



# MORGAN AND MORECAMBE OFFSHORE WIND FARMS: TRANSMISSION ASSETS

## Section 106 Memorandum



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**Prepared by:**

**Burges Salmon and CMS**

**Prepared for:**

**Morgan Offshore Wind Limited,  
Morecambe Offshore Windfarm Ltd**

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## Glossary

Term	Meaning
400 kV grid connection cables	Cables that will connect the proposed onshore substations to the existing National Grid Penwortham substation.
400 kV grid connection cable corridor	The corridor within which the 400 kV grid connection cables will be located.
Applicants	Morgan Offshore Wind Limited (Morgan OWL) and Morecambe Offshore Windfarm Ltd (Morecambe OWL).
Biodiversity benefit	<p>An approach to development that leaves biodiversity in a better state than before. Where a development has an impact on biodiversity, developers are encouraged to provide an increase in appropriate natural habitat and ecological features over and above that being affected.</p> <p>For the Transmission Assets, biodiversity benefit will be delivered within identified biodiversity benefit areas within the Onshore Order Limits. Further qualitative benefits to biodiversity are proposed via potential collaboration with stakeholders and local groups, contributing to existing plans and programmes, both within and outside the Order Limits.</p>
Code of Construction Practice	A document detailing the overarching principles of construction, contractor protocols, construction-related environmental management measures, pollution prevention measures, the selection of appropriate construction techniques and monitoring processes.
Commitment	<p>This term is used interchangeably with mitigation and enhancement measures. The purpose of commitments is to avoid, prevent, reduce or, if possible, offset significant adverse environmental effects. Primary and tertiary commitments are taken into account and embedded within the assessment set out in the ES.</p>
Construction Traffic Management Plan	A document detailing the construction traffic routes for heavy goods vehicles and personnel travel, protocols for delivery of Abnormal Indivisible Loads to site, measures for road cleaning and sustainable site travel measures.
Design envelope	A description of the range of possible elements and parameters that make up the Transmission Assets options under consideration, as set out in detail in Volume 1, Chapter 3: Project Description. This envelope is used to define the Transmission Assets for EIA purposes when the exact engineering parameters are not yet known. This is also referred to as the Maximum Design Scenario or Rochdale Envelope approach.
Development Consent Order	An order made under the Planning Act 2008, as amended, granting development consent.
Direct pipe	A cable installation technique which involves the use of a mini (or micro) tunnel boring machine and a hydraulic (or other) thruster rig to directly install a steel pipe between two points.
Environmental Impact Assessment	The process of identifying and assessing the significant effects likely to arise from a project. This requires consideration of the likely changes to the environment, where these arise as a consequence of a project, through comparison with the existing and projected future baseline conditions.

Term	Meaning
Environmental Statement	The document presenting the results of the Environmental Impact Assessment process.
Evidence Plan Process	A voluntary consultation process with specialist stakeholders to agree the approach to, and information to support, the EIA and Habitats Regulations Assessment processes for certain topics.
Generation Assets	The generation assets associated with the Morgan Offshore Wind Project and the Morecambe Offshore Windfarm include the offshore wind turbines, inter-array cables, offshore substation platforms and platform link (interconnector) cables to connect offshore substations.
Intertidal area	The area between Mean High Water Springs and Mean Low Water Springs.
Intertidal Infrastructure Area	The temporary and permanent areas between MLWS and MHWS.
Landfall	The area in which the offshore export cables make landfall (come on shore) and the transitional area between the offshore cabling and the onshore cabling. This term applies to the entire landfall area at Lytham St. Annes between Mean Low Water Springs and the transition joint bay inclusive of all construction works, including the offshore and onshore cable routes, intertidal working area and landfall compound(s).
Local Authority	A body empowered by law to exercise various statutory functions for a particular area of the United Kingdom. This includes County Councils, District Councils and County Borough Councils.
Local Highway Authority	A body responsible for the public highways in a particular area of England and Wales, as defined in the Highways Act 1980.
Main rivers	The term used to describe a watercourse designated as a Main River under the Water Resources Act 1991 and shown on the Main River Map. These are usually larger rivers or streams and are managed by the Environment Agency.
Marine licence	The Marine and Coastal Access Act 2009 requires a marine licence to be obtained for licensable marine activities. Section 149A of the Planning Act 2008 allows an applicant for to apply for 'deemed marine licences' in English waters as part of the development consent process
Maximum design scenario	The realistic worst case scenario, selected on a topic-specific and impact specific basis, from a range of potential parameters for the Transmission Assets.
Mean High Water Springs	The height of mean high water during spring tides in a year.
Mean Low Water Springs	The height of mean low water during spring tides in a year.
Micro-tunnel / micro-tunnelling	A tunnelling technique involving the use of a hydraulic (or other) jacking rig and a mini (or micro) tunnel boring machine to install a concrete tunnel between two points.
Mitigation measures	This term is used interchangeably with Commitments. The purpose of such measures is to avoid, prevent, reduce or, if possible, offset significant adverse environmental effects.
Morecambe Offshore Windfarm: Generation Assets	The offshore generation assets and associated activities for the Morecambe Offshore Windfarm.

Term	Meaning
Morecambe Offshore Windfarm: Transmission Assets	The offshore export cables, landfall, and onshore infrastructure required to connect the Morecambe Offshore Windfarm to the National Grid.
Morecambe OWL	Morecambe Offshore Windfarm Limited is owned by Copenhagen Infrastructure Partners' (CIP) fifth flagship fund, Copenhagen Infrastructure V (CI V).
Morgan and Morecambe Offshore Wind Farms: Transmission Assets	<p>The offshore export cables, landfall, and onshore infrastructure for the Morgan Offshore Wind Project and the Morecambe Offshore Windfarm. This includes the offshore export cables, landfall site, onshore export cables, onshore substations, 400 kV grid connection cables and associated grid connection infrastructure such as circuit breaker compounds.</p> <p>Also referred to in this report as the Transmission Assets, for ease of reading.</p>
Morgan Offshore Wind Project: Generation Assets	The offshore generation assets and associated activities for the Morgan Offshore Wind Project.
Morgan Offshore Wind Project: Transmission Assets	The offshore export cables, landfall and onshore infrastructure required to connect the Morgan Offshore Wind Project to the National Grid.
Morgan OWL	Morgan Offshore Wind Limited is a joint venture between JERA Nex bp (JNbp) and Energie Baden-Württemberg AG (EnBW).
National Grid Penwortham substation	The existing National Grid substation at Penwortham, Lancashire.
National Policy Statement(s)	The current national policy statements published by the Department for Energy and Net Zero in 2023 and adopted in 2024.
Offshore booster station	A fixed structure located along the offshore export cable route, containing electrical equipment to ensure bulk wind farm capacity can be fully transmitted to the onshore substations.
Offshore substation platform(s)	A fixed structure located within the wind farm sites, containing electrical equipment to aggregate the power from the wind turbine generators and convert it into a more suitable form for export to shore.
Offshore export cables	The cables which would bring electricity from the Generation Assets to the landfall.
Offshore export cable corridor	The corridor within which the offshore export cables will be located.
Offshore Permanent Infrastructure Area	The area within the Transmission Assets Offshore Order Limits (up to MLWS) where the permanent offshore electrical infrastructure (i.e. offshore export cables) will be located.
Offshore Order Limits	See Transmission Assets Order Limits: Offshore (below).
Offshore substation platform(s)	A fixed structure located within the wind farm sites, containing electrical equipment to aggregate the power from the wind turbine generators and convert it into a more suitable form for export to shore.
Onshore export cables	The cables which would bring electricity from the landfall to the onshore substations.
Onshore export cable corridor	The corridor within which the onshore export cables will be located.



Term	Meaning
Onshore Infrastructure Area	The area within the Transmission Assets Order Limits landward of MHWS. Comprising the offshore export cable corridor from MHWS to the transition joint bay, onshore export cable corridor, onshore substations and 400 kV grid connection cable corridor, and associated temporary and permanent infrastructure including temporary and permanent compound areas and accesses. Those parts of the Transmission Assets Order Limits proposed only for ecological mitigation and/or biodiversity benefit are excluded from this area.
Onshore Order Limits	See Transmission Assets Order Limits: Onshore (below).
Onshore substations	The onshore substations will include a substation for the Morgan Offshore Wind Project: Transmission Assets and a substation for the Morecambe Offshore Windfarm: Transmission Assets. These will each comprise a compound containing the electrical components for transforming the power supplied from the generation assets to 400 kV and to adjust the power quality and power factor, as required to meet the UK Grid Code for supply to the National Grid.
Preliminary Environmental Information Report	A report that provides preliminary environmental information in accordance with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. This is information that enables consultees to understand the likely significant environmental effects of a project, and which helps to inform consultation responses.
Renewable energy	Energy from a source that is not depleted when used, such as wind or solar power.
Scour protection	Protective materials to avoid sediment being eroded away from the base of the foundations due to the flow of water.
Substation	Part of an electrical transmission and distribution system. Substations transform voltage from high to low, or the reverse by means of electrical transformers.
The Secretary of State for Energy Security and Net Zero	The decision maker with regards to the application for development consent for the Transmission Assets.
Transmission Assets	See Morgan and Morecambe Offshore Wind Farms: Transmission Assets (above).
Transmission Assets Order Limits	The area within which all components of the Transmission Assets will be located, including areas required on a temporary basis during construction and/or decommissioning (such as construction compounds).
Transmission Assets Order Limits: Offshore	The area within which all components of the Transmission Assets seaward of Mean Low Water Springs will be located, including areas required on a temporary basis during construction and/or decommissioning.  Also referred to in this report as the Offshore Order Limits, for ease of reading.
Transmission Assets Order Limits: Onshore	The area within which all components of the Transmission Assets landward of Mean High Water Springs will be located, including areas required on a temporary basis during construction and/or decommissioning (such as construction compounds).  Also referred to in this report as the Onshore Order Limits, for ease of reading.

## Acronyms

Acronym	Meaning
AIS	Air Insulated Switchgear
AOD	Above Ordnance Datum
BCA	Bilateral Grid Connection Agreement
CoCP	Code of Construction Practice
CoT	Project Commitment
CBRA	Cable Burial Risk Assessment
CfD	Contracts for Difference
CMS	Construction Method Statement
CSIP	Cable Specification and Installation Plan
CTMP	Construction Traffic Management Plan
DCO	Development Consent Order
DECC	Department of Energy and Climate Change
Defra	Department for Environment, Food and Rural Affairs
DESNZ	Department for Energy Security & Net Zero
dML	Deemed Marine Licence
EnBW	Energie Baden-Württemberg AG
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
EPP	Evidence Plan Process
ES	Environmental Statement
EWG	Expert Working Group
GIS	Gas Insulated Switchgear
HDD	Horizontal Directional Drilling
HGV	Heavy goods vehicle
HNDR	Holistic Network Design Review
HVAC	High Voltage Alternating Current
IALA	International Association of Marine Aids to Navigation and Lighthouse Authorities
IAQM	Institute of Air Quality Management
LAT	Lowest Astronomical Tide
MCA	Maritime and Coastguard Agency
MCZ	Marine Conservation Zone
MDS	Maximum Design Scenario



Acronym	Meaning
MHWS	Mean High Water Springs
MLWS	Mean Low Water Springs
MMO	Marine Management Organisation
MPS	Marine Policy Statement
MTBM	Mini (or micro) tunnel boring machine
NGESO	National Grid Electricity System Operator
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
O&M	Operation and Maintenance
OSP	Offshore Substation Platform
OTNR	Offshore Transmission Network Review
PDE	Project Design Envelope
PEIR	Preliminary Environmental Information Report
PPP	Pollution Prevention Plan
PRoW	Public rights of way
SAC	Special Areas of Conservation
SAR	Search and Rescue
SPA	Special Protection Area
SNCBs	Statutory Nature Conservation Bodies
SSSI	Sit of Special Scientific Interest
SWMP	Site Waste Management Plan
TEP	Technical Engagement Plan
TJB	Transition Joint Bay
UK	United Kingdom
UXO	Unexploded Ordnance
WSI	Written scheme of investigation

## Units

Unit	Description
%	Percentage
dB	Decibels
Kg	Kilogram
kHz	Kilohertz

Unit	Description
KJ	Kilojoules
km	Kilometres
km <sup>2</sup>	Kilometres squared
kV	Kilovolt
m	Metres
m <sup>2</sup>	Metres squared
m <sup>3</sup>	Metres cubed
nm	Nautical mile
μPa	micropascal

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# 1 Executive Summary

- 1.1.1.1 The Applicants are committed to mitigating the temporary impact that they have identified at Blackpool Road Recreation Ground (the Recreation Ground) during construction of the Transmission Assets. They have shared a draft s106 agreement (the s106 agreement) with Fylde Borough Council (the Council) and Lytham Town Trust (the Trust). They have also shared a Deed of Indemnity (for the purposes of the Trust as freehold owner of the Recreation Ground).
- 1.1.1.2 By way of executive summary, the agreement in its current draft form, includes contributions to mitigate the construction impacts and support St Anne's Football Club (the Club) to manage the temporary disruption from the construction works. The current version of the s106 agreement includes drafting or placeholders for the mitigations listed below, noting that the exact costs and limbs of mitigation are still under discussion as they are subject to provision of further details and key costs information from the Council before these can be finalised and committed to. These anticipated mitigations are:
- a) Promotion of the Club;
  - b) Drainage and re-seeding of the pitches surrounding the works which may be subject to greater wear and tear as a result of increased use;
  - c) A potential reduction in membership subsidies for players during construction;
  - d) Loss of profits should the Club's summer tournament not take place, or take place in a reduced capacity;
  - e) Alternative transport arrangements (depending on where alternative pitches are located);
  - f) Loss of profits to the café which operates at the Recreation Ground; and
  - g) Hiring of alternative pitch locations (where possible) and/or laying out of pitches on Council owned land, plus associated costs as detailed below.
- 1.1.1.3 The agreement also requires compliance with a restoration specification, such that the Applicants will be responsible for the remedy of any defects arising within a specified period post construction, and reimbursing the Council should they need to remedy any of these defects during that period themselves.
- 1.1.1.4 Regarding point 1.1.1.2 (g) above, the s106 agreement is drafted to ensure that, if the Council is unable to locate enough (or any) alternative pitches for hire (which is a concern that has been raised during discussions with the Council), an alternative option is available.
- 1.1.1.5 The laying out of pitches would be on Council owned land outside of the Order Limits (item (g) above) where possible, or elsewhere if the Council cannot locate a suitable location within council owned land.

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This obligation would be on the Council to carry out the laying out or organise the laying out of the pitches, with the Applicants covering the cost of this. The Council, alongside the Club, have suggested potential locations to the Applicants and these are currently under discussion. This note also details the engagement had to date with the Council regarding the football pitches.

- 1.1.1.6 With regards to the hiring of alternative pitches (item (g) above), this obligation would also be on the Council to organise (again with the Applicants covering the cost), who may choose to liaise with the Club to locate suitable pitches. The Applicants believe it is appropriate that this obligation lies with the Council as the party with the most knowledge of the local area and the needs of the Club.
- 1.1.1.7 The s106 agreement contains detailed notice provisions which ensure that the Council will have sufficient time to book alternative pitches and/or lay out pitches.
- 1.1.1.8 The mechanisms for payment of the various financial contributions and how responsibility for this is split between Morgan OWL and Morecambe OWL is set out in more detail at section 4 below. The s106 agreement has been drafted to ensure that the Council is in receipt of the relevant sums and can secure the relevant football pitches in advance of the impacts on the Recreation Ground occurring, so that they are in a position to carry out their obligations under the s106 agreement and thereby mitigate the impacts on the Recreation Ground.
- 1.1.1.9 All reasonably and properly incurred legal costs of both the Council and the Trust are covered as part of the s106 agreement and Deed of Indemnity.
- 1.1.1.10 An update on negotiations is provided at section 3 and Annex A below, which sets out progress made between the parties and section 10 which notes the additional drafting made to the s106 agreement.
- 1.1.1.11 Minor clarificatory updates have also been made to this explanatory memorandum at Deadline 7 where necessary.

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## 2 Introduction and reason for entering into the agreement

- 2.1.1.1 This memo has been prepared to aid the Examining Authority's understanding of the draft s106 agreement (the Agreement) submitted into the Examination.
- 2.1.1.2 Table 6.14 of Volume 3, Chapter 6: Land use and recreation (APP-104) outlines that the Recreation Ground is an area of designated open space associated with Blackpool Road Playing Field and Recreation Ground. The playing field is used by the Club<sup>1</sup>. As noted in paragraph 1.3.1.6 of REP1-041, the total active construction duration of works at the Recreation Ground will last for a maximum of 5 months in total for both projects, during which the length of the working construction corridor between the entry and exit pits for the trenchless cable installation will be fenced off for public safety. This will impact the Club's ability to use the football pitches at the Recreation Ground.
- 2.1.1.3 In September 2024, the Applicants met with the Council and the Club to discuss the management of open space at the Recreation Ground. The following key items were discussed:
- 2.1.1.4 The current usage of the Recreation Ground, including requirements of relevant stakeholders;
- the potential impacts of the Transmission Assets on the Recreation Ground; and
  - the possible management of impacts of the Transmission Assets at the Recreation Ground
- 2.1.1.5 Responses received during this technical engagement meeting were subsequently used to inform relevant sections of the ES and supporting application documentation.
- 2.1.1.6 Please refer to section 1.5 of REP1-041 for a summary of the assessment of effects of these works.
- 2.1.1.7 The Applicants made a commitment (Volume 1, Annex 5.3 of the Environmental Statement: Commitments Register (REP6-044)) – CoT124- that the Applicants will secure mitigation for the construction activities at the Recreation Ground via a separate agreement with the Council. The Applicants therefore intend to enter into an agreement pursuant to Section 106 of the Town and Country Planning Act 1990 (the 1990 Act) and Section 111 of the Local Government Act 1972 (the 1972 Act) with the Council to secure the mitigation required for the construction activities at the Recreation Ground.

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(<sup>1</sup>) This explanatory memorandum previously referred to the skatepark in the easter part of the Recreation Ground, however, the Council has since confirmed that this has been removed and not replaced.

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## 3 Background of Discussions with the Council

- 3.1.1.1 Having kickstarted engagement in September 2024, the Applicants have had several meetings with the Council to discuss the s106 agreement process and the mitigations required. Full details are set out in Appendix A.

## 4 Structure of Agreement

- 4.1.1.1 The Applicants have taken the approach of preparing one draft s106 agreement, with a view to ultimately entering into mirrored, bilateral agreements i.e. Morecambe OWL will enter into a s106 Agreement with the Council and landowner and Morgan OWL will do the same. The progression of negotiations between the Applicants and the Council will continue using the Morgan OWL s106 agreement and a Morecambe s106 agreement will be prepared once this has been agreed. This avoids the need to twin track the agreements, when the terms of each agreement will be identical.
- 4.1.1.2 In particular, this approach is considered appropriate as it is possible that only one project will lay cables through the Recreation Ground, given the electrical and financial independence of each project.
- 4.1.1.3 For the purposes of this note, reference is made to the 'Developer' to avoid the need to use 'Morgan/Morecambe as relevant' throughout.

## 5 Content

- 5.1.1.1 This memo does not go into the detail of each clause, especially those points which are standard and/or are 'boilerplate' clauses for a s106 agreement. The Applicants have, where possible, used the standard clauses from the Council's template s106 agreement, in an effort to minimise points of negotiation.
- 5.1.1.2 **Parties**
- (a) Lytham Town Trust Limited as freehold owner of the affected site (as will be shown outlined red on a plan appended to the s106 agreement), is required to be a party to this Agreement, in order for the Agreement to bind the land, under Section 106 of the Town and Country Planning Act 1990. The Applicants have prepared separate, bilateral deeds of indemnity to be entered into with the Trust to indemnify the Trust against any liability arising from the s106 Agreement.
  - (b) The Council are a party to the Agreement as both the relevant planning authority of the affected Site, and as they have a leasehold interest in the Site.
  - (c) Morgan OWL or Morecambe OWL.
- 5.1.1.3 **Definitions**
- (a) There is a definition of Site, which will be aligned with the titles and work numbers as set out in Schedule 1. See section 6 below.

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- (b) The definitions include various commuted sums which may be payable by the Developer. These include:
- (i) Football Pitches Commuted Sum- this sum relates to the cost of hiring football pitches for the benefit of the Club.
  - (ii) Football Pitches Replacement Sum- this sum relates to the costs for laying out football pitches, where hire of existing pitches is not possible.
  - (iii) There are also definitions for all payments set out in the executive summary. These are all subject to dual definitions, one 'concurrent' and one 'sequential'. The concurrent version for each commuted sum represents 50% of the sum payable under the sequential equivalent. This is on that basis that, where the works at the Recreation Ground are undertaken concurrently by the projects, the payments by each of Morgan OWL and Morecambe OWL would be triggered at the same time. Meanwhile, in a sequential (or in-isolation) construction scenario, a full payment would be made by the relevant project, to ensure the Council is provided with sufficient funds. Together, these payments are defined as the Concurrent Financial Contributions and Sequential Financial Contributions. These payments are separate to those at (i) and (ii) above.

Payments at (i) and (ii) are to be calculated in accordance with the formulas in the Third Schedule.

All of the payments under the Agreement shall be index linked.

See sections 7 and 9 below for detail on what payments are made and when.

- (c) The "Commencement of Development" definition is aligned with the definition in the draft DCO and is limited to those work numbers associated with the works at the Site (and any associated development), as comprised within the definition Morgan Recreation Ground Works. As explained at sections 7 and 9 of this document, the payments due under this Agreement must be paid in advance of Commencement of Development, in order that the mitigation measures can be secured in advance of the works.
- (d) Construction scenarios
- (i) The Applicants have not defined the construction scenarios in the same way as they have done for the purposes of the Environmental Impact Assessment. This is to ensure that in all cases, the impacts on the Recreation Ground are appropriately mitigated.
  - (ii) Concurrent construction will be where Morgan OWL and Morecambe OWL commence development at the Site at the same time.



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- (iii) Sequential construction will be where Morgan OWL commences development at the Site and Morecambe OWL commences development at the Site at any time following Morgan OWL's commencement of development (or vice versa).
  - (iv) In-isolation construction is where only Morgan or Morecambe OWL are carrying out their works at the Site. This means that this scenario is not only applicable where only one project comes forward generally under the DCO, but also where both projects proceed to construction, but only one routes their cables through the Site (the other routing through Blackpool Airport only).
  - (v) The required 'Construction Notification' ensures that the Council is notified of the way in which construction (i.e. concurrent, sequential or in-isolation) will be undertaken including the number of cables that the Developer intends to lay through the Site.
- (e) Replacement Pitch Notification
- (i) The Applicants are aware that there is a possibility that there may be insufficient (i.e. not enough) or no pitches available for hire at the time that the Developer's works at the Site are taking place.
  - (ii) The Council are then required to ascertain whether there are enough pitches available to hire. Where there are enough pitches available to hire, the Developer will not be required to pay the Football Pitches Replacement Commuted Sum.
  - (iii) Where there are some, but not enough pitches available, the Developer will pay a proportioned combination of the Football Pitches Replacement Commuted Sum (to cover the laying out of any replacement pitches) and the Football Pitches Commuted Sum (to cover the pitches which are available to hire).
  - (iv) Where there are no pitches available to hire, the Developer will pay the Football Pitches Replacement Commuted Sum.
  - (v) The Replacement Pitch Notification must then set out the sums required by the Council in accordance with the above and associated calculations at the Third Schedule.
  - (vi) The Replacement Pitch Notification must provide evidence of the Council's use of reasonable endeavours to locate suitable pitches for hire, where they have proposed the need to lay out temporary replacement pitches.

#### 5.1.1.4 **Clause 4 – Conditionality**

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- 5.1.1.5 This clause has been drafted to govern the scenario where the DCO is not granted. In this case, the legal costs the Council incurred in negotiating the s106 agreement will be payable, and other boilerplate clauses relating to jurisdiction and Delivery will remain in place, however, the rest of the s106 agreement and obligations therein would not have effect.
- 5.1.1.6 This clause also sets out a process for where the DCO is challenged by judicial review. In this case, the terms of the s106 agreement would, in effect, be paused until final determination of judicial review proceedings (including any appeal). Following such proceedings, where the Morgan Recreation Ground Works are still capable of being commenced, then the s106 agreement will take effect.
- 5.1.1.7 **Clause 7 – Miscellaneous**
- (a) Clause 7.7 concerns termination of the s106 agreement. The s106 agreement shall be terminated where the DCO itself is quashed, revoked, otherwise withdrawn or modified by statutory procedure without the Developer’s consent, or where the DCO expires without implementation of the Morgan works (and for the Morecambe s106 agreement, this will be in the case of the Morecambe works).
  - (b) The Applicants have also provided that the s106 agreement would be terminated where the relevant Generation Consent is quashed or revoked, on the basis that the associated Transmission Assets would then not proceed.
- 5.1.1.8 **Clause 9- Change in Ownership and Deed of Covenant**
- (a) Clause 9 requires that prior to any assignment, novation or transfer of rights in the s106 agreement, or under the transfer of benefit provisions under the Order, that the transferee enters into a Deed of Covenant(s) in favour of the Council. The Developer shall remain liable under the s106 agreement until the Deed of Covenant has been entered into, as if any breach committed by the transferee had been committed by the Developer.

## **6 Schedule 1**

- 6.1.1.1 Schedule 1 notes the relevant land that is to be bound by the s106 agreement. This is limited to the land plots within the Recreation Ground itself and is defined by the plan prepared for the purposes of the s106 agreement.

## **7 Schedule 2**

- 7.1.1.1 In principle, this contains the Developer’s Covenants, noting these are subject to agreement and further discussion with the Council, as explained in the Executive Summary.

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- 7.1.1.2 The Developer must provide a Construction Notification to the Council 15 months in advance of Commencement of Development (unless otherwise agreed by the parties).
- 7.1.1.3 As noted at 5.1.1.3(c) above, the Developer cannot commence development until they have paid all relevant sums. These will be:
- a) In all cases: either the Concurrent Financial Contributions or the Sequential Financial Contributions, depending on the construction scenario being carried out (with the exception of the Remaining Pitches Commuted Sum- being the sum payable for increased wear and tear on pitches that are not directly subject to construction- which will not be payable if the Council notify the Developer that those pitches were not used more frequently than is usual for the Club).
  - b) In respect of the football pitches:
    - (i) Where the Council has been able to procure sufficient pitches to hire: the Football Pitches Commuted Sum.
    - (ii) Where the Council has only been able to identify some pitches to hire, but not enough: the Football Pitches Commuted Sum and the Football Pitches Replacement Commuted Sum.
    - (iii) Where the Council has not been able to identify any pitches to hire: the Football Pitches Replacement Commuted Sum (which would cover associated costs, such as defibrillators, leasing of land where necessary, temporary toilet and changing facilities, noting the exact specifications are still under discussion).
- The payments under 7.1.1.3(b) will be calculated by the Council in accordance with the formulae in the Third Schedule and included in the Replacement Pitch Notification as relevant.
- 7.1.1.4 A restoration specification will be appended to the s106 agreement, which must be complied with.
- 7.1.1.5 The Developer will be required to remedy any defects which may arise as a result of the Morgan Recreation Ground Works within a specified period post construction. In the event of failure to take steps to remedy any defects arising during this period, the Council may step in and remedy any defects themselves and recover such costs under the agreement.
- 7.1.1.6 Where a need for further payment is sufficiently evidenced by the Council, the Developer shall agree an increase to any commuted sums due under the agreement.

## **8 Schedule 3**

- 8.1.1.1 The Third Schedule contains the calculations for the sums payable as detailed at section 7.1.1.3 above. The schedule acknowledges that there will be varying prices for the cost of hire of the pitch depending on the size of pitch being hired or laid out.

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## 9 Schedule 4

- 9.1.1.1 The Fourth Schedule contains the Council's covenants. There is an obligation on the Council to use the sums received under the s106 agreement for the purposes that are set out in the s106 agreement, or as is otherwise agreed between the Parties.
- 9.1.1.2 Paragraph 2 requires the Council to reimburse the Developer for any payments made under the s106 agreement that are not required by the Council for the purposes agreed. This would apply, for example, in the scenario where the pitches available for hire are cheaper than is anticipated.
- 9.1.1.3 Paragraph 3 requires the Council to provide evidence of spend of payments under the s106 agreement.
- 9.1.1.4 Paragraph 4 requires the Council to use reasonable endeavours to locate football pitches to hire in the first instance, and subsequently confirm the sums payable. This must be served on the Developer within 56 days of receipt of the Construction Notification (where the Developer notifies the Council of the construction scenario being brought forward).
- 9.1.1.5 Paragraph 5 requires the Council to procure the delivery of the replacement pitches where there are insufficient/no suitable pitches available for hire. The Council is required to use reasonable endeavours to procure this delivery on Council owned land in the first instance and provide evidence of this to the Developer. The paragraph also requires the Council to serve the Replacement Pitch Notification, which will confirm the payments to be made by the Developer (as detailed at 7.1.1.3 above).
- 9.1.1.6 Paragraph 6 sets out the requirement on the Council to provide evidence of reasonable endeavours to locate suitable football pitches to hire.
- 9.1.1.7 Paragraph 8 requires the Council to confirm to the Developer in advance of Commencement of Development whether they intend to use the pitches outside of the Site at the Recreation Ground during the construction period (as this will determine whether the Remaining Pitches Commuted Sum is payable).
- 9.1.1.8 Paragraph 9 requires the Council to notify the Developer post-construction of any defects they become aware of at the Site and Paragraph 10 requires them to notify the Developer once they have remedied any such defects (if necessary to step in) and to provide evidence of their reasonably and properly incurred costs from doing so.
- 9.1.1.9 Paragraph 12 requires the Council to notify the Developer when they become aware of a need for further payments and to provide sufficient evidence of this, such that they can agree a suitable increase with the Developer.

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## 10 Updates to the Agreement

- 10.1.1.1 An updated s106 agreement has been shared with the Council following the meeting on 6/10/2025. The draft s106 agreement now provides details or holds for the below additional mitigations (notwithstanding further details to be provided by the Council such as evidence of anticipated spends where appropriate).
- 10.1.1.2 Updates have been made to this memorandum to align to the latest draft s106 agreement shared with the Council. For clarity, this section 10 has been included to provide a clear summary of the additional mitigations which have now been proposed, noting that these are all summarised above in any event.
- 10.1.1.3 The additional commuted sums which are/have been incorporated into the s106 agreement are:
- a) Funds to assist the Club with promotion of the Club, to mitigate any public perception that the Club is not operating during construction at the Recreation Ground;
  - b) Funds to be used towards drainage costs and re-seeding costs if the pitches surrounding the works are used more frequently during construction at the Recreation Ground and are therefore subject to greater wear and tear than would ordinarily be the case;
  - c) Funds to accommodate a reduction in membership subsidies from players to recognise the impacts on them during construction at the Recreation Ground;
  - d) Funds to mitigate loss of profits should the Club's summer tournament be unable to take place, or take place in a reduced capacity;
  - e) Funds to ensure any pitches which are laid out can be effectively and safely run, in accordance with health and safety requirements, including for example defibrillators and run off zones, temporary changing and toilet facilities;
  - f) Should the Council be unable to locate alternative areas for laying out of pitches on council owned land, the s106 agreement would also cover costs for leasing of land (notwithstanding a requirement for the Council to first use reasonable endeavours to locate an area of suitable council owned land);
  - g) Funds for alternative transport arrangements depending on where the alternative pitches are located; and
  - h) Top up payments to be agreed between the parties where the existing financial contributions transpire to be insufficient.
- 10.1.1.4 In addition, the draft s106 agreement has been updated to reflect the following:
- a) Provision of a specification with details for restoration of the Site;
  - b) Provision of a defects period, during which Morgan/Morecambe would remedy any defects that arise as a result of their works post

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completion of construction at the Recreation Ground and reimburse the Council for remedying those defects should they fail to do so within a specified time period;

- c) Drafting to ensure that prior to any assignment, novation or transfer of rights in the Agreement, or under the transfer of benefit provisions under the Order, that the transferee enters into a Deed of Covenant(s) in favour of the Council; and
- d) Notice provisions have been updated to accommodate the increased list of payments and obligations on the parties.

## **11 APPENDIX A: Record of engagement with the Council**

- 27/08/24- the Applicants initiated the process via email (no substantive details exchanged)
- 09/09/24- the Applicants sent an email requesting information on the mitigations required
- 27/11/24- the Applicants had a meeting with the Council to discuss the s106 agreement process
- 15/12/24- the Applicants followed up on the above meeting via email
- 10/01/25- the Applicants had a meeting with the Council to progress the s106 agreement
- 04/02/25- the Applicants followed up on the above meeting via email with requests for information
- 27/02/25- the Applicants had a meeting with the Council
- 14/03/25- the Applicants followed up on the above meeting via email with requests for information
- 25/04/25- the Applicants had a meeting with the Council, which included discussions on the s106 agreement
- 16/05/25- the Applicants had a meeting with the Council and asked for further information to support the drafting of the s106 agreement
- 13/06/25- the Applicants had a meeting with the Council and asked for further information as above
- 20/06/25- the Applicants had a meeting with the Council and asked for further information as above
- 11/07/25- the Applicants had a meeting with the Council and asked for further information as above



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- 18/07/25- the Applicants had a meeting with the Council and asked for further information as above
  - 25/07/2025- the Applicants provided the s106 agreement Explanatory Memorandum (which was subsequently submitted to Examination at Deadline 4) alongside the draft s106 agreement which was prepared using the information the Applicants had been provided so far
  - 08/08/25- the Applicants requested a meeting to discuss the s106 agreement on w/c 18 August
  - 12/08/2025- the Applicants reached out again with information on availability to organise a meeting to discuss the s106 agreement
  - 13/08/2025- the Applicants received an email from the Council noting they would be providing comments on the draft s106 agreement at Deadline 5. The Applicants encouraged the Council to provide these comments to the Applicants direct in advance of this, to enable negotiations to commence in a meaningful way
  - 19/08/2025- the Council provided a list of schemes and initiatives that the Applicants should contribute towards, which they referred to as Heads of Terms for the s106. **[Note**, a more detailed version of this note was submitted by the Council (AS-084) and a more detailed response from the Applicants was submitted (REP6-169)]
  - 29/08/2025- The Applicants returned comments on the points raised in the document and explained either whether these could be incorporated into the s106 agreement (As they concerned costs for hiring of football pitches etc.), where these were dealt with elsewhere in the Application or were not impacts from the project and did not require mitigation. The Applicants noted that they were keen to progress the s106 agreement and proposed a timeline for engagement. The Applicants proposed meetings on any day the w/c 8 September, following which the parties would exchange comments and a further meeting could be held on the w/c 29 September, with an aim of finalising the agreement on 13 October.
  - 09/09/2025- the Applicants had their weekly meeting with the Council, during which the Applicants asked for any comments on the s106 agreement. The Council noted they did not have any initial comments, but that they were seeking external legal advice. They also provided a verbal list of points which could be covered under the s106 agreement.
  - 22/09/2025- the Council provided a pdf document containing a list of potential limbs that could be covered by the s106 agreement. This was discussed at the meeting on 06/10/2025 noted below.
  - 01/10/2025- the solicitors for the Council made contact with the Applicants' solicitors to request undertakings for their involvement in the negotiations of the s106 agreement and corresponding Deed of Indemnity.
  - 06/10/25 – the Applicants and the Council met with their respective solicitors to discuss the contents of the s106 agreement. See section 10 for details.



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- 13/10/2025- the Applicants sent an action list from the meeting, noting that the Applicants were to provide an updated draft and the Council was to provide further figures and information to inform further drafting.
  - 15/10/2025- further to the actions from the meeting on 06 October, the Applicants provided draft Grampian condition wording to the Council for consideration
  - 20/10/2025- the Applicants and the Council exchanged comments on the draft Grampian condition (as set out in REP6-176).
  - 29/10/2025- the Applicants provided the Council an updated draft of the s106 agreement, which contained further limbs of mitigation as discussed in the meeting on 06/10/2025.