

National Infrastructure Planning
Temple Quay House
2 The Square
Bristol, BS1 6PN

29 July 2022

FAO Edwin Maudsley (Case Manager)

Your ref: BC080001/ CAPP-022

Dear Sirs

Planning Act 2008 (as amended) – section 95

**Applications by Wellers Law Group LLP for awards of costs on behalf of multiple persons:
against London Resort Company Holdings Limited regarding an Application for an Order Granting
Development Consent for The London Resort**

We refer to your letter dated 15 July 2022 regarding the multiple submissions made in April 2022, made by Wellers Law Group and Mr Doug Hilton as summarised in Annex A to that letter.

We note as set out in paragraphs five and six that the Examining Authority (“the ExA”) has accepted recommendations that all parties represented by Mr Doug Hilton would henceforth be represented by Wellers Law Group LLP and where Mr Doug Hilton had made timely submissions the date of those submissions would be accepted as the starting point for consideration of those costs applications.

With regards to paragraph seven of your letter we note that two parties represented by Wellers Law Group LLP (Mehi and Autocentric Ltd) were seeking award of costs but no timely submission had been made by Wellers Law Group or Mr Doug Hilton due to a “clerical error”. We note that the ExA has considered the circumstances and has agreed to accept and consider their applications for costs. We would observe that the ExA widely promoted the mechanism by which costs awards applications could be made and very clearly stated the timescales in which they should be submitted. If Wellers Law Group LLP were instructed to make a submission but failed to the fault lies with them and the two applicants should pursue Wellers Law Group LLP for their costs.

We note that the ExA has made a preliminary decision relating to the first part (“the First Part”) of the Costs Applications for parties now represented by Wellers Law Group LLP with the status as an Affected Person and that it is valid, having regard to the Costs Guidance, notwithstanding that the London Resort Development Consent Order (“DCO”) application was withdrawn before the examination of the application commenced. In reaching this view, the ExA draws on what it considers to be analogous

cost decisions in relation to the withdrawn application for the Atlantic Array offshore wind farm (“AA Decisions”).

We also note that with regard to the second part (“the Second Part”) of the Costs Application an allegation of unreasonable behaviour by LRCH, the ExA as made a preliminary decision that the Costs Application was made within 28 days of the withdrawal of the application and is therefore considered “timely” but the ExA has not reached a concluded position on the question of whether it is a valid application and whether it has the jurisdiction to consider the costs application citing: *“Whilst there are circumstances (including those in respect of which the section 51 advice referred to in paragraph 4 above was given) in which successful objector costs claims can arise in the time prior to a Preliminary Meeting, further to paragraph 12 of the Costs Guidance, it is not clear that costs for unreasonable behaviour can do so, but neither are such claims conclusively excluded....”*

Your letter invites LRCH to make any observations on the Costs Application by 29 July 2022.

In previous correspondence with regards to the First Part of the Costs Application and Matter 1 of your letter, we confirmed that LRCH does not dispute that the Cost Application is valid as a matter of principle. Wellers Law Group LLP for a Group of 16 Interested Parties made a relevant representation in respect of the proposed compulsory acquisition of those third-party interests, amongst other matters, and this representation was still maintained by Wellers Law Group LLP for the parties they represent who were Interested Parties at the date that the DCO application for the London Resort was withdrawn.

We note that the costs awards made by the ExA in the AA Decisions were full costs awards in respect of: *“the costs incurred in the preparation and submission of RRs in respect of their land and/or rights and in preparation or making of their objections to the proposed compulsory acquisition affecting their rights until the withdrawal of the application on 26 November 2013 and the costs of making this costs application, such costs to be assessed in the Senior Courts Costs Office if not agreed.”*

Were equivalent wording to be adopted by the ExA in respect of the Costs Application, LRCH is concerned that it could lead to disputes about the precise scope of any costs award in the due course, in the Court or otherwise. In circumstances where the DCO application was withdrawn before the examination commenced, paragraph 13 and Part D of the Costs Guidance provide a limited exception to what would otherwise have been a bar to the recovery of costs. Such costs should only properly relate to those incurred by the 16 Interested Parties in objecting to the impacts of the proposed compulsory acquisition, in its capacity as a person with an interest in land for the purposes of section 44 of the Planning Act 2008. Costs that the 16 Interested Parties may have incurred in engaging in or making representations on other aspects of the DCO application are not recoverable pursuant to the Costs Guidance given that the examination of the London Resort application did not commence.

The scope of the relevant representations made by Wellers Law Group LLP for a number of parties in respect of the London Resort DCO application extends far beyond matters relating to the impacts on the interested Parties' land as a result of the proposed compulsory acquisition.

LRCH submits that costs incurred by the Interested Parties in preparing, making, or pursuing its relevant representations in relation to the above matters fall outside of the limited scope of paragraph 13 and Part D of the Costs Guidance and should be expressly excluded from any costs award which the ExA may make in respect of the Costs Application.

Furthermore, LRCH submits that any such costs award should expressly state:

1. That only the costs incurred in the period between the service of the section 56 notice until the date of withdrawal of the application by LRCH are payable. This is consistent with the rationale in paragraphs 13-15 of the AA Decisions in which the ExA distinguished between the express encouragement in the section 56 notice to persons affected by compulsory acquisition to submit an objection, and the stage prior to the opening of the relevant representations period where parties had a greater choice as to whether to engage in consultation on the proposed application;
2. That costs incurred in negotiating the private treaty acquisition of any land belonging to the Interested Parties are excluded; and
3. That the quantum of any costs incurred should be assessed upon the standard basis rather than the indemnity basis, the standard basis being the normal basis of costs awards in a compulsory purchase context. In this regard, paragraph 24.11 of the Practice Directions of the Upper Tribunal (Lands Chamber) dated 19 October 2020 [Upper Tribunal \(Lands Chamber\) Practice Directions | Courts and Tribunals Judiciary](#) advises that costs payable on the standard basis are allowed: *"to the extent that they are reasonable and proportionate to the matters in issue, and any doubt as to whether costs were reasonably incurred or reasonable and proportionate will be resolved in favour of the paying party."*

With regard to the Second Part and Matter 2 of your letter, whilst we are not in a position to comment on the ExA's jurisdiction we would contend that Paragraph 12 of the [Award of costs: examinations of applications for development consent orders guidance](#) is very clear: *"For costs purposes, the examination is treated as starting at the beginning of the Preliminary Meeting held under Section 88 of the Planning Act 2008."*

It is a statement of fact that the application was withdrawn prior to the beginning of the Preliminary Meeting and therefore the examination had not commenced.

We are also of the belief that whilst paragraph 12 does not conclusively exclude any type of claim we contend that when read in conjunction with the paragraph that immediately follows: *"Some additional*

and different considerations apply to compulsory acquisition requests which are dealt with in Part D” that this paragraph, paragraph 13 clearly sets out the exclusion to paragraph 12.

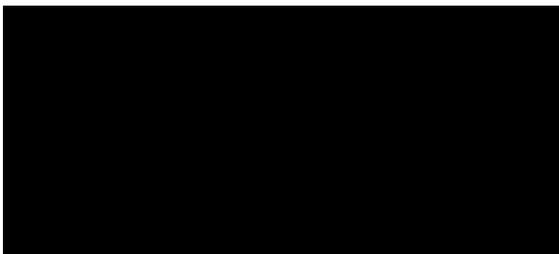
Additionally, the application was withdrawn as a result of one the key issues identified by the Examining Authority which would result in a material change to the application. At Part C of the Guidance under Paragraph 3, bullet point 8 states: “...if the application is withdrawn as a clear result of consultation and discussions between the applicant and any interested party and the reason for the withdrawal relates to any of the key issues identified by the Examining Authority prior to the Preliminary Meeting, an award is unlikely to be made in favour of any interested party.”

We have not commented specifically on Matter 3 as we believe that our comments on the Second Part of the Costs Application and Matter 2 does not warrant this.

LRCH has not disputed Cost Applications made on the grounds of the First Part where validity is a matter of principle and where applications qualify under paragraph 13 and relate to Part D as the Guidance is clear about how Cost Applications made under Part D qualify.

LRCH therefore requests that in making any costs award, the ExA expressly limits the scope of any such costs award as submitted above and follows clearly the Guidance.

Yours faithfully



For and on behalf of
London Resort Company Holdings Limited



The Planning Inspectorate

The London Resort: Applications for Costs [CAPP-022]

This table is based on Annex A to the Planning Inspectorate's letter to the respondent party of 15 July 2022. It sets out a list of applicants for costs who were initially represented by Wellers Law Group LLP, by Mr Doug Hilton or by both Wellers Law Group LLP and Mr Doug Hilton. All of these applicants are now represented by Wellers Law Group LLP. The table identifies the original applications by reference number (providing access to these submissions in the Examination Library) and also identifies the procedural class into which each application falls and the validity considerations which apply to them. The notes at the foot of this table are drawn from Annex B to the Planning Inspectorate's letter to the Respondent Party of 15 July 2022. They describe each procedural class.

The respondent party is requested to respond to each application in the right-hand column to this table.

Original Reference	Applicant for costs	Procedural Class	Notes	Respondent Comments
[CAPP-014]	Gabriel Ciudatu, AGB Cars Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP. The ExA has confirmed that this entity has a different legal personality and interests from AGB Developments Dartford Ltd.	See all comments in our letter dated 29 July 2022.
[CAPP-014]	Gabriel Ciudatu, AGB Developments Dartford Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP. The ExA has confirmed that this entity has a different legal personality and interests from AGB Cars Ltd.	See all comments in our letter dated 29 July 2022.
[CAPP-014]	Patricia Dole & Directors of MGD Group	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.	See all comments in our letter dated 29 July 2022.
[CAPP-014]	Mr Robert Samuel, Sheerness Recycling Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.	See all comments in our letter dated 29 July 2022.
[CAPP-014]	Dorian Osmani DMJ Group	UB	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.	With regard to the Second Part and Matter 2 of your letter, whilst we are not in a position to

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				<p><u>comment on the ExA’s jurisdiction we would contend that Paragraph 12 of the Award of costs: examinations of applications for development consent orders guidance is very clear: “For costs purposes, the examination is treated as starting at the beginning of the Preliminary Meeting held under Section 88 of the Planning Act 2008.”</u></p> <p><u>It is a statement of fact that the application was withdrawn prior to the beginning of the Preliminary Meeting and therefore the examination had not commenced.</u></p> <p><u>We are also of the belief that whilst paragraph 12 does not conclusively exclude any type of claim we contend that when read in conjunction with the paragraph that immediately follows: “Some additional and different considerations apply to compulsory acquisition requests which are dealt with in Part D” that this paragraph, paragraph 13 clearly sets out the exclusion to paragraph 12.</u></p> <p><u>Additionally, the application was withdrawn as a result of one the key issues identified by the Examining Authority which would result in a</u></p>

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				<p><u>material change to the application. At Part C of the Guidance under Paragraph 3, bullet point 8 states: “...if the application is withdrawn as a clear result of consultation and discussions between the applicant and any interested party and the reason for the withdrawal relates to any of the key issues identified by the Examining Authority prior to the Preliminary Meeting, an award is unlikely to be made in favour of any interested party.”</u></p> <p><u>We have not commented specifically on Matter 3 as we believe that our comments on the Second Part of the Costs Application and Matter 2 does not warrant this.</u></p> <p><u>LRCH has not disputed Cost Applications made on the grounds of the First Part where validity is a matter of principle and where applications qualify under paragraph 13 and relate to Part D as the Guidance is clear about how Cost Applications made under Part D qualify.</u></p> <p><u>LRCH therefore requests that in making any costs award, the ExA expressly limits the scope of any such costs award as submitted above and follows clearly the Guidance.</u></p>

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				See comments in our letter dated 29 July 2022
[CAPP-014]	Eriks Azimovs, Director of Mosero Performance Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.	See all comments in our letter dated 29 July 2022.
[CAPP-014]	Jac Anthony Connolly, JC Recoveries Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.	See all comments in our letter dated 29 July 2022.
[CAPP-014]	Vytautas Mickevicius of B2 Car Sales Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.	See all comments in our letter dated 29 July 2022.
[CAPP-014]	Madalina Bodolica and Andrei Botnaru, Dokin Car Parts Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP. The ExA has confirmed that this entity has a different legal personality and interests from CD&A Ltd.	See all comments in our letter dated 29 July 2022.
[CAPP-014]	Madalina Bodolica and Andreie Botnary CD&A Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP. The ExA has confirmed that this entity has a different legal personality and interests from Dokin Car Parts Ltd.	See all comments in our letter dated 29 July 2022.
[CAPP-014]	Balbir Singh S&S Global Freight Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.	See all comments in our letter dated 29 July 2022.
[CAPP-014]	Constantin-Valetin Romanescu, Seamonix Services Construction Ltd	UB	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.	With regard to the Second Part and Matter 2 of your letter, whilst we are not in a position to comment on the ExA's jurisdiction we would contend that Paragraph 12 of the Award of costs: examinations of applications for development consent orders guidance is very clear: "For costs purposes, the examination is treated as starting at the beginning of the Preliminary Meeting held under Section 88 of the Planning Act 2008."

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				<p><u>It is a statement of fact that the application was withdrawn prior to the beginning of the Preliminary Meeting and therefore the examination had not commenced.</u></p> <p><u>We are also of the belief that whilst paragraph 12 does not conclusively exclude any type of claim we contend that when read in conjunction with the paragraph that immediately follows: “Some additional and different considerations apply to compulsory acquisition requests which are dealt with in Part D” that this paragraph, paragraph 13 clearly sets out the exclusion to paragraph 12.</u></p> <p><u>Additionally, the application was withdrawn as a result of one the key issues identified by the Examining Authority which would result in a material change to the application. At Part C of the Guidance under Paragraph 3, bullet point 8 states: “...if the application is withdrawn as a clear result of consultation and discussions between the applicant and any interested party and the reason for the withdrawal relates to any of the key issues identified by the Examining Authority prior to the Preliminary Meeting, an award is unlikely to be made in favour of any interested party.”</u></p>

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				<p><u>We have not commented specifically on Matter 3 as we believe that our comments on the Second Part of the Costs Application and Matter 2 does not warrant this.</u></p> <p><u>LRCH has not disputed Cost Applications made on the grounds of the First Part where validity is a matter of principle and where applications qualify under paragraph 13 and relate to Part D as the Guidance is clear about how Cost Applications made under Part D qualify.</u></p> <p><u>LRCH therefore requests that in making any costs award, the ExA expressly limits the scope of any such costs award as submitted above and follows clearly the Guidance.</u></p>
[CAPP-014]	Kawsar Ahmed and Syed Obaidul Haque, E3 Motors London Ltd	UB	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.	<p><u>With regard to the Second Part and Matter 2 of your letter, whilst we are not in a position to comment on the ExA's jurisdiction we would contend that Paragraph 12 of the Award of costs: examinations of applications for development consent orders guidance is very clear: "For costs purposes, the examination is treated as starting at the beginning of the Preliminary Meeting held under Section 88 of the Planning Act 2008."</u></p>

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				<p><u>It is a statement of fact that the application was withdrawn prior to the beginning of the Preliminary Meeting and therefore the examination had not commenced.</u></p> <p><u>We are also of the belief that whilst paragraph 12 does not conclusively exclude any type of claim we contend that when read in conjunction with the paragraph that immediately follows: “Some additional and different considerations apply to compulsory acquisition requests which are dealt with in Part D” that this paragraph, paragraph 13 clearly sets out the exclusion to paragraph 12.</u></p> <p><u>Additionally, the application was withdrawn as a result of one the key issues identified by the Examining Authority which would result in a material change to the application. At Part C of the Guidance under Paragraph 3, bullet point 8 states: “...if the application is withdrawn as a clear result of consultation and discussions between the applicant and any interested party and the reason for the withdrawal relates to any of the key issues identified by the Examining Authority prior to the Preliminary Meeting, an award is unlikely to be made in favour of any interested party.”</u></p>

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[CAPP-014]	Dr Nighat Jabeen and Mr Kunwarjeet of Nihang Ltd	Comb	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP.	<u>See all comments in our letter dated 29 July 2022.</u>
[CAPP-014]	Ms Helen Hall	None	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP. Correspondence dated 12 July 2016 from Wellers confirms this application was submitted due to a clerical error and is withdrawn. There is no need to respond to this application.	<u>None required</u>
[CAPP-014]	Ms Claire Edie	None	Within the original timely 'group of 16' applications submitted by Wellers Law Group LLP. Correspondence dated 12 July 2016 from Wellers confirms this	None required

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Original Reference	Applicant for costs	Procedural Class	Notes	Respondent Comments
			application was submitted due to a clerical error and is withdrawn. There is no need to respond to this application.	
[CAPP-021]	Mehi Ltd	Comb	Not within the original timely 'group of 16' applications submitted by Wellers Law Group LLP. Correspondence dated 12 July 2016 from Wellers confirms this application was instructed and intended to have been submitted in the stead of an application submitted in error. The ExA has considered this explanation and has agreed in the circumstances that it should accept this late application.	None required <u>We note that the ExA has considered the circumstances and has agreed to accept and consider their applications for costs. We would observe that the ExA widely promoted the mechanism by which costs awards applications could be made and very clearly stated the timescales in which they should be submitted. If Wellers Law Group LLP were instructed to make a submission but failed to the fault lies with them and the two applicants should pursue Wellers Law Group LLP for their costs.</u>
[CAPP-021]	Autocentric Ltd	Comb	Not within the original timely 'group of 16' applications submitted by Wellers Law Group LLP. Correspondence dated 12 July 2016 from Wellers confirms this application was instructed and intended to have been submitted in the stead of an application submitted in error. The ExA has considered this explanation and has agreed in the circumstances that it should accept this late application.	<u>We note that the ExA has considered the circumstances and has agreed to accept and consider their applications for costs. We would observe that the ExA widely promoted the mechanism by which costs awards applications could be made and very clearly stated the timescales in which they should be submitted. If Wellers Law Group LLP were instructed to make a submission but failed to the fault lies</u>

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				<u>with them and the two applicants should pursue Wellers Law Group LLP for their costs.</u>
[CAPP-015]	Vitesse Investments Ltd	Comb	Timely applications [CAPP-017 & 018] made by Mr Doug Hilton have now been consolidated with this application and Wellers Law Group LLP act.	<u>See all comments in our letter dated 29 July 2022.</u>
[CAPP-015]	Buckland Dartford Ltd	Comb	Timely applications [CAPP-017 & 018] made by Mr Doug Hilton have now been consolidated with this application and Wellers Law Group LLP act.	<u>See all comments in our letter dated 29 July 2022.</u>
[CAPP-017]	LD Developments Ltd	Comb	Timely applications [CAPP-017 & 018] made by Mr Doug Hilton have now been consolidated with this application and Wellers Law Group LLP act.	<u>See all comments in our letter dated 29 July 2022.</u>
[CAPP-017]	Sabotcastle Ltd	Comb	Timely applications [CAPP-017 & 018] made by Mr Doug Hilton have now been consolidated with this application and Wellers Law Group LLP act.	<u>See all comments in our letter dated 29 July 2022.</u>
[CAPP-017]	MES Contractors Ltd	Comb	Timely applications [CAPP-017 & 018] made by Mr Doug Hilton have now been consolidated with this application and Wellers Law Group LLP act. Late application [CAPP-020] made by Wellers Law Group LLP is not proceeding.	<u>See all comments in our letter dated 29 July 2022.</u>
[CAPP-017]	JDP Property Services	Comb	Timely applications [CAPP-017 & 018] made by Mr Doug Hilton have now been consolidated with this application and Wellers Law Group LLP act. Late application [CAPP-020] made by Wellers Law Group LLP is not proceeding.	<u>See all comments in our letter dated 29 July 2022.</u>
[CAPP-017]	Mr Dan Bramwell	UB	Timely applications [CAPP-017 & 018] made by Mr Doug Hilton have now been consolidated with this application and Wellers Law Group LLP act. Late	<u>With regard to the Second Part and Matter 2 of your letter, whilst we are not in a position to comment on the ExA's jurisdiction we would contend that</u>

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Original Reference	Applicant for costs	Procedural Class	Notes	Respondent Comments
			<p>application [CAPP-020] made by Wellers Law Group LLP is not proceeding.</p>	<p><u>Paragraph 12 of the Award of costs: examinations of applications for development consent orders guidance is very clear: "For costs purposes, the examination is treated as starting at the beginning of the Preliminary Meeting held under Section 88 of the Planning Act 2008."</u></p> <p><u>It is a statement of fact that the application was withdrawn prior to the beginning of the Preliminary Meeting and therefore the examination had not commenced.</u></p> <p><u>We are also of the belief that whilst paragraph 12 does not conclusively exclude any type of claim we contend that when read in conjunction with the paragraph that immediately follows: "Some additional and different considerations apply to compulsory acquisition requests which are dealt with in Part D" that this paragraph, paragraph 13 clearly sets out the exclusion to paragraph 12.</u></p> <p><u>Additionally, the application was withdrawn as a result of one the key issues identified by the Examining Authority which would result in a material change to the application. At Part C of the Guidance under Paragraph 3, bullet point 8 states: "...if the application is withdrawn as a clear result of</u></p>

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				<p><u>consultation and discussions between the applicant and any interested party and the reason for the withdrawal relates to any of the key issues identified by the Examining Authority prior to the Preliminary Meeting, an award is unlikely to be made in favour of any interested party.”</u></p> <p><u>We have not commented specifically on Matter 3 as we believe that our comments on the Second Part of the Costs Application and Matter 2 does not warrant this.</u></p> <p><u>LRCH has not disputed Cost Applications made on the grounds of the First Part where validity is a matter of principle and where applications qualify under paragraph 13 and relate to Part D as the Guidance is clear about how Cost Applications made under Part D qualify.</u></p> <p><u>LRCH therefore requests that in making any costs award, the ExA expressly limits the scope of any such costs award as submitted above and follows clearly the Guidance.</u></p>
[CAPP-018]	Mr John Palmer	Comb	Confirmed by Mr Doug Hilton as having formed part of his timely application [CAPP-018] as a member of Peninsula Management Group. Timely applications [CAPP-017 & 018] made by Mr Doug	<u>See all comments in our letter dated 29 July 2022.</u>

Original Reference	Applicant for costs	Procedural Class	Notes	Respondent Comments
			Hilton have now been consolidated with this application and Wellers Law Group LLP act.	

Notes on Procedure

(From Annex B to the Planning Inspectorate’s letter to the Respondent Party of 15 July 2022)

There are two procedural classes of application.

- Applications made on behalf of persons alleging **unreasonable behaviour** by the respondent party as the basis for their claim for costs (the “UB applications”); and
- Applications made on behalf of **successful objectors** where allegations of **unreasonable behaviour** by the respondent party have also been made (the “Comb. applications”).

UB applications

Where an application is marked ‘UB’ in the table to Annex A, this means that the ExA notes that the applicants concerned are not APs and that the application is founded on an allegation that the respondent party behaved unreasonably.

In relation to the validity of the costs applications in this class, the ExA notes that they were made within 28 days of the withdrawal of the application for the Order and so are timely¹. However, the ExA has not reached a concluded position on the question of whether these applications are valid applications and whether it has jurisdiction to consider these costs applications.

¹ In relation to timeliness, it should be noted that whilst certain applications made by Wellers Law LLP were not timely [CAPP-019 & 020], in each circumstance where that was the case, a timely application on behalf of the same applicants had already been made by Mr Doug Hilton. Judgments of timeliness in those applications are based on the timing of the earliest application made on behalf of the applicant concerned. Due to a clerical error, in respect of two parties in [CAPP-014], timely applications were made on behalf of persons who did not instruct Wellers Law LLP to apply on their behalf and two clients who had instructed that applications should be made were excluded from this application in error. On receipt of an explanation, the ExA has decided to allow that error to be corrected (see [CAPP-021]).

This class of applications rely on allegations of unreasonable behaviour by the respondent party. They are based on the applicants having standing as Interested Parties (IPs). The ExA accepts that all of the applicants in the class are IPs. Whilst there are circumstances (including those in respect of which the section 51 advice referred to in paragraph 4 of the covering letter was given) in which successful objector costs claims can arise in the time prior to a Preliminary Meeting, further to paragraph 12 of the Costs Guidance, it is not clear that costs for unreasonable behaviour can do so, but neither are such claims conclusively excluded. It follows that there is a question in relation to validity and jurisdiction that must be decided before a decision is taken on the merits of this class of costs applications.

The following IPs with costs applications already under consideration by the ExA have made submissions that rely on allegations of unreasonable behaviour alone and argue that such claims can validly be made in relation to matters arising before a Preliminary Meeting [CAPP-003, 004, 007, 009 & 010]. These submissions are relevant to the validity and jurisdiction question as to whether such claims can be made.

A further group of APs have made submissions that rely on both the standing of the costs applicant as an AP and on allegations of unreasonable behaviour [CAPP-006, 011, 013, 014, 015, 017, 018, 019 and 020]. To the extent that these applications for costs also argue that unreasonable behaviour claims can be made in relation to matters arising before a Preliminary Meeting, then aspects of them raise considerations that are relevant to the question of jurisdiction.

All of the documents referred to above are available on the National Infrastructure Planning Website documents tab.

In accordance with paragraph 34 of the Costs Guidance and for the reasons set out above, the ExA has decided to address the validity and the jurisdiction question and the question of whether the respondent party's behaviour satisfies the necessary tests for unreasonable behaviour in a rolled-up procedure. **The respondent party is asked to make any observations on the following matters:**

- **Matter 1:** the validity of each costs application in this class and the jurisdiction to award costs for unreasonable behaviour in these circumstances; and, without prejudice to this first matter
- **Matter 2:** the unreasonable behaviour alleged in the costs applications in this class and whether these meet the tests for awards set out in the Costs Guidance.

Combination applications

Where an application is marked 'Comb.' in the table to Annex A, this means that the ExA considers that the applicants concerned are APs identified in the Book of Reference (or have equivalent interests in land within the scope of the request for CA powers) and that they have objected to the CA of their land and/or rights and so are successful objectors (in the **first part** of their costs application). However, these applicants have additionally alleged that the respondent party behaved unreasonably (in the **second part** of their costs application). These applications proceed on the basis of one or both elements of a two-part claim.

In relation to the validity of the **first part** of the costs applications in this class, the ExA has considered the Costs Guidance, referring specifically to all paragraphs in Part D. The ExA notes the basis of this first part of this class of costs applications as being that the applicants consider themselves to be 'successful objectors', that it is not necessary for unreasonable behaviour by the respondent to be demonstrated in order for this part of their claims to succeed.

On the basis that all of the applicants in this class appear to the ExA to be APs or to have equivalent interests, that the application for the Order has been withdrawn and so these applicants also appear to be 'successful objectors' and that the costs applications were made within 28 days of the withdrawal of the application for the Order and so are timely², the ExA has agreed to consider the costs applications in this part of this class.

In reaching this view, the ExA notes specifically that whilst the examination of the London Resort application had not commenced at the point where the application was withdrawn, previous costs decisions in relation to Planning Act 2008 casework by the ExA for the Atlantic Array demonstrate acceptance of the principle that costs may be applied for in circumstances where an application is withdrawn in the period between acceptance for Examination and the Preliminary Meeting. The ExA here sees the approach taken by the ExA for the Atlantic Array as being relevant and applicable to the circumstances of this part of this class of applications for costs.

In relation to the validity of the **second part** of the costs applications in this class, the ExA notes that they were made within 28 days of the withdrawal of the application for the Order and so again are timely². However, the ExA has not reached a concluded position on the question of whether it has jurisdiction to consider the second part of this class of costs applications. This part relies on allegations of unreasonable behaviour by the respondent party. It is based on each applicant's standing as an IP.

Whilst there are circumstances (including those in respect of which the section 51 advice referred to in paragraph 4 above was given) in which successful objector costs claims can arise in the time prior to a Preliminary Meeting, further to paragraph 12 of the Costs Guidance, it is not clear that costs for unreasonable behaviour can do so, but neither are such claims conclusively excluded. It follows that there is a question in relation to jurisdiction over the second part of this class of claims that must be decided before a decision is taken on the merits of this part of this class of costs applications that you have made.

The following IPs with costs applications already under consideration by the ExA have made submissions that rely on both the standing of the costs applicant as an AP and on allegations of unreasonable behaviour [CAPP-006, 011, 013, 014, 015, 017, 018, 019 and 020]. To the extent that these applications for costs also argue that unreasonable behaviour claims can be made in relation to matters arising before a Preliminary Meeting, then aspects of them raise considerations that are relevant to the question of jurisdiction.

A further group of APs have made submissions that rely on allegations of unreasonable behaviour alone and argue that such claims can validly be made in relation to matters arising before a Preliminary Meeting [CAPP-003, 004, 007, 009 & 010]. These submissions are also relevant to the validity and jurisdiction question as to whether such claims can be made.

All of the documents referred to above are available on the National Infrastructure Planning Website documents tab.

In accordance with paragraph 34 of the Costs Guidance and for the reasons set out above, the ExA has decided to address the 'successful objector claim', the jurisdiction question and the question of whether the respondent party's behaviour satisfies the necessary tests for unreasonable behaviour in a rolled-up procedure.

The respondent party is asked to make any observations on the following matters:

- **Matter 3:** the 'successful objector' claim for costs, and specifically whether there are any arguments that, if successful, a part award should be made that would be different to or lesser in extent than any award that could possibly be made under Matter 5;
- **Matter 4:** the validity of and jurisdiction to award costs for unreasonable behaviour in these circumstances; and without prejudice to this matter
- **Matter 5:** the unreasonable behaviour alleged in the costs applications in this class and whether these meet the tests for an award set out in the Costs Guidance.