

# **Norwich to Tilbury NSIP**

## **Colchester City Council's Responses to the ExA's Questions Number 2**

Colchester City Council (CCC) will repeat the relevant questions in bold and will respond to each below:

## **GEN 2.2 - Legal Agreements**

**Further to first written question (ExQ1) GEN 1.21, the applicant provided a table (appendix E [REP3-074]) outlining the legal agreements requested to date by local authorities and setting out its comments, including on whether (or not) such an agreement would meet the relevant tests. All local authorities are invited to provide: • further comments on appendix E [REP3-074], or if already done this, to signpost to the ExA where in the examination library your comments on such matters can be found. In particular, the ExA seeks comments from the local authorities on how they consider each of its requests would meet the relevant policy tests (including regulation 122 of the Community Infrastructure Levy Regulations 2010). The applicant is asked to provide: • an update to the table of the requests • a summary of any ongoing agreements with local authorities which are being progressed, with expected time periods for completion • an update to the document 'Consents and licences required under other legislation' as necessary to include such other forms of agreement • updates to SoCG with local authorities as necessary to reflect agreement or non-agreement on the need for such agreements**

CCC have seen a draft Section 106 agreement. In brief, the requests are:

- i. Biodiversity Net Gain
- ii. Tree Replacement Planting Programme
- iii. National Landscape Duty (section 85)
- iv. Location-specific Compensatory Measures
- v. Abnormal Indivisible Loads

CCC proposes that these requests should form a bilateral or multi-party S106 agreement or S111 agreement, or other such hybrid agreement known as a Deed of Obligation.

The Council considers that section 122(2) of the Community Infrastructure Levy Regulations 2010 and at paragraph 58 of the National Planning Policy Framework are the relevant policy tests, as below:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

Concerning the BNG schedule, CCC understands that the Applicant has voluntarily proposed this schedule (thereby necessary). This has been proposed as a Unilateral Undertaking; however, the Host Authorities believe that this should be a multi-party agreement and that approval should be sought and that mechanisms could be introduced in the agreement to avoid over-complication regarding decision-making. Recognising that BNG is not (as yet) a requirement for NSIPs to deliver, the Council considers that at least 10% BNG (but ideally more) should be sought if achievable to compensate for the adverse impacts experienced on the environment as a direct result of the construction of the proposed development (thereby directly related). The metric of 10% BNG is an established precedent for projects of equal and lesser scale (thereby in scale and kind).

The Tree Replacement Planting Programme has been proposed by the Applicant to replace any trees removed at a 3:1 ratio. The Council considers that vegetation removal and tree loss should follow the Mitigation Hierarchy, as identified in EN-1 (avoid, mitigate, compensate). CCC deems that the tree replacement planting programme represents compensatory measures (thereby necessary). As this schedule relates to replacing trees lost which must be removed if the proposed development is progressed, the Council considers this directly related to the proposed development (thereby directly related). The Council does not yet know how many trees will be removed and therefore any costing is subject to this confirmation, however, CCC supports the 3:1 proposal as forwarded by the Applicant (thereby in scale and kind).

The National Landscape Duty, as section 85 of the Countryside and Rights of Way Act 2000 (as amended) dictates, is the requirement to “seek to further the purpose” of the Area of Outstanding Natural Beauty (“AONB”). As the project will traverse through the Dedham Vale AONB, the Council considers that this is required (thereby necessary and directly related). The Council has proposed a cost schedule based on the Management Plan of the National Landscape (thereby in scale and kind), for which the Applicant has accepted as an approach.

CCC considers that the Applicant should endeavour to sign legal agreement in regard to location-specific compensatory measures in Essex as requested by ECC on behalf of all of the greater Essex host LPAs. CCC understands that discussions are underway with ECC to potentially deliver compensatory planting on ECC owned land across the County and CCC support this approach.

The Council also understands that the Applicant is seeking to agree resourcing for police escorts for Abnormal Indivisible Loads, however, the Council seeks to ensure that obligations such as to undertake Structural Surveys on proposed routes are secured (thereby necessary and directly related). This matter does not require financial compensation, rather protection for the Local Highway Authority (thereby in scale and kind).

## **GEN 2.4 - Report on interrelationship with other infrastructure projects**

The ExA notes that the latest cut-off date for other existing and approved developments in the cumulative assessment is currently 31 January 2026 (Environmental Statement (ES) Chapter 17 - Cumulative Effects - Response Update [REP4-163], see also question GEN 2.5 below). However, the final version of the interrelationship report [REP4-296] should include, as far as possible, the most up-to-date position relating to the progress of other approved and pending development proposals in a summary 'at a glance' document. The applicant is asked to:

- ensure its final interrelationship report to be submitted at deadline 7 is consistent with ES chapter 17 and [REP4-163]
- include an indication of the location of Tasway Energy Park (DCO 17) in table 2.1 of the next version of the report (the ExA notes that this proposal is not included in the plans due to the infancy of its design development) and, if available, an indication of its submission date to the Planning Inspectorate. All local authorities, and IPs who are listed in the interrelationship report, are asked to:
- Review the interrelationship report [REP4-296] and confirm if the updated position on approved and proposed developments is, to the best of your knowledge, accurate and to provide any further comments if you wish.

CCC would like to reiterate that the preferred options sites in the Regulation 18 Draft Plan (a new Local Plan for Colchester) have not been included but this has been noted previously.

Further to this it is noted that the site (NG Ref CO44) at Foxes Corner, CCC Ref: 250833 has a committee resolution to approve the subject to the signing of a Section 106 agreement.

## **DES 2.5 Approach to scenarios**

The ExA notes the updates to the progress of a number of alternative design scenarios as noted in [REP4-310], and that a number of revised plans and documents are expected to be submitted at deadline 5, however it remains unclear when a number of the other alternative scenarios are likely to be confirmed for a number of reasons, including the progress of third party planning applications.

- The applicant is asked to ensure that by deadline 7 those outstanding alternative scenarios which remain are fully reasoned and timescales given wherever possible for such matters to be resolved.
- The local authorities are asked to review the Approach to Scenarios document [REP4-310], clarify their understanding of the scenarios which are reliant on third party planning applications, and to make other comments on the document where relevant to their area.

The three relevant area in the CCC host area are:

Table 2.12 River Stour crossing west of Stratford St Mary (Section C)

Table 2.13 Black Brook north of Langham (Section C)

Table 2.14 Great Horkesley south of School Lane (west of Great Horkesley) (Section D)

All of these areas have been drawn with an excessively wide order limit to allow for the design flexibility set out in the supporting text. There is no reliance on further agreement nor can CC see impacts on third party planning applications of note.

Table 2.4 Flying Trade Group and Crown Quarry east and west of the A12 (Sections C and D) is being dealt with by Tendring DC in their response to this question which CCC have seen and clearly sets out the key risks around Scenario B.

CCC agree with the points TDC have raised, particularly around the lack of detail on the revised alignment, the uncertainty in environmental assessment (including LVIA and heritage impacts), and the potential implications for the Dedham Vale National Landscape. The emphasis on ensuring a robust and transparent assessment, rather than relying on flexibility or deliverability arguments, is especially important.

## **BIO 2.1 - Assessment of biodiversity deficit**

**In response to ExQ1 BIO 1.4 the applicant has stated that replacement planting and habitat creation is identified as embedded/ standard mitigation within the outline Landscape and Ecological Management Plan (outline LEMP). The applicant considers that with this in place there would be no ‘biodiversity deficit’. To applicant: However, the ExA notes that as indicated in image 4.1 of ES Chapter 4 [APP-130] the overall construction programme, for example, for the Dedham Vale National Landscape the enabling works through to the initial energisation would take almost 4 years. Using this as an example and noting that up to a 120 metre (m) swathe of vegetation would need to be removed for the proposed underground cabling (and with a further 50m either side being “potentially affected”) set out the worst-case scenario in time period from vegetation being removed to when you consider the replanted vegetation would reach a similar degree of maturity. Also, the applicant is requested to further explain its statement in response to BIO 1.4 that ES Chapter 8 [AS 026] has taken into account any short term temporary effects on ecological receptors – explain this with worked through examples, such as for hedgerow species and also for bats, to demonstrate how impacts on biodiversity have been assessed for this intervening period. To all local authorities and Wildlife Trusts: Set out your views on the potential for there to be biodiversity deficit and whether you consider this has been properly assessed in ES Chapter 8**

**and mitigated for by the applicant. Explain any outstanding concerns and what (if any) additional measures you would wish to see the applicant implement.**

### Ecology

There is a persistent assumption throughout the ES Chapter 8 that the planned reinstatement of impacted habitats will lead to an inevitable long-term negligible effect – both for the habitats and the species associated with them. Two problems with that assumption are:

1. It assumes that there will always be successful habitat reinstatement to an equivalent (or better) type and condition of habitat. New vegetation planting, be it trees, shrubs or grass mix, can have problems and setbacks. The 5-year management period proposed for the vegetation reinstatement efforts does not leave much scope for any failures that would need correction and care to assure safe establishment.
2. The impact assessments within the ES Chapter 8 are not transparent with respect to predicted residual impacts in the short and medium term. As stated before, within the ES Chapter 8, Table 8.23 (the Residual Effect column), does not ever clarify how long it is predicted to take for the magnitude of impact to degrade to a negligible level for the affected receptors. One could interpret from Table 8.23 that the application of mitigation will ultimately bring about a neutral outcome but miss recognising that there is a necessary period of recovery time which may be measurable in years. Providing transparency about the short – medium term impacts predictable for receptor species displaced from or otherwise denied previous resources, would enable a more inference-based examination of those assessments. That further clarity of argument would enable reviewers of the ES Chapter 8 to more informatively judge whether or not certain long-term impact assessments do seem reasonable to assess as neutral

### Green Infrastructure

CCC supports the concerns set out above and adds the following.

CCC considers that insufficient regard has been given to the temporal gap between habitat loss recovery and reinstatement, particularly in relation to ecological function and species use of habitats. While mitigation may deliver comparable habitats in the long term, the ES does not adequately assess the short- to medium-term deficit arising during establishment.

In practice, habitats such as hedgerows and tree lines are unlikely to provide equivalent ecological function (e.g. for commuting bats, nesting birds, and invertebrates) for a number of years, and in some cases decades. The ES does not clearly demonstrate how these interim effects on ecological receptors have been assessed or how significance has been attributed over this period.

It is reasonable to expect a minimum of 10+ years before hedgerows and tree lines begin to provide comparable structure and connectivity, with longer timescales required to reach mature condition.

CCC also notes that the linear and extensive nature of the works increases the likelihood of cumulative temporary disruption to habitat connectivity, particularly in sensitive landscapes. For example, the loss of linear features may fragment bat commuting routes and reduce foraging opportunities over multiple seasons; the ES does not clearly assess these interim effects or their significance. More widely, species reliant on habitat continuity may experience displacement, reduced resources, and increased predation during recovery.

CCC therefore considers that a short- to medium-term biodiversity deficit is likely, and that this has not been fully or transparently assessed within ES Chapter 8. Further clarity is required on recovery timescales, interim impacts on species, and measures to reduce temporal losses such as advanced planting, retention of key features where feasible, and longer-term management commitments. The proposed mitigation and management approach does not fully address the duration or extent of these interim effects.

While CCC acknowledges that long-term reinstatement may reduce impacts, the current assessment does not fully demonstrate that a biodiversity deficit would be avoided over the lifetime of the project when temporal effects are taken into account.

## **BIO 2.8 - Monitoring the effects on birds**

**In response to ExQ1 BIO 1.13 regarding the use of bird diverters the applicant in [REP3-074] states that ES Chapter 8 [AS-026] and the Habitat Regulations Assessment (HRA) Report [APP-082] predict no significant adverse effects on birds during operation of the proposed development either with or without mitigation and therefore additional monitoring or adaptive management is not considered necessary or proportionate. Do you agree with the applicant's comments in this regard, if not then please explain why and set out what additional monitoring and (if necessary) adaptive management you would wish to see secured.**

CCC acknowledges that the submitted ES Chapter 8 considered the issue with appropriate survey effort and reasonably concluded a negligible risk to the effect on birds. With respect to the route through Essex, CCC does not disagree with the NG/Arcadis assessment or their conclusions.

## **DCO G.2**

**DCO General 2 In light of the applicant's response to ExQ1 [REP3-074], question SET 1.5, and the Secretary of State's decision letter for The North Falls Offshore Wind Farm Project dated 14 May 2026, especially paragraphs 4.192 to 4.194 (inclusive), do you have any further comment in regard to the use of the term "where practicable" or any variant of that term.**

As set out in previously, the use of the term 'where practicable' is wholly unenforceable.

CCC has given some further thought to the use of 'where practicable' and would make the following comments:

First, the Applicant relies on a definition of "where practicable" accepted in the Sizewell C examination: that the action "should be done unless the degree of risk in a particular situation cannot be balanced against the time, trouble, cost and physical difficulty of taking measures to avoid the risk", and that "it would only be acceptable not to take the relevant step if there would not be a significant impact as a result, and therefore the risk would be low".

CCC considers that even taken at face value, that test would require, before each departure from a mitigation measure, an evidenced balancing exercise tied to the risk of a significant impact, and a record of that exercise. Nothing in the dDCO or in the OCoCP secures any such balancing exercise, evidences it, or makes it auditable.

If the Applicant therefore wishes to rely on the Sizewell C definition, then the Sizewell C definition needs to be (a) written into Article 2 of the dDCO as a defined term, and (b) accompanied by an enforceable procedural mechanism that delivers what the definition promises.

Second, the Applicant's explanations show that “where practicable” is doing different work in different places, which is itself the problem. Within the same response, “where practicable” is variously said to mean:

- a. “it may not be physically possible” (a technical-impossibility test);
- b. “we will look at whether it is appropriate or feasible” (an Applicant-judged discretion);
- c. “the landowner may have requirements/ask for something unreasonable” (a third party-driven exception);
- d. “key aspect is H&S” (a safety override);
- e. “detailed design has not occurred and therefore specific plant has not been identified” (an information-deficit point that should be resolved before discharge, not preserved as a permanent discretion); and
- f. “Project critical activities needing to take place” (a programme-priority override).

If a single phrase is being asked to carry six different meanings, it is by definition imprecise. Instead, a more precise phrase is needed for each situation.

Third, the Applicant's repeated formula “the rest of the paragraph explains what will happen if this is not possible” undermines the need for the phrase. If the surrounding text already specifies what happens when the measure is not possible, then either (i) “where practicable” is redundant (because the consequence is already secured) and should be deleted, leaving the measure as an unqualified obligation with a defined fallback, or (ii) “where practicable” is doing extra work over and above the specified fallback, in which case the Applicant should explain what that work is, and the LPA should have a role in policing it.

#### **DCO 2.S3 - Schedules 3, Requirement 4 (Construction Management Plans) 1 Complaints procedure under the Outline CoCP secured by Requirement 4**

**Thurrock Council in its deadline 4 submission [REP4-339], as well as a number of other County/ Local Authorities raises concerns in regard to the complaints management process. It considers the current complaints management process, as detailed in the updated outline CoCP [REP3-025] to be “...too basic.” It highlights that although it includes contact details and requires complaints to be logged, it is lacking in significant areas. These include, but are not limited to defined response times; defined escalation procedures, requirements related to ongoing communication with complainants; identifying persons/parties with clear responsibility for resolving issues; and**

**transparency through shared recording with the local authorities. The ExA requests: i) the applicant addresses these concerns raised and updates the complaints management process by incorporating them into a revised/updated complaints management process. The local authorities are to provide draft wording for a complaints management process it/they would be satisfied with.**

CCC understands that Braintree DC and Thurrock Council will be responding to this directly.

#### **DCO 2.S6 - Schedules 3, Requirement 4 (Construction Management Plan) 4 Noise and Vibration**

**Thurrock Council in its deadline 4 submission [REP4-347], along with other County/ Local Authorities, raises concerns in regard to the applicant's approach to noise and vibration monitoring, alleging it is not sufficiently developed and there is no clear or structured strategy for dealing with such matters. The Council highlights: there is no commitment to routine monitoring: no use of simple baseline checks like listening tests; no clear triggers for more detailed monitoring; and no defined thresholds for action or reporting requirements. The ExA requests the applicant to address these concerns raised and updates the outline CoCP to set out a clear and structured strategy regarding noise and vibration monitoring and complaints procedure. Local authorities are asked to collaborate and provide and agreed draft wording for the outline CoCP to set out a clear and structured strategy regarding noise and vibration monitoring and complaints procedure.**

The Council provide some wording below which could be added to the CoCP to address the inadequacies highlighted by Thurrock:

Monitoring of any noise complaints and reporting to the contractor for immediate investigation. Letters should be sent to sensitive receptors prior to undertaking of works to allow a route for complaints to be made, this will allow the contractor to act as soon as a concern is raised.

On receipt of a complaint, noise monitoring will be undertaken. Relevant noise monitoring equipment and measures will be implemented, which would be placed adjacent to the site boundary closest to the complainant's property. The action value/ threshold will be set in line with limits described in BS5228-1.

#### Noise threshold Limits

- Category A threshold LAeq,T Weekday Daytime (0700 – 1900) and Saturdays (0700 – 1300) - 65dB.
- Category A threshold Evening and Weekends – 55dB
- Night-time (2300 – 0700) – 45 dB

## Noise Trigger Levels

In order to ensure the works being undertaken are not adversely affecting nearby receptors, the trigger levels set out below will be implemented to notify the site team on the potential noise limit exceedances of the works:

<b>Trigger Level</b>	<b>Actions</b>
Below threshold	None
Equals threshold level or within less than 5 dB above the threshold	Review BPM currently used, implement temporary mitigation measures if not already in use.
Greater than or equal to 5dB above threshold.	Stop works and review primary cause of trigger, review and adjust mitigation.

### **DCO 2.S10 - Schedules 3, Requirement 7 (Construction Hours)**

The local authorities are maintaining their concerns in regard to this requirement, especially in terms of the core working hours of 07:00–19:00 on weekdays and 07:00–17:00 on Saturdays, Sundays and bank holidays, together with additional start-up and close-down activities outside these hours. The ExA notes the applicant's extensive response to ExQ1 [REP3-074] at question DCO 1.S10, especially at pages 210 and 211, where it states in relation to just removing Sundays or bank holidays/ other public holidays "Should these scenarios be modelled, it is anticipated that the energisation date on the baseline construction programme would remain largely unchanged." The ExA has noted all the justifications put forward by the applicant, as well as the applicant's final sentence in this question where it states "...removal of Sundays and/or bank holidays and public holidays from the core working hours would not represent a neutral change; rather, it would reduce flexibility and introduce unnecessary risk on the timely delivery of the project." The applicant is asked to model the scenarios of removing: a) just Sundays b) just bank and other public holidays c) Sundays and bank and other public holidays and then confirm whether the energisation date on the baseline construction programme would remain largely unchanged in relation to each of those scenarios. The ExA asks the local authorities to collaborate and provide a single form of wording for this requirement that they consider to be a reasonable compromise that collectively satisfies the concerns being raised in regard to this requirement, so this can assist in informing a discussion at ISH3 into the draft DCO. The wording submitted should include, but not be limited

**to, the core construction hours specified, start and close down activities and the operations that may take place outside of those core working hours.**

CCC maintains its position that the proposed construction hours are overly extensive and do not provide sufficient respite for local residents and communities and any other sensitive receptors, particularly in relation to weekend and extended working.

The proposed hours, including working on Sundays, Bank Holidays and extended Saturday periods, combined with start-up and close-down activities outside core periods, would materially increase the duration and intensity of disturbance experienced by residents. In the absence of clear and robust evidence demonstrating that noise effects outside standard construction hours would not give rise to significant adverse impacts, works including piling and deliveries should be restricted to “normal” construction hours as identified in BS 5228-1.

These hours reflect established good practice in balancing construction activity with the protection of residential amenity and align with the application of the ABC assessment methodology. In this context, the Council considers that the position put forward represents a reasonable and proportionate approach, particularly given that more restrictive hours are often applied to other forms of development.

Furthermore, BS 5228-1 identifies increased sensitivity during evenings, weekends and other non-standard working periods, which is consistent with wider health-based guidance, including that published by the World Health Organisation, emphasising the importance of reduced noise exposure during periods of rest and recuperation. The Council therefore considers that the proposed extension of working into these more sensitive periods would be likely to increase the risk of significant adverse effects, particularly where reliance is placed on Best Practicable Means, which are not fixed or guaranteed at the DCO stage.

The Council also notes an inconsistency within the Applicant’s justification. It is stated that the removal of Sunday and Bank Holiday working would be unlikely to materially affect the energisation date, whilst also suggesting that such restrictions would introduce a risk to delivery. In the absence of clear, quantified and robust evidence to support extended working hours, the Council considers that a precautionary approach should be adopted.

In this regard, the Council has reviewed the justification for extended construction hours in the Bramford to Twinstead DCO and notes that the acceptance of Sunday

and Bank Holiday working in that instance was based on clear and specific evidence demonstrating that such working formed a necessary part of the critical path for delivery of the project. The Examining Authority identified that certain construction activities were sequential and could not reasonably be interrupted, and that removing Sunday working would result in measurable delays to the programme, with implications for network delivery and compliance requirements.

The Council does not consider that a comparable justification has been provided for the Norwich to Tilbury project. Unlike Bramford to Twinstead, there is no clear evidence that extended working is necessary to avoid material delay, nor has the Applicant quantified the programme consequences of restricting working hours. As such, the Council considers that the approach taken in the Bramford to Twinstead DCO should be regarded as project-specific, reflecting particular construction and programme constraints, rather than establishing a general precedent for extended working hours.

On this basis, the Council considers that construction hours should align with standard BS 5228-1 working periods, with any departures from these hours subject to prior approval and supported by a robust, site-specific noise assessment demonstrating that relevant thresholds would not be exceeded at sensitive receptors. This would provide an appropriate and proportionate balance between project delivery and the protection of residential amenity.

In light of the above, if the ExA is minded to give greater flexibility that the Council has requested, CCC would suggest the following wording:

#### *Construction hours*

*(1) Subject to sub-paragraphs (2) - (5) work may only take place between the hours of 07.00 and 19.00 Monday to Friday and 08.00 and 13.00 on Saturdays, and may not occur on Sundays, bank holidays and other public holidays (the core working hours), unless otherwise approved by the relevant planning authority*

*(2) No piling operations may take place outside of the hours of 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturday with no piling operations taking place on Sunday and Bank Holidays.*

*(3) Subject to sub-paragraph (5), unless otherwise agreed with the local highway authority, no HGV deliveries may be made to site outside of the hours of 0700 to 1900 Monday to Friday and 0800 to 1300 on Saturdays.*

*(4) The following operations may take place outside the core working hours—*

*(a) trenchless crossing operations including at landfalls and beneath highways, railway lines, woodlands, nature reserves, Sites of Special Scientific Interest or watercourses;*

*(b) the installation and removal of conductors, pilot wires and associated protective netting across highways, railway lines or watercourses;*

*(c) the jointing of underground cables excluding cable cutting;*

*(d) the continuation of any work activity commenced during the core working hours to a point where they can securely and or safely be paused;*

*(e) any highway works requested by the highway authority to be undertaken on a Saturday or Sunday or outside the core working hours;*

*(f) the testing or commissioning of any electrical plant installed as part of the authorised development including undertaking of any identified corrective activities;*

*(g) the completion of works delayed or held up by severe weather conditions which disrupted or interrupted normal construction activities that the undertaker and its contractor agree forms the critical path for the accepted construction programme. In such cases, the undertaker must, as soon as practicable, notify the relevant planning authority of the disruption or interruption and explain why that work could not be completed within the core working hours referred to in sub-paragraph (1);*

*(h) activity necessary in the instance of an emergency where there is a risk to persons or property;*

*(i) security monitoring;*

*(j) non-intrusive surveys;*

*(k) intrusive surveys;*

*(l) oil processing of transformers or reactors in substation sites;*

*(m) delivery to the transmission works of abnormal loads and any highway works requested by the highway authority to be undertaken outside the core working hours; and*

*(n) mechanical and electrical installation works within buildings once erected and enclosed*

*(5) Works outside core working hours are subject to a 50dBA noise limit will apply at the nearest noise-sensitive receptors for start-up and close down activities up to one hour either side of the core working hours.*

*(6) The core working hours exclude:*

*(a) start up and close down activities up to 1 hour either side of the core working hours*

*(b) administrative and clerical activities up to 1 hours either side of the core working hours.*

*(7) The severe weather conditions referred to in sub-paragraph 3(g) means any weather which prevents work from taking place during the core working hours referred to in sub-paragraph (1) by reason of physical incapacity (whether for reasons of visibility, ground conditions, power availability, site access or otherwise) or being contrary to safe working practices.*

### **Start UP / Close Down**

start-up and close down activities” means general works that will not create an audible disturbance to local residents including but not restricted to—

(a) arrival and departure of workforce and staff at site and movement to and from places of work;

(b) general refuelling of plant;

(c) site inspections and safety checks;

(d) site meetings inspections and walkovers;

(e) site clean-up (site housekeeping that does not require the use of plant);

(f) general site maintenance; and

(g) low key maintenance and safety checking of plant and machinery.

### **DCO 2.S11 - Schedule 3 – Requirements 8 (Retention and removal of trees, woodland and hedgerows)**

**The ExA asked in ExQ1 DCO 1.S12 [PD-014] why arboricultural protection measures, such as arboricultural method statements, tree protection plans and root protection areas are not clearly defined and being secured prior to construction as part of this requirement. The applicant responded [REP3-074] “...The submission of an Arboricultural Method Statement is secured through**

**the outline LEMP and requirement 4 of the draft DCO. The outline LEMP states ‘All construction elements likely to impact on retained trees will be addressed within an Arboricultural Method Statement to be produced following detailed design and agreed with the relevant Local Planning Authorities prior to construction activity commencing. The Arboricultural Method Statement will include protection measures including tree protection fencing, as discussed in Section 7.3. and illustrated in a Tree Protection Plan’. Therefore, whilst the Arboricultural Method Statement is not secured through requirement 8, it is secured through requirement 4 and full details will be provided within the final LEMP(s) prior to the stage of works commencing.’. The ExA seeks comments from the local authorities on the applicant’s reply or, if you have already responded to this matter, signpost where you have provided a response on this matter.**

The removal and retention of trees and hedgerows as a result of this project being implemented is a sensitive issue. CCC therefore considers the Arboricultural Method Statement a critically important document providing reassurance on the detail regarding the trees and hedgerows to be removed, the trees and hedgerows to be retained and for those trees hedgerows being retained, the necessary tree / hedgerow protection measures.

In the current draft of the dDCO, CCC acknowledges the AMS forms part of and is secured through the OLEMP. However, given the breadth of the OLEMP, ECC is of the opinion that the current drafting does not provide sufficient clarity around whether the AMS is to be discharged under Requirement 4 or Requirement 8 nor does the current approach make it easy to monitor and track progress around discharge.

The discharge route for the AMS therefore needs to be clarified and CCC believes the AMS should be approved pursuant to Requirement 8 which relates to the retention and removal of trees, woodland and hedgerows. With this in mind, it is recommended the ExA give consideration to including reference at Part iii) of Requirement 8, to the need for the AMS to form part of any submission pursuant to Requirement 8.

### **DCO 2.S12 - Schedule 3 – Requirements 13 (Decommissioning)**

**Braintree DC, in its response to ISH2 Action Points [REP4-323], considers the DCO should include ‘...a clear obligation on the undertaker... to remove any equipment or infrastructure that becomes obsolete, in order to avoid unnecessary long-term impacts on landscape, heritage and residential**

amenity.” The ExA would seek clarification from Braintree DC or any local authority: i) how the relevant planning authority would determine equipment/ infrastructure has become obsolete; ii) whether the removal of such equipment/ infrastructure should be within a specified/ fixed period of time from it becoming obsolete, for example 6 months; and iii) whether some form of control over the decommissioning of such obsolete equipment/ infrastructure, such as a written scheme of decommissioning to be submitted to the relevant planning authority for its approval, should be included within the requirement. The ExA also asks the applicant to comment on this matter.

Braintree DC have confirmed they will respond to this comment.

#### **DCO 2.S13 Schedule 4 – (Discharge of Requirements) Schedule 4(3) - Fees**

The ExA notes the applicant’s responses to ExQ1 [REP3-074], question DCO1.S20 related to fees and asks the local authorities if they wish to raise anything in regard to this matter, especially: a) paragraph 3(1)(a) of Schedule 4 (discharge of requirements) to the Draft DCO already providing for the application fee for the discharge of conditions to be such fee as is prescribed under the relevant regulations and the drafting in paragraph 3(1)(b) providing for an alternative figure or arrangement that would apply in the absence of there being a prescribed fee) the term "per request" having the same meaning as in the Town and Country Planning regime, meaning that the fee would be per application for consent (i.e. more than one consent could be sought in one application) and not for each individual discharge of requirement or consent contained in an application for approval. It is noted the applicant has used the term ‘per request’, which as far as the ExA can see is not used in the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012. The term ‘Each Request’ is used. The ExA invites all local authorities to comment on this should they wish.

Noting the level of work involved, it is clear to CCC that the fee should be ‘each request’ to avoid one small fee for multiple requirements. The latter would result in a significant burden on already stretched LPA’s.

#### **HE 2.13 - Updated version of the outline AMS/ outline WSI**

The ExA is aware that, as referenced by the applicant in [REP4-298] an updated version of the outline AMS/ outline WSI [APP-328] is due to be submitted at deadline 5. However, the applicant has indicated that this updated document would be shared with the local authorities for review at deadline 4. Please provide any initial views (and without prejudice to any formal comments you

**may wish to make on the submitted version at deadline 6) on the updated version of the outline AMS/ outline WSI that you might have.**

CCC understands that comments from ECC on the revised OAMS/OWSI have been provided directly to the Applicant (as requested) to enable them to make the required changes before the document is submitted at deadline 6. The main issues are summarised here:

A main point of disagreement is with the sudden inclusion of mitigation areas within the revised OWSI. The agreement of mitigation areas cannot be concluded until full reporting has been completed on all evaluation areas and the full reports reviewed by the local authority. This is not the case for many of the sites that have been listed as requiring mitigation and only interim reports are available to review, this is not sufficient evidence on which to determine mitigation. Details of archaeological mitigation areas should be provided post consent in the Detailed Written Schemes of Investigations and agreed with the local planning authority and Historic England where relevant.

It was requested that the areas that remain to be evaluated are clearly illustrated within the OWSI as a figure. Figure 1 includes the locations of completed geophysical survey and archaeological trial trenching along the whole route. Figure 1 was requested to identify the location of the geophysical and archaeological trial trenching areas that need to be completed in order to provide a comprehensive evaluation of the areas where there may be impact on archaeological remains. An indicative trial trench plan should have been included, and it should also indicate areas where geoarchaeological evaluation may be required to complete the geoarchaeological and paleoenvironmental assessment of the scheme.

Previous comments have not been fully addressed on the sections covering geoarchaeological and paleoenvironmental assessment:

5.3.22 Geoarchaeological and palaeolenvIRONMENTAL assessment. This section fails to make it clear if there is potential for any other areas of the route that have not undergone GI monitoring to have an impact on geoarchaeological or paleoenvironmental deposits. This will not just be restricted to river valleys. The GI monitoring (Appendix 11.6) covered all river valleys and an area of Tilbury in its assessment. However, Tendring and Colchester also contain sediments of high geoarchaeological potential. Tendring contains former Thames terrace sediments which could include Palaeolithic archaeological remains and Pleistocene floral and faunal remains of high significance due to age and rarity. In Braintree District

lacustrine sediments of high geoarchaeological potential are recorded near Kelvedon/Feering. Similar deposits recorded at Marks Tey in Colchester have been identified as having high potential for containing palaeoenvironmental information. In Kelvedon these deposits have been recorded at depths of 1.2m which means they may be impacted by pylon bases.

The sections covering geoarchaeological assessment still lack clear understanding of what will actually be carried out as part of the geoarchaeological assessment. A clear statement on what further evaluation will take place is required including evaluation in areas of impact that have not yet been assessed. At present the only method proposed for mitigation of geoarchaeological and palaeoenvironmental remains are boreholes. It is possible that there may be more appropriate mitigation strategies, such as test pits or trenches, specifically in areas where early prehistoric remains may also be present.

#### **LUS 2.4 - Green Belt**

**With reference to paragraph 5.11.38 of NPS-EN1 can the applicant and local authorities identify any Local Green Spaces that have been designated in Local Plans that would enjoy the same protection as Green Belt through which the proposed development would pass, and confirm whether these areas should be given the same protection as green belt in the consideration of this application. If not please explain your reasoning.**

The following Local Green Spaces are designated in neighbourhood plans, with justification included in the relevant neighbourhood plan:

- Lorkin Daniell Field, West Bergholt Neighbourhood Plan
- Poors Land, West Bergholt Neighbourhood Plan
- Marks Tey Parish Council Recreation Ground, Marks Tey Neighbourhood Plan
- Colne Park Estate Play Area and Recreation Ground, Marks Tey Neighbourhood Plan
- Pond and seating area by Little Tey Church, Marks Tey Neighbourhood Plan

The proposed development does not appear to directly pass through these sites, however.

#### **LV 2.4 - Link pillars**

**The ExA are considering how the siting and detailed design of the link pillars and compounds are secured and approved by the relevant discharging authority, bearing in mind requirement 12 relates only to buildings. a) The applicant is asked to provide an appropriate form of wording in the draft DCO and / or control documents. This should include (but not limited to) siting, colour, appearance, compound size, surface treatment, fencing appearance and dimensions, and maintenance access. b) Do the relevant discharging authorities have any views on how detailed design matters should be controlled and discharged?**

Link pillars - CCC are not mentioned in the list, but we do have significant sections of undergrounding and therefore link pillars.

CCC considers that the detailed design matters for the link pillars should be submitted to and approved by the relevant discharging authority, secured by a Requirement (as drafted below):

#### 12A. Design of link pillars

1. No stage of the authorised development may commence until the design details of the link pillars have been submitted to and approved by the relevant planning authority.
2. In this requirement, the design details of the link pillars includes, but is not limited to, siting, colour, appearance, compound size, surface treatment, fencing appearance and dimensions, and maintenance access details.
3. The authorised development must be carried out in accordance with the approved design details of the link pillars.

CCC further considers that the structures should be of a receding colour which blends with the environment and that screen planting is required to embed the structures and associated fencing into the surroundings and to reduce the adverse visual effects

#### **LV 2.16 - Mitigation and compensation**

**Point 8.2e [REP4-302] states that the applicant considers it has provided sufficient mitigation and that the residual impacts are vastly and substantially outweighed by the public benefits of the proposed development, and that consequently further compensation for landscape and visual effects would be disproportionate. The local authorities, particularly Suffolk County Council, are asked to provide views on this statement, referring to the Bramford to Twinstead examination report where relevant. Any other IP may also respond if they wish.**

While acknowledging the Bramford to Twinstead examination report, CCC would refer to the 2024 version of NPS EN-1, which is the version against which this project falls to be assessed, which makes clear that Applicants for CNP infrastructure should “demonstrate that all residual impacts are those that cannot be avoided, reduced or mitigated” and that they should “set out how residual impacts will be compensated for as far as possible” (para 4.2.11-12). That is reinforced by paragraph 4.3.4 which again requires the Applicant to “show how any likely significant negative effects would be avoided, reduced, mitigated or compensated for”. The same points are reiterated in paragraph 2.1.6 of EN-5. It is considered therefore that compensation is an inherent part of the mitigation hierarchy which needs to be applied to the Project.

The Council acknowledges that paragraph 4.2.25 of the 2025 version of EN-1 (which is a material consideration) states that “compensation, by definition, does not reduce an adverse effect resulting from a development”, but it does still go on to confirm that “applicants should set out how residual impacts will be compensated for as far as possible”, so there is no significant shift from the position under the 2024 version of EN-1.

It is accepted that the presence of the projects overhead powerlines cannot be fully mitigated, and there will be a residual impact (which will fall to be weighed in the overall planning balance against the public benefits of the project). Therefore a case exists for a strategic landscape compensation package to offset harm as far as possible in line with the mitigation hierarchy consistent with NPS-EN1.

To this end, CCC note that ECC on behalf of CCC and the other Essex authorities, have been in discussion with the Applicant looking at ways in which this landscape and visual compensation could be linked to the adopted Local Nature Recovery Strategy and delivered at a strategic level in addition to any replacement or mitigation planting. This approach is the subject of ongoing discussions with the Applicant and we hope this will be reflected in at draft Section 106 agreement.

ENDS.