DMLs and whether the draft wording for the relevant provisions have been agreed.</p>	<p>The ExA asked the Applicant to provide an update on the progress of discussions with Natural England (NE) and the MMO.</p> <p>Mr McGovern responded that the Applicant had reviewed the MMO's Deadline 3 submissions [REP3-055 and REP-056] and additional submissions [AS-051] and confirmed that progress had been made. Mr McGovern stated that some points were being considered by the Applicant, and these would be addressed at Deadline 4 [Document Ref: 9.42]. Mr McGovern noted that the key issues raised regarded transfer of benefit and force majeure.</p> <p>Mr McGovern stated that the Applicant continued to discuss the piling issue with Natural England and that Natural England have welcomed commitments in relation to monitoring of piling and cessation of piling activity. Mr McGovern confirmed that Natural England had requested <i>without prejudice</i> schedules for species where the Applicant considered there was no adverse effect to integrity. Mr McGovern confirmed that these schedules are being drafted and will be provided at Deadline 5 on a <i>without prejudice</i> basis.</p>
<p>3.1.18 The drafting of condition 20 in Schedule 8 and 10 and condition 21 in Schedule 9 of the draft DCO.</p>	<p>The ExA asked for an update on the parties' position on the drafting of condition 20 (Force Majeure).</p> <p>Mr McGovern responded that the Applicant's position remained unchanged. Mr McGovern explained that the Applicant's position is well precedented and noted the recently granted Rampion 2 DCO has the same provision. Mr McGovern highlighted that the condition is a notification mechanism which does not disapply the statutory provision.</p>

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<p>3.1.19 The changes sought by the MMO to Part 1 paragraph 9 of the DMLs.</p>	<p>The ExA identified the changes sought to Part 1, Paragraph 9 of the dML by the MMO [REP2-043] and the Applicant's response [REP3-038], which indicated that the Applicant disagreed and were not intending to make the requested changes. The ExA asked for an update from the Applicant.</p> <p>Mr McGovern responded that the Applicant maintained its position that the drafting '<i>materially new or materially greater</i>' was more appropriate as '<i>materially different</i>' would be less precise and would significantly change the meaning. Mr McGovern explained that this would be a point best left to the Secretary of State to decide.</p> <p><i>Post-hearing note: This point has now been agreed, with the MMO accepting the drafting '<i>materially new or materially greater</i>'. This is confirmed in the Statement of Common Ground with the MMO, submitted at Deadline 4 [Document Ref: 10.19].</i></p>
<p>3.1.20 The amendments to the draft Schedule 9 conditions proposed by the PLA.</p>	<p>The ExA asked if there was anything further to add on this point from earlier submissions.</p> <p>Ms Russell stated that the changes requested this instance were the same as those agreed with the MMO in Five Estuaries.</p> <p>Mr Tyrell raised concerns with condition 13 and emphasised that London Gateway should be addressed and consulted separately from the Port of London. Mr Tyrell raised concern with the fact the cable burial depth was proposed to be secured in the CSIP only.</p> <p>Mr McGovern responded that submissions at Deadline 4 will address these concerns, and the Applicant is working to confirm the cable burial depth, and the Applicant's package of commitments will ensure that water depth will not be reduced within the Deep Water Routes: [Document Ref: 6.1</p>

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	(Rev 5)]; [Document Ref: 9.53 (Rev 0)]; [Document Ref: 9.52 (Rev 0)] and [Document Ref: 7.24 (Rev 1)].
<p>3.1.21 The recommended amendments to the DMLs proposed by NE including Schedule 8 Part 3 condition 21(1)(m) to give an individual timing requirement for the Site Integrity Plan (SIP).</p>	<p>The ExA asked the Applicant for an update on the progress of discussions with Natural England on proposed amendments.</p> <p>Mr McGovern responded that the Applicant has not had any direct discussions with Natural England in relation to its position on this point. Mr McGovern informed the hearing that this was a position Natural England had taken on other projects.</p> <p>Mr McGovern stated that the Outline Site Integrity Plan (SIP) includes indicative timescales indicating how the Site Integrity Plan would be prepared. A consultation draft would be produced around 12 months prior to installation and submission of the Site Integrity Plan would be made six months prior. As such the timing point is already covered within the outline SIP, and the Applicant is not proposing to include a timing requirement in the dML condition.</p>
<p>3.1.22 The amendments sought by the MCA in respect of the DMLs contained in Schedules 8, 9 and 10 of the draft DCO.</p>	<p>The ExA asked the Applicant to provide an update on progress of discussions with the MCA on their proposed amendments to the dML.</p> <p>Mr McGovern responded that the Applicant had carefully considered the proposed amendments and would be updating the draft DCO at Deadline 4 to address the majority of requests made by the MCA [Document Ref: 6.1 (Rev 5)] Mr McGovern drew attention to a condition related to reporting of dropped objects reporting, on which the MMO had also provided comments. Mr McGovern stated that the Applicant would be submitting its preferred wording of this condition at Deadline 4 in the hope to address both the MCA and MMO comments.</p>

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<p>3.1.23 The amendments sought by the PLA and the London Gateway Port Ltd in their written representations regarding the permissible reduction in water depth for Deep Water Routes in Schedule 9 Condition 13(3).</p>	<p>The ExA invited comments from the Port of London and London Gateway on amendments sought here.</p> <p>Ms Russell told the hearing that the Port of London shared concerns raised by London Gateway earlier in the hearing and re-emphasised the PLA's earlier submissions on this point.</p>
<p>3.1.23 The progress of discussions between the PLA and the MMO regarding amendments sought to the DML (transmission assets) to reflect the requirements relating to the Deep Water Routes and when consultation needs to take place with the PLA.</p>	<p>The ExA asked if there had been progress on discussions between the PLA and the MMO.</p> <p>Ms Russell responded that there was a mark up draft of the deemed Marine Licence in circulation between Port of London and the MMO and they were on track to provide this for Deadline 4.</p> <p>Mr Tyrell for London Gateway and Mr McGovern for the Applicant both expressed their interest in being part of these discussions.</p>
<p>Schedule 14 – Protective provisions</p>	<p>The ExA asked the Applicant for an update on the progress of negotiations in relation to Schedule 14.</p>

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<p><i>The progress of any negotiations relating to the agreement of protective provisions including:</i></p> <p>3.1.24 Those between the Applicant and the EA including in relation to the proposed disapplication of the provisions of the Environmental Permitting Regulations in respect of flood risk activity permits required for the crossings of main rivers and whether any amendments are required for the protection of drainage authorities</p>	<p>Ms Brodrick gave an overview of the status of protective provisions relating to onshore matters. Ms Brodrick reminded the hearing that amendments were being made to the protective provisions for the Environment Agency to include the agreed version of protected provisions from the final version of the Five Estuaries draft DCO submitted prior to the close of the Five Estuaries Examination [Document Ref: 6.1 (Rev 5)]. This applies also to several other sets of protective provisions for onshore statutory undertakers. Ms Brodrick emphasised that in some cases drafting was not entirely agreed with each statutory undertaker and negotiations were ongoing.</p> <p>Ms Brodrick stated that negotiations on both technical and commercial matters continued with Affinity Water alongside Five Estuaries. Ms Brodrick confirmed that to the extent an agreed version was reached during the North Falls Examination, Five Estuaries could make a request to the Secretary of State that updated protective provisions be included in its draft DCO.</p> <p>Ms Brodrick provided examples of an outstanding technical and commercial points relevant to the protective provisions for the benefit of Anglian Water.</p> <p>Ms Brodrick confirmed that bespoke protective provisions and an associated side agreement with Cadent Gas were in agreed form and the draft DCO would be updated at Deadline 4 to include the agreed protective provisions [Document Ref: 6.1 (Rev 5)].</p> <p>Ms Brodrick detailed that two sets of protective provisions had been negotiated which apply to Essex County Council in its role as Lead Local Flood Authority and Local Highways Authority. Ms Brodrick explained that these provisions had been agreed during the Five Estuaries Examination and the agreed version of both sets of protective provisions would be included at Deadline 4 in the draft DCO for North Falls [Document Ref: 6.1 (Rev 5)].</p>

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	<p>Ms Brodrick also confirmed that the protective provisions for National Grid and National Highways have been agreed and that the agreed form of both sets of protective provisions will be included in the North Falls draft DCO at Deadline 4 [Document Ref: 6.1 (Rev 5)].</p> <p>Ms Brodrick informed the hearing that discussions with Network Rail were ongoing both in terms of the protective provisions and related framework agreement. One outstanding matter in this regard was on restriction of the use of compulsory acquisition powers, and the Applicant's position is that it cannot agree to a restriction on its use of compulsory acquisition powers until the parties have entered into the voluntary property agreements. Ms Brodrick then stated that Network Rail had informed the Applicant on 10 March 2025 that technical clearance had been issued and the Applicant was hopeful that progress could now be made in relation to the negotiation of the voluntary land agreement.</p> <p>Mr McGovern provided an update in relation to offshore protected provisions. Mr McGovern stated that no active discussions or negotiations were taking place at present with the ports in relation to offshore protected provisions. Mr McGovern confirmed the Applicant's position is that protective provisions are not necessary for the ports, and as the ports had shown no indication that they would be open to moving away from their protected provisions, negotiations on this matter had not been progressed. Mr McGovern reiterated the Applicant's position that it does not consider protected provisions are necessary or appropriate in the circumstances, noting the Applicant will set out its position in full in writing at Deadline 4 [Document Ref: 9.58]</p> <p>Ms Russell stated that the Port of London wanted parity with the protected provisions from Five Estuaries and that they would be open to further discussions.</p>

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	<p>Mr Tyrell also commented that the amendments sought in relation to the protective provisions for the London Gateway were aimed at putting the protective provisions on the same footing as Five Estuaries.</p> <p>Mr McGovern responded that it was not for the Applicant to discuss or comment on the position adopted by parties in the Five Estuaries Examination. Mr McGovern noted that in Five Estuaries the applicant and the ports had not reached agreement on Protective Provisions and stated that the Port of London Authority seeking parity with its preferred Protective Provisions tables in the Five Estuaries Examination left no scope to deviate from the Port's position, suggesting negotiations would not be a good use of time. Mr McGovern also responded to London Gateway stating that the Applicant was open to meeting to discuss the Port's position as to the necessary mitigation.</p> <p>Mr Tyrell noted the draft DCO currently includes protective provisions for London Gateway and asked the Applicant to confirm its position on this.</p> <p>Mr McGovern confirmed the Applicant's position is that protective provisions for the London Gateway are not required. He drew attention to the fact the Order Limits of the export cable corridor are outside the jurisdictional limits of the London Gateway, and so the Applicant is not of the view that protective provisions for London Gateway are necessary.</p> <p>Mr Tyrrel responded that London Gateway did have the power to dredge out to the area within the Order Limits, to allow the Port to function, and maintained the need for protective provisions for London Gateway. Mr Tyrrel stated that without the protective provisions there is a fundamental concern for London Gateway with lack of detail in the DCO and dML at present.</p>

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	<p>Ms Russell responded to Mr McGovern's comments by confirming that although parity with Five Estuaries was a preference, that was not to say that the Port of London would not be open to further discussions.</p> <p>Mr McGovern responded by reaffirming the Applicant's willingness to meet with all Port representatives. Mr McGovern responded to My Tyrell's argument that although dredging was permitted beyond London Gateway's jurisdiction, this was only to 16.5m Chart Datum and does not allow dredging to a depth of 20m Chart Datum.</p> <p>Mr Tyrell responded that the dredge depth is 16.5m with a one metre deviation. Mr Tyrell then stated that it was the power for London Gateway to dredge within the Order Limit that was the focus, rather than the current dredging depth allowed.</p> <p>Mr McGovern responded by confirming that the Applicant would address the points raised via written submission at Deadline 4. [Document Ref: 9.58]</p>
<p>3.1.25 Whether the protective provisions sought by the PLA and the changes to the protective provisions sought by London Gateway Port Ltd have been agreed.</p>	<p><i>(as above)</i></p>
<p>3.1.26 Whether any protective provisions in</p>	<p>The Essex County Council asked the ExA to ask the Applicant why the most recent version of protective provisions received was not in line with the Five Estuaries drafting.</p>

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respect of Essex County Council as the Highway Authority should be incorporated within the draft DCO.	Ms Brodrick responded that the protective provisions in the North Falls drafting submitted at Deadline 3 and final version of protective provisions included in the draft DCO for Five Estuaries had not yet been aligned, but that the version submitted at Deadline 4 will be the same as the final version submitted for Five Estuaries [Document Ref: 6.1 (Rev 5)].
3.1.27 Update on any other current negotiations with individual statutory undertakers in relation to protective provisions including those sought by Network Rail, National Highways and National Grid Electricity Transmission (NGET).	(as above)
<p>Schedule 15 – Compensation to protect the coherence of the National Site Network</p> <p>3.1.28 The provision of draft wording on a 'without prejudice' basis relating to compensation for the OTE</p>	<p>The ExA asked the Applicant if draft wording could be provided on a without prejudice basis for the next deadline, covering the sites and species as requested by Natural England.</p> <p>Mr McGovern responded that the Applicant is preparing drafting wording for these schedules on a without prejudice basis to be provided for Deadline 5. This timeframe is necessary to consider the impact of the recent consultation from DEFRA published relating to the Marine Recovery Fund, and the Rampion 2 decision.</p>

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<p>SPA – Red Throated Diver, FFC SPA – Kittiwake and FFC SPA - Guillemot and Razorbill for insertion within Schedule 15 in the event that the Secretary of State agrees with NE that the compensation put forward by the applicant on a 'without prejudice' basis is required. The 'without prejudice' draft wording to include provisions which would allow the applicant to utilise strategic compensation in place of project-led measures in the future, if agreed by the Secretary of State at that time.</p>	
<p>Planning obligations and other agreements</p>	<p>The ExA invited Essex County Council to provide an update on the Framework Highways Agreement.</p>

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<p>3.1.29 Whether any Framework Highways Agreement setting out the details of how the DCO, if granted, would be exercised has been agreed.</p>	<p>The Essex County Council explained why it was important to have a Framework Highways Agreement in place at this stage of the process.</p> <p>Ms Brodrick responded that the Applicant was considering the need for, and the provisions of, any framework agreement and this matter remains under negotiation. Ms Brodrick explained that the Applicant would liaise with Five Estuaries on the drafting and highlighted that there had not been an agreed form at the end of the Five Estuaries examination. Ms Brodrick drew attention to Article 15 of the draft DCO which provides for agreements to be entered into between the undertaker and Highways Authority. Ms Brodrick stated that an update on discussions would be provided by the Applicant.</p> <p><i>Post hearing note: The Applicant is liaising with Five Estuaries on this matter and an update will be provided at Deadline 5.</i></p>
<p>3.1.30 Update on the agreement sought by NGET to put in place a future crossing agreement to govern the offshore crossing in respect of the Sea Link Project and the proposed development.</p>	<p>The ExA asked for an update on further discussions with the National Grid to put in place a future crossing agreement to govern the offshore crossing in respect of the Sea Link Project and North Falls.</p> <p>Ms Brodrick responded that a form of agreement is in circulation that is almost in agreed form. This is expected to be agreed soon, and an update will be provided at Deadline 5.</p>

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<p>3.1.31 Whether any other planning obligations or agreements to secure mitigation, enhancement or other matters are required and intended to be completed prior to the close of the Examination.</p>	<p>The ExA asked whether any other planning obligations or agreements to secure mitigation, enhancement or other matters are required and intended to be completed prior to the close of the examination.</p> <p>Ms Brodrick responded that the Applicant understood that there was not a need for any further agreement or planning obligations at this moment.</p> <p>The Applicant notes that Essex County Council informed the hearing that they were seeking to negotiate a community benefits package and that discussions were ongoing.</p>
<p>Other matters</p> <p>3.1.32 Whether any other amendments are required to the draft DCO to ensure consistency with the VEOF draft DCO on common aspects.</p>	<p>The ExA asked the Essex County Council if they were content with the other amendments that had been made to the draft DCO to align with the Five Estuaries drafting.</p> <p>The Applicant notes that Essex County Council responded that they were content.</p> <p>The ExA asked if the Essex County Council were content with the consistency of requirements 14,15, and 17 regarding noise level.</p> <p>In response to comments made by Ms Wallis relating to the ground monitoring and noise requirements, Ms Brodrick responded that the Applicant is reviewing the final drafting of the draft DCO submitted by Five Estuaries in its Examination in relation to the ground monitoring requirement. Ms Brodrick also explained that there will be different noise limits for North Falls, Five Estuaries and Norwich to Tilbury in their DCOs for each listed receptor but that cumulatively these limits ensure that the noise level generated by the projects do not exceed the acceptable noise limit set at each receptor. This was referred to in the discussions relating to the noise protocol document</p>

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	at Issue Specific Hearing 1 and is explained in the Onshore Substations Operational Noise and Outline Noise Complaints Protocol [REP3-043] .
3.1.33 Whether any additional draft DCO or DML provisions, requirements or amendments are necessary to ensure that the required mitigation including for HRA would be secured.	<p>The ExA asked if there were any additional requirements or other provisions that Interested Parties were seeking that had not been covered.</p> <p>In response to comments made by Suffolk County Council, Ms Brodrick responded that it was the Applicant's position that the proposed Grampian requirement was not necessary and did not meet the legal test. Ms Brodrick confirmed that legal submissions would be made at Deadline 4 to address the Council's pre-commencement points [Document Ref: 9.50].</p> <p>Ms Brodrick also stated that it was the Applicant's position that the drafting in the outline management plans should be the focus rather than adding Suffolk County Council as a consultee, as the project is within Essex and so Essex County Council are the appropriate discharging authority.</p>
3.1.34 Whether the draft DCO and DMLs accurately capture all the required maximum parameters of the proposed works.	<p>The ExA identified London Gateway's submission relating to parameters of cable burial at [REP2-042].</p> <p>Mr Tyrrel reiterated the London Gateway's position that the parameters of cable burial depth are not currently secured in the DCO, and so there is the need for a requirement to set out the parameters.</p> <p>Mr McGovern responded that commitments are often contained in outline plans, as is the case here, and rejected the submission that the details in the outline plan would be insufficient security.</p> <p>Mr Tyrell pointed to DCO drafting guidance specifying that a DCO should include parameters.</p>

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	<p>Mr McGovern stated that this point would be addressed further in written submissions at Deadline 4 [Document Ref: 9.58].</p> <p><i>Post-hearing note: In an effort to resolve matters with the ports, the Applicant has proposed drafting for a new requirement 2(3) in the DCO to secure the cable burial depths in the Deep Water Routes [Document Ref: 6.1 (Rev 5)].</i></p>
3.2 Onshore and Offshore Ecology	
<p>3.2.1 Regard to the principal areas of disagreement with NE/MMO/RSPB to date. Covering benthic/ intertidal/ fish/shellfish/marine mammal ecology, bats and ornithological matters post Deadline 3. Including impacts to the Margate and Long Sands (MLS) Special Area of Conservation (SAC)/ the Kentish Knock East Marine Conservation Zone (MCZ)/</p>	<p>The ExA drew attention to the cumulative effects assessment matters submitted by the Netherlands Ministry of Infrastructure and Water Management at Deadline 3 [REP3-065]. The ExA asked the Applicant if there were any changes to be made in light of the Netherlands Ministry of Infrastructure's comments on potential transboundary impacts, particularly why Bruine Bank project was not included.</p> <p>Mr McGovern noted that the submission did not raise new issues but attached an email dating from 2023 and setting out issues which referred to a previous design iteration of North Falls.</p> <p><i>Post hearing note: the reference to Bruine Bank in the Netherlands Ministry of Infrastructure's submission [REP3-065] relates to a Special Protection Area (SPA), not a project.</i></p> <p>Dr Riley responded that Bruine Bank has been considered in HRA screening [APP-174, Table 8.5] and it was screened out owing to limited connectivity in terms of ornithological impacts. Dr Riley then confirmed that the current position was not altered by the submission from the Netherlands.</p> <p>Benthic/Intertidal</p> <p>The ExA drew attention to the MMO comments that allege insufficient evidence in relation to cable protection, worst case scenario, indirect impacts on relevant SACs, SPAs and the Kentish Knock East MCZ and comments by Natural England regarding the Margate and Long Sands (MLS) SAC</p>

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surrounding Special Protection Area's (SPA's).	<p>condition assessment. The ExA noted Natural England's comment P7 in the risk and issues log [REP3-064] regarding the Worst Case Scenario regarding cable protection and effects on the MLS SAC.</p> <p>The ExA noted a response from The Crown Estate at Deadline 1 regarding the North Sea Net Gain project which includes mapping distribution of biodiversity in the North Sea. The ExA asked the Applicant if there is any variance between North Falls and Five Estuaries data sources and if the Applicant has fully utilised tools referenced by The Crown Estate.</p> <p><i>Post hearing note: The Applicant understands the ExA was referring to the Deadline 2 submission from The Crown Estate [REP2-061]. It is noted that this response from The Crown Estate related to ExQ1 Q10.2.4 regarding marine net gain and The Crown Estate does not question the adequacy of the Applicant's site characterisation data.</i></p> <p>Ms Keenan responded that the Applicant had used the standard approach which is to carry out site specific habitat surveys (completed in 2021) and Five Estuaries have their own. Ms Keenan stated that she did not believe there were any material differences in the findings of each project, however they specific to the order limits of each project. Ms Keenan also confirmed that the Applicant had utilised a wide range of regional data to put the site specific data into context and it was the Applicant's view that that the best available data has been used.</p> <p>The ExA asked the Applicant to summarise its position on worst case scenario information affecting Benthic and intertidal ecology.</p> <p>Ms Keenan responded by clarifying that during the site selection process and in consultation with Natural England, the Applicant avoided any overlap with Margate and Long Sands SAC and the Kentish Knock MCZ, while the update condition assessment by Natural England focuses on the</p>

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	<p>effects of infrastructure within the SAC. Ms Keenan also confirmed that the Applicant's assessment and conclusions had not changed.</p> <p>With regards to the Kentish Knock East MCZ, the ExA asked if the Applicant is intending to fill any evidence gaps suggested by Natural England. Ms Keenan stated that it is the Applicant's position that the approach taken in the assessment is appropriate but that additional modelling to support the Applicant's position was being carried out, to be submitted at Deadline 4, to address Natural England's comments.</p> <p><i>Post hearing note: the modelling is described in detail in the Hydrodynamic and Sediment Dispersion Modelling Report [Document reference 9.54]. Further information on the implications of the modelling with regards to marine physical processes is provided in the Hydrodynamic and Sediment Dispersion Modelling Results Interpretation [Document reference 9.56], and consideration of the effects of the Project on the Margate and Long Sands SAC and Kentish Knock East MCZ, informed by the modelling, is provided in the Supporting Information on Offshore Additional Mitigation [Document reference 9.55]]</i></p> <p>The ExA asked the Applicant to clarify the buffer distance to be secured between the Array and the MCZ and whether this was derived from best practice.</p> <p>Ms Keenan responded that the buffer was inherent as the rotors could not go over the Order limits. This creates a minimum 50m buffer between the foundations and scour protection to the MCZ. Ms Keenan also responded that there was no specific industry practice or specific guidance but from previous experience a 50m buffer has been requested by Natural England for more sensitive habitats, therefore the measure here is appropriately precautionary to avoid significant indirect impacts on the MCZ.</p>

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	<p><i>Post hearing note: Further information on the buffer to the MCZ is provided in Section 2.1.6 of the Supporting Information on Offshore Additional Mitigation [Document reference 9.55]</i></p> <p>The ExA asked the Applicant how it was considering the impact of burial of the export cables to sufficient depths to enable future dredging by the Ports to 22m, as requested by shipping stakeholders, in respect of the conclusions of the Environmental Statement.</p> <p>Ms Keenan responded that the Applicant would be including this as part of the modelling to be submitted at Deadline 4.</p> <p><i>Post hearing note: the modelling is described in detail in the Hydrodynamic and Sediment Dispersion Modelling Report [Document reference 9.54] and consideration of the effects of the additional dredging, on all relevant receptors is provided in the Supporting Information on Offshore Additional Mitigation [Document reference 9.55].</i></p> <p>The ExA asked if Ms Keenan was confident that the full environmental effects of the dredging depth would be assessed.</p> <p>Ms Keenan confirmed that the modelling would fully address the likely environmental effects.</p> <p>In response to concerns from Natural England on impacts to the Margate and Long Sands SAC, the ExA asked what assurances could be given by the Applicant in relation to actual cable protection and successful prevention of impacts to the Margate and Long Sands SAC.</p> <p>Ms Keenan responded that the Applicant maintains its position that the cable protection will not have any indirect effect on the SAC as it has been physically avoided. Ms Keenan explained that the indirect effects of sand moving over the cable protection and into the SAC would continue to move as normal. Ms Keenan confirmed that the Deadline 4 submission will provide further information on this impact and reiterated that at Deadline 1 the Applicant committed to an additional buffer of 150m from the Margate SAC, a commitment that was welcomed by Natural England,</p>

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	<p>subject to additional evidence which the Applicant is providing at Deadline 4 [<i>Please see the Supporting Information on Offshore Additional Mitigation [Document reference 9.55]</i>].</p> <p>The ExA asked if there was a cable protection option that had been considered which would be more readily removable at decommissioning stage and what specific cable protection mitigation the Applicant was presently committing to in the DCO, and why.</p> <p>Mr Reid responded that the Applicant had detailed the cable protection needed and identified the relevant zones in [REP1-059]. Mr Reid explained that cable protection will depend on how much protection is needed and where crossings are located. The final method of protection will need to be designed based on the exact requirements for the specific areas. Mr Reid noted the primary means of cable protection is through burial, the cable will be buried as much as practicable. If there are force majeure issues that mean the cable cannot be buried, assessments will be done to determine the least impactful solution. Mr Reid explained that it was not anticipated that there would be any exposed cable along the cable route.</p> <p>The ExA noted that Natural England had requested a more detailed assessment of impacts to SPA supporting habitats and prey availability. In addition, NE consider that, where possible, s.41 Habitats under the <i>Natural Environment and Rural Communities Act 2006</i> should be avoided and seek further mitigation. The ExA asked the Applicant if there are any NERC s41 habitats present and is the Applicant considering any changes in the Rochdale Envelope following comments by the MMO and Natural England regarding avoidance and mitigation.</p> <p>Ms Keenan stated that comments from Natural England had been responded to by the Applicant at Deadline 1 [REP1-044], confirming that the effects on s. 41 Habitats have been assessed under section 2.5.3 of the Report to Inform Appropriate Assessment Part 2 [APP-175] and in Sections 3.6.1.2, 13.6.2.4 and 13.6.2.6 of the ES Offshore Ornithology chapter [APP-027], and the Applicant</p>

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	<p>understands from Natural England that they are yet to review the submissions from the Applicant but a response is expected at Deadline 4.</p> <p>Ms Keenan explained that micro-siting where practicable will minimise any impact to s. 41 habitat, in addition to the extensive mitigation commitments already made by the Applicant through the pre-application process, such as reducing the number of turbines and export cables.</p> <p>Marine Mammals</p> <p>The ExA advised that questions regarding marine mammals would be provided in written format, including a matter raised by the Essex Wildlife Trust in relation to a Working in Proximity to Wildlife Plan. The ExA asked the Applicant if it had any information to provide.</p> <p>Mr McGovern responded that the Applicant would wait for a written question addressing the Essex Wildlife Trust's concerns.</p> <p>The ExA asked about the production of any outline Decommissioning Plan, and whether the Applicant planned to amend the related requirement in the draft DCO.</p> <p>Mr McGovern responded that the Applicant was aware of the guidelines referred to by the MMO in its Deadline 3 submission [REP3-056]. Mr McGovern clarified that the guidelines referred to were produced by a trade body and were not government or regulator produced or endorsed. Mr McGovern confirmed that a robust assessment of decommissioning had been undertaken for all of the Environmental Statement Chapters. Mr McGovern stated that it was unnecessary at this stage for an outline Decommissioning Plan to be produced.</p> <p>Bats</p>

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	<p>In relation to concerns raised by Sussex County Council regarding impacts on bats, the ExA asked the Applicant to confirm whether it considered the surveys relied upon were adequate to address Bat impacts.</p> <p>Mr Campbell drew attention to the assessment submitted considering impacts on migratory bats across the North Sea as part of the Environmental Statement. Mr Campbell pointed to Chapter 23 paragraph 6.2.4 of the Environmental Statement as identifying the baseline data used to inform the assessment. This included survey data collected within the Project's onshore footprint during 2022 and 2023 on bat activity. Mr Campbell explained that survey data from other existing monitoring projects had been drawn upon including the BCT's National Nathusius Pipistrelle Project that ran from 2014 to 2023, which was used to provide an understanding about the degree of bat migration that might be anticipated between continental Europe and East Anglia. This underpinned the assessment within Chapter 23, Onshore Ecology of the Environmental Statement.</p> <p>The ExA asked the Applicant for its response to Suffolk County Council's suggested adjustment to wind cut-in speeds.</p> <p>Mr Reid responded that the impact of an increased speed on generation would depend on the scale of the increase and the timeframes in which it would apply. Mr Reid continued to explain that for example if the restriction was from an hour prior to dawn and an hour after dusk, that is effectively 20% of the day when the project would lose electricity generating capacity, and from that perspective, from a cut-in speed of about 3 to about 4 m/s depending on the direction of the wind, somewhere in the region of 6 to 8% of wind falls within that range on the site throughout the day. Mr Reid explained that increasing the cut-in speed would affect productivity time and energy production. Therefore, the impact could be significant as Offshore Transmission Owners (OFTO) require a 98% availability, and an increase of the cut-in speed would amount to a reduction of availability of between 0.25 to 0.5% of annual energy production.</p>

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	<p>The ExA asked if the Applicant had a form of wording to provide, if a requirement regarding cut in speed was included in the DCO.</p> <p>Mr McGovern responded that the Applicant did not have wording it wished to propose. He highlighted that this issue was raised in the context of the Five Estuaries project and Natural England had advised that due to limitations in data it would not be possible to devise a proportionate and effective strategy to determine an appropriate mitigation strategy. Mr McGovern confirmed the Applicant's position that it would not support such a requirement.</p> <p>Suffolk County Council reiterated their LIR recommendation suggesting that the Applicant seek advice from Natural England on this issue.</p> <p>Essex County Council pointed out that migratory bats were not necessarily breeding in the specified areas but travelling through the area, and the Applicant should consider undertaking some monitoring surveys over the lifetime of the project increase bat migration numbers increase.</p> <p>Mr McGovern responded that the Applicant would consider the request and respond at a future deadline.</p> <p>Hazel Dormice</p> <p>In response to concerns raised by Mr Fell regarding dormice surveys and the need for an off cable route haul road, Mr Campbell responded that there was evidence of dormice identified in the pre-consent surveys [Fig 23.11 Chapter 23 Environmental Statement] and the Applicant followed the mitigation hierarchy which led to the identification of a possible alternative route for the haul road, rather than going through the hedgerow where dormice were identified, as dormice are a European protected species under the Habitats Regulations and are a UK Species of Principal Importance. Mr Campbell also reiterated that the Project is committed to undertaking full pre-construction surveys for legally protected and notable species and this is recorded within the outline Landscape</p>

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	<p>and Ecological Mitigation Management Strategy which is secured in the DCO. If no dormice are identified within the hedgerows at the time of construction, then the need for the alternative route for the haul road can be considered. However, Mr Campbell explained that given the previous identified use of the particular hedgerow by dormice, in his view it was unlikely to change within the next few years. In response to Mr Fell's reference to hedgerow numbers and documents in the Five Estuaries DCO Application and comments made during the Five Estuaries hearings, Ms Brodrick confirmed that the Applicant would check the references to the plans and respond on this point in writing at Deadline 4.</p> <p><i>Post Hearing Note: The Applicant has provided a response to this point under Reference AS-050_e_1 in Applicant's Response to Deadline 3 Submissions and Deferred Responses from Deadline 2 [Document reference 9.42], being submitted at Deadline 4.</i></p>
<p>3.2.2 Whether the cumulative effects concerning all relevant ecology have been adequately addressed. Including the on and offshore ornithological assessment robustness for relevant species/ transboundary cumulative implications/ and in-combination assessments.</p>	<p><i>Addressed above.</i></p>

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3.2.3 Whether the extent and suitability of avoidance and mitigation measures for onshore and offshore ecology are adequate.	<i>Addressed above.</i>
3.2.4 Habitat Regulation Assessment considerations –the case made for derogation.	<p>Lesser Black Backed Gulls</p> <p>The ExA asked the Applicant which without prejudice compensation matters were to be taken forward with other offshore wind farms and if the Applicant was closer to confirming more definite locations for LBBG compensation.</p> <p>Ms Keenan responded that an overview of additional site selection work that has been undertaken was provided by the Applicant at Deadline 1 [REP1-017] and [REP1-019]. Ms Keenan confirmed that the preferred sites for LBBG compensation are Lantern Marshes and Gedgrave Estate, and the compensation measures would be anti-predator fencing and habitat management. The Applicant is also retaining the option at Outer Trial Banks which would use the measure of rat eradication or rat control. The Applicant has also retained the option to collaborate with Five Estuaries on their site ('VE2'). Ms Keenan stated that all these options are ecologically effective and so it will be ongoing commercial discussions with landowners that will determine the selection process. The ExA asked if the Applicant had considered the likely significant effects on the Orfordness-Shingle Street SAC if Lantern Marshes was used for compensation.</p> <p>Ms Keenan responded that local fencing contractors had been engaged to better understand the works that would be required at Lantern Marshes and that the Applicant is currently in the process of undertaking further assessment that will be submitted at Deadline 4 [<i>Post-hearing note: Provided in HRA Annex 2B Lesser Black-backed Gull Compensation; Effects on Designated Sites</i>]</p>

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	<p>[document reference 7.2.2.2]. Ms Keenan confirmed that it was the Applicant's position that there would be no likely significant effects on the AOE SAC.</p> <p>Mr Outlaw for SCC asked the ExA to inquire if consideration had been given to potential impacts of LBBG as a predatory species if a population were established at the Marshes.</p> <p>Ms Keenan responded that impacts on other receptors were considered as part of the assessment to be provided at Deadline 4 [Document reference 7.2.2.2].</p> <p>Red Throated Diver</p> <p>The ExA noted Natural England's comments that 20 rafts would be too little but that the Applicant's documents refer to 20 waterbodies and asked the Applicant to clarify how many rafts were to be used.</p> <p>Dr Riley responded that the raft number will depend on the lochs selected and in general it would likely be one raft per loch where this measure is selected, but as mentioned there is the alternative option for compensation through habitat management, and the Applicant is looking at areas on Shetland for this. These areas of habitat management may not require rafts.</p> <p>The ExA asked the Applicant to explain why a three-year monitoring period would be sufficient.</p> <p>Dr Riley responded that this time period is a robust timeframe for monitoring, and there is provision for adaptive management. This means that a review will be carried out at the end of the monitoring period to identify any requirement for further monitoring. Dr Riley deferred to Sue O'Brien on the proposed approach to adaptive management if compensation measures were unsuccessful.</p> <p>Mr McGovern confirmed that the issue of adaptive management would be responded to at Deadline 4 [Applicant's Response to Actions List for ISH1 and ISH2 [Document reference 9.50] and in response to the ExA's further written questions on this point.</p>

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	<p>The ExA asked the Applicant to explain its response to Natural England's comments regarding the Landscape and Ecological Management Strategy [REP1-044].</p> <p>Mr McGovern responded that Natural England's comments on this point would be addressed via written responses [Document Ref: 9.43].</p>
<p>3.2.5 Consideration of relevant compensation proposals (without prejudice or otherwise) for protected sites/applicable species including their overall potential effectiveness. The Applicant will be invited to give a brief overview summary of its most up to date compensation schemes for: Lesser Black Backed Gull; Red Throated Diver; Kittiwake; Guillemot and Razorbill, with ExA questions posed.</p>	<p><i>As above.</i></p>
<p>3.2.6 Regard to the Biodiversity Duty - the level of scheme wide</p>	<p>The ExA asked the Applicant to explain the current proposal for local opportunities and enhancement of biodiversity.</p>

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ecological conservation/enhancement provision submitted, as well as related BNG measures.	<p>Mr Campbell answered that the Applicant has submitted proposals, as part of the DCO Application, which would achieve a 10% biodiversity net gain across the Project in relation to habitats and hedgerows. The focus is within the Order Limits, primarily at the onshore substation, where there is the greatest opportunity for biodiversity enhancement. These proposals are detailed in the Outline Landscape and Ecological Management Plan and involve creating various habitat types as part of landscape and biodiversity net gain efforts. Along the onshore cable routes, the intention is to return the land to landowners for continued use after construction. Conversations with Natural England about other schemes have also taken place.</p> <p>In response to comments by Ardleigh Parish Council regarding the impact on existing habitats, Mr Campbell explained that the existing ecological baseline was considered in the development of the landscaping and BNG strategies and the Applicant is seeking to maximise the existing habitats and species. In respect of the onshore cable route, the Applicant will reinstate hedgerows that are removed, rather than add hedgerows in new locations.</p> <p>In response to comments from Essex County Council, Mr Campbell explained that the Applicant had provided values calculated using the Defra Statutory Metric which gives numbers for North Falls alone and North Falls together with Five Estuaries. He referred to the BNG strategy submitted at Deadline 3 [REP3-027] and [REP3-028].</p>
3.2.7 Any other matters pertinent to gauging overall ecological impacts posed by the application deemed appropriate by the ExA.	N/A

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3.3 Commercial Fisheries	
<p>3.3.1 Whether the estimate of the effects in the environmental assessment of commercial fisheries is sufficiently robust.</p>	<p>The ExA asked the HHFA to advise if they were satisfied with the Applicant's response [REP3-038], noting the MMO Final Report on "Sensitivity of the under 12m fishing fleet to offshore wind development in the east marine plan" areas as included in the HHFA's additional submission [AS-047], in respect of the assessment of effects on commercial fisheries.</p> <p>Mr Armstrong on behalf of the HHFA responded that in its opinion the EIA was not representative of the fishing fleets in the sea areas that are impacted by the project.</p> <p>Ms Winrow-Giffin stated that the report referenced by the MMO was published in June 2024 and so it was not included in the EIA assessment, but the baseline information used in the report was the same as that used in the EIA assessment. Ms Winrow-Giffin confirmed that the assessment was based on project specific information which included site specific data and consultation with the fishing industry and Commercial Fisheries Working Group, and was therefore a robust, relevant and appropriate assessment.</p> <p>Mr Armstrong clarified that it was the position of the HHFA that the impact is not insignificant on the commercial fishing fleet. Mr Armstrong considered that the EIA did not consider the under 12m fleet.</p> <p>Ms Winrow-Giffin responded that consideration has been given to the local UK inshore fishers throughout the assessment for each impact and this was informed by direct consultation with local stakeholders, including local fishermen from Ramsgate to Lowestoft. Ms Winrow-Giffin also noted that the mitigation proposed for commercial fisheries had been built into the project as embedded mitigation and taken into account in the outcomes of the assessment. Ms Winrow-Giffin confirmed that mitigation took into account good practice and existing guidance with regards to coexistence and liaison with the fishing industry. Ms Winrow-Giffin continued that mitigation measures would</p>

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	<p>include notices to mariners, guard vessels, and contracting offloads as required so offshore fisheries liaison officers would be on board.</p> <p>The ExA asked for further explanation from the Applicant on the consideration given in the assessment to different boat sizes.</p> <p>Ms Giffin responded that the EIA considered all vessel sizes in the assessment, including vessels less than 12m.</p> <p>Ms Xoubanova also clarified that in addition to the data obtained with regards to activity of the local fleet from consultation and engagement, data had also been included in the EIA Chapter 14 which referenced vessels under 12m in length. Ms Xoubanova noted that information on vessels under 12 m in length is included in the analysis of landings by International Council for the Exploration of the Sea (ICES) presented in the assessment and in other publicly available fisheries datasets, such as surveillances sightings data, also included in the assessment.</p> <p>Mr Armstrong responded that the HHFA had not seen the data and that they did not believe that best practice has been followed in comparison to other projects.</p> <p>The ExA asked for a response from the Applicant and an update on the Statement of Common Ground.</p> <p>Mr McGovern assured the HHFA that the Applicant had followed good practice and considered all data sources available, and that the Applicant could not comment on the approaches of other developers.</p> <p>Mr Armstrong responded by asking if the Applicant will consider how vessels that use mobile fishing gear will be impacted.</p>

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	<p>Mr McGovern clarified the Applicant's position was that the assessment has concluded there are no significant effects to commercial fisheries that would require mitigation as requested by Mr Armstrong.</p> <p>Ms Winrow-Giffin informed the Hearing that the Statement of Common Ground with the HHFA, via the Commercial Fisheries Working Group, is being updated following a meeting on 27th March 2025, and it is looking to facilitate co-existence during the conducting of pre-construction surveys where fishing vessels will be given right of way where safe to do so</p> <p>The ExA asked Mr Armstrong to provide written submissions at Deadline 4 addressing the significance and impact of the project on smaller vessels.</p>
<p>3.3.2 Whether the mitigation proposals result from the applicant having sufficiently detailed consultation with relevant representatives of the fishing industry, Inshore Fisheries and Conservation Authorities, the MMO and the relevant Defra policy team in England</p> <p>3.3.3 Whether the mitigation has been designed sufficiently to</p>	<p>The ExA asked the Applicant to address how it had followed NPS-EN3, and whether the mitigation proposals were the result of sufficiently detailed consultation with relevant representatives of the fishing industry, Inshore Fisheries and Conservation Authorities, the MMO and the relevant Defra policy team.</p> <p>Mr McGovern responded that the Applicant had adhered to the consultation process.</p> <p>Ms Winrow-Giffin also responded that consultation had been undertaken with local, national and international fisheries bodies and groups, and that mitigations to address potential impacts were embedded. Ms Winrow-Giffin reiterated that the Applicant was developing a Statement of Common Ground with the Commercial Fisheries Working Group and NFFO and are also in discussions with Kent & Essex Inshore Fisheries and Conservation Authority to ascertain whether they wish to progress a Statement of Common Grounds.</p> <p>Mr Armstrong stated that they have not signed the Statement of Common Ground as the HHFA is not in agreement with North Falls.</p>

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<p>enhance where reasonably possible any potential medium and long-term positive benefits to the fishing industry, commercial fish stocks and the marine environment.</p>	<p>Ms Winrow-Giffin responded that the HHFA's disagreement was noted and that points of disagreement would be recorded in the SoCG.</p> <p>The ExA asked the Applicant whether consideration had been given to enhancing potential medium and long term positive benefits to the fishing industry.</p> <p>Mr McGovern responded, confirming the Applicant had not identified any potential beneficial impacts of the project to commercial fishing. He referenced NPS-EN3, which sets out that offshore wind farms can have both adverse and positive effects. Mr McGovern also drew attention to Chapter 11 of the Environmental Statement [APP-025], which notes that a reduction in fishing within the Array area could potentially be beneficial to fish ecology, but noted that any potential benefit would likely be low magnitude, and stressed that the Applicant does not attach any weight or seek to rely on this point.</p> <p>Mr Armstrong raised concern with the conclusions on magnitude of impact reached as set out in the EIA chapter.</p> <p>Mr McGovern responded that the EIA had identified the adverse impacts and determined that the magnitude of such impacts was not significant from an EIA perspective, and acknowledged the disagreement between the Applicant and HHFA on this matter.</p>
<p>3.3.4 Whether the proposed methods of cable protection are adequate to prevent future exposure of the cables, resulting in them becoming</p>	<p>The ExA asked if the HHFA were satisfied with the proposed methods of cable protection – whether these methods were adequate to ensure protection and prevent snagging, noting the HHFA had previously raised concerns on this point [REP1-025] and [REP2-038] and the Applicant had responded [REP2-020] with reference to their embedded mitigation measures at Table 14.4 of the Environmental Statement [APP-028].</p>

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a snagging hazard to fishing vessels.	<p>Mr Armstrong invited the ExA to ask the Applicant whether it had assessed how many cables were currently exposed in the area and the hazard created by the number of crossings that are subsequently created.</p> <p>Mr Reid acknowledged that cable protection would be required in some areas and indicative locations requiring cable protection along the export cable route were shown on the plans at [REP1-059]. Mr Reid confirmed that the export cables would mainly be buried in clay and in the southern part of the Array the Applicant planned to mitigate through design. Further understanding of the best remedial works would require a more detailed understanding of the risks, timings and effects of cable exposure at specific locations, to determine the most appropriate solutions.</p> <p>The ExA asked if the HHFA had any preferred methods of cable protection.</p> <p>Mr Armstrong responded that pre and post-construction surveys could create a benchmark. He added that although rock placement was preferred for developers it created a hazard for fishermen using mobile gear and some cables are currently exposed and have been for a number of years.</p> <p>Mr Reid responded that it is a reality that cables may be exposed and so it is the Applicant's intention, through design, to minimise risks of cable exposures where possible, and more work is needed to understand the best remedial methods based on the seabed type, movement, and burial approach. Mr Reid stated that the relevant mitigations embedded in the project include designing the cable routes to minimise the amount of time the cable is likely to free span. This includes, running the cable parallel to the sand waves where possible and burying in the troughs of the sand waves that currently exist so that the cable is as deep as possible.</p> <p>Ms Winrow-Giffin followed on by stating that the Applicant was seeking to minimise disruption and ensure safety. The Applicant has included in the embedded mitigations the requirement to provide notification in the event that a cable is identified as exposed. This is a requirement in the draft DCO.</p>

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	<p>Additional mitigation in respect of interactions between the project and fishermen is proposed to be managed through a Fisheries Liaison and Co-Existence Plan.</p> <p>Mr McGovern stated that the Applicant remains open to further discussions with HHFA, including on the outline Fisheries Liaison and Co-Existence Plan, and a copy would be provided after the meeting.</p> <p><i>Post-hearing note: The Applicant provided a hard copy of the outline Fisheries Liaison and Co-Existence Plan to Mr Armstrong after close of the Hearing.</i></p>
<p>3.3.5 Whether the estimate of the effects from disruption to fishing in the assessment of socio economics is sufficiently robust.</p>	<p>The ExA asked the Applicant to respond on whether the assessment of effects from disruption to commercial fishing in regard to socio-economic impacts has been sufficiently addressed. The ExA acknowledged that the socioeconomics expert for the Applicant was not in attendance and asked for clarity from the Applicant on how the impacts on under 10m vessels had been considered in the socioeconomic assessment in Chapter 31 [APP-045].</p> <p>Mr McGovern responded that a written response would be provided by the Applicant in response to further questions from the ExA to come, but pointed out that the commercial fisheries assessment in the Environmental Statement [APP-028] had considered all sizes and types of vessels and the socioeconomic chapter [APP-045] had utilised this information. Mr McGovern added that the Applicant would highlight any specific reference in the ES to under 10m vessels in writing, in response to further questions to come from the ExA.</p>
<p>3.3.6 Whether any additional mitigation measures and/or safeguards are necessary,</p>	<p>The ExA stated that if the MMO were in attendance they would have asked the MMO to advise whether there are any additional mitigation measures and/or safeguards necessary to address project alone and cumulative effects.</p> <p>The ExA asked the Applicant if they had any comments or if the point could be covered in the Statement of Common Ground.</p>

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to include project alone and cumulative effects.	<p>Mr McGovern responded that the mitigation hierarchy had been applied as required by the NPS, and so the proposed development has avoided, reduced or mitigated impacts as far as possible. Mr McGovern drew attention to detailing site selection [APP-018] and consideration of alternatives, noting that there had been considerable reduction in the area of the proposed wind farm through removal of the northern array, reduction in the size of the southern array, and consequently a reduction in the number of turbines. Mr McGovern concluded that it was the Applicant's submission that in line with the NPS, the site selection and design process has reasonably minimised adverse effects on fish stocks and fisheries activities.</p>
3.4 Navigation and Shipping	
<p>3.4.1 Whether there are any outstanding concerns regarding the risks to navigational safety being assessed As Low As Reasonably Practicable (ALARP) for both the project alone and cumulative effects, subject to implementation of management plans and the level of mitigation proposed by the applicant.</p>	<p>The ExA pointed to the conflicts raised by the Netherland Ministry of Infrastructure and Water Management in its submission at [REP3-065]. The ExA asked the Applicant to comment on these proposed conflicts.</p> <p>In response, Mr Foster highlighted that these comments were made on a previous iteration of the proposal. Mr Foster noted that agreement had been made with the MCA as to the distances for the array area and the traffic separation schemes and precautionary areas and this has been secured through site size reductions and the implementation of the structure exclusion zone, noting these same measures have also streamlined the overall shape of the array area. Mr Foster stated that the overlap between the southern array area and the precautionary area has been completely removed. Further, the reductions made to the array area and the implementation of the structure exclusion zone ensure an appropriate buffer distance will be maintained between the Outer Precautionary Area and any surface piercing infrastructure. The northern array has also been removed in its entirety meaning there is no direct interaction with the Sunk TSS North.</p> <p>Mr Foster also confirmed that through the Navigational Risk Assessment (NRA) it has been confirmed there are no navigational safety issues with removing the Galloper recommended route.</p>

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	<p>The MCA commented that normally it is their position that a 2nm distance is required between turbines but in this case a 1nm buffer is being applied, following precedent from recent wind farms.</p> <p>Mr Foster noted that a number of existing turbines are closer than 1nm to the Routeing measures, with the closest being approximately 0.8nm.</p> <p>The MCA stated that they had no concerns to raise, subject to implementation of the proposed mitigation measures and removal of the Galloper recommended route.</p> <p>The ExA asked the Applicant if they had any comments on this point.</p> <p>Mr Foster confirmed that the Applicant had undertaken the NRA which has found all risk to be as low as reasonably practicable (ALARP). Mr Foster also confirmed that as required under Marine Guidance Note 654, this includes hazards to fishing vessels in transit.</p> <p>The Port of London raised concerns with the approach to securing the embedded mitigation measures relevant to shipping and navigation, arguing the Applicant is placing significant weight on documents yet to be produced, and requesting further information on the outline documents proposed to be developed.</p> <p>Mr Foster responded by confirming that there will be documents submitted at Deadline 4 to address concerns raised by the ports. These are the outline Cable Specification and Installation Plan (CSIP) [Document Ref: 9.53 (Rev 0)] and outline Sediment Disposal Management Plan (SDMP) [Document Ref: 9.52 (Rev 0)]. The outline SDMP will provide the detail around how the Applicant will ensure that disposal of sediment will be such that the Deep Water Routes and the area around the Sunk Pilot Diamond will not be affected from an under keel clearance perspective. There will also be an updated outline Navigation and Installation Plan (NIP) submitted at Deadline 4 [Document Ref: 7.24 (Rev 1)] that sets out how the temporary impact of cable installation and cable maintenance will be managed by the Applicant. The Applicant is confident that the technical</p>

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	<p>content can be agreed between the relevant parties by the end of examination. Mr Foster confirmed the Applicant's willingness to discuss the documents with the Ports after Deadline 4.</p> <p>The ExA asked the MCA for comments on the deviation of routes 10 and 14 [APP-107 at Table 14.3].</p> <p>The MCA responded that they would address the issue in writing.</p>
<p>3.4.2 Whether there are any outstanding concerns regarding the feasibility and timing of the formal removal of the Galloper Recommended Ferry route.</p>	<p>The ExA asked if the MCA could provide suggested wording for the draft DCO at Deadline 4 for its position that a condition of consent must be included within the DCO or dML to ensure that no offshore construction that directly interacts with the Galloper recommended route can commence before the route is removed.</p> <p>Mr Salter responded that the MCA could provide suggested wording.</p> <p>Mr McGovern responded that the Applicant is seeking a further meeting with the MCA to discuss the Galloper recommended route and would prefer to meet with the MCA to discuss the matter before a submission is made on any consent condition. Mr McGovern confirmed it is the Applicant's position that a condition of consent is not required.</p> <p>Mr Foster provided an update on the progress of the removal process for the Galloper Recommended Ferry Route. Mr Foster reiterated that no navigational safety concerns remain with the proposed removal of the Galloper Recommended Ferry Route and discussions are now only administrative, related to timing and process of removal. Mr Foster stated that the Applicant's position was that the process of removing the route could begin now, rather than waiting for consent to be granted. Mr Foster explained that this was due to confirmation from Belgian Authorities that there is no issue with removal, the route no longer meets the intended purposes as set out by the International Maritime Organization within its ratification process in 2006 (as the Ostend route has not been active since 2009), and the Applicant has demonstrated that if the route</p>

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	<p>were to temporarily remain open there are safe deviations vessels could take. Further, data analysis shows that the Galloper Recommended Ferry Route is currently only being used on an infrequent basis by commercial vessels (cargo, tankers, passenger vessels).</p> <p>The ExA asked the MCA if its position remained the same.</p> <p>Mr Salter responded that the MCA's position was unchanged and pointed to the timing constraints for submitting a proposal for removing the route and the IMO timetable.</p> <p>Mr Foster responded that the Applicant understood the time constraints, and that maintained it should be possible to request removal of the route prior to consent being granted.</p> <p>Mr Salter responded that the MCA did not want to submit anything to the IMO until consent was in place.</p> <p>Mr McGovern stated that the Applicant was happy to meet with the MCA and would expand on points made by Mr Foster in written submissions. He further added that in the Applicant's submission the route come under the scope of NPS-EN3 paragraph 2.8.330, being a less strategically important route, as the route is no longer in active use, and therefore this is a circumstance where which Secretary of State should take a pragmatic approach to the potential impacts of the project.</p> <p>Mr Salter clarified that the MCA had made clear that the IMO process was not quick.</p> <p>Mr Foster agreed and explained that this was the reason why the Applicant was determined to get the process started as soon as possible, any delay could mean waiting another year for the next relevant IMO session and opportunity to have the removal considered by the IMO.</p> <p>The ExA asked if the MCA had any outstanding concerns about the feasibility and timing of the formal removal of the Galloper route.</p>

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	<p>Mr Salter responded that the MCA had no concerns on timing but stated that there was no guarantee the proposal would be approved by IMO members.</p> <p>Mr Foster responded that the Applicant had considered this and reached out to the Belgian Maritime Authority, and received confirmation in writing that there has been a positive outcome on their consultation which should remove the key obstacle.</p> <p>Mr Salter stated that if any members objected the proposal would not pass.</p> <p>Mr Foster responded that the possibility of objection was another reason why it was in the Applicant's best interest to progress the removal as soon as possible.</p> <p>Mr McGovern confirmed that no alternative layout had been contemplated in the event the Galloper recommended route was refused and this would be considered further by the Applicant.</p> <p>Mr Salter responded that if the Galloper route could not be removed, the MCA would need to object to the North Falls project.</p>
<p>3.4.3 Whether there are any outstanding concerns regarding the risks to shipping movements, including the passage of vessels to and from nearby ports.</p>	<p>The ExA asked London Gateway and Port of London to advise of any future plans for the dredging operation required to achieve the future depths proposed in the Deep Water Routes.</p> <p>Mr Tyrell for London Gateway responded that there were future plans to dredge, and it was conceivable that during the lifetime of the wind farm there would be a requirement to dredge to 22m.</p> <p>Ms Russell responded that the Port of London had no timetable for future dredging but that they were actively looking to future proof their interests as once the cable is installed it will be a permanent constraint.</p> <p>Mr Foster responded that the Applicant concurs with what has been stated about the NRA, in that it does identify 20m as a realistic worst case future scenario for vessel draught. Mr Foster highlighted</p>

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	<p>that as mentioned, the Applicant was preparing a package of documents to be submitted at Deadline 4 to address the cable burial depth. The commitment to cable burial depth in the Deep Water Routes will be confirmed in the outline CSIP, which will safeguard the ability of the ports to dredge to 22m Chart Datum in future, and the ability for future vessels of up to 20m draught to enter the ports.</p> <p>The ExA asked if it was technically feasible to bury the cables before any dredging by the ports took place.</p> <p>Mr Reid confirmed that it was technically feasible, and that cable burial by North Falls will be undertaken before future dredging carried out by any of the ports. He explained that the exact cable depth would be set out in the Cable Burial Risk Assessment.</p> <p>Mr Tyrell raised concern with the conclusions made by the Applicant that effects on shipping and navigation were sufficiently addressed, on the basis that there is not sufficient certainty for the Ports in the Applicant's proposal.</p> <p>Mr McGovern stated that the key point at issue was the need for sufficient mitigation and it is the Applicant's understanding that the ports will be satisfied provided the 22m Chart Datum cable burial depth is secured, and so the remaining question is how it is secured. Mr McGovern reiterated that submissions would be made at Deadline 4 to address this issue.</p> <p>Ms Russell identified that the outline NIP details a water depth of 20m being maintained and raised the concern that the water depth in the deep water routes and sunk pilot diamond area will need to be <i>below</i> 20m to enable the passing of 20m vessels.</p> <p>Mr McGovern responded that the plans would be updated and confirmed that burial will be sufficiently below 22m to allow dredging to 22m.</p>

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	<p>Mr Foster also responded by confirming that the sunk pilot diamond was identified as an area of concern as shown in Figure 2.1 of the outline NIP and added that additional consideration will be given to this issue within the documentation submitted at Deadline 4.</p> <p>SDMP</p> <p>The ExA asked how the sediment disposal management plan (SDMP) will address concerns that high spots could be created, impacting access to the ports.</p> <p>Mr McGovern noted that the outline SDMP would be submitted at Deadline 4 [Document Ref: 9.52]</p> <p>Mr Reid responded that the SDMP will mainly focus on where and how the disposal of any materials will be carried out. The aim will be to avoid high spots, and no disposal will occur within the Deep Water Routes - this will be addressed in the SDMP.</p> <p>Mr Tyrell raised concern with the number of new documents at Deadline 4.</p> <p>Mr Foster responded that the technical contents of the documents would be similar to those submitted for Five Estuaries.</p> <p>Ms Russell asked if it would be possible to organise a meeting between the Applicant, the Port of London Authority, London Gateway and the Port of Tilbury between Deadline 4 and Deadline 5 to discuss the documents.</p> <p>Mr McGovern confirmed that the Applicant would be happy to meet with the ports between the deadlines and would be content to extend the invite to the MCA.</p> <p>In response to Mr Tyrell's comments, Mr McGovern stated that the Applicant had been waiting for the close of examination on Five Estuaries before being in a position to align documents and approaches between the projects.</p>

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	<p>CSIP</p> <p>The ExA asked how the Applicant would involve London Gateway with the draft Cable Specification and Installation Plan (CSIP) and the Offshore Operations and Maintenance Plan (OOMP).</p> <p>Mr Foster responded that the outline CSIP would be submitted at Deadline 4 [Document Ref: 9.53 (Rev 0)] and thereafter the Applicant would discuss any comments with the ports.</p> <p>Mr Tyrrel confirmed that the London Gateway wanted to be involved in the development of the final CSIP as submitted to the MMO and future activities under the OOMP.</p> <p>Mr McGovern responded that updates would be made to the relevant DML condition (Schedule 9) at Deadline 4 to require that the final CSIP correspond with the outline CSIP [Document Ref: 6.1 (Rev 5)]. Further he stated that consultation with the ports and other interested stakeholders on the content of the final CSIP would be carried out as a matter of good practice, and that a requirement on this point within the DCO was not necessary.</p> <p>Mr Tyrell reiterated that London Gateway had statutory powers related to dredging within areas crossing the export cable route and it was in the interest of the Applicant to involve the ports with plans related to cable depth.</p> <p>Mr McGovern noted Mr Tyrell's earlier submission that the port did not currently have the power to dredge beyond 17.5m and would require a further marine licence to do so.</p> <p>Mr Tyrell responded that currently London Gateway can dredge to 17.5m at any time and so needs to be involved in the development of the CSIP.</p> <p>Mr Foster noted that the existing water depths where the cable will cross the Deep Water Routes is already below 17.5m, at around 19m.</p> <p>NIP</p>

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	<p>The ExA asked the Applicant to advise if a meeting has been held, and if so, what are the proposed next steps are to engage with key stakeholders for updates to the Navigation and Installation Plan (NIP).</p> <p>Mr McGovern responded that comments to date had been considered in drafting the outline NIP [Document Ref: 7.24 (Rev 1)] and the Applicant will progress further discussions with the MMO, MCA and Ports between Deadline 4 and Deadline 5.</p> <p>Mr Tyrell raised concerns with the interaction between the CSIP and the NIP in regard to cable depths detailed.</p> <p>Mr Foster confirmed that cable depth information will only be in the outline CSIP, not the outline NIP. The outline NIP will look at the impact of temporary works and maintenance.</p>
<p>3.4.4 Whether the estimate of the effects from disruption to navigation and shipping in the assessment of socio economics is sufficiently robust.</p>	<p>The ExA invited the Applicant to comment on the extent Chapter 31 of the Environmental Statement [APP-045] on socioeconomic impacts has considered the range of stakeholders and routes identified by the Navigational Risk Assessment (NRA) at Appendix 15.1 [APP-106, APP-107 and APP-108].</p> <p>Mr McGovern reiterated that the author of Chapter 31 was not present at the hearing and further information would be provided in writing in response to the ExA's further written questions. Mr McGovern added that the position of the parties remains subject to the Applicant securing commitments around cable depth and other related issues in relation to pilotage in the various management plans. While disagreement persists on how these commitments should best be secured, it is the Applicant's submission that there will be no adverse impacts on operations of the ports that could manifest as adverse socioeconomic effects.</p>

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	<p>Ms Russell responded that it was the Port of London Authority's position that the socioeconomic impact would not be an issue if the necessary mitigations and measures were in place. This could only be through a requirement and protected provisions in the DCO.</p> <p>Mr Tyrrel added that there had to be certainty that the 22m depth was guaranteed and there would be an economic impact if the ports were not given the commitment until the CSIP was approved by the MMO.</p> <p>Mr McGovern responded that the comments were noted, and the Applicant had nothing further to add at this time.</p> <p>The ExA asked what the impact would be from changing from a 19m to 22m depth cable burial depth on the disruption to shipping and navigation during construction, based on the socioeconomic assessment presented at Chapter 31 [APP-045].</p> <p>Mr McGovern responded that given the Applicant's socioeconomics expert was not present the Applicant would address the question in writing.</p> <p>The ExA stated that if they were present they would have asked the UK Chamber of Shipping if they thought that the proposed mitigations had been developed sufficiently to minimise disruption or economic loss for the project alone and cumulatively.</p> <p>The ExA invited the Applicant to provide any comments or points within the Statement of Common Ground with the UK Chamber of Shipping that address this question.</p> <p>Mr Foster responded that the Applicant intended to submit the first iteration of the draft Statement of Common Ground with the UK Chamber of Shipping at Deadline 4 [Document Ref: 10.15]. Mr Foster added that broadly speaking the UK Chamber of Shipping are content with the array area and changes made by the Applicant in terms of site reductions, and they have said they will defer to</p>

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	the ports on matters related to the export cable corridor. Mr Foster concluded that this would be reflected in the Statement of Common Ground.
3.4.5 Above points to include the effectiveness of the mitigation measures proposed and whether any additional mitigation measures and/or safeguards are necessary, to include project alone and cumulative effects.	<p>The ExA asked the MCA to comment on whether the proposed mitigations were adequate for the project in isolation and cumulatively with other projects.</p> <p>Mr Salter responded that subject to agreement of post consent plans and conditions within the DML, the MCA were content.</p> <p>Mr Foster responded that the view expressed by Mr Salter was reflective of the comprehensive NRA that the Applicant has undertaken which has looked to identify all of the relevant hazards and the stakeholder concerns throughout the consultation process. The NRA has concluded that with the mitigations in place, including the relevant post consent plans, hazards have been reduced to as low as reasonably practicable (ALARP).</p>
3.5 Offshore Landscape, Visual and Seascape Effects	
3.5.1 Whether the proposal would enable the Secretary of State to discharge the section 85 Countryside Rights of Way Act 2000 duty as amended by section 245(6) of the Levelling Up and Regeneration Act 2023.	<p>The ExA invited submissions from the Applicant.</p> <p>Ms Brodrick referred to the Applicant's response to ExQ 14.1.3 in the Applicant's Response to Written Questions (ExQ1) [REP2-020] which sets out the Applicant's position in relation to this issue.</p> <p>Ms Brodrick referred to National Policy Statement EN-1 and EN-3 which state that the Secretary of State should be satisfied that any measures required by the duty are sufficient, appropriate, and proportionate to the development's type and scale and that changes to the design or scale of wind farms could significantly affect electricity generation output, making mitigation through reduction in scale unlikely. She emphasised the need to consider siting and layout of the development to minimise harm while accounting for ecological, safety, and engineering and design parameters.</p>

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	<p>Ms Brodrick outlined the measures undertaken by the Applicant that would enable the Secretary of State to be satisfied that the duty could be discharged including removing turbines from the northern section of the array. She stated that further mitigation, such as removing additional turbines, would not meaningfully reduce the Project's impact on relevant receptors from a landscape, seascape and visual perspective but would compromise the Project's generation capacity. She stated that the Applicant has fully considered whether any further amendments could be made to the design of the offshore wind farm array to minimise impacts further and has concluded that no further amendments would be proportionate or appropriate.</p> <p>Ms Brodrick stated that the Applicant's position is that there is no legislative, policy or guidance that requires that compensatory measures are provided in every case where there is any form of impact on a National Landscape. Ms Brodrick reiterated that the requirement to take appropriate, reasonable and proportionate measures to comply with the duty must be applied on a case-by-case basis. Ms Brodrick noted that some recently granted development consent orders required financial contributions but it was the Applicant's position that those schemes are not directly comparable to the Project and do not set a precedent that every scheme that identifies any impact on a National Landscape should be required to provide such financial contributions.</p> <p>Mr Macrae explained that the removal of the northern array between the Preliminary Environmental Impact Report stage and the Environmental Statement stage had a material impact on the conclusions of the Seascape, Landscape and Visual Impact Assessment and reduced the seascape, landscape, and visual impacts of the Project. Further changes including minor layout would only incrementally reduce impacts but would materially affect the Project's electricity generation capacity. Mr Macrae confirmed that removing a large enough proportion of the array to reduce impacts would significantly affect the Project's ability to generate electricity.</p> <p>Mr Macrae noted that the Rampion 2 Offshore Wind Farm is proposed to be located off the south coast of England. Rampion 2 would have slightly smaller turbines than North Falls but would be</p>

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	<p>located less than 20km from the South Downs National Park and approximately 31k from the Isle of Wight National Landscape. Rampion 2 would also be adjacent to the Rampion 1 offshore wind farm which is located 15km from the South Downs National Park. In contrast, the North Falls Offshore Wind Farm would be located 40km away from the Suffolk and Essex Coast and Heaths National Landscape. Further, Rampion 2 would occupy a broader section of the view from the South Downs National Park in comparison to North Falls which has a smaller, more compact array and occupies a narrower angle of view. Mr Macrae noted that the Examining Authority for Rampion 2 accepted that Rampion 2 would have no significant effects on the National Landscape at that distance (31km).</p> <p>In response to submissions made by Mr Bedford on behalf of Suffolk County Council, Ms Brodrick said that she would confirm the Applicant's position on whether it is a statutory undertaker for the purposes of the duty in the Applicant's written submissions (see the Applicant's Response to Actions List for ISH1 and ISH2 [Document Ref: 9.50]). She said that the Applicant is a special purpose vehicle set up solely for the Project and does not have wider statutory undertaker functions. In any event, the Applicant did not consider that this point had any impact on the application of the duty.</p> <p>Ms Brodrick explained that the Applicant's position is that there are two elements to the duty – (a) whether any changes could be made to the development to minimise harm to the National Landscape; and (b) whether any enhancement or compensatory measures should be provided to offset the harm caused.</p> <p>Ms Brodrick reiterated that the design of the Project, including the removal of the northern array, was part of its approach to comply with the duty to minimise impacts on the National Landscape. The Applicant considered further amendments to the Project scale and layout but could not identify</p>

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	<p>any further changes that would not have the result of severely impacting the Project's generation capacity.</p> <p>Ms Brodrick also reiterated that there is nothing in policy documents to suggest that the duty automatically requires compensatory measures to be provided for any level of harm and that each case should be considered individually. Given the minimal extent of harm identified, the Applicant believes that compensatory measures are not appropriate or proportionate in this circumstance.</p> <p>The ExA sought further clarification regarding the interplay between policy and the statutory duty in the CRoW Act.</p> <p>Ms Brodrick clarified that the relevant statutory duty is to 'seek to further', rather than 'must further'. The duty must be considered alongside (and does not override) other statutory duties, such as those under the Planning Act 2008. The Secretary of State must balance the need for renewable energy with the impacts on the National Landscape and consider whether any amendments could be made to the proposed development to reduce impacts without significantly impacting its generating capacity. She emphasised that the application of the statutory duty should be considered in the context of the statutory requirement under the Planning Act 2008 to determine DCO applications in accordance with the National Policy Statements including the policies regarding critical national priority infrastructure.</p> <p>Mr Macrae added, in relation to the technical note, that paragraph 22 concludes that the scale of change on certain perceptual aspects is medium, while the following paragraph confirms the magnitude of change to the special qualities will be low. The methodology document (Environmental Statement Appendix 29.1 SLVIA and VM [APP-170]) clarifies that scale of change and magnitude of change are separate stages. The judgment on magnitude of change considers other factors as well as the scale of change including geographical extent and reversibility of the</p>

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	<p>effect, which is why the two judgments differ. The Applicant is satisfied that the technical note is correct.</p> <p>Mr Bedford asked a further question regarding the scale of change and related magnitude of impact.</p> <p>Mr Macrae responded that the geographical extent refers to the specific areas where the effect would be experienced, which is smaller than the entire National Landscape. This combines the LVIA approach with consideration of effects on special qualities common to the National Landscape as a whole.</p> <p>Mr Amstutz made submissions on behalf of the Suffolk & Essex Coast & Heaths National Landscape. In response to Mr Amstutz's submissions, Ms Brodrick noted that when considering the duty to seek to further, the aim is to avoid any harm to the relevant National Landscape. If that is not possible (as is the case for the Project), the aim is to minimise adverse effects by designing the development as sensitively as possible whilst taking into account the need for the development (i.e. to generate renewable energy). Changes made to the North Falls project design between statutory consultation and submission of the DCO Application, such as the removal of the northern array, were part of this consideration and are relevant to the Secretary of State when they come to consider their ability to discharge of the duty as part of their decision making process in respect of the Project. The Applicant's position is that no further changes are feasible without significantly impacting the Project's generating capacity.</p> <p>The Applicant notes that both Mr Bedford and Mr Amstutz confirmed that they were not suggesting that the Project should be reduced in scale.</p> <p>Ms Brodrick reiterated that the Applicant's position is that compensatory measures are not proportionate or appropriate given the assessed impacts for the Project.</p>

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	<p>Mr Macrae noted that visibility of the turbines will vary depending on weather and atmospheric conditions, and while they could be visible in certain conditions, this variability must be considered.</p> <p>Mr Bedford raised further points regarding the duty and the Applicant's LVIA assessment.</p> <p>Ms Brodrick said that the Applicant's findings are set out in the Environmental Statement Chapter 29 Seascape, Landscape and Visual Impact Assessment [APP-043] but that the Applicant would consider the other points raised in relation to the assessment. The Applicant has provided a response within the Applicant's Response to Action List for ISH1 and ISH2 [Document Ref: 9.50].</p>
<p>3.5.2 Whether adding further offshore wind turbines into the seascape setting would conserve and enhance the natural beauty of the National Landscape or positively contribute to the special character of the Heritage Coast</p>	<p>The ExA invited the Applicant to make submissions in addition to the technical note provided at Deadline 3 (Assessment of the Special Qualities of the Suffolk and Essex Coast and Heaths National Landscape and Suffolk Heritage Coast [REP3-044]).</p> <p>Mr Macrae explained that the technical note was provided in response to Natural England's request for more information on the effects of the Project on the special qualities of the relevant National Landscape and the special character of the Heritage Coast. The technical note details these effects and concludes that they would be moderate to minor at most, and therefore not significant. The overall conclusion is that the Project will not significantly affect the natural beauty of the National Landscape or the special character of the Heritage Coast.</p> <p>In response to submissions from Mr Bedford and Mr Amstutz, Mr Macrae responded that the Applicant would review the comments raised in relation to the technical note. The Applicant has provided a response at [Document Ref: 9.50].</p> <p>Mr Macrae confirmed that the approach taken in the technical note is appropriate and aligns with Natural England's recommendations to consider the effects of the Project on the Heritage Coast in relation to landscape character. Regarding tranquillity and lighting, he noted that the Seascape,</p>

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	Landscape and Visual Impact Assessment [APP-043] concluded that lighting would not have significant effects on the landscape or views from the National Landscape.
3.5.3 Whether there is a difference between Natural England's judgment of the significance of effects (in EIA terms) and the conclusions of the SLVIA.	<p>Mr Macrae referred to the Applicant's response to Natural England's submissions on this point (Applicant's Response to Natural England's Relevant Representation Appendix I2 Seascope, Landscape and Visual Impact Assessment [REP2-024]).</p> <p>Mr Macrae explained that the Seascope, Landscape and Visual Impact Assessment adequately assesses effects of the Project on relevant visual receptors. He noted that the differences between Natural England's conclusions in Appendix I2 and the conclusions in the Seascope, Landscape and Visual Impact Assessment only relate to the level of the effect on visual receptors not in relation to whether an effect is significant from an EIA perspective. Accordingly the Applicant considers that the Seascope, Landscape and Visual Impact Assessment [APP-043] presents a detailed and comprehensive assessment of the potential significant effects of the Project on visual receptors, and no further updates are needed beyond what is provided in the Assessment of the Special Qualities of the Suffolk and Essex Coast and Heaths National Landscape and Suffolk Heritage Coast [REP3-044].</p>
3.5.4 Whether, or not, the Applicant has coordinated the design with the proposed VEOWF. And, if coordinated, how this would progress.	<p>Ms Brodrick confirmed that there has been no coordination between North Falls and VEOWF regarding the layout of the array areas due to their geographical separation. Coordination efforts have focused on the onshore grid connection cabling and substation designs.</p> <p>In response to submissions made by Mr Bedford, Mr Macrae confirmed that the cumulative effects assessment in the Seascope, Landscape and Visual Impact Assessment [APP-043] considers both the North Falls and VEOWF schemes as designed.</p>
3.5.5 Whether the effects of the offshore	The ExA asked the Applicant to provide further information on the types of lighting used.

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<p>safety lighting for the Proposed Development's wind turbine generators alone and cumulatively with the existing offshore arrays and the proposed VEOWF have been explored.</p>	<p>Mr Macrae explained that Environment Statement Chapter 29 Seascape, Landscape and Visual Impact Assessment [APP-043] outlines the assumptions for lighting at paragraph 26 which includes red lights up to 2000 candela, dimmed to 200 candela when visibility exceeds 5km. Navigation lighting at the turbine bases is not likely to be visible from shore-based views as they would be below the horizon and were therefore not considered further as part of the Seascape, Landscape and Visual Impact Assessment [APP-043]. The Seascape, Landscape and Visual Impact Assessment concludes that aviation lighting will not have significant effects, and no cumulative effects are expected from the two projects if the same lighting assumptions are applied to Five Estuaries.</p> <p>Mr Reid added that lighting requirements for aviation and shipping navigation will follow existing standards, which should not have significantly changed from the standards that applied to existing turbines in the area. He noted that the main difference for the Project is the proposed height of the turbines, which can reach up to 377m in rotor tip height.</p> <p>The ExA requested further clarification in relation to whether the minimum lighting level required for the turbines is 200 candela and whether this is the level that the lighting would predominantly be at depending on prevailing visibility conditions.</p> <p>Mr Reid said that the Applicant would look into the point and respond by written submission. The Applicant has provided a response to this point at Deadline 4 (see the Applicant's Response to Action List for ISH1 and ISH2 [Document Ref: 9.50]).</p> <p>In response to submissions from Mr Amstutz, Mr Macrae explained that the Environment Statement Chapter 29 Seascape, Landscape and Visual Impact Assessment [APP-043] concludes that lighting impacts would not be significant. He explained that the assessment of special qualities in the Assessment of the Special Qualities of the Suffolk and Essex Coast and Heaths National Landscape and Suffolk Heritage Coast [REP3-044] is based on a subset of qualities likely to be</p>

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	<p>impacted by the Project, which is why tranquillity is not specifically assessed. He also noted that the guidance on lighting documents focuses more on the use of lighting within the National Landscape.</p> <p>Mr Macrae said that paragraph 16 of the Assessment of the Special Qualities of the Suffolk and Essex Coast and Heaths National Landscape and Suffolk Heritage Coast [REP3-044] lists factors related to natural beauty as defined in guidance issued by Natural England (including relative tranquillity). The special qualities of National Landscapes are related to these factors. Not all special qualities were considered relevant for assessment, and none of the special qualities relating to relative tranquillity were included. Paragraph 21 summarises this process.</p> <p>Mr Macrae also noted that the effects of aviation lighting are specifically addressed in the assessment on page 17 of [REP3-044] in relation to some scenic qualities.</p> <p>The ExA requested a written response from the Applicant explaining its position in relation to effects on tranquillity and its approach to assessment in the Assessment of the Special Qualities of the Suffolk and Essex Coast and Heaths National Landscape and Suffolk Heritage Coast [REP3-044]. This response is set out in the Applicant's Response to Action List for ISH1 and ISH2 [Document Ref: 9.50]).</p>



NORTH FALLS

Offshore Wind Farm



HARNESSING THE POWER OF NORTH SEA WIND

North Falls Offshore Wind Farm Ltd

A joint venture company owned equally by SSE Renewables and RWE.

To contact please email contact@northfallsoffshore.com

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