



Suffolk County Council (20050784)

Comments on submissions received at
Deadline 5

North Falls (EN010119)

Deadline 6

24 June 2025

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Glossary of Acronyms

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| <i>DCO</i> | <i>Development Consent Order</i> |
| <i>DVNL</i> | <i>Dedham Vale National Landscape</i> |
| <i>EACN</i> | <i>East Anglian Connection Node</i> |
| <i>ExA</i> | <i>Examining Authority</i> |
| <i>ExQ</i> | <i>Examining Authority Questions</i> |
| <i>ISH</i> | <i>Issue Specific Hearing</i> |
| <i>LIR</i> | <i>Local Impact Report</i> |
| <i>NESO</i> | <i>National Energy System Operator</i> |
| <i>OWF</i> | <i>Offshore Wind Farm</i> |
| <i>SECHNL</i> | <i>Suffolk & Essex Coast & Heaths National Landscape</i> |
| <i>SoS</i> | <i>Secretary of State</i> |

"The Council" / "SCC" refers to Suffolk County Council

Purpose of this Submission

The purpose of this submission is to provide responses to the Applicant's Deadline 5 (D5) submissions and representations made by other interested parties at D5, as appropriate. Examination Library references are used throughout to assist readers.

1 Comments on submissions received at Deadline 5

9.78 Position Statement on various issues relating to National Landscapes (Rev 0) [[REP5-068](#)]

| Table 1: SCC Table of Comments on 9.78 Position Statement on various issues relating to National Landscapes (Rev 0) [REP5-068] | | | | |
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| Ref. | Topic | Paragraph Number | SCC's Comments | References |
| 1a | Compliance with Duty (DVNL) | 1 | <p>SCC refers the Applicant to [REP5-116] where SCC recommends the inclusion of viewpoint assessments from areas which indicate greater visibility of the substation from the DVNL within the 2km study area. This point has been made in representations from previous deadlines including [REP1-074], [REP2-059] and [REP4-094]. For it to be determined whether the DVNL is affected, and whether any measures undertaken in accordance with the duty to be considered reasonable, proportionate, appropriate and sufficient, the extent of the impacts on the DVNL must be assessed.</p> <p>As a matter of clarification, SCC would like to make the point that it is not saying that simple visibility of the development from within the DVAONB is necessarily an adverse effect (i.e. mere intervisibility is not necessarily to be regarded as harmful) and that what matters is the nature and extent of any visual impacts, which is a matter for assessment and professional judgment. SCC notes that at ISH1 the Applicant drew a distinction between visibility and visual impacts (as set out in its Post Hearing Submissions in [REP4-026], item 3.1). Where the visual effects are assessed, even after any proposed mitigation such as landscape planting/screening, to result in some detrimental effects on the special qualities or natural beauty indicators of the DVAONB then those effects will be a residual adverse effect on the DVAONB and there will be a failure to</p> | <p>[REP1-074]</p> <p>[REP2-059]</p> <p>[REP4-026]</p> <p>[REP4-094]</p> <p>[REP4-096]</p> <p>[REP5-116]</p> |

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| | | | <p>conserve the natural beauty of the DVAONB. It is that consequence which then gives rise to the statutory Duty in relation to Protected Landscapes.</p> <p>SCC's concern is that the information thus far provided by the Applicant provides an insufficient assessment of the visual impacts of the substation proposal on the DVAONB (by not including an assessment of more relevant views on the Essex Way south west of the selected VP8).</p> <p>SCC would also make the point that it does not agree that the Secretary of State could be satisfied that the statutory Duty would be discharged if they found that there were minor adverse impacts on the DVAONB that are not 'significant effects' in EIA terms. SCC has already made detailed representations on why it is a false equivalence to treat the EIA test of 'likely significant effects' as a threshold (or yardstick) for judging whether the objective of seeking to further the purpose of conserving and enhancing the natural beauty of a Protected Landscape is met or not, as set out in section 3.3 of [REP4-096], and in paras 21, 23, and 52-53 of Appendix B of [REP4-094].</p> | |
| 1b | Cumulative Effects Assessment (DVNL) | 3 | <p>Please see SCC's comments on item 1 regarding its concerns on the cumulative effects assessment of the DVNL in relation to Norwich to Tilbury. SCC is in agreement with the Applicant that there is insufficient information at this stage to include Tarchon Interconnector in the CEA. SCC welcomes the Applicant's approach in updating its assessments should more information on the project be made public.</p> | |
| 1c | Application of the Duty | 4 | <p>SCC submits that the Applicant misunderstands SCC's position regarding its interpretation of the application of the duty. SCC does not claim that "every development that is located outside of, but visible from, a National Landscape</p> | [REP2-059] [REP4-094] |

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| | | | <p>must provide some form of financial contribution to the National Landscape regardless of its impact.” As noted above, SCC does not suggest that visibility alone is the test of whether the duty is engaged. It is necessary to consider the nature and extent of any visual impacts to determine whether a development ‘affects’ a National Landscape. If those visual impacts are such that they result in adverse effects on the special qualities or natural beauty indicators of a National Landscape, they will ‘affect’ the National Landscape and there will be a failure to conserve that National Landscape.</p> <p>In such circumstances it is then necessary to consider what, if any, actions the person subject to the duty has taken to seek to further the purpose of conserving and enhancing the natural beauty of the National Landscape. If that person is the promoter of the project, it is necessary to consider what measures they have either taken, or could reasonably be expected to take to, fulfil the duty. If it would not, in the particular circumstances, be reasonable to expect the project itself to be changed or further mitigated, it is then necessary to consider whether measures can be reasonable be taken to offset (or compensate) for the failure to conserve the National Landscape. Those measures could be the undertaking of improvement/enhancement actions within the National Landscape or they could be the making of a financial contribution to fund the undertaking of such actions by others. Any measures should be proportionate to the impacts on the National Landscape, having regard to the advice in EN-1 and the Defra guidance.</p> <p>SCC notes that the Applicant has frequently framed the test of what may be required to satisfy the duty by reference to the phrase ‘appropriate, reasonable, and proportionate’ (which is taken from the Defra guidance). SCC acknowledges that these are relevant factors to be considered, but it is important not to lose sight of the additional requirement in para 5.10.8 of EN-1 that the Secretary of State needs to be satisfied that what is done by way of measures to satisfy the</p> | |
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| | | | <p>duty is ‘sufficient, appropriate, and proportionate.’ In SCC’s view what is ‘sufficient’ is inextricably connected with whether the measures in question allow the duty to be discharged.</p> <p>SCC does not consider that the duty requires that the relevant authority “must further” the purposes of affected designated landscapes. SCC has always accepted that the duty is to ‘seek to further’ the purpose of conserving and enhancing the natural beauty of the designated landscapes but, as the Defra guidance indicates, the duty is an ‘active’ duty and so the person subject to it must take some actions by way of seeking to achieve the desired outcome. The nature of those actions will be informed by the effects that the project has on the designated landscape and it would be reasonable to expect that more would sought to be achieved where the project fails to conserve and/or enhance the protected landscape than in other cases.</p> <p>In the case of the SECHNL, the proposal has been assessed to give rise to negative impacts on the landscape’s special qualities and no measures seeking to conserve or enhance the natural beauty of the SECHNL have been proposed. Therefore, SCC considers that the proposal cannot be said to give a relevant authority a basis for concluding that, as matters stand, sufficient has been done to satisfy the duty.</p> <p>With regard to the CNP policy presumption in EN-1, SCC has set out detailed representations on its position in full answer to ExQ1 14.1.5 in Annex 1 of [REP2-059] and in paras 29-31 of Appendix B to [REP4-094]. It is clear in para 4.2.7 of EN-1 that the policy presumption is only to be applied “<i>following</i>” the “<i>normal consideration</i>” of the case, including any impacts (and so cannot be relied on to diminish or downplay those impacts). It is also clear in para 4.2.10 of EN-1 that all relevant “<i>legal requirements</i>” must be met in a case involving CNP, and that</p> | |
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| | | | necessarily includes compliance the statutory duty in relation to designated landscapes. The CNP presumption cannot be relied on to ‘water down’ or otherwise side-step the statutory requirements of the duty. | |
| 1d | Phasing restriction | 5 | Please see SCC’s response to Q9.1.17 of ExQ2 [REP5-117] , SCC’s response to Action points for ISH1 and ISH2 [REP4-095] , Appendices A and B of [REP4-094] and SCC’s comments on the Applicant’s response to ExQ2 included in this document for SCC’s position on the points made by the Applicant. | [REP4-094] [REP4-095] [REP5-117] |
| 1e | Application of the duty | 6 | SCC welcomes the Applicant’s recognition that it is a relevant authority and so itself subject to the duty. As stated during ISH 2 and within SCC’s corresponding written summary [REP4-096] , SCC considers that there may be differences between what is required to discharge the Duty depending on whether it is a duty placed only on the decision maker or also on the project promoter. One difference may arise from the fact that one party is the project promoter and so had control over the design choices throughout the evolution of the project that result in the submitted application. By contrast, the other party, as the decision maker, is limited to considering the submitted application (and not the merits of some different application that is not before the decision maker). Thus, the former had more scope than the latter in designing the scheme so as to address its impacts on the National Landscapes. In addition, the promoter of a project also has more flexibility to propose changes to a project post-submission or to propose additional mitigation or offsetting measures, including by engaging with stakeholders. Whilst the decision maker can require changes to a project before giving approval and/or can impose further restrictions by the imposition of requirements in any made DCO, the decision maker only has a regulatory function to discharge and so is more limited in how they can seek to further the | [APP-215] [REP4-096] |

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| | | | <p>statutory purpose than the promoter of the project who is responsible for formulating the project and any measures that might support it.</p> <p>Whilst SCC notes that the Applicant states that it ‘took into account’ the duty ‘when developing its proposals for the Project’, it is to be noted that the duty took effect from 26 December 2023, and the Project ‘s statutory consultation was completed in July 2023 [APP-215]. Until the most recent submissions from the Applicant at Deadline 5 it was not apparent to SCC that the Applicant did accept that it was a relevant authority and subject to the duty. It is therefore not clear to SCC how/when the duty was taken into account by the Applicant during the formulation of its proposals. SCC would be grateful to be pointed to any references in the application material that would shed light on this point. In any event, the duty requires more than that it is simply taken into account. It requires the person subject to the duty to ‘seek to further’ the statutory purpose. That is clearly more onerous than the previous ‘have regard’ duty that the new duty replaced.</p> <p>On the question of whether pre-application design choices made by the Applicant should be taken into account, this is responded to under item 9</p> | |
| 1f | Application of Duty | 9 | <p>The reason behind SCC’s position as summarised by the Applicant is the interpretation of the duty proposed by SCC in this document and elsewhere, including [REP4-094], based on the wording of the duty and relevant policy and guidance.</p> <p>It is SCC’s understanding that the application was largely if not entirely settled in its present form before the Applicant became subject to the duty in December 2023. By that date the Applicant had already undertaken both its non-statutory and statutory consultations, and the project did not materially change</p> | [REP4-094] |

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| | | | <p>thereafter. Steps taken by the Applicant during the earlier formulation of the project to minimise effects on any National Landscapes were not steps taken in order to discharge the duty.</p> <p>Whilst SCC does not say that such prior steps can never have any relevance to the question of compliance with the duty, the duty arises in this case because the project <u>as now formulated</u> ‘affects’ the National Landscape, and it is because of those effects (as set out in the SLVIA) of the proposal that is now the subject of the DCO application that the Applicant is under a duty to seek to further the statutory purpose. Those effects are the residual effects of the project, <i>after</i> design choices on the location of the array area(s) and the dimensions of the WTGs have already been made. Any benefits resulting from those choices cannot be said to have any effect in diminishing the adverse effects of the residual effects (precisely because they are residual effects). It is those residual effects which impact on the National Landscape and so it is those residual effects which need to be considered when assessing whether the Applicant has put forward sufficient, appropriate, and proportionate measures to seek to further the purpose of conserving and enhancing the natural beauty of the National Landscape.</p> <p>The reason behind SCC’s position as summarised by the Applicant is that the reduction of negative effects caused by changes to the proposed development are already accounted for in the Applicant’s assessments. It would then be ‘double counting’ to rely on the changes to the application which reduced negative effects to discharge the duty since these changes have already been accounted for during the assessments, the results of which inform what is appropriate, reasonable and proportionate to discharge the duty. The results of</p> | |
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| | | | <p>the assessments are the starting point on account of the duty's intrinsic link to the effects of the proposed development on designated landscapes.</p> <p>The duty applies when a relevant authority performs or exercises a function 'in relation to, or so as to affect' a designated landscape. EN-1 and the relevant guidance makes it clear that changes to the size and scale of the proposed development are relevant insofar as they affect considerations of what extent of measures undertaken to comply with the duty are considered appropriate, proportionate, sufficient and reasonable. However, such changes do not in themselves also serve as measures applicable to the discharge of the duty. They are measures which mitigate the effects of a previous iteration of the proposed development, not the final iteration to be presented to the Secretary of State. These measures have already been accounted for when deciding to what extent the proposed development will negatively affect the SECHNL. The adverse effects of the current iteration of the project, which SCC considers to be substantial due to the medium scale of change found on several special qualities of the SECHNL, are the 'effect' on the SECHNL arising from the function of consenting this DCO. It is therefore in relation to the adverse effects on the SECHNL found in the Applicant's assessments that the SoS must be able to discharge the duty. Accordingly, SCC considers that measures should be proposed to comply with the duty for the current iteration of the proposed development.</p> <p>The function which would be performed by the Secretary of State is enacting the DCO as it is presented, subject to the Secretary of State's power to require changes to be made to the proposal or for additional requirements to be imposed. It is within that function that the SoS must be able to discharge the duty.</p> | |
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| 1g | Discharge of Duty | 10 | <p>SCC reiterates its position that the proposed development will negatively affect multiple special qualities of the SECHNL, many of which will experience a medium scale of change, without any measures proposed to positively affect the natural beauty of the SECHNL. SCC's position is not that the duty requires additional measures "regardless of impact"; rather, the duty requires additional measures which are proportional to the level of effect on relevant designated landscapes. A financial contribution proportionate to the level of effect of the project on the relevant National Landscapes would meet the relevant criteria found in relevant policy and guidance. At no point has SCC claimed that a financial contribution is necessary in all cases where developments affect designated landscapes. As stated in its LIR [REP1-074], SCC proposed the option of financial contribution due to the logistical simplicity it provides for the Applicant given the late stage of the application. The Applicant is free to propose alternative measures to allow the duty to be discharged.</p> <p>It is not SCC's place to detail the quantum of such measures. This burden lies with the relevant authorities for the purposes of the duty in relation to this application, which includes the Applicant. SCC has recommended at previous deadlines that the Applicant engage with the SECHNLP to agree what measures should be undertaken by the Applicant to allow for the duty to be discharged. SCC notes that the Applicant has not provided justification for its position that it would not be reasonable, appropriate, proportionate and sufficient to undertake additional compensatory measures.</p> <p>Measures undertaken to comply with the duty must be 'realistically achievable' on account of the wording of "must seek to further". If an agent seeks an outcome, then that outcome must be in some sense realistically achievable, otherwise the agent cannot be said to have sought that outcome. SCC has acknowledged that the duty does not require the purposes of affected</p> | [REP1-074] |
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| | | | designated landscapes actually be furthered, but the wording of the duty clearly requires relevant authorities to take reasonable steps that are realistically available to seek to achieve the desired outcome. | |
| 1h | Discharge of Duty | 12 | Whilst SCC accepts that decisions made in relation to the duty will be made on a case-by-case basis, SCC considers that some useful parallels can be drawn from the London Luton Airport Expansion DCO decision, as set out in its earlier representations. | |
| 1i | Scope of the Duty | 13 | See position within SCC's response to item 10 in relation to interpreting the duty. | |
| 1j | Application of the Duty | 14 | SCC has stated in previous submissions (such as [REP5-116]) that there remain unassessed zones of theoretical visibility in the DVNL within the 2km study area which suggest greater visibility than the assessed viewpoint from within the DVNL. SCC therefore queries how the Applicant is confident that there will be no impact on the DVNL resulting from the proposed development. | [REP5-116] |
| 1k | Application of the Duty | 15 | SCC has stated its position on the New Forest Judgement during ISH 2 and within SCC's corresponding written summary [REP4-096] . | [REP4-096] |

9.68 Applicant's Response to ExA's Second Written Questions (ExQ2) (Rev 0) [[REP5-054](#)]

| Table 2: SCC Table of Comments on Applicant's Response to ExA's Second Written Questions (ExQ2) [REP5-054] | | | | |
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| Ref. | Topic | Paragraph Number | SCC's Comments | References |
| 2a | Other matters relating to dDCO requirements | Q9.1.13 | <p>(ii)</p> <p>SCC considers that where there are adverse impacts on an environmental resource, an applicant should follow the mitigation hierarchy (as defined in the glossary in EN-1). In this regard, in relation to a National Landscape, SCC sees no reason why the mitigation hierarchy should not be followed whether the impacts are significant or non-significant in EIA terms. This would see the avoidance of adverse effects being prioritised ahead of either mitigation or compensation. The purpose of the phasing requirement is, in essence, avoidance, in the sense that harm to the National Landscape is not justified (and so should be avoided) until it is clear that the benefits of providing clean power to the Grid are certain of delivery.</p> <p>SCC understands that connection agreements may be subject to change, as could be the case for the Applicant were Norwich to Tilbury's development consent delayed or refused. There can be no presumption, when a decision is made on the present application, that a separate project (not yet the subject of any application) will be consented. SCC is not privy to the details of the Applicant's connection agreement with NESO and so does not know by what date NESO is required to provide a Grid connection for the Applicant, or what arrangements are in place were NESO to fail their statutory obligation imposed by the connection agreement. Once a DCO is made, the Applicant would be entitled to implement it according to its terms, irrespective of whether by doing</p> | <p>[APP-019]</p> <p>[REP4-095]</p> <p>[REP5-117]</p> |

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| | | | <p>so that would entail harming the SECHNL, making the phasing restriction necessary for the project to follow the requirements of the mitigation hierarchy. Such a scenario involves harming a National Landscape without the benefits of clean energy being delivered despite such harm being avoidable until it is deemed necessary once the project's connection point is determined. It is presently unknown what alternative connection arrangements would be sought were Norwich to Tilbury refused consent, nor the feasibility of such arrangements, making it possible for the WTGs to be installed for a significant period of time without a Grid connection.</p> <p>There are relevant factual differences, relating to the works needed for the respective Grid connections, between this application and the Sheringham Shoal and Dudgeon Offshore Windfarm Extension Project. The magnitude of the works in need of development consent for the two projects is drastically different in terms of the EACN being part of a large electricity transmission DCO whilst Norwich Main substation merely required works which could be dealt with in a standalone application. It should be noted that the EACN does not yet exist, meaning there are greater possibilities for changes in its delivery which could cause delays.</p> <p>SCC made the point in its own answer to this question [REP5-117] that the Applicant is not in a position to make a judgement about the outcome of a future DCO examination.</p> <p>(iii)</p> <p>The proposed, and rejected, phasing condition for the Triton Knoll Offshore Wind Farm is not comparable to the one proposed by SCC in this examination. The context in that case (in 2013) did not include the new statutory duty on relevant authorities in relation to designated landscapes. The condition proposed by SCC</p> | |
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| | | | <p>only covers offshore, rather than onshore, works, which in this case affect a National Landscape. In turn, the justifications behind the two proposed conditions share little similarity. In the case of Triton Knoll OWF, the Examining Authority proposed the phasing condition based on concerns over the impacts of subsequent applications necessary to deliver the project. In this examination, SCC has not based its justification for the proposed phasing condition on concerns about the impacts of another project; rather, it is based on the imperative to avoid unjustified harm in relation to designated landscapes arising from the WTGs of the North Falls application. Therefore, SCC does not consider its proposed phasing condition to be liable for rejection on the same grounds as the one proposed for the Triton Knoll OWF.</p> <p>(iv)</p> <p>The Secretary of State is expected to make a decision on the North Falls application by January 2026. According to the Applicant’s timeline for offshore construction works ([APP-019], table 5.23), offshore construction is not intended to commence until year 4, which will presumably be 2029. Even if it is the case that the Applicant is required “to order a large number of long lead items at considerable cost prior to March 2027” (the earliest date the Applicant expects a decision to be made on Norwich to Tilbury) in relation to its offshore construction activities, that is a commercial decision that the Applicant is prepared to make at a time when it simply will not know whether (or when) Norwich to Tilbury will be consented.</p> <p>SCC remains puzzled by the Applicant’s insistence that the proposed phasing requirement would “create a significant delay” and make the project’s 2030 delivery “unachievable”. If, as the Applicant states, the Applicant is willing to make significant financial investments prior to the consent of the EACN, it is</p> | |
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| | | | <p>willing to tolerate the risk of its connection point being refused consent or otherwise delayed. The proposed phasing requirement does not alter this level of risk, which is evidently tolerable for the Applicant, since the requirement itself merely requires notification of the development consent of the Applicant's connection point. If there is no real risk that the EACN will not be delivered, then there will be no prejudice to the project by the imposition of the phasing requirement (because the Applicant will have no difficulty in meeting it).</p> <p>(v)</p> <p>SCC submits that its reasons given in [REP4-095] and [REP5-117] justify its position that the proposed phasing requirement meets the relevant requirement tests. Nor would any precedent arising from the proposed requirement cause delays for future projects on account of the requirement itself not being a source of delay. If anything, it would be the delay of unconsented Grid connections which delay the delivery of future projects. Such a scenario would occur without the presence of a phasing requirement.</p> <p>(vi)</p> <p>SCC considers that, unlike in the case of Hinkley Point C, the proposed phasing requirement for North Falls would not delay delivery of the project as stated in response to (iv). In addition, the Examining Authority and Secretary of State in that case were not asked to consider imposing a phasing condition/requirement on construction of any element of the project until such time as a Grid connection had been consented. The Examining Authority's discussion of a Grid connection (in paras 4.397-4.400 of their report) was in the context of whether the Hinkley Point C project should have consent withheld. The circumstances are therefore materially different.</p> | |
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9.70 Applicant's Response to Deadline 4 Submissions (Rev 0) [[REP5-056](#)]

| Table 3: SCC Table of Comments on Applicant's Response to Deadline 4 Submissions (Rev 0) [REP5-056] | | | | |
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| Ref. | Topic | Paragraph Number | SCC's Comments | References |
| 3a | Applicant's Response to Suffolk County Council comments on submissions received at Deadline 3 [REP4-097] | | <p>Whilst SCC appreciates the detail added to this technical note at deadline 5, SCC remains unclear on the reasoning process that has allowed a series of medium scale of change effects on the special qualities to then be said to come to a low magnitude of impact. In particular, the Applicant has not specified how it has combined judgements about, scale of change, geographical extent, duration and reversibility of impact in order to come to its conclusions for each impacted special quality. In the SLVIA Methodology [APP-170], it is stated that scale of change is often the "dominant factor" in making judgements on magnitude of effect. It is not clear to SCC that this has been carried forward into this technical note and the Applicant has not specified why this is the case.</p> <p>The statement from SCC's RR as quoted by the Applicant is making a point about the EIA assessment of effects, and SCC has not suggested that in EIA terms there is a 'likely significant effect'. However, that does not carry with it any implication that SCC is satisfied with the methodology used to assess the effects on the special qualities of the SECHNL or with the further explanation subsequently provided by the Applicant in [REP3-044]. SCC's concern has arisen from a lack of methodological transparency in the Applicant's assessment which SCC considers critical to understand the extent of the impacts on the SECHNL.</p> | <p>[APP-170]</p> <p>[REP3-044]</p> |

Rule 17 - Request for further Information [[PD-014](#)]

| Table 4: SCC Table of Comments on Rule 17 Letter - ExA requests that the Applicant provides draft National Landscape Enhancement Scheme principles and a mechanism for securing such a scheme, on a without prejudice basis [PD-014] | | | | |
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| Ref. | Topic | Paragraph Number | SCC's Comments | References |
| 4a | National Landscape Enhancement Scheme | | <p>SCC welcomes the ExA's decision to request that the Applicant provides draft National Landscape Enhancement Scheme principles and a mechanism for securing such a scheme, on a without prejudice basis. SCC would like to reiterate its position that the measures proposed in this document should be proportionate to the type and scale of development as it affects the National Landscape, reasonably related to the identified residual adverse effects, and sufficient to allow for the discharge of the statutory duty by both the Applicant and by the Secretary of State.</p> <p>SCC has engaged with the Applicant to organise a meeting with the SECHNLP regarding the draft National Landscape Enhancement Scheme principles following deadline 6.</p> | |