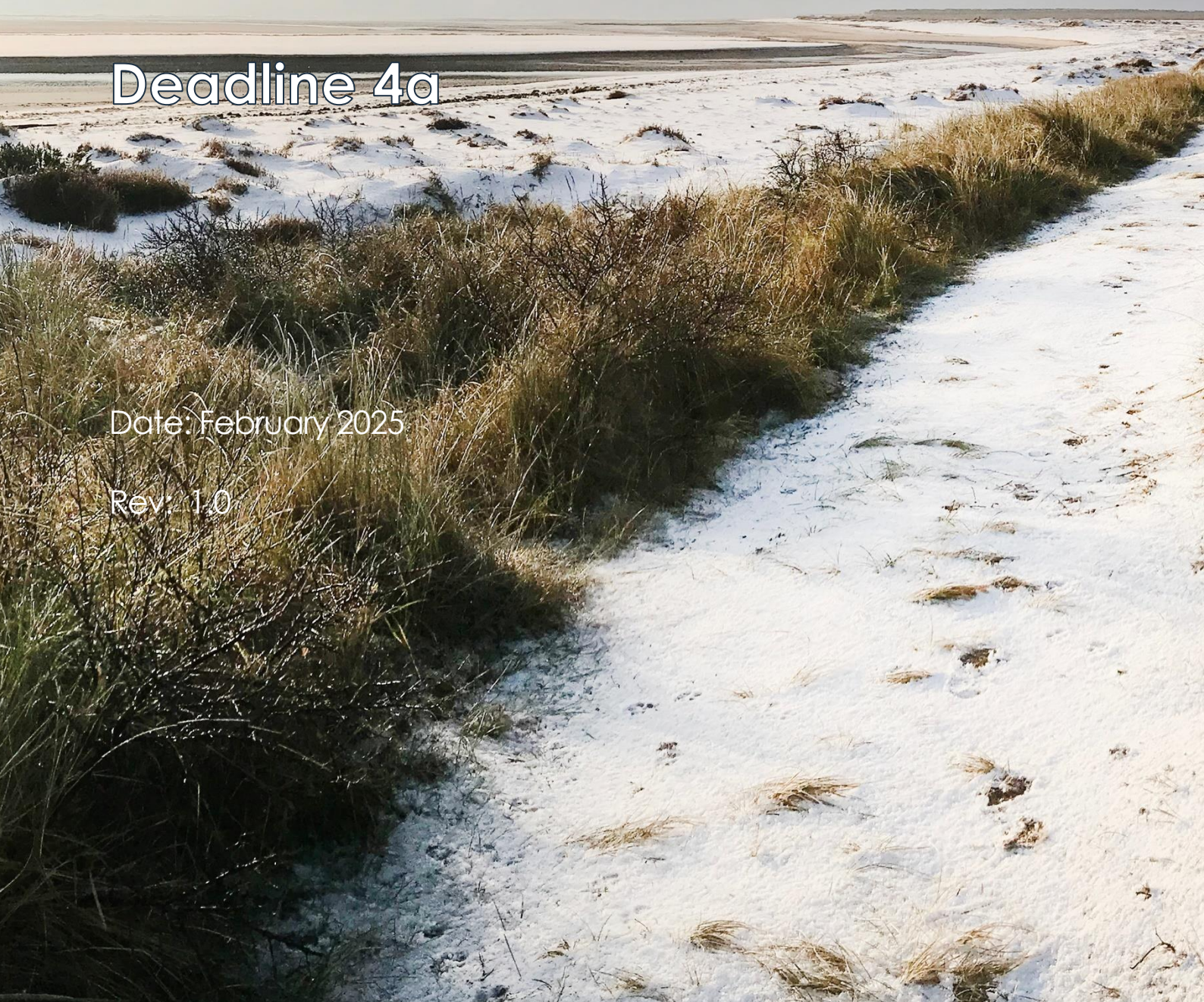
Outer Dowsing Offshore Wind

The Applicant's Written Summary of Oral Case Put at the Issue Specific Hearing 5 held on 12 February 2025

Deadline 4a



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Acronyms & Definitions

Abbreviations / Acronyms

Abbreviation / Acronym	Description
BMV	Best and Most Versatile
DCO	Development Consent Order
ECC	Export Cable Corridor
EIA	Environmental Impact Assessment
ES	Environmental Statement
HND	Holistic Design Network
IAQM	Institute of Air Quality Management
NESO	National Energy Systems Operator
NGSS	National Grid Substation
oCoCP	Code of Construction Practice
OFH	Open Floor Hearing
OnSS	Onshore Substation
OTNR	Offshore Transmission Network Review
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 (and its affiliates), Total Energies and Gulf Energy Development (GULF)), trading as Outer Dowsing Offshore Wind. The Project is being developed by Corio Generation, TotalEnergies and GULF.
Cumulative impact	Impacts that result from changes caused by other past, present or reasonably foreseeable actions together with the Project.
Development Consent Order (DCO)	An order made under the Planning Act 2008 granting development consent for a Nationally Significant Infrastructure Project (NSIP).
Effect	Term used to express the consequence of an impact. The significance of an effect is determined by correlating the magnitude of the impact with the sensitivity of the receptor, in accordance with defined significance criteria.
Environmental Impact Assessment (EIA)	A statutory process by which certain planned projects must be assessed before a formal decision to proceed can be made. It involves the collection and consideration of environmental information, which fulfils the assessment Requirements of the EIA Regulations, including the publication of an Environmental Statement (ES).
Environmental Statement (ES)	The suite of documents that detail the processes and results of the EIA.

Term	Definition
Export cables	High voltage cables which transmit power from the Offshore Substations (OSS) to the Onshore Substation (OnSS) via an Offshore Reactive Compensation Platform (ORCP) if required, which may include one or more auxiliary cables (normally fibre optic cables).
Impact	An impact to the receiving environment is defined as any change to its baseline condition, either adverse or beneficial.
Landfall	The location at the land-sea interface where the offshore export cables and fibre optic cables will come ashore.
Mitigation	Mitigation measures 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.
National Grid Onshore Substation (NGSS)	The National Grid substation and associated enabling works to be developed by the National Grid Electricity Transmission (NGET) into which the Project's 400kV Cables would connect.
Onshore Export Cable Corridor (ECC)	The Onshore Export Cable Corridor (Onshore ECC) is the area within which, the export cables running from the landfall to the onshore substation will be situated.
Onshore substation (OnSS)	The Project's onshore HVAC substation, containing electrical equipment, control buildings, lightning protection masts, communications masts, access, fencing and other associated equipment, structures or buildings; to enable connection to the National Grid
Outer Dowsing Offshore Wind (ODOW)	The Project.
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.
The Planning Inspectorate	The agency responsible for operating the planning process for Nationally Significant Infrastructure Projects (NSIPs).
Pre-construction and post-construction	The phases of the Project before and after construction takes place.
The Project	Outer Dowsing Offshore Wind, an offshore wind generating station together with associated onshore and offshore infrastructure.
Project design envelope	A description of the range of possible elements that make up the Project's design options under consideration, as set out in detail in the project description. This envelope is used to define the Project for Environmental Impact Assessment (EIA) purposes when the exact engineering parameters

Term	Definition
	are not yet known. This is also often referred to as the “Rochdale Envelope” approach.

1 Introduction and Document Purpose

1. This document is provided in line with the Examining Authority's (ExA's) Rule 8(3) and 9 Letter (PD-022) request for submission of *"Post-hearing submissions including written summaries of oral case put at hearings during w/c 10 February 2025".*
2. Issue Specific Hearing 5 (ISH5) for the Outer Dowsing Offshore Wind Farm took place on 12 February at 10am and was held in person and virtually via Microsoft Teams.
3. The ISH5 broadly followed the agenda published by the Examining Authority (the ExA) on 5 February (the Agenda) (EV10-001).
4. Summaries of oral submissions of parties other than the Applicant are provided only to the extent necessary to give the Applicant's submissions necessary context.

2 Written Summary of Oral Case Put at the Issue Specific Hearing 5

Table 2.11: Written Summary of the Applicant's Oral Case at ISH5

Agenda Item	ExA Question / Context for discussion	Applicant's Response
3.1 Welcome and Introductions		
3.1	The ExA opened the hearing, made introductory remarks, introduced themselves and invited parties present to do likewise.	Harry Phillpot KC ("**HPKC**") introduced himself as instructed by Shepherd and Wedderburn LLP on behalf of GT R4 Ltd and stated that he would introduce other speakers over the course of the Hearing and would provide a full list of all speakers in the post-hearing summary. This is now provided below against each agenda item.[1] a. **Item 3.2:** Greg Tomlinson, ODOW Offshore Consent Manager b. **Item 3.3:** Martin Baines, Hydrology Lead. Technical Director, SLR Consulting c. **Item 3.4:** Stephanie Boocock Ecology Lead. Principal Consultant, SLR Consulting d. **Item 3.4:** James Wilson Ornithology Lead. Technical Director, SLR Consulting e. **Item 3.4:** Chris Jenner, ODOW Development Manager f. **Item 3.4:** Andy Gregory, Technical Director – Onshore EIA Lead, SLR Consulting g. **Item 3.4:** Bob Edmonds BNG Lead. Technical Director, SLR Consulting h. **Item 3.5** Siobhan Hall Geology, Ground Conditions and Land Use Lead. Technical Director, SLR Consulting i. **Item 3.5** David Wright, Land Manager, Outer Dowsing Offshore Wind j. **Item 3.5** Emma Moir, Senior Associate, Shepherd and Wedderburn LLP

[1] Speakers who spoke against multiple items are listed only once against the first item on which they spoke.

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		k. **Item 3.5** Ben Turner Air Quality Lead. Principal Consultant, SLR Consulting l. **Item 3.6:** Garrett Roche, Onshore Civil Engineer, Outer Dowsing Offshore Wind m. **Item 3.7:** Scott McCallum, Partner, Shepherd and Wedderburn LLP n. **Item 3.7**: Emma Reid, Director, Shepherd and Wedderburn LLP o. **Item 3.7:** Jo Phillips Landscape and Visual Lead. Associate Director, OPEN part of SLR Consulting.
	Stephanie Hall, of Counsel, introduced herself as acting for Lincolnshire County Council ("**LCC**") and referred to members of LLC's team attending in person and online, including: a. Mr. Neil McBride, Head of Planning; b. Darren Clark, Ecologist,	
	Mark Westmorland-Smith KC ("**MWSKC**") introduced himself as acting on behalf of TH Clements ("**THC**") and introduced THC's team who appeared in person: a. Fiona Barker, Solicitor and Principal Associate, Mills and Reeves, b. Philip Wright of Wright Resolutions Limited c. Damian Pawson Technical Director, Air Quality, Sweco Ltd	
	Annette Hewitson introduced herself as appearing on behalf of the Environment Agency (**EA**). EA's two flood risk advisers present (Rebecca Silvester and Heather Tyson) introduced themselves	

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	Derek Brady, Engineering Manager introduced himself on behalf of Witham Forth District IDB	
Additional Agenda Item on timetable		
	The ExA set out that it had thought that certain matters would be further developed by this stage of Examination but that with this not being the case and without further intervention there was a risk that certain matters would not be sufficiently development before the close of Examination. For this reason the ExA had introduced Deadline 4a. The submissions expected are set out in the ExA's Procedural Decision (PD-022). In addition, in the course of the hearings, the ExA will ask for certain further information which will be expected at Deadline 4a unless stated otherwise.	The Applicant noted this position.
	The ExA further stated that it has accepted the Applicant's Change Request and had accepted that the Change Notification information submitted at Deadline 4 had been accepted without the need for a further Change Requests.	

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3.2 Seascape and Visual Effects		
Offshore Reactive Compensation Platform (**"ORCP"**) Lighting Management Plan and ORCP Design Principles Statement		
3.2	The ExA introduced the first agenda item and referred to the submission at Deadline 4 of the Outline ORCP Lighting Management Plan and ORCP Design Principles Statement ("**DPS**"). The ExA queried how the ORCP Design Principles Statement was secured given it is not referenced in the relevant paragraph.	Greg Tomlinson provided the following explanation: a. The condition referenced in paragraph 3 of the ORCP Design Principles Statement (REP4-121) references the relevant DCO condition (Schedule 11 condition 13(1)(a)) but the Applicant requires to discuss any changes to the wording required to incorporate the ORCP DPS with the Marine Management Organisation ("**MMO**"). b. The Applicant believes the appropriate condition has been referenced but that it may require certain tweaks. c. This information can be provided at Deadline 4a subject to discussion with MMO. The ExA took an action (Action Point 2) for the Applicant to discuss such matters with the MMO and provide an update at Deadline 4a. The Applicant has since met with the MMO (on 20.02.2024 and 24.02.2024) and the relevant condition of the offshore transmission assets deemed Marine Licence (Schedule 11) has been updated following these discussions as summarised in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (Document 22.9).
3.2	The ExA referred to paragraph 19 and Section 3.1 of the ORCP DPS which refer to an "Outline Design Principles Statement" and asked whether this was a reference to the ORCP DPS itself.	Greg Tomlinson confirmed that the ORCP DPS is an Outline Document, and this will be made clear at D4a. The ORCP DPS is part of the Applicant's suite of outline documents and plans.
3.2	The LCC was asked for its position in relation to this issue.	

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	The LCC confirmed it had no comment and was not involving itself on offshore matters.	
3.2	The ExA asked whether the Outline ORCP Lighting Management Plan and ORCP DPS have been subject to consultation.	Greg Tomlinson set out that the documents themselves had not been consulted upon, though their content are a reflection of the evolution of the project to date and therefore its elements are captured throughout the Environmental Statement ("**ES**") which has been subject to consultation including at the pre-application stage.
Duty to further the purposes of National Landscapes		
3.2	The ExA asked the Applicant about the Duty to further the purposes of National Landscapes and referenced the LCC position set out in their answers to Written Questions. The ExA referred to the fact that Lincolnshire Wolds has been assessed in ES Chapter 17 Seascape, Landscape and Visual Impact Assessment and there had been found to be no significant effect on national landscapes from the offshore elements of the project. The ExA asked the Applicant to comment.	HPKC confirmed that the ExA's explanation matched his understanding. HPKC provided a high-level summary of the Applicant's general position on the duty to further the purposes of National Landscapes but committed to providing a more detailed explanation in writing if this would be of assistance to the ExA (Action Point 3). HPKC's oral submissions are summarised below and the more detailed written explanation position in writing is appended to this Summary in **Appendix 1.** a. Neither the national landscapes in issue (the Lincolnshire Wolds, 21.5km away from the ORCPs and 64 km from the array or the Norfolk Coast, 32km away from the ORCPs and 55km from the array) are assessed as being likely to involve significant effects; b. As a result the application of the duty is inherently unlikely to affect the Secretary of State's decision making in this case. c. There are three general points about the nature and effect of the duty, reflected in the relevant guidance, which reinforces that conclusion: i. The duty is intended to complement existing statutory functions and duties, so does not override the Planning Act 2008 framework or the National Policy Statements;

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		ii. It is not a duty to *ensure* that the decision made furthers the statutory purpose but instead *to seek* to further it. This allows room for judgment on a case by case basis for instance as to whether to make a DCO which does not further the purpose iii. Where furthering the purpose would not be proportionate in all the circumstances, having regard to the legal, policy and factual context, then the decision maker is not obliged to achieve that outcome regardless. rt.
3.2	The ExA asked LCC for any further comments on the duty and its consideration by the Applicant. Ms Hall set out that she did not think that the Applicant and LCC were "far apart" on the duty but that, given it was a member of the LCC's team who was not present, the LCC would provide its position in writing. The ExA recorded an action (Action Point 4) for LCC to respond in writing regarding this duty.	
3.2 East Coast Flyway - World Heritage Site bid		
3.2	The ExA asked LCC to set out whether it agreed that the above bid was not relevant for the purpose of seascape assessment. LCC agreed with this position	HPKC stated that the Applicant was content not to provide a more detailed position on the issues given the parties were agreed.
3.3 Water Environment		
3.3 Flood Risk Assessment		

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3.3	The ExA asked LCC in relation to REP4-128 (the EA's response to ExQ2) whether: a. LCC had deferred consideration of the flood risk to the EA; and b. whether it had any comment or matters to raise in regard to the updated Flood Risk Assessments ("**FRAs**") Ms Hall set out that the LCC had not set out any objection on flood risk and had no further comment	
3.3	The ExA asked the EA about its position on flood risk, including in relation to the Applicant's FRAs for (i) the ECC and 400kV cable and (ii) the Onshore Substation ("**OnSS**"). The ExA noted the EA's holding objection, which it typically maintains until it is satisfied that the sequential test has been fulfilled. The ExA asked whether the holding objection was still in place and if so what remains outstanding and when and whether it would be resolved. Ms Hewitson on behalf of the EA confirmed that the holding objections for both flood risk assessments were still in place.	Martin Baines set out that a. Regarding the noise bund modelling, the model itself is submitted and undergoing review. Mr Baines understood that there was only one line item left in the review process which related to a request for further information which the Applicant has provided and which Mr Baines believed was close to being resolved; b. Regarding the information requested on OnSS modelling, the Applicant is in the process of uploading what are large files.

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	Regarding the ECC and 400kV FRA, the EA is reviewing flood modelling in respect of the noise bund. Regarding the OnSS FRA, the EA is awaiting additional files on the 75-year climate change scenario. The EA set out that once those are received and reviewed the objections may be reviewed and that regarding the revised FRAs, the EA has not yet had the chance to review them. The ExA asked the Applicant to respond.	
3.3	The EA confirmed its agreement with Mr Baines' summary.	
3.4 Onshore Ecology and Ornithology		
Outstanding matters of disagreement between the Applicant and Natural England		
3.4	The ExA noted that the further responses from the Applicant and Natural England, there remains disagreement on a significant number of issues on the Deadline 4 Risk and Issues Log. The ExA remarked on the current status of certain points including that Natural England are seeking specialist advice on a number of issues including dust and noise and will provide feedback at D5 and that Natural England has provided advice on	HPKC asked Stephanie Boocock to answer the ExA's specific question, following which HPKC wished to add further submissions on the Natural England position. Stephanine Boocock set out that: a. A meeting was held with the Natural England Wildlife Licensing Service team on 8th August 2024 to discuss the baseline environment and the general approach to the principles for acquiring Letters of No Impediment ("**LONIs**"). The principles were that if a licensable impact was predicted, LONIs would be acquired but that where no impact was predicted, acquiring LONIs was not possible because you were dealing with a "hypothetical scenario." It was agreed between the Applicant and Natural England that the rationale would be recorded as an appendix to the

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	actions required by the Applicant to address certain concerns. The ExA stated that it wished to discuss the "red" status matters of species licence for badger and otter to ensure these matters can be addressed. In relation to badgers, it asked the Applicant to explain what was stopping it from acquiring relevant licences	Outline Landscape and Ecological Management Strategy ("**OLEMS**") which was done and submitted as part of an updated OLEMS at Deadline 3. b. The issue may revolve around Natural England perhaps being unable to access the confidential badger annex, noting that Natural England had queried where the Annex was provided. Access by Natural England to this may resolve the issue. c. In summary, where there is no licensable impact, the Applicant would be unable to apply for a licence and seek a LONI and the justification is set out in Annex A] of the OLEMS. d. The OLEMS provides mitigation for protecting and preventing impacts and also includes a commitment to pre-construction surveys therefore the Applicant's position is very precautionary and in the event that at the time of pre-construction surveys the baseline has changed, this can be addressed at the time. However, based on information available now, there is no licensable impact.
3.4	The ExA set out that the Natural England position does appear to have changed since August	Ms Boocock stated that it appears that the dialogue through the Risk and Issues Log has not been updated in line with the meeting she had previously referred to so there is a disconnect in the advice the Applicant received.
3.4	The ExA asked whether there has been a direct conversation about the matters outstanding which may assist the conversation.	Andy Gregory, Onshore EIA Lead and Technical Consultant at SLR explained that there have been a number of requests to Natural England to resolve these issues via calls but that that such engagement has not been able to be secured despite every effort to have such conversations with Natural England from the Applicant.
3.4	The ExA asked whether the position set out in relation to badgers was equally true of the position in relation to otters.	Ms Boocock confirmed that the position was the same and that a conversation with Natural England to close out the issue would be very beneficial. Action Point 5 and Action Point 6 were taken. The Applicant's update in relation to Action Point 6 is set out in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (Document 22.9).

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		HPKC then made further summary submissions regarding the approach taken by Natural England to the examination, indicating that these points which would be set out in more detail in writing at Deadline 4a. HPKC's oral submissions are summarised below and the Applicant's written position has been provided in Document 22.10 The Applicant's Position on Natural England's Engagement in the Outer Dowsing Offshore Wind Examination: a. HPKC referred to Natural England's Covering Letter at Deadline 4 and what was said there and elsewhere as to the nature and extent of their participation generally. HPKC referred to Natural England's December email (AS-031) where the ExA had asked Natural England to attend hearings on the basis that the intention was to test the evidence in the most time efficient manner but that Natural England declined the invitation. b. The absence of an important Interested Party such as Natural England from hearings where the evidence of all parties is to be tested by the ExA through oral questioning is a problem in itself, because it creates an imbalance in the inquisitorial process; c. This concern is then exacerbated by Natural England's position more generally on the testing of its position and the relevant evidence in the Examination process. For instance, Appendix F3 (REP4-139) states that "the Examination… is not an appropriate forum" to discuss the evidence base and best practice in assessment in light of that evidence. Instead of examining the competing positions and testing them against the available scientific evidence, Natural England invites the ExA simply to give considerable weight to its advice because of who it is. This approach to controversial issues of impact assessment is not consistent with the inquisitorial nature of the Examination process.

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		d. In support of its approach Natural England refers to the case of *Akester* [2010] EWHC 232 (Admin). However (as expanded upon by the Applicant in Document 22.10) in the Sizewell C case (*R (Together Against Sizewell C Ltd.) v. Secretary of State for Energy Security and Net Zero* [2023] EWHC 1526 (Admin)), it was made clear that the Secretary of State and therefore also the ExA was entitled to disagree with Natural England and that the degree of deference to Natural England's views will depend on the extent to which its position is properly explained and supported by the evidence provided. The Judgment also noted that in the Sizewell examination concerns as to fairness were raised as a result of Natural England's from non-participation in hearings intended to test the evidence. e. It is apparent, as discussed by the ExA, that there are issues which are not fully resolved between the Applicant and Natural England and if the ExA requires to grapple with these issues, we are seeking to inform the ExA of our view as to the approach that should be taken in that exercise. The written submission will address this in more detail.
3.4 Mitigation to avoid Adverse Effect on Integrity on The Wash SPA		
3.4	The ExA referred to Natural England's position on the Applicant's derogation case as discussed in responses to ExQ2 HRA 1.2. The ExA noted that reference has been to mitigations to avoid AEoI on the Wash SPA which the ExA noted the Applicant wishes to discuss with Natural England. The ExA asked how much the Applicant has considered the stated mitigations in the Project's specific circumstances (as opposed to the	James Wilson explained that the Applicant has considered Natural England's advice in relation to mitigation (being best practice advice on pink footed goose mitigation, specifically in relation to the North Norfolk SPA) and that it is seeking further discussion with Natural England on how this can be tailored to the Project. Mr Wilson expanded that the Applicant's position is that it has provided mitigation tailored to the Project and that it is unclear how the SEP and DEP precedent can be used by the Applicant given the Project-specific differences.

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	circumstances of the Sheringham and Dudgeon Extension Project ("**SEP and DEP**") project where such mitigations were used.	
3.4	The ExA asked whether the Applicant would not be in a position to submit its proposal for mitigation until it has had further discussions with Natural England.	The Applicant set out that this was correct.
3.4	The ExA asked whether any proposed further mitigation could be provided beyond that set out in the ES at Deadline 4a without Natural England's feedback.	The Applicant agreed to take that away and consider what additional mitigation measures could be included for Deadline 4a (Action Point 7). Following ISH5, the Applicant has met with Natural England (on 20th February) and has agreed additional mitigation measures for The Wash SPA pink-footed geese. These measures are set out in the OLEMS (document 8.1. version 6). Further details are provided in response to Action Point 7 in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (document 22.9).
3.4	ExA referred to SEP and DEP's "Option 2" mitigation (alternative foraging resources and asked whether there could be additional land required should that be an option and whether there is sufficient time to consider such acquisition	HPKC asked if this question could be taken away. Action Point 8 was recorded. James Wilson set out that this was one of the options that required to be discussed with Natural England on the basis that Natural England appeared perhaps to be developing their own mitigation scheme outside the order limits which could be used rather than, for instance, acquisition of land. The Applicant also committed to considering whether discussion with SEP and DEP may be useful to resolve this. As noted above, following ISH5, the Applicant has met with Natural England (on 20th February) and has agreed additional mitigation measures for The Wash SPA pink-footed

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		geese. The Applicant has provided its position in relation to Action Point 8 in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (document 22.9). The Applicant has considered the question of whether engagement with SEP and DEP would be useful. On the basis of the progress of discussions with Natural England and the choice of mitigation option eventually used by SEP & DEP, the Applicant does not believe that engagement with SEP & DEP would be useful at this juncture but will keep this under review.
3.4 Compensatory habitat for skylark and yellow wagtail		
3.4	The ExA referred to the LCC position in response to HOE 1.10 (REP4-133) which expressed concern about the extent to which the measure is secured and enforceable. The ExA referred to the Applicant's response that once detailed design stage is reached, severed land would be considered and the mitigation would be set out in final ecological management plan based on the available land and to be secured in line with the relevant discharge requirements. The ExA referred to paragraph 177 in the OLEMS which refers to *"*opportunities being explored and provided where viable" and the Outline Code of Construction Practice ("**CoCP**") which does not appear to refer to compensatory habitats in section 6.,14 which relates to severed land.	HPKC committed to responding in writing (Action Point 9) but asked Andy Gregory to provide an overview, who set out that: a. the CoCP commits to providing access for landowners over the working corridor to allow farming practices to continue; b. where an individual landowner considers that an area of land intersected by the working corridor is impractical to farm, the Applicant will agree areas of severed land with the landowner on an individual basis and discuss compensation; c. in these instances, the unfarmed land could be considered additional habitat for various species, which is what the OLEMs are referring to. The Applicant has provided its position in relation to Action Point 9 in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (document 22.9).

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	The ExA asked the Applicant to comment on whether the OLEMs should deliver a firm commitment to compensation.	
3.4	The ExA asked whether there was ambiguity in the OLEMs due to the potential that compensation was not going to be provided.	Andy Gregory set out that there is not further detail because it will be agreed on a case by case basis with individual farm owners based on their farming practices.
3.4	The ExA asked about the scenario where there is no additional land	HPKC reiterated that the Applicant would take this question away and respond in writing. The Applicant has provided its position in relation to Action Point 9 in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (document 22.9).
3.4	The ExA asked the LCC for its position. LCC stated that it welcomed the Applicant's intention to deliver compensation and mitigation habitat, and flagged its position on the clarity of this commitment and referenced that this was a "cross issue" with BNG to be discussed next on the agenda.	
3.4 Biodiversity Net Gain		
3.4	ExA referred to REP4-111 which includes a comparison between the Applicant's and certain made DCOs' Net Gain position. The ExA asked the Applicant to set out whether the 18 DCOs which provided a % net gain commitment were either OWF DCOs or other projects with a relatively low proportion of a	Bob Edmonds provided the following summary a. The Applicant conducted a review of 18 DCO applications; 10 were solar farms, 3 were wind farm sites. b. There was much variation in those projects and what the Applicant found was that within those projects a variety of approaches including the metrics which were used. Some highlighted that BNG trading rules were not met and some defined tightly the temporal and spatial scope of their project c. The majority of the projects did make a commitment to undertake a BNG assessment but did not specify a commitment to a certain percentage.

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	permanent onshore infrastructure, and therefore akin to an OWF	
3.4	The ExA asked whether the 3 OWFs referenced did or did not commit to a numerical percentage	Bob Edmonds set out that a. Rampion 2 Offshore Wind Farm make a commitment at Decision stage that they would provide at least 10% b. SEP and DEP did not provide percentage c. Five Estuaries Offshore Wind Farm committed to overall BNG but without overall percentage Rampion 2 Offshore Wind Farm was therefore the only project which committed to a percentage.
3.4	ExA asked how Rampion 2 could provide certainty whereas the Project could not	HPKC provided an overview about the question of necessity: a. absent evidence that this commitment is necessary to make the development acceptable in planning terms, the issue of whether it is possible or not to provide a percentage is not the right point to be asking b. there is no legal or policy requirement to deliver a particular percentage of BNG and that in the absence of any legal or policy justification for refusal of the development consent because of a failure to provide a particular percentage, it then becomes a matter in the gift of the developer, should the developer choose to put forward a percentage requirement it may do so, as seen in some other projects. c. That is very different from any attempt to impose a requirement or seek an obligation from an applicant to deliver a particular percentage. d. The question therefore is not whether it is possible but whether it is necessary to make the development acceptable. HPKC then turned to some of the examples provided:

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		a. The Applicant has drawn attention to the fact that for some other projects (such as solar farms) it is relatively straightforward to achieve quite significant percentage gains in BNG because of the nature of the projects and their use of land. b. That goes to the explanation of what they have put forward on a voluntary basis as part of their overall package of proposals. It does not address the question of necessity. c. One of the cases identified was the Cottam Solar DCO, an example of a voluntary provision on the part of the Applicant to deliver BNG including via requirement. There does not appear in that case to be any examination of whether this requirement satisfied the necessity test, either in the Examining Authority's report or the Secretary of State's decision letter. The precedent only shows you what applicants have chosen to put forward, and how that has been treated, but this does not 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.
3.4	The ExA highlighted that it is tasked with weighing the balance of an application and the evidence presented to it. Until such time as the legislation kicks in to change the situation HPKC's point was factually correct. However this did not change the balancing exercise that the ExA needs to undertake and from that point of view it may still be the case that the existence or non-existence of BNG within the Application will have an effect on the balance struck.	HPKC submitted that: a. The Applicant appreciates that if an applicant volunteers to provide benefit, then (subject to compliance with policy and law) the benefit may sound in the balance. However, the Applicant rejects the suggestion that it ought to provide a percentage gain simply on the basis of what has been achieved elsewhere. b. Absent any legal or policy 'hook' BN, the difference between particular percentage points of BNG is in itself something of no legal or policy significance. given relevant policy in the National Policy Statements ("**NPS**") makes very clear what Applicants are expected to do pending the introduction of the legal requirement to provide a particular percentage. If, as the Applicant says is the

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		case, the NPS policy tests are satisfised on the basis of what is provided here for the purposes of section 104 of the Planning Act 2008 ("**PA 2008**"). If other relevant parts of the NPS are also fulfilled, so that the project is aligned with policy overall, the project will then benefit both from the policy presumption and the legal presumption in favour of granting consent. c. One is then required to turn to the question of section 104(7) of the Planning Act 2008 and because the project is Critical National Priority Infrastructure ("**CNP**") you engage the CNP Infrastructure policy in NPS EN-1 in relation to the weighing exercise and the residual impacts. d. HPKC finally referred to previous oral submissions at ISH3 by Chris Jenner about BNG progress but referred back to the fact that applicants are not expected voluntarily to provide a particular BNG percentage in circumstances where parliament has not made that a legal requirement and has not chosen to make it a policy requirement in the NPS in advance of it being a legal requirement, simply because other projects have done it. While there may be certain circumstances in which a particular project may feel it's appropriate because of concerns about the overall balance, it would be wrong to make it an expectation of projects generally simply because others have chosen to do it. Returning to the question of the ability of Rampion 2 to commit to a percentage net gain, Mr Edmond stated that: a. there are 11 key assumptions by Rampion, which are not for the Applicant to comment upon but which will have assisted with them being able to be confident in the percentages of net gain. b. As for the Applicant's case, we are awaiting specific guidance on how to deliver BNG for NSIP projects, which may assist in its application to long linear projects such as the Applicant's.

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		c. The Applicant is committed to delivering BNG and doing so by reference to a metric and the Applicant will re-run the exercise of calculating percentage net gain at detailed design stage.
3.4	LCC was asked for its view and provided the following position: a. LCC does not wish for the Cottam DCO requirement be copied and pasted into the ODOW DCO but was an example of what is possible and what appears to LCC to have become standard practice; b. the Application is an outlier in that it is not promising 10% net gain nor is it promising a net gain across the board; c. Per paragraph 175 of the Applicant's BNG Assessment report (AS-014), the prediction for the habitat units is a loss of 0.8% which does not align with the Applicant's stated commitment to net gain. While there is no statutory or policy requirement to achieve 10% net gain, NPS EN-1 expects a measurable gain rather than a loss; d. At the moment, there is a loss predicted and there is no mechanism to secure a gain	Mr Edmond set out that the onsite assessment at present using the design scenario would see a very small habitat biodiversity unit (0.8%) loss over a very large baseline area within the redline boundary. The Applicant is therefore confident that when detailed design comes forward, narrowing the area of development, a gain can be delivered which is set out in the conclusions of the Report.
3.4	The ExA asked whether detailed design would follow consent	This was confirmed by the Applicant.

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		HPKC summarised that: a. The policy is looking for is for opportunities to be taken to deliver BNG where it is something that can be achieved. That is what the Applicant delivers; b. The most effective way of delivering that is the approach set out by the Applicant which requires the information generated at detailed stage in order to make sure that gains are achieved where possible and are maximised. Seeking to do that at this stage which is necessarily outline is not the most effective or efficient way of doing this in terms of delivering actual net gains on the ground. This approach complies with policy. c. Whether or not we are an outlier or not does not go to the relevant law or policy and just brings one back to the points made that it must be assessed on the facts of a particular case by reference to the policy.
3.4	LCC responded to reiterate its position: a. if the intention is to deliver a gain, there ought to be something to secure that via the DCO but that its role was not to impose the outcome of that; b. LCC was not seeking to impose a particular percentage but that there should be a positive BNG;	HPKC responded that: a. the Applicant is very grateful that LCC had made clear that it was not seeking a percentage gain which was not what the Applicant had understood from previous submissions; b. If there is concern about the extent to which the commitment is made via the DCO we can look at that. The Applicant took Action Point 10. The Applicant's response on this point is provided in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (document 22.9).
3.4	The ExA asked about discussions regarding an offsite provider of BNG, citing REP4-111, and asked the Applicant for an update	Chris Jenner set out that there is no significant update to provide; that the applicant is pursuing opportunities including planting at substation and via third party providers.
3.4	The ExA asked about the timing of those discussions	Mr Jenner stated that it appeared, at this stage, that they would continue beyond the end of the Examination.

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3.4	LCC stated that it agreed that offsite was a recognised method of achieving BNG and that this method could be used to deal with any struggles regarding linear nature of site	
3.4 Lincolnshire County Council's request for an Ecological Steering Group, Environment Compliance Officer and Ecology Enhancement Fund		
3.4	The ExA asked about the draft section 106 agreement and whether, if the section 106 agreement was agreed and LCC's requests for an ecological steering group, environmental compliance officer and ecology enhancement fund are taken forward, whether application documents would require to be updated (for example, to reference those commitments in the relevant management plans and strategies)	The Applicant committed to take the point away and consider whether there might be any updates required. This was recorded as Action Point 11. The Applicant's response on this point is provided in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (document 22.9).
3.4	LCC stated that Deadline 6 would be pessimistic for the delivery of the section 106 agreement, noting progress in negotiations	
3.5 Land Use, Geology and Ground Conditions		
3.5 Agricultural Land Classification ("**ALC**") and soil surveys		
3.5	The ExA referenced Chapter 25 of the ES which sets out ALC grades per cable segment and the total loss of agricultural land and asked the Applicant to provide a breakdown of the predicted ALC grade of land within the order limit and the loss of ALC land related to the permanent infrastructure and habitat enhancement and disturbed / undisturbed land.	The Applicant committed to this being provided at D4a (Action Point 12). The Applicant's response on this point is provided in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (document 22.9).

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3.5	The ExA referenced THC's request that soil assessments be undertaken on all of their land by a combination of visual assessments and laboratory analysis. The ExA noted the Applicant's position in the Outline SMP that assessment at this level was being committed to for Grade 1 land only at the request of the landowner.	Siobhan Hall advised the ExA that the wording of the commitment was not restricted to Grade 1 land, however this was based on a misunderstanding of the testing that the ExA was referring to. The Applicant wishes to clarify that: a. The Outline Soil Management Plan ("**SMP**") includes the commitments that ALC and soil surveys, to determine ALC Grade, will be undertaken across the areas in which construction activities are proposed. Samples of topsoil, upper subsoil, and lower subsoil (where present) will be taken within each soil type for Particle Size Distribution (PSD) analysis, in order to calibrate and confirm hand texturing. b. The wording of the commitment for additional soil assessments by a combination of visual assessment and laboratory analysis, included in the revised Soil Management Plan ("**SMP**"), does refer only to Grade 1 land; c. This commitment is assigned solely for Grade 1 land due to the higher sensitivity of these soils. In contrast, ALC Grade 2 and 3 soils are generally less sensitive, and their quality and condition can be accurately assessed through the ALC survey commitments within the Outline SMP. These surveys are considered appropriate and sufficient for evaluating the characteristics of Grade 2 and 3 soils. d. The reason for the caveat that it is "at request of landowner" is that it goes above and beyond the MAFF guidance in order to provide addition assurance that soil would be restored to original quality and therefore it is at requested because it is for those who wish additional test (MAFF (1988) *Revised guidelines and criteria for grading the quality of agricultural land*). e. Any such request would be taken forward.
3.5	MWSKC responded to say that THC was grateful for this specific request being taken onboard but that THC has other points to make on SMP which it will do so later	

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3.5.2 Working width of the cable corridor		
3.5	The ExA noted the Applicant's response to Q2 LU1.1 suggests there should be a revised figure which maps the routes considered however the figures appears to be missing from the ExQ2 answer. The ExA requested that if a plan is missing can it be provided.	The Applicant committed to provide this at D4a (Action Point 13). The Applicant has now provided an updated version of 21.2 The Applicant's Responses to The ExA's Second Written Questions submitted which includes the previously omitted figures.
3.5	The ExA referred to THC comments on 20.9 Clarification Note Land Take, Soil calculation and Storage Bunds (REP3-056) The queried whether it was correct that there would not be a haul road where HDD was used.	David Wright confirmed that there may have been a miscommunication, and that there would only be some areas of trenchless crossing where there would be no haul road. Not having a haul road in a trenchless area would be the exception rather than the norm.
3.5	THC set out they were grateful for the clarification and that the response addressed the substance of their concern.	
3.5	The ExA asked whether its understanding was correct that the 80m cable corridor width was necessary to allow for micrositing of the 60m permanent cable at the point where detailed design is firmed up.	David Wright confirmed that was correct
3.5	THC set out its view that when you consider the elements required within the cable corridor it does not appear that there is any real ability to	David Wright set out that there may be some confusion regarding two separate plates provided within the Applicant's responses to relevant representations (PD1-071, specifically within RR-067), one of which assumes open cut trenching with soil bund, another of which assumes HDD (where the 60m width is present).

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	microsite once you account for the Applicant's oil bund and haul road.	David Wright clarified that there is no correlation between the 80m plate and the 60m plate: the 80m plate shows open cut trenching to justify a maximum working width of 80m and the 60m plate shows trenchless techniques to justify a 60m wide easement.
3.5	THC stated that this point could be addressed outside the Examination but that they are unconvinced that it addresses the point.	The ExA recorded Action Point 14 for THC and the Applicant to engage in discussions and provide a note of respective positions regarding the cable corridor width and ability for micro-siting. The Applicant's response on this Action Point is provided in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (document 22.9).
3.5 Cumulative effects		
3.5	The Applicant was asked to confirm the status of the Naylor Farm protein facility planning application.	David Wright confirmed that the Applicant's understanding is that the local planning authority refused to determine the application and it is to be determined by LCC's planning department. It was set out that the Applicant understands there is a delay in determining the application.
3.5	LCC provided further information on the application, setting out that the particular project application was submitted but without an Environmental Statement (or one that was considered sufficient) resulting in potential delay on determination, resulting in an extension to January 2026 for determination.	
3.5 Suitability of the outline Soil Management Plan (SMP) submitted at deadline 4		
3.5	The ExA referred to the Applicant having incorporated THC comments into outline SMP but noted that a number of points had not been	Siobhan Hall provided the following overview of the updates: a. The areas where the Applicant has not accepted changes are those where THC are asking for a level of detail which the Applicant does not believe is suitable for

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	incorporated, and stated that it wasn't always clear why some but not all had been taken into account, and asked the Applicant to provide a brief explanation	an outline management plan or where providing it may go outside relevant guidance. b. For instance, the request to survey below 1.2m which is the typical rooting depth for vegetables and which is set out in guidance. To do so we would have to use methods other than the standard machinery to do so. To carry out surveys to a depth of 1.5m, the Applicant would have to use other methods which may cause more disturbance to the ground, which is why the Applicant has committed instead to providing an assessment of that during the excavation.
3.5	THC responded that there are remaining key issues which Philip Wright set out as follows: The Outline SMP does not refer to three distinct horizons when considering surveying, soil handling, soil storage, stripping and reinstatement, rather it generally refers to topsoil and subsoil. The ExA asked the Applicant to comment on the recognition of soil horizons within the Outline Soil Management Plan	HPKC responded to say that it may be useful for the Applicant to sit down with THC to see whether these are points that can be better reflected given it appears that they have been dealt with, to ascertain whether any further updates are needed. Siobhan Hall highlighted that there are multiple references in the outline SMP to the three horizons (topsoil; upper subsoil; lower subsoil) but that the reason why more specifics are not included is because surveys to be conducted in due course will set out how many horizons are specifically within across the entire route and project area the final SMP will include all horizons (of which there may be more). Siobhan Hall confirmed that the outline SMP would be reviewed and where applicable further references to upper subsoil and lower subsoil, would be included within the oSMP submitted at DL4a. HPKC added that this is an outline plan, and as requirement 31 makes clear, for each stage, a soil management plan for that stage has to be submitted and approved, so the actual management plan for each stage will have to reflect the conditions on the ground. Therefore as long as the principle is embraced within the outline plan, then the detail plan can set out whatever the soil happens to be in that particular area.

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3.5	The ExA noted that the oCoCP and oSMP both include a commitment to consult with the Land Interest Group ("LIG") and asked whether feedback received by the Applicant from the LIG on the Soil Management Plan would be reported to the Local Planning Authority when the documents are submitted for approval under the requirements of the DCO.	HPKC set out that if information such as LIG feedback is required by the discharging authority, the discharging authority could ask for it and that, if the Applicant submits the SMP for determination and does not provide that feedback, the discharging authority may ask for it. In this respect, the system is self-policing.
3.5	THC agreed with HPKC's interpretation and stated that their request is the ability to input into the SMP when finalised. At present, THC submitted, the proposition is to consult prior to submission via the LIG. THC's request is that such submissions are shared so that it is clear whether such submissions are before the relevant planning authority, have been taken into account by the Applicant and to avoid imposing on the relevant planning authority the need to ask for them. Relatedly, THC wants to be consulted in some form. Though the Applicant may not wish to have landowners set out in the DCO, THC require to be named in the relevant outline plan.	HPKC made the following submissions: a. It appears that the issues is not with consulting THC but instead with the process, for instance what requires to be set out in documents and what does not; b. the Applicant would discuss the issue with THC but saw no issue in THC having input where they are landowner; c. in relation to any burden on the relevant planning authority as discharging authority, when framing mechanisms in DCOs the assumption must be made that the relevant planning authority does its job properly and it is not necessary to spell out what they must be provided with; it being anticipated instead that they will call for such information as required in order to carry out their duties d. Should the Applicant be required to consult with landowners and does not provide reporting of this to the discharging authority, then the Applicant shouldn't be surprised if the discharging authority requests the information be provided. HPKC reiterated the point being whether you need to spell it out or can rely instead on the presumption that the Local Planning Authority will fulfil its duties lawfully and appropriately.

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3.5	The ExA asked what would prevent the information being put forward by the Applicant to the LPA without being asked.	HPKC set out that there would be nothing preventing this but reiterated that the question is whether that has to be required or whether the general requirement that the LPA should request necessary information is sufficient.
3.5	LCC set out that all of their concerns have been addressed, but noted the outstanding concerns regarding the SMP which it appeared would be resolved with THC where LCC will retain a monitoring role.	
3.5	THC provided a final point regarding the SMP and adverse weather provisions, requesting that soil operations must not restart until one dry day after intense rainfall and an agreed moisture criteria can be met a rather than the current drafting which appears to allow an either / or of the soil criteria being met or a relevant period of time passing. It was agreed that this was another matter to be discussed between parties.	
3.5	The ExA asked for certain action points to be taken	The Applicant agreed to discuss this with TH Clements and provide an update at Deadline 4a (Action Point 15). The Applicant also agreed to provide an update on the role of the LIG (Action Point 16). The Applicant's response on these Action Points is provided in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (document 22.9).

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		With regard to Action Point 15 and the discussion about the consultation requirements of relevant plans: the Applicant has considered this matter further and has updated the oCoCP and the oSMP (as well as the outline Organic Land Plan ("**oOLP**")) to confirm that the Applicant will collate comments received and any subsequent amendments agreed to by the Applicant and submit these details to the LPA when submitting the final versions. The oCoCP and oSMP have also been updated to confirm that consultation on the final CoCP and final SMP prior to submission for approval will be with the LIG and TH Clements.
3.5 Suitability of the outline Organic Land Protocol ("**OLP**") submitted at deadline 3 [REP3-024]		
3.5	The ExA referenced written submissions by Woodlands Farm and the Applicant's Deadline 4 OLP which may provide Woodlands with assurances. The ExA took an action (Action Point 17) to seek feedback from Woodlands Farm.	HPKC agreed that it would be appropriate to hear what Woodlands Farm's response is and confirmed that the Applicant has sought to meet their concerns and hopes it has done so.
3.5 Relationship between the oCoCP, oSMP, oOLP and dDCO		
3.5	The ExA referenced Requirements 31 of the dDCO and the updated outline CoCP. The ExA noted that LCC had response to written questions to suggest that the OLP be secured in Requirement 31 rather than also Requirement 18 (related to the Outline CoCP) so that all agricultural matters are considered together.	Ms Emma Moir set out that: a. The Applicant understands that the LCC and LPAs are discussing this between them. b. Where requirements 18 and 31 ultimately sit in the DCO will depend on the decision as to who is the discharging authority. For example, if it is agreed LCC should be the discharging authority for the COCP, SMP and OLP, then, subject to confirmation from LCC that they would no longer insist on a separate SMP requirement, it would likely make sense for all three plans to sit under requirement 18. However, if there is a different discharging authority for one or two of those plans, then the requirements will need to be separate. F

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		c. The Applicant is content amend the draft DCO to reflect the agreement that is reached by the LPAs and LCC. d. The Applicant recognises the interrelationship between the oCoCP, oSMP and oOLP therefore should the ExA be of the view that given the inter-relationship between the oSMP and oOLP, it would be more appropriate for the CoCP, OLP and soil management plan to be dealt with under the same requirement, the Applicant would have no concerns with that approach.
3.5	LCC set out that it does not have final confirmation from the LPAs but that LCC thinks the outcome will be the LCC discharging both Requirement and that the LCC believe they are nearly finalised that outcome. The ExA took an action for LCC and LPAs to provide outcome of agreement on which body shall be the discharging authority for the various Outline Plans under discussion. Action Point 18 was taken.	
3.5 Soil restoration		
3.5	ExA referenced the Applicant position that a pre-Determination ALC survey has not been committed to for various reasons. The ExA enquired about the Applicant's soil restoration commitment which did not appear to reference the ALC grade and asked whether	HPKC confirmed that the questions was whether soil restoration commitment was to restore to the previous ALC grade and whether this would better align with the policy objectives than what the Applicant is currently committing to. The Applicant then set out: a. that the Applicant's commitment went above and beyond returning the soil to the same ALC Grade; for instances a commitment to returning Grade 1 Soil would

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	restoration "to the same ALC grade" would better align with relevant policy.	allow stoniness of between 5 – 10% whereas the Applicant's commitment requires restoration to the exact stoniness percentage (returning land with 1% stoniness to 1% stoniness). b. that by committing to the specifics of the soil, rather than the ALC grade, the Applicant avoids any risk of any issues caused by amendments to ALC grades in the future.
3.5	The ExA reiterated that the NPS benchmarks against the ALC grade and asked whether the Applicant could provide further assurance that the commitment would, similarly, benchmark against the ALC classifications. The ExA also asked what the pre-construction ALC surveys would inform.	HPKC summarised the evidence heard: a. that a commitment to restore to the ALC Grades might be a "moving target" should they change; for instance if the grades change to allow for soil to be restored to a lesser condition than is required now; b. the obligation to return the soil to its pre-existing condition would fulfil the policy requirement: until and unless the ALC classifications change, you will always remain in the same grade if you restore it to the soil's current state; c. if you were to have a requirement to require restoration to the current ALC Grade then this would provide a broader obligation than that which the Applicant has committed to which doesn't take you any further. Siobhan Hall agreed with HPKC's submissions and set out, in relation to the ALC surveys, that they determine the ALC grade, assessing the multitude of factors affecting quality and condition.
3.5	The ExA asked the Applicant to clarify its remark about the soil quality not becoming worse that the current grade	HPKC clarified that his remarks were a summary of previous evidence that if you restored soil to the same condition you would be in the same grade unless the criteria for assigning grades change.
3.5	THC stated that it and the Applicant are "at one" on the issue and that THC's issue is ensuring that there is no deterioration of ALC grade and that	HPKC set out that this was exactly what the Applicant had in mind and committed to taking this away as an action point (Action Point 19).

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	THC would not wish to introduce any wording which would muddy these waters. THC suggested that a simple paragraph could be added to the SMP to clarify that a consequence of this will be that soil will be restored to its current ALC Grade but not in a way that changes the mechanism provided above.	The Applicant's response to this action point is set out in The Applicant's response to this Action point is provided in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (Document 22.9).
3.5	The ExA referenced Natural England's review of REP3-056 (Clarification Note: Land Take, Soil Calculation and Storage Bunds) which suggests that the implications of the information provided is that there may be a risk of mixing of soil profiles and asked for the Applicant's comments.	David Wright stated that the figure referred to is an indicative cross-section and when the Applicant comes to providing its final SMP this will be based on field by field, case by case ALC surveys, rather than being based on an indicative depth (the 450mm depth referred to by the ExA) and exact soil depths will be known. The Applicant understands that true depth will vary throughout the scheme.
3.5 Cable burial depth		
3.5	The ExA referenced the Applicant's position in response to Further Written Questions (REP4-107; Q2 LU 1.8), which states that agreement has been reached with THC in relation to cable burial depth. THC confirmed this was broadly the case and that THC are happy other than the use of specific wording ("where practicable") in paragraph 109 of the oCoCP which THC understood the Applicant is content to remove.	David Wright set out that relevant wording in the CoCP can be amended to remove "where practicable" and that the only addition which the Applicant would seek to make is, rather than referring simply to existing drainage schemes, to also refer to drainage schemes installed by the Applicant. This is to ensure that if the Applicant does have to install the cable at a shallower depth, the Applicant will put a new scheme over the top. David Wright confirmed this proposed wording would be provided to TH Clements in the first instance, and then the oCoCP would be updated at Deadline 4a (Action Point 20). The Applicant has responded to this Action Point by The Applicant's response to this Action point is provided in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (Document 22.9).
3.5 Severance		

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3.5	The ExA stated that the Applicant's Covering letter refers to meeting to be held to discuss any disparity between understanding of severance now that various documents have been provided and asked for an update.	David Wright set out that shapefiles have been provided to the Applicant from THC and that overlays have now been produced by the Applicant and sent to THC and that parties were looking for a mutually convenient date for a meeting. This was recorded as Action Point 21. The Applicant's response to this Action Point is set out in The Applicant's response to this Action point is provided in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (Document 22.9).
3.5	The ExA referred to CoCP updates related to the process for dispute resolution for severance matters, reflecting THC's suggestions. THC confirmed that other than the point relating to sharing of costs, THC were content. Action Point 22 was recorded for Woodland Farms to provide an update on the same question.	
3.5 Dust contamination		
3.5	The ExA set out that it does not appear that resolution will be reached on the appropriate method for assessing dust and the assessment conclusions, but noted that the THC response to further written questions stated discussions are continuing regarding a compromise position on the subject of mitigation related to land at high risk of being affected by visible dust.	David Wright set out that: a. the Applicant's dust assessment is robust and that its outcomes are valid; b. the Applicant will have further discussions with THC on risk and mitigation; c. however the Applicant and THC are some distance apart on their view of the impact of dust based on the perceived risk based on their respective reports.

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	The ExA asked the Applicant to provide an update	
3.5	THC stated that this fairly summarised the position and that THC would respond in detail to the Applicant's Dust Report (submitted at Deadline 4). Damian Pawson of Sweco UK, THC's dust expert, provided an overview of THC's response to the Applicant's dust Report and made clear that in THC's view there were clear answers to each of the points in dispute.. Note: *given the technical nature of the submissions, the Applicant has not sought to summarise these here and understands that THC will be providing their summary of their hearing submissions at the next Deadline.* The ExA enquired, in relation to one of Mr Pawson's submissions, if the dispersion modelling method used by THC has been used elsewhere in the UK. THC responded that this dispersion modelling may be used in the situations where there are site specific factors at play and, as set out in REP3-065, there is justification in the guidance though the use of the modelling is rare.	To provide some background, HPKC started the Applicant's submissions by providing the following context regarding the nature of dispute for the purpose of decision-making: a. As THC's response to ExQ2 LU1.6 and THC's summary provided at ISH5 explain, this dispute concerns the area of land identified as high risk of visible dust and the appropriate amount of mitigation land which requires to be provided. It is not a dispute about whether additional mitigation measure are needed. Rather the Applicant has committed (as set out in its response at Deadline 4) to best practice mitigation measures. That is the key point which addresses the policy set out in NPS EN-1 Section 5.7. b. With those mitigation measures in place, whether one takes THC's estimated area of impact or the Applicant's estimated area of impact, the result is a highly localised and temporary impact even when even on the worst case scenario presented by THC's case. This requires to be viewed in the context of a Nationally Significant Infrastructure Project which compromises CNP Infrastructure, engaging S4.2 of EN1. c. Even if THC was correct, it would not mean that further mitigation was required and it would not generate a residual impact which would outweigh the provision of CNP Infrastructure in national policy terms. d. The reason it's being disputed by parties is because it provides an input for a commercial negotiation. However this is not a matter which affects the decision-making or the mitigations to be secured, given compensation for financial loss are not a matter for Examination. Ben Turner provided a high-level summary in response to Mr Pawson, which the Applicant committed to providing in full in writing.

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	ExA asked whether some of these points can be addressed in writing. THC provided that there are substantive differences between the Applicant and THC's positions and there is doubt as to whether these will be resolved because of the differences between parties on dispersion modelling. THC highlighted that ultimately this questions feeds into an agreement between THC and the Applicant, which isn't dependent on just dust dispersion modelling but how to manage the cable running through THC's land and that the disagreement on dispersion would not prevent a global agreement between parties.	Mr Turner explained that separate assessment for dust have been done by the Applicant and THC leading to separate conclusions. Mr Turner provided an overview of the Applicant's assessment: a. The Applicant's approach follows established best practice, used extensively for the past 10 years. It is the standard for onshore linear schemes traversing farmland used on the Sheringham Extension Project ("**SEP**") and HS2; b. It is a qualitative assessment, whereby the construction activities and sensitivity of the environment are evaluated to determine the level of dust risk. This risk informs the necessary mitigation measures to ensure residual effects remain not significant. c. In response to Mr Pawson's argument that commercially sensitive crops warrant further detailed modelling, the IAQM framework already considers commercially sensitive horticulture within its methodology. d. The Applicant has assigned the maximum protection for dust risk and protection, which is higher than agreed in some other comparable projects (for instance, SEP assigned a "medium" protection). e. The Applicant is providing the full suite of relevant controls for dust, which will be later refined. This includes a monitoring and communications framework, reported to the local authority. f. Based on this approach, the Applicant's view is that there are not significant impacts caused by dust. Mr Turner made the following brief remarks about the approach taken in THC's assessment: a. THC's dispersion modelling approach concludes a 100-hectare impact, even with maximum mitigation—an unusual outcome, especially given Lincolnshire County Council's view that the measures are robust and policy-compliant.

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		b. The study relies on dust emission factors from coal and metalliferous mines in the USA and Australia, which are unvalidated for the UK climate and unsuitable for construction activities. Mr Turner also noted that 83% of emissions are based on a 1988 coal stockpile emission factor, making the approach inappropriate. c. Mr Pawson cited IAQM construction dust guidance to justify dispersion modelling, but this overlooks the Applicant's position. As the study uses mining emission factors, the IAQM's mining guidance applies, which explicitly states that non-UK emission factors should not be used in UK local impact modelling assessments (as THC has done). Post-hearing note: As discussed the Applicant will provide its position in writing in due course. To ensure a structured response to submissions, the Applicant intends to respond in writing once it has reviewed THC's written submissions at Deadline 4a (including its written response to the Applicant's dust report submitted at Deadline 4 [REP4-125] and its written summary of Mr Pawson's oral submissions). THC's written response [REP4-150] referred to a draft version of the Applicant's dust report which was not entered into examination, therefore responding at this stage may create unnecessary complications. This aligns with the Applicant's response to Q2 LU 1.6.
3.5	The ExA enquired about the "risk profile" point made by Mr Turner in his remarks.	Mr Turner set out that "High Risk" leads to the maximum level of mitigation which can be afforded under relevant guidance. What we are seeing in the THC modelling assessment doesn't take that into account because of its inherent flaws.
3.5	THC confirmed, in response to HPKC's submissions that: a. THC is not seeking further mitigation and that this is a local impact but that if	

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	agreement is not reached between the Applicant and THC then there will be impacts to take into account by the ExA that go beyond dust aspiration and into other factors, some of which are set out in SE1.1 (Economic impact on agricultural operations); b. It is right for HPKC to state that compensation is not a matter for this forum but the absence of compensation may be a matter for this forum, and this would be a consequence of non-agreement. c. Within the "microcosm" of local dust impacts, they may go into your planning balance and may have a small impact but the impacts on THC go beyond this and into wider socio-economic impacts. Mr Pawson set out further submissions in response to Mr Turner: a. Agreed that the Applicant's assessment is industry standard. b. However, mitigation is not always effective but that though the impact may be temporally limited, it may have a great effect on THC.	

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	c. Regarding the emission factors, THC asserts that they are not solely applicable to coal mining and can be used for construction. This will be addressed in THC's summary of ISH.	
3.5	The ExA questioned where the commitment on page 26 of the Applicant's response to THC's Dust Report regarding revising the construction dust assessment to include detailed construction data once the principal contractor is appointed was secured.	The Applicant took Action Point 23 to respond to this matter. THC took Action Point 24. The Applicant's response to this Action Point is set out in The Applicant's response to this Action point is provided in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (Document 22.9).
3.5 Agricultural drainage and irrigation		
3.5	The ExA referenced indicative conceptual pre and post construction drainage plans provided to THC's agents 27th January and asked for any updates on drainage and its discussions with THC on the matter. THC set out that their remaining concern relates to CoCP paragraphs 111-112 where THC is concerned about the ability for the Applicant to carry out partial reinstatement. THC summarised the issue where a new drainage scheme is installed and an old scheme has been	David Wright set out that a key point has been whether you "cross-connect" or whether you put in a new partial scheme. The commitment now to go 300mm below drainage system should allow cross connection and reinstating drainage above cables so it removes any issues with redundant cables. David Wright set out that, the CoCP doesn't provide detail on how certain issues should be resolved but instead, the pre- and post-construction drainage plans will enable the Applicant to deal with such issues on a case-by case basis with individual landowners to take into account their individual preferences for how such issues should be dealt with. When asked, David Wright further provided that if there were outstanding issues, these would be assessed on a case-by-case basis including in relation to the removal of certain redundant drainage where necessary but this would be subject to a consultation and

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	severed by the pathway of the corridor, this can encourage the flow of water into an area of the corridor which would exacerbate machinery sinkage; cable corridor is so drains upstream or upgrade of the corridor should be removed. THC also flagged an issue related to the drainage plans which the Applicant has shared where THC is engaging in on-going discussions with the Applicant rather than being in settled agreement.	discussion and involves mechanism for reaching agreement including expert determination.
3.5	THC clarified that the context for its above discussion is that the issues have narrowed significantly due to the 300 mm commitment discussed above but that THC will reflect on the issue. The ExA took Action Point 25 for THC to provide its view.	
3.5 Climate change, increased rainfall and soil impacts		
3.5	The ExA referred to the fact that on this issue the LCC appear to be content and the EA defer to the LCC but that THC appear to have on-going concerns, which the ExA asked THC to respond to. THC confirmed in response that it has provided its view on the issue in writing.	The Application has provided its response to Action Point 27 in the Applicant's response to this Action point is provided in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (Document 22.9

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	The Applicant was asked to provide in writing at Deadline 4a to the position set out by THC in Rep4-150 (Action Point 27)	
3.5 Peat identification and management		
3.5	In the Environment Agency's absence, the ExA asked the Applicant to respond to the EA's submissions on Peat Identification and Management in writing at Deadline 4a	The Applicant committed to doing so (Action Point 26). This Action Point has been responded to in The Applicant's response to this Action point is provided in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (Document 22.9).
3.6 Design		
The applicant's approach to design and its strategy for future design development relating to the onshore substation structures.		
3.6	The ExA set out that it has received updated Design Principle Statement ("**DPS**") (REP4-077) and Design Approach Document ("**DAD**") (REP4-075) and would be reviewing these and may reserve further questions for the Applicant.	
3.6	Regarding securing the quality of design, the ExA asked LCC about its response to Q2 DES 1.2 (REP4-107) and the position on securing a further independent design review via the DPS. LCC set out that its concern relates to the crystalising of design; how this could be captured; and how LCC could feed into this. LCC stated that it requires to sit down and consider how design is secured.	

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	The ExA asked LCC its view on the particular route to having the design review process secured (for instance, via the Design Principle Statement vs. directly via Requirement 9 of the dDCO. LCC said it did not object to the principle of the way that the process was secured at present.	
3.6	The ExA asked how much involvement LCC expected to have in the in-depth design process. LCC set out that: a. there is a design group set up of which the LCC is a member giving it an opportunity to feed in to the design process; b. the question is what the mechanism will be for the findings of the group to be secured post-consent; c. generally; LCC is content that it is part of the process but subject to how recommendations are secured. The ExA asked the Applicant to comment.	HPKC submitted that: a. The applicant is pleased that there is no issue with the independent Design Review being secured via the DPS, which is secured through Requirement 9; b. The review is independent and will be an input in thedesign but it cannot, of course, determine the design in whole and it must be open to both the Applicant and the LCC to disagree with the outputs of the process. For example, one can imagine situations where the recommendations of the independent review are impossible to comply with in the terms of the DCO (given the design review group may not correctly understand or interpret the terms of the DCO). There may also be instances of an Applicant (and/or LCC) simply disagreeing with the inputs. c. It is then for the discharging body (LCC, in this case) to consider discharge taking into account all factors including the independent design review. Insofar as there is any question of how the design review panel outputs are made available to LCC we may be in a similar position to the discussion regarding discharging discussed above in relation to landowners.

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3.6	The ExA asked whether LCC would sit on the design review panel. LCC confirmed it believes itself to be on the panel.	HKPC confirmed that the LCC was on the panel.
3.6	The ExA then asked about Q2 DES 1.2 and the question of whether further external, independent review of the onshore substation design will be undertaken as part of the detailed design process. The ExA asked whether there was *one* design review process or many? The ExA further note that the wording suggested there would perhaps be just one.	HPKC confirmed that there would be as many reviews as are required during the process but committed to review the drafting of the Design Principles Statement (DPS) and the Design Approach Document (DAD) (to be submitted at Deadline 5) and to provide a response in writing against Action Point 28. This action point is dealt with in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (Document 22.9).

3.6	The ExA referred to Q2 DES 1.3 and asked a series of questions regarding the Applicant's answer and the Applicant's general approach to design including: a. whether the Applicant, in its response to DES 1.3, intended to refer to a "contractor" or "consultant" b. whether what the Applicant was referring to was a "design and build" route c. whether one contractor would be used for onshore works and associated development (as opposed to providing the works on just the OnSS) d. why a "design and build" was the most appropriate delivery method e. what the Applicant's brief would be to the nominated contract.	Garrett Roche set out that DES 1.3 was referring to a "contractor" and that, generally, consideration of the implementation of the design process was subject to the Applicant's procurement strategy. Requirements of the DCO (and commitments made within the Outline Management Plan, including commitments made to the design process) will form part of the Applicant's requirements for contractors in respect of all stages of the development. Post-hearing note: The Applicant notes that no specific Action Point was taken related to this discussion (EV9-001). However, the Applicant has provided further submissions in writing on how it is ensuring good design through the consent process within its Response to Action Point 28 (Document 22.9 the Applicant's Response to Actions Points recorded at ISH5 and ISH6).

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3.6	The ExA asked about how the Applicant's brief to its contractor could ensure compliance with Good Design pursuant to the NPS.	HPKC agreed to take this question away and made the following remarks: a. The Secretary of State will require to form a view on the question of design the extent to which NPS is met at decision stage. Thereafter requirements (such as Requirement 9) are in place to secure the outcome. b. To put it another way, the decision maker has to be satisfied at the point of determination rather than thereafter. c. Given that the DCO provides a legal framework which would constrain further design and construction work, it would be useful to understand the ExA's concern about the post-consent stage given it does not appear to relate specifically to the framework set by the DCO. HPKC asked whether this was therefore better understood as a question about what requires to be in the DCO to satisfy the good design.
3.6	The ExA set out that its concern is that there is not an outline proposal at this stage nor a decision on the type of OnSS which will be used. As a result, the Applicant's design process needs to demonstrate that – while the design stage is at a relatively fledgling stage – the requirements to achieve good design and design quality can be assured through the process it adopts including its brief to its eventual Contractor	HPKC noted that a. the securing of good design must be through the DCO. The contractual means by which the Applicant seeks to put in that framework into practice would necessarily have to reflect the legal framework set by the DCO but the contract itself is not a matter for the Secretary of State to engage with as part of decision-making. b. if there is more that requires to be secured for the purposes of policy compliance at the decision-making state then that needs to be addressed *in* the DCO and requires to be addressed now.
3.6	The ExA set out that the relevant design documents are lacking in detail which leaves it in the situation where it is unclear at this stage what will move forward.	HPKC said that was helpful and the Applicant would respond in writing but reiterated that if there was a concern about the adequacy of the documents to secure good design then this would require the putting forward of further proposals as opposed to examining contractual means thereafter given they are matters that the Secretary of State cannot regulate (even, as here, where there is a high level concept as opposed to a detailed design)

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	What the DPS effectively secures and how the local authority can have certainty that the detailed design that ultimately comes before them is in line with the DPS.	Post-hearing note: As above, the Applicant notes that no specific Action Point was taken related to this discussion (EV9-001). However, the Applicant has provided further submissions in writing on how it is ensuring good design through the consent process within its Response to Action Point 28 (Document 22.9 the Applicant's Response to Actions Points recorded at ISH5 and ISH6).
3.6	LCC were asked for any further comments and confirmed that they did not have any.	
3.7 The draft Development Consent Order		
3.7 Comments and observations in advance of the ExA's recommended draft Development Consent Order (DCO)		
3.7	The ExA asked LCC for its view on the approach to defining the relevant planning authority. It answered that, as in other DCOs, its preference was a table provided within the Order which sets out which authority is to be termed the relevant planning authority for the various Requirements. However, LCC noted the Applicant did not agree on the approach. LCC provided reference to a number of DCOs which had taken this approach.	Emma Moir set out that the current dDCO drafting achieves this aim but with less confusion. The LCC's approach would involve a definition of "relevant planning authority" within the Intepretation part of the DCO (which refers to the local planning authorities) then a different definition would be provided in Schedule 1 (which sets out different local authorities for different requirements). This would mean that the term "relevant planning authority" would have a different meaning in different requirements, which could cause unnecessary confusion.. Rather, the approach the Applicant has taken is to name the authority as the discharging authority and keep the definition of "Relevant Planning Authority" consistent throughout, leaving less room for confusion, and better ensuring the reader can understand its terms.
3.7	LCC make clear that it also wishes, generally, for LCC to be referred to as the "Relevant Planning Authority" for the purpose of enforcement (rather than just ensuring the DCO is drafted in the most straightforward way)	Emma Moir set out the Applicant's concern with this: a. Part 8 (enforcement) of the Planning Act 2008 gives the "relevant local planning authority" enforcement powers if it suspects an offence has been committed (i.e. development without consent or a breach of the Order). b. S173 of the Planning Act 2008 defines relevant local planning authority for the purposes of Part 8 which is the district planning authority unless the development

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		is the construction or alteration of a hazardous waste facility, in which case it is the county council. c. The Applicant therefore does not consider that changing the definition in the DCO would address the concern raised by LCC as the wording of the Planning Act 2008 would not change t. Ms Moir advised that the Applicant was exploring options to resolve this issue within the DCO.
3.7	The ExA recorded Action Point 29 for LCC to provide examples of relevant DCOs and the Applicant and the LCC to discuss the matter and update the ExA on progress.	The Applicant's response to this Action point is provided in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (Document 22.9)
3.7	The ExA provided an overview of the outstanding issues between the Applicant and the MMO and made clear it would return to these later in this agenda item: a. First, the ExA referenced Article 6 of the dDCO and the fact that MMO continues to have issues with the number of sections of drafting; b. Next the ExA discussed more generally the outstanding issues between the Applicant and the MMO and the concern that they may not be addressed within the Examination	

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	c. The ExA referenced areas where there is a lack of consensus which may create an issue for the Secretary of State's decision making.	
3.7	The ExA turned to THC's outstanding DCO issues and enquired about THC's current position on dDCO matters. THC set out that its position would be set out in response to the latest draft DCO and referenced a number of points: a. Regarding Restrictive Covenants, many of its comments have been taken into account meaning outstanding issues are materially narrowed. One area of concern relates to the consent for the Applicant to dig beyond 0.7 m where the outstanding issue relates to the doing so in waterlogged conditions which THC will discuss with the Applicant hereafter. b. THC wished to be consulted on the outline CoCP and SMP, but THC's name does not require to be in the Order itself. The ExA asked whether it was preferable to take these points forward outside of the hearing and whether it may be premature to discuss them now.	HPKC agreed that what was outstanding were matters of detail and it would be premature to take hearing time to air those issues.

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	THC stated that because so much progress has been made, it is profitable to take these conversations forward outside the Hearing where THC will engage with the Applicant on that basis.	
3.7	The ExA asked about Article 19 and the Applicant's response within Appendix 2 of its ISH1 summary (REP3-040) and the fact that it adopts the reasoning for Immingham Green Energy Terminal ("**IGET**")	Emma Moir made the following submissions: . hat since previous submissions, the IGET DCO has been consented on 6 February 2025 and the Human Remains article is contained in the made DCO. . Within the recommendation report (paragraphs 7.4.17- 7.4.19) the ExA agreed with arguments put forward by the Applicant in that Examination that the system for removal of remains outside the DCO would create delays and that there would be no harm to including the Article , in case remains were encountered. . Within the Secretary of State's Decision Letter, the need for the Article was not discussed but the Secretary of State removed certain wording in the Article which is not contained within the Applicant's dDCO which is therefore not relevant to the Applicant's draft Article. . This provides a useful recent precedent for the inclusion of the Article in the Outer Dowsing DCO.
3.7	The ExA set out that its view is that the inclusion of Article 19 is reasonable and the argument well-made but that one issue which surrounds the Applicant's Deadline 3 response is whether it is reasonable for the Applicant to adopt – as it's justification – the submissions of another developer made in another Examination.	HPKC confirmed the Applicant's view that the position set out in IGET is of general application: a. these cases are unlikely but may give rise to significant delay and that such an Article provides a mechanism to avoid a low likelihood, high impact event by putting in place a bespoke process. b. This justification isn't specific to a particular scheme, because in IGET as in the Applicant's case it is not the case that the land over which the project is to be

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		developed gives rise to a high or elevated risk but rather the justification is that we are in a country which has been populated for a very long time and remains may be therefore be found even where not expected. c. Because there is no downside of inclusion, the Article acts as an insurance and is not dependent on the likelihood of having to use it. d. The wording is not remarkable and is found in a number of orders. The issue only came to be considered in IGET because in a number of Secretary of State decisions made prior to IGET, such wording had been removed post-Examination on the basis of being apparently unnecessary but as the Applicant has raised previously these changes were made without consultation with the Applicant. e. Therefore, the relevance of IGET is that it is the only instance where the issue was ventilated in order to produce a considered decision. The Applicant therefore submits that IGET is on "all fours" for consideration given it is acceptable to the ExA and Secretary of State but for one non-relevant change.
3.7	The ExA stated that the one remaining issue was in adopting the wording of a completely separate submissions of another developer made in another Examination, the ExA are – as an examining authority – interested in the merits here and so it is not sufficient to adopt wording from another Examination submission without further justification. The ExA was therefore looking for justification as it applies to this application.	HPKC stated that the applicant would provide a summary of its oral submissions including the relevant Article numbers to justify – in this Order – the inclusion of the Article. This information is now included in **Appendix 2** of this Summary.

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3.7	The ExA proceeded with a number of short questions regarding specific dDCO provisions as follows.	
3.7	The ExA referred to wording of "a bridge" in relation to Work Number 22 and queried whether this was sufficiently clear without further definition.	HPKC stated that when you take the work number and the work plan together there is no ambiguity as to which bridge it is referring to
3.7	The ExA stated that the description within Work Number 25 does not match the description in the Work Plans and asked which should be updated	The Applicant stated that the key on the works plans should be updated rather than the DCO. The Applicant was asked (Action Point 30) to check the wording of works plans match the wording within Sch.1 Part 1. The Applicant's response to this Action Point is provided in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (Document 22.9).
3.7	The ExA asked in relation to Part 3 Requirement 3(2) whether, and where, Artificial Nesting Structures, was defined.	HPKC set out that we believe it is defined elsewhere (in relation to Marine Licences) and that this definition can be imported into the dDCO. Please note that, after the ISH5, and upon review the Applicant noted that the Artificial Nesting Structures was not defined in the version of the dDCO submitted at the time of ISH5. The Applicant has subsequently included this definition in the dDCO submitted at Deadline 4a as detailed in the Schedule of Changes to the dDCO (document 3.1.1)
3.7	The ExA asked for LCC's view on the landscape maintenance period. LCC provided that landscaping should require to be maintained for longer than 5 years based on	Jo Phillips highlighted a distinction to be drawn between the below facets of landscaping (note that the Applicant has, in response to Action Point 32 provided further detail on this issue) a. first, the 5-year *maintenance* period which relates predominately to the onshore cable corridor: the reason for it to be included is that plant failures will most likely

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	the longer term nature of the project but committed to responding to the point in writing with the assistance of its relevant team member (Action Point 31 was recorded). The ExA referred to the fact that the primary means of visual mitigation relies on landscape proposals and the resultant need for screening to survive into maturity. The ExA referred to the equivalent requirements in the SEP and DEP made DCO.	occur within 5 years and after that we are removing species anyway and as a result this is standard to apply 5-year maintenance b. second, at the OnSS there is both (i) a 5-year *replacement* period for the same reasons as above but there is also (ii) an on-going lifetime management and maintenance regime.
3.7	The ExA summarised the position that (1) at an initial stage you are overplanting then (2) you strategically thin back at or after 5 years.	Jo Phillips confirmed and made clear that this relates more to woodland, where overplanting / thinning is more common, as opposed to hedgerows which are easy to establish and are commonplace throughout the cable corridor.
3.7	The ExA asked about the Applicant about Jo Phillips' remarks about OnSS planting and asked whether these remarks related to all planting or just screening planting	Jo Phillips set out that it was planting generally at the onshore substation as shown on the mitigation planting plan.
3.7	The ExA asked whether, when referring to planting at the OnSS which has a different regime, she meant planting at the OnSS generally or the planting specifically in place to mitigate the negative effects of the OnSS in the landscape.	Jo Phillips confirmed that her understanding was planting generally at the OnSS would be maintained. HPKC suggested that perhaps the relationship between requirements 11(2) and 10 requirements could be set out better in writing to ensure a clear picture for the ExA regarding the approval of the landscape management plan and how 11(2) fits into that picture. The Applicant took an action to provide this at Deadline 4a (Action Point 32). HPKC made the following overview remarks:

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		a. What 11(2) is dealing with is– unless its otherwise dealt with in the approved landscape management plan –a requirement to replace trees and shrubs within the first 5 years should they become diseased or die. b. The result is that you have a general obligation to manage the landscape and then a very specific requirement relating to the first 5 years of planting growth. c. The Applicant will unpack that and better explain it in writing. The Applicant's response to Action Point 32 is provided in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (Document 22.9).
3.7	LCC confirmed it would consider this when available.	
3.7	The ExA asked for an update on the resolution of the outstanding issue between LCC and the Applicant regarding Article 17	The Applicant set out that it had been agreed between the Applicant, LCC and Historic England that there was to be no updates to Requirement 17 because an update to paragraphs 74, 85, 90 and 98 the Outline Onshore Written Scheme Investigation (REP4-088) has been agreed by said parties.
3.7	LCC stated that that was correct. Mr Parker-Wooding was asked for comment and stated that LCC and the Applicant have come to agreement where the only remaining matter of substance is the question of amount of trenching which LCC hopes will be decided and agreed before Deadline 4a (by around the end of the month).	
3.7	The ExA then returned to outstanding issues with MMO, referencing REP4- 129 and listing outstanding concerns of the MMO, being: a. Article 6 Transfer of Benefit b. Maintain and Materiality	HPKC confirmed that the ExA's summary appears consistent with our understanding of outstanding issues.

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	c. Determination dates d. Maintenance Reporting e. Stages of construction (timescales for Plans) f. Force Majeure g. Temporal piling restriction (Impacts on herring). The ExA referenced, additionally, proposed variations in the dDCO and deemed Marine Licences ("**dMLs**") and changes made by the Applicant.	
3.7	The ExA referenced Article 6 (which it referred to as a "regulatory requirement") and referenced the Applicant and MMO's submissions. The ExA asked applicant to provide an overview of its position.	Emma Reid set out that: a. The point is one which may remain outstanding at the end of Examination and has been debated at length in DCO applications and examinations to date where the Secretary of State has concluded in previous Decisions that the Article is appropriate in line with the Marine and Coastal Access Act 2009 b. The MMO takes the view that the Article creates an increased burden in relation to the transfer of dMLs; whereas the Applicant takes the view that the MMO's proposals regarding "parallel transfer" do not address the issue c. Moreover, the Applicant believes that some of the MMO issues and proposals relate more to the interaction between the Secretary of State and MMO rather than between the Applicant and MMO
3.7	ExA asked whether the MMO has interpreted the wording of Article 6 accurately	Scott McCallum provided that a. he assumes that the MMO has interpreted the article accurately but is raising concerns which appear surprising in that context. The Transfer of Benefit process has happened under made DCOs to date and it has worked well.

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		b. The MMO is concerned that (i) it should be for them to carry out the transfer via the marine licence regime and (ii) they require post-transfer to *"clean up"* the remaining marine licences to ensure clarity as to where the benefit sits. c. However, there are provisions which requires all relevant parties to be made aware of who the benefit sits with. d. In our view this is an important Article to ensure that Transfer of Benefit works well across DCO and MLs and we feel that the protections are in-built so there can be no misunderstanding as to who has benefit and who enforcement would be against. e. The process has worked previously in practice and there is nothing novel about the way the process will work. f. In summary, the Applicant does not think there is a misunderstanding but instead a different in view about the burden.
3.7	ExA stated that MMO alludes to the fact that Secretary of State may make an unsafe decision and asked for the Applicant's view?	HPKC set out that the Applicant cannot draft on the basis that the Secretary of State might make an error of law. Instead, it must be the case that the Secretary of State is assumed to exercise its responsibility lawfully and reasonably. It cannot be envisaged (and the Applicant cannot draft on the basis of) the Secretary of State making such a decision.
3.7	The ExA stated that, equally well, the ExA cannot recommend that it make an Order which would lead unlawful decision. The ExA stated that it is compelled to ask the MMO to respond in writing.	
3.7	The ExA asked about MMO's position on Maintain and materiality	Emma Reid referenced Requirement 29(2) in Schedule 1 which the Applicant believes achieves the same aim as that requested by the MMO under its heading "Maintain and materiality".

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3.7	The ExA asked for the Applicant's position on the MMO's "determination timescales" point.	HPKC premised the Applicant's answer with the context that the determining timescales for the MMO – a 4 month determination period following pre-application consultation, which may be increased to 6 months if there is complexities – must be balanced against the CNP Infrastructure status of the Project and the need to develop at speed and scale. Emma Reid set out that the MMO Deadline 4 submission involved a reference to a 3-month determination period which applies in the context of the dDMLs in Schedule 12 – 15. The Applicant's position is that those plans will, as a matter of course, are less complex because they relate to minor works and therefore need a shorter determination period.
3.7	The ExA set out that the MMO's point is that the Schedule 12 – 15 dML discharges, though applicable to smaller structures, does not result in work which is necessarily more minor and that the MMO's position is that the timescales proposed is to avoid delay rather than add delays.	Emma Reid set out that the Applicant's view is that this is a matter that should be determined on a case by case basis so the Applicant disagrees that it would be necessary in all cases to extend the MMO determination timeframe.
3.7	The ExA referred to Schedule 10 – 15 as a whole and ExA asked "what would happen" if the MMO did not determine an application for approval in the timescales set out	Emma Reid set out that – from a practical perspective – the Applicant and the MMO would discuss and agree appropriate timescales.
3.7	The ExA asked about the arbitration provisions within the dMLs	Scott McCallum set out that the arbitration provisions have been disapplied in relation to the MMO. As a result, on that basis the arbitration would not be the ultimate consequence, instead you would have to seek resolution through the courts if a party was acting unreasonably, which is not somewhere you'd ever expect to get to. However, the point remains that we believe it important to have reasonable timescales within the dMLs.

Agenda Item	ExA Question / Context for discussion	Applicant's Response
3.7	The ExA suggested that the MMO's concerns "go away" if you agree that 6 months could be agreed generally. ExA asked why the for the sake of two months the Applicant would wish to risk the delay.	Scott McCallum set out that the issue relates to lead-in times: a. for instance, putting in place the ANSs has to happen sufficiently in advance of the other works. b. As a result, every day matters for the purpose of sticking to programme c. There is a risk, and a risk borne by the Applicant, to ensure that the plans can be discharged in the relevant timescales; however the Applicant cannot easily concede on this issue given the tightness of timescales. d. The Applicant requires to be able to procure decisions from this, and other, discharging authorities in a reasonable time period, which is why discussions are on-going on what are the more complicated issues which may require longer time periods. e. The Applicant hopes to discuss this with the MMO at its upcoming meeting. HPKC provided context for the Applicant's position, being that: a. The Planning Act 2008 provides tight timeframes for determining the DCO and all that goes with it: a six-month examination deadline; three month report deadline; 3 month Secretary of State decision deadline. b. This results in two consequences: (i) it frames what might be a reasonable time for matters of detail on one part of project (ii) it sets the context of expectation that NSIPs will be dealt with expeditiously when viewed in its statutory context (that is before you consider the policy context of NPSs and Government policy which emphasises the need for urgency). c. All of this sets a context for whether 6 months or perhaps something shorter but considerable (i.e. four months) would be an appropriate time. d. Time matters because of both the Applicant's procurement but, importantly, the public interest and the clock is ticking in public interest terms. As a result, delay must be justified and must serve a public interest if justified.

Agenda Item	ExA Question / Context for discussion	Applicant's Response
3.7	The ExA stated that MMOs justification appears to be that longer timeframes are sought to avoid the potential for delays. By implication, MMO sees there to be a greater risk of delay for a shorter period	HPKC stated that it would be for the Secretary of State's decision the point if it was convinced of the MMO's argument, on a detailed examination of the justifications for a six month period by the MMO and on review of detailed submissions by the MMO that a six months is less likely to lead to delay than a four month period months. However, this would have to be the result of "justification" by the MMO rather than "assertion". The Applicant has sought to set out the practical issues with delay. If the MMO wishes to persuade the Secretary of State and ExA of its position, it must justify it.
3.7	ExA summarised that the Applicant will be (1) taking these points forward to discuss with the MMO and (2) the Applicant was going to confirm what would happen if not determined in the relevant period.	
3.7	The ExA asked (1) how much consultation there would be with the MMO before the plans are submitted and (2) once the consultation process is started, can the clock be stopped during this process.	Greg Tomlinson set out that (1) it would be within any Applicant's post consent plans to engage with MMO and relevant consultees on a plan before submitting the final version and this would be the Applicant's intention. It would not be our intention to submit cold versions of complex documents for discharge. Regarding (2) if there is an issue with a document the MMO would typically write to the Applicant and ask for an update or further information which may necessitate the need for further consultation but the Applicant would seek to avoid this happening. HPKC referred to the subsection of the relevant licences which sets the determination period (Note: this was Condition 14(4) of Schedule 10 but the condition section and subsection may vary between the relevant Schedules). This is a period which applies "*unless otherwise agreed in writing by the undertaker*", meaning it provides the mechanism to agree to extend.

Agenda Item	ExA Question / Context for discussion	Applicant's Response
3.7	The ExA asked the Applicant to update on progress on the issue of maintenance reporting.	Emma Reid set out that this remains an outstanding issue, where the Applicant believes the MMO's request is unnecessary on the basis that Condition 13 requires submission of a operation and maintenance plan and condition 7 requires notification to be made. Taking these points together, the requirement for further reporting would be unnecessary.
3.7	The ExA asked whether progress towards resolution has moved forward	Emma Reid set out that there is no clear middle ground but this will be on the agenda for the meeting with the MMO.
3.7	The ExA set out that MMO position is that the *force majeure* definition is too broad and would allow deposit in circumstance which were still under the vessel mangers control	Emma Reid stated that the Applicant disagrees on the basis that: a. The drafting refers to necessity, not, for instance, desirability b. The drafting refers to certain reasons (threat to vessel or human life) which sufficiently restricts the operation of the condition.
3.7	The ExA asked whether the wording ("any other cause") was a broad scope	Emma Reid stated that the wording of Condition 12(1) must be read in the context of the surrounding words which provide the relevant restrictions on the scope of the application of the condition
3.7	The ExA asked if it was the Applicant's position that the wording could not encompass, for instance, negligence.	HPKC set out that it would need to be shown that there was necessity due to either threat to vessel or human life and that in these circumstances, the provisions kick in. What gives rise to such threats is broad because many things could give rise to this.
3.7	The ExA asked whether it wasn't it the case that the wording ("any other cause") must be a reference to force majeure rather than just anything beyond force majeure	HPKC said that you would have to read title and condition together but that if there was a concern that the two things aren't sufficiently clear then we can take it away. The essential point is that one or other of the two conditions (threat to vessel or human life) are met then the deposit could take place but that it's not clear to HPKC why the cause of the emergency matters – whether it be weather, negligence or another cause. Instead the question is what should be done in such an emergency.
3.7	The ExA stated that MMOs concern is that on the face of it while a vessel master may take the actions as set out where human life or vessel at	HPKC questioned whether it may be that the concern is over the title of the Condition (force majeure) rather than its content.

Agenda Item	ExA Question / Context for discussion	Applicant's Response
	risk, the wording is broader than force majeure properly conceived.	The question – if you change the name of the clause – is what should happen in this emergency and is it appropriate to have a clause such as this. HPKC set out that the provisions reflect the defence of "action taken in an emergency" under s 86 of the Marine and Coastal Access Act 2009 if a person is charged with an offence under s 85. The question of principle is whether it is right to bring that defence into an Article condition. If that is accepted then perhaps the best way to deal with it is to change the title of the condition Post-hearing note: the Applicant's position on this issue is set out Document 22.3 (see "Force Majeure" section within sub-heading 1.2.1.2). As set out therein, in light of the comments raised by the MMO and the discussions at Issue Specific Hearing 6, the Applicant has sought to find a pragmatic solution with the MMO and proposed an amendment to the relevant condition.
3.7	The ExA recorded an action for The MMO to provide responses to any and all of the points covered in relation to it at the Hearing (Action Point 36). Over the course of the above discussion, the ExA recorded a range of other points in relation to the Application's submissions and further engagement between the Applicant and MMO. These were recorded in:	The Applicant's response to Action Points 33 – 35 are provided in the Applicant's Response to Actions Points recorded at ISH5 and ISH6 (Document 22.9).

Agenda Item	ExA Question / Context for discussion	Applicant's Response
	a. Action Point 33 b. Action Point 34 c. Action Point 35	
3.7 Schedule 18 of the draft DCO – Protective Provisions (The Applicant will be asked to provide an update to the ExA on the progress with the drafting of / agreement on Protective Provisions for all parties.)		
3.7	The ExA asked for an update on progress on PPs.	Emma Moir provided an update on the status of PPs which, for brevity, is provided in Appendix 3 of this summary.
3.7	The ExA asked whether Mr Brady, Engineering Manager for Witham Forth District IDB wished to add anything in relation to the specific update on IDBs. Mr Brady provided an update including in relation to the status and drafting of the Planning Performance Agreement / Memorandum of Understanding.	The Applicant responded to state that it had not had sight of relevant documents referred to by Mr Brady and did not have instructions on the points raised but the Applicant could consider the point and revert in due course (directly with Mr Brady or the IDBs if preferable).
3.7	The ExA asked for anticipated timeframes for the completion of PPs	The Applicant set out that to some extent it was difficult to provide timeline for completion PPs because it was reliant on receiving feedback from other parties, but the Applicant would continue to progress agreement where possible provide an update at D5 and endeavour to submit agreed PPs before the close of the Examination. In relation to the Ørsted IP's PPs which the ExA had asked about, HPKC set out that: a. The distance is such that there is no impact; b. Nevertheless proximity agreements are being discussed in relation to certain of the Ørsted IPs (Race Bank and Lincs offshore windfarm) which is the appropriate legal mechanism to deal with any issues which might arise. We don't consider

Agenda Item	ExA Question / Context for discussion	Applicant's Response
		that PPs are warranted in this context but we are in discussions regarding proximity points c. HPKC stated that the Ørsted IPs are attending tomorrow so an update can be provided then should they wish to give one.
3.7	The ExA asked whether the Applicant was aware of any other interested parties with which it may need still to agree protective provisions at this stage	The Applicant confirmed there were none.
3.8 Actions arising from the Issue Specific Hearing		
3.8	The ExA set out the actions arising.	The Actions, and the Applicant's responses, are set out in Section 3 of this Hearing Summary. A comprehensive list of Actions across ISH5 and ISH6 are also provided in the Document 22.1 (the Applicant's Covering Letter). Further detail and written explanation in response to Actions is provided in The Applicant's Response to Actions Points recorded at ISH5 and ISH6 (Document 22.9).
3.9 Any other matters arising.		
3.9	No such matters were referred to.	
4. Next Steps		
4.	The ExA set out next steps including that Written Summaries of oral submissions are requested at Deadline 4a.	
5. Closing		
5.	The ExA made closing remarks including thanking participants and closed the meetings.	

3 Appendix 1: Note of Duty to Further the Purposes of National Landscapes

Background

- Two National Landscapes are located within the SLVIA study area. These comprise the Lincolnshire Wolds National Landscape (approximately 21.5km from the ORCPs, approximately 64km from the array area) and the Norfolk Coast National Landscape (approximately 32km from the ORCPs, approximately 55km from the array area).

Law and guidance

- S.85(A1) of the Countryside and Rights of Way Act 2000 provided that in exercising or performing any functions in relation to, or so as to affect, land in an AONB in England, a relevant authority must seek to further the purpose of conserving and enhancing the natural beauty of the AONB.
- Ss.(1A) authorises the Secretary of State ("**SoS**") to make regulations to provide for how a relevant authority is to comply with the duty under ss.(A1) (including provision about things that the authority may, must or must not do to comply with the duty). No such regulations have yet been made.
- Those two subsections were added by s.85 of the Levelling-Up and Regeneration Act 2023. So far as the Applicant is aware there have not been any decided cases since those amendments were made which consider their meaning and effect.
- DEFRA has recently published *Guidance for relevant authorities on seeking to further the purposes of Protected Landscapes* ("the DEFRA Guidance"). This provides guidance as to the application of the s.85(A1) duty, although its status is as guidance not law.

Meaning and effect of the duty

- The DEFRA Guidance identifies decision-making on NSIPs as a function in respect of which the duty may apply.
- The following helpful general points can be gleaned from what is said under the heading "*The Protected Landscapes Duty*" in the DEFRA Guidance:
    - The duty is intended to *complement* the existing statutory functions, duties and responsibilities, rather than prevent them being discharged.
    - It does this by ensuring that the purposes of designation are recognised in reaching decisions and undertaking activities that impact these areas.

- Consideration of what is *reasonable and proportionate* in the context of fulfilling the duty is decided by the relevant authority and *should take account of the context of the specific function being exercised*.

- In other words, the decision-maker has a context specific judgment to make in each case as to what is reasonable and proportionate to fulfil the duty in that particular case. The duty does not override the decision-making framework set by the PA 2008 and the NPSs.
- All of that is consistent with the way Parliament has chosen to frame the duty in a way that does not mandate any particular outcome (unlike, say, the duties that apply under the Habitats Regulations).
  - It is not a duty to ensure the decision made furthers the statutory purpose, but instead to "seek to" further it.
  - This allows for the exercise of judgment as to whether, for example, to make a DCO that does not itself further that purpose.
  - 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 obliged the decision-maker to achieve it nevertheless.
- This means that the duty does not oblige the decision-maker to set aside or give less weight to other important and relevant considerations which may militate against an outcome that furthers the purposes of the designation. That is reflected in what the DEFRA Guidance says under the heading "What a relevant authority should do", which seeks to explain what the active rather than passive nature of the duty means in practice. The examples given in the bullet points reflect the need for a context specific and proportionate judgment to be reached as to what is appropriate and justified in any individual case. For example:
  - "a relevant authority should take *appropriate, reasonable and proportionate* steps to *explore* measures which further the statutory purposes of protected landscapes."
  - "*as far as is reasonably practical*, relevant authorities should *seek to* avoid harm and contribute to the conservation and enhancement …"
  - "for … development management decisions affecting a Protected Landscape, a relevant authority should *seek to* further the purposes of the Protected Landscape – in so doing, the relevant authority should consider whether such measures can be embedded in the design of plans and proposals, *where reasonably practical and operationally feasible*."
- In exercising the necessary judgment, the SoS will be obliged to take into account the conclusions that he reaches as to the existence and, if relevant the scale, extent and significance pf any harm that the development may cause to the statutory purposes of the Protected Landscape as part of the process of EIA he must undertake pursuant to reg. 21 of the EIA Regs.

- In this case the assessment in the ES concludes that the effect of the offshore elements of the Project would be minor and not significant in relation to the Lincolnshire Wolds and Norfolk Coast National Landscapes. No significant adverse effects are identified on the special qualities or characteristics of the National Landscapes.
- Natural England advises that it does not consider the new guidance of the LURA duty has any implications for the proposal, given the conclusions it has reached regarding the absence of impacts to designated landscapes.

- In addition, the SoS will be obliged to have regard to the policy in respect of such impacts in the NPS, in particular:
  - The recognition that virtually all nationally significant energy infrastructure projects will have adverse effects on the landscape (EN-1 [5.10.5])
  - Having regard to siting, operational and other relevant constraints, the aim when designing a project should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate (EN-1 [5.10.6]). The Applicant's answer to 1st WQ SV1.1 [REP2-051] explains how that has been done here.
  - The fact that a proposed project will be visible from within a designated area should not in itself be a reason for the SoS to refuse consent (EN-1 [5.10.34])
  - Where the NPS requires an applicant to mitigate a particular impact as far as possible, but the SoS concludes that there would still be residual adverse effects after the implementation of such mitigation measures, the SoS should weigh those residual effects against the benefits of the proposed development. For project such as this one that qualify as CNP Infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional circumstances (EN-1 [4.1.7]).
  - The policy on the imposition of requirements and on seeking and taking account of obligations, and the tests of necessity, reasonableness etc. that apply in both cases).
- Hence any suggestion that a requirement should be imposed or an obligation sought to achieve enhancements to the Protected Landscapes would in this case clearly be wrong.
  - The duty does not amount to an obligation to achieve an improvement or to avoid any and all harm.
  - The NPS does not impose any policy obligation to that effect.
  - There can be no credible suggestion that any such requirement or obligation is necessary to make this development acceptable in planning terms.

4 Appendix 2: Applicant's position on Article 19

Background and Summary

- At ISH5, the ExA asked the Applicant to provide its justification for the inclusion of Article 19 (Removal of human remains).
- At ISH1, the ExA questioned the need for Article 19 of the draft DCO, and directed the Applicant to the decision of the Secretary of State on the Longfield Solar Farm Orde 2023, in which the Secretary of State considered a similar article was deemed not to be required because "There are no known burial grounds within the Order limits so the Secretary of State considers this article to be unnecessary. Provision for any human remains should be included in the written scheme of investigation, as required by paragraph 12 of Schedule 2."
- As explained in the Explanatory Memorandum (Document 3.2, version 6), the purpose of this article is to enable the undertaker to remove human remains from the Order limits, and provides a process for notification and identification of the human remains as well as their re-internment or cremation. There are different procedures in place for remains which were interred more than 100 years ago, and those which were interred more recently than that. Without such an article in place, in the unlikely event that human remains are discovered during the construction of the project, this could cause unnecessary delays to the Project.
- In summary, there is a need for the Article on the basis of the absence of any public interest harm caused by its inclusion weighed against the public interest benefit in ensuring that the removal of human remains, should they be found, is dealt with in a timeous and reasonable manner without risking delay to Critical National Priority Infrastructure which requires to be realised urgently in line with national policy.

Justification

- The inclusion of this Article is justified not by the likelihood of discovery, but by the consequences of non-inclusion. As evidenced by its inclusion in the Model Provision (Model Provision 17) and made DCOs, this justification isn't specific to a particular scheme. The land over which the project is to be developed does not give rise to a high or elevated risk but precedent suggests that human remains may be found in the UK in places where they are not expected. For instance, human remains were discovered at Chambers Wharf during the Thames Tideway Tunnel development, as discussed in the article provided in Annex A to this Appendix.
- In the absence of this Article, it would be necessary for the Applicant to meet the requirements of a number of other regimes regulating the removal of human remains in the event that any are found. The possible delay that this could cause requires to be considered in the

context of the Project's status as "Critical National Priority Infrastructure" for which there is an urgent need under National Policy Statements ("**NPSs**") EN-1 and EN-3.

- Conversely, there is no downside of the Articles inclusion: should no human remains be found, the Article will simply not be used.
- Article 19 therefore acts as an insurance policy against a low likelihood but high impact event which may otherwise lead to a delay in the construction of urgently needed low-carbon infrastructure: There is a significant public interest benefit from the Articles inclusion. On the other hand, no person will benefit if Article 19 is removed and no public interest benefit will be realised by its removal.

Precedent

- The Applicant notes the ExA's previous reference to the Secretary of State's decision in the Longfield Solar Farm Orde 2023, in which an Article similar to the Applicant's was removed on the basis of apparent lack of need.
- It is the Applicant's position that the Longfield Solar Farm Order 2023 decision does not provide any real assistance for the purpose of this examination and has limited precedent value. The matter of the need (or otherwise) of the article was not considered in the Examining Authority's report, which appears to reflect the fact that the need for inclusion of the provision was not explored or debated during the examination or subject to consideration by the Examining Authority. The Applicant cannot find any evidence that the Longfield Solar Farm applicant was given an opportunity to comment on the removal of the article prior to it being so removed. In addition, the reasoning provided by the Secretary of State for removing the article is extremely brief.
- As discussed by the Applicant in Issue Specific Hearing 5, this issue arose and was considered by the Examining Authority in the Immingham Green Energy Terminal (**"IGET"**) DCO Examination.
- The IGET DCO was consented on 6 February 2025, and the removal of human remains article has been retained. The ExA recommendation report states at paragraphs 7.4.17-7.4.19:
    - "*Whilst the ExA note that similar Articles have been deleted during the Examination of recently made DCOs, by the relevant SOS, there appears to have been very little discussion as to the need or justification for those Articles during the Examination of the relevant NSIP. In this case however, the matter has been the subject of questioning by the ExA and the Applicant has provided additional detail and explanation to justify why Article 21 is needed.*
    - *The ExA agrees with the Applicant's submissions that the chances of encountering human remains would appear to be low, however we accept that this cannot be ruled out in its entirety. In this regard, the ExA notes that there are alternative procedures in place, through other legislation, for dealing with any unexpected discoveries. The ExA also agrees with the Applicant on the*

limitations of this legislation and the potentially negative effects this could have upon the delivery of the Proposed Development. The ExA finds that the process set out in Article 21 would mitigate this risk. Furthermore, the ExA notes the Applicant's point that this process would only be engaged should human remains be encountered.

- *Given the nature of the Proposed Development, and in particular the contribution it would make to the overall aims of delivering wider climate change ambitions, the ExA agrees with the Applicant that there is a need, in this instance, for a consolidated approach, as presented in Article 21. As a consequence, the ExA do not recommend any further amendments to this Article."*
- The Secretary of State decision letter did not delve into the matter of the need for the article.

- to the best of the Applicant's knowledge the recent precedent of the IGET DCO is the only instance of a similar Article being tested during Examination in order to produce a considered decision. It is the Applicant's position that this can give the ExA and Secretary of State confidence that the approval of such an Article in circumstances such as the Applicant's is appropriate.[2]

[2] Particularly, the ExA's Recommendation Report noted that the system for removal outside the DCO would create delays and that there was a need for the approach taken in the equivalent article in the IGET DCO. ExA Recommendation Report, 6 November 2024. Available on the Planning Inspectorate's webpage Immingham Green Energy Terminal (accessed 25.02.2025)

Annex A: News Article on human remains discovered at Chambers Wharf during the Thames Tideway Tunnel development

(https://molaheadland.com/the-medieval-mystery-of-the-booted-man-in-the-mud/)

The medieval mystery of the booted man in the mud

03 DEC

(https://molaheadland.com/the-medieval-mystery-of-the-booted-man-in-the-mud/)

Written by **MOLA Headland (https://molaheadland.com/author/mola/)**

Categorised **Blog (https://molaheadland.com/category/blog/)**, **News (https://molaheadland.com/category/news/)**, **Tideway (https://molaheadland.com/category/tideway/)**

A mysterious male skeleton, lying face-down deep in the Thames mud, with a pair of in-situ thigh-high leather boots has been discovered by our archaeologists working on one of the sites being used to build London's **super sewer (https://www.tideway.london/the-tunnel/)** in Bermondsey.

The skeleton was discovered at **Tideway (https://www.tideway.london/)**'s Chambers Wharf site in Bermondsey, where work is currently underway to build the Thames Tideway Tunnel to stop sewage pollution in the River Thames.

Jack Russell, Archaeology Lead for Tideway, said:

"The Tideway archaeology programme has allowed us to gather really interesting new evidence for how Londoners have used the river throughout history. As we work towards our goal of cleaning up the Thames and reconnecting London with it, it's really important to acknowledge the lessons we can learn from significant discoveries like this."

The river was a hazardous place even in the late 15th century, so perhaps his occupation was the cause of his death and the reason he came to be discovered. Could he have been a fisherman, a mudlark or perhaps a sailor? Was he climbing the Bermondsey Wall when he fell into the water? Did he become trapped in the mud and drown? The discovery has sparked an investigation by a team of our archaeological and osteological experts who are unravelling the mystery of the booted man in the mud. So what does the evidence tell us?

The boots

Our finds specialists studying the boots believe they date to the late 15th or early 16th century. Leather was expensive and often re-used at this time and experts believe it is unlikely that someone would have been buried wearing such a highly-prized item. The boots would have reached thigh height when fully extended therefore would have been ideal for walking out into the river and through the sticky Thames mud, so were perhaps waders. They were built to last: our conservators revealed that they were reinforced with extra soles and stuffed with an unidentified material (possibly moss) perhaps to make them warmer or improve the fit. This research suggests the person wasn't buried deliberately and the clues also indicate the owner may have made his living from the river, which could well have led to his untimely demise.

Beth Richardson, Finds Specialist at MOLA Headland, said:

"By studying the boots we've been able to gain a fascinating glimpse into the daily life of a man who lived as many as 500 years ago. They have helped us to better understand how he may have made his living in hazardous and difficult conditions, but also how he may have died. It has been a privilege to be able to study something so rare and so personal."

The bones

It's not unusual to find burials on the foreshore, but the booted man's position was unusual: face-down, with one arm above his head with the other bent back on itself to the side. These clues could suggest that he fell or drowned and was covered quickly by the ground as it moved with the tide. Our osteological experts have not identified evidence of any injuries at the time of death or a cause of death. However, they have uncovered some clues about how he might have made his living, evidence of the damage to his physical health from the extreme physical demands of his work on his body, and why he might have ended up in the silty deposits of the River Thames where he lay undisturbed for more than 500 years. Our osteologists think it's possible he was under the age of 35 at the time of death, by then he had already led an active life which left its mark on his skeleton. His daily life wouldn't have been comfortable – he would have felt pain and discomfort from osteoarthritis. Possibly the biggest clues about his life, are deep grooves found on his teeth. They were caused by a repetitive action like passing rope between his teeth as a fisherman might – which may also suggest that he made his living from the river.

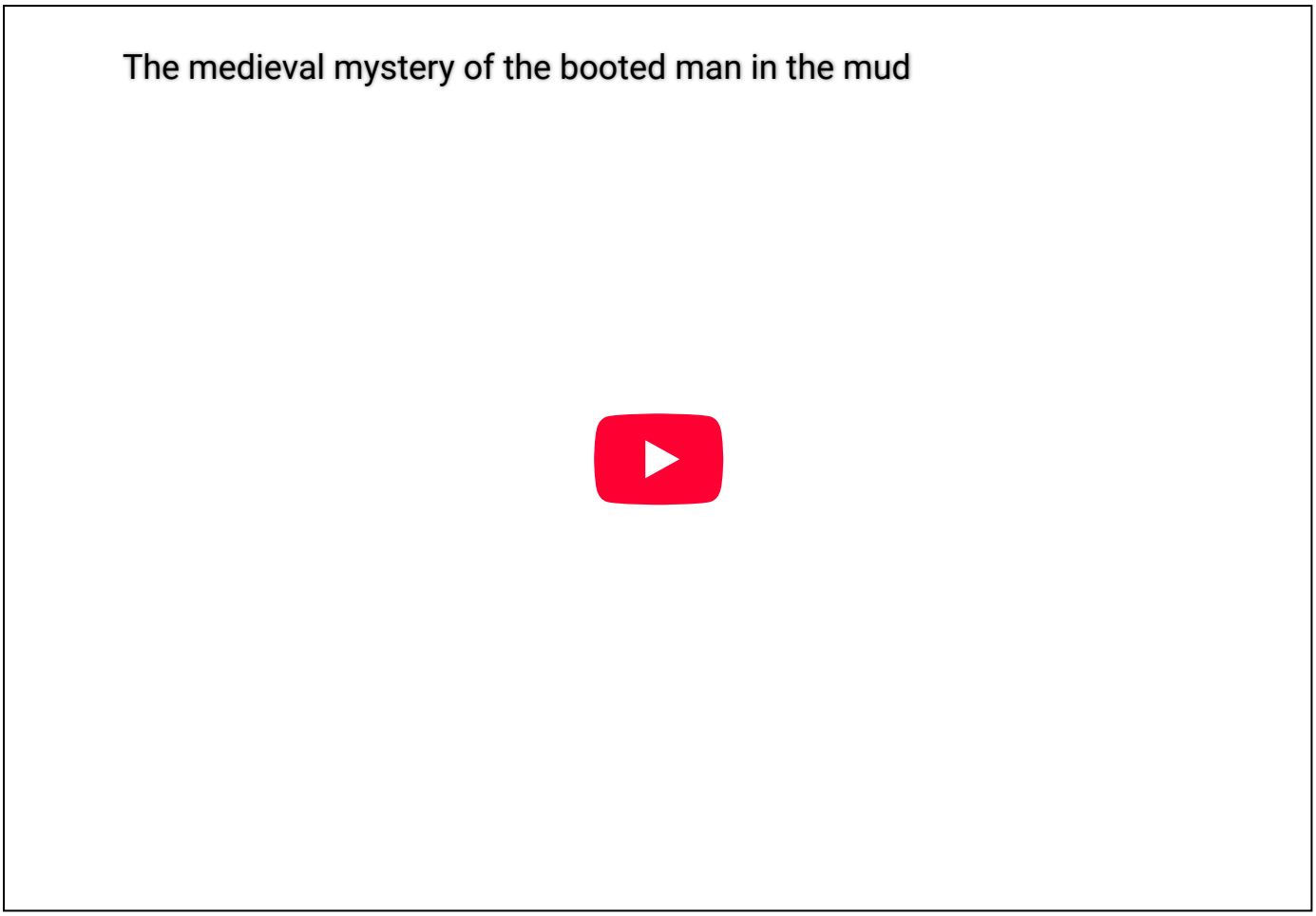
Niamh Carty, Human Osteologist at MOLA Headland, said:

> *"Studying a human skeleton provides incredible insights that allow us to create osteo-biographies of a person's life. With the booted man, examining his teeth has given clues about his childhood and marks on his skeleton have allowed us to proffer ideas about the aches and pains he may have suffered from on a daily basis, the toll his job took on his body and even a little about what he might have looked like."*

The discovery location

It may be that his discovery location – at a bend in the river downstream from the Tower of London at Chambers Wharf close to where the medieval Bermondsey Wall stood – is a natural confluence where materials accumulate in the river. The skeleton was uncovered during the construction of a shaft at Chambers Wharf, where one of the main tunnel boring machines digging the super sewer is due to start tunneling later next year. We may never know the answer to exactly how the booted man came to rest in the river, but his untimely death has offered an incredible opportunity to learn from

him: to explore the relationships between the people of London in the past and the river Thames and how this dangerous and powerful natural resource was used by so many as a means of making a living.



5 Appendix 3: Applicant's Update on Protective Provisions at ISH5

The below provides the oral submissions made by Emma Moir regarding the current status of PPs.

Party	Status
Environment Agency Schedule 1, Part 4	The Applicant and The EA are actively engaged on the negotiation of the Protective Provisions and co-operation agreement. Negotiations are progressing well and there remain two principal points at issue between the parties on the PPs, along with some other minor points of drafting. The principal issues between the parties are as follows: The definition of "specified work" – The EA has proposed an amendment to the definition of specified work to include any works that involve any interference with the ability of the EA or its contractors to carry out the beach nourishment works or access to its existing compound at Roman Bank. The Applicant disagrees that this is necessary. The Applicant and the EA have been discussing the terms of a cooperation agreement to deal with co-ordination of the EA's beach nourishment works and the Applicant's works, for which principles of working together to co-ordinate works have been proposed and agreed in principle. This amendment to the protective provisions would require the EA to consent to any ODOW works that could interfere with the beach nourishment works, which goes further than the principles agreed for the cooperation agreement. Other specified works for which consent is required relate to matters which could impact sea defences, remote defences, drainage works etc. for which it is clearly imperative the EA has sign off over such works due to the risk of environmental harm if those defences/works are impacted, whereas the beach nourishment works is largely a programme concern which will be adequately covered in the agreement. It should also be noted that the EA's access to Roman Bank is already protected by paragraph 8(2) of these protective provisions. Indemnity provisions (paragraph 11) – Discussions are ongoing between the Applicant and the EA regarding whether the indemnity set out in paragraph 11(1)(b) should apply to the specified works to which the protective provisions relate or the authorised development. The EA has provided the Applicant with a draft beach works cooperation agreement to review following productive discussions on the terms of the agreement. The Applicant will consider the draft provided and seek to progress this with the EA as soon as possible.
Drainage Authorities Schedule 18, Part 5	The Protective Provisions for the drainage authorities are set out at Part 5, Schedule 18 of the draft DCO. The negotiation of the Protective Provisions is well progressed and the developed drafts are currently at review by the IDBs' solicitor. The Applicant awaits any detailed comments the IDBs' solicitor may have. Potential question re disapplication wording in Art 34: The ExA might ask about a letter of consent by the Black Sluice IDB to the disapplication wording. The Black Sluice IDB has been consulted on the change and has not provided any comments. Whilst not strictly required under s120 of the Planning Act 2008, the Applicant would also seek the Black Sluice IDB's consent to the disapplication of the relevant local Acts and Orders relevant to their undertaking.

	IDBs have engaged on the side agreement – discussions are ongoing
Port of Boston Limited/Harbour Authority Schedule 18, Part 6	Agreed with POBL and included in the draft DCO in Part 6 of Schedule 18 (Protective Provisions). A letter of consent to disapplication of legislation has also been provided by POBL (REP2-061). This provides POBL's written consent to the disapplication of legislation set out in article 34(1) of the DCO insofar as they are inconsistent with the Protective Provisions for the protection of the harbour authority.
NGET Schedule 18, Part 7	The Applicant and NGET are actively engaged on the negotiation of the Protective Provisions and side agreement. Negotiations are progressing well and there remain two principal points at issue between the parties, along with some other minor points of drafting. The principal issues between the parties are as follows: Acceptable insurance – The parties are discussing what should be included in the definition of "acceptable insurance". The Applicant has amended NGET's preferred protective provisions based on advice from its insurers on the availability of such insurance, and awaits feedback from NGET who the Applicant understands is awaiting advice from its own insurers. oThe restriction on the acquisition of land – the Applicant has proposed an amendment to NGET's preferred protective provisions at paragraph 6 which, rather than restrict the use of compulsory acquisition powers over all land forming part of the Proposed NGET Projects Sites, proposed to restrict this only in the Connection Area. This is because: The definition of Proposed NGET Projects Sites is "(a) land on which any Proposed NGET Projects apparatus is situated; and (b) land on which Proposed NGET Projects apparatus is anticipated to be situated (in so far as the same has at any time been notified by National Grid Electricity Transmission Plc in writing to the undertaker);". Given the uncertainty of the final location for both the EGL3 and 4 and G2W projects at this stage, the Applicant does not consider it to be reasonable or proportionate to restrict the use of its compulsory acquisition powers over an undefined area which NGET has broad scope to determine (and which it may not in fact need in future depending on the final layouts for each project). Based on NGET's written representation (paras 1.29-1.31) [REP1-041] the area of most concern for NGET in relation to the use of compulsory acquisition powers appears to be the Connection Area. The Applicant's proposal is therefore considered to provide more certainty, while still addressing NGET's principal concern. The Applicant awaits feedback from NGET on this proposal.
National Gas Transmission Schedule 18, Part 8	The Applicant and NGT are actively engaged on the negotiation of the Protective Provisions. Negotiations are progressing well and there remain one principal point at issue between the parties, along with some other minor points of drafting. The principal issue between the parties is as follows: Acceptable insurance – The parties are discussing what should be included in the definition of "acceptable insurance". The Applicant has amended NGT's preferred protective provisions based on advice from its insurers on the availability of such insurance, and awaits feedback from NGT who the Applicant understands is awaiting advice from its own insurers.
Cadent Gas Schedule 18, Part 9	The Applicant and Cadent Gas are actively engaged on the negotiation of the Protective Provisions and side agreement. Negotiations are progressing well and there remain two principal points at issue between the parties, along with some other minor points of drafting. The principal issues between the parties are as follows: 1. Indemnity provisions – paragraph 10, Part 9, Schedule 18 of the DCO (3.1) – the Applicant and Cadent Gas disagree on whether the exclusion of liability of the undertaker for any loss which is not reasonably foreseeable (subparagraph 10(3)(c)) ought to be included in the Protective Provisions. The Applicant considers that the exclusion of the indemnity for loss which is

	not reasonably foreseeable is an appropriate provision to include in the Protective Provisions. This aligns with the general principles for recovery of loss under tort law. The Applicant and Cadent Gas disagree on whether there should be an overall cap on the undertaker's liability under the Protective Provisions (subparagraph 10(6)). The Applicant's view is that an overall cap on liability is appropriate so that the Applicant can have relative certainty on its level of financial exposure under the Protective Provisions. The Applicant considers that the proposed £50 million cap in the aggregate is substantially in excess of any likely claim that could be made by Cadent Gas, in light of the minor nature of the interactions between the Applicant's proposed works and Cadent Gas assets. The Applicant would be content for this provision to be included in the side agreement, rather than on the face of the Protective Provisions. 2. Insurance provisions – the Applicant and Cadent Gas disagree on the insurance requirements which should apply to the specified works. The Applicant disagrees with the insurance requirements as set out by Cadent Gas, following advice from the Applicant's insurance advisors. In particular, the Applicant disagrees that the following should be specific requirements of the insurance policy "(a) Cadent as a Co-Insured; (b) a cross liabilities clause; (c) a waiver of subrogation in favour of Cadent" as set out in the definition of "acceptable insurance" in the draft protective provisions submitted into the Examination by Cadent Gas (REP2-084). For example, the inclusion of Cadent Gas as a co-insured is unnecessary. The insurance in question is a third party liability policy designed to insure against third party claims (made by Cadent Gas) in respect of the undertaker's works. The Applicant's position is that these points are more appropriately dealt with in a side agreement, rather than the Protective Provisions. The Applicant and Cadent Gas continue to negotiate to discuss and agree the drafting in relation to these two principle issues, with a view to finalised text being agreed prior to the close of Examination.
Network Rail Schedule 18, Part 10	A set of PPs for the protection of Network Rail are being negotiated between the Applicant and Network Rail. There remains one outstanding point between the parties which is the subject of ongoing discussions:– the Applicant considers that there should be a time limit (24 months after completion of the project works is proposed) within which Network Rail would need to identify and require carrying out of additional works as a consequence. The Applicant is actively engaging with Network Rail on these PPs and is seeking to agree these as soon as possible.
Perenco Schedule 18, Part 11	The Applicant and Perenco are actively engaged on the negotiation of the Protective Provisions and side agreement. Negotiations are progressing well and there remain three principal points at issue between the parties. The principal issues between the parties are as follows: 1. The radius of the communications corridors – the Applicant has proposed a 50m radius from the communications line. The Applicant awaits confirmation from Perenco that this is agreed. The infrastructure permitted within the communications corridors – The Applicant's position is that WTG towers only should be excluded from being erected in the communications corridors. This is on the basis that turning blades are not expected to interfere with the line of sight communications

	between platforms. Perenco disagrees with this and wants no part of any WTG to be erected in the communications corridors. Discussions are ongoing between the parties on this point. Infrastructure to be permitted in marine corridors – Perenco have requested amendment to paragraph 3 to allow for marine corridors to be free from other permanent or temporary infrastructure unless with their agreement. The Applicant does not agree as this would impose unnecessary control in respect of installation of cables across the marine corridor which would not unreasonably hinder the ability of Perenco to use the marine corridor for vessel access. The protective provisions provide that if the undertaker plans to undertake works within 500m of the Galahad Assets, the Malory Assets, or the Pickerill Assets, the undertaker has to notify the relevant asset owner and the undertaker and the owner must, unless agreed otherwise, acting reasonably, agree and enter into a co-existence and proximity agreement as soon as reasonably practicable, therefore a framework to deal with co-ordination is already in place. Discussions are ongoing between the parties on this point.
Shell Schedule 18, Part 12	A draft set of protective provisions was issued to Shell on 28th September 2024. Following progress on discussions with Perenco, a revised set of protective provisions mirroring the approach taken in the Perenco protective provisions was issued to Shell in November 2024. A further revised set of protective provisions, accounting for information on the relevant licence received from Shell and updates to reference the Shell Protective Provisions Plan, was issued to Shell in January 2025. Two meetings were held with Shell in December 2024. As at the date of this submission, no comments have been received from Shell on the draft protective provisions but a further meeting has been proposed by the Applicant for 5th February. Notwithstanding this, the Applicant considers protections should be in place for the Barque assets and has therefore included the draft protective provisions in Schedule 28 of the dDCO.