



East Anglia ONE North and East Anglia TWO Offshore Windfarms

Applicants' Responses to the Secretary of State Questions of 20th December 2021 (Item 3)

Applicants: East Anglia ONE North Limited and East Anglia TWO Limited
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Glossary of Acronyms

Aeol	Adverse Effect on Integrity
BTO	British Trust for Ornithology
CoCP	Code of Construction Practice
CPO	Compulsory Purchase
DCO	Development Consent Order
DLL	District Level Licensing
EA	Environment Agency
EIA	Environmental Impact Assessment
EMF	Electromagnetic Frequency
EMP	Ecological Management Plan
ES	Environmental Statement
ESC	East Suffolk Council
ExA	Examintaiton Authority
FEH	Flood Estimation Handbook
FFC	Flamborough and Filey Coast
GCN	Great Crested Newt
HDD	Horizontal Directional Drilling
HRA	Habitats Regulations Assessment
IDB	Internal Drainage Board
IP	Interested Party
ISH	Issue Specific Hearing
LCoW	Landscape Clerk of Works
LLFA	Lead Local Flood Authority
LMP	Landscape Management Plan
LONI	Letter of No Impediment
MMO	Marine Management Organisation
NPPF	National Planning Policy Framework
NPS	National Policy Statement
OAMP	Outline Access Management Plan
OCTMP	Outline Construction Traffic Management Plan
OLEMS	Outline Landscape and Ecological Management Plan
OODMP	Outline Operational Drainage Management Plan
OPCTMTP	Outline Port construction traffic management and travel plan
OTNR	Offshore Transmission Network Review
OTP	Outline Travel Plan
PRoW	Public Right of Way
Q_{bar}	Mean Annual Flood
RAG	Red-Amber-Green
RICS	Royal Institution of Chartered Surveyors
RSPB	Royal Society for the Protection of Birds
SASES	Subsation Action Save East Suffolk
SCC	Suffolk County Council
SEAS	Suffolk Energy Action Solution
SoS	Secretary of State for Business, Energy and Industrial Strategy
SPA	Special Protection Area
SuDS	Sustainable Drainage System

Glossary of Terminology

Applicants	East Anglia TWO Limited / East Anglia ONE North Limited
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 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.

1 Introduction

1. This document has been prepared by East Anglia TWO Limited and East Anglia ONE North Limited (the Applicants) in relation to the East Anglia TWO and East Anglia ONE North Development Consent Order (DCO) applications (the Applications). It provides information in response to item 3 of the letter published by the Secretary of State for Business, Energy and Industrial Strategy (SoS) on 20th December 2021 (the SoS letters).
2. Although the SoS letters relate to the East Anglia TWO and East Anglia ONE North Offshore Windfarm projects respectively, the contents of each are identical. This document is therefore applicable to both projects (the Projects).

1.1 Purpose

3. This document provides a response to Part 3 of the SoS letter, which invites all interested parties *“to comment on the responses received to the previous round of consultation which closed on 30 November 2021. The consultation responses have been published on the East Anglia TWO project page of the National Infrastructure Planning website listed at the end of this letter”*.
4. The structure of the remainder of this document is as follows:
 - **Section 2** provides the Applicants' comments on Suffolk County Council's (SCC) responses;
 - **Section 3** provides the Applicants' comments on East Suffolk Council's (ESC) responses;
 - **Section 4** provides the Applicants' comments on Natural England's responses;
 - **Section 5** provides the Applicants' comments on Marine Management Organisation's (MMO's) responses;
 - **Section 6** provides the Applicants' comments on Environment Agency's (EA's) responses;
 - **Section 7** provides the Applicants' comments on Royal Society for the Protection of Birds' (RSPB's) responses;
 - **Section 8** provides the Applicants' comments on Substation Action Save East Suffolk's (SASES) responses
 - **Section 9** provides the Applicants' comments on Interested Parties' (IP's) responses.

- **Appendix 1** provides the Applicants' comments on Suffolk Energy Action Solution (SEAS) response in respect of matters relating to the voluntary acquisition of land rights

2 Applicants' Comments on Suffolk County Council's Responses to Post Examination Consultation

ID Suffolk County Council Response	Applicants' Comments
Flood Risk	
<p>1 <i>The Secretary of State has identified a number of issues in relation to flood risk on which he invites comment:</i></p> <p><i>The Secretary of State notes that in July 2021 the National Planning Policy Framework was updated and in particular at paragraph 159 onwards in relation to flood risk assessment. The Applicant and Interested Parties are invited to provide any comments they may have in light of these changes;</i></p> <p>In SCC's opinion, the changes to the NPPF would require the Applicant to undertake a Sequential Test and if necessary, an Exception Test. This is based on the updated reference to 'flood risk from all sources and the current and future impacts of climate change'. See new paragraph 161.</p> <p>However, at the time of writing, whilst the NPPF has been updated, the NPPG has not. The NPPG is still focussed on Flood Zones, with criteria on how to apply the Sequential & Exception Tests for other sources of flood risk not available. It is therefore not clear how exactly the Sequential & Exception Test should be applied. This is relevant for all forms of development.</p> <p>Whilst the revised NPPF chapter of relevance (Chapter 14) commences its revised discussion on flood risk by reference to the plan-making process (para 161), it is clear that when the chapter is read as a whole (and in particular the guidance in paras 162, 166 and</p>	<p>The Applicants welcome SCC's response to this item, which appears to align with that set out in Applicants' Responses to the Secretary of State's Questions of 2nd November 2021 (Item 3), in that both parties acknowledge the change of focus in the text of the National Planning Policy Framework (NPPF) to place greater emphasis on the consideration of all sources of flooding.</p> <p>Regarding application of the Sequential Test (and where necessary, the Exception Test) for all sources of flooding, SCC and the Applicants note that the criteria on how it should be applied to other sources of flooding (i.e. not fluvial / coastal) remain unclear as the supporting Planning Practice Guidance has not been amended or updated alongside the NPPF.</p> <p>However, as summarised in Applicants' Responses to the Secretary of State's Questions of 2nd November 2021 (Item 3), SCC has already given surface water flooding equal weighting when reviewing the Applicants' assessment of flood risk, prior to the publication of the updated NPPF. The Applicants therefore consider that all sources of flooding have been appropriately considered throughout development of the Projects' concept design.</p> <p>Additionally, the Applicants confirm that a Sequential Test (using the current criteria) was undertaken for the Projects placing the onshore substation and National Grid infrastructure at low fluvial flood risk. In</p>

ID	Suffolk County Council Response	Applicants' Comments
	<p>167) that the updated approach is intended to apply also at the development management stage (unless sites have already been assessed at planmaking). In addition, the draft revisions to the Energy National Policy Statements support SCC's view that national policy clearly expects the sequential and exception tests to be applied to the risk from all sources of flooding.</p>	<p>addition, when reviewing other potential sources of flooding it was noted that the majority of the Order limits are at very low risk of surface water flooding.</p> <p>As stated in Applicants' Responses to the Secretary of State's Questions of 2nd November 2021 (Item 3), all development sites have an element of potential surface water flood risk and the National Grid substation location was selected in full cognisance of the presence of a shallow surface water flow route. The Applicants consider that such features can be diverted, and their continued conveyance ensured through the use of well-established and proven techniques.</p> <p>The Applicants therefore consider that despite there being no specific criteria available for the consideration of other sources of flooding (namely surface water flooding), the approach adopted for the Projects is comprehensive with regard to flood risk from all sources during both construction and operation.</p>
<p>Key Document to be Certified</p>		
<p>3</p> <p><i>The Applicant submitted updated versions of documents to be certified at Deadline 13, with the consequence that key parties were unable to provide comments on them before the Examination closed. The Secretary of State requests observations on the following documents from the listed parties and, where identified, restricted to the issues listed:</i></p> <p><i>i. Outline Code of Construction Practice: East Suffolk Council are asked to comment on matters in relation to water quality and flood measures; Suffolk County Council are asked to comment on flood measures.</i></p>	<p>The Applicants acknowledge that the parameters used for the Projects' construction drainage proposals are not agreed within the Statement of Common Ground (REP12-070), but maintain their position as set out in Applicants' Responses to the Secretary of State's Questions of 2nd November 2021 (Item 3) (Document reference ExA.AS-1.SoSQ2.V1) submitted on November 30th.</p> <p>Regarding the onshore substations and National Grid infrastructure, in Applicants' Responses to the Secretary of State's Questions of 2nd November 2021 (Item 3) the Applicants committed to increasing the storm event return period accommodated in the Projects' construction drainage scheme from a 1 in 15 to a 1 in 30 year event for Work Nos. 30, 31, 34, 38, 41 and 42. It was proposed that this be</p>	

ID Suffolk County Council Response	Applicants' Comments
<p>As per SCC's Statement of Common Ground with the Applicant, we do not agree that the Outline Code of Construction Practice provides sufficient mitigation to prevent an increase in offsite surface water flood risk during construction. Indeed, the Outline Code of Construction Practice does not demonstrate the deliverability of any mitigation within the Order Limits. SCC also do not agree with the rainfall return periods proposed by the Applicant for construction surface water drainage and note the Secretary of State questions on this matter, addressed to other Parties. SCC provided comments on the Outline Code of Construction Practice at Deadline 12 [REP12-098]. On the basis the revised document submitted at Deadline 13 has no material changes RE surface water management, these comments remain relevant.</p>	<p>secured through an update to the draft DCO (document reference 3.1). However, following the publication of the SoS letters, this commitment will be now secured through updates to the Outline Code of Construction Practice (CoCP) (document reference 8.1). The ability to accommodate the increase within the Order limits is presented in Appendix 2 of the Outline CoCP. Section 11 of the updated Outline CoCP also contains a number of additional construction surface water management measures and a commitment to the provision of the Flood Resilience Fund.</p> <p>Regarding the onshore cable route, it is unnecessary and inappropriate to undertake significant amounts of additional excavations, additional earth movements and increased land / subsoil disturbance which would be required to accommodate an increase in storm event return period for such works in a location with such low risk. Committing to a 1 in 10 year return period (proposed within the Outline CoCP (document reference 8.1)) is not only in line with the recommendations of Control of water pollution from linear construction projects (C649) (CIRIA, 2006), but goes beyond comparable linear projects.</p> <p>The Applicants note the onshore construction drainage proposals set out within the Outline CoCP documents for comparable offshore windfarm projects off the east coast of England, including Dogger Bank Teesside A / Sofia, Norfolk Boreas and the Hornsea 2, 3 and 4 projects, none of which prescribe a design storm return period for the construction phase. Where finalised documents are available these are equally high level.</p> <p>Hornsea 2, which has now been constructed, has infrastructure within Flood Zones 2 and 3. Paragraphs 1.6.11 to 1.6.12 of the Hornsea 2 CoCP¹ state "A detailed surface water drainage scheme based on sustainable drainage principles and an assessment of the hydrological</p>

¹ <http://planninganddevelopment.nelincs.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=PJXNQSLJ02X00>

ID	Suffolk County Council Response	Applicants' Comments
		<p>and hydrogeological context of the electrical transmission station has been submitted to North Lincolnshire Council and the North East Lindsey Internal Drainage Board (IDB) in order to discharge Requirement 13 of the DCO. The CoCP sets out the principles that the contractor will be required to adhere to for the onshore cable route (see Section 5.7)".</p> <p>Paragraph 5.7.2 of Section 5.7 then states "Water Protection measures are located within the Construction Environment Plan (DPO0101/EPL/11000)". The surface water drainage scheme referred to is not available online.</p> <p>Paragraph 3.5.5 of the Hornsea 2 Construction Environment Plan states the following (which is the only text on drainage): "To manage the unlikely event of flooding on the project, the site team will be signed up to the Environment Agency Flood Warning system which will, along with regular monitoring of weather forecasts, ensure that all mitigation possible is put in place prior to the event occurring. In addition, prior to construction, an extensive system of drainage will be installed".</p>
4	<p><i>iii. Outline Operational Drainage Management Plan: East Suffolk Council and Suffolk County Council.</i></p> <p>As per SCC's Statement of Common Ground with the Applicant, it is agreed that the Outline Operational Drainage Management Plan provides adequate mitigation for the operational development at this stage, with further work secured through Requirement 41.</p>	<p>The Applicants welcome SCC's confirmation that it is satisfied with the Outline Operational Drainage Management Plan (OODMP) (REP13-020).</p>
5	<p><i>ii. Outline Landscape and Ecological Management Strategy: Natural England, East Suffolk Council, and Suffolk County Council.</i></p> <p>Suffolk County Council is content, in respect of Landscape matters, with this document, including the changes at paragraphs 145 and 200.</p>	<p>The Applicants welcome SCC's confirmation that it is satisfied with the changes to the Outline Landscape and Ecological Management Strategy (OLEMS) (REP13-007).</p>

3 Applicants' Comments on East Suffolk Council's Responses to Post Examination Consultation

ID	East Suffolk Council Response	Applicants' Comments
Flood Risk – Point 3		
1	<p>The Secretary of State notes that in July 2021 the National Planning Policy Framework was updated and in particular at paragraph 159 onwards in relation to flood risk assessment. The Applicant and Interested Parties are invited to provide any comments they may have in light of these changes;</p> <p>The National Planning Policy Framework (NPPF) published in July 2021 did not make significant changes to the text in 'Planning and flood risk' section of the 2019 version but did update the wording in a few important ways.</p> <p>Firstly, it was stated that plans should take account of all sources of flood risk (paragraph 161), this reinforces the need to robustly consider flood risk from all sources including those which have previously received less attention, for example surface water flooding. Secondly, plans should manage residual flood risk by using opportunities provided by development to improve green and other infrastructure to reduce the causes and impacts of flooding (paragraph 161). This supports and encourages the use and integration of natural management techniques and green infrastructure within the design of the development. It also further emphasises the need to build into project design flood resilience and flood resistance construction.</p> <p>Thirdly, emphasis has been added to the need for development in areas at risk of flooding to be flood resistant and resilient, such that, in</p>	<p>The Applicants welcome the comments provided by ESC and its understanding in relation to the updated NPPF, which appears to align with that set out in <i>Applicants' Responses to the Secretary of State's Questions of 2nd November 2021 (Item 3)</i>, in that both parties acknowledge there have been no significant changes to the updated NPPF in relation to 'planning and flood risk', and that the change focusses on the revised wording and emphasis contained therein.</p> <p>Regarding application of the Sequential Test (and where necessary, the Exception Test) for all sources of flooding, ESC and the Applicants both note that the criteria on how it should be applied to other sources of flooding (i.e. not fluvial / coastal) remain unclear as the supporting Planning Practice Guidance has not been amended or updated alongside the NPPF.</p> <p>Additionally, the Applicants confirm that a Sequential Test (using the current criteria) was undertaken for the Projects placing the onshore substation and National Grid infrastructure at low fluvial flood risk. In addition, when reviewing other potential sources of flooding it was noted that the majority of the Order limits are at very low risk of surface water flooding.</p> <p>As stated in <i>Applicants' Responses to the Secretary of State's Questions of 2nd November 2021 (Item 3)</i>, all development sites have an element of potential surface water flood risk and the National</p>

ID	East Suffolk Council Response	Applicants' Comments
	<p>the event of a flood, it could be quickly brought back into use without significant refurbishment (paragraph 167).</p> <p>Of the three main changes, although all are relevant, one has the potential to have important implications for the projects. The reference within the NPPF to all sources of flooding, potentially now means the Applicant is required to pass a Sequential Test and if necessary, an Exception Test. It is however acknowledged that the Planning Practice Guidance on this matter has not yet been amended and this remains predicated on flood zones, it is therefore unclear as to how the tests should be applied.</p>	<p>Grid substation location was selected in full cognisance of the presence of a shallow surface water flow route. The Applicants consider that such features can be diverted, and their continued conveyance ensured through the use of well-established and proven techniques.</p> <p>The Applicants therefore consider that despite there being no specific criteria available for the consideration of other sources of flooding (namely surface water flooding), the approach adopted for the Projects is comprehensive with regard to flood risk from all sources during both construction and operation.</p>
2	<p><i>The Applicant and Interested Parties are invited to comment on the implications of the Environment Agency's 20 July 2021 update on climate change allowances for Flood Risk Assessment which updated peak river flow allowances and changed the guidance on how to apply these;</i></p> <p>East Suffolk Council has no comments and will defer to the Environment Agency.</p>	Noted.
Offshore Ornithology Point 6		
3	<p><i>Natural England, RSPB and Interested Parties are requested to provide comments on the current Offshore Ornithology Cumulative and In Combination Collision Risk and Displacement Update2 submitted at the end of the Examination. The Secretary of State notes that at the end of the Examination there were minor discrepancies in the in-combination mortalities predicted for herring gull, greater blackbacked gull and gannet; however, these are unlikely to make a material difference to the conclusions of the assessment.</i></p> <p>East Suffolk Council has no comments and will defer to Natural England and the RSPB.</p>	Noted.

ID	East Suffolk Council Response	Applicants' Comments
Key Documents to be Certified – Point 7		
4	<p><i>Outline Code of Construction Practice: East Suffolk Council are asked to comment on matters in relation to water quality and flood measures; Suffolk County Council are asked to comment on flood measures.</i></p> <p>ESC has no comments to make on water quality and defers to the Lead Local Flood Authority and comments contained within the signed Statement of Common Ground submitted at Deadline 12 in relation to flood measures.</p>	Noted.
5	<p><i>Outline Landscape and Ecological Management Strategy: Natural England, East Suffolk Council, and Suffolk County Council.</i></p> <p>ESC notes the confirmation in paragraph 14 (REP13-007) that tree and shrub planting will not be planted within 5m of the footprint of the drainage basins, and confirmation in paragraph 200 that trees along the western bank of the River Hundred (extending 5m in land) which fall outside the area which the onshore cables are to be installed but within the cable corridor will not be removed unless for safety reasons. These revisions to the document are welcomed and ESC has no further comments to make on the changes made to the document at Deadline 13.</p>	The Applicants welcome ESC's confirmation that it is satisfied with the changes to the OLEMS (REP13-007).
6	<p><i>Outline Operational Drainage Management Plan: East Suffolk Council and Suffolk County Council.</i></p> <p>ESC notes that paragraph 132 (REP13-020) confirms that trees and shrubs will not be planted within 5m of the footprint of the drainage basins, which ensures consistency with the updated Outline Landscape and Ecological Management Strategy (REP1 3-007). ESC has no further comments to make on the changes made to the document at Deadline 13.</p>	The Applicants welcome ESC's confirmation that it is satisfied with the changes to the ODMP (REP13-020).

ID	East Suffolk Council Response	Applicants' Comments
	<i>Appendix 2 – Letter from NG-ESO</i>	The Applicants note Appendix 2 of the ESC submission. The Applicants wish to reaffirm their consistent position that the Projects are not appropriate candidates for the Offshore Transmission Network Review (OTNR) Early Opportunities workstream and should be determined in accordance with current UK Government policy.

4 Applicants' Comments on Natural England's Responses to Post Examination Consultation

ID	Natural England Response	Applicants' Comments
1	<p>On the 2nd November 2021, the Secretary of State (SoS) provided written request for Natural England to provide further information or update with regard to East Anglia ONE North in relation to:</p> <ul style="list-style-type: none"> • The prospect of being able to issue a draft Letter of No Impediment (LONI) for badgers • The option of a LONI for great crested newt (GCN) • The offshore ornithology cumulative and in-combination collision risk and displacement update submitted by the Applicant at Deadline 13 • The Outline Landscape and Ecological Management Strategy (OLEMS) submitted by the Applicant at Deadline 13 <p>Natural England provides the following statutory advice to the SoS and BEIS for consideration. Please note, the advice within this letter document is applicable to both the East Anglia ONE North (EA1N) and East Anglia TWO (EA2) applications and is endorsed with the yellow (EA1N) and blue (EA2) icons, consistent with the documents submitted throughout examination. In addition, Natural England also requests the right to respond to the Applicant's update and clarifications to items within this letter.</p>	Noted.
Summary		
2	<p>Natural England advises that post examination we have continued to work with the Applicant towards progressing appropriate draft wildlife licence applications for badgers and great crested newt (GCN). As such,</p>	See ID5 to ID7 (badgers) and ID8 (GCN).

ID	Natural England Response	Applicants' Comments
	<p>a draft LONI for badgers was issued to the Applicant on 04 August 2021. However, this included several requests to be included within the method statement, as agreed with the Applicant, and these are detailed in point 2 below.</p> <p>On 10 November 2021, we advised the Applicant that their application for a draft GCN LONI was not successful; this decision was based on the insufficiency of survey data. Following subsequent engagement with the Applicant, Natural England received a formal District Level Licence (DLL) GCN application on 23 November 2021.</p> <p>With progression of these onshore wildlife licences post examination, Natural England continues to advise any associated licence requirements will need to be incorporated into the OLEMS and associated plans accordingly.</p>	
3	<p>In addition, Natural England notes the OLEMS was updated at Deadline 13 [REP13-007 clean] and [REP13-008 tracked] with a commitment to reduce the number of trees to be removed immediately adjacent ('within 5m') to the west bank of the Hundred River as part of the cable installation. Whilst Natural England welcomes this commitment and, as advised at Deadline 13 [REP13-050], additional information and commitments should be included within the OLEMS on further enhancements/mitigation measures which should be provided as a result of any impacts to this area of woodland adjacent to the Hundred River.</p>	<p>The Applicants welcome Natural England's response on the additional commitments within the OLEMS (document reference 8.7). The OLEMS is an outline document that provides the information and structure that will be used to prepare a detailed Landscape Management Plan (LMP) and Ecological Management Plan (EMP) to be produced post-consent to discharge the relevant DCO requirements, prior to construction of the Projects. These documents will require detailed design information not yet available in order to provide the types of additional information Natural England is seeking at the Hundred River.</p> <p>The final LMP and EMP will provide the key mechanisms for discharge of the relevant DCO requirements by the relevant planning authority. It can therefore be assured that ecological management and provision of landscaping associated with the construction of the onshore infrastructure will be formally controlled and implemented through this process.</p>

ID Natural England Response		Applicants' Comments
		In addition, the Applicants submitted an updated OLEMS (document reference 8.7) on 31 st January 2022 which now includes a role for a Landscape Clerk of Works (LCoW). The LCoW will ensure that the landscape mitigation measures set out within the final LMP are implemented appropriately, such that their benefits are fully realised. In particular, the LCoW will oversee planting and reinstatement works within Work Nos. 19 (Hundred River), 24, 29, and 33 to ensure that they are successful.
4	Natural England notes the Applicant's incorrect figures for herring gull and great black-backed gull, as advised at Deadline 12 [REP12-090], were still included in the Applicant's Offshore Ornithology Cumulative and In Combination Collision Risk and Displacement Update at Deadline 13 [REP13-019]. However, this does not alter our main concerns and these remain unchanged.	The Applicants updated the figures as requested by the Secretary of State, these were provided in the Updated Offshore Ornithology Cumulative and In Combination Collision Risk and Displacement Assessment submitted on the 30 th November.
Draft Letter of No Impediment (LONI) for Badgers		
5	Natural England can confirm that, following the Applicant's second draft application of the 28 June 2021, a draft LONI for badgers was issued to the Applicant on the 04 August 2021. It is our understanding that the Applicant intends to submit the LONI as part of their response to the Secretary of State's consultation.	A copy of the LONIs (4 th August 2021) was included within the Applicants' response to the SoS (Applicants' Responses to the Secretary of State's Questions of 2nd November 2021 (Items 4-7)) submitted on the 30 th November. This is reflected in updates made to the OLEMS (document reference 8.7) submitted on 31 st January 2022. Text within section 6.6.3.2 (pre-construction licencing and mitigation) and section 6.6.3.3 (construction mitigation) has been updated to include measures that align with those set out within the Applicants' draft mitigation licence applications, upon which the LONIs are based. As noted, the Applicants will update the draft Method Statement with the additions proposed by Natural England before formal submission of the licence application.
6	As stated in our letter dated 04 August 2021 (NE Ref 2021-51755-NSIP1 A001011 / 10571 / 361556), Natural England foresee no impediment to a licence being issued for badger, should the DCO be granted for East Anglia ONE North. However, several issues were identified with the draft Method Statement that we highlighted need to be addressed before the licence application for badgers is formally submitted. These were discussed with the Applicant via e-mail correspondence on 28 July 2021, after which it was	

ID	Natural England Response	Applicants' Comments
	<p>confirmed by the Applicant via e-mail on 04 August 2021 that the necessary amendments would be made. For your awareness Natural England advised the Applicant that the Method Statement is revised to include:</p> <ul style="list-style-type: none"> • Evidence of the named ecologist's experience in relation to artificial sett construction. • Updated badger surveys of the site, including previously un-surveyed land within and abutting the DCO boundary, which will be impacted by the development. • In the event main sett 33b will be lost, additional details regarding the final location of an artificial sett, including supporting information from any bait survey conducted, will be required. • Details of the location of the proposed two-way badger gates along the perimeter fence, in relation to badger runs / pathways identified during surveys. • Consideration must be given to the additional recommended mitigation, as provided in the accompanying advice letter, in relation to the location of soil storage areas, clearance of vegetation and the presence of livestock susceptible to badger borne disease within 2km of the project. 	
7	<p>Finally, should the DCO be granted, the draft badger LONI outlined the next steps required for the formal badger mitigation licence application to Natural England.</p>	
<p>Draft Letter of No Impediment (LONI) for Great Crested Newt (GCN)</p>		
8	<p>Following review of the second draft application of the 09 September 2021, the Applicant was informed (by letter dated 10 November 2021, NE Ref 368203 SPR Ref: 2021-51740-EPS-NSIP1), that Natural England is unable to provide a draft LONI for GCN. This is mainly due to outstanding uncertainties with survey data, particularly regarding the</p>	<p>An Impact Assessment and Conservation Payment Certificate was entered into by both the Applicants and Natural England on 17th December 2021. A copy of the Impact Assessment and Conservation Payment Certificate for the East Anglia ONE North and East Anglia TWO Offshore Windfarms (Ref. DLL-ENQ-NOSU-00085) is included</p>

ID	Natural England Response	Applicants' Comments
	<p>timing of the most recent surveys and contradictory evidence to support the application. In addition, the scale and magnitude of mitigation measures required to address these uncertainties would need to be considerably more. But, nonetheless both District Level Licencing (DLL) and Licencing Policy (LP4) remained suitable options for the Applicant to resolve this issue.</p> <p>Natural England was subsequently advised by the Applicant that they wish to proceed with the option for DLL. Following recent engagement with the Applicant to discuss the requirements for this option, Natural England formally received a GCN DLL enquiry on 23 November 2021.</p> <p>Natural England advises that once secured the awarded Impact Assessment and Conservation Payment Certificate can be recognised as being the DLL equivalent of a LONI. This is reflected in Planning Inspectorate (PINS) Advice Note Eleven, Annex C – Natural England and the Planning Inspectorate National Infrastructure Planning:</p> <p><i>Strategic protected species licencing</i></p> <p><i>Where strategic approaches such as district licencing for great crested newts are used a LONI will not be required. The developer will need to provide evidence to the ExA on how and where this approach has been used in relation to the proposal which may include a quotation from Natural England. A certificate will be issued by the habitat delivery body when compensation habitats are available.</i></p>	<p>within Appendix 1 of Applicants; Responses to the Secretary of State's Questions of 20th December 2021 (Item 6 & 7) (document reference ExA.AS-3.SoSQ2.V1).</p>
<p>The Offshore Ornithology Cumulative and in-Combination Collision Risk and Displacement Update Submitted by the Applicant at Deadline 13</p>		
9	<p>Natural England's main concerns with the Offshore Ornithology Cumulative and In Combination Collision Risk and Displacement Update remain unchanged. These were outlined within our Deadline 13 response [REP13-048] at the end of examination.</p>	Noted.

ID	Natural England Response	Applicants' Comments
10	<p>However, of note, the points we raised in paragraphs 22 and 23 [REP13-048] regarding the Applicant's incorrect figures for herring gull and great black-backed gull were still included in the Applicant's Deadline 13 update [REP13-019]:</p> <ul style="list-style-type: none"> • Para 22: For Herring gull, the Applicant's figures are incorrect. As stated in REP12-090 Natural England's figure of 28 collisions per annum is for the 150 turbines layout at East Anglia One, whereas the Applicant uses the figure of 19 collisions per annum from the 102 turbine layout. • Para 23: For Great black-backed gull an error was noted in the previous cumulative collision risk presented by the Applicants in Table A0.5 of REP11-027 for Hornsea 4 – the annual total should be 16.6 rather than 13.6 as presented (3 collisions in the breeding season + 13.6 collisions in the non-breeding season = annual total of 16.6). Therefore, we have included this correction in our calculations which gives a total of 1,003 collisions for all projects including DEP & SEP and Hornsea 4. 	<p>The Applicants updated the figures as requested by the SoS, these were provided in the Updated Offshore Ornithology Cumulative and In Combination Collision Risk and Displacement Assessment submitted on the 30th November.</p>
11	<p>Natural England notes that the Secretary of State has requested that the Applicant provides an updated Offshore Ornithology Cumulative and In Combination Collision Risk and Displacement assessment, which includes the correct in-combination mortality figures for herring gull, greater black-backed gull and gannet by 30th November 2021. Therefore, Natural England requests the right to respond to the Applicant's update and clarifications on this matter.</p>	<p>The Applicants updated the figures as requested by the SoS, these were provided in the Updated Offshore Ornithology Cumulative and In Combination Collision Risk and Displacement Assessment submitted on the 30th November.</p>
<p>The Outline Landscape and Ecological Management Strategy (OLEMS) Submitted by the Applicant at Deadline 13</p>		
12	<p>Natural England has reviewed the updates to Version 7 of the Outline Landscape and Ecological Management Strategy (OLEMS) submitted by the Applicant at Deadline 13 [REP13-007 clean] and [REP13-008 tracked] and provide the following formal statutory advice:</p>	<p>See ID3 regarding works at the Hundred River. In addition, the OLEMS (document reference 8.7) submitted on 31st January 2022 includes the following updates:</p>

Applicants' Responses to SoS Questions 20th December 2021 (Item 3)

ID	Natural England Response	Applicants' Comments
	<ul style="list-style-type: none"> • Para 200: Natural England notes the Applicant's intention to retain trees along the western bank of the Hundred River within the project working area, other than the area where cables are to be installed or unless removal is required for safety reasons. While we welcome this outlined commitment within the OLEMS to reduce impacts to this woodland habitat, we request that further information is submitted as to how further enhancements/mitigation will be provided as a result of any impact to this area of woodland adjacent to the Hundred River. Please see Natural England's Deadline 12 response to the Hundred River Ecology survey report [REP12-091] and our position summary at Deadline 13 [REP13-050]. • Section 6.6 Badgers: Following the issue of a draft LONI, Natural England advise the OLEMS and associated plans should be updated to reflect the requirements as outlined within the draft LONI issued on 04 August 2021 (detailed above). • Section 8.6 Great Crested Newt: If the DLL application is successful, Natural England advise that the OLEMS and any associate plans is updated by the Applicant with any requirement as part of the licencing process. 	<ul style="list-style-type: none"> • Text within section 6.6.3.2 (pre-construction licencing and mitigation) and section 6.6.3.3 (construction mitigation) has been updated to include measures that align with those set out within the Applicants' draft mitigation licence applications, upon which Natural England's LONIs (4th August 2021) are based; and • Measures previously set out within section 6.8.3.1 (pre-construction survey), section 6.8.3.2 (further pre-construction mitigation) and section 6.8.3.4 (post construction monitoring) have been replaced with text confirming that the Applicants will use Natural England's District-Level Licencing (DLL) scheme.
<p>Re: Additional analysis to inform SNCB recommendations regarding collision risk modelling – BTO Research Report No.739 (2021)</p>		
13	<p>As you will be aware from our letter dated 26th August 2021, Natural England recently commissioned BTO to undertake an analysis that combines the avoidance rates from various sites as presented in Cook et al. (2014), with those derived from the ORJIP study (Bowgen & Cook 2018) and any additional sites where the appropriate data are available, in order to provide avoidance rates based on data across a range of sites where possible. This report was published online at: REDACTED</p> <p>The data used to inform the report and the R code were made available by the BTO alongside the report, to allow interested parties to review the report and the evidence base for its recommendations. We have been contacted by a consultant who has reviewed that material and raised</p>	<p>The Applicants have discussed this matter with Natural England.</p> <p>The Applicants confirm that the assessments presented within the Applications and throughout the examinations used Natural England's standing advice. No updates were made as a result of the British Trust for Ornithology (BTO) report (which has now been withdrawn by Natural England), therefore no action is required on this matter.</p>

ID Natural England Response	Applicants' Comments
<p>concerns with the inclusion of one of the post-construction studies within the report.</p> <p>Natural England has reviewed these concerns and discussed them with the author of the report and the other SNCBs. Having carefully considered the issues raised we have concluded that they present reasonable grounds for the exclusion of that study from the findings of the report. Accordingly, Natural England has concluded that it is not appropriate to use the recommended rates in the BTO report.</p> <p>Therefore our advice is that CRM modelling should use the avoidance rates previously advised by SNCBs i.e. those presented in the 2014 SNCB advice note based on Cook et al (2014). These are available at: REDACTED</p> <p>Natural England sincerely apologise for any inconvenience or additional work caused by our previous advice to developers and regulators to start using the recommended avoidance rates. We are working hard to identify a course of action to ensure that any future SNCB recommendations regarding avoidance rates are robust and can be adopted with confidence by stakeholders.</p> <p>We will continue to keep you updated on this matter. If you have any questions or would like to discuss the implications for your proposal, please do not hesitate to contact me.</p>	

5 Applicants' Comments on Marine Management Organisation's Responses to Post Examination Consultation

ID	Marine Management Organisation Response	Applicants' Comments
1	<p>The MMO received a letter from the SoS dated 02 November 2021 requesting further information on various matters. The MMO has reviewed the matters presented by the SoS and consider that only one section requires our response as an Interested Party, this being Section 6 "Offshore Ornithology". The MMO has provided comments below.</p> <p>Offshore Ornithology</p> <p>The MMO notes that the Examining Authority has requested that the Interested Parties provide comments on the current Offshore Ornithology Cumulative and In Combination Collision Risk and Displacement Update, which was submitted by the Applicant in response to Deadline 13 at the end of the Examination period. The MMO defers to Natural England on this point as it has done previously on matters related to Offshore Ornithology and In-Combination/Cumulative impacts.</p> <p>This written representation is submitted without prejudice to any future representation the MMO may make about the DCO Application. This representation is also submitted without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.</p>	Noted.

6 Applicants' Comments on Environment Agency's Responses to Post Examination Consultation

ID	Environment Agency Response	Applicants' Comments
1	<p><i>3 Flood Risk (ii) The Applicant and Interested Parties are invited to comment on the implications of the Environment Agency's 20 July 2021 update on climate change allowances for Flood Risk Assessment1, which updated peak river flow allowances and changed the guidance on how to apply these;</i></p> <p>Although this question was not specifically directed to us, we would highlight that because the DCO application was submitted prior to the release of the updated peak river flow climate change allowances and guidance, it is appropriate for the previous allowances to be used. The Updated peak river flow climate change allowance for the area of the proposed scheme are slightly lower than the previous allowances that were used in the flood risk assessment for this proposal.</p>	<p>The Applicants welcome the Environment Agency's comments and endorse the point that because the DCO applications were submitted prior to the July 2021 changes to allowances and guidance it is appropriate to use the allowances and guidance that were applicable at that time. Whilst the Applicants recognise that policies and guidance must change in line with changes in understanding, there needs to be a cut-off point to allow assessment and decision-making to take place.</p> <p>Notwithstanding the above, as highlighted in Applicants' Responses to the Secretary of State's Questions of 2nd November 2021 (Item 3) submitted on November 30th a review of the climate change allowances set out in the July 2021 update has been undertaken. Whilst the question in the Secretary of State's Questions of 2nd November 2021 (Item 3) focused on peak river flow allowance, a review of the peak rainfall intensity allowance (applicable to surface water flooding) was also undertaken.</p> <p>The Applicants note the Environment Agency's comments in relation to reduction in the peak river flow allowance and confirms that this is in accordance with the Applicants' understanding.</p> <p>In relation to the risk from surface water flooding, the climate change allowance guidance remained unchanged in the July 2021 update. During consultation, following submission of the Applications, SCC requested that a 40% uplift for climate change be applied to the</p>

ID	Environment Agency Response	Applicants' Comments
		<p>Projects' operational drainage design and this was accordingly adopted within the OODMP (REP13-020). Within the updated Environment Agency climate change allowances (July 2021), the 40% uplift to peak rainfall intensity relates to the 2080s epoch and remains the most conservative value stipulated.</p>

ID	Environment Agency Response	Applicants' Comments
2	<p><i>(iii) The Environment Agency is asked to comment on the sufficiency of: a. the existing measures within the construction Surface Water and Drainage Management Plan (located within the updated Outline Code of Construction Plan) b. the 1 in 15 (for the substation site) and 1 in 10 (for the cable corridor) return periods proposed by the Applicant. Taking into consideration the associated responses from the Applicant, Suffolk County Council and Interested Parties, and the recent flood event in Friston.</i></p> <p>Throughout the examination period, we have reviewed the Applicant's proposed approach to the management of surface water during construction, but only in terms of protecting water resources and quality. It is the Lead Local Flood Authority, in this instance Suffolk County Council, that have the statutory responsibility in respect of the management of surface water flood risk. Therefore, it would not be appropriate for us to make comment on that aspect of the proposal</p> <p>We have previously confirmed we are satisfied with the measures as outlined to protect water quality during construction. The Outline Code of Construction Practice requires that we are consulted on the relevant detailed management plans.</p>	<p>The Applicants welcome the Environment Agency's confirmation that it is satisfied with the measures outlined to protect water quality during construction.</p> <p>The Applicants look forward to working with the Environment Agency to develop the detailed measures in the Code of Construction Practice post-consent.</p>

7 Applicants' Comments on Royal Society for the Protection of Birds' Responses to Post Examination Consultation

ID	RSPB Response	Applicants' Comments
1	<p>In our examination submission at Deadline 8 (REP8-171) the RSPB noted that in REP4-042 (and referred to in REP6-045 at para 35 in Appendix 1 (Kittiwake)), the Applicant had removed Hornsea Three in respect of kittiwake collision risk on the basis that it is compensated for. The RSPB disagreed with that approach for the reasons set out in that submission.</p> <p>We now have the following additional comments on this matter.</p> <p>Compensatory measures only enter the equation when it has been determined that there will be adverse effects on the integrity of the site (under regulation 63) or lack of certainty as to the absence of adverse effects and the need for the competent authority to decide whether consent should be granted under regulation 64.</p> <p>It therefore follows that if compensation measures have been required for a project that that project has been identified as giving rise to adverse impacts on the integrity of a protected site (or lack of certainty as to the absence of adverse effects) and therefore also relevant when considering whether a later project is likely to have a significant effect on a designated site, whether on its own or in combination with other plans and projects whether the competent authority can be satisfied that there will not be adverse effects on the integrity of the designated site whether taken alone or in combination with other projects.</p>	<p>As stated in the <i>Applicants' Comments on the Royal Society for the Protection of Birds' Deadline 8 Submissions</i> [REP9-020] the Applicants disagree with the RSPB position that kittiwakes compensated for by the Hornsea Three project should be included in the in-combination mortality figures.</p> <p>The Applicants note that in response to the following Rule 17 question (R17QB.12):</p> <p><i>“Does NE agree with the Applicant’s view in section 5.3.2 of [REP6-045] that the in-combination annual kittiwake collisions apportioned to the FFC SPA should exclude the estimated collisions at Hornsea Project Three since that windfarm has been consented on the basis that it fully compensates for its predicted 73 collisions? If not, please explain your reasons”.</i></p> <p>Natural England responded in REP8-166 to say:</p> <p><i>“Natural England confirms that the SoS decision is clear that the impacts from the project will be fully compensated for”.</i></p> <p>Furthermore, in <i>Natural England’s Deadline 12 Submission - Appendix A16c - Comments on Cumulative and In-Combination Collision Risk [REP11-027]</i> [REP12-090], in section 2.1 in relation to the figures included for Hornsea Three, Natural England state:</p>

ID	RSPB Response	Applicants' Comments												
		<p>“5. We welcome that the Applicants have included updated figures for Hornsea 3 in the assessments in Tables A0.1-A0.8 of REP11-027, based on the document provided to the Applicants’ by Ørsted. Natural England has now completed our review of the updated data provided by Ørsted for Hornsea 3. We can confirm agreement with the central/mean EIA and HRA scale collision predictions using our advised input parameters for collision risk and of abundances for displacement, and advise they are suitable to include for the Hornsea 3 project in cumulative and in-combination assessments.</p> <p>6. The figures we consider appropriate to use for the Hornsea 3 project based on the information provided to use by Ørsted are presented in Table 1 below:</p> <p>Collision risk</p> <p>Table 1 Natural England calculated EIA and HRA scale collision predictions for Hornsea 3 based on data recently provided by Ørsted</p> <table border="1" data-bbox="1176 930 1919 1380"> <thead> <tr> <th data-bbox="1176 930 1415 1220"></th> <th data-bbox="1415 930 1659 1220">Annual EIA scale collision prediction for Hornsea 3</th> <th data-bbox="1659 930 1919 1220">Flamborough and Filey Coast SPA (gannet and kittiwake) / Alde-Ore Estuary SPA (LBBG) annual collision prediction for Hornsea 3</th> </tr> </thead> <tbody> <tr> <td data-bbox="1176 1220 1415 1257">Gannet</td> <td data-bbox="1415 1220 1659 1257">19</td> <td data-bbox="1659 1220 1919 1257">7</td> </tr> <tr> <td data-bbox="1176 1257 1415 1289">Kittiwake</td> <td data-bbox="1415 1257 1659 1289">123</td> <td data-bbox="1659 1257 1919 1289">(74)*</td> </tr> <tr> <td data-bbox="1176 1289 1415 1380">Lesser black-backed gull (LBBG)</td> <td data-bbox="1415 1289 1659 1380">9</td> <td data-bbox="1659 1289 1919 1380">0</td> </tr> </tbody> </table>		Annual EIA scale collision prediction for Hornsea 3	Flamborough and Filey Coast SPA (gannet and kittiwake) / Alde-Ore Estuary SPA (LBBG) annual collision prediction for Hornsea 3	Gannet	19	7	Kittiwake	123	(74)*	Lesser black-backed gull (LBBG)	9	0
	Annual EIA scale collision prediction for Hornsea 3	Flamborough and Filey Coast SPA (gannet and kittiwake) / Alde-Ore Estuary SPA (LBBG) annual collision prediction for Hornsea 3												
Gannet	19	7												
Kittiwake	123	(74)*												
Lesser black-backed gull (LBBG)	9	0												

ID	RSPB Response	Applicants' Comments		
		Herring gull	5	-
		Great black-backed gull (GBBG)	36	-
		<p><i>* Noting the contribution from this project is set to 0 in the in-combination assessment as compensated for"</i></p> <p>Despite this, for the purposes of transparency the Applicants have presented the Hornsea Three pre-compensation estimates in parentheses in Table 4.2 of the Updated Offshore Ornithology Cumulative and In Combination Collision Risk and Displacement Assessment submitted on 30 November 2021. The figures are therefore available should the SoS wish to take these figures into account.</p> <p>Furthermore, should the SoS conclude that an Adverse Effect on Integrity (AEol) cannot be ruled out in respect of the Projects, the Applicants have provided details of in-principle compensation measures within the Offshore Ornithology Without Prejudice Compensation Measures document [REP11-071].</p> <p>The Applicants wish to confirm that the intention to work strategically and collaboratively with Norfolk Boreas Ltd in respect of kittiwake and lesser-black backed gull compensation (as set out within the Offshore Ornithology Without Prejudice Compensation Measures document) should the SoS be unable to rule out AEol in respect of those species, still applies. The Applicants have continued to work closely with Norfolk Boreas Ltd in this regard since the close of the Examinations and note that the Norfolk Boreas Offshore Wind Farm Project has now been consented with compensation required for both kittiwake and lesser-black backed gull.</p>		

ID RSPB Response	Applicants' Comments
	<p>With respect to the RSPB's additional comments, the Applicants agree that compensatory measures are only considered where it has been determined that there will be AEoI of a site, however this is in the context of the project under consideration and the compensatory measures proposed in respect of that project. This does not apply to compensatory measures secured in respect of another project considered in the in-combination assessment.</p> <p>The aim of compensatory measures is to offset the negative impact of a plan or project on the species or habitats concerned. Where AEoI cannot be ruled out, prior to granting consent, the competent authority must "<i>secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected</i>". Sufficient compensation must therefore be secured before a project which may otherwise result in an AEoI is allowed to proceed.</p> <p>It therefore follows that subsequent projects should be able to consider the impacts arising from projects for which an AEoI could not be ruled out and which are subject to compensatory measures as having been compensated for. If this were not to be the case and all compensated for impacts for all prior projects were to be included in the in-combination assessment, then this would result in unrealistic and overly precautionary assessment conclusions.</p>

ID	RSPB Response	Applicants' Comments
2	<p>It is difficult to see on what basis the fact that compensation has been provided for the adverse effects of the first scheme should mean that the effects of that scheme should be removed from the equation when carrying out the assessments required by regulation 63 for a later scheme, although it may well be relevant when considering whether consent should be granted under regulation 64 for the second scheme and/or what compensation measures should be required at that stage. There are two points we would stress in that context:</p> <ul style="list-style-type: none"> • Firstly, the admonition of AG Sharpston in C-258/11 <i>Sweetman v An Bord Pleanala</i> [2013] CMLR 16 (“Sweetman No 1”) at AG47. To exclude the adverse effects of scheme one when considering whether a later scheme would be likely to have significant effects / would not have an adverse effect on the integrity of a protected site in combination with other projects would seem to risk perpetuating the “death by a thousand cuts” phenomenon discussed in that case; and • Secondly, the uncertainty as to the effectiveness of measures that are designed to compensate for (for example) loss of habitat rather than to mitigate the harm which might otherwise be caused: see C-164/17 <i>Grace v Sweetman</i> at 52-3. 	<p>See response at ID1.</p> <p>The Applicants consider that these cases have been taken out of context.</p> <p>Whilst AG Sharpston does refer to “death by a thousand cuts”, that is in the context of a failure to consider smaller scale individual effects, with the Advocate General going on to further clarify the phenomenon of concern - “that is to say, cumulative habitat loss as a result of multiple, or at least a number of, lower level projects being allowed to proceed on the same site”. The Applicants do not see the relevance of AG Sharpston’s comment in the context of the information presented by the Applicants in the current Applications.</p> <p>In <i>Grace v An Bord Pleanala</i> (Case C-164/17), the question related to whether the measures set out in a proposed management plan constituted mitigation measures and could therefore be taken into account in the article 6(3) assessment or whether they must be regarded as compensation under article 6(4). The court confirmed that measures to compensate for the negative effects of the project, the benefits of which could not be foreseen with certainty, may not be taken into account for the purpose of the assessment that must be carried out in accordance with article 6(3). That fact fell to be considered, if need be, under article 6(4).</p> <p>It should be noted that this case related to a management plan proposed in respect of a particular project and whether it could be considered in that project’s assessment. This is different to the current circumstances where compensatory measures have been secured for an earlier project and the question is whether that earlier project’s pre-compensation effects, rather than the</p>

ID	RSPB Response	Applicants' Comments
		<p>compensated for effects, should be taken into consideration in a subsequent project's article 6(3) appropriate assessment.</p>

Applicants' Responses to SoS Questions 20th December 2021 (Item 3)

ID RSPB Response	Applicants' Comments
<p>3 Such an approach would also seem inconsistent with the clear ruling of the CJEU in C-164/17 <i>Grace v Sweetman</i> that <i>compensatory</i> measures should not be taken into account at the Article 6(3) stage when carrying out an appropriate assessment for a particular project. It is difficult to see why the compensatory measures associated with an earlier scheme could, therefore, be taken into account (by effectively removing the adverse effects of scheme 1 from consideration) where the competent authority is deciding on a later scheme whether it was likely to have significant effects or would / would not have adverse effects on the integrity of the site in combination with other projects. We set out the material passages from that decision out below for ease of reference:</p> <p><i>“50 In that regard, the Court has previously ruled that the measures provided for in a project which are aimed at compensating for the negative effects of the project cannot be taken into account in the assessment of the implications of the project provided for in Article 6(3) of the Habitats Directive.</i></p> <p><i>51 It is only when it is sufficiently certain that a measure will make an effective contribution to avoiding harm, guaranteeing beyond all reasonable doubt that the project will not adversely affect the integrity of the area, that such a measure may be taken into consideration when the appropriate assessment is carried out.</i></p> <p><i>52 As a general rule, any positive effects of the future creation of a new habitat, which is aimed at compensating for the loss of area and quality of that habitat type in a protected area, are highly difficult to forecast with any degree of certainty or will be visible only in the future.</i></p> <p><i>53 It is not the fact that the habitat concerned in the main proceedings is in constant flux and that that area requires ‘dynamic’ management that is the cause of uncertainty. In fact, such uncertainty is the result of the identification of adverse effects, certain or potential, on the integrity of the area concerned as a habitat and foraging area and, therefore, on one of the constitutive</i></p>	<p>As noted in ID2, the Applicants consider that this case has been taken out of context and that it is distinguishable from the current circumstances.</p> <p>The judgement relates to measures proposed in respect of the project under consideration and not measures secured in respect of earlier projects.</p>

ID RSPB Response	Applicants' Comments
<p><i>characteristics of that area, and of the inclusion in the assessment of the implications of future benefits to be derived from the adoption of measures which, at the time that assessment is made, are only potential, as the measures have not yet been implemented. Accordingly, and subject to verifications to be carried out by the referring court, it was not possible for those benefits to be foreseen with the requisite degree of certainty when the authorities approved the contested development.</i></p> <p><i>54 The foregoing considerations are confirmed by the fact that Article 6(3) of the Habitats Directive integrates the precautionary principle and makes it possible to prevent in an effective manner adverse effects on the integrity of protected areas as a result of the plans or projects being considered.”</i></p>	

8 Applicants' Comments on SASES' Responses to Post Examination Consultation

ID	SASES' Comment	Applicants' Comments
Flood Risk – Paragraph 3(i)		
1	<p>5. SASES made a series of submissions during the course of the examinations concerning both operational and construction flood risk (see Appendix 1). In these SASES highlighted the defects in the Applicants' approach to both operational and construction phase flood risk. A key reason for these defects is the Applicants failure to consider pluvial/surface water flood risk as part of its site selection process despite Friston having a history of flooding and these issues being clearly communicated to the Applicants during the consultation process.</p>	<p>Pluvial / surface water flood risk was considered as part of the site selection process for the Projects.</p> <p>In accordance with the guidance set out in both the Overarching National Policy Statement for Energy (NPS EN-1) and the National Planning Policy Framework (NPPF), the locations identified for the onshore substations and National Grid infrastructure are entirely within Flood Zone 1 and therefore on land that is at the lowest risk of fluvial flooding (defined as land which has a less than 1 in 1,000 annual probability of river flooding (<0.1%).</p> <p>The onshore substation and National Grid infrastructure locations were also reviewed against the Environment Agency's surface water flood risk mapping and identified as being located in an area predominantly at very low risk of surface water flooding. Furthermore, the National Grid substation location was selected in full cognisance of the presence of a shallow surface water flow route, noting that such features can be diverted, and their continued conveyance ensured through the use of well-established and proven techniques. A commitment to this is made within the OODMP (REP13-020), along with a commitment to offset any reduction in volume relating to other existing surface water features affected at the substation locations.</p> <p>The surface water flow that leads to flooding events within the village of Friston primarily originates from a number of locations unrelated to the onshore substation and National Grid infrastructure locations and this is supported by the information and modelling presented in the</p>

Applicants' Responses to SoS Questions 20th December 2021 (Item 3)

ID	SASES' Comment	Applicants' Comments
		Friston Surface Water Study (BMT, 2020) commissioned by SCC as the Lead Local Flood Authority (LLFA).
2	<p>6. The NPPF as updated in July 2021 further reinforces the existing policy requirements in respect of considering all sources of flooding and the requirement to apply the sequential test in respect of all sources of flooding as part of site selection. Richard Turney of Landmark Chambers prepared a detailed analysis of relevant policy requirements (as at 25 March 2021) and this was submitted into the examinations at Deadline 8 – see Appendix 1 of REPS-227. For ease of reference this is attached at Appendix 2.</p> <p>7. This further reinforcement in the NPPF is set out at the beginning of paragraph 161 which states:</p> <p><i>"all plans should apply a sequential, respect approach to the location of development - taking into account all sorts of flood risk and the current and future impacts of climate change."</i></p> <p>8. Furthermore the requirement to consider all sources of flooding has also been reinforced in the draft new NPS EN-1 in respect of which SASES made a submission to the Secretary of State dated 19 October 2020 - see paragraphs 3.6 - 3.9.</p>	<p>See comments at ID1. A Sequential Test (using the current criteria) was undertaken for the Projects placing the onshore substations and National Grid infrastructure in a location at the lowest risk of fluvial flooding. In addition, other potential sources of flooding were reviewed when determining the Order limits, the majority of which are at very low risk of surface water flooding.</p> <p>The Applicants provided comments in relation to the July 2021 update to the NPPF and application of the Sequential Test in <i>Applicants' Responses to the Secretary of State's Questions of 2nd November 2021 (Item 3)</i> submitted on November 30th. The Applicants' understanding of the update, and the criteria for application of the Sequential Test, are in accordance with the responses provided by SCC and East Suffolk Council.</p> <p>The Applicants previously responded to SASES' Deadline 8 submission (REP8-227) at Deadline 9 in <i>Applicants' Comments on SASES Deadline 8 Submissions</i> (REP9-013).</p>
3	<p>9. It is clear from the Applicants' submissions in the examinations that surface water and groundwater flooding were not considered in the site selection RAG (red amber green) process - only fluvial (river) flooding was considered and accordingly the sequential test was not properly applied. Had it been Friston would have been excluded as a development site.</p> <p>10. In conclusion the latest update to the NPPF does not impose any new policy requirement it merely reinforces existing requirements with which the Applicants' proposals do not comply.</p>	<p>See comments at ID1 and ID2, specifically regarding the criteria set out within NPPF and its accompanying Planning Practice Guidance on application of the Sequential Test. Additionally, site selection, design and refinement of the Projects (as detailed fully in Environmental Statement (ES) <i>Chapter 4 Site Selection and Assessment of Alternatives</i> (APP-052)) was an iterative process accounting for environmental, physical, technical, commercial and social considerations / opportunities, as well as engineering requirements. The decisions made during site selection were based upon the analysis of data gathered from a range of sources, including primary data obtained during a series of specialist site surveys, and consulted</p>

ID	SASES' Comment	Applicants' Comments
		<p>upon through the Projects' specific Site Selection Expert Topic Group. The red / amber / green (RAG) process referred to by SASES (ES Appendix 4.2 (APP-443)) is a well-established appraisal tool that was used by the Applicants to allow the clear and direct comparison of options; it was not the mechanism by which the Projects' site selection decisions were made.</p>
4	<p>11. In addition to the policy requirements SASES highlights the following points in relation to flood risk.</p> <ul style="list-style-type: none"> a) The pluvial flood risk baseline remains poorly defined - there has been no rainfall or run-off monitoring - and therefore not only is the QBAR poorly constrained for the watershed, but it has not been proven that QBAR itself will not cause flooding given flooding occurs regularly in Friston. Groundwater flooding risk has not been assessed at all. b) SASES conclude that without understanding the baseline flood risk, the Secretary of State cannot conclude the Applicants' flood risk reduction measures will be effective and will ensure no increase in flood risk elsewhere, when it is self-evident that there will be an increase in storm water run-off volume from the impermeable areas of the proposed development. 	<p>The Applicants do not consider the baseline understanding of flood risk to be poorly defined.</p> <p>The modelling presented in the Friston Surface Water Study (BMT, 2020), commissioned by SCC (as the LLFA), models surface water flow routes and verifies them using historic information on flooding events within Friston to provide a robust assessment that puts the flood risk in a numerical context without relying on anecdotal evidence alone.</p> <p>As noted at ID1, the surface water flow that leads to flooding events within the village of Friston primarily originates from a number of locations unrelated to the onshore substation and National Grid infrastructure locations, and this is supported by the information and modelling in the Friston Surface Water Study (BMT, 2020).</p> <p>In addition, the calculation used for the derivation of the Qbar values for a catchment is clearly defined and is based on an industry standard methodology and equation. There are two methodologies that can be used for the derivation of Qbar values: the Institute of Hydrology 124 (IH124) method and the Flood Estimation Handbook (FEH) method. The FEH method has largely superseded the IH124 method. Furthermore, the use of FEH 2013 rainfall data, as part of the FEH method is the industry standard for estimation of design rainfall. This methodology is also in accordance with the latest SCC guidance on specific requirements to be adopted when determining Qbar values. A summary of the methodology applied for the derivation of</p>

ID	SASES' Comment	Applicants' Comments
		<p>Qbar values is provided in paragraph 96 of the OODMP (REP13-020), which confirms that the latest FEH 2013 dataset and FEH method has been adopted. This is therefore in accordance with both the industry standard methodology and guidance from SCC for the derivation of Qbar values.</p> <p>The drainage measures to be implemented by the Projects will ensure that by maximising the use of infiltration in the detailed operational drainage design, attenuating surface water and ensuring a controlled discharge rate from the site (i.e. discharging at the greenfield rate), there is no increased risk of flooding to the surrounding area, and specifically Friston, as a result of the Projects. Furthermore, the comprehensive surface water control measures proposed during construction and operation will reduce uncontrolled flows from the site towards Friston.</p>
5	<p>c) Notwithstanding the above concerns over the operational phase of the proposed development, the Applicant continues to fail to demonstrate the difference in flood risk associated with the much larger area of disturbance of the proposed development site (including the cable route particularly as it approaches the substations and cable sealing ends site at Friston) during the construction phase. This will result in the generation of highly turbid run-off and the requirement to treat and clarify this water to ensure both adequate discharge quality is achieved and to enable ground infiltration to be an effective disposal method. The Applicants have not demonstrated that this requirement will be met.</p> <p>d) This failure to understand the difference in the flood risk posed by the construction phase and hence demonstrate adequacy of construction phase flood risk management measures remains a critical shortcoming in meeting policy</p>	<p>The Applicants have set out their position on this matter over several submission to the DCO examinations, and most recently summarised it within Applicants' Responses to the Secretary of State's Questions of 2nd November 2021 (Item 3) submitted on November 30th.</p> <p>Construction works associated with the onshore cables will be temporary and transient in their nature. As noted, not only are the majority of the Order limits at the lowest risk of fluvial flooding and at very low risk of surface water flooding, but the vast majority of the onshore cable route crosses rural, agricultural land where the impacts associated with flooding are likely to be less than in residential locations and the potential for surface water runoff to dissipate is greater. In determining that the Projects' construction drainage proposals for the onshore cable route should accommodate the 1 in 10 year storm event return period (proposed in Section 11 of the Outline CoCP (document reference 8.1)) several scenarios have been modelled and the necessary storage volumes and drainage</p>

ID	SASES' Comment	Applicants' Comments
	<p>requirements to ensure flood risk is not increased from ALL and ANY sources of flood risk.</p>	<p>basin dimensions identified. The proposals are considered wholly appropriate and are not only in line with the recommendations of Control of water pollution from linear construction projects (C649) (CIRIA, 2006), but go beyond those for comparable linear projects.</p> <p>The Applicants also consider that accommodating the 1 in 15 year storm event return period (as proposed during the Examinations) is wholly appropriate regarding construction of the onshore substations and National Grid infrastructure. Notwithstanding this, the Applicants have now increased the storm event return period to be accommodated to 1 in 30 years for Work Nos. 30, 31, 34, 38, 41 and 42. This is secured through updates to section 11.1.5 of the Outline CoCP (document reference 8.1) submitted to the SoS on 31st January 2022. The ability to accommodate this infrastructure within the Order limits is shown in Appendix 2 of the Outline CoCP. Section 11 of the updated Outline CoCP also contains a number of additional construction surface water management measures and a commitment to the provision of the Flood Resilience Fund.</p> <p>Regarding turbidity, a number of sediment management measures are embedded in the design of the Projects and these are set out in Table 20.3 for Environmental Statement Chapter 20 Water Resources and Flood Risk (APP-068). Additionally, Section 11 of the Outline CoCP (document reference 8.1) also sets out silt management measures for construction of the Projects. A Pollution Prevention and Response Plan will be prepared which describes controls for the prevention of pollution which will be in place during construction works. The plan will include all emergency incident response procedures (including unconsented discharge to land or water, release of silt, emergency pollution events to air, flooding and extreme weather) and will detail key site and emergency contacts.</p>
<p>Flood Risk – Paragraph 3(ii)</p>		

ID	SASES' Comment	Applicants' Comments
6	<p>12. For clarification the river in Friston is interchangeably referred to as the Main River and the Friston Watercourse. There is attached at Appendix 3 a plan showing the main river derived from the Environment Agency's Main River Map which can be found at this link</p> <p>As can be seen the main river starts at the south side of Church Road. It should be noted that this is outside the order limits for the EA1N and EA2 projects. The relevant works plan shows the southern boundary of the site ending on Church Road. See sheet 7 of 12 at the attached link.</p> <p>https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010077/EN010077-005220-2.3.2%20EA1N%20Works%20Plan.pdf</p> <p>13. Interested parties are invited to comment on the implications of the Environment Agency's 20 July 21 update on climate change allowances for flood risk assessment which updated peak river flow allowances and changed the guidance on how to apply these.</p>	<p>No further comment.</p>
7	<p>14. There is a fundamental difficulty in so commenting because the Applicants have not considered the impact of the development on existing peak river flows on the Main River passing through Friston Village. The Applicants have limited their analysis to the management of surface water run-off leaving the site, on the basis that the site itself does not reside within Flood Zone 3 and focused on demonstrating they can achieve the QBAR surface water flow rate from the site.</p>	<p>As noted, there is very limited fluvial flood risk to the onshore substation and National Grid infrastructure locations (notably all are located well within Flood Zone 1 – land identified as having the lowest risk of fluvial flooding). ES Appendix 20.3 Flood Risk Assessment (APP-496) of the Applications considers the peak river flow allowance that would be applicable to these locations. However, the Applicants note that although the Friston Watercourse is a Main River within Friston village, it is ephemeral in nature (i.e. dry for large parts of the year) and is fed by surface water runoff from the surrounding area in times of heavy rainfall. As such, the analysis undertaken for the Projects focuses on the types of event that would result in flooding (i.e. heavy rainfall and surface water flow into the watercourse).</p> <p>Notwithstanding the above, in relation to the risk from surface water flooding, during consultation following submission of the Applications,</p>

ID	SASES' Comment	Applicants' Comments
		<p>SCC (as the LLFA) requested that a 40% uplift for climate change be applied to the Projects' operational drainage design and this was accordingly adopted within the OODMP (REP13-020). There were no changes to these values within the updated Environment Agency climate change allowances (July 2021), and the 40% uplift to peak rainfall intensity relates to the 2080s epoch which is the most conservative value stipulated.</p> <p>The updated Environment Agency climate change allowances guidance (July 2021) does not alter the assessment of flood risk for the Projects and the allowances already applied within the OODMP (REP13-020) are the highest that the Environment Agency has identified in relation to peak rainfall intensity.</p>
8	<p>15. However (as noted in paragraph above) the Applicants have not assessed the QBAR flow in the watershed nor the conveyance of the current flow route channel and culverts, so cannot assess the consequences of assessing impact against a revised climate change allowance. Further there has been no monitoring undertaken by the Applicants of rainfall or watercourse flows in the Friston watershed.</p>	<p>As noted at ID1 and ID4, the modelling presented in the Friston Surface Water Study (BMT, 2020), commissioned by SCC (as the LLFA) models surface water flow routes and verifies them using historic information on flooding events within Friston to provide a robust assessment that puts the flood risk in a numerical context without relying on anecdotal evidence alone. This modelling clearly defines key extreme rainfall events (including an allowance for climate change), catchment boundaries and conveyance routes within the catchment. The Applicants note that the findings of the Friston Surface Water Study (BMT, 2020), support and confirm their understanding of surface water flow within the catchment as set out in ES Appendix 20.3 Flood Risk Assessment (APP-496).</p> <p>As noted at ID4, the calculations used for the derivation of Qbar values for a catchment are clearly defined, based on an industry standard methodology and equations. SCC also provides guidance on specific requirements to be adopted when determining Qbar values. The Applicants confirm that the industry standard methodology and</p>

ID	SASES' Comment	Applicants' Comments
		<p>the guidance from SCC are utilised within the OODMP (REP13-020) for the derivation of Qbar values.</p>
9	<p>16. SASES contends this remains a critical failure of the Applicants to adequately assess the flows in the Friston Watercourse – indeed there has been no attempt by the Applicants to determine the flows in the Main River passing through Friston Village – and therefore the Applicant cannot consider the extent to which either the existing or the updated peak flow allowances result in a material change to flood risk in the Main River passing through Friston.</p>	<p>As noted at ID7, although the Friston Watercourse is a Main River within Friston village it is ephemeral in nature (i.e. dry for large parts of the year) and is fed by surface water runoff from the surrounding area in times of heavy rainfall. As such, the analysis undertaken for the Projects focuses on the types of event that would result in flooding (i.e. heavy rainfall and surface water flow into the watercourse).</p> <p>On this basis, the Applicants have developed the OODMP (REP13-020) to incorporate a series of flood risk and drainage measures to be implemented by the Projects which will ensure there is no risk of surface water flooding to the proposed infrastructure, either from the existing flow route or through the increase in impermeable areas.</p> <p>Furthermore, by maximising the use of infiltration in the detailed operational drainage design, attenuating surface water and ensuring a controlled discharge rate from the site (i.e. discharging at the greenfield rate), there will be no increased risk of flooding to the surrounding area, and specifically Friston, as a result of the Projects.</p> <p>Indeed, implementing a controlled surface water strategy as part of the Projects, by which surface water is retained in the SuDS basins and allowed to infiltrate or be released to the Friston Watercourse at a controlled greenfield rate, will provide benefits to the downstream catchment of Friston. This is on the basis that during extreme events the flow into the top of the Friston Watercourse, where the channel commences at Church Road, will reduce when compared to the existing situation.</p>

9 Applicants' Comments on Interested Parties' Responses to Post Examination Consultation

9.1 Introduction

5. This section presents the Applicants' comments on representations received from IPs. Responses to representations received in respect of the Projects from IPs have been grouped by topic in order to avoid repetition. The key topics raised in these representations along with the Applicants' responses have been provided below. Each of the IPs have been allocated a number as follows:

- Allan Bullard (1);
- Allan Bullard (2);
- Alan Collet (3);
- Alde Ore Association (4);
- Alison Rosenberg (5);
- Andrew Norton (6);
- Andrew Norton (duplicate) (7);
- Angela Mallinson (8);
- Antony Deardon (9);
- Brian Roger (10);
- Charles Manning (11);
- Christine Wiles (12);
- Colin Roxby (13);
- David Bizzell (14);
- David Gordon (15);
- David McKenna (16);
- David Steen (17);
- David Walduck (18);
- Elisabeth Jarrett (19);
- Eliot Grant (20);
- Emma Hegarty (21);
- Fiona Cramb (22);
- Fiona Cramb (duplicate) (23);
- Fiona Gilmore (24);
- Gillian Horrocks (25);
- Glynis Robertson (26);
- Graham Bagnall (27);
- Henrietta Palmer (28);
- Iain Brown (29);
- Ian Wiles (30);
- James Dow (31);
- James White Drinks (32);
- Janet Harber (33);
- Jennifer Pearson (34);
- Laura Fagg (35);
- Lesley and John Swann (36);
- Lesley Walduck (37);
- Lesley Walduck (duplicate) (38);
- Louise and Derek Chadwick (39);
- Louise Fincham (40);
- Luigi Beltrandi (41);
- Luigi Beltrandi and Mya Manakides (42);
- Margaret McKenn (43);

-
- Marie Szpak (44);
 - Mark Haines (45);
 - Mark Waine (46);
 - Martin Cotter (47);
 - Mary Shipman (48);
 - Maryanne Nichols (49);
 - Michael Jones (50);
 - Michael Lewis (51);
 - Nicolas and Nichola Winter (52);
 - Mrs EP Gimson (53);
 - Nicky Scott (54);
 - Reet Gilday (55);
 - Richard Gibbons (56);
 - Richard Cooper (57);
 - Sally Sturridge (58);
 - Sarah Courage (59);
 - Sheridan Steen (60);
 - Simon and Christine Ive (61);
 - Simon Seymour-Taylor (62);
 - Snape Parish Council (63);
 - Stephen Barnard (64);
 - Suffolk Energy Action Solutions (68, 69, 70)
 - Susan Obsen (71);
 - Teresa Newton (72);
 - Tessa Wojtczak (73);
 - Theresa Tollemache (74);
 - Tim Rowan-Robinson (75);
 - Tony Morley (76);
 - Tony Morley (77);
 - Wardens Trust (78);
 - Wendy Orme (79);
 - William Halford (80);
 - William Halford (81); and,
 - William Matthew (82).

Representation received	Main point raised	Was this addressed during Examination (YES/NO)?	Summary and documents where this point is addressed
1, 13, 14, 24, 26, 28, 29, 68, 70, 71	Flooding (general).	YES	<p>Surface water drainage and flood risk received considerable attention during the course of the Examination.</p> <p>The key point of discussion was around the adequacy of the operational sustainable drainage system (SuDS) being proposed for the onshore substations and National Grid infrastructure. During the Examination the Applicants undertook specific infiltration testing at the proposed locations of the SuDS basins. Based on the test results (<i>Infiltration Test Results (May 2021)</i> (AS-129)), the Applicants agreed appropriate outline design parameters for the SuDS basins with SCC (as the LLFA) who accept the 1 in 100 design basis (LA-05.08 and LA-05.10 within the <i>Statement of Common Ground: East Suffolk Council and Suffolk County Council</i> (REP12-070)). The proposals are set out in full within the <i>OODMP</i> (REP13-020).</p> <p>The Projects' operational SuDS have been designed to highly conservative standards that in fact surpass the requirements set out in the relevant legislation, policy and guidance, including recent updates made to the NPPF (July 2021) and the Environment Agency climate change allowances (July 2021). By implementing the proposed SuDS, not only will there be no increased risk of flooding to the surrounding area as a result of the Projects, but there will be downstream benefits for locations such as Friston as the attenuation and controlled release of surface water from the site during extreme events will ensure that its flow is reduced when compared to the existing situation.</p> <p>As noted in the <i>Statement of Common Ground: East Suffolk Council and Suffolk County Council</i> (REP12-070), there remains an outstanding matter</p>

Representation received	Main point raised	Was this addressed during Examination (YES/NO)?	Summary and documents where this point is addressed
			<p>with SCC (as the LLFA) in that it requests the 1 in 100 year storm event return period be accommodated by the Applicants' construction drainage proposals.</p> <p>Regarding the onshore substations and National Grid infrastructure, in <i>Applicants' Responses to the Secretary of State's Questions of 2nd November 2021 (Item 3)</i> the Applicants committed to increasing the storm event return period accommodated in the Projects' construction drainage scheme from a 1 in 15 to a 1 in 30 year event for Work Nos. 30, 31, 34, 38, 41 and 42. It was proposed that this be secured through an update to the <i>draft DCO</i> (document reference 3.1). However, following the publication of the SoS letters, this commitment will be now secured through updates to the <i>Outline CoCP</i> (document reference 8.1). The ability to accommodate the increase within the Order limits is presented in <i>Appendix 2</i> of the <i>Outline CoCP</i>. <i>Section 11</i> of the updated <i>Outline CoCP</i> also contains a number of additional construction surface water management measures and a commitment to the provision of the Flood Resilience Fund.</p> <p>Regarding the onshore cable route, it is unnecessary and inappropriate to undertake significant amounts of additional excavations, additional earth movements and increased land / subsoil disturbance which would be required to accommodate an increase in storm event return period for such works in a location with such low risk. Committing to a 1 in 10 year return period (as proposed within the <i>Outline CoCP</i> (document reference 8.1)) is not only in line with the recommendations of Control of water pollution from linear construction projects (C649) (CIRIA, 2006), but goes beyond comparable linear projects.</p>
24, 36, 40, 44, 48, 51, 52, 54, 56, 58, 60, 61, 68, 70, 76	Flooding at the substation site.	YES	The adequacy of the operational SuDS being proposed for the onshore substations and National Grid infrastructure received considerable attention during the course of the Examination. Before the close of the Examination the

Representation received	Main point raised	Was this addressed during Examination (YES/NO)?	Summary and documents where this point is addressed
			<p>Applicants undertook specific infiltration testing at the proposed locations of the SuDS basins. Based on the test results (<i>Infiltration Test Results (May 2021)</i> (AS-129)), the Applicants agreed appropriate outline design parameters for the SuDS basins with SCC (as the LLFA) (LA-05.08 and LA-05.10 within the <i>Statement of Common Ground: East Suffolk Council and Suffolk County Council</i> (REP12-070)). The proposals are set out in full within the <i>OODMP</i> (REP13-020).</p> <p>The Projects' operational SuDS have been designed to highly conservative standards that in fact surpass the requirements set out in the relevant legislation, policy and guidance, including recent updates made to the NPPF (July 2021) and the Environment Agency climate change allowances (July 2021). By implementing the proposed SuDS, not only will there be no increased risk of flooding to the surrounding area as a result of the Projects, but there will be downstream benefits for locations such as Friston as the attenuation and controlled release of surface water from the site during extreme events will ensure that its flow is reduced when compared to the existing situation.</p>
24, 60, 68, 70, 80	Flooding at the Hundred River.	YES	<p>The Applicants undertook a Sequential Test for the Projects which placed the majority of the onshore cable route within Flood Zone 1 (i.e. land at the lowest level of fluvial flood risk), with the Exception Test considered for the element of the Projects to be located in Flood Zone 3. As would be expected, there is a higher risk of flooding (i.e. Flood Zone 3) associated with the course of the Hundred River, and at the location where the onshore cable route crosses it. This is fully appraised in <i>Appendix 20.3 Flood Risk Assessment</i> (APP-496), where it is noted that the potential risk of flooding will be limited to the construction phase. Once operational, the flood risk will be mitigated as the cables will be wholly located underground and there will be no interaction with</p>

Applicants' Responses to SoS Questions 20th December 2021 (Item 3)

Representation received	Main point raised	Was this addressed during Examination (YES/NO)?	Summary and documents where this point is addressed
			<p>the above ground Flood Zone 3. The measures proposed to ensure the crossing works do not exacerbate flood risk are discussed throughout the Outline Watercourse Crossing Method Statement (REP11-074).</p> <p>The methodology to be used for any temporary or permanent works associated with the Hundred River crossing will be agreed with the Environment Agency in accordance with the Environmental Permitting (England and Wales) Regulations 2016 and Water Resources (Abstraction and Impounding) Regulations 2006. In line with these regulations, the Applicants will apply for a Flood Risk Activity Permit prior to commencement of the works associated with the Hundred River crossing.</p>
1, 2, 5, 6, 7, 8, 11, 14, 15, 16, 18, 19, 20, 22, 23, 24, 25, 28, 29, 31, 32, 36, 37, 38, 39, 42, 43, 47, 49, 50, 52, 53, 56, 57, 58, 59, 60, 61, 62, 63, 64, 68, 72, 73, 75, 76, 77, 78, 79, 81	Cumulative effects and approach to cumulative impact assessment.	YES	<p>The Applicants summarised their final position with respect to Cumulative Impact Assessment (CIA) in Section 2.1 of Deadline 13 Topic Position Statements (REP13-023).</p> <p>The Applicants set out their position regarding the selection of other proposed developments to be considered within the CIAs within Applicant's Comments on Relevant Representations, Volume 3: Technical Stakeholders (AS-036).</p> <p>Further information on cumulative assessment is also presented in Section 3.3 of The Applicant's Final Position Statement (REP13-009) submitted at Deadline 13.</p>
1, 2, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37,	Other potential connection options / use of an offshore ring main.	YES	<p>The Applicants have previously addressed this matter in detail, specifically in the following documents:</p> <ul style="list-style-type: none"> Section 2.2 of the Applicants' Submission of Oral Case: Preliminary Meeting (Part 1) on 16 September 2020 (PDC-001).

Applicants' Responses to SoS Questions 20th December 2021 (Item 3)

Representation received	Main point raised	Was this addressed during Examination (YES/NO)?	Summary and documents where this point is addressed
38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 68, 71, 72, 73, 74, 75, 76, 77, 79, 81			<ul style="list-style-type: none"> • Regulatory Context Note (REP2-003). • Section 2.5 of the Applicants' Submission of Oral Case: Issue Specific Hearing 2 on 2nd and 3rd December 2020: Onshore Siting, Design and Construction (REP3-085). • Section 2.7 of Applicants' Comments on SASES' Deadline 9 Submissions (REP10-020).
1, 5, 9, 1, 12, 14, 15, 16, 18, 19, 21, 22, 23, 24, 26, 27, 01, 31, 32, 33, 34, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 49, 51, 52, 54, 58, 59, 62, 63, 68, 71, 72, 73, 75, 76, 77, 82	Requests for a split decision.	YES	<p>A split decision would not help deliver against the Government's target for the deployment of offshore wind and would have a negative effect on the developing UK supply chain.</p> <p>The Applicants have previously addressed this matter in detail, specifically in the following documents:</p> <ul style="list-style-type: none"> • Section 2.1 (in particular paragraph 20) and Section 6.3 (in particular paragraph 122 (East Anglia TWO) and paragraph 116 (East Anglia ONE North)) of The Applicant's Final Position Statement (REP13-009) submitted at Deadline 13 • Row 6 of Applicants Comments on Thérèse Coffey D8 Submissions (REP9-026). • Row 7 of Applicants Comments on Thérèse Coffey D9 and D11 Submissions (REP12-065).
17, 22, 23, 40, 53, 64, 68, 69, 70, 73, 79	Use of Non Disclosure Agreements.	YES	The Applicants have conducted their negotiations with Affected Persons in an entirely appropriate manner and have provided a full response on this at Appendix 1 .
3, 4, 26, 36, 53, 60, 71, 78	Coastal erosion and cliff stability at the landfall.	YES	This was a topic of considerable discussion at the Examination. During the project development process the Applicants determined that the most

Representation received	Main point raised	Was this addressed during Examination (YES/NO)?	Summary and documents where this point is addressed
			<p>appropriate technique for installing the offshore export cables at the landfall is Horizontal Directional Drilling (HDD). The Applicants have engaged leading HDD consultants to advise on both the feasibility and the delivery of the HDD solution. Further technical reports were lodged by the Applicants to support the position (see Horizontal Directional Drilling Verification Clarification Note (REP6-024) and Landfall Hydrogeological Risk Assessment (REP6-021)). These further assessments have concluded that the HDD is deliverable, and it is unlikely that there would be adverse significant effects arising from the works.</p>
28, 36, 43, 49, 60, 63, 75	Potential impacts on traffic and transport.	YES	<p>Potential traffic and transport impacts have been considered throughout the development of the Projects. This was assessed in the EIA (Chapter 26 Traffic and Transport APP-074) and further information was presented in various documents during Examination including:</p> <ul style="list-style-type: none"> • Traffic and Transport Clarification Note (REP1-048). • Applicants' Responses to Examining Authority's Written Questions Volume 18 – 1.18 Transportation and Traffic (REP1-121). • Sizewell C Cumulative Impact Assessment Note (Traffic and Transport) (REP2-009). • Traffic and Transport Clarification Note for Deadline 3 (REP3-055). • Deadline 4 Traffic and Transport Clarification Note (REP4-027). • Written Summary of Oral Case (ISH4) (REP5-028). • Sizewell C Cumulative Impact Assessment Note (Traffic and Transport) (REP6-043).

Applicants' Responses to SoS Questions 20th December 2021 (Item 3)

Representation received	Main point raised	Was this addressed during Examination (YES/NO)?	Summary and documents where this point is addressed
			<ul style="list-style-type: none"> • Applicants' Responses to Written Question 2 Volume 8 2.18 Transportation and Traffic (REP6-065). • Written Summary of Oral Case Issue Specific Hearing 13 (REP8-098). <p>These documents are supported by outline traffic plans:</p> <ul style="list-style-type: none"> • Outline Construction Traffic Management Plan (OCTMP) (REP11-017). • Outline Access Management Plan (OAMP) (REP11-020). • Outline Travel Plan (OTP) (REP11-022). • Outline Port Construction Traffic Management and Travel Plan (OPCTMTP) (REP12-062). <p>These outline documents are secured under the requirements of the draft DCO. Prior to construction commencing, final versions of the CTMP, AMP TP, PCTMP and PTP will be produced, in consultation with the Local Planning Authority, Highway Authority and Highways England, as appropriate, to discharge requirements of the DCO.</p> <p>A summary of traffic and transport matters is detailed Section 4.9 of The Applicant's Final Position Statement (REP13-009) submitted at Deadline 13.</p>
5, 8, 13, 25, 26, 44, 46, 50, 60, 68, 79	Potential Impacts on the local economy.	YES	<p>Potential impacts on the local economy have been considered throughout the development of the Projects. This was assessed in the EIA (Chapter 30 Tourism, Recreation and Socio-Economics APP-078) and further information was presented in various documents during Examination including:</p> <ul style="list-style-type: none"> • Socio Economics and Tourism Clarification Note (REP1-036).

Applicants' Responses to SoS Questions 20th December 2021 (Item 3)

Representation received	Main point raised	Was this addressed during Examination (YES/NO)?	Summary and documents where this point is addressed
			<ul style="list-style-type: none"> • <i>Applicants' Responses to Examining Authority's Written Questions Volume 17 – 1.17 Socio Economic Effects</i> (REP1-120). • <i>Applicants' Responses to Examining Authority's Written Questions Appendix 13 Tourism Impact Review</i> (REP1-102). • <i>Written Summary of Oral Case (ISH5)</i> (REP5-029). • <i>Applicants' Responses to Written Question 2 Volume 7 2.17 Socio Economic Effects</i> (REP6-064). • <i>Applicants' Responses to ExQ3 Volume 11 3.17 Socio Economic Effects</i> (REP11-072). • <i>Applicants' Comments on Suffolk Coast Destination Management Organisation Limited's Deadline 11 Submissions</i> (REP12-036). <p>A summary of how the Applicants propose to address potential impacts on the economy/tourism is presented in Section 4.10 of <i>The Applicant's Final Position Statement</i> (REP13-009) submitted at Deadline 13.</p>
13, 14, 24, 26, 28, 29, 46, 48, 54, 59, 60, 61, 63	Potential impacts on onshore ecology and biodiversity.	YES	<p>The Applicants have given careful consideration of potential impacts on onshore ecology and biodiversity as well as identifying opportunities for ecological enhancement to be provided by the Projects by way of various measures proposed within the ES and the OLEMS (document reference 8.7). This is also discussed in the Ecological Enhancement Clarification Note submitted at Deadline 1 (REP1-035) and the Ecological Enhancement Clarification Note Addendum submitted at Deadline 8 (REP8-041). Further information regarding onshore ecology and biodiversity was presented during Examination in the following documents:</p> <ul style="list-style-type: none"> • Clarification Note - Onshore Ecology (REP1-023).

Representation received	Main point raised	Was this addressed during Examination (YES/NO)?	Summary and documents where this point is addressed
			<ul style="list-style-type: none"> • Applicants' Responses to Examining Authority's Written Questions Volume 4 – 1.2 Biodiversity Ecology and Natural Environment (REP1-107). • Written Summary of Oral Case (ISH1) (REP3-084). • Deadline 3 Onshore Ecology Clarification Note (REP3-060). • Deadline 4 Onshore Ecology Clarification Note (REP4-005). • Written Summary of Oral Case (ISH3) (REP5-027). • Deadline 6 Onshore Ecology Clarification Note (REP6-025). • Ecology Survey Results (REP6-035). • Written Summary of Oral Case ISH7 - Issue Specific Hearing 7 on 17th February 2021: Biodiversity and Habitats Regulations Assessment (REP6-052). • Applicants' Responses to Written Question 2 Volume 4 2.2 Biodiversity Ecology and Natural Environment (REP6-061). • Written Summary of Oral Case Issue Specific Hearing 14 (REP8-099). • Hundred River Ecology Survey Report (REP11-063). • Applicants' Responses to ExQ3 Volume 4 - 3.2 Biodiversity Ecology and Natural Environment (REP11-088). • Outline SPA Crossing Method Statement (REP12-027). <p>Table 2.1 of Deadline 13 Topic Position Statements (REP13-023) provides a status summary for onshore ecology. It reviews the EIA topics as set out in the relevant Statements of Common Ground to highlight areas of agreement</p>

Representation received	Main point raised	Was this addressed during Examination (YES/NO)?	Summary and documents where this point is addressed
			<p>and any outstanding matters with the technical stakeholders (i.e. the regulators or statutory advisors with the relevant technical competence).</p> <p>Section 4.4 of <i>The Applicant's Final Position Statement</i> (REP13-009) provides a summary of the key effects arising from the construction and operation of the onshore works on onshore ecology and how the Applicants have considered these.</p> <p>Progress has been made with Natural England regarding badger and GCN mitigation since the close of the Examinations.</p> <p>Regarding badger, Natural England issued a LONI on 4th August 2021 and this was included within the Applicants' response to the SoS (Applicants' Responses to the Secretary of State's Questions of 2nd November 2021 (Items 4-7)) submitted on the 30th November.</p> <p>Regarding GCN, the Applicants will use Natural England's District-Level Licensing scheme. An Impact Assessment and Conservation Payment Certificate was entered into by both the Applicants and Natural England on 17th December 2021. A copy of the Impact Assessment and Conservation Payment Certificate for the East Anglia ONE North and East Anglia TWO Offshore Windfarms (Ref. DLL-ENQ-NOSU-00085) is included within Appendix 1 of Applicants' Responses to the Secretary of State's Questions of 20th December 2021 (Items 6 & 7) (document reference ExA.AS-3.SoSQ2.V1). The OLEMS (document reference 8.7) submitted to the SoS on 31st January 2022 has been updated to reflect the position regarding badger and GCN.</p>

Applicants' Responses to SoS Questions 20th December 2021 (Item 3)

Representation received	Main point raised	Was this addressed during Examination (YES/NO)?	Summary and documents where this point is addressed
13, 50, 59	Potential impacts on heritage assets.	YES	<p>The Applicants undertook considerable work in respect of cultural heritage during the site selection process (Appendix 24.3 Onshore Archaeology and Cultural Heritage Desk Based Assessment and Annexes (APP-514)) and further information was presented in various documents during Examination including:</p> <ul style="list-style-type: none"> • Archaeology and Cultural Heritage Clarification Note (REP1-021). • Heritage Assessment Addendum (REP4-006) and associated Appendices (REP4-007 to REP4-012). • Heritage Assessment GIS Addendum (REP11-075) and associated Appendices (REP11-076 to REP11-080). <p>The Applicants' final position regarding cultural heritage and heritage assets is summarised in Section 4.6 The Applicant's Final Position Statement (REP13-009).</p>
53, 73, 78	Potential impacts on Ness House / Wardens Trust.	YES	<p>Potential for impacts on the Ness House well (which supplies Ness House and the Warden's Trust) due to construction activities at the landfall has been addressed in the Post Hearing Submissions Including Written Submissions of Oral Case (REP11-112). This document presented the Applicants' evidence that the HDD poses a low risk to water supplies and the Applicants' evidence was fully vindicated by the Environment Agency's Deadline 11 submission (REP11-112).</p> <p>Regarding concern over onshore cable routing works in proximity to Wardens Trust, the Applicants, through non-material changes to the Order limits, moved the proposed onshore cable corridor 80m west to ensure construction works would be at an increased distance from Wardens Trust land. The Outline CoCP (document reference 8.1) also sets out the limited duration of the</p>

Representation received	Main point raised	Was this addressed during Examination (YES/NO)?	Summary and documents where this point is addressed
			<p>onshore cable route construction works in the vicinity of the Wardens Trust property.</p> <p>The Applicants provided written responses to submission made by the Wardens Trust during Examination in the following documents:</p> <ul style="list-style-type: none"> • Applicants' Responses on the Wardens Trust Land Interests (REP7-058). • Applicants' Comments on Wardens Trust's Deadline 9 Submissions (REP10-023). • Applicants Comments on Wardens Trust Deadline 11 Submissions (REP12-049). <p>A summary of how the Applicants addressed potential impacts on Ness House and the Wardens Trust is presented in Section 4.1 and 4.2 of The Applicant's Final Position Statement (REP13-009).</p>
13, 14, 25, 50	Potential impacts on human health.	YES	<p>The Applicants have given careful consideration to the impacts on human health and this was considered throughout the development of the Projects. This was assessed in the EIA (Chapter 27 Human Health (APP-075)) and further information was presented in documents during Examination including:</p> <ul style="list-style-type: none"> • EA1N&EA2 Written Summary of Oral Case Issue Specific Hearing 10 (REP8-095) <p>In relation to noise, the Applicants note that the councils are in agreement that there will be no significant adverse noise impacts as a result of operation from the Projects (EA1N&EA2 Statement of Common Ground with East Suffolk Council and Suffolk County Council (REP12-070))</p>

Representation received	Main point raised	Was this addressed during Examination (YES/NO)?	Summary and documents where this point is addressed
			<p>In addition, mitigation pertaining to traffic and transport, air quality, noise, public rights of way (PRoW) and electromagnetic frequency (EMF) are agreed with ESC and SCC.</p> <p>A summary of how the Applicants addressed potential impacts on health and those parameters which are related are presented in <i>The Applicant's Final Position Statement</i> (REP13-009) submitted at Deadline 13.</p>
63	Adequacy of Consultation.	YES	<p>Consultation is recognised by the Applicants as being a key feature of the EIA process, and continues throughout the lifecycle of a project, from its initial stages through to consent and post-consent. The Applicants provided a detailed response regarding this matter in <i>Table 1 of Applicant's Comments on Relevant Representations Volume 2: Individual Stakeholders</i> (AS-035).</p>

Appendix 1 Applicants' comments on SEAS response in respect of matters relating to the voluntary acquisition of land rights

1 Introduction

1. This submission is in response to the SEAS unsolicited submission to the Secretary of State on the 30 November 2021 in relation to matters relating to the voluntary acquisition of land rights. The Secretary of State will note that SEAS, in their submissions, now criticise every aspect of the process, including the Panel for seeking an extension and the Secretary of State seeking further information. Their submissions regarding the Applications have become more extreme throughout the process.
2. The Applicants take allegations about their conduct very seriously and cannot leave SEAS' submission without response. The conduct of SEAS has now become vexatious. They have deliberately distorted information in their submission to the Secretary of State. There is no reasonable explanation for this conduct.

2 The Applicants' Approach to the Voluntary Acquisition of Land Rights

3. The submitted DCOs include articles seeking the compulsory acquisition of both land and rights. Guidance on the procedures to be followed when applying for a DCO has been provided the Department for Communities and Local Government². This guidance advises that Applicants should seek to acquire land and rights on a voluntary basis and if achieved this would mean that the Compulsory Purchase (CPO) powers would not be required. This can only be achieved if there is a comprehensive land contract and if objections to the CPO have been removed. This would have to provide that such objection is completely withdrawn and cannot be restated. In addition, any such land agreements would incorporate financial and other information which the parties agree is confidential. This sets out the context for the discussions that the Applicants' agents have held with those representing the relevant Affected Persons. The Land Agents for the Applicants and the Affected persons involved in the negotiations also have the

² Ministry of Housing, Communities & Local Government (2013), Planning Act 2008: guidance related to procedures for the compulsory acquisition of land, available here: [Planning Act 2008: procedures for the compulsory acquisition of land - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270421/Planning_Act_2008_guidance_related_to_procedures_for_the_compulsory_acquisition_of_land.pdf)

benefit of relevant guidance from the RICS which provides a comprehensive coverage of the issues that are likely to be involved³.

4. The Applicants set out in the ***Applicants' Response to Letters Submitted in relation to Suffolk Energy Action Solutions (SEAS) Complaint*** (REP7-061) their approach to the voluntary acquisition of rights. The Applicants appointed Dalcour Maclaren as land agents on 11 April 2018. The approach that the Applicants have adopted with Affected Persons is to understand how the Projects may affect these interests and to work with those parties to understand the particular issues that they face and seek to address these issues.
5. The Applicants built upon their experience in developing the East Anglia ONE offshore windfarm project and have included a number of additional measures in the standard contractual provisions contained in their voluntary land agreements to increase the engagement with affected parties and landowners in the ultimate development of the scheme. For example, one of the lessons learnt from the (now operational) East Anglia ONE project was that there would be benefit in having greater landowner input into drainage matters. In that context, the Option Agreements propose to pay for the landowners to engage appropriate contractors to respond to such matters.
6. As would be expected, every landowner appointed their own solicitor and land agent. Seven landowners appointed one law firm, and three other firms represent the remaining landowners. Each solicitor, and each land agent, that has been instructed are members of well-known and experienced regional practices.
7. The Applicants, through their land agents, have engaged extensively with those parties potentially impacted by the compulsory purchase process and worked with their land agents on agreeing personalised Heads of Terms. In addition, the Applicants have also recognised many of the challenges created both for landowners and agents during the pandemic. This has resulted in negotiations taking longer than they might otherwise do. The Applicants, however, have been keen to allow those negotiations to progress to a conclusion naturally and have not sought to draw them to a premature conclusion.
8. For every deadline in the examination process, records of compulsory application and temporary possession objections have been submitted (***ExQ1.3.2 Schedule of Compulsory Acquisition and Temporary Possession Objections***).

	Clean Document	Tracked Document
Deadline 1	REP1-122	N/A
Deadline 2	REP2-019	REP2-020

³ RICS (2018), *Negotiating Options and Leases for Renewable Energy Schemes*, available here: [Negotiating Options and Leases for Renewable Energy Schemes](https://www.rics.org/uk/insights/publications/2018/negotiating-options-and-leases-for-renewable-energy-schemes), 2nd edition (rics.org)

	Clean Document	Tracked Document
Deadline 3	REP3-087	REP3-088
Deadline 4	REP4-051	REP4-052
Deadline 5	REP5-040	REP5-041
Deadline 6	REP6-068	REP6-069
Deadline 7	REP7-036	REP7-047
Deadline 8	REP8-136	REP8-137
Deadline 9	REP9-033	REP9-034
Deadline 10	REP10-032	REP10-033
Deadline 11	REP11-096	REP11-095
Deadline 12	REP12-078	REP12-077
Deadline 13	REP13-028	REP13-029

9. This discloses the extensive negotiations that have been held and the progress that has been made. Over 80% of the landowners whose land is likely to be directly affected by the Projects have signed non-binding heads of terms and, in all cases, negotiations on the Option Agreements are at an advanced stage. Updated Books of Reference were also submitted into the Examination at frequent deadlines.

Deadline	Examination Reference
Application	APP-028
20 December 2019	AS-004
7 February 2020	AS-005
Deadline 1	REP1-015
Deadline 3	REP3-014
Deadline 7	REP7-021
Deadline 8	REP8-011
22 April 2021	AS-114
Deadline 11	REP11-013
Deadline 12	REP12-019

10. As evidenced in the various **ExQ1.3.2 Schedule of Compulsory Acquisition and Temporary Possession Objections**, many landowners and Affected Persons submitted Relevant Representations. None of these were withdrawn during the course of the Examination.
11. SEAS characterisation of the Applicants' negotiations is wholly inaccurate and misleading. The Applicants ensure that all landowners are properly represented by independent land agents and solicitors in the negotiations. Furthermore, the Applicants put in place arrangements to pay for these professional fees. Many of the negotiations involved consideration of individual aspects of the particular land holdings and that is the purpose of the process. It should be acknowledged

that the primary purpose of entering into a voluntary agreement is to ensure that there is no need to exercise powers of compulsory purchase. Furthermore, the contracts that have been negotiated have had full regard to the RICS guidance on such contractual relations (see Appendix 2 of **Applicants' Response to Letters Submitted in relation to Suffolk Energy Action Solutions (SEAS) Complaint** (REP7-061)). These contracts have been drafted and negotiated in good faith and reflect RICS guidance. They are complex commercial agreements, given the length of time for which they will take effect and the obligations and duties that are incumbent upon both parties. The primary purpose of these agreements is to secure the long-term land rights and to regulate how those rights are exercised. The whole nature of the contracts has been mischaracterised and misunderstood by SEAS in their submissions.

3 SEAS' Complaint

12. The first of the SEAS complaints on 14 February 2021 (**Letter of Complaint** (AS-074)) related to a draft Option Agreement which had been negotiated with a number of potential Affected Persons and the Applicants. It is understood that a copy of this generic Option Agreement had been passed to a Dr Gimson by his representatives in good faith to take instructions and progress negotiations. He holds a Power of Attorney on behalf of his mother in relation to an area of land (Plot 10) through which it was originally proposed that a cable easement would be required. As noted within the **Deadline 11 Project Update Note** [REP11-053], the Applicants reviewed the extent of the Order limits in this area in response to various representations by Dr Gimson on behalf of the Wardens Trust, seeking increased separation between the Order limits and the Wardens Trust property; and requests by Mr Richard Reeves and Ms Tessa Wojtczak during informal consultations on a separate matter. Through engagement with designers and progression of the landfall outline design, the Applicants were able to remove land plot 10 in its entirety from the Order limits, and make minor reductions to land plot 12 and 13 (see **Change Request** (AS-104)).
13. In representations dated the 14th February 2021 (**Letter of Complaint** (AS-074)), SEAS made claims about a condition in the draft Option Agreement which required the party entering the Option Agreement to withdraw any objection that had already been submitted and not to submit further objections. This type of clause is standard in circumstances where the landowner's interests have been fully protected in terms of the relevant Option Agreement and that they have voluntarily agreed to enter that Option for a long-term contract with the counterparty. It is recognised in the RICS guidance that such terms are likely to be included in this type of Option Agreement.

14. The SEAS complaint did not, however, disclose that Dr Gimson had instructed his agents to contact the Applicants' land agents to discuss the specifics of that clause. He had advised that he wished to continue making representations on behalf of the land interest that he represented in the Examinations. The Applicants' land agents took instructions from the Applicants and confirmed that the Applicants were happy to propose a variation of the particular contractual term to allow Dr Gimson to continue to make his representations. Against that background, the SEAS complaint did not contain the full details of the discussions with Dr Gimson and therefore did not put the full evidence before the Examinations.
15. After the SEAS complaint, some SEAS supporters lodged claims before the Examinations that they knew parties who had signed Option Agreements and taken payments, and now regretted it. This could not have been accurate as, at that time, no Option Agreements had been entered into and no option payments had been made to any landowner.
16. Against that background, the SEAS complaints then moved on to attacking what is known as the Heads of Terms. This is a document which is generally negotiated between land agents before the negotiation of the Option Agreement and which set out the intended commercial terms of that Option Agreement. The Heads of Terms are then passed to Solicitors to negotiate the detailed drafting of the Option Agreement. Again, this is referenced in the RICS guidance on such contracts and the recommendation is that on the front page there should be a statement on them that "they are subject to contract". That is exactly what the various Heads of Terms that the Applicants have used state. The Applicants' do not consider the Heads of Terms to be legally binding and that they represent the starting point of the further negotiation that requires to be held. This is how they have been treated by the parties in the process. Again, SEAS have mischaracterised the nature and character of these documents.
17. Furthermore, the specific Heads of Terms example used by SEAS in their Deadline 8 submission (***Post Hearing Submission – Issue Specific Hearing 14, Item 1A*** (REP8-237)) was one which actually demonstrated the value of the process as the Heads of Terms were fully bespoke to one individual land-holding and, indeed, the Heads of Terms had been negotiated between agents over an extensive period of time. There had been no less than 4 drafts. These were all designed to ensure that the very specific issues associated with that land-holding were properly protected and dealt with in the future long-term Agreement (see ***Applicants' Comments on Suffolk Energy Action Solutions' Complaint*** (REP9-010)). Again, the information demonstrates the individual landowners were represented by a highly regarded firm of land agents and also represented by a senior lawyer at a regional firm.

18. The next submission from SEAS (**Response to Applicant's Deadline 8 Submission re Non-Disclosure Agreements (NDA)** (REP9-086)) went on to claim the following at paragraph 15:

"In relation to one landowner, who we refer to as "X", SPR contacted X's agent and, to use X's language, "hit the roof". SPR was furious that X had disclosed the Heads of Terms to SEAS. SPR threatened X that there could be financial repercussions. X was left very shaken by the experience".

19. The Applicants responded in their next submission at Deadline 10 (**Applicants' Comments on Suffolk Energy Action Solutions' Non-Disclosure Agreement Complaint** (REP10-031)) with the full account of that particular conversation:

"The facts are as follows. On the 6th of April 2021 [redacted] of Dalcour Maclaren left a voicemail with [redacted] the agent for X. [redacted] returned the call and a discussion was held regarding the release of extracts of Heads of Terms and the question was asked as to whether X wished to continue to progress with the Option Agreement. [redacted] then contacted X and took instructions and called [redacted] back. [redacted] explained that X had been approached by SEAS but that they only released information X considered was not commercially sensitive and that X was keen to progress with the Option Agreement. On the 23rd of April 2021 [redacted] again spoke with [redacted]. [redacted] had been provided with a copy of paragraph 15 of the SEAS submission. [redacted] confirmed that at no point did he indicate to his client, X, that there would be any financial penalties imposed".

20. This exchange is further presented in SEAS' submission to the Secretary of State. On page 13 of their 30 November 2021 submission, there is a footnote 23 which states:

"SPR took steps to identify those assisting opposing groups and strenuously remonstrated with such persons".

21. Again, these comments are simply inaccurate and demonstrate that SEAS are prepared to say things that are not correct.

22. SEAS have also misrepresented other aspects of the Examinations. For example, on page 7 of their 30 November 2021 submission to the Secretary of State, there is a heading

"SPR's application to have evidence of its alleged misconduct removed from the record upon the basis that it was "vexatious" and misleading".

23. This, again, is a misrepresentation of the position that the Applicants took before the Examinations. It is correct that the Applicants raised concerns both about the accuracy of the SEAS submissions and those of other parties that followed on from those submissions. However, at no stage did they make a formal application to have the SEAS evidence removed. Paragraph 26 then makes the following claim:

“The SPR legal team (Shepherd & Wedderburn) then made a formal application to have the evidence of the alleged misconduct of SPR removed from the record upon the basis that, under the procedural governing rules, the evidence was “vexatious” and misleading. If the application succeeded the effect would be that the Inspectors would in effect expunge the evidence from the record”.

24. The basis for the claim in the SEAS submission is referenced in their footnote 8 which refers to the **Applicants' Response to Letters Submitted in relation to Suffolk Energy Action Solutions (SEAS) Complaint** (REP7-061) submitted at Deadline 7. The conclusion of that submission was in the following terms:

“All parties should ensure that the Examining Authorities have the fullest and most accurate information available in respect of these applications. At this point in time, the Applicants would not wish to make a motion that the conduct of any of the parties has been vexatious. The Applicants would, however, wish to record their serious concerns about the partial information being submitted and also information which is false. They can be distinguished from material in the course of the Examination where there may be a genuine debate or difference of view. If parties continue to submit material which is knowingly or recklessly inaccurate then it is the Applicants' view that those submission would be vexatious. At this stage, we would invite the Examining Authorities to note the Applicants' serious concerns in this regard”.

4 Conclusions

25. Against the above background, the conduct of SEAS has now become vexatious. SEAS have deliberately distorted information in their submission to the Secretary of State. There is no reasonable explanation for this conduct.