

East Anglia THREE
Offshore Windfarm

East Anglia THREE

Applicant's Response to ENI UK Limited's Position Statement

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Response to ENI Position Statement

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1 Introduction

1. This document contains the Applicant's response to the Deadline VI submission of ENI UK Limited (Eni).
2. As with the Applicant's other submissions this document adopts a tabular format containing extract text from Eni's response (including paragraph numbering) to Deadline VI followed by the Applicant's comments.
3. This document should be read in conjunction with the Applicant's redrafting of the ExA's suggested protective provision contained in the Applicant's Comment's on the ExA's dDCO (doc ref. Deadline 7/Comments on the ExA dDCO (Applicant)) and the Applicant's response to Annex A Consultation Questions contained with the ExA's draft DCO, also contained in the Applicant's comments on the ExA's dDCO.

2 Principle of a Protective Provision

ID	Comment and Applicants response
Eni's Comment	<p>5. According to the Applicant's own assessment (see ES Chapter 18.6.1.5, para 91) the oil and gas industry is a receptor of national importance. The Applicant's ES considers impacts upon the oil and gas industry and specifically Eni's interest during both the construction and operational phases of the development in Chapters 18.6.1.5 and 18.6.2.5 of the ES respectively. In doing so, it notes in relation to the construction phase:</p>
Applicant's response	<p>Paragraph 91 also reads "...however, the integrity of the resource (oil and gas) would not be affected by the proposed East Anglia THREE project."</p>
Eni's Comment	<p>5.1 At paragraph 92 that "the phasing of the construction has the potential to impact on some oil and gas activity, in particular, any seismic exploration exercises scheduled within adjacent licence blocks".</p> <p>5.2 At paragraph 90, that "it is difficult to predict the level of impact that the construction of the proposed East Anglia 3 Project would have on future oil and gas activity".</p>
Applicant's response	<p>Paragraph 90 reads in full "It is difficult to predict the level of impact that the construction of the proposed East Anglia THREE project would have on future oil and gas activity, however the continued consultation with licensees of the oil and gas licence blocks should ensure that the magnitude of the impact would be low".</p>
Eni's Comment	<p>5.3 At paragraph 92, a conclusion in relation to construction activity, that "the impact significance of minor adverse would apply to both single phase and two phased approaches". By reference to Table 18.8 in the ES such an impact is described as a "small change in receptor condition, which may be raised as local issues but are unlikely to be important in the decision making process".</p>
Applicant's response	<p>Paragraph 30 below Table 18.8 also reads: "Minor impacts become more important when considering potential, cumulative impacts or interactions".</p> <p>Paragraph 31 below Table 18.8 also reads: "Embedded mitigation is discussed in section 18.4.1, and is referred to throughout the impact assessment. The impact assessment takes into account the embedded mitigation before coming to a conclusion on the potential impact of a receptor".</p>

ID	Comment and Applicants response
	<p>"There may be constraints imposed on the siting or design of offshore wind farms because of restrictions resulting from the presence of other offshore infrastructure or activities".</p> <p>18.4.1 states:</p> <p>"15. As previously mentioned, this chapter has taken into account guidance from the NPS statements. Although specific guidance for all the individual activities assessed in this Chapter is not provided in EN-3, the need to consider other offshore infrastructure is highlighted within the first sections of Chapter 6 – Offshore Wind.</p> <p>16. See Chapter 4 Site Selection and Alternatives for an explanation of the rationale as to the location of the proposed East Anglia THREE project.</p> <p>17. In addition the section which describes the impacts of offshore wind on oil, gas and other offshore infrastructure and activities (page 55) provides generic requirements which are applicable to this assessment. Paragraph 2.6.179 states that:</p> <p>"Where a potential offshore wind farm is proposed close to existing operational offshore infrastructure, or has the potential to affect activities for which a licence has been issued by Government, the Applicant should undertake an assessment of the potential effect of the proposed development on such existing or permitted infrastructure or activities. The assessment should be undertaken for all stages of the lifespan of the proposed wind farm in accordance with the appropriate policy for offshore wind farm EIAs."</p> <p>18.Paragraph 2.6.180 states that:</p> <p>"Applicants should engage with interested parties in the potentially affected offshore sectors early in the development phase of the proposed offshore wind farm, with an aim to resolve as many issues as possible prior to the submission of an application to the IPC" (now the Planning Inspectorate).</p> <p>Paragraph 92 reads:</p> <p>"The phasing of the construction has the potential to impact on some oil and gas activity, in particular, any seismic exploration exercises schedules within adjacent licensed blocks. However this would be managed through consultation and it is not currently</p>

ID	Comment and Applicants response
	possible to determine which would be the preferred approach from the oil and gas industry's perspective. At present, the impact significance of minor adverse would apply to both Single Phase and Two Phased approaches.
Eni's Comment	5.4 At paragraph 88, and throughout other references in Chapter 18.6.1.5, it is clear that this conclusion is reached on the basis that there will be continued consultation with Eni "to discuss any impacts that may arise from the proposed East Anglia 3 Project and enable any impacts to be mitigated as far as possible. This will ensure that with necessary planning and engagement, disruption due to construction will be avoided".
Applicant's response	<p>Paragraph 88 reads:</p> <p>"There are planned and ongoing oil and gas operations in licensed blocks overlapping with the East Anglia THREE site and the offshore cable corridor (see section 18.5.4 and Figure 18.2). EATL is continuing to engage with oil and gas developers, mainly Eni UK Limited, who currently hold the licence for these blocks. EATL have been in contact with Eni UK Limited to discuss the relative interests of both the proposed East Anglia THREE project and the oil and gas licensed block. This programme of consultation will be ongoing to discuss any impacts that may arise from the proposed East Anglia THREE project and to enable any impacts to be mitigated as far as possible. This will ensure that with necessary planning and engagement, disruption due to construction will be avoided."</p>
Eni's Comment	<p>6. In respect of impacts during operation, the following is noted:</p> <p>6.1 At paragraph 109, that "EATL would continue to engage with any relevant oil and gas developers during operation of the wind farm. This would ensure that with necessary planning and engagement, disruption due to the operation of the proposed East Anglia 3 Project would be avoided".</p> <p>6.2 At paragraph 110, as a result of this approach the Applicant concluded that impacts on Eni's interest would be of negligible significance.</p>
Applicant's response	Paragraph 110 goes on to read: "Therefore the magnitude of the impact is predicted to be negligible and although the receptor is considered to be of national importance the integrity of the resource would not be affected and therefore an impact of negligible significance is predicted."
Eni's Comment	7. In summary, it is therefore acknowledged by the Applicant that Eni has a licence to explore and develop a nationally important resource which may be impacted by the East Anglia 3 Project. Its conclusions on impact are based on there being ongoing consultation with the result that the project and Eni's activities can co-exist. As highlighted above, it describes the ongoing planning and engagement (i.e. mitigation measures) as "necessary" to underpin the conclusions of its assessment. It has undertaken no assessment of any scenario in which disruption to Eni's activities is unavoidable.
Applicant's response	<p>Eni have not indicated whether or not this resource has been confirmed or what the prospects for successful exploration are likely to be.</p> <p>EATL do not consider the reference to "ongoing planning and engagement" at paragraph 88 of the ES constitutes a reference to</p>

ID	Comment and Applicants response
	mitigation measures. Mitigation measures are those actions that come out of the planning and engagement once Eni bring forward proposals, assuming that they do so, and some form of mitigation is required.

3 Potential Impacts on ENI's Interests

ID	Comment and Applicants response
Eni's Comment	10. In respect of Mobile Offshore Drilling Units (MODUs), fixed installations and other infrastructure such as Floating Storage and Offloading vessels (FSOs) and pipelines, a safety zone of at least 500m is anticipated to be required from the outer periphery of the relevant infrastructure. This is borne out of the Petroleum Act 1998 and associated regulations.
Applicant's response	While anticipated safety zones, survey areas, corridors and access routes are set out, no information is provided to enable EATL to understand where they would apply and to what extent. Without this information EATL cannot assess when, if at all, Eni would be in a position to comment on EATL's plans.
Eni's Comment	14. Consequently, it is conceivable that the minimum spacing of turbines (blade tip to blade tip) throughout the area of interaction with Eni's licence area P.1965 could be 455 metres (crosswind) or 680 metres (downwind). Were that to be the case, then Eni would not be able to explore, appraise and/or develop the resource in accordance with its rights under the licence. In addition, the Applicant will require its own safety zones during construction and operation as set out in Chapter 15 of the ES.
Applicant's response	Surveys could potentially be targeted and appraisal works to coincide with turbine outages or mutually agreeable periods when required turbines were out of service. Similarly it may be possible to carry out certain activities before commencement of EA3 offshore construction. During the operational period it is possible that safety zone requirements could be agreed on an activity by activity basis.
Eni's Comment	15. From this, it is clear that any mitigation measures for protection of Eni's interests must have effect prior to the approval of any layout details, and prior to construction commencing. They cannot be left until later (or until the operational phase as the ES suggests) as by then it will be too late to ensure co-existence. However, it is Eni's view from an analysis of the minimum parameters against its requirements that a satisfactory layout within the area of overlap to enable both projects to co-exist should be achievable without undue impact on the Applicant's proposals.
Applicant's	This is not simply a matter of mitigation to protect Eni interests: it relates to working together in a reasonable way. No explanation

ID	Comment and Applicants response
response	is provided of the basis for this conclusion or why, if that is the case, it is not possible to draw up a coexistence agreement at an early stage without the need for any form of protective provision.

4 National Policy Statement and other material considerations

ID	Comment and Applicants response
Eni's Comment	<p>18. Eni would draw attention to the following aspects of the NPS:</p> <p>18.1 Paragraph 2.6.179 requires an assessment not only of the effects on existing infrastructure, but also on activities for which a licence has been issued by the Government (as is the case for Eni).</p> <p>18.2 Paragraph 2.6.181 requires stakeholder engagement to continue throughout the life of the development with the aim "to ensure that solutions are sought that allow offshore wind farms and other uses of the sea to successfully co-exist".</p>
Applicant's response	<p>This reflects what EATL are doing with other offshore stakeholders and none have asked for protective provisions given that matters can be addressed through commercial agreement in due course and where required dependent on final design proposals. Paragraph 2.6.181 refers to seeking solutions that allow coexistence by means of stakeholder engagement, which is what EATL's draft protective provision proposes. The paragraph makes no reference to any prior right of approval by one party over the other.</p>
Eni's Comment	<p>18.3 Paragraph 2.6.183 indicates that the Secretary of State should "expect the Applicant to minimise negative impacts and reduce risks to as low as reasonably practicable" where the proposed development potentially affects Eni's activities.</p>
Applicant's response	<p>Where appropriate EATL are committed to minimizing negative impacts and reducing risks to as low as reasonably practicable but cannot do so without details of Eni's proposed activities and timings. Paragraph 2.6.183 also refers to "a pragmatic approach" being employed by the Secretary of State, which is what EATL's draft protective provision proposes. EATL does not consider giving a prior right of approval by one party over the others' plans to be a "pragmatic approach".</p>

ID	Comment and Applicants response
Eni's Comment	18.4 Paragraph 2.6.184 directs that the Secretary of State must be satisfied that “site design of the proposed offshore wind farm has been made with a view to avoiding or minimising disruption or economic loss or any adverse effect on safety to other offshore industries”.
Applicant's response	EATL have endeavoured to design the site with a view to avoiding or minimising disruption or economic loss on the basis of the best available information currently available.
Eni's Comment	18.5 Paragraph 2.6.185 directs that the Secretary of State must give substantial weight where a proposed development is likely to affect the future viability or safety of a licenced offshore activity. This requirement applies to the consideration of impacts on Eni's future activities.
Applicant's response	EATL are willing to engage in these discussions once it is known what the relevant activities are. The likelihood of any effect on future viability or safety of Eni's activities is not yet known and Eni has provided no detail of what likelihood there is, if any, - only (19) that there "may be an effect".
Eni's Comment	19. Consequently, in the absence of any measures within the DCO to secure the appropriate protection for Eni's interests to be accommodated within the final site layout, the Secretary of State will have to acknowledge that due to the parameters highlighted above there may be an effect on both the viability and safety of Eni's licenced activities to the extent that they may be prevented in their entirety and that is a matter to which he must give substantial weight in reaching his decision. However, it is Eni's position that such considerations can be avoided if protective provisions are put in place.
Applicant's response	The oil and gas clause is the fallback position.
Eni's Comment	21. All of the above indicates why it is necessary for a protective provision to be included within the DCO, and Eni notes that similar issues were grappled with during the examination of the Hornsea 2 Wind Farm which resulted in the Examining Authority recommending that a protective provision be included to safeguard E.ON's future activities under a UK petroleum production licence. A discussion of the Hornsea 2 position is addressed further below, but at this stage, Eni would note that it firmly establishes the principle that a protective provision is both necessary and appropriate to protect future activities under an issued licence. Further consideration then needs to be given to the terms of such a provision which we comment on further below.
Applicant's response	Eni's activities are neither implemented nor yet defined. EATL's draft protective provision achieves this as far as practicable having regard to the level of detail of Eni's proposed activities.

5 Oil and Gas Clause

ID	Comment and Applicants response
Eni's Comment	<p>22. The Applicant has suggested that there is no need for a protective provision because the oil and gas clause in the Crown Estate Lease carries with it an expectation set out in related DECC guidance that the Secretary of State will expect the parties to reach a commercial agreement such that an application to invoke the oil and gas clause may only be made if that has not proved possible. Eni reject this approach for the following reasons:</p>
Applicant's response	<p>The fact that a protective provision is recommended by the ExA on H2 should not be seen as establishing any principle for including a protective provision in the EA3 DCO. In the case of H2 the parties were able to put forward an agreed protective provision during the examination as a fallback, in the knowledge that they were close to reaching a coexistence agreement. The fact that they were able to conclude a coexistence agreement was no doubt in part due to the very limited area of overlap of the protected area with the array area and the level to which E.ON had detailed their proposed activities within the protected area. Ultimately the protective provision was omitted from the H2 DCO due to the coexistence agreement having been concluded.</p>
Eni's Comment	<p>23.1 According to the Ministerial Statement, the oil and gas clause will only be considered at the point that the Minister has to give further consent for the development of the resource, following the exploration and appraisal phases and consideration of a detailed field development plan. In addition, paragraph 7 of the Guidance sets out evidence that must be provided in order for the clause to be operated. This includes evidence of why the oil and gas development cannot proceed without determination of the wind farm lease, and includes information on alternative locations, options for co-existence and technical solutions, and why those have been ruled out. Again, this will not be possible until the final development phase, and long after the Applicant has said that it will have needed to finalise its layout. It is therefore not a satisfactory position either for Eni, nor the Applicant.</p>
Applicant's response	<p>This paragraph appears to crystallise the difficulty inherent in Eni's proposed approach to any protective provision. As yet Eni has no consent for the development of the resource. It has a petroleum production licence. Under the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 and the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Amendment Regulations 2007 environmental assessments have to be carried out for certain types of offshore oil and gas activities including the granting and renewal of production consents for field developments, the</p>

ID	Comment and Applicants response
	<p>drilling of wells (deep boring) and the construction and installation of production facilities and pipelines in the United Kingdom Territorial Sea and on the United Kingdom Continental Shelf (UKCS). Seismic surveys are regulated under the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2000. The Secretary of State for BIES must take into consideration environmental information before making decisions on whether or not to consent to certain offshore activities. Regulation 5(1) requires that a formal application for the granting of consent by the Secretary of State in respect of an activity for a field development, the construction of a pipeline or the drilling of a well is accompanied by an ES unless a petroleum operation notice (where it is considered that the activity proposed will not have a significant effect on the environment or where further consents are being sought in relation to an activity which has already been the subject of an ES under the regulations) has been submitted in seeking a direction that an ES is not required and that direction has not been granted. No consent for an activity will be granted until the Secretary of State is satisfied with the environmental information provided and that there will be no significant effect on the environment. (See DECC Guidance notes for industry – Guidance notes on the Offshore Petroleum Production and Pipelines (Assessment of Environmental Effects) Regulations 1999 (as amended).</p> <p>Among the information to be included in the ES is information which shows that</p> <ul style="list-style-type: none"> • The operator is informed in detail about the natural environment and commercial issues arising from other users of the sea • The likely consequences of the activities from the physical presence of equipment and structures have been identified • Where alternative solutions were available, how the option selected was decided upon, and why, with due consideration of practicality, safety and cost benefit • Consultations have been undertaken with both statutory and non-statutory organisations and the public, including if and how their representations have been addressed in the design and operation of the activity <p>It appears from what Eni are saying in paragraph 23.1 that it will not be possible to provide "information on alternative locations options for coexistence and technical solutions" until "the final development phase and long after the applicant has said that it will have needed to finalise its layout".</p> <p>If this is the case, and Eni were to have a right of prior approval of EATL's plans under its draft protective provision it is inevitable that if EATL were to submit its plans for approval in 2018, Eni will be unable to enter into any coexistence agreement and will</p>

ID	Comment and Applicants response
	<p>reject the plans for the protection of its apparatus – which includes infrastructure etc which may be installed or exploration etc which may be carried out. This would have the effect of sterilising a large part of the EA3 offshore site until such time as Eni are in a position to submit plans both for exploration, and appraisal and field development.</p> <p>In EATL's view the implementation of EA3 cannot be delayed in this way. If Eni are not in a position to confirm whether or not the EA3 plans are "satisfactory", or what the criteria are to make them satisfactory, by 2018, EA3 should be free to proceed, taking such measures as it can to accommodate Eni's future plans as known at the time. Eni would then need to address the existence of EA3 in submitting its environmental information to the Secretary of State for the purpose of obtaining further consents for the development of the resource.</p> <p>EATL do not consider it acceptable for a conceptual development to potentially hold up a well defined nationally significant infrastructure project which, once constructed, will be on a strict timeline to providing nationwide benefits. Consent is only the first stage in a series of requirements (some Government driven) with which EATL must comply eg CfD timelines. EATL needs to be able to take advantage of opportunities for the provision of regulatory support when they arise and cannot be impeded by highly uncertain future activities such as Eni's proposals. Where such a conflict exists, and in the spirit of reasonableness, there must be an obligation on Eni to define its proposals in such a way and in such a timeframe that both parties can investigate opportunities to coexist without either party being disadvantaged ie Eni must bring forward the necessary works to assess the prospect and provide the necessary detail to allow the position to be understood. It is not in the national interest to hold up the progress of, or potentially render unviable, an NSIP project on the basis of another undefined oil and gas development project which may or may not yield resource or may or may not be developed at all.</p>
Eni's Comment	<p>23. Consequently, the oil and gas clause mechanism is based around a premise which both the Applicant and Eni argue should not exist, and will operate in a context where it is not possible to achieve the policy outcomes envisaged by the sections of EN-3 noted above. Therefore, the threat of the oil and gas clause should not be perceived as sufficient to ensure that the required engagement takes place between the Applicant and Eni at the appropriate time.</p>
Applicant's response	<p>The oil and gas clause is not a threat but rather a mechanism by which coexistence/commercial agreement can be reached and should that not be possible ensures the payment of appropriate compensation.</p>

6 Timetable of Eni's activities

ID	Comment and Applicants response
Eni's Comment	<p>25. Eni's activities under licence P.1965 are essentially split into three distinct phases as follows:</p> <p>25.1 An initial term of 4 years during which Eni is obliged to drill an exploration well within the area of licence P.1965 or (the adjacent) licence P.1964.</p>
Applicant's response	<p>The initial term ends on 31 December 2017 so Eni must therefore drill in either P1965 or P1964 within the next 13 months. Eni have not clarified what further permissions they need if any or when procurement is getting underway to meet these timelines.</p>
Eni's Comment	<p>25.2 Subject to the completion of the initial term work programme, the licence may then continue for a further period of 4 years (the second term) to allow Eni to appraise any discoveries arising from exploration. In order to move into this phase, there is a mandatory requirement for Eni to relinquish 50% of the licenced area. It is by no means certain that this would include part of the area of overlap. The licence will expire at the end of the second term unless the Oil & Gas Authority has approved a development plan.</p>
Applicant's response	<p>This would appear to confirm that any field development plan is unlikely to be submitted before 2020 at the earliest, some two years after EATL is likely to need certainty on the layout of the wind farm array.</p>
Eni's Comment	<p>26. The third term (production phase) runs for a period of 18 years following the end of the second term.</p> <p>27. Therefore it is clear that there is an overlap in timescales between the wind farm and the exploration, appraisal and potential development of the resource. It is not possible for Eni to commit to reducing any of the above timescales.</p>
Applicant's response	<p>It is not clear why Eni are unable to commit to reducing any of the timescales.</p>
Eni's Comment	<p>28. In the absence of a protective provision, Eni would experience significant uncertainty as to whether it could develop the resource on a viable basis in the future.</p>

ID	Comment and Applicants response
Applicant's response	<p>If Eni were to produce firm proposals that uncertainty could significantly be reduced. Again this implies that EATL should make all concessions. The intention of the Minister via the oil and gas clause was to ensure that conflict is addressed in a balanced way hence the DCO is not the appropriate or intended vehicle for this.</p> <p>The corollary to this statement is that with the protective provision as drafted by Eni EATL would experience significant uncertainty which could render the project not viable should a protective provision in Eni's favour be inserted in the DCO. This in spite of the EATL's proposals being significantly more developed than Eni's proposed activities.</p>

7 Hornsea Two

ID	Comment and Applicants response
Eni's Comment	<p>29. As alluded to above, it is Eni's position that the recommendation of the Examining Authority to the Secretary of State in Hornsea Two creates a precedent as to the principle of a protective provision being appropriate to protect Eni's interests. The similarities are as follows and are by reference to the conclusions in the Examining Authority's report, the relevant extract of which is attached at Appendix 6:</p>
Applicant's response	<p>As already stated, the recommendation of the Examining Authority to the Secretary of State on H2 does not create any precedent as to the principle of a protective provision being appropriate to protect Eni's interest. There are a number of significant differences between the circumstances surrounding the protective provision on H2 and the present position.</p> <ul style="list-style-type: none"> • E.ON's exploration and future development prospects (Joly, Newton, Newton Deep and Dodgson) had been identified – paragraph 10.5.15 – and were shown on the draft PP plan. Eni have identified no such prospects or their prospects for successful exploration • There was therefore a clear potential conflict between the development of the proposed wind farm and the exploitation of oil and gas reserves within the overlap area – 10.5.16. Eni have not demonstrated any potential conflict other than the existence of the overlap between licence P1965 and the EA3 array area.

ID	Comment and Applicants response
	<ul style="list-style-type: none"> • E.ON's concerns as to how HP2 would limit its potential operations were set out in some detail – 10.5.21. Eni have provided no detail. • E.ON considered the HP2 application did not go into sufficient detail to explain the impact of the proposed wind farm on the development of block 48/3 – 10.5.22. Eni have not suggested EA3 should, by virtue of the level of detail on Eni's activities, have gone into any further detail. • In E.ON's view they had required the minimum flexibility required to exploit the named prospects in its licenced area and would leave the applicant with the large majority of its project site intact, with sufficient area to erect up to the 300 turbines now applied for – paragraph 10.5.23 bullet 8. As pointed out in EATL's first submission (10.3) the area coloured green represented 20% of the overlap and 5% of the entire area of Hornsea 2. In contrast, Eni's area coloured green would cover approximately 27% of the array area of EA3 and would "sever" a further significant area of the array to the south. • Extensive discussion had taken place with a view to finding agreement and the suggested protective provision had been put forward as an alternative in the event that agreement could not be reached – 10.5.24. Parties were close to agreement of commercial terms at the end of the examination – 10.5.29 and 10.5.42. An agreement would amongst other matters set out an agreed position regarding each parties activities in and around the area in which their interests overlap – 10.5.32. In the case of Eni and EATL, both have agreed that there is insufficient detail of Eni's activities to be able to draw up any commercial agreement at this stage and the protective provisions being put forward are not against the background of any likelihood of a commercial agreement being reached • Both the applicant and E.ON considered protective provisions would allow for coexistence of their respective interests in the absence of a commercial agreement or coexistence – 10.5.42. EATL does not consider that in the light of the lack of detail of Eni's activities any protective provision in the form sought in H2 would allow for coexistence of EATL's and Eni's respective interests • The level of detail on formulating the proposed protected area was considerable, to the point that there was discussion over whether a 1 nautical mile eastward addition to the proposed protected area should be included in order to provide a clearance area for flexibility for helicopter access to any installation. The Applicant stated that the revision would have a significantly adverse effect on the feasibility and commercial viability of HP2 and could not be justified. It maintained that E.ON was endeavouring to impose protective provisions which provide absolute control over as large an area as possible in order to maximize the flexibility available and to ease other consenting proposals relevant to its proposals. E.ON on the other hand suggested that, in order to commit significant resources for exploration, it required certainty in its ability to explore with seismic surveys and to drill exploration and appraisal wells – 10.5.46. The ExA took the view that "the flexibility that would be offered by increasing the area subject to protective provisions in line with E.ON's suggestion does not justify the potential sterilization of a large area of the HP2 application site when E.ON's plans are not as yet well developed" – 10.5.53.

ID	Comment and Applicants response
	<p>In contrast EATL consider that Eni's plans are considerably less well developed than were those of E.ON, yet Eni are seeking to sterilise a significantly greater area of the EA3 site than E.ON are seeking to do for H2.</p> <p>Overall therefore the H2 draft protective provision put forward should be looked at on its own facts, including the identification of known prospects; the identification of clear potential conflict; the level of detail of E.ON's plans; the limiting of overlap with H2; the ability to conclude a commercial agreement on coexistence and the detailed formulation of the protected area. All of these factors contrast markedly with the position between EATL and Eni. Indeed they tend to serve as a reason why protective provisions in the form sought by Eni would be wholly inappropriate.</p>

8 Protective Provisions and progress since the Hearing

ID	Comment and Applicants response
Eni's Comment	<p>34. Eni has considered these points, and the comments made by the Examining Authority at the Hearing regarding equality of arms in any protective provision, identifying an early point at which Eni's requirements could be defined having regard to the Applicant's delivery programme and CfD timetable requirements. With that in mind, Eni submitted a revised protective provision to the Applicant for comment at Appendix 3. This protective provision attempted to address the Applicant's concerns, and the comments made by the Examining Authority as follows:</p>
Applicant's response	<p>Eni say they have identified "an early point at which Eni's requirements could be defined having regard to the applicant's delivery programme and CfD requirements". As EATL understand it Eni are proposing that this early point would be when EATL applies for approval of plans from Eni under (2) and the requirement that if Eni wish to withhold approval they must provide a written statement of reasons for doing so "by reference to reasonable details of apparatus and minimum requirements...to enable the licensees to, as relevant, explore, appraise and/or develop hydrocarbon resources within the protected area". In light of Eni's statement in paragraph 23.1 and the fact that any field development plan will come forward well after the date when EATL are likely to require certainty on layout, there can be no certainty that Eni would not be able to reject the plans for the reasons set out in the response to 23.1 above.</p>

ID	Comment and Applicants response
Eni's Comment	34.1 A significantly compressed protected area (a plan of which is identified at Appendix 5) targeted at specific areas of prospectivity within the area of overlap between licence area P.1965 and the array area.
Applicant's response	EATL do not consider the protected area to have been "significantly compressed" for the reasons set out in the response to at 29 above.
Eni's Comment	34.4 That Eni may not withhold its consent to any layout proposed where there are no unacceptable effects on its activities, nor where the proposal submitted allow its activities to successfully co-exist by minimising the negative impacts upon them and reducing risks as low as reasonably practicable. This accords with the requirements of the National Policy Statement highlighted above.
Applicant's response	It is not clear when Eni will know this and how that will fit in with EATL's timelines.
Eni's Comment	36. It is Eni's view that its proposals accord with the requirements and policy aims set out in paragraphs 2.6.176 to 2.6.188 of National Policy Statement EN-3 and provide a clear mechanism for any disputes about whether they do so to be referred to an independent Arbitrator as anticipated by paragraph 2.6.188 so as to ensure that reasonable coexistence of the projects as envisaged by the Applicant's Environmental Statement which is referred to above. This process is to be assessed against Eni's reasonable minimum requirements for exploration, appraisal and development of the resource and Eni believes it strikes a fair and appropriate balance between the interests of both parties.
Applicant's response	<p>It is not clear how Eni know what their reasonable minimum is or what strikes a fair and appropriate balance if they have no defined plans or proposals against which to make this judgement.</p> <p>EATL considers that the draft protective provision which it has put forward is reasonable to reflect the guidance in EN-3 and DECC Guidance; to maintain a balanced position between the parties (one with a production licence requiring further consents and the other with an agreement for lease requiring further consents); to reflect the level of detail in Eni's future plans; and to prevent a position whereby a significant renewable energy project cannot proceed due to continuing uncertainty over the likelihood of licence P1965 being developed at all.</p>

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