



**SCOTTISHPOWER
RENEWABLES**

East Anglia ONE North and East Anglia TWO Offshore Windfarms

Applicants' Comments SASES Deadline 6 Submissions

Applicant: East Anglia TWO and East Anglia ONE North Limited
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Applicable to East Anglia ONE North and East Anglia TWO



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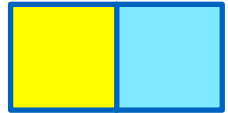


Glossary of Acronyms

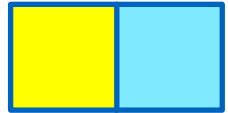
AEoI	Adverse Effect on Integrity
AONB	Area of Outstanding Natural Beauty
APP	Application Document
AQMA	Air Quality Management Area
AS	Additional Submission
BLF	Beach Landing facility
CoCP	Code of Construction Practice
DCO	Development Consent Order
DML	Deemed Marine Licence
EIA	Environmental Impact Assessment
EMP	Ecological Management Plan
ES	Environmental Statement
ESC	East Suffolk Council
kW	Kilowatt
LCA	Landscape Character Assessment
LCT	Landscape Character Type
LMP	Landscape Management Plan
LVIA	Landscape and Visual Impact Assessment
MMMMP	Marine Mammal Mitigation Protocol
MMO	Marine Management Organisation
NE	Natural England
NGET	National Grid Electricity Transmission
NO ₂	Nitrogen dioxide
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NRMM	Non-Road Mobile Machinery
OLEMS	Outline Landscape and Ecological Management Strategy
OTE	Outer Thames Estuary
OWF	Offshore Windfarm
PD	Procedural Decision
PEIR	Preliminary Environmental Information Report
PMoW	Precautionary Method Statement
PRoW	Public Right of Way
PTS	Permanent Threshold Shift / Permanent Auditory Injury
PVA	Population Viability Analysis
RSPB	Royal Society for the Protection of Birds
RTD	Red-Throated Diver
SAC	Special Area of Conservation
SCC	Suffolk County Council
SCHAONB	Suffolk Coasts and Heaths Area of Outstanding Natural Beauty
SEAS	Suffolk Energy Action Solutions
SPA	Special Protected Area
SuDS	Sustainable Drainage System

Glossary of Terminology

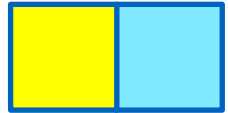
Applicant	East Anglia TWO Limited / East Anglia ONE North Limited
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Construction operation and maintenance platform	A fixed offshore structure required for construction, operation, and maintenance personnel and activities.
East Anglia ONE North project	The proposed project consisting of up to 67 wind turbines, up to four offshore electrical platforms, up to one construction, operation and maintenance platform, inter-array cables, platform link cables, up to one operational meteorological mast, up to two offshore export cables, fibre optic cables, landfall infrastructure, onshore cables and ducts, onshore substation, and National Grid infrastructure.
East Anglia ONE North windfarm site	The offshore area within which wind turbines and offshore platforms will be located.
East Anglia TWO project	The proposed project consisting of up to 75 wind turbines, up to four offshore electrical platforms, up to one construction, operation and maintenance platform, inter-array cables, platform link cables, up to one operational meteorological mast, up to two offshore export cables, fibre optic cables, landfall infrastructure, onshore cables and ducts, onshore substation, and National Grid infrastructure.
East Anglia TWO windfarm site	The offshore area within which wind turbines and offshore platforms will be located.
European site	Sites designated for nature conservation under the Habitats Directive and Birds Directive, as defined in regulation 8 of the Conservation of Habitats and Species Regulations 2017 and regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017. These include candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation and Special Protection Areas.
Generation Deemed Marine Licence (DML)	The deemed marine licence in respect of the generation assets set out within Schedule 13 of the draft DCO.
Horizontal directional drilling (HDD)	A method of cable installation where the cable is drilled beneath a feature without the need for trenching.
Inter-array cables	Offshore cables which link the wind turbines to each other and the offshore electrical platforms, these cables will include fibre optic cables.
Jointing bay	Underground structures constructed at intervals along the onshore cable route to join sections of cable and facilitate installation of the cables into the buried ducts.
Landfall	The area (from Mean Low Water Springs) where the offshore export cables would make contact with land, and connect to the onshore cables.
Link boxes	Underground chambers within the onshore cable route housing electrical earthing links.
Meteorological mast	An offshore structure which contains metrological instruments used for wind data acquisition.
Mitigation areas	Areas captured within the onshore development area specifically for mitigating expected or anticipated impacts.
Marking buoys	Buoys to delineate spatial features / restrictions within the offshore development area.
Monitoring buoys	Buoys to monitor <i>in situ</i> condition within the windfarm, for example wave and metocean conditions.



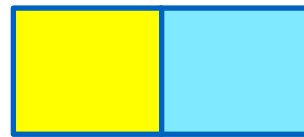
Natura 2000 site	A site forming part of the network of sites made up of Special Areas of Conservation and Special Protection Areas designated respectively under the Habitats Directive and Birds Directive.
Offshore cable corridor	This is the area which will contain the offshore export cables between offshore electrical platforms and landfall.
Offshore development area	The East Anglia TWO / East Anglia ONE North windfarm site and offshore cable corridor (up to Mean High Water Springs).
Offshore electrical infrastructure	The transmission assets required to export generated electricity to shore. This includes inter-array cables from the wind turbines to the offshore electrical platforms, offshore electrical platforms, platform link cables and export cables from the offshore electrical platforms to the landfall.
Offshore electrical platform	A fixed structure located within the windfarm area, containing electrical equipment to aggregate the power from the wind turbines and convert it into a more suitable form for export to shore.
Offshore export cables	The cables which would bring electricity from the offshore electrical platforms to the landfall. These cables will include fibre optic cables.
Offshore infrastructure	All of the offshore infrastructure including wind turbines, platforms, and cables.
Offshore platform	A collective term for the construction, operation and maintenance platform and the offshore electrical platforms.
Platform link cable	Electrical cable which links one or more offshore platforms. These cables will include fibre optic cables.
Safety zones	A marine area declared for the purposes of safety around a renewable energy installation or works / construction area under the Energy Act 2004.
Scour protection	Protective materials to avoid sediment being eroded away from the base of the foundations as a result of the flow of water.
Transition bay	Underground structures at the landfall that house the joints between the offshore export cables and the onshore cables.
Transmission DML	The deemed marine licence in respect of the transmission assets set out within Schedule 14 of the draft DCO.



1 Introduction

1. This document presents the Applicants' comments on SASES' Deadline 6 submissions as follows:
 - Response to SASES' Comments on East Anglia ONE Operation Phase Noise Monitoring Report
 - Comments on SASES' Post Issue Specific Hearing 7 Submissions
 - Comments on SASES' Post Issue Specific Hearing 9 Submissions
 - Response to SASES' Comments on the Examining Authority's Commentary on the draft DCO
 - Comments on SASES' Submission on Pearce V Secretary of State for Business, Energy and Industrial Strategy (Norfolk Vanguard)

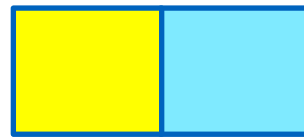
2. This document is applicable to both the East Anglia TWO and East Anglia ONE North DCO applications, and therefore is endorsed with the yellow and blue icon used to identify materially identical documentation in accordance with the Examining Authority's procedural decisions on document management of 23rd December 2019 (PD-004). Whilst this document has been submitted to both Examinations, if it is read for one project submission there is no need to read it for the other project submission.



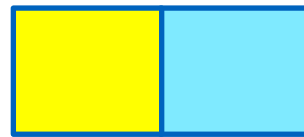
2 Applicants' Comments on SASES' Deadline 6 Submissions

2.1 Response to SASES' Comments on East Anglia ONE Operation Phase Noise Monitoring Report

ID	SASES' Comment	Applicants' Comments
Summary		
1	1. The Applicants referred to this report ("EA1 Report" [REP5-022]) during ISH4 although it had not been previously submitted in the examinations. The EA1 Report was submitted at deadline 5 in response to ISH4 action point 6.	No further comment.
2	2. The Applicants rely upon this report to support their submission that: a. generally there have proven to be no noise issues at Bramford arising from the EA1 substation; and b. the EA1N and EA2 substations will not emit tonal noise.	It is somewhat disingenuous to suggest that the Applicants rely upon the East Anglia ONE Onshore Substation Operational Noise Assessment (REP5-022) to support part b) of this comment. This directs the reader to assume that the Applicants rely solely on REP5-022. REP5-022 was referenced and provided to the Examinations to counter previous comments by SASES and East Suffolk Council's noise consultants, which suggested that it was not possible to mitigate noise from substations adequately and that mitigation could not reduce nor remove the tonal elements of substation noise. REP5-022 provides substantial evidence that noise from substations, including tonal elements, can be appropriately mitigated.
3	3. In fact the EA1 report does not provide any support for these assertions given: a. it is based on unverified assumptions; b. the testing process was flawed;	The claim that the East Anglia ONE Onshore Substation Operational Noise Assessment (REP5-022) is based on unverified assumptions is without foundation.



ID	SASES' Comment	Applicants' Comments
	<p>c. the EA1 substation is not comparable to the EA1N or EA2 substations either individually or in combination; and</p> <p>d. the Bramford substation site and relevant receptors are not comparable to the Friston substation site.</p>	<p>SASES provides no evidence that the testing process itself was flawed (instead commenting on part the REP5-022 methodology that was included for discussion and to provide additional context).</p> <p>The East Anglia ONE (EA1) substation is highly comparable to the Projects' onshore substations, being of similar capacity and, notwithstanding the detailed design development of the Projects, highly likely to contain very similar. items of electrical plant.</p> <p>The EA1 substation site and relevant receptors are highly comparable to the Friston area, being rural in nature and with intervening ground (i.e. agricultural fields) of an identical nature.</p>
4	4. Attached at Appendix 1 is report prepared by Rupert Taylor dated 22 February 2021 in relation to the conclusions of the EA1 Report in relation to tonality etc.	Noted.
<p>THE EA1 REPORT</p> <p>Conclusions</p>		
5	5. The EA1 Report concludes (paragraph 77) that "the specific sound of the EA1 substation is in compliance with the noise limit criteria contained in requirement 24 (2) of the DCO for the EA1 windfarm. The wording of Requirement 24 is set out in paragraph 10 of the EA1 Report. In the essence the noise limit is 35 dB LAeq, 5min at three specified receptors, referred to below as the "EA1 receptors".	No further comment.
6	6. Further, and no doubt it is upon this conclusion which the Applicants rely, it is stated (paragraph 68) that "Numerical analysis of the results, using the third octave method	Use of the word 'rely' is inappropriate. The East Anglia ONE Onshore Substation Operational Noise Assessment (REP5-022) is referenced and was submitted by the Applicants in order to provide useful and relevant information



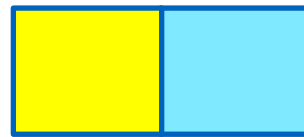
ID	SASES' Comment	Applicants' Comments
	described 2 within BS4142:2019 methods for writing and assessing industrial and commercial sound, confirms that no tones are objectively quantifiable”.	to the Examining Authority, the Applicants do not rely on the report.
7	7. However these conclusions are incorrect and inapplicable to the Friston site for the reasons set out in Rupert Taylor's Report attached at appendix 1 and for the reasons set out below.	<p>The conclusions of the report are quite emphatically not incorrect and SASES provide no meaningful evidence to support their statement.</p> <p>As discussed above, the Friston area and Bramford area are highly comparable.</p>
8	<p>8. Further it should be noted that in the ES for the EA1 project it was recognised that “Noise from electricity infrastructure can contain tonal components (the “mains hum”)” - see paragraph 40 of Environmental Statement Volume 3 – Onshore Noise and Vibration. This is also recognised in the operational noise requirement in the DCO which refers to “relevant penalties for tonal or impulsive noise” - see requirement 24 (1).</p> <p>https://webarchive.nationalarchives.gov.uk/20191203074627/https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010025/EN010025-000550-7.4.7%20Volume%203%20Chapter%206%20Noise%20and%20Vibration.pdf</p>	This comment seems to suggest that the Applicants are denying the potential for tonal elements to noise from substation electrical equipment. This is simply not the case and the Applicants are committing to DCO Requirements that address the potential for tonality by specifying a limit for the rating level.
9	9. The EA1 Report also recognises the tonal nature of sound emissions from substations – see paragraph 17.	See response at ID8.
Unverified Assumptions		
10	10. The assessment for the EA1 EA1 Report was purportedly to have been carried out on a worst case basis as that is when the substation would be at its noisiest. However there is no evidence that that is the case. All that is relied upon are “Conversations between site operatives and the substation Senior Authorised Person indicated that the substation was running at full capacity during the measurements” and the conclusion drawn was “and therefore may be assumed to be representative of worst case (noisiest) conditions”. See paragraph 37.	<p>This criticism is spurious and appears to be an attempt to cast doubt on the confidence the reader can have in the East Anglia ONE Onshore Substation Operational Noise Assessment (REP5-022).</p> <p>The load on substations for wind farms depends entirely on the offshore wind conditions and consultation and discussion with the Senior Authorised Person (i.e. the person with overall</p>



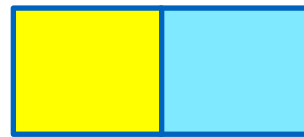
ID	SASES' Comment	Applicants' Comments
		<p>control of, and responsibility for the substation) on site, and using real-time information as to the load on the substation, is entirely appropriate; it is the only reliable way to ascertain whether the substation is operating at capacity.</p> <p>The Applicants consider this comment to be egregious and dismiss it in the strongest possible terms.</p>
11	11. So essentially a worst-case assumption was made based on a conversation. This undermines the reliability of the EA1 Report.	The Applicants consider this comment to be egregious and dismiss it in the strongest possible terms.
Flawed Testing Methodology		
12	12. Aside from the assumption that the substation was operating at full capacity the noise testing only took place over a very limited period. At each of the chosen three receptors there was approximately a one hour test duration on 5 August 2020. At two receptors (NMP 2 & NMP3) noise was monitored from approximately half past midnight to approximately 01:30 whereas at the third (NMP1) it was measured from 02:22 to 03:22.	<p>Noise emitted by substations is, by its very nature, constant and with very little variation. The monitoring duration is, therefore, entirely appropriate for the purposes of the test.</p> <p>The monitoring duration and methodology was agreed during extensive consultation with the Local Authority Environmental Health Officer.</p>
13	13. The testing was carried out on 4 and 5 August before the EA1 substation was commissioned. Paragraph 11 states that "At the time of writing this report the FON was scheduled for issue to National Grid by 30 September 2020". Requirement 24 in the EA1 DCO, which is reproduced at paragraph 10 of the EA1 Report, defines completion of commissioning as meaning "the date when the circuits have been fully tested and verified that they are able to transmit their rated power capacity to the grid connection point and National Grid has issued an FON (final operation notification) to the generator." It is unclear whether it is the generator or National Grid which issues the FON.	<p>This criticism is spurious and appears to be an attempt to cast doubt on the confidence the reader can have in the East Anglia ONE Onshore Substation Operational Noise Assessment (REP5-022).</p> <p>The timing of monitoring and testing was agreed upon in full consultation with the Operator, Client and Local Authority to ensure that testing took place when the substation was operating at its full capacity.</p> <p>The Applicants consider this comment to be egregious and dismiss it in the strongest possible terms.</p>



ID	SASES' Comment	Applicants' Comments
14	14. Also the words “within three months of completion of commissioning” as set out in Requirement 24(2) of the EA1 DCO have been curiously interpreted in this context as meaning both three months before completion of commissioning as well as the natural meaning of three months after commissioning. Why would you test the noise emissions from the EA1 substation before it had completed commissioning?	See response at ID8.
15	15. Please note action point 6 from the ISH6 Action Points issued by the Examining Authorities is drafted as follows: “Justification of anticipated noise levels during operation at the sub-station sites <i>Submit evidence of noise level measurements from the operation of EA1 substation following its commissioning”</i> [emphasis added]	See response at ID8.
16	16. The EA1 Report was not prepared following the commissioning of EA1.	See response at ID8.
17	17. Additional noise testing is reported as having taken place at a bridleway location referred to as NMP4/VER1, at which location noise levels of 35dBA L90 were recorded (Table 3.2). However, no one third octave data has been provided for this location, unlike NMP1, 2 and 3, which prevents any objective conclusion being reached as to tonality at this location, which was about 150m from the super-grid transformers in the substation, and therefore more representative of the 250m separation distance proposed for the Friston site.	Third octave data was not provided within the East Anglia ONE Onshore Substation Operational Noise Assessment (REP5-022) for this monitoring location as it was not relevant to the report. The third octave data from this location is available and analysis of the data shows that, using the third octave method of BS4142, no tonal elements are present within the measured sound.
18	18. According to para 55 of the EA1 Report “there was no discernible or audible noise” at NMP4/VER1 which appears inconsistent with the 35dBA noise measurement taken there. Based on this information, and the extremely low sound levels at NMP1, 2 and 3, it is not possible to reach meaningful conclusions about the lack of tonality of EA1.	SASES has misquoted, or rather selectively quoted, this particular sentence from the East Anglia ONE Onshore Substation Operational Noise Assessment (REP5-022). The full sentence reads: “ <i>The site operatives also conducted observations on the bridleway at its closest point to the EA1 substation (approximately 100m from the southern boundary</i>



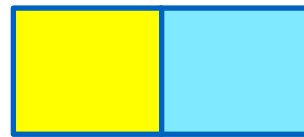
ID	SASES' Comment	Applicants' Comments
		<p><i>of the EA1 substation) and confirmed that there was no discernible or audible noise from the EA1 substation site at this location".</i></p> <p>These observations were carried out following the completion of monitoring at Bullenhall Farm during the quietest part of the night.</p>
EA1 and EA1N & EA2 Substations not Comparable		
19	<p>19. The EA1 substation is not directly comparable with those proposed for EA1N or EA2.</p> <p>a. EA1N and EA2 have a planned maximum capacity of 800 MW and 900 MW respectively. The EA1 substation capacity is approximately 700 MW.</p> <p>b. The design of the EA1N and EA2 substations will be different; EA1 is a 220kV substation whereas the EA1N and EA2 substations will be 275kV.</p> <p>c. Harmonic filters which can be a significant emitter of noise are not present in the EA1 substation as built, unlike the proposals for Friston which show six harmonic filters in each substation.</p> <p>d. There is also the obvious point that two substations are proposed to be built at Friston not one.</p>	<p>The Applicants are aware that the Projects include two substations and that the capacity and rating differs slightly. The EA1 substation is highly comparable to the Projects' substations, being of similar capacity to both and, notwithstanding the detailed design development of the Projects, highly likely to contain very similar items of electrical plant.</p> <p>The EA1 substation site and relevant receptors are highly comparable to the Friston area, being rural in nature and with intervening ground (i.e. agricultural fields) of an identical nature.</p>
Receptors Not Comparable		
20	<p>20. The plan attached to the EA1 Report (reproduced at Appendix 2 below) shows the location of the three receptors. This plan is unhelpful as it does not show the position or layout of the EA1 substation at Bramford. What is more informative is Figure 26.2 from the EA1 Environmental Statement which is reproduced at Appendix 2 below accompanied by the relevant link.</p>	<p>No further comment.</p>



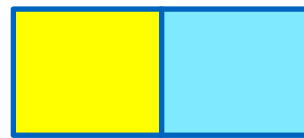
ID	SASES' Comment	Applicants' Comments
21	<p>21. These plans show that the monitoring points for EA1 are 600m to 1200m from the EA1 substation whereas those proposed for Friston are approximately 250m from the substations, with the village of Friston in close proximity.</p>	<p>The EA1 substation site and relevant receptors are highly comparable to the Friston area, being rural in nature and with intervening ground (i.e. agricultural fields) of an identical nature.</p>
<p>APPENDIX 1 Report prepared by Rupert Taylor dated 22 February 2021</p>		
<p>INTRODUCTION</p>		
22	<p>The applicants have produced the document "East Anglia ONE Operation Phase Noise Monitoring Report" 3rd February 2021.</p> <p>This supplementary report by Rupert Thornely-Taylor addresses a specific issue that arises with respect to the content of that Document, namely audibility and tonal character.</p>	<p>No further comment.</p>
<p>APPLICATION OF BS4142 TO TONAL CHARACTER</p>		
23	<p>Paragraph 17 of the document states</p> <p>The sound emissions (i.e. sound level emitted at source) from transformers and reactors at substations typically contain a significant proportion of their acoustic energy (if not most) at 100 Hz. The commentary to clause 9.2 of BS 4142:2014+A1:2019 suggests the following subjective method for the determination of the rating penalty for tonal specific sounds:</p> <p>"18. Tonality</p> <p>19. For sound ranging from not tonal to prominently tonal the Joint Nordic Method gives a correction of between 0 dB and +6 dB for tonality. Subjectively, this can be converted to a rating penalty of 2 dB for a tone which is just perceptible at the noise receptor, 4 dB where it is clearly perceptible, and 6 dB where it is highly perceptible."</p>	<p>No further comment.</p>



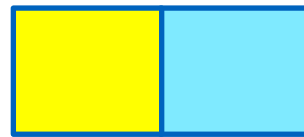
ID	SASES' Comment	Applicants' Comments
24	<p>The document then proceeds to consider the perceptibility of transformer noise using a method which departs from the method set out in BS4142, and leads to a conclusion based on very specific assumptions. Using more appropriate assumptions a very different conclusion would be reached.</p>	<p>SASES' consultant has misread or wilfully misinterpreted the East Anglia ONE Onshore Substation Operational Noise Assessment (REP5-022).</p> <p>The method described and critiqued here was discussed within the methodology section of the REP5-022, but it is critical to note that it was not used within the assessment to define tonality, either at the receptors or at the source.</p> <p>This method was discussed purely in order to provide additional context and relevant information for the Local Authority; it acted as an 'informative' addition to the main assessment relating to potential indoor noise levels.</p> <p>Requirement 24 of the DCO for EA1 required that external noise levels be assessed, in accordance with BS4142, and the assessment described within REP5-022 does exactly this.</p> <p>This comment appears to be an attempt to cast doubt on the confidence the reader can have in the East Anglia ONE Onshore Substation Operational Noise Assessment (REP5-022).</p>
25	<p>The document contains an attempt to calculate the indoor sound level of tones at 100Hz and 200Hz (notwithstanding the fact that BS4142 requires the noise to be measured and assessed outdoors) and to assess the result against the threshold of audibility from ISO 226. They conclude that "it is considered that a 100 Hz tone in the specific sound from the substation that is no greater than 42 dB Leq,100Hz,outside is unlikely to be perceptible within any nearby dwelling and that a 200 Hz tone in the specific sound from the substation that is around 32 dB Leq,200Hz,outside is also unlikely to be perceptible within any nearby dwelling."</p>	<p>This method was discussed purely in order to provide additional context and relevant information for the Local Authority; it acted as an 'informative' addition to the main assessment relating to potential indoor noise levels.</p>



ID	SASES' Comment	Applicants' Comments
26	<p>At this point is it necessary to clarify that for detailed calculations such as thi8s the “A-weighting”, an adjustment made to measured physical sound levels to approximate the human ear’s unequal response to sounds of across the spectrum, has to be taken out of account. The value of the A-weighting curve at 100Hz is - 19.1 dB, so a single-frequency sound with an unweighted level of 42 dB measures 22.9 dBA.</p>	<p>See response at ID25.</p>
27	<p>It is also necessary, when departing from the standard approach required by BS4142 and carrying out, as the applicants have, an assessment of indoor noise, to make an adjustment for the difference between sound levels out of doors and inside a room in a dwelling.</p>	<p>The <i>East Anglia ONE Onshore Substation Operational Noise Assessment</i> (REP5-022) does not depart from the BS4142 approach and SASES' consultant should be fully aware of this (see response at ID24).</p>
28	<p>The applicants have made their outside-inside adjustment based on a Defra Report NANR116. This presents the results of a laboratory tests where the sound source was pink noise (white noise with the same energy content in each frequency band - true white noise increases by 3dB per octave) - appropriate for the transporation noise sources considered. This means that the modal behaviour of the receiving room at a single frequency is hidden by the behaviour of the other frequencies in the band. Room acoustics at low single frequencies is modal, not statistical (i.e. there is not a diffuse field assumed by statistical acoustics). This is recognised in the Northern Powergrid document "NSP/007/020 – Guidance on Substation Design: Transformer Noise".</p>	<p>Notwithstanding that these comments relate to information reported to provide context to the assessment (and not to provide, in any way, the main assessment) for EA1, it is noted that NSP/007/020 – Guidance on Substation Design: Transformer Noise does not make any reference whatsoever to internal sound levels within a dwelling. The document provides appropriate guidance for those specifying and requiring noise enclosures for transformers. The guidance is to assist those designing enclosures in avoiding the creation of standing waves within the very tightly constrained spaces of the enclosure. The Applicants further note that NSP/007/020 relates very specifically to transformers installed within 50m of occupied dwellings.</p> <p>The document in fact demonstrates the highly detailed and technical considerations that both the Applicants and the substation technology providers will take into account when specifying and designing appropriate mitigation.</p>



ID	SASES' Comment	Applicants' Comments
29	<p>From the NANR116 report the EA1 report takes the outside-inside correction as a minimum of 19 dB and says that "On this basis, the spectral level of a 100 Hz tone in the specific sound from the substation that is no greater than 42 dB Leq,100Hz, outside may be approximately 19 to 25 dB Leq,100Hz,inside". The report then compares this with the threshold of hearing from ISO 226 which it takes as 26 dB at 100Hz (for 50% of the population¹). Thus, on this basis, 42 dB (without A-weighting) outside gives 42-19=23 dB inside, 3dB below the 50% audibility threshold.</p>	<p>Notwithstanding that these comments relate to information reported to provide context to the assessment (and not to provide, in any way, the main assessment) for EA1, it is noted that the entirety of the argument put forward rests on SASES' consultant assuming a situation which is physically impossible with the equipment and plant to be installed at the substation.</p> <p>The substation will not emit the entirety of its spectral content as a pure tone of 100Hz and to suggest that it will be somewhat egregious.</p> <p>The 6dB tonal penalty would not apply because, as noted above, the situation SASES' consultant describes is physically impossible.</p>
30	<p>If the DCO Requirements 26 and 27 limit is an A-weighted level of (as now proposed) 31 dBA, and if it should be tonal such that all the spectral content was at 100Hz, this is a physical sound level, after removing the A-weighting, of 50.1 dB. After taking the outside to inside reduction of 19 dB this gives an internal sound level of 31.1 dB for comparison against the audibility threshold of 26 dB. It will therefore be highly perceptible (over 5dB above the 50% audibility threshold).</p> <p>In that case, the 6dB tonal penalty would apply, and the requirement 26 and 27 limits would be breached.</p>	<p>See response at ID29.</p>
31	<p>The outside to inside reduction of 19dB is for a ventilation opening of 0.05m² . On a summer night much more than this would be required, reducing the 19dB and increasing the audibility further. For a wide open window the normal assumption is an outside-inside reduction of 10dB. For a room with one of more modes at 100Hz the true figure could be less than 10 dB. It is the impossibility of knowing the specific</p>	<p>Notwithstanding that these comments relate to information reported to provide context to the assessment (and not to provide, in any way, the main assessment) for EA1, the Applicants are fully aware of the reasons that BS4142 does not provide for the assessment of indoor sound levels and this is why the 'NANR116' detail is provided specifically and</p>



ID	SASES' Comment	Applicants' Comments
	construction details and dimensions of dwellings being assessed that is the reason why BS4142 provides only for the assessment of noise outdoors.	solely for information purposes within the <i>East Anglia ONE Onshore Substation Operational Noise Assessment</i> (REP5-022). As noted at ID29 and ID30, the audibility would not be substantial as the situation SASES' consultant describes is physically impossible.
32	In an outdoor assessment, as the proper application of BS4142 requires, the audibility would be substantial.	See response at ID29.
33	It should also be borne in mind when making assessments of noise levels to be measured in the future, that the international standard for sound level meters, BS EN 61672-1:2013 requires an accuracy no better than ± 1 dB at 100Hz for the sound level meter, plus a further ± 0.5 dB for the effect of a windshield, so an actual true level as perceived by the ear, may be as much as 1.5dB higher than indicated in a measurement.	No further comment.
CONCLUSIONS		
34	The report submitted by the applicants "East Anglia ONE Operation Phase Noise Monitoring Report" 3rd February 2021, seeks to demonstrate that if the transformer and allied noise is tonal it will not be perceptible at receptors and therefore no penalty for tonality should be applied. The method used does not accord with the provisions of BS4142, and reaches a conclusion based on inappropriate assumptions. If appropriate assumptions are made, the method used by the applicants leads to the reverse conclusion, namely that a tonal noise with a specific sound level just on the limits of Requirements 26 and 27 would be highly perceptible and therefore attract a +6 dB penalty, causing the requirements to be breached.	See response at ID29.



2.2 Comments on SASES' Post Issue Specific Hearing 7 Submissions

ID	SASES' Response	Applicants' Comments
AGENDA ITEM 2a.i		
Hundred River - Priority deciduous woodland - wet woodland		
1	<p>1. Ecologists representing the Applicants, Suffolk County Council (SCC) and East Suffolk Council (ESC) reported having visited the Aldeburgh Road, Aldringham on Monday 15 February with the aim of assessing whether the area of woodland on the west bank of the proposed Hundred River crossing location and designated as Priority Deciduous Woodland should also be considered as Wet Woodland. Each ecologist stated at ISH7 the opinion that it is not wet woodland.</p> <p>2. SASES felt obliged to defer to the judgement of three ecology specialists when offered an opportunity to comment.</p>	<p>Noted. The Applicants would add that 'Priority Habitat' is neither a statutory nor non-statutory designation. Priority Habitats, or UK 'Habitats of Principal Importance' (as identified in Section 41 of the Natural Environment and Rural Communities Act (2006)) are those for which public bodies must account during their own operations.</p>
2	<p>3. ESC and SCC have subsequently been asked to supply their logs for this visit.</p> <p>4. ESC replied saying "ESC does not require our technical officers to keep a public log of visits. They [the ecologists] predominantly viewed the site from the edge of the B1122, this was considered an adequate viewpoint to understand whether the area was comprised of wet woodland or not which was the purpose of the visit. James also viewed the wider area, including part of the field on the eastern bank of the river and the river downstream of the crossing point, from public footpaths 10, 64 and 65." (Appendix 1)</p> <p>5. SCC has responded saying "I understand that our Senior Ecologist, Andrew Murray-Wood, visited the woodland at Aldringham with James Meyer, East Suffolk Council's Ecologist, on 15th February. They visited the area of the proposed Hundred River crossing and predominantly viewed the site from the edge of the B1122 and from the end of Gypsy Lane, as this was considered adequate to understand whether the area was comprised of wet woodland or not which was the purpose of the visit. A written submission in relation to this will be submitted at Deadline 6 (next week). Suffolk CC</p>	<p>The Applicants are unable to comment on ESC's or SCC's approach to their site visit.</p>



ID	SASES' Response	Applicants' Comments
	<p>does not require its technical officers to keep a public log of visits undertaken in the course of their work." (Appendix 2)</p> <p>6. It was not mentioned at ISH7 that the ecologists had not in fact entered on the area of land that they had come to assess. They had only viewed it only from roadside and at a distance of c. 75 metres from riverbank. Footpaths 10, 64 and 65 are situated at least 175 metres away from the riverbank which would have been obscured by hedgerows.</p>	
3	<p>7. The Applicants did not state whether or not their own ecologist(s) had actually entered on to the land during this visit.</p>	<p>The Applicants confirm that their surveyors accessed the full survey area denoted on Figure 1c of the Ecology Survey Results (REP6-035) submitted at Deadline 6.</p>
4	<p>8. Following ISH7, daily moisture level sampling has begun to be carried out by local people at the River Hundred crossing place at distances from 4 to 70 metres from the river using a basic soil wetness hygrometer. Despite minimal rainfall and low river levels, the instrument has been consistently recording the maximum wetness within its range at all positions up to 2 metres from the roadside, Within 2 metres of roadside the readings have been 'Normal', that is neither wet nor dry.</p>	<p>The Applicants' classification of the woodland at the Hundred River is based on the species present rather than moisture levels in the ground (in line with the Joint Nature Conservation Committee's (JNCC) Handbook for Phase 1 Habitat Survey (2016)). The species found during surveys in both 2018 and 2021 did not comprise those associated with wet woodland. A full survey report was submitted at Deadline 6 (REP6-035).</p>
5	<p>9. It is not possible to understand how ecologists could have formed a definite conclusion without even stepping on to the land in question or approaching closer to the river than 75 metres.</p>	<p>See response at ID3.</p>
6	<p>10. Consequently, SASES must now withdraw its acceptance of the assessment put forward by the Applicants, SCC and ESC at ISH7 that the land is not wetland and urges ExA not to accept those submissions as firm evidence in this respect pending clarification that may be contained within the Visit Report due by Deadline 6 or 7, or else receipt of an independent assessment.</p>	<p>See response at ID3.</p>



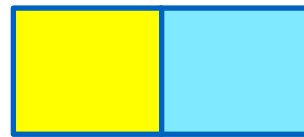
ID	SASES' Response	Applicants' Comments
7	11. The Applicant was asked to explain at ISH7 why no alternative cable crossing points had been evaluated. Mr McGrellis for the Applicants replied that there is no alternative feasible crossing place on the Aldeburgh Road and in justification referred to APP-052 Chapter 4 Site Selection and Assessment of Alternatives.	No further comment.
8	12. APP-443 6.3.4.2 Appendix 4.2 Red/Amber/Green (RAG) Assessment for Onshore Substations Site Selection in the Sizewell Area at para 17 states that “the onshore study area was to be extended westward following consultation with Suffolk County Council (July, 2017) to look further west by potentially crossing Aldeburgh Road” and APP-052 , in Table 6.1.4 indicates that the crossing point was selected by SPR in conjunction with SCC, SCDC and Waveney DC at Site Selection Meetings, Workshops and Visits during 2017. However, no evidence has been presented in the EIA to indicate that ecological surveys of the riparian woodland were carried out in 2017 near the selected crossing point on Aldeburgh Road.	SASES' assertions regarding the timing of surveys and key project decisions are incorrect. An Extended Phase 1 Habitat Survey of the full indicative onshore development areas (including the location of the Hundred River crossing) was undertaken by professional ecological surveyors in April 2018. The decision to locate the onshore substations and National Grid infrastructure in 'Zone 7' (as identified in APP-443), thus necessitating the Hundred River crossing, was not made until June 2018.
9	13. The need for the ecologists to make an onsite assessment at this late stage of ExA's timetable of hearings for EA1N and EA2 together with significant errors and omissions in the EIA Extended Habitats Report in the area of the Aldringham River Hundred, begs the question: Was any professional assessment made of habitat on that particular section of riverside land in 2017 when the Aldeburgh Road crossing place was selected, or at any time since then?	See response at ID8. All surveys were undertaken in accordance with industry guidance (e.g. Handbook for Phase 1 Habitat Survey (JNCC, 2016)). Also in accordance with this guidance, habitats have been assigned the appropriate classification based on the species noted at the time of the surveys. Furthermore, species-specific guidance and standards have been used when assessing habitats for their suitability to support legally protected and notable species.
10	14. SASES and others have repeatedly asked for the Applicants to publish the 'Cable Corridor Optioneering Report' mentioned in APP-443 6.3.4.2 Onshore substation Site Selection RAG Assessment para. 5 and the Engineering Report on the selection of the Aldeburgh Road Cable Crossing decision referred to in APP-052 4.9.1.3.4 which states at 146 that: “Following an Engineering feasibility review it was deemed feasible to cross	Engineering feasibility considerations have influenced the project definition as presented with the Applications and make up a wide spectrum of contributions, including workshops, meetings, e-mails. Such information informed project route selection which was the followed through with more environmental appraisal.



ID	SASES' Response	Applicants' Comments
	Aldeburgh Road". Neither report has been forthcoming and there has been no mention in the EIA of Ecological Reports supporting or qualifying that decision.	
11	15. The conclusion that must be drawn is that if, as the Applicants insist, this land is the only feasible place for the Cable Corridors to cross the Aldeburgh Road and if it is not possible to avoid a priority UK Biodiversity Action Plan habitat, then neither EA1N nor EA2 should be consented.	The Applicants disagree with this conclusion and have no further comment to make.
<p>AGENDA ITEM 2a.iii</p> <p>Hundred River - Watercourse crossing method statement</p>		
12	16. The Applicants had responded to several of the Panel's earlier ExQ1 questions regarding the R Hundred crossing, essentially to the effect that they would much prefer to use an Open/Cut trenched approach across the R. Hundred rather than an alternative 'trenchless' approach and tunnelling under the river. The Applicants identified certain disadvantages of using trenchless methods at that location, but on the assumption that HDD is the only alternative method that would avoid risk to the watercourse, its neighbouring habitats and further downstream, to the Sandlings SPA including North Warren Nature Reserve.	See response at ID13.
13	17. The Applicants' Methodology does not say anything about other non-HDD trenchless methodologies. It has not provided any information on the feasibility and comparative advantages that might accrue from using micro tunnelling instead of Open /Cut trench.	<p>Appendix 4 of the Outline Watercourse Crossing Method Statement (REP6-042) includes commentary on the unsuitability of a trenchless technique for the Hundred River crossing. This Appendix was updated at Deadline 6 to include further justification of the unsuitability of micro-tunnelling.</p> <ul style="list-style-type: none"> The Applicants consider a micro-tunnel operation to be unfeasible due to the disturbance it would impose to the area such as:



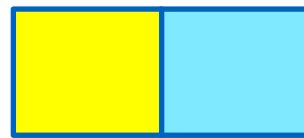
ID	SASES' Response	Applicants' Comments
		<ul style="list-style-type: none"> • The delivery of the plant, machinery and piping required for this operation as well as the handling and disposal of the material used and removed from the tunnelling operation would involve considerably higher levels of traffic than for an open trench solution; • It would require the construction and installation of two deep/large caissons / pits (at entry / exit points) for the machine drilling head to be installed/removed; • It would require the set-up of a large compound at the entry point to cover all aspects of the works including but not limited to set-up of control rooms/offices, laydown area, water, soil and waste management plant areas, among others; and • The construction programme (including reinstatement of the affected areas) for this technique will extend significantly from that of the open trench crossing technique.
14	<p>18. SPR's Ground Engineering Consultants first mentioned micro tunnelling at SPR's Community Consultation events as being a potentially less intrusive technical solution than HDD for the installation of underground power cable ducts, indicating that it might be feasible to construct a cluster of tunnels from a point east of the R Hundred underneath all of the following vulnerable features:</p> <ul style="list-style-type: none"> • the river itself 	See response at ID13.



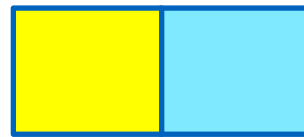
ID	SASES' Response	Applicants' Comments
	<ul style="list-style-type: none"> • under the section of riparian woodland discussed under Agenda item 2 (i) • under the B1122 Aldeburgh Road • and finally beneath the Group TPO [SCDC/87/00030] woodland to the west of Aldeburgh Road, between Fitches Lane and Aldringham Court emerging at a point beyond the woodland protected under and well away from human habitation. The distance involved (200 - 300 metres according to the Works Plans) should be within the capabilities and experience of a Civil Engineering specialist contractor. <p>19. Such a solution might not only mitigate, but eliminate much of the prospective damage to biodiversity in Aldringham, including loss of woodland, the risk of flooding during construction, B1122 traffic delays and interruptions to utility services. However, it must be recognised that even micro tunnelling could also bring substantial disturbance and perhaps other problems to residents living close by. Such matters would have to be weighed up against the benefits.</p>	
15	<p>20. It seems reasonable to have expected that a major international company such as Iberdrola Scottish Power would have at least provided a professional and quantified analysis of the pros and cons of the available methodologies, rather than as it has simply choosing one.</p> <p>21. SASES had previously asked at Deadlines 1, 4 and 5 that the Applicants be required to provide an evaluation of micro tunnelling at the Aldeburgh Road Cable Crossing– so far without response:</p> <ul style="list-style-type: none"> • [REP1-371] SASES Written Representation – Construction Onshore Cable Corridor, page 5 para 42 • [REP4-106] SASES Comments on Applicants' DL3 Submission Construction Issues, page 111 	<p>The Applicants have used experienced and competent specialists in defining the Projects, which conclude that the use of micro-tunnelling or other trenchless techniques are not viable at this location (as outlined in the Outline Watercourse Crossing Method Statement (REP6-041)). Such conclusions do not need to be reached through the preparation of reports, rather are established through engagement with the design teams and consideration of constraints on site.</p>



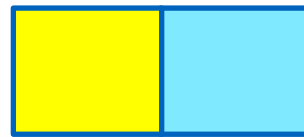
ID	SASES' Response	Applicants' Comments
	<ul style="list-style-type: none"> SASES [REP5-098] Further comments on Applicants' Watercourse Crossing Method Statement 22. <p>22. We ask that the Applicants commit to publishing their expert report (which may already be to hand) on the feasibility, benefits and dis-benefits of a micro tunnel solution to protect the River Hundred, its riverside habitats, the TPO woodland west of B1122 and the road crossing as described above.</p>	
<p>AGENDA ITEM 2b.ii</p> <p>Badger Setts on the Substation Site</p>		
16	<p>1. At ISH 7, the Applicant stated that there were no badger setts on the Substation Site and that their expert ecologists had found no evidence of such. SASES has already made submissions to the Examination of the existence of a badger sett [REDACTED] and this was viewed by 3 members of the ExA on the Accompanied Site Inspection on 26th January 2021.</p>	<p>An Extended Phase 1 Habitat Survey was undertaken in April 2019, and this identified one active badger sett along the onshore cable route and other active badger sets within the wider substation area.</p> <p>Based on the findings of the surveys undertaken to date, the Applicants have submitted a draft badger method statement and licence application to Natural England to seek a Letter of No Impediment for any active badger setts within the onshore development area. This was submitted at Deadline 6 (document reference REP6-050).</p> <p>As noted in section 10.2 of the Outline Landscape and Ecological Management Strategy (OLEMS) (document reference 8.7), an Ecological Clerk of Works (ECoW) will have responsibility for ensuring that all surveys and mitigation measures in respect to badgers are adhered to during construction.</p> <p>The Applicants acknowledge the mobility of badgers and therefore have committed to undertaking pre-construction</p>



ID	SASES' Response	Applicants' Comments
		surveys for badger post-consent. These will identify any changes since the surveys undertaken to date and ensure any mitigation measures reflect up to date data. Surveys will also inform a full mitigation badger licence application at the time.
17	<p>2. Below are the map and photographs provided to the ExA prior to the ASI (REP5-103). Evidence of this sett was also included in SASES' submissions at Deadline 1 on Onshore Ecology with photographs attached at Annex 3 (REP1-350) and Request for Site Inspections (REP1-340) as well as initial Relevant Representations (RR-069). The Applicants have therefore had sufficient opportunity to investigate this sett.</p> <p>3. SASES appreciates this map and photos will be redacted when published however this does present a problem in having a fair and open examination of the existence of these setts, as the public is not able to comment on what has been submitted or corroborate the existence of the setts.</p>	<p>See response at ID16.</p> <p>The Applicant is aware of reports of two additional setts within wider onshore substation area not recorded at the time of preparing the Application. These setts appear to be disused (based on evidence of collapsed holes, old spoil piles and cluttered, overgrown sett entrances) but as with the entire onshore development area, the Applicant will undertake pre-construction surveys for badger post-consent, which will inform the full mitigation licence application at that time. The purpose of the pre-construction survey will be to identify any changes since the surveys undertaken to inform the Environmental Statement and Application and ensure that any mitigation measures adopted reflect the up to date conditions within the onshore development area.</p>
18	<p>4. Prior to ISH 7 evidence was submitted by Gill Horrocks on 15th February 2021 regarding the existence of an [TEXT REDACTED]. Included in this document were a map and photographs of this sett. Works Plan Sheet 7a (REP3-006) is included below showing the relationship of the sett to the onshore substation site during the construction period. It can be seen that this is directly where the haul road enters the substation site and cannot be avoided.</p>	
19	<p>5. Local residents can attest to the fact that these badger setts have existed in these locations for many years and it is not credible that the Applicants or their ecologists have not been aware of the presence of the setts.</p>	
20	<p>6. The Applicants should be asked to make a full assessment of the known badger setts on the substation site during the course of this Examination. This would only require a very short visit to confirm the presence of the badgers.</p>	



ID	SASES' Response	Applicants' Comments
<p>AGENDA ITEM 2b.iii</p> <p>Noise</p>		
21	<p>7. The Applicants refer to an assessment of operational noise in their Deadline 4 Onshore Clarification Note (REP4-005). This concludes that the substation site is of “low ecological value and as a consequence, disturbance from lighting and noise is predicted to be minor adverse and therefore not significant and only have the potential to affect ecological receptors in the immediate vicinity of the substations”.</p> <p>8. The Applicants have not acknowledged that the wooded pit, directly adjacent to the western substation, is a haven for wildlife in particular for bats, badgers, birds and deer, all of which will be very susceptible to operational noise and light. Similarly Laurel Covert to the east of the substations provides very suitable habitat for wildlife and will also be bisected by a proposed alternative public footpath. The wildlife will initially be displaced by the construction activity and be very unlikely to return due to light and noise in operation.</p>	<p>The Applicants assume SASES is referring to paragraph 8 of section 2 of APP-005. This is a quote from section 22.6.2.2 of Chapter 22 of the ES (APP-070) which is referring to the location of the substations and the wider area in general, which in large part relates to the fact that the land is in arable use. APP-005 goes on to specifically address both the wooded pit referred to and Laurel Covert.</p> <p>The Applicants would note that the proposed Public Right of Way diversion through Laurel Covert follows the alignment of an existing track as far as is practicable.</p>
22	<p>9. Further ecological surveys should be carried out at the wooded pit and Laurel Covert to determine the range of species present, particularly in respect of bats who are likely to be very sensitive to both light and noise. This should be carried out before the end of the Examination.</p>	<p>The Applicants have committed to undertaking pre-construction surveys. These will identify any changes since the surveys undertaken to date and ensure any mitigation measures reflect up to date data.</p>
<p>AGENDA ITEM 2b.v</p> <p>Trees and Hedgerows</p>		
23	<p>10. The documents submitted into the Examination only deal with the removal of Important Hedgerows and not ordinary hedgerows which may not be historic, but do contribute very suitable habitats for wildlife, including bats and birds. The Applicant should give details of any such hedgerows which are proposed to be removed, but have not been recorded.</p>	<p>The Applicants consider that identifying important hedgerows to be removed or be crossed using a reduced working width is appropriate and proportionate. The removal of other hedgerows will be controlled through the approval of the</p>



ID	SASES' Response	Applicants' Comments
		Ecological Management Plan in accordance with Requirement 21 of the DCO.
24	11. It has become apparent in recent hearings that the Applicants have overstated the need for the removal of Important Hedgerows and have included the full extent of each hedgerow, whereas only a small portion may need to be removed. SASES contends that the Applicant should define the area for removal more closely so as to preserve important habitats. There is a danger that any contractor will be able to remove extensive lengths of hedgerow for its own convenience rather than necessity.	As set out in the OLEMS (REP6-008), as part of embedded mitigation, hedgerow losses will be minimised where practicable. Pre-construction hedgerow surveys will inform the production of an arboricultural method statement, which will form part of the final ecological management plan to be submitted to and approved by the relevant planning authority in advance of commencement of the onshore works (in line with Requirement 21 of the draft DCO (REP5-003))
25	12. In relation to the above, East Suffolk Council has drawn attention to the proposed removal of Important Hedgerows Nos 61, 62, 63, 64 and 66. The Applicant has said this is to facilitate the overhead line realignment works and only necessary sections will be removed. Again the Applicant should define the sections for removal.	Please refer to ID24 above. Such detail will be established post consent as part of the detailed design process.
26	13. SASES welcomes the Applicants' confirmation in the hearing that the destruction of Important Hedgerow 21 in Fitches Lane, Aldringham, would not be the complete length as indicated on Sheet 5 of the Important Hedgerows and Tree Preservation Plan (APP-020) but instead would be restricted to a crossing width of 27.1M. Similar detail is required on the extent of other hedgerows to be removed.	Please refer to ID24 above. Such detail will be established post consent as part of the detailed design process.

2.3 Comments on SASES' Post Issue Specific Hearing 9 Submissions

ID	SASES' Response	Applicants' Comments
PRELIMINARY ISSUE		



ID	SASES' Response	Applicants' Comments
1	<p>1. SASES noted that it would not repeat previous issues raised which had not been addressed by the Applicants' recent updates. Those issues remained live and in some cases unaddressed. Whilst the Applicants said that their responses were as given in response to SASES's Deadline 1 submissions, it was noted that detailed submissions had been made on behalf of SASES in the course of the ISHs and in written submissions at Deadline 5. Accordingly, a response on some of those issues remained outstanding from the Applicants</p>	<p>The Applicants have provided responses to SASES' DCO comments and post hearing submissions within the <i>Applicants' Comments on SASES' Deadline 1 Submissions</i> (REP4-023), <i>the Applicants' Comments on SASES' Deadline 4 Submissions</i> (REP5-017) and the <i>Applicants' Comments on SASES' Deadline 5 Submissions</i> (REP6-031).</p>
AGENDA ITEM 2: APPLICANTS' LATEST POSITION		
2	<p>2. SASES noted the following issues in respect of matters where the Applicants intend to propose further changes to the dDCO:</p> <p>a. It was noted that the Applicants intend to consider provisions preventing the construction of the National Grid NSIP without constructing either generating station. However this exposes a broader ongoing issue about the control of the relationship between the three NSIPs;</p> <p>b. It was noted that an onshore preparation works management plan is proposed to be the subject of a requirement. It will be important for SASES and others to review an outline of that management plan;</p> <p>c. It was noted that requirement 12 is to be revisited. SASES notes that requirement 12 does not bring the cable sealing end compounds (CSEC) within the substation design principles and this should form part of the revisiting of this requirement.</p>	<p>An updated draft DCO has been submitted at Deadline 7 which incorporates the updates referred to by the Applicants at ISH9.</p>
3	<p>3. SASES noted the following issues arising from (or related to) the latest iteration of the dDCO:</p> <p>a. The definition of "stage" should extend to onshore preparation works. At present the position on this is unclear because under article 11, stages only arise after commencement. Issues arise e.g. in respect of requirement 18;</p>	<p>a) The Applicants do not consider it necessary for onshore preparation works to fall within the scope of requirement 11. The Applicants have included a new requirement in the draft DCO (requirement 26) at Deadline 7 which requires the approval of an onshore preparation works management plan which will ensure that relevant onshore preparation works are</p>



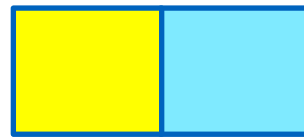
ID	SASES' Response	Applicants' Comments
	<p>b. The definition of “cable sealing end compound” raises an issue about how the CSEC will be controlled to ensure that they are constructed only for the purposes of EA1N and EA2, and not for other projects;</p> <p>c. Article 4 and the power to “maintain” still raises issues about the extent to which the undertakers are required to maintain the authorised development including the mitigation measures which are required as part of it. Article 4 authorises maintenance but does not require it; and the obligations to maintain e.g. landscaping and other mitigations measures are time limited and do not extend to the whole authorised development. There should be a general obligation to maintain. Further, certainty is required as to which party is subject to a maintenance duty given multiple undertakers and where (for example) drainage and landscape provision will be common to infrastructure of multiple undertakers;</p> <p>d. Article 5 and requirement 38 continue to raise concerns about the relationship between the three NSIPs. Requirement 38 should be reconsidered and made of general application e.g. to other parts of the development which are common to EA1N and EA2 and/or the National Grid NSIP. Furthermore how such parts of the development would be constructed under a DCO other than the EA1N and EA2 DCOs and the impact of that on the EA1N and EA2 DCOs needs to be thought through and addressed – see SASES Responses to the ExAs' Commentaries on the dDCOs in respect of Schedule 1 Part 1 Paragraphs 1 & 2 and R38;</p> <p>e. Article 7 remains a significant concern. The Applicants' position is not accepted. Further, the Applicants have failed to address the point that, unlike other NSIPs and other major projects, there is no commitment to obtain s 61 consents for the construction of the projects;</p> <p>f. Although the Applicants indicated that permitted development rights may be addressed, the extent of operational land created by the dDCOs remains a significant concern. SASES endorses the ExA's request for a clearer indication of the extent of operational land, but further requests that dDCOs are drafted to ensure that the</p>	<p>subject to approval. An outline of the information that will be included within the onshore preparation works management plan has been included in Appendix 1 of the Outline Code of Construction Practice.</p> <p>b) The Applicants disagree that the definition of “cable sealing end compound” raises an issue about how they will be controlled. Appropriate controls relating to the cable sealing end compounds are set out within requirement 12. Furthermore, the Applicants have included a new requirement in the draft DCO (requirement 43) at Deadline 7 which prevents the grid connection works from being constructed where the offshore wind farm is not going ahead. The definition of “grid connection works” includes the cable sealing end compounds and therefore the Applicants consider that it would not be possible for the cable sealing end compounds to be constructed under the DCO in the event that the offshore windfarm is not going ahead.</p> <p>c) The Applicants do not consider it necessary to include such an obligation within Article 4. There is no relevant precedent for including such an obligation within the DCO. The relevant undertaker will carry out such maintenance as is required. Furthermore, the requirements secure the maintenance of landscaping, fencing, drainage and other matters (see for example, requirements 14, 15, 17, 25, 41).</p> <p>d) Requirement 38 has been expanded to refer to Work No. 34 (permanent access road) to secure that it will not be constructed more than once. The Applicants do not consider</p>



ID	SASES' Response	Applicants' Comments
	<p>operational land is constrained to those parts of the land within the order limits that are in fact used for the authorised development in the final design;</p> <p>g. As noted above, requirement 12 is the subject of ongoing review by the Applicants. However, SASES notes a concern about the use of finished ground levels for the identification of height parameters since ground levels may be altered; a limitation in AOD is required for each part of these structures. In respect of the CSEC, clarification is required in respect of the height of the compounds and the height of the gantries associated with them;</p> <p>h. Requirement 17 needs to be considered in the context of onshore preparation works, since controls over temporary fencing will be required for that stage of the development;</p> <p>i. Requirements 23 and 24 on construction hours still represent a major concern for SASES and it is very disappointing that the Applicants continue to pursue long working hours in excess of those used on other major projects (e.g. HS2);</p> <p>j. Requirement 25 in respect of lighting needs to ensure that lighting is also addressed as part of scheme design;</p> <p>k. Requirements 26 and 27 on noise impacts are still unacceptable in SASES's view. Proposed alternative requirements have been advanced but not responded to by the Applicants. This issue will be addressed further in the noise ISH.</p>	<p>that any further amendments are requirement to Requirement 38.</p> <p>e) The Applicants note that there will be choices as to how construction noise is controlled. The Outline Code of Construction Practice includes a requirement to submit a Construction Phase Noise and Vibration Management Plan and the Applicants consider that this is an appropriate mechanism to control construction noise however the updated OCoCP submitted at Deadline 7 confirms an intention to apply for a section 61 consent as a mechanism to control construction noise.</p> <p>f) The Applicants have set out their reasons for the retention of permitted development rights in the response to ExQ2.0.1 within the Applicants' Responses to ExA's Comments on Draft DCO (REP6-067).</p> <p>g) Requirement 12 has been restructured so that it is easier to follow. The Applicants consider the approach to specifying maximum heights within requirement 12 and within the SDPS to be appropriate in securing the maximum parameters assessed.</p> <p>h) Temporary fencing will be addressed within the onshore preparation works management plan secured by requirement 26.</p> <p>i) The specified construction hours are not uncommon for nationally significant infrastructure projects and are required for the Projects in order to ensure an optimum construction programme for the works. Any reduction in the start/finish time will have a consequential increase in the overall</p>



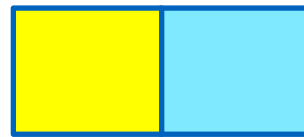
ID	SASES' Response	Applicants' Comments
		<p>construction programme (and construction impacts) of the Projects, increased costs and a delay to the deployment of renewable energy.</p> <p>j) Requirement 25 of the draft DCO provides a robust mechanism to control operational artificial light emissions from the onshore substations, cable sealing end compounds and National Grid substation, the final details of which will require approval from the relevant planning authority.</p> <p>k) SASES provided alternative requirements at Deadline 5 and the Applicants responded at Deadline 6 to say that they note the comments made and will consider the comments regarding additional monitoring provisions, noting that if any changes are considered appropriate they will be included within the revised draft DCO at deadline 7. The Applicants can confirm that amendments have been made to Requirement 27 within the draft DCO submitted at Deadline 7 which take on board some of the points raised by SASES in its Deadline 5 submission.</p>
4	4. SASES's overall comment is that there are significant areas of ongoing disagreement, and the Applicants have failed to engage with SASES (updated) comments since its original submissions at Deadline 1.	The Applicants disagree with this statement and note that amendments have been made to the draft DCO to address comments raised by SASES in its written and oral submissions. The Applicants also refer to the submissions noted at ID1 above in which responses have been provided to comments raised by SASES on DCO matters.
AGENDA ITEM 4: THE CHANGING POLICY ENVIRONMENT		
5	5. The comments of the Rt Hon Therese Coffey MP were gratefully noted and endorsed. In SASES's submissions there are three possible approaches to address the	During the examination a number of statements have been made about the policy framework changing. The BEIS review



ID	SASES' Response	Applicants' Comments
	<p>lack of coordination, and the risk of consenting these projects when the policy environment is highly likely to change to require greater coordination:</p> <ul style="list-style-type: none"> a. To refuse development consent in light of the multiple adverse impacts; b. To issue a split decision; c. To impose an obligation to confirm that a better coordinated approach cannot be achieved after consent but prior to the projects proceeding. 	<p>is currently reviewing matters. It has acknowledged that the major structural changes are not likely to take place until the end of this decade and that technology gains would have to be achieved to make that happen. In the interim there is an encouragement being given to the creation of pathfinder projects. No credible technology solutions have been put forward. This matter is addressed in the Applicant's response to SASES Deadline 5 submission (REP6-031). SASES suggested a theoretical technology which does not currently exist and which would breach regulatory and auction requirements. The Applicants at this stage do not consider that there is a pathfinder technology that would be suitable.</p> <p>A split decision would leave the projects in limbo and unable to proceed to construction. There would be no certainty of future delivery and no foreseeable technology to provide a cost effective grid solution.</p> <p>A split decision would result in a decision that would not support the delivery of the key commitments set out on pages 16,17, 38 and 45 of the White paper. It would not accelerate the required deployment (38). It would not provide additional capacity that could bid into Auction Round 4 (45, 2nd column) It would bring the supply chain development to a shuddering halt and damage confidence of the investor community. All these consequences would damage the implementation of the Government's Energy policy. There is no support in the White Paper for the delivery of critical new capacity to be deferred until a future more coordinated grid is delivered. That would in effect be a moratorium. An attempt to try and</p>



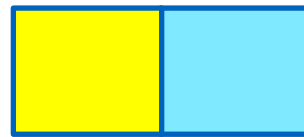
ID	SASES' Response	Applicants' Comments
		<p>apply the future policy now is likely to thwart the achievement of the 40GW target.</p>
6	<p>6. The possibility of a split decision to consent only the offshore works has been addressed at Deadline 1 by SASES, and is endorsed by SEAS and others. As to an obligation to ensure coordination, SASES suggest (without prejudice to its primary case) the following additional "Article 3A" as a possible approach:</p> <p>Article 3A: Grid connection coordination</p> <p>3A (1) Article 3(1) is subject to the provisions of this article.</p> <p><i>(2) The undertaker may not commence the development unless he obtains within six months prior to commencement a grid connection coordination certificate.</i></p> <p><i>(3) For the purposes paragraph (2) a grid connection coordination certificate is a certificate granted by the Secretary of State to certify that there is no more efficient or better coordinated means of establishing a connection between Work No. 1 and electricity transmission network.</i></p> <p><i>(4) An application for a grid connection coordination certificate under this provision shall:</i></p> <p style="padding-left: 40px;"><i>(a) be made in writing to the Secretary of State</i></p> <p style="padding-left: 40px;"><i>(b) be made after the strike price for the electricity to be generated by the authorised development has been determined under the Contracts for Difference regime (or such other regime as exists at the relevant time)</i></p> <p style="padding-left: 40px;"><i>(c) be accompanied by an assessment of the opportunities to make use of all other reasonable means of connecting to the electricity transmission network available or likely to be available within five years of the date of the application</i></p> <p style="padding-left: 40px;"><i>(d) demonstrate that there are no more efficient or better coordinate means of establishing such a connection.</i></p>	<p>The Article proposed by SASES contemplates a "Grid Connection Certificate" to be provided by the Secretary of State, (SoS). The certificate will certify as follows: <i>"that there is no more efficient or better coordinated means of establishing a connection between Work No. 1 and electricity transmission network"</i>.</p> <p>The Article proposed would be unlawful for a number of reasons. First, it would introduce grid connection tests which would be different from those set out and provided for in terms of the Electricity Act and the regulatory framework. It would result in some of the Statutory requirements not being taken into account. It would be irrational to introduce such a conflict.</p> <p>The Electricity Act 1989, (the 1989 Act), sets out a scheme for the regulation of the electricity industry including the licensing of NGET and NGENSO. The connection arrangements have been carefully considered under arrangements in place under that 1989 Act scheme, for example under the CION process NGENSO are required to offer connections in compliance with their 1989 Act duties. The 1989 Act provides that a specialist energy regulator, Ofgem, is responsible for monitoring compliance with such duties. The Article cuts across the statutory framework for monitoring compliance by Ofgem which was provided for by Parliament. Notwithstanding the Article the grid connection</p>



ID	SASES' Response	Applicants' Comments
	<p><i>(5) The Secretary of State shall determine the application for a grid connection coordination certificate based upon the facts and circumstances including all relevant Government policy at the time of his determination under this article.</i></p>	<p>would have to be developed and approved under the regulatory framework provided.</p> <p>The Article sets a different standard than that required by the 1989 Act regime. It requires the identification of a “most efficient and co-ordinated connection” for the project but not the system as a whole. The 1989 Act arrangements do not go so far as to require such a singular measure. This is for good reason. The identification of a point of connection involves a range of complex factors. It engages deliverability and cost. Cost is a key consideration in the current regulatory framework and protection of consumer interests continues to be a key consideration as set out in the White Paper. As the White Paper states at page 46 “It is vital that CfDs offer value for money to consumers and continue to deliver low prices” The Article subverts the legal standards applied by Parliament and developed by Ofgem by requiring a different standard.</p> <p>It would also be irrational because it would render the projects undeliverable. Major infrastructure projects require certainty to enable the procurement of the plant, equipment and construction. Commitments to turbines supply, cable manufacture and the hire of key vessels all require to be secured well in advance of 6 months prior to the commencement of development.</p> <p>The Article is also likely to prevent the project bidding into a CfD auction. The CfD arrangements, put in place by the SoS under the Energy Act 2013 contemplate that grid connection arrangements are in place before an application is made for a CfD. The CfD arrangements do not contemplate an additional</p>



ID	SASES' Response	Applicants' Comments
		<p>grid connection step such as this. Commitments require to be made to delivery through that process. If a party is successful under a CfD Round, they must enter into a binding contract, the terms of which are also determined under the Energy Act 2013 arrangements. These do not provide contractual protection against such an Article. Again, this would be irrational given government policy, and the nature and objectives of the CfD regime.</p> <p>Offshore windfarm developments involve the identification of an efficient and co-ordinated point of connection. These matters are regulated under the 1989 Act regime. The proposed Article would impose a materially different standard to that imposed on other developments. The Applicants would be put at a material disadvantage to others. This would run contrary to longstanding energy policy.</p> <p>The imposition of such an Article would be incompatible with the duties placed on the Secretary of state.</p>
7	<p>7. This approach would ensure that the projects did not proceed without the question of coordination being properly tested. The Applicants' suggestion that such an approach would be unlawful is baseless. The DCO can control the project as the Secretary of State sees fit, including subjecting it to further authorisations where necessary and appropriate.</p>	<p>The article is contrived and would be contrary to law and policy.</p>
8	<p>8. The Applicants' approach in respect of a "pathfinder" project were noted. However, the Applicants have failed to respond to SASES's detailed submissions on this point in REP5-107. So far as the Applicants contended that s 104 Planning Act 2008 required a determination in accordance with the relevant NPSs, and the NPSs support the prospect of a grid connection being authorised along with a generating station, SASES observed that s 104(7) also requires consideration of the adverse impacts of the</p>	<p>The reference to the consenting of a nuclear station is not an appropriate analogy. The connection of offshore wind projects has been given its own regulatory regime established by law and through a specific regulatory framework. The OFTO regime recognises the significant logistical and financial challenges involved. It recognises that the Government has</p>



ID	SASES' Response	Applicants' Comments
	<p>proposals. Moreover, it is plain that the NPSs do not require a grid connection to be authorised simultaneously and indeed that was the recent approach at Wylfa Newydd where a separate application was made by National Grid for a DCO for a new grid connection.</p>	<p>been under positive duties to facilitate renewable generation's access to grid. For onshore projects grid connections are often taken forward by the Transmission Owner through grid connection agreements. Offshore wind connection is different.</p>
AGENDA ITEM 9/10		
9	<p>9. It was noted that Deadline 7 requires the submission of a final dDCO for each project. However, that deadline is before the final series of ISHs, including on the dDCO, and accordingly it was suggested that the timetable should be revised to reflect the fact that the dDCO would require further consideration and revision in light of those hearings.</p>	<p>Noted.</p>



2.4 Response to SASES' Comments on the Examining Authority's Commentary on the draft DCO

ID	Examining Authority Matter, Issue or Question	SASES' Response	Applicants' Comments
General Observations			
1	<p>Adaptation Provisions</p> <p>The ExAs have noted the potential relationship between the non-array elements of the proposed developments and policy change in relation to onshore transmission system connections, as indicated in Energy White Paper and subject to potential change in the BEIS Offshore Transmission Review. The Applicants have responded in summary terms indicating that they do not consider that the proposed development would be subject to any emerging policy change because the proposed developments are already at an advanced position in the approvals pipeline. They have outline that they consider they have prepared an economically efficient transmission system connection design that does not give rise to unacceptable adverse effects. They have made clear that they do not seek 'pathfinder' status under the Energy White Paper for their transmission system connections. They have sought to control risks associated with these policy changes by reducing the time allowable for commencement from seven to five years.</p> <p>That approach notwithstanding, taking an alternative approach without prejudice, how would the Applicants consider that the dDCOs might be amended to provide flexible adaptation to face policy change around transmission system connections, should the Secretary of State form the view that (at a relevant time) change policy around transmission system connections was applicable to the proposed developments and or that adaptation to support pathfinder status under the Energy White Paper was desirable?</p> <p>This matter is raised generally and with no particular suggestion as to how such provisions might be drafted into the dDCOs. The elements that might need to be included however are:</p> <ul style="list-style-type: none"> • Provisions in relation to Compulsory Acquisition (CA) and/or Temporary Possession – which might enable change or fall-away if an alternative transmission connection method were to emerge. • Provisions in relation to Works, principally onshore but also in the offshore cable alignments – which might enable change. 	<p>SASES is of the view that with a degree of creativity a solution might be found. SASES has suggested some possible drafting in its post ISH9 submission. This is also provided in response to action point 7.</p> <p>SASES also refers the ESA to its Pathfinder Clarification Note submitted at D5 REP5-107</p>	<p>See Applicants' response to SASES submissions at ID5 to ID9 of section 2.3 above and to the Applicants response to the SASES Pathfinder Clarification Note provided within the Applicants Comments on SASES Deadline 5 submissions (document reference ExA.AS-7.D7.V1).</p>
2	<p>Review</p> <p>When the draft development consent order (dDCO) is finalised (ahead of submission at Deadline 7), all internal references, statutory citations and references and legal footnotes should be checked and updated as required. Drafting should be reviewed to follow best practice in Planning Inspectorate Advice Notes (ANs) 13 and 15 and (as relevant) guidance on statutory instrument drafting from the Office of the Parliamentary Counsel (June 2020).</p>	<p>SASES would make the observation that given the number of points outstanding and the further hearing ISH15, the dDCO to be submitted at D7 is unlikely to be the final version.</p>	<p>Noted.</p>
Articles			



ID	Examining Authority Matter, Issue or Question	SASES' Response	Applicants' Comments
3	<p><i>Art 2(1) definitions: commence</i></p> <p>Definitions of “commence” on land are limited to the first carrying out of any material operation as defined in s 155 of the 2008 Act ‘other than onshore preparation works’.</p> <p>As raised in ISHs6, “<i>onshore preparation works</i>” means operations consisting of site clearance, demolition work, pre-planting of landscaping works, archaeological investigations, environmental surveys, ecological mitigation investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of temporary means of enclosure, creation of site accesses, footpath creation, erection of welfare facilities and the temporary display of site notices or advertisements;...</p> <p>This is a potentially wide class of exceptions to the limitation on commencement. It enables substantial pre-commencement works with relevant environment effects. Detailed plans and approvals pursuant to (for example) Rs 11 (Stages of authorised development onshore), 12 (Detailed design parameters onshore) or 13 (Landfall construction method statement) (or at least relevant parts of them) might be expected to secure aspects of the environmental performance of works including site clearances, demolitions, creation of accesses, remedial groundworks, any works relevant to flooding or drainage or pre-planting in landscape works.</p> <p>a) Is it necessary to further specify that relevant aspects of plans and approvals under requirements be completed before such pre-commencement works take place? How might that be done?</p> <p>b) Alternatively, can the definition of “onshore preparation works” be amended to provide that all such works must take place ‘to the extent assessed in the ESs’?</p>	<p>See SASES post ISH9 submission</p>	<p>See Applicants' response to SASES post ISH9 submission in section 2.3.</p>
4	<p><i>Art 2(1) definitions: maintain</i></p> <p>This definition is wide, a matter raised at ISHs6, but is expressly limited ‘to the extent assessed in the [ESs]’. Are parties now broadly content with this drafting?</p>	<p>No. The ES essentially assesses the Rochdale Envelope impacts. What is in fact constructed is in accordance with detailed design, detailed plans etc which are determined and agreed under the terms of the DCO. Therefore such a limitation should be limited to what is finally agreed/approved under the DCO. Referring to the ES will give the undertaker(s) very broad rights to alter and reconstruct the authorised development.</p>	<p>The Applicants consider the definition of “maintain” to be entirely appropriate, justified and in accordance with existing precedent.</p>
5	<p><i>Art 2(1) definitions: relevant to onshore substation design</i></p> <p>References to the “outline national grid substation design principles statement” and the “outline onshore substation design principles statement” have been removed at Deadline 5. Reference to the “substations design principles statement” which is also to be a certified document have been added.</p> <p>a) Are parties content that this change is appropriate and has been appropriately reflected elsewhere in the dDCOs?</p>	<p>Yes but without prejudice to SASES' comments on the substations design principles statement submitted at D5</p>	<p>Noted.</p>



ID	Examining Authority Matter, Issue or Question	SASES' Response	Applicants' Comments
6	<p>Defence to proceedings in respect of statutory nuisance</p> <p>Existing concerns raised at ISHs6 are noted.</p> <p>a) Any outstanding concerns at the extent or effect of the proposed defence must be submitted by Deadline 6.</p> <p>b) Arts 7(1)(a)(i) refers to the Control of Pollution Act 1974. Are relevant provisions of this legislation still on the statute book? Section 65 is understood to have been repealed?</p> <p>c) Arts 7(1)(b) (i) in (1) refers to the onshore substation of the project proposed to be authorised by the other dDCO (2) – and vice versa. Do the substations referred to here need to be defined?</p> <p>d) Is any changed drafting necessary?</p>	<p>a) SASES refers the ExA to its post ISH4 REP5-100 and ISH9 submission in relation to Article 7 both in respect of nuisance during construction and nuisance during operation.</p> <p>c) Yes including the National Grid substation and the cable sealing ends, all infrastructure must be included. If the applicants position is that this infrastructure does not emit noise then there should be no problem with including all this infrastructure. In addition it needs to be addressed how these provisions would work with the provisions of another DCO which is not a "Scottish Power" DCO where the grid connection works are constructed under that other DCO – see Requirement 38. SASES has made a submission in relation to non "Scottish Power" DCOs in its post ISH9 submission.</p> <p>d) Yes</p>	<p>a) See Applicants' response to SASES submissions on this point in section 2.3 above and in ID83 of section 2.4 of the Applicants' Comments on SASES' Deadline 5 Submissions (REP6-031).</p> <p>c) SASES' comment seems to relate to the noise requirements more generally rather than the specific point raised by the ExA. See the Applicants' responses in section 2.3 above in relation to SASES post ISH9 submissions.</p> <p>d) The reference to onshore substations has been removed from this cross reference as the title of the requirement being referred to has been amended in the draft DCO at Deadline 7. This amendment resolves the matter raised by the ExA relating to defined terms.</p>
7	<p>Temporary uses of land: notice periods for entry</p> <p>In Arts 26 (applicable during construction) the notice period for entry to land is 'not less than 14 days'. In Arts 27 (applicable during operation for maintenance works) the notice period is 'not less than 28 days'.</p> <p>a) The Applicants are requested to explain and justify the difference in notice provided.</p> <p>b) 14 days is in principle a very short period of notice of intended entry onto land. Given that 28 days can be accommodated for maintenance works, why can the same period not be provided for construction works?</p> <p>c) In Arts 27(11) (b) the Applicants are requested to check and confirm that the cross reference to Arts 26(3) is now the correct reference.</p>	<p>SASES regard 28 days as a minimum notice period in relation to construction works not least because construction works may well be more disruptive than maintenance works.</p>	<p>The Applicants have amended article 26 to require a minimum notice period of 28 days to be provided. This is reflected in the draft DCO submitted at Deadline 7.</p>
8	<p>Arbitration</p> <p>Arts 37 of the dDCOs are expressed (Arts 37(1) as subject to Art 40 (saving provision for Trinity House) and to the provision that the arbitration provisions do not apply to 'any dispute or difference arising out of or in connection with any provision of this Order, unless otherwise provided for...'. Arts 37(2) provide that '[a]ny matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration'.</p> <p>a) Is it sufficiently clear that the discharge of Requirements in Schedule 1 and as provided for in Schs 16 and/ or of Conditions to the DMLs in Schedules 13 or 14 are outside the scope of the arbitration provision?</p> <p>b) Is the Applicants' intention as described in (a) and if not, what is the intended application of arbitration to the discharge of Requirements, the operation of Schs 16 and/ or the discharge of Conditions to the DMLs?</p> <p>c) Is the MMO content that the exception from arbitration provided for it is appropriate and addresses its concerns?</p>	<p>SASES awaits the Applicants revised drafting on this point.</p>	<p>Noted.</p>



ID	Examining Authority Matter, Issue or Question	SASES' Response	Applicants' Comments
	<p>d) Is Trinity House content with the proposed saving provision in Arts 40 and that has the effect of excepting it from the arbitration provisions?</p> <p>e) Are local authorities acting as relevant planning authority or highway authority and in related capacities content that the arbitration provisions do not intrude on their powers and duties in any unexpected or unwarranted manner?</p> <p>f) Are the Environment Agency, Natural England and/ or Historic England content that their roles as advisory and regulatory authorities, as consultees and in the making of relevant expert determinations and authorisations where necessary appropriately responded to in this drafting?</p> <p>g) Is it sufficiently clear that the SoS' own determinations are not subject to arbitration?</p> <p>See also – Schs 15.</p>		
<p>9 Bodies discharging requirements</p> <p>Bodies acting under Arts 38 of the dDCOs and discharging or directing under Requirements including:</p> <ul style="list-style-type: none"> • The relevant planning authority; • The relevant highway authority; • Environment Agency; • Historic England; • Natural England; • Civil Aviation Authority; • Ministry of Defence • NATS • Suffolk County Council (as lead local flood authority); <p>Are requested to confirm that they are content with the application of Arts 38 and Schs 16.</p> <p>See also – Schs 16.</p>	<p>Given Suffolk County Council has ongoing responsibility for flood matters it would be inappropriate for East Suffolk Council to have a role in relation to the discharge of requirements which relate to drainage and flood risk. When Friston is flooded as a result of these projects, given the inadequate investigation and mitigation conducted and proposed by the Applicants, it will be Suffolk County Council which will have to deal with the consequences.</p> <p>Whilst landscape and drainage issues are related they are not inextricably linked.</p>	<p>The Applicants do not agree with the comments regarding the adequacy of the investigation and mitigation proposed and consider the comment that Friston will flood as a result of the Projects to be wholly inappropriate and without evidence</p> <p>With respect to the comments regarding the appropriate discharging authority, the Applicants' consider that this is ultimately a matter for the Local Planning Authorities to agree between themselves. In the absence of agreement between ESC and SCC as to which authority should discharge the requirement, the Applicants consider that the default position in terms of the discharging authority should be the relevant planning authority.</p>	
SCHEDULE 1 – Authorised Project			
<p>10 Pt 1: Authorised development Para 1 – the generating stations NSIPs</p> <p>Works Nos.1 secure the status of the authorised developments as NSIPs by providing that the works consist of an offshore wind turbine generating station with a gross electrical output capacity of over 100 MW. They provide for East Anglia ONE North (1) up to 67 wind turbine generators may be constructed and for East Anglia TWO (2) up to 75 wind turbine generators may be constructed. These provisions secure the maximum physical extent of the generating station array developments at sea and describe the upper limit of the Rochdale Envelopes for the proposed developments.</p>	<p>A point of information for the ExA in relation to the highlighted text below. The changes made to the to the EA1 DCO were made pursuant to (i) a non-material change process and (ii) a process which involved seeking waiver to the requirements of the DCO.</p> <p>It has always been of concern to SASES that changes which had such profound implications and consequences were made in this manner. One explanation might be that those who were charged with reviewing such changes were unaware of the implications and consequences of such changes.</p>	<p>See ID5.1 of <i>Applicants' Responses to ExA's Comments on Draft DCO</i> (REP6-067).</p>	



ID	Examining Authority Matter, Issue or Question	SASES' Response	Applicants' Comments
	<p>The Applicants have been clear (ISHs6) that they do not consider it necessary or precedented in previous made DCOs for there to be additional Works descriptions that secure the development of installed generating capacity over 100 MW.</p> <p>However, to the extent that some Interested Parties have made submissions that in their views, the adverse impacts of the proposed developments could outweigh their benefits, it could be argued that larger installed generating capacities may form a relevant component of greater public benefits.</p> <p>Reference has also been made to the material change process for the East Anglia ONE offshore wind farm post the initial grant of development consent for that project, which has been argued to have resulted in the assessed adverse impact of that development in terms of onshore effects becoming greater (in proportion to a reduced installed generating capacity benefit) than they were at the point of original decision on the DCO. In such circumstances, arguments have been mounted that there may be a threshold for minimum installed generating capacities that might be necessary to be secured in these proposed developments to ensure that a positive balance of benefit could be retained.</p> <p>a) Is it the Applicants' view that the construction of either proposed development at a minimum installed capacity of 101 MW would provide sufficient benefits to outweigh their relevant adverse impacts?</p> <p>b) If there is doubt on this point, please propose drafting which might secure an appropriate threshold of installed generating capacity to address this.</p> <p>c) Are there provisions in the Agreements for Lease (AfLs) for the offshore array areas that secure minimum installed generating capacities? If so, could the equivalent figure be referred to in the dDCOs?</p>		
11	<p>Paras 1 & 2 – formation of a new permanent access road from the B1121 north of Kiln Lane to the onshore substation and national grid substation.</p> <p><i>Works Nos. 34</i> forms part of both the generating stations and electric lines NSIPs. The rationale for this approach is clear. However, in relation to matters raised in respect of R38 (Restriction on carrying out grid connection works where consented in another order), there is an argument that drafting should be included to ensure that this access road cannot be constructed a second time if already constructed under one DCO. Is any additional drafting required?</p>	<p>It would be helpful for SASES if this rationale could be explained. There will be at least three undertakers at the Friston site, all of whom will presumably need to use this access road for operational maintenance. Therefore whilst each undertaker will require a right to use this road, it is unlikely that they will jointly own it.</p> <p>The Applicants will no doubt answer that R38 refers to the grid connection works (which includes the operational access road) and each of the Scottish Power DCOs has the same provision. However there remains the issue if the grid connection works are constructed under a “nonScottish Power” DCO</p> <ol style="list-style-type: none"> 1. Will that other “non-Scottish Power” DCO have the same definition of grid connection works and work nos descriptions and subject to the same design requirements etc? 2. Will the entirety of the grid connection works be constructed under the other “non-Scottish Power” DCO(s) or could some of the works be constructed under the other “non-Scottish Power” DCO and some under one or both of the other Scottish Power DCOs? The use of the word “part” in R38 would indicate that this is a possibility. 	<p>The Applicants consider the controls within the draft DCO to be appropriate for the Projects for which consent is sought.</p> <p>With respect to Work No. 34, Requirement 38 has been expanded to make it clear that Work No. 34 cannot be constructed more than once.</p> <p>With respect to the grid connection works more generally, these are necessary for the Projects to be delivered. However noting representations from SASES at ISH6, a new requirement 43 has been included in the draft DCO at Deadline 7 which prevents the grid connection works from being constructed where the offshore wind farm project is not going ahead.</p>



ID	Examining Authority Matter, Issue or Question	SASES' Response	Applicants' Comments
		<p>3. Will the “non-Scottish Power” DCO(s) contain an identical requirement to R38?</p> <p>4. The grid connection works will require (inter alia) landscaping and drainage works. Will they be constructed under the Scottish Power DCOs or the non-Scottish Power DCO(s). If the latter how will that be addressed in the Scottish Power DCOs including issues around design, maintenance etc? If the former how will it be assured that construction of the grid connection works dovetails with the construction of the EA1N and EA to substations.</p> <p>5. How will landscaping, drainage, noise etc matters be addressed in the environmental statement for the non-Scottish Power DCO(s)?</p> <p>6. There are no doubt other issues as well but these are the most obvious ones that spring to mind.</p> <p>SASES has also highlighted this issue in its post ISH9 submission.</p>	
12	<p>Para 2 – the electric lines (transmission) NSIP</p> <p>Is there an argument that the element of these developments relating to National Grid infrastructure is not only a separate NSIP but is potentially a separate project that should be the subject of a separate DCO? Such an approach might ensure that the effects of a range of potential grid connections were appropriately assessed and mitigations secured?</p>	<p>SASES refers the ExA to its post ISH 2 submissions in respect of site selection REP3- 128 and cumulative impact.REP3-126</p>	<p>See ID5.6 of the <i>Applicants' Responses to ExA's Comments on Draft DCO</i> (REP6-067)</p>
13	<p>Para 2 – the electric lines (transmission) NSIP</p> <p>In order to adequately ensure that relevant design mitigations for the transmission connections substations are provided and endure, permitted development rights applicable to a National Grid substation might be withdrawn: ExQs2.0.1 and 2 refer, as does East Suffolk Council D5 submission on ISHs6 [REP5- 047].</p> <p>a) How might that be provided for in drafting terms in the dDCOs?</p> <p>b) Is the drafting proposed by East Suffolk Council appropriate?</p>	<p>See SASES post ISH9 submission in respect of operational land and permitted development rights</p>	<p>The Applicants have set out their reasons for the retention of permitted development rights in the response to ExQ2.0.1 within the <i>Applicants' Responses to ExA's Comments on Draft DCO</i> (REP6-067). See also ID5.7 of the <i>Applicants' Responses to ExA's Comments on Draft DCO</i>.</p>
14	<p>Para 2 – the electric lines (transmission) NSIPs – landscape and drainage and other shared works</p> <p>Works Nos. 34 (an access road) is shared between the generating stations (para 1) NSIPs and the electric lines (transmission) (para 2) NSIP. On the same principle are elements of other Works also shared and if so should relevant drafting provision be made? Works Nos. 33 appears to be of particular relevance as a candidate for inclusion as shared Works, as Works Nos. 38 (sealing end compounds), 41 (a new National Grid substation) and 34 itself (the access road) require to be landscaped and drained during the operation phase?</p> <p>a) Should there be other shared Works?</p> <p>b) How might these be provided for in drafting terms?</p>	<p>As per SASES post ISH9 submissions there is additionally the question of where maintenance responsibilities will lie.</p>	<p>See ID5.8 of the <i>Applicants' Responses to ExA's Comments on Draft DCO</i> (REP6-067). With respect to maintenance responsibilities, the requirements secure the maintenance of landscaping, fencing, drainage and other matters (see for example, requirements 14, 15, 17, 25, 41).</p>
15	<p>R14: Provision of landscaping</p>	<p>It needs to be clarified that the maintenance regime will apply to “pre-planting”</p>	<p>Requirement 26 of the drat DCO requires an onshore preparation works management plan to be submitted and</p>



ID	Examining Authority Matter, Issue or Question	SASES' Response	Applicants' Comments
	The proposal to undertake 'pre-planting' is potentially valuable as a form of mitigation, enabling the part establishment of some landscape enclosure before commencement. However, it also serves to reduce the level of accountability around the approval of landscape schemes. Is there a form of drafting that could enable reference of pre-commencement landscape works to the relevant planning authority and so address this concern?		approved by the relevant planning authority. Any early planting undertaken as onshore preparation works will require approval from the relevant planning authority under this requirement. Any early planting undertaken during the construction phase will require approval from the relevant planning authority under Requirement 14 of the draft DCO. Adequate control of early planting is therefore secured under the draft DCO.
16	R15: Implementation and maintenance of landscaping How might drafting securing an aftercare/ replacement period for the landscaping for Works Nos. 33 in accordance with the time period for adaptive/dynamic maintenance and aftercare set out in the OLEMS [REP3-030, Section 4.2] be formed? How might this address the suspension of maintenance? Is a ten-year replacement period for failed woodland planting required for Works Nos. 24 and 29?	As per SASES' submissions at a ISH9 maintenance is required for so long as the development sits in the landscape. Whether it is operational is irrelevant. Anyone who has anything to do with the maintenance of woodland knows that it requires regular and continuing maintenance. It is unclear what a "adaptive/dynamic" maintenance means.	Details of the proposals and commitments in relation to landscaping can be found within the Outline Landscape and Ecological Management Strategy (REP6-008).
17	R16: Highway accesses Please comment on the following matters: a) Why is the term 'begin' used in this provision and not the defined term 'commence'? (See Arts 2(1).) b) SZB has requested to become a consultee on highway access written details submissions relating to Works Nos. 10, 11 and 15. Is the Applicant content?	This is another requirement where it needs to be clarified that onshore preparation works which involve highways accesses are subject to this requirement.	The use of the term "begin" is intentional to ensure that onshore preparation works are not excluded, as would be the case if the term "commence" was used. Relevant onshore preparation works therefore fall within the scope of this requirement.
18	R23 & 24: Hours Please comment on the following matters: a) Is there any feasible means of limiting or controlling the classes of essential activities which (following discussion at ISHs6) remain as open classes? b) Does the Applicant have any further observations to make on proposals for further hours limitations raised by Interested Parties at ISHs6? Proposals made included reducing hours from 0700-1900 to potentially 0800-1800 (and 0800-1300 on Saturdays) and also to the possibility of tourism/ festival-related non-working period in the summer months.	SASES refers to its post-ISH6 submissions in relation to construction hours. REP5-102 The applicants fail to appreciate that in relation to the Friston site and at points along the cable route that it is very close to residential receptors. Friston is very different from the Bramford site. Reduction in working hours does not mean the inevitable extension of the construction period. An alternative is simply to employ more construction workers.	See the Applicants' Responses to Hearings Action Points (ISH6) (REP5-026).
19	R26: Control of Noise during Operational Phase R27: Control of noise during operational phase cumulatively with (1) and (2) The Applicants are requested to clarify whether drafting securing an additional monitoring location is proposed to be added to R26 [REP4-026][REP4-043], or whether the Deadline 5 changes are viewed as sufficient.	SASES refers to its post-ISH6 submissions in relation to noise requirements. REP5-102	See the Applicants' response at ID3 in section 2.3 above.



ID	Examining Authority Matter, Issue or Question	SASES' Response	Applicants' Comments
	<p>East Suffolk Council has suggested a 'considerably lower' operational noise rating level (LAr) should be secured in both of these requirements [REP5-047]. What do they consider the value(s) should be and why?</p> <p>Is it appropriate and if so, how might the National Grid infrastructure be included within the final agreed cumulative operational noise rating level in R27?</p>		
20	<p>R38: Restriction on carrying out grid connection works where consented in another order</p> <p>Are there any circumstances in relation to works other than 'grid connection works' where there is scope for commencement under 'another Order' that requires an equivalent restriction on commencement, if commencement has already occurred under another Order?</p>	<p>See SASES comments above in respect of Pt 1 Paras 1 & 2 – formation of a new permanent access road</p>	<p>See Applicants' response at ID11 above.</p>
21	<p>R41: Operational drainage management plan</p> <p>Would the provision be improved by the following?</p> <p>a) In para (1) drafting providing that '[t]he operational drainage plan must include a timetable for implementation'; and</p> <p>b) In para (2) that '[t]he operational drainage management plan must be implemented and maintained as approved'.</p> <p>c) Having this requirement secure and crossrefer to a newly defined Work consisting of all surface water drainage infrastructure (as suggested by Suffolk County Council).</p> <p>Is Suffolk County Council content that East Suffolk Council as the relevant planning authority should lead on discharge of this required (in consultation with Suffolk County Council and the Environment Agency) to ensure coordinated input on subject matters with a strong bearing overall on design and appearance?</p>	<p>(b) As per SASES' post ISH9 submissions given the importance of flood mitigation measures the duration of the maintenance for so long as the development sits in the landscape must be secured in the requirement wording and not by reference to some subsequent approval.</p> <p>(c) See SASES comments in relation Art 38 Bodies discharging requirements above. The Friston Community is concerned given the threat of flood risk to the village that the body which is the lead local flood authority, namely Suffolk County Council, is not directly and primarily responsible for the discharge of this requirement.</p>	<p>b) The Applicants consider that the reference to maintenance within Requirement 41(1) is appropriate and adequately secures the maintenance of the measures set out within the plan.</p> <p>c) See response at ID9 above.</p>
22	<p>Security for Memoranda of Understanding (MoUs)</p> <p>Suffolk County Council [REP5-058] although not agreeing necessarily that formal security is required, has proposed a form of words to secure proposed MoUs between the Councils and the Applicants on skills, education and economic development through a new requirement. The proposed wording is reproduced below. Please provide your views on it.</p> <p>See also Obligations and Agreements below.</p> <p><i>The development shall not commence until a Memorandum of Understanding (MoU) has been agreed between the Applicant, Suffolk County Council, and East Suffolk Council. The MoU shall address the arrangements for securing the dissemination of skills and the integration of the supply chain into the local economy, including working to a shared set of objectives, and shall include measures for the periodic monitoring and review of those arrangements. The development shall be undertaken in accordance with the agreed MoU (including any review thereof).</i></p>	<p>Given the importance of securing meaningful skills, education and economic development it seems inconceivable that this requirement is not secured in the DCO. If the DCO is granted residents will have regular questions for both local authorities on this subject.</p>	<p>See response at ID5.32 of the Applicants' Responses to ExA's Comments on Draft DCO (REP6-067) and section 3.5.2.13 of the Written Summary of Oral Case (ISH6) (REP5-030).</p>



ID	Examining Authority Matter, Issue or Question	SASES' Response	Applicants' Comments
SCHEDULE 3 -Public Rights of Way to be Temporarily Stopped Up			
23	<p>Public rights of way, extent of temporary stopping up and substituted temporary public rights of way</p> <p>Please confirm that the public rights of way, the extent of the proposed temporary stopping up and any substituted temporary public rights of way are in correct locations, correctly described and give rise to no other matters. Alternatively, submit any final proposed revisions or corrections.</p>	<p>SASES is concerned that as to whether the PRoWs which will be used by the Applicants for pre-construction accesses are referred to in this schedule. There needs to be greater clarity as to which PRoWs will be used for the purposes of the onshore preparation works and the extent to which these works will render such PRoWs unusable. See further Annex A</p>	<p>Requirement 32 has been amended to remove reference to "commence" to clarify that the requirement applies to onshore preparation works that affect public rights of way.</p>
SCHEDULE 8 - — Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions			
24	<p>Additional Drafting – Inter-relationships between the dDCOs on CA and TP In circumstances where CA and/or TP powers have been exercised to the benefit of the undertaker under one Order, but the effect of that is to remove the need for the beneficiary of the second Order to exercise the same powers, how is the falling-away of the powers in the second Order provided for in the dDCOs.</p> <p>a) Is additional drafting required (noting that it may not be in these Schs) or, if not</p> <p>b) How is the issue provided for?</p> <p>See also Articles empowering CA and TP</p>	<p>What will the position be if the grid connection works are constructed under another order which is not a "Scottish Power DCO". See comments on Requirement 38 above</p>	<p>The Applicants consider that the draft DCO adequately controls the Projects for which consent is sought.</p>
SCHEDULE 11 – Hedgerows			
25	<p>Pt 1: removal of important hedgerows Please respond to the following matters:</p> <p>a) Is it sufficient that only 'important hedgerows' are identified?</p> <p>b) Is any provision required for other hedgerows in the Orders lands?</p> <p>c) Please confirm that proposed hedgerow removals to be carried out are in the correct locations, as assessed in the Environmental Statements, and give rise to no other matters. Alternatively, submit any final proposed revisions or corrections.</p> <p>The Applicants are additionally asked to clarify the apparent conflict between documents providing for the same hedgerows being subject to removal [REP3-011], [REP3-030] and crossed with reduced width [REP3-010]. Please submit updated documents.</p>	<p>Given the importance of hedgerows to the ecosystem all hedgerows should be subject to protection.</p>	<p>The Applicants consider that identifying important hedgerows to be removed and those to be crossed using a reduced swathe is appropriate and proportionate. The removal of other hedgerows will be controlled through the approval of the Ecological Management Plan in accordance with Requirement 21 and therefore the Applicants consider that there are sufficient safeguards in place.</p>
SCHEDULE 15 – Arbitration Rules			
26	<p>Costs</p> <p>The general principle in planning proceedings (other than civil litigation) is that absent 'unreasonable behaviour' by a party, costs normally lie where they fall.</p> <p>a) What is the justification for what is understood to be a novel approach where costs run with the event?</p>	<p>Given such proceedings will arise from planning matters costs should lie where they fall. A party should not be subject to the risk of adverse costs in the absence of "unreasonable behaviour"</p>	<p>In arbitration, costs and expenses usually follow success and that is the rationale for the drafting.</p>



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	b) The Applicants are requested to remove the stray bracket ']' at the end of para (3).		
27	<p>Confidentiality</p> <p>Para 7 provides that arbitration proceedings are confidential unless agreed otherwise between the parties to the arbitration.</p> <p>a) Are there any subject matters or circumstances in which an arbitration relates to matters which are public interest matters and should be publicised?</p> <p>b) If so, how might that be provided for in drafting?</p>	See SASES Post ISH6 submission on this topic. SASES refers to its post-ISH6 submissions in relation to construction hours. REP5-102	The Applicants have amended paragraph 7 of Schedule 15 of the draft DCO to provide for an open arbitration procedure that is accessible to the public, subject to certain exceptions (for example, where the arbitration relates to a dispute or difference under the protective provisions).
ANNEX A – PROWS AND PRE-CONSTRUCTION ACCESSES / ONSHORE PREPARATION WORKS			
28		<p>1. The Indicative Construction Plans 6.2.6.6 (APP-101) and the Onshore Works Plans 2.3.2 (REP3-006) both show existing PRowS to be used as accesses for Pre-Construction Works traffic. On the Works Plans these include (Construction Plan reference follows in brackets):-</p> <ul style="list-style-type: none"> • Sheet 3: Bridleway 28 from Sizewell Gap Road (Figure 6.6d) • Sheet 5: Footpath 7, Fitches Lane, Aldringham (Figure 6.6e) • Sheet 6: Bridleway 2 off Grove Road, Friston (Figure 6.6g) <p>2. There do not appear to be proposals within the Temporary or Permanent Stopping Up plans to close or divert these PRowS. In the Project Description, Chapter 6.1.6 (APP-054) paragraph 333 on page 75 states “Accesses for all onshore preparation works are identified in Figure 6.6 (a-j) as ‘Onshore Preparation Works Access’. No new physical works will be required at these access locations, and any onshore preparation works traffic will use the existing condition of the accesses and ensure that accesses are reinstated to preuse condition.” This confirms that the PRowS will in themselves be used for works traffic with no provision for the safety of the public, including cyclists and horse-riders on the affected bridleways.</p>	The specific public rights of way exist over private land which is used by the land owner and other parties for vehicular access to properties and land served by those tracks. The Applicants have agreed terms with the land owners for use of the tracks for pre-construction access and will have full regard to the shared use of access tracks with members of the public who may be on foot, on bicycle or on horse.
29		3. As discussed onshore preparation works is widely defined and could be extensive works requiring significant vehicular movements which would pose a danger to the public on the PRowS. The DCO needs to ensure proper controls over the use of these PRowS to ensure the safety and amenity of the public.	As noted above, Requirement 32 has been amended to remove reference to “commence” to clarify that the requirement applies to onshore preparation works that affect public rights of way. The Applicants therefore consider that there are sufficient controls in place.



2.5 Comments on SASES' Submission on Pearce V Secretary of State for Business, Energy and Industrial Strategy (Norfolk Vanguard)

ID	SASES' Response	Applicants' Comments
INTRODUCTION		
1	<p>1. In Pearce v Secretary of State for Business, Energy and Industrial Strategy [2021] EWHC 326 (Admin), the High Court (Holgate J) quashed the Order granting development consent for the Norfolk Vanguard offshore windfarm.</p> <p>2. SASES considers that the judgment in Pearce provides further support for its submissions in respect of the need for assessment of the cumulative effects of EA1N and EA2 with other schemes which are in contemplation and which are anticipated to connect to make use of a grid connection at Friston if it is consented through these applications. Those submissions have been set out at length already. SASES Written Summary of Submissions on Cumulative Impact filed at Deadline 3 is emphasised in particular (see REP3-126) is not repeated here but its contents are relied on in full.</p> <p>3. The facts of Pearce bear strong similarities with the present case. Vanguard proposed a grid connection at Necton, as did another project (Norfolk Boreas). Unlike Friston, Necton is the site of an existing National Grid substation constructed in connection with the Dudgeon offshore windfarm. Both Vanguard and Boreas would require their own substations together with extensions to the existing National Grid substation.</p> <p>4. The ES for Vanguard provided an assessment of the cumulative effects at Necton of both Vanguard and Boreas proceeding. Cumulative effects were also raised by the local planning authority and local residents (including Mr Pearce, the judicial review claimant). However, the ExA concluded that it should not consider cumulative effects between Vanguard and Boreas “due to the limited amount of details available. The ExA considers it would most appropriate for cumulative impacts to be considered in any future</p>	<p>The Applicants have reviewed the note prepared by SASES and submitted at Deadline 6 in relation to the High Court judgment in Pearce v Secretary of State for Business, Energy and Industrial Strategy [2021] EWHC 326 (Admin). The Applicants fundamentally disagree with the comparisons which SASES seek to draw and with the support they seek to extrapolate from that judgment. In short:</p> <p>(i) Mr Justice Holgate’s decision in Pearce was based on his finding that the Examining Authority and Secretary of State, as a matter of fact, had before them environmental information which they chose not to take into account. That, he held, was contrary to the relevant Environmental Impact Assessment Regulations (in that case the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009) and was, in the circumstances irrational. He further held that sufficient reasons for this decision had not been properly set out in the Secretary of State’s decision letter.</p> <p>(ii) SASES assert that the facts of Pearce bear strong similarities with the East Anglia ONE NORTH and East Anglia TWO examinations. The Applicants agree in the respect that they respectively involve two offshore wind projects with common parent company ownership connecting in a similar location</p>



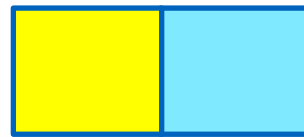
ID	SASES' Response	Applicants' Comments
	<p>examination into Norfolk Boreas” (judgment 63). That conclusion was implicitly accepted by the Secretary of State.</p> <p>BREACH OF THE EIA REGULATIONS</p> <p>5. The Court found that the decision was in breach of the EIA Regulations. The law on cumulative effects was considered in detail. The Court found that since a significant cumulative effect had been identified in the ES, but not considered by the ExA or Secretary of State, there was a breach of the regulations. The Court found that the ability to assess the cumulative impacts was more straightforward than other cases because (a) the applicant had carried out an assessment and (b) “there were strong links between the two projects which were directly relevant to this subject”. Whilst factor (a) does not apply here (since the Applicants have refused to assess cumulative effects beyond those between EA1N and EA2 and to a limited extent Sizewell C), factor (b) does.</p> <p>6. The Court also noted that the pressing need for renewable energy did not justify the failure to consider cumulative effects:</p> <p><i>“124. I have referred to the Defendant's submissions on the importance of avoiding delay to an urgently needed project of national importance. For completeness, I should add that the court was not shown any provision which would enable that factor to overcome any requirement under regulation 17 to obtain additional information, where a decision-maker considers that the details in the ES are inadequate for assessing likely significant adverse environmental effects. In any event, the Defendant's decision letter did not purport to approach the matter on that basis.”</i></p> <p>7. Accordingly, it is no answer to the failure of assessment of cumulative effects in the ESs in this case to say that such assessment should not hold up these projects. It plainly should, if that is what is necessary to consider the likely significant effects of the proposals in cumulation with the other projects identified.</p> <p>RATIONALITY</p>	<p>and that in the case of both (i) Vanguard and Boreas and (ii) East Anglia ONE NORTH and East Anglia TWO, environmental information has been provided to allow the decision maker to assess the cumulative impact of the other project. That is, in our view, where an appropriate and useful comparison of the factual circumstances ends and it is down to the Examining Authority and the Secretary of State to consider the information before them in making their respective recommendations and decisions.</p> <p>(iii) As set out above Mr Justice Holgate concluded, on the evidence provided to him, that there was sufficient information on the cumulative impact of Vanguard and Boreas in front of the Examining Authority and Secretary of State (or at least that the applicant clearly thought this was the case and that this had not, during examination and deliberation, been challenged by the Examining Authority or Secretary of State via a request for additional information or otherwise). Mr Justice Holgate did not therefore provide a detailed analysis on the law of cumulative impact assessment generally. He did, however, summarise some prior judicial consideration of environmental impact assessment issues, some of which is quoted in the SASES note, and also including the practical limitations to cumulative impact assessment where sufficient information is not available on future proposals:</p> <p><i>“117. However, in some cases these principles may allow a decision-maker properly to defer the assessment of cumulative impacts arising from the subsequent development of a separate site not</i></p>



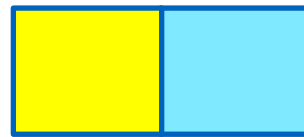
ID	SASES' Response	Applicants' Comments
	<p>8. The Court also found that it was irrational not to consider cumulative effects on the facts (i.e., regardless of the EIA regulations). The Court found (emphasis added):</p> <p><i>"128. There is no dispute that Vanguard and Boreas are separate projects. They did not fall to be treated as a single project for the purposes of EIA legislation. This is not a case where, for example, the developer has sought to define the development for which he seeks permission so as to avoid EIA scrutiny. I also accept the submission of the Defendant and NVL that the proposals for Vanguard and Boreas have been made on the basis that the implementation of the Vanguard DCO is not dependent upon the approval or implementation of a DCO for Boreas... But none of these points address the true circumstances of this case... and so do not assist the Defendant and NVL in resisting this challenge to the DCO.</i></p> <p>...</p> <p><i>131. It is inescapable that the only reason given by the Defendant for deferring all consideration of cumulative landscape and visual impacts to the Boreas examination was that the information available on Boreas was "limited". I am in no doubt that this bare statement was, in the circumstances of this case, illogical or irrational. It was common ground in the hearing before this court that the nature and level of information on the two projects for the purposes of assessing landscape and visual impacts of the substation development at Necton was essentially the same. Plainly, the Defendant must have proceeded on the basis that the information on the solus impacts of the Vanguard project was sufficient for him to be able to evaluate and weigh that matter. No basis has been advanced in these proceedings by either the Defendant or NVL for either (a) treating the adequacy of the environmental information on Boreas differently for an evaluation of the cumulative landscape and visual impacts or (b) not making any such evaluation at all in the Vanguard decision. The Defendant's decision is flawed by an obvious internal inconsistency. The decision was all the more perverse because, in accordance with ex parte Milne , NVL's approach employed a "Rochdale envelope" in order to cater for the absence of more detailed information, for the evaluation of (a) the</i></p>	<p><i>forming part of the same project. In R (Littlewood) v Bassetlaw District Council [2009] Env. L.R. 407 the court held that it had not been irrational for the local authority to grant consent for a freestanding project, without assessing cumulative impacts arising from future development of the remaining part of the site, where that development was inchoate, no proposals had been formulated and there was not any, or any adequate, information available on which a cumulative assessment could have been based (pp. 413-5 in particular [32])."</i></p> <p>Given Mr Justice Holgate's findings in fact, nothing turned on that case law review. It is important that the Examining Authority understand and place in context the quotations from Mr Justice Holgate's judgment provided by us, SASES and others. Importantly, in our submission, this case was decided on a very narrow point (namely a decision not to take into account information which had been provided) and so is of very limited more general interest.</p> <p>(iv) The assertions by SASES to the effect that elements of Mr Justice Holgate's judgment lend weight to their previous submissions (for example at paragraph 9 of the SASES summary) are, in our view, without objective merit. The Applicants have no connection to NGV or its projects. The Applicants had no knowledge of NGV's projects at the point of its site selection (and still have very little information on NGV's projects). The Applicants site selection and the delivery of their projects more generally are not reliant on or affected by whether or not NGV's</p>



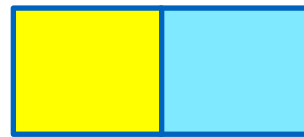
ID	SASES' Response	Applicants' Comments
	<p><i>Vanguard solus impacts and (b) the cumulative impacts of both projects in the Necton area. The decision was also irrational in other respects.</i></p> <p><i>132. There were a number of features which plainly required the cumulative impacts of the substations for both projects to be assessed as part of the Vanguard decision and not simply left over to the Boreas decision. The two projects had been based on a strategy of co-location. Necton and alternative locations for the essential connection to the National Grid were assessed for their ability to accommodate the substations and infrastructure needed for both Vanguard and Boreas. That was important, if not critical, to the decision to select Necton for the grid connection and to include in the Vanguard DCO authority for the provision of a 60 km cable corridor between Happisburgh and Necton to serve both projects and compulsory acquisition of some land at Necton for Boreas (which would need to satisfy a "compelling public interest" test). Consequently, consistency required the cumulative impacts of the substation development at Necton to be evaluated in the Vanguard decision. In the circumstances of this case, it was irrational for the Defendant to defer that evaluation.</i></p> <p><i>133. If the cumulative impacts in the Necton area had been evaluated when considering the application for the Vanguard DCO, one possible outcome is that they would have been found to be unacceptable. That could have led the Defendant to decide that Necton was not an appropriate location to provide a grid connection for both projects, as intended by the developer, which would also call into question the appropriateness of the co-located cable corridor leading to that connection point. Even assuming that the Defendant would still have decided all the other issues in favour of the Vanguard proposal, it would have been permissible for him to refuse to grant the DCO on the basis that the location of a grid connection at Necton to serve both Vanguard and Boreas (and the related cable corridor) needed to be reconsidered by the developer. Plainly, that ought to be determined before granting consent for the first project. In that way the promoter could reapply or modify or even abandon its strategic co-locational approach</i></p>	<p>project comes forward and where that may be located.</p> <p>(v) On the issue of a ring main, no challenge was raised and there was no indication by Mr Justice Holgate that any challenge would have had merit in respect of the Secretary of State's very clear decision to discount an offshore transmission network as a viable alternative in the circumstances. In our submission that position is also true in this case but the Examining Authority and Secretary of State should reach a decision on this point based on the facts before it in these Examinations and not on anything contained in the Vanguard application or Pearce judgment.</p>



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	<p><i>before proceeding with either project. Here, the decision to leave that issue over to consideration of the DCO for the second project prevented that course from being taken.</i></p> <p>...</p> <p>135. ...The Defendant's approach has had the effect, absent consideration of those cumulative effects, of making it easier to obtain consent for Vanguard, and providing a "foot in the door" making it easier to obtain consent for Boreas. Although there is no evidence that NVL sought those outcomes, the Vanguard DCO decision has had a "precedent effect" for decision-making in relation to Boreas upon which, understandably, NVL has relied heavily in the Boreas examination. In view of the familiar North Wiltshire line of authority on consistency in decision-making, these were highly likely, if not inevitable, consequences of the Defendant's decision to approve the DCO for Vanguard. These were obviously material considerations which went directly to the rationality of the decision.</p> <p>136. <i>These considerations underscore the absence of any rational justification in the Vanguard decision letter for refusing to make any evaluation of the cumulative impact issue at that stage. The single, perfunctory reason given for deferral, the limited amount of information available on Boreas, could not, in the circumstances of this case, justify by itself leaving the issue entirely to the second examination, particularly where the information was in front of the Defendant, NVL considered it to be adequate and no one suggested the contrary.</i></p> <p>137. In any event, the Examining Authority and the Defendant had powers to obtain further information. Indeed, if the Authority had considered the application of regulation 17 of the 2009 Regulations and decided that additional material should have been included in the ES, they would have been obliged to require that information to be provided and suspend the examination in the meantime."</p> <p>9. This passage is crucial to the present case. The important reasoning is:</p>	



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	<p>a. The fact that information in respect of cumulative impacts before the examination is “limited” is not a reason for those impacts to be disregarded. There is a power to require more information if the Applicants will not provide it;</p> <p>b. Here, as in the case of Vanguard, there is a “strategy of co-location”. That is clear beyond argument from the evidence already submitted by SASES and others in respect of the intentions regarding interconnector projects. See for example para. 12 of REP3-126 (“SPR acknowledged in early 2018... that it had made commitments not to sterilise NGV’s ability to develop their projects. Further, NGV wrote to PINs in March 2020 accepting that there would be a need to “future proof” the SS for future development”);</p> <p>c. That strategy has influenced the selection of Friston as a grid connection location: “A new National Grid 400kV substation will therefore be required somewhere in the Leiston area, beyond the Sizewell site, to connect the two proposed windfarms and the two proposed interconnectors” (NG Note of 28 June 2018, para. 12 and footnote 2 of REP3-126);</p> <p>d. If the cumulative effects are considered it is possible that Friston will not be found to be acceptable as a location for all of the cumulative schemes. It would follow that it would may not be an appropriate location for grid connections for these projects;</p> <p>e. If cumulative effects are not considered, a “foot in the door” would be provided for those other projects which is “obviously” a material consideration for these projects.</p> <p>10. In those circumstances, Pearce confirms that the approach of the Applicants to cumulative assessment, if accepted, is likely to be found to be irrational and unlawful.</p> <p>REASONS</p> <p>11. The reasons challenge turned on the terms of the decision letter and ExA’s report. However, it emphasises that some clear reasoning would be required to reject the need to assess the cumulative impacts of the proposals</p> <p>GRID COORDINATION AND THE OFFSHORE TRANSMISSION NETWORK REVIEW</p>	



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	<p>12. It should also be noted that, importantly, Holgate J cast some doubt on the lawfulness of a “single project” approach to addressing issues relating to grid coordination:</p> <p><i>“59. The Examining Authority noted the strongly held view of several participants that in view of the number of offshore wind farm projects coming forward in the region, there should be a strategic approach requiring contributions to an offshore ring main to avoid or reduce onshore environmental impacts. The Authority considered that because that would require coordination between projects, it was not an alternative which could be considered within the remit of an examination of a single offshore wind farm project. Although it is not apparent how well that reasoning sits with the requirements of the 2009 Regulations, particularly as the Examining Authority did consider elsewhere cumulative impacts resulting from a project being undertaken by an independent developer, no such argument was raised in the grounds of challenge. That is understandable in view of the way in which the Defendant discounted this particular alternative on the merits in his decision letter (see [71] below).</i></p> <p>...</p> <p>71. As to the suggestion that an offshore ring main be considered, the Defendant concluded at DL 4.11: -</p> <p><i>“Whilst discussions are taking place in respect of the future shape of the offshore transmission network, such discussions are at the preliminary stage. The Secretary of State considers that he must assess the Development in line with current policy as set out in the National Policy Statements. He does not consider that the decision should be delayed to await the outcome of the discussions on the offshore transmission network given the urgent need for offshore wind development as identified in the National Policy Statements.”</i></p> <p>13. Thus, whilst the issue did not arise in the grounds in Pearce, the Examining Authority is invited to note the recent doubt cast on the lawfulness of rejecting an argument that a better coordinated approach between projects could be available on the basis that such</p>	



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	<p>considerations were not relevant to a decision on development consent for a single project. Moreover, since the absence of challenge on this ground was only “understandable” on the basis that the outcome of the offshore transmission network review was awaited, clearly the outcome of that review will be relevant to the determination of the present applications.</p> <p>CONCLUSION</p> <p>14. <i>Pearce</i> serves as firm confirmation of SASES's position on cumulative impacts. A failure to assess the cumulative impacts of other projects intended for a grid connection at the new substation at Friston would be in breach of the EIA Regulations, and irrational.</p>	