

Outer Dowsing Offshore Wind

The Applicant's Closing Statements

Deadline 6

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Acronyms & Definitions

Abbreviations / Acronyms

Abbreviation / Acronym	Description
APs	Affected Persons
ALC	Agricultural Land Classification
ALO	Agricultural Liaison Officer
AEoI	Adverse Effect on Integrity
ANS	Artificial Nesting Structures
AYM	Awel Y Mor
BMV	Best and Most Versatile
CAH	Compulsory Acquisition Hearing
CfD	Contracts for Difference
CoCP	Code of Construction Practice
CIMP	Compensation Implementation and Monitoring Plan
CNP	Critical National Priority
DAD	Design Approach Document
DCO	Development Consent Order
Defra	Department for Environment, Food & Rural Affairs
DPS	Design Principles Statement
ECC	Export Cable Corridor
EIA	Environmental Impact Assessment
ES	Environmental Statement
ExA	Examining Authority
FFC	Flamborough and Filey Coast
FLL	Functionally Linked Land
GW	Gigawatt
GVA	Gross Value Added
HP4	Hornsea Project 4
IAQM	Institute of Air Quality Management
IDBNR	Inner Dowsing, Race Bank and North Ridge
ISH	Issue Specific Hearing
IPs	Interested Parties
IROPI	Imperative Reasons of Overriding Public Interest
LCC	Lincolnshire County Council
LEA	Local Economic Area
LIR	Local Impact Report
LWT	Lincolnshire Wildlife Trust
NE	Natural England
NGSS	National Grid Substation
NPS	National Policy Statement
NRA	Navigational Risk Assessment
MCZ	Marine Conservation Zone
MMO	Marine Management Organisation

Abbreviation / Acronym	Description
MRF	Marine Recovery Fund
oAQMP	Outline Air Quality Management Plan
OLEMS	Outline Landscape and Ecological Management Strategy
OLP	Organic Land Protocol
OnSS	Onshore Substation
O&M	Operations & Maintenance
oSMP	Outline Soil Management plan
OWF	Offshore Wind Farm
OWIC	Offshore Wind Industry Council
PCD	Policy Compliance Document
PP	Protective Provision
RIAA	Report to Inform Appropriate Assessment
RIES	Report on the Implications for European Sites
ROCs	Renewables Obligation Certificates
SAC	Special Area of Conservation
SEP and DEP	Sheringham and Dudgeon Extension Projects
SMP	Soil Management Plan
SNSOF	Southern North Sea Operators Forum
SoCG	Statement of Common Ground
SoS	Secretary of State
SPA	Special Protected Area
TCE	The Crown Estate
THC	TH Clements
UCI	Upper Confidence Interval

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.
The Application	The Project's application
Cumulative effects	The combined effect of the Project acting cumulatively with the effects of a number of different projects, on the same single receptor/resource.
Cumulative impact	Impacts that result from changes caused by other past, present or reasonably foreseeable actions together with the Project.
Deemed Marine Licence (dML)	A marine licence set out in a Schedule to the Development Consent Order and deemed to have been granted under Part 4 (marine licensing) of the Marine and Coastal Access Act 2009.
Derogation	Stage 3 of the Habitats Regulations Assessments which is triggered once it is determined that you cannot avoid adversely affecting the integrity of a

Term	Definition
	designated site. Involves assessing if alternative solutions are available to achieve the same goals as the project, if there are imperative reasons of overriding public interest, and if compensatory measures will be required.
Development Consent Order (DCO)	An order made under the Planning Act 2008 granting development consent for a Nationally Significant Infrastructure Project (NSIP).
The Draft DCO	The Outer Dowsing Offshore Wind Farm Order 202*
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.
Habitats Regulation Assessment (HRA)	A process which helps determine likely significant effects and (where appropriate) assesses adverse impacts on the integrity of European conservation sites and Ramsar sites. The process consists of up to four stages of assessment: screening, appropriate assessment, assessment of alternative solutions and assessment of imperative reasons of over-riding public interest (IROPI) and compensatory measures.
The Habitats Regulations	The Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017
Impact	An impact to the receiving environment is defined as any change to its baseline condition, either adverse or beneficial.
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 Policy Statement (NPS)	A document setting out national policy against which proposals for Nationally Significant Infrastructure Projects (NSIPs) will be assessed and decided upon
Offshore Reactive Compensation Station (ORCP)	A Structure attached to the seabed by means of a foundation, with one or more decks and a helicopter platform (including bird deterrents) housing electrical reactors and switchgear for the purpose of the efficient transfer of power in the course of HVAC transmission by providing reactive compensation

Term	Definition
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 Offshore (ODOW)	Dowsing Wind 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 Inspectorate	Planning 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.
Trenchless Technique	Trenchless technology is an underground construction method of installing, repairing and renewing underground pipes, ducts and cables using techniques which minimize or eliminate the need for excavation. Trenchless technologies involve methods of new pipe installation with minimum surface and environmental disruptions. These techniques may include Horizontal Directional Drilling (HDD), thrust boring, auger boring, and pipe ramming, which allow ducts to be installed under an obstruction without breaking open the ground and digging a trench.
Wind turbine generator (WTG)	A structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation
WTG area	Following the introduction of the offshore restricted build area, the WTG area is a reduced area within the array area within which WTG and offshore platforms may be constructed.

1 Introduction

1. This document sets out the Closing Statements on behalf of GT R4 Limited (trading as Outer Dowsing Offshore Wind) (the “**Applicant**”) in relation to the examination of The Outer Dowsing Offshore Wind Farm Order 202* (the “**draft DCO**”).

1.1 Overview

2. The Outer Dowsing Offshore Windfarm project (the “**Project**”) is a large-scale offshore windfarm expected to generate around 1.5 GW of low carbon electricity, equivalent to the annual electricity consumption of over 1.6 million households and meeting the definition of “nationally significant low carbon infrastructure” for the purposes of National Policy Statement (“**NPS**”) EN-1 and EN-3.¹ Its development is a “Critical National Priority” (“**CNP**”), leading to policy presumptions in favour of its consent.
3. As summarised in these Closing Statements, the Project’s Application (the “**Application**”) accords with Section 104 of the Planning Act 2008 against which the Secretary of State must determine applications for development consent orders (“**DCOs**”). Relevant impacts have been properly identified, mitigated and controlled. Outstanding issues with Interested Parties (“**IPs**”), Affected Persons (“**APs**”), and Statutory Undertakers have been narrowed and resolved where possible and outstanding areas of disagreement should not preclude the granting of development consent.
4. The residual impacts of the Project identified in its Environmental Impact and Habitats Regulations Assessments require to be considered in light of its CNP Infrastructure status. Against this backdrop, they clearly do not outweigh the very substantial benefits the Project will bring nor the urgent need for its development in line with the policy presumption in favour of its development.² The Application complies with - and grant of the DCO would accord with – relevant policy and statute.
5. To make this clear, these Closing Statements summarises the Applicant’s final position regarding (i) the matters which the Secretary of State must consider under Section 104 of the Planning Act and (ii), generally, the key issues raised in the examination, making clear why the Applicant considers the Examining Authority (the “**ExA**”) should recommend, and the Secretary of State should grant, development consent for the Project.

¹ NPS EN-1 paragraph 4.2.5

² As set out in NPS EN-1 and EN-3 including, as set out in the EN-1 Glossary, CNP Infrastructure “*applies a policy presumption that, subject to any legal requirements (including under section 104 of the Planning Act 2008), the urgent need for CNP Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy.*”

1.2 Nature of Closing Statement

6. The purpose of these Closing Statements is to assist the ExA reporting and Secretary of State decision-making. It therefore summarises key issues and provides relevant signposting, structured around the issues which the Secretary of State requires to have regard to.
7. On this basis, it is not intended to describe the Project or Application in full nor give a comprehensive statement of the Applicant's case or the issues outstanding between it and others. For the Applicant's full case in favour of consent, the Applicant's suite of Examination documents should be referred to including the Environmental Statement ("ES"), Habitats Regulation Assessment ("HRA") Application documents and Summaries of Oral Cases Put at hearings. This document does not seek to introduce new material, raise new issues nor duplicate the extensive submissions and evidence submitted during Examination, which should be referred to in full.

1.3 Key Planning Issues

8. Later Sections of these Closing Statements set out specific Planning Matters which were identified by the Examining Authority as principal issues at the start of Examination or which have been raised as key issues during Examination, summarising the Applicant's final position, signposting where relevant submissions can be found and providing a conclusion for the purposes of decision-making. As set out below, key issues raised by the ExA, IPs and APs have been addressed by the Applicant in the course of Examination and resolved where possible. As above, the Project's residual impacts, when considered in light of its CNP Infrastructure status, clearly do not outweigh its benefits and urgent need or overturn the presumption in favour of its consent which results from its CNP status

1.4 Other Deadline 6 submissions

9. These Closing Statements should be read alongside other documents provided at Deadline 6 which, together, provide the closing positions on certain issues at the last Examination deadline. These include: 24.8 The Applicant's Close of examination progress tracker; 24.2 The Applicant's Comments on Deadline 5; 18.5 The Applicant's planning obligations and side agreements tracker Version 2; and 15.4 Compulsory Acquisition and Land Rights Tracker (Schedule of Negotiations and Powers Sought) Version 6.

10. The Applicant's Statements of Common Ground ("**SoCGs**") and the Applicant's Statement of Commonality of Statements of Common Ground (document 15.18, version 6) submitted at Deadline 6 which summarise the final status of all requested SoCGs.³ The outstanding areas of disagreement with IPs, including those highlighted in the SoCG, do not justify refusal of the Application.
11. The Project's possible interaction with certain other parties' projects must also be considered against the Protective Provisions (set out in schedule 18 of the draft DCO) which protect the parties or infrastructure with the benefit of these Protective Provisions. The Applicant has been in discussions with the relevant parties throughout examination to agree Protective Provisions, the final status of which is set out below under the "Draft Development Consent Order" section.

³ In order to seek to narrow outstanding issues with certain Interested Parties, and in response to the request contained in the Rule 6 letter dated 4 September 2025 (PD-009) Statements of Common Ground (**SoCGs**) have been entered into. Draft and final SoCGs have been submitted throughout the examination. Note that certain IPs were also requested to submit Principal Areas of Disagreement, which the Applicant expects to be submitted at Deadline 6.

2 Section 104 of the Planning Act 2008

12. The Applicant's Closing Statement addresses each part of Section 104 of the Planning Act 2008 to summarise if and how each part relates to the Application and explains why, when properly considered, the evidence militates decisively in favour of the making of the DCO in the terms sought.
13. Section 104(2) of the Planning Act 2008 states that, in deciding an application for a DCO where a national policy statement ("**NPS**") has effect in relation to the development to which the application relates, the Secretary of State must have regard to:
- Any NPS which has effect in relation to the proposed development;
 - The appropriate marine policy documents;
 - Any local impact report ("**LIR**") submitted to the Secretary of State before the specified deadline;
 - Any matters prescribed in relation to development of the description to which the application relates; and
 - Any other matters which the Secretary of State thinks are both important and relevant to their decision.
14. Section 104(3) states that the Secretary of State must decide the application in accordance with any relevant NPS, except to the extent that one or more of subsections (4) to (8) apply.
15. Subsections (4) to (8) apply if:
- the Secretary of State is satisfied that determining the application in accordance with the relevant NPS would lead to the United Kingdom being in breach of any of its international obligations;
 - the Secretary of State is satisfied that determining the application in accordance with the relevant NPS would lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment;
 - the Secretary of State is satisfied that determining the application in accordance with the relevant NPS would be unlawful by virtue of any enactment;
 - the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits; or
 - the Secretary of State is satisfied that any condition prescribed for deciding an application otherwise than in accordance with an NPS is met.
16. Section 104(3) gives primacy to the NPS. In relation to the proposed development, the relevant NPSs are the 'Overarching National Policy Statement for energy (EN-1)', the 'National Policy Statement for renewable energy infrastructure (EN-3)', and the 'National Policy Statement for electricity networks infrastructure (EN-5)'. The NPSs are discussed in Section 3 of these Closing Statements. The summary provided in Section 3 (and the overall case put in the Application and evidence presented through examination) demonstrates why the application of the NPSs points to consent approval.

17. The Applicant's Planning Statement (APP-297) and Policy Compliance Document ("PCD") REP4-090) set out in detail the Applicant's position regarding the Project's compliance with international obligations and national climate change legislation for energy, the relevant NPS, relevant marine policy documents, the Infrastructure Planning (Decisions) Regulations 2010 (the "2010 Regulations"), and other important and relevant matters.
18. The relevant marine policy documents for the proposed development are the 'Marine Policy Statement' and the 'East Inshore and East Offshore Marine Plans'. The Applicant's position on compliance with the marine policy documents is set out in Sections 5 and 6 of the Applicant's PCD (REP4-090) and throughout the Applicant's Planning Statement (APP-297).
19. A joint LIR was submitted on behalf of East Lindsey District Council, Boston Borough Council and South Holland District Council (REP1-052), and an LIR was submitted on behalf of Lincolnshire County Council (REP1-053). The Applicant's response to the LIRs is set out in REP2-052. Section 4 of these Closing Statements sets out how matters raised in the LIRs have been progressed and resolved, where possible, during the examination.
20. In terms of other legislative requirements in decision making, Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 (the "2010 Regulations") states that when deciding an application which affects a listed building or its setting, the Secretary of State must have regard to the desirability of preserving the listed building or its setting, or any features of special architectural or historic interest which it possesses. When deciding an application relating to a conservation area, the Secretary of State must have regard to the desirability of preserving or enhancing the character or appearance of that area. When deciding an application which affects or is likely to affect a scheduled monument or its setting, the Secretary of State must have regard to the desirability of preserving the scheduled monument or its setting. Cultural heritage is discussed in Section 7 of these Closing Statements.
21. Regulation 3A of the 2010 Regulations states that when considering whether to include a deemed marine licence (dML) in a DCO, the Secretary of State must have regard to the need to protect the environment, the need to protect human health, and the need to prevent interference with legitimate uses of the sea. The dMLs sought by the Applicant are discussed in Section 6 of these Closing Statements.

22. Regulation 7 of the 2010 Regulations states that when deciding an application for a DCO, the Secretary of State must have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992. There is also a duty under the Natural Environment and Rural Communities Act 2006 on every public body exercising its functions to take action to further the general biodiversity objective of conserving and enhancing biodiversity and in complying with this duty, s40(2) provides that regard must be had to the United Nations Environment Programme Convention on Biological Diversity 1992. The Application contains detailed information on biodiversity implications of the Project and the Applicant considers that the Examining Authority and Secretary of State are in a position to have proper regard to these duties in reaching a decision to authorise the DCO. The Habitats Regulations contribute towards realising the objectives of the Convention. The application of the Habitats Regulations is also relevant both to compliance with NPS, and to whether the exceptions in subsections (5) and (6) of S104 of the Planning Act 2008 are engaged. The Applicant's position on the Habitats Regulations is set out in Section 5 of these Closing Statements.
23. NPS EN-1 creates a presumption in favour of the grant of development consent for the Project. This presumption will apply unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. Overall, the Project is supported by, or complies with, the relevant NPS and marine policy documents, and the benefits of the Project significantly outweigh any adverse impacts. Moreover, the Project's CNP status and the steps the Applicant has taken through its assessments, engages support within individual policies (discussed in more detail below). There are therefore not considered to be any more specific and relevant policies within the NPSs which indicate that consent should be refused. None of the exceptions in subsections (4) to (8) of Section 104 of the Planning Act 2008 are engaged. Therefore, the Applicant requests the ExA to recommend, and the Secretary of State to grant, development consent and make a DCO in accordance with the draft DCO submitted at Deadline 6 (Document 3.1, Version 10).

3 National Policy Statements

24. The Applicant's Planning Statement (APP-297), PCD (REP4-090), and the ES (on a topic-by-topic basis), set out in detail the Applicant's position regarding the Project's compliance with international obligations and national climate change legislation for energy, the relevant NPSs, the 2010 Regulations, and other important and relevant matters.
25. NPS EN-1 states at paragraph 4.1.3: *"Given the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS, the Secretary of State will start with a presumption in favour of granting consent to applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused."* (Emphasis added). Given the statutory position that any DCO application must be determined in accordance with the relevant NPS (subject only to a few exceptions under S104 discussed above, none of which are considered to be engaged in this case), the NPS EN-1 presumption in favour of grant of energy DCOs means that applications for energy NSIPs should be granted, unless there are specific NPS policies indicating consent refusal.

3.1 Need for the Project

26. Part 3 of NPS EN-1 sets out the need for new nationally significant electricity infrastructure. Paragraph 3.3.62 states that
- "Government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure."*
27. Paragraph 3.3.83 states that:
- "Given the urgent need for new electricity infrastructure and the time it takes for electricity NSIPs to move from design conception to operation, there is an urgent need for new (and particularly low carbon) electricity NSIPs to be brought forward as soon as possible, given the crucial role of electricity as the UK decarbonises its economy."*
28. Paragraph 3.3.59 of NPS EN-1 notes that generating technologies including offshore wind are *"...urgently needed to meet the government's energy objectives by..."* providing security of supply, providing an affordable, reliance, and ensuring the system is net zero consistent.
29. Paragraph 3.3.63 of NPS EN-1 states:
- "Subject to any legal requirements, the urgent need for CNP Infrastructure to achieving our energy objectives, together with the national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy. Government strongly supports the delivery of CNP Infrastructure and it should be progressed as quickly as possible."*
30. There is an urgent need for decarbonisation of the UK's electricity supply. The Project seeks to develop a large-scale offshore wind farm to generate around 1.5GW of low carbon electricity, which will make a direct and meaningful contribution towards decarbonisation.

31. The UK Government has emphasised the need for energy security in recent years, due to global events which have highlighted vulnerability to global oil and gas markets which can increase domestic energy bills as they fluctuate. The Project's anticipated generating capacity of around 1.5GW of low carbon electricity will assist in meeting the UK's energy security needs, by reducing dependence on imported oil and gas. This will also assist in providing low-cost energy to UK consumers.
32. As noted above, NPS EN-1 identifies a critical national priority for new offshore wind infrastructure. The Project would be one of the UK's largest offshore wind farms and is anticipated to generate renewable electricity equivalent to the annual electricity consumption of over 1.6 million households. The Applicant's secured grid connection and Project timeline enables it to be operational in the course of 2030, meaning that the Project will make a significant contribution towards meeting the urgent need for low carbon electricity, and is capable of making a meaningful contribution towards the UK Government's target, set out most recently in the Clean Power 2030 Action Plan, of having up to 50GW of offshore wind capacity by 2030.⁴
33. The urgent need for decarbonisation and energy security requires that offshore lease areas are used to their optimum capacity. The Project will contribute towards optimising wind generation linked with seabed rights leased under Round 4.
34. There is also a need to maximise economic opportunities from energy infrastructure investment for the UK. The Project will create local jobs, and enable local individuals and businesses to see the economic benefits of the Project, with an estimated peak of supporting 810 jobs in the regional area. The Project will help create a positive legacy for Lincolnshire, facilitating socio-economic enhancement, including encouraging locals and businesses to realise the benefits associated with the investment associated with the Project.
35. Paragraphs 3.2.6 - 3.2.8 of NPS EN-1 state:

"3.2.6 The Secretary of State should assess all applications for development consent for the types of infrastructure covered by this NPS on the basis that the government has demonstrated that there is a need for those types of infrastructure which is urgent, as described for each of them in this Part.

3.2.7 In addition, the Secretary of State has determined that substantial weight should be given to this need when considering applications for development consent under the Planning Act 2008.

3.2.8 The Secretary of State is not required to consider separately the specific contribution of any individual project to satisfying the need established in this NPS."

⁴ The Clean Power 2030 Action Plan is further discussed in the Derogation Case (Document 7.5 Version 3). Among other things, the Action Plan makes clear that *"all [capacity] that can be deployed by 2030 has either already been consented or is in the development and consenting process"* and that meeting these targets require *"dramatic acceleration in progress compared to anything achieved historically"* and *"unprecedented pace"*

36. As set out above, with some very limited exceptions, Section 104 of the Planning Act 2008 requires DCO applications to be determined in accordance with the relevant NPS, and paragraph 4.1.3 of NPS EN-1 sets out a presumption in favour of granting applications for electricity NSIPs.
37. The overall need for and policy imperative for urgent realisation of the Project is established by NPS EN-1. Policy need for new renewable energy generation, and the Project's contribution towards that need, is set out in more detail in Section 5 of the Planning Statement, and Chapter 2 'Need, Policy and Legislative Context' (APP-057) of the ES. The Project Need and Objectives within the Derogation Case (Document 7.5, Version 3) sets out further how the Project's Objectives respond to key drivers which underpin the need for offshore wind power generally as established by relevant policy and guidance.

3.2 Impacts of the Project

38. Paragraph 4.1.7 of NPS EN-1 states:

"For projects which qualify as CNP Infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases. This presumption, however, does not apply to residual impacts which present an unacceptable risk to, or interference with, human health and public safety, defence, irreplaceable habitats or unacceptable risk to the achievement of net zero. Further, the same exception applies to this presumption for residual impacts which present an unacceptable risk to, or unacceptable interference offshore to navigation, or onshore to flood and coastal erosion risk."

39. Section 6 of the Planning Statement, and the PCD, sets out in detail how the Project complies with, and is supported by, NPS EN-1, NPS EN-3 and NPS EN-5. No residual impacts of a nature outlined in paragraph 4.1.7 are identified in the Planning Statement, PCD, ES or Report to Inform an Appropriate Assessment (RIAA).
40. The Applicant therefore considers that there are no adverse impacts which could be taken to outweigh the presumption in favour of grant of development consent for the Project.
41. Paragraph 4.1.5 of NPS EN-1 sets out that, as well as taking into account any adverse impacts of a proposed development, the Secretary of State should take into account "...its potential benefits, including its contribution to meeting the need for energy infrastructure, job creation, reduction of geographical disparities, environmental enhancements, and any long-term or wider benefits".
42. In addition to the Project's contribution towards the need for energy infrastructure, consideration should also be given to:
- The beneficial effects of the Project identified in Chapter 29 'Socio-Economic Characteristics' (REP4a-027) of the ES which concludes that:
 - the construction of the Project is expected to generate £129 million Gross Value Added (GVA) in the local economic area (LEA), £153 million GVA in the regional area, and £357 million GVA across the UK, which will have a minor beneficial effect within the LEA and regional area;

- the construction of the Project is expected to result in the creation of 1,690 years of employment in the LEA, 2,010 years of employment in the regional area, and 4,030 years of employment in the UK, with a peak of 680 jobs in the LEA, 810 jobs in the regional area, and 1,200 jobs across the UK, which will have a minor beneficial effect within the LEA and regional area;
- O&M for the Project is expected to generate an annual total of £17 million GVA in the LEA, £26 million in the regional area, and £36 million across the UK, which will have a minor beneficial effect within the LEA and regional area;
- O&M for the Project is expected to result in the creation of 180 jobs in the LEA, 280 jobs in the regional area, and 400 jobs across the UK, which will have a minor beneficial effect within the LEA and regional area;
- Decommissioning of the Project is expected to generate £47 million GVA in the LEA, £52 million GVA in the regional area, and £64 million GVA across the UK, and to result in the creation of 220 years of employment in the LEA (with a peak of 110 jobs), 250 years of employment in the regional area (with a peak of 130 jobs), and 320 years of employment across the UK (with a peak of 160 jobs), which will have a minor beneficial effect within the LEA and regional area; and
- The beneficial effects of the Project identified in Chapter 30 'Human Health' (AS1-054) of the ES, which concludes that health benefits arising from the creation of employment as a result of the Project will have a minor beneficial effect on vulnerable groups during both the construction phase and the O&M phase.

3.3 CNP infrastructure presumptions

43. As discussed above, the Project does not contain residual impacts pertaining to “exceptional circumstances” of the nature referred to in NPS EN-1 4.2.15. On the basis that the Applicant’s project is CNP Infrastructure, meeting the requirements of NPS EN-1 4.2.10 – 4.2.13 (“Applicant’s Assessment”), the Application benefits from the policy presumptions in favour of grant of development consent notwithstanding any residual non-HRA or non-Marine Conservation Zone (“**MCZ**”) residual impacts (NPS EN-1 4.2.15).
44. In relation to HRA and MCZ residual impacts, the Applicant has summarised its Habitats Regulation case within these Closing Statements (“Habitats Regulations” Section 5), which sets out the derogation case and without prejudice derogation cases put forward. As set out in the Applicant’s Derogation Case (Document 7.5, Version 3), the Application benefits from the “starting point” presumptions set out in NPS EN-1 4.2.21 regarding the alternatives case and the imperative reasons of overriding public interest in favour of the Project.

4 Local Impact Reports

45. Section 104 of the Planning Act 2008 requires the Secretary of State to have regard to any LIRs submitted by relevant local authorities.
46. A joint LIR was submitted on behalf of East Lindsey District Council, Boston Borough Council and South Holland District Council (REP1-052), and an LIR was submitted on behalf of Lincolnshire County Council (LCC) (REP1-053). The Applicant's response to the LIRs is set out in REP2-052.
47. The Applicant has been working with the local authorities throughout the examination to reach agreement on the matters raised in the LIRs.
48. A signed SoCG with Boston Borough Council, East Lindsey District Council and South Holland District Council was submitted at Deadline 5 (REP5-136). This demonstrates that the parties have reached agreement in relation to the vast majority of matters. Where agreement has not been reached, in relation to the proposed access route through the Wrangle Conservation Area (a matter recognised as having "no material impact"), this is because the Councils defer to LCC on this point. In the SoCG with LCC (REP5-135), it is agreed that the use of construction traffic route through the Wrangle Conservation Area will not have an unacceptable impact on the character and appearance of the Wrangle Conservation Area.
49. A signed SoCG with LCC was submitted at Deadline 5 (REP5-135). This demonstrates that the parties have reached agreement in relation to the vast majority of matters. Where agreement has not been reached, parties are generally in agreement that the issue is not material. Areas of disagreement which the parties have agreed do not have a material impact relate to onshore archaeology and biodiversity net gain, with the remaining point in relation to landscape and visual impact assessment subject to recent, post-SoCG agreement as set out in the Landscape and Visual Impact Assessment section of these Closing Statements.
50. The only area of disagreement between the Applicant and LCC which LCC considers is a material issue relates to best and most versatile (BMV) agricultural land, discussed below.

4.1 LCC Areas of Disagreement: BMV Agricultural Land

51. As set out in Section 8.4 of Chapter 4 'Site Selection and Consideration of Alternatives' (REP5-013) of the ES, all land within a c.6km radius of the National Grid T-Junction is classified as Agricultural Land Classification (ALC) Grade 1, and as such the use of ALC Grade 1 land could not be avoided when identifying potential onshore substation (OnSS) land to facilitate the Project's grid connection at Weston Marsh.
52. As discussed in Section 9.4 of ES Chapter 4, following consultation, the Applicant selected an onshore export cable corridor (ECC) which significantly reduced the amount of Grade 1 land which would be temporarily impacted by the construction of the onshore ECC.
53. The majority of the Grade 1 land impacted by the Project will only be subject to temporary effects during construction and restoration.

54. LCC acknowledges the Applicant's reasoning for the siting of the OnSS, and that the Applicant's re-routing of the onshore ECC reduces the amount of Grade 1 land required. However, they adopt an in-principle objection to the use of Grade 1 land.
55. The Council's in principle objection to the use of Grade 1 land does not indicate that the Applicant's approach is inconsistent with NPS EN-1. Paragraph 5.11.12 states that *"Applicants should seek to minimise impacts on the best and most versatile agricultural land..."*. The Applicant's selection of the northern onshore ECC option, which contains 23% Grade 1 land, compared to the northern onshore ECC option, which contains 88% Grade 1 land, demonstrates that the Applicant has sought to minimise impacts. Avoiding Grade 1 land entirely is not possible in relation to the OnSS, as all land within the search area is Grade 1. The Applicant's search area was determined in the manner described in ES Chapter 4 Site Selection and Consideration of Alternatives (REP5-013) which, as set out below, involved consideration of technical requirements, environmental considerations and consultation responses.
56. The Council's position is also inconsistent with the approach taken by the Secretary of State in a number of recent decisions in relation to electricity NSIPs.
57. Paragraph 5.11.34 of NPS EN-1 states:
- "The Secretary of State should ensure that applicants do not site their scheme on the best and most versatile agricultural land without justification. Where schemes are to be sited on best and most versatile agricultural land the Secretary of State should take into account the economic and other benefits of that land."*
58. The decision letter dated 24 January 2025 for the West Burton Solar Project, when considering impacts on BMV land, states at paragraph 4.273, that:
- "The Secretary of State places great importance on the protection of BMV land but is satisfied that the Proposed Development's siting on BMV land has been justified, noting that the Applicant has reasonably evidenced the use of BMV land and considered the relevant 2011 and 2024 NPS tests."*
59. That application related to a solar farm, and the Secretary of State acknowledged the harms of long-term, reversible, use of BMV land, and ascribed *"...little negative weight to soils and agriculture in the planning balance."*
60. The Council also notes the temporary nature of some of the impacts on Grade 1 land, but consider there is a need for a comprehensive agricultural restoration plan. It is the Applicant's position that restoration of agricultural land temporarily impacted by construction works will be adequately addressed through the measures set out in the Outline Soil Management Plan ("oSMP") (document 8.1.3, version 7). A detailed soil management plan which accords with the oSMP is secured in Requirement 18 (Code of construction practice) of the draft DCO. As set out in the paragraph 12 of the outline SMP, an Agricultural Liaison Officer (ALO) and Soil Clerk of Works will be appointed who will supervise works as they proceed. The Applicant and LCC have also agreed terms for a s106 agreement including a contribution towards the provision of an Agricultural Specialist (see Section 14 below).

5 Habitats Regulations

61. Within the context of Section 104 of the Planning Act 2008, this section provides a high-level summary of the Applicant's submissions contained within its Habitats Regulations-related documents and the legal framework to which the Applicant's submissions respond.

5.1 Legal framework

62. Sections 104(5) and (6) of the Planning Act 2008 provide that the Secretary of State is not required to determine an application in accordance with the relevant NPS where this would lead to the Secretary of State being in breach of any duty imposed on them by or under any enactment or would be unlawful by virtue of any enactment. We have referred to Regulation 7 of the 2010 Regulations and the Natural Environment and Rural Communities Act 2006 above (and outlined how these can be complied with in making a decision).

63. In addition, in England and Wales, the UK's obligations under the Habitats Directive and the Birds Directive were transposed into law by the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (together the **Habitats Regulations**). The Habitats Regulations remain in force (subject to certain amendments) following the UK's withdrawal from the EU. The network of designated protected sites, which is referred to by the EU as the Natura 2000 network, is now known in the UK as the National Site Network.

64. The Habitats Regulations provide that, before granting development consent for a project which is likely to have a significant effect on a European site or a European offshore marine site (either alone or in-combination with other plans or projects), and is not directly connected with or necessary to the management of that site, the Secretary of State must make an Appropriate Assessment of the implications of the project for that site, in view of the site's conservation objectives.

65. The Secretary of State may only grant development consent for a project if it will not adversely affect the integrity of the European site or European offshore marine site, or if there are imperative reasons of overriding public interest which justify a derogation from the Habitats Regulations.

66. Regulation 64(1) of the Conservation of Habitats and Species Regulations 2017 states:

"If the competent authority is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature), it may agree to the plan or project notwithstanding a negative assessment of the implications for the European site or the European offshore marine site (as the case may be)."

67. Regulation 29(1) of the Conservation of Offshore Marine Habitats and Species Regulations 2017 is in fundamentally the same terms.

68. Regulation 68 of the Conservation of Habitats and Species Regulations 2017 states:

“Where in accordance with regulation 64 - (a) a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site or a European offshore marine site, or (b) a decision, or a consent, permission or other authorisation, is affirmed on review, notwithstanding such an assessment, the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of [the National Site Network] is protected.”

69. Regulation 36 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 similarly requires necessary compensatory measures to be secured where development consent is granted notwithstanding a negative assessment.
70. The Habitats Regulations therefore set out a sequential process to be followed before development consent may be granted in relation to an application for a project which the Secretary of State considers will have adverse effects on integrity (AEol) on a designated site or sites) or where such an effect cannot be ruled out. The Secretary of State must be satisfied:
- There must be no alternative solutions to the project.
 - There must be imperative reasons of overriding public interest (IROPI) for development consent to be granted for the project.
 - Compensatory measures can be secured to ensure the overall coherence of the National Site Network is protected.

5.2 Report to Inform Appropriate Assessment and Derogation Case

71. The Applicant submitted, with the DCO application, a Report to Inform Appropriate Assessment (RIAA) to support the Secretary of State’s undertaking of an Appropriate Assessment. The RIAA has been updated during the examination phase to capture various changes made by the Applicant to the Project. The final version of the RIAA was submitted at Deadline 6 (Document 7.1, version 5).
72. The assessments in the RIAA have been undertaken in accordance with the requirements of the Habitats Regulations and the requirements of the policies set out in the Energy NPSs.⁵
73. The RIAA identified potential for AEol in relation to potential collision risk in-combination with other plans and projects to the kittiwake feature of the Flamborough and Filey Coast (FFC) Special Protected Area (SPA). The Applicant’s position is that it is possible to rule out the risk of an AEol on all other features of the FFC SPA and on all other designated sites.

⁵ In particular, paragraphs 5.4.25 to 5.4.32 of NPS EN-1 and paragraphs 2.8.51 to 2.8.56 and 2.8.95 to 2.8.110 of NPS EN-3

74. The Applicant carried out extensive consultation with statutory nature conservation bodies and others through the Evidence Plan Process ahead of submission of the application and throughout the Examination. The Applicant also had regard to recent decisions by the Secretary of State in relation to DCO applications for other offshore windfarms which have the potential to impact on the same designated sites as the Project. Taking the Applicant's assessments, the consultation process, and recent offshore windfarm decisions together:

- The RIAA concludes that there will be no AEol in relation to potential displacement risk to the guillemot feature of the FFC SPA. Natural England disagree with this conclusion. The Applicant recognises that, following the Hornsea Three and Hornsea Four consent decisions, there is the possibility that the Secretary of State may conclude that the potential for AEol cannot be excluded.
- The RIAA concludes that there will be no AEol in relation to potential displacement risk to the guillemot feature of the Farne Islands SPA. In response to the ExA's Report on the Implications for European Sites ("RIES"), Natural England submitted updated advice at Deadline 5 that an in-combination AEol on guillemot at the Farne Islands cannot be ruled out due to the substantial impacts of the Berwick Bank Offshore Wind Farm (REP5-172).
- The RIAA concludes that there will be no AEol in relation to potential displacement risk to the razorbill feature of the FFC SPA. However, the Applicant recognises that following the Hornsea Four consent decision, there is the possibility that the Secretary of State may conclude that the potential for an AEol cannot be excluded.
- The RIAA concludes that there will be no AEol in relation to the assemblage feature of the FFC SPA. Natural England have stated they are unable to rule out an adverse effect in combination.
- The RIAA concludes that there will be no AEol in relation to the red-throated diver feature of the Greater Wash SPA. At the beginning of the Examination, Natural England raised concerns as to the potential impacts of the Project on red-throated diver at the Greater Wash SPA. Following the submission of further evidence by the Applicant in an updated version of the RIAA (7.1) at Deadline 4a, and the commitment to a seasonal restriction on works associated with the ORCP and the offshore export cable within the Greater Wash SPA plus a 2km buffer, Natural England have confirmed that they are able to exclude AEol for red-throated diver at the Greater Wash SPA.
- The RIAA concludes that there will be no AEol in relation to potential risk to the sandbank feature of the Inner Dowsing, Race Bank and North Ridge (IDRBNR) Special Area of Conservation (SAC). Natural England disagree with this conclusion. The Applicant recognises that following the Hornsea Three, Norfolk Vanguard, and Norfolk Boreas consent decisions, there is the possibility that the Secretary of State may conclude that the potential for AEol cannot be excluded.
- The RIAA concludes that there will be no AEol in relation to potential risk to the biogenic reef feature of the IDRBNR SAC. This conclusion is based on the lack of any biogenic reef identified within the proposed cable route for the Project where it passes through the IDRBNR SAC. Notwithstanding, the Applicant proposes to implement a Biogenic Reef Mitigation Plan (prepared in accordance with the Outline Biogenic Reef Mitigation Plan – REP2-043) to avoid any impacts to *S. spinulosa* reef that could in theory develop within the cable route prior to

construction. Furthermore, the Applicant has committed to the deployment of removable cable protection within specific areas which are assessed as being capable of being supporting habitat for *S. spinulosa* reef, following advice on the identification of supporting habitat received from Natural England at Deadline 3 (REP3-067) and subsequent bilateral engagement with them. However, Natural England have maintained that an AEoI cannot be ruled out for this feature.

- The RIAA concluded that there will be no AEoI in relation to potential habitat loss, disturbance and pollution risk to the common scoter (non-breeding), sandwich tern (breeding), common tern (breeding), and little tern (breeding) features of the Greater Wash SPA. Natural England confirmed in its response to the RIES (REP5-172) that it agrees with the Applicant's conclusions in relation to these features of this designated site.
- The RIAA concluded that there will be no AEoI in relation to potential habitat loss, disturbance, pollution and air quality impacts to the Bewick's swan (non-breeding), pink-footed goose (non-breeding), dark-bellied brent goose (non-breeding), shelduck (non-breeding), wigeon (non-breeding), gadwall (non-breeding), pintail (non-breeding), common scoter (non-breeding), goldeneye (non-breeding), oystercatcher (non-breeding), grey plover (non-breeding), knot (non-breeding), sanderling (non-breeding), dunlin (non-breeding), black-tailed godwit (nonbreeding), bar-tailed godwit (non-breeding), curlew (non-breeding), redshank (non-breeding), turnstone (non-breeding), common tern (breeding), little tern (breeding) and waterbird assemblage features of the Wash SPA.
- The RIAA concluded that there will be no AEoI in relation to potential habitat loss, disturbance, pollution and air quality impacts to the following features of the Wash Ramsar: saltmarshes, major intertidal banks of sand and mud, shallow water, and deep channels; inter-relationship between saltmarshes, intertidal sand, mudflats, and estuarine waters; bird assemblages of international importance; and bird species occurring within the Ramsar at levels of international importance noting species with peak counts in spring/autumn as being redshank; curlew; oystercatcher (wintering); grey plover (wintering); knot; sanderling; black-tailed godwit; and ringed plover; and species with peak counts in winter as being black-headed gull; eider; bar-tailed godwit; shelduck; dark-bellied brent goose; dunlin; pink-footed goose; golden plover; and lapwing.
- Natural England's initial position was that it did not agree with the Applicant's assessment of significance of impacts on SPA interest features namely pink footed goose, dark-bellied brent goose, golden plover, lapwing and curlew whilst located within Functionally Linked Land (FLL) to The Wash SPA/Ramsar, but that it considered further mitigation measures could be adopted to minimise the impacts. The Applicant has discussed potential mitigation with Natural England throughout the Examination and updated its mitigation package to seek to address Natural England's concerns. At Deadline 5 (REP5-170), Natural England advised:

- **Pink-footed goose:** Natural England welcomed the Applicant's inclusion of additional pink-footed geese mitigation within the Outline Landscape and Ecological Mitigation Strategy (OLEMS) (document 8.10, version 8) and noted that as well as aligning with NE's suggested approach every effort /measure option has been included to mitigate the impacts. Natural England requested a number of minor amendments to the wording of the OLEMS in relation to the pink-footed goose management plan commitment, which the Applicant has made in the OLEMS submitted at Deadline 6. This matter is therefore considered to be resolved and the conclusion of no AEoI in respect of pink-footed geese is considered to be agreed by NE.
- **Dark-bellied brent goose:** Natural England welcomed the commitments made by the Applicant to (1) not undertake construction works within 400m of The Wash, The Haven or areas designed to enhance bird numbers e.g. compensation areas, during the sensitive periods for dark-bellied brent geese between November and March inclusive (2) not undertake drilling in April and to install visual screening in the seasonally restricted area around The Haven in April in order to minimise potential visual disturbance arising from soft start works, and (3) to undertake a pre-construction survey for dark-bellied brent goose at the seasonally restricted area at The Haven and adjacent land to ensure that the proposed mitigation remains appropriate. With regard to the commitment to install visual screening, Natural England highlighted that careful consideration will need to be given to the necessity of screening at each location and material used, due to potential noise and visual disturbance from screening being moved by wind and noise associated with that. The Applicant has amended Section 3.7.5.5 of the OLEMS (document reference 8.10, version 8) to confirm that consideration will be given to the necessity for screening in each location and the material to be used, in order to minimise the potential for disturbance caused by the screening itself being moved by wind. This was shared with Natural England in advance of Deadline 6 and Natural England welcomed the additional text but queried what contingency there was should screening not be practicable. The Applicant has addressed this by adding further clarification to Section 3.7.5.5 of the OLEMS which clarifies the action to be taken in adverse weather and includes a commitment to contingency measures. Natural England stated that it continued to query if further mitigation measures can be adopted to minimise visual disturbance impacts to dark-bellied brent geese. The Applicant has considered whether further mitigation measures can be adopted to minimise visual disturbance impacts on dark-bellied brent geese during the April soft start works and has added text to Section 3.7.5.5 of the OLEMS (document reference 8.10, version 8) in this regard, wherein the Applicant has committed to exploring potential mitigation measures at the detailed design stage which will be documented and secured in the final ecological management plan. This matter is therefore considered to be resolved and the conclusion of no AEoI in respect of dark-bellied brent geese is considered to be agreed by NE.
- **Golden Plover, Curlew and Lapwing:** Natural England advised that it remained of the view that there is limited mitigation for disturbance, particularly in the Export Cable Corridor (ECC) running parallel to the A52. The Applicant met with Natural England on 24 March 2025. At that meeting, Natural England provided advice and clarification on the further measures that it required to address its remaining

concerns on this matter. The Applicant has incorporated these additional measures into Section 3.7.5.5 of the OLEMS (document reference document reference 8.10, version 8.0), which has been shared with Natural England in advance of Deadline 6 in order to achieve resolution at Deadline 6. Natural England responded via email on 3 April 2025 and recognised the intention to mitigate the impacts, however asked that the types of measures that could be used be stated and also that the freezing weather restriction be extended throughout the winter period from October to March inclusive. In response, the Applicant has added this extra information and clarification to the OLEMS. This matter is therefore considered to be resolved.

- Natural England also advised that while their concerns regarding the overall assessment of noise disturbance to designated bird features are resolved (as set out in REP5-168), it would be pertinent to ensure that impacts from noise pollution during construction and decommissioning to noise sensitive designated features of designated ecological sites are monitored and activities adjusted where an impact is identified. The Applicant has provided a detailed response on this matter in The Applicant's Comments on Deadline 5 Submissions (document 24.2, under The Applicant's Response to Appendix H7- Natural England's Comments on Onshore Ecology). The Applicant has already committed in the Outline Noise and Vibration Management Plan (REP2-031) to noise monitoring within the Anderby Marsh Lincolnshire Wildlife Trust (LWT) Reserve at its closest approach to the landfall construction area whilst construction operations are being undertaken. This ecological receptor has been targeted due its close proximity to the landfall area and specific noise attenuation mitigation which has been incorporated. The Applicant has had further engagement with Natural England with a view to establish the genesis of the most recent request. Whilst the Applicant does not understand the precise ask from Natural England, nor does it consider any additional monitoring to be justified or necessary, an acknowledgment of Natural England's comment in its email to the Applicant (referred to in 24.2 The Applicant's Comments on Deadline 5 Submissions) that "noise and disturbance to birds is an under-studied area", the Applicant has proposed within an update to the OLEMS (document 8.10, version 8) to further consultation with Natural England to discuss the potential for targeted baseline noise monitoring. The Applicant will undertake this monitoring at selected ecological receptors to assist Natural England in its data gathering activities. This initiative aims to enhance the scientific knowledge base on this topic and support Natural England in providing robust advice in the future.
- The RIAA concluded that there will be no AEoI in relation to potential loss of habitats within the SAC, disturbance to otter and habitat loss for otter, for the following features of the Wash and North Norfolk Coast SAC: Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*), mediterranean and thermo-Atlantic halophilous scrubs (*Sarcocornetea fruticosi*), coastal lagoons (priority feature) and otter. Natural England has not raised any concerns regarding this conclusion.

- The RIAA concluded that there will be no AEoI in relation to potential habitat loss, disturbance, pollution and air quality impacts to the grey plover (non-breeding), sanderling (non-breeding); bar-tailed godwit (non-breeding); and little tern (breeding) features of the Gibraltar Point SPA. Natural England confirmed in its response to the RIES (REP5-172) that it agrees with the Applicant's conclusions in relation to these features of this designated site.
- The RIAA concluded that there will be no AEoI in relation to potential habitat loss, disturbance, pollution and air quality impacts to the following features of the Gibraltar Point Ramsar: coastal habitats – estuarine mudflats, sandbanks, and saltmarsh; Red Data book invertebrates – including: *Haliphus mucronatus* (a water beetle aquatic); *Brachytron pratense* (hairy dragonfly, aquatic); waterfowl; grey plover, sanderling, bar-tailed godwit and dark-bellied brent goose. Natural England confirmed in its response to the RIES (REP5-172) that it agrees with the Applicant's conclusions in relation to these features of this designated site.
- The RIAA concluded that there will be no AEoI in relation to potential loss of habitats within the Saltfleetby-Theddlethorpe Dunes and Gibraltar Point SAC, or reduction of habitat quality for the following Annex I habitats: embryonic shifting dunes; "shifting dunes along the shoreline with *Ammophila arenaria* ('white dunes')"; "fixed coastal dunes with herbaceous vegetation ('grey dunes')" priority feature; dunes with *Hippophae rhamnoides*; and Humid dune slacks. Natural England has not raised any concerns regarding this conclusion.
- The RIAA concluded that there will be no AEoI in relation to potential habitat loss, disturbance, pollution and air quality impacts to bittern (non-breeding and breeding), shelduck (non-breeding), marsh harrier (breeding), hen harrier (non-breeding), avocet (non-breeding and breeding), golden plover (non-breeding), knot (non-breeding), dunlin (non-breeding), ruff (non-breeding), black-tailed godwit (non-breeding), bar-tailed godwit (non-breeding), redshank (non-breeding), little tern (breeding) and waterbird assemblage features of the Humber Estuary SPA. Natural England confirmed in its response to the RIES [REP5-172] it agrees with the Applicant's conclusions in relation to these features of this designated site.
- The RIAA concluded that there will be no AEoI in relation to potential habitat loss, disturbance, pollution and air quality impacts to the following features of the Humber Estuary Ramsar: dune systems and humid dune slacks; assemblages of international importance (waterfowl, non-breeding season); species/populations occurring at levels of international importance: shelduck; golden plover; knot; dunlin; black-tailed godwit; bar-tailed godwit; and redshank. Natural England confirmed in its response to the RIES (REP5-172) that it agrees with the Applicant's conclusions in relation to these features of this designated site.
- The RIAA concluded that there will be no AEoI in relation to potential habitat loss, and disturbance to the pink-footed goose feature of the North Norfolk SPA and the North Norfolk Ramsar. Natural England has disagreed with the Applicant's conclusions in their response to the RIES [REP5-172] however the Applicant has since addressed Natural England's outstanding concerns, as detailed above in relation to the pink-footed goose qualifying feature of The Wash SPA and Ramsar site. This matter is therefore considered to be resolved and the conclusion of no AEoI in respect of pink-footed geese is considered to be agreed by Natural England.

5.2.1 Approach to the RIAA

75. The Applicant has submitted a RIAA (Document 7.1, Version 5) that incorporates an appropriate level of precaution for all protected features and sites.
76. In relation to the ornithology impact assessment in particular, the Applicant and Natural England disagree on the appropriate level of precaution to apply. Both the Applicant's approach and Natural England's approach are presented throughout the ornithology assessments and the Applicant has updated the parts of the assessment based on Natural England's approach as Natural England's advice has evolved throughout the Examination. Table 4 within Appendix 12.7 Levels of precaution in the assessment and compensation calculations for offshore ornithology (REP4a-048) summarises the differences in the Applicant's and Natural England's positions. In addition, in-combination assessments should be considered highly precautionary in nature because they do not account for the fact individual birds could be double counted across multiple projects within similar areas, thus further over-inflating predicted impacts.
77. The appropriate level of precaution to be applied to the ornithology impact assessments, particularly on Auk species, has been the subject of further submissions by the Applicant. The Applicant's position is set out in the following documents:
- Levels of precaution in the assessment and compensation calculations for offshore ornithology (REP4a-048);
 - Consideration of bioseasons in the assessment of guillemot (REP4a-050);
 - Rates of displacement in guillemot and razorbill (REP4a-052); and
 - Madsen and Searle Papers (Further Commentary) (REP5-153).
78. In summary, the Applicant has demonstrated that the precautionary nature of the impact assessment is likely to over-estimate the real-world impacts on the Applicant's approach to assessment. If the over-precautionary approach advocated by Natural England were to be applied, this would result in a considerable inflation of the predicted impacts, generating impacts that are unrealistic compared to the environmental risk in question.
79. The effect of an over-precautionary approach is compounded by the layering of levels of precaution on precaution, many of which address the same issue, at each stage of the assessment. Due to the nature of the calculation, where precaution is added at the start, this is then multiplied throughout the latter stages. Figure 1 of Guillemot and Razorbill Compensation Quanta (Document 20.17, Version 4) illustrates the multiple precautionary inputs that contribute to this compounding effect.
80. Whilst the Applicant recognises the need for precaution in these assessments to address uncertainty, it is a tool to enable decision makers to make a reasonable assessment of the associated risk using the best scientific evidence available. The risk must be plausible and real and the precautionary principle should not be applied speculatively.

81. In response to ExA Q1 OR 1.2 (REP2-074), Natural England provided a table summarising the outstanding areas of disagreement in relation to the ornithology assessment methodology (Annex 2, REP5-166). The Applicant's Comments on Deadline 5 Submissions (Document 24.2) provides a summary of the status of disagreement at Deadline 6 within its Natural England section. All but one of the methodological comments identified by Natural England have been resolved.
82. The outstanding area of disagreement relates to whether Highly Pathogenic Avian Influenza (HPAI) should be considered in the assessment. The Applicant's view is that the immediate (and therefore the long term) impacts of HPAI are extremely difficult to assess; there is no evidence that a realistic assessment of potential future population trends should consider any meaningful reduction in colony growth as a result of HPAI given the uncertainties regarding the occurrence and scale of any future outbreaks. The lack of any clear methodology for the consideration of HPAI within an assessment potentially introduces more uncertainty into the assessment and as such any outputs would be speculative. The Applicant's position is that this methodological disagreement is not material to the conclusions of the assessment.

5.2.2 Key RIAA Conclusions

5.2.2.1 The guillemot feature of the FFC SPA

83. The Applicant is confident that an AEoI can be ruled out for the guillemot feature of the FFC SPA. The WTG Area is located 93.5km from the FFC SPA, which is beyond the mean max foraging range of guillemot of 73.2km.⁶ Paragraph 675 of the RIAA (Document 7.1, Version 5) concludes that the Project would result in a 0.199% increase in baseline mortality against the most recent colony count. In relation to the in-combination assessment, the assessment concludes in paragraph 1785 that the impact of the Project in combination with other projects would result in a 0.2% annual reduction in population growth rate. Both scenarios are expected to result in impacts that are indistinguishable from natural fluctuations in the population and the Applicant considers the SPA population would maintain its current size over the long term. Natural England have previously stated that a maximum reduction in the growth rate of 0.4% would not cause an AEoI of the guillemot feature of the FFC SPA (Natural England, 2021b). This scenario is not triggered in the Applicant's assessment of impacts, using the Applicant's approach.

5.2.2.2 The guillemot feature of the Farne Islands SPA

84. The Applicant is confident that an AEoI can be ruled out for the guillemot feature of the Farne Islands SPA. The WTG Area is located 286.5km from the Farne Islands SPA, which is beyond the mean max plus 1SD foraging distance for breeding season birds. There is only connectivity between the Project and the Farne Islands SPA during the non-breeding season. Paragraph 641

⁶ The WTG Area is within the mean max plus 1 standard deviation foraging distance of 153.7km and therefore has been screened into the assessment following best practice.

of the RIAA (Document 7.1, Version 5) concludes that the Project would result in a 0.079% increase in baseline mortality as a result of the project alone. In relation to the in-combination assessment, the assessment concludes in Paragraph 1751 that the impact of the Project in combination with other projects would result in a 0.2% annual reduction in population growth rate. Both scenarios are expected to result in impacts that are indistinguishable from natural fluctuations in the population.

5.2.2.3 The razorbill feature of the FFC SPA

85. The Applicant is confident that an AEoI can be ruled out for the razorbill feature of the FFC SPA. The WTG Area is located 93.5km from the FFC SPA, which is beyond the mean max foraging range of razorbill of 88.7km.⁷ Paragraph 704 of the RIAA (7.1) concludes that the Project would result in a 0.163% increase in baseline mortality against the most recent colony count. In relation to the in-combination assessment, the assessment in Paragraph 1807 concludes that the impact of the Project in combination with other projects would result in a 0.2% annual reduction in population growth rate. Both scenarios are expected to result in impacts that are indistinguishable from natural fluctuations in the population and the Applicant considers the SPA population would maintain its current size over the long term. Even considering the multiple levels of precaution built into the assessment, both the anticipated Natural England scenario and Applicant's approach would not cause any reversal of the current population trend (an annual population growth rate of approximately 6%).

5.2.2.4 The sandbank feature of the IDRBNR SAC

86. The Applicant is confident that an AEoI can be ruled out for the sandbank features of the IDRBNR SAC, based on the low footprint of the cable protection on designated features, the fact that structures are removable at the end of the lifetime of the project, and the lack of significant impacts from any cable maintenance activities. The total area of the designated sandbank features that will be impacted by removable cable protection is 5,760m² (approximately 1.59% of the designated sandbanks features). As both the cable and cable protection from the SAC are removable at the end of the operational life of the project, this ensures that the physical presence of the structures and any associated habitat loss will be long-term and temporary, rather than permanent. Furthermore, while there is a possibility of remedial cable repairs and associated maintenance activity, any works would have a significantly smaller footprint than for the construction phase and be limited discrete events.

5.2.2.5 The biogenic reef feature of the IDRBNR SAC

87. The Applicant is confident that an AEoI can be ruled out for the biogenic reef feature of the IDRBNR SAC. Site-specific survey data for the project confirms that there is no biogenic reef within the proposed export cable corridor and so there will be no direct overlap with any biogenic reef features of the designated site. The Applicant has developed an Outline Biogenic

⁷The WTG Area is within the mean max plus 1 standard deviation foraging distance of 164.6km and therefore has been screened into the assessment following best practice.

Reef Mitigation Plan (REP2-043), which includes a commitment to micro-siting around any areas of identified *S. spinulosa* reef. Furthermore, whilst the Applicant maintains that the conservation objectives of the IDRBNR SAC do not require that habitats with the potential to support designated habitats receive the same level of protection as the designated habitats themselves, the Applicant has committed to the deployment of removable cable protection (where cable protection is needed) within specific areas which are considered to be capable of being supporting habitat for *S. spinulosa* reef.

5.3 Derogation Case

88. The Applicant has submitted a Derogation Case (Document 7.5, Version 3), setting out the Applicant's position as to why a derogation from the Habitats Regulations is justified in relation to the potential AEoI on the kittiwake feature of the FFC SPA. The Derogation Case also sets out the Applicant's position, on a without prejudice basis, as to why a derogation from the Habitats Regulations is justified if the Secretary of State concludes there is a potential AEoI on the razorbill feature or guillemot feature of the FFC SPA, the guillemot feature of the Farne Islands SPA or on the sandbank feature and biogenic reef feature of the IDRBNR SAC, in line with the policy set out in paragraph 5.4.26 of NPS EN-1.
89. Section 3 of the Derogation Case sets out the Applicant's assessment of alternative solutions. The Applicant's assessment was carried out in accordance with relevant guidance. It considered the 'do nothing' option, and possible alternatives to Project parameters relating to route, scale, size, design, method and timing.⁸ It concludes that there are no feasible alternative solutions which would reduce the risk of AEoI on designated sites.
90. Section 4 of the Derogation Case considers whether there is IROPI which would justify a derogation. The Project will make a significant direct contribution towards reducing greenhouse gas emissions and limiting climate change, helping to protect human health and safety. The UK has set ambitious policy targets and objectives, and legally binding targets commensurate with the importance and scale of the challenge of tackling climate change. The Project will make a key contribution towards meeting these targets and objectives. The Project will help to address the issue of energy security. There is a clear public interest in meeting these policy and legal targets and objectives, ensuring the UK's energy security, and increasing renewable electricity supply. The Project is also expected to have a number of beneficial socio-economic effects, in the LEA, the regional area, and the UK through generation of GVA and employment. The benefits of the Project will be long-term.
91. It is the Applicant's position that there are imperative reasons, in the public interest, for the Project to proceed, which should override the potential AEoI which may be caused to designated sites. The Applicant therefore concludes that there are demonstrable IROPI to justify derogation from the Habitats Regulations.

⁸ In this regard, the Applicant refers to its summaries of key mitigation discussed 10 below.

92. The Applicant's conclusion is in line with the Plan-level Habitats Regulation Assessment which was carried out for NPS EN-1 to EN-5, which concluded that, subject to Project-specific assessment:

"...there is IROPI in designating this policy which permits new energy infrastructure because security of supply is essential for the maintenance of human health and public safety, and because combating climate change (which is one of the factors creating the demand for new generating capacity) will have beneficial consequences of primary importance for the environment. The Government is certain that we need new energy infrastructure; we need a system of development consents and a set of criteria against which they will be determined. The Government is therefore satisfied that there are IROPI in adopting EN-1 to EN-5"

5.4 Compensation Measures

93. The Applicant has submitted a number of documents setting out the proposed measures for delivering the necessary compensation for any AEoI that arise as a result of the Project. In relation to guillemot, razorbill, the FFC seabird assemblage, sandbanks and biogenic reef, these documents are submitted on a "without prejudice" basis. The relevant documents include:

- Benthic Compensation Strategy (REP4-045);
- Without Prejudice Sandbank Compensation Plan (REP5-105);
- Without Prejudice Biogenic Reef Compensation Plan (Document 7.6.2, Version 4);
- Without Prejudice Benthic Compensation Evidence Base and Roadmap (Document 7.6.3, Version 4);
- Outline Sandbank Compensation Implementation and Monitoring Plan (APP-245);
- Biogenic Reef Compensation Implementation and Monitoring Plan (APP-247);
- Ornithology Compensation Strategy (REP4-053);
- Kittiwake Compensation Plan (Document 7.7.1, Version 3);
- Without Prejudice Guillemot Compensation Plan (Document 7.7.2, Version 3);
- Without Prejudice Razorbill Compensation Plan (Document 7.7.3, Version 3);
- Offshore Artificial Nesting Structures Evidence Base and Roadmap (Document 7.7.4, Version 3);
- Without Prejudice Predator Control Evidence Base and Roadmap (Document 7.7.5, Version 4);
- Without Prejudice Additional Measures for Compensation of Guillemot and Razorbill (Document 7.7.5 Version 5);
- Outline Kittiwake Compensation Implementation and Monitoring Plan (APP-251);
- Outline Guillemot Compensation Implementation and Monitoring Plan (APP-253);
- Outline Razorbill Compensation Implementation and Monitoring Plan (APP-254); and

- Compensation Funding Statement (REP2-027).

94. These documents set out, for each of the relevant sites and species, the package of potential compensation measures which would be delivered to compensate in the event that an AEoI is concluded in the appropriate assessment for the Project.
95. In each case, the Applicant has set out a robust evidence base which demonstrates that the measures have been appropriately secured, the proposed measures will be ecologically effective in compensating for the impacts on the relevant feature and that there is a clear route to their delivery, with substantial progress along that route already having been made.
96. The Secretary of State can therefore be satisfied that the Project complies with the policies relating to compensation set out at paragraphs 2.8.265 to 2.8.283 of NPS EN-3.

5.5 Legal mechanism for securing compensation

97. Schedule 22 of the draft DCO creates an enforceable legal mechanism to ensure delivery of the Applicant's proposed compensation measures. The measures include Project-specific measures which would be delivered by the DCO undertaker, but also include optionality for the undertaker to pay a contribution to the Marine Recovery Fund, or participate in strategic or collaborative measures alongside, or in substitution for, Project-specific measures.
98. Several recent DCOs have been granted on the basis of a derogation, and the use of DCO provisions to ensure compensation measures are legally secured is preceded in these DCOs, which include: Hornsea Three Offshore Wind Farm Order 2020, Norfolk Boreas Offshore Wind Farm Order 2021, Norfolk Vanguard Offshore Wind Farm Order 2022, East Anglia ONE North Offshore Wind Farm Order 2022, East Anglia TWO Offshore Wind Farm Order 2022, Hornsea Four Offshore Wind Farm Order 2023, and Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024.
99. The Applicant's position remains that there will be no AEoI on any feature other than kittiwake at the FFC SPA, and the Applicant considers that Parts 2 to 5 of Schedule 22 should not be included in any DCO made by the Secretary of State. Each Part of the Schedule has been set up to operate independently, such that one or more Parts can be removed without affecting the operation of compensation for other features in other Parts of the Schedule. This allows the Secretary of State to easily remove or retain Parts of the Schedule as appropriate to reflect his decision on relevant features.

100. Parts 1 to 5 of Schedule 22 follow a staged approach to finalising the compensation measures to be taken forward post-consent, which aligns with the precedent DCOs referred to above. This requires: (i) a steering group to be established; (ii) the preparation of a compensation implementation and monitoring plan (“**CIMP**”) in consultation with the steering group, to be submitted to the Secretary of State for approval; and (iii) implementation of the compensation measures in accordance with the approved CIMP, and notification to the Secretary of State of completion. The detailed CIMPs must be based on the compensation strategy set out in the Compensation Plans submitted during this examination. This ensures that the overall coherence of the National Sites Network is protected, by ensuring that compensation measures must be put in place (if deemed to be required), and requiring detailed compensation provisions to be approved by the Secretary of State.
101. Schedule 22 requires the detailed CIMPs to include details of monitoring and reporting on the effectiveness of the measures, including details of the mechanism to determine the need for any alternative compensation measures and/or adaptive management measures. This ensures that the effectiveness of measures will be appropriately monitored and measured, and that, if necessary, alternative and adaptive management measures can be put in place. This also ensures that the overall coherence of the National Sites Network is protected.
102. Schedule 22 follows the well-precedented approach taken in other DCOs where a derogation has been justified, and ensures that there is an enforceable legal mechanism to secure compensation and ensure the overall coherence of the National Sites Network is protected.

5.6 Compensation measures for kittiwake

103. The following documents set out or are relevant to the Applicant’s proposed compensation measures for potential AEoI on the kittiwake feature of the FFC SPA:
- Ornithology Compensation Strategy (REP4-053);
 - Kittiwake Compensation Plan (Document 7.7.1, Version 3);
 - Outline Kittiwake Compensation Implementation and Monitoring Plan (APP-251);
 - Offshore Artificial Nesting Structures Evidence Base and Roadmap (Document 7.7.4, Version 3);
 - The Crown Estate Kittiwake Strategic Compensation Plan (APP-260);
 - App A TCE Outline Kittiwake Strategic Implementation Monitoring Plan (APP-261);
 - Collaborative Delivery of Kittiwake Compensation Letter of Intent (PD1-098); and
 - Lead-in periods for kittiwake breeding on Artificial Nesting Structures (REP4-104).

104. The preferred compensation measure for kittiwake is delivery of an offshore ANS. Section 3.2 of the Offshore Artificial Nesting Structures Evidence Base and Roadmap sets out the extensive evidence base demonstrating the efficacy of offshore ANS as a compensation measure for kittiwake. The evidence submitted by the Applicant builds on the large body of evidence compiled by previous projects (primarily Hornsea Four) before the Secretary of State took the decision to approve offshore ANS as a suitable compensation measure for those projects.
105. The Applicant's proposed approach complies with the conclusions of the plan-level HRA undertaken by The Crown Estate as part of the Round 4 leasing round, including the requirements of the Kittiwake Strategic Compensation Plan (APP-261). Section 5.3 of the Kittiwake Strategic Compensation Plan identifies offshore ANS as a suitable compensation measure and sets out the evidence base that supports this. The use of ANS has been approved as a strategic compensation measure for kittiwake and included in the Library of Compensation Measures that will form part of the MRF.⁹
106. The Applicant has set out the quantum of compensation required and detailed the Applicant's strategy for delivering the required compensation (Kittiwake Compensation Plan (Document 7.7.1, Version 3)). The Offshore Artificial Nesting Structures Evidence Base and Roadmap sets out in detail the robustness of this compensation measure and how the necessary quantum of compensation would be delivered. Whilst the Applicant maintains that the conclusions of impact and compensation requirements based on the Applicant's approach are justified on the best available scientific evidence and should be preferred, the Applicant has demonstrated that it can deliver the required compensation, using the overly precautionary approach advocated Natural England at a ratio of 2:1 (REP4-104).
107. The Applicant has demonstrated that practical delivery of the proposed compensation measures can be achieved in a suitable timescale and that the ANS measure is well-progressed. The Applicant has taken the novel approach of securing consent for up to two ANS in the DCO, thereby dispensing with the need for further consent to be obtained post-consent. The Applicant has also obtained a letter of comfort from TCE (REP2-062), which confirms that TCE has the ability to grant to the Applicant the required seabed rights for the installation of the ANS. The design of the ANS is progressing, building on the work that had already been undertaken by Hornsea Three and Hornsea Four. Natural England confirmed early in the Examination in their responses to the ExA's First Written Questions (Q1 HRA 2.3, REP2-074) that they considered *"the kittiwake compensatory measures to present an equivalent or greater level of detail than that provided by previous developments"*. These previous developments were all consented on the equivalent or less detail than the Applicant has provided.

⁹ DESNZ, Strategic compensation measures for offshore wind activities: Marine Recovery Fund interim guidance

108. Part 1 of Schedule 22 contains provisions prohibiting the operation of turbines until two full breeding seasons have elapsed following implementation of the measures set out in the approved kittiwake CIMP. This ensures that the overall coherence of the National Sites Network is protected by providing confidence that the impact on kittiwake predicted to arise from the Project will be offset by the end of the Project's operational life. The Applicant has submitted detailed justification for the inclusion of this lead-in period in Document 19.11: Lead-in periods for kittiwake breeding on Artificial Nesting Structures (REP4-104).
109. The ExA and the Secretary of State can therefore have confidence that the required compensation for kittiwake can be delivered by the measures proposed by the Applicant and evidenced at Examination.

5.7 Compensation measures for guillemot and razorbill

110. The following documents set out or are relevant to the Applicant's proposed compensation measures in the event that an AEoI is concluded on the guillemot feature of the FFC SPA, the guillemot feature of the Farne Islands SPA or the razorbill feature of the FFC SPA:
- Ornithology Compensation Strategy (REP4-053);
 - Without Prejudice Guillemot Compensation Plan (Document 7.7.2, Version 3);
 - Without Prejudice Razorbill Compensation Plan (Document 7.7.3, Version 3);
 - Offshore Artificial Nesting Structures Evidence Base and Roadmap (Document 7.7.4, Version 3);
 - Without Prejudice Predator Control Evidence Base and Roadmap (Document 7.7.5, Version 4);
 - Without Prejudice Additional Measures for Compensation of Guillemot and Razorbill Evidence Base and Road Map (Document 7.7.6, Version 5);
 - Outline Guillemot Compensation Implementation and Monitoring Plan (APP-253);
 - Outline Razorbill Compensation Implementation and Monitoring Plan (APP-254); and
 - Guillemot and Razorbill Compensation Quanta (Document 20.17, Version 4).
111. The Applicant has set out a robust package of measures which may be relied upon to deliver any required compensation for guillemot and/or razorbill. These measures are:
- Predator eradication at the Plémont Seabird Reserve in Jersey;
 - Delivery of an offshore Artificial Nesting Structure; and
 - Reduction of disturbance, habitat management and potentially additional predator eradication at various sites in the south west of England.

112. The Without Prejudice Predator Control Evidence Base and Roadmap (Document 7.7.5, Version 4) sets out the robust evidence base demonstrating the anticipated benefits for guillemot and razorbill from predator control at Plémont Seabird Reserve in Jersey. The Applicant has developed the measure in conjunction with Birds on the Edge Partnership, a joint initiative between the National Trust for Jersey (NTJ), the Government of Jersey Natural Environment Department and Durrell Wildlife Conservation Trust, and an exclusivity agreement has been concluded for the funding of the measure by the Applicant (RR-009).
113. The clear evidence base for offshore ANS as compensation for auk species is set out at section 3.3 of the Offshore Artificial Nesting Structures Evidence Base and Roadmap (Document 7.7.4, Version 3. The Crown Estate Kittiwake Strategic Compensation Plan (APP-260), at paragraph 10.1.1, also notes that the final design of an offshore ANS may accommodate other species of seabird such as guillemot, recognising the in principle suitability of offshore ANS for auk species.
114. The Without Prejudice Additional Measures for Compensation of Guillemot and Razorbill Evidence Base and Road Map (Document 7.7.6, Version 5) sets out in detail the robustness of these compensation measures. This document has been updated throughout the Examination as the Applicant has progressed these compensation measures. Eight sites in the south west of England, identified through a site selection process, were monitored through the guillemot and razorbill breeding season of 2024. This informed site use by both birds and potential sources of anthropogenic disturbance, as well as identifying other key pressures such as predators and incidences of habitat loss through vegetation encroachment. Productivity data for a number of colonies were also recorded. At the close of the Examination, some of the measures are proposed as project-specific measures and others are being developed in collaboration with other offshore wind developers. In addition, the Applicant is engaging with the Offshore Wind Industry Council (OWIC) and Defra in relation to the strategic predator eradication measures for auk species which will ultimately form part of the MRF, in particular on the Isles of Scilly.
115. The Applicant's position on the quantum of compensation that would be required for each species, should an AEol be concluded by the Secretary of State, as well as the compensation that can be developed by the package of measures, is set out in Guillemot and Razorbill Compensation Quanta (20.17) and in the above Evidence Base and Road Map documents. The Applicant maintains that, should compensation be required, the implementation of predator control at the Plémont Seabird Reserve (see Without Prejudice Predator Control Evidence Base and Roadmap (Document 7.7.5, version 4)) can deliver the full requirement based on the Applicant's approach.

116. The Applicant maintains that Natural England's proposed method of compensation calculation, which advocates for the use of the upper confidence interval and an 'appropriate' ratio, is over-precautionary and should not be the appropriate basis for compensation calculation. The Applicant notes that Natural England has not advised on its position regarding what ratio would be appropriate. Adding further levels of precaution at this stage of the calculation is unnecessary in light of the significant precaution added into the impact assessment. Guillemot and Razorbill Compensation Quanta (Document 20.17, Version 4) outlines at section 2 how yet further precaution is added at the point of calculating the compensation requirement, compounding the over-precaution concluded in the assessment. The case studies set out at section 7 of Chapter 12 Appendix 7 Levels of precaution in the assessment and confidence calculations for offshore ornithology (REP4a-048) demonstrate how the precaution included in the early stages of the assessment multiplies through the stages to produce a figure that is far removed from the likely impact. For guillemot, as an example, this increases the compensation requirement by over 1800% (assuming a 1:1 ratio). The Applicant's position is that should Natural England's preferred approach using the UCI be applied, then the addition of a further ratio is not necessary or appropriate for the reasons outlined above.
117. That said, even using Natural England's design criteria calculation, compensation would still be deliverable through the measures proposed at a 2:1 ratio. The calculation in Guillemot and Razorbill Compensation Quanta excludes any additional benefit that would be available through the predator eradication measures on the Isles of Scilly.
118. In terms of delivery, the package of measures is well-progressed and the Applicant has continued to move forward with the delivery of the compensation measures throughout the Examination. In particular, and in addition to the considerable progress made on the delivery of the offshore ANS noted at section 5.6 above:
- a planning application has now been submitted for the predator eradication measure at Plemont (key documents from the planning application have been annexed to the Without Prejudice Predator Control Evidence Base and Road Map (Document 7.7.5, Version 4);
 - a letter from the Jersey Government authorising the fence to be erected, as landowner of the Plemont Seabird Reserve, once planning approval has been obtained (PD1-099);
 - a survey campaign has been carried out for the disturbance reduction and habitat enhancement measures in the south west of England;
 - letters of comfort have been obtained from partner organisations for delivery of the disturbance reduction and habitat enhancement measures in the south west of England: the Cornwall Wildlife Trust and Torbay Coast and Countryside Trust (annexed to the Additional Measures for Compensation of Guillemot and Razorbill Evidence Base and Road Map (Document 7.7.6, Version 4))
 - a letter of comfort has been obtained from TCE in relation to those sites in the south west which would be carried out in the foreshore or nearshore, confirming that TCE has the ability to grant the necessary rights (REP2-062);

- a letter has been obtained from Tor Bay Harbour Authority confirming the necessary authorisation to install seasonal marker buoys, part of the package of disturbance reduction measures in the south west (annexed to the Without Prejudice Additional Measures for Compensation of Guillemot and Razorbill Evidence Base and Road Map (Document 7.7.6, Version 5)).
- an email statement has been received from Defra (annexed to the Without Prejudice Additional Measures for Compensation of Guillemot and Razorbill Evidence Base and Road Map (Document 7.7.6, Version 5)) confirming a dedicated 'task and finish group' comprising Defra, DESNZ, Natural England, The Wildlife Trusts, OWIC, The Crown Estate, is working to establish the mechanisms required to allow predator eradication to be delivered as a strategic compensation measure, noting the option for this to be delivered through the Marine Recovery Fund. The statement notes that all parties agree that predator eradication on the Isles of Scilly has great potential to provide compensation for the impacts of offshore wind projects and support its inclusion in project and that Offshore wind projects currently seeking consent might wish to submit this statement to the examining authority to demonstrate progress with this scheme, if they seek to use it as strategic compensation for unavoidable impacts to protected species likely to be impacted. A letter from Offshore Wind Industry Council dated 11 March 2025 (also annexed to the Without Prejudice Additional Measures for Compensation of Guillemot and Razorbill Evidence Base and Road Map (Document 7.7.6, Version 5)) confirms the Project's role in this measure.

119. The Applicant considers that, on the basis of the information provided, it has been demonstrated that practical delivery of the proposed compensation measures can be achieved in a suitable timescale.
120. The ExA and the SoS can therefore have confidence that compensation for guillemot and/or razorbill, if required, can be delivered by the measures proposed by the Applicant and evidenced at Examination.

5.8 Compensation measures for the seabird assemblage feature of the FFC SPA

121. The Applicant considers that there will be no AEoI on the assemblage feature of the FFC SPA. However, in the event that AEoI is concluded by the SoS, Natural England has concluded that any impacts on the assemblage feature of the FFC SPA (which the Applicant considers would be negligible) would be addressed by the proposed compensation for kittiwake, and the without prejudice compensation being developed for guillemot and razorbill should an AEoI on these features be concluded.

5.9 Compensation measures for sandbank and biogenic reef

122. The following documents set out or are relevant to the Applicant's proposed measures in the event that the SoS concludes AEoI on the sandbank and/or biogenic reef feature of the IDRBNR SAC:
- Benthic Compensation Strategy (REP4-045);
 - Without Prejudice Sandbank Compensation Plan (REP5-105);
 - Without Prejudice Biogenic Reef Compensation Plan (Document 7.6.2, Version 4);

- Without Prejudice Benthic Compensation Evidence Base and Roadmap (Document 7.6.3 Version 4);
 - Outline Sandbank Compensation Implementation and Monitoring Plan (APP-245); and
 - Outline Biogenic Reef Compensation Implementation and Monitoring Plan (APP-247).
123. The Without Prejudice Benthic Compensation Evidence Base and Roadmap (Document 7.6.3, Version 4) sets out the robust evidence base for the compensation options which are available to the Applicant should the SoS conclude AEoI on the sandbank and/or biogenic reef feature of the IDRBNR SAC.
124. The Applicant and Natural England's preferred measure is the extension of an appropriate SAC as a strategic compensation measure and the measure is currently being progressed by Defra. The mechanism for delivering this measure strategically has been provided in the Strategic compensation measures for offshore wind activities: Marine Recovery Fund interim guidance (2025) and the Written Ministerial Statement (2025). It is expected to be in place by the time the Project is seeking to deliver compensation.
125. Notwithstanding the preferred SAC extension measure, unless and until the Secretary of State makes a decision and the details of the MRF are available, including in relation to timing, it is prudent and necessary for the Applicant to retain some other project-specific compensation measures. These are:
- Creation of biogenic reef (both sandbanks and biogenic reef);
 - Redundant infrastructure removal (sandbanks only); and
 - Aggregate pressure removal (sandbanks only).
126. The delivery of these measures is also well advanced. In particular:
- the DCO incorporates any required consent for the creation of biogenic reef, should this be progressed as a compensation measure and therefore there would be no requirement for further consent to be sought for this measure after grant of the DCO;
 - a letter of comfort has been obtained from TCE confirming that TCE has the ability to grant the necessary rights relating to the creation of biogenic reef and redundant infrastructure removal (REP2-062);
 - a letter of comfort has been obtained from BT that BT would be willing to enter into an Out of Service Cable Recovery Agreement with ODOV for removal of disused cables (REP2-063); and
 - a letter of comfort has been obtained from the Oyster Restoration Company that the Oyster Restoration Company can provide the necessary services for the delivery of the biogenic reef creation measure (REP4-122).

127. The Benthic Compensation Evidence Base and Roadmap sets out in detail the quantum that would be required should compensation measures be deemed to be necessary. In all cases, the Applicant has demonstrated how each of the proposed benthic compensation measures would deliver the necessary quantum of compensation. It is particularly notable that, in relation to the preferred SAC extension measure, the extension areas are ambitious when considering the scale of the features for compensation.
128. The ExA and the SoS can therefore have confidence that compensation for sandbanks and/or biogenic reef, if required, can be delivered by the measures proposed by the Applicant and evidenced at Examination.

5.10 Funding

129. The Applicant has submitted a Compensation Funding Statement (REP2-027) which sets out the estimated costs of delivering the Project-led compensation measures, with the total cost estimate being £54.7 million.
130. The Compensation Funding Statement also explains that collaborative and/or strategic delivery of compensation has been considered alongside the Project-led compensation measures. Costs associated with delivery of these measures have not been included in the cost estimate as details around the timing and provision of a collaborative and/or strategic delivery framework are yet to be finalised. However, it is anticipated that the costs of strategic and/or collaborative compensation measures would fall within (and be less than) the cost estimate for the Project-led compensation measures.
131. The Applicant is confident that the Project will be commercially viable, assuming it is granted development consent and a Final Investment Decision is taken whereby the shareholders agree to proceed with investment in construction of the Project.
132. It is anticipated that final financing for the Project will be via a mixture of funding from the Applicant's parent companies, combined with project financing and/or equity investment, secured against the revenue streams of the completed Project.
133. Given the group of parent companies' track record of developing, delivering, and investing in offshore wind projects, the Applicant is confident that the final financing of the Project will meet the capital expenditure requirements for the Project, including the costs of implementing compensation measures.
134. The Secretary of State can therefore be satisfied that the financial viability of the Project will not be compromised by the delivery of compensation measures, and that these measures can be financed through the financing arrangements to be put in place to develop, construct and operate the Project.

5.11 Conclusion

135. The Applicant's RIAA identifies potential AEol in relation to the kittiwake feature of the FFC SPA. The Applicant's RIAA rules out potential AEol in relation to the guillemot and razorbill features of the FFC SPA, the assemblage feature of the FFC SPA, the guillemot feature of the Farne Islands SPA or the sandbank and biogenic reef features of the IDRBNR SAC. However, the Applicant acknowledges that the Secretary of State may take a different view and conclude that AEol on these features cannot be ruled out. A derogation case has therefore been advanced in respect of these features (on a without prejudice basis, other than for the kittiwake feature of the FFC SPA).
136. The Applicant has demonstrated that there are no feasible alternatives which would reduce harm to European Sites, and that there are IROPI which justify a derogation from the Habitats Regulations.
137. The Applicant has put forward compensation measures to offset any AEol, and the draft DCO provides an enforceable legal mechanism for ensuring delivery of these compensation measures. The Applicant's compensation measures are robust and can deliver the necessary quantum of compensation within appropriate timescales. Delivery of the compensation measures can be financed through the general financing arrangements for the Project and are not expected to prejudice the financial viability of the Project.
138. As such, the exceptions in Sections 104(5) and (6) of the Planning Act 2008 are not engaged and the grant of consent is supported by the policies set out in paragraphs 5.4.49 and 5.4.54 to 5.4.55 of NPS EN-1.

6 Deemed Marine Licences

139. Regulation 3A of the 2010 Regulations requires the Secretary of State to have regard to the need to protect the environment, the need to protect human health, and the need to prevent interference with legitimate uses of the sea when deciding whether to include a deemed marine licence in a DCO.
140. The draft DCO includes seven deemed Marine Licences (dMLs) which would authorise licensable marine activities relating to the generation assets, the offshore transmission assets, the artificial nesting structures, and biogenic reef creations.
141. Other than in relation to Seascape Landscape and Visual effects (see Chapter 17 Seascape, Landscape and Visual Impact Assessment' (REP5-033)), the chapters of the ES dealing with offshore effects generally conclude that there are no likely significant adverse residual effects in relation to each topic as a result of the Project.
142. In particular, Chapter 18 'Marine Infrastructure' of the ES (APP-073) concludes that there are no likely significant adverse residual effects on marine infrastructure and other users as a result of the Project. Chapter 30 'Human Health' of the ES (AS1-054) concludes that there are no likely significant adverse residual effects on human health as a result of the Project.
143. While some likely significant adverse residual effects are predicted in relation to seascape, landscape and visual impacts, it is the Applicant's position that these are outweighed by the need for the Project which will make a significant contribution towards tackling climate change and decarbonisation of the UK's energy supply.
144. It is therefore the Applicant's position that the dMLs set out in the draft DCO should be included in any DCO made by the Secretary of State.

7 Cultural Heritage

145. Regulation 3 of the 2010 Regulations states:

When deciding an application which affects a listed building or its setting, the Secretary of State must have regard to the desirability of preserving the listed building or its setting, or any features of special architectural or historic interest which it possesses.

When deciding an application relating to a conservation area, the Secretary of State must have regard to the desirability of preserving or enhancing the character or appearance of that area.

When deciding an application which affects or is likely to affect a scheduled monument or its setting, the Secretary of State must have regard to the desirability of preserving the scheduled monument or its setting.

146. There are no scheduled monuments in the marine archaeology study area considered in Chapter 13 'Marine and Intertidal Archaeology' of the ES (REP5-025). Regulation 3 is therefore relevant only in relation to onshore archaeology.

147. Chapter 20 'Onshore Archaeology and Cultural Heritage' (REP5-037) identifies:

- Seven scheduled monuments located within the study area, none of which are located within the Order Limits, with one scheduled monument (Abbey Hills moated site (NHLE 1016044) located adjacent to the Order Limits.
- Nine listed buildings located within the study area, none of which are located within the Order Limits.
- Three conservation areas located within the study area, none of which are located within the Order Limits.

148. Where necessary and possible, special regard to the setting of listed buildings and the character of conservation areas has been had through embedded design mitigation. Additionally, the Outline Construction Traffic Management Plan will ensure that construction traffic does not pass through conservation areas with the exception of the Wrangle Conservation Area whose northern boundary includes the A52. It has been agreed in the SoCG with LCC (REP5-135) that the use of the construction traffic route through the Wrangle Conservation Area will not have an unacceptable impact on the character and appearance of the Wrangle Conservation Area. Given the proximity of the Abbey Hills Moated Site to the Order Limits, the Outline Onshore Written Scheme of Investment for Archaeological Works (REP4-088) places controls on the working area and requires marking out of the site boundary, in order to avoid disturbance to the scheduled monument from construction plant and activities.

149. As a result of the design and other mitigation proposed by the Applicant, no likely significant adverse residual effects are identified in relation to impacts on scheduled monuments, listed buildings, or conservation areas as a result of the Project.

150. It is the Applicant's position that the Project has been appropriately designed and mitigated with regard to potential impacts on conservation areas, listed buildings and scheduled monuments, and that any residual adverse effects are not significant, and should be given very limited weight in the determination of this application.

8 Marine Conservation Zone Assessment

151. Sections 104(5) and (6) of the Planning Act 2008 provide that the Secretary of State is not required to determine an application in accordance with the relevant NPS where this would lead to the Secretary of State being in breach of any duty imposed on them by, or under any, enactment, or would be unlawful by virtue of any enactment.
152. By way of background, section 125 of the Marine and Coastal Access Act 2009 (**2009 Act**) places a general duty on public authorities exercising functions which are capable of affecting (other than insignificantly) the protected features of a Marine Conservation Zone (**MCZ**), or any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent. The duty requires public authorities to exercise their functions in the manner which the authority considers best furthers the conservation objectives for the MCZ and, where it is not possible to do so, exercise their functions in the manner which the authority considers least hinders the achievement of the conservation objectives.
153. Section 126 of the 2009 Act applies where a public authority has the function of determining an application for authorisation of the doing of an act which is capable of affecting (other than insignificantly) the protected features of an MCZ, or any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent. It provides that the authority must not grant such authorisation unless the person seeking the authorisation satisfies the authority that:
- there is no significant risk of the act hindering the achievement of the conservation objectives for the MCZ, or
 - that there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of those objectives, the benefits to the public of proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it, and the person seeking the authorisation will undertake, or make arrangements for the undertaking of, measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MCZ.
154. As part of the EIA for the Project, the Applicant carried out a screening exercise to identify MCZs which could potentially be affected by the Project, based on the zones of influence identified for relevant features of MCZs within the study area. This identified the following sites: Holderness Inshore MCZ, Holderness Offshore MCZ, and the Cromer Shoal Chalk Bed MCZ.
155. The identified MCZs were taken forward for assessment in the Applicant's Marine Conservation Zone Assessment (APP-157), which considered whether the potential impacts of the Project may give rise to a significant risk of hindering the achievement of the conservation objectives for the identified MCZs.
156. The first stage of the assessment process was to carry out another screening exercise to identify whether there were any potential impacts of the Project which would affect the identified MCZs. As set out in the Marine Conservation Zone Assessment, this screening exercise concluded that none of the potential impacts considered would affect any of the identified MCZs. Further assessment was therefore not required.

157. The Marine Conservation Zone Assessment demonstrates that the in terms of Section 126(1)(b) and 126(2) the Project will not “*affect[...] (other than insignificantly) the protected features of an MCZ / any ecological / geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent*” nor will the Project result in “*significant risk of ... hindering the achievement of the conservation objectives stated for the MCZ*”.
158. Grant of development consent for the Project would therefore not breach the Secretary of State’s duties under Sections 125 and 126 of the 2009 Act. As such, the exceptions in Sections 104(5) and (6) of the Planning Act 2008 are not engaged.

9 Overarching Planning Matters

159. At Annex C of the ExA's Rule 6 Letter dated 4 September 2024 (PD-009), the ExA set out its initial assessment of principal issues. The sections below summarises the Applicant's position in relation to those principal issues and in relation to further matters which the Applicant considers to be material to the determination of the Application.

9.1 Site Selection and Alternatives

160. The Applicant undertook a careful process of site selection and project design and refinement in the years leading up to application for a Development Consent Order.

161. As is explained in detail in Chapter 4 Site Selection and Consideration of Alternatives (REP5-013), the siting and routing of Project infrastructure can be broadly split into four parts.

162. The location of the offshore array was determined through The Crown Estate Round 4 leasing process. Following the auction process, the Applicant was awarded a Project Agreement for Lease array area, located in the Eastern bidding region.

163. The grid connection location was dictated by the outcome of the Holistic Network Design process (which formed part of the Offshore Transmission Network Review instigated by The Department for Business, Energy and Industrial Strategy). In August 2023, the Applicant received a Grid Connection Offer from NGESO for a connection at Weston Marsh. This connection point represented the end point which had to be reached by the Project infrastructure.

164. The siting of the transmission infrastructure to transport electricity from the array to the grid connection point (including offshore and onshore cable circuits; offshore and onshore substations; and an offshore reactive compensation platform) was then arrived at through consideration of technical requirements, environmental considerations, and consultation responses. The iterative process of constraints mapping, assessment and continued consultation undertaken has been key in the identification and refinement of the Project's siting. The overall aim of the process was to understand the relevant constraints (environmental, engineering/technical and economic) to ensure that the adopted locations are robust and deliverable.

165. Finally, locations were identified for the siting of possible environmental mitigation measures (such as screening planting) and compensation measures, if found to be required as a result of impacts on European Sites.

166. Chapter 4 Site Selection and Consideration of Alternatives (REP5-013) sets out the reasonable alternatives studied by the Applicant in considering site, route and design choices and the main reasons for the final selections including by reference to comparative environmental effects.

167. This included a consideration of particular legal or policy requirements including:

- The application of the Sequential Test on the basis that parts of the onshore cable route and onshore substation are in Flood Zones 3 or 2. When developing new infrastructure, projects

must demonstrate that a sequential approach to site selection has been taken. Under section 5.8, and specifically 5.8.10 of National Policy Statement EN-1, the promoter of a project is required to consider whether there are reasonably available sites which are lower risk, which would be appropriate for the development and where relevant policy would not present a clear reason for refusing development within that alternative site. Chapter 4 Site Selection and Consideration of Alternatives, (REP5-013) explains that the Sequential Test has been applied and is considered to have been passed, with no reasonably available, lower risk sites or routes appropriate for the proposed development identified (see also Applicant's response to Examining Authority Question Q2 GC 1.2, REP4a-110). This position has not been contested by any party during the course of the Examination.

- Seeking to minimise impacts on the best and most versatile agricultural land and preferably use land in areas of poorer quality (as provided in National Policy Statement EN-1, paragraph 5.11.12). Chapter 4 Site Selection and Consideration of Alternatives, (REP5-013) explains that site and route selection decisions were taken with a preference to avoid best and most versatile agricultural land and with a preference to use land in areas of poorer quality. However it further explains that, given the prevalence of best and most versatile agricultural land within the broad area of the required onshore development, the Applicant was unable to site the Project's onshore substation outside of Agricultural Land Classification Grade 1, or to avoid impacting best and most versatile agricultural land along the onshore cable route. The Applicant considers that in carrying out its site/route selection it has demonstrated compliance with policies relevant to best and most versatile agricultural land set out in the national policy statements. Impact on best and most versatile agricultural land was an issue raised and discussed during Examination as set out further below.
- The need to consider alternatives which might have a lesser impact on European Sites if a derogation case under the relevant Habitats Regulations is being pursued. The Applicant presented a Derogation Case (Document 7.5, Version 3), which includes a derogation case in respect of the kittiwake feature of the Flamborough and Filey Coast ("FFC") SPA; and a without prejudice derogation case in respect of the guillemot and razorbill and assemblage features of the FFC SPA, the guillemot feature of the Farne Islands SPA; the sandbank feature of the Inner Dowsing, Race Bank and North Ridge ("IDRBNR") SAC; and the biogenic reef feature of the IDRBNR feature of the SAC.) As is required by the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 that Derogation Case also demonstrates that there are "no alternative solutions". As set out in non-statutory government advice ("Nationally Significant Infrastructure Projects: Advice on Habitats Regulations Assessments") an alternative will only be acceptable if it: achieves the same overall objective as the original proposal; is financially, legally and technically feasible; and is less damaging to the European site and does not have an AEoI of this or any other European site. Further, in relation to Critical National Priority ("CNP") infrastructure paragraph 4.2.21 of NPS EN-1 provides that the Secretary of State will consider the particular circumstances of any plan or project, but starting from the position that energy security and decarbonising the power sector to combat climate change requires a significant number of deliverable locations for CNP Infrastructure and for each location to maximise its capacity. It further notes that the NPS imposes no limit on the number of CNP infrastructure projects that may be consented. NPS EN-1 confirms that this means that the fact that there are other potential plans or projects deliverable in different locations to meet the need for CNP Infrastructure is unlikely to be treated as an alternative solution for the

purposes of a Habitats derogation decision. Further, the existence of another way of developing the proposed plan or project which results in a significantly lower generation capacity is unlikely to meet the objectives and therefore be treated as an alternative solution. The Applicant has explained why there are no acceptable alternative solutions to the Project in the Derogation Case (Document 7.5 Version 3).

9.1.1 Representations and Discussions During Examination

168. Elements of site selection and alternatives were specifically discussed during Examination. The Applicant has set out below a summary of and signposting to the main onshore and offshore site selection matters discussed, together with explaining the refinements to the Project areas which the Applicant has been able to make.

169. There have also been a number of further design refinements/commitments made during Examination in mitigation of particular environmental impacts or concerns raised. These include, for example, further restrictions on where gravity base foundations may be used¹⁰ and commitments to use trenchless technique when laying cables through certain areas.¹¹ These further refinements and commitments are described further under principal issues headings below where they are relevant to those environmental topics.

■ Onshore

- During Examination the Applicant was able to make some small reductions to the land required for the onshore works (AS-021; REP1-039; document 2.0, version 8).
- Some representations were made by parties who objected to the use of particular land parcels and general comments were made that queried the route chosen and/or asserted in broad terms that the Project should have been routed through lesser quality agricultural land.¹² The Applicant has responded to the points made in these representations.¹³ The Applicant explained further during Examination some of the factors which had influenced and constrained its final site/route selection for onshore works (See in particular Response to Examining Authority Questions Q1 LU 1.3, REP2-051).
- LCC acknowledges in the signed SoCG (REP5-135) that the Applicant has sought to avoid BMV land where possible. Further, whilst LCC is not in agreement that Grade 1 land should be used for the substation, it notes the reasoning as to why it is not possible to avoid the loss of Grade 1 BMV land for the substation.

¹⁰ Discussed, for instance, under Change 3 of the Applicant's 20 February 2025 Change Notification (AS-032), accepted as a change in PD-024.

¹¹ Further discussed in the Closing Statements "Land Use, Geology and Ground Conditions" section

¹² See Relevant Representation on behalf of T.H. Clements & Sons Limited (RR-067); Relevant Representation by Andrew Malkin (RR-086); Relevant Representation by William Barker (RR-077); Relevant Representation by Andrew Roberts, (RR-092); Summary of Oral Submissions by Jenny Pennington REP1-040, Written Representation on behalf of T. H. Clements (REP1-050)

¹³ For example see Applicant's Responses to Relevant Representations, PD1-071; Response to Examining Authority Questions Q1 LU 1.2, REP2-051; Response to Examining Authority Questions Q2 LU 1.1, REP4-107.

- In response to the Examining Authority's question Q2 LU1.1 (REP4-150), T H Clements confirmed that it was not pursuing the points it had raised in relation to route selection any further. Further at Issue Specific Hearing 8 and Compulsory Acquisition Hearing 2, Senior Counsel on behalf of T H Clements confirmed that they were now taking no point in relation to alternatives arising from the width of the onshore cable corridor.
- None of the objections maintained have provided any evidence to counter the Applicant's rationale for its approach to site/route selection nor that that approach accords with relevant policy.
- The Applicant therefore considers that it has justified the site and route selection decisions it has taken and that these accord with guidance, including the relevant NPSs.
- Offshore
 - Offshore, the Applicant has been able to refine the project further during Examination. As a result of continuing engagement with stakeholders, and enabled by progress on engineering design, the area within which the wind turbine generators (WTGs) and offshore platforms will be positioned has been refined, with the introduction of an Offshore Restricted Build Area (ORBA) stretching along the northern boundary of the array area. The purpose of the ORBA is to minimise impacts from the presence of the WTGs (and offshore platforms) on auk species (specifically common guillemot and razorbill). This change is more fully explained in Document REP2-065.
 - One offshore export cable route option included at the point of application (referred to as the northern route), which passes through an aggregates area, is no longer available to the Project as a Marine Licence Application (MLA/2024/00227) to permit aggregates extraction over the site for up to 15 years has now been submitted to the Marine Management Organisation (MMO). The Exploration and Option Agreement holder has priority with regard to seabed rights and has informed the Project that they intend to use the whole of the marine licence application area. This activity is not compatible with cable installation and ongoing operation and maintenance. Therefore, colocation is not possible, and the site covers the whole of the northern route, so the aggregate area is unavoidable. As such, the Offshore ECC was updated during Examination to exclude the northern route option. This change is more fully explained in Documents AS-025 and REP4a-001.
 - A minor amendment was also made during Examination to the ORCP area within the southern route to exclude an area at the eastern extent within which it would not be technically feasible to install the structures whilst meeting the minimum bend radii requirements for the offshore export cables (See REP4a-001).

- During Examination, Natural England asked (REP1-061) that the Applicant consider whether the Offshore Reactive Compensation Platforms could be moved outside of the Greater Wash SPA to avoid impacts to the red-throated diver feature. The Applicant explained why the Offshore Reactive Compensation Platforms have to be located inside of the Greater Wash SPA in its response to Examining Authority's written questions Q1 HRA 1.4 (Document REP2-051). To help address Natural England's concerns, the Applicant proposed a reduction to the maximum height of the Offshore Reactive Compensation Substations (Document REP4-124), with the change being made to the draft DCO at Deadline 4a (REP4a-007). Natural England confirmed its view that the Project would not contribute to in-combination impacts to the red-throated diver feature of the Greater Wash SPA if the Applicant committed to a marine licence condition providing for a seasonal restriction on the construction of the cable circuits and Offshore Reactive Compensation Substations inside the Greater Wash SPA plus a 2km buffer (REP4a-137). The Applicant has committed to this restriction, as secured by condition 25 of Part 2 of Schedule 11 to the draft DCO (Document 3.1, Version 10).
- Consideration of alternative solutions for the purposes of the Conservation of Habitats and Species Regulations 2017 and The Conservation of Offshore Marine Habitats and Species Regulations 2017 is set out in the Derogation Case (Document 7.5, Deadline 6) and is discussed further above.

9.1.2 Conclusion

- The Applicant has considered and addressed each of the legal and policy requirements in relation to consideration of alternatives. Paragraphs 4.3.22 to 4.3.29 inclusive of NPS EN-1 set out important guidance on the approach to consideration of alternatives in decision making. Of particular note:
 - Given the level and urgency of need for new energy infrastructure (and subject to any contrary legal requirement), NPS EN-1 flags the need for proportionality and notes that only alternatives that can meet the objectives of the proposed development need to be considered (see paragraph 4.3.22 of NPS EN-1);
 - The Secretary of State should also be guided by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security, climate change, and other environmental benefits) in the same timescale as the proposed development (paragraph 4.3.23);
 - The Secretary of State should not refuse an application for development on one site simply because fewer adverse impacts would result from developing similar infrastructure on another suitable site (paragraph 4.3.24);
 - Alternatives not among the main alternatives studied by the applicant (as reflected in the ES) should only be considered to the extent that the Secretary of State thinks they are both important and relevant to the decision (paragraph 4.3.25);
 - Alternative proposals which mean the necessary development could not proceed, (e.g. because not commercially viable or physically suitable), can be excluded on the grounds that they are not important and relevant to a decision (paragraph 4.3.27);

- Alternative proposals which are vague or immature can be excluded as not important and relevant to a decision; and
 - Where an alternative is first put forward by a third party after an application has been made, the Secretary of State may place the onus on the person proposing the alternative to provide the evidence for its suitability (see paragraph 4.3.29).
- The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 contains a legal requirement to detail the reasonable alternatives studied by the Applicant within the Project ES. In particular the Regulations require that an ES includes:
 - a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the effects of the development on the environment; and
 - A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.
- Chapter 4 Site Selection and Consideration of Alternatives (REP5-013) sets out the reasonable alternatives studied by the Applicant in considering site, route and design choices and the main reasons for the final selections including by reference to comparative environmental effects. The approach taken therefore complies with legal requirements set out in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.
- The requirement to consider if alternative suitable options exist as part of a sequential approach to siting Projects in lowest risk flood areas is set out in NPS EN-1, paragraph 5.8.10:

“The Exception Test is only appropriate for use where the Sequential Test alone cannot deliver an acceptable site. It would only be appropriate to move onto the Exception Test when the Sequential Test has identified reasonably available, lower risk sites appropriate for the proposed development where, accounting for wider sustainable development objectives, application of relevant policies would provide a clear reason for refusing development in any alternative locations identified. Examples could include alternative site(s) that are subject to national designations such as landscape, heritage and nature conservation designations, for example Areas of Outstanding Natural Beauty (AONBs), SSSIs and World Heritage Sites (WHS) which would not usually be considered appropriate”
- Chapter 4 Site Selection and Consideration of Alternatives (REP5-013) explains how the Sequential Test has been applied and passed, with no reasonably available, lower risk sites or routes appropriate for the Project identified (see also Applicant’s response to Examining Authority Question Q2 GC 1.2, (REP4a-110)). This position has not been contested by any party during the course of the Examination.
- Chapter 4 (REP5-013) also explains the efforts made to minimise impacts on BMV land and to steer development to lesser quality land.
- In the context of the promotion of a derogation case and without prejudice derogation cases under the Conservation of Habitats and Species Regulations 2017 and the Conservation of

Offshore Marine Habitats and Species Regulations 2017, it has been demonstrated that there are “no alternative solutions” capable of fulfilling the same objectives as the Project and which would be feasible and which would be less damaging to European Sites. This element of the “derogation test” has therefore been passed.

- The location of the Project offshore and onshore has been fully justified and is supported by relevant policy. Alternatives studied have been outlined and reasons have been provided for the final choices made, including by reference to comparative environmental effects. Where a need to consider alternatives has been triggered by policy or legislation, confirmation of compliance has been explained. No clear or developed alternatives to the Project have been articulated by any Interested Party. The proposals comply with relevant NPS policies in respect of alternatives and there is therefore nothing in respect of these policies which indicate that consent should be refused.

9.2 Design

170. “Good design” has been at the forefront of decision making throughout the evolution of the Applicant’s Project and has strongly influenced site selection and the design commitments and principles which the Applicant has secured.
171. The Design Approach Document (“**DAD**”) (REP5-125) summarises the key processes and considerations which have informed the Applicant’s approach, and which will be implemented through to detailed design. The Applicant has further established design principles, discussed in its Design Principles Statement (“**DPS**”) (REP5-127), based on the National Infrastructure Commission’s four key design principles (Climate, People, Place and Value). Design is considered and discussed in a range of places throughout the Project’s ES and other Application documents.¹⁴

9.2.1 Design submissions

172. The Applicant has welcomed the discussion with the ExA and LCC over the course of Examination regarding design and welcomed LCC’s confirmation (most recently at ISH8, summarised in Document 24.4 submitted at D6) that it was satisfied with the approach now taken to design as set out in the Applicant’s most recent suite of design documents and had no further comment.
173. The Applicant has discussed good design and how it intends to secure it throughout the Examination. It provided responses to ExQ1 including to highlight the engagement taking place in relation to substation design, the work of the external Design Review Panel, the key aspects of the design approach to the OnSS, and relevant landscape and visual mitigation being taken forward (discussed more fully in relation to Landscape and Visual Impacts below).

¹⁴ Including the Outline Landscape and Ecological Management Strategy (OLEMS) (document 8.10; v6 submitted at D6); ES Chapter 3 Project Description (REP5-009); ES Chapter 4 Site Selection and Consideration of Alternatives (REP5-013); ES Chapter 27 Landscape and Visual Impact Assessment (LVIA) (REP4a-025); Consultation Report (AS1-034); and The Planning Statement (APP-297)

174. The Applicant further discussed design matters at ISH3 (REP3-051). It provided the ExA with post-hearing design submissions in response to Action Point 2 from ISH3 (REP3-053), setting out how the Applicant's approach aligns with guidance presented in the Planning Inspectorate's 'Advice on Good Design'.
175. The Applicant provided further submissions in its Responses to ExQ2 Good Design questions (REP4-107) and during ISH5 (REP4a-116), setting out those aspects of the substation that allow scope for design development and how good design could be secured through the DCO. Following ISH5, it provided post-hearing submissions (REP4a-120) including to further articulate on-going consultation and the securing of good design in the post-consent design process. In these submissions, the Applicant committed to updating, at the next examination deadline, and securing, via the DCO, both the DAD and DPS to guarantee good design would be implemented throughout the detailed design stage.

9.2.2 OnSS Good Design

176. Much of the discussion during Examination has focussed on the question of OnSS design. The Applicant considers that with the information submitted into Examination (signposted above) and the steps taken – including the securing of the DPS and DAD through the DCO – good design has been secured for the Project. The Applicant has articulated the approach, process and engagement by which it will do so throughout the detailed design stage.
177. Good design of the OnSS is embedded and secured via the draft DCO (3.1, Version 10).
- Requirement 9 (1) requires that the Applicant produce detailed design covering the layout, scale, building elevations and external appearance of the onshore substation.
 - Requirement 9 (3) then requires that that detailed design be in accordance with both the DAD and DPS produced by the Applicant.
 - Requirement 9 (1) stipulates that the construction of the onshore substation will not commence until the detailed design has been submitted and approved by Lincolnshire County Council, ensuring that the Applicant must deliver good design in line with the process and principles of the DAD and DPS to the satisfaction of LCC.
178. Separately, the Applicant notes that discussion has also taken place regarding the provision of mitigation screening for the OnSS. This is discussed below (landscape and visual effects).

9.2.3 ORCP design

179. The issue of ORCP design has also been discussed during the course of Examination in the context of seascape and visual effects. As part of this discourse, the Applicant submitted at Deadline 4 and revised at Deadline 4a an ORCP Design Principles Statement ("**ORCP DPS**") (REP4a-112). Under the offshore transmission assets dML (Schedule 11, condition 13(1)(a)), the Design Plan to be submitted for the approval of the MMO must accord with the ORCP DPS, ensuring good design.

9.2.4 Accordance with Policy and Conclusion

180. The DAD and DPS ensure that the emerging detailed design for the Project, including the

onshore substation, will comply with current policy on good design, with Section 1.2 of the DPS setting out how the project has taken on board the Planning Inspectorate's 'Advice on Good Design' and Section 3.2 of the DAD setting out how the project's process fulfils design guidance set out in the National Policy Statements. Page 48 to 52 of the Policy Compliance Document (REP4-090) and Table 6-6 of the Planning Statement (APP-297) sets out how 4.7 of EN-1 (Criteria for good design for Energy Infrastructure) are complied with through the approach taken by the Applicant. Should the DCO be granted, the route map set out at Section 5.5 of the DAD will ensure that the Applicant will be required to comply with the DCO and hence ensures that good design is secured.

181. When considering the question of Energy NSIP design, the Secretary of State must consider the factors set out in NPS EN-1 4.7.10 – 4.7.15. Among other things, the Secretary of State is required to consider the “ultimate purpose of the infrastructure” and “the operational, safety and security requirements”. Notwithstanding this, the Applicant considers that the approach taken and mapped out will ensure good design of the Project including the OnSS.
182. On the basis of the above, the Secretary of State can be satisfied that the Applicant's consideration of design aligns with the policies set out in the Energy NPSs.

10 Offshore Planning Matters

10.1 Benthic and Intertidal Ecology

183. The Applicant refers to its submissions on benthic HRA matters at 5.2 above which, in the interests of brevity, are not repeated here.
184. The Applicant has undertaken an assessment of potential impacts of the Project in relation to Benthic and Intertidal Ecology in line with the requirements of EIA, HRA and paragraphs 2.8.95 to 2.8.110 and 2.8.115 to 2.8.126 of NPS EN-3. Its assessment is set out in the Environmental Statement and the RIAA, in particular in the following documents:
- Chapter 9 Benthic and Intertidal Ecology (Document 6.1.9, Version 3);
 - Chapter 9 Benthic and Intertidal Ecology Figures (REP5-049)
 - Appendix 9.1: Benthic Ecology Technical Report (Array) (APP-154);
 - Appendix 9.2: Benthic Ecology Technical Report (ECC) (REP4a-069);
 - Appendix 9.3: Intertidal Technical Report (APP-156);
 - Report to Inform Appropriate Assessment (Document 7.1, Version 5);
 - Report to Inform Appropriate Assessment Appendix 1: Screening Matrices (REP4-039); and
 - Report to Inform Appropriate Assessment Integrity Matrices (REP4-041).
185. As detailed in Chapter 9 Benthic and Intertidal Ecology (REP5-019), the assessment concludes that, with suitable mitigation measures in place, the Project will have no likely significant effects on benthic and intertidal ecology receptors, either on a project-alone or cumulative basis.
186. The conclusions of the RIAA with respect to benthic and intertidal ecology are summarised at section 5.2 above. In brief, the Applicant's assessment concludes that an AEoI can be ruled out for all features of all European sites designated for benthic and intertidal ecology features.
187. The Applicant has discussed a SoCG with Natural England (Document 18.14.3, Version 2). The SoCG submitted at Deadline 6 represents the latest draft SoCGs, with Natural England's comments having been provided to the Applicant on 1 April 2025 (as explained in the Applicant's Deadline 6 Covering Letter (document 24.1)).
188. The Applicant and Natural England disagree on whether or not an AEoI can be ruled out in respect of the sandbank and biogenic reef features of the IDRBNSR SAC (see sections 5.2.2.4 and 5.2.2.5 above). The Applicant maintains its position that it has provided sufficient evidence of recoverability of the features of the IDRBNSR SAC which, in conjunction with the mitigation measures set out at Paragraph 177 below, allow an AEoI to be ruled out.

189. In their response to the RIES, Natural England note that the potential impact of the ORCP on physical processes also means that their current advice is that this will further contribute to the inability to rule out AEoI for the IDRBNR SAC (see Table A.1, Annex 1 (REP5-172)). The Applicant disagrees that this impact contributes to a finding of AEoI. The Applicant's assessment demonstrates that tidal flows are aligned north to south and as such there is limited pathway of effect from the ORCP to the SAC. Furthermore, predominant wave directions from the north and northeast towards the coast are such that any modifications to the wave regime occur away from the SAC and in the wave's direction of travel. As such there is limited pathway of effect from the ORCP to the SAC.
190. Whilst the Applicant and Natural England are not agreed on whether they can rule out an AEoI, the Applicant understands that there is agreement that this should not prevent the Project being granted consent, rather it is a matter as to whether a derogation case and subsequent compensation is required. If the Secretary of State decides that compensation is required, the Applicant and Natural England are agreed on the appropriate measure to deliver such compensation, as detailed in section 5.9 above.
191. In addition to the IDRBNR SAC, the Applicant notes Natural England's advice in response to the RIES (REP5-172), that it is unable to rule out an AEoI on the following sites:
- a. North Norfolk Sandbanks and Saturn Reef SAC; and
 - b. The Wash and North Norfolk Coast SAC.
192. The Applicant maintains that a conclusion of AEoI can be ruled out in respect of these two SACs.
193. In relation to the North Norfolk Sandbanks and Saturn Reef SAC, the Applicant observes that Natural England has not noted the North Norfolk Sandbanks and Saturn Reef SAC, specifically with regard to suspended sediment and deposition in writing within the Risk and Issues Log or the PADS (Document Reference 21.8, V3, updated at Deadline 6). The Applicant notes the late confirmation of Natural England's position in relation to the North Norfolk Sandbanks and Saturn Reef SAC and the lack of supporting information justifying its position which would be required to allow the Applicant to have a reasonable opportunity to respond to it. The Applicant suggests that such evidence should be afforded limited weight.

194. The Applicant's assessment undertaken in the RIAA (Section 9.1.41, document reference 7.1, Version 5) highlights that there will be no direct overlap from the construction activities associated with the artificial nesting structure with the North Norfolk Sandbanks and Saturn Reef SAC. In relation to the potential impacts of increased suspended sediment and associated deposition associated with construction activities, sediment plumes are expected to quickly dissipate after cessation of the construction activities, due to settling and wider dispersion with the concentrations reducing quickly over time to background levels (i.e., within a couple of tidal cycles). Sediment deposition will consist primarily of coarser sediments deposited close to the source (a few hundred meters), with a small proportion of silt deposition (reducing exponentially from source). Regarding the Annex I sandbank features the physical and ecological features are tolerant to habitat disturbances and the physical structure of the banks and associated benthic communities is likely to be renewed from any disturbance (JNCC and Natural England, 2010) and therefore the Applicant is confident on no AEoI to these features. In relation to Annex I biogenic reef, smothering and deposition impacts that are most likely to significantly disturb benthic communities are considered to be in the immediate vicinity of the works (0-50m), therefore the Applicant is confident of no AEoI to biogenic reef features of the North Norfolk Sandbanks and Saturn Reef SAC due to the distance from construction activities, where SSC are not expected to be present at concentrations sufficient to negatively impact benthic features and there will be no measurable thickness of deposition.
195. In relation to the Wash and North Norfolk Coast SAC, there is no overlap between the ECC and Wash and North Norfolk Coast SAC. Any installed cable protection in shallow water areas would be low in profile and therefore not considered to affect regional or local sediment transport. Natural England has noted in their Risk and Issues Log (REP5-171) that the Applicant's commitment to the use of concrete mattresses in the nearshore (if required) in addition to the commitment of the nearshore cable protection height to not exceed 0.35 m has progressed the issue. Both of these commitments were made following requests from Natural England during the Examination. These are secured in the (further) updated Outline Scour Protection and Cable Protection Management Plan V5 (document reference 8.21) submitted at Deadline 6). Natural England requested further information on the dimensions of the cable protection, which was provided on 27th March 2025. Natural England has advised that until this information has been reviewed, their advice is that an AEoI cannot be ruled out. The Applicant is disappointed that Natural England have been unable to consider the information provided in order to resolve this issue.
196. The Applicant has worked closely with Natural England in developing a robust suite of mitigation measures specific to benthic and intertidal ecology receptors. The available options for mitigation have been thoroughly tested in line with Natural England's advice which was based around the impact 'mitigation hierarchy' of avoid, mitigate, and compensate, outlined by CIEEM (2018) with the aim of "development leaving nature in a better state, including through emerging mechanisms for nature improvement and enhancement". These are all secured in the Applicant's draft DCO and are summarised as follows:

- a. provision of a cable specification and installation plan;

- b. removeable cable protection on the sandbank features and defined areas of supporting habitat for Annex I reef on the IDRBNR SAC;
- c. provision of a project environmental management plan to be submitted to the MMO for approval to cover accidental spills, potential contaminant release and minimise the spread of invasive non-native species, including the provision of a biosecurity plan;
- d. disposal of dredged material in agreed disposal sites and that dredged material within the IDNRBR SAC will remain within the SAC;
- e. cable burial to reduce the impacts of electromagnetic fields on sensitive receptors and minimise the requirement for additional cable protection; and
- f. micrositing of infrastructure around Annex I reef to avoid direct impacts to sensitive habitats and the provision of a biogenic reef mitigation plan.

10.1.1 Accordance with Policy and Conclusions

- 197.** The Applicant has also committed to extensive monitoring proposals within the Offshore In-Principle Monitoring Plan (REP4a-073) in compliance with policies 2.8.83 to 2.8.87 of NPS EN-3, which has been developed following engagement with Natural England.
- 198.** The Secretary of State can be satisfied that, with the implementation of the proposed mitigation, there will be no significant residual effects on benthic and intertidal ecology receptors, that an AEoI can be ruled out in respect of sites designated for the protection of benthic ecology receptors and that the Project complies with policies 2.8.302 to 2.8.306 of NPS EN-3.
- 199.** The Project complies with policies 2.8.311 and 2.8.317 of NPS EN-3. The Applicant has proposed comprehensive mitigation proposals, following the mitigation hierarchy, that are designed to avoid or reduce the effects of cable installation on intertidal and coastal habitats and sensitive subtidal environmental aspects, in close consultation with Natural England. The Secretary of State can therefore be satisfied that cable installation and decommissioning has been designed sensitively, considering intertidal, coastal and subtidal habitats and that discussions with the relevant conservation bodies have taken place.
- 200.** The Project also complies with the policies set out at paragraphs 2.8.119 and 2.8.123 of NPS EN-3, which relate to the Project's compliance with the plan-level HRA carried out by The Crown Estate in respect of Round 4. The Crown Estate Record of Appropriate Assessment explains at paragraph 6.2.7:
- "The mitigation measures identified will be secured through the Agreements for Lease and leaseholders will be required to demonstrate compliance with the mitigation measures in order to obtain an Agreement for Lease for any transmission assets."*
- 201.** The Crown Estate subsequently confirmed to the Applicant that the necessary requirements of the plan-level HRA had been satisfied to the satisfaction of The Crown Estate in June 2023 to enable an Agreement for Lease for the transmission assets to be entered into and this was completed on 17th October 2024.

10.2 Civil and Military Aviation and Communication

202. The Applicant carried out an assessment of possible effects on civil and military aviation interests in accordance with relevant policy (including section 5.5.37 and 5.5.40 of National Policy Statement EN-1).
203. Its assessment is set out in the Environmental Statement, particularly the following documents
- Chapter 16, Aviation, Radar, Military and Communication of the Environmental Statement (REP5-031)
 - 6.3.16.1 Chapter 16 Appendix 1 Aviation Technical Report (APP-173)
 - 6.2.16 Chapter 16 Aviation, Radar, Military and Communication Figures (REP5-056-).
204. As detailed in REP5-031, the assessment concludes that, with suitable mitigation measures imposed, the Project will have no significant impacts, either on a project-alone or cumulative basis. The assessment acknowledged that, in respect of certain military and civil radars, the conclusions were premised on technical mitigation solutions being applied. Continued engagement with NATS and the MOD on this aspect was necessary.
205. The Applicant notes that consultation with aviation interests was carried out throughout the EIA scoping process and the statutory pre-application consultation process, informed by the Preliminary Environmental Information Report (PEIR), in compliance with National Policy Statement EN-1, paragraph 5.5.39. Details of this consultation is set out in Table 16.2 of REP5-031. Consultation with relevant stakeholders, most notably the Ministry of Defence and NATS En Route Limited (“NERL”), continued through Examination.
206. The Applicant highlights the following key submissions before and during Examination regarding Civil and Military Aviation and Communication:

10.2.1 Ministry of Defence

207. In relation to the Ministry of Defence, key submissions are as follows:
- Relevant Representation by the Defence Infrastructure Organisation (“DIO”) (RR-016) and the Applicant’s response (PD1-071)
 - Principal Areas of Disagreement Statement by the DIO (PD1-112)
 - The Applicant’s Response to the Examining Authority’s First Written Questions (REP 2-051)
 - The DIO’s response to the Examining Authority’s First Written Questions (REP2-072) and the Applicant’s response (REP3-054)
 - The Applicant’s response to the Examining Authority’s Second Written Questions (REP4-107)
 - DIO’s response to the Examining Authority’s Second Written Questions (REP4-131) and the Applicant’s response (REP4a-114)
 - DIO’s response to the Examining Authority’s Rule 17 (REP5-177), to which the Applicant has responded at Deadline 6 (24.2, The Applicant’s Comments on Deadline 5 Submissions, section 2.7).

10.2.2 NATS En Route Ltd

208. In relation to NATS En Route Ltd, key submissions are as follows:

- NERL's deadline 5 response (REP5-178]
- The Applicant's response to NERL's withdrawal (REP5-154]

10.2.3 Summary of key issues

209. DIO expressed concern that without appropriate mitigation, the Project would have a significant and detrimental impact on the effective operation and capability of air defence radar systems sited/deployed at Remote Radar Head (RRH) Staxton Wold and Remote Radar Head (RRH) Neatishead. In addition, DIO were concerned that the development, during either or both the implementation and operational phases, has the potential to: introduce physical obstacles into Holbeach Air Weapons Range; introduce physical obstacles to the operation and/or capability of a technical asset known as the East 1 WAM network; and introduce physical obstacles to low flying aircraft.

210. In order to address concerns in relation to physical obstacles, the Applicant proposed amendments to Requirement 18 of the draft DCO to add the Ministry of Defence as a consultee to the approval of the Code of Construction Practice in respect of certain Works and included Requirement 27 which requires aviation safety lighting, as well as conditions within the proposed Deemed Marine Licences (Schedules 10, 11, 12, 13, 14, and 15) that require the submission of sufficient data to allow the development to be charted. The Applicant also proposed a suspensive Requirement providing for appropriate mitigation for impacts on RRH Staxton Wold and RRH Neatishead . The DIO's response to the Examining Authority's Rule 17 (REP5-177] requested some amendments to the radar mitigation Requirement – providing its preferred drafting at Appendix A to its response and confirming:

“subject to the Requirement wording set out at Annex A of this letter being added to any Development Consent Order that might be made, and the retention of the following Requirements and Conditions already set out in the applicant's draft Development Consent Order:

- *Requirement 18 in the form set out in the draft Development Consent Order dated February 2025 (Document Ref: 3.1 Revision 8.0).*
- *Condition 10 – Aviation Safety at Schedule 10 Deemed Marine Licence under the 2009 Act – Generation Assets, Part. 2.*
- *Condition 10 – Aviation Safety at Schedule 11 Deemed Marine Licence under the 2009 Act – Offshore Transmission Assets, Part. 2.*
- *Condition 10 – Aviation Safety at Schedule 12 Deemed Marine Licence under the 2009 Act – Northern Artificial Nesting Structure 1, Part. 2.*
- *Condition 10 – Aviation Safety at Schedule 13 Deemed Marine Licence under the 2009 Act – Northern Artificial Nesting Structure 2, Part. 2.*
- *Condition 10 – Aviation Safety at Schedule 14 Deemed Marine Licence under the 2009 Act – Southern Artificial Nesting Structure 1, Part. 2. and*

- *Condition 10 – Aviation Safety at Schedule 15 Deemed Marine Licence under the 2009 Act – Southern Artificial Nesting Structure 2, Part. 2.*

the MOD is content to withdraw its objection to this development.”

211. The Applicant can confirm that the Requirement 18 and Condition 10 wording referred to by the DIO has been retained in the draft Development Consent Order submitted at Deadline 6 and the radar mitigation requirement has been updated to reflect DIO’s preferred wording (Requirement 32 in the draft DCO (Document 3.1, Version 10) submitted at Deadline 6). The Applicant therefore considers the DIO’s objection to have been fully addressed.
212. NATS En-Route submitted Relevant Representations due to concerns that the Project would cause an adverse impact to the Claxby and Cromer radars and the associated air traffic operations of NERL without suitable mitigation. An agreement was entered into between NERL and the Applicant for the implementation of an identified and defined mitigation solution in relation to the Project. In summary, such a mitigation solution will require works to be carried out to NERL’s infrastructure at the Claxby and Cromer radar installations. On that basis (and subject to the imposition of an agreed Requirement which has been included as Requirement 31 in the draft DCO (Document 3.1, Version 10) submitted by the Applicant at Deadline 6) NERL withdrew its Relevant Representations to the Development Consent Order (REP 5-178].

10.2.4 Accordance with Policy and Conclusion

213. The Secretary of State can therefore be satisfied that the Project has been designed, where possible, to minimise adverse impacts on the operation and safety of aerodromes and that realistically achievable mitigation will be carried out on existing surveillance systems such as radar/tracking technologies in compliance with NPS EN-1 paragraph 5.5.50. Further the Secretary of State can be satisfied that the Applicant has secured compliance with statutory lighting requirements and has addressed aviation and defence stakeholder lighting requirements and can consider the necessity for such lighting in accordance with NPS EN-1 paragraphs 5.5.54 and 5.5.55 in that context. In relation to effects on radar, the DIO and NATS En Route Ltd have respectively agreed that any issues of concern can appropriately be addressed by a Requirement. The wording of the respective Requirements has been agreed with each of the DIO and NATS En Route Ltd as appropriate and is included as Requirement 31 and Requirement 32 of the draft DCO submitted at Deadline 6. The Secretary of State can be satisfied that necessary mitigation solutions are likely to come forward within the timescale for implementation of the Development Consent Order and the use of the forms of requirement proposed within the draft DCO and which relate to the use of current or future technological solutions, to mitigate impacts on legacy radars is appropriate in the circumstances in compliance with paragraph 5.5.57 and 5.5.58 of NPS EN-1. Taking account of the mitigations proposed and secured, the Secretary of State can be satisfied that the Project does not present risks to national security and physical safety and, on that basis, paragraph 5.5.60 of NPS EN-1 intimates that consent may be granted. The proposals comply with NPS EN-1 policies in respect of civil and military aviation and defence interests and there is therefore nothing in respect of these policies which indicate that consent should be refused.

10.3 Commercial Fisheries and Fishing

214. The Applicant's has undertaken an assessment of potential impacts of the Project in relation to Commercial Fisheries and Fishing. Its assessment is set out in the Environmental Statement, particularly the following documents

- Chapter 14 Commercial Fisheries (REP5-027)
- Chapter 14 Commercial Fisheries Figures (REP5-054)
- Chapter 14 Appendix 1 Commercial Fisheries Technical Baseline (APP-170).

215. As detailed in REP5-027, the assessment concludes that, with suitable mitigation measures imposed, the Project will have no significant impacts, either on a project-alone or cumulative basis. The Applicant notes the range of engagement with local fishing industry through the pre-application and application process detailed in REP5-027.

216. The Applicant highlights the following key submissions before and during Examination regarding Commercial Fisheries.

- The MMO provided a range of comments on Commercial Fisheries within its Relevant Representations (RR-042), which the Applicant has responded to (PD1-071). The Applicant also provided responses to the MMO regarding Commercial Fisheries in its Comments on Deadline 1, Deadline 2, and Deadline 3 submissions (REP2-053; REP3-037; REP4-108). The MMO SoCG was submitted at Deadline 6 (Document 18.17) and the Applicant notes no areas of disagreement related to commercial fisheries.
- The Applicant notes the ExA's question (CF1.1) relating to Commercial Fisheries within each set of written questions. The Applicant maintains the position set out in its answers regarding the continuation of fishing activities (see REP2-051; REP4-107). The Applicant notes that the Eastern Inshore Fisheries and Conservation Authority ("EIFCA") was asked for its view of "any outstanding concerns" regarding the Applicant's assessment or mitigation (Q2 CF 1.2). On the basis that EIFCA has only raised concerns regarding the Applicant's Export Cable Route (AS-035), the Applicant considers that there are no other outstanding concerns regarding the Applicant's consideration of Commercial Fisheries.
- Regarding EIFCA's Additional Submission (AS-035) the Applicant notes that this was first introduced into Examination on 26 March 2025. The Applicant has therefore provided a response at Deadline 6 which it considers addresses those issues raised by the Interested Party.¹⁵

¹⁵ Document 24.2 The Applicant's Comments on D5 Submissions; Eastern Inshore Fisheries and Conservation Authority section

217. The Applicant has set out a range of mitigations within REP5-027 Table 14.14, which it believes provide mitigations necessary to ensure no residual significant adverse effect on commercial fisheries receptors. This includes securing the provision of a Fisheries Liaison and Co-Existence Plan via the Draft DCO's dMLs as outlined in the Outline Fisheries Liaison and Co-existence Plan (PD1-060). This requires to be submitted to and approved in writing by the MMO as part of the Project's Environmental Management Plan.

10.3.1 Accordance with Policy and Conclusions

218. The Application required to comply with specific requirements related to commercial fisheries receptors (NPS EN-3 paragraphs 2.8.152-2.8.164; 2.8.250-251) and in making their decision the Secretary of State requires to take certain considerations into account (NPS EN-3 2.8.318 – 2.8.324). Per Table 14.1 of REP5-027, the Project has taken all the relevant NPS requirements into account and the information which the Secretary of State requires to consider has been set out. The key Secretary of State considerations are that (1) they must be satisfied that the Applicant has sought to design the project following consultation with key stakeholders, including (as relevant) the MMO, Defra, and representatives of the commercial fishing industry, to minimise the loss of fishing opportunities while also considering effects on other marine interests (2.8.322) and (2) they require to consider the extent to which disruption to the fishing industry has been mitigated where reasonably possible. As set out in REP5-027 extensive consultation and engagement has taken place with the relevant stakeholders and the Applicant has committed to a range of measures to minimise and mitigate adverse impacts (Section 14.5; REP5-027). The Secretary of State can be satisfied that, with the implementation of the proposed mitigation, there will be no significant residual impacts in relation to Commercial Fisheries and Fishing and that the Project aligns with the policies set out in the Energy NPSs.

10.4 Fish and Shellfish Ecology

219. The Applicant has undertaken an assessment of potential impacts of the Project in relation to Fish and Shellfish Ecology in line with the requirements of EIA and paragraphs 2.8.95 to 2.8.110 and 2.8.147 to 2.8.151 of NPS EN-3. Its assessment is set out in the Environmental Statement, in particular in the following documents:

- Chapter 10 Fish and Shellfish Ecology (REP5-021);
- Chapter 10 Appendix 1 Fish and Shellfish Ecology Technical Baseline (REP5-068);
- Chapter 10 Fish and Shellfish Ecology Figures Part 1 of 2 (REP5-050); and
- Chapter 10 Fish and Shellfish Ecology Figures Part 2 of 2 (REP5-051).

220. As detailed in Chapter 10 Fish and Shellfish Ecology (REP5-021), the assessment concludes that, with suitable mitigation measures in place, the Project will have no likely significant effects on fish and shellfish receptors, either on a project-alone or cumulative basis.

221. The Applicant has agreed a SoCG with the MMO. Following agreement with the MMO on a spatial and temporal piling restriction for the protection of spawning Banks herring (condition 25, Part 2, Schedule 10 and condition 17, Part 2, Schedules 12 and 13 of the DCO), there are no material outstanding matters related to this topic.
222. The spatial and temporal piling restriction for the protection of spawning herring has been proposed in addition to the broader package of mitigation measures which the Applicant has developed for fish and shellfish ecology receptors. These are all secured in the Applicant's draft DCO and are summarised as follows:
- a. provision of a cable specification and installation plan;
 - b. provision of a project environmental management plan to be submitted to the MMO for approval to cover accidental spills, potential contaminant release and minimise the spread of invasive non-native species, including the provision of a biosecurity plan;
 - c. cable burial to reduce the impacts of electromagnetic fields on sensitive receptors and minimise the requirement for additional cable protection; and
 - d. provision of a marine mammal mitigation protocol, including deployment of noise mitigation systems or noise abatement systems that will be utilised to manage sounds from those piling activities and therefore reduce impacts on noise sensitive species including herring.

10.4.1 Accordance with Policy and Conclusions

223. The Secretary of State can be satisfied that, in particular with the implementation of the proposed mitigation, there will be no significant residual effects on Fish and Shellfish Ecology and that the Project aligns with the policies set out in the Energy NPSs.

10.5 Marine and Intertidal Archaeology

224. The Applicant has undertaken an assessment of potential impacts of the Project in relation to Marine Archaeology. Its assessment is set out in the Environmental Statement, particularly the following documents
- Chapter 13 Marine and Intertidal Archaeology (REP5-025)
 - Appendix 13.1: Marine and Intertidal Archaeology Technical Report (APP-167)
 - Appendix 13.2 Marine and Intertidal Archaeology Geoarchaeological assessment Phase One (Array and ECC) (APP-168; APP-169)
225. As detailed in REP5-025, the assessment concludes that, with suitable mitigation measures imposed, the Project will have no significant impacts, either on a project-alone or cumulative basis.
226. Further questions have not been asked in written questions or hearings nor concerns raised by Interested Parties about Marine and Intertidal Archaeology in the course of Examination, which the Applicant considers provides comfort that its conclusions in its Environmental Statement are not challenged.

227. In their respective Relevant Representations, the MMO confirmed that it deferred consideration of Marine Archaeology to Historic England (RR-042) and Historic England made clear that the production of a Marine Written Scheme of Investigation (“**WSI**”) was required and that in its view the Applicant’s *“present Outline Marine WSI is sufficient”* (RR-027).
228. Historic England’s Statement of Common Ground (REP5-134) shows all issues as “agreed” and confirms that mitigation provided through the Marine WSI is adequate and that suitable embedded mitigation has been committed to by the Applicant in relation to Marine and Intertidal Archaeology.
229. The Applicant’s draft DCO (Document 3.1; Version 10) secures appropriate mitigations in relation to Marine and Intertidal Archaeology. Conditions¹⁶ within Part 2 (Conditions) of each Deemed Marine Licences set out in Schedules 10 – 16 requires that a marine WSI related to the offshore Order limits be submitted to the statutory historic body and the MMO at the specified time prior to commencement of the licensed activities and must accord with the outline marine WSI and industry good practice and must include the relevant details set out in the Condition.

10.5.1 Accordance with Policy and Conclusions

230. The Application required to comply with specific requirements related to the marine historic environment as set out in NPS EN3 2.8.165 – 2.8.177, in addition to section 5.9 of NPS EN-1 heritage assets, as relevant to the marine historic environment. The Applicant has appropriately considered impacts to the marine historic environment (Section 13.9; 13.10 of REP5-025). Following assessment and consideration of embedded mitigation (Table 13.7 REP5-025) no significant adverse residual effects have been identified as part of the assessment (Table 13.16 REP5-025). The Secretary of State requires to be satisfied (2.8.325 of NPS EN-3) that the Applicant has appropriately assessed and mitigated for any impacts to the historic environment, including both known heritage assets, and discoveries that may be made during the course of development.
231. The Secretary of State can be satisfied that impacts have been properly assessed and mitigated in relation to Marine and Intertidal Archaeology and that the Project aligns with the policies set out in the Energy NPSs.

10.6 Marine and Intertidal Ornithology

232. The Applicant refers to its submissions on ornithology HRA matters at Section 5 above which, in the interests of brevity, are not repeated here.

¹⁶ The Condition in each Marine Licence is in the same terms within the subheading “Pre-construction plans and documentation” of Part 2 of each licence

233. The Applicant has undertaken an assessment of the potential impacts of the Project on marine and intertidal ornithology in accordance with the EIA Regulations, the Habitats Regulations and paragraphs 2.8.95 to 2.8.110 and 2.8.136 to 2.8.146 of NPS EN-3. Its assessment is set out in the Environmental Statement and the RIAA, particularly the following documents:
- Chapter 12 Offshore and Intertidal Ornithology (REP4a-011);
 - Chapter 12 Offshore and Intertidal Ornithology Figures (REP4a-030);
 - Chapter 12 Appendix 1 Offshore and Intertidal Ornithology Baseline Characterisation Report (REP4a-043);
 - Chapter 12 Appendix 2 Collision Risk Modelling (REP4a-044);
 - Chapter 12 Appendix 3 Ornithology Displacement Assessment (REP4a-045);
 - Chapter 12 Appendix 4 Offshore Ornithology Population Viability Assessment (REP4a-046);
 - Chapter 12 Appendix 5 Migratory Collision Risk Modelling Annex (REP4a-047);
 - Chapter 12 Appendix 6 MRSea Modelling for Offshore Ornithology (REP4-018);
 - Chapter 12 Appendix 7 Levels of precaution in the assessment and compensation calculations for offshore ornithology (REP4a-048);
 - Chapter 12 Appendix 8 Consideration of bioseasons in the assessment of guillemot (REP4a-050);
 - Chapter 12 Appendix 9 Rates of displacement in guillemot and razorbill (REP4a-052);
 - Report to Inform Appropriate Assessment (Document 7.1, Version 5);
 - Report to Inform Appropriate Assessment Appendix 1: Screening Matrices (REP4-039); and
 - Report to Inform Appropriate Assessment Integrity Matrices (REP4-041).
234. As detailed in Chapter 12 Offshore and Intertidal Ornithology (REP4a-011), the assessment concludes that, with suitable mitigation measures in place, the Project will have no likely significant effects on offshore and intertidal ornithology receptors, either on a project-alone or cumulative basis.
235. The conclusions of the RIAA with respect to offshore and ornithology are summarised at section 5.2 above. In brief, the Applicant's assessment concludes that an AEoI can be ruled out for all species at all European sites, with the exception of kittiwake at the FFC SPA.

236. The Applicant has continued to take opportunities to further mitigate the effects of the Project since the submission of the Application. Prior to the Examination, the Applicant introduced the Offshore Restricted Build Area as mitigation for auk species following concerns raised by stakeholders regarding the high numbers of birds to the north of the Array area. The introduction of the ORBA resulted in a reduction in the summed mean seasonal peak abundance of guillemot from 27,653.3 birds in the array plus 2km buffer to 23,586 guillemot in the array area minus the ORBA plus 2km buffer. The introduction of the ORBA was proposed alongside the Environmental Report for the ORBA and ECC Revision (PD1-081), plus supporting appendices (PD1-082 – PD1-090) and a Habitats Regulations Assessment for the ORBA and ECC Revision (PD1-091) and ornithology apportioning appendix (PD1-092). The results of the ORBA reports were subsequently incorporated into the ES and the RIAA.
237. As set out at paragraph 169, Natural England raised concerns in relation to the potential effects of the Project on red-throated diver. In response to those concerns, the Applicant committed to a seasonal restriction on construction works associated with the ORCP and the offshore export cable within the Greater Wash SPA plus a 2km buffer during the sensitive overwintering period (see condition 25, Part 2, Schedule 11 of the DCO). Following this confirmation, Natural England confirmed that there is no AEoI on the red-throated diver feature of the Greater Wash SPA (set out in Natural England's Advice set out at REP5-166 ("Appendix F5")).
238. The Applicant has discussed a SoCG with Natural England (Documents 18.14.6 and 18.4.8, Version 2). The SoCG submitted at Deadline 6 represents the latest draft SoCGs, with Natural England's comments having been provided to the Applicant on 1 April 2025 (as explained in the Applicant's Deadline 6 Covering Letter (document 24.1). No other material issues remain outstanding other than those described in paragraphs 239 and 240 below.
239. The Applicant has presented the ornithology assessment using both the Applicant's preferred approach and Natural England's preferred approach, as explained at section 5.2.1. The Applicant has updated the RIAA and ES and supporting documents throughout the Examination to reflect evolutions in the advice provided by Natural England as to how the Natural England preferred methodology should be reflected. Natural England has confirmed that it is satisfied that all of the methodological issues raised in its relevant representation (RR-045) have now been addressed, with the exception of consideration of HPAI in the assessment, which is a point also raised by the RSPB. The Applicant's position in relation to this matter is set out at paragraph 82 above.

240. There is a fundamental disagreement between the Applicant and Natural England as to the level of precaution that ought to be applied in ornithology assessments, as set out at section 5.2.1 above. In brief, the Applicant's approach, as set out in its assessments, incorporates an appropriate level of precaution to address the uncertainties present in the assessments. The level of precaution advocated by Natural England is disproportionate to the risks caused by the residual uncertainty in the assessment. This is exacerbated by the layering of precaution on precaution sometimes to address the same uncertainty. If the over-precautionary approach advocated by Natural England were to be applied, this would result in a considerable inflation of the predicted impacts, generating impacts that are unrealistic compared to the environmental risk in question.
241. The Applicant has agreed a SoCG with the RSPB. At the close of Examination, there remain a number of matters disagreed between the Applicant and the RSPB. In summary, the Applicant's position in relation to these matters is as follows:
- a. The Applicant considers the DAS surveys which inform the baseline are robust and exceed the requirements set out in Natural England's guidance.
 - b. The Applicant maintains that the exclusion of "compensated for" projects from the RIAA is justified on the basis that the relevant Project delivering compensation will be fully compensated (i.e. the impact of the relevant project would be zero).
 - c. The Applicant maintains that its conclusion of no AEoI on Sandwich tern at the North Norfolk Coast SPA is robust. The assessment concludes that fewer than 0.4 birds would be affected by the Project per annum and that the Project would consequently make no material contribution to any in-combination impact. Natural England has agreed with this conclusion.
 - d. The Applicant maintains that its conclusion of no AEoI on the gannet population of the FFC SPA is robust. Natural England agrees with the conclusion of no AEoI on the gannet population of the FFC SPA and the Applicant notes the RSPB's acknowledgement that, as the usage of the site by gannet is relatively low, the RSPB's concerns in relation to the calculation of impacts are unlikely to be of material significance in the context of the Application. Taking this statement to its logical conclusion, for these concerns not to be "of material significance" must mean that the conclusion of no AEoI is justified.
 - e. The Applicant maintains that its conclusion of no AEoI on the seabird assemblage qualifying feature of the FFC SPA is robust. No significant changes to either their abundance or diversity are expected as a result of the Project.
 - f. The Applicant maintains that a robust and properly evidenced package of compensation measures has been provided and can be relied upon to allow the SoS to comply with its obligations to secure the necessary compensation measures to ensure the overall coherence of the National Site Network, as summarised at sections 5.6 and 5.7 above.

10.6.1 Accordance with Policy and Conclusions

242. The Secretary of State can be satisfied that, with the implementation of the proposed mitigation:
- there will be no significant residual effects on marine and intertidal ornithological receptors
 - that an AEoI can be ruled out in respect of all features of all SPAs, with the exception of kittiwake in-combination;
 - where an AEoI is concluded, the Applicant has advanced a robust derogation case, including proposals for delivery of compensation measures; and
 - the Project complies with policies 2.8.302 to 2.8.306 of NPS EN-3.
243. The Project complies with policies 2.8.315 and 2.8.316 of NPS EN-3. In particular, the collision risk and displacement assessments have been conducted to a high standard, in line with best practice and having due regard to the conservation status of seabirds. The Applicant has presented both the Applicant's approach and the Natural England approach to the impact assessment, taking account of updates to Natural England's advice throughout the Examination as it has evolved. As a result, although there are differences in position between the Applicant and Natural England as to the correct level of precaution to be applied to the assessment, and therefore the conclusions reached following that assessment, agreement with Natural England has been reached in relation to how Natural England's approach has been presented on all but one matter. Natural England advise that HPAI should be considered in the assessment, however no guidance on how to undertake this assessment has been supplied and the Applicant has provided a rationale as to why consideration of HPAI is not appropriate. The Applicant's position is that this methodological disagreement is not material to the conclusions of the assessment.
244. The Applicant notes that paragraph 2.8.316 of NPS EN-3 requires the SoS to take into account the views of the relevant statutory advisors, in this case Natural England. In this regard, the Applicant refers to the Applicant's Position on Natural England's Engagement in the Outer Dowsing Offshore Wind Examination (REP4a-121) and its comments made at ISH 5 (see summary at REP4a-116). In those submissions, the Applicant highlighted its concerns in relation to the approach taken by Natural England to the examination. Natural England have declined to attend any of the hearings to examine the evidence before the Examination, even following a specific request from the ExA (AS-031).
245. 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.

246. 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.
247. 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 REP4a-121) 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 non-participation in hearings intended to test the evidence.
248. Whilst the views of Natural England must be taken into account in accordance with the policy, the policy does not require a particular weighting to be applied automatically to Natural England's advice. The weight to be attached to individual items of evidence and analysis is a matter of judgement for the ExA and, in due course, the Secretary of State.
249. In forming its judgment, the ExA may and should take account of submissions made by the Applicant and the evidence of its expert witnesses in respect of NE's advice and how it relates to the underlying evidence base. It may also take account any response, or lack of response, by NE to such submissions and evidence and the extent to which the parties have made their experts available for direct questioning at the hearings arranged by the ExA to enable the evidence to be tested.
250. The Applicant notes that, for example, Natural England has identified several matters as "red" and "amber" rated issues in tab G (ornithology compensation), with an undertaking to provide further advice on these matters at Deadline 6 once Natural England has fully reviewed the documentation submitted at Deadlines 4 and 4a. The Applicant is disappointed that Natural England has not confirmed its position prior to the final deadline of the Examination which would have allowed the Applicant to address the concerns raised and assisted the Applicant in narrowing the issues before the Examination. The Applicant considers that sufficient information has been provided into the Examination to date which justifies the Applicant's position. It is likely that, in many instances, the substantive concerns have been addressed, however, Natural England have not had sufficient resources to consider the information submitted and confirm an update to its position.
251. The Applicant submits that, where any new information is submitted by an Interested Party at Deadline 6, to which the Applicant should reasonably be given an opportunity to respond, such evidence should be afforded limited weight.

252. The Applicant submits that a failure by Natural England to provide timely advice should not be used as a justification for delay to decisions on CNP infrastructure, with the resulting delay to their deployment. This is all the more so in circumstances where the relevant party has had ample opportunity to make representations on a particular matter during the course of the Examination.
253. Whilst the Applicant makes these submissions in the context of the particular policy relating to ornithology, the comments on Natural England's participation in the Examination apply more widely than on ornithology matters.

10.7 Marine Mammals

254. The Applicant has undertaken an assessment of the potential impacts of the Project on marine mammals in accordance with the EIA Regulations, the Habitats Regulations and paragraphs 2.8.95 to 2.8.110 and 2.8.127 to 2.8.135 of NPS EN-3. Its assessment is set out in the Environmental Statement and the RIAA, particularly the following documents:
- Chapter 11 Marine Mammals (Document 6.1.11, Version 3);
 - Chapter 11 Marine Mammals Figures (REP5-052);
 - Chapter 11 Appendix 1 Marine Mammals Technical Baseline (APP-160)
 - Chapter 11 Appendix 2 Underwater Noise Assessment (REP5-70);
 - Interim Population Consequences of Disturbance Modelling Report (REP4a-106);
 - Interim Population Consequences of Disturbance Modelling Report (Cumulative) (Document 6.3.11.3);
 - Report to Inform Appropriate Assessment (Document 7.1, Version 5);
 - Report to Inform Appropriate Assessment Appendix 1: Screening Matrices (REP4-039); and
 - Report to Inform Appropriate Assessment Integrity Matrices (REP4-041).
255. As detailed in Chapter 11 Marine Mammals (Document 6.1.11, Version 3), the assessment concludes that, with suitable mitigation measures in place, the Project will have no likely significant effects on marine mammal receptors, either on a project-alone or cumulative basis.
256. The RIAA assesses the effects of the Project on several European sites designated for marine mammal features and concludes no AEoI both on a project-alone and in-combination basis, following the commitment to suitable mitigation measures.
257. The Applicant has discussed a SoCG with Natural England (Document 18.14.5, Version 2f). The SoCG submitted at Deadline 6 represents the latest draft SoCGs, with Natural England's comments having been provided to the Applicant on 1 April 2025 (as explained in the Applicant's Deadline 6 Covering Letter (document 24.1).
258. The Applicant notes Natural England's advice in response to the RIES (REP5-172), that it is unable to rule out an AEoI on the following sites:
- a. Harbour seal at the Wash and North Norfolk Coast SAC;
 - b. Grey seal at the Humber Estuary SAC and Ramsar site; and

c. Harbour porpoise at the Southern North Sea SAC.

259. Following engagement with Natural England and the advice provided against PADSS items NE8 and NE9 in the NE Risk and Issues Log (REP5-171), the Applicant has updated the commitment secured within the Outline MMMP for Piling Activities (document reference 8.6.1, V6 submitted at deadline 6) and the In Principle SIP (document reference 8.7, V4 submitted at deadline 6) to state:

“The Applicant will deploy primary and/or secondary noise reduction methods (Noise Abatement Systems) for pile driving, unless otherwise agreed with the MMO”.

260. The Applicant considers that the commitment it has made is now above what is required by the Defra (2025) policy *Reducing Marine Noise*, and that this issue is now partly resolved. The Applicant maintains that it is not possible or helpful to commit to specific primary or secondary noise reduction methods until the final project parameters are known.

261. In their comments, Natural England also requested that Interim Population Consequences of Disturbance (iPCoD) modelling was provided to support the conclusions of the Applicant’s assessment. The Applicant has provided iPCoD modelling on a project-alone basis which confirms the results of the Applicant’s assessment, i.e. no population-level effect, which was updated based on Natural England’s feedback at Deadline 4a (REP4a-107). The Applicant notes that Natural England intend to provide further comments on the updated modelling at Deadline 6 and refers to the Applicant’s comments on the weight that ought to be given to new evidence submitted at the final deadline elsewhere in this document.

262. Natural England has requested that iPCoD modelling is also carried out on a cumulative basis. The Applicant has previously highlighted the over-precautionary nature of cumulative iPCoD modelling in light of the assumptions that need to be made within it in the absence of reliable piling schedules for each third party project (see E2, 1.45.6, Applicant’s Responses to Relevant Representations (PD1-071)). The Applicant notes that Natural England have accepted and agreed to this position in its responses to the Five Estuaries DCO examination (See Row ME. 1.01, REP4-062, Natural England, 2024). The Applicant submits that cumulative iPCoD modelling is not required in order for the conclusions of no likely significant effects and no AEoI to be reached in the ES and the RIAA and therefore this matter is not material to the determination of the application.

263. Notwithstanding this position, the Applicant has carried out cumulative iPCoD modelling (6.3.11.3) and has submitted this at Deadline 6. Despite its highly precautionary nature, the cumulative iPCoD confirms that for the levels of cumulative disturbance modelled, there is no significant effect at population level. These results align with the Project’s Environmental Impact Assessment magnitude definition of “Low,” meaning that temporary behavioural effects may occur, but survival and reproductive rates are unlikely to be affected in a way that alters population trajectories.

264. The Applicant considers that, in light of the conclusions of the Applicant's assessments and the subsequent commitment to the use of noise abatement solutions, Natural England should be able to confirm no AEoI in respect of all European sites designated for marine mammals species.
265. The Applicant's draft DCO (Document 3.1; Version 10) secures appropriate mitigations specific to marine mammals. Conditions within Part 2 (Conditions) of each Deemed Marine Licences set out in Schedules 10 – 15 require, in the event that driven or part driven piles are to be used:
- a marine mammal mitigation protocol to be submitted to the MMO for approval, following consultation with Natural England, prior to commencement of piling in line with the outline marine mammal mitigation protocol, which includes consideration of deployment of noise mitigation systems or noise abatement systems that will be utilised to manage sounds from those piling activities and complies with paragraphs 2.8.53, 2.8.237 and 2.8.238 of NPS EN-3 and the Policy Paper on Reducing Marine Noise published by Defra in January 2025;
 - a project environmental management plan to be submitted to the MMO for approval to cover accidental spills and potential contaminant release;
 - a vessel management plan to be submitted to the MMO for approval to reduce collision risk, minimise disturbance and include measures for avoidance of sensitive areas where practicable (Schedules 10 and 11);
 - a restriction on the maximum hammer energies which may be used to drive or part-drive the pile foundations;
 - monitoring of marine mammals to be set out in a monitoring plan and carried out pre-, during and post-construction (Schedules 10 and 11 only), which complies with paragraphs 2.8.83 to 2.8.87 of NPS EN-3;
 - information to be submitted to the Marine Noise Registry; and
 - a site integrity plan to be submitted to the MMO for approval, following consultation with Natural England, prior to commencement of piling in accordance with the In Principle SIP, which complies with paragraphs 2.8.135, 2.8.237 and 2.8.238 of NPS EN-3.

10.7.1 Accordance with Policy and Conclusions

266. The Secretary of State can be satisfied that, with the implementation of the proposed mitigation, there will be no significant residual effects on marine mammal receptors, that an AEoI can be ruled out in respect of SACs designated for the protection of marine mammals and that the Project complies with policies 2.8.302 to 2.8.306 of NPS EN-3.
267. The Project complies with policies 2.8.312 to 2.8.314 of NPS EN-3. In particular:
- the proposed foundations have been designed reasonably to minimise significant impacts on marine mammals;
 - suitable noise mitigation measures have been proposed in the DCO (Document 3.1, Version 10), which align with best practice and Defra policy and therefore there is no reason for the Secretary of State to refuse the application on this basis; and

- the cumulative and in-combination impacts on marine mammals have been fully assessed, taking account of the conservation status of cetaceans and seals.

10.8 Marine Physical Processes

268. The Applicant has undertaken an assessment of potential impacts of the Project in relation to Marine Physical Processes in line with the requirements of EIA and paragraphs 2.8.95 to 2.8.111 to 2.8.114 of NPS EN-3. Its assessment is set out in the Environmental Statement, in particular in the following documents:
269. Chapter 7 Marine Physical Processes (REP4a-029);
270. Chapter 7 Marine Physical Processes Figures (REP4a-041 and REP4a-042);
271. Chapter 7 Appendix 1 Physical Processes Technical Baseline (AS-003);
272. Chapter 7 Appendix 2 Physical Processes Numerical Modelling Report (APP-151); and
273. Chapter 7 Appendix 3 Seabed Mobility Report (APP-152).
274. As detailed in Chapter 7 Marine Physical Processes (REP4a-029), the assessment concludes that, with suitable mitigation measures in place, the Project will have no likely significant effects on marine processes receptors, either on a project-alone or cumulative basis.
275. The Applicant has discussed a SoCG with Natural England (Document 18.14.2, Version 2. The SoCG submitted at Deadline 6 represents the Applicant's view of the status of the various issues.
276. The Applicant's position on the key outstanding matters is as follows:
- a. The Applicant has carried out a robust and comprehensive assessment on marine physical processes receptors that contains sufficient detail to justify its conclusions.
 - b. In relation to the effects of the use of cable protection in the nearshore, the Applicant has committed to using concrete mattresses if cable protection is required in the nearshore (defined as the inner depth of closure out to 7.1m water depth). These are low in profile and therefore not considered to affect regional or local sediment transport. In addition, the Applicant maintains that all marine physical processes receptors are insensitive to increases in SSC resulting in elevated turbidity and consequential changes to seabed levels.
 - c. The Applicant's conclusion of no likely significant effects on the potential seabed morphological change arising from changes to the wave and tidal regime resulting from the installation of the ORCP is robust. The assessment demonstrates that tidal flows are aligned north to south and as such there is limited pathway of effect from the ORCP to the SAC. Furthermore, predominant wave directions from the north and northeast towards the coast are such that any modifications to the wave regime occur away from the SAC and in the wave's direction of travel. As such there is limited pathway of effect from the ORCP to the SAC.
277. The Applicant has developed a robust suite of mitigation measures specific to marine physical processes receptors. These are all secured in the Applicant's draft DCO and are summarised as follows:

- a. the removal of the option for gravity base foundations for the ORCP, which accords with paragraph 2.8.309 of NPS EN-3;
- b. commitment to concrete mattresses as cable protection in the nearshore which will not exceed 0.35m;
- c. provision of a cable specification and installation plan;
- d. the installation of scour protection;
- e. removeable cable protection on the sandbank features and defined areas of supporting habitat for Annex I reef on the IDRBNR SAC;
- f. no cable protection is to be installed in the intertidal zone; and
- g. disposal of dredged material in agreed disposal sites and that dredged material within the IDNRBR SAC will remain within the SAC.

278. The Secretary of State can be satisfied that, with the implementation of the proposed mitigation, there will be no significant residual effects on marine physical processes receptors.

279. The Project complies with policies 2.8.307 to 2.8.309 of NPS EN-3. In particular, the Secretary of State can be satisfied that, in light of the comprehensive suite of mitigation measures proposed as summarised above, the design of the wind farm, offshore transmission and methods of construction, including use of materials, are such as to reasonably minimise the potential for impact on the physical environment.

10.9 Oil, Gas and Other Offshore Infrastructure

280. The Applicant has undertaken an assessment of the potential impacts of the Project on Marine Infrastructure and Other Users, including the effects on oil and gas receptors. Its assessment is set out in the Environmental Statement, particularly the following documents:

- Chapter 18 Marine Infrastructure and Other Users (REP5-035);
- Chapter 18 Marine Infrastructure and Other Users Figures (REP5-060);
- Chapter 18 Appendix 1 Helicopter Access Report (APP-175); and
- Chapter 18 Appendix 2 Helicopter Access Report – Hornsea One and Two RCS (REP5-075).

281. As detailed in REP5-035, the assessment concludes that, with suitable mitigation measures in place, the Project will have no likely significant effects on marine infrastructure and other users receptors, either on a project-alone or cumulative basis.

282. The following IPs have made representations in relation to the specific matters covered by this topic that have not been withdrawn:

- Hornsea 1 Limited (RR-028);
- Breesea Limited, Soundmark Wind Limited, Sonningmay Limited, Optimus Wind Limited (together, the Hornsea Two Companies) (RR-011);
- Orsted Hornsea Project Three (UK) Limited (RR-052);
- Orsted Hornsea Project Four Limited (RR-051);

- Lincs Wind Farm Limited (RR-037);
- Westermost Rough Limited (RR-072);
- Race Bank Wind Farm Limited (RR-054);
- Diamond Transmission Partners RB Limited (RR-017);
- Perenco UK Limited (RR-053);
- Equinor New Energy Limited (Equinor New Energy Limited) on behalf of Scira Extension Limited and Dudgeon Extension Limited (RR-059);
- Scira Offshore Energy Limited;
- Dudgeon Offshore Wind Limited (together known in the Examination as the Equinor IPs);
- Shell U.K. Limited(RR-059); and
- TC Lincs OFTO Limited(RR-066).

283. The matters raised during Examination fall into the following broad categories:

- potential impacts on oil and gas receptors, including obstruction of access by helicopter, access by vessel and direct line-of-sight telecommunications facilities;
- potential impacts on helicopter access to the Hornsea One and Two Reactive Compensation Stations;
- matters relating to proximity between the boundary of the ECC and the boundary of other offshore assets;
- wake effects; and
- potential impacts of benthic compensation measures on other offshore infrastructure.

10.9.1 Potential impacts on oil and gas receptors

284. The Applicant has been engaging with two owners of oil and gas infrastructure on the potential impacts of the Project, as set out in “Protective Provisions” within the Draft Development Consent Order section of these Closing Statements and as recently discussed at ISH8 (Document 24.5). The Applicant has discussed both Protective Provisions and commercial terms with the parties.

- The Applicant and Perenco¹⁷ have reached agreement on the majority of the Protective Provisions subject to one outstanding point regarding the radius of the communications corridors. The Applicant’s submitted Protective Provisions propose a 50m radius from the centre of the communications line which the Applicant believes is a sufficient and justified protection as set out elsewhere in these Closing Statements.

¹⁷ Perenco Gas (UK) Limited, Perenco North Sea Limited, Everard Energy Limited, Ithaca MA Limited, and RockRose (UKCS2) Limited (Perenco)

- Shell UK Limited has not provided substantive comments on the Protective Provisions proposed by the Applicant other than in relation to the relevant Shell entity.

285. The Protective Provisions proposed provide sufficient controls on the Applicant's activities to ensure (i) the necessary protection of both Shell and Perenco and (ii) the ability for the respective activities to continue in a reasonable manner:

- In relation to Perenco (3.1 dDCO, Schedule 18, Part 11) the PPs do so through (1) the restriction on the works that may be carried out by the Applicant in certain areas; (2) the requirement to have certain plans approved before the certain works may take place and (3) the requirement to enter into a co-existence and proximity agreement in the circumstances referred to.
- In relation to Shell (3.1 dDCO, Schedule 18, Part 12) the PPs do so through (1) the restriction on the works that may be carried out by the Applicant in certain areas; (2) the requirement to enter into a co-existence and proximity agreement in the circumstances set out and (3) the requirement to provide certain information between parties.

286. By so doing, the Applicant has acted in accordance with NPS EN-3 paragraphs 2.8.341 – 348, including by providing measures to negate or reduce effects on other offshore infrastructure or operations to a level sufficient to enable the Secretary of State to grant consent. For the reasons set out in the Protective Provision table, the Protective Provisions should take the form proposed by the Applicant.

287. While the Applicant is also negotiating commercial agreements with the two parties, the Applicant does not consider completion of such agreements to be a matter necessary to reach a conclusion that the above policy is met and that consent in relation to this issue should be granted.

10.9.2 Potential impacts on helicopter access to the Hornsea One and Two Reactive Compensation Stations.

288. The Orsted IPs submitted in their deadline 4 submissions (REP4-149) and at ISH 6 that helicopter access to their reactive compensation platforms should be considered.

289. The Applicant provided Appendix 18.2 Helicopter Access Report – Hornsea One and Two RCS Volume 3 Appendices (REP5-076).

290. The Orsted IPs confirmed at ISH 8 that the Applicant had provided the information required and no further scrutiny of this matter was required.

10.9.3 Matters relating to boundary proximity

291. Lincs Wind Farm Limited, Race Bank Wind Farm Limited and Equinor New Energy Limited (Equinor New Energy Limited) on behalf of Scira Extension Limited and Dudgeon Extension Limited have maintained representations due to the proximity of the proposed boundary of the ECC to the redline boundary of the IP's project.

292. In each case, the Applicant is in active negotiations with the relevant IPs with a view to agreeing a proximity agreement to govern the interaction of the Project with the relevant IP project. The Applicant has proposed protective provisions at Parts 13 – 15 of Schedule 18 of the dDCO (3.1). Whilst the Applicant anticipates that the parties will enter into a proximity agreement in due course, the PPs provide the other sea user with sufficient protection via provisions to control works within each Interested Party’s “control area” and thereby provides the ExA and Secretary of State with comfort that relevant national policy has been satisfied whether or not a proximity agreement is ultimately completed (see further comments on this matter at section 13.3 below).
293. The ExA and the SoS can therefore be satisfied that the assets of Lincs Wind Farm Limited, Race Bank Wind Farm Limited and Equinor New Energy Limited (Equinor New Energy Limited) on behalf of Scira Extension Limited and Dudgeon Extension Limited are sufficiently protected such that any effects on third party infrastructure are negated or reduced to a level sufficient to enable the Secretary of State to grant consent in accordance with paragraph 2.8.348 of NPS EN-3, if engaged.

10.9.4 Wake effects

294. The Applicant has set out its detailed submissions on wake effects in the Applicant’s Submissions on Wake Loss Matters (Document 24.12,. The Applicant’s position is summarised below.
295. The question of the applicability of the policies relating to “Other offshore infrastructure and activities” to wake effects experienced by other offshore wind farms is the subject of a debate in the context of the Mona Offshore Wind Farm and the Morgan Offshore Wind Farm DCOs, which will fall to be determined by the SoS prior to determination of the application for development consent for the Project (see response to question Q1 OG 1.2 in the Applicant’s Responses to the ExA’s First Written Questions (REP2-051) and the summaries of oral case at ISH 2 held on 4 December 2024 (REP3-041) and ISH 8 held on 19 March 2025 (24.5)).
296. As a matter of principle, the extent of and effects arising from any wake effects only becomes a relevant consideration for the ExA and the SoS in the event that the Secretary of State decides against the applicants in relation to those two applications.
297. If that happens, then in light of the evidence before this Examination there is no significant issue on the facts of this case and no justification for any additional provisions in the DCO.
298. The Applicant has demonstrated throughout the Examination that wake effects arising from the Project are very small and cannot be said to be significant in EIA terms or material in policy terms. That position is supported by both general and site-specific analysis. The evidence is set out in:
- Array Layout Yield Study (REP2-056);
 - Wake Loss Technical Note (REP4-114); and
 - Wood Thilsted Wake Impact Assessment Report (Document 23.6, Version 2).

299. Nine IPs maintain objections to the Project on the grounds of wake loss effects. These IPs are as follows:
- Hornsea 1 Limited;
 - Breesea Limited, Soundmark Wind Limited, Sonningmay Limited and Optimus Wind Limited (the Hornsea 2 Companies);
 - Race Bank Wind Farm Limited,
(together, the Orsted IPs);
 - Equinor New Energy Limited on behalf of Scira Extension Limited and Dudgeon Extension Limited (as developer of the Sheringham Shoal and Dudgeon Extension Offshore Wind Farm projects);
 - Scira Offshore Energy Limited; and
 - Dudgeon Offshore Wind Limited,
(the latter three known as the Equinor IPs).
300. Following the submission of the Applicant's Wake Loss Technical Note (REP4-114), Orsted Hornsea Project Three (UK) Limited, Orsted Hornsea Project Four Limited, Lincs Wind Farm Limited and Westernmost Rough Limited took the decision to withdraw their representations in relation to this matter (REP4a-125a).
301. The IPs maintaining representations in this Examination on the grounds of wake effects (the Orsted IPs and the Equinor IPs) agree with the methodology used by the Applicant's independent expert consultants to carry out that assessment and the conclusions reached in relation to the quantification of wake effects in percentage terms.
302. The assessments before the Examination present a broadly consistent picture, demonstrating a level of impact which can fairly be described as very small, being less than 1%, and not significant in EIA terms.
303. The EIA Regulations and the NPS are only concerned with environmental effects which are both likely and significant. The effects here do not pass that threshold.
304. The ExA and the SoS can be satisfied that, insofar as they apply to the Project, the relevant policy tests are met. The Applicant has demonstrated that the Project has been carefully designed, thorough engagement with key stakeholders has been undertaken and, in the absence of any significant effects, no mitigation measures are required for effects to be reduced to a level sufficient to enable the Secretary of State to grant consent for the Project.
305. The Applicant has previously explained the reasons why the imposition of a requirement following the model of Requirement 25 of the Awel y Mor Offshore Wind Order 2023 would not be appropriate as it fails the policy tests for requirements (REP2-051).

306. The Orsted IPs and the Equinor IPs instead seek the imposition of protective provisions, requiring both mitigation of wake effects through further design and the payment of a commuted sum representing the total loss of revenue for six offshore wind farms anticipated prior to commencement of construction of the Project. The imposition of protective provisions, which have not been agreed by the Applicant must logically be subject to the same tests as the imposition of requirements, particularly in light of the criminal sanctions for breach. The proposed protective provisions fail the tests for the imposition of requirements, as well as broader principles of legal certainty, and there is no basis in law, policy, precedent or evidence for the requested payment provisions.

10.9.5 Potential impacts of benthic compensation measures on other offshore infrastructure

307. The Applicant notes the submissions made by three parties regarding potential impacts of benthic compensation measures.¹⁸ As set out by the Applicant in response (PD1-071) and in the suite of benthic compensation documents provided into examination, the matter of concern is a strategic compensation measure (MPA extension as part of the Marine Recovery Fund).

308. This will be led by Government (Defra) and it can be expected that offshore infrastructure owners such as the Interested Parties will have opportunities to engage in its development in accordance with relevant regulatory processes. This will ensure that all stakeholders are appropriately consulted and their interests are considered in the decision-making process. The Applicant will remain aligned with Defra's guidance and contribute to any necessary consultations or assessments as part of the process, if required.

309. The Applicant notes that similar concerns have been raised from a commercial fisheries perspective by Eastern Inshore Fisheries and Conservation Authority (AS-035). The Applicant has responded in Document 24.2 (submitted at Deadline 6). Similarly, the Applicant expects that commercial fisheries stakeholders will also have the opportunity to engage in the relevant regulatory process and, as a result, relevant impacts can be considered.

10.9.6 Conclusion

310. For the reasons set out above, the Applicant considers that the Secretary of State can be satisfied that the Applicant's consideration of Oil, Gas and Other Offshore Infrastructure aligns with the policies set out in the Energy NPSs.

10.10 Shipping and Navigation

311. The Applicant has undertaken an assessment of potential impacts of the Project in relation to Shipping and Navigation. Its assessment is set out in the Environmental Statement, particularly the following documents

- Chapter 15 Shipping and Navigation (REP5-029)

¹⁸ Diamond Transmission Partners RB Limited (RR-017); TC Lincs OFTO (RR-066)

- Chapter 15 Shipping and Navigation Figures (REP5-055)
- Chapter 15 Appendix 1 Navigational Risk Assessment (“**NRA**”) (REP5-072)
- Chapter 15 Appendix 1 Navigational Risk Assessment Appendices (REP5-074)
- Chapter 15 Appendix 2 Oil and Gas Platform Allision and Marine Access Study (APP-172)

312. As detailed in REP5-029, the assessment concludes that, with suitable mitigation measures imposed, the Project will have no significant effects, either on a project-alone or cumulative basis.
313. The Applicant has provided further submissions on these issues in the course of Examination including at Issue Specific Hearings, post-hearing written responses, and responses to written questions.¹⁹ The Applicant also notes that mitigations have been developed during Examination including the introduced an Offshore Restricted Build which reduces collision risk by approximately 3% (see paragraph 105 of REP5-029).
314. The Applicant notes the following agreements related to Shipping and Navigation. As set out in the respective SoCGs all issues are “agreed” with UK Chamber of Shipping (“**COS**”), Trinity House (“**TH**”) and the Maritime and Coastguard Agency (“**MCA**”) (REP5-140; REP5-138; REP5-137). On this basis, the Applicant considers that previous representations made by these Interested Parties have been addressed in the course of Examination.
315. The Applicant notes the submissions related to shipping and navigation made by the Orsted IPs during the course of Examination. The Applicant maintains its positions set out in Examination submissions including its submissions at ISH6 (see REP4a-117), the clarification note on marine access and allision provided thereafter (REP5-151) and the ES Appendix submitted thereafter (Chapter 15 Appendix 2 Oil and Gas Platform Allision and Marine Access Study (APP-172). The Applicant welcomed that at ISH8 (Document 24.5) the Orsted IPs confirmed that they were now content with the robustness of the Applicant’s Navigational Risk Assessment having reviewed the aforementioned documents. These submissions are summarised by the Applicant in Document 24.4 The Applicant's Written Summary of oral case put at Issue Specific Hearing 8, 19th March).²⁰
316. As set out in Table 15.25 of REP5-029 the Applicant has considered mitigation where necessary and is confident that no residual significant adverse effect on shipping and navigation receptors will occur.

¹⁹ These include the submissions at ISH6 on Shipping and Navigation (summarised in REP4a-117) and the clarification note on marine access and allision (REP5-151) following ISH6.

²⁰ This discussion is also digitally transcribed in EV13-003; page 46 time stamp 1:39:39. Please note that this is an automatically generated transcript where word recognition errors by the software are not corrected thereafter.

317. The Application required to comply with specific requirements related to Shipping and Navigation as set out in NPS EN-3 2.8.178 – 2.8.195 and the Secretary of State is directed to consideration of certain factors when considering the grant of consent (NPS EN-3 2.8.326 – 2.8.340). The Applicant has consulted extensively with relevant stakeholders (NRA, REP5-072, Section 4) and appropriately considered impacts related to navigation and shipping receptors (15.7, REP5-029) and considered mitigation where appropriate. No significant adverse residual effects have been identified as part of the assessment (Table 15.25, REP5-029). The Secretary of State requires to be satisfied of a range of factors relating to shipping and navigation factors which, as summarised on page 15 – 17 of REP5-029, and set out in ES Chapter 15 and the NRA generally, the Applicant has taken into account.
- 318.** The Secretary of State can be satisfied that relevant impacts have been appropriately identified and mitigated in relation to Shipping and Navigation and that the Project aligns with the policies set out in the Energy NPSs.

11 Onshore Planning Matters

11.1 Onshore Ecology

319. The Applicant has undertaken an assessment of potential impacts of the Project in relation to Onshore Ecology in accordance with the EIA Regulations, the Habitats Regulations. Its assessment is set out in the Environmental Statement and the RIAA, particularly the following documents:

- Chapter 21 Onshore Ecology (REP5-039)
- Chapter 21 Onshore Ecology Figures (REP5-061-REP5-062)
- Chapter 21 Appendix 1 Onshore Ecology Desk Based Assessment (APP-189)
- Chapter 21 Appendix 2 UK Habitat Classification Survey (APP-190)
- Chapter 21 Appendix 3 Important Hedgerows Survey (APP-191)
- Chapter 21 Appendix 4 Preliminary Roost Survey for Bats (APP-192; APP-193)
- Chapter 21 Appendix 5 Badger Desk Study and Field Survey (Confidential) (REP5-098)
- Chapter 21 Appendix 6 Riparian Mammal Surveys (APP-195)
- Chapter 21 Appendix 7 Newt Surveys (APP-196)
- Chapter 21 Appendix 8 Reptile Habitat Suitability Survey (APP-197)
- Chapter 21 Appendix 9 Invertebrate Study (APP-198)
- Chapter 21 Appendix 10 Fish Habitat Survey (APP-199)
- Report to Inform Appropriate Assessment (Document 7.1, Version 5);
- Report to Inform Appropriate Assessment Appendix 1: Screening Matrices (REP4-039); and
- Report to Inform Appropriate Assessment Integrity Matrices (REP4-041).

320. As detailed in Chapter 21 Onshore Ecology, the assessment concludes that with mitigation, the Project will have no significant impacts (either alone or cumulatively) during the construction, operation and decommissioning phases.

321. The RIAA assesses the effects of the Project on several European sites designated for onshore ecological features and concludes no AEoI both on a project-alone and in-combination basis, following the commitment to suitable mitigation measures.

322. Agreement has been reached with LCC regarding the robustness of the conclusions of the onshore ecology impact assessment and the appropriateness of the mitigation proposed in the OLEMS (document 8.10, version 8) as shown in the SoCG with LCC (REP5-135). Boston Borough Council, East Lindsey District Council and South Holland District Council made no comments on onshore ecology and deferred to other relevant stakeholders for onshore ecological matters (REP5-136).

323. In its Relevant Representation (RR-036) and in response to the ExA's first rounds of written questions (REP2-070), Lincolnshire Wildlife Trust (LWT) raised concerns relating to onshore ecology. The Applicant responded in PD1-071 and, REP3-037. In the second round of written questions, the ExA asked LWT whether the Applicant had addressed its concerns, to which LWT responded (REP4-145) requesting:

- Additional assurances on habitat protection and soil management for peatland/ wetland restoration are needed, with more detail on how soil disturbance and sedimentation will be managed.
- Commitments to long-term monitoring and habitat connectivity for Water Vole, breeding birds and Great Crested Newt.
- Specific plans for creating compensatory habitat and adaptive management triggers for mitigation failures.

324. The Applicant provided a response on these remaining points in REP4a-014, sign posting to how these matters had been addressed in outline plans and licence requirements. In respect of Water Vole and Great Crested Newts, it should be noted that the Applicant has obtained Letters of No Impediment (LONI) for these species from Natural England (REP3-043 and REP4-044).

325. Natural England has provided (and continued to update throughout the Examination) a Risk and Issues log, most recently submitted at Deadline 5 (REP5-171) which includes a section on onshore ecology. The onshore ecology tab also includes some matters relevant to onshore ornithology and soils, which are considered in Sections 11.2 and 11.4 of this Closing Submission. It should be noted that the Risk and Issues Log does not take account of responses provided at Deadline 5 and is therefore often one step behind the submitted material. In addition, the Applicant has sought to make progress with NE on the outstanding issues post-Deadline 5. Any progress made will not be reflected in the Risk and Issues Log until NE submits a final version at Deadline 6. In its response at Deadline 6 (document 21.8) the Applicant has outlined where further agreement has been reached with NE. The Applicant discussed entering into a SoCG with NE to address onshore ecology, but NE advised it would not be able to do this in the timescales.

326. An issue raised by NE during examination related to onshore ecology was the impacts on protected species, in particular the requirement for LoNIs and additional mitigation for bats, badgers and otters. NE raised that it had not received applications for LoNIs for bats, badgers and otters and raised concerns with the mitigation proposed for such species. The Applicant provided justification for why licences for these species were not considered to be required, and provided additional mitigation and commitments to undertake additional pre-commencement surveys in the OLEMS (document 8.10, version 8). NE has accepted the Applicant's position in respect of bats and badgers. With respect to otters, NE stated at Deadline 5 that it did not have sufficient information to determine the effectiveness of the outlined mitigation measures as presented within the OLEMS. The Applicant has committed to additional pre-construction surveys in the OLEMS (and this was included in the version submitted at Deadline 5 (REP5-119). Should the pre-commencement surveys reveal new evidence of otter presence, or suggest that new impacts on otter would occur, an assessment of the need for further mitigation would be carried out. The Applicant has made clear that if the Ecological Clerk of Works considers that an offence under the Wildlife and Countryside Act 1981 would still be possible, an A45 licence would be applied for at that time using the LoNI process. The Applicant therefore considers this matter should now be agreed with NE.
327. In its Risk and Issues Log (REP5-171), Natural England stated its preference for Requirement 18 (Code of Construction Practice) of the draft DCO to include a plan to monitor the Sea Bank Clay SSSI in the event of dewater within requirement 18. And ensure that all environmental mitigation measures are appropriately secured. The Applicant amended Requirement 18 during Examination to include the requirement to submit a water quality monitoring and management plan as part of the code of construction practice. The Outline Code of Construction Practice (oCoCP) (document 8.1, version 8) outlines what this plan will include. Natural England has not updated its position on this matter, and it is unclear why this is the case. The Applicant's position is that the update to the DCO and oCoCP resolves this matter.
328. In its Risk and Issues Log (REP5-171), Natural England requested that back up mitigation measures be secured in the oCoCP in relation to the potential pathway between the Project and Sea Bank Clay Pits SSSI. The Applicant set out its position in REP2-053. The Applicant has updated the oCoCP (document 8.1, version 8) to provide that the final pollution prevention and emergency incident response plan will identify and include sensitive ecological receptors, such as the Sea bank Clay Pits Site of Special Scientific Interest and its features. The Applicant therefore considers this matter should now be resolved.
329. The Applicant has reached agreement with Natural England on a number of matters as shown in NE's Deadline 5 Risk and Issues Log (REP5-171). The Applicant's responses to NE's Deadline 5 Risk and Issues Log (document 21.8) demonstrate further points that can be considered agreed following further discussions and amendments to application documents to address Natural England's concerns.
330. There are a number of matters which are not agreed (including those which the Applicant considers should be agreed but have not been confirmed as such by NE). It is the Applicant's position that none of these remaining points of disagreement are material to decision making.

331. The Applicant's draft DCO (Document 3.1; Version 10) secures appropriate mitigations specific to onshore ecology. Requirement 12 requires the submission of an ecological management plan prior to commencement of any stage of the onshore works, and specifies that the ecological management plan must be in accordance with the OLEMS. Requirement 12 also requires that the approved plan is implemented. Therefore, the implementation of the mitigation proposed in the OLEMS is secured via a requirement of the DCO.

11.1.1 Accordance with Policy and Conclusions

332. NPS EN-1 requires that the Applicant carry out its assessment of significant effects on internationally, nationally, and locally designated sites of ecological importance (including those outside England), on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity, including irreplaceable habitats (NPS EN-1 paragraph 5.4.17). As set out in Table 21.1 of Chapter 21 (REP5-039) the Applicant has carried out an assessment which complies with Section 5.4 of NPS EN-1, including securing appropriate mitigation measures. The Secretary of State is thereafter required to consider the factors set out in paragraphs 5.4.39 to 5.4.55 when making their decision. As signposted on Table 21.1 of Chapter 21, the Applicant has provided the relevant information and assessment necessary. The proposals comply with NPS EN-1 policies in respect of biodiversity conservation, and there is therefore nothing in respect of these policies which indicates that consent should be refused.

333. NPS EN-3 requires that energy infrastructure projects demonstrate good design which mitigates effects on ecology (NPS EN-3 paragraph 2.5.2) and requires Applicants to develop an ecological monitoring programme to monitor impacts during the pre-construction, construction and operational phases to identify the actual impacts caused by the project and compare them to what was predicted in the EIA/HRA. (NPS EN-3 paragraph 2.8.211). The Applicant has designed a scheme which, with mitigation, avoids significant impacts on ecological receptors. In addition, the OLEMS (document 8.10, version 8) sets out an ecological monitoring strategy with measures relating to adaptive mitigation. The proposals therefore comply with NPS EN-3.

334. The Secretary of State can be satisfied that, with the implementation of the proposed mitigation, there will be no significant residual effects on onshore ecology receptors.

11.2 Onshore Ornithology

335. The Applicant has undertaken an assessment of potential impacts of the Project in relation to Onshore Ornithology in accordance with the EIA Regulations and the Habitats Regulations. Its assessment is set out in the Environmental Statement and the RIAA, particularly the following documents:

- Chapter 22 Onshore Ornithology (REP5-041);
- Chapter 22 Onshore Ornithology (Confidential) (REP5-043);
- Chapter 22 Onshore Ornithology Figures (REP5-061-REP5-063);
- Chapter 22 Appendix 1 Ornithology Desk Study (APP-200);

- Chapter 22 Appendix 2 Ornithology Desk Study Annex (Confidential) (REP5-089) ;
- Chapter 22 Appendix 3 Winter Bird Survey 2022- 2023 (REP5-091-REP5-095);
- Chapter 22 Appendix 4 Breeding Bird Survey 2023 (APP-205);
- Chapter 22 Appendix 5 Breeding Bird Survey 2023 (Confidential) (APP-206);
- Chapter 22 Appendix 6 Bird Species List (APP-207);
- Chapter 22 Appendix 7 Addendum Winter Bird Survey 2023/24 (REP5-096);
- Chapter 22 Appendix 8 Additional Clarifications Relating to Natural England's Relevant Representations (Appendix I Onshore Ornithology) (REP5-097);
- Report to Inform Appropriate Assessment (Document 7.1, Version 5);
- Report to Inform Appropriate Assessment Appendix 1: Screening Matrices (REP4-039); and
- Report to Inform Appropriate Assessment Integrity Matrices (REP4-041).

336. As detailed in Chapter 22 Onshore Ornithology, the assessment concludes that (with the exception of temporary localised significant impacts to yellow wagtail and skylark during the construction phase, for which compensation is proposed) with mitigation, the Project will have no other significant impacts (either alone or cumulatively) during the construction, operation and decommissioning phases.
337. The RIAA assesses the effects of the Project on several European sites designated for onshore ecological features and concludes no AEoI both on a project-alone and in-combination basis, following the commitment to suitable mitigation measures.
338. Agreement has been reached with LCC regarding the robustness of the conclusions of the onshore ornithology impact assessment and the appropriateness of the mitigation proposed in the Outline Landscape and Ecological Mitigation Strategy (OLEMS) (document 8.10, version 8) as shown in the SoCG with LCC (REP5-135). Boston Borough Council, East Lindsey District Council, and South Holland District Council made no comments on onshore ornithology. Agreement has also been reached with The RSPB on matters related to the onshore ornithology assessment, as shown in the SoCG with The RSPB (document 18.19, version 4).
339. As noted in Section 5.2 of these Closing Statements, the Applicant has worked with Natural England to address Natural England's concerns regarding onshore ornithology (as set out in REP5-170) and ensure that mitigation is in place which provides Natural England with reassurance that the assessment conclusions of no significant effect are robust. The Applicant considers it has suitably resolved Natural England's remaining concerns with regard to the potential for impacts on pink-footed geese, dark-bellied brent geese, golden plover, curlew, and lapwing.

340. The Applicant proposed construction of a noise bund as part of the mitigation measures for potential noise disturbance. Natural England requested that construction of this be avoided in March which the Applicant committed to in the OLEMS (document 8.10, version 8). Natural England confirmed at Deadline 5 in its Risk and Issues Log (REP5-171) that this issue had now been resolved, but stated that it would welcome further efforts being made in the final OLEMS to minimise disturbance from these activities, and an Ecological Clerk of Works (ECOW) advising on potential risks to aggregations of birds from activities and implementation of further measures if bird disturbance behaviours are shown. A commitment to employing an Ecological Clerk of Works (ECOW) for the landfall mitigation bund soft start works has been added to Section 3.7.5.4 of the OLEMS (document reference 8.10, version 8).
341. Natural England raised concerns regarding noise disturbance assessment and impacts to the designated features of The Wash SPA / Ramsar, and Sea Banks Clay Pits Site of Special Scientific Interest (SSSI) including on functionally linked land (FLL). The Applicant provided a number of responses to Natural England on this matter, setting out where and how the assessment had been undertaken. At Deadline 5 (REP5-168) Natural England advised that the assessment can be considered acceptable.
342. Natural England also confirmed in REP5-168 that a number of other matters related to its concerns around noise impacts to onshore ornithology receptors had been resolved and this was also reflected in the Risk and Issues Log (REP5-171). In particular, NE confirmed that its comments on the Sea Banks Clay Pits Site of Special Scientific Interest, the use of Impact Risk Zones, the assessment of designated bird features of The Wash SSSI / SPA and Ramsar, the use of threshold construction and operational noise impact magnitudes and Functionally Linked Land as ecological noise sensitive receptors were all now resolved.
343. The main (and potentially only) remaining point of disagreement between the Applicant and Natural England on onshore ornithology is the request made by Natural England at Deadline 5 (REP5-168) that impacts from noise pollution during construction and decommissioning to noise sensitive designated features of designated ecological sites are monitored and activities adjusted where an impact is identified. The Applicant has provided a detailed response on this matter in The Applicant's Comments on Deadline 5 Submissions (document 24.2, under The Applicant's Response to Appendix H7- Natural England's Comments on Onshore Ecology). The Applicant has already committed in the Outline Noise and Vibration Management Plan (REP2-031) to noise monitoring within the Anderby Marsh Lincolnshire Wildlife Trust (LWT) Reserve at its closest approach to the landfall construction area whilst construction operations are being undertaken. This ecological receptor has been targeted due its close proximity to the landfall area and specific noise attenuation mitigation which has been incorporated.

344. The Applicant has had further engagement with Natural England with a view to establish the genesis of the most recent request. Whilst the Applicant does not understand the precise ask from Natural England, nor does it consider any additional monitoring to be justified or necessary, an acknowledgment of Natural England's comment in its email to the Applicant (referred to in 24.2 The Applicant's Comments on Deadline 5 Submissions) that "noise and disturbance to birds is an under-studied area", the Applicant has proposed within an update to the OLEMS (document 8.10, version 8) further consultation with Natural England to discuss the potential for targeted baseline noise monitoring. The Applicant will undertake this monitoring at selected ecological receptors to assist Natural England in its data gathering activities. This initiative aims to enhance the scientific knowledge base on this topic and support Natural England in providing robust advice in the future.
345. The Applicant's draft DCO (Document 3.1; Version 10) secures appropriate mitigations specific to onshore ornithology. Requirement 12 requires the submission of an Ecological Management Plan prior to commencement of any stage of the onshore works, and specifies that the Ecological Management Plan must be in accordance with the OLEMS. Requirement 12 also requires that the approved plan is implemented. Therefore, the implementation of the mitigation proposed in the OLEMS is secured via a requirement of the DCO.

11.2.1 Accordance with Policy and Conclusion

346. NPS EN-1 requires that the Applicant carry out its assessment of significant effects on internationally, nationally, and locally designated sites of ecological importance (including those outside England), on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity, including irreplaceable habitats (NPS EN-1 paragraph 5.4.17). As set out in Table 22.1 of Chapter 22 (REP5-041; REP5-043) the Applicant has carried out an assessment which complies with Section 5.4 of NPS EN-1, including securing appropriate avoidance, mitigation, compensation and enhancement measures. The Secretary of State is thereafter required to consider the factors set out in paragraphs 5.4.39 to 5.4.55 when making their decision. As signposted on Table 22.1 of Chapter 22, the Applicant has provided the relevant information and assessment necessary. The proposals comply with NPS EN-1 policies in respect of onshore ornithology, and there is therefore nothing in respect of these policies which indicates that consent should be refused.

347. NPS EN-3 requires that energy infrastructure projects demonstrate good design which mitigates effects on ecology (NPS EN-3 paragraph 2.5.2) and requires Applicants to develop an ecological monitoring programme to monitor impacts during the pre-construction, construction and operational phases to identify the actual impacts caused by the project and compare them to what was predicted in the EIA/ HRA. (NPS EN-3 paragraph 2.8.211). The Applicant has designed a scheme which, with mitigation, avoids significant impacts on ecological receptors with the exception of localised, temporary impacts on yellow wagtail and skylark which will be compensated in accordance with the measures outlined in Section 3.7.5.6 of the OLEMS (document 8.10. version 8). In addition, the OLEMS (Document Reference 8.10, version 8) provides for monitoring where this would inform the mitigation to be implemented. For example, noise monitoring in relation to the noise attenuation bund at the landfall is included in the OLEMS. Commitments to undertake updated surveys, for example to determine the locations of Schedule 1 breeding species, have also been included where considered relevant. The proposals therefore comply with NPS EN-3.
348. The Secretary of State can be satisfied that, with the implementation of the proposed mitigation, there will be no significant residual effects on onshore ecology receptors.

11.3 Historic Environment

349. The Applicant has undertaken an assessment of potential impacts of the Project in relation to Onshore Archaeology and Cultural Heritage. Its assessment is set out in the Environmental Statement, particularly the following documents:
- Chapter 20 Onshore Archaeology and Cultural Heritage (REP5-037)
 - Chapter 20 Appendix 20.1 Desk Based Assessment (REP5-076-REP5-088)
 - Chapter 20 Appendix 20.2 Heritage Statement (APP-188)
350. As detailed in Chapter 20 Onshore Archaeology and Cultural Heritage, the assessment concludes that with mitigation, the Project will have no significant impacts (either alone or cumulatively) during the construction, operation and decommissioning phases.
351. The Applicant has set out a range of mitigations within the Outline Onshore Written Scheme Investigation (OWSI) for Archaeological Works (REP4-088). These comprise the standard suite of archaeological mitigation works including set piece excavation, strip, map and sample, watching briefs and preservation in situ. Mitigation options will be deployed in response to the results of archaeological evaluation and will be set out in detail in the final WSI(s) to be submitted in order to discharge Requirement 17 (Onshore archaeology) of the DCO. A commitment to installing cables by trenchless techniques under the location of the Slackholme deserted medieval village is secured via Requirement 9(3) of the DCO.
352. Submissions were made on behalf of LCC and Historic England (HE) during Examination in relation to the sufficiency of the baseline in the ES. LCC was not satisfied with the level of trial trenching and also the lack of archaeological interpretation of aerial photography. HE also raised concerns about the level of archaeological survey.

353. The Applicant's position is that the baseline in the assessment presented in Chapter 20 (REP5-037) is sufficient to identify the likely significant effects of the project for the following reasons:
- Chapter 20 Table 20.9 (REP5-037) sets out the worst case impacts such that trial trenching is not necessary to identify additional significant effects of the Project. Rather it is required to determine which of the suite of mitigation options set out in the OWSI would be most appropriate to deploy in the event that archaeological remains are encountered. This detailed, site-specific mitigation will be included in the final WSI(s) that must be in place prior to construction of the Project under Requirement 17 (onshore archaeology) of the DCO. Undertaking trial trenching would not change the significance of the effects assessed, nor would it result in any additional mitigation measures being identified in the OWSI.
 - the Applicant did carry out some aerial assessment including LIDAR assessment which included an aerial photography review of full Google Earth imagery for the Order Limits, full review of project-commissioned satellite imagery, and a sample review of Historic England historic imagery including all of ECC11-ECC14, which confirmed that a full aerial photography assessment was not needed to complement the baseline assessment already collected via geophysical survey and deposit modelling, which provides greater clarity.
 - The suite of mitigation measures in the OWSI includes preservation in situ, which would ensure remains of national importance were not impacted. There are only two locations (the OnSS site and TJB site) where preservation in situ would not be possible, and trial trenching has been undertaken in those areas. The results of the archaeological trial trenching confirmed the lack of significant impact at these two locations where significant impacts cannot be avoided through preservation in situ.
354. The Applicant undertook further geophysical surveys and trial trenching in locations agreed with LCC under a WSI in the Summer and Autumn of 2024. These investigations reinforced the conclusions set out in Chapter 20. A report on the findings is set out in REP4-152 and has been incorporated into the assessment set out in Chapter 19 (REP5-037). Slit trenching was also undertaken under a WSI agreed with HE under a WSI in the Summer and Autumn of 2024. These investigations are reported in interim (REP4-116) and will inform further trial trenching in consultation with HE and LCC.
355. The Applicant has committed to undertaking further trial trenching prior to construction of the Project in order to inform site specific mitigation to be deployed. This commitment is set out in the OWSI (REP4-088) in section 9.2. It is acknowledged in that section that the trial trenching will be informed by the results of the 2024 trial trenching campaign and that this will include the targeting of 'blank' areas in reference to all baseline data in order that trial trenching is proportionate. The OWSI also confirms that pre-construction trial trenching will be undertaken in accordance with a subordinate WSI to be approved by the Historic Environment Officer at LCC in consultation with Historic England and the relevant LPA under Requirement 17(2) of the DCO.

356. The suitability of Requirement 17(2) to secure this additional trial trenching was the subject of debate with LCC and HE during Examination. The wording of requirement 17(1) was amended during Examination to ensure it was clear that the final WSI(s) would be informed by archaeological investigations carried out pre-construction under Requirement 17(2), and the OWSI was updated to cross refer to pre-construction investigations being carried out in accordance with Requirement 17(2). These updates were sufficient to allow this matter to be resolved between the Applicant and LCC and HE, as set out in LCC and HE's respective responses to the ExA's second round of written questions (REP4-133, REP4-134, Q2 HE 1.2) in which HE stated it was "content with the latest submitted wording of Requirement 17 and the applicant's proposed update to the OWSI..., on which basis there is no outstanding disagreement between HE and the Applicant."
357. While there remains disagreement between the Applicant and LCC on the amount of trial trenching needed to establish the baseline, these matters have been considered in the Statement of Common Ground with LCC (REP5-135) and are marked as "Not agreed (No material impact)" as the Applicant and LCC have agreed that while they have not reached agreement in terms of the baseline assessment, this is of limited relevance as the position has been appropriately secured by the wording within the DCO. This is on the basis of the agreement with LCC on Requirement 17 and the OWSI noted above.

11.3.1 Accordance with Accordance with Policy and Conclusion

358. NPS EN-1 requires that the Applicant carry out its assessment of significant effects, giving consideration to heritage assets above, at, and below the surface of the ground and also giving consideration to the wider historic landscape (NPS EN-1 paragraph 5.9.9). As set out in Table 20.1 of Chapter 20 (REP5-037) the Applicant has carried out an assessment which complies with NPS EN-1 paragraphs 5.9.9 to 5.9.15, including carrying out appropriate desk-based assessment and field evaluation in accordance with NPS EN-1, paragraph 5.9.11, and which has secured appropriate mitigation measures in accordance with NPS EN-1 paragraphs 5.9.16 to 5.9.21. The Secretary of State is thereafter required to consider the factors set out in paragraphs 5.9.22 to 5.9.36 when making their decision. As signposted in Table 20.1 of Chapter 20, the Applicant has provided the relevant information and assessment necessary to allow the Secretary of State to make that decision, including the obligation to comply with the requirements on listed buildings, conservation areas and scheduled monuments set out in Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010. The proposals comply with NPS EN-1 policies in respect of the historic environment and there is therefore nothing in respect of these policies which indicates that consent should be refused.

11.4 Land Use, Geology and Ground Conditions

359. The Applicant has undertaken an assessment of potential impacts of the Project in relation to Geology and Ground Conditions. Its assessment is set out in the Environmental Statement, particularly the following documents:
- Chapter 23 Geology and Ground Conditions (REP4a-015)

- Chapter 23 Geology and Ground Conditions Figures (REP4a-032)
 - Chapter 23 Geology and Ground Conditions Appendix 23.1 Preliminary Land Quality Risk Assessment (REP4a-056)
360. As detailed in Chapter 23 Geology and Ground Conditions, the assessment concludes that the Project will have no significant impacts during the construction, operation and decommissioning phases, and did not identify any cumulative impacts.
361. The Applicant has undertaken an assessment of potential impacts of the Project in relation to Land Use. Its assessment is set out in the Environmental Statement, particularly the following documents:
- Chapter 25 Land Use (document 6.1.25, version 4)
 - Chapter 25 Land Use Figures (REP4a-034)
362. As detailed in Chapter 25 Land Use, the assessment concludes that the Project will have no significant impacts during the construction and decommissioning phases, but that the Project will have a significant adverse impact, both on a project-alone and cumulative basis, during the operational period as a result of the loss of agricultural land. This is on the basis of the prevailing IEMA guidance which identified any permanent loss of best and most versatile (BMV) agricultural land over 20 hectares as significant.
363. During the Examination, the ExA asked the Applicant to carry out a regional (East Midlands) and national cumulative effects assessment using a similar methodology to that used by Rampion 2. This was provided by the Applicant and subsequently appended to Chapter 25 Land Use (REP4a-060). The assessment concluded that the cumulative impact of the Project together with other projects identified in the East Midlands region amounted to the loss of 0.699% of agricultural land within the East Midlands Region, and 1.606% of BMV land and that, on the assumption that all projects listed were to be constructed over a 5 year period, the annual loss of land would be 0.139%. As the average annual loss of agricultural land is below the expected 0.166% average loss nationally, it is therefore concluded that the cumulative effects of the Outer Dowsing Project and the other projects would not result in significant cumulative effects.
364. As set out in Section 4.1, LCC acknowledges the Applicant's reasoning for the siting of the OnSS, and that the Applicant's re-routing of the onshore ECC reduces the amount of Grade 1 land required, but adopts an in-principle objection to the use of Grade 1 BMV land.
365. The Council's objection to the use of Grade 1 land does not indicate that the Applicant's approach is inconsistent with NPS EN-1. Paragraph 5.11.12 states that "Applicants should seek to minimise impacts on the best and most versatile agricultural land..." The Applicant's selection of the northern onshore ECC option, which contains 23% Grade 1 land, compared to the northern onshore ECC option, which contains 88% Grade 1 land, demonstrates that the Applicant has sought to minimise impacts. This is not possible in relation to the OnSS, as all land within the search area is Grade 1. The Applicant's search area was determined by technical requirements, environmental considerations and consultation responses.

366. As set out in the Natural England's Risk and Issued Log (REP5-171), there remains disagreement between the Applicant and Natural England regarding the timing of undertaking Agricultural Land Classification (ALC) surveys. The Applicant's position is that it is appropriate to carry out ALC surveys post-consent, whereas Natural England consider ALC surveys should have been carried out pre-consent. The Land Use chapter bases its assessment on BMV land using Natural England's provisional ALC maps. The current scale of the published ALC mapping does not differentiate between the sub-grades Grade 3a and Grade 3b, with only the overall Grade 3 presented in the Natural England Provisional ALC maps. Natural England describe BMV land as Grades 1 – 3a, with Grade 3b not being considered BMV land. For the purposes of assessing significant effects, it has been assumed that all Grade 3 land is Grade 3a and therefore BMV land. This is considered to be a realistic worst-case scenario and the assessment conclusions are therefore considered to be conservative, as detailed ALC surveys may confirm that land considered as Grade 3a in the ES is in fact Grade 3b and therefore not BMV land. ALC surveys are therefore not required in order to reach a conclusion on the likely significance of the effects on the environment. The results of the detailed ALC surveys are more important in respect of finalising the mitigation to be applied to ensure impacts to BMV soils during construction are mitigated as the precise condition of the soils will allow bespoke mitigation for that soil to be applied, based on the suite of measures set out in the oSMP (document 8.1.3, version 7). The Applicant has committed to undertake ALC surveys post-consent to inform the final soil management plan(s) and has secured this commitment in Section 1.8 of the oSMP (document 8.1.3, version 7). Requirement 18 (Code of construction practice) of the draft DCO (document 3.1, version 10) requires the submission of final soil management plan(s) as part of the code of construction practice, and the final plan(s) must be in accordance with the oSMP.
367. It is not necessary to undertake ALC surveys pre-consent to ensure that appropriate mitigation measures are secured as the existing measures secured are robust enough to ensure that any potential adverse impacts are effectively minimised. Furthermore, there is no NPS policy requirement that is infringed by the Applicant's approach.
368. T.H. Clements raised a number of concerns related to land use in its Relevant Representation (RR-067) and Written Representation (REP1-050), and subsequently throughout the Examination.²¹ In summary, T.H. Clements' key concerns were: the working width of the cable corridor; cable burial depth; soil handling and restoration (including stone contamination); severance of agricultural land; dust contamination; agricultural drainage; climate change, increased rainfall and soil impacts; and soil heating.

²¹ REP2-079, REP2-095, REO3-059, REP3-060, REO3-061, REP3-063, REP3-065, REP4-150, REP4a-140 and REO5-173.

369. A number of other APs (or agents acting for groups of APs)²² made relevant representations, citing concerns on similar matters as those raised by T.H. Clements and considered throughout Examination. None of these APs sought to expand on these concerns during Examination. The Applicant has worked closely with T.H. Clements during the Examination to provide further comfort on these issues and has submitted at this deadline a suite of outline plans (oSMP (document 8.1.3, version 7), oCoCP (document 8.1, version 8 and Outline Air Quality Management Plan (oAQMP)(document 8.1.2, version 3) that have been fully agreed with T.H. Clements. The Applicant considers that the mitigation package that has been secured is exemplary and appropriately addresses concerns raised, and this is demonstrated by the agreement reached with T.H. Clements.

370. Impacts on organic farming practices was raised as a concern by Woodlands Farm (Kirkton) Limited.²³

11.4.1 Working width of the cable corridor

371. In both its written representations and oral submissions during the Examination, T.H. Clements questioned the need for an onshore export cable corridor with a working width of 80 metres and considered that the Applicant had not justified the need for flexibility to microsite around any identified constraints. The Applicant provided explanation and justification for the working width for both trenchless and open cut installation techniques on a number of occasions.²⁴ At CAH2, Senior Counsel on behalf of T.H. Clements confirmed that following further explanation provided by the Applicant at Deadline 5 (REP5-150), that T.H. Clements was

²² Brown & Co (RR-012); Fred Grant & Co (RR-023); Brown & Co Property and Business Consultants LLP on behalf of George Hay & Sons Limited (RR-024); Brown & Co Property and Business Consultants LLP on behalf of G-VEG Limited (RR-026); Hub Rural Ltd on behalf of The Holmes 1987 Pension Fund (RR-029); Hub Rural Ltd on behalf of Henry Tunnard Ltd (RR-030); Hub Rural Ltd on behalf of Jonathan Gordon Fowler (and J Fowler & Sons) (RR-032); Brown & Co Property and Business Consultants LLP on behalf of J W Grant & Co (RR-033); Brown & Co Property and Business Consultants LLP on behalf of J W Grant & Co Pension Fund (RR-034); The Lincolnshire Association of Agricultural Valuers Land Interest Group (RR-035); Hub Rural Ltd on behalf of Janice Norma Pettitt, Richard Nelson Pettitt, F Pettitt & Son (RR-040); Brown & Co Property and Business Consultants LLP on behalf of M Baker (Produce) Ltd Pension Scheme (RR-043); Robert Bell & Company (RR-055); Savills (UK) Limited (RR-058); Brown & Co Property and Business Consultants LLP on behalf of Stanley David Codd Will Trust (RR-062); Brown & Co Property and Business Consultants LLP on behalf of Staples Brothers Limited (RR-063); Brown & Co Property and Business Consultants LLP on behalf of Staples (Vegetables) Ltd (RR-064); Brown & Co Property and Business Consultants LLP (Brown & Co Property and Business Consultants LLP) on behalf of VER Limited (RR-069); Will Barker & Co (Will Barker & Co) on behalf of Will Barker & Co (RR-073); Hub Rural Limited on behalf of W T Taylor & Sons (RR-076); William Barker (RR-077); Brown & Co Property and Business Consultants LLP (Brown & Co Property and Business Consultants LLP) on behalf of Doreen Belton (RR-078); Brown & Co Property and Business Consultants LLP on behalf of Steve Belton (RR-079); Brown & Co Property and Business Consultants LLP on behalf of Messrs A, J & R Daubney (RR-081); Hub Rural Ltd on behalf of Gerald Hicks(RR-082); Hub Rural Ltd (Hub Rural Ltd) on behalf of Paul Cameron Holmes (RR-083); Fraser Dawbarns LLP on behalf of Alan Harold Naylor (RR-087); Fraser Dawbarns LLP on behalf of Ann Naylor (RR-088); Fraser Dawbarns LLP on behalf of Brian Douglas Naylor (RR-089); Fraser Dawbarns LLP (Fraser Dawbarns LLP) on behalf of Simon Brian Naylor (RR-090); Brown & Co Property and Business Consultants LLP on behalf of Roseanna Skelham, Elizabeth Schweikhardt & Victoria Jane White (RR-094); and Hub Rural Ltd on behalf of Mark Skipworth and Betty Skipworth (RR-095).

²³ RR-075, REP2-087 and REP4-151

²⁴ The Applicant's justification for the working width can be found in PD1-071, REP2-051, REP3-051, REP3-056, REP4a-114, REP4a-116 and REP5-150

satisfied that the 80 metre width of the working corridor is justified. The Applicant therefore considers this point to be agreed between the parties.

11.4.2 Cable burial depth

372. In both its written representations and oral submissions through most of the Examination, T.H. Clements did not agree that the minimum burial depth of 1.2 metres to the top of the tile was sufficient, largely due to potential impacts on existing agricultural land drainage, and requested a deeper cable installation be committed to.

373. The Applicant updated the oCoCP (document 8.1, version 8) to commit to installing cables 300mm below any existing or reinstated drainage system or any alternative drainage system installed by the Applicant. The wording was requested by T.H. Clements in REP5-173 (Appendix 2). As noted above, the oCoCP submitted at Deadline 6 (document 8.1, version 8) is now in agreed form with T.H. Clements therefore this matter is agreed between the parties.

11.4.3 Soil handling and restoration (including stone contamination)

374. The Applicant has submitted an outline soil management plan (oSMP document reference 8.1.3, version 7) based on published soils guidance, which will be further refined into a final soil management plan which will include detailed soil information and confirm mitigation measures from the suite of appropriate options identified in the oSMP and based on the ALC surveys. The measures set out in the oSMP ensure that soils will be appropriately handled once excavated during construction, will be appropriately stored and reinstated following construction, and that soils will be restored to their pre-development quality as far as is reasonably practicable.

375. The oSMP has been developed throughout the Examination process to accommodate reasonable suggestions made by the Land Interest Group and individual interested parties, such as T.H. Clements. Soil handling and restoration during the construction phase has been at the forefront of concerns raised by T.H. Clements. The Applicant has worked closely with T.H. Clements to develop and update the oSMP, ensuring that the mitigation proposed is sufficient to address the concerns raised.

376. The Applicant has updated the oSMP on a number of occasions to address concerns raised by T.H. Clements. This includes:

- Updating any references to subsoil to upper subsoil and lower subsoil and ensuring it is clear that these different soil horizons will be stored separately when excavated for construction;
- Ensuring that soils are returned to their pre-development quality as far as is reasonably practicable, including measures to ensure the pre-development stone content is restored);
- Providing for additional soil testing to be undertaken pre and post-construction on Grade 1 land at the request of the landowner, in respect of topsoil and upper subsoil; and
- Committing to only restarting soil operations following a period of sustained rainfall if an agreed moisture criteria of the soil can be met (such as 'drier than the plastic limit') as advised by the SCoW, rather than restarting following one dry day.

377. It has been agreed (and incorporated into the oSMP) that the Land Interest Group and T.H. Clements will be consulted on the final soil management plan and that any comments received on the same will be provided to LCC as part of the submission to discharge the requirement.
378. As noted above, the oSMP submitted at Deadline 6 (document 8.1.3, version 7) is now in agreed form with T.H. Clements. This demonstrates that the oSMP sufficiently addresses the concerns raised during Examination by T.H. Clements regarding soil handling (including stone contamination).

11.4.4 Severance of agricultural land

379. As set out in the oCoCP (document 8.1, version 8), the Applicant is committed to maintaining access for farming activities across all areas of fields intersected by the Project. In cases where it is mutually agreed between the Applicant and the landowner or farmer that certain areas are impractical to farm using standard methods, the Applicant will provide compensation to ensure that any necessary changes in farming practices do not result in economic detriment for the affected individuals.
380. Section 5.14 of the oCoCP (document 8.1, version 8) provides that a management plan for severed land will be implemented. The management plan for severed land is in essence an agreement between the Applicant and individual Affected Parties that outlines the extent of any severed land; if the severed land can be accessed with the provision of a crossing point; the location(s) of any crossing points across the Applicant's working corridor; if the severed land can or cannot be economically and practically farmed; who will be responsible for the on-going management (including management of weed growth) of the area – the Applicant or Affected Party; if the land will be left fallow, be planted with an alternative crop, or will be planted with a cover crop; and the anticipated timescale until the land can be returned. Management plans would be entered into with individual affected owners and tenants, as required.
381. The oCoCP also provides that in the event of dispute regarding the extent of severed land or the management thereof, the point in dispute shall be referred to an expert for determination. Expert determination was added at the request of T.H. Clements.
382. Woodlands Farm (Kirkton) Limited also raised concerns related to severance of land in the context of cropping and rotations (RR-075). Woodlands Farm (Kirkton) Limited withdrew its objection to the Project, stating that it was content with the draft documentation prepared by the Applicant and had signed HoTs (REP4a-134).
383. With the measures set out in the oCoCP secured (including compensation being committed to) and a built in dispute resolution process to ensure that matters are properly adjudicated over in the event of a dispute, there will be no material impact on affected landowners, tenants or occupiers due to severance as a result of the Project. As noted above, the oSMP submitted at Deadline 6 (document 8.1.3, version 7) is now in agreed form with T.H. Clements. This demonstrates that the oSMP sufficiently addresses the concerns raised during Examination by T.H. Clements regarding severed land.

11.4.5 Dust contamination

384. The Applicant has undertaken an assessment of potential impacts of the Project in relation to Dust/PM10 emissions generated from temporary onshore construction works within Chapter 19 Onshore Air Quality (REP4a-013). The assessment concludes that the Project will have no significant impacts in EIA terms, either alone or cumulatively, during the construction phase.
385. Impacts from dust deposition as a result of the Project is a matter where the Applicant's and T.H. Clements' technical reports are not aligned²⁵, and it appears there is no resolution that is likely to be reached regarding the assessment methodology or the conclusions in terms of the lateral extent of the potential impact. The Applicant maintains that its assessment of dust and the mitigation proposed and secured in the oAQMP (document 8.1.2, version 3) is robust and fit for purpose. The purpose of the T.H. Clements assessment (and the nexus of the dispute between the parties) is to establish an area over which T.H. Clements considers crops will be impacted by visible dust which it considers may affect its ability to fulfil commercial contracts during the construction of the Project. It is not a dispute about whether additional mitigation measures are needed.
386. The Applicant has conducted an industry-standard construction dust assessment in accordance with UK Institute of Air Quality Management (IAQM) construction dust guidance, aligned with best practice and successfully applied to comparable NSIPs. This framework has been operable for over ten years and inherently accounts for dust impacts on sensitive commercial farmland. The Outline AQMP prescribes the maximum level of mitigation as per IAQM Construction Dust (2024) Guidance. The assessment demonstrates that, with the implementation of measures set out in the Outline AQMP, dust impacts including those on sensitive commercial farmland - will not be significant.
387. The Applicant's position on the T.H. Clements report on dust impacts, and the suitability of the Applicant's own construction dust assessment is set out in REP4-025. In summary:
- The Applicant's assessment in Chapter 19 Onshore Air Quality (REP4a-013) follows the IAQM's 2024 qualitative construction dust assessment framework which aligns with established best practices for evaluating dust impacts from onshore linear NSIPs traversing farmland (e.g. HS2 and Sheringham Extension Project (SEP)).
 - The IAQM framework explicitly accounts for potential dust impacts on commercial farmland, and the Applicant has applied the maximum (high) level of dust risk and protection in its assessment. . This level of dust protection is higher than agreed in other local comparable linear NSIPs, for instance, SEP assigned a "medium" protection.
 - The full suite of best-practice controls prescribed by the IAQM were consequently recommended, with 50 specific controls included in the Outline AQMP (document 8.1.2, version 3). This also comprises a regulated monitoring and communications framework to ensure these measures are effective, whereby the outcomes are reported to the Local Authority to ensure accountability. These measures will be further refined as the detailed design progresses and once a Principal Contractor is appointed.

²⁵

T.H Clements' report on dust is contained in REP1-050; the Applicant's response to that report is REP4-125.

- The oAQMP is described as robust and compliant with local policy in the Local Impact Report prepared by the local authorities (REP1-052]. The report emphasises that communication will play a highly important role in managing and mitigating dust emissions. The Applicant is implementing a proactive monitoring and communication framework.
- It can be confidently concluded that the specific characteristics of the site and surrounding area have been fully considered, ensuring that the conclusion of no significant effect is robust. This is because commercial farmland is accounted for within the IAQM construction dust framework, and the Applicant has applied the maximum level of dust risk and protection.
- While T.H. Clements argue that residual dust effects may still occur even with the most rigorous dust management, the Applicant is assured that the conclusion is robust. This is because the measures are designed to control dust at its source, resulting in a strategy that is inherently resilient - maintaining control even if some measures are less effective. Furthermore, the Applicant's assessment adopted a conservative approach, assessing the entire onshore ECC without accounting for phasing, and assigning it the highest dust emission potential. This led to a high-risk classification and the recommendation of maximum mitigation. However, in practice, construction will be phased and confined to small working areas at any one time, meaning the actual dust emission potential could reasonably be downgraded. In this context, the proposed mitigation already exceeds what is necessary, providing additional assurance (Section 4.2.1, REP4-125).
- The Technical Report: Dust Deposition Modelling (REP1-050) prepared on behalf of T.H. Clements is deemed unsuitable due to:
 - **Critical model execution issues:** For instance, it incorrectly misrepresents HDD areas as surface excavation which equates to 20% of the study area. Additionally, it does not account for key mitigation measures outlined in the Outline AQMP (document 8.1.2, version 3) such as solid screens or barriers around activities.
 - **Uses of inappropriate emission factors:** The assessment relies on outdated dust emission factors derived from coal mines in the USA and Australia, which are unvalidated for UK conditions and inappropriate for representing construction activities. Notably, 83% of emission are based on a 1988 factor for coal stockpiles that was formally withdrawn in 1995 (REP5-150); the current equivalent factor is approximately 80 times lower. Regardless of any justification, this emission factor should not be used. T.H. Clements' claim that they have used globally accepted emission factors is therefore incorrect (REP5-173; REP4a-140).

- **Does not align with any UK Technical Guidance:** T.H. Clements assert that their quantitative assessment is supported by the IAQM's Construction Dust Guidance and is therefore legitimate in the context of UK technical guidance (pdf pg. 89/91 REP5-173, pdf pg. 22 REP4a-140). They claim to have followed the IAQM Construction Dust Guidance (Section 5.5), which acknowledges that dispersion modelling can be undertaken and refers to specific emission factors - which T.H. Clements claim to have used. However, the Applicant's review (REP5-150) confirms this is incorrect. The 1988 coal stockpile emission factor (which 83% of the modelled emissions are based on) is not included in the sources referenced by the IAQM guidance as it was formally withdrawn in 1995. The guidance instead signposts to a more recent equivalent factor, which is approximately 80 times lower than that which T.H. Clements has applied. Separately, given the THC's reliance on emission factors from the mining sector, the IAQM's Minerals Guidance (2016) is relevant. This explicitly advises against the use of non-UK emission factors in local-scale dispersion modelling in the UK, deeming it as inappropriate for the UK mining sector.
- The assessment framework employed by T.H. Clements does not constitute an appropriate technique for evaluating dust soiling impacts, as it uses inappropriate emission factors that are withdrawn and does not align with any UK technical guidance.
- The implications of these inputs are demonstrated in practice. THC's assessment suggests that, even with the implementation of the oAQMP, residual dust effects would extend beyond 150m from the Order Limits (confirmed by THC in REP4a-140). This is highly unusual, given the oAQMP offers the maximum level of mitigation afforded under UK Technical Guidance and is described as robust and compliant with Local Policy in the Local Impact Report prepared by the local authorities (REP1-052). Further, the construction techniques align with other NSIPs. If the IAQM Construction Dust impact assessment and mitigation framework were as ineffective as THC assert, even under maximum IAQM recommended mitigation, it would not remain the industry standard.

The disagreement between technical experts regarding dust impacts requires to be considered in its context: being that it does not affect key points before the ExA: T.H. Clements has accepted that the oAQMP(document 8.1.2, version 3) prescribes the maximum level of mitigation as per IAQM construction dust (2024) guidance (REP5-173) and confirmed at ISH5 that it was not seeking additional mitigation to be included in the oAQMP and that this is a local impact (REP4a-116). As such, there appears to be no dispute between the parties that the mitigation proposed is in accordance with industry best practice. In addition, the oAQMP submitted at Deadline 6 (document 8.1.2, version 3) has been agreed between the Applicant and T.H. Clements following discussion on further amendments to address concerns raised by T.H. Clements on haul roads during ISH8.

The disagreement with regard to the assessment methodology as it relates to localised dust impacts therefore does not affect the outcome of the EIA. It is helpful that T.H. Clements has accepted that the oAQMP prescribes the maximum level of mitigation and that no further mitigation is being sought. This is important to the matter in dispute as, even if T.H. Clements assessment was considered to be correct, it would not mean that further mitigation was required and it would not generate a residual impact which would outweigh the provision of Critical National Priority Infrastructure in national policy terms. The acknowledgement from T.H. Clements that this is a local impact is also helpful and ought to be considered in the context of a Nationally Significant Infrastructure Project which compromises Critical National Priority Infrastructure, engaging section 4.2 of NPS EN-1.

388. T.H. Clements have already acquired 1,050 acres of land as advanced mitigation land, which, as was established during ISH8, is more land than their assessment suggests will be impacted by the Project and which was accepted by T.H. Clements to sufficiently mitigate its perceived risks as it ensures that the business will be able to fulfil its contractual obligations. This issue therefore turns on the matter of compensation and commercial negotiations between the parties, as opposed to any material matter for decision making. The remaining issue of concern to T.H. Clements is therefore one of an additional business cost (rental for the "mitigation land") for which T.H. Clements assert they should be recompensed. That is not a matter which, on the evidence before the Examination, is a material consideration which falls to be weighed against any of the National Policy Statement policies. The Applicant has demonstrated that the dust/air quality impacts are not significant. Neither T.H. Clements or any other party has led evidence which can credibly be said to lead to a different conclusion in EIA terms. It would appear to be a matter of common ground between the Applicant and T H Clements that the suite of mitigation proposed is comprehensive (as it was acknowledged in REP5-173 that the oAQMP prescribes the maximum level of mitigation set out in the relevant guidance).

389. The Applicant has made an offer to T.H. Clements which includes compensation for provision of mitigation land associated with the risk of dust despite the Applicant's assessment indicating there will be no significant dust impacts outside the Order Limits once mitigation measures are in place. The offer also outlines that additional compensation for crop loss as a result of dust impacts over and above the area of land included in the offer, would be payable by the Applicant. The Applicant considers this to be a fair and reasonable offer which would appropriately compensate T.H. Clements for perceived and actual loss. Compensation is not a matter for consideration by the ExA in the overall balance when making its recommendation. Submissions on the availability of compensation are provided in the compulsory acquisition section of this Closing Statement.

11.4.6 Agricultural drainage

390. Impacts on agricultural drainage, both during the construction and operation phases of the Project, and cumulatively with other developments, has been assessed in Chapter 26 Geology and Ground Conditions. For the Project alone during construction, it was concluded that with mitigation, the magnitude of the impact would be negligible, which, with the receptor assigned moderate sensitivity, would result in an effect that is minor adverse (not significant) in EIA terms. For the Project alone during operation, it was concluded that with mitigation, the magnitude of the impact would be negligible, which, with the receptor assigned moderate sensitivity, would result in an effect that is minor adverse (not significant) in EIA terms. The cumulative assessment concluded that the residual effects would not increase from what is predicted for the Project alone and was therefore also not significant in EIA terms.
391. The potential for impacts to agricultural drainage as a result of the Project was a matter of ongoing discussion between the Applicant and T.H. Clements during the Examination. The oCoCP (document 8.1, version 8) at Section 5.15, provides details of the mitigation to be implemented to mitigate impacts during construction. This includes installing cables 300mm below any existing/reinstated drainage system or any alternative drainage system installed by the Applicant, having a local drainage consultant employed to collate land drainage plans and design pre and post-construction drainage schemes which will allow drainage to be maintained during construction, and providing a process for agreeing pre and post-construction drainage schemes with landowners (including referral to expert determination in the event of a dispute).
392. As noted above, the oCoCP submitted at Deadline 6 (document 8.1, version 8) is now in agreed form with T.H. Clements. This demonstrates that the oCoCP sufficiently addresses the concerns raised during Examination by T.H. Clements regarding drainage.

11.4.7 Climate change, increased rainfall and soil impacts

393. Following questions received from the ExA at ISH3 regarding the possible effects of increased peak rain fall intensity due to climate change on earth movement and subsidence, the Applicant provided a Clarification Note on Climate Change, Increased Rainfall & Soil Impacts (REP3-055). This set out the Applicant's position that if peak rainfall increases by 25%, the soil will have exceeded its field capacity and water holding capacity limits and therefore the soils would be fully saturated and soil structure and stability in itself will not be affected. Once soils reach the water holding capacity limit, this would result in surface runoff run-off, ponding, or percolation to groundwater. The land on which the Project is situated is low lying relatively flat land. Earth movement or subsidence due to flooding is less likely to occur on low-lying, flat, and level land because the gentle gradients reduce the risk of movement. This area of Lincolnshire has extensive water management systems, including drainage channels, and pumping stations. These systems help manage water levels and reduce the risk of prolonged flooding, which can lead to subsidence.
394. LCC and the Environment Agency were invited to comment on the Clarification Note (PD-020). LCC confirmed (REP4-133) that it was satisfied that REP3-055 gave confidence that climate change implications had been factored into the calculations and the Environment Agency deferred to LCC as the lead local flood authority on the matter.

395. T.H. Clements also commented on the Clarification Note, setting out its position that increases in both intensity, and frequency of rainfall will increase risk of structural degradation of soils, and that increased levels of rainfall will increase the amount of surface water movement, and therefore increase slumping (collapsing) risk in such areas.
396. In the Applicant's response (REP4a-114), the key points made were that:
- at the stage of increased rainfall and increased intensity by 2050, the cable will be installed, backfilled and fully reinstated and drainage fully reinstated;
 - once constructed the land along the onshore ECC will be reinstated and there will be no change to existing surface water hydrology and no potential for a change to the soil environment; and
 - concerns raised by TH Clements are the impacts of climate change as a consequence of broader climatic trends, they are not impacts as a result of the project and would occur independently of the Project, and that the Applicant's efforts are focused on mitigating the potential impacts of the Project to ensure that agricultural land is reinstated to its predevelopment quality as far as is reasonably practicable.
397. While there is some disagreement between the parties on the long term effects of climate change on soil structure, for the reasons outlined in paragraph 11.16 above and set out in more detail in REP4a-114, this does not alter the likely effects of the Project or the appropriateness of the mitigations being proposed.
398. T.H. Clements' key concern, as expressed at ISH5 (REP4a-140) is the handling of soils during construction in periods of adverse weather. T.H. Clements objected to the wording of the oSMP which provided for soil operations to restart after one full dry day or once an agreed moisture criteria had been met. T.H. Clements raised concerns that one full dry day could pass but that would not in itself mean that the soil moisture criteria was suitable for soil handling. The Applicant took this feedback on board and amended the oSMP to commit to only re-commencing soil handling operations following sustained heavy rainfall once an agreed moisture criteria of the soil can be met (such as 'drier than the plastic limit') as advised by the Soil Clerk of Works, removing the alternative option that soil handling operations could commence after the ground has had at least one full dry day. The wording was requested by T.H. Clements in REP5-173 (Appendix 3). As noted above, the oSMP submitted at Deadline 6 (document 8.1.3, version 7) is now in agreed form with T.H. Clements therefore this matter is agreed between the parties.

11.4.8 Soil heating

399. Soil heating was assessed in Chapter 25 Land Use of the Environmental Statement. It was concluded that with mitigation in the form of the use of thermal bedding along the entirety of the onshore ECC and 400kV cable corridor, the magnitude of the impact would be negligible, which would result in an effect that is minor (not significant) in EIA terms.

400. In its Relevant Representation (RR-067) and Written Representation (REP1-050), T.H. Clements raised concerns about the adverse impact that electromagnetic radiation and heat emanating from buried cables could have on the quality and productivity of the soils on the land it farms, and in particular that it could cause some crops to develop more quickly than others. T.H. Clements pointed to another project in the local area, Triton Knoll, as an example of where it considered this issue had arisen and submitted photographs which is stated demonstrated this.
401. In the Applicant's Responses to The ExA's First Written Questions (REP2-051, Q1 LU 1.16), the Applicant considered a series of scientific studies presented by T.H. Clements to support its claim, and set out why each was not comparable to the scenario under consideration, and also directed the ExA to a number of scientific studies that had been carried out as field trials with growing crops, above cables, and which had assessed a variety of crop types including, potatoes, winter wheat, maize, and mustard (noting that mustard is a brassica species, brassicas being most commonly farmed by T.H. Clements) covering a wide range of rooting depths and which found there to be negligible or no significant effects to soils and cropping.
402. The Applicant has put forward the best scientific evidence available, as provided in REP2-051. As described within the studies presented there, no negative effects have been found as part of published research, for crops rooting at and beyond cable depth.
403. The Applicant notes photographs submitted by T.H. Clements, and notes the linear discolouration across the field, as can be seen in the presented images. There is no evidence before the ExA which would allow a conclusion that the difference in colour within the fields is as a result of soil heating caused by heat emanating from the buried cables. There are a number of factors which could cause this such as ground type (geology), water table depth, land drainage, reinstatement and associated construction methodologies. The difference in colour shown is isolated to certain fields; and is not consistent along the cable route which suggests this is an isolated issue unrelated to cable heating, which would be more likely to present consistently across the full length of the cable route.

11.4.9 Organic farming practices

404. Following receipt of concerns raised by Woodlands Farm (Kirkton) Limited, impacts to organic farming practices have been considered and appropriate mitigation has been secured in the Outline Organic Land Protocol (oOLP) (REP4a-081) to ensure avoidance of cross contamination between non-organic and organic fields. The oOLP sets out the controls and management measures that will apply to all land certified as organic within the Order Limits.
405. The oOLP was drafted in conjunction with all four organic farmers whose landholding is within the Order Limits. The oOLP has been agreed with all parties affected. Woodlands Farm (Kirkton) Limited subsequently withdrew its objection to the Project, stating that it was content with the draft documentation prepared by the Applicant and had signed HoTs (REP4a-134).
406. There are no outstanding concerns related to impacts on organic farming practices.

11.4.10 Accordance with Policy and Conclusion

407. With regard to land use, NPS EN-1 paragraph 5.11.8 requires that the Applicant carry out an assessment which identifies impacts on existing and proposed land uses. As set out in Table 25.1 of Chapter 25 (document 6.1.25, version 4) the Applicant has carried out an assessment which complies with the relevant parts of NPS EN-1 paragraphs 5.11.8 to 5.11.22 (Applicant's Assessment). Paragraph 5.4.35 provides Applicants should include appropriate avoidance, mitigation, compensation and enhancement measures as an integral part of the proposed development. Table 23.9 of Chapter 23 provides details of embedded mitigation which has been included in the proposals.
408. Paragraph 5.11.12 of NPS EN-1 requires applicants to seek to minimise impacts on the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification). As set out above, the Applicant has achieved this by the selection of the northern onshore ECC option, which contains 23% Grade 1 land, compared to the northern onshore ECC option, which contains 88% Grade 1 land. Avoiding Grade 1 land entirely is not possible in relation to the OnSS, as all land within the search area is Grade 1. The Applicant's search area was determined in the manner described in ES Chapter 4 Site Selection and Consideration of Alternatives (Document REP5-013) which, as set out below, involved consideration of technical requirements, environmental considerations and consultation responses.
409. Impacts to agricultural land temporarily impacted during construction will be mitigated through implementation of the final code of construction practice, soil management plan and organic land protocol, which will be in accordance with the oCoCP (document 8.1, version 8) and the oSMP (document 8.1.3, version 7). Further details on the measures set out to mitigate impacts on soils are set out in the preceding sections.
410. Paragraph 5.11.23 of NPS EN-1 acknowledges that there may be little that may be done to mitigate direct effects on land use from energy projects, but requires applicants to minimise effects on existing and planned uses. The Applicant has made amendments to the proposals to accommodate existing and planned uses where possible, for example:
- The Applicant has agreed to use trenchless techniques under the land at New Field Farm to minimise any disruption to the landowner's plans to develop a caravan site on the land;
 - The Applicant varied the extent of landscape planting to ensure access can be obtained for a proposed protein extraction facility and AD plant, and has coordinated the access to the OnSS with the developer of that project; and
 - The Applicant reduced the width of landscape planting from 10 metres to 6 metres west of the A16 following feedback from the landowner that the proposals would impact their access to the ditch for maintenance and jetting of land drains.
411. The Secretary of State is required to consider the factors set out in paragraphs 5.11.32 to 5.11.40 of NPS EN-1 when making their decision. The Applicant has provided the relevant information and assessment necessary to allow the Secretary of State to make that decision. The proposals comply with NPS EN-1 policies in respect of land use and there is nothing in respect of these policies which indicates that consent should be refused.

412. With regard to geology and ground conditions, NPS EN-1 paragraph 5.4.17 requires that the Applicant carry out an assessment on the effects on internationally, nationally, and locally designated sites of geological conservation importance. As set out in Table 23.1 of Chapter 23 (REP4a-015) the Applicant has carried out an assessment which complies with the relevant parts of NPS EN-1 Section 5.4 including securing appropriate mitigation measures. The Secretary of State is thereafter required to consider the factors set out in paragraphs 5.4.39 to 5.4.55 when making their decision. As signposted on Table 23.1 of Chapter 23, the Applicant has provided the relevant information and assessment necessary. The proposals comply with NPS EN-1 policies in respect of geological conservation and there is therefore nothing in respect of these policies which indicates that consent should be refused.

11.5 Landscape and Visual Effects

413. The Applicant has undertaken an assessment of potential impacts of the Project in relation to Landscape and Visual effects. Its assessment is set out in the ES, particularly the following documents:

- Chapter 28 Landscape and Visual Assessment (REP4a-025)
- Chapter 28 Landscape and Visual Assessment Figures (REP4a-037-039; APP-125-APP-136)

414. The Applicant has provided further submissions on these issues in the course of Examination including at Issue Specific Hearings, post-hearing written responses, and responses to written questions.²⁶

415. As detailed in Chapter 28 Landscape and Visual Assessment the assessment concludes that there will be localised significant visual effects during the construction phase of the onshore ECC and significant landscape and visual effects during the construction and operational phases of the OnSS, but that the operation phase impacts will gradually reduce to not significant over a 15 year period owing to the growth of mitigation planting around the OnSS. There will also be significant cumulative effects on localised landscape and visual receptors, but these will also be gradually mitigated over a 15 year period owing to the growth of the mitigation planting.

416. Agreement has been reached with Boston Borough Council, East Lindsey District Council and South Holland District Council regarding landscape and visual impacts.²⁷

²⁶ The Applicant made submissions at ISH3, ISH5 and ISH8 on landscape and visual impacts (summarised in REP3-051, REP4a-116 and document 24.4The Applicant's Written Summary of Oral Case put at the Compulsory Acquisition Hearing held on 19 March 2025 respectively) responded to ExQ1 Landscape and Visual questions (REP2-051) and ExQ2 Landscape and Visual questions (REP4-107); and commented on Interested Parties' responses to ExQ1 Landscape and Visual questions in REP3-054 and ExQ2 Landscape and Visual questions in REP4a-114.

²⁷ REP5-136, Statement of Common Ground with Boston Borough Council, East Lindsey District Council, South Holland District Council.

417. Agreement has also been reached with LCC regarding landscape and visual impacts. The SoCG with LCC submitted at Deadline 5 (REP5-135) identified one area where matters had not been agreed (Row LCC59), which was the wording of the Outline Landscape and Ecological Management Strategy (OLEMS) (document 8.10, version 8) on replacement planting to ensure appropriate screening is maintained for the life of the Project. This issue was also discussed at ISH8 and following the hearing with LCC in response to Action Point 10 taken at ISH8.²⁸ Following ISH8, the Applicant has updated text within Section 2.5.5 (Maintenance and Management) of the OLEMS (Document 8.10, version 8) to address concerns raised by LCC. The updated text states that in the unlikely event of external factors causing losses to the OnSS planting (as covered by Works No. 23- Landscaping works in the DCO) during the lifetime of the Project, such that the purpose of screening the OnSS is no longer achieved as a result of gaps in the planting, replacement planting will be undertaken to infill gaps that may arise. This approach will ensure commitments are fulfilled in respect of providing screening of the onshore substation and enhancing biodiversity. This text was shared with LCC ahead of Deadline 6 and LCC has confirmed it is in agreement with the updates made.
418. Requirements 10 and 11 of the draft DCO (Document 3.1; Version 10) secure the submission of a landscape management plan (which must accord with the OLEMS) and implementation of the plan as approved.

11.5.1 Accordance with Policy and Conclusion

419. NPS EN-1 requires that the Applicant carry out a landscape and visual impact assessment. As set out in Table 2.1 of Chapter 28 (REP4a-025) the Applicant has carried out an assessment which complies with the relevant parts of NPS EN-1 paragraphs 5.10.16 to 5.10.25, and which has appropriately mitigated the visual and landscape effects of the Project in accordance with NPS EN-1 paragraphs 5.10.25 to 5.10.28. This mitigation has included the siting design of the proposed OnSS, as well as the provision of mitigation planting to screen the OnSS from views, which forms Work No. 23 of the DCO. The details of the landscaping proposed is set out in the OLEMS (document 8.10, version 8) and secured by Requirement 10 (Landscape management plan) of the draft DCO which requires a landscape management plan which accords with the OLEMS to be submitted. The Applicant's position on measures taken to achieve good design in these Closing Statements (see "Design" section within Overarching Planning Matters). On the basis of the above, the Applicant considers that the Secretary of State can be satisfied that, with the implementation of the proposed mitigation, there will be no significant residual landscape and visual impacts after 15 years once the mitigation planting has matured.

²⁸ Please see document 24.4 The Applicant's Written Summary of Oral Case put at the Compulsory Acquisition Hearing held on 19 March 2025 and 24.5 The Applicant's Response to Actions Points recorded at CAH2 and ISH8 where this point was captured as, and responded to under, Action Point 10.

420. The Secretary of State is required to consider the factors set out in paragraphs 5.10.29 to 5.10.38 of NPS EN-1 when making their decision. The Applicant has provided the relevant information and assessment necessary to allow the Secretary of State to make that decision. In accordance with paragraph 5.10.35 of NPS EN-1, the Secretary of State must judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project. There is no evidence in Examination which suggests that there would be an adverse impact that meets this threshold. As such, the proposals comply with NPS EN-1 policies in respect of landscape and visual (and as noted in “Design” section within Overarching Planning Matters) and, therefore, there is nothing in respect of these policies which indicates that consent should be refused.

11.6 Socio-economic Characteristics

421. The Applicant has undertaken an assessment of potential impacts of the Project in relation to Socio-economic Characteristics. Its assessment is set out in the ES, particularly the following documents:

- Chapter 29 Socio-Economic Characteristics (REP4a-027)
- Chapter 29 Socio-Economic Characteristics Figures (REP4a-040)

422. As detailed in Chapter 29 the Project will not result in any significant adverse effects on socio-economic characteristics receptors during construction, operation and maintenance, or decommissioning phases. It will have minor (not significant) beneficial effects on the economy of the Local Economic Area (“LEA”) during the development and construction (section 29.12; REP4a-027), with positive (albeit not significant) effects on the economy of the LEA, the Regional Area and the UK during both the O&M and decommissioning phases. There are also no significant impacts on social and community assets.

423. Agreement has been reached with LCC regarding the Applicant’s socio-economics assessment as shown in the SoCG with LCC (REP5-135). Boston Borough Council, East Lindsey District Council and South Holland District Council made no comments on socio-economics (REP5-136).

424. The Applicant has provided further submissions on these issues in the course of Examination including at Issue Specific Hearings, post-hearing written responses, and responses to written questions.²⁹ Submissions between the Applicant and the LCC during examination have covered both tourism and UK vegetable market receptors. The Applicant notes that on both of these issues LCC is now content with the Applicant’s assessment per REP5-135.

²⁹ The Applicant made submissions in response to ExQ1 and ExQ2 Socio-economic Effects questions (REP2-051; REP4-107); in response to comments made by IPs on Socio-economic Effects in ExQ1 and ExQ2 (REP3-054; REP4a-114); ISH3, ISH5 and ISH8 on landscape and visual impacts (summarised in REP3-051, REP4a-116 and document 24.4 The Applicant’s Written Summary of Oral Case put at the Compulsory Acquisition Hearing held on 19 March 2025 respectively) responded to ExQ1 Landscape and Visual questions (REP2-051) and ExQ2 Landscape and Visual questions (REP4-107); and commented on Interested Parties’ responses to ExQ1 Landscape and Visual questions in REP3-054 and ExQ2 Landscape and Visual questions in REP4a-114.

425. The Applicant has also provided a number of responses to TH Clements in the course of examination regarding agricultural socio-economic impacts. As set out in its submissions, the Applicant has assessed socio-economic impacts related to agriculture including on food security, BMV land and UK vegetable markets within Chapter 29 Socioeconomic Characteristics (REP4a-027) with no significant impacts predicted. The Applicant also notes that it has developed, secured, and will adhere to Project-specific Plans including a Soil Management Plan and Outline Air Quality Management Plan, to identify and mitigate against any potential negative effects on agricultural land, which in turn helps minimise adverse socio-economic effects on vegetable markets as a result of the Project. Outline Plans have been included in examination (Documents 8.1.2; 8.1.3).
426. In response to an Action Point raised at ISH5 (Action Point 12; responded to in REP4a-120), the Applicant updated certain figures within the Socio-Economic Characteristics Chapter. As set out in its answer, the update did not alter the conclusions of the assessment. Socio-economic Characteristics assessment was raised again during the course of ISH8 (summarised in 24.4 The Applicant's Written Summary of Oral Case Put at ISH8 held on 19 March 2025; Agenda Item 3.3 Chapter Updates). Following the updates to figures discussed above, the Applicant was asked about the resultant change in the level of significance of cumulative effect assessed (negligible increasing to minor but not significant in EIA terms). The Applicant gave an account of how the change accorded with its EIA methodology in relation to the specific receptor. For the reasons set out in ISH8, the assessment is robust.
427. The Applicant's draft DCO (Document 3.1; Version 10) secures appropriate mitigations specific to socio-economic characteristics. Requirement 30 secures that no stage of the onshore transmission works may commence until a skills, supply chain and employment plan in relation to that stage has been submitted to and approved by the relevant planning authority following consultation with LCC. Any plan submitted in accordance with this requirement must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with that stage of the onshore transmission works and the means for publicising such opportunities. The skills, supply chain and employment plan must be implemented as approved. The plan will consider all mitigation listed in paragraph 108 of REP4a-027. The Applicant notes that NPS EN-1 5.13.12 specifically advises the Secretary of State that they may wish to include such a requirement.

11.6.1 Accordance with Policy and Conclusion

428. NPS EN-1 requires that the Applicant carry out its assessment of environmental impacts in the terms set out in paragraphs 5.13.2 – 5.13.7. The Secretary of State must consider those factors set out in 3.13.8 – 5.13.12. The Applicant’s assessment has been conducted in a manner consistent with those factors set out in the NPS, providing the information advised, carrying out the assessment in the terms required, and engaging with relevant local authorities as strongly encouraged. The Secretary of State requires to have regard to the potential socio-economic impacts of the Applicant’s infrastructure which, as set out in the ES is not significant. The Applicant has provided a requirement of the kind that the Secretary of State “may wish to include” (5.13.12). The Applicant notes that the Secretary of State may conclude that limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence. To the extent that any Interested Parties are putting forward an argument that there is a negative socio-economic impact of the project on certain socio-economic receptors, it is the Applicant’s evidence-based assessment – the robustness of which is agreed by the LCC – which should be preferred.
429. On the basis of the above, the Secretary of State can be satisfied that, with the implementation of the proposed mitigation, there will be no significant adverse residual effects on socio-economics and that the Project aligns with the policies set out in the Energy NPSs.

11.7 Traffic, Transport and Public Rights of Way

430. The Applicant has undertaken an assessment of potential impacts of the Project in relation to Traffic and Transport and Public Rights of Way (“PRoW”). Its assessment is set out in the Environmental Statement, particularly the following documents:
- Chapter 27 Onshore Traffic and Transport (REP4a-023);
 - Chapter 27 Traffic and Transport Figures (REP4a-036); and
 - Appendix 27.1 Transport Assessment (REP4a-063).
431. The Applicant has provided further submissions on these issues in the course of Examination including at Issue Specific Hearings, post-hearing written responses, and responses to written questions.³⁰
432. As detailed in Chapter 27 Onshore Traffic and Transport the assessment concludes that, with the implementation of suitable mitigation measures, the Project will have no significant impacts, either on a project-alone or cumulative basis.

³⁰ The Applicant provided a clarification note on Abnormal Load Alternative Routes following ISH3 (REP3-045) and a clarification note on PRoW issues (REP3-046); responded to ExQ1 Traffic and Transport questions (REP2-051); and commented on Interested Parties’ responses to ExQ1 Traffic and Transport questions in REP3-054

433. Agreement has been reached with Boston Borough Council, East Lindsey District Council and South Holland District Council and, separately, LCC regarding traffic and transport and public rights of way issues.³¹ National Highways has not raised any issues regarding the impact of construction traffic on the Strategic Road Network.³²
434. The Applicant's draft DCO (Document 3.1; Version 10) secures appropriate mitigations in relation to traffic, transport, and public rights of way including as follows:
- Requirement 21 secures that no stage of onshore transmission works may commence until, for that stage, the following have been submitted to and approved by the relevant highway authority in consultation with the relevant planning authority: (a) a construction traffic management plan (CTMP) which must be in accordance with the outline construction traffic management plan; and (b) a travel plan which must be in accordance with the outline travel plan. Such plans to be approved must be implemented upon commencement.
 - Requirement 22 secures that (1) no stage of the onshore transmission works or onshore preparation works that would affect a public right of way specified in Schedule 3 (public rights of way to be temporarily stopped up) is to be undertaken until a public access management plan (PAMP) in respect of that stage and in accordance with the outline public access management plan, including the specification for the making up of an alternative right of way (where appropriate) has been submitted to and approved by the relevant highway authority in consultation with the relevant planning authority and (2) Any alternative public rights of way must be implemented in accordance with the approved public access management plan.
 - Other requirements within the dDCO secure the steps the Applicant must take before stopping up PRoWs and streets, including Article 11 which specifies which PRoWs may be temporarily stopped up and the steps the Applicant must take when doing so.
 - The Outline CTMP (REP4a-088), Outline Travel Plan (APP-290) and Outline PAMP (REP4a-090) include a comprehensive range of measures that ensure there will not be significant project-alone or cumulative impacts in relation to Traffic, Transport and Rights of Way, based on a standard and well recognised approach to securing and delivering such measures.
435. A number of responses to "Traffic and Transportation" issues were requested and provided in ExQ1 and ExQ2 which the Applicant responded to in REP3-054 and REP4a-114. These were in relation to representations by the LCC, Mr Nicholas Alexander Sermon, Fosdyke Playing Field, and Barry Cooper:
436. **Lincolnshire County Council:** the Applicant considers that the issues raised by LCC in response to ExQ1 and 2 are now resolved. The Applicant's position on the issues raised are each set out in its comments on LCC's responses to Written Questions.

³¹ REP5-136, Statement of Common Ground with Boston Borough Council, East Lindsey District Council, South Holland District Council; REP5-135, Applicant's Statement of Common Ground with Lincolnshire County Council. Note that the only issues which is not marked green ("Agreed") is in REP5-136 where agreement has not been reached with District and Borough Council, in relation to the proposed access route through the Wrangle Conservation Area (an area recognised as having "no material impact"), because these Councils defer to LCC on this point.

³² National Highways reserved the right to make such representations if necessary in its Relevant Representations (RR-046). It has made no representations into Examination at any stage since.

437. **Mr Nicholas Alexander Sermon** (RR-093) raised concerns related to impacts from construction traffic among other things. These were further particularised in response to ExQ1 (REP2-075). The Applicant provides its response to Mr Sermon's Relevant Representations in PD1-071 and responded to Mr Sermon's response to ExQ1 within (page 97; TT1.4, REP4-107). The Applicant held a call with Mr Sermon on 29.01.2025 and followed up with a visit to Mr Sermon's residence. The Applicant understands that Mr Sermon's issues were materially resolved by the further details provided to him regarding the Applicant's proposals and the information which would be provided and secured within the CTMP.
438. **Fosdyke Playing Field** (RR-006): Fosdyke Playing Fields ("FPF") did not respond to the ExA's request for response to ExQ1 TT 1.3. The Applicant's position on FPF's Relevant Representation is set out in PD1-071. The Applicant considers that it has provided sufficient information in its assessment and during the examination regarding the potential for cumulative effects which it considers will have no significant impacts.
439. **Barry Cooper** (RR-080): Barry Cooper did not respond to the ExA's request for response to ExQ1 TT 1.5. The Applicant's position on Barry Cooper's Relevant Representation is set out in PD1-071. The Applicant considers that the mitigations for the impact of construction traffic in the area around Mr Cooper's property are robust and will ensure there are no significant impacts. The Applicant note's LCC's position in response to TT 1.5 that it *"has no reason to dispute the applicants conclusions on this matter"*.

11.7.1 Accordance with Policy and Conclusion

440. NPS EN-1 requires that the Applicant carry out its assessment and consider mitigation in line with paragraphs 5.14.5 – 5.14.17. As displayed in Table 27.1, page 15 of REP4a-023 the Applicant has done so, carrying out relevant assessment appraisals and consultations, considering relevant mitigations and plans. The Secretary of State thereafter requires to consider the factors set out at 5.14.18 – 21 when making their decision. As signposted on Table 27.1, page 18, REP4a-023 the Applicant has provided the relevant information and assessment necessary.
441. On the basis of the above, the Applicant considers that the Secretary of State can be satisfied that, with the implementation of the proposed mitigation, there will be no significant residual impacts as a result of traffic, transport and public rights of way and that the Project aligns with the policies set out in the Energy NPSs.

11.8 Hydrology, Hydrogeology and Flood Risk (Water Quality and Resources)

442. The Applicant has undertaken an assessment of potential impacts of the Project in relation to hydrology, hydrogeology and flood risk. Its assessment is set out in the Environmental Statement, particularly the following documents:
- Chapter 24 Hydrology, Hydrogeology and Flood Risk (REP4a-017);
 - Chapter 24 Onshore Hydrology and Flood Risk Figures (REP4a-033);
 - Groundwater Risk Assessment (REP4a-058);

- Chapter 24 Appendix 2 Flood Risk Assessment Onshore ECC & 400kV (REP4-022 and REP4-024);
- Chapter 24 Appendix 3 Flood Risk Assessment Onshore Substation (REP4-027 and REP4-028); and
- Volume 3, Appendix 8.1: Water Framework Directive Assessment (APP-153).

443. As detailed in REP4a-017, the assessment concludes that, with suitable mitigation measures imposed, the Project will have no significant impacts, either on a project-alone or cumulative basis on hydrology, hydrogeology and flood risk.

444. The Applicant notes that consultation with stakeholders was carried out throughout the EIA scoping process and the statutory pre-application consultation process (including through an Expert Topic Group on hydrology, hydrogeology and flood risk), in compliance with NPS EN-1, paragraph 5.16.4 and paragraph 5.8.18. Details of this consultation is set out in Table 24.2 of REP4a-017. The Applicant highlights the following key submissions before and during Examination regarding hydrology, hydrogeology and flood risk.

11.8.1 Environment Agency

11.8.1.1 Relevant Representation by the Environment Agency (RR-018) and the Applicant's response (PD1-071)

- Principal Areas of Disagreement Statement by the Environment Agency (PD1-104);
- Written Representation on behalf of the Environment Agency (REP1-048);
- The Applicant's Response to the Examining Authority's First Written Questions (REP 2-051);
- The Environment Agency's response to the Examining Authority's First Written Questions (REP2-067) and the Applicant's response (REP3-054);
- The Applicant's response to the Examining Authority's Second Written Questions (REP4-107);
- The Environment Agency's response to the Examining Authority's Second Written Questions (REP4-128) and the Applicant's response (REP4a-114);
- The Environment Agency's written summary of oral case (REP4a-123);
- The Environment Agency's response to D4a submissions (REP5-156) and
- Agreed Statement of Common Ground (document 18.8, version 3);
- The Applicant's Comments on Deadline 5 submissions (24.2, submitted at deadline 6).

11.8.2 Lincolnshire County Council

11.8.2.1 Relevant Representation by Lincolnshire County Council (RR-004) and the Applicant's response (PD1-071)

- Local Impact Report from Lincolnshire County Council (REP1-053);
- The Applicant's Response to the Examining Authority's First Written Questions (REP 2-051);
- Lincolnshire County Council's response to the Examining Authority's First Written Questions (REP2-069) and the Applicant's response (REP3-054);

- The Applicant's response to the Examining Authority's Second Written Questions (REP4-107); and
- Agreed Statement of Common Ground (REP5-135).

11.8.3 Summary of key issues

445. The Environment Agency played the most active role in Examination in relation to hydrology, hydrogeology and flood risk issues. In particular they submitted representations and attended hearings to discuss:
- the protection of the EA's existing assets, resources, and flood protection responsibilities; and
 - the Project's hydrology, hydrogeology, and flood risk assessment, including flood risk assessments, groundwater risk assessment, water framework directive assessment and outline management plans.
446. The Environment Agency sought protective provisions and an agreement ensuring co-ordination of works (in particular where the Environment Agency are carrying out beach replenishment works). The projective provisions for the protection of the Environment Agency (as included in the draft DCO submitted at Deadline 6) are in agreed form and the co-ordination agreement has been signed by the Applicant.
447. Further, the Applicant understands that the Environment Agency have consented to the disapplication of some provisions within the Environmental Permitting (England and Wales) Regulations 2016 and land drainage byelaws (with their position being submitted at Deadline 6). It is proposed within the draft Development Consent Order that Regulation 12(1)(a) (requirement for environmental permit) of the 2016 Regulations be disapplied in relation to the carrying out of flood risk activities. It is also proposed that the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991 that require consent or approval for the carrying out of works also be disapplied.
448. In terms of the assessment, the Environment Agency have confirmed that they are satisfied that all matters (within their remit) have been appropriately assessed and mitigation, as required, is adequately secured through the DCO (document 8.18, version 3).
449. The Environment Agency made a holding objection to the DCO application (PD-071) on the basis that they were not satisfied that the flood risk assessments submitted with the Application provided sufficient comfort that the second bullet point of the Exception Test as set out in paragraph 5.8.11 of NPS EN-1 ("the project will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible will reduce flood risk overall.") was passed. The Environment Agency sought a number of clarifications in relation to the flood risk assessments carried out for the onshore elements of the Project. These clarifications were provided and the Environment Agency confirmed that they are now satisfied that the flood risk assessments provide an assessment that is appropriate to the scale, nature and location of the development and is sufficient to inform consideration of the flood risk Exception Test, as required by EN-1. Accordingly, they withdrew their holding objection (document 8.18, version 3).

450. As confirmed in document 8.18, version 3, the Environment Agency have also indicated that they are content with the Code of Construction Practice (Document 8.1, version 8) and the terms on which this is secured in the draft Development Consent Order. They are also satisfied with topics included in other outline management plans including the Outline Operational Drainage Management Plan (APP-286).
451. The Environment Agency confirmed that it has reviewed Chapter 8 of the ES, Marine Water and Sediment Quality (REP5-017) from the perspective of their remit and found it to be satisfactory.
452. In relation to the Water Framework Directive (“WFD”) assessment (APP-153) the Environment Agency note in its relevant representations (RR-018) that:

On the basis that they are satisfied that the Outline CoCP and Outline Cable Specification and Installation Plan appropriately secure that the landfall exit pits will be a minimum of 500m offshore from MLWS, the Environment Agency are satisfied with the conclusions of the WFD that the works will not cause an issue to Bathing Waters.

453. In respect of the assessment undertaken for the impacts on the Lincolnshire Coastal Water body, the Environment Agency have confirmed they are generally satisfied with the Applicant’s approach and conclusions that these sections of the export cable corridor activity are unlikely to result in a deterioration at water body scale or jeopardise the attainment of water body objectives. Significant impacts to protected areas within these WFD waterbodies are also unlikely. They go on to note that they defer to Natural England and the Marine Management Organisation in respect offshore habitats in protected areas, fish and shellfish etc., which are outside of the Environment Agency’s jurisdiction (document 8.18, version 3).
454. Natural England and the MMO have not noted a concern in this respect. The Applicant notes that having reviewed the Water Framework Directive assessment the MMO asked that the Applicant ensure that the properties of all chemicals used for construction, operation or maintenance on structures within 1nm be added to the chemical risk assessment to be produced post consent, which the Applicant agreed (REP3-077).
455. LCC, as lead local flood authority, have also made some representations in relation to hydrology, hydrogeology and flood risk. They confirm that the Applicant has carried out a robust assessment of the Project’s impacts on onshore hydrology, hydrogeology and impacts to flood risk during the construction, operation and maintenance and decommissioning phases (REP5-135).

11.8.4 Accordance with Policy and Conclusion

456. The Secretary of State can therefore be satisfied that the Applicant has carried out an appropriate environmental assessment in accordance with paragraphs 5.16.3 and 5.16.7 of NPS EN-1 and in relation to flood risk, 5.8.13 to 5.8.15 of NPS EN-1. Further appropriate mitigations have been proposed, see (REP41-017), for example through the Code of Construction practice (secured through Requirement 18 of the draft Development Consent Order (Document 3.1, version 10)), with the Environment Agency welcoming the confirmation that this will include a Water Quality Management and Mitigation Plan (document 8.18, version 3), and an Operational

Drainage Management Plan (secured through Requirement 15). The Secretary of State can be satisfied that paragraphs 5.16.8 to 5.16.10 of NPS EN-1 and paragraphs 5.8.24 to 5.8.35 of NPS EN-1 are satisfied. In terms of decision making, the Applicant has:

- had proper regard to legislative requirements including under the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017;
- has demonstrated that both the Sequential Test (see Site Selection and Alternatives Section above) and Exception Test have been applied and satisfied;
- proposed and secured mitigation;
- demonstrated that the Project is not having an adverse effect on the achievement of any relevant environmental objectives; and
- demonstrated that the Project is not having a likely significant effect in EIA terms. Neither the Environment Agency or any other relevant flood risk management authorities have concerns or are maintaining objections on the basis of flood risk.

457. The Project is therefore consistent with the policy aims set out under 5.16.11 to 5.16.16 of NPS EN-1 and of paragraphs 5.8.36 to 5.8.41 of NPS EN-1 and therefore, there is nothing in respect of these policies which indicate that consent should be refused.

11.9 Onshore Air Quality

458. The Applicant has undertaken an assessment of potential impacts of the Project in relation to Onshore Air Quality. Its assessment is set out in the ES, particularly the following documents:

- Chapter 19 Onshore Air Quality (REP4a-013);
- Chapter 19 Onshore Air Quality Figures (REP4a-031);
- Chapter 19 Appendix 1 Construction Dust Assessment Methodology (AS1-066);
- Chapter 19 Appendix 2 Non-Road Mobile Machinery Emissions Assessment (APP-177);
- Chapter 19 Appendix 3 Offshore Activities Assessment (APP-178); and
- Chapter 19 Appendix 4 Road Traffic Dispersion Modelling (REP4a-054).

459. As detailed in Chapter 19 Onshore Air Quality the assessment concludes that, with suitable mitigation measures imposed, the Project will have no significant impacts, either on a project-alone or cumulative basis.

460. Agreement has been reached with Boston Borough Council, East Lindsey District Council and South Holland District Council regarding onshore air quality matters. LCC has not raised any issues regarding the air quality impacts.

461. Requirement 18 of the draft DCO (Document 3.1; Version 10) secures the submission of an air quality management plan (which must accord with the oAQMP (document 8.1.2, Version 3). The oAQMP provides appropriate mitigations in relation to air quality impacts.

462. The key issue that was raised by Interested Parties in relation to air quality during the Examination was the impact of construction dust. This matter is addressed in detail in Section 11.4 of this Closing Statement.

11.9.1 Accordance with Policy and Conclusion

463. NPS EN-1 requires that the Applicant undertake an assessment of the air quality impacts of the proposed development (NPS EN-1 paragraph 5.2.8). As set out in Table 19.4 of Chapter 19 (REP4a-013) the Applicant has carried out an assessment which complies with NPS EN-1 paragraphs 5.2.8 to 5.2.14, and which has incorporated and secured appropriate mitigation for the construction phase in the oAQMP (document 8.1.2, version 3). The Secretary of State is required to consider the factors set out in paragraphs 5.2.15 to 5.2.19 of NPS EN-1 when making their decision. As signposted in Table 19.4 of Chapter 19, the Applicant has provided the relevant information and assessment necessary to allow the Secretary of State to make that decision.
464. On the basis of the above, the Applicant considers that the Secretary of State can be satisfied that, with the implementation of the proposed mitigation, there will be no significant residual air quality impacts and that the Project aligns with the policies set out in the Energy NPSs.

11.10 Noise and vibration

465. The Applicant's has undertaken an assessment of potential impacts of the Project in relation to Noise and Vibration. Its assessment is set out in the Environmental Statement, particularly the following documents:
- Chapter 26 Onshore Noise and Vibration (REP4a-021)
 - Chapter 26 Onshore Noise and Vibration Figures (REP4a-035)
 - Chapter 26 Appendix 1 Noise and Vibration Calibration Certificates (APP-214)
 - Chapter 26 Appendix 2 Full Baseline Survey Results (APP-215)
 - Chapter 26 Appendix 3 Construction Plant List (APP-216)
 - Chapter 26 Appendix 4 Noise Model Outputs (REP4a-061)
466. The Applicant has provided further submissions on these issues in the course of Examination including at Issue Specific Hearings, post-hearing written responses, and responses to written questions.³³
467. As detailed in Chapter 26 Onshore Noise and Vibration the assessment concludes that, with suitable mitigation measures imposed (being those set out in the Outline Code of Construction Practice (document 8.1, version 8) and the Outline Noise and Vibration Management Plan (oNVMP) (REP2-031)), the Project will have no significant impacts, either on a project-alone or cumulative basis.

³³ The Applicant responded to ExQ1 Noise and Vibration questions (REP2-051) and ExQ2 Noise and Vibration questions (REP4-107); and commented on Interested Parties' responses to ExQ1 Noise and Vibration questions in REP3-054; ExQ2 Noise and Vibration questions in REP4a-114.

468. Agreement has been reached with Boston Borough Council, East Lindsey District Council and South Holland District Council on matters related to the noise and vibration assessment.³⁴ LCC raised no concerns on noise and vibration matters, and in response to Q1 NV 1.1 of the ExA's first round of written questions confirmed that "LCC has no comments to make in respect of Noise and Vibration and defers to East Lindsey District Council, Boston Borough Council and South Holland District Council as the relevant pollution control authorities" (REP2-069).
469. The Applicant's draft DCO (Document 3.1; Version 10) secures appropriate mitigations in relation to noise and vibration including as follows:
- Requirement 18 secures that no stage of onshore transmission works may commence until, for that stage, a code of construction practice (which must accord with the Outline Code of Construction Practice (oCoCP) (document 8.1, version 8) has been submitted to and approved by LCC. The code of construction practice must include a noise and vibration management plan (which must accord with the oNVMP (REP2-031)).
 - Requirement 25 sets rating levels for standard operational noise arising from the operation of the onshore HVAC substation and specifies the locations for measuring the noise, and provides for a monitoring scheme to be submitted to and approved by Lincolnshire County Council prior to the HVAC substation commencing operation. The monitoring scheme must be implemented as approved.
 - The oNVMP (REP2-031) and oCoCP (document 8.1, version 8) include an appropriate range of measures that ensure there will not be significant project-alone or cumulative impacts in relation to these receptors, based on a standard and well recognised approach to securing and delivering such measures.
470. A number of responses to "Noise and Vibration" issues were requested and provided in ExQ1 and ExQ2 which the Applicant responded to in REP3-054 and REP4a-114. These were in relation to the LCC, East Lindsey District Council, Boston Borough Council and South Holland District Council, Barry Cooper and Nicola Ann Pearson (there were also questions directed to the Environment Agency but these relate to flood risk assessment matters rather than noise and vibration):
471. **Lincolnshire County Council:** as noted above, LCC confirmed in response to ExQ1 NV 1.1 that it had no comments to make in respect of Noise and Vibration and defers to East Lindsey District Council, Boston Borough Council and South Holland District Council as the relevant pollution control authorities. LCC also deferred to the local councils in its response to ExQ1 NV 1.5 on vibration effects.

³⁴ REP5-136, Statement of Common Ground with Boston Borough Council, East Lindsey District Council, South Holland District Council.

472. **Barry Cooper:** Barry Cooper did not respond to the ExA's request for response to ExQ1 NV 1.1. The Applicant's position on Barry Cooper's Relevant Representation is set out in PD1-071. The Applicant's position is that the assessment carried out concluded that with the implementation of the mitigation measures set out in the oNVMP, there would be no significant noise and vibration effects and in particular that the effects of Noise and Vibration on Mr Copper's property are 'Minor Adverse Level of Effect', which are not considered significant in terms of the EIA regulations. The Applicant notes that East Lindsey District Council, Boston Borough Council and South Holland District Council have not raised any concerns in this regard and that agreement has been reached with Boston Borough Council, East Lindsey District Council and South Holland District Council on matters related to the noise and vibration assessment (REP5-136).
473. **Nicola Ann Pearson:** Nicola Ann Pearson did not respond to the ExA's request for response to ExQ1 NV 1.5. The Applicant's position on Nicola Ann Pearson's Relevant Representation is set out in PD1-071. The Applicant's position is that the peak particle velocity levels from construction operations which the project is committed to are below the level where damage could occur to buildings. The Applicant notes that East Lindsey District Council, Boston Borough Council and South Holland District Council have not raised any concerns in this regard and that agreement has been reached with Boston Borough Council, East Lindsey District Council and South Holland District Council on matters related to the noise and vibration assessment (REP5-136).
474. **Boston Borough Council, East Lindsey District Council and South Holland District Council:** Following LCC's responses to ExQ1 NV 1.1 and NV 1.5, the ExA asked the local councils to comment on these matters. The responses to ExQ2 NV 1.1 and NV 1.4 (REP4-132) noted that potential impacts from noise have been assessed in the Environmental Statement Chapter: Noise and Vibration and concluded that no significant effects were identified, and requested all vibration sensitive receptors be informed ahead of works commencing and be provided a contact to make a complaint to. The Applicant responded in REP4a-114 confirming that this requirement is included within Sections 5.4 and 5.5 of the oNVMP (REP2-031).

11.10.1 Accordance with Policy and Conclusion

475. NPS EN-1 requires that the Applicant undertake a noise assessment where noise impacts are likely to arise from the proposed development (NPS EN-1 paragraph 5.12.6). As set out in Table 26.1 of Chapter 26 (REP4a-021) the Applicant has carried out an assessment which complies with NPS EN-1 paragraphs 5.12.6 to 5.12.12, and which has incorporated and secured appropriate mitigation for both construction and operational noise in accordance with NPS EN-1 paragraphs 5.12.13 to 5.12.16. The Secretary of State is thereafter required to consider the factors set out in paragraphs 5.12.17 to 5.12.18 when making their decision. As signposted in Table 26.1 of Chapter 26, the Applicant has provided the relevant information and assessment necessary to allow the Secretary of State to make that decision. With regard to paragraph 5.12.18, the draft DCO (document 3.1, version 10) includes requirements to provide a noise and vibration management plan for the construction phase (Requirement 18) and to control operational noise at sensitive receptors (Requirement 25). On the basis of the above, the Applicant considers that the Secretary of State can be satisfied that, with the implementation of the proposed mitigation, there will be no significant residual impacts as a result of noise and vibration and that the Project aligns with the policies set out in the Energy NPSs.

11.11 Biodiversity Net Gain

476. NPS EN-1 paragraph 4.6.6 requires applicants to seek opportunities to contribute to and enhance the natural environment by providing net gains for biodiversity, and the wider environment where possible. Paragraph 4.6.7 encourages applicants to use the latest version of the biodiversity metric to calculate their biodiversity baseline and present planned biodiversity net gain outcomes. Achievement of 10% BNG is not currently a statutory requirement for NSIPs as Section 99 and Schedule 15 of the Environment Act 2021 are not yet in force. There is a distinction between seeking opportunities to achieve BNG and the obligation to deliver a percentage BNG: the NPS (the policy against which the Application must be determined) is concerned with the former.

477. The Applicant has complied with the national policy requirement to seek opportunities to provide BNG.

478. The Applicant has submitted a Biodiversity Net Gain Assessment Report (AS-014) which outlines the commitment of the Project to achieving BNG using the latest metric and provides details of the measures proposed within the Order Limits and secured in the OLEMS. While the current metric calculation shows a loss of 0.8% of habitat biodiversity units (as well as a gain of 14.40% for linear biodiversity units and 0.08% for riparian biodiversity units), it is important to note that this is over the current Order Limits which provide a Maximum Design Envelope and will be refined post-consent once the detailed design is progressed, and that a further calculation will be undertaken at that stage. The Applicant is confident that when detailed design comes forward, narrowing the area of development, a gain can be delivered.

479. The Applicant has, within Section 3.9 of the OLEMS (document 8.10, version 8), committed to delivering a net gain in biodiversity and demonstrating this gain by using an appropriate biodiversity metric, and in the event that if there is a shortfall in overall biodiversity units from any metric type (habitat, hedgerow, or river), as a result of the Project, offsite habitat enhancement to deliver an overall net gain for the Project will be agreed and incorporated. The Applicant has been and continues to negotiate with third parties in respect of providing off-site net gains. Discussions have been progressing with RSPB's Greater Frampton Vision Landscape Recovery Project and other voluntary discussions have been progressing with a landowner to explore a long term BNG project that could provide wider ecological and community benefits.
480. Following the update to the OLEMS noted above, LCC welcomed the commitment and agreed that the delivery of BNG could be by off-site means if required. However, it stated that the level of detail currently provided in relation to the quantum, nature and location of BNG provision, either within the Project boundary, or via a third party was insufficient and that this was not secured in the DCO (REP5-158). As noted above, measures proposed to enhance biodiversity within the Order Limits are set out in the OLEMS. The commitment to deliver a net gain in biodiversity is secured in the DCO via Requirement 10 (Landscape management plan) and Requirement 12 (Ecological management plan). Both the landscape management plan to be submitted for approval by LCC under Requirement 10 and the ecological management plan to be submitted for approval by LCC under Requirement 12 are required to be in accordance with the OLEMS. Therefore, the commitment to securing a net gain will be carried through to those documents, and should LCC, as the discharging authority, not be satisfied that a net gain in biodiversity (which is to be calculated using an appropriate biodiversity metric) is being achieved through those plans, it would be in a position to refuse to approve either or both of the management plans.
481. LCC had in its early submissions (for example the Local Impact Report (REP1-053)) stated that a requirement to deliver a minimum of 10% BNG was necessary. This was a matter of discussion at ISH3 and ISH5, and at ISH5 LCC stated that it was not arguing that a particular percentage of BNG should be imposed, but that it wanted positive BNG to be secured. There was debate during examination (see for example The Applicant's Written Summary of Oral Case Put at the Issue Specific Hearing 3 held on 5 December 2024(REP3-051) and The Applicant's Written Summary of Oral Case put at the Issue Specific Hearing held on 12 February 2025 (REP4a-116) about whether a set percentage of BNG should be secured and whether a condition could be imposed in that regard. The Applicant has explained why, in the current policy context, it doesn't think imposition of a requirement could be considered necessary and so pass the policy tests, nor is insisting on a particular percentage of BNG justified. The Applicant has secured delivery of BNG in an appropriate manner as set out above.

11.11.1 Accordance with Policy and Conclusion

482. The Applicant's approach is compliant with national policy set out in NPS EN-1, and there is therefore nothing in respect of this policy which indicates that consent should be refused.

12 Compulsory Acquisition

12.1 Compulsory acquisition of land and rights in land

483. Section 122 of the Planning Act 2008 states that an order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that:

- The land
 - (i) is required for the development to which the development consent relates; or
 - (ii) is required to facilitate or is incidental to that development; or
 - (iii) is replacement land which is to be given in exchange for the order land under Section 131 or 132; and
 - (iv) there is a compelling case in the public interest for the land to be acquired compulsorily.

484. Section 123 of the Planning Act 2008 further states that an order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that one of the following conditions applies:

- The application included a request for compulsory acquisition of the land to be authorised; or
- All persons with an interest in the land consent to the inclusion of the provision; or
- The prescribed procedure has been followed in relation to the land.

485. The Applicant's case for compulsory acquisition (including temporary possession powers) is set out in detail in the Statement of Reasons (Document 4.3, Version 8 submitted at Deadline 6). This demonstrates how the legal tests in Sections 122 and 123 of the Planning Act 2008 are met.

486. The plots of land over which the Applicant seeks compulsory acquisition powers (including temporary possession powers), and type of powers being sought in relation to each plot, are set out in the Book of Reference (Document 4.1, Version 9), Appendix 2 of the Statement of Reasons, and Schedules 7 and 9 of the draft DCO.

487. Section 5 and Appendix 2 of the Statement of Reasons demonstrates why each plot of land over which compulsory acquisition powers (including temporary possession powers) is required for the purposes of, to facilitate, or is incidental to, the Project. Section 6 of the Statement of Reasons sets out the Applicant's justification for the use of compulsory acquisition, and demonstrates the Applicant's compliance with the Government's 'Planning Act 2008: Guidance related to procedures for compulsory acquisition' (the Compulsory Acquisition Guidance).

488. The Compulsory Acquisition Funding Statement (REP2-019) contains detailed information regarding the funding available for the Project. It sets out an estimate of costs relating to compensation for the compulsory acquisition of land and rights in land, and the imposition of restrictions, as well as other associated costs, and demonstrates how such costs will be funded.

489. Section 6.4 of the Statement of Reasons summarises the negotiations between the Applicant and landowners to acquire the necessary land and rights in land voluntarily. The Applicant remains in negotiation with affected landowners, and updates have been provided regularly throughout examination through the Applicant's Compulsory Acquisition and Land Rights Tracker, a final version of which is submitted at this deadline 6 (document 15.4, Version 6). The Applicant intends to continue negotiations after examination, with a view to reaching agreement with as many land interests as possible.
490. There is a compelling case in the public interest for powers to be granted for the land or rights over land to be compulsorily acquired and restrictions imposed in order for the UK to meet its legal obligations to decarbonise, meet the increasing demand for low carbon electricity, and achieve net zero by 2050.
491. It is therefore the Applicant's position that the compulsory acquisition powers (including temporary possession powers) sought by the Applicant should be included in any DCO made by the Secretary of State.

12.2 Statutory undertakers

492. Section 127 of the Planning Act 2008 applies in relation to land (statutory undertakers' land) if:
- The land has been acquired by statutory undertakers for the purposes of their undertaking;
 - A representation has been made about a DCO application before completion of the examination and has not been withdrawn; and
 - As a result of the representation, the Secretary of State is satisfied that (i) the land is used for the purposes of carrying on the statutory undertakers' undertaking, or (ii) an interest in the land is held for those purposes.
493. Section 127 provides that a DCO may include provision authorising the compulsory acquisition of statutory undertakers' land only to the extent that the Secretary of State is satisfied that the nature and situation of the land are such that:
- It can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
 - If purchased it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.
494. A DCO may include provision authorising the compulsory acquisition of a right over statutory undertakers' land by the creation of a new right only to the extent that the Secretary of State is satisfied that the nature and situation of the land are such that:
- The right can be purchased without serious detriment to the carrying on of the undertaking; or
 - Any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertakers by the use of other land belonging to or available for acquisition by them.

495. Section 138 of the Planning Act 2008 provides that a DCO may include provision for the extinguishment of a “relevant right”, or the removal of “relevant apparatus” (both as defined in the Planning Act 2008), only if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the DCO relates.
496. Article 30 of the draft DCO will permit the compulsory acquisition of land or new rights in land of statutory undertakers, or enable the Applicant to extinguish rights or relocate apparatus of statutory undertakers.
497. Article 30 is subject to the Protective Provisions contained within Schedule 18 of the draft DCO, which set out provisions for the protection of undertakers’ apparatus with which the Project interacts or will be in proximity to.
498. The Applicant has been in discussions with the relevant undertakers throughout examination to agree the terms of the Protective Provisions. The current status of the Applicant’s negotiations with statutory undertakers is set out in the Compulsory Acquisition and Land Rights Tracker and summarised in the table below. Protective provisions have now been agreed with all statutory undertakers who had made a representation into the Examination and who engaged S127 or S138, these are set out in the final version of the draft DCO submitted at this Deadline 6 (Document 3.1, Version 10). A number of these statutory undertakers have intimated that they either have or will withdraw their representations on that basis.
499. On the basis that representations have been withdrawn, or at the least, provisions for the protection of undertaker assets have been agreed, it is the Applicant’s position that the Secretary of State can be satisfied that the conditions in Sections 127 and 138 of the Planning Act 2008 have been met, and that the DCO can be made including Article 30, subject to the inclusion of Schedule 18.

12.3 Special category land

500. Sections 130, 131 and 132 of the Planning Act 2008 provide additional protection for land belonging to the National Trust, and land forming part of a common, open space, or fuel or field garden allotment.
501. No land belonging to the National Trust has been identified within the Order land.
502. Section 132(2) of the Planning Act 2008 provides that a DCO authorising the compulsory acquisition of a right over land forming part of a common, open space or fuel or field garden allotment must be subject to special parliamentary procedure unless the Secretary of State is satisfied that one of three conditions applies. One of the conditions is that the land, when burdened with the right authorised to be compulsorily acquired, will be no less advantageous than it was before to the person in whom it is vested; other persons, if any, entitled to rights of common or other rights; and, the public.
503. Plot 17-001 (Hall Gate (Track)) comprises common land. The Applicant seeks authorisation for the compulsory acquisition of rights in relation to this plot. The onshore export cables will be installed beneath this land using a trenchless technique, and no works are proposed to the surface of this plot.

504. No works are proposed which will affect the use of Plot 17-001 or its physical appearance. The cables will be located underground, and no works will be undertaken to the surface of the common land. As such, the land, when burdened with the rights sought, will be no less advantageous than it was before.
505. Plots 01-001, 01-002, 01-004 and 01-005 (landfall at Wolla Bank to the South of Anderby Creek) comprise public open space in the ownership of the Crown and LCC. The Applicant seeks authorisation for the compulsory acquisition of rights in relation to these plots. The offshore export cables will be installed using trenchless techniques under this land.
506. No works are proposed which will affect the use of Plots 01-001, 01-002, 01-004 and 01-005 or their physical appearance. The cables will be located underground, and no works will be undertaken to the surface of the open space. As such, the land, when burdened with the rights sought, will be no less advantageous than it was before.
507. Section 132(2) also requires the fact that the Secretary of State is satisfied that the land will be no less advantageous than it was before be recorded in the DCO. The draft DCO includes in the preamble a statement to this effect.
508. No fuel or field garden allotments have been identified within the Order land.

12.4 Crown land

509. Section 135 of the Planning Act 2008 provides that a DCO may include provision authorising the compulsory acquisition of an interest in Crown land only if (a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown; and (b) the appropriate Crown authority consents to the acquisition. A DCO may include any other provision applying in relation to Crown land, or rights benefiting the Crown, only if the appropriate Crown authority consents to the inclusion of the provision.
510. Part 4 of the Book of Reference sets out the Crown land plots, which are shown on the Crown Land Plans Onshore (PD1-009) and the Crown Land Plans Offshore (PD1-010).
511. The status of the negotiation with TCE regarding Crown Consent is as stated in the Document 24.1 Deadline 6 Covering Letter. As set out there, it is expected that Crown Consent will be provided at or around the Close of Examination and this will be advised of as soon as possible.

12.5 The Connection Area

512. The Applicant is seeking compulsory acquisition powers over the area in which the Project's 400kV cables will connect into a new substation to be developed by National Grid, referred to as the Connection Area. At Issue Specific Hearing 8, the ExA set Action Point 4 for the Applicant to set out its reasoning for the approach of seeking to acquire significantly more rights over land than needed via Compulsory Acquisition (CA) and then reducing that amount post consent and also asked that the Applicant's response to this action point set out where this approach is supported within the Planning Act 2008. The Applicant has provided the reasoning and what it considers to be a very clear and compelling justification for the approach taken, and has set out how this meets the tests in the Planning Act 2008 in The Applicant's Response to Actions Points recorded at CAH2 and ISH8 (document 24.5).

13 Draft Development Consent Order

513. The Applicant considers that the Draft DCO, including the dMLs, provides all necessary rights and powers for the delivery of the Project. Importantly, its Requirements (Schedule 1, Part 3) and dDML conditions (Part 2 of Schedules 10 – 16) also provide for suitable controls on those rights and powers. As set out in relation to specific onshore and offshore matters, it secures a range of appropriate mitigations. The Applicant has had regard to comparable recent precedent when drafting the Draft DCO, including other offshore wind farm DCOs and other recently consented DCOs.

13.1 Discussion in Examination

514. The Applicant has welcomed the opportunity to articulate its justification for its preferred drafting of the dDCO. This has included responding to DCO questions within ExQ1 and ExQ2³⁵ and making oral submissions at ISH1; ISH5 (Item 3.7); ISH8 (Item 3.5).³⁶ The Applicant has also addressed DCO drafting in written submissions in response to Interested Parties, particularly Natural England, the MMO, LCC, and TH Clements (all discussed below) and has, where possible and appropriate, updated DCO drafting as a result of such engagement.

515. The Applicant has, over the course of Examination, sought and received consent to disapplications of legislation provided for within the draft DCO from the Environment Agency and, whilst not required, from Port of Boston Limited and the IDBs also.³⁷

13.2 Outstanding disagreements

516. Since its first submission at Application, the Project has refined the Draft DCO, updating it as a result of on-going engagement with Interested Parties and scrutiny from the ExA. Where possible and appropriate, the Applicant has updated the mitigations and the manner in which they are secured in order to address concerns raised. General drafting changes have also been made as articles have been reviewed and drafting improved. The updates made and the reasons for them are set out in the Applicant's Schedule of Changes to the Draft Development Consent Order (Document 3.1.1, version 8 submitted at Deadline 6).

517. The Applicant considers that the draft Development Consent Order contains the necessary and appropriate powers and controls but notes a limited number of outstanding areas of disagreement at the end of examination with certain IPs (see those signposted below). The Applicant's understanding of the final outstanding issues related to the draft DCO is based on submissions to date and discussions with IPs but without the benefit of sight of each IP's final submissions.

³⁵ REP2-051 1.7 DCO questions; REP4-107 2.6 DCO questions.

³⁶ Summarised in REP3-040; REP4a-116; Document 24.5 (submitted at D6)

³⁷ Provided in REP2-061 and Document 24.14.

The "IDBs" are South Holland, Lindsey Marsh, Black Sluice, Welland and Deepings, and Witham Fourth Internal Drainage Boards.

13.2.1 Natural England and the MMO

518. The positions on disagreement between the Applicant, Natural England and MMO in relation to the DCO drafting have been discussed and explained during the course of Examination (albeit without the benefit of direct discussion with the IPs during hearings).
519. The Applicant's understanding of the current list of disagreements between it and Natural England is as set out in:
- The Applicant Response to Appendix A – Natural England's Advice on the Development Consent Order (DCO) and Deemed Marine Licence (DML) within *24.2 The Applicant's Comments on Deadline 5 Submissions* (submitted at Deadline 6)
 - The Applicant's Current position on Risk and Issues matters – DCO & dML within *24.8 The Applicant's Comments on Natural England's Risk and Issues Log* (submitted at Deadline 6)
520. The Applicant's understanding of the current list of disagreements between it and the MMO is as set out in the MMO SoCG (Document 18.17, submitted at D6).
521. The Applicant also notes the extensive submissions made at ISH5 (summarised on page 56 – 64 of REP4a-116) in response to the MMO's positions on the draft DCO and the submissions made thereafter by the Applicant (particularly the Applicant's Action Points document (REP4a-120) which contains a joint statement with the MMO in relation to the disagreement on Article 6.
522. The Applicant considers that where it has not been able to agree DCO drafting with these Interested Parties it has robustly set out its justification for its preferred drafting. Drafting of the draft DCO has had appropriate regard to policy and prior examples of Secretary of State decision making in comparable Orders. Restrictions proposed in the draft DCO by the Applicant in the form of Requirements have had due regard to the policy instruction that Requirements imposed by the Secretary of State should be necessary, relevant to planning, relevant to the development to be consented, enforceable, precise, and reasonable in all other respects, (Paragraph 4.1.16 of NPS EN-1). Where disagreement remains, the Applicant has sought to clearly explain why it considers its position should be preferred. The Applicant considers that the MMO and Natural England's positions and justification for their positions are far less clear or evidenced in a number of areas and in that context it is considered that much more limited weight can be given to their suggestions.

13.2.2 Orsted and Equinor IPs

523. The Applicant notes the outstanding issues between it and these IPs in relation to the potential for wake loss to be dealt with within the draft DCO (by way of protective provisions). The Applicant's submission on this is set out most fully in document 24.12 The Applicant's Submissions on Wake Loss Matters. The Applicant's comments on matters relating to proximity matters are set out at section 13.3 below.

13.2.3 TH Clements

524. The Applicant notes the disagreements during Examination between TH Clements and the Applicant regarding certain Draft DCO drafting discussed in the ISHs referenced above as well as in the written submissions exchanged between parties. It welcomes the engagement between the parties which has resulted in the resolution of most if not all outstanding areas of disagreement on dDCO drafting. To the extent that TH Clements is, at Deadline 6, maintaining arguments on any of its previous areas of disagreement with the Applicant regarding the Draft DCO, the Applicant affirms its positions set out at ISHs to date and its responses to TH Clements submissions to date.³⁸

525. Particularly, with regard to the wording of Schedule 7 and specifically the restrictive covenant and timescale for responding to trench digging requests, the Applicant noted that TH Clements, during ISH8, expressed the view that the amended wording originally proposed by TH Clements should be incorporated. For the reasons stated during ISH8 and provided in writing in REP5-150 and REP5-148, the Applicant confirms its position regarding its concerns regarding the practicality, drafting, and necessity issues in relation to this wording. The Applicant notes that, in comments made during ISH8, TH Clements expressed no concern with the Applicant's drafting of Article 22 of the draft DCO, which had previously been raised by the Interested Party.

13.2.4 LCC

526. The Applicant notes the disagreements during Examination between the LCC and the Applicant regarding certain Draft DCO drafting discussed in the ISHs referenced above as well as in the written submissions exchanged between parties. It welcomes the engagement between parties which has resulted in the resolution of most if not all outstanding areas of disagreement on dDCO drafting. The Applicant's understanding is that the only issue which remains between the parties in relation to DCO drafting is in relation to BNG, which is discussed in full above ("Biodiversity Net Gain" subsection).

527. To the extent that LCC is, at Deadline 6, maintaining arguments on any of its other previous areas of disagreement with the Applicant regarding the Draft DCO, the Applicant affirms its positions set out at ISHs to date and its responses to LCC in submissions to date.³⁹

13.2.5 Schedule of proposed changes to the draft Development Consent Order

528. For the reasons set out in REP5-148, the Applicant does not believe that certain Articles and Parts should be changed as suggested by the Examining Authority. The Applicant welcomed the opportunity to present and further articulate these positions during ISH8 (summarised in Document 24.2).

³⁸ Set out in the Applicant's "Comments on Deadline [] Submissions" documents, being: REP3-038; REP3-037; REP4-108; REP4a-115; REP5-150; Document 24.2

³⁹ Set out in the Applicant's "Comments on Deadline [] Submissions" documents, being: REP3-038; REP3-037; REP4-108; REP4a-115; REP5-150; Document 24.2

13.3 Protective Provisions

529. The current status of all protective provisions in Schedule 18 of the draft DCO is set out below. The Compulsory Acquisition and Land Rights Tracker (Schedule of Negotiations & Powers Sought) (document 15.4, version 6) also provides an update against the individual statutory undertakers noted therein as having an interest in the land within the Order Limits.

DCO Reference	Protective Provision Status
Schedule 18, Part 1, Protection for electricity, gas, water and sewerage undertakers	These are standard protective provisions for electricity, gas, water and sewerage undertakers. The Applicant has received no comments from any statutory undertakers on the drafting of these provisions. Statutory undertakers with an interest in the land within the Order Limits who can rely on these protective provisions are noted in the Compulsory Acquisition and Land Rights Tracker (Schedule of Negotiations & Powers Sought) (document 15.4, version 6).
Schedule 18, Part 2, Protection for operators of electronic communications code networks	These are standard protective provisions for operators of electronic communications code networks. The Applicant has received no comments from any statutory undertakers on the drafting of these provisions. Statutory undertakers with an interest in the land within the Order Limits who can rely on these protective provisions are noted in the Compulsory Acquisition and Land Rights Tracker (Schedule of Negotiations & Powers Sought) (document 15.4, version 6).
Schedule 18, Part 3, Protection for Anglian Water Services Limited	These protective provisions are agreed with Anglian Water Services Limited and Anglian Water has withdrawn its representations.
Schedule 18, Part 4, Protection for the Environment Agency (EA)	These protective provisions are agreed with the EA. The beach works co-operation agreement has also been signed by the Applicant and is with the EA for signing. As a result, the EA has signed the consent to disapplication of legislation letter (document 24.14).
Schedule 18, Part 5, Protection for the drainage authorities (South Holland, Lindsey Marsh, Black Sluice, Welland and Deepings, and Witham Fourth Internal Drainage Boards (the IDBs))	These protective provisions are agreed with the IDBs. As a result, the IDBs have each signed the consent to disapplication of legislation letter (document 24.14).
Schedule 18, Part 6, Protection for the Harbour Authority	These protective provisions are agreed with the Port of Boston Limited. The Port of Boston Limited has signed the consent to disapplication of legislation letter (REP2-061).
Schedule 18, Part 7, Protection for National Grid Electricity Transmission Plc (NGET)	These protective provisions are agreed with NGET. A side agreement has also been signed by the Applicant and is with NGET for signing. The Applicant understands on that basis that NGET is withdrawing its representations at Deadline 6.

Schedule 18, Part 8, Protection for National Gas Transmission Plc (NGT)	These protective provisions are agreed with NGT. The Applicant understands on that basis that NGT is withdrawing its representations at Deadline 6.
Schedule 18, Part 9, Protection for Cadent Gas Limited	These protective provisions are agreed with Cadent Gas Limited. A side agreement has also been entered into between the parties. The Applicant understand on that basis that Cadent is withdrawing its representations at Deadline 6.
Schedule 18, Part 10, Protection for Network Rail Infrastructure Limited	These protective provisions are agreed with Network Rail Infrastructure Limited
Schedule 18, Part 11, Protection for Perenco Gas (UK) Limited, Perenco North Sea Limited, Everard Energy Limited, Ithaca MA Limited, and RockRose (UKCS2) Limited (Perenco)	<p>The Applicant and Perenco have reached agreement on the majority of the protective provisions. There remains one point outstanding which is the radius of the communications corridors. The Applicant has proposed a 50m radius from the centre of the communications line.</p> <p>The Applicant instructed Semco Maritime to undertake an assessment to determine the spatial parameters of the Line of Sight network to inform and substantiate the size of the communication corridor exclusion zones that would be necessary to avoid interference from wind turbine generators. Semco Maritime have more than 40 years' experience in the energy industry. One of their core competences and services is providing integrated Engineering, Procurement, Construction, and Installation communication and IT solutions specifically designed for offshore assets. Interference is predominantly caused by diffraction along the line of sight link. This could be caused by an obstructing structure, such as a wind turbine generator tower or blades interrupting the microwave signal. The area in which diffraction could occur is referred to as the Fresnel Zone, therefore it is this Fresnel Zone which must be used to determine the exclusion area. The Fresnel Zone represents an elliptical area that is derived using key input data, which includes the distances between the receiver and transmitter antennas, the size and height of the antenna and the operating frequency for each of the microwave links. The assessment undertaken by Semco Maritime determined that the maximum Fresnel Zone radius observed across all evaluated LoS links was 19 metres. The Applicant has proposed an exclusion zone with a 50 metre radius measured from the centre line of the communication line for each line of sight link within the array area. This extends 31 metres beyond the maximum observed Fresnel Zone boundary, and therefore provides sufficient additional clearance, further reducing</p>

	<p>the risk of line of sight obstruction and minimising potential diffraction impacts. This ensures that Perenco's line of sight reliability and performance are maintained across all evaluated links. The Applicant therefore considers a 50 metre radius is sufficient and justified.</p> <p>The ExA and the SoS can therefore be satisfied that the assets of Perenco Gas (UK) Limited, Perenco North Sea Limited, Everard Energy Limited, Ithaca MA Limited, and RockRose (UKCS2) Limited (Perenco) are sufficiently protected such that any effects on third party infrastructure are negated or reduced to a level sufficient to enable the Secretary of State to grant consent in accordance with paragraph 2.8.348 of NPS EN-3.</p>
Schedule 18, Part 12, Protection for Shell U.K. Limited	<p>No comments have been received from Shell on the protective provisions, besides a request to amend the entity who would benefit from the protection. The Applicant considers that the restriction on erecting any wind turbine generators in the WTG exclusion zone (an area of 2,500 metre radius measured from the centre of the Barque Assets production helideck) provides Shell with the space required to continue its regular aviation activity (as described in RR-060)</p> <p>The ExA and the SoS can therefore be satisfied that the assets of Shell U.K. Limited are sufficiently protected such that any effects on third party infrastructure are negated or reduced to a level sufficient to enable the Secretary of State to grant consent in accordance with paragraph 2.8.348 of NPS EN-3.</p>
Schedule 18, Part 13, Protection for Lincs Wind Farm Limited	<p>Lincs Wind Farm Limited, Race Bank Wind Farm Limited and Equinor New Energy Limited (Equinor New Energy Limited) on behalf of Scira Extension Limited and Dudgeon Extension Limited have maintained representations due to the proximity of the proposed boundary of the ECC to the redline boundary of the IP's project.</p> <p>Whilst the terms of these PPs are not agreed with the relevant parties, in each case, the Applicant is in active negotiations with the relevant IPs with a view to agreeing a proximity agreement to govern the interaction of the Project with the relevant IP project. In order to provide sufficient comfort that these projects are protected and co-existence can operate effectively (whether or not proximity agreements are completed), the Applicant has</p>
Schedule 18, Part 14, Protection for Race Bank Wind Farm Limited	
Schedule 18, Part 15, Protection for Dudgeon Extension Limited	

	<p>proposed a set of protective provisions for the benefit of each IP.</p> <p>The Equinor IPs and the Orsted IPs have commented that the Applicant should be obliged to enter into a proximity agreement prior to commencement of the works. The Applicant considers that:</p> <p>(a) The works controlled by the PPs should be limited to those within the “control area”, not the works as a whole (a point that has been accepted by the Orsted IPs in discussions); and</p> <p>(b) That the approval mechanism set out in the PPs provides sufficient control for the IPs in each case in the absence of a proximity agreement being completed as the relevant works cannot commence until such time as the protected party has confirmed that they are content with the specifications of those works.</p> <p>The ExA and the SoS can therefore be satisfied that the assets of Lincs Wind Farm Limited, Race Bank Wind Farm Limited and Equinor New Energy Limited (Equinor New Energy Limited) on behalf of Scira Extension Limited and Dudgeon Extension Limited are sufficiently protected such that any effects on third party infrastructure are negated or reduced to a level sufficient to enable the Secretary of State to grant consent in accordance with paragraph 2.8.348 of NPS EN-3 if engaged.</p> <p>The Applicant and the Equinor IPs and the Orsted IPs remain fundamentally disagreed on the appropriateness of protective provisions covering wake effects. The Applicant refers to its submissions at section 10.9 in this regard.</p>
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13.4 Accordance with Policy and Conclusion

184. For the reasons summarised above, and set out in the Applicant’s examination submissions, the Applicant considers that the Draft DCO provides all necessary rights and powers for the delivery of the project subject to appropriate and suitable controls on those rights and powers which are well-precedented via previous made Orders, have been well evidenced in the course of examination and are in accordance with paragraph 4.1.16 of NPS EN-1. The Applicant considers that in areas of outstanding disagreements with Interested Parties, it is the Applicant’s drafting which should be preferred on the basis of the justification provided in Examination.

14 Development Consent Obligations

530. As noted in the SoCG with LCC (REP5-135), the Applicant is negotiating an Agreement under Section 106 of the Town and Country Planning Act 1990 to secure certain development consent obligations.
531. The development consent obligations secure various onshore mitigation and enhancements relating to the Project, comprising:
- A contribution towards a Landscape and Ecology Enhancement Fund (with an associated Terms of Reference for a steering group to manage and monitor the Fund) ;
 - A contribution towards the employment of an Environmental Compliance Officer;
 - A contribution towards the appointment of an Agricultural Specialist;
 - A contribution towards the Council's archaeological archive capacity; and
 - A contribution towards treasure acquisition (if found in the course of excavation works carried out in relation to the onshore transmission works).
532. These mitigations and enhancements were identified through the LCC LIR process (discussed elsewhere in these Closing Statements) and were reached following a process between parties and consideration of relevant policy.
533. It is proposed that the Section 106 Agreement will be secured over the site of the onshore substation. The Applicant is in the process of concluding its option agreement with the landowner, and the intention is for the draft Section 106 Agreement to be entered into by LCC, the landowner, and the Applicant.
534. The Applicant is endeavouring to complete the Section 106 Agreement prior to the close of Examination, which failing prior to the Secretary of State's decision. Should the Section 106 be completed prior to the close of Examination, the Applicant would propose to submit it and ask for it to be accepted out of deadline/as a late submission.
535. If the Section 106 Agreement is not completed prior to the application being determined, the Applicant would request that requirement 33 of the draft DCO be included in any DCO made by the Secretary of State. The requirement provides that no stage of the onshore transmission works may commence until an onshore mitigation and enhancement scheme, in accordance with the Outline Onshore Mitigation and Enhancement Principles document (document 8.25), has been submitted to and approved by LCC. The Onshore Mitigation and Enhancement Principles document outlines the onshore mitigation and enhancements which are intended to otherwise be secured in the Section 106 Agreement. This is very similar to the approach taken on the Awel y Mor and Rampion 2 DCO consent decisions. The wording of the Requirement, the Enhancement Principles and the Section 106 Agreement are all agreed as between the Applicant and LCC.

536. If the Section 106 Agreement is completed prior to the application being determined, the Applicant would request that Requirement 33 of the draft DCO is not included in any DCO made by the Secretary of State, as the relevant obligations will be secured in the Section 106 Agreement.

15 Conclusion

537. Section 104(2) of the Planning Act 2008 sets out the criteria against which the Secretary of State must determine an application for development consent unless certain exceptions apply. Absent the application of any of the exceptions set out in Section 104(4) – (8), Section 104(3) states that the Secretary of State must decide the application in accordance with any relevant NPS.
538. These Closing Statements has summarised key elements of the Application which the ExA and Secretary of State will require to consider when reporting on and determining the Application. The Applicant's case, as summarised in these Closing Statements and set out in full throughout the Application and submissions made prior to and into the Examination, confirms that when considered against relevant NPSs and other relevant criteria, the Secretary of State should grant consent for the Project, which seeks to deliver Critical National Priority Infrastructure for which there is an urgent need. The criteria discussed in these Closing Statements are as follows.

15.1 NPSs

539. Paragraph 4.1.3 of NPS EN-1 creates a presumption in favour of granting consent for applications for energy NSIPs, unless “any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused”. Paragraph 4.1.7 provides that for projects which qualify as CNP Infrastructure this presumption will outweigh the residual effects of a proposed NSIP in “...all but the most exceptional cases.”
540. The documentation submitted with the Application, and throughout Examination, and thoroughly tested through the Examination process demonstrates that any and all residual adverse effects of the Project could, by no means, properly be characterised as creating such an exceptional case as to be capable of outweighing the presumption in favour of granting this application.
541. The Planning Statement, PCD (as well as the ES and RIAA and derogation and case) demonstrate that the Project is consistent with, and supported by, the relevant NPSs considered as a whole, appropriate marine policy documents, and national and local planning policy.

15.1.1 Planning matters

542. Relevant impacts have been properly identified, mitigated, and controlled in relation to each of the overarching, onshore and offshore planning matters as part of the Applicant's assessment set out in its ES (and in the RIAA). Outstanding issues with Interested Parties have been narrowed and resolved where possible and outstanding areas of disagreement do not preclude the granting of development consent. Specifically, the residual impacts of the Project require to be considered in light of its CNP Infrastructure status. Against this backdrop, any residual impacts clearly do not outweigh the very substantial benefits it will bring nor the urgent need for its development in line with the policy presumption in favour of its development. None of the impacts are such that "specific and relevant" NPS policies "clearly indicate that consent should be refused".
543. As set out above in Sections 9 – 11, relevant national policy has been complied with in relation to the Applicant's consideration and assessment of impacts on each of the specific topic areas presented, and evidence has been presented and examined to demonstrate how the guidance within the NPSs support a decision to grant the DCO in the form sought. As a result, the Secretary of State can be satisfied that the Application is consistent with the NPSs.

15.2 Marine Policy Documents

544. As set out above, the "appropriate marine policy documents" which the Secretary of State must have regard to under S 104(2) of the Planning Act 2008 have been complied with, as set out in Sections 5 and 6 of the Applicant's PCD (REP4-090), throughout the Applicant's Planning Statement (APP-297) and relevant ES chapters.

15.3 LIR

545. The Secretary of State must have regard to the LIRs. However, the SOCGs between the Applicant and the relevant planning authorities demonstrate only one material disagreement between the Applicant and LCC, relating to impacts on BMV land. As set out in the Land Use, Geology and Ground Conditions section of these Closing Statements, the impacts on BMV land are not inconsistent or non compliant with NPS policy and cannot be considered to outweigh the presumption in favour of granting the Application.

15.4 HRA

546. The Applicant has submitted a RIAA to inform the Secretary of State's Appropriate Assessment under the Habitats Regulations. The Applicant has submitted a Derogation Case, setting out the justification for a derogation from the Habitats Regulations in relation to potential AEoI on the kittiwake feature of the FFC SPA, and setting out, on a without prejudice basis, the justification for a derogation in relation to potential AEoI on the guillemot and razorbill and assemblage features of the FFC SPA, the guillemot features of the Farne Islands SPA and the sandbank and biogenic reef features of the IDRBNR SAC, if the Secretary of State is unable to reach a conclusion of no adverse effect on integrity in relation to these sites. Schedule 22 of the draft DCO secures appropriate compensation measures for any AEoI, which measures are practically and financially deliverable, and legally enforceable.

15.5 Matters prescribed: dMLs

547. The draft DCO includes seven dMLs, and the Applicant has provided sufficient information to allow the Secretary of State to have regard to the matters specified in Regulation 3A of the 2010 Regulations when determining this application.

15.6 Matters prescribed: Cultural Heritage

548. The Applicant has also provided sufficient information relating to the Project's potential impacts on designated cultural heritage assets to allow the Secretary of State to have regard to the matters specified in Regulation 3 of the 2010 Regulations when determining this application.

15.7 Matters prescribed: Environmental Programme Convention on Biological Diversity

549. The Applicant has also provided sufficient information relating to the Project's potential impacts on biodiversity conservation etc to allow the Secretary of State to have regard to the matters specified in Regulation 7 of the 2010 Regulations when determining this application.

15.8 Compulsory Acquisition

550. The draft DCO includes compulsory acquisition powers (including temporary possession powers). The Applicant has demonstrated that there is a compelling case in the public interest for these powers to be included in any DCO made by the Secretary of State.

551. The draft DCO also includes compulsory powers in relation to statutory undertakers' land. The Applicant has demonstrated that the Secretary of State can be satisfied that the conditions in Sections 127 and 138 of the Planning Act 2008 have been met, and that any DCO can be made including Article 30, subject to the inclusion of Schedule 18.

552. The Order seeks compulsory powers in relation to land forming part of a common, and open space. The Applicant has demonstrated that the land, when burdened with the compulsory rights sought, will be no less advantageous than it was before, and that Special Parliamentary procedure is not required.

15.9 Overall

553. These Closing Statements summarise the Applicant's final position regarding the key issues raised in the Examination, making clear why the Applicant considers the Examining Authority should, on the basis of all of the evidence and decision making framework, recommend, and the Secretary of State should grant, development consent for the Project. The Applicant requests the Examining Authority to recommend and the Secretary of State to grant development consent for the Project and to make the DCO in accordance with the draft DCO submitted at this deadline 6.