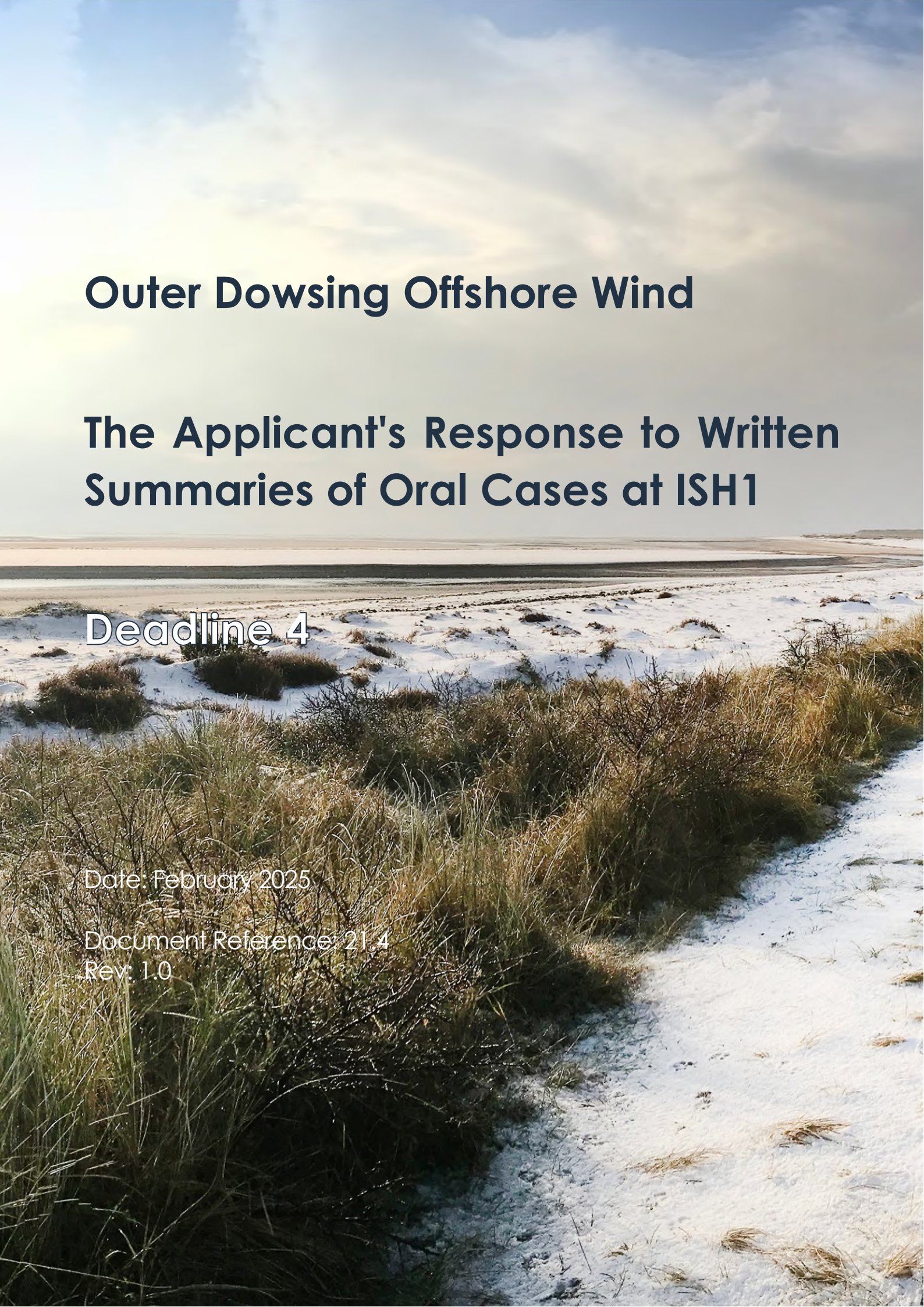

Outer Dowsing Offshore Wind

The Applicant's Response to Written Summaries of Oral Cases at ISH1

Deadline 4

Date: February 2025

Document Reference: 21.4
Rev: 1.0

Company:		**Outer Dowsing Offshore Wind**		Asset:		**Whole Asset**
Project:		**Whole Wind Farm**		Sub Project/Package:		Whole Asset
Document Title or Description:		21.4 The Applicant's Response to Written Summaries of Oral Cases at ISH1				
Internal Document Number:		PP1-ODOW-DEV-CS-REP-0261		3rd Party Doc No (If applicable):		N/A
Rev No.	**Date**	**Status / Reason for Issue**	**Author**	**Checked by**	**Reviewed by**	**Approved by**
1.0	February 2025	Deadline 4	Outer Dowsing	Outer Dowsing	Shepherd & Wedderburn	Outer Dowsing

Table of Contents

Acronyms & Definitions 4

Abbreviations / Acronyms 4

Terminology 4

Table of Tables

Table 1: The Applicant's Comments on LCC's Summary of Oral Representations for ISH1 7

Table 2: The Applicant's Comments on LPA's Summary of Oral Representations for ISH1 11

Table 0.3: The Applicant's Comments on TH Clement's Summary of Oral Representations for ISH1 12

Acronyms & Definitions

Abbreviations / Acronyms

Abbreviation / Acronym	Description
ALC	Agricultural Land Classification
BNG	Biodiversity Net Gain
CoCP	Code of Construction Practice
DCO	Development Consent Order
dDCO	Draft Development Consent Order
EIA	Environmental Impact Assessment
ES	Environmental Statement
ExA	Examining Authority
ISH	Issue Specific Hearing
LCC	Lincolnshire County Council
LMP	Landscape Management Plan
LPA	Local Planning Authority
NSIP	Nationally Significant Infrastructure Project
NPS	National Policy Statment
ODOW	Outer Dowsing Offshore Wind (The Project)
OLEMS	Outline Landscape and Ecological Management Strategy
OnSS	Onshore Substation
SMP	Soil Management Plan

Terminology

Term	Definition
The Applicant	GT R4 Ltd. The Applicant making the application for a DCO. The Applicant is GT R4 Limited (a joint venture between Corio Generation, TotalEnergies and Gulf Energy Development (GULF)), trading as Outer Dowsing Offshore Wind. The Project is being developed by Corio Generation (a wholly owned Green Investment Group portfolio company), TotalEnergies and GULF.
Baseline	The status of the environment at the time of assessment without the development in place.
Biodiversity Net Gain	An approach to development that leaves biodiversity in a measurably improved state than it was previously. 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.
Compensation	Compensation describes measures taken to offset residual effects, i.e., where mitigation *in situ*. is not possible.
Cumulative Effect	The combined effect of the Project acting cumulatively with the effects of a number of different projects, on the same single receptor/resource.

Term	Definition
Damage	Damage here means any form of impact such as loss of habitat, soil compaction, changes in hydrology, nutrient enrichment, pollution, disturbance of species, spread of invasive species, etc.
Development Consent Order (DCO)	An order made under the Planning Act 2008 granting development consent for a Nationally Significant Infrastructure Project (NSIP) from the Secretary of State (SoS) for Department for Energy Security and Net Zero (DESNZ).
Effect	Term used to express the consequence of an impact.
Environmental Statement (ES)	The suite of documents that detail the processes and results of the Environmental Impact Assessment (EIA).
Impact	An impact to the receiving environment is defined as any change to its baseline condition, either adverse or beneficial.
Mitigation	Mitigation measures, or commitments, are commitments made by the Project to reduce and/or eliminate the potential for significant effects to arise as a result of the Project. Mitigation measures can be embedded (part of the project design) or secondarily added to reduce impacts in the case of potentially significant effects.
Onshore Export Cable Corridor (ECC)	The Onshore Export Cable Corridor (Onshore ECC) is the area within which the export cable running from the landfall to the onshore substation will be situated.
Onshore substation (OnSS)	The Project's onshore substation, containing electrical equipment to enable connection to the National Grid.
Order Limits	The area subject to the application for development consent. The limits shown on the works plans within which the Project may be carried out.
Outer Dowsing Offshore Wind (ODOW)	The Project
Pre-commencement and post-construction	The phases of the Project before and after construction takes place.
The Project	Outer Dowsing Offshore Wind including proposed onshore and offshore infrastructure
Study Area	Area(s) within which environmental impact may occur – Area within which the desk-based studies for habitats and species have been undertaken. Habitats and species have bespoke study areas which are described within this chapter. See also Zone of Influence.
Trenchless technique	Trenchless technology is an underground construction method of installing, repairing and renewing underground pipes, ducts and cables using techniques which minimize or eliminate the need for excavation. Trenchless technologies involve methods of new pipe installation with minimum surface and environmental disruptions. These techniques may include Horizontal Directional Drilling (HDD), thrust boring, auger boring, and pipe ramming, which allow ducts to be installed under an obstruction without breaking open the ground and digging a trench.

1 Introduction and Document Purpose

1. This document summarises the main oral submissions made by the stakeholders at Issue Specific Hearing 1 (ISH1) dealing with the draft Development Consent Order (dDCO), held on 4 December 2024, and provides the Applicant's written response.
2. The stakeholders who to provided a written summary of their ISH 1 oral cases were
   - Lincolnshire County Council (LCC), and
   - The Local Planning Authorities (LPAs), and
   - T. H. Clements and Sons Limited.
3. Responses are provided in Table 1 – Table 3 below.

Table 1: The Applicant's Comments on LCC's Summary of Oral Representations for ISH1

Ref No	LCC Summary	Applicant Response
2-4	LCC spoke to Agenda Item 3.2(2) – requirements and conditions of the DCO. First, in relation to Requirements 10, 11 and 12 LCC considers that it is the best placed authority to be defined as the "relevant planning authority" via an amendment to Article 2: a. LCC has engaged throughout the DCO process, b. these requirements relate to county-wide matters such as landscape impacts and biodiversity which are best considered at a county-wide level rather than split between the districts, c. LCC is well resourced in relation to the handling of applications to discharge requirements for these topics, d. LCC is also well-placed to monitor compliance and, if necessary, enforce in relation to these issues Following ISH1 LCC has received agreement from the District Councils that they are agreeable to LCC being defined as the relevant planning authority for these matters. The Applicant confirmed at the hearing that it equally would not object to this amendment.	These comments have been noted by the Applicant. The Applicant submitted an updated DCO at Deadline 3 (REP3-006) which designates LCC as the discharging authority for requirements 10, 11 and 12. The Applicant does not consider it necessary or indeed standard practice in offshore wind DCOs to amend the definition of "relevant planning authority" in Article 2(1) of the draft DCO in the way suggested by LCC. LCC is referred to (i.e. as the relevant highway authority) or specifically named in relevant requirements where it is agreed that LCC is to be the discharging authority therefore the Applicant considers it has achieved the aim sought by LCC. This ensures that it is clear when LCC are the discharging authority under a DCO provision and who they are to consult with and when they are to be consulted by another approving authority. It is considered that this approach is clearer than the proposal put forward by LCC, which would mean that the term "relevant planning authority" would have a different meaning in different requirements, which could cause unnecessary confusion. The approach followed by the Applicant in the draft DCO has precedent in The Hornsea Three Offshore Wind Farm Order 2020, The Norfolk Boreas Offshore Wind Farm Order 2021, The East Anglia ONE North Offshore Wind Farm Order 2022, The East Anglia TWO Offshore Wind Farm Order 2022, The Norfolk Vanguard Offshore Wind Farm Order 2022, and The Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024. In each of these Orders, there was a lower tier and upper tier Council interface, as is the case here between LCC and East Lindsey District Council, South Holland District Council and Boston Borough Council.
5	Second, LCC considers that Requirement 12 should be amended (or a new requirement inserted) to include a specific requirement to achieve biodiversity net gain. The Applicant has repeatedly said that it is "committed to delivering a biodiversity net gain" (see REP2-051). However, at present the DCO does not secure this. The DCO secures landscaping and ecological measures but does not address whether these measures would result in a gain or a loss overall. LCC's ecologist is concerned that there would in fact likely be a loss on site. Notably, the BNG Principles and Approach document [APP-302] makes reference to the potential need for off-site measures to be required. None of this is secured. As such, for the Applicant to rely upon a "gain", of whatever scale, this should be secured beyond merely securing broad measures which may or may not result in a net gain. LCC considers that the Applicant's criticisms of the Defra metric, if reasonable, could be overcome by drafting of the requirement to avoid the applicant being tied to Defra metric 4.0.	These comments have been noted by the Applicant. As set out in the Applicant's Written Summary of oral case put at the Issue Specific Hearing 1 held on 4 December 2024 [REP3-040] where the Applicant's general position was summarised as: a. *the Applicant is seeking to deliver Net Gain but that there is difficulty with the metric to be used: it is not considered that the current metric is appropriate for long linear schemes such as the Applicant's and new metrics are still being developed;* b. *the Applicant has taken the approach of outlining what BNG activities it will be taking forward via the OLEMS (PD1-054) and the Applicant will continue to update the OLEMS to add biodiversity enhancements where appropriate;* c. *As a result, the DCO does not include a specific Requirement but instead the details of activities are included within the OLEMs.* The Applicant has addressed these comments in The Applicant's Written Summary of Oral Case Put at the Issue Specific Hearing 3 held on 4 December 2024 (REP3-051) where it was set out that: ▪ *the context for discussion of this issue is that there is no legal or policy foundation for a development of this sort to deliver a particular percentage of BNG. The Applicant's written materials explain how it has complied with what is required in policy terms in respect of BNG. It should be apparent, therefore, that LCC's concerns regarding the surveys required to address a percentage gain proceed from a false premise: there is no need for a numerical analysis of BNG*

Ref No	LCC Summary	Applicant Response
		in this case. So far as the Applicant is looking for offsite options these are not things that could properly be required within the DCO on the basis of the current legal and policy position. ▪ *there was a distinction between seeking opportunities to achieve Net Gain and the obligation to deliver a percentage Net Gain and that the NPS – the policy against which the Application must be determined – is concerned with the former. The question of what is secured in BNG terms within the DCO is a question of how the specific proposed biodiversity measures are secured – for instance, how is planting secured in the dDCO if BNG is secured via planting;* ▪ *Requirements should only be imposed where they meet the relevant policy tests which include, importantly here, the test of necessity, which would be tested by whether the development would be acceptable in the absence of a requirement.* ▪ *Insofar as other DCOs include a requirement to achieve a particular percentage BNG, it would be necessary to examine very closely the extent to which any such requirement had been examined against the tests for the imposition of a requirement. Their precedent value would need to be judged in the light of that examination* In its Post-hearing submissions including written summaries of oral case at ISH 1 & ISH 3 (REP3-057), LCC directed the ExA to the Cottam Solar Project Order 2024, specifically requirement 9 of the Order which requires a biodiversity net gain strategy to be submitted which achieves a stated percentage of net gain. As noted above, it is important to examine the extent to which any such requirement had been examined against the tests for the imposition of a requirement. The applicant of the Cottam Solar Project application submitted as part of its application a Biodiversity Net Gain Report (Cottam Examination Library reference APP-089) in which it was stated *"The upcoming Environment Act will make a 10% Biodiversity Net Gain (for all Biodiversity Units type – HU, HeU and RU) a legal requirement, using the Metric and approval of a BNG Plan. It is expected the mandatory requirement will come to place in November 2025 for NSIP projects. Although a BNG assessment using the Metric is not yet mandatory, it is already required by most Local Authorities."* The application version of the draft DCO (Cottam Examination Library reference APP-016) included a requirement to submit a biodiversity net gain strategy but at that point did not contain a specific percentage of net gain to be achieved. It is clear that from the outset, notwithstanding that there was no legal or policy requirement to do so, the Cottam applicant voluntarily undertook to secure the achievement of net gain via a requirement in the DCO. The draft DCO was updated at deadline 4 (Cottam Examination Library reference REP4-013) to include limb (2) of the requirement which introduced the requirement for a minimum percentage of net gain to be achieved, but left the percentages blank, noting in the Schedule of Changes (Cottam Examination Library reference REP5-024) that exact percentages were being considered, to allow for flexibility in detailed design. At deadline 5, the draft DCO was updated (Cottam Examination Library reference REP5-005) to include the percentages which now form part of the Order as made. It was noted in the Schedule of Changes that the percentages had been included in response to comments from stakeholders and that the figures allowed for a degree of flexibility commensurate with the current uncertainty around BNG metrics and how these will apply to NSIP Schemes.

Ref No	LCC Summary	Applicant Response
		The need for a requirement committing the applicant to provide a certain percentage of BNG does not appear to have been the subject of examination by the Examining Authority. The Examiners Report, under the heading of Biodiversity Net Gain (paragraphs 3.5.49-54), notes that the ability to deliver the assessed amount of net gain was questioned by one IP, and there was discussion over the appropriate metric that would be used to calculate the net gain at the time of submission of the details. It also states that The Requirement was altered during the course of the Examination to specify the percentage gains to habitat, hedgerow and river units. The ExA Report concluded that the BNG was a "benefit which weighs positively in favour of the Proposed Development". In the Secretary of State's decision, the Secretary of State confirmed that he had clarified the percentages of BNG that the Applicant was committing to as part of his consideration of the application. The Secretary of State also made an amendment to requirement 9 of the DCO to include the words "and maintained throughout the operation of the relevant part of the authorised development to which the plan relates" to provide greater security and certainty in the implementation of the plan. It is not clear that the Secretary of State explicitly considered whether the tests for the imposition of a requirement were met, in particular he did not question whether the requirement was in fact necessary in light of the position that there were no legislative or policy requirements for a specific percentage of net gain to be delivered. It is therefore the Applicant's position that there is limited precedent value that can be relied upon in the example provided in the Cottam Solar Project Order 2024. In order to meet the tests for imposition, a requirement must be necessary. Necessity would generally be tested by reference to whether or not the development would be acceptable absent the requirement, and if a requirement is necessary in order, say, to ensure compliance with policy, then you would pass the test of necessity. But if it is simply something which can be done but doesn't need to be done to make the development acceptable, that fails the test of necessity. As there is no requirement to deliver a certain percentage of BNG in legislation or the policy the Applicant considers that its approach of including (and thereby securing delivery of) BNG opportunities which it has identified within the OLEMS (document 8.10, version 5) is the proper and better approach.
6-7	Third, LCC has concerns about Requirement 17 as currently drafted. All elements of Requirement 17 require compliance with the current Outline Written Scheme of Investigation ("OWSI"). However, LCC (and Historic England) have considerable concerns in relation to the adequacy of that document (this is a topic returned to below in relation to ISH3). One (but not the only) issue with the OWSI is that it fails to prescribe a quantum of trial trenching. The Applicant has acknowledged that further trial trenching is required and indeed is proposing further trenching in the new year. This is welcomed but it should reach an extent of 2% of the order limits with a 2% contingency. A scheme for this further trenching should be submitted to LCC for its approval. Following which, the Applicant should be required to update the OWSI once a stage has been reached where LCC and the Applicant agree that mitigation can adequately be defined. LCC has suggested the wording from Mallard Pass requirement 10. This is a clean, simple requirement which avoids the wordy cross-referencing to the inadequate OWSI which is a feature of the Applicant's current Requirement 17. Following ISH3, LCC has agreed to meet with the Applicant (and discuss with Historic England) a way forward, the ExA will be updated at DL4.	These comments have been noted by the Applicant. As set out in the Applicant's Written Summary of oral case put at the Issue Specific Hearing 1 held on 4 December 2024 [REP3-040], the Applicant's position in respect of Requirement 17 is that the drafting as it currently stands is appropriate and that the proposed Mallard Pass wording is inappropriate for the follow reasons: a. The first limb of Mallard Pass DCO Requirement requires further trenching to be submitted to the County Council for approval. b. Additional trial trenching is committed to by the Applicant in the Onshore Outline WSI (document 8.9, version 3) in section 9.2. It is acknowledged in that section that the trial trenching will be informed by the results of the 2024 campaign which has been ongoing and that this will include the targeting of 'blank' areas in reference to all baseline data in order that trial trenching is proportionate and undertaken in areas of potential only.

Ref No	LCC Summary	Applicant Response
		c. The next limb of Mallard Pass DCO Requirement requires the additional trenching to be carried out as approved. d. The DCO permits "onshore preparation works" to be carried out which includes archaeological investigations, prior to commencement of the onshore transmission works. The additional preconstruction trial trenching will form part of the archaeological investigations that will take place under the remit of onshore preparation works. e. Any archaeological investigations carried out as part of onshore preparation works taking place must, under Requirement 17(2) of the draft DCO, only take place in accordance with a specific written scheme of investigation (which must accord with the outline onshore written scheme of investigation for archaeological works) which has been submitted to and approved by Lincolnshire County Council in consultation with the relevant planning authority and Historic England. f. Therefore, LCC have final approval over the proposed pre-construction trial trenching and the Applicant is obliged to undertake the works in accordance with that Onshore OWSI. g. The third limb of the Mallard Pass DCO Requirement requires the outline plan to be updated with the results. Requirement 17(1) of the draft DCO requires a written scheme of archaeological investigation (which must accord with the outline onshore written scheme of investigation for archaeological works and is to be informed by the archaeological investigations carried out as part of the onshore preparation works) to be submitted to and approved by LCC in consultation with the relevant planning authority and Historic England before any stage of the onshore transmission works can commence. As such, a WSI will be issued to LCC for approval in advance of each stage of the construction works. h. It is therefore not considered necessary for the outline plan to be updated post-consent, nor would it be usual practice for the construction to proceed based on an approved outline as opposed to a more detailed plan or scheme under the remit of that outline. i. It is considered that the approach set out in Requirement 17 for both archaeological investigations carried out as part of onshore preparation works and any archaeological works during each stage of the development of the onshore transmission works provides a sufficient level of oversight for LCC. LCC is the approving authority under this Requirement and so if they are not content with a WSI submitted for approval they need not approve it. The risk of failing to gather and present the information required by LCC therefore sits with the undertaker in seeking approval in order to proceed to commence the relevant works. The Applicant has met with LCC and Historic England to discuss Requirement 17 and additional wording has been inserted into the OWSI (document reference 8.9 version 4) in order to resolve any outstanding concerns. LCC and Historic England have confirmed to the Applicant that with this addition no further text is required to be added to Requirement 17.

Ref No	LCC Summary	Applicant Response
		In respect of the quantum of trial trenching to be undertaken, this is addressed further in the Applicant's Response to Written Questions (REP2-051)
8	Fourth, LCC is concerned as to a mismatch between timescales for highways approvals, some of which sit within Articles 12-16 and are subject to a 56 day approval time limit, and others are within the Requirements. The LCC and the Applicant will discuss how this can be overcome practically.	These comments have been noted by the Applicant. The Applicant's position is set out in the Applicant's Written Summary of oral case put at the Issue Specific Hearing 3 held on 5 December 2024 [REP3-051]. The Applicant will continue to engage with LCC in respect of discharge timelines.
9	Fifth, LCC considers that 13 weeks is a more realistic timescale for the discharge of requirements. Notably other DCOs in this area which are also renewable energy generating projects have included much longer timescales than those currently proposed by the Applicant. For example, Mallard Pass includes 10 weeks, Gate Burton is also 10 weeks and at Cottam, the DCO provides for the full 13 weeks sought by LCC. The Applicant's current drafting is out of step with other recent DCOs in this area. Noting, of course that LCC requires a sufficient amount of time in light of the sheer number of recent and proposed DCOs in this area	These comments have been noted by the Applicant. The Applicant's position is set out in the Applicant's Written Summary of oral case put at the Issue Specific Hearing 3 held on 5 December 2024 [REP3-051]. The Applicant will continue to engage with LCC in respect of discharge timelines.

Table 2: The Applicant's Comments on LPA's Summary of Oral Representations for ISH1

Ref No	LPA Summary	Applicant Response
	we can confirm that Lincolnshire County Council can be the appropriate discharging authority in relation to Requirements 10 and 11 for the provision, implementation and maintenance of landscaping	This comment has been noted by the Applicant. The discharging authority for Requirements 10 and 11 has been updated accordingly.

Table 0.3: The Applicant's Comments on TH Clement's Summary of Oral Representations for ISH1

Ref No	THC Summary	Applicant Response
(i)	3. Article 22(1) [REP2-008, p.26-27 (PDF)] allows the undertaker to acquire compulsorily such rights or impose restrictive covenants over the Order land. 4. It is subject to Article 22(2). Under that provision, in the case of Order land specified in column (1) Schedule 7 (land in which only new rights etc. may be acquired), the powers of compulsory acquisition are limited to the acquisition of restrictive covenants for the purposes specified in column (2) of Schedule 7. 5. Article 22(1) is therefore a wide power, circumscribed by Article 22(2) such that for Order Land in Schedule 7 the restrictive covenant that can be imposed is limited to that set down in Schedule 7. 6. Outside of Schedule 7 land, there is no such limitation on the ability to impose restrictive covenants. 7. T.H. Clements farmed plots the subject of the wider Article 22(1) power are as follows: 26-015; 27-003; 27-004; 27-013; 27-014; 27-016; 27-017; 27-018; 27-022; 27-025; 27-026; 27-028; 27-029; 29-012; 30-001;30-003; 30-004; 30-012; 32-012; 32-013; 32-020; 32-021; 32-022; 32-023; 32-024; 33-017; 33-018; 33-021; 33-022; 33-023; 33-024; 33-025; 33-030; 33-031; 33-030; 33- 031; 34-017; 34-022; 34-024; 37-005; 37-006; and 38-009.	The plots referred to by TH Clements are all listed in Schedule 9 (Land of which temporary possession may be taken) of the draft DCO (document 3.1, version 7). Article 28(8) of the draft DCO provides that: *"The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i)* [being the land specified in column (2) of Schedule 9] *except that the undertaker is not precluded from— (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 22 (compulsory acquisition of rights) to the extent that such land is listed in column (1) of Schedule 7 (land in which only new rights etc. may be acquired); or (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 26 (acquisition of subsoil or airspace only).* As such, the plots of concern to TH Clements are not subject to a wide power to impose restrictive covenants. In fact, save for the exceptions noted in sub-paragraphs (a) and (b) of paragraph (8), the powers under article 22 cannot be used over those plots. The Applicant has reviewed the plots listed and agrees that the following plots are actively farmed : 26-015; 27-003; 27-004; 27-013; 27-017; 27-018; 27-026; 27-028; 27-029; 29-012; 30-001; 30-003; 30-004; 30-012; 32-012; 32-013; 32-020; 32-021; 33-021; 33-022; 33-023; 33-024; 33-025; 33-030; 33-031; 34-022; 34-024; 37-006; and 38-009. The Applicant believes TH Clements also farm plots 33-033 and 33-034 which should appear in their submission, but duplicates appear in their place. Additionally, the Applicant notes plots 27-020; 29-011 and 30-011 have also been listed previously in TH Clements submissions. The Applicant acknowledges that the following plots are utilised by TH Clements for farming in the form of access splays or drains: 27-014; 27-016; 27-022; 27-025; 32-013; 32-022; 32-024; 33-017; 33-018; 37-005 The Applicant has been informed by TH Clements professional representative that they do not have an interest in plot 34-017.
	8. As to the restrictive covenants prescribed in Schedule 7, T.H. Clement's farmed land would be subject to the restrictive comment at [REP2-008, p.103 (PDF) at B.]. 9. It provides: "B. A restrictive covenant over the land for the benefit of the remainder of the order land to prevent anything being done in or upon the land or any part thereof which interferes with or might interfere with the exercise of the rights or the use of the cables or in any way render the cables in breach of any statute or regulation for the time being in force and applicable thereto and without prejudice to the generality of the foregoing to prevent the construction of any buildings on, the surfacing of, the carrying out of any excavations or works to a depth greater than 0.75 metre on or in, or the planting of any trees or shrubs on, the land." 10. There are two key operative restrictions imposed on the relevant Order land by this restrictive covenant: (i) "to prevent anything being done in or upon the land or any part thereof which interferes with or might interfere with the exercise of the rights or the use of the cables"; and (ii)	The Applicant has reviewed the revised restrictive covenant wording proposed by TH Clements and has updated the restrictive covenant wording in Schedule 7 of the draft DCO (Document 3.1, version 7) to include the majority of the proposed drafting. The only part of the restrictive covenant wording that has not been included is the text which states: "*...with consent for [trench digging] requests [relating to waterlogging] to be determined within 24 hours not including weekend or bank holiday hours, if the proposed activity would not cause damage to the relevant part of the authorised development nor make it materially more difficult to access or maintain the authorised development, [with such consent being subject to such reasonable conditions as the undertaker may require])*" It is considered that it is inappropriate to have such a detailed and subjective (in terms of assessing potential damage or impact on access) commitment in a restrictive covenant which applies to the Order Limits generally..

Ref No	THC Summary	Applicant Response
	to prevent "the carrying out of any excavations or works to a depth greater than 0.75 metre on or in…the land." 11. As to (i): this prohibition is widely drawn. T.H. Clements concern is that ordinary farming operations could be caught by it. T.H. Clements has explained how farm machinery can and does sink into the ground to levels at or close to and potentially below the proposed cable depth (see T.H. Clements' written representation [REP1-050, p.58-60, §§4.3.8-4.3.15 and App.11 and 12]). This is important as the restrictive covenant is one that binds the land and is not temporary to the construction period. It is not understood that ODOW intend to inhibit ordinary farming activities. Amended wording is suggested below. 12. As to (ii): T.H. Clements has explained how it is necessary to manage water logging in heavy rains (see T.H. Clements' written representation [REP1-050, p.58, §§4.3.8-4.3.11 and App.10]). This is done by digging trenches. Trenches can need to be deeper than 0.75m. Without the ability to properly drain the soils in such conditions there would be impact on crop yields, ability to harvest, quality of vegetables and greater risk of farm machinery sinking (and potentially coming into contact with ODOW's cable). T.H. Clements' is proposing the inclusion of wording (see below) that would permit the landowner to request consent (not to be unreasonably withheld) to enable excavations to a greater depth in order to enable the continuation of ordinary farming practices. 13. T.H. Clements proposes revised wording for this restrictive covenant as follows: *"B. A restrictive covenant over the land for the benefit of the remainder of the order land to — (a) prevent anything being done in or upon the land or any part thereof for the purposes of — (i) the construction of any buildings; or 3 (ii) the [hard] surfacing of the land; (b) prevent the planting of any trees or shrubs on the land without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, or shrubs would not cause damage to the relevant part of the authorised development nor make it materially more difficult to maintain or to access the relevant part of the authorised development); (c) prevent the carrying out of any excavations or works or agricultural practices to a depth greater than 0.75 metre from the surface of the land, without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed, with consent for trench digging requests relating to waterlogging to be determined within 24 hours if the proposed activity would not cause damage to the relevant part of the authorised development nor make it materially more difficult to access or maintain the authorised development, with such consent being subject to such reasonable conditions as the undertaker may require) provided that (for the avoidance of doubt)— (i) ordinary agricultural practices including but not limited to acts of cultivation including soil preparation, ploughing and sub-soiling, not exceeding 0.75 metres in depth from the surface of the land, do not require the consent of the undertaker; and (ii) flushing of land drainage systems, maintenance of outfalls and culverts of land drainage systems, clearance of vegetation (by use of machinery or by hand) and the operation of existing land drainage systems do not require the consent of the undertaker."*	In addition, the Applicant has added the following wording to the end of limb (c)(ii) of the proposed restrictive covenant wording: *"...provided that no excavations take place to a depth greater than 0.75 metre."* This is to ensure that the consent procedure applies for all instances where excavations are to reach a depth greater than 0.75 metres, in order to protect the integrity of the buried cables and ensure the safety of those working over it.
	12. As to (ii): T.H. Clements has explained how it is necessary to manage water logging in heavy rains (see T.H. Clements' written representation [REP1-050, p.58, §§4.3.8-4.3.11 and App.10]). This is done by digging trenches. Trenches can need to be deeper than 0.75m. Without the ability to properly drain the soils in such conditions there would be impact on crop yields, ability to	

Ref No	THC Summary	Applicant Response
	harvest, quality of vegetables and greater risk of farm machinery sinking (and potentially coming into contact with ODOW's cable). T.H. Clements' is proposing the inclusion of wording (see below) that would permit the landowner to request consent (not to be unreasonably withheld) to enable excavations to a greater depth in order to enable the continuation of ordinary farming practices. 13. T.H. Clements proposes revised wording for this restrictive covenant as follows: *"B. A restrictive covenant over the land for the benefit of the remainder of the order land to — (a) prevent anything being done in or upon the land or any part thereof for the purposes of — (i) the construction of any buildings; or 3 (ii) the [hard] surfacing of the land; (b) prevent the planting of any trees or shrubs on the land without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, or shrubs would not cause damage to the relevant part of the authorised development nor make it materially more difficult to maintain or to access the relevant part of the authorised development); (c) prevent the carrying out of any excavations or works or agricultural practices to a depth greater than 0.75 metre from the surface of the land, without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed, with consent for trench digging requests relating to waterlogging to be determined within 24 hours if the proposed activity would not cause damage to the relevant part of the authorised development nor make it materially more difficult to access or maintain the authorised development, with such consent being subject to such reasonable conditions as the undertaker may require) provided that (for the avoidance of doubt)— (i) ordinary agricultural practices including but not limited to acts of cultivation including soil preparation, ploughing and sub-soiling, not exceeding 0.75 metres in depth from the surface of the land, do not require the consent of the undertaker; and (ii) flushing of land drainage systems, maintenance of outfalls and culverts of land drainage systems, clearance of vegetation (by use of machinery or by hand) and the operation of existing land drainage systems do not require the consent of the undertaker."*	
	14. Outside of Schedule 7 Order land, there is no prescribed restrictive covenant. As such, there is no limitation on the undertaker and the undertaker could impose greater restrictions on land outside of Schedule 7 Order land. That could have a material detrimental effect on T.H. Clements' (and others) on-going ability to farm after the undertaker has completed construction. 15. In light of which, T.H. Clements proposes the following amendment (changes in italics) to Article 22(1): "22 (1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 20 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence, *provided that any new restrictive covenant(s) to be created shall not be more restrictive or onerous than the restrictive covenants set out in column (2) of Schedule 7*."	The Applicant's position is that it would not be appropriate to amend article 22(1) in the manner proposed by TH Clements. As noted above in response to paragraph 3, the use of compulsory acquisition powers (including the imposition of restrictive covenants) is restricted in respect of the land specified in column (2) of Schedule 9 (Land of which temporary possession may be taken) of the draft DCO (document 3.1, version 7). The TH Clements comments acknowledge that the land specified in column 1 of Schedule 7 is restricted to the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of Schedule 7. That leaves only those plots of land which are intended for freehold acquisition (as shown coloured pink on the Land Plans (REP3-004 – REP3-005) that the Applicant could, under the powers conferred by Article 22(1), acquire rights and impose restrictive covenants over as an alternative to freehold acquisition, where this power to impose restrictive covenants is not subject to specific wording set out in the draft DCO. The land over which compulsory acquisition powers are sought in respect of the freehold relates to the onshore substation and associated drainage and access, and the landscaping required to screen the onshore substation. It would not be appropriate to impose an obligation that, in the event rights were acquired as an alternative to freehold acquisition, the restrictive covenants imposed cannot be "more restrictive or onerous" than the restrictive covenants in column (2) of Schedule 7, as the restrictive covenants that would be required for such land uses would be different in nature from those

Ref No	THC Summary	Applicant Response
		imposed in Schedule 7. The covenants in Schedule 7 largely relate to protection of the underground cables and are not comparable in nature to the restrictive covenants that may be necessary for landscaping and drainage, which would make it impossible to determine whether a restriction being imposed were more or less restrictive or onerous than those set out in Schedule 7. Any restrictive covenants imposed over land that is the subject of the right to compulsorily acquire the freehold would need to be bespoke and relate to the reason for the acquisition of the corresponding rights. While the draft DCO does not provide specific restrictive covenant wording for this scenario, the acquisition of rights and imposition of restrictive covenants as an alternative to freehold acquisition would be a lesser interference than what is currently sought in the draft DCO and as such, it is not considered necessary or proportionate to set out restrictive covenant wording in the DCO for these plots in the event that rights are acquired instead.
(ii)	16. In the context of discussions on Works No.17 and the need for flexibility in CAH1, ODOW placed reliance on the fact that Articles 20 and 22 [REP2-009, p.26-27 (PDF)] in so far as those 4 provisions limit the exercise of CA powers to "so much of the Order land as is required for the authorised project or to facilitate it or is incidental to it." 17. The short point is that Article 28 [REP2-008, p.31-32 (PDF)] does not have equivalent wording. It is accepted, of course, that there is a distinction between temporary possession powers and compulsory acquisition powers, not least their temporary nature. However, they amount to a material interference with land (and can, for example, lead to the removal of buildings over and above taking possession (Article 28(1)(b) [REP2-008, p.31 (PDF)]) and for that reason their exercise is subject to compensation. 18. Article 28(1)(a)(i) permits the undertaker to take specified land (as set out in Schedule 9 [REP2-008, p.112-116 (PDF)]) for temporary possession for the limited purposes set out in Schedule 9. As ODOW explained at the CAH1, the Order land captured in Schedule 9 does not include the plots required for the laying of the cable itself (i.e. the working corridor for the cable) but are in the nature of temporary work areas/ compounds, access tracks, bell-mouths and footpaths to facilitate the installation of the cable. 19. Art.28(1)(a)(ii) provides a wider general power of temporary possession in relation to any other Order land, which has not at the time the power is sought to be exercised, been subject to the of compulsory acquisition powers. 20. In so far as it is said that Article 28(3) does provide a limitation on the power (it says that the undertaker is only allowed to remain in possession for as long as reasonably necessary), this is not clear. It applies to the undertaker remaining on the relevant land. That is distinct from the initial exercise of the power and going onto the land in the first place. 21. If it is meant to be a limitation on the power, then it does need to be more clearly expressed and ought to be located on the provision that permits the exercise and the taking of temporary possession of Order land, i.e. in Article 28(1) (as is the case in Articles 20 and 22). 22. The Examination heard from the Applicant in CAH1 that the intention is to use of temporary possession powers to install the onshore cable. No point is taken against this proposed use, save	The Applicant has addressed the proposed amendment to Article 28(1)(a)(ii) in The Applicant's Written Summary of Oral Case Put at the Issue Specific Hearing 1 held on 4 December 2024 [REP3-040] under Agenda Item 3.4, where it was confirmed that "*the Applicant's position is that the additional wording is not necessary because the opening words of Article 28 already provide an appropriate limitation on the exercise of the temporary possession power; and this drafting is very well precedented, including in the following Orders:* ▪ *Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024;* ▪ *Awel Y Môr Offshore Wind Farm Order 2023;* ▪ *Hornsea Four Offshore Wind Farm Order 2023;* ▪ *East Anglia ONE North Offshore Wind Farm Order 2022;* ▪ *East Anglia TWO Offshore Wind Farm Order 2022;* ▪ *Norfolk Vanguard Offshore Wind Farm Order 2022;* ▪ *Norfolk Boreas Offshore Wind Farm Order 2021;* ▪ *Hornsea Three Offshore Wind Farm Order 2020;* ▪ *Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020;* ▪ *Triton Knoll Electrical System Order 2016;* ▪ *Dogger Bank Creyke Beck Offshore Wind Farm Order 2015; and* ▪ *Dogger Bank Teesside A and B Offshore Wind Farm Order 2015*. The opening words of Article 28 referred to are that the powers can be exercised "in connection with the carrying out of the authorised project". The Applicant therefore disagrees with TH Clements that Article 28 provides a wider scope of powers as compared with Articles 20 and 22. As TH Clements have noted, Article 28 permits temporary possession powers to be used which is considered to be a lesser interference than using powers of acquisition contained in Articles 20 and 22. As set out in The Applicant's Responses to The ExA's First

Ref No	THC Summary	Applicant Response
	for the wider scope of the powers as compared to Articles 20 and 22 and what the wide spread proposed use does is indicate the importance of ensuring the scope of the powers is appropriate. 23. T.H. Clements' suggest that the powers under Article 28 are limited to Order Land *required* for or to facilitate the construction of the authorised development and propose the following wording. This can be achieved by a simple change to Article 28(1)(a)(ii) as follows: "any other Order land *as is required for the authorised project or to facilitate, or is incidental to it*, and in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act" 24. It is acknowledged that in certain areas this may be of little practical importance (for example, where the entire width of the cable corridor is required) but it is important in principle and there will be areas within the Order land where it does have practical significance (for, example, Work No.17). 25. It is further acknowledged that Article 28 is in a form that has often been used in previous development consent orders. However, precedent does not provide a full answer to the issue and matters should be considered from first principles and, in particular, the overarching need to limit in so far as possible interference with landowner's and occupiers enjoyment of their land.	Written Questions [REP2-051, CA 1.2], using the temporary possession powers contained in Article 28 to construct the Project first would then result in the permanent acquisition of any land or rights being limited to the as built locations of the infrastructure associated with the Project which ensures that the land and rights acquired are no more than is necessary for the Project. This is inherently proportionate. Precedent aside, it is considered that the wording of Article 28(1) already sufficiently limits potential interference with landowners' and occupiers' enjoyment of their land.
iii	26. Both Requirements 18 [REP2-008, p.58] (Code of Construction Practice (which contains the Air Quality Management Plan which is important from T.H. Clements' perspective in relation to dust dispersal) and 31 (Soil Management Plan) [REP2-008, p.62] prevent onshore transmission works from commencing unless and until the Code of Construction and Soil Management Plan (as appropriate) (both of which are to accord with the outline plans which are to be certified under Article 41 and Schedule 21) have been submitted to and approved by the relevant planning authority. 27. In both cases the relevant planning authority is required to consultation with various bodies prior to approving the document. Neither Requirement asks the relevant local planning authority to consult with landowners and / or occupying farmers. 28. These documents will be critical to the extent of actual impacts on T.H. Clements and it wishes to ensure that there is appropriate opportunity to comment on the final operative documents (which, of course, will govern the impacts on the ground (as opposed to the outline plans)). 29. T.H. Clements notes and is grateful for the indication given by ODOW that it will provide the Code of Construction Practice and Soil Management Plan to the Land Interest Group post consent when the detailed plans are being developed and prior to their submission to the relevant planning authority for approval (giving 10 working days to respond and undertaking to take the comments on board) (adding this to the commitments register) (in answer to Q1 LU 1.15 [REP2-051, p.118-119]). 30. T.H. Clements' principal point is that the relevant planning authority ought to be seized of the position of landowners/ occupying farmers on these plans when determining whether to approve	The Applicant does not consider it would be appropriate to include individual landowners as consultees to the discharge of Requirements 18 (Code of construction practice) and 31 (Soil management plan). This would impose too great a burden on the relevant planning authority that would need to carry out consultation. Instead a commitment has been added to the Outline Code of Construction Practice (CoCP) (document reference 8.1 v5) and the Outline Soil Management Plan (document reference 8.1.3 v4) that prior to submission to the relevant planning authority for approval under Requirements 18 and 31 respectively, the final CoCP and SMP will be submitted to the Landowner Interest Group (LIG) providing no less than 10 working days for comments to be provided. The Outline CoCP and Outline SMP also state that comments will be taken on board by the Applicant and alterations to the final documents will be made where appropriate. The Applicant notes TH Clement's suggestion that the commitment by the Applicant to provide copies of the final CoCP and SMP to the Land Interest Group (LIG) for comment and take comments provided into account, should be extended to include an undertaking to provide the comments received from the LIG to the relevant planning authority. The Applicant does not believe it would be appropriate to include this within the condition discharge and that the existing commitment, set out in paragraph 3 of the outline CoCP (document reference 8.1 version 5) that 'comments will be taken on board by the Project and alterations will be made where appropriate' provides sufficient protection for landowners' interests.

Ref No	THC Summary	Applicant Response
	the plans. This might (broadly) be achieved by ODOW's proposed commitment if the commitment includes an undertaking to provide the comments received from landowners/ occupiers to the relevant planning authority. 31. The alternative is a requirement in the Order itself for the relevant planning authority to consult the owners and occupiers of the land who rely on the efficacy of the Code of Construction Plan and Soil Management Plan.	