



## Hearing Transcript

<b>Project:</b>	Outer Dowsing Offshore Wind Project
<b>Hearing:</b>	Issue Specific Hearing 5 (ISH5) Part 1
<b>Date:</b>	12 February 2025

**Please note:** This document is intended to assist Interested Parties.

It is not a verbatim text of what was said at the above hearing. The content was produced using artificial intelligence voice to text software. It may, therefore, include errors and should be assumed to be unedited.

The video recording published on the Planning Inspectorate project page is the primary record of the hearing.

# TRANSCRIPT\_OUTERDOWSING\_ISH5\_SESSION1\_12022025

Wed, Feb 12, 2025 1:58PM • 1:26:17

00:05

Good morning.

00:06

It's now 10am on Wednesday the 12th of February 2025 and time for this hearing to begin.

00:13

Before I proceed any further, can I confirm that everybody can hear me clearly?

00:20

And can I also confirm with Mrs. Haraway that the live streaming and recording of this event has commenced?

00:26

Thank you. I'd

00:29

like to welcome you all to this issue specific hearing number five, in relation to the application made by GTR for limited trading as outdoor dining offshore wind for an order granting development consent for the outdoor dancing offshore wind project.

00:45

This hearing is being held both in person and online in what we call a blended event. My name is Rod MacArthur, and I've been appointed by the Secretary of State to be the lead panel member of the panel to examine this application. I'm now going to ask the other panel members with me today to introduce themselves.

01:04

Good morning. I'm Mark James,

01:08

good morning. I'm Gavin Jones,

01:11

good morning. I'm Gordo Joshi, good

01:14

morning. My name is Claire meginson,

01:18

thank you. Together, we constitute the examining authority for this application. We're also supported in the venue today by Louise Haraway, the case manager and online by Georgiana Hannigan, the case officer for the application.

01:31

I'll now deal with a few housekeeping matters for those attending in person.

01:37

Can everyone in the room with us this morning? Please set all of their devices, including phones to silence,

01:44

tea and coffee will be available today in caviar Lounge, which is directly through the double doors towards the rear of this room.

01:52

WCS, including accessible facilities, are located immediately outside this meeting room after you exit any of the sets of double doors to your left or behind you, in your case,

02:03

into either the adjoining room or the corridor. Turn to your right and follow the signage. Fire exits are also accessed via the same corridor outside the double doors, and signage will direct you to the nearest exit in the event of a fire.

02:17

There are no fire drills planned during the time that hearings are scheduled to occur this week. Therefore, if you hear the fire alarm, you should assume that it is the real thing and act appropriately after exiting the building by the nearest safe fire exit. The assembly point is in the red car park, which is the first car park that you came to as you arrived today.

02:37

This meeting will follow the agenda published on the national infrastructure planning website on the fifth of February, examination Library Reference, Ev, 10, 001,

02:48

it would be helpful if you had a copy of this in front of you. And I will also, at this stage ask the applicant if they could share the agenda on screen for us. Please

03:01

the agendas for guidance only, and we may add or remove considerations or issues as we progress, we will conclude the hearing as soon as all relevant contributions have been made and all questions asked and responded to. But if the discussions can't be concluded, then it may be necessary for us to prioritize certain matters and defer other matters to further written questions, or indeed, further hearings if we choose or decide that they are necessary.

03:26

Likewise, if you cannot answer the questions being asked the required time to get information requested together, then can you please indicate that you need to respond in writing?

03:38

As I said, today's hearing is being undertaken as a blended event using Microsoft Teams. And we'll make sure that if you've decided to attend today virtually, you'll be given a fair opportunity to participate.

03:52

For those people observing or participating through teams. In order to minimize background noise, we ask that you please make sure that you stay muted unless you're speaking,

04:01

and if you are participating virtually and you wish to speak at the relevant point in the proceedings, please use the raise hand function within Microsoft Teams. Please be patient, as we may not get to you immediately, but we will invite you to speak at the appropriate time.

04:17

I'd also like to remind people that the chat function on Microsoft Teams has been deactivated, so please don't try to use this

04:24

if you don't manage to ask your question or raise your point at the relevant time, there will be an opportunity at the end of the meeting to raise this under Agenda Item 3.9

04:32

which is any other matters arising. A

04:36

recording of today's hearing will be made available on the advertising offshore wind farms section of the national infrastructure planning website, as soon as practicable after the hearing is finished, with this in mind, please ensure that you speak clearly into the microphone, stating your name and who you are representing each time before you speak, a link to the planning inspectors. Inspectorates. Privacy notice was provided in the notification for this.

05:00

Hearing, and we assume that everybody here has familiarized themselves with this document, which establishes how the personal data of our customers is handled in accordance with the principles set out in data protection laws.

05:12

Please speak to the case manager, Mrs. Haraway, if you have any questions about this,

05:18

we aim to adjourn for a short break at an appropriate time during the morning and the afternoon, and there will also be a lunch break scheduled

05:27

coming on then to the purpose of today's hearing,

05:31

the hearing is intended to address matters and questions identified by us through our reading of submissions to date regarding the applicant's submitted documents and responses from interested parties or affected persons.

05:44

If particular issues raised by interested parties do not appear in the agenda, this does not mean that the examining authority will not take them into account or potentially raise them later in the process. However, we remind you that all,

05:58

we remind you all that the examination is primarily a written based process, and so it may be the case that not all issues are discussed at hearings.

06:08

A list of post hearing actions will be taken as they emerge. Please. Can the applicant also record a version of action points as they arise? And at the close of the hearing, we intend to go through this list of actions, which will then be issued in writing as soon as possible after the close of this hearing,

06:26

unless agreed otherwise. Post hearing, actions will be expected at the next deadline in the examination timetable. And I'll expand a little further on this in a moment.

06:36

Before that, I'm going to ask those of you who are participating in today's meeting to introduce yourselves when I state your organization's name, could you introduce yourself, giving your name and who you represent and which agenda item you wish you wish to speak on. If you're not representing an organization, please confirm your name, summarize your interest in the application and confirm the agenda item upon which you wish to speak. Please. Could you all also state how you would prefer to be addressed? For example, Mr. Mrs. Ms, miss, miss, the Very Reverend,

07:09

your choice.

07:11

Can we start with the applicants then and any of its advisors? Please? Good morning, sir. My name is Harry wood, Philpott King's Council. I'm instructed by Shepard and Wedderburn. On behalf of the applicant, GT r4 Ltd, I will be calling on a number of individual speakers to address different items on the agenda as we go along. And because of their number, I propose to introduce them as and when it's time for them to speak, rather than going through a lengthy list now will provide their names and credentials as part of the post hearing notes.

07:56

Thank you. Can we come on then to Lincolnshire county council? Please

08:01

Good morning, sir Stephanie. Hall, H, A double L, counsel instructed by Lincolnshire county council. Happy to be Miss Hall. To my left is Mr. Neil McBride, who's head of planning at Lincolnshire county council. To my right is Mr. Darren Clark, who's our ecologist. We're joined by three people on the screen who are going to assist us with later agenda items. I introduced Mr. Clark. He's going to assist with items 3.4

08:27

and I think it's safe to assume that we'll pitch in from 3.4 onwards on the agenda. Probably introduce people on the screen later, because it might be some at some point later today that we get to that stage. But just to make the x a way that we're aware that we've got three people, I think potentially four, joining us on teams. Thank you.

08:49

Thank you. Ms Hall, coming on then to TH Clements. Please

08:55

Good morning. My name is Mark Westmoreland, Smith King's Council. I appear on behalf of TH Clements. I'm instructed by Fiona Barker, who sits to my right. She's a solicitor and principal associate at Mills and Reeves, and to her right is Philip Wright, W, R, I, g, h t, who's the director of rights resolutions limited, and he will be speaking to matters related to soil. And to his right is Damian Pawson, who's a technical director on air quality at SWACO UK, limited, and he will be speaking to dust matters our interest in the agenda, as you will already appreciate, relates to Agenda Item 3.5

09:47

land use. And it may be that we have one or three two things to say on agenda item 3.7 which is the draft development consent order you.

10:00

Thank you. Coming on then to the Environment Agency.

10:08

Good morning. My name is Annette Hewitt, and I'm the planning advisor for the Environment Agency. Happy to be addressed as MERS. We're here to answer questions in relation to Agenda Item, 3.3

10:22

in respect of this item, because of the linear nature of the project and the fact that we don't know what sort of questions you're going to be asking us. I'm joined by two flood risk advisors, so that hopefully we've got all bases covered. But before I pass to them to introduce themselves, I wonder if it'd be okay for me to check that you're happy for us to drop out of the hearing once that agenda item is completed, because I don't think we'll have anything further to input on the other agenda items.

10:51

Ms Hewitt, that should be fine. We I'm aware that we have an agenda item for the development draft development consent order, and there will be, we will be touching on the progress of

11:04

protected provisions in that section.

11:08

Mainly it's, it will be for the applicant to provide an update. So I'll leave it up to you whether, whether you want to stay for that or not, and if you, if you need to respond, or prefer to respond in writing, that will be fine.

11:22

Thank you. So yeah, I think we'll leave that to the applicant to respond in writing, if that's okay.

11:27

Thank you. Thank you.

11:31

Did your colleagues want to introduce themselves at the moment? Yes, I'm Rebecca Sylvester. I'm a flood risk advisor for the east coast of Lincolnshire. I'm happy to be addressed as Mrs. Sylvester. Thank you.

11:47

Hello. My name is Heather tyso. I'm a flood risk advisor for the well and the mean area. I'm happy to be addressed as Miss tyso. Thank you, Heather.

12:03

Thank you. And then we have a representative from within fourth district IDB with us as well. And if you could introduce yourself, please,

12:16

hi. My name is Derek Braddy, engineering manager for with and fourth district in Talend, drainage board, happy to be addressed as Derek.

12:25

Particularly agenda item, 3.3 and then I think it's 3.7 on the DCO. Thank you.

12:32

Thank you, Mr. Brady.

12:36

Is there anybody else in attendance who wishes to or intends to speak at this hearing, and if so, please let me know, either in the room here by raising your hand,

12:50

or by raising your hand on teams,

12:59

seeing No hands anywhere. So I will take that as a as a no, and

13:08

move on. Now, before I hand over to Mr. James for the next agenda item,

13:14

I have one further item to address with regard to these hearings, and in particular the information to be submitted following this week's hearings, and the timing of those submissions.

13:25

When it established the examination timetable in the rule eight letter examination, Library Reference, PD,

13:32

011, the examining authority anticipated that a number of areas which it planned to examine would be further developed by this stage in the examination. However, that

13:45

is not the case,

13:47

and the examining authority now has reason to be concerned that without further intervention, a number of significant examination topics may remain unresolved at the close of this examination,

13:58



or it may not receive final statements from all parties, which are as complete as they might otherwise be. For

14:04

these reasons, the examining authority yesterday made the procedural decision to amend its timetable, to introduce an additional deadline for a on the 26th of February. Submissions that the examining authority expects to receive at this deadline are set out in its procedural decision, which all interested parties and affected persons should have received by email. In addition, over the course of the hearings being held this week, the examining authority will almost certainly ask for additional information for parties to this examination, unless it states otherwise, the examining authority will expect the information that it has requested to be submitted at the new deadline for a on the 26th of February. Are there any questions on this matter at this stage?

14:49

No, that's good. I will move on then to note

14:53

that the applicant and interested parties will also note that within the same procedural decision, the examining authority has also accepted.

15:00

To the applicant's change request submitted at deadline four, which is examination, Library Reference rep 4124,

15:06

and has also agreed that the information submitted in the applicant's change notification submitted at deadline four as well, which is examination, Library Reference rep 4123,

15:18

can both be accepted into the examination without the need for further change request. Again, I'll ask if there are any questions related to this procedural decision.

15:30

And seeing no hands, I will move on to hand you over to Mr. James for Agenda Item 3.2

15:38

Thank you. So moving on to Item 3.2,

15:43

which relates to seascape and visual effects. First of all, to consider the offshore reactive conversation platform lighting management plan and design principle statements.

15:55

The applicants submitted the offshore reactive conversation platform lighting management plan and the design principle statement at deadline four,

16:04

paragraph three of the design principle statement

16:08

refers to the principles in the document that we followed in the design plan that must be submitted to the marine management organization pursuant To Schedule 11, condition 13, brackets one, brackets a however, it's not clear from the wording in the draft development concern, sort of how the commitments to follow the design principle statements is secured as it is not referenced in condition 13. Can the applicant please provide clarification on this? I

16:43

um, Harry wood Philpot on behalf of the applicant, so I'm going to ask Mr. Greg Tomlinson, who's the offshore consent manager for the applicant, just to provide an initial response to that.

16:58

Greg Tomlinson for the applicant, and

17:02

essentially, given that that document was submitted at deadline four, we believe that the condition reference there, condition 13, one A is the relevant condition given that it references the design plan. However, essentially, we would like the ability to discuss any specific additional wording that may be required with the marine management organization prior to inserting that drafting into the draft DMLS, therefore, proposed that we could speak to the MMO and potentially bring forward additional wording to secure that further bearing in mind, it would essentially be new drafting and new To the MMO in that sense. However, we do believe that that condition, which requires the submission of a design plan, is the appropriate condition to do that, but it may need some minor tweaks to reflect the design principle statement.

17:56

Okay, in terms of the timing of that amendment, would that be forthcoming at the line for a that should be possible. Greg Thompson, for the applicant that should be possible. We have a meeting with the MMO next Monday, and amongst other things that will be on the agenda. Okay, thank you.

18:16

Moving on, paragraph 19 and table 3.1,

18:22

of the design principle statement referred to the preparation of an outline design principle statement. Can

18:29

you also confirm if the document Smith that the line four is the outline design principle statement?

18:35

Greg Thompson, for the applicant, yes, that is the case. It's

18:40

not entirely clear from the cover or title, so perhaps that could be revised to make that more clear. That'll be helpful. Thank you again for deadline for a can do that

18:55

table 3.1 of the design principle statements also commits to consulting with the land for Community Liaison Group on the detailed design of the offshore reactive conversation platforms.

19:07

Does Lincoln County Council have any comments to make on the design principle statements at this point, including the details for further consultation on the detailed design of the offshore reactive conversation platforms?

19:22

Definitely. Holding into county council. So no, we're not involving ourselves in offshore matters. So as far as we're concerned, no, no, we don't. Thank you very much. Okay?

19:35

And can we have to confirm if the lining management plan or design principle statement has been subject to any consultation or feedback. To date,

19:45

Greg Thompson, for the applicant, the specific form of those two documents essentially no however, what is reflected in both documents essentially reflects the evolution of the project in terms of the project de.

20:00

Design that has been ongoing since the pre application stage. And if you in terms of the design principle statement and reflecting those key decisions that have been made throughout, in terms of siting of project infrastructure and such like, and in terms of the orcp lighting management plan,

20:20

essentially, again, all of the elements that are in there are essentially captured throughout the environmental statement, which was obviously subject to pre application consultation and such like. So those documents as standalone no but essentially, the contents of them are an evolution of what has gone on since the early stages of the pre application process. Thank you. That's that's helpful.

20:46

Moving on then, unless anybody has any further comments to raise on on this matter, I don't see any hands, so I'll move on to the duty to further purposes of national landscapes. I note Natural England response to further written questions. SV, 1.1,

21:04

that's rep, 4143,

21:07

in which it states that the new guidance issued by Defra regarding the duty to further purposes of national landscapes does not have implications for the project given its conclusions regarding the absence of impact to designated landscapes.

21:20

Lincoln's Council's response reiterates its concerns. Rates in response to first written questions, that the landscape and visual impact assessment scopes The Lincolnshire walls out, and that the applicant should provide some assurance that the national landscape is not just protected but enhanced by the projects.

21:40

It's the examining authorities understanding that Lincolnshire walls has been assessed in the seascape landscape and visual impact assessments, and that no significant effects are identified on the national landscape from the offshore elements of the projects. Would the applicant just like to comment initially on that position? Please, sir. Harry wood, Phil Park Casey, on behalf of the applicant. So that is, that is our understanding. We noticed that the way that it had been put on behalf of the County Council and their representations slightly missed the point that you've just identified as to where it is dealt with. So that is correct, as you've just explained. If it would be helpful. I can also make some short submissions about the implications of the duty and the circumstances of this case, but I'm in your hands as to whether that's what you're after, and therefore whether it be helpful or just would take time a brief summary helpful. Thank you. Thank you.

22:41

So as you have identified neither of the national landscapes that are in issue here, the Lincolnshire worlds national landscape, which is approximately 21 and a half kilometers from the orcps and about 64 kilometers from the array area, or the Norfolk coast national landscape, where the equivalent figures are 32 kilometers and 55

23:07

kilometers, neither as areas are assessed as being like to experience any significant adverse effects as a result of the proposed development. And that also reflects the views of Natural England. And in this case, therefore the application of the duty is inherently unlikely to materially affect the Secretary of State's decision making.

23:30

And that against that important case specific background, there are three further general points about the nature and effect of the duty which serve to reinforce that conclusion, all of which are reflected in the recent Defra guidance. And I just briefly summarize those here, because that they are relevant to the point that the county council has raised in its written submissions. The first is that the duty is intended to complement the existing statutory functions, duties and responsibilities rather than prevent them being discharged. And so the duty doesn't override the decision making framework that is set by the Planning Act 2008

24:11

and the national policy statements. The second point is that it's not a duty to ensure the decision made furthers the statutory purpose, but instead to seek to further it. And this allows for the exercise of judgment as to whether, for example, to make a development consent order that does not itself further that purpose. And then, thirdly, if achieving that purpose in a particular case would be unreasonable and/or disproportionate having regard to the context, including other legitimate public interest objectives, then the duty does not oblige the decision maker to achieve it. Nevertheless,

24:55

if you would find it helpful, we can provide further written submission.

25:00

At deadline for a to set out the applicant's understanding of the nature, scope and effect of the duty and to provide further explanation of its limited significance on the facts of this case. And we can do that if it will be helpful, but for the purposes of today's hearing, hope that sufficiently explains our position. That's helpful. Thank you. And we would welcome a short note setting out your position in writing at deadline for a thank you.

25:28

Turning to the county council then, and having regard to the assessments on the walls, national landscape, in the seascape, landscape and visual assessment chapter of the ves. Does the council have any further comments to make on this, on this matter in terms of the duty, and whether or not

25:48

it has been considered Stephanie Hall, Lincolnshire county council, so I don't think we're a part in terms of the interpretation and suggested application of the duty and what it requires of the decision maker. We had been asked to draw this to the X days attention, the applicant's attention by our walls officer, who's not with us today. So if it's acceptable to the XA, we'll just take this back to them and see if they've got something to add. I suspect they might not, but I'm not assisted today by their presence. Okay? It'll be useful if you could confirm whether or not you've reviewed the seascape chapter of the ES and the conclusions within it, if there's any comments you only have because they do consider the effect on national landscapes. Yep. Thank you understood. Thank you very much.

26:35

Again, this would be an action point for deadline for a

26:41

moving on then to the East Coast flyaway World Heritage Site bid, the applicant's response to further written questions. SV, 1.2 that's rep 4107,

26:55

considers the bid not too relevant to seascape as it relates to habitats.

27:01

County council response also appears to echo this view in that the world heritage site is one of an ornithological designation, rather than seascape itself. Can the county council confirm whether not agrees with the applicant that the bid is not a matter for seascape effects and consideration?

27:27

Stephanie Hollinger county council, yes, thank you. Would

27:32

the applicant like to comment

27:35

her with Philpott Casey on behalf of the icon. So no, we have. We had prepared an explanation as to why we thought that was the position. But given that it doesn't appear to be controversial, unless you find it helpful, I don't propose to go through those matters. No, I think, I think it's clear from from both parties. Thank you. Thank you.

27:56

Okay, so that concludes the item relating to seascape, unless there are any further points that anybody wishes to raise on this matter.

28:07

I don't see any hands, so I will now hand over to Mr. Choshi for item 3.3

28:16

Sir Harry wood Ford, on behalf of the app. And can we just have a short moment to shuffle around our speakers before we launch into A very careful thing you

29:06

thank you very much. We're now all in place. Grateful.

29:12

Thank you. Thank you. Mr. James under 3.3 agenda item which is water environment. Have a matter to raise regarding the flood risk assessment, turning to Lincolnshire county council in response to the examining authorities, Q, 2w, E, 1.1

29:33

rep four, 128, the Environment Agency has deferred the response to the Local Lead flood authority regarding surface water risk,

29:42

which is Lincolnshire county council. So do you have anything to respond on that one? And the Secondly, the applicant had submitted updated flood risk assessment for the onshore ECC and 400 KV cable corridor and onshore substation. Rep, four dash.

30:00

0222,

30:01

rev four, dash zero, 29 at the deadline for May I ask Lincolnshire county council if they have any matters to raise in this regard,

30:10

Stephanie Hollinger county council said, no, no, we don't. We've not made any objection in relation to flood risk or the adequacy of the flood risk assessment. Thank you.

30:20

Thank you.

30:24

Can I turn to Environment Agency now in your relevant representation, 018, the environment agency stated that for a PP 211

30:36

chapter 24

30:39

appendix to flood risk assessment. ECCN 400 KV, they hold an objection on flood risk ground until they have sufficient information to determine if the project satisfies the exception test in accordance with the paragraph 5.8, point 11 of en one, similarly, they stated for the APB 212,

30:59

chapter 24 appendix three, flood risk assessment, onshore substation.

31:05

Subsequently, many of the issues raised in the environment agency's relevant representations have been resolved, but a few still remain at the deadline for submission. May I ask the Environment Agency whether the holding objection on flood risk, ground for ACC and onshore substation are still in place or not, and if so, what matters are still under discussion, excluding protective provisions and likely likelihood of resolving these matters.

31:37

Annette Hewson for the Environment Agency, yes, those holding objections are still in place for both the ECC corridor and the onshore substation. I think in terms of the

31:52

ECC, we are currently reviewing some flood modeling in respect of the noise Bund

32:00

and in respect of the onshore substation, we are waiting for some additional files in relation to the modeling of the 75 year

32:13

climate change scenario. So hopefully, when those have been received and reviewed, those objections may be removed, but in terms of the submissions by the applicant, revised flood risk assessments at deadline form afraid we just haven't had the opportunity to actually review those at the present time.

32:39

Thank you. May I ask the applicant to respond on that?

32:48

Harry wood Hill Park Casey, on behalf of the applicant. So I'm going to ask Mr. Martin Baines, who sits to my right, who's the hydrology lead and technical director of SLR consulting, just to respond briefly on behalf of the applicant. On those

33:05

points, Martin Baines on behalf of the applicant,

33:09

just to respond to the Environment Agency with regard to the information that was requested for the onshore substation, modeling that information in terms of the boundary files we're currently in the process of uploading. They're quite large files, and we have to arrange a specific location to upload them to, but we're ongoing with that at the moment, with regard to the noise and modeling that goes the model itself is submitted to the Environment Agency and goes through a process of review with their external auditors. We're in the final stages of that review process. The last time that we were asked to submit something, there was only one line item left in that review process, and it was a request for further information and clarity on why we'd use the certain boundary file. We feel that we've got valid reason for the use of that file, and we provided that information to the EA now, so hopefully we're very close now to reaching resolution on all the points needed.

34:16

Thank you.

34:18

Can I ask the Environment Agency, if anything to respond in that regard.



34:26

Annette Hewson for the Environment Agency, know that that that is all correct and aligns with our understanding of what we're working on. Thank you.

34:35

Thank you.

34:37

Unless any other party have a question regarding the water environment,

34:42

please raise now.

34:44

Otherwise I'll now hand hand back to Mr. James for Agenda Item 3.4

34:51

Thank you. So moving on to Item 3.4 onshore ecology and ornithology.

34:58

First of all.

35:00

Considering outstanding matters of disagreement between the applicant and Natural England, sees the items identified on its risk and issues log,

35:09

the XA notes from the respective responses to further written questions from the applicants and Natural England. And that's an England response is rep 4143,

35:21

that there remains disagreement on a significant number of issues, from the risk and issues log, which naturally submitted a deadline for in relation to both on shore ecology and ornithology

35:34

natural England's now also seeks to secure specialist advice on a number of issues that relate to the consideration of matters such as dust and noise, and they commit to provide further feedback at deadline five.

35:49

It also provides some further advice of actions that the consists are necessary for the applicants to undertake to address its concerns.

35:56

We don't have time to consider all those issues today, but I would like to discuss those items categorized, as read by Natural England, which relate to protected species licenses for badger and Otter.

36:11

Natural England seeks further discussion regarding license mitigation and states that a draft species license should be submitted prior to consent for a letter of no impediment to be issued to provide comfort to the Secretary of State that matters can be addressed.

36:25

I note the reasoning provided by the applicants as to why it shows not to follow advice to date are set out in response to first written questions and second written questions,

36:35

and these relate to the provision of mitigation risk avoidance are set out in the the olms

36:44

in relation to badgers, the applicant appears to acknowledge that a license may be required in light of future pre construction surveys.

36:53

Paragraph 198 of the olms also states that badgers are confirmed to occur within the odd limits without light and main sets both recorded

37:04

in that context, can the applicant just clarify what's preventing it from submitting a draft species license at this stage,

37:15

everybody's Philpott Casey on behalf of the applicant, So I'm going to ask Stephanie Bucha, who's the ecology lead and Principal Consultant at SLR consulting, to deal with that matter. There's also so just to flag it up, a general point that I want to raise at some stage about the approach taken in the Natural England deadline for

37:39

some written submissions, and I'm happy to deal with that at the end of the items that you've got under item 3.4 on Natural England, or immediately after Miss Bucha has spoken, depending on your preference, I

37:55

think we'll take that after we've considered the Other items related to national response. Yep. Thank you. Applause.

38:03

Uh Steph Bucha called behalf of the applicant, so we had a meeting with the Neils team, the Natural England wildlife licensing team, on the eighth of August last year, where we discussed the baseline that was current at that time and the general approach, the principles that we would apply to obtaining letters of no impediment. And the principles were that if we could predict a licensable impact, we would produce a license application to obtain a Lonnie. But for those species where no licensable impact was predicted, it wasn't possible to do that, because you're essentially constructing a hypothetical scenario in the event that the pre construction surveys would detect something. So it was agreed in that meeting with latter England that we would record our rationale for why we thought the license was not required and provide that as an appendix to the OM OMS, or an annex to the OMS, which we did. I think part of the issue with the Badger license confusion is that it appears, from the responses from Natural England that they weren't able to access the annex, the confidential annex that sets out the Badger rationale. So it would be useful to confirm that from them, but in the in their comments, in their responses. The deadline for in the in the risk log actually asks us to advise them of where that annex is, and it's confidential, so it's not available on pin. So I think perhaps once they've been able to review that, that might put that into bed, so to speak. But yeah, to go back a second, our position is, if there's no licensable impact, yes, there are sets within the order limits, but we won't be impacting on them. There's no discernible licensable impact. We wouldn't need to apply for license at the current baseline. We're not able to do a Lonnie. So what we have done is we've set out that justification in the olims annex.

40:00

And we've also provided lots of mitigation within the olems around protecting, preventing impacts, preventing disturbance, that sort of thing, and then also the requirement for pre construction survey. So it's really precautionary when we'll do the pre construction service, and if at that stage the baseline has changed, we'll address it then. But based on what we know now, there's no licensable impact.

40:22

Thank you. At this point, can I note an action point for Natural England to confirm whether or not it has access to the confidential annex relating to Badgers,

40:33

and if not, if you can seek that from the inspectorate? I think that would be helpful. But it

40:40

does seem to be that natural image response has changed from what was said to you in August.

40:48

Is that a fair summary, they are now asking for it, for a license to be submitted,

40:55

Steph Bucha, on behalf of the applicant, how it appears through the dialog, through the risk log is that the initial comments haven't been updated in line with the advice that we were given during the nuance meeting. So there seems to be a slight disconnect in the streams of advice that we're receiving. Have

41:14

you had that conversation with them to clarify whether or not there is some lack of update in terms of their risk and issues, like, has there been a direct conversation? With them on on the matters that are outstanding, beyond an exchange of emails? Has there been an actual conversation? Because it seems that that might help the situation.

41:36

So Harry wood Philpot, on behalf of the applicant, on this matter, the sort of general discussion, state of discussions with Natural England, I might turn to Mr. Andy Gregory, who's the onshore EIA lead and the tech and the technical director SLR consultant, just to deal with this. Thank you.

41:53

Morning. Andy Gregory, for the applicant.

41:57

My understanding is that there have been a number of requests to Natural England to have a call to try and resolve some of these issues. But at the minute, that's not been able to be secured.

42:08

Okay? So there's been no direct conversation beyond exchanges of of emails or documents. There's been an attempt to have that conversation. Okay? On the applicant has has made every effort to have that conversation with Natural England.

42:27

Again, I'd like to just add into another action point for the applicant and to make every endeavor to make sure that conversation happens before deadline for in order to inform submissions at that deadline, please, four, a, rather than four

42:44

it does seem as though the miscommunication across wires that would be easily addressed with it with a conversation that so far hasn't happened. So if efforts can be made to ensure that that does happen, that'd be that we appreciate it. Thank you.

42:58

In relation to otters, then I guess it's the same point, really, in terms of the hypothetical scenario that it referred to that is difficult to assess. And again, it may be an issue that that could be resolved with the conversation with with Natural England,

43:13

Stephanie cook on behalf of the applicant. Yeah, very similar situation, and that no licensable impacts are predicted. If we could have that conversation, I'm sure we could come to an agreement. Thank you.

43:24

Mr. Philpott, had a further point to raise on this. So yes, Harry wood, Philpott, Casey, on behalf of the applicant. So it's really just to put a marker down and flag up something that we'll deal with in more detail, in writing at deadline four a but I wanted to raise it now.

43:45

We will provide a written response in general to the matters that have been raised by Natural England at deadline four. But one of the points we particularly want to pick up is the submissions made in the covering letter that Natural England has put in and also in the appendices as to the nature and extent of its participation in the examination process.

44:09

The applicant has now seen the published correspondence from December in which the examining authority asked Natural England to attend these issues specific hearings at which the issues it had raised were to be considered on the basis that the intention was to test the evidence in the most time efficient manner, and that its presence would therefore be beneficial. And we see that Natural England decline, that invitation its absence from hearings at which the evidence of all participants is to be tested is a concern in itself, because we say it necessarily creates an imbalance in the inquisitorial process. But that concern is exacerbated by what we've now read in natural England's deadline for submissions as to its approach.

45:00

To the testing of its position and the relevant evidence in the examination process more generally.

45:07

So in Appendix f3

45:09

for example, Natural England has set out its view that the examination process is not an appropriate forum or constructive discussions on the interpretation of the evidence base and its application in best practice for Impact Assessment. Instead, it simply invites the examining authority to give considerable weight to its advice on the basis that it is Natural England that does not reflect the applicant's understanding of the inquisitorial examination process and how that process should approach the issues and the evidence of all interested parties. And you'll have seen from the Natural England deadline for submissions that it refers to some case law, a case of akester, in relation to this matter. But the High Court has recently made clear in the sizewell C case, and will give you that case and the relevant references in the written material, that the Secretary of State and therefore also yourselves as examining authority, are entitled to disagree with Natural England, and that the level of reasoning required when doing so, and the degree of deference to natural England's views may depend on whether its position is supported by evidence, and it noted the concerns that were raised in that case about fairness that can arise from non participation in Proceedings intended to test that evidence. Now we'll deal with this in more right, in more detail in writing. But this is the first opportunity we've had since seeing that to raise this point and but given that Natural England is not here to respond, we proposed that to deal with that more fully in our written response. But sure as you, as you have indicated, as and as will be apparent, there are issues which are as yet not fully resolved, and if it comes to the point of

the examining authority having to grapple with those issues, we think it's important that we provide you with our view as to the approach that should be taken in that exercise. Those

47:16

comments. No. Submit to Phil Park, thank you.

47:22

Okay,

47:24

moving on, then to another matter that natural and have raised, which relates to mitigation to avoid adverse effects of integrity on the wash. SP, a

47:38

national in response to furthering questions at HRA 1.2

47:44

is clear that further mitigation could negate the need for a derogation case and has drawn the applicant's attentions advice provide in relation to the sharing and Dudgeon extension projects. I note the applicant has already made reference to this advice and identified two options for mitigation that we considered on the sharing and Duncan project to address potential disturbance to qualifying features using functionally linked land. However, again, a note that wishes to discuss these options further with with Natural England, beyond

48:17

the information provided in its response to further any questions, which summarizes, I think there's a copy and paste from the Schengen Duncan documentation. In terms of those options, how far has the applicant gone to review and assess the extent to which they may be applicable to this particular project?

48:37

So Harry would fill pot on behalf of the applicant, I'm going to now invite Mr. James Wilson, who's taken a seat to my right. He's the ornithology lead and a technical director of SLR consulting. He'll deal with that question, Sir

48:54

James Wilson, on behalf of the applicant.

48:58

So we have, we have reviewed that document that you refer to, which is natural England's best practice advice on pink footed goose mitigation, specifically in relation to the North Norfolk SP

49:12

we

49:14

we are seeking further discussions with Natural England to understand how that may be tailored to the outer dowsing project. The

49:24

applicant's position is that we have provided mitigation for this specific impact, which is tailored to the impact from the project. And it's not readily clear how the best practice guidance provided to the sharing and extension project can be implemented for the outer dowsing project, which has slightly different impacts and slightly different suite of species, and I can discuss that further if necessary, so the applicant wouldn't be in a position to submit its proposal for mitigation following that.

50:00

Advice, without further conversations with Natural England, is that that's correct. That's the position.

50:06

Again, I think it comes back to the need the agency to make sure there is a conversation as soon as possible, to try and bottom out those, those issues. But perhaps, if that isn't forthcoming,

50:18

the submission by the applicant of a

50:21

of a solution that it's as considered based upon action device as far as it can take it without their feedback would be, would be helpful as well, if further conversations are forthcoming as a as a backup that could be considered during the examination, perhaps

50:35

we can certainly take that away and see if we can come up with some additional mitigation options, as I say, the mitigation package that we've already provided, we've evidenced in the assessment that that is adequate to address potential impact on the wash SP, but we can look at potential further mitigation options in accordance with natural England's best practice. It were helpful to have something right enough beyond what was submitted and further written questions. Yes, certainly in case that needs to be considered further during the examination. Thank you.

51:07

And again, that would be helpful if that is submitted, if further conversations are for coming with applicant at deadline for a so that's another action point. Please.

51:29

A related question

51:32

to that as well.

51:36

I know the option two that was considered on the sharing condition projects

51:42

related to alternative foraging resources an undisturbed location.

51:52

Is there the potential, if that was an option that was deemed necessary for this project, that there could be additional land that may be required beyond the order limits or additional

52:04

cost acquisition that may be necessary, and if so, is

52:10

there sufficient time with examination to consider such matters at

52:15

Harry, with Phil, but on behalf of the app, so I think we'd better take that away. If I if I can, I don't have instructions on on whether we've got additional land at the moment, if I can, just see if there is a James Wilson, on

52:36

behalf of the applicant, that was one of the things we would like to discuss with Natural England, it's suggested that they may have been developing their own Mitigation Scheme, obviously, outside of the order limits. We'd like to know, is that up and running? Is that something that is that essentially what they would like us to contribute to, essentially a Mitigation Scheme that's already there, that we can that we can support, but we need to find out from Natural England if that's the case.

53:05

Again, that'd be helpful again, for the deadline for a and again, that's, that's, that's an action point. Has there been any communication with the developer on the chain conversion project directly to see if they could offer any advice as to what option they've taken forward?

53:22

I would thought that on the applicant. So not, not as far as I'm instructed. I don't believe there has been direct discussion with that developer that may or may not be helpful, I'm not sure, but it's a suggestion perhaps that you could take away and think about. So yes, we'll see if we can get any assistance from them directly, absent further assistance from Natural England. Thank you.

53:47

Unless you have any further questions on this, I shall move on to

53:54



the master of compensatory habitats for skylark and yellow wagtail

54:01

Lincoln County Council's response to further written questions, that's H, o, e1, point 10,

54:08

docket reference rep, 4133,

54:11

express concern regarding extents which measures not secured

54:16

in the draft development consent order are enforceable now the

54:20

applicant response the same question states that, once detailed design isn't taken, it will agree the extent of severed land with landowners, as per the outline COVID construction practice, which will then allow detailed design of the conversation habitats as outlined in the or to be outlined in the final ecological management plan, which is secured under requirement 12,

54:43

and that will be subject to approval by the county council in consultation with the local planning authorities.

54:50

However, the examining authority notes that paragraph 177,

54:55

of the olms currently refers to opportunities for conversation being explored so.

55:00

And provided where viable.

55:03

Furthermore, the outline code of construction practice that's docket reference rep 4068,

55:09

does not appear to refer to the provision of compensatory habitats. Explicitly in Section 6.14, which relates to severed land and

55:21

the applicant just comments on whether the olms should provide affirming commitments to deliver conversation as is suggested. And it's further written questions response. So this is

55:39

relating to the there's some commentary in the in the document that refers to where viable seeking opportunities. There isn't a firm commitment that will be delivered, Harry, we thought on behalf of the applicant. So I will ask Mr. Gregory if he can assist. It may be that we need to take that wording away and look at it in come back to in writing. But I'll ask Mr. Gregory who's able to provide any initial assistance. Thank you. Thank you very much. Andrew Gregory, for the applicant. So the way that we've dealt with potentially severed land within the the

56:13

essentially working on the assumption that the COVID construction practice will enable all land either side of the order limit that may be considered to be severed to sufficient access will be provided to all farmers to make sure that they are able to access their land and continue farming practices,

56:36

however, where

56:38

A individual farmer deems that that piece of land is isn't worth farming or is too difficult to farm, then

56:47

the the project so the applicant will see, discuss that with them on a case by case basis and agree appropriate compensation for the for the landowner in that instance, then those areas of unfarmed land, should we say, could then be considered

57:06

as additional habitat for various species. So that's

57:13

that's where we're up to that point, and that's what the LMS is then referring to.

57:17

Okay, so the to the ambiguity in the olems relates to the fact that there is a potential that conversation is not

57:27

provided. It's a bit sorry Andy COVID for the applicant. It's the ambiguity is because the level of detail is not yet agreed, because it will be agreed on a case by case basis as a result of how those individual farm practices deal with the

57:44

those additional areas of land.

57:49

So it's an additional opportunity,

57:53

okay?

57:56

So if in the scenario whereby there is no severed land that is available for compensatory habitat.

58:03

How would that be, provided

58:06

that I will take away? Yes, so on behalf of cab, I think that's the area where I think I'd like to just take that away, make sure I've got clear, a clear understanding of what is anticipated, and if there's a change needed to the wording and the explanation, then we can provide that. But I'm not, I don't have that to hand now. Okay,

58:28

thank you. Again, that'd be an action point for deadline foray to provide that note, please. And similarly, in terms of the wording in the outline code of construction practice, again,

58:42

perhaps it would be better if that was made clear in that document that that was it was an opportunity that would be explored or perhaps even delivered by the applicant. Again, that Section relates to seven land it doesn't really mention it at all at the moment, so there's not a clear link between those documents on that conversation.

59:00

Do Lincoln

59:01

County Council have any comments on this point? Yeah,

59:08

so Stephanie Hall, Lincolnshire county council, yes. I'm just going to invite Mr. Clark to make a brief comment. Thank you. Thank you. Darren Clark, for Lincolnshire county council, yeah. I think just, we'd welcome the the applicant intentions in this area in terms of delivering compensation and mitigation habitat for Skylark. I think the concerns we've expressed in our

59:29

answers to the written questions are around the clarity, as you've picked up on that. I think that also that this is a cross issue with the next item that we're about to discuss on biodiversity net gain. This is something that potentially could add to the the amount of biodiversity net gain that the applicant is delivering, and it's just clarity around what can and will be delivered that we're seeking. I think really,

thank you. Thank you. Does the applicant have any further response to that point? No, sir, no. Thank you. So.

1:00:00

Will, as I said, we'll review the concerns that have been raised about the lack of clarity on provision, and we'll come back to you in writing at deadline. Foray on that. Thank you.

1:00:12

Moving on then to biodiversity, net gain,

1:00:17

as per action points, 10 of issue specific. Hearing three, the applicant provided a review of net gain provision and other made development consensus orders in the Lincolnshire area and along the North Sea coast. That's in rep 4111,

1:00:35

it indicates that other projects with larger proportions of permanent infrastructure, such as solar farms, are generally better able to provide predictions in relation to net gain. May

1:00:47

I forget just confirm that none of the projects that it reviewed, I think there was 18, made DCOs, although they're not, they're not named in the response.

1:00:59

If none of those projects that are secure a percentage of body based net gain

1:01:05

with for offshore wind farm projects or other projects with a relatively low proportion of a permanent on tour infrastructure, so akin to

1:01:13

what we have with the proposed development we're considering here.

1:01:18

Very good Philpott Casey on behalf of the applicant. So I'm going to ask Mr. Bob Edmunds, who's the bng lead technical director at SLR consulting, to respond on this matter.

1:01:35

Hello, Bob. Bob Edmunds, on behalf of the applicant. So yeah, we conducted a review of a total of 1818,

1:01:44

DCO applications. 10 were solar farms and three were wind farm sites.

1:01:50

There was a lot of variation in the

1:01:55

in the approach to biodiversity net gain for each of those projects.

1:02:01

And what we found was that

1:02:06

the

1:02:08

within those projects, overall, they took a variety of bespoke arrangements and interpretation of the bng guidance, different versions of the biodiversity metric. We used. Some schemes highlighted that the trading rules hadn't been met, and some schemes

1:02:25

and and many of the projects defined tightly the scope, the temporal and spatial scope of the projects that was in their bng assessment. The majority of the applications did make a commitment to undertake a bng assessment, but did not specify a commitment to a numerical percentage for png.

1:02:46

So there was three offshore wind farms that were assessed three, none of the three secure a commitment to a specific percentage of net gain, and they made DCO. Is that correct? Let me just check the so I've got the we did complete a full analysis. So if I just look so Bob Edmunds on behalf of the applicant,

1:03:06

rampian two wind farm,

1:03:10

did, did make a commitment

1:03:14

at at the decision stage,

1:03:21

and they said that hang on.

1:03:24

And they said that they would provide so ramping to said that they would provide at least 10%

1:03:31

the sharing and Dungeon extension project, which is also wind farm, said that they had completed the assessment but had not given a specified percentage. And the five estuaries offshore wind farm, the applicant was committed to taking a bng assessment.

1:03:47

The project had committed to overall bng, but with no specific percentage. And so the one scheme that had made a commitment, which is rampian, two, had addressed that through some of the methodological approaches they're taken to biodiversity net gain.

1:04:05

Thank you. That's that's helpful clarification. Do

1:04:11

you know why the romping project was able to secure a percentage of of net gain and provide that certainty when that can't provided for this project? Are there any key differences between the two that mean that it isn't possible here

1:04:35

to Harry would Thorpe, but on behalf of the applicant, just while Mr. Edmonds is checking the factual point, if I may, that the issue that we discussed last time in the last hearing about this was as to the question of necessity,

1:04:53

and therefore the issue as to

1:04:56

whether it is possible or not to provide.

1:05:00

Percentage. It is not in my submission the right point to be asking, absent evidence, that it is necessary to make the development acceptable in planning terms,

1:05:15

as we went through in the last hearing. There is no legal or policy obligation on the part of a developer of a project such as this to deliver any particular percentage of bng, and in the absence of any policy or legal justification for the refusal of development consent because of a failure to provide a particular percentage, it then becomes a matter effectively in the gift of the developer. If the developer chooses to put forward a percentage requirement, it may do so, as appears to have happened in some of these other projects, but that is very different from any attempt to impose a requirement or to seek an obligation from an applicant to deliver a particular percentage. And thus, it's not so much a matter of, is it possible? The question is, is it necessary to make the development acceptable. We've drawn attention to the fact that for some developers, such as those who are proposing solar farms, it is relatively straightforward to achieve quite significant percentage gains in bng because of the different nature of the development and the availability of land on which bng can be provided as part of those

projects because of their nature and the way in which they use land in ways that do not apply necessarily in the same way to offshore wind projects. But that goes to the explanation of what they have decided to put forward on a voluntary basis as part of their overall package of proposals. What it doesn't touch on is the question of necessity in any of those cases. So we've one of the cases that's been identified, and it was the cotton solar DCO, which has been discussed in the documents, and that

1:07:24

is an example of where there was a

1:07:28

voluntary provision on the part of the applicant from the outset, to deliver bng by including a proposed requirement. But there doesn't appear to have been any examination of whether that requirement satisfies the necessity test, either in the examining authority's report or the Secretary of State's decision letter. And so those precedents really only tell you what applicants have chosen to pull forward, and you can see how they're treated. But what they don't grapple with are the issues that the decision maker must look at when deciding whether or not either to impose a requirement or seek an obligation.

1:08:09

Thank you noted. Thank

1:08:16

you, Mr. Philpott, as my colleague Mr. James has said, Your comments are noted. I think the one thing that they overlook from an examining authority's point of view in particular, is that we are tasked with weighing the balance of an application and the evidence presented to it

1:08:36

until such time as the legislation kicks in to change the situation your your your point is factually correct. It does not change the balancing exercise that we need to undertake. From that point of view,

1:08:52

we, as an examining authority, believe the questions we're asking are valid. It still may be the case that

1:09:00

the existence or non existence of biodiversity, net gain within your application

1:09:06

will have an effect on the balance that we strike. Hence the reason that that is the specific reason for a questioning, and

1:09:16

that is why we still would appreciate a response

1:09:21

per on behalf of the applicant. So of course, we appreciate that if an applicant volunteers to provide benefit as part of its scheme, that may benefit may sound in the balance, that's that's understood.

1:09:34

Our particular point is about the this suggestion that we ought to be providing a particular percentage gain based on what has been achieved in other projects, because leaving aside the question of whether or not the balance in this case, could go against the granted development consent, because of the absence of biodiversity net gain the difference between.

1:10:00

Particular percentage points has no other legal or policy significance. The policy makes very clear what applicants are expected to do pending the introduction of the legal

1:10:13

requirement. If those policy tests are satisfied as we believe they are in this case, then so far as bng is concerned, the MPs requirements are satisfied. That part of the MPs, then is effectively ticked off for the purposes of section 104

1:10:35

and if the other parts of the MPs are satisfied, so that overall the policy

1:10:42

the project is aligned with policy, and therefore benefit benefits both from the policy presumption and the legal presumption in favor. Then one gets into the question of section 1047,

1:10:57

now, in those circumstances, of course, because this is critical national priority infrastructure. One engages the policy in MPs en one in relation to the weighing exercise and residual impacts in those circumstances. And so the applicant is conscious of all of that in what it puts forward. And you heard last time from Mr. Jenner about the voluntary efforts that it is making, but it's it's important in this that applicants are not expected voluntarily to provide a particular percentage in circumstances where parliament has not made that a legal requirement on them and has not chosen in the national policy statement to make that a policy requirement in advance of it becoming a legal requirement simply because other other projects have done it. There may be certain circumstances in which a particular project may feel it's appropriate because they're concerned about the overall balance, but it would be wrong in my submission to make it an expectation simply because others have chosen to do it. That's the point I want to make

1:12:06

point. Sorry. Thank you, Mr. Philpott, that is clear, and

1:12:11

I think it's an appropriate time to hand back to Mr. James. I think to your last point, that is the clarification that we're looking for at the moment. Thank you.



1:12:24

Thank you.

1:12:28

I did. I did introduce that as something I was going to say

1:12:33

while I gave, well, gave Mr. Edmonds the opportunity to check the point that you were particularly asking, and I must now go back to him and give him the chance to actually complete his answer. Thank you. Thank you. Bob Edmunds, on behalf of the applicant, so I

1:12:48

so we have completed a thorough review of the particular scheme at rampion and the other 18 schemes that we considered. I don't particularly want to get drawn on a critique of the approach that they've taken in their b and g assessment. But I did note that there are 11, at least 11, key assumptions in the approach they taken to bng that will have assisted with them being able to determine exactly the proportions of net gain and how they've calculated it.

1:13:18

It's it's worth noting that we're still awaiting specific guidance on how to deliver bng for NCIP projects, and that guidance will be forthcoming from Natural England, so we're still awaiting that to come forward.

1:13:33

And then the third point I wanted to just quickly make was that the applicant is committed to delivering an overall gain for biodiversity, and they're committed to demonstrating this using a metric. It's really a question of timing, about when that when we're able to confirm at the moment, we've provided an assessment, a bng assessment, that's been published, and the approach that we've taken is to

1:13:59

is to redo that exercise at the future step when more detailed designers come forward.

1:14:07

Thank you. I think at this

1:14:09

point it'd be helpful to get the use of Lincoln County Council who have expressed

1:14:16

concerns with the approach.

1:14:18

Stephanie Hall on behalf of Lincolnshire county council. Yes, thank you. We do have some concerns. I just want to be very clear about what we're asking for, and it's not that the cotton requirement is carbon copied and pasted into this DCO that was an example of what's possible and what appears to us, particularly for other projects in Lincolnshire to have become standard practice. This application is very much an outlier in that not only does it promise a particular percentage in excess of 10, it doesn't promise 10 and it doesn't actually promise a gain across the board, either, either in terms of the predicted percentages within the biodiversity net.

1:15:00

Gain assessment, or as secured within the DCO. So there are two parts of this, firstly, so in paragraph 175 of the biodiversity net gain assessment report, which is as 014

1:15:15

the prediction for Habitat units is actually a loss of nought point 8% so to us, this sits rather ill with the applicant's repeated assertion that they are committed to a gain because the projection is a loss, and in that respect, whilst there is no policy or statutory requirement to achieve 10% net gain en one clearly does envisage a measurable gain rather than a predicted loss. So it's more stark than is it 10% or is it 9% that the question is, can a gain be achieved at all? And if it can be achieved, is it secured? And for our point of view, both of those questions should be answered in the negative at the moment. And what we see there's a there's a loss predicted, and there is no secure mechanism to secure again. So that that's in a nutshell, our position at the moment. I just know Mr. Clark has indicated doesn't have anything to add at the moment, but very briefly, that that's our position. Thank you, sir.

1:16:25

Thank you. Does the applicant have anything to to add to that in terms of the

1:16:31

again or otherwise, and also the reference to MPs em one and the assumptions made in that please?

1:16:39

Bob Edmunds, on behalf of the applicant. So I've just been looking through our report and the reference that you've made,

1:16:46

and you are correct at the current time, the on site assessment that we've done based on the design scenario that has been assessed, we are looking at a very small percentage gain. So zero point, sorry, a 0% loss, 0.8%

1:17:02

loss over a very large baseline area. The site that has been the red line boundary that we've used as our baseline is a very large area. So the we're confident that with some with with detailed design and refining those approaches that a game can overall be delivered. And it makes that. It does make that clear in some of the in the conclusion section of the report,

1:17:31

with the with the detailed design that provide that confirmation being after any consent,

1:17:37

yes, yes.

1:17:40

Thank you. Mr. Thompson, yes. So just the the only other point I would, I would add, is that what the policy is looking for is for opportunities to be taken to deliver biodiversity net gain, where that is something that can be achieved, that we say is what we deliver, and the most effective way of delivering that is the way that we have described, which requires the information that is generated at the detailed stage in order to make sure that gains are achieved where possible, and that they are effectively maximized. We're seeking to do it at this stage, which is necessarily outline

1:18:23

is not the most effective or efficient way of doing it, in terms of delivering actual net gain on the ground. So the approach is appropriate, we say it complies with policy, and whether or not we're described as an outlier for other projects, is with a greater suspect, neither here nor there. It doesn't go to either the law. It doesn't go to policy, and it simply brings one back to the points I was making earlier. That is not a question of, well, someone else did it. You should do it. It has to be assessed case by case, by reference to the policy, by reference to the facts of a particular case and as to what approach is most likely to deliver an outcome that is in accordance with the policy.

1:19:09

Thank you. Any

1:19:12

further comment from the county council, or just very briefly so Lincoln to county council, I'm Stephanie Hall. Lincoln to county council, so if the intention is to deliver again, which is what we are being told. There ought to be something securing that. I think that's our point. We we don't seek to impose the outcome of this. We're just suggesting that if, if the prediction at the as it stand at the moment, the prediction is for it for a marginal loss, and there's nothing secured in the DCO, that would change that outcome. We understand the applicant hopes for better, but there's nothing securing better. So at the moment, that's what goes into the planning balance, or on our case, if the applicant wants to improve their prospects and improve the planning balance in respect of biodiversity, net gain, that would be welcome and.

1:20:00

And they can do so, we say, by including some security within the DCO itself to secure some measures that would achieve biodiversity net gain, and explain how one gets from where we are at the moment to a measurable net gain, as we stated before, we're not seeking to impose a particular percentage, but just that the negative should be changed into a positive, if what the applicant wants is for the x data way into the planning balance that net gains are going to be achieved. Because at the moment, we think there's a there's a disconnect there. And thank you very much.

1:20:34

Thank you, Mr. Philpott, Sir Harry with Philpot on behalf of the applicant, just two points very briefly. First, we're very grateful to hear clarification from the county council that it is not seeking a percentage gain. That is not what we had originally understood from the written material that had been put in, but is now helpfully clarified that the second point which is that if there is concern as to the extent to which the commitment is adequately captured in the documentation, we're happy to take that away and look at that, and if there's a need for greater clarification, we can provide it. So we'll seek to do that, and we'll give you something at deadline for a either to

1:21:16

give you a route map of how it's secured, or if we think that it can be improved upon to identify what we put forward to do that. Thank you. Yes, that's another action point. Third line four A in terms of the clarification on on biodiversity net gain.

1:21:30

Miss. All right, thank you.

1:21:33

I'll move on then, although it's a related question to to biodiversity net gain,

1:21:42

in response to points raised at issue, specific hearing three, the applicant referred to advanced discussions with an offset off site habitat banking provider, and that's in rep 4111,

1:21:55

can the applicant provide Any further update on those discussions? Please?

1:22:02

Harwood, Philpott Casey, on behalf of the applicant, so I'm going to invite Mr. Chris Jenner, who's the applicant's development manager, to provide you with an overview of where we've got to.

1:22:14

Good morning, Chris Jenner, for the applicant, in short, there is no significant update to provide. We are continuing to explore opportunities to deliver bng

1:22:26

through both the planting scheme at the onshore substation, together with a number of external stakeholders, where there are potential environmental and wider societal benefits of bng. But in so far as an update from the last hearing and Arabic and submission and deadline for there is no significant update to provide

1:22:49

in terms of the timing of any outcome of those discussions. Is that like to be during examination or post?

1:22:59

It's Jennifer, the applicant at this stage, we anticipate those discussions would progress beyond the end of examination.

1:23:07

Thank you.

1:23:10

Does the county council have any points to raise on that?

1:23:14

Stephanie Halling at your county council? So no. Only that, obviously, if part of the mechanism for securing any measurable net gain is off site. You know, that's obviously a recognized mechanism for achieving gain. And if the applicant is struggling because of the linear nature of the project to accommodate measurable gains on site, then off site is obviously a way of

1:23:35

bolstering any net gain percentage that they are aiming to achieve.

1:23:40

Thank you. Unless I see any hands, I shall move on from biodiversity net gain.

1:23:49

I don't see any so I'll move on to the County Council's request for a ecological Steering Group, an environmental compliance officer and ecology enhancement fund. The applicant response to further written questions refers to a draft section 106 agreement that includes provision for those three requests. This was sent to county council on the 20 January, and the applicant is working towards deadline six for the completion of the section 106 as per the examination timetable,

1:24:21

a question for the applicant, if the section 106 is agreed and those three requests are taken forward,

1:24:30

does it anticipate any necessary updates to the various documents that are before the examinations? Yearling, for example, just to make sure that those commitments are referenced elsewhere within the relevant management plans and strategies,

1:24:44

just so it all ties in

1:24:52

very with Philpott on behalf of the applicant. So thank you for raising that point. I think we'd like to just take that away and consider whether there's.

1:25:00

Needs to there might be any knock on consequences for those other documents, or whether the section 106 can essentially just stand apart from them, and we'd just like to check that before providing a response. Okay, would that be a response by deadline for a go? Indeed. Yes. Thank you.

1:25:17

Does the county council have any response to that? Stephanie Halling at your county council. So I know, just to know, that we received the 106 agreement, I think deadline six might actually be relatively pessimistic, because we feel like we're quite close to agreement on that. So things are progressing. Thank you. Okay, thank you. I

1:25:47

Okay, unless anybody has any further points to raise in relation to onshore ecology and ornithology,

1:25:54

I shall adjourn for a short break. I'm seeing no hands at the moment. The time is 25 minutes past 11, so if we return at 1135, for a short coffee break,

1:26:10

thank you. Bye.