



SUNNICA ENERGY FARM

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Volume 8

8.109 Applicant's Response to LPA Deadline 7 Submissions

Planning Act 2008

Infrastructure Planning (Examination Procedure) Rules 2010



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**The Infrastructure Planning
(Examination Procedure) Rules 2010**

**Sunnica Energy Farm
Development Consent Order 202[x]**

8.109 Applicant's Response to LPA Deadline 7 Submissions

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1 Introduction

1.1 Purpose of this document

1.1.1 This report sets out the Applicant's response to the material submitted by Cambridgeshire County Council (CCC), East Cambridgeshire County Council (ECC), West Suffolk Council (WSC) and Suffolk County Council (SCC) at Deadline 7. The Applicant has responded to these submissions thematically in section 2 of this report, as follows:

- Arboricultural
- BESS – Fire Safety
- CTMP & Travel Plan
- Design
- DCO
- Ecology
- General – BOR
- General – Works Plans
- General – ARow Plans
- General – ISH comments
- Heritage
- Noise
- Planning
- PRoW
- Soils
- Transport

1.1.2 This report does not respond to the following submissions:

Submissions	Reason
ECC, WSC, CCC, SCC Comments on revised/updated SoCG	The Applicant and the LPAs have submitted a 'final' SoCG at Deadline 8 which records their positions.
SCC – Response to ISH4 Action Point	The Applicant considers that the points raised in its Deadline 7 submission on

No. 7	this point (Applicant's response to Suffolk County Council's proposed amendments to Schedule 1 [REP7-064]) respond to this submission.
ECDC, WSC, CCC, SCC Position on Parcel by Parcel Mitigation and Residual Effects	The Applicant has responded to this in a separate Deadline 8 submission to provide commentary on the LPAs' suggestions for further mitigation and its residual effects.
WSC Comments on Applicant's Deadline 6 Submissions: Table providing comments on the Ecology Position Statement [AS-320]	The Applicant's position on the matters arising is set out in its Deadline 7 submissions, including in particular the updated OLEMP.
All LPAs Post Hearing Submissions – specific aspects	Where the table below does not respond to points within the LPA's Post Hearing Submissions, this is because it is considered that the Applicant's Post-Hearing Submissions (and its other Deadline 6 and 7 submissions) already cover the points raised.

2 Comments on LPA Deadline 7 submissions

Topic	Document Ref	Summary of issue raised	Applicant's response
General	<p>CCC</p> <p>Comments on Applicant's D6 Submissions</p> <p>[REP7-091]</p> <p>Ownership / Statutory Interests</p> <p>&</p> <p>P.57-58</p> <p>REP5-091; CCC Comments on Land and Crown Land Plans Rev 04 [REP4-003] and [REP4-004] Proposed Use of Land</p>	<p>Comments on Book of Reference, the compulsory acquisition of rights over highway land and in relation to highway boundary data.</p>	<p>The Applicant has reviewed the highways plots within the Land and Crown Land Plans [REP6-004] which straddle both administrative boundaries and has amended plot 3-02 within the Book of Reference [REP7-009]. This will be submitted at Deadline 8.</p> <p>The Applicant also notes that column 3 ('Description of Land') in the Book of Reference [REP7-009] states the administrative boundary(s) which the plot falls under based on spatial polyline data.</p> <p>In relation to the acquisition of rights over highway land, the Applicant has responded to this point previously at Deadline 6 in its response to other parties' submissions at Deadline 5 [REP6-036] on pages 57 and 58:</p> <p><i>"Rights acquired over land that is also a highway do not affect the status of that land as highway, nor affect the right of the public to enjoy the use of a highway, nor do they affect in anyway the statutory regimes regulating highways nor the highway authorities' functions.</i></p> <p><i>The rights are required to ensure that the Applicant has the necessary interests in land it requires to carry out the Scheme and to ensure that it is not prevented from doing so by the assertion of any currently unknown existing private rights in land that are inconsistent with the exercise by the undertaker of the rights it seeks."</i></p> <p>The Applicant notes that there is already in existence an extensive and detailed legal regime for regulating the respective interests of highway authorities and statutory undertakers (such as the Applicant) in relation to the placing of apparatus in, on or under highways. This is the New Roads and Street Works Act 1991, together with its associated code of practice. The Applicant does not propose through its draft development consent order, to alter the operation of this legal regime.</p>

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	<p>CCC</p> <p>Comments on Applicant's D6 Submissions</p> <p>[REP7-091]</p>	<p>Comments on Works Plans</p>	<p>The Applicant does not consider that there is a conflict between the points raised at ISH4 and the Environmental Masterplans. CCC has interpreted the Applicant's response during ISH4 correctly, i.e. that the triangle of land was to facilitate access by avoiding a drain and for a temporary construction compound. The trees and existing scrub shown on the Masterplan will be retained as the cable in that location will cross the drains via non-intrusive methods i.e. HDD, moling or similar (see Sheet 15 of Figure 3-23a-t Cable Route Crossings [APP-166] and Table 3-3 of the Environmental Statement [REP2-022]). Similarly, the Masterplan identifies the existing grassland within that area to differentiate it from arable across the majority of the cable corridor. Once the cable is constructed the grassland will be re-instated.</p>
	<p>CCC</p> <p>Comments on Applicant's D6 Submissions</p> <p>[REP7-091]</p>	<p>Comments on ARoW Plans</p>	<p>The Applicant has submitted Context overlay – Rights of Way and Access Plans at Deadline 7 [REP7-065]. These plans have been updated to provide all Public Rights of Way within the vicinity of the Scheme. The latest version of the ARoW plans were submitted at Deadline 6 [REP6-007]. The Permissive Path link to Beck Road is shown in the Context overlay – Rights of Way and Access Plans at Deadline 7 [REP7-065] as well as the Environmental Masterplan (Zoomed In) [REP7-054].</p> <p>The Applicant has included the Cambridgeshire County Council Highways Boundary data on the site access plans within Annex C of the Framework Construction Traffic Management Plan/Travel Plan (F-CTMP/TP) [REP7-017]. This is included on all plans where highways works are proposed in Cambridgeshire.</p>
	<p>CCC</p> <p>Comments on Applicant's D6 Submissions</p>	<p>The Council welcomes the inclusion of LHA protective provisions in the event that the side agreement is not achieved by the close of the Examination. The Council's preference is the agreement</p>	<p>The Applicant shares the Council's preference to complete the side agreement that is currently being negotiated between the parties. The Applicant has prepared the local highway authority protective provisions as a safeguard against the eventuality that it</p>

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	[REP7-091]	<p>to be secured by close of Examination. The Council has significant concerns about the protective provisions for LHAs as currently drafted. The Council is in discussion with the Applicant.</p>	<p>does not prove possible to conclude the side agreement in time.</p> <p>This approach ensures that the Examining Authority would have a basis against which to report in that eventuality.</p>
		<p>The timescales for review of plans should align with that normally given for such matters under section 278, 56 days.</p> <p>[inspection of works] this needs to include provisions for the LHA to require that works be uncovered, where they have been covered without the LHA having had the opportunity to inspect.</p>	<p>The Applicant is considering the appropriateness of extending the period for the LHA determining whether or not to approve the specified works to 56 days.</p> <p>For the purposes of the protective provisions, the Applicant considers that the provisions of paragraph 7 are sufficient to safeguard the local highway authority's interests by safeguarding its ability to supervise the works while they are underway, thereby rendering unnecessary to provide for the works to be subsequently uncovered.</p>
		<p>[payment of costs] these proposals are not acceptable. Payment to the LHA for time and expenses incurred should be on an actual cost basis, in accordance with an agreed schedule of rates, which needs to be part of these provisions. The fees associated with this (paragraph 11) of 2% potentially increasing to 6% of the anticipated construction costs is below that applied in Cambridgeshire of 8.5%. The LHA should provide reasonable substantiation of time spent and expenses incurred.</p>	<p>The Applicant invites Cambridgeshire County Council to look again at paragraph 14 which states that the Applicant must repay to the relevant local highway authority all reasonable fees, costs charges and expenses reasonably incurred by it in approving the plans for and supervising construction of a specified work which have not otherwise been covered by a payment made under paragraphs 11 to 13.</p> <p>The fees provided for in paragraph 11 merely provide for the sum of money to paid upfront on submission of the plans, paragraphs 12 to 13 allow for further fees to be requested should they be required. The Applicant considers the approach to be reasonable in the circumstances.</p>
		<p>[damage to highways] There are no protective provisions regarding payment to the LHA for damage to the highway network caused by</p>	<p>The Applicant does not consider it to be necessary to include provision for this in the protective provisions. The Applicant has two key reasons for holding this view.</p>

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		<p>construction and/or operational traffic. Such provisions and the means of deriving such sums need to be included.</p>	<p>Firstly, the CTMP submitted at Deadline 7 provides further detail in relation to the pre and post construction condition surveys and associated remedial work that may be required. This would be secured via Requirement 16.</p> <p>Secondly, to the extent that the Applicant's clear commitment in the CTMP does not provide sufficient reassurance for Cambridgeshire County Council; section 59 of the Highways Act 1980 already makes provision for a highway authority to recover expenses due to extraordinary traffic.</p> <p>It would therefore be wholly duplicative, and unnecessary, to make a further provision in this regard.</p>
		<p>[Provision of asset data] The provisions need to include the means by which the LHA will be provided with relevant highway asset data. This will need to include detailed specifications of what information is required, the requisite data formats and the timescales for the provision of the data.</p>	<p>The Applicant does not object to the principle of providing information that is available to the Applicant that is reasonably required by the local highway authority in relation to the specified works.</p> <p>It is not clear from Cambridgeshire County Council's submission how the "proper and sufficient plans" referred to in paragraph 3 as being required to be submitted for its approval, would not meet its requirements.</p>
		<p>Certification of works by the LHA.</p> <p>The provisions do not include a requirement for the undertaker to obtain certification from the LHA that any works delivered in the highway are to a satisfactory standard before the LHA resumes its maintenance responsibilities for the affected works. This is a key requirement in protecting the LHA from assuming responsibility for highway works without a clear audit trail that such works are deemed</p>	<p>It is unnecessary to include such a provision because the relevant provisions of the draft DCO already requires the highway works to be carried out to the reasonable satisfaction of the local highway authority; see article 10(1) in relation to permanent works, article 10(2) in relation to temporary works and article 9(3) in relation to restoration works.</p> <p>If the local highway authority wishes to record its satisfaction with the works for the purposes of its audit trail by means of the provision of a certificate, then that is a matter for it and its administrative processes. Neither the relevant articles of the draft DCO nor the protective provisions, stand in the way of Cambridgeshire County Council doing so.</p>

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		acceptable.	
		The council requires a provision that ensures that any future works that the LHA may need to undertake will not be fettered by any cables placed below the highway.	The relationship between street authorities (such as highway authorities) and statutory undertakers with apparatus in streets (such as the Applicant) are regulated by the New Roads and Street Works Act 1991. Nothing in the draft DCO seeks to alter the respective positions of the parties set by Parliament in passing that Act.
	<p>SCC's Written summary of ISH</p> <p>[REP7-086]</p> <p>Agenda item 5 – Traffic and Transport</p>	LHA side agreement and protective provisions	<p>The Applicant notes the matters raised in SCC post hearing submissions, much of which is the subject of previous and ongoing discussions.</p> <p>The Applicant notes the comments on protective provisions which reflect discussions between the parties which are ongoing. The Applicant does not propose to respond in detail on those matters at this stage but will do so if SCC consider it necessary to submit at Deadline 8 its preferred form of protective provisions.</p>
	Schedule of Changes to Framework CTMP and Travel Plan [AS-325]	Highway Boundaries	The Applicant has included the Cambridgeshire County Council Highways Boundary data on the site access plans within Annex C of the Framework Construction Traffic Management Plan/Travel Plan (F-CTMP/TP) [REP7-017]. This is included on all plans where highways works are proposed in Cambridgeshire.
	Schedule of Changes to Framework CTMP and Travel Plan [AS-325]	Land to be adopted by the LHAs	<p>It is important to acknowledge that the detailed design of the highways works remains to be completed. It is only that stage that the need, or otherwise, and extent (if at all) of any new highway that is required to be adopted will be determined. Given the modest nature of the highway works, the Applicant does not anticipate there to be a significant quantity of new highway being required.</p> <p>The Applicant further notes that the terms of the protective provisions require the highway authorities' approval of works</p>

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	<p>SCC's post hearing note Agenda item 5(i)</p>	<p>Ports, AIL and Crane routes</p>	<p>within the highway or on land that is to become highway, therefore they will have adequate oversight of this process. Similarly, the draft protective provisions provide for the payment of commuted sums where this appropriate. The Applicant considers therefore that the safeguards included in the draft DCO are appropriate.</p> <p>As reported, the Applicant has commissioned a Haulier to undertake the route review requested by SCC. The Applicant apologises to the ExA that this report was not available for Deadline 7, however it has subsequently been provided to the LHAs by email (08/03/23). The report confirms that the transport of the AILs required is feasible and deliverable for the full route between Ipswich Port and the Scheme.</p> <p>The Applicant has incorporated caps on HGVs at each access point into the revised F-CTMP/TP [REP7-017] at Table 7.1, as agreed with SCC by email.</p> <p>The Applicant has included a requirement for contractors to follow signed diversions in paragraph 7.2.6 of the F-CTMP/TP [REP7-017], following discussions at ISH4.</p> <p>There are controls on the shift patterns of workers and total number of worker vehicles. These are secured in the CEMP and F-CTMP respectively. This will ensure that staff vehicle numbers do not exceed the level assessed in the F-CTMP/TP. The need for the Applicant to ensure that staff vehicle numbers do not exceed this level provides the necessary control mechanism to ensure that the Applicant implements sufficient measures to ensure sustainability through the Travel Plan.</p> <p>The F-CTMP/TP outlines the measures that would be introduced to ensure that <i>“appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location.”</i> (NPPF Para 110). The</p>

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			<p>focus of these measures is car sharing, and the use of minibus services will be investigated once staff locations are known. This, coupled with the staff vehicle control mechanism, is a sufficient and appropriate basis to ensure that the final CTMP/TP meets the requirements of the NPPF. The final CTMP/TP is required to be approved by the LHAs prior to construction.</p>
		<p>Site Accesses</p>	<p>SCC has requested further clarification on access points from the Applicant. The Applicant has provided a detailed table regarding existing and proposed use of accesses in each phase at Deadline 7, in response to ExQ3.9.9. Cable route accesses will be re-instated to their existing form following the operational phase.</p> <p>The Applicant proposes widening on Elms Road and La Hogue Road to provide passing places during the construction phase. The Applicant has stated previously that it will work with the LHA's preference on whether the widening is retained or re-instated post-construction phase. The widening is not required during the operational phase, but clearly there would be a benefit to the local road network to retaining it.</p> <p>Temporary Traffic Management Layouts have been provided to the LHAs by email (07/03/23) to demonstrate deliverability.</p> <p>The Applicant has updated the site access plans in Annex C of the F-CTMP/TP [REP7-017] to address the LHAs specific comments on access junctions. As noted by SCC, the Applicant has undertaken a further speed survey at Newmarket Road, which establishes that visibility at Access I is acceptable. The Applicant confirms that suitable warning signs will be provided, as is recommended in the RSA. As a point of clarification to SCC's text on Access I, the visibility of 90m does not represent a departure from DMRB guidance, and visibility is provided to standard in line with the 85th percentile speeds. Notwithstanding this point of detail, the Applicant and SCC are in agreement that</p>

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			visibility is acceptable.
		Traffic Management and Regulation	As stated above, Temporary Traffic Management Layouts have been provided to the LHAs by email (07/03/23) to demonstrate deliverability.
		Outstanding matters	<p>Responses are provided to SCC's comments where necessary.</p> <p>Highway boundary data. The matter of timing of the highway boundary request was covered at ISH4 and so the Applicant does not re-iterate here. The Applicant has been clear throughout the process that the key issue for the Examination of the DCO is deliverability of highways works, and that this point is addressed by the Order limits. Indeed, the specific example of an issue in another DCO raised by SCC in its response would not be an issue if the visibility splay required was within the Order limit. For the absolute avoidance of any doubt, the excerpt of a plan provided by SCC showing visibility required outside of Order limit and highway boundary, is not in relation to the Sunnica Energy Farm DCO, and relates to an entirely different scheme. SCC has advised that for several roads, highway boundary information does not exist and the highways records team would need to research maps and other documents to identify these. The Applicant is happy to provide SCC with its extensive research on land ownership for the Scheme area and land adjacent to the highway, if it would be of assistance to enabling SCC to identify the extent of its asset.</p> <p>Newmarket Road Access I: As set out above, this matter has been resolved by the undertaking of an additional speed survey, which has confirmed that the visibility at the access location is acceptable.</p> <p>Signage for construction traffic: The Applicant notes that SCC would welcome the signing of construction traffic, and the</p>

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			<p>Applicant has included this commitment in paragraphs 7.2.5 and 7.2.35 of the F-CTMP/TP [REP7-017]. This includes a commitment to agree the signage with the LHAs.</p> <p>Road Safety Audit: The Applicant confirms that RSAs have been agreed and arranged with SCC. A response to the Applicant's proposal has been verbally promised by CCC, but not yet received.</p> <p>Documentation: At ISH4, the Applicant stated that it did not consider it necessary to present the Road Safety Audits in the F-CTMP/TP, but would not strongly object to doing so if others considered it necessary. This can be included within the final CTMP/TP when the RSAs have been completed. The reason that the Applicant considers that it is not necessary to include the RSA in the CTMP is that RSA forms a necessary part of the technical approvals process for highways works, and thus it is extremely unlikely that the requirements of an RSA would not be carried forwards and incorporated into highways works, as is the concern of the LHA.</p>
	<p>Joint answers to Ex A Questions 3</p> <p>Response to Q3.9.1</p>	<p>Request to link article 11 ([temporary PRow closure]) with article 10 ([maintenance])</p>	<p>The Applicant wishes to correct the misunderstanding that it agreed to amend article 11 to relate to reinstatement works under article 10. The Applicant's position is recorded clearly in its written summary of oral submissions at Issue Specific Hearing 4 [REP7-060] at paragraphs 7.2.14 to 7.2.20.</p> <p>The Applicant remains of the clear view that the suggested linkage between the power in article 11 to temporary close public rights of way, with the provisions of article 10 which deal with the maintenance of highways is misconceived and misunderstands the role that each of those articles plays. This is because article 11 does not authorise any works to highways, only their temporary closure.</p>

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			<p>The concern underlying the Council's representations on this point are understood by the Applicant but are addressed through the mechanism of the Framework Construction Traffic Management Plan and Travel Plan and requirement 16. The F-CTMP was updated by the Applicant at Deadline 7 [REP7-018] to include further detail on its proposals for highway condition surveys (such term being inclusive of public rights of way) at paragraph 7.2.17.</p>
BESS	<p>Joint answers to Ex A Questions 3</p> <p>Q3.10.4</p> <p>Joint answers to Ex A Questions 3</p> <p>Response to Q3.1.4 and 3.1.7</p>	<p>Suggested amendment to article 44 to reference a "newspaper"</p> <p>That a reasonable worst-case scenario cannot have been assessed without the chemical make up being known. Suggestion Dr Fordham is involved in the discharge of requirement 7.</p>	<p>The Applicant confirmed in its ISH4 post hearing submission [REP7-060] it will make this amendment in the next version of the draft DCO to be submitted at Deadline 10.</p> <p>The Applicant responds to these two responses as follows:</p> <p>The Applicant responded to ExA question 2.1.4 [REP5-056] and WSC appear to have accepted its response. The Applicant remains of the view that it has assessed a reasonable worst-case scenario – this has been set out in its response to ExA question 2.1.3. In terms of the interrelationship of the DCO process and the subsequent COMAH/HSC process the Applicant has also set its position out on pages 63 -71 of the Applicant's Response to Other Parties Deadline 5 submissions [REP6-036]. Fundamentally, the Applicant is not seeking COMAH/HSC consent at this stage and the ExA/SoS is entitled to assume those two regimes will operate as they are meant to do should DCO consent be granted.</p> <p>The Council seems to be suggesting they would be taking advice from Dr Fordham in respect of its discharge of requirement 7 or granting hazardous substances consent. Such an approach is not reasonable. Dr Fordham has no locus to be involved in that process and would clearly have a conflict of interest given his opposition to the Scheme. It is clear from HSE's response at</p>

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			<p>Deadline 7 that it will engage in matters where it has a statutory function, but not in respect of reviewing of Battery Fire Safety Management Plans prepared for the planning process. There is no reason to suppose that they would not engage in a Hazardous Substances Consent application as consultee to the LPAs.</p> <p>The Councils have also stated that the approach put forward by the Applicant is contrary to the NPSs. This is not the case, and the Applicant has responded to this allegation previously in REP6-36 as referenced above.</p>
PRoW	<p>Joint answers to Ex A Questions 3</p> <p>Response to Q3.9.4/11</p>	Concerns over the principle of provision of additional PRoW through the S106 agreement	The Applicant notes that discussions with the County Councils are ongoing with respect to the Legal Agreement including the PRoW Contribution. The Applicant will respond to the points raised at a later deadline if agreement with the Councils cannot be reached.
Design	WSC Comments on Design Principles	Council is concerned over the relationship between the Design Principles and the ES.	<p>The Applicant is prepared to make a change in line with the Council's concerns that will require it to show how its detailed design of the structures has sought to integrate with the landscape or explain where this has not been possible given the technical requirements of the structures proposed.</p> <p>The Applicant is considering whether this should be made to the DCO, OLEMP or Design Principles; and will confirm the position at Deadline 10.</p>
Ecology	ECDC, CCC, SCCC, WSC Response to 3WQs	Q3.2.4 (Role of EAG) – the LPAs raise concerns as to how the EAG will be funded.	The OLEMP submitted at Deadline 7 provides a commitment from the Applicant to fund the administrative costs of the EAG.
	ECDC, CCC, SCCC, WSC Response to 3WQs	Q 3.2.12 (HRA) – the LPAs raise concerns as to how in-combination impacts arising from the Scheme with the Bexwell to Bury St Edmunds Pipeline and the allocation for Land West of Mildenhall have be considered.	In-combination effects are considered in Table 4-3 of the Applicant's HRA [REP5-045]. At the time of identifying and screening relevant schemes and projects the Bexwell to Bury St Edmunds Pipeline was only at scoping opinion stage, but has subsequently submitted a full planning application. However, irrespective of this the HRA submitted with the application concluded there would be no significant effect with the Breckland

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			<p>SPA, and in particular Stone-curlew, from the Scheme. Given, that the Applicant will deliver all offsetting within the Order limits, to avoid any potential loss of Stone-curlew nesting opportunities, there are no cumulative effects from the two schemes that may result in significant effects to European sites. Equally, as the Applicant has embedded sufficient land to offset any loss in nesting opportunities within the Order limits, the allocation of land for housing to the west of Mildenhall will not give rise cumulatively to any significant effects on European sites or their qualifying features.</p>
	<p>WSC Comments on Applicant's Deadline 6 Submissions</p> <p>CCC Comments on Applicant's Deadline 6 Submissions</p>	<p>CCC and WSC raise concerns:</p> <ul style="list-style-type: none"> • that the BNG Report and Hedgerow Loss/Retained Plans are not consistent; • that the Applicant's BNG calculations don't properly consider additionality; AND • about the detail of the Hedgerow Loss/Retained Plans. 	<p><u>Hedgerow Loss/Retention</u></p> <p>The apparent discrepancies reflect the differences in definition of hedgerows with respect to biodiversity and arboriculture. From a biodiversity perspective 29.08 km of the 30.82 km of existing 'hedgerows and lines of trees' will be retained with proposals to create an additional 6.09 km. The total length of hedgerow post-construction will be 35.17km.</p> <p><u>Consideration of additionality</u></p> <p>Defra's 'consultation on biodiversity net gain (BNG) regulations and implementation' was launched in January 2022 and ran for 12 weeks. The findings from the consultation were published 21st February 2023. Part of the response focused on setting out the future direction of BNG within the NSIP/DCO process which is due to be mandated no later than November 2025.</p> <p>In relation to the provision of additionality within the NSIP process the consultation response recognises the following:</p> <p><i>"Some NSIPs need to include significant areas for environmental mitigation within their project boundaries. We do not intend to make a distinction for NSIPs between on-site habitats (which are subject to BNG) and any dedicated environmental mitigation areas included in the project boundary. This maintains</i></p>

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			<p><i>consistency with the approach for TCPA development. We will consult further on this proposal through the draft biodiversity gain statement"</i></p> <p>Therefore, as set out above, the Sunnica calculations have included the whole of the Order Limits within the calculation regardless of what function certain areas have been identified to perform in terms of environmental mitigation.</p> <p>The Consultation response also provides further guidance in section 5.6 'Additionality', quoted below:</p> <p><i>"Mitigation and compensation for protected species and protected sites can be counted within a development's BNG calculation. The consultation document stated that: 'at least 10% of the gain should be delivered through separate activities which are not required to mitigate or compensate for protected species impacts'. This has been interpreted in different ways. To clarify, this means that at least 10% of the total (110+%) post-development biodiversity score should be from measures which are not undertaken to address impacts on protected species or protected sites (e.g. nutrient mitigation). For example, if a development has a baseline score of 10 biodiversity units and needs to achieve a score of 11 units, at least 1 unit should come from separate activities (such as an onsite habitat or the wider market for biodiversity units)"</i>.</p> <p>Under this expanded guidance at least 10% of the total (110+%) post-development biodiversity score should be from measures which are not undertaken to address developmental impacts upon protected species or protected sites. This guidance has been applied to the Sunnica metric calculation:</p> <ul style="list-style-type: none"> • Sunnica has a baseline habitat score of 2997

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			<p>biodiversity units.</p> <ul style="list-style-type: none"> • Therefore, it would need to achieve a unit value of 3297 units to deliver a 10% net gain. • Under the guidance above at least 300 units of the 3297 total would need to be delivered by non-mitigation related habitat interventions to demonstrate the required approach to additionality. • The Scheme delivers an additional 1259 units (40.25%) • Of those 1259 units only 79 units are generated through the mitigation interventions designed for Stone Curlew (6.29% of the 1259 habitat unit uplift delivered by the scheme and 1.88% of the 4204 biodiversity units on site post-intervention) • Therefore, the BNG calculation has taken into account the need for additionality when considering the Scheme's wider environmental planning policy and legislative requirements.
	CCC Comments on Applicant's Deadline 6 Submissions	<p>Response to Ecology Position Statement on Arable Flora: CCC sets out that it considers that off-site compensation is required to address losses of up to 10.6km of fields margins assumed to be lost. Given these are likely to not be of all high quality, CCC seeks at least 50% compensation should be created, to various standards set out in its submission.</p>	<p>It is assumed that the figure of 10.6km provided by CCC is based on the premise that all margins of fields support notable arable flora; this is simply incorrect, as is provided in the Phase 1 Habitat maps (6.3 Environmental statement Figure 8.3 [APP-187] and as previously detailed in the Applicant's responses, arable flora occurring within field margins is localised across the Scheme and, even then, not widely abundant in all fields where noted. The Applicant's proposed mitigation measures as set in the OLEMP and as shown on the Environmental Masterplan secure over 2 km of arable plots and are considered more than proportionate to the actual loss of habitat supporting notable arable flora.</p>
	WSC Post Hearing Submissions	<p>Stone Curlew – specific points 27ha is unlikely to support 3 pairs of SC. In addition, the presence of the panels on E12 would likely have an</p>	<p>As set out in section 4.1.23 and Table 4-6 of Appendix F Offsetting Habitat Provision for Stone-curlew Specification of the OLEMP [REP7-015] the total area of ECO3 amounts to 51.4 ha. This consists of a core Stone-curlew area of 32.7 ha and</p>

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		<p>impact on the use of the retained offsetting land at ECO3.</p> <p>Other introduced factors might additionally affect the efficacy of the offsetting land at ECO3 such as the introduction of a permissive footpath route, the recreational attraction of open grassland, potential impact of strategic development at West Suffolk site allocation SA4 within 1.5km of ECO3, and habitat establishment and management of translocated turf from E13.</p> <p>SC offsetting at ECO1 and ECO2 will not provide grass heath which is the habitat used by SC in the Brecks.</p> <p>In addition, there is uncertainty around whether ECO1 can provide the 3 bare ground plot because of archaeological constraints, and there is little room to provide further plots in ECO2.</p>	<p>additional area of 18.7 ha, which encompasses existing unimproved acid grassland within Worlington Heath County Wildlife Site (CWS) and immediately to the south of the CWS and semi-improved acid grassland and arable farmland to the east of the CWS. Within the core Stone-curlew area there will be 8 ha of disturbed and bare ground/short sward (i.e., nesting plots) and 24.7 ha of grassland (sward height <5cm). It should also be noted that the three offsetting areas (ECO1, ECO2 and ECO3) have been designed to allow for no loss in nesting opportunities for a breeding population of five pairs and as such to provide ample opportunities for these pairs across the three offsetting areas; not restricted to all being in a particular area. There is no evidence to suggest that Stone-curlew will avoid solar panels, and with specific reference to the DCO site, Stone-curlew are nesting successfully in close proximity to residential areas (Worlington and Freckenham), roads (B1102 and B1104), public rights of way (U6006), woodland belts, tree lines and mature hedgerows. In addition, they are subject to the regular presence of farm machinery and personnel, events which will cease or be greatly reduced during operation of the solar farm.</p> <p>As set out in sections 4.1.31-4.1.35 of Appendix F Offsetting Habitat Provision for Stone-curlew Specification of the OLEMP [REP7-015] and shown on the Environmental Masterplans, the permissive path south of Worlington is over 200m away from the core Stone-curlew offsetting area in ECO3 and is screened by existing tree line and hedgerow. In addition, permanent fencing around ECO1, ECO2 and (part of) ECO3, will prevent intrusion to and recreational use of these areas. The Applicant has no reason to believe that there will be any potential impact to Stone-curlew offsetting areas within the Order limits from the strategic development at West Suffolk site allocation SA4, 1.5km to the east of the Scheme. It should also be made clear that the translocation of 0.8 ha of grassland from E13 is not being relied upon to deliver grassland establishment in ECO3, rather this will provide small contribution to the overall quantum being provided.</p>

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			<p>Measures to create and manage grassland in ECO3 are clearly set out in the OLEMP.</p> <p>It is important to note that Stone-curlew occurring within the Order limits are not using grass heath habitats currently, but rather arable farmland. The key requirement is that the grassland is maintained at a particular height, i.e., approximately 5cm, as set out in the OLEMP. This provides the required foraging conditions and assemblages and abundance of invertebrate prey. The type of grassland is not the critical factor.</p> <p>The Applicant has discussed appropriate methods for creating and managing Stone-curlew plots with relevant archaeology consultees within the LPAs and these are presented in the OLEMP (and the OHEMP).</p>
	WSC Post Hearing Submissions	Comments on Requirement 10: The LPAs make specific proposals as to how the stone curlew specification could be updated to provide for specific remedial action to be taken.	<p>The Applicant disagrees that a contingency plan is required, nor would it be proportionate or appropriate to do so. As set out in previous submissions, more than sufficient land has been incorporated within the Order limits to adequately offset the potential loss of nesting opportunities for Stone-curlew, including the ability to be able to react to any alterations required to ensure the objectives of no net loss in breeding pairs is met. Therefore, it is not a requirement that suitable land outside the Order limits may need to be identified and secured at some point in the future.</p> <p>As set out in the OLEMP, the delivery of Stone-curlew nesting plots can be achieved alongside the preservation of archaeology. Should there be the need for any remedial actions then clearly the scope of these cannot be predicted at this stage, but the Applicant would re-iterate that the solution would not require the need for additional or alternative land outside the Order limits, nor the removal of areas from solar generation within the Order limits. The quality of the offsetting habitat and other factors such as disturbance which are raised as concerns over its suitability have been addressed in previous responses and submissions,</p>

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			<p>however, in summary, the Applicant has embedded sufficient land for the long term (40 years minimum) permanent presence of Stone-curlew habitat. This will secure the population of Stone-curlew within the Order limits, reducing the uncertainties that come with the management of farmland for the next four decades and sufficient to allow an expansion in the population. Whilst high quality grassland will take a number of years to establish, the principal habitat provision is the creation of nesting plots. These have been shown to be the most important habitat feature for Stone-curlew providing both preferred nesting and foraging habitat, i.e., areas of short sward or bare ground. These will be delivered prior to the loss of any arable farmland recently used for nesting. Therefore, the Applicant does not accept that the potential options presented by WSC are required.</p> <p>The Applicant does not agree that the additional text on 'remedial actions' suggested by WSC is necessary to secure the successful meeting of the objectives for Stone-curlew offsetting areas, as set out in section 6.1.7 of the OLEMP, which states '<i>An average of 50% of the Stone-curlew plots to be in use (i.e., equivalent of 5 breeding pairs) in the first 5 years post construction and then in the 5 year periods following, until decommissioning</i>'. Compliance with this objective is adequately secured by a function of the EAG in section 6.2.13 '<i>if the commitments and outcomes in this OLEMP are not being met, agree reasonable actions that the Applicant must implement in an agreed period of time (which may, but are not required to, include updating and amending the detailed LEMPs), in order to meet the relevant commitments and outcomes</i>'.</p> <p>Any remedial action will be undertaken when considered appropriate by the EAG on reviewing the relevant information and, if necessary, seeking additional advice, such as understanding the wider picture of Stone-curlew population trends. As such, it is not necessary or practicable to include a fixed timeframe for any remedial actions.</p>

Topic	Document Ref	Summary of issue raised	Applicant's response
Soils	ECDC, CCC, SCCC, WSC Additional Submission ALC	<p>The Councils note the dispute between the Applicant and SNTS about the quality of the soil and ALC assessment. The Councils do not have the expertise on this matter. Their suggestion is that the ExA apply the Rochdale envelope approach, meaning that where doubts are present in respect of analysis undertaken by Sunnica (and have been established), a "reasonable worst case" approach would be applied to the assessment of the evidence.</p>	<p>The Applicant does not agree that the approach advocated by the Councils is necessary, given "doubts" presented in respect of the Applicant's ALC assessment have not been established. The Applicant's assessment is robust, and is endorsed by Natural England, who have confirmed that it "<i>reviewed the evidence submitted to the examination regarding the ALC classification of the land and is satisfied that the methodology and results of the ALC survey carried out by the applicant are reliable</i>" [REP7-104].</p> <p>The Applicant has presented ALC assessment work from three survey providers. These include the former MAFF (the ALC expertise and remit having passed into Natural England) and survey work by Reading Agricultural Consultants (RAC) prior to their engagement by SNTS. All three assessments within the sites found shallow and light textured soils limited to grade by drought.</p> <p>ALC assessment work presented by SNTS has not complied with ALC guidelines, failing to record the information needed to assess a drought limitation. Representations made by RAC on the role of irrigation, cropping and yield in assessing ALC grade are contradicted by their own prior ALC survey that overlapped the sites.</p> <p>The concerns raised by the Applicant with respect to the work done on behalf of SNTS are further bolstered by the peer review that was done by LRA of SNTS's ALC Report [REP5-065].</p> <p>A Rochdale Envelope approach as set out by the Councils should not be used to include assessment work that rejects specific planning guidance.</p> <p>It is accepted that the Councils do not have expertise on ALC, and in light of that the Applicant would point to the expertise and experience of Natural England with respect to ALC. We would refer the Councils to the SoCG between the Applicant and NE on the matter of agricultural land quality [REP6-041], and NE's latest Deadline 7 submission [REP7-104].</p>

Topic	Document Ref	Summary of issue raised	Applicant's response
Arboriculture	ECDC, CCC Post Hearing Submission Appendix - Arboriculture	The LPAs shared a copy of correspondence sent to the Applicant with regards to detailed matters of tree impacts.	The Applicant has responded to this correspondence already to the LPAs. A copy of this response can be found at Appendix A to this response document.
Heritage and Arboriculture	ECDC and CCC Post Hearing Submission Paragraphs 14-17	The LPAs raise concerns about the impacts to the setting of Chippenham RPG, in particular to the assets and the trees within it.	<p>The Applicant has presented its assessment of impacts on Chippenham Hall Registered Park and Garden within Chapter 7 of the Environmental Statement [APP-039] and the Report of the Current Status of Heritage Aspects of the RPG submitted at Deadline 5 [REP5-060].</p> <p>As stated in the Arboricultural Impact Assessment [REP5-052], the trees that form part of the Chippenham Hall Avenue will be retained and protected. There will be no tree removal as part of the proposed access road.</p> <p>The retention of hedgerows and tree belts will retain the appreciation of the pastoral evolution of the area. The Scheme will change the character of the land; however, its low-lying character will retain an appreciation of the open character of the landscape and local topography.</p> <p>The Applicant recognises that assessing the value of a feature like the Avenue involves a degree of subjectivity and, as the Avenue is retained in full, it is not a key issue but rather a point of detail.</p> <p>The aerial imagery from the 1940s indicates a single species avenue due to the form of the trees. Avenues are typically single species as this provides the greatest uniformity and therefore formal landscape impact (the only mature exception the Applicant is aware of is at Westonbirt Arboretum which is a Douglas fir and tulip tree avenue). Only mature beech trees on site are capable of being old enough (based on stem diameter) to have been part of the original avenue (or subsequent pre-war</p>

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			<p>replacement plantings). Further north towards Chippenham Park other remnants of the Avenue (following its alignment) are formed of mature and over mature beech.</p> <p>APN9 Arboricultural Practice Note 'Management of Avenue Trees' (Patch, D and Ryan, J. 2004 Tree Advice Trust) defines an avenue as: <i>'a regular and linear planting of trees whose grandeur often results from the general uniformity of the trees, which give the impression of all having been planted at the same time'</i>.</p> <p>Non mature beech present in the Avenue do not appear to be formally planted in a regular, uniform manner and are not linear aside from the overall linear nature of the planted group as a whole. The nature of the trees also changes markedly on either side of the Avenue and as it progresses south with clumps of different species present in different areas further detracting from any sense of uniformity of species, height or scale.</p> <p>The Applicant appreciates that the existing linear tree groups have importance and value but would argue that the arboricultural value is reduced compared to a formal avenue of mature trees which would typically be considered to have greater impact and 'grandeur'.</p> <p>From a heritage perspective, as stated in response to the Deadline 6 written submission:</p> <p>The avenue is noted as a feature which forms part of the designed landscape at Chippenham Hall. The alignment of the avenue is retained and remains as evidence for the 19th century landscape. The importance of the feature is however considered to be diminished by its poor perseveration, which includes the loss of Beech trees and infilling with other species. An avenue was deliberately planted feature with trees specifically chosen to form a grand approach to the main house and one which also enabled views out from the avenue from which to appreciate the wider landscape. This function is diminished by the poor survival of the Beech trees and the blocking of views by new specimens. The contribution the avenue makes to the designated landscape</p>

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			<p>is, therefore, also reduced.</p> <p>The Applicant understands that following clearance works by the landowner, access and visibility was improved for inaccessible areas of the avenue at the time of the ASI4 visit and this may have resulted in some features (such as the potentially veteran crab apple, blackthorn and hawthorn) being apparent which were not visible/accessible at the time of the tree survey which took place in advance of any clearance work. The FCEMP [REP7-033] includes the commitment for further detailed surveys where necessary and a commitment to avoid any loss of any unidentified veteran trees. The Applicant also would like to reiterate that no trees in this area are at risk of impact.</p> <p>The proposed solar array will occupy a portion of the setting of the designated asset and within an area that has been shown to make limited contribution to the significance of the asset despite its proximity. The area does not form part of a deliberately designed landscape and has been subject to extensive change. On this basis the Applicant does not agree that there is a significant loss of setting.</p> <p>The Applicant does not accept that substantial harm is caused to the designated asset. As such, in accordance with the NPS-EN1, this harm should be weighed against the public benefit of the Scheme.</p> <p>The Environmental Masterplan was updated and resubmitted at Deadline 7 to reflect no tree loss within the Avenue (Sheet 13 [REP7-054]).</p> <p>An additional plan (Cable and Vehicle Access Across Chippenham Park Avenue plan [REP7-058]) was submitted at Deadline 7 to illustrate how the access route and cable route will</p>

Topic	Document Ref	Summary of issue raised	Applicant's response
			be achieved without tree loss from within the Avenue.
Noise	ECDC and CCC Comments on the Revised/Updated Statement of Common Ground	<p>The LPAs raise a concern that the Applicant has not provided further information or data on modelled operational noise impacts, including low frequency noise, as a result of the introduction of Option 3.</p> <p>Suggestion that summary of position on construction working hours is clarified to also include piling. For example "Whether proposed construction hours, including piling</p>	<p>Text in Table 3-7 of the OEMP relating to noise and vibration from operational equipment has been updated at Deadline 8 to include the following text:</p> <p><i>"As the plant design is progressed, the specification of plant machinery with low noise emission and properly attenuated supply and extract terminations will help to minimise noise emissions. The use of enclosures, local screening, mufflers, and silencers will also be used as appropriate. Should the noise exhibit any such acoustic features then the relevant penalty/ correction should be applied in accordance with BS 4142. Plant such as the onsite substation and batteries will be designed to have minimal tonal, impulsive or intermittent features.</i></p> <p><i>The OEMP will also set out how the scheme design and operational plant levels have been developed to mitigate and reduce effects to a minimum. <u>This will include consideration of sound output levels of all mechanical and electrical plant, low frequency and/or tonal components of any sound sources, the noise from inverters and cooling fans during lower modes of operation, positioning of plant in relation to sensitive receptors and, if necessary, implementation of mitigation measures and/or acoustic barriers.</u> This will include consideration of sound output levels, the noise from inverters and cooling fans during lower modes of operation, positioning of plant and, if necessary and practicable, implementation of acoustic barriers."</i></p> <p>The summary of position on construction working hours will be updated to include piling.</p>

Topic	Document Ref	Summary of issue raised	Applicant's response
		working hours, are appropriate”.	
PRoW	Joint answers to Ex A Questions 3 Response to Q3.9.14	Comment on the Council's proposals for how PRoW should be managed during construction	The Applicant has made substantial edits to the F-CTMP/TP [REP7-017] to accommodate the Councils' remaining concerns, and considers that it has addressed such matters
DCO – temporary use of land	ECDC and CCC Post Hearing Submission Paragraph 27(c) and the Councils' joint response to ExQ 3.5.2	Concern around the 'temporary use of land' and request that Article 27 authorising temporary use of land is restricted to 24 months from the start of construction as suggested by the developer. The Applicant's view is that this can be resolved via the CEMP.	The Applicant responded to ECDC's concerns at ISH4 and in its post hearing submission [REP7-060] to confirm that it does not agree that temporary use of land should be limited to 24 months and neither did it suggest this to ECDC. In summary there is no justification for the 24 month period and imposing such time limit could result in the Applicant being required to compulsory acquire more land than is necessary if the 24 month period for temporary use is not sufficient. The Applicant is not aware of any precedent for imposing a time limit on the power to use land temporarily and the Council has not provide any precedent for doing so in its submissions.
DCO – definition of maintain	ECDC and CCC Post Hearing Submission Paragraph 27(c)	Concern about the scope of the power of 'maintain' and request that the DCO includes a requirement for the CEMP to be updated in accordance with ECDC's previous submission.	<p>The Applicant has responded to ECDC's concerns at ISH4 and in its post hearing submission [REP7-060] to confirm that it does not agree that a new requirement is needed. The scope of the definition of maintain to include 'remove', 'replace' and 'reconstruct' has precedent in several other DCOs, including the Cleve Hill Solar Park Order 2020, the Little Crow Solar Park Order 2022 and the Riverside Energy Park Order 2020.</p> <p>The Applicant does however acknowledge the Councils' concerns and has sought to address them in paragraph 2.1.1 Operational Environmental Management Plan, which includes a requirement to provide an annual schedule of planned maintenance so that it can be considered by the authorities. The Applicant further updated paragraph 2.1.1 at Deadline 7 [REP7-036] to include additional wording proposed by WSC, who have now confirmed that they are comfortable with the definition of 'maintain' in the context of the requirements and controls in the</p>

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			OEMP. The Councils have also confirmed their acceptance of the wording in the OEMP by recording it as 'agreed' in the final joint Councils SoCG that was signed and submitted at Deadline 8.
DCO – street works articles	SCC Post Hearing Submission Agenda Item 6	Request that the street authority consents works undertaken pursuant to Article 9(1).	The Applicant refers to paragraph 7.2.20 of its ISH4 post hearing submission [REP7-060] where it confirms that the protective provisions, along with any side agreement, will give the authorities the necessary controls they need, as well as the Construction Traffic Management Plan and approval of the detailed design under to Requirement 6.
DCO – Schedule 2, requirement 16	SCC Post Hearing Submission Agenda Item 6	Proposed amendments to requirement 16(3) and the CTMP.	The Applicant refers to its earlier response to the Council on the points raised in paragraph 8.81 of its response to the LPA's deadline 6 submissions [REP7-057].
DCO – Article 37	WSC, ECDC and CCC Post Hearing Submission Paragraph 27(g)	The scope of Article 36(4) should be replicated in Article 37(4).	The Applicant refers to paragraph 7.2.47 of its ISH4 post hearing submission [REP7-060] where it confirms that the draft DCO will be updated to limit the scope of the power under Article 37 to the construction period only.
	SCC Post Hearing Submission Agenda Item 6	Removal of the wording 'except for where not practically possible' from Article 37	The Applicant refers to paragraph 7.2.46 of its ISH4 post hearing submission [REP7-060] where it confirms that it will make this amendment in the next version of the draft DCO.
DCO – Schedule 2, requirement 6	SCC Post Hearing Submission Agenda Item 6.	Request that requirement 6 is updated to require the detailed design to be informed by an Environmental Colour Assessment.	The Applicant is prepared to make a change in line with the Council's concerns that will require it to show how its detailed design of the structures has sought to integrate with the landscape or explain where this has not been possible given the technical requirements of the structures proposed. The Applicant is considering whether this should be made to the DCO, OLEMP or Design Principles; and will confirm the position at Deadline 10.
	WSC Post Hearing Submissions Agenda Item 6.	Request that the design principles are updated to be informed by an Environmental Colour Assessment.	

Topic	Document Ref	Summary of issue raised	Applicant's response
DCO – schedule 12	SCC Post Hearing Submission Agenda Item 6	Amendments to paragraph 94 and 95 of Part 8 of Schedule 12 protective provisions for the benefit for drainage authorities	The Applicant has engaged with both SCC and CCC as drainage authorities and the protective provisions are agreed with both parties as of March 2023.
DCO – Schedule 13	ECDC and CCC Post Hearing Submission Paragraph 31, the Councils' joint response to ExQ 3.5.1, WSC Post Hearing Submissions Agenda Item 6 and SCC Post Hearing Submission Agenda Item 6	The Councils note concern about there being a substantial amount of work to do within one month and the burden on resources. The Councils have requested funding for enforcement of the DCO either through the s106 agreement or the DCO.	<p>The Applicant notes the Council's concern about resources, which is why it has proposed a fee schedule for the discharge of requirements even though there is no precedent for this in other made solar DCOs. However, it is not clear what the one-month time frame the Council refers to is based on, as paragraph 2 of Schedule 13 to the draft DCO sets out a 56 day period for the relevant authority to consent, agree or approve any requirement in Schedule 2. The Applicant does not expect that it will be seeking approval for requirements under Schedule 2 all at the same time, particularly due to the phased nature of the authorised development, so it is satisfied that 56 days for approval is sufficient. In any event, paragraph 2(1)(c) of Schedule 13 provides for the parties to agree an extension for the 56 day period if it is required.</p> <p>As stated in our previous submission [REP7-055] basing the fee schedule, including the categories of fees, on the Sizewell C (Nuclear Generating Station) Order 2022 is not appropriate. The Applicant is reviewing the fee schedule and it will include in the draft DCO submitted at Deadline 10 its final reasonable proposal, which it will share with the Councils in advance. The Councils' proposal for fees has focused on the detailed design approval of the Scheme (Requirement 6), which the Applicant does not agree with as the nature and scope of a solar and battery storage project is inherently less complex than other NSIPs, such as nuclear power stations. Accordingly, the £2,028 for both relevant planning authorities (£4,056 in total) for discharging the detailed design is sufficient. However, the Applicant does recognise that there are certain elements of the</p>

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			<p>Scheme that will require more resource, such as approval of the Landscape and Ecological Mitigation Plan, so it is revisiting the categories of requirements in its proposed fee schedule as a bespoke approach may be more suitable for this type of Scheme.</p> <p>The Applicant has confirmed to the Councils that it will not provide funding for enforcement of the DCO as part of Schedule 13 or through any s106 agreement. The Councils' request assumes that enforcement action will be necessary, and in any event, it is a statutory function of the Councils rather than an activity or a function that the Applicant should be funding.</p>

Appendix A

Sunnica Arb comments

Key to Comments:

- Initial Comment 1 - ECDC Tree Officer Kevin Drane
- Applicant Response 1 - Andy Wakefield
- ECDC Response 1 - ECDC Tree Officer Kevin Drane
- Applicant Response 2 – Andy Wakefield

Veteran Tree Management:

Veteran trees identified for having their ivy severed this should only be undertaken in conjunction with a bat and bird nesting assessment due to the very high habitat value of Ivy and veteran trees and should only be done if further assessment is required for safety reasons. A suitable exclusion zone should negate the need for this.

As per the response to the deadline 6 written submission, ivy severance is proposed as preliminary management only and is not a requirement for the development. Where there is a concern in relation to ivy severance this work does not need to be carried out (although note this may result in proactive management intervention which could prolong a veteran trees contribution not being carried out). Many of the relevant trees are now outside of the Order Limits following the removal of Sunnica West Site B.

A copy of the deadline 6 response has not been shared, my comments appear to align with the stated response given in the unseen document.

Chippenham Avenue Species Composition:

What evidence is there to support this claim of the avenue being solely a Beech tree avenue? The importance is the existing avenue feature not so much the species now included as things change due to climate alterations and storm events.

The applicant recognises that assessing the value of a feature like the avenue involves a degree of subjectivity and, as the avenue is retained in full, it is not a key issue but rather a point of detail.

The aerial imagery from the 1940s indicates a single species avenue due to the form of the trees. Avenues are typically single species as this provides the greatest uniformity and therefore formal landscape impact (the only mature exception I am aware of is at Westonbirt Arboretum which is a Douglas fir and tulip tree avenue). Only mature beech on site are capable of being old enough (based on stem diameter) to have been part of the original avenue (or subsequent pre-war replacement plantings). Further north towards Chippenham Park other remnants of the avenue (following its alignment) are formed of mature and over mature beech.

APN9 Arboricultural Practice Note 'Management of Avenue Trees' (Patch, D and Ryan, J. 2004 Tree Advice Trust) defines an avenue as: '*a regular and linear planting of trees whose grandeur often results from the general uniformity of the trees, which give the impression of all having been planted at the same time*'.

Non mature beech present in the avenue don't appear to be formally planted in a regular, uniform manner and are not linear aside from the overall linear nature of the planted group as a whole. The nature of the trees also changes markedly on either side of the avenue and as it progresses south with clumps of different species present in different areas further detracting from any sense of uniformity of species, height or scale.

The applicant appreciates that the existing linear tree groups have importance and value but would argue that the arboricultural value is reduced compared to a formal avenue of mature trees which would typically be considered to have greater impact and 'grandeur'.

From a heritage perspective as stated in response to the deadline 6 written submission:

The avenue is noted as a feature which forms part of the designed landscape at Chippenham Hall. The alignment of the avenue is retained and remains as evidence for the 19th century landscape. The importance of the feature is however considered to be diminished by its poor perseverance, which includes the loss of Beech trees and infilling with other species. An avenue was deliberately planted feature with trees specifically chosen to form a grand approach to the main house and one which also enabled views out from the avenue from which to appreciate the wider landscape. This function is diminished by the poor survival of the Beech trees and the blocking of views by new specimens. The contribution the avenue makes to the designated landscape is, therefore, also reduced.

This information is informative and agreeable though it was noted on the site visit that the north western side of the avenue in the south western half contained outgrown potential veteran trees that were remnants from what appeared to have once been a double hedgerow but no mention of there being an old hedge row has been mentioned in any of the documents. But these tree should not be impacted by the current plans they are just an intriguing feature that should be considered in the soft landscaping and maintenance proposals.

The double hedgerow was not noted during the survey of the area, although the particular focus at the time of the survey was on identifying features which potentially formed part of the original avenue e.g. mature beech. It is a large area with difficult access and was also surveyed during heavy snow. It is understood that some clearance of understorey may have taken place since the tree survey which may have increased visibility and accessibility for the *site visit*.

The FCEMP includes the commitment for further detailed surveys where necessary so could be included to inform soft landscaping/maintenance where required. As noted *these trees should not be impacted by the current plans*.

Chippenham Road Access Route and Cable Route:

The additional two/three trees protected by TPO at Chippenham Road stated as there being potential for these trees to be retained as part of the detailed design process but this will be too late by then especially as the DCO will override all statutory tree protection and the cheapest option would be removal making it the most likely outcome. Why can't Horizontal Directional Drilling (HDD) or equivalent be used to avoid these tree removals which would avoid harming this high amenity landscape feature. *As stated in the response to the deadline 6 submission, the Arboricultural Report (secured via FCEMP) will include consideration of how/why TPO trees are impacted or can be avoided. This is then subject to approval by the LPA. There is a requirement for access and the cable route which result in tree loss so HDD or equivalent wouldn't avoid tree loss in this location. Access is for construction only. The existing access to the west is for construction/operation and decommissioning.*

Why can't the existing access be utilized for access as it is stated as needing pruning works undertaken to the trees either side of it anyway?

The existing access can't be used to avoid a new access route to the north east as this is required for cable installation. A diverted access route (as drawn in the screen shot below) can't be utilised as this would require works outside the Order Limits.

Chippenham Road Existing Access Route:

The individual tree (subject to TPO at Chippenham Road) is to be pruned to facilitate the Scheme. T332 would be crown lifted to 4m to the north and east to provide a clearance of vehicle oversail for the use of the existing access point for construction access.

These works are likely to have an impact on the appearance of the group but should be of minor consequence if undertaken sympathetically. But if the trees at the end of the avenue are removed then the access should be there to avoid impacting the remaining avenue feature. **As stated in the response to the deadline 6 submission, the applicant appreciates your concerns here but as per the response above the access is required at the eastern end for the construction of the cable route which can't be achieved via the existing access (at this stage).**

A copy of the deadline 6 response has not been shared, why is it not possible to install a temporary road from the existing access to the cable route as indicated by the red lines on the image below?

This would be outside of the Order Limits boundary and therefore the Scheme has no right of access into this area.



T227 Fenced Area:

AIA report section 7.4.4 T227 (low quality) could be pollarded to 10-12m to address structural defects which would represent an unacceptable risk following the change in use of adjacent land. These works are justified to promote the long-term survival of the tree but will be avoided and the area within falling distance of the tree will be protected as a fenced exclusion zone.

Will it be sustainable to not undertake the pruning works once the site is in use? Will it breach duty of care for site occupiers/users to not undertake this work? **As per the response to deadline 6 written submissions the area within falling distance of this tree will be fenced off during construction and operation to address LPA concerns, there will be no requirement or reason to access this area. This may mean the tree collapses and is lost and the applicant recognises that this risk could be reduced by undertaking pruning but due to LPA concerns the works do not have to be carried out. This will be able to confirmed via submission of the Arboricultural Report.**

A copy of the deadline 6 response has not been shared, access to the fenced area will still need to occur to prevent it becoming overgrown with unsuitable weed species though this is likely to involve short term occasional occupancy so could be deemed acceptable via suitable risk assessment.

Any access (if required at all) would be very occasional and could be managed on an ad hoc basis.

Cable Route and Access Route at Chippenham Avenue:

AIA report section 7.5.2 States that the proposed access route and cable route which is positioned to the north of the Chippenham Park avenue will be achieved without tree loss. There is an existing hard standing access route which will be utilised for access where feasible, should any widening be required within an RPA it will be achieved without excavation using a three-dimensional raft or tile system installed **without excavation** and will maintain a **minimum 1m from any tree stem position**. The cable will be routed to avoid RPAs and where this is not possible (to be determined via detailed design) it will be installed via Horizontal Directional Drilling (HDD) or equivalent at a minimum depth of 1.5m (final depth to be confirmed at detailed design taking into account soil type and tree species), with insertion and retrieval pits located outside of RPAs.

Any excavations must be located outside of the root protection areas as set via BS 5837:2012 which for the smallest size tree diameter of 75mm still provides a RPA diameter of 3m. NJUG Vol 4: Guidelines for the planning, installation, and maintenance of utility apparatus in proximity to trees (issue 2) states that the 1m zone to the trunk of the tree is a prohibited area and that the next zone measured as 4 x tree circumference. Where excavations must be undertaken within this zone the use of mechanical excavation plant should be prohibited. Precautions should be undertaken to protect any exposed roots. Materials, plant and spoil should not be stored within this zone. Consult with Local Authority Tree Officer if in any doubt. The NJUG guidelines are from 2007 and in planning terms should be regarded as out of date and the recommendations in BS 5837:2012 followed instead location services outside of root protection areas on under them via directional drilling or similar. **As detailed in the response to deadline 6 written submissions, the minimum 1m from the stem position relates to new no dig surfacing (not excavation – see highlighted in red above) so no issue in terms of root severance is anticipated. No excavation is proposed within the RPA of trees in the avenue and the insertion/retrieval pits will be circa 20m from tree canopy edges (this will be detailed in a plan to be shared with ExA following a request at ISH4).**

A copy of the deadline 6 response has not been shared, my comments appear to align with the stated response given in the unseen document.

Chippenham Road TPO Trees – Number of Trees Removed:

AIA report section 8.1.7 Of the trees to be removed one individual tree and part of two tree groups are subject to a TPO at land south of Worlington and two trees subject to a detailed tree survey are protected by a recently served TPO are located at Chippenham Road (east of Snailwell). The design has been developed to minimise tree loss where possible however the loss of these trees cannot be avoided if the current Scheme design is to be achieved. The potential for these trees to be retained will be reviewed as part of the detailed design process and this is secured as a commitment in the FCEMP [EN010106/APP/6.2].

Map 6 page 148 and the tree schedule page 125 show three TPO trees to be removed from the TPO on Chippenham Road not the two described as above which is correct?

As detailed in the response to the deadline 6 written submission, when zoomed in on the Plan it is clear that the TPO designation only affects two of the three trees, the third tree is outside of the TPO hatched area and therefore is not considered to be subject to protection.

The TPO document clearly list the numbers of protected trees on each side of Chippenham Road and their species which if noted would have informed the applicant that all of the Beech trees on both sides of the road are protected by the TPO. 68 trees on the North eastern side of the Road and 66 on the south western side all of which are all Beech trees. If unsure it would have been a simple task to contact the ECDC trees officers for confirmation.

Thankyou for this clarification. The applicant assumed that the plotting of the TPO extent was spatially accurate as it is a recent TPO and would have benefitted from aerial imagery etc. As the accuracy of the plotting wasn't considered likely to be questionable confirmation wasn't sought from ECDC. If this is the case then the Applicant accepts that three trees subject to TPO are lost at Chippenham Road rather than the two trees stated in the Arboricultural Impact Assessment Report submitted at deadline 7. This will be taken into account in the DCO to be submitted at Deadline 10 in terms of the TPO article and related Schedule.

Chippenham Avenue Double Hedgerow and Veteran Trees:

On the western side of the Chippenham avenue (W343-W346 in the AIA) there were noted on the recent enquiry site visit the remnants of what appeared to have once been a double hedgerow which includes several veteran specimens of Hawthorn, Blackthorn and Crab Apple. These have not been recorded as veteran trees in the AIA any reference to them is of them only being mature. The majority of these trees displayed features associated with veteran trees such as fungal colonisation, cavities, deadwood etc. Veteran trees are considered to be an irreplaceable resource and the NPPF and current standing advice from Natural England and the Forestry Commission states that development affecting veteran trees should be refused unless justification is wholly exceptional. Veteran trees require a buffer equivalent to 15 x stem diameter (at 1.5m) or the canopy spread +5m (whichever is greatest). Although the submitted plans provide a degree of separation that should protect these trees from construction they must be recorded as veteran trees and considered in relation to the soft landscaping plans to ensure any new planting in this area as has been indicated does not detrimentally affect these irreplaceable habitats.

Veteran classification is subjective and open to interpretation e.g. it is not just the presence of decay or deadwood but significant/extensive decay and extensive long lasting deadwood habitat. The avenue has been subject to a detailed tree survey however these features have not been surveyed individually (but rather as a group feature) and are not subject to any impact (as they are set well back from any Proposed Development). The FCEMP includes a requirement for further surveys where there could be an impact and a commitment to avoid impacts to any further veteran trees encountered so this will secure the protection of any veteran trees in this location.

If during a detailed tree assessment of a grouped tree feature it would be expected to either refer to the presence of veteran trees within the group or to identify them separately but they have not been recorded other than as species within a woodland area with age classes from young to mature only.

As stated above, no trees considered to warrant veteran status were identified by the survey, however due to the scale of the survey area individual trees within group features were not assessed in detail and in many areas access was restricted due to the density of vegetation (understory clearance is understood to have taken place following the tree survey and in advance of the *site visit* which would have increased visibility and accessibility). As stated the FCEMP includes a requirement for further surveys where required and there is a commitment that no ancient or veteran trees shall be impacted by the Scheme.

Previous comments remaining

Basis of the Tree Survey:

Still the majority of trees not assessed beyond the use of overhead imagery little change noted

As noted in the response to the deadline 6 submission, the percentage of removed trees is exponentially low because of design changes in areas subject to detailed survey (e.g. Chippenham Park Avenue and woodland to south east – now not impacted).

The applicant has also provided further information on how trees not subject to detailed survey have been assessed and argues that this does not differ markedly from the level of information that would typically be collected by a detailed survey and provides sufficient information to allow an understanding of the order of magnitude of likely impacts (with further work secured by commitments in the FCEMP). Requirement 6 of the DCO, and the measures in the FCEMP, ensure that there will be suitable protection for these trees.

A copy of the deadline 6 response has not been shared so it is not possible to assess the suitability of this information.

Tree Shading:

There is no clearer marking of shade patterns but still some areas of concern such as the south western boundary of W08 as can be seen from the screen captures of the area from google and the submitted AIA plan. The approximate length of the shade pattern is 29m on the google capture. These trees are Lombardy poplars with significant future growth potential as they can grow to in excess of 30m in height leading to a shade area in excess of 30m (see the screen captures below).



The current AIA states that to address future shading potential as the trees mature, a 30m shading arc has been applied to all tree features to identify areas for more detailed assessment, the mature shading arc has then been adjusted in those areas with potential to impact on solar array positions to reflect the assumed mature height of the given species of tree. Mature heights are determined using data provided in Table 3 of NHBC Chapter 4.2 (2022) (Ref 14). The NHBC document is designed in relation of building footings for buildings with limited relation to shading implications.

As detailed in the response to the deadline 6 written submission, the NHBC guidance is the only published data on UK mature tree heights that the applicant is aware of. There is information on maximum heights of tree species (e.g. champion trees via the Tree Register) but this is considered to not be typical/representative. Proprietary tree survey software is understood to use NHBC height information for mature shading arcs so this approach has also been adopted by others within the arboricultural industry. Barchams Tree Nursery indicates mature heights of Lombardy poplar of 20m+.

Lombardy Poplars such as those mentioned are recorded in the NHBC guidance as having a height of 25m, my concern is that a 25m high tree will create a shade pattern at certain times of the day that will be in excess of 30m in length which will reduce the output of affected panels and it is unclear what tree implications this will have.

BS5837 only indicates consideration of shade based on tree height and doesn't require consideration of shade beyond tree height (even though such shade may occur). This is an indicative tool to consider general impacts but gives guidance on how shading should be assessed. The Applicant has aligned with this approach which is considered to be reasonable and proportionate.

As stated in the Arboricultural Impact Assessment [REP-055] shading will be greatest in winter (when the sun is lower in the sky) when these trees are not in leaf, the narrow canopy of Lombardy poplar will also not result in complete shade as light will penetrate between (and through) tree canopies. Solar arrays do not require full sun all the time and can tolerate some transient shade. Ultimately the Applicant does not consider any short term or transient shading beyond tree height or mature tree height to be a significant issue (if it were to occur).

It should be noted that the FOEMP has been updated at Deadline 7 to provide that the Applicant must provide details of impacts during trees during the operational phase.

Veteran Trees Not Subject to Detailed Survey:

Some of the veteran trees have been identified but have not assessed beyond a walk by with no other details provided. Veteran trees are considered to be an irreplaceable resource and should be retained and protected. The NPPF and current standing advice from Natural England and the Forestry Commission states that development affecting veteran trees should be refused unless justification is wholly exceptional. Veteran trees require a buffer equivalent to 15 x stem diameter (at 1.5m) or the canopy spread +5m (whichever is greatest). The ECDC Natural Environment Supplementary Planning Document 2020 policy SPD.NE8: Trees and Woodland states 'Where the proposal will result in the loss or deterioration of these irreplaceable assets (as defined by the NPPF):

(c) ancient woodland; and/or

(d) the loss of aged or veteran trees found outside ancient woodland

permission will be refused, unless, and on an wholly exceptional basis, the need for and benefits of the development in that location clearly outweigh the loss and a suitable compensation strategy exists.'

There is ample space to avoid the veteran trees (including their buffer zone) within the Order Limits and the AIA confirms that no veteran trees are to be lost or impacted.

Due to the way the trees have been assessed for the AIA this statement can only apply to the trees that have had a detailed assessment undertaken on them and there are many trees that have not been assessed in detail some of which could be veteran trees especially as the veteran classification is based on tree features and not age or size, a veteran Beech would generally be significantly larger than a veteran Hawthorn for example.

The query related to veteran trees identified via walkovers and in those areas there is ample space to avoid those trees (e.g. two trees near La Hogue Farm – these have an indicative 30m buffer included on the Tree Protection and Removal Plan. The FCEMP includes a commitment that any veteran trees not yet identified will be retained and protected. The Applicant considers that only mature trees are typically able to provide significant features associated with veteran status.

Draft DCO Powers in Respect of Tree Works:

AIA report section 7.4.9 states that 'should the requirement for additional tree works be identified this will be discussed with an appointed arboriculturalist and no works will be undertaken without the consent of the relevant LPA'.

Yet the draft DCO overrides all LPA authority in relation to trees including TPO's. If as the AIA report states the tree loss is the worst-case scenario then why does the DCO still need the section relating to the removal of TPO and Conservation area trees without needing to notify or get approval from the LPA? The DCO has been updated so this power only relates to construction (not operation – where a tree works application would be required for any works).

The Arboricultural Report will review and update any impacts to TPO trees and will be issued to the LPA for approval. No further tree works or removal of TPO trees is anticipated.

The revised DCO mentioned has not been made available for assessment yet so it is not possible to confirm what alterations have been made or if they are acceptable.

Environmental Masterplan:

Although the AIA report states that the Chippenham Park avenue will not suffer tree losses the environmental master plan still shows that there will be some losses which is correct and how can the potential impacts of this development be accurately assessed or managed when the information provided by the applicant doesn't align with itself.

The Environmental Master Plan is to be updated and resubmitted at deadline 7. The protection of the Avenue is secured via a commitment in the FCEMP.

A copy of the revised Environmental Master Plan has not been shared so it is not possible to assess the suitability of this information.

Cable Routes on Plans:

Route of cable is marked on some AIA plans but not others why is this?

As detailed in the response to the deadline 6 written submission, the 33kv cabling is not shown as this isn't drawn on the development plans (which are overlaid). 400kv cables are drawn and are shown as an indicative alignment but could be routed anywhere within the Order Limits corridor.

A copy of the deadline 6 response has not been shared so it is not possible to assess the suitability of this information.

Category A Trees on Plans:

Inspected category A trees indicated on AIA plans in same colour as un-inspected ones making it extremely difficult to differentiate.

As detailed in the response to the deadline 6 written submission, the category of trees is clearly shown on the Tree Constraints Plan. The Tree Protection Plan shows only retained or removed trees in green or red and this is standard practice in our experience. All surveyed trees with a reference number can be searched via their reference number on the pdf of the Tree Protection Plan using the 'find' function.

On the tree constraints plan category A trees are the same colour whether a detail inspection has been carried out or not but the other categorisations (B, C and U) are different colours dependent upon if they have been subject to a detailed assessment or not so why are only cat A tree colours identical as from an assessment point of view it's not possible to distinguish the difference which is only the assessed cat A trees have a dot in the centre of their circle and un-assessed ones don't.

The key distinction between trees subject to detailed survey and those not subject to detailed survey is the presence of a reference tag number and this can be reliably used to determine if a tree is category A and has been subject to a detailed survey or not.

PAMS

1.2 Order of operations

1. Formal appointment of an arboriculturist and LPA notification of tree related impacts
2. Confirmation of preliminary tree works by the appointed Arboriculturist (where required)
3. Notification and consent of tree works with relevant landowner and/or LPA (where required)
4. Pre-commencement site meeting
5. Preliminary tree works
6. Scheme briefing for site personnel
7. Programme of site monitoring
8. Installation of protective fencing as advised by the appointed Arboriculturist
9. Construction operations including installation or diversion of services in proximity to trees under arboricultural supervision
10. Site signed off on agreed completion of significant development works
11. Dismantling of tree protection measures

Current DCO removes requirement for LPA notification of permission in relation to trees including trees covered by a TPO negating points 1 and 3.

The general principles of the PAMS is acceptable.

The DCO has been amended so that powers to work on TPO trees without further consent are limited to the construction phase only (not operation). During operation works to TPO trees would require consent via a tree works application.

The revised DCO mentioned has not been made available for assessment yet so it is not possible to confirm what alterations have been made or if they are acceptable.

The OEMP includes a provision that a maintenance schedule will be submitted annually to the LPA which will include notification of any tree works required.

As a copy of the updated OLEMP has not been shared so it is not possible to assess the suitability of this information or if there is any provision for the LPA to make any changes to the works proposed or would the only option be to serve a TPO.

It is considered that this should be noted in the context that ordinary development proposals or even just use of land do not need approvals to remove non-TPO trees (subject to the various tree felling licence requirements). As such, if the LPA did have concerns it would need to enforce/deal with this in its usual way (e.g. through making a TPO if felt necessary).

The Arboricultural Report (secured by the FCEMP) will provide an updated assessment of impacts on trees which will address point 1 to 3. This will be submitted to the LPA for approval.

This could be acceptable depending upon the detail provided.

OLEMP

OLEMP Landscape:

4.2.19 Trees within the Scheme footprint that cannot be retained will be replaced with native species (either the same species as the tree that has been removed or another suitable native species) within the Order limits boundary.

Replacement planting also needs to comply with the relevant LPA policy such as ECDC policy SPD.NE8 which stipulates the numbers of trees require as replacement based on the diameter of the trees removed. The species planted need to be suitable for the location and take into

consideration climate change which may make it more suitable to plant non-native species that can still provide a habitat opportunity.

This has been addressed in updates to the OLEMP submitted at deadline 7.

A copy of the updated OLEMP has not been shared so it is not possible to assess this information.

OLEMP Ecology:

4.2.9 Ecology includes Nesting birds, Stone Curlew, Badgers, Reptiles and Amphibians but does not include Bats which all species of are protected and easily disturbed with most UK species of bat roosting or breeding in trees therefore they must be considered due to the extent of vegetation removals and site disturbances.

The Framework CEMP includes the following commitment in Table 3-3 Biodiversity, relating to bats 'Following the provision of the detailed Arboricultural Method Statement and prior to the commencement of any tree works, where necessary, further inspections for bats will be undertaken. This would include updated roost assessment, presence or likely absence survey (e.g. tree climbing and/or dusk emergence) and if necessary, the obtaining of a mitigation licence for the proposed works where impacts to roosts are identified'. This has also been included in the OLEMP submitted at Deadline 7.

The quoted comments from the framework CEMP would be acceptable but a copy of the updated OLEMP has not been shared so it is not possible to assess the suitability of this information.