DBS Offshore Wind

RWE Renewables UK Dogger Bank South (West) Limited

RWE Renewables UK Dogger Bank South (East) Limited

Dogger Bank South Offshore Wind Farms

The Applicants' Closing Statement

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Glossary

Term	Definition
Array Areas	The DBS East and DBS West offshore Array Areas, where the wind turbines, offshore platforms and array cables would be located. The Array Areas do not include the Offshore Export Cable Corridor or the Inter-Platform Cable Corridor within which no wind turbines are proposed. Each area is referred to separately as an Array Area.
Beach	A deposit of non-cohesive sediment (e.g. sand, gravel) situated on the interface between dry land and the sea (or other large expanse of water) and actively 'worked' by present-day hydrodynamic processes (i.e. waves, tides and currents) and sometimes by winds.
Biodiversity Net Gain	An approach to development that leaves biodiversity in a better state than before. Where a development has an impact on biodiversity, developers are encouraged to provide an increase in appropriate natural habitat and ecological features over and above that being affected to ensure that the current loss of biodiversity through development will be halted and ecological networks can be restored.
Collision	The act or process of colliding (crashing) between two moving objects.
Development Consent Order (DCO)	An order made under the Planning Act 2008 granting development consent for one or more Nationally Significant Infrastructure Project (NSIP).
Dogger Bank South (DBS) Offshore Wind Farms	The collective name for the two Projects, DBS East and DBS West.
Effect	Term used to express the consequence of an impact. The significance of an effect is determined by correlating the magnitude of the impact with the value, or sensitivity, of the receptor or resource in accordance with defined significance criteria.
EIA Regulations	The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
Electrical Switching Platform (ESP)	The Electrical Switching Platform (ESP), if required would be located either within one of the Array Areas (alongside an Offshore Converter Platform (OCP)) or the Export Cable Platform Search Area.
Environmental Impact Assessment (EIA)	A statutory process by which certain planned projects must be assessed before a formal decision to proceed can be made. It involves the collection and consideration of environmental information, which fulfils the assessment requirements of the EIA Directive and EIA

Term	Definition
	Regulations, including the publication of an Environmental Statement (ES).
Environmental Statement (ES)	A document reporting the findings of the EIA and produced in accordance with the EIA Directive as transposed into UK law by the EIA Regulations.
Evidence Plan Process (EPP)	A voluntary consultation process with specialist stakeholders to agree the approach, and information to support, the Environmental Impact Assessment (EIA) and Habitats Regulations Assessment (HRA) for certain topics.
Expert Topic Group (ETG)	A forum for targeted engagement with regulators and interested stakeholders through the EPP.
Glacial till	Poorly sorted, non-stratified and unconsolidated sediment carried or deposited by a glacier.
Habitats Regulations	Conservation of Habitats and Species Regulations 2017 and Conservation of Offshore Marine Habitats and Species Regulations 2017.
Habitats Regulations Assessment (HRA)	The process that determines whether or not a plan or project may have an adverse effect on the integrity of a European Site or European Offshore Marine Site.
Haul Road	The track along the Onshore Export Cable Corridor used by traffic to access different sections of the onshore export cable route for construction.
health	State of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity.
Impact	Used to describe a change resulting from an activity via the Projects, i.e. increased suspended sediments / increased noise.
In Isolation Scenario	A potential construction scenario for one Project which includes either the DBS East or DBS West array, associated offshore and onshore cabling and only the eastern Onshore Converter Station within the Onshore Substation Zone and only the northern route of the onward cable route to the proposed Birkhill Wood National Grid Substation.
Intertidal	Area on a shore that lies between Mean High Water Springs (MHWS) and Mean Low Water Springs (MLWS).

Term	Definition
Jointing Bays	Underground structures constructed at regular intervals along the onshore cable route to join sections of cable and facilitate installation of the cables into the buried ducts.
Landfall	The point on the coastline at which the Offshore Export Cables are brought onshore, connecting to the onshore cables at the Transition Joint Bay (TJB) above mean high water.
Landfall Zone	The generic term applied to the entire landfall area between Mean Low Water Spring (MLWS) and the Transition Joint Bays (TJBs) inclusive of all construction works, including the landfall compounds, Onshore Export Cable Corridor and intertidal working area including the Offshore Export Cables.
Main River (onshore)	Main Rivers are usually large rivers or streams that are designated under the Water Resources Act (1991) and are shown on the statutory Main River Map. They are managed by the Environment Agency, who carry out construction, maintenance and improvement works to manage flood risk.
Marine Guidance Note (MGN)	A system of guidance notes issued by the Maritime and Coastguard Agency which provide significant advice relating to the improvement of the safety of shipping at sea, and to prevent or minimise pollution from shipping.
Mean High Water Springs (MHWS)	MHWS is the average of the heights of two successive high waters during a 24 hour period.
National Policy Statement (NPS)	A document setting out national policy against which proposals for NSIPs will be assessed and decided upon.
Nationally Significant Infrastructure Project (NSIP)	Large scale development including power generating stations which requires development consent under the Planning Act 2008. An offshore wind farm project with a capacity of more than 100 MW constitutes an NSIP.
Offshore Development Area	The Offshore Development Area for ES encompasses both the DBS East and West Array Areas, the Inter-Platform Cable Corridor, the Offshore Export Cable Corridor, plus the associated Construction Buffer Zones.
Offshore Export Cable Corridor	This is the area which will contain the offshore export cables between the Offshore Converter Platforms and Transition Joint Bays at the landfall.

Term	Definition
Offshore Export Cables	The cables which would bring electricity from the offshore platforms to the Transition Joint Bays (TJBs).
Onshore Converter Stations	A compound containing electrical equipment required to transform HVDC and stabilise electricity generated by the Projects so that it can be connected to the electricity transmission network as HVAC. There will be one Onshore Converter Station for each Project.
Onshore Export Cable Corridor	This is the area which includes cable trenches, haul roads, spoil storage areas, and limits of deviation for micro-siting. For assessment purposes, the cable corridor does not include the Onshore Converter Stations, Transition Joint Bays or temporary access routes; but includes Temporary Construction Compounds (purely for the cable route).
Order Limits	The limits within which the Projects may be carried.
Outline Onshore Written Scheme of Investigation (WSI)	Project specific document forming the agreement between the Applicants, the appointed archaeologists, contractors and the relevant stakeholders landward of MHWS. The document sets out the methods to mitigate the effects on all the known and potential archaeological receptors within the Hornsea Four onshore Order Limits.
Preliminary Environmental Information Report (PEIR)	Defined in the EIA Regulations as information referred to in part 1, Schedule 4 (information for inclusion in environmental statements) which has been compiled by the applicants and is reasonably required to assess the environmental effects of the development.
Project Change Request 1	The changes to the DCO application for the Projects set out in Project Change Request 1 - Offshore & Intertidal Works [AS-141] which was accepted into Examination on 21st January 2025.
Project Change Request 2	The changes to the DCO application for the Projects set out in Project Change Request 2 - Onshore Substation Zone [AS-152] which was accepted into Examination on 21st January 2025.
Project Design Envelope	A concept that ensures the EIA is based on assessing the realistic worst-case scenario where flexibility or a range of options is sought as part of the consent application.
Receptor	A distinct part of the environment on which effects could occur and can be the subject of specific assessments. Examples of Receptors include species (or groups) of animals, plants, people (often categorised further such as 'residential' or those using areas for amenity or recreation), watercourses etc.

Term	Definition
Scour protection	Protective materials to avoid sediment erosion from the base of the wind turbine foundations and offshore substation platform foundations due to water flow.
Sequential Scenario	A potential construction scenario for the Projects where DBS East and DBS West are constructed with a lag between the commencement of construction activities. Either Project could be built first.
Special Area of Conservation (SAC)	Strictly protected sites designated pursuant to Article 3 of the Habitats Directive (via the Habitats Regulations) for habitats listed on Annex I and species listed on Annex II of the Directive
Special Protection Area (SPA)	Strictly protected sites designated pursuant to Article 4 of the Birds Directive (via the Habitats Regulations) for species listed on Annex I of the Directive and for regularly occurring migratory species
Statutory consultation	The statutory consultation ran in two periods. The first period ran between 6th June and 17th July 2023, with a second period running between 4th August and 15th September 2023 to gather responses from third-parties missed during the initial consultation period. The PEIR was presented as part of this consultation.
Statutory Nature Conservation Bodies (SNCBs)	Comprised of JNCC, Natural Resources Wales, Department of Agriculture, Environment and Rural Affairs/Northern Ireland Environment Agency, Natural England and Scottish Natural Heritage, these agencies provide advice in relation to nature conservation to government
Suspended sediment	The sediment moving in suspension in a fluid kept up by the upward components of the turbulent currents or by the colloidal suspension.
Temporary Construction Compound	An area set aside to facilitate construction of the Projects. These will be located adjacent to the Onshore Export Cable Corridor and within the Onshore Substation Zone, with access to the highway.
The Applicants	The Applicants for the Projects are RWE Renewables UK Dogger Bank South (East) Limited and RWE Renewables UK Dogger Bank South (West) Limited. The Applicants are themselves jointly owned by the RWE Group of companies (51% stake) and Masdar (49% stake).
The Projects	DBS East and DBS West (collectively referred to as the Dogger Bank South Offshore Wind Farms).
Wind turbine	Power generating device that is driven by the kinetic energy of the wind.

Acronyms

Acronym	Definition
AEoI	Adverse Effect on Integrity
ANS	Artificial Nesting Structure
BAPA	Basic Asset Protection Agreement
BNG	Biodiversity Net gain
BNHIDB	Beverly and North Holderness Internal Drainage Board
CA	Compulsory Aquisition
CB6	6th Carbon Budget
CfD	Contract for Difference
CI	Confidence Interval
CNP	Critical National Priority
CO_2	Carbon Dioxide
DAS	Design and Access Statement
dB	Decibel
DBA	Dogger Bank A
DBB	Dogger Bank B
DBC	Dogger Bank C
DBS	Dogger Bank South
DCLG	Department for Communities and Local Government
DCO	Development Consent Order
DEFRA	Department for Environment, Food & Rural Affairs
DESNZ	Department for Energy Security & Net Zero
DML	Deemed Marine Licence

Acronym	Definition
DRP	Design Review Pannel
EIA	Environmental Impact Assessment
eNGO	Environmental Non-Governmental Organisation
EPP	Evidence Plan Process
ERYC	East Riding of Yorkshire Council
ES	Environmental Statement
ESP	Electrical Switching Platform
ETG	Expert Topic Group
ExA	Examination Authority
FFC	Flamborough and Filey Coast
GHG	Green House Gas
GVA	Gross Value Added
GW	Giggawatt
HCC	Hull City Council
HE	Historic England
HRA	Habitats Regulations Assessment
IP	Interested Party
IPMP	In-Principle Monitoring Plan
ISH	Issue Specific Hearing
JNCC	Joint Nature Conservation Committee
LIR	Local Impact Report
LoSCM	Library of Strategic Compensation Measures
LVIA	Landscape and Visual Impact Assessment

Acronym	Definition
MarESA	Marine Evidence-based Sensitivity Assessment
MCAA	Marine and Coastal Access Act
MCZ	Marine Conservation Zone
MGN	Marine Guidance Note
MHWS	Mean High Water Springs
MMMP	Marine Mammal Mitigation Protocol
MMO	Marine Management Organisation
MOD	Ministry of Defence
MPS	Marine Policy Statement
MRA	Minerals Resource Assessment
MRF	Marine Recovery Fund
MSA	Mineral Safeguarded Area
MSL	Mean Sea Level
NFFO	National Federation of Fishermen's Organisation
NGET	National Grid Electricity Transmission
NGT	National Gas Transmission
NHHM	North Humber to High Marnham
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
O&M	Operation & Maintenance
OCoCP	Outline Code of Construction Practice
ODOW	Outer Dowsing Offshore Wind

Acronym	Definition
OLMP	Outline Landscape Management Plan
OOMP	Offshore Operations and Maintenance Plan
OWEIP	Offshore Wind Environmental Improvement Package
OWIC	Offshore Wind Industry Council
PEIR	Preliminary Environmental Information Report
PILs	Persons with an Interest in Land
RIAA	Report to Inform Appropriate Assessment
RRH	Remote Radar Head
RSPB	Royal Society for the Protection of Birds
SAC	Special Area of Conservation
SEL	Sound Exposure Level
SIP	Site Integrity Plan
SN	Southern North Sea
SoCG	Statement of Common Ground
SPA	Special Protection Area
SSC	Suspended Solid Concentrations
SSSI	Site of Special Scientific Interest
TCC	Temporary Construction Compound
TTS	Temporary Threshold Shifts
UK	United Kingdom
UXO	Unexploded Ordnance
WMS	Written Ministerial Statement
WSI	Written Scheme of Investigation

1 Executive Summary

1. This document summarises the Applicants' position as set out in the Application documents and other submissions from the Applicants during the Examination, including oral submissions, with reference to the most up to date Government policy and announcements. It then draws this information together and presents the Applicants' closing submissions on the overall planning balance and case for the Projects.

2. In summary, it demonstrates why there is a compelling case in favour of the Projects and why the Development Consent Order (DCO) should be granted by the Secretary of State.

3. Under The Planning Act 2008 Act (the '2008 Act'), the primary policy framework for examining and determining applications for development consent is provided by National Policy Statements (NPS). The Applicants have clearly demonstrated in the DCO Application and throughout Examination that there is a clear need for the Projects to achieve the Government's policy commitments as set out in the Overarching NPS for Energy (EN-1), which confirms the need for new low carbon energy infrastructure, including Offshore Wind, and confirms the status of the Projects as critical national priority (CNP). EN-1 is clear that for projects which qualify as CNP infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases.

4. A number of important energy and climate change policies and plans have been published since 2020, including most recently the Government's Clean Power 2030 Action Plan. These documents provide further support for the urgent need for new energy infrastructure (as set out in NPS EN-1) in order to provide security of supply, add resilience to the energy network, support the deployment of renewables and ultimately support the Government's Clean Power 2030 Mission and the transition to net zero by 2050. Section 2 of this Closing Statement sets out how the Projects would contribute toward the important objectives set out in UK energy and climate change policy.

5. As set out in section 3 of the document, the Applicants have worked collaboratively with stakeholders throughout the Projects' development to date and this is reflected in the positive state of the majority of the Statements of Common Ground (SoGCs) as demonstrated by the **Statement of Commonality of Statements of Common Ground (Revision 3)** [document reference 9.1] submitted at Deadline 8.

6. In addition to this, the Applicants sought significant pre-application advice from stakeholders, in-line with Department for Communities and Local Government (DCLG) Guidance, and engaged thoroughly through the Evidence Plan Process (EPP) which was expanded beyond Habitats Regulations Assessment (HRA) aspects to include Environmental Impact Assessment (EIA) topics. Section 3 also summarises how the Applicants have found resolutions across a host of environmental aspects of relevance to the Projects as well as those topics where a change of significance was recorded following the reassessments as part of the updated Environmental Statement (ES) submitted at Deadline 7.

7. Section 4 of this document provides information on progress made with matters which are currently not resolved and subject to ongoing discussions between the Applicants and the relevant stakeholders. It is not expected that these matters will be agreed by the close of Examination. Thus, these areas are highlighted as key issues for decision and determination by the Secretary of State.

8. Section 5 sets out the main points of disagreement that remain in relation to the **Draft DCO (Revision 11)** [document reference 3.1] and explains the Applicants' position on these.

9. Section 6 summarises the Applicants' compulsory acquisition case for the powers sought through the DCO, as well as providing a final update on the excellent progress that has been made in reaching voluntary agreements with landowners.

10. The Projects have a number of very clear and substantial benefits. These include responding to the urgent need for low carbon energy infrastructure; providing security of supply and resilience to the energy system; the contribution toward important UK energy and climate change legislation and policy objectives, including net zero by 2050 and Clean Power 2030; employment generation and support to the national and local economy, amongst others.

11. In contrast, the long-term, permanent and direct significant residual adverse effects of the Projects are confined to effects on a limited number of receptors listed in the ES. The Projects have also conceded that there will be an Adverse Effect on the Integrity (AEoI) of certain protected European sites as a result of the Projects. As a result, the Applicants have provided a derogation case and compensation measures for these impacts, which are secured through the Draft DCO.

12. It is important to note that NPS EN-1 (paragraph 3.1.2) does recognise that it will not be possible to develop the necessary amount of energy infrastructure without some significant residual effects.

13. Notwithstanding the above, the Projects are CNP infrastructure (as confirmed in EN-1), and CNP policy places a clear presumption in favour of granting consent for such infrastructure where residual effects remain after the application of the mitigation hierarchy. Indeed, EN-1 states (paragraph 4.1.7) that for projects which qualify as CNP infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases. However, EN-1 goes on to clarify that this presumption in favour of consent does not apply to residual effects that present an unacceptable risk to, or unacceptable interference with, human health and public safety, defence, irreplaceable habitats (e.g. impacts on areas covered by the Habitats Regulations or Marine Conversation Zones) or unacceptable risk to the achievement of net zero. The Projects RIAA could not rule out an AEoI of certain protected European sites and so the presumption will not apply in respect of those residual impacts. However, the Applicants have demonstrated throughout the Application documents why a derogation should be made for the Projects to enable consent to be granted.

14. For the reasons set out above and throughout this document, the planning balance weighs overwhelmingly in favour of the Projects and development consent should therefore be granted.

2 Introduction

2.1 Purpose of this Document

15. This document summarises the Applicants' latest position as set out in the Application Documents and other submissions from the Applicants during the Examination, including oral submissions and with reference to the most up to date Government policy and announcements.

16. It does not introduce new material but provides clarity on the Applicants' final position prior to the close of the Examination. Section 4 of this document focuses on those matters where disagreements remain and references previous submissions the Applicants have made.

17. It then draws this information together and presents the overall planning balance and case for the proposed Dogger Bank South (DBS) East and DBS West Offshore Wind Farms (herein 'the Projects').

18. In summary, it demonstrates why there is a compelling case in favour of the Projects and why the DCO should be granted.

2.2 The Examination Process

19. The Applicants submitted the DCO application to the Planning Inspectorate on 12 June 2024. The application was accepted for examination by the Planning Inspectorate on 10th July 2024. A Preliminary Meeting was held but was adjourned on 22nd October 2024, largely for reasons relating to offshore ornithology and the HRA compensation proposals, following submissions by Natural England and Royal Society for the Protection of Birds (RSPB) prior to the Preliminary Meeting. The Applicants are of the view that this delay was unnecessary and has harmed the competitivity of the Projects in future Contract for Difference rounds, as the Applicants appeared to be treated differently to other similar offshore wind developments.

20. The Examination started on the 14th January 2025 after the Preliminary Meeting resumed and formally concluded. This was followed by the first round of hearings, and subsequent Deadlines as per the Examination Timetable. The Applicants have followed the instruction of the Examination Authority (ExA) throughout Examination at every stage, including notable Rule 17 requests such as the request to update the ES in full by Deadline 7 [PD-018] in April 2025. The ExA has chosen to close Examination three days early, on the 11th July 2025, following the issuing of a Rule 9 Letter [PD-029] on the 30th June 2025.

21. During the extended pre-examination period, the Applicants advanced two Change Requests, **Project Change Request 1 – Offshore and Intertidal Works** [AS-141] and **Project Change Request 2 – Onshore Substation Zone** [AS-152], which reduced the scope of the Projects. These were consulted upon in November-December 2024 and submitted into examination on the 10th January 2025 ahead of the Preliminary Meeting [AS-129]. The Change Requests were both accepted into examination on the 21st January 2025 [PD-012] with documents updated to reflect the changes accepted into Examination.

3 Policy – Needs Case and Policy Support

22. Recent Government policy has been increasingly clear that mitigating the effects of climate change and ensuring UK energy security, resilience and affordability is a top priority.

23. Since the submission of the Projects' DCO Application in June 2024, policy and Government support has grown even stronger with regard to the steps necessary to reach Net Zero and improve energy security, resilience and self-sufficiency of the UK energy market.

24. In April 2025, the Government consulted on material and minor updates to NPS EN-1, NPS EN-3 and NPS EN-5 (the '2025 revisions'). The 2025 revisions seek to embed Clean Power 2030 policy into the Energy NPSs; revise CNP wording to assist developers in bringing forward higher quality applications; establish policy guidance for onshore wind developments under the Energy NPSs; provide updated guidance for offshore wind developments and seek to endorse the recommendations made in the Centralised Strategic Network Plan in NPS EN-5.

25. The policy narrative of the 2025 revised draft NPS EN-1 has been updated to bring Clean Power 2030 to the front and centre as the primary policy that the NPSs enable. It points towards the Clean Power 2030 Action Plan, which contains the capacity ranges for technologies in 2030 that the NPSs support. Successfully delivering Clean Power 2030 will require rapid deployment of new clean energy capacity. Delivering Clean Power 2030 also paves the way to decarbonising the wider economy by 2050.

26. The Projects constitute low carbon infrastructure as they make provision for offshore electricity generation that does not involve fossil fuel combustion. Resultingly, the Projects are recognised as a CNP infrastructure.

27. Alongside the recognised need to deploy nationally significant low carbon CNP infrastructure, NPS EN-1 also recognises that the UK's energy security and Net Zero ambitions will "only" be delivered if we can enable the development of new low carbon sources of energy at "speed and scale".

28. Given the established need to deploy CNP infrastructure at such speed and scale, the starting point for assessing applications, such as the one made for these Projects, is to place substantial weight on the need for the development when assessing the Applications. Furthering this weighting and the overall significance of the needs case is the fact that section 3.1 of NPS EN-1 recognises that it will not be possible to develop the necessary amounts of new large-scale energy infrastructure without some significant residual adverse impacts, following the application of the mitigation hierarchy.

29. The Projects will make a significant contribution to the achievement of both the national renewable energy targets and to the UK's contribution to global efforts to reduce the effects of climate change. The Climate Change Act 2008 (2050 Target Amendment) Order 2019 sets a UK target for at least a 100% reduction of Green House Gas (GHG) emissions (compared to 1990 levels) by 2050. This ambitious 'net zero' target will only be met by the crucial contribution from the offshore wind industry. The UK Climate Change Committee, in its advice on the Sixth Carbon Budget, identified that the amount of renewable electricity generated in the UK must double by 2030 if it is to meet its legally binding climate change targets.

30. Based on an estimated capacity of 3GW, once fully operational, the Projects could generate enough electricity to meet the average annual domestic energy needs of around 3 million typical UK homes. The Projects would reduce carbon emissions and significantly contribute to the economy by providing substantial investment locally and nationally, as well as employment and new infrastructure during all phases of the Projects.

31. The Greenhouse Gas assessment, as contained within **Chapter 30 Climate Change (Revision 2)** [REP6-036], estimates that the Projects would avoid 183.5 million and 168.4 million tonnes (values wake adjusted to 1% scenario) of CO_2 emissions, resulting in significant beneficial effects across the Projects' whole life cycle and all Development Scenarios.

32. In being specific to the critical deployment needs of offshore wind developments, paragraph 5.5.4 of the Overarching NPS for Energy EN-1 explicitly recognises wind farms as being "an integral part of our (The Government's) plan to achieve Net Zero, as well as delivering affordable clean energy to consumers". The paragraph goes on to state that:

"*The Government has an ambition to deliver up to 50GW of offshore wind by 2030 and the Committee on Climate Change's 6th Carbon Budget (CB6) views offshore wind as the backbone of electricity generation across all its scenarios*".

33. In support of the Projects, it is noted that the 2025 revision of NPS EN-1 has expanded the governments ambition to accelerate the deployment of offshore and onshore wind to meet its Clean Power 2030 mission.

34. NPS EN-3, taken together with the Overarching NPS EN-1, makes clear reference to the target of 50GW of new offshore wind capacity by 2030 (paragraph 2.8.1). Given the ambitions to deliver up to 50GW of offshore wind by 2030, there is a need to speed up and reduce delays in the consenting process (paragraph 2.8.7).

35. The 2025 revision of NPS EN-3 acknowledges that due to the rate of deployment of offshore wind there has been a rapid increase in the cumulative effects on the environment from offshore wind (paragraph 2.8.7). It further acknowledges that:

"*Most recent DCOs have needed to include conditions related to benthic and avian compensation measures. However, it is becoming increasingly difficult for developers to*

source sufficient compensation measures to allow their consent to be granted and some projects which have received consent have found it difficult to discharge their compensation conditions."

36. To address this concern, paragraph 2.8.8 of the 2025 revision of NPS EN-3 states that reducing delays in the planning process is essential to accelerate deployment of offshore wind and as such the Department for Energy Security & Net Zero (DESNZ) are working closely with Defra to support them in delivering the Offshore Wind Environmental Improvement Package (OWEIP) to address environmental barriers at a strategic level.

37. It is also noted that the ExA in its Rules 4, 6, 9, 13 and 17 letter dated 17 December 2024 stated that in relation to Habitats Regulations Assessment compensation for some potentially impacted qualifying features, it has taken into account the likelihood of progress on project-specific compensation during the limited time available within the Examination and, where this is incomplete or insufficient, that there are strategic compensation approaches being progressed outside this individual Examination by the Government that may be available to the Secretary of State before any final decision on the application is made.

38. These strategic compensation approaches, including the establishment of OWEIP as mentioned in NPS EN-3, as well as the establishment of the Marine Recovery Fund (MRF) by Defra, are intended to be used as a delivery mechanism by the Projects, where possible, to deliver some of the required compensation measures pursuant to the HRA derogation case that has been submitted for the Projects [REP7-019]. Further information on the proposed compensation measures is included in section 3.3.4 below.

39. The 2025 draft NPS EN-3 states at paragraph 2.8.176 that with the increasing use of the nation's offshore wind resource, the question of wake effects, where wind turbulence arises between neighbouring developments, has gained attention. It requires applicants to consider the impact of their proposal on other activities and make reasonable endeavours to address these. **The Applicants' Closing Statements on Wake Effects** [document reference 18.6] summarise the Applicants' position on the interpretation of the existing NPS, the 2025 draft NPS and the other aspects of the Wake Effects topic that have arisen during examination.

40. Whilst NPSs are the primary policy framework for the assessment and determination of Nationally Significant Infrastructure Projects (NSIPs), other planning policy may be both important and relevant where it does not conflict with the NPSs. The Applicants have provided a comprehensive assessment of the Projects against the relevant NPSs in the **Policy Compliance Assessment Tables** [APP-227] submitted with the DCO application.

41. The Marine and Coastal Access Act 2009 (MCAA 2009) created a strategic marine planning system that seeks to promote the efficient, sustainable use and protection of the marine environment, guided by the Marine Policy Statement (MPS) and a series of Marine Plans.

42. The MPS accepts that renewable energy infrastructure can potentially have adverse effects on fish, mammals, and birds but at the same time recognises through paragraph 3.3.19 that "the UK has some of the best wind resources in the world and offshore wind will play an important and growing part in meeting our renewable energy and carbon emission targets and improving energy security by 2020, and afterwards towards 2050" and that offshore wind "has the potential to have the biggest impact in the medium-term on security of energy supply and carbon emission reductions through its commercial scale output".

43. The Projects are in line with the vision and objectives of the MPS by virtue of their substantial contribution to renewable energy targets, thereby helping in the development of a low carbon economy and sustainable economic development. The Applicants have provided an assessment of the Projects' compliance with the relevant Marine Plan Policy being the East Inshore and Offshore Marine Plan (adopted April, 2014) and the North East Inshore and Offshore Marine Plan (adopted June, 2021). This assessment is contained in **Policy Compliance Assessment Tables** [APP-227].

44. As demonstrated by the assessment contained in the ES, the potential likely significant effects of the Projects have been or will be avoided or reduced as far as possible whilst the benefits of the marine area will be retained, in line with the requirements of the MPS.

45. Section 4.3.4 of this document presents information on how the Projects have provided well developed compensation plans for the three derogation cases, utilising measures included in the Library of Strategic Compensation Measures (LoSCM), per Round 4 Strategic Compensation Plans (where applicable) and backed by adaptive management options. Notwithstanding some unresolved matters relating to the three derogation cases, the Applicants maintain the view that it has, as far as possible, developed suitable measures to either avoid or minimise the risk of AEoI from the Projects. In addition to the three conceded derogation cases, the Applicants have also presented without prejudice derogation cases for the razorbill feature of the Flamborough and Filey Coast Special Protection Area (SPA) and the guillemot feature of the Farne Islands SPA, as Natural England have not been able to rule out AEoI for these features.

46. Since the submission of the Projects for examination the previously adopted East Riding of Yorkshire Local Plan 2012- 2029 Strategy Document (Adopted April 2016) and emerging policies have been updated and the new East Yorkshire Local Plan Update (2022) has been adopted by the Council in April 2025. Where relevant, the Projects' compliance with the current adopted Local Plan has been considered in **Chapter 3 Policy and Legislative Context (Revision 2)** [REP7-026] of the updated ES submitted at Deadline 7.

47. The outcome of these assessments during the pre-application stage as well as in the updated ES identifies that the Projects are not in conflict with adopted and emerging policies contained in the Local Development Plan apart from limited adverse impacts of landscape and visual effects relating to the Onshore Converter Station.

4 Resolution of Issues

4.1 Pre-application engagement with stakeholders

48. The Applicants sought significant pre-application advice from stakeholders in-line with DCLG Guidance, and engaged thoroughly through the Evidence Plan Process (EPP) which was expanded beyond HRA aspects to include a range of EIA topics.

49. It is important to note that the EPP was set-up to work around the existing requirements of the Planning Act 2008 DCO application process including the statutory pre-application consultation process. The EPP grouped consultees into several 'Expert Topic Groups' (ETGs) which facilitated focused discussions on specific EIA topics.

50. The Projects engaged with the separate ETG Groups outlined in Table 3-3 of the **Consultation Report** [APP-034] extensively throughout pre-examination which meant the Projects already had a very advanced nature of SoGC with numerous parties at the first publication of these documents at Deadline 1.

51. At the point of submission, the ES had concluded relatively few significant effects as a result of the construction, operation and decommissioning of the Projects. As concluded by the Planning Statement, the Applicants considered that there remained substantial weight in the overall planning balance in favour of the Projects despite these significant effects due to the overwhelming benefits of the proposals.

4.2 Engagement and consultation with the community prior to Examination

52. In parallel to liaising with statutory stakeholders and interest groups through the ETG process, the Applicants also undertook an extensive multi-stage consultation process in accordance with all relevant legislation, regulation and guidance. In addition to the three phases of consultation discussed in sections 5, 6 and 7 of the **Consultation Report** [APP-034], the Projects have also undertaken significant engagement with both the local community and statutory stakeholders. Since inception, the Projects identified the local communities as essential stakeholders to the development of the scope of the Projects and have sought to keep them involved. The Applicants have sought to do this in a number of ways, including by attending Parish Council meetings and through the publication of Newsletters.

53. This ongoing consultation has had a significant impact on the design evolution of the Projects throughout the DCO pre-application stage, as well as playing a significant role in the structure and shape of environmental assessments to understand the impact of the Projects.

54. During the statutory consultation period over 400 people attended an in-person or online event, and 110 responses to the consultation were received. The Applicants believe that the relatively small number of consultation responses received is a fair indication of the general acceptance by the community of the Projects due to this engagement.

55. The Applicants followed relevant guidance and regulations for the publication of examination. In addition to the statutory requirements, the Applicants undertook extensive further engagement with parish councils and community groups to explain the registration process in the pre-application period. Notwithstanding this extensive engagement, the general acceptance by the community of the Projects is demonstrated in that only five members of the public and three Parish Councils registered as Interested Parties for examination.

4.3 Engagement throughout Examination and the outcomes

56. Discussions with stakeholders regarding the projects' design, scope, methodology and conclusions of assessments and associated mitigation has been ongoing between the Applicants and stakeholders throughout examination. Whilst the examination process lends itself to responding deadline to deadline, it is the experience of the Applicants that this is aided by thorough engagement between Interested Parties on issues to better find resolution. This approach, undertaken via email, site visits and virtual meetings has been strongly incorporated by the Applicants on the Projects. This is evidenced in the final statements of common ground with each stakeholder which set out the extensive engagement throughout examination used to facilitate the Agreement logs later in those documents.

57. As is common in the DCO Examination process, there have been multiple areas of disagreement between the Applicants and stakeholders. Whilst it is not considered possible for applicants to resolve all stakeholder issues with a project, the Applicants have demonstrated great success in reaching resolution across a broad range of topic areas. **The Statement of Commonality of Statements of Common Ground (Revision 3)** [document reference 9.1] (hereafter 'Statement of Commonality') submitted at Deadline 8 provides a summary of the positions held across all Statements of Common Ground. This document demonstrates *en masse* the success the Projects have achieved in resolving areas of disagreement with stakeholders. The Applicants consider it prudent to provide examples where resolutions have been reached to demonstrate the acceptability of the Projects in the eye of key stakeholders.

4.3.1 Landscape and Visual Effects at the OnshoreSubstation Zone

During the pre-application stage the Applicants heavily engaged with the Landscape and Visual Impact Assessment (LVIA) ETG to discuss the assessment in **Chapter 23**

Landscape and Visual Impact Assessment (Revision 2) [REP7-090] and progress the **Outline Landscape Management Plan (OLMP) (Revision 4)** [REP4-044]. Throughout examination, key areas of disagreement on these documents, and the **Design and Access Statement (DAS) (Revision 3)** [REP7-103], have been resolved.

58. Following the receipt of a Grid Connection offer and supply chain engagement, the Applicants obtained further certainty on the size of Onshore Converter Station(s) required. The Applicants considered the feedback from East Riding of Yorkshire Council (ERYC), Historic England (HE) and public and landowner feedback received during the pre-application stage requesting smaller Onshore Converter Stations and opted to seek **Project Change Request 2 – Onshore Substation Zone** [AS-152]. Pre-submission consultation feedback on these changes highlighted they would be received positively by stakeholders due to the reduced built form of the Onshore Converter Stations. The Change request was subsequently submitted into examination on the 10th January 2025 [AS-152] and promptly accepted into examination by the ExA on 21st January [PD-012].

59. The ERYC requested an independent architect be added to the Design Review Pannel (DRP), the local Ward councillors be consulted, and further detail be provided on how the design review process would work. The **DAS (Revision 3)** [REP7-103] was updated to address these comments and confirm the Applicants will agree the detailed Terms of Reference guide for the DRP with the ERYC. In addition, they have added Historic England as a consultee considering their concerns regarding the Heavy Anti-Aircraft gun site at Butt Farm. Since these parties will be embedded in the process to finalise landscape design of the Onshore Substation Zone, the Applicants confirm they consider there to be no need for the wording proposed by the ExA on the Draft DCO to Requirement 10(3)(b) as outlined in **The Applicants' Comments on the ExA's Proposed Schedule of Changes to the dDCO** [REP7-130].

60. Further to this, the Applicants have provided additional viewpoints and photomontages to assist progression towards agreement on assessment conclusions with ERYC and the ExA. However, it should be noted that they do not form part of the main LVIA and the original eight agreed viewpoints are considered to be sufficient for the purposes of the LVIA and have been agreed with the ERYC.

61. As detailed in section 4.3.1, The Applicants updated the construction assessment in **Chapter 23 Landscape and Visual Impact Assessment (Revision 2)** [REP7-090] at Deadline 7 to address comments raised by ERYC in their Local Impact Report (LIR) and present the temporary significant adverse effects more clearly.

62. The above case study from the DCO Examination shows the positive and collaborative approach the Applicants have taken to resolving stakeholder issues from examination. This approach, heavily focused around engagement, has ensured that there are no major disagreements with stakeholders with respect to Landscape and Visual at the end of examination. This is demonstrated through the positive messages regarding agreements identified in the final **SoGCs** submitted at Deadline 8 for **Historic England (Revision 3)** [document reference 9.4] and **ERYC (Revision 3)** [document reference 9.2] respectively.

4.3.2 Marine Mammals

63. During the pre-application stage, the Marine Management Organisation (MMO) and Natural England made representations about the Applicants' Marine Mammals assessments in the Environmental Statement and the Report to Inform Appropriate Assessment (RIAA), particularly the impact of injury and disturbance to marine mammals from underwater noise during piling driving. The Applicants updated relevant underwater noise modelling and assessment work as part of **Project Change Request 1 - Offshore and Intertidal Works** [AS-141, AS-138, AS-140] which removed the Electrical Switching Platform (ESP) and four collector platforms from the Projects scope to help to reduce impacts upon receptors. The Applicants updated relevant underwater noise modelling and assessment work as part of **Project Change Request 1 - Offshore and Intertidal Works** [AS-141, AS-138, AS-140] which removed the Electrical Switching Platform (ESP) and four collector platforms from the Projects scope to help to reduce impacts upon receptors. Following this, the Applicants updated the **In Principle Site Integrity Plan (SIP) for the Southern North Sea (SN) Special Area of Conservation (SAC) (Revision 4)** [REP7-119] and **Outline Marine Mammal Mitigation Protocol (MMMP) (Revision 5)** [REP7-117] to align the Projects' mitigation proposals with that outlined in Defra's updated Policy Paper on Reducing Marine Noise[1] and associated Joint Statement.

64. Despite this, Natural England and MMO remained concerned regarding potential impacts on marine mammals from the Projects. As a result, the Applicants provided the **Illustrative Noise Reduction Technical Note (Revision 2)** [REP5-032] to ease these concerns by illustrating the effectiveness of mitigation and reduction in impact that could be achieved. Whilst Natural England and MMO were comfortable that the note demonstrated that there would be no significant impact to marine mammals from underwater noise, they maintained that a formal commitment to delivering this mitigation should be secured through the DCO. The Applicants have now agreed the wording of condition 15(1)(g) of Deemed Marine Licences (DMLs) 1 and 2 and condition 13(1)(g) of DMLs 3 and 4 in the **Draft DCO (Revision 11)** [document reference 3.1] with the MMO and Natural England meaning the wording proposed by the ExA is not required – as outlined in **The Applicants' Comments on the ExA's**

[1] https://www.gov.uk/government/publications/reducing-marine-noise/reducing-marine-noise

Proposed Schedule of Changes to the dDCO [REP7-130], and confirmed by the MMO and Natural England in their comments on the ExA's proposed schedule of changes to the dDCO [REP7-178; REP7-151].

65. These responses also confirm that no further amendments are required to the condition wording in the DCO that secures the Site Integrity Plan, with the MMO and Natural England both supporting the Applicants' position that additional SACs designated for seal species should not be added to the condition wording because the purpose of the document is specifically for harbour porpoise and there are no outstanding concerns regarding adverse effect for any protected sites designated for any marine mammal species.

66. All material issues related to marine mammals from the MMO and Natural England are now considered resolved in the Final SoCGs for **Natural England (Revision 3)** [document reference 9.24] and **MMO (Revision 3)** [document reference 9.6] submitted at Deadline 8.

4.3.3 Air Defence and Radar

67. Prior to application, and through the examination period, the Applicants have worked hard to ensure the avoidance of impacts to military radars where possible. This has been achieved through making reductions of both the red line boundary of the array areas and the maximum turbine tip height prior to submission of the Environmental Statement.

68. The radar modelling submitted at Preliminary Environmental Information Report (PEIR) – based on the contemporaneous Project Design Envelope - showed approximately 89% of the DBS West Array Area would be in the radar line of site of the Staxton Wold Remote Radar Head (RRH) with a maximum turbine tip height of 452m amsl. This was reduced to approximately 66% with a maximum turbine height of 396m amsl – a reduction of 23%, whilst the array area boundary has also been moved further away from the radar, allowing a further avoidance of impacts.

69. At Deadline 5, the Applicants further reduced the maximum tip heights to around 378m amsl (376.8m above MHWS), allowing a further avoidance of impacts and leaving just 56.4% of DBS West in radar line of sight. This resulted in approximately 152km2 of the DBS West sitting outside of the radar line of sight for the largest Wind Turbine Generator in the envelope.

70. Within **Chapter 15 Aviation and Radar (Revision 2)** [REP7-056] it was reported that DBS West had the potential to affect air defence radars, as it could be developed in line of sight of the Staxton Wold Remote RRH whereas DBS East had no impact. The Applicants concluded that mitigation would be required to reduce the impact of DBS West on the Staxton Wold RRH. However, in line with paragraph 5.5.46 of NPS EN-1, the Applicants do not propose any further impact avoidance by way of a reduction or alteration in the scale of development.

71. In acknowledgement that the government's ambitions for the delivery of its Net Zero targets cannot be achieved without impacts to air defence radar, the UK Clean Energy 2030 Action Plan established that government would fund the delivery of strategic air defence radar mitigation for impacts caused by infrastructure identified as a 'Critical National Priority' such as the Projects through an initiative known as Programme Njord. Programme Njord specifically includes the Staxton Wold RRH and the Applicants are confident that it will deliver a mitigation solution in line with the Projects' delivery timeframes (the Applicants' full case in relation to the availability of mitigation through Programme Njord is set out in section 2.2 of **The Applicants' Written Summaries of Oral Submissions made at Issue Specific Hearing 6 (ISH6)** [REP6-055]).

72. In recognition of these impacts to Staxton Wold RRH from DBS West, Requirement 31 has been included in **Draft DCO (Revision 11)** [document reference 3.1] to ensure that appropriate mitigation for any impacts is secured and that the principal stakeholder with interests in this issue – the Ministry of Defence (MOD) – will have appropriate control of these impacts in consultation with the Secretary of State. The drafting of the requirement is reflective of that accepted by the Secretary of State for similar issues for many previously consented offshore wind farm developments. Therefore, the wording is well precedented in relation to the issue at hand.

73. In their Relevant Representations on this matter [AS-002] MOD objected to the Application on the basis of the impacts predicted, seeking the security of appropriate mitigation in the Development Consent Order. This position was reinforced in MOD's Written Representation [REP1-062]. However, in April 2025, MOD offered the contingent withdrawal of their objection to the consent application, subject to acceptance of their preferred requirement wording. The proposed wording was identical to that included in the DCO by the Applicants, with the exception being that the MOD wording was drafted to be applicable to both DBS West and DBS East, whereas the Requirement included in the DCO by the Applicants was limited in applicability to DBS West only, given that DBS East could not impact on the Staxton Wold RRH as it occurs beyond radar line of sight [AS-175].

74. Following subsequent engagement between MOD and the Applicants between Deadlines 6 and 9, agreement has been reached by the parties on the Requirement wording. This agreed wording has been included in the **Draft DCO (Revision 11)** [document reference 3.1] submitted by the Applicants at Deadline 8 meaning the wording proposed by the ExA in the Examining Authority's Schedule of Recommended Amendments to the Applicant's DraftDCO [PD-028] is not required. The Applicants submit that this issue should now be considered resolved in Examination.

4.3.4 HRA Compensation

75. Throughout pre-application, pre-examination and during examination, the Projects developed their compensation plans for the three derogation cases (namely, Annex I sandbank loss from the Dogger Bank SAC, impacts on the kittiwake feature of the Flamborough and Filey Coast (FFC) SPA, and impacts on the guillemot feature of the FFC SPA) which rely principally on measures included in the LoSCM, in accordance with the Round 4 Strategic Compensation Plans (where applicable. These plans are backed by adaptive management options, ensuring that compensation measures will be delivered in order to address the AEoI that could not be ruled out by the Projects.

76. In addition to the three conceded derogation cases, the Applicants have also presented without prejudice derogation cases for the razorbill feature of the FFC SPA and the guillemot feature of the Farne Islands SPA, as Natural England have not been able to rule out AEoI for these features.

4.3.4.1 Dogger Bank SAC

77. As outlined above, agreement was already achieved regarding the compensation measure and delivery mechanism for any in-combination effects upon Dogger Bank SAC. This measure gained further security following the publication of the interim guidance by DESNZ in January 2025 which confirmed the eligibility of the Round 4 Projects for strategic compensation for impacts to benthic features and outlined how the measure can be referred to by developers. Guidance was accompanied by a Written Ministerial Statement (WMS) from Defra committing to the delivery of sufficient MPA designations and/or extensions to provide strategic compensation for benthic impacts resulting from offshore wind developments. Furthermore, guidance confirms the launch of a MRF in late 2025 to provide an optional mechanism for developers to fund strategic compensation measures. The Applicants compensation requirement and approach is detailed in **Project Level Dogger Bank Compensation Plan (Revision 4)** [REP7 -020]. While some detail is yet to be agreed regarding the final quantum, the Applicants regard the measure as secured.

78. The Applicants note that in the final Natural England Risk and Issues Log [REP7-154] the only 'red' issue remaining for benthic compensation is disagreement of compensation quantum, and Natural England acknowledge that the Applicants have provided 'without prejudice' footprints.

4.3.4.2 Kittiwake at Flamborough and Filey Coast SPA

79. As outlined above, the compensation measure was agreed with Statutory Nature Conservation Bodies (SNCBs) pre-application. The Applicants have provided multiple updates of the **Project Level Kittiwake Compensation Plan (Revision 7)** [document reference 6.2.1], with this document providing a robust plan for the delivery of kittiwake compensation in line with the requirements of the **Round 4 Kittiwake strategic Compensation Plan** [APP-053]. In addition to the provision of a Project-led offshore Artificial Nesting Structure (ANS), the proposals provide details of collaborative delivery of reciprocal shared nesting spaces on another ANS with Outer Dowsing Offshore Wind (ODOW) mitigating any risk associated with having a single offshore structure. This is in addition to nesting spaces on the Applicants' existing onshore ANS near Gateshead constructed in 2023.

80. Key milestones within submission to date include:

- Identification of a suitable location to site the offshore ANS (see **Project-Level Kittiwake Artificial Nesting Structure (ANS) Site Selection Report (Revision 2)** [PDB-007]);
- A substantially progressed ANS design (which has been presented and discussed with the Kittiwake Steering Group);
- Advanced discussions regarding an Agreement for Lease from The Crown Estate demonstrated by a Letter of Comfort appended to the **Project Level Kittiwake Compensation Plan (Revision 6)** [REP6-010]);
- A marine licence application for the ANS to be submitted to the MMO prior to or very soon after the end of examination.
- A detailed **Outline Kittiwake Compensation Implementation & Monitoring Plan (Revision 2)** [REP4-022] has also been submitted into the examination, outlining the route to delivery, future monitoring, success criteria, adaptive management and an indicative programme for future monitoring and maintenance.

81. No other offshore wind development has been at this stage of advancement regarding kittiwake compensation prior to the end of Examination, as demonstrated by compliance with the Natural England checklist for compensation measures.

82. In the final Natural England Risk and Issues Log [REP7-154], the only 'red' issue remaining for kittiwake compensation is regarding mitigation and reducing the Projects' impacts on kittiwake, demonstrating maturity and suitability of compensatory measures. Regarding the single 'red' issue, Natural England have acknowledged that they are not in a position to comment on the appropriateness of array revision or reduction as a viable mitigation option for the Projects.

4.3.4.3 Guillemot [and Razorbill] at Flamborough and Filey Coast SPA and Guillemot at the Farne Islands SPA

83. As outlined in paragraph 251 of the **RIAA HRA Part 4 of 4 – Marine Ornithological Features (Revision 5)** [REP6-008] the Applicants consider that the displacement impacts predicted at DBS East and DBS West in-combination with other projects, will not adversely affect the integrity of the FFC SPA. However, due to the previous decisions by the Secretary of State concluding an AEoI for guillemot at the FFC SPA, the Applicants did not consider it worthwhile to contest this point and on this basis concede AEoI for this feature. With regard to razorbill, the Applicants concluded no AEoI (see paragraph 329 of the **RIAA HRA Part 4 of 4 – Marine Ornithological Features (Revision 5)** [REP6-008]).

84. In addition on the basis of population modelling and trends at the site, the Applicants have ruled out AEoI for guillemot at the Farne Islands SPA (see section 9.8.2.2.5.1 of the **RIAA HRA Part 4 of 4 – Marine Ornithological Features (Revision 5)** [REP6-008]).

85. For guillemots and razorbills, no AEoI was identified through the Round 4 Plan Level HRA and no strategic plan developed. Despite this, the Applicants have undertaken a comprehensive programme of works to identify potential locations for a predator eradication measure and undertaken surveys of the most feasible options in order to confirm site suitability (see section 5.1.3.2 for further details). The process undertaken is described in **Guillemot [and Razorbill] Compensation Plan (Revision 6)** [REP6-012]. Through their work, the Applicants identified the Isles of Scilly as a prime location that could fulfil the Projects' compensation requirements (**Isles of Scilly Guillemot and Razorbill Survey and Habitat Assessment** [REP4-097]), this is now being taken forward as a strategic project by the Isles of Scilly Seabird Recovery Partnership (see section 5.1.3.2 for further details). In March 2025, Defra confirmed that a task and finish group, comprising Defra, DESNZ, Natural England, The Wildlife Trusts, Offshore Wind Industry Council (OWIC), The Crown Estate and the RSPB has been formed:

> *"to establish the mechanisms required to allow predator eradication to be delivered as a strategic compensation measure, noting the option for this to delivered by the Marine Recovery Fund".*
>
> *"All parties agree that predator eradication on the Isles of Scilly has great potential to provide compensation for the impacts of offshore wind projects and would support its inclusion in project specific compensation plans. Offshore wind projects currently seeking consent might wish to submit this statement to the examining authority to demonstrate progress with this scheme, if they seek to use it as strategic compensation for unavoidable impacts to protected species likely to be impacted by their projects*".

86. In order to avoid delays while the MRF is developed, OWIC confirmed in March 2025 that they have "procured legal services to explore the establishment of a functioning developer-led delivery mechanism which would provide the offshore wind industry with a route to collaborative compensation whilst the Government-led MRF is in development". Therefore, the Applicants consider that there will be a strategic approach available for auk compensation in late 2027 (see section 6.3.1.3.1 of the **Guillemot [and Razorbill] Compensation Plan (Revision 6)** [REP6-012]).

87. In addition, the Applicants are continuing to actively investigate options for project-level compensation and are currently carrying out surveys at several locations in Scotland which are in private ownership and where there is landowner support for an eradication scheme. As the survey results are not yet available, it is not known if any one project could meet the Projects' compensation need, however the contribution to the Isles of Scilly strategic scheme through the MRF would meet any potential shortfall. The public interest is secured through the provisions in Part 3 of Schedule 18 to the **Draft DCO (Revision 11)** [document reference 3.1]. This gives decision makers confidence that the Projects will provide adequate compensation for auks.

88. The Applicants note that in the final Natural England Risk and Issues Log [REP7-154] no 'red' issues remain, the Applicants consider that the remaining amber issues pertain to project level compensation only.

4.3.5 Herring Spawning Sediment Disturbance

89. Impacts upon the Banks herring spawning grounds caused by export cable installation works during construction were raised by both Natural England and MMO during the course of examination, with these parties requesting a seasonal restriction on all cable installation works to be undertaken on the Offshore Export Cable Corridor from the start of August to the end of October (inclusive). This topic was discussed at length through numerous submissions made at most examination deadlines.

90. Through a series of meetings and email exchanges which took place between Deadline 5 and Deadline 7 wording in relation to a DML condition to be included in DMLs 3 and 4 of the **Draft DCO (Revision 11)** [document reference 3.1] was discussed. This wording was agreed between all parties prior to Deadline 7 when it was added to the Draft DCO. The Applicants await sight of MMO's and Natural England's submissions at Deadline 8. In anticipation of their agreement, the Applicants submit that this issue should now be considered resolved.

4.3.6 Other Examination Environmental Topics

91. The following topics in the headers below were all a focus of examination at any given time, but the Applicants have subsequently reached agreement with stakeholders.

4.3.6.1 Terrestrial Ecology

92. The Applicants have actively engaged Natural England, the Environment Agency, the ERYC and the Yorkshire Wildlife Trusts as part of the pre-application Terrestrial Ecology ETG. Positive comments on terrestrial ecology were received from the ERYC in their LIR [PDC-007] and no specific issues have been raised throughout the examination by the ERYC as detailed in the agreed **ERYC SoCG (Revision 3)** [document reference 9.2].

93. Several comments have been received from the ExA on hedgerows, arboriculture (trees), bats and water voles all of which have been addressed and updated in the **OEMP (Revision 6)** [REP7-107], **Chapter 18 Terrestrial Ecology and Ornithology (Revision 6)** [REP7-064] and **the Tree Preservation Order and Hedgerow Plan (Revision 6)** [REP4-004]. Additional comments were also raised on the **Appendix 18-10 - Biodiversity Net Gain (BNG) Strategy (Revision 2)** [REP5-015] by the Environment Agency in their Relevant Representation, this was updated at Deadline 5 to include the result of an additional river condition survey and is now agreed in the **Environment Agency SoCG (Revision 3)** [document reference 9.3].

94. Natural England have also raised comments on the assessment of the emergency beach access and the Applicants have updated **Chapter 5 Project Description (Revision 4)** [REP7-032], the **OEMP (Revision 6)** [REP7-107] and **Chapter 18 Terrestrial Ecology and Ornithology (Revision 6)** [REP7-064] in response. This has primarily included a commitment to agreeing the design of the emergency beach access with the ERYC and Natural England as part of the Drilling Fluid Management Plan prior to construction and including monitoring of the priority maritime cliff and slope habitat located along the cliff line.

95. Comments have been raised on ancient woodland by Dr. Mounce, the Woodland Trust, Forestry commission and the ExA. The Applicants principally avoided all ancient woodland including the Burton Bushes Site of Special Scientific Interest (SSSI), except at Bentley Moor Wood where the cables cross beneath a small section of ancient woodland. The **OEMP (Revision 6)** [REP7-107] has been updated to address concerns and commit to a minimum depth of 5m, unless evidence is provided that it will not impact the root protection zone at the detailed design stage. A commitment has also been added to prepare a woodland management plan for Bentley Moor Wood and maintain a minimum 15m buffer from the ancient woodland during construction. With the amendments to the **OEMP (Revision 6)** [REP7-107] and the measures to control dust and noise included in the **Outline Code of Construction Practice (OCoCP) (Revision 5)** [REP7-105] the Applicants consider the issues raised during the examination in relation to Ancient Woodland have been resolved.

4.3.6.2 Hydrology, Flood Risk and Drainage

96. The Applicants actively engaged all stakeholders as part of the pre-application Hydrology and Flood Risk ETG. However, various matters were raised during the examination following questions by the ExA and Relevant Representations received from the Environment Agency, Beverley and North Holderness Internal Drainage Board (BNHIDB) and Landowners including Albanwise and East Yorkshire Concrete Products Ltd. The Applicants have worked collaboratively with the Environment Agency, ERYC as the Lead Local Flood Authority and the BNHIDB to ensure that all matters relating to hydrology, flood risk and drainage are resolved at Deadline 8 as demonstrated by the **Environment Agency SoCG (Revision 3)** [document reference 9.3] and the **ERYC SoCG (Revision 3)** [document reference 9.2].

97. The Applicants made several updates to the **Outline Drainage Strategy (Revision 4)** [REP7-109], the **OCoCP (Revision 5)** [REP7-105] and the Drainage Authority protective provisions in the **Draft DCO (Revision 11)** [document reference 3.1] to address BNHIDB comments in their relevant representation. The updates addressed concerns about open cut crossings including crossing depth and reinstatement and commitment to cross certain, maintained drains by trenchless crossing. In addition, a minimum discharge was agreed at a meeting prior to ISH4, that does not affect local flood risk.

98. The Applicants have also sought engagement with landowners and although several concerns have been raised by Albanwise and East Yorkshire Concrete Products Ltd about field drains, these have been addressed through updates to the **Outline Drainage Strategy (Revision 4)** [REP7-109]. The Applicants have also undertaken early drainage designs for landowners through engagement with a specialist land drainage contractor which will feed into the detailed Drainage Strategy.

99. The ExA commented on the methodology for assessing temporary crossings of watercourses by the haul road in **Chapter 20 Flood Risk and Hydrology (Revision 3)** [REP5-017]. The chapter was updated to provide further assessment, however the significance of effect on ordinary watercourses during construction remained minor adverse. A number of comments were also raised by the ExA and further discussed with the Environment Agency on perceived increased flood risk from two Temporary Construction Compounds (TCCs) located in flood zone 2 and 3. The Applicants submitted the **Flood Risk and Climate Change Technical Note** [REP5-039] at Deadline 5 and following further review and updates by the Environment Agency it was resubmitted at Deadline 7 as an annex to the **Appendix 20-4 - Flood Risk Assessment (Revision 2)** [REP7-071]. The outcomes of not increasing flood risk was fully agree in the **Environment Agency SoCG** [document reference 9.3].

100. Several updates were made in the **OCoCP (Revision 5)** [REP7-105] to clarify what would be agreed as part the Crossing Method Statement for Main Rivers including, cable duct depth, vibration impacts and reinstatement of a single temporary haul road crossing that will be required by culvert rather than clear span bridge. Based on the updates made by the Applicants the Environment Agency have agreed the protective provisions in Schedule 15, part 4 of the **Draft DCO (Revision 11)** [document reference 3.1], on the basis they will be updated at Deadline 8 to include the wording specified in their model provisions.

4.3.6.3 Traffic and Transport

101. At an early stage of the Projects' development, the Applicants worked with the highways stakeholders to develop a comprehensive access strategy that seeks to reduce and avoid impacts upon sensitive receptors where possible. The Applicants have also developed a comprehensive **Outline Construction Traffic Management Plan (Revision 4)** [REP6-041] which contains details of measures to control, monitor and enforce vehicle movements and provides details of the mechanisms for managing the design of accesses and offsite highway works.

102. The Applicants consider that this extensive engagement and package of mitigation measures and commitments have contributed to the very few comments on traffic matters from stakeholders and interested parties. In particular, the Applicants note that the LIR from ERYC did not raise any highway matters of concern or requiring attention and that the impact upon highways and transportation was considered to be 'neutral'.

103. At the point of DCO submission, all matters relating to traffic and transport were 'agreed' with highways stakeholders, as evidenced in the **Consultation Report Appendix F - Non-Statutory Consultation and Engagement, Appendix F1 - Meeting Minutes - ETG** [APP-043]. During the pre-examination and examination period, consultation with highways stakeholders continued, and a number of traffic and transport matters arose. These have since been discussed and resolved between the Applicants and highway stakeholders.

104. The Applicants have worked collaboratively with highways stakeholders to ensure that all matters relating to traffic and transport are resolved at Deadline 8 within relevant final Statements of Common Ground, including **Environment Agency SoCG (Revision 3)** [document reference 9.3], **Hull City Council (HCC) SoCG (Revision 3)** [document reference 9.5] and **National Highways SoCG (Revision 3)** [document reference 9.12].

4.3.6.4 Air Quality

105. The Applicants consulted key Air Quality stakeholders during the pre-application stage through the Air Quality ETG which was attended by ERYC, HCC and Natural England; with active engagement from all parties. At the point of DCO submission, all matters relating to Air Quality were agreed with stakeholders.

106. A number of matters arose during the Examination phase, which were subsequently addressed and resolved. At the close of Examination, there are no outstanding issues relating to Air Quality as evidenced in **ERYC SoCG (Revision 3)** [document ref. 9.2], **HCC SoCG (Revision 3)** [document reference 9.5] and Natural England's Risks and Issues Log Deadline 6 [REP6-077].

4.3.6.5 Noise and Vibration

107. From the outset of the Project the Applicants have worked closely with Noise and Vibration Stakeholders (ERYC and HCC) to ensure all technical matters relating to noise and vibration were agreed through the Noise and Vibration ETG. At the point of DCO submission the Applicants had reached agreement on key areas including baseline monitoring, approach to the assessment for construction noise and vibration, construction road traffic noise, operational noise, and proposed mitigation measures. Construction and operational noise criteria were agreed with all parties, as evidenced in **Appendix 25-1 Noise and Vibration Consultation Responses** [APP-203].

108. During the examination, minor matters relating to noise and vibration arose, primarily from ERYC comments on Construction Working Hours (raised in their LIR [PDC-007]) as a result of questioning by the ExA to ERYC in their ExAQ1 [PD-014] and ExAQ2 [PD-021]. Following discussion with ERYC these were all resolved, through updates to the **OCoCP (Revision 5)** [REP7-105].

109. All matters relating to noise and vibration have been successfully resolved with Stakeholders at the close of examination.

4.3.6.6 Shipping and Navigation

110. All matters relating to shipping and navigation have been successfully resolved with relevant stakeholders at the close of examination, as is evidenced in the **Trinity House SoCG (Revision 3)** [document reference 9.17], **Maritime and Coastguard Agency SoCG (Revision 3)** [document reference 9.7], and **UK Chamber of Shipping SoCG (Revision 3)** [document reference 9.18]. This is the result of regular engagement throughout Project Development to date.

4.3.6.7 Climate Change

111. During the Examination comments were raised by the ExA, the Projcos and the Orsted IPS on Wake Loss, as detailed in **The Applicants' Closing Statements on Wake Effects** [document reference 18.6] submitted at Deadline 8. In response to some of these comments, the Greenhouse Gas Sensitivity Analysis of Wake Effects report previously issued into examination at Deadline 4 has been included as **Appendix 30-4 Additional Wake Loss Scenarios** [REP6-040], to the **Chapter 30 Climate Change (Revision 2)** [REP6-036] at Deadline 6. The wake loss values were derived from a review of other recent wake loss assessments completed for offshore wind farms during examinations. Three hypothetical wake effect scenarios were considered in the assessment assuming a uniform wake loss at each of the neighbouring offshore wind farms within scope of the assessment. When considering the 1% scenario, assumed most representative of the total CO2 emissions avoided for both Projects, as shown by the further assessments provided in **Appendix 30-4 - Additional Wake Loss Scenarios [REP6-040]**, emissions were reduced from 183.5 tonnes CO_2e s to 168.4 tonnes CO_2e. Although this has decreased slightly, when considering wake effects, the Projects would still enable the provision of renewable energy to the UK electricity grid and significantly contribute to the UK's progress in meeting its net zero targets and the overall significance of effect remains beneficial, which is significant in EIA terms.

4.4 Updated Conclusions to the Environmental Statement

112. Despite significant pre-application engagement, it is common that issues raised by stakeholders and the ExA during the examination process can lead to re-assessment of impacts. The ExA requested a full update of the Environmental Statement by Deadline 7 in their **Rule 17 Letter - Request for further information dated 15 April 2025** [PD-018] to account for the Project Change Requests accepted into examination on 21st January 2025 and any subsequent updates to assessment necessary from ongoing examination in the interim. For the majority of topics, these updates did not change the significance of effects for any receptor or receptor group. Therefore, most are not discussed here and the Planning Balance remains much as that discussed in detail in the Applicants' **Planning Statement** [APP-226]. The sub-headings below explain the few instances where these assessments were updated following discussions in examination.

4.4.1 Landscape and Visual

113. The Applicants originally presented the construction effects assuming no significant residual effects. However, following further discussion with the ERYC, **Chapter 23 Landscape and Visual Impact Assessment (Revision 2)** [REP7-090] was updated at Deadline 7 to remove reliance on the mitigation set out in the **OLMP (Revision 4)** [REP4-044], as it would not be fully effective during the construction phase. The residual effects during construction are now presented more clearly and would be Major or Moderate adverse from viewpoints 1-3, within 1km of the Substation Zone that are near to the Onshore Converter Stations and Substation Zone TCCs and not screened by any existing vegetation. Following completion of construction, construction effects at the Substation Zone will be superseded by the operational effects. At the Landfall Zone there would be moderate adverse, significant effects during construction but, these would be minor adverse (not significant) following the restoration of the landscape at the landfall.

114. Following acceptance of **Project Change Request 1 – Offshore and Intertidal Works** [AS-141] and **Project Change Request 2 – Onshore Substation Zone** [AS-152] the Applicants submitted revised Landscape and Visual photomontages [REP2-024]] of the Projects, at Deadline 2 which reflected the reduced footprint of the Onshore Converter Stations and minor amendments to the **OLMP (Revision 4)** [REP4-044]. At Deadline 7, **Chapter 23 Landscape and Visual Impact Assessment (Revision 2)** [REP7-090] was updated to account for the changes and as a result of the operational effects on visual receptors from VP2, Coppleflat Lane in Bentley were reduced from a significant, moderate adverse effect to a minor adverse and insignificant effect after 10 years.

4.4.2 Land-use

115. Following comments raised by the ExA throughout the examination the Applicants have updated **Chapter 21 Land Use (Revision 4)** [REP5-022] to add a more detailed assessment of agri-environmental schemes, resulting in the addition of a minor adverse residual significance of effect, which is not significant in EIA terms. Further detail was also added on the potential impact to existing agri-environmental schemes at the Onshore Substation Zone. However, the operational effect has remained as no change and not significant.

116. Comments were also made by East Yorkshire Concrete Products Ltd and the ExA on during ISH 4 and ISH 6 on the depth of cable installation. **Chapter 5 - Project Description (Revision 4)** [REP7-032], the **DAS (Revision 3)** [REP7-103] and the **OCoCP (Revision 5)** [REP7-105] have all been updated to clarify the minimum cable duct burial depth of 1.1m from the surface and the design depth, of 1.2m below the subsoil level, that applies to the majority of the cable route. This parameter was added to exclude the topsoil depth that can vary from 0-400mm. **Chapter 21 Land Use (Revision 4)** [REP5-022] did not require update to account for these changes, as the minimum depth, would allow the operation of most farming works above it, which is key embedded mitigation in the chapter that has not changes since submission.

117. The temporary loss of agricultural land has also been updated to change the level of residual significance from minor, to major adverse. This was following confirmation, that the amount of land that would remain in use for longer than two years within the Order Limits would be greater than 20ha. However, the Applicants have reaffirmed throughout the examination that they have made a firm commitment within the **OCoCP (Revision 5)** [REP7-105] to reinstatement of agricultural land between Jointing Bays within two years, which accounts for 84.2% of the Order Limits and is secured by Requirement 19 of the **Draft DCO (Revision 11)** [document reference 3.1]. Therefore, although the effect is significant it is limited to a small portion of the Order Limits.

118. As detailed in **The Applicants' Comments on the ExA's Proposed Schedule of Changes to the dDCO** [REP7-130] on Requirement 25, the Applicants do not agree with the proposed wording to state that a minimum of 80% of the land must be reinstated within two years as the 84.2% calculated is based on the indicative design and worst-case number of Jointing Bays. Therefore, this area will change at the detailed design stage. It also does not recognise that the Projects will be constructed in phases and that the Applicants have not committed to reinstate 80% of the total area of all land subject to temporary possession within two years from the start of commencement of the Projects. The two years would start to run in each case from the start of the relevant works or phase of works.

119. As this commitment is already secured through the **OCoCP (Revision 5)** [REP7-105], it is not necessary or reasonable to seek to secure it within the requirement and therefore it does not meet the legal tests set out in paragraph 4.1.16 of NPS EN-1.

4.4.3 Geology and Land Quality

120. Following comments from the ExA during examination about the viability of extracting any minerals identified in a Minerals Resource Assessment (MRA) prior to the construction works, the mitigation was removed from the **OCoCP (Revision 5)** [REP7-105] and **Chapter 19 Geology and Land Quality (Revision 2)** [REP6-020]. Therefore, assessment of the sterilisation of future mineral resources (Impact 4 and 9) has been updated to remove reference to MRA and re-assessment of the impact during operation. Impact 9 was amended from a minor adverse to moderate adverse residual significance as outlined in **The Applicants' Responses to April 2025 Hearing Action Points** [REP4-096]. This updated level of significance was agreed as appropriate with the ERYC, given the Applicants had sought to avoid 'preferred' Mineral Safeguarded Areas (MSAs) at the Optioneering phase and they could not be avoided entirely – as detailed in **The Applicants' Comments on the Responses to ExAQ2** [REP6-051] and at a meeting with the ERYC on the 15th May 2025.

121. **Chapter 19 Geology and Land Quality (Revision 2**) [REP6-020] has also been updated, again in response to comments raised by the ExA to remove the assessment of impacts on designated sites (Impact 6) following confirmation from the Hull Geological Society that Skipsea Drain had been incorrectly identified as a Local Geological Site within East Riding of Yorkshire's Local Plan, as detailed in **The Applicants' Responses to ExQ1** [REP3-027] and the April 2025 Hearing Action Points, Action Number 53 as outlined in **The Applicants' Responses to April 2025 Hearing Action Points** [REP4-096].

122. In response to comments received from Dr Stephen Mounce, the Forestry Commission and the Woodland Trust, **Chapter 19 Geology and Land Quality (Revision 2)** [REP6-020] has also been updated to clarify that an assessment of the impacts on Burton Bushes SSSI as a result of disruption of shallow groundwater flow has not been included as there is no hydrogeological connection based on the local geology, as outlined in **The Applicants' Responses to Deadline 4 Documents** [REP5-037].

4.4.4 Tourism and Recreation

123. **Chapter 29 Tourism and Recreation (Revision 2)** [REP6-033] was updated at Deadline 6 to address concerns raised by the ExA on the potential impacts of noise during construction as detailed in **The Applicants' Responses to ExQ2** [REP5-037] point NV.2.2. The assessment was updated to consider the potential impact of noise on camping tourism assets based on predicted noise levels at camping receptor locations during both construction (Impact 2) and operation (Impact 6). This has resulted in an additional significant effect of major adverse at night, during the limited periods when nighttime works will take place during the construction phase and minor adverse during the day. The significance of effect in relation to the change in landscape and visual effects remains as moderate adverse and significant. Therefore, overall, the impact on Butt Farm as a tourism asset has increased from moderate adverse to major adverse (impact 2).

124. Although an additional significant effect has been identified, this is temporary in nature, and mitigation includes the implementation of measures within the **OLMP (Revision 4)** [REP4-044] and **Chapter 25 Noise (Revision 3)** [REP6-028]. In addition, there will be close liaison with Butt Farm and the consideration of mitigation in programming and implementing a communication and grievance mechanism to direct questions or report nuisance and other issues, including details for a site representative during construction hours. In addition, compensation for any loss of business would be payable on a proven loss basis. However, this has not been considered as mitigation in the chapter. The ERYC confirmed in their comments at Deadline 7 that this mitigation would be important for a small scale tourism business.

125. During operation an additional minor adverse significant effect has been added to the assessment from the consideration of noise during operation at Butt Farm Caravan and Camping site. However, the noise levels are not considered to be significant at night when the tourism asset is most sensitive.

4.4.5 Marine Mammals

126. Following engagement with relevant stakeholders and their concerns regarding the impacts to marine mammals from underwater noise, and further refinements to the project design envelope, the Applicants proposed a number of changes to the DCO application which were set out in **Project Change Request 1 - Offshore & Intertidal Works** [AS-141]. The proposed changes included reductions in the number of offshore platforms, including an ESP from the Offshore Export Cable Corridor and subsequently removed the need for piling within the Offshore Export Cable Corridor, and removal of gravity base foundations from the Projects' Design Envelope. The ExA accepted the proposed changes into the Examination in January 2025.

127. The Applicants assessed the environmental impacts of the proposed changes and it was concluded that the ES conclusion submitted by the Applicants within the Projects' DCO Application did not change in the majority of assessments. The exception to this was the positive change to significance of effect before mitigation for the assessment of Temporary Threshold Shifts (TTS) from cumulative exposure from concurrent jacket pin pile installations at multiple piling locations on grey seal' which reduced from major adverse to minor adverse.

128. This change was incorporated into **Chapter 11 Marine Mammals (Revision 2)** [REP7-045] at Deadline 7.

4.5 Summary

129. The Applicants have demonstrated that for the majority of issues raised at the pre-application and examination stages, through adopting a collaborative approach to engagement and consultation, acceptable outcomes have been achieved. This is reflected in the positive state of the majority of the SoCGs as outlined in the **Statement of Commonality of SoCGs & Examination Progress Tracker (Revision 3)** [document reference 9.1] submitted at Deadline 8.

130. During the pre-application stage the Applicants identified the local communities as essential stakeholders to the development of the scope of the Projects and have sought to keep them involved. The Applicants have sought to do this by attending Parish Council meetings and through the publication of Newsletters. The general acceptance of the Projects by the community is reflected in only five members of the public and three parish councils registering as Interested Parties for the examination.

131. Notwithstanding the positive state of the majority of the SoCGs, it is common in the DCO Examination process to have multiple areas of disagreement between the Applicants and stakeholders. Whilst it is not considered possible for applicants to resolve all stakeholder's issues with a Project, the Applicants have demonstrated great success in reaching resolution across a broad range of topic areas.

132. Whilst it would not be prudent to discuss all the key disagreements resolved with stakeholders during examination, the Applicants have provided examples where resolutions have been reached to demonstrate the acceptability of the Projects in the eye of key stakeholders. In addition to these examples, the Applicants have also reached agreements on several other onshore and offshore topic areas that were extensively discussed during the examination period.

133. Despite the extensive pre-application engagement undertaken by the Applicants, it is common that issues raised by stakeholders and the ExA during the examination process can lead to re-assessment of impacts. For the majority of topics raised, the updates to the ES did not change the significance of effects for any receptor or receptor group. The few instances where these assessments were updated and resulted in an increase if the significance of the adverse effect relate to Landscape and Visual, Land Use, Geology and Land Quality, Tourism and Recreation.

134. Despite the changes in significance of effects for the four receptors the Applicants maintain its original position in regard to the planning balance as set out in the **Planning Statement** [APP-226]. This position is based on NPS EN-1 clearly stating that CNP policy places a clear presumption in favour of granting consent for such infrastructure where residual effects remain after the application of the mitigation hierarchy. Indeed, EN-1 states (paragraph 4.1.7) that for projects which qualify as CNP infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases.

5 Material Areas of Disagreement

135. Despite the extensive engagement and work undertaken to try to resolve areas of disagreement with stakeholders as demonstrated in section 4, there remain some material areas of disagreement at the end of examination and the Applicants have set out their position on these below.

136. A summary of where disagreements remain is provided within the **Statement of Commonality of SoCGs & Examination Progress Tracker (Revision 3)** [document reference 9.1] submitted at Deadline 8. For a full review of unresolved matters please review the Final SoGCs [document references 9.2 – 9.23].

5.1 Offshore Ornithology Matters

137. Throughout Examination, whilst agreements have been reached with Natural England and other Interested Parties such as RSPB in relation to offshore ornithology matters, there are some key areas of disagreement which remain.

5.1.1 Mitigation

138. Through the course of Examination, Natural England has maintained that further consideration should be given to potential mitigation measures (i.e. revising the Array Area configuration or increasing the air gap) to reduce impacts on bird features (particularly kittiwakes), or that the Applicants should justify that no further mitigation is achievable. In response, the Applicants have further assessed and evaluated the potential options for additional mitigation.

139. In terms of changing the Array Area configuration, the lease boundaries are fixed and as such, there is very limited scope for further amendment. Some hotspot modelling was applied as part of the progression of project design from the PEIR to the application stage where the array area boundaries were reduced and refined based on a number of factors, including bird distribution data (see **Appendix A - Offshore Ornithology Year 1 and 2 Combined Spatial Plots (Revision 2)** [document reference 17.10]). Generally, the Applicants consider that hotspot modelling is an unreliable basis on which to conduct any boundary changes or micro-siting since seabird distributions are notoriously variable through time, and the snapshots collected for the impact assessment, while considered a reliable guide in terms of population estimates generally, are not considered to represent static and consistent locations. It would therefore not be appropriate to use this as a means to further modify the design. In the final Natural England Risk and Issues Log [REP7-154], Natural England state that it is not within their field to comment upon the viability of reducing the developable area within the Projects' lease boundaries.

140. Regarding increasing the air gap, the Applicants have already mitigated ornithological impacts by proposing a minimum air gap of 34m Mean Sea Level (MSL) rather than the statutory minimum of 22m MHWS (approximately 24m MSL), i.e. 10m above the minimum required. The Applicants have also provided a summary of detailed engineering and cost modelling that has been used to assess feasibility of increasing the minimum air gap. The outcome of this work is that increasing the airgap beyond 34m is not feasible while retaining viability of the Projects. Further details regarding the Applicants mitigation options are provided in the **Ornithological Mitigation Option Report (Revision 2)** [REP4-081]. The Applicants conclude that all available concessions have already been made and that there is no further recourse for ornithological mitigation.

141. The approach being taken by the Applicants is aligned with the policy in NPS EN-3 (paragraph 2.8.216) that asks applicants to employ all feasible avoidance, reduction and mitigation measures before exploring possible compensatory measures. It is the Applicants' position that they have exhausted all mitigation measures that are feasible and would not adversely impact the Projects' viability.

5.1.2 Natural England's Approach to Precaution in Assessment

142. Throughout the impact assessment and compensation calculation process there are many opportunities to apply precaution. The main reason for applying precaution is to deal with uncertainty given the lack of definitive evidence on the scale of impact (due to the relative novelty of offshore wind and understanding of potential issues). However, this should be undertaken in a proportionate manner that captures the overall level of uncertainty, rather than applied to each of the individual elements.

143. The Applicants provided **Precaution in the Ornithology Assessment and Implications for Compensation Quantum** [REP3-030] which details precaution in the auk and kittiwake assessments and compensation calculation step by step through the assessment process. Overall, the case made is that the 'worst case' mortalities should not be considered to accurately reflect a realistic value for the upper range of impact. If displacement and collision mortalities were as high as suggested this would almost certainly have produced clear evidence of impacts through sharp declines in auk populations which would have been reported at colonies and locations in proximity to operational wind farms.

144. Natural England countered this point in [REP3-057]:

"*Natural England highlights the assessment process currently relies on limited empirical evidence that hinders our understanding of potential impacts of offshore wind farm developments……It is critical that sources of variation and uncertainty are considered throughout the assessment process, and that these are appropriately presented throughout e.g. through the use of confidence intervals. This is to ensure that false levels*

of confidence are not assigned to predicted impacts. Understanding how this variability, and sources of uncertainty, may influence the outcomes of an assessment is important for determining how much confidence can be placed in a predicted outcome and whether significant effects, or adverse effects on integrity (AEoI) of a designated feature, can be ruled out beyond scientific doubt."

145. Whilst it is true that the sources of uncertainty should be *considered* for every step of the assessment process, Natural England instead requires the use of the upper estimates at nearly every step of the process which embeds unrealistic assumptions throughout. More detail is provided in section and 4.1 below in relation to disagreements with Natural England on kittiwake and auk impacts and compensation calculation advice.

5.1.3 Kittiwake

146. Assessment of kittiwake impacts and compensation have been a major focus of discussion between the Applicants, Natural England and other Interested Parties such as the RSPB. The key areas of disagreement are discussed in sections 5.1.2 - 5.1.4 below.

5.1.3.1 Kittiwake Quantum

147. The scale of compensation requires a stepwise approach as outlined in the **Round 4 Kittiwake Strategic Compensation Plan** [APP-053] these steps are:

- Step 1 - calculate the project level impact (as provided in the RIAA);
- Step 2 - determine the size of compensation population required to produce enough fledglings to replace adults lost from the population as a result of the Projects; and
- Step 3 - application of a precautionary compensation ratio to account for uncertainties in the steps above and the ability of the compensation measure to deliver intended outcomes.

148. The Applicants submitted the **Precaution in the Ornithology Assessment and Implications for Compensation Quantum** [REP3-030] at Deadline 3 to underline the precaution applied at multiple levels throughout the process which leads to inflated levels of impact and disproportionate requirements for compensation.

5.1.3.1.1 *Disagreements in Step 1*

149. The Applicants have put forward strong evidence within the **RIAA HRA Part 4 of 4 Marine Ornithological Features (Revision 5)** [REP6-009] and **Precaution in the Ornithology Assessment and Implications for Compensation Quantum** [REP3-030] that the percentage of these birds who are breeding adults from FFC SPA is 53%. This position aligns with demographic studies. Natural England advise that in the absence of 'definitive data', a 100% apportionment value should be used for assessment. This vastly influences the results shown in **Table 4-1**. The Applicants have presented the 100% apportionment value whilst maintaining the position that this introduces considerable precaution as many birds may be from non-SPA colonies (such as colonised offshore oil and gas infrastructure) which are nearer to the Projects.

5.1.3.1.2 *Methodology for Step 2*

150. The Applicants and Natural England have not been able to reach an agreed position regarding the methodology and inputs used to calculate the quantum of kittiwake compensation for the Projects – this is a common issue as seen for other projects including ODOW and the Hornsea Four Project. The Applicants support use of the most recently consented 'Hornsea Four' (H4) method, while Natural England supports the 'Hornsea 3, part 2' (H3pt2) method. The Applicants consider the H3pt2 method to be unsuitable due to issues around complexity, double counting and a very high consideration of precaution (see **Precaution in the Ornithology Assessment and Implications for Compensation Quantum** [REP3-030] and **Appendix 1 - Project Level Kittiwake Compensation Plan (Revision 7)** [document reference 6.2.1] for further details).

151. Natural England have acknowledged that "*Identifying a robust and proportionate approach to quantifying the compensation requirements for offshore windfarms impacting seabird SPAs has proved challenging. Multiple methods have been used but there is no clear consensus on the most appropriate method to use*" [AS-160]. As such, the Applicants maintain that the approach adopted by the Applicants is valid and have provided evidence to support this position (as outlined above).

5.1.3.1.3 *Approach to Step 3*

152. The Applicants maintain that given the mature nature of the kittiwake compensation measures (confirmed location, completed site investigation surveys, marine licence application progressed, advanced design work, updated **Outline Kittiwake Compensation Implementation and Monitoring Plan (Revision 2)** [REP4-022]), the appropriate compensation ratio is 2:1. Natural England are not willing to confirm the suitability of this ratio, though acknowledge it may be suitable for advanced compensation measures.

153. The Applicants' kittiwake compensation package, which includes nesting spaces across two offshore ANS and an existing onshore ANS, is mature and the delivery programme well defined. Each party's approach to calculating compensation requirement for the offshore ANS is presented in **Table 4-1**.

Table 4-1 Application of compensation ratios to different assessment inputs using the Hornsea 3 and Hornsea 4 methodology for kittiwake. The Applicants' preferred values are in bold. Note that values have been presented based on different breeding season impacts estimated assuming 53% of birds present were adults and also 100%.

Abundance estimate Metric	Apportionment % FFC Adults	Impacted value (annual mortality)	Calculation Method	Compensation required (breeding pairs) and Ratio	
				2:1	3:1
Mean	**53**	**104**	**Hornsea 4**	**556**	834
Mean	100	191		1021	1531
U95% CI	53	205		1095	1643
U95% CI	100	377		2015	3022
Mean	53	104	Hornsea 3 part 2	1151	1726
Mean	100	191		2114	3170
U95% CI	53	205		2269	3403
U95% CI	100	377		4172	6258

154. As set out in **Precaution in the Ornithology Assessment and Implications for Compensation Quantum** [REP3-030], based upon the Projects' impact of 104 birds annually, the Applicants have calculated that the number of pairs required to offset the impact is 556. When applying Natural England's approach (i.e. 100% apportionment and H3pt2) however, the number of pairs required to compensate for impacts is up to 2,114 (2:1) or 3,170 (3:1) pairs (4,228 to 6,340 birds) (using the mean impact figure).

155. In addition, whilst Natural England suggests that the above numbers based on the mean abundance estimate are sufficient to determine the 'success' metric for compensation, the design of the offshore ANS also needs to account for the low likelihood that all nesting spaces on an offshore ANS would be utilised by breeding kittiwake. Therefore, Natural England proposed that the offshore ANS should be 'scaled' to the upper 95% confidence interval based on 100% apportionment to the breeding population. Applying Natural England's approach (100% apportionment to breeding population, H3pt2, upper 95% confidence interval) however means an offshore ANS must provide for 4,172 (2:1) to 6,258 (3:1) pairs. This is up to 12,516 birds to compensate for a mean annual impact of 104 birds (or 191 using Natural England's 100% breeding population apportionment rate). This is neither a proportionate, nor reasonable approach.

156. Given the need to progress the offshore ANS rapidly to meet the 2030 targets for the Projects, the Applicants have progressed at pace to develop mature design plans for the structure. The Applicants are confident that their ANS design is sufficient to accommodate the number of breeding pairs required based on the H4 approach, a compensation ratio of 3:1 using the mean impact value and apportionment of 100% adults if required. The Applicants existing ANS design could be scaled to meet the 95% confidence level of the above scenario but this would limit any headroom for Adaptive Management and wider industry benefit in providing for future offshore wind project compensation requirements (in alignment with NPS EN-3 and DESNZ guidance).

157. However, 'scaling' to the number of nesting spaces as proposed by Natural England using their preferred methodology (Hornsea 3 part 2) would not be possible using the current design base case without severely impacting both the ANS and wider delivery programme and budget.

5.1.3.1.4 Conclusion on Kittiwake Quantum

158. The Applicants have developed a mature package of kittiwake measures in alignment with the **Round 4 Kittiwake Strategic Compensation Plan** [APP-053] and guidance from Natural England, DESNZ and DEFRA. The combined compensation delivered by the project-led offshore ANS, shared nesting spaces between the Applicants and ODOW to provide reciprocal resilience across the measure (a Memorandum of Understanding has been signed by the two parties), and onshore nesting spaces at the existing onshore tower in Gateshead, accompanied by adaptive management options offsets potential risk associated with delivering any measure in isolation. As such, the requirement for over-applied precaution as suggested by Natural England is disproportionate and unnecessary.

159. For perspective, the cost of the current design is expected to be between c.€20-25 million to fabricate and install. This is an expenditure of c. €755,000k per year over 30 years to compensate for the Projects' annual predicted mortality of 104 birds. To put in context this is an expenditure of c.€220,000 for a mean impact value of 104 birds. Further costs around development, operation and maintenance, monitoring and decommissioning will further increase this cost.

160. Re-designing the offshore ANS to accommodate 6,258 pairs would cost millions, increasing the existing cost burden to the industry and the end-consumer and the already eye-watering cost compared to the mean impact value. There is currently no precedent for scaling compensation, and while the Applicants intend to accommodate substantial headroom in the ANS design, there are major financial and programme implications for scaling compensation to the upper 95%CI or at ratios greater than 2:1.

161. The Applicants do not consider there is sufficient evidence for the additional levels of precaution added at each stage by Natural England and highlight that Scaling was not introduced in previous applications or in the pre-application or pre-examination stage of these Projects.

5.1.3.2 Installation Timing

162. Regarding the number of breeding seasons, the Applicants understand and agree that the ANS would need to be installed ahead of first operation. Until recently Natural England have maintained that four breeding seasons is required for the Projects. However, in their Deadline 6 submission Natural England state that the number of breeding seasons required ahead of operation is a matter for the Secretary of State given that the Applicants' case is primarily centred around logistical constraints, consenting and supply chain risks [REP6-076].

163. Delivering an offshore ANS ahead of Q4 2027 would be highly challenging for the Applicants (especially with the uncertainty regarding final compensation quantum, as set out above) and installation prior to two breeding seasons ahead of first operation could prove a genuine risk to overall project delivery and therefore the UK Government's 2030 carbon reduction targets. Furthermore, offshore ANS installation four years prior to operation would require sizeable investment decisions to be made prior to the Financial Investment Strategy for the Projects and would have required installation in Q1 2025, prior to consent for the Projects being granted.

164. The Applicants have also considered precedent - both the Hornsea Three and Four offshore wind farms were granted Non-Material Changes to their DCO, to reduce the amount of time that ANS were required to be in place from four to two full kittiwake breeding seasons.

165. A robust ecological case for reducing this period to two years has been provided (see **Reduction in Kittiwake Breeding Seasons Prior to Artificial Nesting Structure Installation (Revision 2)** [REP4-085]), which supports the validity of the Applicants' position via the provision of biological evidence. The Applicants have undertaken colony growth modelling and demonstrated that:

- Even at low colonisation and productivity rates, the ANS would adequately compensate for the lifetime collision mortality of the Projects, in all, except the most precautionary scenarios.
- In the unlikely event that the mortality debt is not offset within the operational lifetime of the wind farm, the Applicants could continue to maintain and monitor the ANS beyond this timeframe.
- Installation two breeding seasons ahead of operation would not materially affect the point at which the ANS would match mortality with productivity and at which the overall accumulated mortality debt would be compensated for.

166. To provide additional comfort, the Applicants would like to draw attention to the onshore ANS which can support up to 240 breeding pairs of kittiwakes, with planning permission to extend to 480 nesting spaces. This structure was installed at least seven breeding seasons ahead of operation and as such has the capacity to offset accrual of mortality debt in the period ahead of offshore ANS installation.

167. The Applicants note that in the final Natural England Risk and Issues Log [REP7-154] only a single 'red' issue relating to kittiwake remains which relates to mitigation matters rather than compensation.

5.1.4 Auks

168. Assessment of auk impacts (in relation to guillemot and razorbill) and compensation have been a major focus of discussion between the Applicants, Natural England and other Interested Parties such as the RSPB. The key areas of disagreement are discussed in below.

169. As noted in section 4.3.4.3, the Applicants have conceded AEoI for guillemot at the FFC SPA, but, on the basis of population modelling have ruled out AEoI for razorbill (see **Report to Inform Appropriate Assessment Habitats Regulations Assessment Part 4 of 4 – Marine Ornithological Features (Revision 5)** [REP6-008]). In addition, again on the basis of population modelling and trends at the site, the Applicants have ruled out AEoI for guillemot at the Farne Islands SPA. For the latter two features, the Applicants have provided without prejudice compensation (see **Guillemot and Razorbill Compensation Plan (Revision 6)** [REP6-012].

5.1.4.1 Proposed Compensation

5.1.4.1.1 Compensation Quantum

170. As outlined in section 5.1.2 above, Natural England's advice regarding the calculation of impacts and compensation quantum for auk impacts via displacement introduces significant over-precaution. As stated in **Precaution in the Ornithology Assessment and Implications for Compensation Quantum** [REP3-030], the Applicants' assessment for guillemot starts out with an assumption that 22% of the FFC population is present at the Array Areas during the breeding season, which, even allowing for uneven distribution throughout the foraging range, is clearly not realistic, given that the Array Areas represent only 2-3% of the available foraging area. Mapping of guillemot distribution from the FFC SPA (by Cleasby *et al.* (2020) presented in **Effects on Prey Species Technical Note (Revision 2)** [REP6-049]) shows that the species prefers the coastal waters close to the SPA well away from the Array Areas, and this aligns with their typical foraging range.

171. From this initial point onwards, the precaution is compounded throughout the assessment and calculation of compensation quantum.

172. The next over-inflation of the impact comes from the displacement and mortality rates used. The Applicants highlight evidence reviews in **Precaution in the Ornithology Assessment and Implications for Compensation Quantum** [REP3-030] as justification for the use of 50% and 1% as suitably precautionary, which for the Projects result in 162.8 annual guillemot mortalities. However, Natural England continue to advise much higher rates of 70% and 2%, which almost triples mortality to 455.9 at the end of 'step 1' of the process (see section 5.1.3.1).

173. Following extensive discussion across examination, Natural England have agreed with the Applicants on the suitability of the Hornsea 4 calculation method for 'step 2' (see section 5.1.3.1). Once the compensation quantum is calculated, Natural England then seek to apply a ratio to account for 'uncertainty' again, this time for uncertainty that the measure will be successful.

174. The Applicants consider that using 50% and 1% displacement and mortality is already precautionary based on the evidence available, and that predator eradication is well understood and highly likely to succeed and therefore no further ratios need be applied to the compensation quantum. Thus for 162.8 annual mortalities, 719 breeding pairs are required as compensation.

175. Natural England considers that 70% and 2% displacement and mortality is used and then further ratios applied (at least 2:1). Thus, for 455.9 annual mortalities, 4029 breeding pairs are required as compensation.

176. Following the application of multiple layers of precaution, Natural England then questions the achievability of such high compensation requirements and highlights the length of time needed to 'pay back' mortality debt. At no point is there any reflection of the fact that the compensation requirement is overinflated by the precaution embedded by Natural England advice and therefore the concerns over success of the measure are as a result of their own requirements.

177. The Applicants highlight that given that predator eradication has been accepted as a measure in the LoSCM, and Natural England were integral to agreeing the LoSCM, there must be relatively high confidence in such a measure being successful. In summary, the Applicants consider that use of the 50% displacement and 1% mortality rates are suitably precautionary and given the confidence in the measure, there is no requirement for further ratios to be applied to the compensation quantum.

178. Whilst over-compensation is a concern for the Projects, both because of the additional financial implications and potential for failure to meet success criteria, it is also an issue in terms of meeting Government objectives. Future projects will require compensation, given that AEoI thresholds have been breached and there are very few options available to provide compensation, as demonstrated by the Applicants' own studies to identify and secure a 'Project-led' predator reduction scheme. Over-compensating therefore 'uses up' capacity for compensation and therefore potentially undermines the deliverability of future projects and the ability for the Government's policy goals to be met.

5.1.4.2 Compensation Delivery

179. The Applicants have been developing compensation options for guillemot (and razorbill on a without prejudice basis) since late 2023, in recognition that although not picked up for strategic compensation through the Round 4 Plan Level HRA it was likely that compensation would be required for guillemot following review of decisions made by the Secretary of State on other Projects. The primary measure for compensation is predator eradication and control, which aligns with the predator reduction measure included for strategic delivery as compensation for offshore wind projects recommended by Collaboration on Offshore Wind Strategic Compensation.

180. The Applicants have undertaken a comprehensive programme of works to identify potential locations for the measure and undertaken surveys of the most feasible options to confirm their suitability. The process undertaken is described in **Guillemot and Razorbill Compensation Plan (Revision 6)** [REP6-012].

181. The onus was therefore on the Projects to develop a 'project led' measure which would cover the requirements of the Projects only. Over the last 12 months the MRF has been more developed and is intended to be in place by the end of 2025 as a vehicle to deliver compensation.

182. Currently, the Strategic compensation measures for offshore wind activities: Marine Recovery Fund interim guidance (DESNZ, 2025) states (paragraph 22), with reference to reliance on delivery of predator eradication compensation schemes via the MRF: "*project-specific ornithological compensation measures must be provided alongside this provision.*"

183. Despite very substantial effort and investigations (such as surveys and engagement with site managers and owners at the Isles of Scilly, (see **Guillemot and Razorbill Compensation Plan (Revision 6)** [REP6-012]) the Applicants are still currently unable to take forward any predator eradication schemes in England, Wales and Northern Ireland for auks that would be delivered as 'project-led' compensation. The majority of bird colonies in the UK are currently leased or owned by environmental Non-Governmental Organisations (eNGOs) such as Wildlife Trusts, the National Trust and RSPB. Whilst the Applicants have identified sites where predator eradication could feasibly be undertaken, the emergence of the MRF has directly led to the landowners (all eNGOs) choosing not to work directly with developers to undertake predator eradication as they consider the MRF a more suitable and palatable route for their members.

184. The Applicants understanding of the reason for the requirement outlined in the interim guidance is that project-specific ornithological compensation measures were considered to be achievable by developers, unlike, for example, designation of a new or extended MPA. However, since the publication of the DESNZ (2025) interim guidance the very fact that the MRF is seen to be imminent is preventing stakeholders from collaborating with developers.

185. It is the Applicants' understanding that most parties, including Defra and Natural England, consider that a scheme at the Isles of Scilly is highly likely to deliver sufficient compensation potential to be a suitable strategic compensation measure. Indeed, in summer 2024, it was Natural England that encouraged the Applicants to explore the Isles of Scilly as an option. It is, therefore, surprising that in their representations Natural England continue to cast doubt upon the measure. In [REP5-062: OR.2.13] they state:

"*While we acknowledge that the issues with delivery of strategic compensation are outside of the Applicants' control, we note that a delivery mechanism for compensation on the Isles of Scilly has yet to be established and secured. Outstanding concerns therefore remain relating to the timescales for beginning and achieving compensation, as well as the compensation potential of the site*"

186. The Applicants highlight that Natural England are part of the 'Task and Finish group', formed "to establish the mechanisms required to allow predator eradication to be delivered as a strategic compensation measure, noting the option for this to delivered by the Marine Recovery Fund". Therefore, Natural England are integral to the successful delivery of this measure and have the full backing of the Government as this will help deliver on the 2030 targets.

187. According to the guidance, the Applicants need a project led measure, but the imminence of the MRF is making this very challenging to achieve. However, to most parties it would seem that the Isles of Scilly offer a feasible and deliverable strategic option, therefore negating the need for the project led option. The only reason to pursue the project led option is to follow the letter of paragraph 22 of the interim guidance. Therefore, the key barrier to the Applicants being able to satisfy the requirements of the Secretary of State is the Secretary of State's own guidance. Following discussion with DESNZ on this matter, the Applicants believe that the statement agreed by the Task and Finish Group (see paragraph) supersedes paragraph 22. The Applicants have requested that this matter is clarified by DESNZ prior to the close of the examination.

188. Nonetheless, as stated previously, the Applicants are continuing to actively investigate options for project-level compensation and are currently carrying out surveys at several locations in Scotland.

189. The Applicants note that in the final Natural England Risk and Issues Log [REP7-154] no red issues remain, the Applicants consider that the remaining amber issues pertain to project level compensation only.

5.2 Impacts on Dogger Bank SAC

5.2.1 Derogations

190. The Applicants concede AEoI from permanent habitat loss due to the footprint of infrastructure above the seabed in the Dogger Bank SAC. This includes foundations, scour protection and any cable protection required. The Application provided the footprint for this based on the worst case parameters, which have subsequently been reduced via cable bundling and removal of offshore platforms (for details see section 6.3.2 of the **RIAA HRA Part 2 of 4 – Annex I Offshore Habitats and Annex II Migratory Fish (Revision 5)** [REP7-016]. The Applicants conceded AEoI pre-application and engaged with The Crown Estate's strategic compensation steering group to develop the compensations measures. However, the Applicants do not agree with Natural England on what effects should contribute to AEoI.

5.2.1.1 Disturbance

191. The Applicants dispute the conclusion that disturbance (either during construction or Operation & Maintenance (O&M)) should contribute to AEoI. The Applicants have always held this position given the high recoverability of the sandbank biotopes (as evidenced by their attributed Marine Evidence-based Sensitivity Assessment (MarESA) sensitivities), industry-evidence of recovery and commissioned site-specific survey in the SAC to support the case (**Appendix 8-2 - Met Mast Survey Analysis** [APP-083]). Natural England have repeatedly stated, without providing any empirical evidence and contradicting MarESA assessments (which their own guidance says to use), that recovery from disturbance will take 10-25 years and should effectively be seen as a permanent effect. The Applicants requested Natural England to provide evidence for their position pre-application and nothing was provided.

192. Following submission, the Applicants expanded on the evidence of recovery in the technical note (now appended to the RIAA) **Review of Evidence on Recovery of Sandbank Habitat Following Habitat Damage (Revision 2)** [REP3-022].

193. Natural England has not provided a detailed response to [REP3-022] or explained why they dispute the MarESA conclusions on timescales for recovery.

194. In addition, Natural England considers that the footprint of Unexploded Ordnance (UXO) clearances and disturbance footprint from jack-up operations throughout the lifetime of the Projects should be included and considered permanent effects. The Applicants note that UXO clearance does not form part of this application and further considers both issues represent temporary disturbance and have provided a response on the scale and recoverability of UXO craters and jack-up effects (see response to REP4-127: C1 in **The Applicants' Responses to Deadline 4 Documents** [REP5-037]).

195. The Applicants note that if the Secretary of State concludes that habitat disturbance contributes to AEoI then the jacking-up footprint would be within the disturbance footprint and therefore already taken into account. Therefore, the footprint of jacking up should only be added to the permanent habitat loss footprint a) if Secretary of State agrees that this is not a temporary disturbance impact and b) if the Secretary of State agrees with the Applicants that other construction disturbance is temporary and does not contribute to AEoI.

5.2.1.2 Suspended Sediments and Smothering

196. The Applicants note that in response to the ExA questions on the Report on the Implications for European Sites, Natural England [REP7-152:18] state that changes in suspended solid concentrations (SSC) or smothering could contribute to AEoI. The Applicants have assessed these as pathways in their own right and do not conclude that they would not result in AEoI.

197. As to whether these could contribute to AEoI, the Applicants highlight that any non-trivial changes in SSC or sedimentation occur within the footprint already assessed for abrasion/disturbance in section *6.4.2.1.1 Abrasion/disturbance of the substrate*, this footprint encompasses the habitat loss footprint assessed in section *6.4.2.6.1 Physical change (to another seabed / sediment type)*. Therefore, any effects from SSC or sedimentation on the benthos or sandeel is accounted for within other effects. There is no additional footprint.

5.2.1.3 Halo Effects

198. Natural England first raised ecological halo effects in their relevant representation [RR-039]. Natural England consider that the Applicants have not undertaken a robust assessment as '*the potential for changes to the physical and/or biological structure and function of Annex I sandbank beyond the footprint of the planned infrastructure'* were not included within the benthic assessments of included within the application.

199. In their responses to this issue, the Applicants have highlighted the following key points:

- The assessment did consider the physical and/or biological structure and function in terms of the introduction of hard substrate and subsequent colonisation;
- It has not been common practice to assess 'halo effects' in detail (or as a potential significant effect) in previous offshore wind farm assessments;
- Following extensive literature review (**Ecological Halo Effects Technical Note (Revision 2)** [REP7-127]), there is limited evidence of any significant effects of the kind described by Natural England in environments such as the Dogger Bank;
- The lateness of this concern being raised by Natural England in the process (i.e. only at the relevant representation stage), preventing discussion pre-application and inclusion of additional information within the assessment. The Applicants highlight that Natural England had over three years to raise this as a concern through both the Plan Level HRA process and the project level EIA / HRA process. The Applicants also highlight that this was not raised as an issue in the scoping response to Dogger Bank D (July, 2024).
- The subsequent lack of any guidance from Natural England as to how this effect should be assessed
- The Wildlife Trusts and Lincolnshire Wildlife Trusts did not raise 'halo effects' until after the publication of [RR-039].

200. The Applicants have therefore provided the **Ecological Halo Effects Technical Note (Revision 2)** [REP7-127] as a comprehensive review of the evidence of halo effects and how these could relate to the Projects. In addition, a methodology for determining the scale of an effect (if it were needed to be quantified) is proposed. Natural England have responded to this methodology and the Applicants have updated the 'without prejudice' footprint of effect accordingly (see **Ecological Halo Effects Technical Note (Revision 2)** [REP7-127] section 5.1). The Applicants consider that Natural England's suggested approach is highly precautionary with no basis in the evidence, this is particularly stark in relation to their advice for cable protection which Natural England treats the same as foundations, despite the obvious difference in scale between the two.

201. The Applicants maintain their position that there is no evidence of significant effects arising from halo effects in conditions similar to the Dogger Bank (exposed, offshore, higher energy environments), but acknowledge that this is a knowledge gap that should be further explored. Halo effects should not be considered to contribute to AEoI.

5.2.1.4 Consideration of Sandeel

202. Natural England disagree with the Applicants' conclusion that impacts on sandeel are low to negligible [REP5-056] on the basis that sandeel form part of the characteristic communities relevant to the biological structure and function in certain areas of the Dogger Bank SAC.

203. To clarify, the conclusion on negligible effect is related to the EIA not the HRA. The Applicants conclusions in terms of EIA are in the context of the large areas of potential sandeel habitat (as illustrated in **Heat Mapping Report: Atlantic Herring and Sandeel** [AS-105]) across the Southern North Sea and the small scale of permanent habitat loss and temporary disturbance effects of the Projects.

204. The Applicants highlight that the seabed within the Offshore Development Area within the Dogger Bank SAC, as well as being Annex I sandbank, is all potential spawning habitat for sandeel. This is highlighted in the **RIAA HRA Part 2 of 4 – Annex I Offshore Habitats and Annex II Migratory Fish (Revision 4)** [REP4-014] (see paragraphs 40 and 81). Therefore, any seabed habitat loss or disturbance within the SAC is also loss or disturbance of potential sandeel spawning habitat. For clarity, it is the same seabed just categorised for different elements of the community, hence there should be no consideration of additionality of disturbance effect from an HRA perspective.

205. The Applicants consider that habitat loss due to the permanent footprint of above surface infrastructure is a contributing factor to AEoI. As highlighted above, this includes the potential sandeel spawning habitat affected.

206. The Applicants do not consider that temporary disturbance during construction, operation or decommissioning is a contributing factor to AEoI. This includes UXO clearance and jack-up operations. This is because of the rapid recovery from disturbance. The Applicants have provided comprehensive evidence of this case in **Review of Evidence on Recovery of Sandbank Habitat Following Habitat Damage (Revision 2)** [REP3-021] which covers both the recovery of the biotopes and sandeel from disturbance.

207. The Applicants have assessed habitat loss and disturbance and provided footprints for both effects, these footprints are simultaneously Annex I sandbank and potential sandeel spawning grounds. The assessment is comprehensive, this is simply a disagreement over the conclusion and that matter has no material effect on compensation requirements.

5.2.1.5 Summary

208. The Applicants concede AEoI from permanent habitat loss due to the footprint of infrastructure above the seabed in the Dogger Bank SAC as concluded by the Plan-level HRA. The Applicants consider that they have provided comprehensive evidence to rule out AEoI as a result of disturbance effects during construction and operation (including UXO clearance and jack-up operations) or from potential 'halo effects'. The Applicants consider that Natural England has failed to provide any comprehensive, evidence-based rationale in response to the Applicants' submissions throughout examination.

209. As outlined above, the manner and timing of the raising of 'halo effects' is of particular concern as it shows little regard for due process and the aim of the pre-application consultation to raise and resolve issues. The Applicants were afforded no opportunity by Natural England to consider this effect pre-application or consult on assessment approaches. By Natural England's own admission, such effects have been investigated for many years (with highly variable results), so raising it when they did was not a result of any new evidence.

210. The Applicants note that if the Secretary of State concludes that 'halo effects' and disturbance do contribute to AEoI then account needs to be taken of the fact the footprints from different effects overlap and should not be double counted. The Applicants have presented footprints based on different scenarios dependent upon what the Secretary of State decides contributes to AEoI (see Table 4-4, 6.2 **Habitats Regulations Derogation Provision of Evidence (Revision 4)** [REP7-018].

211. The Applicants note that in the final Natural England Risk and Issues Log [REP7-154] the only red issue remaining for benthic compensation is disagreement of compensation quantum, and Natural England acknowledge that the Applicants have provided 'without prejudice' footprints.

212. The Applicants highlight that compensation should not be considered lightly and needs to have a justified scientific basis. The difference between outcomes of what contributes to AEoI is the requirement to compensate for approx. 2km² for habitat loss only or over 35km² if disturbance and halo effects are included. Although the Applicants do not know the financial contribution that is required by the MRF this order of magnitude difference clearly has financial implications for the Projects. In addition, concluding AEoI on the basis of disturbance has implications for future projects given the extent of designations around the UK coast. Consideration must be given to other sea users who could be affected by new designations, such as the fishing industry. The National Federation of Fishermen's Organisation (NFFO) raises this point in their **SoCG** [document reference 9.13] with the Applicants, noting that the NFFO are concerned about further disruption and displacement from designated sites. This concern has also been raised in parliament to the Environmental Audit Committee.

5.2.2 Conflation of EIA and HRA

213. There are several instances of disagreement between the Applicants and Natural England over the sensitivities assigned to receptors in the EIA. In their relevant representation (RR-39) and subsequent representations, Natural England state that the sensitivity of some receptors of the Dogger Bank should reflect the fact that the effects occur within a designated site.

214. The Applicants note that in the final Natural England Risk and Issues Log [REP7-154] that Natural England state that:

"*The sensitivity of the Dogger Bank (and Dogger Bank SAC) to changes in seabed level has been assessed as negligible. We advise that these construction activities and similar O&M activities are likely to result in changes to the extent and distribution and physical structure of the site's sandbank feature, which will further hinder restore objectives.*"

215. The Applicants highlight that this is irrelevant to the EIA and effects on the SAC are covered in the **RIAA HRA Part 2 of 4 – Annex I Offshore Habitats and Annex II Migratory Fish (Revision 5)** [REP7-016]. As stated in **Chapter 8 - Marine Physical Environment (Revision 2)** [REP7-035]

"As the conservation objectives of SACs and Marine Conservation Zone (MCZs) are driven by their ecological functioning, they are not considered as receptors for the marine physical environment and are assessed in the relevant chapters ..... However, a designated site may have a morphological component. For example, the Dogger Bank SAC comprises part of the Dogger Bank which is a topographic high and a geomorphological feature. Therefore, Dogger Bank itself is included as a receptor in this assessment, but not the Dogger Bank SAC."

"Dogger Bank as a geomorphological feature is not designated, but is considered to be of national and international importance for influencing oceanographic conditions in the

southern North Sea, it has therefore been assigned a high value. However, as the impact assessed here is not influencing the broad-scale morphology of Dogger Bank which in turn influences oceanographic conditions, its value is not considered in the definition of sensitivity and the resulting sensitivity of the receptor is defined as negligible."

216. With regard to the benthic EIA, Natural England state [RR-039: C7]:

"*Natural England strongly disagrees with the approach that has been taken by the Applicant in valuing benthic receptors and note that all of the biotopes identified within the boundary of Dogger Bank SAC (i.e. throughout the array and in the eastern section of the Offshore Export Cable Corridor), are representative of Annex I sandbank communities. As such, these biotopes should, according to the Applicants own methods, be considered high value (not low value)"*

217. In the EIA (**Chapter 9 Benthic and Intertidal Ecology** [REP7-038]) it is explained in that sensitivity is primarily based upon the ecological sensitivity of the receptor to an effect and this is based on the MarESA biotope sensitivities. Whilst value (in this case being part of a designated feature) may be used as a modifier to increase sensitivity this is not automatically done and is subject to expert judgement. Given the ubiquity of the biotopes within the Dogger Bank across the Southern North Sea, it was not considered that the value element was required to modify the sensitivity. Whether these biotopes are within or outwith a designated site is not relevant to the EIA.

218. The value is considered therefore within the **RIAA HRA Part 2 of 4 – Annex I Offshore Habitats and Annex II Migratory Fish (Revision 5)** [REP7-016]. The status of the biotopes as part of a designated site is the primary consideration and the key driver in the difference in the conclusions on adverse effect on integrity within the HRA process from significance in the EIA process.

219. The Applicants reiterate that Natural England were clear in pre-application consultation that EIA and HRA processes should be clearly separated within the application.

5.3 Effects on Prey

220. Following submission of the application, comments have been made by stakeholders regarding indirect effects on receptors (birds and marine mammals) via effects upon prey species (fish and shellfish. and benthos) from stakeholders. Natural England states that the Applicants have *'not provided an adequate assessment to quantify predicted impacts on predator species as a result of impacts to localised prey populations'* [REP5-056].

221. In line with common industry working practices **Chapter 10 Fish and Shellfish Ecology (Revision 2)** [REP7-042] assessed the potential impacts of the Projects upon fish and shellfish during the construction, operation and maintenance and decommissioning, whilst **Chapter 9 Benthic and Intertidal Ecology (Revision 2)** [REP7-038] assessed the potential impacts of the Projects upon the benthos. The impact conclusions from these chapters were then cross-referenced in the relevant assessments for ornithology (**Chapter 12 Offshore Ornithology (Revision 4)** [REP6-015] and **Report to Inform Appropriate Assessment (RIAA) HRA Part 4 of 4 – Marine Ornithological Features (Revision 5)** [REP6-008]) and marine mammals **Chapter 11 Marine Mammals (Revision 2)** [REP7-045] and **RIAA HRA Part 3 of 4 – Annex II Marine Mammals (Revision 3)** [REP5-009] in the context of the supporting role of benthic habitats and fish and shellfish as prey. The Applicants therefore consider that the assessment is in line with best practice for offshore wind assessments.

222. The Applicants provided the **Effects on Prey Species Technical Note (Revision 2)** [REP6-049] which signposted how this was done together with information on how the plan Level HRA considered these effects (they were effectively screened out). This document was updated with additional mapping following a meeting with Natural England on 7th May 2025.

223. Whilst Natural England now consider this matter to be resolved for marine mammals given that the indirect impacts to prey species is only a contributing factor to adverse effect and not sufficient to drive a conclusion of AEoI alone, Natural England maintain that this impact pathway will intensify the effects on kittiwake, guillemot, and razorbill as it has already been concluded that there will be an adverse effect as a result of other impact pathways. Natural England maintain that the assessment is inadequate for seabirds however, the Applicants maintain that:

- Where individuals (predators) are subject to displacement effects **(**as assessed in the **RIAA HRA Part 4 of 4 – Marine Ornithological Features (Revision 5)** [REP6-008]) and **RIAA HRA Part 3 of 4 – Annex II Marine Mammals (Revision 3)** [REP5-009]), the mortality from this is assumed to result from a reduction in access to prey. So, in this case, consideration of any indirect effects via effects on prey is double counting to some degree (e.g. the predators are already displaced from the Array Areas so effects on prey within these locations have no additional effect).
- Where predators are not displaced, there are two considerations:
  - The area which can no longer be used for foraging which is confined to the immediate footprint of the infrastructure (or disturbance footprint if following Natural England position) within the Array Areas (and within the Offshore Export Cable Corridor small sections of cable protection) (as assessed in **Chapter 9 Benthic and Intertidal Ecology (Revision 2)** [REP7-038] and **RIAA HRA Part 2 of 4 – Annex I Offshore Habitats and Annex II Migratory Fish (Revision 4)** [REP4-014]). This footprint is small in relation to both the potential spawning habitat and the foraging ranges of predators.

- The direct effects on the prey themselves (disturbance, noise impacts etc as assessed in **Chapter 10 Fish and Shellfish Ecology (Revision 2)** [REP7-043]) which are temporary and/or affect small areas / numbers of individuals.

224. Therefore, the assessment has covered all the potential pathways for impacts. These were assessed in line with standard practice in the Application, with the steps set out in the **Effects on Prey Species Technical Note (Revision 2)** [REP6-049] and no further assessment is required to inform conclusions of the EIA or RIAA.

225. When directly questioned by the ExA (see **Appendix N7 - Comments on the Report on the Implications for European Sites (RIES)** [REP7-152]) as to whether further quantitative assessment could be undertaken to the extent that the quantum of compensatory measures required can be identified, Natural England state that:

"*The Applicant has not provided an adequate assessment to quantify predicted impacts on predator species as a result of impacts to localised prey populations (see REP5-056). However, we acknowledge that any such assessment would carry a high degree of uncertainty and that as a result the likely scale of potential impact would remain poorly understood. Accordingly, we do not consider the indirect impacts can be quantified in the way suggested."*

Natural England consider that robust monitoring should be undertaken to fill evidence gaps with respect to this pathway. We direct the Applicant to outputs produced by JNCC (Report 767, 2024[2]) and the PrePARED project which provide recommendations for future work targeting both birds and mammals in relation to prey availability".

226. Thus, Natural England accept that no further assessment work can be done. The Applicants have already committed to the inclusion of sandeel monitoring within the Dogger Bank South **In-Principle Monitoring Plan (IPMP) (Revision 5)** [REP7-115] and will take account of any recommendations of PrePARED when developing monitoring proposals.

227. The Applicants acknowledge the PrePARED work but highlight that the report cited states that (Applicants' emphasis):

"*Depletion of fish prey in the North Sea, caused by climate change and/or fisheries activities, is a key pressure contributing to poor kittiwake population status. The ecological mechanisms and processes underpinning the interactions between kittiwakes and their fish prey are complex and need to be better understood in order to inform robust, evidence-based ecological measures that would improve the viability of seabird populations of conservation importance*."

[2] Ruffino, L. & Black, J. 2024. Interactions between black-legged kittiwakes and their fish prey in the North Sea. Report of the JNCC-Ørsted workshop, Edinburgh, October 2023. JNCC Report 767. JNCC, Peterborough, ISSN 0963-8091. https://hub.jncc.gov.uk/assets/9627551b-3805-4bcc-9db8-bbad34841537

228. The Applicants note that the effects of the Projects are minimal in scale (i.e. highly localised) when compared to the key pressures (identified by Natural England themselves in the PrePARED work), upon prey resource, namely climate change and fisheries which act at the scale of the North Sea. The Applicants maintain that there is no significant effect from prey species (over and above that already assessed through other pathways).

229. The Applicants note that in the final Natural England Risk and Issues Log [REP7-154] prey effects remain a red issue, however, in [REP7-152] Natural England accept that no further assessment work can be done. The Applicants maintain that the assessment undertaken is robust, follows standard practice and has included all pathways that could be quantified. Natural England has provided no further guidance on additional assessment to be undertaken and has acknowledged the consideration of sandeel in the IPMP. Therefore there is no further action or assessment required and the Applicants consider this matter resolved.

5.4 Impacts on the Humber Estuary SAC and Spurn Point

230. Natural England have requested that no cable protection is placed landward of the 10m water depth contour as they are concerned it would have adverse effects on longshore sediment transport to designated features of the Humber Estuary SAC and Spurn Head, located 53km south of the landfall. They claim that sediment transport to Spurn Head could be reduced to an extent that Spurn Head is breached, having significant impacts on designated ecological receptors [REP6-072: B1-vi].

231. Through the Evidence Plan Process, within the ES (**Chapter 8 Marine Physical Environment (Revision 2)** [REP7-035]), and during examination, the Applicants have provided evidence to justify the potential need for cable protection in the nearshore due to the presence of chalk bedrock at shallow depths below the seabed which could result in cable burial depth not being achieved, requiring surface cable protection to manage the risks associated with a cable being exposed on the seabed.

232. To reduce the potential impact from nearshore cable protection measures, the Applicants committed to:

- Burying the cable in the intertidal zone at the landfall and 350m seaward of mean low water spring (MLWS) water level;
- Limiting surface cable protection to 10% of the cumulative length of all cables laid between 350m seaward of MLWS; and
- Bundling the Offshore Export Cables into a maximum of two trenches to minimise the amount of cable protection that may be required (DML 3 & 4 Condition 3).

233. The Applicants have also committed to a reduction in the maximum height of the cable protection structures from 1.4m to 0.5m. This is secured within the **Draft DCO (Revision 11)** [document reference 3.1] within DML 1 & 2 – Condition 15, DML 3 & 4 – Condition 13 and DML 5 – Condition 11, through adherence to MGN 654 in relation to cable protection, namely that cable protection would not change the charted water depth by more than 5%, unless otherwise agreed with the Maritime and Coastguard Agency and Trinity House. As such, within the 10m depth contour the Applicants would be limited to a cable protection height of no greater than 50cm.

234. To provide the evidence base to inform the assessment of significance, the Applicants have simulated changes to longshore sediment transport at the landfall due to the worst case scenario for cable protection in the nearshore (**Assessment of Coastal Processes at the Dogger Bank South Landfall** [REP5-040]). The numerical modelling shows that the majority of active sediment transport occurs within 200m of the base of the cliff line. As a worst case, the cable protection would be located at least 480m from the base of the cliffs and it is widely acknowledged that the majority of sediment supply from the Holderness Coast to Spurn Head occurs south of the DBS landfall, with Spurn Head also lying south of the landfall.

235. The modelling shows that there is a small amount of active sediment transport at the location of the cable protection and if the structures completely blocked the water column (and sediment transport), approximately 4.2% of the average annual sediment transport budget would be affected. However, the cable protection will never completely block the water column like a groyne would, and it would occupy between 14% and 17% of the water column at any given time, depending on the phase of the tide. Assuming constant sediment transport rates throughout the water column, the volume of sediment blocked by the structures would be **<1%**. This means sediment can bypass the structures by accumulating on the northern lee side (updrift of the dominant sediment transport direction to the south) until it fills the gap between the seabed and the top of the cable protection structure at 0.5m above seabed, at which point sediment transport to the south resumes as there would be no residual blockage effect. The modelling results predict this would occur within one month based on sediment transport rates.

236. However, following Natural England's advice provided in [REP6-072: B1-iv], a greater proportion of sediment would be transported at the base of the water column as bedload meaning the values presented may under-represent the volumes of sediment blocked. The Applicants have recalculated the volumes to update the results. The model indicates bedload sediment transport accounts for 56% of the total volume of sediment transported. Therefore, the volume of sediment blocked by the structures could reach 1.75% as a worst case.

237. Using the modelling results, the Applicants define the magnitude of impact in the nearshore as being low as the scale of impact would be extremely small when compared to the high volumes (millions of m³ a year) of sediment being eroded and transported along the Holderness coast due to cliff erosion. After incorporating the additional modelling and addressing Natural England's comments throughout the examination period, the Applicants reviewed the conclusions of the ES in relation to changes in bedload sediment transport due to the presence of cable protection measures and changed the significance of effect from negligible to minor adverse which is not significant in EIA terms. Despite this conclusion, the Applicants have committed to post-construction monitoring of any cable protection measures in water depths of less than 10m to confirm the conclusions of the ES (see **In Principle Monitoring Plan (Revision 5)** [REP7-115]).

238. Despite all the evidence provided by the Applicants, Natural England "*maintain our advice that the conservation objectives for the Holderness Inshore MCZ being hindered and adverse effects on integrity for the Humber Estuary SAC cannot be ruled out beyond scientific doubt, if cable protection is placed within the 10m depth contour. We also consider that there is unlikely to be agreement between Natural England and the Applicants on this matter*" [REP6-072-B1-vi]. The Applicants disagree with this statement and consider they have provided a robust scientific evidence base using appropriate, best-practice, industry approved numerical modelling.

239. The Applicants are deeply concerned by Natural England's claims in REP6-072: B1-vi that "*sediment transport to Spurn Head, in-combination with other plans and projects, be reduced to an extent that Spurn is breached*" and that if breaching occurs, the Applicants have a condition included in the DCO/dML to "*repair any breach at Spurn point is sufficient to address the risk of an adverse effect on effect on integrity of the Humber Estuary SAC and significant impacts to the Holderness Inshore MCZ*". This statement is made without any consideration of the morphodynamic functioning of Spurn Head and the impact of climate change and sea-level rise on the system. It also puts onus on a single Project/developer to mitigate against the effects of complex natural processes (which are not necessarily adverse), operating against a background of climate change, in combination with multiple plans and projects being developed along the entire length of the Holderness coast.

240. The Applicants also highlight that the Environment Agency have confirmed that they were '*satisfied with the information provided and with the mitigation proposed by the Applicants, and that the position of this item as agreed*' (see SoCG ID 19 of the **EA SoCG** [document reference 9.3] with regards to the potential effects on coastal processes in the nearshore environment. In addition, the MMO confirmed via email dated 1st July 2025 that '*The MMO are content that the evidence presented via modelling work is adequate to address the physical process changes arising from the emplacement of scour protection around the landfall exit pit in the nearshore'* and that '*the MMO are confident that the applicant's estimate of the scale of impacts is reasonable i.e., that the local structure (cable protection at the exit point of the cables, several hundred metres offshore) will directly affect the physical processes only in the immediate vicinity*'.

241. The Applicants ask the Examining Authority and Secretary of State to carefully consider the scale of the nearshore cable protection measures (2 x 140m in length and 0.5m in height) and the potential blockage effect they may have on sediment transport budgets (<1.75% of the annual sediment transport budget) in relation to the location of Spurn Head as a receptor, located 53km to the south, and the huge volumes of sediment being eroded from the Holderness coast on an annual basis due to climate change. It should be noted that if the Applicants cannot sufficiently protect the cables in this location, then there are increased risks of cable breakages and damage which could result in limitations of the supply of clean energy from the projects, as well as increased risks to navigational traffic and fishers. The latter risk being particularly pertinent given that potting fishers are known to fish the area in question at a relatively high intensity.

242. Given the Applicants' position, supported by robust evidence and agreed by both the MMO and Environment Agency, that AEoI can very obviously be ruled out, the Applicants do not propose to submit a without prejudice derogation case in relation to this matter.

5.5 Requests for Temporal Restrictions due to Herring Impacts

243. A key remaining disagreement is maintained between the Applicants and the MMO and Natural England regarding the potential noise impacts caused by piling on herring during their spawning season (August – October).

244. To mitigate these effects, the MMO and Natural England have pressed the Applicants to secure additional mitigation through the inclusion of temporal restrictions on piling activity between August and October (inclusive). The issues relating to this matter as they have emerged through examination are summarised in **Summary of Herring Noise Impact Discussions During Examination** [REP7-134].

245. The Applicants maintain that a temporal restriction for piling activities in the Array Areas with regard to herring spawning and effects from underwater noise associated with piling is not required. This is because the 186dB re 1µPa2s Sound Exposure Level (SEL) during pile driving, the recommended threshold for the onset of TTS in sensitive fish receptors such as herring (Popper *et al.*, 2014)[3], does not encroach into the preferred and marginal substrate areas within the relevant spawning grounds. This is the case for a non-mitigated worst case piling scenario.

246. Within their assessments (**Chapter 10 Fish and Shellfish Ecology (Revision 2)** [REP7-042]), to meet the requests of Natural England and MMO, the Applicants have also modelled a 135dB re 1µPa2s SEL noise contour, which is the noise threshold advocated by the Interested Parties as being relevant for behavioural impacts. However, as further described below, the relevance of this contour is contested and Applicants do not agree that the 135dB sound level is indicative of an effect that could be considered to have a population level impact on the species.

247. Whilst the 135dB threshold has been demonstrated to encroach into the preferred and marginal substrate areas within spawning ground, the Applicants note that the source from which the 135dB behavioural threshold is discussed is Hawkins *et al.* (2014)[4]. The Applicants do not agree that this paper establishes the best-available scientific evidence relating to noise impacts on herring given that it draws its conclusions based on a study conducted in a quiet sea lough, using recorded sounds, it focusses on sprat (*Sprattus sprattus*) rather than herring and the behavioural responses observed were minimal, including issues such as changes in swimming direction and schooling behaviour. Hence, this study could be said to be of little relevance to herring populations in the North Sea which are exposed to relatively high levels of background noise.

248. Moreover, the authors of the paper note that its findings are preliminary and should not be used to inform impact assessment work in the manner suggested by Natural England and MMO, stating: "*In this paper, data have been presented on the levels of impulsive sound to which sprat and mackerel respond. However, these data cannot yet be used to define the sound exposure criteria. More detailed studies of the behaviour of these species are required to establish whether the responses observed are likely to result in adverse effects upon the survival of individuals*."

[3] Popper,A.N., Hawkins,A.D., Fay, R.R., Mann, D.A., Bartol, S., Carlson,T.J., Coombs, S., Ellison, W.T., Gentry, R.L., Halvorsen, M.B., Løkkeborg, S., Rogers, P.H., Southall, B.L., Zeddies, D.G. & Tavolga,W.N. (2014). Sound exposure guidelines for Fish

[4] Hawkins, A.D., Roberts, L. & Cheesman, S. (2014). Responses of free-living coastal pelagic fish to impulsive sounds. Journal of the Acoustical Society of America, 135(5), pp. 3101-3116. doi:10.1121/1.4870697

249. Thus, applying the 135dB level is likely to significantly overestimate the actual risk of behavioural effects on herring spawning. The Applicants wish to reiterate the exceptionally precautionary nature of this sound level for the assessment of behavioural effects to herring (and other clupeids), which fails to demonstrate the potential for impacts on spawning outcomes, and therefore on the fitness of the wider Banks herring population. This is due to the acoustically quiet nature of the environment in which the study was undertaken which is not considered reflective of the study area (i.e. the North Sea) associated with the Offshore Development Area, the method undertaken to generate sound during the study (i.e. playback of recordings), and the nature of perceived sound changing with distance from the source (*Hawkins et al.*, 2014).

250. With this in mind, the Applicants note that this paper presents preliminary findings important for establishing a more comprehensive behavioural disturbance metric in future studies. There is no information available to 'translate' the behavioural responses for sprat used in Hawkins *et al.* (2014) into behavioural responses for Atlantic herring. Further, there is no evidence to indicate that the behavioural response (which did not result in sprat moving to avoid the source of noise) observed would result in any kind of **likely significant effect** – the bar of relevance to EIA – through preventing the spawning of herring either through preventing migration of herring to their spawning grounds, or through preventing spawning itself.

251. The Applicants consider that the Popper *et al.*, 2014,[5] 186dB SEL_{cum} sound level during pile driving is the suitable threshold for the onset of TTS in sensitive fish receptors. This approach has been developed specifically to provide an evidence-based criteria for effects of anthropogenic sound (including pile driving and shipping) on fish and when considered in the environmental assessments undertaken for DBS, no overlaps with the Banks herring population spawning grounds were identified and no likely significant effects could be identified (**Chapter 10 Fish and Shellfish Ecology (Revision 2)** [REP7-042].

252. The Applicants consider that the 186dB limit is the correct lowest impact threshold for considering impacts on herring and is an accepted methodology and approach to determining TTS which is known to be a temporary impact. This threshold has been utilised by assessments across the offshore industry for many years (i.e. Hornsea Project Four, Five Estuaries).

[5] Popper,A.N., Hawkins,A.D., Fay, R.R., Mann, D.A., Bartol, S., Carlson,T.J., Coombs, S., Ellison, W.T., Gentry, R.L., Halvorsen, M.B., Løkkeborg, S., Rogers, P.H., Southall, B.L., Zeddies, D.G. & Tavolga,W.N. (2014). Sound exposure guidelines for Fish

253. The request for the application of the 135dB level by the MMO and Natural England raises significant challenge for the development of the offshore wind industry, with little evidence to support its usage. Indeed, its use for the purpose suggested is specifically rejected by the author of the paper from which this 'impact' threshold has been derived.

254. The MMO have asked for the Applicants to provide empirical evidence indicating that herring will continue to spawn when subject to underwater noise disturbance and state there is a large body of research that fish will exhibit behavioural responses at noise levels lower than the 186dB. The Applicants note that other than the Hawkins *et al.* (2014) study (which is not considered a comparable example) there is limited further evidence to support the use of lower threshold. It is the Applicants' opinion that the onus for the provision of suitable, peer-reviewed empirical study lies with the MMO in terms of providing clear, evidence-based justification for the highly consequential mitigation that has been proposed.

255. The implications of a piling restriction for the delivery of the Projects are significant and substantial and set out in **The Applicants Responses to the Examining Authority's Second Written Questions (ExQ2)** [REP5-036]. These implications are reiterated here.

256. The preferred time to complete offshore construction works, including piling, is through Spring, Summer and into early Autumn when weather and sea conditions can be expected to be at their most favourable. In an unrestricted case, the Projects assume that piling would be conducted across two years, assuming a Spring start for each project over the two years. It is not expected that work would conclude by the start of the presently proposed restricted period in either year. Therefore, a temporal restriction between 1st August and 31stOctober would have a negative and delaying impact on construction. This is not just because it could cause breaks in the piling programme, but also because it very significantly reduces the availability of some of the most favourable construction weather to the Projects which typically occur from late Spring through to early Autumn.

257. If a restriction was enforced, the Applicants would either pause piling in July and recommence piling in November to complete the remaining locations, or would bring the start of the foundation campaign forward to around the start of November, to have a viable chance of completing before August. The alternative would be the Applicants extending the piling campaign over three years rather than two as per the present assumption, to maximise construction in favourable seasons. Any of these options would result in the Projects potentially incurring significant programme and cost impacts associated with weather downtime, additional mobilisation / demobilisation for the main piling vessel and other associated vessels, and extended port lease costs, potential supply chain issues should construction vessels be required on other projects and also the overall extension of the period over which impacts would be devolved on fish, marine mammals and other receptors outside of the restricted period. Programme-wise, the completion of the Projects could be delayed by up to 12 months.

258. The commercial impact of such a restriction would be likely to be in the range of 20-30% increase to foundation installation costs, being likely to run well over £100,000,000. It is important to highlight that foundation costs are a key Levelised Cost of Energy component. Therefore, this cost increase would be material in the cost competitiveness of the Projects, and potentially the ability of the Applicants to successfully secure a route to market.

259. The potential maximum consequences of an interrupted installation that the requested restriction could cause, with uncertainty over when contractors / vessels would be able to return, particularly when taken together with other restrictions and mitigation that have been proposed, will be viewed very negatively by investors / technical advisors. It is important to stress in the strongest possible terms that the requested restriction would create a very significant project risk, with significantly increased foundation installation costs. The result of this could very well undermine the competitiveness and, ultimately, the viability of the Projects. It is important that consideration is given to whether the requested restriction is proportionate, reasonable and necessary, given the comparatively weak evidence-base upon which it has been requested. Further, the application of any restriction should be clearly contextualised in the planning balance against the potentially existential threat that such restriction poses to the proposed Projects.

260. Whilst the Applicants dispute that a temporal restriction is required to mitigate effects which within the ES were demonstrated to be not significant in EIA terms they acknowledge the position of the MMO and Natural England. In addition, both parties to the discussion recognise that the final impact ranges associated with piling will only be fully established post consent upon application of the final design and the agreement of the final noise reduction mitigations required.

261. In consideration of the differing positions relating to this matter, the Applicants have brought forward 'without prejudice' wording for a condition that could be imposed if required by the Secretary of State in the decision-making process should they be minded to do so in the full knowledge of the significant impacts that such restrictions could have on the Project.

262. The Applicants maintain that if a condition were to be imposed for a temporal restriction there should be a clear basis for disapplication where agreed impact criteria are demonstrably met through updated modelling delivered post-consent. The 'without prejudice' wording for a condition that could be imposed if required by the Secretary of State is presented in **Summary of Herring Noise Impact Discussions During Examination** [REP7-134] and has been included in square brackets in the Draft DCO. The wording secures that there will be no noise levels above 135dB within the herring spawning habitat as defined. This would be achieved via either a temporal restriction or demonstration through the delivery of a herring spawning piling restriction plan that shows that the impact ranges at the 135dB threshold would not encroach spawning areas as defined.

263. Discussions with the MMO relating to the without prejudice piling restriction condition were held on 15th May 2025 and the 6th June 2025. Following these discussions MMO agreed without prejudice wording presented in the Draft DCO (via email on the 24th June). Natural England, who were not party to the meetings with MMO, have also subsequently agreed the draft wording (via email on the 25th June).

264. If the Secretary of State is minded to impose a seasonal restriction on piling, despite their knowledge of the impacts that such a restriction could have on Project delivery, then the above condition wording would need to be applied to Deemed Marine Licences 1-4 (Schedules 10-13) presented in the **Draft DCO (Revision 11)** [document reference 3.1]. The wording would not apply to Deemed Marine Licences 5 or 6 as they cover the Projects' inter-project cabling, which requires no piling.

5.6 Wake Loss

265. The Applicants closing statement in relation to wake loss has been included separately within **The Applicants' Closing Statements on Wake Effects** [document reference 18.6] also submitted at Deadline 8.

5.7 Conclusions of Assessment on Heavy Anti-aircraft gun site at Butt Farm (Scheduled Monument)

266. Effects on the Scheduled Heavy Anti-Aircraft gun site at Butt Farm (NHLE 1019186) would arise only through change to setting. There would be no physical impact to the designated site. This is common ground between the Applicants and all consultees. Harm to an asset that arises through change to setting is treated in the same way as harm that arises through physical disturbance or loss in the balancing exercise required under NPS EN-1, and the weighting of that harm in the balancing exercise would form part of the assessment of the magnitude of that harm. Consequently, this issue has been considered in some detail during the examination.

267. The Applicants have assessed this impact as of low magnitude, resulting in a moderate adverse effect which would be significant in the absence of mitigation (**Appendix 22-5 - Onshore Infrastructure Settings Assessment (Revision 2)** [REP7-076] section 85, **Chapter 22 Onshore Archaeology and Cultural Heritage (Revision 3)** [REP7-073], section 344). This would equate to less than substantial harm toward the lower end of the scale. This harm would arise because the setting of the asset contributes primarily to the viewers ability to understand and 'read' the strategic and tactical function of the asset with reference to an understanding of the wider gun battery site and its designed fields of fire to the north and west. While the presence of the Onshore Converter Stations would be visually intrusive, the limited contribution of that part of the setting to historic interest means that this effect could be adequately mitigated through the provision of planting to provide screening of lower-level elements of the Onshore Converter Station and the agreement of appropriate surface finishes. This screening, while not concealing the converter station wholly, would screen lower elements of the structure, such as the switchgear and signage, and would increase the perceived separation and reduce the visible extent of the Onshore Converter Station.

268. Management of design treatment of the proposed Onshore Converter Station would be through the process set out in the **DAS (Revision 3)** [REP7-103], which sets out a process for consultation and approval of detailed design by ERYC following consultation with Historic England.

269. Taken together with the proposed landscaping mitigation, the adoption of appropriate surface treatments for the larger buildings secured in the **DAS (Revision 3)** [REP7-103] would mean that the magnitude of impact would be reduced to negligible, resulting in a minor adverse effect (not significant in EIA terms). This would equate to a harm level of less than substantial, but at the lower end of the scale.

270. Historic England and ERYC, maintain their conclusion that harm would be less than substantial, but toward the higher end of the scale in the absence of mitigation.

271. Historic England and ERYC, however, have argued that the presence of the converter station would affect the viewer's more generalised aesthetic appreciation of the asset meaning that the magnitude of harm would not be addressed by the proposed mitigation, which would be limited in effectiveness as being visually permeable, particularly in winter (HE: Written Representation [REP1-059]) or be of inappropriate character and enclosing a 'a functioning military site within an open natural landscape' (ERYC: Summary of oral responses from Issue Specific Hearing 4 [REP5-043]).

272. In this respect, the Applicants have noted that the proposed planting would be woodland rather than a hedgerow or shelter belt, providing an effective visual screen at maturity, even with loss of leaves in winter. This woodland would also broadly replicate the location and form of Bentley Moor Wood, a historic woodland that was present during the entire operational life of the gun site, and would reflect the local landscape character, addressing Historic England's requests to provide 'naturalistic' planting (**The Applicants' Comments on the Responses to the Examining Authority's First Written Questions (ExQ1)** [REP4-087]). These planting proposals would be subject to consultation with Historic England as part of the process for agreement of design treatments with ERYC through the process set out in **DAS (Revision 3)** [REP7-103].

273. Historic England have requested the provision of physical enhancements to the gun site and its inclusion within a wider heritage engagement strategy. The Applicants maintain their position that these works are not required as mitigation to address the impacts of the Projects; but could (subject to the necessary agreements with landowners and heritage stakeholders) be progressed as an opportunity for enhancement of the significance of the gun site, to be delivered as part of the Public Outreach and Engagement Strategy within the **Outline Onshore Written Scheme of Investigation (WSI) (Revision 2)** [REP4-049]. The Applicants have included this option in the **Outline Onshore WSI (Revision 2)** [REP4-049], and engaged with HE, the landowner and the occupier of the site to develop a scope of interventions that could be provided as enhancement measures. The Applicants have met Historic England on site twice and have accepted Historic England's requests for information, physical enhancement and public engagement on both occasions. As detailed in the Statement of Common Ground with Historic England supplied at Deadline 8 (document ref 9.4) Historic England *'agree with the Applicant that enhancement proposals for the Butt Farm gunsite have been circulated, all that is required is to agree the mechanism for the proposals to be finalised and implemented'.* Similarly, the Applicants are engaging with the cross-project engagement forum established by Historic England, with Historic England noting in the **Statement of Common Ground** [document ref 9.4] supplied at Deadline 8 that *'Historic England and the Applicant have made considerable advances on this matter'* .The Applicants will continue to work with Historic England to agree a final scope for these enhancement proposals to be delivered through the final Onshore Archaeological Written Scheme of Investigation (secured through Draft DCO Requirement 18).

274. The difference between the parties is limited, with agreement that less than substantial harm would arise in the absence of mitigation; it is the value and effectiveness of that mitigation that is at question. The Applicants have developed a scheme of landscaping and planting that uses established planting and design practice to:

- Reflect the historic landscape character of the area both in the present at the time the gun site was in use;
- Preserve the designed field of fire of the gun site;
- Break up the bulk of the proposed converter station;
- Screen lower-level structures and activity in views of and from the gun site; and
- Maximise the perceptual separation of the Onshore Converter Station site from the gun site.

275. In addition, a range of enhancement proposals are being developed which focus on increasing potential public outreach opportunities related to the gun site, as outlined in Appendix 3 of the **Outline Onshore WSI (Revision 2)** [REP4-048] including physical enhancement, archaeological and historical research, and a Digital 3D model of the gun site. These proposals are in line with requests from Historic England.

276. In the event of the assessment made by Historic England and ERYC that less than substantial harm would arise and would not be mitigated being upheld by the ExA, this would mean that any harm would be weighed against the benefits of the Projects in the balancing exercises carried out by the ExA in providing their recommendation and the Secretary of State in making the decision. This exercise would be guided by the requirement to have regard to the desirability of preserving the scheduled monument or its setting set out at Section 3(3) of the Infrastructure Planning (Decisions) regulations 2010 and the relative weights placed on the harm to a designated heritage asset and to the benefits of the scheme in supporting the delivery of the UK Government target to provide 50 GW of offshore wind capacity by 2030. In applying the weighting, NPS EN-1 at paragraph 4.1.7 is clear that for projects which qualify as CNP Infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases.

6 Draft Development Consent Order

6.1 Position with Interested Parties

277. The drafting of the **Draft DCO (Revision 11)** [document reference 3.1] has had regard to recent applicable precedents and drafting practice from the Secretary of State. The majority of the DCO drafting has been agreed with interested parties. The Applicants have no outstanding areas of disagreement with the relevant planning authority on the Draft DCO. As far as the Applicants are aware the key drafting points that are not agreed with interested parties are as set out below.

278. The Applicants have also included in section 6.3 below commentary on protective provisions, setting out areas of agreement and disagreement and providing justification and rationale for the Applicants' position, where that differs from the position of the relevant interested party.

6.1.1 Article 5: transfer of the benefit of the DMLs

279. The MMO objects to the transfer of the benefit of the DMLs as authorised by article 5 of the **Draft DCO (Revision 11)** [document reference 3.1]. Their position is that any transfers of the benefit of the DMLs should be dealt with separately under the Marine and Coastal Access Act 2009. For the reasons set out below, the Applicants disagree.

280. Paragraph (14) of Article 5 disapplies sections 72(7) and (8) of the Marine and Coastal Access Act 2009 in relation to a transfer or grant of the benefit of a DML. The drafting is based on the Model Provisions and reflects a long established precedent regarding the transfer of DCO powers and DMLs that has been endorsed by the Secretary of State many times, including most recently in the Rampion 2 DCO and Sheringham Shoal and Dudgeon Extensions DCO.

281. The Planning Act 2008 is clear that marine licences may be deemed in a DCO in appropriate areas (s149A) and that a DCO may include such further provisions ancillary to the operation of that DML (s120(3)), including transfer along with the benefit of the other parts of the DCO. It is clear from the wording of section 120(5)(a) and (c) that a DCO may "apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order" or "include any provision that appears to the Secretary of State to be necessary or expedient for giving full effect to any other provision of the order". DMLs are clearly a matter for which provision may be made in a DCO; section 72 MCAA 2009 is a provision relating to that deemed marine licence and the transfer power is accordingly authorised by s120 of the Planning Act.

282. The ability to transfer the DML is related to the deeming and is submitted to be a sensible, expedient part of the wider power to transfer the benefit of the DCO. There is accordingly no legal barrier to including these provisions in the **Draft DCO (Revision 11)** [document reference 3.1] and there is strong precedent authority for its inclusion demonstrated by DCOs in English waters on this position which has been repeatedly adopted by the Secretary of State and has not been subject to legal challenge as to its competency.

283. Where a transfer of a DML is sought under Article 5, the Secretary of State would consider the context of all the provisions of the DCO being transferred and would consider the appropriateness of the party to whom the transfer or grant is proposed. The Secretary of State would also take into account any representations made by the MMO before determining whether to grant consent, noting that Article 5 (paragraphs (6) and (9)) includes provisions requiring notification and consultation with the MMO where a transfer or grant of the benefit of a DML is proposed. That process would be robust in ensuring a suitable approach is being taken. In that context, it is appropriate that the Secretary of State has the ability to approve the transfer or grant of a DML such that the transfer or grant can fully reflect the relevant DCO and DML powers.

284. The undertaker is required by statute to transfer the transmission assets to an OFTO and cannot retain those in the same ownership as the generation assets. A transfer of some of the benefit of the DCO and two of the DMLs at an early stage is therefore not only known to be required, but is a statutory necessity. It is undesirable to separate the transfer of the benefit of the order generally and the transfer of the benefit of the deemed marine licence as doing so could result in transfers occurring at different times and result in an inconsistency in position. It is considered important that the timing of any transfer or grant of powers / authorisations under the DCO and a DML be aligned, as there is considerable overlap between the authorisations and the requirements/conditions. This justifies a departure from the procedure under the Marine and Coastal Access Act 2009.

285. In addition, Article 5 provides for a transfer to take place in a different way to section 72(7). Since Article 5 is different from the precise wording of section 72(7) of the 2009 Act it is necessary to specify that section 72(7) only applies to a transfer not falling within Article 5 in order to enable Article 5 to operate. Without specifying this, Article 5 might be claimed to be inoperative because of adopting a different wording from section 72(7).

286. Having deemed the marine licence in the DCO it is also appropriate that any transfer under the provisions of that DCO include the DML as part of the wider transfer – it is one element of the wider order powers and should not be separated out from the authority to construct, operate and maintain the NSIPs granted by the order.

6.1.2 Schedules 10 – 14A (DMLs 1 – 6): determination dates

287. The MMO does not agree with the inclusion of determination dates for the approval of submitted plans and documents. Condition 17(2) of DMLs 1 and 2, condition 15(2) of DMLs 3 and 4 and condition 11(5) DMLs 5 and 6 include provision for the MMO to determine an application for approval under the conditions relating to pre-construction plans and documentation and the Site Integrity Plan within six months from the date of receipt of the relevant application, unless otherwise agreed in writing with the undertaker.

288. The Applicants require certainty that the discharge of conditions under the DMLs will not cause undue delay to the delivery of the Projects. The Applicants note that, whilst the MMO is not subject to set determination periods for the discharge of conditions for marine licences issued by the MMO, the MMO does aim to make a decision on most marine licence applications within 13 weeks of an application being validated. It would therefore seem reasonable that the MMO is able to make a decision on the discharge of conditions within a period double that length. The Applicants therefore submit that six months is a reasonable amount of time for the MMO to determine any approvals sought, noting that the provisions of the DMLs do allow for an alternative timeframe to be agreed between the MMO and the undertaker, which could be utilised in the unlikely event that six months was not sufficient in individual cases.

289. The Applicants note that similar conditions have been included within the DCO for Rampion 2 (which in fact includes a four-month determination period for certain approvals), Sheringham Shoal and Dudgeon Extension Projects (again, this includes a four-month determination period) and Hornsea Four (a six-month determination period has been included). The Applicants therefore suggest that such a condition has been found to be reasonably required by the Secretary of State in order to ensure that no undue delay is caused in the delivery of critical national infrastructure.

6.1.3 Schedules 10 – 14A (DMLs 1 – 6): force majeure

290. Condition 14 of DMLs 1 and 2, Condition 12 of DMLs 3 and 4 and Condition 10 of DMLs 5 and 6 include a provision which means that if, due to stress of weather or any other cause, the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life or of the vessel is threatened, within 48 hours the undertaker must notify full details of the circumstances of the deposit to the MMO. The MMO does not agree with the inclusion of this provision and submits that it does not meet the legal tests for conditions as set out in the National Planning Policy Framework (NPPF).

291. The Applicants do not agree with the MMO's position. The Applicants would highlight that "force majeure" is defined in law as covering events outwith a parties' reasonable control commonly including Acts of God, flood, drought, earthquake or other natural disaster; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; fire, explosion or accident.

292. The Applicants do not accept that there is any basis for submitting that force majeure would cover the Applicants' contractor's negligence (as submitted by the MMO), noting that nothing in the DCO or DMLs differentiates between the undertaker and its contractors, the undertaker cannot 'pass off' responsibility to a contractor and somehow become immune under the DCO. The MMO's position is contrary to judicial interpretation of "force majeure" and requires to be substantiated.

293. The Applicants maintain that within the accepted, judicially interpreted meaning of "force majeure" and not the incorrect meaning the MMO are attempting to ascribe, it is entirely reasonable for this to be included.

294. The MMO highlights that DMLs should be broadly consistent with standalone marine licenses (as per PINS advice note 11) However, it is the Applicants' position that "broadly consistent with" does not mean identical. Simply because the MMO have adopted a misleading interpretation of "force majeure" does not mean that the Secretary of State is bound to follow that. It is noted that this provision has been included in many recent DCOs, including for Rampion 2, Sheringham Shoal and Dudgeon Extension Projects, Awel y Mor, Hornsea Four and East Anglia ONE North, as examples. It is therefore clear that this inclusion is well precedented in recent offshore wind DCO decisions.

295. The Applicants' position is that the drafting of this provision does meet the relevant legal tests. The master of a vessel must be able to take necessary actions to preserve the safety of their vessel and persons on it. "Any other cause" covers unforeseen events that endanger a vessel and cannot therefore be listed. The Applicants note that "any other cause" is wording that is precedented in other DMLs, as listed above. For the reasons given above it is considered to be reasonable to include this wording.

6.1.4 Schedules 10 – 14A (DMLs 1 – 6): replenishment of cable protection

296. Natural England has raised concerns as the DCO does not contain an end date for deployment of cable protection within and outside of designated sites – their position is that cable protection should only be deployed for a maximum period of 10 years outside of designated sites and not at all within the Dogger Bank SAC following the completion of construction. The ExA suggested drafting changes to give effect to Natural England's position, with which the Applicants disagree (see **The Applicants' Comments on the ExA's Proposed Schedule of Changes to the dDCO** [REP7-130]).

297. Table 2-3 of the **Outline Offshore Operations and Maintenance Plan (OOMP) (Revision 3)** [REP2-045] is clear that any new cable protection during operation, including at new locations, would require a new Marine Licence. Replacement or addition to cable protection during operation in the same area as cable protection has been installed during construction (up to the limits set out for the Projects as a whole) would be undertaken under the DMLs in accordance with condition 7 of DML1 (and equivalent conditions in the other DMLs) and would not require a new Marine Licence.

298. Condition 23 of DML1 (and equivalent conditions in the other DMLs) requires ongoing reporting of scour and cable protection, including where such protection is replenished during operation. This requirement includes for provision of the location and volume of cable and scour protection and any other information relating to such protection as is agreed between the MMO and the undertaker.

299. The Applicants' position remains that replenishment of cable and scour protection up to the limits set out within the DMLs could be deposited within the footprints of deposition established at the construction stage. These footprints would be established through the discharge of the Reporting of Scour and Cable Protection conditions in each DML (for example, see Condition 23 in DMLs 1 and 2) with the volumes of deposition also managed through these conditions. The effects of protection introduced through this mechanism will be compensated for as part of the DBS benthic SAC compensation proposals and any protection will be subject to monitoring for engineering integrity purposes throughout the life of the Projects. The effects of such protection will have been comprehensively assessed as a permanent effect compensated for through the DCO consenting process. The Applicants maintain that further assessment and compensation discussions relating to project activities that have been previously assessed, licenced and (where relating to cable protection and replenishment within the SAC) compensated for as part of the Projects' benthic SAC compensation proposals, would be neither proportionate nor necessary.

300. The Applicants believe requiring further licencing for replenishment of cable protection already consented beyond 10 operational years serves only to increase bureaucracy without providing any additional environmental benefits. There are no environmental harms associated with the installation of replenishment protection up to the limits established by the Draft DCO that would not have already been assessed, mitigated and managed through the main project consents.

301. The Applicants also highlight the reasons that replenishment protection is required include reducing risks to other sea users which might be caused through exposed cables lying on the seabed, and also to reduce the risk of reductions in operational time or output (potentially denying the transmission of up to 3GW of clean power to the UK grid) should exposed cables become damaged whist waiting for approvals to make protection deposits. Both of these risks increase in proportion with delays to the deposits of replenishment protection which might arise as a result of the suggested processes.

6.1.5 Schedules 10 – 14A (DMLs 1 - 6): removal of cable protection

302. During the course of examination both MMO and Natural England have pressed the Applicants to provide an Outline Decommissioning Plan, with Natural England's concerns in this regard focussing primarily on their preference for all above seabed material to be removed on decommissioning, including cable and scour protection, particularly within the Dogger Bank SAC and in areas of high – very high potential spawning habitat for sandeel and herring.

303. The Applicants have resisted these requests, noting that any Outline Decommissioning Plan would not provide any further information than is already available within the application, so it would add not value to the Examination process. The Applicants' position is that decommissioning issues are most appropriately considered post-consent. The Applicants position is aligned with the '*Decommissioning guidelines for offshore renewable energy projects have been provided by Government in the form of Decommissioning of offshore renewable energy installations under the Energy Act 2004: guidance notes for industry'* (2019). The Applicants note that it is the explicit position of Government in the Guidance that the Energy Act (2004) process should form a "one-stop shop" for decommissioning of offshore windfarms. The Applicants, accordingly, maintain that the DCO should not duplicate this regime given the clear position of Government. In accordance with the Guidance the Applicants have included Requirement 7 in the **Draft DCO (Revision 11)** [document reference 3.1] which states:

(1) The DBS East Project offshore works must not be commenced until a written decommissioning programme in compliance with any notice served upon the undertaker by the Secretary of State pursuant to section 105(2)(a) (requirement to prepare decommissioning programmes) of the 2004 Act has been submitted to the Secretary of State for approval.

(2) The DBS West Project offshore works must not be commenced until a written decommissioning programme in compliance with any notice served upon the undertaker by the Secretary of State pursuant to section 105(2) (requirement to prepare decommissioning programmes) of the 2004 Act has been submitted to the Secretary of State for approval. Through this Requirement the Applicants have demonstrated clear compliance with the Guidance which demands the submission of a Decommissioning Programme prior to the commencement of works.

304. As regards the removability of external protection, the Applicants have committed to considering the removability of protection post consent. At this juncture detailed designs will be mature and the different pros and cons of different scour and cable protection approaches – such as their overall footprint, height, replacement period and seabed preparation and installation requirements - can be properly balanced and weighed, in line with the mitigation hierarchy. Both the Cable Statement and Outline Scour Protection Plan contain provisions for undertaking such assessments, so that a holistic view of external protection impacts can be established without an undue narrow focus solely on their removability.

6.1.6 Schedules 10 – 13 (DMLs 1 – 4): site integrity plan

305. Condition 16 of DMLs 1 and 2 and Condition 14 of DMLs 3 and 4 require submission of a Site Integrity Plan (SIP) for the Southern North Sea SAC. Natural England is of the position that this should be submitted no later than 6 months but no sooner than 9 months prior to the commencement of piling activities.

306. The Applicants have agreed to the 6 month time period but do not agree that the 9 month restriction is necessary or proportionate as it is possible that piling programmes will be known in sufficient detail more than 9 months in advance of piling operations. The Applicants are aware that it has taken other projects approximately 12 months to receive SIP approval following submission, demonstrating that piling programmes can be known in sufficient detail more than 9 months prior to piling and that an earlier submission is reasonable to avoid costly delays to construction programme that could arise if the Applicants are restricted to a 9 month submission. Therefore, the Applicants do not consider it to be reasonable to restrict the submission of the SIP in such a way.

307. The Applicants are also not aware of any precedent where the "no sooner than 9 months" wording has been included.

6.1.7 General: operational lifetime of the Projects

308. Natural England would like the DCO to limit the operational lifetime of Projects to ensure that the operational lifetime considered within the Environmental Statement is not exceeded and the Applicants do not agree.

309. The Applicants do not think that it is appropriate to specify the operational lifetime of the Projects in the DCO. The operational period of 30 to 32 years in the ES is an estimate to enable the assessment of the environmental effects of the Projects pursuant to the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. The operational lifetime of a wind farm is generally not fixed and is driven by fatigue, operational maintenance and expected life of the turbines. In order to maximise the contribution of the Projects to the Government's legal targets to achieve net zero and ensure the ongoing provision of low carbon renewable generating capacity to up to 3million homes, it is important to retain flexibility in the operational period.

310. Furthermore, the Applicants would highlight that the lifetime of the Projects is already controlled through the requirements of the Energy Act 2004, which require the Applicants to submit a decommissioning programme to the Secretary of State prior to commencement of the Projects' offshore works (which is secured through requirement 7 of the **Draft DCO (Revision 11)** [document reference 3.1]). The decommissioning programme would include details of the measures to be taken for decommissioning the Projects and the times at which, or the periods within which, those measures will have to be taken. That programme must be approved by the Secretary of State who is therefore able to retain control over the operational lifetime of the Projects. The ES assesses the realistic worst case scenario and as detailed above and in **Chapter 5 Project Description (Revision 4)** [REP7-032] is based on the indicative design of 30-32 years, although this might be extended further as technology advances. The Applicants consider if this were to be extended to allow a longer operational period this would not alter the outcomes of the assessments, and the relevant mitigation would still be in place ensuring the levels of impact are acceptable.

6.2 Applicants' Position on ExA's Suggested Drafting Changes

311. In addition to the outstanding points of disagreement with interested parties, the ExA has also made some drafting suggestions to the Draft DCO [PD-028] and the Applicants do not agree with all of these. The Applicants' position on the ExA's comments is set out in **The Applicants' Comments on the ExA's Proposed Schedule of Changes to the dDCO** [REP7-130]. Not all points of disagreement are covered in this Closing Statement, and where that is the case, the Applicants' position should be taken to be that set out in [REP7-130]. However, the Applicants have included the key points of disagreement below. Some matters where the Applicants do not agree with the ExA's suggested drafting changes have also been covered off elsewhere in this Closing Statement.

6.2.1 Implementation Period

312. The ExA has stated that it considers the seven year implementation period proposed by the Applicants to be excessive and sees no reason why either or both Projects cannot reasonably be commenced within a shorter timeframe.

313. The Applicants recognise the critical need for low carbon infrastructure and intend to begin construction of the Projects as soon as possible following the grant of consent. However, it can take a long time for a project of this scale and complexity to move into the construction phase following grant of consent, as there are several matters that need to be in place before construction can begin.

314. The Applicants may need to secure a Contract for Difference (CfD) for each Project, and the Applicants are not able to guarantee the timing for this process. The Applicants note that changes have been made to the timings of the CfD auction rounds over recent years, moving from bi-annual to annual and also moving the auction application windows to different months of the year. Any future changes to the process and its timing by Government are entirely outside of the Applicants' control and so contingency must be allowed for in the implementation period for the Projects to reflect this.

315. Additionally, it is well known that there can be long lead in times for the manufacture and supply of major parts of the Projects' key infrastructure, such as wind turbine generators and cabling, due to the current high global demand for such services. The specialist vessels used in the offshore construction are also in particularly high demand at present. Whilst the Applicants intend to seek to commission these services as early as possible, supply chain availability is another factor that could potentially delay the implementation of the Projects.

316. In addition to the above, the Projects could be subject to legal challenge. It has become increasingly common for large infrastructure schemes to be subject to legal challenge by way of judicial review and, whilst the majority of these challenges have been unsuccessful, they have caused long and unforeseen delays to the implementation of projects. This would particularly be the case if any legal challenge were taken all the way through to the Supreme Court, which could take much longer than 12 months. For example, the judicial review of the Norfolk Vanguard project resulted in a more than 12 months delay to the reapproval of the DCO (noting that Vanguard was also subject to delays by the Secretary of State in reaching a decision of an additional 7 months).

317. There remains the possibility that several of the factors outlined above could combine in unexpected ways, with the result that the start of construction of either one or both Projects is delayed such that the full 7-year implementation period is required. This is particularly the case due to there being two separate NSIPs within the Draft DCO, both of which will require CfD and to go through key milestones such as Financial Investment Decision, bringing a further element of uncertainty.

318. The Applicants therefore consider that, whilst it is the intention to commence construction of the Projects as soon as practicable, a seven year time limit for implementation is proportionate and justified. This approach has been accepted by the Secretary of State on other recent offshore wind farm developments of similar scale and complexity, including Rampion 2, Sheringham Shoal and Dudgeon Extensions, Hornsea Four and Hornsea Three.

319. Given the recent precedent for other offshore wind farms of seven year implementation periods, the Applicants submit that any reduction in this period would introduce uncertainty and inconsistency in the consenting regime, undermining investor confidence and increasing risk premiums across the industry. Given the Government's clear commitment to scaling offshore wind development, stability and predictability in DCO consenting terms is essential.

320. A stark example of offshore wind projects being put on hold due to reasons not dissimilar to those set out above (for example, supply chain issues), has recently occurred with the discontinuance (in its current form) of Hornsea Four. The ability to rely on the seven year implementation period within the DCO for that project could enable it to be resurrected at a later date and enable its valuable contribution to the Government's clean energy targets to be realised.

321. The Applicants therefore maintain that, whilst they will seek to implement both Projects as soon as possible, there may be factors, or a combination of factors, outside of their control that could cause unforeseen delays, which supports the position that a seven year implementation period is required.

6.2.2 Monitoring Requirements

322. In its suggested changes to the Draft DCO, the ExA has included the following additional monitoring provisions:

- Hydrological effects on Bentley Moor Wood/ Burton Bushes SSSI;
- Worst-case piles;
- Operational underwater noise;
- Halo effects;
- Adaptive management generally, and also specifically in relation to Spurn point, Holderness Inshore MCZ, Humber Estuary SAC and bottlenose dolphin; and
- Offshore ornithology.

323. The Applicants do not propose to repeat their responses to each of these requests (see **The Applicants' Comments on the ExA's Proposed Schedule of Changes to the dDCO** [REP7-130] for full responses) but would note in all cases that they do not agree that it is necessary to include this monitoring within the Draft DCO, either because it is already secured elsewhere or because there is no justification for its inclusion. Detail on each point is provided in **The Applicants' Comments on the ExA's Proposed Schedule of Changes to the dDCO** [REP7-130].

6.2.3 Cable Protection

324. In addition to the points covered above in relation to Natural England's position on the replenishment of cable protection, the ExA has also suggested that Natural England should be consulted on the cable laying plan for the Projects (which forms part of the construction method statement), specifically in relation to the deployment of cable protection that would exceed 5% of navigable depth (under Condition 15(1)(c)(i) of DMLs 1 and 2, Condition 13(1)(c)(i) of DMLs 3 and 4 and Condition 11(1)(c)(i) of DMLs 5 and 6).

325. The Applicants are of the opinion that this amendment is unnecessary, noting that control of the reduction of water depths to levels exceeding 5 percent of navigable depths is already secured via the Applicants' commitment to comply with MGN654, contained in the 'Offshore Safety Management' conditions included within each DML (e.g. Condition 18 of DMLs 1 and 2).

326. Further, the Applicants note that Natural England's interest in this issue only applies within the 10m depth contour and not beyond. As such, if applied, this recommendation would only be applicable to DMLs 3 and 4 and should be restricted to water depths within the 10m depth contour closest to shore only.

327. Requesting this requirement beyond the 10m depth contour will likely further increase Natural England's known and stated resourcing problems for no discernible benefit, which may also then lead to further delays in necessary approvals.

328. The ExA has also suggested in its proposed drafting that "where cable protection is proposed within habitats of principal importance, Annex 1 subtidal habitat, habitat with suitability for sandeel or superficial deposits of glacial till, a survey report must be submitted to the MMO following completion of the relevant survey to justify with evidence the need for the proposed locations and extent of any cable protection in those locations, demonstrating how the extent of cable protection has been kept to a minimum for each."

329. The Applicants highlight that they have already committed to providing the details of exclusion zones or micro-siting requirements for any habitats of principal importance, Annex I subtidal habitat or surficial deposits of glacial till through conditions, such as Conditions 15(1)(v) and 20(4)(a) in DMLs 1 and 2. Further, the **Cable Statement (Revision 5)** [REP6-043] contains provisions for the minimisation of the use of cable protection. The Applicants note that their assessments have assumed that the full footprint of development in the array areas has been assumed to be suitable for sandeel and no significant impacts have been identified. As a result of the above, the Applicants believe that the Draft DCO as presently drafted, and the controls it contains, already provides sufficient protections, where they are justified, in relation to the receptors of the impacts of cable protection identified by the ExA.

330. The Applicants do not propose to include the suggested wording in the Draft DCO due to its impractical nature. The Applicants note that habitats of principal importance, Annex 1 subtidal habitat, habitat with suitability for sandeel or superficial deposits of glacial till co-occur across the Offshore Development Area and also occur in close proximity to one another. As a result, in many cases it will not be possible to avoid cable protection on one receptor, without impacting another, adjacent receptor that the restriction is seeking to avoid, potentially to a greater degree. This becomes clear, by way of an example, when it is considered that all of the array areas lie within the Annex I sandbank habitat where areas of high sandeel potential also occur. It is unclear, in this example, how one might strike a balance between avoidance of potential sandeel habitat when so doing might involve greater levels of cabling construction activity and the deposit of cable protection in areas of Annex I habitat which might also support habitats of principle importance. As drafted, there is no way to prioritise these trade-offs and there is a high risk that reaching agreement in relation to these issues would be highly time consuming, and potentially impossible.

6.3 Protective Provisions

331. The Applicants have been engaged with all affected Statutory Undertakers at pre-application stages and throughout Examination to resolve representations made in relation to the Draft DCO.

332. In addition, the Applicants have engaged with the Lead Local Flood Authority, the relevant Internal Drainage Board and the Environment Agency and the protective provisions in favour of these parties (included in Parts 3 and 4 of Schedule 15 to the Draft DCO) have been agreed, with no matters outstanding.

333. In relation to offshore interactions with third party infrastructure, the Applicants maintain that reciprocal crossing and proximity agreements which contain obligations on both the Applicants and the owner of an existing asset is an industry standard approach. These agreements deal with the interactions between assets and/or works which interface offshore and are intended to provide protection to each asset owner for any damage or losses suffered as a consequence of the carrying out of works by the other party. These agreements are specific to the works proposed and are entered into when appropriate levels of detail pertaining to the works are understood. The agreements will also cover approval mechanisms for both the initial crossing works undertaken and also mechanisms for any future works which may be undertaken for maintenance purposes by either the Applicant or a third party asset owner. For these reasons crossings and proximity agreements are more appropriate in the context than protective provisions.

334. There are standard protective provisions included within the Applicants' final **Draft DCO (Revision 11)** [document reference 3.1] submitted at Deadline 8 for the benefit of electricity, gas, sewerage, water and telecommunications undertakers. The Applicants have sought to reach agreement with all Statutory Undertakers. Agreement has been reached with Northern Powergrid, however there remain some key areas of disagreement in relation to the form of protective provisions with three statutory undertakers, namely Network Rail, National Gas Transmission (NGT) and National Grid Electricity Transmission (NGET). The Applicants have included the Applicants' preferred form of bespoke protective provisions within the Draft DCO for the benefit of Network Rail, NGT and NGET.

335. The Applicants have submitted a summary within the **Applicants' Section 127 and 138 case - Statutory Undertakers** [document reference 18.4] at Deadline 8 in relation to statutory undertakers with whom protective provisions are not agreed. This includes an up to date position in respect of negotiations with Network Rail, NGT and NGET and sets out the key areas of disagreement which remain in relation to the form of protective provisions included in the **Draft DCO (Revision 11**) [document reference 3.1], compulsory acquisition and where appropriate, this includes addressing the claims of 'serious detriment' by the relevant statutory undertakers. Short summaries of the position are set out below.

336. Network Rail objects to the compulsory acquisition of rights across its property. The Applicants have been in negotiations with Network Rail since 2023, with Heads of Terms agreed in August 2024 for an Option Agreement and Deed of Easement ('the Property Agreements'). Despite constructive negotiations, and whilst the majority of matters are agreed, there remain key points of disagreement relating to clauses within the Property Agreements as set out in the Applicants' responses to Deadline 6 Documents [REP7-131], principally relating to Network Rail having the ability to terminate the Option Agreement and an obligation on the Applicants to cease supply from the wind farm if Network Rail are undertaking works to the railway. The outstanding points of disagreement in relation to protective provisions are set out within the **Applicants' Section 127 and 138 case - Statutory Undertakers** [document reference 18.4]. In the absence of agreement, the Applicants must seek the authorisation of compulsory acquisition powers. No substantive case has been made by Network Rail that the proposed acquisition of rights would cause serious detriment to Network Rail's undertaking for the purposes of Section 127 of the Planning Act 2008. Moreover Network Rail's asset protection team has confirmed that they do not foresee any emergency or maintenance requirements for future Network Rail works going deeper than 5m below ground and the Applicants submit that its proposed form of Protective Provisions provides the appropriate protection for Network Rail's undertaking such that there will not be any serious detriment caused by the proposed acquisition of land and rights from Network Rail.

337. NGT objects to omission of 'acceptable security' provisions, the use of compulsory powers across land in which it holds an interest without its approval, timescales for approval, the amendment of the definition of authorised works to exclude maintenance, indemnity, expenses and arbitration drafting. The Applicants consider that the protective provisions included in favour of NGT in the **Draft DCO (Revision 11)** [document reference 3.1] are comprehensive, include approvals mechanisms and ensure that NGT's interests are adequately protected given the extent of the interaction between the Projects and NGT assets and land interests. The land rights sought by the Applicants can co-exist without detriment to National Gas, with the authorised works being undertaken in accordance with approvals mechanisms contained within the protective provisions included in favour of NGT. The Applicants do not accept that there is any serious detriment to NGT's undertaking if these protective provisions are included in the final DCO and this is further set out within the **Applicants' Section 127 and 138 case - Statutory Undertakers** [document reference 18.4] submission at Deadline 8.

6.3.1 National Grid Electricity Transmission

338. The Applicants have been in active discussions with NGET to agree the protective provisions and a co-operation agreement since the pre-application stage. The Applicants note the protective provisions submitted by NGET at Deadline 6 and NGET's position on the main areas of difference [REP7-150]. The Applicants included bespoke protective provisions in Part 7 of Schedule 15 in the **Draft DCO (Revision 10)** [REP7-011] submitted at Deadline 7.

339. The Applicants strongly disagree with NGET's position that the Applicants' preferred protective provisions mean that there will be a serious detriment to NGET's undertaking. NGET's Deadline 6 representations [REP6-067] are based upon the proposition that the Projects should be subordinate to NGET's emerging proposals for grid infrastructure comprising the Birkhill Wood and Wanless Beck Substations as well as the North Humber to High Marnham (NHHM) Overhead Line DCO. This is despite none of those NGET projects yet having consent or (bar one length of construction access) being the subject of a live application for consent, or NGET not owning any of the land or rights needed to construct those projects.

340. NGET's Deadline 6 reference to the protections offered to statutory undertakers in sections 127 and 138 of the Planning Act 2008 (quoted at paragraph 2.3 and 2.4 of the NGET submission), providing that a DCO can only authorise compulsory acquisition affecting an SU's land or apparatus if it will not cause serious detriment and is needed for the DCO in question, are misconceived. Those provisions apply to land or rights in existence at the date, DCO in respect of the Projects is confirmed. If those rights come into existence after the DBS DCO is confirmed, sections 127 and 138 do not offer that protection. NGET is not in a position to define the extent of the land that it seeks to bring into these protections, and so seeks protection for whatever land those projects might affect in the future.

341. The Applicants are continuing to negotiate with statutory undertakers where agreement has not been reached with a view to reaching agreement and providing a further update to the Secretary of State in due course.

7 Compulsory Acquisition and Voluntary Agreements

7.1 Compulsory Acquisition and Temporary Possession

7.1.1 Section 122(2) of the Planning Act 2008

7.1.1.1 Summary Statement

342. The Applicants have engaged extensively with landowners across the Projects since April 2022. As outlined in the **Statement of Reasons (Revision 5)** [document reference 4.1], the Applicants have worked collaboratively with those impacted by the proposals to identify specific areas of concern, amending the design to remove or mitigate these as far as reasonably possible, while still delivering the Projects' objectives. This proactive approach by the Applicants resolved many compulsory acquisition matters prior to submission of the DCO application.

343. The Applicants have written to landowners to invite discussions to acquire land and rights required for the Projects by voluntary agreement. The Applicants have made it clear during the course of engagement with landowners and throughout the course of the Examination that voluntary agreements are an option that remains open to those who wish to progress such discussions, as an alternative to compulsory acquisition. The Planning Act 2008: Guidance related to procedures for compulsory acquisition ('the Guidance') (Department for Communities and Local Government, 2013) recognises (paragraph 25) that for linear schemes where multiple landowners are affected, negotiations are likely to proceed in parallel with the DCO process. The Applicants have progressed negotiations where Persons with an Interest in Land (PILs) are willing and have reached agreement in many cases.

344. The Projects have been widely publicised, with comprehensive consultation undertaken in accordance with Part 5 of the Planning Act 2008. The Applicants have consulted all categories of persons identified in section 44 of the Act, including landowners, occupiers, and those with potential claims under the Compulsory Purchase Act 1965, Land Compensation Act 1973 or section 152(3) of the Planning Act 2008.

345. The Projects impact approximately 61 PILs within the Order Limits. Of these 61, less than 10%, submitted a Relevant Representation or a Written Representation to the Examining Authority. Only 3 of these have an outstanding objection to a specific element of compulsory acquisition, or to the Projects as a whole. This is considered an exceptionally small number of representations and objections to compulsory acquisition given the scale of the Projects compared to other DCO applications. It demonstrates the quality of engagement the Applicants have had with landowners and the successful focus on resolving matters of concern in relation to the compulsory acquisition or temporary possession of land.

346. As set out in the **Statement of Reasons (Revision 5)** [document reference 4.1], the Applicants have consistently prioritised negotiation to acquire the land and rights necessary for the Projects. The strategy from the outset has been to minimise the need for compulsory acquisition and temporary possession by pursuing voluntary agreements wherever practicable.

347. In line with paragraph 25 of the Guidance, and reflecting the linear nature of the c.36km cable corridor, the inclusion of Compulsory Acquisition (CA) powers in the Draft DCO is reasonable and required as a fallback in the event that negotiations are ultimately not successful or, for example, to clean additional third party interests from the title after voluntary acquisition. Nonetheless, the Applicants have continued to engage constructively with Affected Parties throughout the pre-application, application, and examination stages.

348. The Applicants have reported their land rights negotiations via the **Land Rights Tracker (Revision 8)** [document reference 10.4] at each applicable Deadline. This evidences meaningful, sustained engagement, willingness to meet reasonable costs, and an ongoing effort to reach voluntary agreement with all relevant parties. Where agreement has not yet been concluded, there remains a clear and compelling case for the CA powers sought.

349. To date, progress in securing the required agreements is as shown in **Table 6-1** below.

Table 6-1 Status of Negotiations

Interest	Status of negotiation	Count
Occupier	Heads of Terms negotiations ongoing	11
	Heads of Terms agreed	1
Owner	Heads of Terms negotiations ongoing	16
	Heads of Terms agreed	33
	Option agreed	22
	Option Exchanged	6

Interest	Status of negotiation	Count
	56% (34 of 61) have Heads of Terms agreed.	
	44% (27 of 61) remain in active negotiation.	
	6 Option agreements completed, and 22 options are pending signature.	

350. The Applicants continue to make substantive progress, but where agreement has not yet been possible, the use of compulsory acquisition powers remains essential to secure timely delivery of these Nationally Significant Infrastructure Projects and to ensure their substantial public benefits can be realised. Please see section 7.5 Outstanding Objections below outlining areas of disagreement.

7.2 Crown Land

351. The Applicants have been engaging with the relevant Crown Authorities to obtain the section 135(1) and section 135(2) consents required to the making of the DCO. Consent is required from the MOD, Secretary of State for Defence and The Crown Estate. Details of the interests held by those parties is included in the **Statement of Reasons (Revision 5)** [document reference 4.1].

352. In relation to the interests held by The Crown Estate, the current position is that the Applicants and The Crown Estate agreed Heads of Terms for the necessary Option Agreement on 10 March 2025. Both parties' respective legal representatives are progressing the Option Agreement. It is hoped that this will be completed by the end of examination and, following this, that Crown Consent under s.135 would be obtained.

353. In relation to powers to acquire new rights and temporary possession over plots where the Ministry of Defence and the Secretary of State for Defence hold an interest, the Applicants' land agent has continued negotiations with appointed agent and solicitors have now been appointed by the Ministry of Defence/Secretary of State for Defence. The Applicants are continuing engagement with the Ministry of Defence and Secretary of State for Defence's solicitors and are hopeful that if Crown Consent under Section 135 is not agreed prior to the end of examination, it will be agreed very shortly after.

7.3 Legal Test

354. The Applicants submit that the proposed powers of compulsory acquisition and temporary possession are both necessary and proportionate and that the legal tests set out in sections 122(2) and 122(3) of the Planning Act 2008 are satisfied. The land in question is either required for the Projects, facilitates it, or is incidental to it, and there is a compelling case in the public interest for its acquisition. These matters are set out in full in the **Statement of Reasons (Revision 5)** [document reference 4.1], supported by the **Book of Reference (Revision 7)** [document reference 4.2] and **Land Plans (Onshore) (Revision 4)** [REP4-002].

7.3.1 Requirement for the land – section 122(2)(a) and (b) of the PA 2008

355. In line with established practice for NSIPs, and specifically consistent with offshore wind DCOs previously made by the Secretary of State (including Sheringham & Dudgeon, Hornsea Projects, Triton Knoll, Awel-y-Mor, and East Anglia One and Two), the Applicants have adopted a proportionate and standardised design approach, to define the project parameters, enable environmental assessment, and identify the necessary land for construction, operation, and maintenance. Given the scale and complexity of the Projects, a degree of design flexibility is essential to address uncertainties during detailed design and construction. This flexibility is reflected in the use of limits of deviation and safeguarded through provisions such as Article 20(1) and (2) of the **Draft DCO (Revision 11)** [document reference 3.1] which ensure land is only acquired if still required at the point of exercising the power.

356. The extent of land and rights sought has been carefully reviewed. As part of this process, the Applicants submitted a Change Request (**Project Change Request 2 - 10.53 Onshore Substation Zone** [AS-152], accepted 21 January 2025) which reduced the Order Limits in certain areas and/or adjusted the powers sought to lesser forms of acquisition. However, further reductions would jeopardise the ability to deliver the development and the public benefits it would bring.

357. The final layout and spatial extent of the cable infrastructure will be determined at detailed design stage. However, flexibility within the construction corridor must be retained due to potential technical constraints (e.g. unexpected ground conditions, buried obstructions) that may only be identified during construction. The temporary possession powers will allow works to commence while the scope of permanent acquisition is refined.

358. Following completion of construction, any land not permanently required will be reinstated and returned to the landowner. This will be done in accordance with the outline management plans secured under the DCO, including the Outline Soils Management Plan (Requirement 22) and Outline Landscape and Ecology Management Plan (Requirement 12), ensuring the land is returned to a suitable condition. Critically, under Article 20(1) and (2) of the **Draft DCO (Revison 11)** [document reference 3.1] the Applicants can only acquire "so much of the Order land as is required for the DBS [East/West] works, or to facilitate, or is incidental to, the construction, operation and maintenance". The Applicants therefore have to consider at the point of exercising powers of compulsory acquisition whether that land is required for the Projects, further respecting the human rights of affected persons. This provides an important safeguard for Affected Parties and ensures that powers are only used where the necessity remains valid.

7.3.2 A compelling case in the public interest Section 122(3) of the Planning Act 2008

359. The Applicants consider that the condition contained in s122(3) of the Planning Act 2008 for there to be a compelling case in the public interest for the land, rights and restrictive covenants to be acquired compulsorily, has been met. The Applicants' justification for the compulsory acquisition powers sought is contained in its **Statement of Reasons (Revision 5)** [document reference 4.1]. The consideration of alternatives at each stage of the process has been thorough and rigorous and has been a continuous and iterative one. As alternatives and refinements have been proposed by Affected Parties the Applicants have considered such proposals and have, where appropriate, made changes. Where alternatives proposed by landowners have been demonstrated not to be workable alternatives, the Applicants have sought to provide further alternatives for consideration with a view to reaching an agreed position with landowners. While it has not always been possible to accommodate alternative proposals, the Applicants have considered alternatives and sought to refine or revise the acquisition requirements accordingly.

360. In this case:

- The land and rights sought are proportionate and not excessive;
- No Affected Party has demonstrated that their land is not required under section 122(2);
- Alternatives have been robustly assessed; and
- There is no evidence that lesser powers would be sufficient.

361. Accordingly, the legal tests for compulsory acquisition under the Planning Act 2008 are met, and there is a clear and compelling public interest case for the grant of powers sought through the DCO.

7.3.3 Human Rights Act 1998

362. The public benefits that the Projects would outweigh the loss of private land as there is a compelling case in the public interest for the compulsory acquisition of land, and rights over land, required to deliver the Projects.

363. The Applicants' approach to compulsory acquisition is consistent with the relevant duties in the Human Rights Act 1998 and the Equality Act 2010. The Applicants set out their obligations and how these obligations have been complied with in the **Statement of Reasons (Revision 5)** [document reference 4.1]

364. The proposed interference with private rights is for a legitimate purpose and accords with relevant national and local planning policy, as explained in the **Planning Statement** [APP-226] and in the section above of these submissions.

365. Regarding Article 1 of the First Protocol, it has been demonstrated that the compulsory acquisition of land is necessary and proportionate to the public interest in the Projects, and owners will be compensated for land acquired. As to Article 6, landowners have been able to challenge the acquisition and extent of land required during the development of the Projects' proposals, consultations and throughout the Examination process.

366. With regards to Article 8, no residents or businesses will be displaced by the powers of compulsory acquisition sought in the Order and no residential dwellings or business premises are proposed to be acquired or demolished for the purposes of the Proposed Development.

7.4 Special Category Land - Section 132 Planning Act 2008

367. Section 13.6 of the Statement of Reasons summarises the special category land within the Order Land and explains why the Applicants consider the tests in Section 132 for the acquisition of new rights/restrictive covenants over that land to be met. The Special Category Land Plans identify where the special category land is located, the type of special category land, and the proposed type of compulsory acquisition.

368. In each case, the Applicants rely upon the exemption in section 132(3), which applies if the order land, when burdened with the order right, will be no less advantageous than it was before to the following specified persons: the persons in whom it is vested; other persons, if any, entitled to rights of common or other rights; and the public.

369. The existing use of the special category land can continue both during the construction and operational phases of the Proposed Development, except in the case of an emergency. The land will not be fenced during construction, the cables will be installed using trenchless techniques and there will not be any above ground works that limit the use of the land or its physical appearance. There will be no permanent interference with the enjoyment of the rights by specified persons. Accordingly, the Applicants consider that the use of the special category land by the specified persons, when the land is burdened by the proposed New Rights and/or Restrictive Covenants, will be no less advantageous than it was beforehand, and the test in section 132(3) is met. This conclusion has not been challenged by any of the Affected Parties.

7.5 Outstanding Objections

370. Since the Application was submitted, the Applicants have concluded negotiations with 57% of all Affected Parties. The Applicants summarise the position with the other remaining Affected Parties who have made representations below.

7.5.1.1 Albanwise Limited and Albanwise Synergy Limited

371. Albanwise Limited and Albanwise Synergy Limited made representations to the ExA, noting that although negotiations with the Applicants were ongoing and they believe that a satisfactory position can be reached, agreement of terms is still to be reached on:

- The form of agreement that will grant the Applicants access to the referenced land parcels; and
- The technical details regarding the installation, potential impact on efficient use of the land and the impact on farming operations.

372. The parties have held several proactive discussions regarding the commercial deal. All parties met on the 2nd July where Heads of Terms for the Substation Lease were agreed and signed by both parties.

7.5.1.2 East Yorkshire Concrete Products Limited

373. East Yorkshire Concrete Products Limited, Mark Mewburn and James Mewburn raised objections to the adoption of compulsory acquisition powers given their experiences of a previous 2015 Order scheme works and the impact which the Projects proposals may have on their landholding. The Interested Parties raised significant concerns regarding the current proposals and the impact it is likely to have on their property interests and businesses as well as their amenity.

374. In particular, the Interested Parties object to the Projects for the following reasons:

(a) Cable Depth and Future Movement of the Cables and Infrastructure;

(b) Damage to Soil Quality/Health and Poor Reinstatement of Land to former agricultural condition;

(c) Impact of the Project on the businesses of the Interested Parties;

(d) Length of Occupation of the Onshore Export Cable Corridor / Easement Corridor and Management of Corridor during occupation and works;

(e) The provision of adequate legal agreements (Unilateral Undertaking and Deed of Grant) to protect landowners' interests, including addressing the concerns expressed in a-d above.

375. The Applicants' Land Agents have been in regular contact with the Agents acting on behalf of Interested Party and have provided all relevant technical details regarding the installation of the Onshore Export Cable Corridor. The Applicants met with the Agents acting on behalf of the Interested Parties on Monday 23rd June 2025 to discuss all outstanding matters in attempt to reach a voluntary agreement which was productive, however it is unlikely that this matter will be concluded prior to the end of examination.

7.5.1.3 Riplingham Estates Limited and the Los Trustees

376. Riplingham Estates Limited and the Los Trustees raised commercial objections that the Applicants are refusing to accept that land on the urban fringe is worth more than land way out in open countryside.

377. The Applicants understand the key outstanding issue to be resolved with both Interested Parties relating to future development value. The Applicants appointed land agent has indicated that the sites have development potential, and the Interested Party would like to redevelop for an alternative use. The Applicants accept that both sites may have development potential and has sent to the appointed agents a Development Clause to be included in the legally binding Option and Deed of Grant, allowing for the loss in development value to be recovered once planning consent has been granted for alternative use development in the future, and the Applicants and the appointed agent are currently in discussions.

378. The Applicants have agreed this development clause as a mechanism to recover future loss with several interested Parties who have all signed Heads of Terms and are awaiting a response from the appointed land agent.

7.6 Statutory Undertakers

379. It is proposed that pursuant to the powers in the Draft DCO the Applicants will acquire rights over land owned by statutory undertakers by the creation of new rights and imposition of restrictive covenants. Several statutory undertakers have made a representation in objection to the proposed compulsory acquisition powers, and therefore the provisions of section 127(6)(a) of the 2008 Act are engaged. The Applicants have submitted at Deadline 8 **The Applicants' Section 127 and 138 case – Statutory Undertakers** [document reference 18.4] explaining why the Draft DCO provides sufficient protection for statutory undertakers with land interests within the Order Limits. The Applicants consider that the statutory undertakers will not suffer serious detriment to the carrying on of their undertaking because of the compulsory acquisition of rights and/or restrictive covenants over their land and therefore test set out in section 127(6)(a) of the 2008 Act is satisfied.

8 Overall Planning Balance

380. NPS EN1 makes it clear that there is a need for new energy infrastructure and that this need is urgent. NPS EN1 is also clear that the ExA should assess applications covered by the energy NPSs on the basis that the Government has demonstrated that there is an urgent need (para 3.2.6 of NPS EN1) and that substantial weight should be given to the contribution that projects would make towards satisfying this need (para 3.2.7).

381. Section 104 of the Planning Act 2008 states that the Secretary of State must decide any application in accordance with the relevant NPSs, unless any of section 104(4) to (8) applies, being:

- The UK would be in breach of any of its international obligations;
- The Secretary of State would be in breach of any of their statutory duties;
- The decision would be unlawful;
- The adverse impacts of the development would outweigh its benefits.

382. It is the Applicants' position that none of the tests in section 104(4) to (8) are triggered by the Projects and that therefore the Application should be determined in accordance with the relevant NPSs.

383. As demonstrated throughout the Application documents, in particular the **Policy Compliance Assessment Tables** [APP-227], the Applicants have fully complied with the policies set out in the relevant NPSs, applied the mitigation hierarchy and complied with any other legal and regulatory requirements, as set out in the **Policy and Legislative Context (Revision 2)** [REP7-026]. The Applicants have also demonstrated compliance with the relevant parts of the NPPF and relevant local planning policy (see **Policy Compliance Assessment Tables** [APP-227]).

8.1.1 Residual effects

384. Whilst the Projects do inevitably result in some adverse impacts, it is important to note that NPS EN-1 (paragraph 3.1.2) does recognise that it will not be possible to develop the necessary amount of energy infrastructure without some significant residual effects. However, the status of the Projects as CNP infrastructure influences how these residual effects are considered in the planning balance and, where any non-HRA or non-MCZ impacts remain after the mitigation hierarchy has been applied, these residual impacts are unlikely to outweigh the urgent need for this type of infrastructure (paragraph 4.2.15). The Applicants' position on residual effects and HRA impacts is set out below.

385. The Applicants have already set out their case on the small number of significant residual adverse effects identified in the EIA and HRA at the DCO submission stage, and clearly demonstrated how the benefits of the Projects will outweigh these as part of the overall planning balance (as set out in the **Planning Statement** [APP-226]) This exercise demonstrated that '*Whilst some significant residual adverse effects remain post implementation of both embedded and additional mitigation measures, the planning policy assessment reaffirms that the Projects are wholly compliant with and widely supported by the relevant policy tests as set out in the NPSs for each environmental topic. This position has been reached by the Applicants as, subject to any legal requirements, the urgent need for CNP infrastructure will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy.'*

386. As is the case in most DCO examinations, comments were made on the Applicants' assessments by stakeholders following submission of the Application. Following extensive discussions during the examination stage and as requested by the ExA, the Applicants have updated their ES assessment, which has resulted in revisions to the conclusions on significant adverse effects in relation to Landscape and Visual, Land Use, Geology and Land Quality, and Tourism and Recreation. Section 4.4 of this document provides an explanation of the reasons for and the outcomes of the updated assessments.

387. **Landscape and Visual:** The NPSs for energy recognise that it is not possible to eliminate all the visual and landscape impacts associated with projects of this nature, whilst NPS EN-1 specifically acknowledges that due to the scale of energy projects they will often be visible across a very wide area (paragraph 5.10.35). The Applicants have sought to avoid, minimise and mitigate visual impacts as much as possible through site selection and the inclusion of extensive landscaping around the Onshore Substation Zone, however it has not been possible to avoid a residual significant effect for this impact.

388. **Land Use, Geology and Land Quality:** By bringing two Projects forward at the same time, the Applicants have sought to reduce environmental effects and community disturbance. However, to maintain flexibility for pulling of cables for the second project in a sequential scenario, the Applicants have now concluded a significant major adverse effect (previously minor adverse) due to the temporary loss of agricultural land. Whilst it has not been possible to avoid these impacts, due to the need to route the cables from landfall to the grid connection point, the Applicants have sought to minimise and mitigate this impact through commitments (within the OCoCP (Revision 5) [REP7-105]) to reinstate agricultural land between Jointing Bays within two years, which accounts for 84.2% of the Order Limits and is secured by Requirement 19 of the Draft DCO (Revision 11) [document reference 3.1]. Therefore, although the effect is significant it is limited to a small portion of the Order Limits.

389. The assessment of the sterilisation of future mineral resources has also been updated and a re-assessment of the impact during operation resulted in the impact changing from a minor adverse to moderate adverse residual significance as outlined in **The Applicants' Responses to April 2025 Hearing Action Points** [REP4-096]. This updated level of significance was agreed as appropriate with the ERYC, given the Applicants had sought to avoid 'preferred' Mineral Safeguarded Areas (MSAs) at the optioneering phase and they could not be avoided entirely – as detailed in **The Applicants' Comments on the Responses to ExAQ2** [REP6-051] and at a meeting with the ERYC on the 15th May 2025. NPS EN-1 requires applicants to safeguard mineral resources as far as possible. In this instance the Applicants have agreed with ERYC that avoidance of 'preferred' MSAs was part of the Projects' optioneering phase, but they could not be avoided entirely. The Applicants therefore submit that they are in accordance with the NPS, as safeguarded mineral resources have been avoided as far as possible.

390. **Tourism and Recreation:** The updated Tourism and Recreation assessment concludes that there will be a major adverse residual night-time effect for visitors to Butt Farm Caravan and Camping site in construction during the limited periods of night-time works. The Applicants have sought to avoid this impact through the application of controls over working hours but there are exceptional circumstances where night-time working cannot be avoided. However, the additional significant effect is temporary in nature and mitigation includes close liaison with Butt Farm and the implementation of a communication and grievance mechanism. In addition, compensation for any loss of business would be payable on a proven loss basis.

391. **Onshore Archaeology and Cultural Heritage:** Whilst no change to the conclusions of effects has occurred during examination, the Applicants have agreed common ground with all consultees that the effects on the Scheduled Heavy Anti-Aircraft gun site at Butt Farm would arise only through a change to setting and not the physical impact to the designated site. However, the harm to an asset that arises through change to setting is treated in the same way as harm that arises through physical disturbance or loss. Due to the views of Historic England and ERYC in this matter this issue has been considered in some detail during the examination. As set out in section 4.7 of this document, the Applicants maintain a position that the magnitude of harm to the asset would equate to less than substantial harm toward the lower end of the scale. When weighted against the benefits of the Projects in supporting the delivery of the UK Government target for offshore wind generation as set out in NPS EN-3, taken together with the Overarching NPS EN-1, which aims to deploy up to 50GW of offshore wind capacity by 2030, it is clear that such benefits outweigh the less than substantial harm toward the lower end of the scale - and even if the Secretary of State agrees with HE's position then the Applicants' maintains that the benefits would outweigh the harm and that in any event the CNP policy would apply.

392. **Infrastructure and Other Users:** Another matter of extensive discussion during examination has been wake effects. The conclusions of the wake assessments do not warrant a conclusion of significance in EIA terms or in planning terms for any affected project (DBA, DBB, DBC, Hornsea 1 to 3). At most the wake effects should have limited weight in the planning balance in relation to DBA. The effects on DBB, DBC and Hornsea 1, 2 and 3 are too small and uncertain to carry any weight in the planning balance.]

393. It is clear from the CNP policy in NPS EN-1 that where unavoidable residual impacts remain, these are unlikely to outweigh the urgent need for this type of infrastructure. The Applicants submit that this policy applies to the residual impacts set out above and identified elsewhere in this document, and that the Applicants have sought to avoid, minimise and mitigate (and where appropriate compensate) these impacts and fully complied with the mitigation hierarchy in this regard.

394. **Habitats Regulations Assessment:** As noted above, HRA and MCZ impacts are to be treated differently in the application of the CNP policy in NPS EN-1. Any HRA or MCZ residual impacts will continue to be considered under the framework set out in the Habitats Regulations and Marine and Coastal Access Act 2009 respectively. The Projects do not have any residual MCZ impacts but the Applicants' RIAA concludes that:

- For the kittiwake feature of the FFC SPA, an AEoI cannot be ruled out due to in-combination collision risk;
- For the guillemot feature of the FFC SPA, an AEoI cannot be ruled out due to in-combination displacement effects; and
- For the 'sandbanks slightly covered by seawater all the time' feature of the Dogger Bank SAC, an AEoI cannot be ruled out for Projects together and in-combination due to long term habitat loss.

395. For all other sites and features assessed in the RIAA, the Applicants' assessment concluded that all other AEoI can be ruled out. However, Natural England continue to disagree and maintain that an AEoI cannot be ruled out for the following effects:

1. Habitat loss arising from abrasion and disturbance on the 'sandbanks slightly covered by seawater all the time' feature of the Dogger Bank SAC;
2. In-combination displacement effects upon the Razorbill feature of the FFC SPA; and
3. In-combination displacement effects upon the Guillemot feature of the Farne Islands SPA.

396. As the above AEoI cannot be ruled out, the Applicants ask the Secretary of State to make a derogation under the Habitats Regulations. The Applicants have updated **Habitats Regulations Derogation: Provision of Evidence (Revision 4)** [REP7-019] at Deadline 7 to account for additional derogation cases required other than those included at the submission stage.

397. In line with paragraph 4.2.22 of NPS EN-1, and as set out in [REP7-019], the Applicants have demonstrated that there are no deliverable alternative solutions and that there are imperative reasons of overriding public interest in relation to the delivery of the Projects for energy security and decarbonising the power sector to combat climate change. Compensatory measures are also secured through Schedule 18 of the **Draft DCO (Revision 11)** [document reference 3.1] and detailed in **Appendix 1 - Project Level Kittiwake Compensation Plan (Revision 6)** [REP6-010], **Guillemot [and Razorbill] Compensation Plan (Revision 6)** [REP6-012] and **Project Level Dogger Bank Compensation Plan (Revision 4)** [REP7-020]. Whilst the RIAA reaches the conclusion that there will not be AEoI in relation to razorbill at the FFC SPA or guillemot at the Farne Islands SPA, compensatory measures are proposed for these effects on a 'without prejudice' basis only within the **Guillemot [and Razorbill] Compensation Plan (Revision 6)** [REP6-012] and included in square brackets in Schedule 18 of the **Draft DCO (Revision 11)** [document reference 3.1].

398. Similarly, disputed assessment conclusions related to habitat loss in the Dogger Bank SAC are included within the **Project Level Dogger Bank Compensation Plan (Revision 4)** [REP7-021] on a 'without prejudice' basis only and do not affect the drafting in the Draft DCO to the extent that anything needs to be included in square brackets in order to secure any additional quantum of compensation in this regard.

399. As concluded in section 4.3.4 above, each of the compensation measures and plans are well developed and rely primarily on measures included within the Defra Library of Measures, meaning that confidence in the effectiveness of the measures is high. Nevertheless, adaptive management mechanisms are also secured in the event that any are required. Agreement has been largely reached in the delivery of these measures, albeit disagreements remain regarding the quantum of compensation that must be provided by the Projects and the necessary timing of the delivery of the offshore kittiwake ANS.

400. **Aviation and Radar:** The CNP policy presumption also does not apply to impacts that present an unacceptable risk to, or unacceptable interference with defence. In order to avoid a potential residual effect relating to defence, the Applicants have, through extensive engagement with MOD, prior to application and through the examination period, worked hard to ensure the avoidance of impacts to military radar where possible, for example through changes to the array boundary of DBS West and reducing the maximum tip heights of the turbines. It has not been possible to entirely avoid a likely impact occurring in order to protect the commercial integrity of the Projects and so the Applicants have secured mitigation through Requirement 31 of the Draft DCO (Revision 11) [document reference 3.1] which will adequately address any impact and which has been agreed with the MOD, such that they no longer have an objection to the Projects. However, the removal of this objection is contingent on the wording agreed between the Applicants and the MOD (as included in the **Draft DCO (Revision 11)** [document reference 3.1] being included in any made DCO. The Applicants submit that this issue should now be considered resolved in Examination and as such the Projects do not constitute an unacceptable risk to, or unacceptable interference to, defence infrastructure.

8.1.2 Projects' benefits and need

401. As part of the overall planning balance, as well as considering the residual adverse effects of the Projects, the Secretary of State will also need to take into account the significant benefits that the Projects create.. These beneficial effects relate to Socio Economics, including skills and employment, as well as the reduction in Greenhouse Gas emissions.

402. **Socio Economics:** As set out in **Chapter 28 Socio-Economics** [APP-217], it is estimated that the development and construction of the Projects would support 2,380 jobs across the UK, including 1,520 jobs supported across the Humber Region. **Socio Economics:** As set out in **Chapter 28 Socio-Economics** [APP-217], it is estimated that the development and construction of the Projects would support 2,380 jobs across the UK, including 1,520 jobs supported across the Humber Region. During the operational and maintenance phase, it is estimated that the Projects would support 1,120 jobs across the UK, including 810 jobs supported across the Humber Region. In addition to the jobs created, the annual anticipated expenditure during the development and construction of the Projects would result in almost £1 billion of Gross Value Added to the UK, including £400 million Gross Value Added in the Humber Region. A detailed Skills and Employment Strategy will be prepared prior to the commencement of pre-construction activities and is secured by requirement 26 of the **Draft DCO (Revision 11)** [document reference 3.1].

403. Whilst the Projects will produce some greenhouse gas emissions, mainly during the construction phase, overall, they are assessed as having significant beneficial effects on greenhouse gas emissions in operation, with an avoidance of 168.4 million tonnes (values wake adjusted to 1% scenario) of CO_2 emissions for both Projects, resulting in significant beneficial effects across the Projects' whole life cycle and all Development Scenarios. This would make a significant contribution in meeting UK policy commitments and legal decarbonisation targets for renewable energy and the wider policy objectives for future UK decarbonisation and energy security. Therefore, substantial weight should be given to the Projects in satisfying this recognised urgent need.

404. Section 3 of this Closing Statement sets out how the Projects would contribute toward the important objectives set out in UK energy and climate change policy. In support of achieving this objective the overarching NPS for Energy EN-1 explicitly recognises wind farms as being *'an integral part of our (The Government's) plan to achieve Net Zero, as well as delivering affordable clean energy to consumers'*. The paragraph goes on to state that*:*

"The Government has an ambition to deliver up to 50GW of offshore wind by 2030 and the Committee on Climate Change's 6th Carbon Budget (CB6) views offshore wind as the backbone of electricity generation across all its scenarios".

8.1.3 Conclusion

405. In summary, the Applicants conclude that the planning balance should be overwhelmingly in favour of the Projects being granted and that any residual adverse effects are clearly outweighed by the urgent need for and demonstrable benefits of the Projects and that in any event, the CNP policy would apply, creating a presumption in favour of consent being granted. In addition, the Applicants have provided extensive evidence to demonstrate why a derogation case should be made for the Projects in relation to any remaining AEoI to protected sites that cannot be ruled out.

9 Closing Statement

406. The Projects are CNP infrastructure (as confirmed in EN-1), and CNP policy creates a clear presumption in favour of granting consent for such infrastructure where residual effects remain after the application of the mitigation hierarchy. Indeed, EN-1 states (paragraph 4.1.7) that for projects which qualify as CNP infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases. As set out above, the Applicants submit that any adverse residual impacts of the Projects are outweighed in the planning balance by the urgent need for delivery of the 3GW of low carbon generating capacity that the Projects will deliver as well as the other significant and demonstrable benefits discussed above.

407. As stated above, the CNP policy does not apply to HRA impacts, which must continue to be assessed under the Habitats Regulations. Although the Projects are likely to give rise to AEoI, detailed and well evidenced compensation plans for the three derogation cases (namely, sandbank loss from the Dogger Bank SAC, impacts on the kittiwake feature of the FFC SPA, and impacts on the guillemot feature of the FFC SPA) have been developed and are secured through the **Draft DCO (Revision 11)** [document reference 3.1]. In addition to the three conceded derogation cases, the Applicants have also presented without prejudice derogation cases for the razorbill feature of the FFC SPA and the guillemot feature of the Farne Islands SPA, as Natural England have not been able to rule out AEoI for these features.

408. The Applicants have demonstrated that there are no alternatives to the Projects and that imperative reasons of overriding public interest clearly exist. In addition, the nature and delivery of compensatory measures has been largely agreed with key stakeholders and therefore the Secretary of State can be confident that it is appropriate in the circumstances to allow a derogation to be granted.

409. Despite the Applicants' best efforts to reach agreement with stakeholders during the pre-application and examination periods, areas of disagreement do remain, as set out in section 5 above. The Applicants have presented extensive and robust evidence to support their position on these matters and submit that other relevant stakeholders have not always provided the same level of evidence to substantiate their respective views. The Applicants have also provided evidence to demonstrate the very serious impacts on the Projects' timely delivery and, in some cases, viability, that is likely to arise should certain restrictions (or a combination of restrictions) be imposed upon the Projects as requested by stakeholders. In addition, any additional restrictions imposed upon the Projects poses a serious risk to the timely achievement of the Government's carbon reduction targets.

410. Such constraints would not only delay the deployment of critical low-carbon infrastructure but also jeopardise the future viability of subsequent offshore wind developments. This is particularly so, where, for example, the quantum of compensation to be provided by the Projects is inflated due to the application of excessive and over-precautionary measures such as those suggested by Natural England. This could result in a significant reduction in the availability of compensation measures for later projects and could lead to significantly deterring investment, reducing developer confidence, and undermining the scalability of the UK's offshore wind pipeline at a time when urgent action on climate and energy security is most needed.

411. For these reasons, the Applicants submit that the Secretary of State must give careful consideration to each parties' respective position on areas of disagreement, along with detailed consideration of the evidence that has been submitted during examination to support each parties' position. The Applicants submit that, where areas of disagreement remain, the robust scientific evidence submitted by the Applicants should be favoured over unsubstantiated statements made by stakeholders that are lacking evidential support.

412. In conclusion, the Applicants have clearly demonstrated that the Projects, being CNP infrastructure as confirmed by NPS EN-1, will support and make a significant contribution to the UK in its transition to a low carbon economy which, on balance, provides a compelling reason for the DCO to be granted.

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