

Outer Dowsing Offshore Wind

The Applicant's Written Summary of Oral Case Put at the Compulsory Acquisition Hearing 2 held on 19 March 2025

Deadline 6

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Acronyms & Definitions

Abbreviations / Acronyms

Abbreviation / Acronym	Description
AP	Affected Party
DCO	Development Consent Order
CNP	Critical National Priority
CAH	Compulsory Acquisition Hearing
ECC	Export Cable Corridor
ExA	Examining Authority
HoTs	Heads of Terms
NGSS	National Grid Substation
TCE	The Crown Estate
THC	TH Clements
OnSS	Onshore Substation

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.
Compensation Code	a collective term used for the principles relating to compensation for compulsory acquisition as set out in Acts of Parliament
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.
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

Term	Definition
	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).
The Project	Outer Dowsing Offshore Wind, an offshore wind generating station together with associated onshore and offshore infrastructure.

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 18 March 2025"*.
2. Compulsory Acquisition 2 (CAH2) for the Outer Dowsing Offshore Wind Farm took place on 19 March at 10am and was held in person and virtually via Microsoft Teams.
3. The CAH2 broadly followed the agenda published by the Examining Authority (the ExA) on 12 March (the Agenda) (EV14-001), save that the ExA added an additional agenda item regarding protective provisions relevant to compulsory acquisition .
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 Compulsory Acquisition Hearing 2

Table 2.11: Written Summary of the Applicant's Oral Case at CAH2

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 introduced the following speakers: <ul style="list-style-type: none"> a. David Wright, Land Manager, Outer Dowsing Offshore Wind b. Pippa Wright, Land Agent, Dalcour MacLaren. c. Emma Moir, Senior Associate, Shepherd & Wedderburn LLP
	Mark Westmorland-Smith KC (" MWSKC ") introduced himself as appearing on behalf of TH Clements (" THC ") and instructed by Mills and Reeve and introduced THC's team who appeared in person <ul style="list-style-type: none"> a. Sam Jeffery, Finance Director, TH Clements b. Fiona Barker, Principal Associate and Instructing Solicitor, Mills and Reeve, 	
	The ExA set out that the hearing was to hear and probe strategic case for the application in CA terms and hear from any Affected Persons (" APs ") who are interested parties with a legal interest in land. The ExA explained that the purpose of the hearing is to consider whether the relevant legal tests have been met, and that following the hearing, the APs are invited to make any final submissions at Deadline 6.	

Agenda Item	ExA Question / Context for discussion	Applicant's Response
3.2		
3.2(1) Section 122 and 123 of the Planning Act 2008 (PA2008)		
3.2(1)	<p>The ExA asked about entries in the most recent Land Rights Tracker (REP4-092) within which there are a number of plots where the negotiations are identified as having closed but objections remain open. The ExA referred to:</p> <ul style="list-style-type: none"> - Plot 25-005 (J W Grant Co and Andrew John Grant) - Plot 25-013 (Alan Richard Daubney, John Henry Daubney and Richard John Daubney) - Plots 28-015, 29-001, 28-016, 28-018, and 28-019 (Doreen Ann Belton) - Plots 42-018 and 42-020 (Gerald William Hicks) <p>The ExA noted that in each of these cases, the Land Right Tracker notes an option agreement has been exchanged, and asked the Applicant to provide an update on the status of the option agreements exchanged, and whether the objections have been removed or are anticipated to be removed before the end of the examination.</p>	<p>David Wright (“DW”) set out that there are parties who have signed Head of Terms or exchanged option agreements but there are representations still extant. The Applicant has asked if those representations can now be removed but has had no response from the agents of those parties. The Applicant’s view is that that these parties are content, but confirmation is needed from the parties’ agents in order to confirm this to the ExA.</p>
	<p>The ExA asked as a general point of clarification, what is the next stage beyond the exchange of option agreement</p>	<p>DW set out that an option agreement is the option to take rights at a future date. The Applicant will, post-financial close, serve a construction notice under the option agreement which will allow the Applicant to undertake construction of the</p>

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		Project and once works are completed and as built plans are made, rights would then formally taken by exercising the option.
	The ExA asked for clarification on, where agreements have been exchanged, whether that means they have been agreed.	<p>DW set out that there are two stages to the process: The Heads of Terms (“HoTs”) which when agreed are not binding and the option agreement which once exchanged is binding. The Applicant is satisfied that it has the needed rights to construct on the land where an Option Agreement is in place.</p> <p>HPKC set out that the HoTs identify what will be in the contract but that the option agreement <i>is</i> the contract and provides the contractual rights for the Applicant to take the interest specific in the Option at a future date.</p>
3.2(1)	The ExA noted that from the Land Rights Tracker (REP4-092) there are 86 APs where both negotiations and objections are indicated as being open, with the rights sought ranging from temporary possession to permanent rights and freehold acquisition, and asked if the status for each could be set out in writing at Deadline 6 (Action Point 1)	<p>Pippa Wright (“PW”) set out that there are 14 agreements outstanding with 11 affected parties.</p> <p>Given the limited number of outstanding agreements, PW provided an update on each, as follows:</p> <p>In respect of <i>Cable easement agreements</i>:</p> <ol style="list-style-type: none"> 1. Jane Brooks <ul style="list-style-type: none"> - The AP’s representative has communicated that they are not prepared to enter into a voluntary agreement at this stage until there is more certainty with the project. - The last communication was on 18th February 2025, where the AP was advised to instruct an agent, but the Applicant is yet to receive confirmation of this. - The Applicant is confident that a voluntary agreement can be obtained however this is likely to be post consent. 2. THC

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		<ul style="list-style-type: none"> - The Applicant has continued to engage with THC, the last meeting being the 25th February, and is continuing to engage with the expectation that a voluntary agreement can be achieved before the close of examination. 3. Julie Ann Mason <ul style="list-style-type: none"> - The Applicant has made best endeavours to reach a voluntary agreement with Julie Ann Mason - This included addressing the AP's concerns by committing within the DCO to drill under the land. - However, the parties are at an impasse with regard to compensation. - Should the Applicant utilise CPO powers contained within the DCO Julie Ann Mason will have access to the Upper Lands Tribunal to decide the appropriate amount of compensation payable. 4. Environment Agency <ul style="list-style-type: none"> - The AP is engaging with the Applicant with regard to the agreement and payments for the bridge crossing the Wainfleet Relief Channel. - The Applicant reissued a revised offer on 11th March 2025 and the Applicant awaits a response however the Applicant is confident that an agreement can be reached before the close of examination. 5. The Crown Estate – Rural Team <ul style="list-style-type: none"> - The Applicant has agreed financial consideration with TCE for the Onshore ECC following which the Applicant is awaiting updated HoTs from TCE to review and if acceptable sign off. - The Applicant is of the expectation that these will be agreed before Deadline 6 6. The Crown Estate – Coastal Team <ul style="list-style-type: none"> - The Applicant has agreed a financial consideration with TCE for crossing the river Haven.

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		<ul style="list-style-type: none"> - HoTs have been received from TCE and final comments from the Applicant have been submitted back for TCE review and approval. - The Applicant is of the expectation that the HoTs will be in an agreed form before Deadline 6. <p>In respect of <i>Mines and Minerals</i></p> <p>7. Church Commissioners</p> <ul style="list-style-type: none"> - The Heads of Terms are in an agreed form and the AP's professional representative is meeting with their client this week to review the Charities Act report. - The Applicant is confident this matter will be concluded and terms will therefore be agreed before Deadline 6. <p>In respect of <i>Connection Area Agreements</i></p> <p>8. George Hay and Sons</p> <ul style="list-style-type: none"> - The AP has signed HoTs where the cable corridor is defined however the Connection Area HoTs are not agreed as the landowner feels the Applicant has offered non-commercial terms. - The landowner is not willing to engage at this point in time until a more specific cable route is defined. <p>9. St Johns College</p> <ul style="list-style-type: none"> - The Applicant was notified on 10th September 2024 that St John's College were withdrawing from negotiations and do not wish to proceed with an option agreement due to factors unrelated to the Applicant despite Heads of Terms being signed. - The Applicant will remain engaged with St John's College for regular updates on their position. <p>In respect of <i>Freehold Planting Agreements</i></p> <p>10. The Crown Estate</p>

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		<ul style="list-style-type: none"> - Regular meetings have been held with the AP's professional representative and the Applicant is awaiting confirmation from TCE on the type of agreement they are willing to progress. - The Applicant is confident these terms will be agreed by Deadline 6 <p>11. Jared Thomas Wright, William Eric Creasey and Davina Lynette Fillingham</p> <ul style="list-style-type: none"> - The Applicant's professional representative held a meeting on 13th February 2025 to discuss drainage and the landscaping with the landscape designer and drainage consultant. - The AP took away drainage plans for review and the Applicant awaits feedback. - The tenant, Walter Smith (Gosberton) Limited, submitted a representation at Deadline 4a, and the Applicant responded at Deadline 5. - The Applicant and the AP remain engaged and will continue to engage with the AP and their professional representative, in the hope that a voluntary agreement can be reached however this is unlikely to be before the close of examination. <p>In respect of <i>Substation Access Agreements</i></p> <p>12. Anne, Brian and Simon Naylor</p> <ul style="list-style-type: none"> - Discussions are ongoing between the Applicant and the AP. - The Applicant has issued revised HoTs and is awaiting a response. - Both parties have agreed the following joint statement: <i>"The Applicant and the Naylor family have continued negotiations with a recent meeting held on 21st February 2025. Following this meeting, amendments have been made to the terms and have been re-issued on 13th March 2025. The terms are largely agreed by both parties with the mechanism for constructing a joint bell mouth being the only outstanding</i>

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		<p><i>point. Both the Applicant and the Naylor family are confident that voluntary terms will be agreed prior to Deadline 6 (3rd April 2025)."</i></p> <p>13. John Grant (Donington)</p> <ul style="list-style-type: none"> - The Applicant has continued to hold regular meetings with the AP's professional representative and the outstanding matters of compensation for severed land and agent fees have been agreed. - The Applicant has scheduled a meeting the following week from the hearing, with the view to close the final agreement. - The Applicant is confident signed HoTs will be received before the close of examination. <p>The Applicant's response to Action Point 1 is provided in the Applicant's Response to Actions Points recorded at CAH2 and ISH8 (Document 24.5)</p>
3.2(1)	The ExA asked how many of those APs with outstanding agreements it is believed that there is no prospect of agreement before close of the Examination	PW stated there were 4 APs where it is believed no agreement would be reached before the end of Examination.
3.2(1)	<p>The ExA referred to George Hay and Sons and St John's College and noted they comprised 2 of the 4 identified parties.</p> <p>The ExA also asked whether St John's are still seeking for the removal of their land from the Order Limits until the 400kV cable route has been determined.</p>	HPKC stated that the Applicant could not speak on St John's College's behalf as St John's College had not confirmed an updated position with the Applicant, but that in the absence of any information to the contrary, it is assumed that remains their position.
3.2(1)	The ExA asked what the options available to the Applicant would be where agreements are not reached.	<p>HPKC stated that in broad terms:</p> <ul style="list-style-type: none"> - For the purpose of decision making, in the absence of agreement, the request for compulsory powers becomes a matter for the decision-maker

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		<ul style="list-style-type: none"> - If compulsory acquisition powers are granted it does not mean they will be relied upon because the opportunity to negotiate will continue and as is often the case the grant of powers provides fresh impetus to negotiations. - There will be a process of detailed design which will lead to refinement of the areas to be acquitted which can also provide a fresh impetus for negotiation - The form of negotiation and how differences will be resolved will be a party-to-party matter, but for the purposes of decision making, should the objection remain, it will be for the Secretary of State to decide whether powers should be granted, notwithstanding the objection.
3.2(1)	<p>The ExA noted its concerns raised previously about the extent of land acquired for Work No. 17 within the Connection Area.</p> <p>The ExA the case previously put forward by the Applicant that it would only ultimately acquire the land that it needs and that it is financially incentivised to take no more land than is required.</p> <p>The ExA asked how landowners and other persons with interests in the land would be affected in the interim period of time between a determination being made that the application, Order Limits and compulsory acquisition powers sought are acceptable and the cable corridor route and substation position being firmly</p>	<p>HPKC set out that until the land to be acquired is narrowed, the landowners are affected to the extent shown on the plans.</p> <p>Underlying this, and important for the overall justification, is that the requirement for flexibility at this particular point is in order to ensure the efficient and effective delivery of Critical National Priority (“CNP”) infrastructure, being infrastructure which is at the highest level of public importance. That is the matter that is to be weighed in the balance against the temporary interference with the interests in land of the relevant APs.</p> <p>While it is the case that the greater the extent of land affected, the greater the impact on that landowner, where the underlying public interest is so clearly of the highest order of importance, provided the need for flexibility is reasonably justified, the Applicant would submit that this amounts to a compelling case.</p>

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	located, noting that could be a considerable period of time.	<p>To look at it from the opposite perspective, to say that it would be appropriate to frustrate the delivery of CNP infrastructure because of the temporary period in which a larger area of land than will ultimately be required is under the shadow of Compulsory Acquisition would be a surprising result and one that would be difficult to reconcile with the delivery of the government's policy and targets to achieve net zero and delivering offshore wind.</p> <p>Therefore, whilst the impact is recognised, in terms of applying the test from statute, the Applicant would submit that the test is clearly satisfied, notwithstanding the acknowledged impact on the landowners affected.</p> <p>HPKC set out that regarding the National Grid Substation, the current expectation is that the National Grid statutory consultation will be undertaken later this year. It is the uncertainty regarding that project which underlies the need for the area of land that is identified and until that project is further developed, the flexibility will continue to be needed. As and when the National Grid Substation evolves, this will provide some early indication to the landowners of the land which is more likely to be required and that which is less likely to be acquired. The Applicant's point is that the Applicant is seeking to connect into infrastructure the precise shape and nature of which is not fixed as of yet.</p>
3.2(1)	The ExA asked whether the point of APs asking for land to be removed until precise route is known is a design problem and ultimately if this means that the application is premature.	HPKC made clear that this can be understood from a lay perspective. If you were to review the overall nature of the UK Government's plans for offshore wind, other generating infrastructure and the plans for the National Grid to ensure that generating capacity can be connected, it is necessary that in order for both those plans to be achieved these plans have to be progressed in parallel. The urgency is such that developers cannot wait until all of the grid connections are in place before promoting the Orders that would allow the generating capacity to be delivered. It is a challenging and ambitious target to produce the generating

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		<p>capacity and the necessary grid infrastructure. If the generating capacity has to wait for the grid infrastructure to be in place, then that challenge effectively becomes impossible to achieve.</p> <p>Given the scale of the ambition for the National Grid infrastructure developments that are necessary across the country, getting all of those in place by 2030 will be a challenge. If developers are required to wait for all of that to be in place before promoting the generating infrastructure, then Government targets will not be met and it is therefore necessary for generating capacity and grid upgrades to be taken forward in parallel, and that requires flexibility.</p> <p>Underpinning this is the underlying public interest objectives which has stimulated those targets.</p>
3.2(1)	<p>The ExA stated that the underlying concern sits with the extent of land and the way it is being presented in this examination. The ExA noted that a significant amount of this land appears to be set aside for options for the National Grid Substation location as was presented at CAH1. The ExA advised that it had not been explained to a point that the ExA is comfortable with how that sits with the DCO application, noting that the extent of land is significant and is significantly larger than it will need to be. The ExA advised it is not comfortable that the presence of the substation within that area satisfies the test of Section 122 and asks the Applicant for clarification.</p>	<p>HPKC provided the following clarification:</p> <ol style="list-style-type: none"> The land that the Applicant is seeking to acquire is in order to implement the development for which development consent is sought and the Applicant is not seeking to acquire land in order to implement the National Grid Infrastructure. The uncertainty as to where the Project's infrastructure will be is driven by the existing uncertainty as to where the National Grid infrastructure will be, and therefore the land has been identified as that which will allow sufficiently flexibility to fit in with what emerges in the National Grid plans. In terms of Section 122(2), the condition being that the land "is required for the development to which the development consent relates": all of the land being sought is required for the development to which the development consent relates, bearing in mind the need for flexibility as to where the development ultimately needs to take place.

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		<p>d. In principle, that is no different from any other DCO. Even taking the example of a simple linear project where the precise area of land that will be acquired will sit somewhere within a corridor, not all of the land over which compulsory acquisition will be authorised will ultimately be required for the development. The test is passed for that larger area of land recognising the need for flexibility, so there is no difference in principle in terms of what the Applicant is seeking in this application.</p> <p>e. The remaining parts of the test set out in Section 122(2) are that the land “is required to facilitate or is incidental to that development, or is replacement land which is to be given in exchange for the order land under section 131 or 132.” That applies in relation to works areas etc. which is not the issue being raised and replacement land which is also not the issue being raised.</p> <p>f. in relation to Section 122(3), “the compelling case” relates to the point made in earlier oral submissions that if the Secretary of State is satisfied that the need and extent of flexibility has been justified, bearing in mind the stage of both projects and the need to share that land, the Applicant’s submission is that there is a compelling case for the reasons that have been outlined in this summary.</p>
3.2(1)	<p>The ExA set out that this is something that is far greater than a corridor and noted that if you remove the substation element from the diagrams that the Applicant presented at CAH1, you are left with three areas of cable corridor, not dissimilar to what was originally submitted offshore and then amended as part of a change request. The ExA noted that had that been the case presented, this may not be an issue.</p>	<p>HPKC noted that the principle had been addressed in the response to the previous question, and committed to providing a detailed response in writing at Deadline 6 (Action Point 4), but asked DW to provide further explanation. DW set out that:</p> <ul style="list-style-type: none"> a. The Connection Area matches the National Grid graduated swathe set out currently in their non statutory consultation for the NGSS at Weston Marsh as part of the Grimsby to Walpole project. b. Further refinements will be likely forthcoming as part of National Grid’s statutory consultation on the Grimsby to Walpole project later this year,

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	<p>The ExA noted that it appears that it is being said that the entirety of the Connection Area is needed because the Applicant needs the flexibility to put those cables anywhere within that 161 hectares of land, and the ExA noted that it had concerns with this approach being an overreach of flexibility.</p>	<p>but even at that stage that will not be set in stone and will be subject to consultation and potentially further refinements.</p> <ul style="list-style-type: none"> c. As part of the agreements issued to landowners a mechanism is built in whereby the Applicant would relinquish its option rights over land that at a later stage is no longer deemed to be reasonably necessary in light of more certainty on the location of the NGSS. d. 7 out of the 9 landowners within the Connection Area are happy with this approach and have signed HoTs to that effect. e. Of the two parties that are not content, it is understood that St John's College does not necessarily have an objection but there are other matters occurring on their land limiting their interest in the project and that George Hay and Sons is concerned with understanding the location of the NGSS and how that will fit together with the Project's infrastructure. However, the Applicant is confident that once a route is known, agreement with George Hay and Sons will be forthcoming as is the case where the 400kV cable route is currently known. <p>The Applicant has responded to Action Point 4 in The Applicant's Response to Action Points recorded at CAH2 and ISH8 (Document 24.5)</p>
3.2(1)	<p>ExA noted that while there are two landowners/APs remaining in dissent, they are owners of two of the larger areas of land within the Connection Area so they remain clearly significant.</p>	
3.2(1)	<p>ExA asked how NGSS will be affected by Applicant's land take when it comes to make its application and whether the Applicant's acquired land be sufficiently refined by then such that National Grid will be able to put a</p>	<p>HPKC set out that Protective Provisions for NGET incorporate provisions to address this matter. NGET's consent is required for taking land identified as possibly being required for NGET's future projects (being Grimsby to Walpole and</p>

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	<p>substation on an area in which permanent rights have not been acquired by the Applicant.</p>	<p>Eastern Green Link 3 and 4)(as shown on the NGET Protective Provisions Plan (document 21.21, version 2)).</p> <p>In terms of sequencing, National Grid will bring forward its own DCO which will set out any provision needed in order to ensure the delivery of that project. National Grid has the ability, if justified, to make changes to the landownership position (including acquiring the Applicant's land) and can also make amendments to the Applicant's DCO, if necessary.</p> <p>The combination of the protection for NGET incorporated into the Applicant's DCO and the fact that National Grid's project will come second in the sequence will ensure that that National Grid's position is adequately addressed both in terms of its status as a future landowner and as a statutory undertaker, through the combination of the two measures.</p>
3.2(1)	<p>Daniel Jobe on behalf of George Hay and Sons set out that George Hay and Sons are farmers in Weston Marsh and grow high value vegetable crops and root crops and are a farm with high voltage cables crossing them but otherwise has limited existing infrastructure currently.</p> <p>Mr Jobe confirmed that George Hay and Sons has entered into an agreement with regard to the known cable corridor route, but is not comfortable with HoTs that cover approximately 200 acres. Mr Jobe noted it was important to consider George Hay and Sons' particular situation because ODOW is one of about 6 or 8 schemes crossing their landholding meaning a huge impact on them as a family and as a farming business</p>	<p>HPKC confirmed that this reflects the Applicant's understanding of the position.</p>

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	and they therefore need to know how everything will fit together before proceeding further.	
3.2(1)	<p>ExA invited any APs to set out any outstanding concerns that had not already been discussed.</p> <p>MWSKC on behalf of THC set out that negotiations with Applicant have been constructive and both parties want to come to agreement. THC's position is that in the absence of an agreement with the Applicant there will be likely material private loss without compensation which must be considered in the overall balance, but specifically in the context of compulsory acquisition in terms of impacts on human rights and the compelling case as set out in the December Hearings and their summary in REP3-061. MWSKC set out that while progress is being made, in the absence of arriving at agreement, the main points made in the December Hearings as summarised in REP3-061 remain.</p> <p>MWSKC noted that a formal offer was received from the Applicant on 17 February 2025 which has been discussed in meetings since then and there has been some material progress. The key area around which further progress requires to be made relates to the extent to which the Applicant will pay the rent on Gosberton Farm which THC has taken on for mitigation purposes, and the fundamental question there turns on</p>	<p>HPKC responded that:</p> <ol style="list-style-type: none"> The Applicant was grateful for the update on the alternatives case. On compensation, this is not a matter for the ExA. Through Parliament and case law, the Compensation Code has been developed. In addition to what is in the Compensation Code, the Applicant has voluntarily gone above and beyond what is set out in the Compensation Code. . The precise extent to which it is agreed to offset the cost of the additional land at Gosberton Farm is not a matter the ExA needs to be concerned about. In terms of the compulsory acquisition case and whether this gives rise to an existential threat to THC's business, sets out that it is important to understand that this is land that THC have taken in advance for mitigation purposes,. THC farm approximately 10,000 acres. The additional land that has been taken is approximately another 1000 acres, therefore whatever the view regarding the impacts of dust, the additional land that has been taken must reflect THC's view as to what will allow them to continue to fulfil their contractual obligations and the extent to which they are or are not provided with funding to offset the rent is a matter for commercial negotiations. The Applicant's position is that the voluntary offer that has been made removes the issue of any existential threat and leaves only matters of commercial negotiation. <p>DW set out that:</p> <ol style="list-style-type: none"> An occupier's consent has been offered which would give THC the same right to compensation as if they were a landowner or a tenant (the Occupiers Consent). Voluntary offers have been made which set out the Applicant's assessment of likely loss but there is also included a mechanism whereby it will pay for

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	<p>dust impacts. Although there remains a difference between the parties in terms of assessment of dust impacts, MWSKC acknowledged that the this was not stopping negotiations and the Applicant is offering a buffer either side of the corridor for which any damage to crops from dust would be paid for.</p> <p>MWSKC noted that the issue is that there would be an existential threat to the business if THC could not meet its contractual obligations to supply produce, and that this goes to the rent that the Applicant is willing to pay for Gosberton Farm which is the principal issue. MWSKC made clear that they remain concerned about all issues previously raised at CAH1, other than on the issue of alternatives which MWSKC acknowledged had narrowed during Examination and that following further explanation from the Applicant at Deadline 5, THC is also now satisfied on the remaining outstanding issue of whether the 80m width of the working corridor is justified. MWSKC confirmed THC was therefore no longer pursuing an alternatives case.</p>	<p>losses above the initial assessment where they occur. This is in line with the Compensation Code whereby 90% of losses can be paid in advance with any further losses paid on receipt of a valid claim.</p> <p>c. The Applicant is of the view that the additional land (1,050 acres) taken by THC mitigates their losses (and goes over and above what is needed to mitigate those losses) therefore a surplus of land is available in the event that there is an impact from dust and there is no threat of an existential crisis.</p> <p>d. The Applicant has a mitigation hierarchy with the item currently being discussed forming the "higher level" items. If these higher-level mitigations are not possible (I.e. acquisition of replacement land to grow replacement crops) then they could go to the next tier of the mitigation (importation of crops etc.).</p>
	<p>ExA asked for clarity regarding the Applicant's view on whether the land taken by THC was as much as they need or over and above what they need.</p>	<p>DW described that THC's assessment shows 450 acres of land to be impacted using their dust assessment methodology whilst the Applicant's assessment shows roughly 200 acres as being impacted. With THC having acquired roughly 1050 acres of land, they have a surplus.</p>

Agenda Item	ExA Question / Context for discussion	Applicant's Response
		<p>HPKC clarified that the point being made was that THC have taken as much land in advance as they have deemed is appropriate. HPKC did not seek to comment on the commercial decision that was made but made the point that considering both parties' assessments of potential impacts from dust, the area of land taken falls comfortably within the amount of land assessed as being impacted.</p>
	<p>MWSKC responded that:</p> <ol style="list-style-type: none"> a. It has always been accepted that compensation is a matter for the upper tribunal but that is about quantities of compensation. MWSKC set out THC's position that what is relevant is the availability of compensation for the balance being weighed by the decision maker, and that is agreement is not reached there is an absence of compensation. b. THC has taken steps to mitigate via the tenancy on Gosberton Farm which is an appropriate thing to do where one is obliged to mitigate in the context of compensation. If agreement cannot be reached, there are additional business costs for that mitigation which are being borne by THC and not by developer, which should be taken into account as a business impact. c. In relation to the quantum of land taken: <ul style="list-style-type: none"> • it is quite difficult to come across opportunities in the market for such substantial land acquisitions, so the 	<p>HPKC set out that an offer has been made to THC which would ensure that THC is not left without compensation. The Applicant understands that, should this offer be accepted, THC would not be putting forward evidence that it would still face an existential threat to its business. HPKC noted that if that offer is rejected, the Applicant has sought to address THC's concern but beyond that it becomes a matter for negotiation.</p>

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	<p>opportunity needed to be taken rather than looking for the precise amount of land.</p> <ul style="list-style-type: none"> The land taken is 1050 acres, of which about 660 is appropriate for growing vegetables. Quantum of land is for detailed negotiations between the parties. THC notes that the land is larger than needed but the opportunity had to be taken for mitigation purposes and they are taking account of that in the ongoing bilateral discussions. <p>The ExA asked the Applicant for a response to THC's submissions</p>	
	<p>ExA asked THC to clarify if that existential threat only exists in absence of agreement.</p> <p>THC made clear that that is right but that it is a question of business impact in terms of costs having secured that land for mitigation.</p>	<p>HPKC confirmed the Applicant had nothing further to add and that the clarification provided was helpful.</p>
3.3(2) Section 135 of the PA2008 – Crown Land		
3.3(2)	<p>The ExA recalled that at CAH1 there was an Action Point for the Applicant to produce a statement setting out the position between the Applicant and Crown Estate.</p>	<p>HPKC stated that</p> <ol style="list-style-type: none"> As indicated, at Deadline 5, an agreed statement with The Crown Estate's solicitors was produced

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	<p>The ExA noted that the agreement has not been reached but that a statement is made in the Deadline 5 Covering Letter.</p> <p>ExA asked the Applicant to expand on the section written in the covering letter and to provide an update on progress and a best estimate for the receipt of Crown Consent.</p>	<ul style="list-style-type: none"> b. The current position is that a draft version of The Crown Consent letter as well as a side agreement has been produced by The Crown Estate and reviewed by the applicant c. The Applicant's understanding is that the Crown is at an advanced stage of reviewing the drafts following limited proposed changes from the Applicant and that the relevant technical teams are at the final stages of aligning understanding of Crown ownership in the relevant plots d. The Applicant's expectation is that Crown consent would be provided at Deadline 6 or failing that before the close of the examination. e. The Applicant has been given no reason to be concerned that the Crown Consent cannot be produced in that timeframe.
3.3(2)	ExA asked how Applicant would inform the ExA if negotiations go beyond Deadline 6.	HPKC advised that if it becomes apparent that it cannot be provided at Deadline 6, but that it will be before the close of the Examination, then the Applicant will set that out in writing at Deadline 6 and suggest when and how the Applicant would provide an update in writing. It would be in the form of a late representation, and it would be for the ExA to exercise its discretion as to whether to accept that. HPKC submitted that it is hoped in the circumstances that that discretion would be exercised to accept the submission in the absence of prejudice to any parties.
3.3(2)	ExA set out that the preference would be Deadline 6 but failing that given the importance of Crown Consent in the context of the Application as a whole, the ExA would accept a late submission which confirms Crown Consent.	HPKC welcomed this confirmation.

3.3 Additional Agenda Item: CA relevant Protective Provisions

Agenda Item	ExA Question / Context for discussion	Applicant's Response
3.3	ExA asked the Applicant to go through the status of protective provisions as they relate to CA matters and advised that it would go through those Category 2 statutory undertaker affected persons noted in the Land Rights Tracker .	HKPC introduced Emma Moir (“EM”) to speak on the status of the Protective Provisions
	The ExA asked if there was any update from the Lands Rights Tracker in respect of National Grid Electricity Transmission PLC	EM set out the principal point under discussion between the parties as set out in the Deadline 5 cover letter (REP5-147), being the area to which a restriction on the acquisition of land should relate, had moved on as National Grid had proposed an area that would be acceptable to the Grimsby to Walpole team, and the Applicant had confirmed its agreement to the same. EM advised that the only remaining point was in respect to the Eastern Green Link 3 and 4 projects where the Applicant was awaiting approval of the area to be shown on the plan relative to those projects, but that the Applicant believed it had proposed an area which covers the whole of the possible overlap. EM stated that the Applicant considered it would be in a position to submit Protective Provisions in the Deadline 6 DCO
	The ExA asked if there was any update in respect of National Gas Transmission PLC	EM set out that Protective Provisions had been agreed in principle but were subject to final internal sign off by the Applicant's Board, such approval being anticipated shortly. EM stated that the Applicant considered it would be in a position to confirm the Protective Provisions are fully agreed at Deadline 6.
	The ExA asked if there was any update in respect of Cadent Gas Ltd	EM set out that Protective Provisions had been agreed in principle but were subject to final internal sign off by the Applicant's Board, such approval being anticipated shortly. EM stated that the Applicant considered it would be in a position to confirm the Protective Provisions are fully agreed at Deadline 6.

Agenda Item	ExA Question / Context for discussion	Applicant's Response
	The ExA asked if it remains the case that there has been no response from Centrica PLC and that Centrica will be able to rely on the standard protective provisions for electricity, gas, water and sewage undertakers within the draft DCO	EM confirmed that remains the case.
	<p>The ExA asked if it remains the case that Triton Knoll Offshore Windfarm will also be able to rely on the standard protective provisions in the same category.</p> <p>The ExA asked if it was correct that no bespoke protective provisions have been proposed with Triton Knoll.</p> <p>The ExA asked for an elaboration on the nature of the correspondence and if there was cause for concern.</p>	<p>EM confirmed that it remains the Applicant's position that Triton Knoll/Equitix will be able to rely on the standard protective provisions and that standard protective provisions are sufficient, but that the Applicant is discussing the matter with Triton Knoll having received correspondence the day before the hearing from Triton Knoll/Equitix wishing to discuss the matter.</p> <p>EM stated that it is the Applicant's position that there is no need for bespoke protective provisions but that the Applicant would discuss the matter with Triton Knoll/Equitix and provide an update to the ExA on the position. The correspondence received related to a potential overlap between an enabling access within the Project's Order Limits and the cable easement of the Triton Knoll project. EM advised that the Applicant was seeking to ascertain the precise circumstances and to understand Triton Knoll's position.</p>
	The ExA asked if the expectation is of there being no surprises at Deadline 6 and if Triton Knoll will be submitting Protective Provisions at Deadline 6	EM stated that the Applicant could not speak on behalf of Triton Knoll, but the Applicant is of the view that the matter can be resolved and that the standard protective provisions will be suitable for Triton Knoll's purposes.
	The ExA asked if it remains the case that there has been no response from Spalding Energy Company Limited and that it remains the case that they can use the standard Protective Provisions for the same category.	EM confirmed that remains the case.
	The ExA asked if there was any update on the negotiations with the Environment Agency	EM stated that the Protective Provisions with the Environment Agency have been agreed but remain subject to the conclusion of the side agreement. Once the side

Agenda Item	ExA Question / Context for discussion	Applicant's Response
		agreement has been concluded, then the Environment Agency will be in a position to confirm final approval of the protected provisions. EM advised that the Applicant is not anticipating any changes to be made to the protective provisions as currently set out in Schedule 18 of the DCO.
	The ExA asked if there was any update on the negotiations with the South Holland Internal Drainage Board	EM set out that the Applicant has accepted the final outstanding amendment in the Protective Provisions and the Protective Provisions are therefore in an agreed form. EM confirmed that the draft DCO will be updated further at Deadline 6 to reflect that agreement.
	The ExA asked if it was still the case that there was no response from National Grid Electricity Distribution (East Midlands) PLC and that therefore they will be relying on standard Protective Provisions	EM confirmed that remains the case.
	The ExA asked if it was still the case that there was no response from Openreach and that they will therefore be relying on standard Protective Provisions	EM confirmed that remains the case.
	The ExA asked for a update on the negotiations with Black Sluice Internal Drainage Board.	EM set out that the relevant Internal Drainage Boards are covered in one set of Protective Provisions. EM confirmed that the Protective Provisions are now in an agreed form following the Applicant accepting the final outstanding point.
	The ExA asked if this would be the same response for the remaining drainage boards.	EM confirmed that this is the case. EM set out for clarity that the Internal Drainage Boards are: South Holland, Lindsey Marsh, Black Sluice, Welland & Deepings and Witham Fourth.
	The ExA asked for an update on the negotiations with Network Rail	EM set out that the Protective Provisions are still in negotiation. The applicant received a draft from Network Rail, but it was unclear whether the final point reported as outstanding was agreed. EM advised that the applicant has asked Network Rail for clarification, with a view to confirming agreement by Deadline 6.

Agenda Item	ExA Question / Context for discussion	Applicant's Response
	The ExA asked if it remained the case that there had been no response from InterGen (UK) Ltd and that the standard Protective Provisions will apply.	EM confirmed that remains the case.
	The ExA recorded an Action Point that in the event of Protective Provisions having not been agreed, that each party submit their preferred protective provisions in final format for the ExA to consider at Deadline 6.	
3.3 Action Points Arising from the Compulsory Acquisition Hearing		
3.3	The ExA set out the actions arising.	A comprehensive list of Actions across CAH2 and ISH8 are provided in document 24.1 (the Applicant's Deadline 6 Covering Letter). Further detail and written explanation in response to Action Points is provided in The Applicant's Response to Action Points recorded at CAH2 and ISH8 (Document 24.5)
3.4 Any Other Matters Arising		
3.4	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 6.	
5. Closing		
5.	The ExA made Closing remarks including thanking participants and closed the hearing.	