



FIVE
ESTUARIES
OFFSHORE WIND FARM

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10.16 APPLICANT'S SUMMARIES OF ORAL SUBMISSIONS

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1 COMPULSORY ACQUISITION HEARING

1.1.1 This note summarises the submission made by Five Estuaries Offshore Windfarm Limited (the Applicant) at the Compulsory Acquisition Hearing on 17 September 2024. This document does not purport to summarise the oral submissions of parties other than the Applicant; summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant's submissions.

1.2 AGENDA ITEM 3.1: EXTENT OF CA POWERS SOUGHT

The extent to which the CA powers sought in relation to the onshore export cable corridor and substation for the proposed Five Estuaries Wind Farm, the substation and cable ducting for the proposed North Falls Wind Farm and National Grid's proposed East Anglia Connection Node substation accord with:

(i) the conditions stated in section 122(2) of the Planning Act 2008 ("PA 2008"); and

(ii) the Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land (Department for Communities and Local Government, September 2013) ("2013 CA Guidance")

1.2.1 The ExA invited the Applicant to summarise its case with respect to item 3.1 on the Agenda for the Compulsory Acquisition Hearing 1. The text of that summary is copied below.

- 1) The Applicant's case in full is set out in the Application, in particular the Statement of Reasons [APP-030] and the Planning Statement [APP-231].
- 2) It is important to note that the second set of ducts and the site preparation for the wider substation site, which would include the area on which the North Falls substation will be constructed, form part of the development for which consent is sought. These are works listed in Schedule 1 of the dDCO. The Applicant is not seeking powers of acquisition for works which are not part of its authorised development.
- 3) The second set of ducts form part of the associated development for which consent is sought. Guidance on associated development has been issued by the Secretary of State. This guidance provides that associated development should either support the construction or operation of the principal development, or help address its impacts. The inclusion of the second set of ducts is designed to address the cumulative impacts of the proposed development and accord with NPS EN-5. The Department for Communities and Local Government 2013 Guidance on Associated Development provides in 'Associated development principles' at Paragraph 5 (iv) that:

"associated infrastructure development (such as a network connection) that is on a larger scale than is necessary to serve the principal development if that associated infrastructure provides capacity that is likely to be required for another proposed major infrastructure project".



- 4) That larger capacity can explicitly be provided for another project. The footnote to Paragraph 5 explicitly addresses offshore generating stations transmission infrastructure providing:

“ in the case of an application for an offshore generating station, the Secretary of State may consider it appropriate for a degree of overcapacity to be provided in respect of the associated transmission infrastructure, so that the impacts of one or more other planned future projects which could make use of that infrastructure would be reduced by taking advantage of it.”.

- 5) Section 122 of the PA 2008 requires that the Secretary of State be satisfied that the powers sought are required for the development or required to facilitate or are incidental to it. This second limb under s122(2)(b) of the PA 2008 is widely drawn. The powers of acquisition sought meet this test. In particular, the seeking of powers for the second set of ducts allows the project to comply with the obligation under the NPS EN5 to seek a co-ordinated approach (section 2.13) which includes considering co-located substations and transmission lines (paragraph 2.13.16).
- 6) For the onshore cable corridor, the Applicant is seeking compulsory powers and temporary possession over a corridor of land within which it proposes to microsite the cable corridor. That corridor is, in the majority of cases, 90m wide to allow for flexibility at the detailed design stage, having regard to further investigation of the land and including seeking to minimise impacts on ecology, including trees and species. Within that corridor, the working corridor is generally 60m, with a final land take of a 20m corridor with rights overlain on that for each set of cables or ducts. Those rights are to allow access to inspect and maintain the cables, and to protect it and are the minimum necessary to deliver the proposed development.
- 7) The majority of the onshore cable corridor is currently in agricultural use and that use will be able to resume once the cables have been installed. Accordingly, seeking rights to install, use, maintain and protect the cables (as opposed to the acquisition of the land) is considered to be appropriate and necessary under s122 of the PA 2008.
- 8) Although powers are sought over a wider corridor than that which will be finally acquired, that is necessary to allow the development to undertake detailed design in the final routing of the corridor. It is disproportionate to do that work ahead of consent being granted, given both the substantial costs involved and the intrusive works, including more GI and trenching required. This approach is common in DCOs including other offshore wind farms, for example, Awel y Mor in 2023 and Sheringham and Dudgeon in 2024, both of which adopted a similar approach.
- 9) For the substation, given that the landowner will not be able to resume the current use and the Applicant needs to be able to control this area for the life of the development, it is appropriate that freehold interest is taken and the landowner is compensated for the full value of the land.



- 10) For competition and procurement reasons, the Applicant cannot carry out , and is therefore not seeking consent, for 'electrical' works for North Falls. That includes the installation of cables and the building of the North Falls substation itself.
- 11) Within the wider substation area, the collaborative approach adopted by the projects provides that, where practicable, the first project will carry out the levelling and earthworks to create the level working area for all of the works. The landscaping design requires access to, and vehicle movements over, the whole area. The whole area would need to be occupied for either project to work on their development Given this, and that the fact that the land would necessarily have been taken out of agricultural use for that, it is likely to be less impactful for these works to be done as a single programme rather than seeking to create an 'island' of restored land in the middle of the wider works. This approach would reduce the overall impacts by carrying out all earthworks at one time as one programme rather than being carried out by two contractors at a different time.
- 12) Practically it would be challenging to create the levels needed for the final landscaping for Five Estuaries without affecting the area for the other project's substation footprint. Doing so would likely require drainage works to be carried out.
- 13) The wider area is necessary for the carrying out of the Five Estuaries development as the landscaping is more effective when placed on the outer red line. It is accordingly necessary for, and as part of, the authorised development even if the North Falls element was not a consideration. Not including the North Falls substation footprint would leave an isolated plot in the middle of the landscaping and drainage provision, which would be of little practical use to the landowner. The Applicant accordingly submits that not only is the wider area required for the development, but the inclusion of the North Falls substation footprint meets the s122 of the PA 2008 test in that it is required to facilitate the Five Estuaries development to level this land as part of the wider area works both practically and to prevent creating drainage and maintenance issues. The guidance is clear that land that is necessary for works to be carried out to make the development acceptable, such as landscaping, may be acquired compulsorily (para 12). The Applicant accordingly submits that these areas are reasonably required and meet the statutory tests and the relevant guidance.
- 14) The inclusion of Works to install a second set of ducts for North Falls means that the width of the corridor which may be acquired is slightly wider than it would be for the Five Estuaries development in isolation. However, by following this approach, project efficiencies, with associated reduction in overall land take and environmental impacts, can be realised, such as:
 - > A single haul road for the cable corridor to support construction of the onshore export cable;



- > Single access points at Temporary Construction Compounds (TCCs) from the highway network to service both projects;
 - > Use of the same or sharing of TCC therefore reducing the total number of overall TCCs and the area required.
 - > (A fuller list is given in the Statement of Reasons [APP-030] at 3.1.7)
- 15) The Applicant has to get its cables to the National Grid substation boundary to then be able to connect into that substation. The Applicant is not seeking to consent any works for National Grid or to deliver their substation or to acquire any rights in that area for the benefit of any other party or project.
 - 16) Within the EACN site, the Applicant is seeking powers to acquire rights to install and maintain the cables and to access those. These powers are necessary and sought over the whole area as it is not yet known where in the area identified National Grid will site the substation or where the connection point will be. The Applicant accordingly needs to be able to route the cables to any point that National Grid determine. That may involve both land that National Grid later acquires and land they do not. The Applicant also needs to be able to access those cables. At this time the intention is that, rather than create multiple access points to this site, the Applicant would use whatever access point National Grid will use to align with and minimise impacts. That does, however, mean that the route through the wider site to the cables cannot yet be known and the rights are accordingly sought over the whole area.
 - 17) Where the final connection point is known before any rights have to be exercised, the Applicant will only take the cable and access corridors necessary to align with the EACN final design. The powers sought are accordingly necessary to ensure that the development can get the cables to the connection point and operate and are accordingly compliant with s122 of the PA 2008.
 - 18) For all of the powers sought, the guidance at paragraph 9 provides that the Applicant must demonstrate a clear idea of how each plot would be used. The need and proposed use for each area is set out in the Statement of Reasons [APP-030] in section 9.
 - 19) The Applicant is seeking temporary possession for land required in construction but not in operation. This minimises the land over which permanent rights are required to be sought.
 - 20) The use of temporary possession powers in DCOs commonly includes the ability to use land for access during construction. In this case, there are a number of plots where the Applicant requires to be able to take access during construction but does not intend to do so exclusively. Essentially, the proposal is to use temporary possession powers to create a temporary right to share accesses. The alternative would be to create a permanent right of access, which the Applicant does not consider is necessary or proportionate in these cases.



- 21) In order to assist landowners in identifying and having certainty where we are proposing to share access and not exclude current use, the Applicant has subdivided its temporary possession to create a new category of temporary possession for access only. These are shown green on the Onshore Land Plans [APP-008].
- 1.2.2 The ExA asked the Applicant to confirm whether the powers sought in respect of the blue land shown on the Land Plans-Onshore [APP-008] and the Book of Reference (“BoR”) [APP-026] ought to be described as land to be temporarily possessed with rights to be acquired permanently.
- 1.2.3 The Applicant confirmed that the current description of the blue land in the BoR is accurate. This is because it is standard approach to record the greatest level of interference which is proposed. The greatest level of interference which falls over the relevant sites is the acquisition of permanent rights. However, the Applicant confirmed that changing the wording to “temporarily possessed with rights to be permanently acquired” can be done in order to assist the ExA. This has been done as the response to action point CAH1-1.
- 1.2.4 The ExA asked the Applicant to confirm that the Land Plans-Onshore, the Statement of Reasons, the BoR and the Draft Development Consent Order are consistent and requested that the Applicant carries out a review to ensure that these documents are consistent. The Applicant confirmed that this exercise had been undertaken but agreed to double check the documents for consistency. This has been done in response to action point CAH1-2 and has been completed for the deadline 1 submission.
- 1.2.5 The ExA asked the Applicant to confirm if there is a conflict between the legislative provisions and policy and/or guidance, which should take precedence. The ExA explained that the principle of coordination promoted in the National Policy Statement for electricity network infrastructure (“EN-5”) may not be consistent with section 122 of the PA 2008.
- 1.2.6 The Applicant explained that the key issue is the definition of associated development and what can be included within that definition. Section 122 of the PA 2008 relates to the compulsory acquisition being related to the development for which consent is sought. The Applicant has considered this definition very carefully during the application process. The Applicant is confident that the definition of associated development as included in the application is appropriate, having regard to the Planning Act 2008 Guidance on development applications for major infrastructure projects (Department for Communities and Local Government, September 2013) not just EN-5.
- 1.2.7 The ExA queried whether the 2013 Guidance is consistent with the CA 2013 Guidance and noted that this is an issue that needs to be considered as part of the analysis. The Applicant explained that the Applicant is entitled to seek compulsory acquisition powers to assist in the delivery of the scheme. The core question to the Applicant is whether the Applicant has gone too far regarding the interpretation of the definition of associated development.



- 1.2.8 The Applicant explained that the OTNR process which was a holistic network design review process. The key to this was identifying whether (when looking at the relevant region) there was a better solution than a radial connection approach. It was decided that this approach would not be applied to the projects off the East Anglian Coast. However, the Applicant did participate in an initiative under the Early Opportunities Programme. At the time of this exercise, draft EN-5 and other updated national policy statements were emerging. The Applicant was able to consider these policy statements in detail and how these should be interpreted. The Applicant had to make a judgement call on the approach to be taken in light of EN-5 and coordination with the North Falls Offshore Windfarm.
- 1.2.9 Under the previous version of EN-5, the Applicant would not have been expected to demonstrate the principle of coordination. The Applicant would have promoted a straightforward, independently promoted, parallel radial solution. Both the Applicant and North Falls would have promoted two completely separate corridors as projects that happened to be in a similar time frame and in a similar geography, going to ultimately the same location.
- 1.2.10 The Applicant has responded to the new policy imperative to show the coordination requirement pursuant to EN-5. The Applicant noted that one of the key questions that the Applicant had to consider was to what extent could one project carry out advance works for the second project.
- 1.2.11 The Applicant has provided for the ability in its application to install the ducts for the second project, and carry out levelling and incidental works at the substation location. In addition, the Applicant had to consider other factors like the competition law issues that may arise and procurement.
- 1.2.12 The Applicant noted that the key question is whether it is appropriate for the Applicant to seek compulsory acquisition powers for another project whilst the two projects are being promoted separately. The Applicant confirmed that the answer to such question is yes provided that the Applicant has not exceeded the scope of the definition of the associated development. The guidance is of very little assistance regarding this question.
- 1.2.13 The Applicant summarised the background to section 5 of the 2013 Guidance on the associated development principles. This section came about because of the first East Anglia DCO project. It was recognised that the ability to do advanced works or an option of doing advanced works should be provided in the DCO. It is not accidental that the footnote in section 5 of the 2013 Guidance is an offshore windfarm example.
- 1.2.14 The Applicant explained that it is relevant that the opening paragraph in section 5 of the 2013 Guidance is expressed in generic terms. The Applicant noted further examples and references in the guidance. In light of this, the Applicant submits that it is appropriate for the Applicant to include the works for North Falls as associated development and the Applicant is confident that the Applicant can seek temporary possession powers associated with those works.



- 1.2.15 The ExA asked the Applicant to confirm who wrote the Statement of Reasons [APP-030]. The Applicant confirmed that this was a joint effort between the legal team and the land transaction manager. The ExA asked the Applicant to explain the use of language at paragraph 5.3.3 on page 23 of the Statement of Reasons [APP-030]. The Applicant explained that the drafting can be clarified. This will be done as the response to action point CAH1-3 .
- 1.2.16 The ExA queried whether, as a result of the language used, the acquisition of land and rights go beyond “what is strictly required” to facilitate the construction of the Five Estuaries Offshore Windfarm onshore. The Applicant confirmed that the application includes what is necessary to deliver the authorised development.
- 1.2.17 The ExA asked the Applicant to confirm what land and rights are strictly necessary to deliver the onshore elements of the Five Estuaries scheme (without facilitating North Falls). The Applicant explained that, in order to connect to the grid, the grid connection agreement places the obligation on the Applicant to get the cables to the future connection node substation. This is standard and is a part of the Applicant’s scheme. The Applicant is confident that the land and rights included in the application are appropriate.
- 1.2.18 The ExA noted that it would be of assistance if the Applicant can provide the information for the Five Estuaries scheme as a standalone scheme. This is because if the ExA considers in its recommendation that there is an over acquisition of rights and land in the application, then the ExA will need to make a different recommendation to that being sought in the application. It would assist the ExA if the Applicant can, for example, confirm how much land might be required for a stand-alone scheme compared to what is currently sought in the application.
- 1.2.19 The Applicant explained that this would not be a straightforward exercise since it will involve re-imagining the scheme. The Applicant sought clarity from the ExA on whether the Applicant is requested to provide this analysis on the assumption that North Falls did not exist at all. The ExA clarified that they need the Applicant to explain what would be needed to transmit the electricity from offshore to onshore. The Applicant explained that what would be needed is everything sought under the application except for the second set of ducts. The ExA asked the Applicant to carry out a review in order to confirm the size of the area sought under the application without taking account of the land that may be required to facilitate North Falls. The Applicant explained that this exercise is not a straightforward one since it will require the Applicant to review a number of factors such as the location of access points which may be blocked by North Falls. The Applicant, as a result, would need to re-think its access strategy.
- 1.2.20 The Applicant agreed to provide a post-hearing note to explain the reasons why undertaking the exercise of identifying how much land might be required for the Five Estuaries Offshore Windfarm (as stand-alone scheme) compared to what is currently sought in the application is not straightforward and explain what will be involved in carrying out this exercise. This will be submitted as a response to action point CAH1-4.



1.3 AGENDA ITEM 3.2: CONSIDERATION OF ALTERNATIVES

Whether full consideration has been given to all reasonable alternatives to the proposals for onshore Compulsory Acquisition (CA) and Temporary Possession (TP) have been considered.

1.3.1 The Applicant summarised its case as follows:

- 1) The Applicant has undertaken a logical, staged process to arrive at the VE location and design. The Site Selection and Alternatives Chapter of the ES sets out in detail the approach to and consideration of alternatives with further technical assessment in the associated annexes. The site selection and consideration of alternatives has been a sequential process informed by an understanding of the potential locations for infrastructure and the detail of those areas and refining the location options. This has ensured that the findings of the environmental surveys and assessments have guided the evolution of the proposed project design, and the onshore development areas have been modified to avoid, reduce or mitigate the potentially adverse impacts as far as practicable of the number of land parcels affected.
- 2) The consideration of land and land use is set out in the Site Selection and Alternatives Chapter of the ES.
- 3) The site selection process and alternatives considered have been through detailed analysis of environmental and engineering constraints, with key feasible alternatives taken forward for consultation either through the Scoping process, the Evidence Plan, or specific evidence plan meetings. Land ownership and land use were factors taken into account when refining the project location. Through the design of the project and engagement with landowners, the project has sought to reduce the overall land take requirements and mitigate the impact on landowners by limiting the land take required for construction whilst at the same time ensuring enough space and flexibility is retained ahead of detailed design to ensure the most appropriate construction practices can be employed to best mitigate impact on land and expedite construction.
- 4) Other than site selection, the main reasonable alternative to CA is voluntary acquisition. The Applicant has contacted all identified landowners and is seeking voluntary agreements to acquire the necessary land and rights. Negotiations are ongoing with affected parties to seek to reach voluntary agreements, however it has not been possible to secure all of the necessary land and rights.
- 5) In line with DCLG guidance, the Applicant has continued to explore all reasonable alternatives to compulsory powers and this included proposing to make amendments to the order where that is possible and will facilitate reaching a voluntary agreement. The Applicant would note that, for example, the changes to access included in the notification, arose in response to ongoing engagement with landowners or to reduce impacts on them. The Applicant accordingly considers that



this demonstrates that it has been meaningfully engaging with landowners and has been acting reasonably in seeking to accommodate requests where possible and practical.

- 6) In the absence of compulsory acquisition, all of the land and rights required to allow VE to be constructed and operated may not be secured and VE will therefore not proceed. The Applicant needs to have certainty that the required rights and land can be obtained within a reasonable timeframe and to be able to evidence this certainty to its funders. Given the very clear and substantial policy support for the development of projects of this type, the granting of powers of compulsory acquisition to VE represents a proportionate and legitimate interference with private rights.
- 1.3.2 Essex County Council requested clarification in relation to rights being sought in respect of the plot coloured grey on [Sheets 17 and 1] of the Land Plans-Onshore [APP-008]. The Applicant confirmed that the relevant plot is not being compulsorily purchased. The pink land shown surrounding the grey plot on [Sheets 17 and 18] of the Land Plans-Onshore [APP-008] will be used for permanent landscaping. The Applicant is seeking agreement with the relevant landowner in terms of where they would want to take access through the pink area in order to use the grey land.
 - 1.3.3 The Applicant confirmed that the landscaping at the substation has to be in situ for as long as the substation is there because its function is to screen the substation. The Applicant explained that permanent acquisition is necessary because the Applicant is required to put in place mitigation measures for the substation. The Applicant will need to ensure that the landscaping is performing the function as required and, therefore, will need to monitor and maintain the landscaping works. This is why the Applicant needs control over this land. Given that the Applicant needs to maintain the landscaping works for the lifetime of the substation, it is very difficult to justify trying to take rights to do that because of the level of long-term interference with the landowner's use of land. The Applicant does not think that doing this will satisfy the relevant statutory compulsory acquisition tests due to the level of interference and, therefore, freehold acquisition is proposed.
 - 1.3.4 The ExA asked the Applicant to confirm whether the Applicant will have one main contractor or whether there will be multiple contractors. The ExA would like to have a better understanding of the sequencing of works and whether these will progress in a linear fashion or whether works will be divided into sections with works being undertaken concurrently. The Applicant explained that the Applicant is unable to confirm this without prejudicing the procurement process. The Applicant has an idea of the options and is currently investigating various contracting strategies. However, this process has not been finalised yet.
 - 1.3.5 The Applicant is retaining flexibility to do concurrent works in different sections. The Applicant needs to consider timings of the works and ensure that works are divided into appropriate sections and works are carried out at appropriate times.



- 1.3.6 The ExA asked the Applicant to confirm (for example, in respect of plot 03-015 shown on Land Plans-Onshore [APP-0008]) the likely temporary possession period that will be needed in order to undertake works in a plot of that length (i.e. drill, trench formation, ducting, pulling the cable). The Applicant explained that giving an indication of a timeline is challenging due to a large number of factors that need to be considered including ground conditions.
- 1.3.7 The ExA asked the Applicant to confirm how the works will be subdivided/phased (i.e. 2km). The Applicant explained that this process will depend on the field boundaries and other constraints. Most of the field boundaries tend to be within the length of cable that can fit on one drum (approximately 500-700m), this is also designed as the length that is convenient to pull through the ducts. Secondly as The Applicant will need access to Link Boxes during operations the preference is to put these at the edge of the fields. Joint Bays should be within 10m from Link Boxes and so these too are preferred to be at the edge of fields.
- 1.3.8 The Applicant agreed to prepare a technical note to provide an indication of sequencing and high-level indicative timelines (i.e. how long the temporary possession period would be to undertake works in respect of plot [03-015] or a plot of that length. The Applicant will include assumptions and caveats in their technical note. This note will be submitted in response to action point CAH1-5.
- 1.3.9 The ExA asked the Applicant to prepare a further technical note to cover the following points:
- > Why each project needs two cable trenches with three power cables per trench and why cable sharing of all cables in a single trench is not possible;
 - > Geometric and other limitations of cabling, for example, is there a maximum bend radii for the cable;
 - > The frequency of maintenance and inspection of chambers and what effect these may have on the ability to re-use the land (particularly farmland);
 - > Why cable pulling will be done by each project and why this process cannot be done for the other project (like the duct installation);
 - > Why each project needs its own substation;
 - > Why (even if two substations are required) the two projects cannot share a single site;
 - > Coordination document [APP-263] at (para 3.2.10) refers to different technical requirements for the two schemes but does not provide what these technical differences are; these differences should be provided; and
 - > Why three separate substations (National Grid, North Falls and Five Estuaries) are required.
- 1.3.10 The Applicant noted that the Applicant will need to seek input from North Falls and National Grid which can impact on timelines for producing this note. This note will be submitted in response to action point CAH1-6.



- 1.3.11 The ExA asked the Applicant to explain why the Applicant needs to acquire CA rights over the East Anglia connection node site. The Applicant confirmed that it requires it to carry out works to get cables to the final National Grid substation, and there is no proposal that National Grid would do any works outside of the boundary of their substation site. This is the basis on which the Applicant is currently negotiating with National Grid on protective provisions within that area.
- 1.3.12 The ExA asked the Applicant to explain the sequencing of works and whether the Applicant will carry out its own works first. The Applicant explained that the assumption is that National Grid, although their DCO is intended to be applied for later than the Applicant's DCO, would start works earlier because NG do not, for example, have to go through the Contracts for Difference process. The Applicant would do the trenchless crossing under the adjacent highway (Grange Road) into that site at the time that suited the Applicant's build programme; and the Applicant may stop there until National Grid define the connection point. The Applicant will not connect the final length of cables until the connection point is available.
- 1.3.13 The ExA asked the Applicant to confirm why the Applicant needs to acquire rights over the National Grid site and why the Applicant cannot effect the connection to the grid without acquiring rights over that site. The Applicant explained that the connection agreement applies from the point of connection only, and not surrounding land so the Applicant needs to get the cables to the substation to reach that connection point, and access them in operation. There is uncertainty as to how much land National Grid actually acquires and whether National Grid will be able to give the Applicant rights over the site which is not in their ownership. The Applicant noted that the Applicant would need to keep rights as a fallback, for example, for the unknown interests in that land. The Applicant confirmed that discussions with National Grid are on-going about how each project's compulsory acquisition in this area would work together and how each project would protect each other. That work is not yet finalised but once it is ready, it will be presented to the ExA as a joint position.
- 1.3.14 The ExA further asked the Applicant to prepare a note to explain the likely sequencing of works. The Applicant noted that it will be able to provide a note outlining various scenarios for the sequencing of works, however, due to the uncertainties (set out above) the Applicant will not be in a position to commit to a particular scenario at this stage. This note will be submitted in response to action point CAH1-7.
- 1.3.15 The ExA queried why the Applicant does not seek powers only up to the boundary of the plot so that connection can be facilitated over the land that ultimately becomes National Grid's land. The Applicant explained that there may be a gap where National Grid does not acquire the land up to the boundary since they have not committed to acquiring the whole site.
- 1.3.16 The ExA queried whether National Grid know where the substation will be located. The Applicant explained that National Grid have just concluded their statutory consultation process. National Grid have identified an area however the precise orientation of the substation within that area and other considerations are yet to be determined, and could change at a later date or during detailed design post consent.



1.3.17 The ExA queried when National Grid will have this level of detail. The Applicant noted that this is not the first time that developers have faced the uncertainty in relation to the grid connection point. Similar uncertainty was faced by Hornsea 3 when connecting to Norwich Main Substation. Hornsea 3 had to take a precautionary approach and include a large swathe of land around the substation in order to deal with this uncertainty. Sheringham and Dudgeon extensions (“SEPDEP”) had to connect to Norwich Main after Hornsea 3, however, similarly faced uncertainty as to SEPDEP were going to connect (even though Hornsea 3 was already granted). As a result, as part of the SEPDEP application, a large area of land was included which overlapped with Hornsea 3. There is an inherent uncertainty in these situations where it is necessary to adapt a proportionate but precautionary approach to the rights that the Applicant might need.

Offshore Connection Support scheme

1.3.18 The ExA asked the Applicant to confirm how the decision by the Secretary of State for Energy that funding will not be made available for a connection at Sea Link was communicated to the Applicant. The Applicant confirmed that the decision was communicated to the MPs in the relevant local areas as well as being communicated to the relevant local councils.

1.3.19 The ExA asked the Applicant to confirm what “independent” means in the context of the ARUP Report [PD4-008]. The Applicant confirmed that ARUP were given a scope of work, and they had to investigate the feasibility and the constraints in relation to connecting to Sealink. ARUP were then scoped arrive at their own conclusions.

1.4 AGENDA ITEM 3.3: PUBLIC INTEREST

Whether for the purposes of section 122(3) of the PA 2008 there is a compelling case in the public interest for all of the land subject to the CA powers sought by the Applicant to be acquired compulsorily

1.4.1 The Applicant was asked to submit its summary in writing rather than present this. This is set out below:

- 7) The case for the development is set out in the Planning Statement [APP-231]. The project falls within the scope of the current NPSs and is firmly rooted in national policy as required by para 19 of the guidance. This includes the Net Zero Strategy published Oct 2021 and the energy security strategy published in April 2022. We will be giving a full answer on capacity in response to the first written questions, however our headline position is that the Applicant’s intended capacity for this project is up to 1080MW which is the capacity which National Grid is committed to connecting, and which appears on the TEC register. That is a significant contribution to the identified national need.
- 8) The Applicant made a commitment early in the process to avoid the need to seek compulsory acquisition powers over residential dwellings. The Applicant has also sought to minimise impacts by using a trenchless installation technique to avoid interfering with infrastructure such as busy roads and the operational rail line. That does increase engineering complexity and risk and can have other impacts,



including the need for compounds, areas to excavate launch and reception pits to carry out drilling and 24 hours working being required while the crossing is being installed.

- 9) The land over the cables would be returned to its former use following construction, thereby minimising the impact on those affected landowners and farming businesses. The land for the substation would be lost to its their current use. The Applicant has been and continues to work with affected landowners to minimise the impacts on them.
- 10) The Applicant has been seeking to engage with affected parties since April 2021. The Applicant continued to seek to engage with landowners throughout 2022 and 2023. To streamline the discussions, joint Head of Terms were developed with North Falls so that landowners where not trying to parallel process the two projects land negotiations. A number of land agents representing landowners along the route formed a land agents' group with which the Applicant has been working. That group was issued with template heads of terms in April 2023. Negotiation on those heads then continued for 12 months but the group took the position that they could not agree them without seeing the DCO. At that stage the Applicant issued individual populated heads of terms in April 2024. The Applicant therefore notes but entirely rejects the various relevant representations made that there was insufficient engagement with affected landowners or that heads of terms were issued at a late stage. Rather, the Applicant engaged at an early stage, before non-statutory consultation, and actively sought input to help shape the project as it developed. The Applicant continued engagement for 3 years ahead of application.
- 11) The Applicant has considered the need for other consents to be obtained to deliver and operate the project and has set these out in the Details of other consents and licences document [APP-060]. That identifies no known impediment to the delivery of the scheme. As already set out, the financing of the use of powers and for the delivery of the project is available. The Applicant has therefore taken all prudent steps to properly manage potential risks to the project as required by the guidance in para 19.
- 12) In summary, the Applicant considers that the powers sought are necessary to deliver the proposed development, are proportionate, and are sufficient to justify the interference with landowners' rights. The strong policy support for the proposed development, and importantly the contribution it would make towards achieving net zero demonstrate the clear public benefit of the project being granted the powers necessary to ensure its delivery.
- 13) Although powers are sought over a wider corridor than that which will be finally acquired, it is necessary to allow the development to undertake detailed design in the final routing of the corridor and allow co-ordination as required by NPS EN-5. It is disproportionate to do that work ahead of consent being granted



- 14) The Applicant is seeking powers over land required for mitigation (primarily landscape and mitigation planting). DCLG guidance at paragraph 11 sets out that powers should not be sought over more land than is 'reasonably required'. The guidance is clear that land necessary for works to make the development acceptable, such as landscaping, may be acquired compulsorily, as set out in paragraph 12. The Applicant accordingly submits that these areas are therefore reasonably required and met the statutory tests and the guidance.
 - 15) Both the statement of reasons and the funding statement are required as part of the application in accordance with reg 5 of the IP APFP regs 2010. In order to demonstrate the compelling case, the SoR [APP-030] summarises the need case and policy support for the development which is set out in full in other application documents. It also explains the alternatives considered and the engagement which has been had with affected parties. Section 9 sets out the overall case for the powers sought and section 11 specifically considers why that case would justify the grant of powers with regard to human rights and specifically the right to peaceful enjoyment of one's possessions.
- 1.4.2 The Applicant noted that in the Other Consents and Licences Document [APP-060], the Applicant included an explanation that work was ongoing with the Crown Estate in relation to capacity.

1.5 AGENDA ITEM 3.4: IMPLICATIONS OF LIMITING THE CA AND TP POWERS SOUGHT

- 1.5.1 The Applicant noted that there are two interpretations to this heading: (1) whether it is appropriate for the Applicant to have included rights in respect of doing works for North Falls and (2) whether the Applicant's general approach to CA and TP powers is appropriate. The Applicant confirmed that the Applicant is confident that a right balance was struck between various powers sought under the Application.
- 1.5.2 The ExA confirmed that item 3.4 of the Agenda is intended to deal with the Five Estuaries Offshore Windfarm scheme as a standalone scheme.
- 1.5.3 The Applicant was asked to provide a summary of its case in this submission which is set out below:
 - 1) Limiting CA powers will leave the project in what is effectively a ransom situation where it has to reach voluntary agreement with all landowners in order to deliver the project. This creates clear deliverability, programme and viability risk and the Applicant would entirely oppose any such limitations given the urgent need for this project set out in the NPS.
 - 2) Limiting the powers of temporary possession sought would, depending on what the limitation was, place the project in a ransom position for construction (if construction compounds or accesses were removed from the order limits), or increase the permanent land rights acquisition needed. This is because, in common with other DCO developments, the Applicant proposes to use TP for



construction on the wider working corridor width and only acquire permanent rights on the narrower easement width required in operation. Without TP, the Applicant would be forced to acquire rights over the working width in order to be able to construct the development as they would otherwise not be able to occupy the land. This is clearly undesirable both for the project and landowners and would not comply with the guidance to minimise interference.

- 3) If the Examining Authority wishes to be addressed on the point raised in the draft FWQ which is effectively, how the plans would look if the second set of ducts were excluded. The Applicant is happy to address the headline points but would like to caveat that as being subject to the detailed answers those questions seek and which it is working on preparing responses to.
- 4) The substation was covered in the first section of this summary. The landscaping design requires access to, and vehicle movements over, the whole area. The whole area would be required to be occupied for either project to work on their development. The wider area is necessary for the carrying out of the Five Estuaries development as the landscaping is more effectively placed on the outer Order Limits. It is accordingly necessary for and as part of the authorised development even if the North Falls element was not a consideration. Limiting powers to exclude the North Falls substation footprint would create an isolated island in the middle of those works that we do not consider would be practical or economical for agricultural use. An isolated area bounded by the levelled area and landscaping would also likely need drainage to be provided meaning rights to carry drainage works out in that area would be required in any case.
- 5) The final cable route will be sited within the corridor, having regard to various constraints and the need to agree the technical detail of some works with others. For example, the final detail of the trenchless crossing of the railway will be subject to Network Rail approval. The detailed design will also seek, for example, to avoid trees, use existing gaps in hedgerows, avoid an unknown archaeology discovery, provide suitable crossing points for access by landowners and allow for any PRow diversions to be as short as practicable.
- 6) To build just Five Estuaries the Applicant would still need all of the accesses, haul routes, construction compounds and working width areas. The working corridor in the cable route would include the haul road. At Tendring brook, access is only on north side. For the A120 crossing access is only from the opposite side. If there was no second set of ducts there would be no second trench and no second stockpiling of soil on the far side of the haul road but the Applicant would still need, for example, to cross that area from the accesses and construction compounds. It is therefore not as simple as dividing the cable corridor by removing a strip down the side and saying that powers are not needed in that area if there is no second set of ducts. The Applicant will still need to detail design around constraints, and



need access to the highway network as currently designed, and need to connect to the Public Rights of Way being diverted which would require both temporary possession and rights during operation for permanent access through the strip.

- 7) The Applicant is accordingly strongly opposed to any attempt to divide up the land included in the Order Limits by reference as to whether that is needed for the first or second set of ducts. It is not practical to simply divide up the plans and areas to achieve that limitation. The Applicant notes, however, that the second set of ducts sought are sought as part of the authorised development. The NPS requires projects to seek to collaborate and the inclusion of this is accordingly necessary to comply with that NPS requirement. The Applicant is very firmly of the view that all of the powers sought are accordingly necessary and justified.

1.6 AGENDA ITEM 3.5: NEGOTIATIONS RELATING TO THE CA AND TP POWERS

1.6.1 The ExA invited the Applicant to provide an update on the status of the negotiations relating to the CA and TP powers sought by the Applicant. The Applicant explained that item 3.5 of the Agenda was interpreted by the Applicant as providing a summary of the overall approach taken rather than as an update since the submission. The Applicant confirmed that the Land Rights Tracker contains the latest position in terms of the status of negotiations.

1.6.2 The Applicant summarised its case as follows:

- 1) The Applicant, through its agent, has been seeking engagement with the affected parties and the associated land interests since April 2021. Parties have been consulted through the non-statutory consultation process in June 2022 and then further through the statutory consultation process in March 2023 and targeted statutory consultation process in Dec 2023. Alongside this, the Applicant has continued individual engagement with affected parties and their appointed representatives and has sought to meet with the affected parties and have been liaising with their respective appointed land agents on matter relating to both land agreements and practical matters that have been raised as concerns by those landowners.
- 2) The Applicant's agents first issued template Heads of Terms in April 2023 to a number of land agents representing the majority of landowners along the route who formed the 'Land Agents Group'. These template Heads of Terms were then negotiated for 12 months taking them to a point where the applicant believed it was appropriate to focus on individual affected party terms, before issuing populated Heads of terms in April 2024.
- 3) The latest update on the status of negotiations with affected parties is set out in the 'Land Rights Tracker' Revision [PD3-002]. To date, 36 Heads of Terms have been issued to affected parties for the onshore cable route and 9 covering the cable route and temporary construction areas have been agreed and signed. The Heads of Terms are a key stage prior to agreement of the formal legally binding option agreements.



- 4) Engagement is ongoing with all affected parties and the applicant considers that negotiations are at an advanced stage with a number of landowners and expects to secure further voluntary agreements.
 - 5) The Applicant understands there are two key outstanding issues to be resolved with a number of landowners in order to facilitate a voluntary agreement. As referenced in the Relevant Representations, one of these concerns pertains to the potential gap in easements between Five Estuaries and North Falls cable routes and the other relates to rights afforded under access for enabling works. The Applicant will continue to engage with the landowners and their agents to address these outstanding concerns.
- 1.6.3 The ExA asked the Applicant to explain the level of detail that the HoTs usually go into. The Applicant explained that this is a question of balance. For example, some landowners prefer to see the detail at that stage; other landowners prefer a more simplified set of HoTs. The Applicant worked with Dalcour Maclaren to draft a set of HoTs that encompass all of the relevant matters without these being unnecessarily complicated. The Applicant also worked with a land agent group who represents the majority of the landowners in order to get those sets of HoTs refined and in a format that would be acceptable for issue to the landowners.
- 1.6.4 The ExA asked the Applicant to confirm whether the current approach of negotiations is standard (for example, something you may see in a road scheme, a pipeline etc) or are these bespoke negotiations. The Applicant confirmed that it is standard for the industry to negotiate a generic set of HoTs with a wider group of agents that are acting on behalf of the interested parties. Those negotiations can take substantial amount of time to agree, and then the next stage is having one-to-one meetings with affected landowners and parties, whereby the HoTs can be made bespoke.
- 1.6.5 The ExA sought further clarification from the Applicant on whether such model is a good fit for most landowners and whether bespoke HoTs are appropriate for a smaller landowner who may have very specific operational requirements on their farm. The Applicant noted that, as a starting point, the Applicant will put a composite and complete set of HoTs forward to all the affected parties. Following this, the Applicant would look to those professionals acting on behalf of those affected parties to determine at what point they think individual conversations should happen (for example, where the landowner has a specific set of concerns and a generic set of HoTs will not be appropriate). The Applicant confirmed that the Applicant is happy to deviate from the standard set of HoTs when this is needed.
- 1.6.6 The ExA asked the Applicant whether 1-to-1 meetings have been held with landowners. The Applicant confirmed that the Applicant has offered and has had face to face meetings with all of the affected parties. The Applicant has issued 36 HoTs for the onshore cable route and nine of these have been signed.



1.6.7 The ExA requested that the Applicant provides a copy of the HoTs to the ExA as an example of the matters that may be covered in a typical HoTs. The Applicant explained that voluntary agreements are outside of the DCO process and HoTs are commercially sensitive and contain confidential matters. In addition, the HoTs are being jointly negotiated with North Falls and the Applicant would need North Fall's consent to submit them to the ExA. The Applicant suggested to the ExA that the interested parties submit specific questions or particular areas of concern in relation to the HoTs in writing to the ExA. The Applicant will then be able to respond in writing.

1.7 AGENDA ITEM 3.6: CHANGE REQUEST

The Applicant's notification of an intention to submit a change request in its Pre-examination Procedural Deadline D submissions.

1.7.1 The ExA invited the Applicant to summarise its case with respect to item 3.3 on the Agenda as follows:

1.7.2 The Applicant summarised its case as follows:

- 1) Five of the changes proposed by the Applicant are very minor in extent, with a number to correct drawing or mapping anomalies that have been identified since submission (Changes 1, 2, 3, 5 and 6).
- 2) There are two areas the project is seeking to extend where it is seeking temporary possession for off-route haul roads during construction along the onshore export cable corridor to seek to provide flexibility to potentially reduce the impact on farming operations during construction (Change 4). These changes would extend the areas subject to TP but not CA.
- 3) The Applicant proposes to reduce the extent of the land over which powers are sought to provide the LBBG compensatory measures area to approximately 6ha. This removes areas where other OWF projects have existing compensation measures or interests. This is likely to require adding an area currently outside of the order limits but within the same landownership. The nature of the land rights required here does not change but the area affected will be reduced overall, however the change will include a comparatively small area of 'new' land. (Change 9).
- 4) Changes to operational access rights. These relate to a right of access to the Order Limits from the existing road network and generally have been removed or amended following landowner feedback (Change 10). At the access to Work No. 10, this change necessitates amendments to the order limits to remove an access and replace it with a different access as requested by the affected landowner. That change will result in new land affected by the powers. Two other planned accesses would be removed from the Application.
- 5) Changes 7 and 8 do not affect land rights.
- 6) The Applicant is engaging with affected land interest holders and seeking their agreement to the change proposals. However, although there are no newly affected land interests engaged by the changes, given the number of interests and



the timing proposed, the Applicant has assumed for the purposes of this notification that not all consents will be obtained.

- 1.7.3 The ExA asked the Applicant to confirm when the consultation is likely to take place. The six-week period necessary to carry out the consultation would run in November and December 2024 because the consultation does not start until the publication of the second newspaper notice. There is an in-built delay to the start of the minimum statutory period because the Applicant has to publish two consecutive newspaper notices. Therefore, the Applicant has planned for the consultation period to run from week commencing 4th of November until the 13th of December.
- 1.7.4 The Applicant explained that following the notification change request, the ExA has 28 days to decide whether or not to accept it. The Applicant could not start a consultation unless and until it is accepted by the ExA. Therefore, the timings provided in the notification letter assume that the ExA takes the full 28 days. The Applicant is able to start the consultation process earlier if the change request is accepted earlier by the ExA.



2 ISSUE SPECIFIC HEARING 1 (ENVIRONMENTAL MATTERS)

2.1.1 This note summarises the submission made by Five Estuaries Offshore Windfarm Limited (the Applicant) at the Issue Specific Hearing on Environmental matters on 18 and 19 September 2024. This document does not purport to summarise the oral submissions of parties other than the Applicant; summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant's submissions.

2.2 AGENDA ITEM 3.2 EFFECTS FOR OFFSHORE ECOLOGY

2.2.1 The Applicant presented a short summary of the items listed on the agenda the text of which is copied below.

Fish

- 1) The Applicant understands that the survey approach and assessment methodology is agreed by NE to have followed scoping and relevant guidance, and to be appropriate for the proposed development. The MMO have raised a number of specific points on methodology which are under discussion between the parties.
- 2) The Applicant's EIA concludes no significant effects on fish and shellfish receptors, following the implementation of proposed mitigation. The Applicant is confident that the assessment set out in the ES is a realistic worst case and that the conclusions are accordingly robust and suitably precautionary.
- 3) With regard to spawning Downs stock Herring, the Applicant has identified 2 potential significant effects for which mitigation has been proposed. These are the potential for significant effects from underwater noise and vibration and sediment deposition, from the construction of Five Estuaries. The Applicant has therefore proposed a seasonal piling restriction during the peak herring spawning period (6th November to 1st January) to mitigate against potential impacts from underwater noise. Furthermore, to mitigate against the loss of suitable herring spawning habitat characteristics from sediment deposition, the Applicant has proposed a sediment disposal restriction, whereby dredge material from the northern array area will not be disposed of within the southern array area.
- 4) The Applicant is aware that the MMO has not yet agreed that the seasonal restriction on piling is suitable. The Applicant however note that multiple precautions have been applied when defining this seasonal restriction, and the Applicant is accordingly confident that the proposed mitigation is a suitable and effective measure having regard to the affected site. The Applicant is planning to submit a revised Herring Seasonal Restriction Note at Deadline 1.
- 5) The Applicant's proposed seasonal restriction on piling has already been secured through the draft DCO in the deemed marine licence.



- 6) The Applicant is currently working to produce a disposal plan which would set out the restrictions on disposal needed to ensure that the spawning area remains suitable for Downs stock herring spawning. That plan will be secured in an amendment to the conditions of the draft deemed marine licence in a future revision of the dDCO.

Offshore ornithology

- 7) The aerial survey programme followed the industry-standard approach and data capture and processing methods were agreed with Natural England during pre-application consultation.
- 8) There is high level agreement with NE on the methodology used to prepare the ES and RIAA for almost all species and the Applicant is not aware that they are objecting to the methodology used. However, there are some differences in approach between the Applicant and Natural England that have been presented within the RIAA for LBBG and auk displacement rates. The Applicant is also aware that the RSPB has submitted comments objecting to some methodological approaches in the RIAA and mainly relating to compensation. The Applicant however notes that these are industry wide issues where the RSPB has routinely made substantively similar objections to offshore wind applications. The Applicant remains satisfied that the methodology used is reliable and appropriate and is supported in this by the NE RR.
- 9) The Applicant's EIA concludes no significant effect on offshore ornithology due to the project alone or cumulatively. The Applicant is confident that the assessment set out in the ES is a realistic worst case and that the conclusions are accordingly robust and suitably precautionary.
- 10) The impact of vessel traffic on red-throated diver within Outer Thames Estuary has been highlighted as a potential concern by Natural England. The Applicant has agreed to seasonal restriction on cable-laying activities within the Outer Thames Estuary SPA and vessel best practice protocol at all other times and phases. The Applicant is satisfied that this represents appropriate mitigation to prevent AEol on RTD.

Compensatory measures

Ornithology

- 11) The Applicant has conceded on the need for a derogation case for impacts to Lesser Black Backed Gull associated with the Alde Ore Estuary SPA, but disagrees with Natural England regarding the potential for AEol on the kittiwake, guillemot and razorbill features of the Flamborough and Filey Coast SPA in-combination. However, without prejudice derogation cases have been prepared for these species [APP-050 - APP-055]. Natural England are in agreement that an AEol on the gannet feature of FFC SPA can be ruled out. The proposed



compensation measures have been well progressed and are more advanced than any other offshore wind project to date at the time of DCO application.

- 12) The Applicant is progressing the delivery of a suite of compensation measures, all of which Natural England have agreed have merit and are proportionate to the level of impact.
- 13) For LBBG, the Applicant has been working on two alternative compensation proposals on Orford Ness and Outer Trial Bank. This would consist of predator proof fencing and habitat management at Orford Ness or predator control on Outer Trial Bank. Provision on either site would more than compensate for the predicated worst case impact of the proposed development. At this time, the Applicant continues to seek powers to deliver Orford Ness and remains in discussion with The Crown Estate and Defra to progress Outer Trial Bank. Powers of compulsory acquisition are sought on Orford Ness in order to ensure that a deliverable solution is secured and that the ExA and Secretary of State can therefore have confidence in making the HRA decision that a deliverable compensation proposal is in place.
- 14) For kittiwake, nesting space is proposed at an existing artificial nesting structure on the Tyne estuary. There is high certainty in the success of this measure as it is already constructed and agreements are being progressed with the relevant parties.
- 15) For Guillemot and Razorbill – measures to reduce human disturbance at colonies in the southwest of England are being developed. Site investigations of ten sites have been carried out this breeding season and 3 sites have been shortlisted. The Applicant is confident the measures we are proposing are suitable and of a type agreed by other offshore wind projects, with NE being in broad agreement on the scale and location of the measures. The identified measures could include signage, public awareness campaigns and wardens.
- 16) The Applicant's LBBG compensation and without prejudice compensation cases include reference to the Marine Recovery Fund (MRF) being developed by DEFRA. The Applicant is seeking to retain flexibility to deliver compensation through the MRF where that forms an available and appropriate mechanism at the time it is required.
- 17) The Applicant will continue to engage with Natural England and progress these measures throughout the examination.

Benthic and marine mammals

Benthic

- 18) Site-specific survey methodology were consulted with, and agreed by Natural England and Cefas. The survey effort has been concentrated within the order limits of the application, which is usual practice for OWF applications, with wider data



obtained from literature, including recent OWF developments in the vicinity. NE is understood to be happy with the surveys conducted.

- 19) On methodology, the Applicant notes that NE have requested some additional numerical sediment plume modelling to supplement the existing analysis. That work has now been carried out, the applicant is preparing interpretive reporting of it as requested by NE and will this be submitted at Deadline 1. The Applicant has been in discussion with NE on that work and understands that the modelling methodology will fully address NE's query.

Compensation

- 20) The Applicant's offshore export cable corridor includes a short length within Margate and Long Sands SAC. This route was selected following identification and avoidance of a number of sensitive environmental features and consideration of other shipping and navigational users. The final corridor was unable to avoid M&LS SAC due to safety concerns raised by shipping stakeholders with regards to cable installation and presence in close proximity to the Sunk pilot boarding station. The Applicant concluded and remains confident that this represents the appropriate balance given the competing constraints in this area.
- 21) Within the SAC, the Applicant's assumptions include a need to use cable protection. That assumption is very precautionary and the Applicant notes that the figure used for assessment purposes is very much a worst case. The value of 900m covers the anticipated maximum length of both cables within the SAC (noting that final routeing within the corridor is not completed yet), and assuming half of both cables would require external protection. It is stressed this is considered to be very precautionary given that current data would indicate cable protection is unlikely to be required in this location. Even on that highly precautionary assessment approach, the area of the SAC affected by cable protection would be 5,400 m², which equates to approx. 0.0008% of the SAC area. As a result, the Applicant's Report to Inform Appropriate Assessment accordingly concluded that an impact on this scale would not constitute an AEoI upon M&LS SAC. However, NE consider any amount of cable protection on a designated sandbank feature constitutes an AEoI.
- 22) The Applicant has committed that, where possible, the length of cable routed through the SAC will be minimised and that cable protection would only be used as a last resort following attempts to ensure burial. Finally, rock dumping will not be used, instead a form of protection such as concrete matressing, will be used so they can be removed upon decommissioning.
- 23) Noting that NE do not agree with the conclusion reached on AEoI, the Applicant has prepared a without prejudice derogation case should cable protection be required within the SAC. That sets out that the compensation proposed would be



delivered through the MRF by means of the extension or new designation of another SAC with Annex 1 sandbank feature by DEFRA. As set out in [APP-047] 5.5.1 Benthic Compensation Strategy Roadmap, that measure is being developed by DEFRA to address potential impacts of multiple developers. The Applicant has demonstrated that there is sufficient undesignated Annex 1 sandbank, adjacent to existing SACs, and its future designation would represent a significant increase in Annex 1 sandbank area protected.

- 24) The Applicant is also exploring alternative measures should the MRF SAC extension not be available. These include for example additional seagrass restoration work as a non-like-for-like option, and anthropogenic pressure removal from within Annex 1 sandbank areas. However, using the MRF mechanism to buy into the Defra strategic compensation measure is considered the preferable option here, especially as that will provide a co-ordinated measure delivered by DEFRA providing cohesive compensation for multiple impacts from development.

Marine mammals

- 25) The aerial site-specific survey methodology followed the industry-standard and processing methods were agreed with Natural England during pre-application consultation. There is a current query from Natural England regarding the approach to density estimates, which the Applicant expects to be resolved. 3 density options are presented, and the assessment conclusions are based on the highest predicted numbers across these three densities, which comes from the site-specific Digital Aerial Surveys.
- 26) The ES concludes that there will be no significant effects on marine mammals. Additionally, the non-significant effects are lowered by the application of mitigation measures, primarily the plans secured through the conditions of the DMLs.
- 27) NE have requested use of the interim Population Consequence of Disturbance (iPCoD) modelling, which was not requested during the Project's consultations and has only recently been requested by NE for the first time on the Rampion 2 Offshore Wind Farm, the examination for which has recently closed. The Applicant has carried out the requested modelling for the Project alone and is satisfied that the outputs support the conclusions for the disturbance from piling assessment reached in the ES. The iPCoD modelling outputs will be submitted at Deadline 1. The Applicant has not undertaken iPCoD for in-combination impacts. This is because that would require detailed piling schedules for every project included, which the Applicant does not have. As a result this is not an exercise the Applicant is in a position to undertake. The Applicant considers that it is not realistically practicable for any developer to carry out such modelling.
- 28) The Applicant notes that NE have requested noise abatement measures be secured in the DCO and not through later approvals post consent. The Applicant



objects to this as prematurely prejudging, not just the need for abatement, but prematurely seeking mitigation in the form of NAS. The Applicant notes that securing noise abatement solutions now is inconsistent with the mitigation hierarchy as it does not allow for avoidance and reduction of impacts before seeking to apply mitigation. It also notes that not every measure is effective on every site, and measures should be developed having regard to the final design, foundation type, installation method technology available at the time, not prejudged as a 'standard' approach at this stage.

- 29) The Applicant notes that NE have several comments on 9.15 Outline Southern North Sea SAC Site Integrity Plan [APP-246] and the approach taken to managing disturbance from underwater noise impacts on the SAC. The Applicant would like to highlight that the Outline SIP [APP-246] complies with current JNCC guidance, and that the Applicant is doing everything a developer can do at this stage based on that guidance. Additionally, the Project is located within the winter area of the SNS SAC so the spatial and temporal restrictions on the SAC only apply during the winter season (October – March), therefore the Project is able to undertake noisy activities unrestricted throughout the summer season (April – September). The maximum contribution to the spatial 20% threshold in the winter season for the Project undertaking a single unmitigated piling event with a 26 km Effective Deterrent Radius (EDR) is 16.7%, therefore there is available headroom for additional activities to take place on the same day. The maximum contribution to the temporal 10% threshold for unmitigated piling is 7.4%, therefore there is available headroom for additional activities to take place in the same season. Therefore, there is no Project alone impact and the Applicant maintains the conclusion of no AEoI.
- 30) The issues that NE are highlighting stem from the in-combination impacts when the Project is considered alongside other projects undertaking noisy activities in the same winter season. This is an ongoing industry issue affecting multiple projects that are located within the SNS SAC. The Applicant is a member of the SNSOWF developer group that involves offshore wind farm developers working together and sharing information so the post-consent documentation for SNS SAC that the MMO receives contains all the same information across the projects. The Applicant notes that the SNSOWF group actively work together to share live information to avoid exceedance of spatial or temporal thresholds, with this coordination of activities being sufficient to manage activities in recent years, without the need for additional mitigation.
- 31) Regarding the unmitigated EDR for piling of 26 km (JNCC, 2020) that has been considered in 5.4 RIAA [APP-040] and has fed into both the alone and in-combination assessment of the SNS SAC spatial thresholds, the Applicant notes the recent research from the Offshore Wind Evidence and Change (OWEC) funded



Predators and Prey Around Renewable Energy Developments (PrePARED) project has shown an EDR of <10 km may be more representative (Benhemma-Le Gall et al., 2024), and JNCC have just issued a tender to improve the evidence base for piling EDRs and which could lead to revised guidance for the SNS SAC in the near future. The Applicant is waiting to see the results of this study and whether revised guidance should be considered going forward, but nonetheless considers this demonstrative of the precautionary approach used in its assessment.

a) Species Surveys

- 2.2.2 The Examining Authority asked whether survey of Orford Ness has been carried out. The Applicant advised that it is engaged with the landowner but has not yet been given access to the land. The Applicant will continue to seek access for survey.
- 2.2.3 The Examining Authority asked for an update on the engagement with Natural England on Outer Trial Bank. The Applicant advised that it will continue to engage with Natural England and is seeking further survey data for this site. The Applicant advised that it is confident that there is a rat predation problem on this site as evidenced by recent RSPB surveys.
- 2.2.4 The ExA queried the recent update to the bird red list noting that an addendum has been published to the list of Birds of conservation concern in the UK, Channel Islands and Isle of Man. The ExA asked the Applicant to explain whether or not this would have any implications for the EIA and HRA assessments in terms of impact on ornithology. The Applicant advised that for EIA it is aware of the changes to seabird species to the list. It noted that its assessments have been carried out on a sensitivity basis and does not expect any of the EIA assessment or conclusions to change. On HRA the Applicant noted that there is no connectivity to any SPA and there is therefore no change to the HRA assessment.
- 2.2.5 The ExA noted the representation from Germany concerning migrating bats crossing the North Sea between Great Britain and the Netherlands, Belgium and France. The Applicant noted that its position is that there is no issue with offshore bats. It also noted that it is not anticipating more engagement with the BSH who have indicated that they do not wish to enter into further discussion with the Applicant. The Applicant will provide a response on this point at Deadline 1, however, in summary; a review of the data cited by the party making the representation shows that data does not support the argument that the proposed development is within an area of high concentration of migrating bats. It also does not support any argument that significant effects will occur to the bat population migrating between the UK and Europe. A number of embedded mitigation measures, including the minimum blade draft height of 28metres of mean high water springs would reduce the impact in any case.
- 2.2.6 Further the Applicant noted that no UK operational wind farms have required curtailment of turbines for bat mitigation nor has this topic been raised by the SCNB through the development of process. The Applicant does not consider that there is any likely significant effect on any bat species due to the offshore turbines. The Applicant also notes that this has not been raised as a concern by Natural England.



2.2.7 The ExA queried whether there has been any engagement by the Applicant with NatureScot. The Applicant advised that there has not. An update is provided in the response to the action point ISH1-2 .

b) Assessment Methodology

2.2.8 The ExA noted that methodological concerns have been raised by Natural England, the Marine Management Organisation and RSPB. The Applicant noted that it will be responding to the issues raised in the responses to relevant representations. Those have already been submitted for the MMO.

2.2.9 The Applicant is preparing a response to the relevant representation by Natural England for Deadline 1 given the considerable length of that representation.

2.2.10 The Applicant noted that it will be responding to the RSPB however, it considers that the issues raised by the RSPB are extremely well rehearsed and have been considered before in multiple applications. The Secretary of State has taken previous decisions on the RSPB positions which have not supported them. The Applicant therefore considers that it is likely there will be some fundamental points of disagreement between the RSPB and the Applicant which are unlikely to be resolved during examination.

c) Compensatory measures

2.2.11 The ExA sought an update from the Applicant on the proposal to provide Kittiwake nesting facilities on the existing artificial nesting structure at Gateshead. The ExA also requested an update from the Applicant on the mechanism of the apportioning birds between the projects. The Applicant advised that this is subject to ongoing commercial negotiations and an update will be provided later in the Examination. The Applicant notes that there is an action point for Deadline 1 to advise on this, and that update will be provided.

2.2.12 With reference to Lantern Marshes, ExA queried whether this is being considered as a potential compensation site. The Applicant advised that it is not progressing this site, the only sites being presented for potential compensatory measures are Orford Ness and Outer Trial Bank.

2.2.13 The ExA requested an explanation of how the success or otherwise of compensatory measures will be monitored and assessed. The Applicant advised that monitoring plans will be implemented for each measure. The monitoring plan for each measure is likely to be different. Those monitoring plans will be laid out within the implementation and monitoring plan to be approved by the Secretary of State. That monitoring plan will include adaptive monitoring with remedial measures taken should success not meet the agreed objectives set out there.

d) Benthic and Marine Mammal Ecology

2.2.14 The ExA requested that a technical note is submitted setting out how the maximum design scenario for the EIA and benthic and marine mammals impacts was prepared. This note will be submitted by the Applicant in response to action point ISH1-4 at Deadline 2.



- 2.2.15 The ExA queried how the breaking of concrete from, for example, turbine foundations, would be within the assessment of noise for decommissioning. The Applicant advised that concrete would not be broken offshore but would be floated up and taken onshore to be broken. Accordingly, there is no offshore noise impact from that activity.
- 2.2.16 The ExA further queried how other decommissioning exercises would be carried out and how those would result in noise similar to that for construction as claimed by the Applicant. The Applicant agreed to provide a technical note on the decommissioning activities and how they would fit within the noise envelope. That note will be submitted in response to action point ISH1-5 at Deadline 2.
- 2.2.17 The Applicant noted that decommissioning would require further consents at the time it was to be undertaken, including a marine licence to be issued which would require the applicable EIA regulations to be satisfied.
- 2.2.18 The Applicant noted that the Secretary of State has been clearly satisfied on multiple occasions with the approach to decommissioning which is entirely standard for offshore wind DCOs. The Applicant notes that it is wary of being pushed to specify decommissioning too precisely given the time period that would elapse before these activities would be carried out, that technology is likely to change in the interim and that the Secretary of State has accepted the position as set out within the application on numerous, previous examples.
- 2.2.19 The ExA queried what is proposed in terms of cable protection at the decommissioning stage and how that has been considered in assessments. The Applicant noted that the cable protection within the SAC will be concrete mattresses, and it has made a commitment to using that protection type within the SAC. Concrete mattresses are large, flexible, mats comprised of concrete blocks held together, which are lowered onto the seabed and can be lifted from the seabed during the decommissioning. It is entirely safe to assume that the effects for decommissioning would be smaller than for construction given that the disturbance to the seabed would be caused during the placing of the mattresses. The mattresses would then simply be removed at the end of the life of the development.

2.3 AGENDA ITEM 3.3: NAVIGATION AND SHIPPING

- 2.3.1 The Applicant presented a short summary of the items listed on the agenda the text of which is copied below.

Consultation

- 1) Given the location of the Five Estuaries Project (at the outer edges of the Thames Estuary) shipping and navigation was identified as a key topic from the outset and consultation commenced in 2021 pre scoping. Since January 2021 numerous and extensive forms of consultation have been undertaken including consideration of scoping responses and PEIR responses as well as dedicated meetings, regular operator outreach, workshops and attendance at meetings of the Sunk Vessel Traffic Service (VTS) User Group.



MGN 654 and Methodology

- 2) This consultation is an important part of the Navigational Risk Assessment (NRA) process [APP-240]. The NRA process started post scoping following agreement of the methodology used which is in line with Marine Guidance Note (MGN) 654 Safety of Navigation: Offshore Renewable Energy Installations (OREIs) - Guidance on UK Navigational Practice, Safety and Emergency Response.
- 3) MGN 654 and its annexes have been followed throughout the process including Annex 1 which is the methodology for assessing marine navigational safety risk for offshore renewable energy installations.
- 4) Appendix A of the NRA includes the required MGN 654 checklist (Annex 6) and the Applicant has been consulting with the Maritime and Coastguard Agency (MCA) throughout this process and I hope today that 'Mr Jackson of the Navigational Safety Branch' will confirm that the NRA is compliant with the required methodology including the vessel traffic surveys undertaken.
- 5) An important point to note is that given that shipping and navigation issues were first investigated early in the EIA process, a full MGN 654 compliant NRA was submitted at the PEIR stage allowing opportunity for all stakeholders to provide constructive feedback.

Vessel Traffic Surveys

- 6) The NRA includes MGN 654 compliant surveys and additional long term AIS data sets for the array area and sensitive areas of the export cable corridor. For the array area this also included, at the request of stakeholders, a wider 'routeing study area' to fully capture traffic movements beyond the standard 10 nautical mile study area.

Array Area

- 7) Focussing on the array area post scoping it was clear that the scoped boundary would have negative effects on shipping and navigation, notably traffic routeing to and from the North Hinder Junction. The North Hinder Junction is an International Maritime Organization (IMO) routeing measure which features the convergence of various routes and routeing measures and allows the management of traffic at the sensitive area between the United Kingdom and mainland Europe.
- 8) How the design of the Proposed Development has been informed by consultation and risk modelling (Agenda 3.3 c)
- 9) At this stage Anatec undertook specific data assessment, modelling and consultation to fully characterise the risk associated with the scoping boundary and identify what mitigation could reduce the risk to As Low As Reasonably Practicable (ALARP) under the Formal Safety Assessment process (which is part of the MCA methodology). Following this work a major red line boundary (RLB) modification



was undertaken pre PEIR, reducing the developable area of the Northern Array Area by 23% (14% of the array overall). This reduction allowed traffic to flow more sympathetically to and from the North Hinder Junction.

Risk Assessment and Mitigation

- 10) The RLB modification and other embedded mitigation were fed into a full risk assessment undertaken within the NRA for PEIR (which informs the shipping and navigation chapter [APP-078]). This risk assessment was also informed by the output of a Hazard Workshop undertaken with key stakeholders pre PEIR. This risk assessment applied the FSA process and its outputs demonstrated that shipping and navigation risks associated with the array areas were reduced to ALARP levels. Receptors assessed within the NRA include commercial vessels, fishing vessels in transit and recreational vessels with particular emphasis on sensitive routes such as commercial ferries and deep draughted vessels.
- 11) Embedded mitigation includes relevant DML conditions notably Schedules 10 and 11 Part 2 Pre-construction plans and documentation which also require further consultation and agreement post consent on the specific layout within the RLB. This consultation undertaken with the MCA and Trinity House will ensure that the final agreed turbine positions suitably consider both surface navigation and search and rescue access.

Offshore Export Cable Corridor

- 12) Looking now at the Offshore Export Cable Corridor (ECC) rather uniquely and given in recognition of the complexities of the existing Sunk routing measure in this location, sensitive location, shipping and navigation consultants (Anatec) were brought in to support the design process for the Offshore Export Cable Corridor (ECC) much earlier than normal. Again, extensive consultation and data assessment were undertaken and following this process outputs fed into the design of the offshore ECC to ensure that shipping and navigation effects were considered. The offshore ECC was then refined post PEIR to ensure that:
 - > a maximum distance possible was maintained from the Sunk pilot boarding station including the majority of associated activity; and
 - > ensure a perpendicular crossing of the charted Deep Water Routes into the Thames with as minimum interaction as possible.
- 13) The Deep Water Routes are charted lines advising the deepest draught vessels of the preferred route into the port.

SAC

- 14) Pre refinement of the offshore ECC, what was clear during consultation was that the distance between the offshore ECC and the Sunk pilot boarding station needed to be the maximum possible to minimise vessel risk including during the installation phase. This could only be achieved by moving the offshore ECC south and



intersecting into the Margate and Long Sands SAC. It is noted that this option was initially suggested by shipping and navigation stakeholders to maximise the distance from the Sunk pilot boarding station noting that moving north of the Sunk pilot boarding station was not an option given other more significant safety interactions with anchoring activity, the maintained depth Harwich approach channel and Deep Water Routes.

Crossing DWRs

- 15) The location of the project and its onshore substation means that Deep Water Routes have to be crossed and the Applicant has designed the offshore ECC to minimise those interactions including aiming to ensure that:
- installation activity is at a minimum in proximity to the Deep Water Routes;
 - that the offshore ECC crosses the charted Deep Water Routes as close to right angles as possible; and
 - to allow the Applicant's engineers to target areas of deeper patches of water where possible.

Offshore ECC Mitigations

- 16) Following consultation on the modified offshore ECC it was agreed that additional mitigations were still required to manage installation activity in the wider Sunk area by developing and implementing a Navigation & Installation Plan which is a bespoke unique mitigation to manage IPs concerns in the area around the Sunk pilot boarding area and the Deep Water Routes. Following drafting of an initial version [APP-252] consultation has been ongoing including an in-person workshop held with key IPs earlier this year.
- 17) Issues covered by the NIP include management of concurrent working and use of pilots, and we are confident that a final outline NIP can be agreed before the end of examination with only a few points at this stage needing to be agreed.
- 18) One other outstanding issue which relates to shipping and navigation is the cable burial depth. The Applicant recognizes the importance of these routes for deep draught vessels transiting to and from the London ports. Noting the acceptance that the cable routes need to cross the Deep Water Routes, consultation is ongoing to seek to agree the depth of burial for both base and future case environments. This agreement will be picked up as part of the Cable Specification Installation Plan [APP- 242 CSIP] given it relates to technical ability to install in various ground conditions.
- 19) Following agreement of the NIP and CSIP and noting requirements of MGN 654 in relation to cable installation we are confident that the risks associated with the offshore ECC are reduced to ALARP levels.



Onshore PLA radar

- 20) The Applicant is in discussion with the PLA on required protections for the PLA onshore radar at Holland Haven, adjacent to the proposed beach access. These include protections to ensure access is maintained and that any structures within the Beach Temporary Construction Compound located off Manor Way above 25m are agreed with the PLA prior to installation / erection.
- 2.3.2 The Applicant notes the submission made by the MCA that changes to the array boundary made before application have resolved many of its concerns regarding the impacts on the navigable sea room.
- 2.3.3 The Applicant notes the submissions made the Port of London Authority on the approaches to the Port of London and in particular, the need for the deep draft vessels to use water routes where depth must be maintained. The Applicant concurred with the PLA that discussions on protective provisions to ensure appropriate cable burial depth in the deep water channels for vessels seeking to enter the Port of London are ongoing.
- 2.3.4 The Applicant noted that the PLA highlighted a number of issues which it had previously raised with the Applicant, including the location of the offshore substation platforms. The Applicant concurred that it is working to resolve those concerns with updates to the application documents at Deadline 1.
- 2.3.5 The Examining Authority asked for clarification of a number of vessels using the Sunk TSS East. The Applicant undertook to respond to this query in writing; a response is provided as action point ISH1-6.
- 2.3.6 The ExA queried what the maximum deviation to a route cause by the development would be. The Applicant advised that the maximum deviation to a route is 2.7 nautical miles on the route from Grimsby to Zeebrugge. The ExA queried what that would equate to in time added. The Applicant referred to table 15.4 that it is an increase of 1.4%. The Applicant cannot provide a time given that all vessels travel at different speeds. The Applicant however notes that this is a very low percentage of added route length.
- 2.3.7 The ExA queried how the NRA came to the conclusion of a difference in route length of minus 1 nautical mile on the Hull to Zeebrugge route as a result of the array being constructed. The Applicant advised that the methodology is set out in the NRA, and it is likely that a reasonable worst case route which could be adopted has been used to create a figure, which figure may be slightly shorter than the route currently being used by vessel traffic.
- 2.3.8 The ExA requested a note setting out the background of the COLLRISK modelling. The Applicant agreed to provide this note in response to action point ISH1-8.



- 2.3.9 The ExA noted that the minimum distance between turbines within the array is 830m and the distance between the substation and turbines is 500m. The ExA queried how the minimum distance for each was chosen. The Applicant advised that the 830m figure was calculated as 4 times the rotor diameter of the turbine minus 50m for micro siting. This is a technically derived distance as where turbines are placed closer together they are more likely to become fatigued and the wind resource is likely to become impaired. The Applicant notes that 500m between installations is normally provided as a search and rescue corridor and therefore the 830m minimum distance is in excess of this and considered acceptable for other purposes.
- 2.3.10 The ExA requested that third party documents referenced in chapter 17 of the NRA be submitted to the examination. The Applicant has responded to this in its response to action point ISH1-9.
- 2.3.11 The ExA asked how safety would be maintained while cable laying vessels were working in the export cable corridor. The Applicant advised that the assessment of this has been undertaken considering both restricted movement vessels and other vessels. Restricted movement vessels such as cable laying vessels cannot move as freely as other vessels given that they are essentially connected to the seabed by the cable which is being laid. The assessment has defined a no concurrent working area (which has been agreed with the ports and is in discussion with other parties including North Falls and Sea Link) where no concurrent cable laying would be carried out. This is to ensure that there is always sufficient sea room within the channels for vessels to navigate around a restricted movement vessel. There would be no concurrent working by multiple restricted movement vessels in any channel. Other vessels do not have restricted movement and would be able to move out of the way of larger vessels using the deep water channels as required.
- 2.3.12 The Applicant provided an indicative rate of progress for cable laying vessels in the region of a few hundred metres per hour (depending on specific conditions). Accordingly, using this indicative number it would only take a matter of hours for a deep water route several hundred metres wide to be crossed.
- 2.3.13 The Applicant noted in response to a query that it did not consider that there would be any landscape impact on the onshore designated landscapes due to changes in vessel routing caused by the project.

2.4 AGENDA ITEM 3.4: EFFECTS FOR LANDSCAPE, VISUAL AND SEASCAPE

- 2.4.1 The Applicant presented a short summary of the items listed on the agenda the text of which is copied below.

a) Site selection and alternatives

- 1) The Applicant has considered alternative options for siting infrastructure and methods of construction, Operations and Maintenance (O&M) and decommissioning from the scoping phase through to DCO submission. These options have been assessed for community and environmental impacts.
- 2) The Applicant's Site Selection and Alternatives Chapter [APP-066] describes the iterative process that has been followed for alternatives assessment to date. This has included 9 stages as set out therein.



- 3) It is important to note that whilst the site selection process is described as a linear process, the reality of any project development is that site selection is a complex, iterative process requiring consideration of multiple factors to reach a decision.

Onshore Alternatives

Grid connection location

- 4) Following establishment of the array boundary (Stage 1), the next step in the site selection process was the identification by National Grid of a preferred grid connection point for the project. An Offer was presented to the Applicant for a connection to an East Anglia Coastal 400 kV substation, which was ultimately signed in November 2020. This new substation is now known as the proposed National Grid Norwich to Tilbury Reinforcement Project and the associated East Anglia Connection Node (EACN) substation.
- 5) On receiving the revised Connection Offer, the Applicant moved the site selection process for onshore infrastructure from Suffolk to the Tendring peninsula in Essex. The DCO Application therefore proceeds on the basis of the project connecting to a National Grid substation on the Tendring peninsula in Essex.
- 6) Once National Grid identified the refined search area for the EACN substation, the Applicant then planned to identify onshore export cable corridors and a new substation location in the vicinity of the EACN taking into account onshore environmental constraints.
- 7) Two key drivers for the location of the landfall zone were the location of the grid connection offer area and the location of the array areas, as these locations dictate the relevant stretch of coastline along which a landfall can be feasibly sited to accommodate a connection point between the two.
- 8) Once a feasible stretch of coastline was apparent, further constraints mapping and assessment was undertaken to identify potential Landfall Zones for evaluation, avoiding, as far as possible, areas with significant ecological designations along the coast, significant landscape and archaeological designations, the presence of coastal settlements and/ or other coastal development (Section 4.8 of the Applicant's Site Selection and Alternatives Chapter [APP-066] provides greater detail of the types of constraints assessed). The landfall zone was further refined through PEIR and ES following stakeholder consultation and design studies. In particular, impacts to Holland Haven Marshes SSSI were minimised through refinement and following extensive site selection work including alignment with North Falls OWF, a joint landfall location was selected with North Falls OWF in Summer 2023 at Sandy Point between Frinton-on-sea and Holland-on-sea.

Onshore Cable Route

- 9) It was not possible to identify defined locations for VE transmission infrastructure until National Grid had identified more accurately the location for their new EACN



substation. Therefore, an Onshore Infrastructure Area of Search was identified for use at Scoping. Consultation with stakeholders continued prior to scoping. Once National Grid had identified its refined search area in the vicinity of the existing Lawford substation, the Applicant was then able to identify viable Substation Search Areas. At this stage the Applicant explored opportunities to co-ordinate with North Falls OWF. This included identifying an Onshore cable corridor that would be wide enough for two projects.

- 10) A Black-Red-Amber-Green (BRAG) assessment was carried out of the identified options, to compare the environmental, engineering, land management and cost constraints and opportunities of each option (further details are available in Section 4.12 of the Applicant's Site Selection and Alternatives Chapter [APP-066]).
- 11) A number of refinements were made to further reduce potential impacts. One of the key technical constraints was the identification of the existing Affinity Water Main which runs along a similar corridor to the east of Thorpe-Le-Soken.
- 12) It was concluded that Onshore Cable Route Segment Options would be included within the stage 1 public consultation, held between 30 June and 12 August 2022. Following consultation feedback, further design work and concern over the proximity of route segment North West 1 to Tendring, segment North West 1 was dropped. Route segments East AWM Alternative (North) and East AWM Alternative to the south were taken forward as the preferred combined Onshore Cable Route.
- 13) The Onshore cable route was then refined in response to further consultation feedback, updated site surveys and in coordination with North Falls.
- 14) A key technical requirement for the location of the Applicant's Onshore Substation was for it to be within approximately 3 km (maximum 5 km) from the grid connection point to minimise the length of the 400kV connection. Once National Grid had identified its refined search area in the vicinity of the existing Lawford substation, the Applicant was then able to identify viable Substation Search Areas.
- 15) In order to identify the most appropriate location to site the Applicant's Onshore Substation, National Grid's Guidelines on Substation Siting and Design (The Horlock Rules) were taken into consideration. These guidelines document National Grid's best practice for the consideration of relevant constraints associated with the siting of electricity network infrastructure. The Horlock Rules have been considered, as part of the development of the Onshore Substation, relating to design, local context and land use, amenity, and line entry.
- 16) For LVIA, in accordance with the rules, the Onshore Substation location is sited away from built up areas, helping to minimise impacts on visual and noise receptors, avoids all landscape designations including the Dedham Vale AONB, ensures the majority of the existing landscape features such as trees and hedgerows are protected and takes advantage of screening provided by existing



trees and hedgerows along Grange Road. The layout around the Onshore Substation has included sufficient space for the screening of views through planting, as required by the Horlock Rules.

- 17) As a result of this option development and evaluation process, three Substation Search Areas were identified within the Non Statutory public consultation in summer 2022.
- 18) At PEIR, two of the three search areas were combined leaving two search areas.
- 19) Site selection refinements to the substation location for the final ES included selection of a single substation location north of Ardleigh Road and adjacent to National Grid's proposed EACN substation.
- 20) Coordination between the projects and co-location of the Applicant's and North Falls' substations will result in a slightly reduced overall land take compared to two individual substations located in different areas. It allows for opportunities to co-ordinate designs, potentially share temporary and permanent access roads, and co-ordinate landscape mitigation principles to further reduce impacts on the surrounding area.

Offshore alternatives

Array

- 21) The siting of the offshore array, as part of The Crown Estate's extensions round, was necessarily limited by needing to be adjacent to the Galloper boundary. The site was confined by Greater Gabbard offshore wind farm to the west of Galloper, whilst the Traffic Separate Scheme separates the arrays of both Gabbard and Galloper providing further constraint. Following environment constraints analysis which included considering ecology, shipping and other infrastructure, two array areas to the east of Galloper were identified.
- 22) Following scoping, further analysis of survey data alongside stakeholder engagement was undertaken which concluded that a refinement of the northern array boundary would be required to address shipping and navigation concerns. As such, the northern boundary of the array was realigned to minimise displacement of heavily trafficked shipping routes and generally increase sea room. This reduction also had benefits for SLVIA by reducing lateral spread of turbines and increasing the visual 'gap' between East Anglia 2 and Five Estuaries.

Offshore ECC

- 23) Following identification of the connection location and landfall zones, an Export Cable Corridor area of search was identified based on initial constraint mapping. Within this area of search, a number of ECC options were identified following a range of design parameters as well as The Crown Estate's Cable Route Protocol and stakeholder engagement. The final ECC was then identified following further



detailed analysis and using refined landfall zone. This analysis included consideration of cable crossings water depth, avoidance of known wrecks, pilot boarding and other shipping constraints. Further minor refinements to the ECC were made between scoping and PEIR, and following PEIR an area of the ECC closest to the Sunk pilot boarding station was removed.

b) The design for the proposed Onshore Substation, whether air insulated or gas insulated

- 24) The Onshore Substation will use either Air Insulated (AIS) or Gas Insulated (GIS) switch gear technology. The choice of switchgear affects both the total land area required and the size and type of buildings which will be needed. The choice of AIS or GIS will be part of the detailed design process, and a decision will be made post-consent and prior to construction commencing.
- 25) The choice of switchgear affects both the total land area required and the size and type of buildings which will be needed, however having both options in the DCO allows the flexibility for options such as the use of AIS substations, but with the placement of the switchgear in buildings for aesthetic, noise impact and technical reasons.
- 26) The project has outlined the Onshore Substation Design Principles [APP-234]. These design principles will be applied in the detailed design process, which will include engagement with key stakeholders. Topics for the detailed design can include within reason, the Onshore Substation layout, the mitigation planting layout and species selection, and colour pallets to be applied in respect of specific structural elements.
- 27) It is noted by the Applicant that North Falls has committed to AIS. There is a strategic difference between the projects, which have been raised during the Design Council's review. The focus of the Design council evaluation related to the assumption that GIS would include SF6 (which is being phased out). The market is currently developing SF6 free switch gear and options where very small amounts of SF6 is only contained in the circuit breakers; retaining this option into detailed design allows The Applicant to ensure the best technological options to reduce impacts may be considered.
- 28) The Applicant's Onshore Substation will contain a number of elements including electrical equipment, control and welfare buildings, lightning protection rods (if required) and internal road access. A security fence will surround the Onshore Substation compound.
- 29) The largest structure within the Onshore Substation will be the Onshore Substation building, with a maximum height of 15 metres above existing ground level (assuming a GIS design). All other equipment is designed not to exceed a height of



15 metres above existing ground level with the exception of slender lightning masts which would be up to 18 metres in height. The maximum height of the GIS buildings and the maximum AIS footprint have been used to form the LVIA Rochdale Envelope and this is used to ensure the maximum parameters of the Onshore Substation are assessed. It should be noted that the components of the AIS and GIS options have different heights and as their locations are not fixed, the maximum height of 15 metres has been applied to the full extent of the Onshore Substation footprint. There is limited scope to alter the design of the infrastructure as it has to meet very specific technical and safety standards, but there is some scope regarding the application of colour on specific structural elements, which will be explored post consent

c) Natural England's representations on seascape, landscape and visual matters in [PD2-002] and [PD2-011]

- 30) The seascape and visual assessments in Section 10.18 [APP-079] follow guidance and the approach taken on other NSIPs; and there is agreement with IPs that the assessment methodology is appropriate, robust and in accordance with professional guidance.
- 31) The Applicant's assessment is that the Five Estuaries array areas will not have significant adverse impacts on the natural beauty and special qualities of the SCHAONB and that the statutory purposes for designation of the SCHAONB will not be compromised.
- 32) East Suffolk Council and Sussex County Council agreed with these conclusions in earlier submissions; however this is an area of disagreement with Natural England, who have advised that 'there would be significant effects on the SCHAONB special qualities' and that Five Estuaries would compromise the purposes of designation.
- 33) Natural England in their relevant representation appear to use an overly mathematical (quantitative) approach based on the vertical field of view (apparent height) of the closest WTG to arrive at significance, which has no basis in guidance or accepted practice. Judgements on significance should properly be based on the assessment material provided in the ES, particularly the photomontages (Figures 10.6 to 10.46 (APP-204 to APP-224)).
- 34) The Five Estuaries array areas are located 37.3km from the closest point of the SCHAONB. Most of the WTGs are actually located beyond 40km (Figure 10.1) (APP-199). A conclusion of Significant landscape and visual effects at distances over 37km would be unprecedented for offshore wind farms and would be wholly disproportionate.
- 35) The assessments undertaken found that impacts on views and special qualities of the AONB coastline are likely to be Moderate/Minor at worst, and they are not significantly adverse [APP-079] and this is agreed with other IPs (ESC/SCC).



- 36) The Applicant considers it has already minimised harm to the special qualities of the AONB, providing reasonable mitigation within the project design (in line with NPS EN-1).
- 37) The Applicant has shown regard to the statutory purpose of the AONB and sought to further its purposes, insofar as is possible around various siting, operational, viability constraints; and to avoid compromising the purposes of designation (to conserve and enhance natural beauty) (in line with NPS-EN-1 5.9.12).
- 38) The Applicant has sited the array area to the eastern side of the existing Greater Gabbard and Galloper OWFs - with a large separation distance of 37.3 km from the SCHAONB at its closest point; reducing the spatial extent of the array area, limiting the northward lateral spread of WTGs when viewed from the coast; and reducing the maximum height of the WTGs from 424 m to 399 m above LAT (395 m above MHWS), leading to a reduction in the Zone of Theoretical Visibility and apparent height of the WTGs. The maximum WTG height is planned to be further reduced to 370m LAT to blade tip, due to MOD requirements, which will result in a further reduction in seascape and visual effects.
- 39) As a result, the effect of the Five Estuaries array areas on the special qualities of the AONB is, as has been assessed, not significant and that the statutory purposes for designation of the SCHAONB will not be compromised

d) The difference in seascape effects associated with a development of 41 “large” and 79 “smaller” wind turbine generators

- 40) The SLVIA assesses the effects of the 41 turbine ‘large’ WTG layout (399m above LAT) as a maximum design scenario, in accordance with the Rochdale Envelope approach of assessing the effects of a likely worst-case scenario.
- 41) Wirelines showing the 79 ‘smaller’ WTG layout (324m above LAT) were produced to inform the assessments, and will be submitted at deadline 1 to allow comparison of the layouts.
- 42) The Applicant considers that the effects of the 79 ‘smaller’ WTG layout are of lower magnitude due to the smaller apparent height of the 324m WTGs, The Zone of Theoretical Visibility (ZTV) for the 79 ‘smaller’ WTG layout also covers a smaller geographic area than for the larger WTG.
- 43) The 79 ‘smaller’ WTG layout would, on the other hand, result in a greater overall number and density of WTGs in the array; and there would be a greater number of (smaller) WTGs visible in the ‘gap’ on the horizon between Galloper and EA2 with this layout.
- 44) The 79 ‘smaller’ WTG layout will reduce the magnitude of effects, but it is unlikely to change the effects below the thresholds already assessed for the larger WTG



layout in the ES. These effects are already assessed as generally being of low magnitude and no greater than moderate/minor and not significant EIA terms.

- 2.4.2 The Applicant noted the points raised on the landscaping around the substation. The Applicant notes that mitigation and planting shown on the OLEMP is indicative. The Applicant has created a framework however the detailed design will be undertaken post consent.
- 2.4.3 In response to the queries raised by affected landowners as to using bunding, the Applicant considers that bunding would look alien the landscape surrounding the substation site. If built up to a height of 4 or 5 metres it would become intrusive in itself. Bunds are also likely to dry out in this location, adversely impacting the planting on them. The Applicants current view is that it would try and avoid bunding and rely on planting as it provides more reliable and effective screening for this development.



2.5 AGENDA ITEM 3.5: EFFECTS FOR ONSHORE ECOLOGY

2.5.1 The Applicant presented a short summary of the items listed on the agenda the text of which is copied below.

EIA Surveys, Onshore Infrastructure

- 1) The survey scope for habitats and species has been agreed with relevant stakeholders through the scoping and evidence plan process. In all cases field survey data was gathered in accordance with current good practice guidelines by staff with appropriate expertise.
- 2) Section 4.7.1 of [APP—086] 6.3.4 Onshore Biodiversity and Nature Conservation confirms that no significant limitations were associated with the surveys.
- 3) The Applicant notes that NE has raised a query on the timing of surveys undertaken for badgers. The Applicant recognises that whilst badger survey can be undertaken year-round, summer months are not optimal as dense vegetation may prevent access to or may obscure field signs. This limitation is recorded within Section 2.2 of 6.6.4.21 Protected Species Report and Figures (Confidential) [APP-152], which concludes “This is considered to be a minor constraint to the objectives of this study, since the vast majority of the survey area proved accessible”. The Applicant is therefore confident that the assessment is valid, and that the mitigation proposed is appropriate.

LBBG Compensation Orford Ness Surveys

- 4) Vegetation and invertebrate surveys have commenced on Orford Ness (NT land) and are hoped to be completed by the end of October. Survey reports will be provided to Natural England and the Examining Authority in due course and will feed in to an updated assessment for the Lesser Black Backed Gull compensatory area.

Assessment Methodologies

- 5) EIA: The Applicant confirms that the evaluation of ecological importance and assessment of impacts has been undertaken in accordance with the Chartered Institute of Ecology and Environmental Management (CIEEM) (2022) Guidelines (CIEEM guidelines”), which are widely regarded as industry best practice.
- 6) The Applicant has assessed a reasonable worst case for the project using the Rochdale envelope approach. The EclA is based upon assessing the indicative corridor location within the Order Limits. Due to the significant effort made at the design stage to avoid ecological receptors, the indicative corridor is a robust reasonable worst case.
- 7) Where potentially significant effects have been identified, the mitigation hierarchy (avoid, mitigate, compensate, enhance) has been applied. The project has committed to avoidance of direct impacts to all:



- > Statutory designated sites, Local Wildlife Sites and ancient woodland;
 - > Watercourses and ponds;
 - > Lowland meadow;
 - > Woodland;
 - > Hedgerows known to support foraging barbastelle bat and/ or dormice; and
 - > Trees known to support roosting bats.
- 8) There is high level agreement with Essex County Council, Tendring District Council, NE, EA and EWT on the methodology used to prepare the ES and the Applicant is not aware that they are objecting to the methodology used.
- 9) Appropriate Assessment: The Applicant has completed a Stage 1 Screening Assessment and a Stage 2 Report to Inform an Appropriate Assessment in accordance with the requirements of the Habitats Regulations and in line with government guidance. At Stage 1, the applicant identified European and Ramsar sites for which likely significant effects could not be excluded and then proceeded at Stage 2 to assess the effects on the qualifying interest features of these sites. In total, eleven designated sites (or rather five sites with overlapping designations) were identified for which likely significant effects could not be excluded as a result of onshore works and 29 'onshore' qualifying features were subject to a detailed impact assessment. The designated sites are all coastal apart from one which is a reservoir located inland.

Impacts/Mitigation Designated sites and qualifying features and protected species

- 10) EIA, Embedded mitigation: 6.14 Site Selection and Alternatives [APP-066] sets out how the project sought to avoid ecological designated and sensitive sites through the iterative multi-stage design process which included consideration of feedback from consultations.
- 11) The mitigation contained in Table 4-15 of the ecology chapter [APP086] includes mitigation measures or commitments that have been identified and adopted on the residual onshore ecological receptors. A key element is that all construction work will be undertaken in accordance the Code of Construction Practice [APP-253] and the Landscape and Ecological Management Plan, an Outline Landscape and Ecological Management Plan [AS-006] was provided with the application.
- 12) Statutory designated sites: The site selection process sought to avoid where possible statutory designated sites. However, six designated sites were identified as having important ecological features that may be affected by proposals, and were subject to detailed assessment. None of these sites will be directly impacted by the project.
- 13) Applicable to all of these sites are a range of mitigation measures during the construction period to reduce disturbance to non-breeding birds.



- 14) For Hamford Water, additional mitigation measures during the construction period for Fisher's estuarine moth include: pre-construction checks for its foodplant (hog's fennel) during the season prior to work commencing; and if a plant(s) is located and cannot be retained in situ, translocation and/ or propagation.
- 15) In all cases no significant residual impacts are predicted. These mitigation measures are all secured through the outline LEMP/CoCP.
- 16) It is noted that NE in its RR response [at J20] request mitigation for black-tailed godwit (and other species) for unplanned maintenance during the operational period. The Applicant confirms that such mitigation is proposed for black-tailed godwit (and other species). There will be screening of unscheduled maintenance works in the vicinity of Holland Haven Marshes SSSI (where this species occurs), in the same way as detailed for construction.
- 17) LoWS: Six Local Wildlife Sites within 200m of the Order Limits were also identified as important ecological features that may be affected by proposals, and were subject to detailed assessment. None of these sites will be directly impacted by the project. Indirect impacts as a result of changes to air or water quality have been considered within the ES which concluded no significant effect. The CoCP (APP-253) sets out pollution control principles which would be implemented during construction. As a result, no significant impacts are predicted.
- 18) Buffer zones: Some RRs have been received (for example from NE and the Forestry Commission) seeking clarity on the extent of "buffer zones" for designated sites, retained habitats (including ancient woodland) or the species they support. As set out in the Outline Landscape and Ecology Management Plan (OLEMP), the extent of the buffer zones will be established by the Ecological Clerk of Works (ECOW) based on guidance and experience, specific to the location and impact, and where appropriate the effect will be observed.
- 19) Protected Species: Invertebrates (using coastal habitats, the Holland Brook and other S41 habitats), GCN and common toad, reptiles, breeding and non-breeding birds, bats, badger, otter, water vole, dormouse and other S41 species were each identified as important ecological features and were subject to detailed assessment.
- 20) No significant impacts are predicted to any European protected species (EPS). With the exception of GCN, no EPS licences are required to implement the scheme based on data to date. However, due to the high mobility and local presence of dormice and bats, the project has retained the ability to implement licensed mitigation for both, in the unlikely event pre-construction survey confirms they are present and would be unavoidably affected. Natural England has confirmed in its RR it is in agreement with the project's proposed approach in respect to EPS licensing.



- 21) With the exception of certain breeding bird species, no significant impacts are predicted to any other protected species. Significant impacts are predicted for corn bunting (county level) and skylark (local level) as a result of effective permanent habitat loss at the onshore substation. Due to the requirement for landscape screening at the Onshore substation (the presence of which is an adverse impact for these species), it is not possible to provide additional mitigation/ compensation within the Order Limits. A project level decision was made in respect of planning balance; determining that the benefits of the scheme outweighed the potential impact to skylark and corn bunting.
- 22) The Applicant notes that NE has queried the use of time periods for the definition of duration in relation to impact assessment for protected species. The Applicant advises that the time frames referenced in [APP-086] 6.3.4 Onshore Biodiversity and Nature Conservation [APP-086] are explicitly unrelated to protected species or habitats life cycles (and are presented as such in section 4.6.10 of [APP-086] 6.3.4 Onshore Biodiversity and Nature Conservation). They are provided simply to add context for how long an effect may last, irrespective of how time relates to the ecological feature experiencing it.
- 23) Appropriate Assessment: As required European sites were subject to assessment. The effects of the project were considered alone and in combination with other Plans and Projects.
- 24) In summary, all of the identified pathways are minor and/or short-term can be mitigated such the Project would not undermine the conservation objectives for any of these onshore features and sites, and would therefore not result in an adverse effect on the integrity of these sites through the construction and operation of the onshore infrastructure, either alone or in combination with other Project and Plans.

Biodiversity Net Gain

- 25) The project must deliver biodiversity enhancement as a requirement of planning policy, including NPPF. However, at this time there is no statutory requirement for the project to use a metric, or provide a specific quantity of net gain.
- 26) It is however recognised that Schedule 15 of the Environment Act 2021 introduces “biodiversity gain in nationally significant infrastructure projects”, and that these changes will be enacted through subsequent secondary legislation or regulations, currently predicted to be November 2025. They will not apply to this application.
- 27) The Applicant is fully committed to delivering Biodiversity Net Gain. The project has worked hard to maximise biodiversity benefit within the Onshore Order Limits at the Onshore Substation Works Area
- 28) After the outline landscape and ecological plan was drafted, and respecting the recommendation of NPS EN-1 para 4.6.7; the latest version of the biodiversity



metric (the Statutory Metric) has been used as a basis to quantify the biodiversity baseline and net gain outcomes.

- 29) For the purposes of the BNG assessment submitted alongside the VE DCO application an indicative scheme design for the ECC and OnSS has been assessed, which is considered to represent a reasonable worst case scenario compared with final design. This approach allows an understanding of the maximum area of land required in order to deliver BNG and if this can be met on site within the Order Limits.
- 30) The Metric will be re-run post-DCO consent, and the BNG Final Design Report shall be prepared. It is envisaged that this would be the subject of a DCO Requirement.
- 31) The Applicant notes that Natural England agrees the approach taken to determining “On-Site” and “Off-Site” is acceptable. This assumption will be used for post-DCO future iterations of the Metric.
- 32) The Applicant notes that Natural England agrees the approach taken to reinstated hedgerows in Section 4.1.1 of [APP-149] Onshore Biodiversity Net Gain Indicative Design Stage Report is acceptable. The Applicant disagrees that reinstated hedgerows that are not subject to a 30 year management plan should be regarded as lost; the rationale for this stance is provided at Section 4.1.4 of that Report.
- 33) For clarity: the assumption used for post-DCO future iterations of the Metric would be that hedgerows that are removed then subsequently reinstated and subject to the agreed aftercare period to ensure successful establishment are “lost” then “created” (using Metric terminology).

2.5.2 The Applicant noted in response to discussion and submissions made by third parties that it wished to be very clear about the difference between delivering of environmental mitigation and BNG. The land around the substation is being proposed for landscaping and environmental mitigation. Although this will affect the BNG metric it is not being sought for provision of BNG. The Applicant is in discussion with an offsite provider to provide the BNG units necessary to achieve the 10% target the project has set.

2.5.3 The ExA, referring to Appendix J of the Natural England representation, Onshore Ecology, identified a number of alleged deficiencies and the timings of surveys and setting of time periods for assessment. The Applicant advised that it would be responding to Natural England’s relevant representation in detail at Deadline 1 however, in summary, the two points raised by the ExA were addressed in the opening statement as they relate to badgers. The Applicant noted that it would prefer not to go into detail of where badger sets may be located given that these are set out in the confidential Appendix. The Applicant’s position is however that Natural England may have missed some of the information or has misunderstood some of the information presented in the appendices and it is anticipated that the Applicant’s clarification in response to its relevant representations will fully resolve the matter.



2.5.4 Mr Fell on behalf of Strutt & Parker Farms raised an objection to the land take being sought to prevent the need to remove areas of hedgerow. The Applicant confirmed that this is because the hedgerows being referred to have been identified as a habitat for a protected species (dormice). In order for the Applicant to adversely impact this habitat it would require a licence from Natural England. To be granted such a licence three tests must be satisfied, one of which is that there is no satisfactory alternative to the works which would adversely affect the habitat. Accordingly, the project has sought to go round hedgerows through existing gaps or through areas which are not considered to be suitable habitat for protected species as it does not consider it could obtain a licence from Natural England to remove sections of hedgerow in these circumstances. The Applicant is happy to respond to Mr Fell's specific concerns on hedgerows following consideration of his detailed written representation to be submitted at Deadline 1.

2.6 AGENDA ITEM 3.6: EFFECTS OF FARMING

2.6.1 The Applicant presented a short summary of the items listed on the agenda the text of which is copied below.

a) Agricultural Land Classification (ALC)

- 1) Provisional Natural England ALC mapping has been used to assess the grades of land crossed, with the majority of the land selected being good to moderate Grade 3 land, minimising where possible the impact on Grades 1 and 2 land.
- 2) All Grade 3 land crossed has been classed in the assessments as 3a as a precautionary approach, so treated as BMV land. Subgrades will be confirmed during pre-construction soil surveys, in order to inform soil management during construction.
- 3) The ES Site Selection and Alternatives chapter [APP-066] sets out at 4.10.2 "*One of the key technical requirements was for the OnSS to be within around 3 km (maximum 5 km) from the grid connection point to minimise the length of the 400 kV connection.*" All of the potential sites considered within this area are BMV land. Accordingly BMV cannot be avoided.
- 4) 6.14 Site Selection and Alternatives [APP-066] 4.12.20 identifies the guiding principles of the route selection for the onshore ECC, one of which was "Wherever possible the cable route will seek to utilise open agricultural land" to minimise impacts to residential and ecological receptors. "Minimise impacts on agricultural practices and access, avoid rendering parcels of agricultural land inaccessible during construction and installing cables along field boundaries where possible"

b) Temporal impacts on agricultural activity

- 5) The OnSS site is assessed as being permanently lost to agricultural use due to the length of time for which the substation will be required.
- 6) Permanent rights are sought for the underground cables. There will be build period disruption to the existing agricultural activity, but then in operation there would only



be disruption in the unusual case of needing to repair or replace a cable. Cables will be buried deep enough to allow agricultural operations to resume over them. The construction phase impact is accordingly short term.

- 7) The overall onshore construction and commissioning for the project is expected to take around five years to fully complete. This is for all of the onshore works and not all sections will be developed concurrently. The onshore cable route construction period has been assessed as a total length of 18 to 27 months in its entirety. The cable route would be constructed in sections, and the individual sections of the cable route are anticipated to require up to 18 months for construction.
- 8) The Applicant has to make allowance for some unexpected elements to arise in creating the Rochdale Envelope for the build period and retain flexibility in the use of temporary possession to address uncertainty. In many areas, it is likely that land will be able to be restored and handed back earlier than the conclusion of the full construction programme. The timing of this will however depend on site specific conditions, the use of the land, the works it is being used for and the build scenarios.
- 9) The Applicant is also seeking to temporarily occupy land required during the construction of the project over which rights are not required once construction has been completed. The use of temporary possession acts to minimise the areas over which compulsory acquisition is sought. The Applicant cannot define specific periods for which temporary possession will be taken on individual plots as this will depend partly on the build scenario, partly on the detailed construction programme and partly on –site-specific issues such as ground conditions or the details of the construction methodology to be used in a particular location. The build scenarios are described in the Co-ordination Document [APP-263] at section 3 and allow for potential to co-ordinate closely with the North Falls offshore windfarm project, thereby seeking to minimise the overall impacts on landowners of the construction of the two projects. The use of co-ordinated build scenarios may increase the length of temporary possession by the first project, but would reduce the overall impact on the affected landowners

c) Soil management short (Construction) and long term (Operation)

- 10) As set out in CoCP [APP-253] through pre-construction soil surveys, soil profiles will be recorded to a depth of 1.2m, which will include soil type and boundary change depth. Soil samples will be taken to establish baseline soil health and condition, which will be used to inform storage and restoration methods.
- 11) The soil management plan will define stripping methods, storage requirements to protect each soil profile, and restoration methods. It will also require that during construction a soil budget will be created, recording the actual amount of each soil profile removed, storage location, and storage practice to be followed. This is



intended to ensure that soils are removed and stored according to their current condition and managed in a way to be returned in the equivalent condition and profile to being removed.

- 12) Soil removed from the substation will not be stored until decommissioning. Soil stored for the length of time envisaged (around 40 years) would not retain the qualities which currently render it grade 1 BMV land. It is unrealistic to store soils long-term in a way that they will retain their current BMV status, especially for the length of time required. Stored soils will succumb to natural regeneration, through top growth of vegetation including trees, and fibrous roots, the soil will be rendered unsuitable for agricultural use.
- 13) The Applicant is aware that some interested parties have raised queries regarding any potential for heat from the cables to affect soil and any crops thereon. Underground cables are not new within the UK or Europe, with no evidence that there is any significant effect on the growth, ripening, or harvest of crops.

d) Restoration of the export cable corridor and the onshore substation site

- 14) The Applicant notes that the cable corridor will be restored to be suitable for agricultural use following construction. The restored land will be monitored and soil samples taken for analysis for an initial period of one year, to check that the soil health and condition has been returned to that it was removed, if this is found not to be the case, discussions will continue with the landowner(s) concerned in order to plan and measure ongoing interventions, until a point of equilibrium against baseline soil assessments is met.
- 15) The final decommissioning plan will have to have regard to the statutory obligations, EIA requirements and guidance in force at the time. It is not possible to precisely define every element of that at this stage.
- 16) The Applicant considers that it cannot say with certainty at this time what the restoration of the substation would look like, and the assessment has not assumed that the whole area will be returned to farming. The substation footprint itself will be dismantled, after removing the electrical equipment, foundations will be cut at least 1m below ground or fully removed, with pits backfilled with equivalent soils removed. Materials will be recycled where possible. Any contamination will be treated to required standards. Fencing, buildings, and access tracks will be demolished and disposed of, and the land restored. The area may return to agricultural use, with consideration for ecological and agricultural needs at the time. However, the Applicant cannot commit that the planting around the substation would necessarily be removed as it will have ecological value and the Applicant cannot know with certainty that removal of it would be acceptable at the time of decommissioning.



e) Water resources and management Construction and Operation

- 17) Farm drainage will be maintained through construction so not to affect field drainage outside of construction areas.
 - 18) Land drains will be reinstated at the end of construction to ensure their ongoing effectiveness.
 - 19) The restored land will be monitored after reinstatement to check that the condition is as expected including that drainage is functioning appropriately and where issues are identified, discussions will continue with the landowner(s) concerned in order to carry out potential subsequent repairs.
 - 20) The Applicant is aware majority of the agricultural holdings along the route operate arable enterprises and is has proposed mitigation measures which will lessen impacts in the CoCP [APP-253] section 4.1. The detail of these will be progressed at detailed design with each landowner but would include,
 - > Movement of water pipes,
 - > Movement of or alternative provisions for irrigation systems
 - > Preconstruction drainage.
- 2.6.2 The Applicant confirmed that no investigation has been carried out to establish whether Grade 3 agricultural land is Grade 3a or 3b. The Applicant notes that a precautionary approach has been taken and it has been assumed that all Grade 3 land is Grade 3a within the EIA.
- 2.6.3 In response to the points raised by Mr Fell on behalf of Strutt & Parker Farms, the Applicant clarified that the construction practice addendum document which has been referred to in the voluntary land negotiations brings together the controls proposed in the DCO documents and was intended to assist the landowners by providing this in a single reference point rather than requiring them to look throughout the DCO Application. That document does not set out different controls or practices than are being proposed through the DCO.
- 2.6.4 The Applicant confirmed that the CoCP and Soil Management Plan would not be specific to each landowner as these are the equivalent of planning condition documents which would be for the approval of and, if necessary, enforcement by, the relevant planning authority not landowners. The specifics of each landholding is being discussed through the voluntary negotiations process as is normal on a DCO project.
- 2.6.5 The Applicant was asked whether monitoring points for ground water levels would be in place over the winter of 2024/2025. The Applicant advised that a number of monitoring points are already in place and data is being collected on a monthly basis.
- 2.6.6 The ExA queried when the project first took specialist advice on the impact of farming. The Applicant advised that it would have to respond to that query in writing however specialist advice on the topic had started pre scoping. The Applicant is responding to this query under action point ISH1- 12.



- 2.6.7 The Applicant noted that none of the farming considerations arising in this examination are novel. Land use and the impact on agriculture was considered from the beginning as part of the site selection process.
- 2.6.8 The Applicant notes that the shareholder Partner leading the development of this application, RWE, is a very experienced developer and one of the most experienced offshore wind developers in the UK. It has dealt with farming issues on all of its schemes and that issue is hardwired into its considerations from the very beginning. The Applicant considers that focussing on one individual farming system is misleading for a project of this scale, where farming systems, crop rotations in place, and the type and size of equipment used varies between landowners.
- 2.6.9 The ExA asked a number of questions relating to the impact on farming of the cable corridor during construction including any increases in time required or loss of efficiency caused by the corridor's location. The Applicant responded that not only is it unable to address that question as it will depend on the individual practices and equipment of each farmer, it also considers that these matters relate directly to compensation. The Applicant has never and does not suggest that there will be no temporary impact on farming practices due to the development. The proposals made by the Applicant are however entirely standard and follow the approach found to be acceptable in numerous other offshore windfarm DCOs. This includes the approach to soil management. The Applicant noted that it has an interest in not taking more land or land or more time than is necessary as that increases its liability to compensation. However, the Applicant considers that some adverse temporary impact on farming is unavoidable in order to deliver the development proposed.

2.7 AGENDA ITEM 3.6: TRAFFIC AND TRANSPORT

- 2.7.1 The Applicant presented a short summary of the items listed on the agenda the text of which is copied below.
- 1) The Applicant has engaged with Essex County Council and National Highways since the start of 2022, to discuss, refine and agree the scope and approach of the Traffic and Transport assessment for the project.
 - 2) Whilst the majority of the assessment approach has been agreed, the Applicant has continued engagement since submission and there are ongoing discussions with both stakeholders.
 - 3) The Applicant has also met with Essex Police, East of England Ambulance Service and Essex County Fire and Rescue, to discuss their relevant representations and has identified additional drafting within outline management plans to seek to address their concerns. These changes are currently under discussion.
 - 4) The Applicant is in the process of updating a number of application documents related to traffic and transport, to reflect this continuing stakeholder engagement and these amendments do not fundamentally change the conclusions of the assessment.



Road traffic surveys and predicted traffic generation (construction and operational)

- 5) To inform the design of the project in terms of access, a desktop review of potential construction vehicle access routes was undertaken, followed by site visits to the study area as set out in Section 2.11 and 2.12 of the Traffic and Transport Baseline Report - Part 1 [APP-172].
- 6) The use of the highway network has been minimised as far as practicable by the use of long haul road sections, such as at route section 3, which allows the centre of Thorpe-le-Soken to be avoided by construction HGVs.
- 7) With the exception of:
 - > A section of Bentley Road;
 - > A section of Manor Road;
 - > A small section of Ardleigh Road; andThe construction vehicle access routes used by HGVs comprise the Strategic Road Network and A and B Classified Roads.
- 8) Given the small number of HGVs associated with the construction of the project that could possibly use the small sections of Ardleigh Road and Manor Road, no physical improvements are proposed, and use would be managed through measures within the final Construction Traffic Management Plan.
- 9) Bentley Road is already used by some HGVs for access; however, given the anticipated increase in the number of HGVs on this road between the A120 and the construction accesses associated with the project, some improvements have been identified to safely accommodate the passing of 2 HGVs, at the junction with the A120 and along a section of Bentley Road. No HGVs associated with the project would travel through Little Bromley or other settlements to the north of the A120.
- 10) Baseline traffic surveys to inform the assessment were set out in a Technical Note in March 2022, issued to Essex County Council, which was discussed and agreed at an Expert Topic Group meeting, and to National Highways, who agreed the approach in a Briefing Note.
- 11) Speed data was collected to inform the design of the construction accesses and haul road crossings, all of which have been discussed and agreed in principle with Essex County Council, and have been subject to a stage 1 road safety audit.
- 12) In terms of anticipated construction traffic, HGV trip generation forecasts have been derived based on the likely plant and quantity of materials that need to be delivered for the construction activities.
- 13) Construction workforce estimates have been derived based on best practice and experience from other projects and a target of an average vehicle occupancy of 1.5, which would be monitored through the final Workforce Travel Plan.



- 14) The traffic and transport assessment is based on a maximum design scenario, using worst case parameters and combining the maximum anticipated daily number of HGVs and the maximum anticipated daily number of workforce vehicles, which are then combined, for a robust assessment.
- 15) It should be noted that the peak period is likely to be for a short period within the overall construction programme, with lower vehicle movements at other times.
- 16) The abnormal indivisible loads (such as the cable drums and the transformers for the substation], which would be delivered towards the end of the construction programme. .
- 17) The maximum anticipated daily HGV and workforce vehicles for each route section is based on construction of all route sections and the Substation starting at the same time over a total of 19 months, when in reality the construction activities of some sections could start later than month 1, and therefore potentially a lower maximum overall daily impact, whilst a longer construction period overall.
- 18) Vehicle movements associated with the Project would be significantly lower during operation and were scoped out of the assessment.

b) Construction impacts for the Proposed Development on the local and strategic road network, railways and public rights of way

- 19) The Applicant has assessed the potential impacts of the project on the road, railway and Public Rights of Way networks during the construction of the project. Details of the construction phase assessments can be viewed in the Traffic and Transport Chapter [APP-090].
- 20) Based on the review of the construction access routes and using sensitivity of the environment criteria in Table 8.6 of the Traffic and Transport Chapter [APP-090] a range of sensitive receptors were identified from negligible to high, for the potential effects associated with increases in traffic, to inform the assessment.
- 21) As one level of sensitivity is assigned to each link based on the review of sensitive receptors, for the assessment of a specific potential effect, where appropriate, the sensitivity has been reduced or increased such as for the assessment of vulnerable road users and road safety on Bentley Road, where the sensitivity was increased from low to high.
- 22) In terms of the potential effects on the local and strategic road networks, no significant effects have been identified taking the Outline Construction Traffic Management Plan [APP-257] into account, which sets out the measures to be implemented to manage and monitor construction traffic on the highway network, and the Outline Workforce Travel Plan [APP-259], which sets out measures to be implemented to minimise the number of single occupancy construction workforce vehicles on the highway network, and how this would be monitored.



- 23) In terms of the potential effects on the railway, there would be no disruption, due to the proposed use of Horizontal Directional Drilling or other trenchless technique to install the onshore export cable under the railway.
- 24) No significant effects were identified for users of PRow taking the Outline Public Access Management Plan (PAMP) [APP-258] into account. The Outline PAMP sets out mitigation measures to minimise temporary disruptions to the users of PRow such as managed crossings and short, temporary diversions.
- 25) The potential effects of the delivery of a transformer, which would be the largest abnormal indivisible load, from the Port of Harwich to the Substation, in line with the National Highways' water preferred Policy using the nearest Port, has been assessed in the Traffic and Transport Chapter [APP-090] and how this would be managed is set out in the Outline Construction Traffic Management Plan [APP-257].

c) Any onshore port and transportation impacts arising from servicing the offshore works

- 26) The offshore works associated with the construction of the project would generate onshore vehicle movements, however as the preferred base port for the offshore construction and operation and maintenance activities of the project is not known as this would be decided post-consent, an assessment of these vehicle movements does not form part of the Traffic and Transport assessment [APP-090].
- 27) Any Port activity would be within the envelope assessed when the existing approvals for a Port were considered.
- 28) Also, the large wind turbine components would be transported by sea and not by road.

d) Cumulative impacts of this and other proposed developments in the area

- 29) For the cumulative assessment with North Falls, a set of construction vehicle movements has been derived on the basis of the project and North Falls being constructed at the same time under a coordinated approach.
- 30) This is based on the two projects utilising the same construction accesses, haul road crossings, temporary construction compounds and haul roads, which would have a number of benefits including a lower number of construction vehicle movements on the highway network and potential effects on road safety.
- 31) The potential traffic and transport effects in the scenario whereby the project and North Falls build separately without the shared use of this infrastructure would be much greater than the coordinated approach.
- 32) Paragraphs 8.12.6 to 8.12.20 of the Traffic and Transport Chapter [APP-090] described the projects scoped into the cumulative assessment, including:
 - > North Falls;



- > Norwich to Tilbury Reinforcement Project;
- > Sizewell C;
- > East Anglia 2; and
- > Green Energy Hub.

33) No significant effects identified taking into account the mitigation within the Outline Construction Traffic Management Plan [APP-257] the Outline Workforce Travel Plan [APP-259] and the Outline Public Access Management Plan [APP-258].

- 2.7.2 The Applicant notes the three points raised by National Highways relating to the need to agree the demand for construction traffic, resolving some queries around the modelling and progress the road safety audit for the junction with A120/Bentley Road. The Applicant considers that all of these points are resolvable in short course.
- 2.7.3 The Applicant agreed to submit a technical note setting out the different types of abnormal and invisible loads and heavy good vehicles necessary to access the development. The Applicant noted that it is not proposing to take AILs to the beach. The Applicant is responding to this point under action point ISH1-14.
- 2.7.4 In response to questions surrounding the traffic and transport activity assessment report-based activity, the Applicant advised that the offshore activities would be approached as follows. It is not the case that having selected a port materials are shipped to the port or transported over land to the port and then taken offshore. Rather, having selected a supplier, materials are shipped directly from that supplier's nearest port facility, which is often in close proximity to their manufacturing facility, and transported directly to the construction site offshore. Those materials never come onshore. There is accordingly no traffic and transport impact.
- 2.7.5 For operation and maintenance activities the Applicant is not in a position to identify a port at this time. Although the Applicant is in discussion with ports, many of those ports have space constraints of their own. As the Applicant is not able at this stage to specify when space will be required, or commit to buying the port space, the ports cannot commit to reserving it for the Applicant. A further discussion with ports when the timing is known will therefore be required.
- 2.7.6 In terms of the onshore traffic and transport to the operations and maintenance port, it would comprise the technicians who are going to the port to get on to the ship. This would be in the region of 20 to 30 vehicles per day. The Applicant maintains that this is well within the traffic and transport which should be expected at an operational port and which would have been assessed for the port within its consent.
- 2.7.7 The ExA raised a query regarding offshore construction workers. The Applicant advised that the offshore construction workers remain on the vessel for a considerable period of time, often over 6 months. They accordingly do not commute in and out of a port base on a daily basis.



- 2.7.8 The Applicant notes that Essex County Council's submission that the segregated non-motorised users path proposed alongside the Bentley Road Section should not be a permanent construction. The Applicant confirms that it is not seeking consent or land rights for this to become a permanent NMU route. It is proposed as a temporary mitigation to deal with cumulative HGV traffic during construction. The Applicant confirmed that it is in active discussion with North Falls and National Grid as to how this route is best delivered to address the cumulative impact across the projects. The Applicant noted it is not considered to be preferable for this route to be ripped up by one project only to be reinstated by the next. The projects are therefore in discussion as to how such a route could effectively be handed from one project to another where that is necessary to accommodate the construction traffic peaks, with the later project reinstating the land.
- 2.7.9 The ExA queried the more sensitive crossings of infrastructure. The Applicant notes that National Highways have confirmed that a trenchless crossing at approximately 9 metres below the highway would satisfy them in principle. The Applicant notes that National Highways is seeking protective provisions on the methodology of that crossing, is happy to agree that in principle such protections are necessary and a discussion on the form of that has been arranged.
- 2.7.10 In response to a query from the ExA the Applicant advised that the crossing of the railway will also be carried out using a trenchless technique, and will be subject to technical approval from Network Rail. Part of that technical approval will be that Network Rail can direct when the works can be carried out. This will minimise any impact on the operation of the rail by, for example, by requiring the project to carry out works to cross under the railway during the night or during other scheduled maintenance periods, if it is considered necessary following detailed design.
- 2.7.11 The ExA queried whether any surveys of the usage of the King Charles Coastal Path have been carried out. The Applicant noted that this path is not yet in place but the proposed route does run along the current coastal path at landfall. No surveys of the use of this path have been carried out. The only impact the Applicant may have on this path is moving vehicles to the beach to support the landfall drilling activities. The movement of those vehicles which would be low in number, for a relatively short duration, and would be managed as set out in the Outline Public Access Management Plan [APP-258].



3 ISSUE SPECIFIC HEARING 2 (DRAFT DEVELOPMENT CONSENT ORDER)

3.1.1 This note summarises the submissions made by Five Estuaries Offshore Windfarm Limited (the Applicant) at Issue Specific Hearing on the draft Development Consent Order on 19 September 2024. This document does not purport to summarise the oral submissions of parties other than the Applicant; summaries of submissions made by other parties are only included where necessary in order to give context to the Applicant's submissions.

3.2 AGENDA ITEM 3.1: DISCUSSION OF THE DRAFT DEVELOPMENT CONSENT ORDER (DDCO)

a) Applicant's explanation of its approach to the drafting of the dDCO [APP-024] and the Explanatory Memorandum [APP-025]

3.2.1 The Applicant noted that the dDCO follows precedent orders much of the drafting of which is largely based on the model provisions set out in Schedule 1 to the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. The drafting has followed relevant precedents, importantly the Hornsea Four Offshore Wind Farm Order 2023, Awel y Môr Offshore Wind Farm Order 2023 and the Norfolk Boreas and Vanguard orders which provided some precedent on reuse of temporary areas by another DCO relevant to the proposed co-ordination with NF.

3.2.2 Given it was granted in April 2024 after the Applicant submitted its application in March, the Applicant is also now considering the drafting of the Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 (SEPDEP) in preparing amendments to the dDCO.

3.2.3 The Applicant explained the application of article 7 and why the deemed marine licences (DML) were split between generation and transmission assets. Article 7 allows for the benefit of the order or part therefore to be transferred. This is necessary as a DCO is in effect personal to the undertaker. In accordance with the Electricity Act 1989 it is not, however, possible for one entity to hold both the generation and transmission licences and it will therefore be necessary as a matter of law for the transmission assets to be transferred to a transmission operator following the completion of construction. The selection of the Offshore Transmission Owner (OFTO) is managed by Ofgem following a competitive process.

3.2.4 Separate DMLs are sought for the transmission and generation assets to reflect the statutory need to transfer the transmission assets to the OFTO once constructed.

b) References to units of distance, area or volume

3.2.5 Units of measurement: The ExA requested that the DCO be amended to refer to all units of measurement in full. The Applicant will make these changes in the next revision of the dDCO.



c) Articles in the dDCO

Article 2

- 3.2.6 The Applicant notes the query raised that there is no definition of pre-commencement, as advised in the hearing. The Applicant does not consider such a definition to be necessary. Commencement is defined in article 2. Anything which is pre-commencement is simply before the authorised development is commenced in terms of that definition. There is no definition of pre-commencement works or similar as this is not necessary, the definition of commencement scopes out what works do not constitute commencement.
- 3.2.7 The Applicant was asked to review article 2 and remove any unused terms. The Applicant will do this for the next revision. The Applicant was also asked to remove any duplicative definitions between article 2 and the DMLs. The Applicant noted that the DMLs are required to 'stand alone' going forward and this duplication is accordingly necessary. Post any DCO being granted, the DMLs will be administered and where necessary (and as is common) varied by the MMO. The DMLs will therefore change over time and the Applicant's understanding is that the MMO will raise an objection to deletion of definitions from these as the DMLs cannot then be administered in isolation as will happen in practice. The Applicant accordingly did not propose to delete any duplication between article 2 and the DMLs.
- 3.2.8 The Applicant was requested to add a definition of National Highways. National Highways advised that they would provide their preferred definition to the Applicant.

Article 7, Benefit of the Order

- 3.2.9 The Applicant was asked if it was content that the transfer of the benefit article would cover the transfer to North Falls if required. The Applicant confirmed that it is content. The Applicant notes that North Falls Offshore Wind Farm Limited is the holder of a licence under section 6 of the Electricity Act 1989 and the transfer to it would fall within article 7(8)(a) of the dDCO.

Article 8, Application and modification of legislative provisions

- 3.2.10 The ExA queried whether the various regulators who would normally approve such matters have consented to the disapplication provisions listed in article 8. The Applicant advised that under the potential exceptions of the flood risk activity permitting where the Environment Agency would normally be the decision maker, and the Land Drainage Act none of the disapplications sought as prescribed consents and the consent of the Regulator to such disapplication is accordingly not required. The Applicant noted that it is in negotiation with the Environment Agency over the protective provisions to support the request for disapplication of the flood risk activity permits. The Applicant further noted that it is not aware that any other body is objecting to the inclusion of the disapplication sought.



Article 22, Time limit for exercise of authority to acquire land compulsorily

- 3.2.11 The ExA queried why 7 years to exercise powers was sought under this article and why this is not an unreasonable interference with landowners' rights. The Applicant advised that, in practice, it is a pre-requisite in the UK for a project to achieve a Contracts for Difference (CfD) award from Government, before moving towards a final investment decision. The CfD is a competitive process currently run by Government annually. Its procedures and timings are reviewed periodically. The Applicant will be in competition with other projects in any relevant CfD round and has no control over when it will be successful. There are examples of projects being unsuccessful in multiple CfD rounds. The prospects of success in each CfD round depend on the number of projects competing and the amount of CfD support the government has chosen to include in a given round. No developer has control over these factors. The Applicant must (inter alia) have a DCO in place to be eligible to enter the CfD auction so that cannot be done until a DCO is granted. In addition to the CfD uncertainties, there are substantial uncertainties regarding contractor and equipment supply chain availability, which can delay a successful financial investment decision after a CfD has been awarded. These uncertainties relate to turbines, construction vessels, and other major items. Offshore wind is a very international business and each project is competing to secure contractors and equipment in a tight market. There are often difficult decisions, in this context, regarding ordering long lead items. .
- 3.2.12 The Applicant would normally delay material 'on the ground' development work and associated expenditure until a successful financial investment decision (after a successful CfD award). Only then would the Applicant normally use its land-related powers under the DCO (save for survey access). The use of the formal compulsory acquisition of land or rights is one of the later activities that would be carried out by the Applicant. As described in the application, the intention (where powers have to be used) would be to build under temporary possession, using that power to temporarily occupy the wider corridor needed for construction and then take the narrower permanent easement corridor at a later stage when the final location of the cables and ducts are known. The longer period allowed will assist in assuring a reduction in the overall effect on landowners by allowing permanent rights to be acquired once the final onshore cable corridor easement is known. A shorter period could result in the Applicant having to acquire rights over more land earlier simply because the powers would otherwise expire.
- 3.2.13 It is for these reasons that the 7 year period is sought both for commencement of development and the use of compulsory powers. This 7 year period sought has been granted by the Secretary of State in (being relevant recent examples and not an exhaustive list) for both periods in (among others) the:
- > Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024;
 - > Hornsea Four Offshore Wind Farm Order 2023;
 - > Hornsea Three Offshore Wind Farm Order 2020.



Article 30, Temporary use of land for carrying out the authorised development

- 3.2.14 The ExA queried whether there should be some restriction on access to land being taken more than once under temporary possession powers. The Applicant advised that they would be strongly opposed to such a restriction and are not aware of any precedent for its inclusion.
- 3.2.15 The Applicant noted that it may be necessary and advantageous to take temporary possession on more than one occasion to prevent land being left open for a longer period between periods of occupation being required. For example, it may be necessary to take possession for trenching sometime before work begins and land could be closed in the meantime rather than being left open. It may also be necessary to re-enter land following the carrying out of works to remedy any defects or carry out any further works which become required. Limiting the Applicant's flexibility to do this is not only unusual but could increase the interference with landowners overall as the Applicant would be forced to remain in temporary possession until it was entirely satisfied that no further possession would be required and/or its permanent rights were in place.

Article 45 (No Double Recovery)

- 3.2.16 The ExA queried the inclusion of this article. The Applicant explained that this simply provides that compensation may not be sought under two enactments for what is essentially the same harm. The purpose of compensation is to return a landowner to the position they would have been in but for the exercise of powers; insofar as money can do this. It is not there to allow the landowner to be in a better position by being compensated multiple times for one interference.
- 3.2.17 The Applicant notes that this provision may be slightly belt and braces as it would be a defence to the second compensation claim that compensation had been paid under a first claim. However, the Applicant considers that it provides clarity to all parties and would prevent a lengthy and potentially costly dispute as to the ability to raise a second compensation claim arising by being very clear on the face of the order that compensation is only payable once for each interference.

d) Schedules to the dDCO

Schedule 1

- 3.2.18 The ExA asked the applicant to review work number 4 (i.e. 4A is not used). The Applicant will review work number 4.

Requirement 1

- 3.2.19 The ExA queried why the period for implementation was 7 years. The ExA also queried how this would affect the EIA. The Applicant noted the period of 7 years not only matches that for use of CA powers but reflects that granted in the recent DCOs mentioned in relation to Article 22 above. The full reasons for the 7 year period have been presented in relation to Article 22 above and are not repeated here. In short, there are a range of uncertainties which the Applicant needs to manage, which mean that it is prudent for the Applicant to seek this period.



- 3.2.20 On EIA, as and when the Applicant submits applications for discharge under the requirements, it is open to the Local Planning Authority to request additional environmental information under the Infrastructure Planning (EIA) Regulations 2017 should they consider that it is necessary to do so or that some element of the EIA is out of date.
- 3.2.21 The Applicant notes that Essex County Council and Suffolk County Council both submitted that, in their view, the deliverability of the current application is subject to the delivery of Norwich to Tilbury DCO application by National Grid, which is not yet submitted. The County Councils made submissions amounting to seeking a condition that the current application, or parts of it, should not be implementable unless and until there is certainty that the Norwich to Tilbury DCO is going ahead. Suffolk County Council also made representations that this should somehow be phased into the development. The Applicant noted that it would strongly resist any such suggestions to qualify the ability to commence or otherwise implement the DCO.
- 3.2.22 The Applicant notes that it has a connection agreement with National Grid ESO by which they are required to provide a connection for the development to the grid, and that the identified location is the EACN Substation. There are numerous examples of other OWF applying for DCO before the connection point has a DCO and no phasing was required.
- 3.2.23 The Applicant noted that it wished to wait and see the developed case for the position set out by the County Councils in their respective Local Impact Reports to be submitted at Deadline 2 before responding to this point in full. The Applicant did, however, note that it is acknowledged in direct terms in NPS EN1 that offshore wind and grid connections being presented for consenting separately is entirely acceptable. The Hinkley Point C DCO is a good example of the generation asset being consented ahead of a grid connection.

Requirement 2

- 3.2.24 Suffolk County Council submitted that it is not appropriate for the Applicant to “choose” which turbine parameters it will actually develop. The Applicant wishes to see Suffolk’s position on this in writing in order to respond. The Applicant notes that the Offshore Project Description [App-069] sets out the need for flexibility in the design in the project design, particularly paragraphs 1.5.12 to 1.5.16.

Requirement 4

- 3.2.25 The Applicant agreed to provide explanation in the EM or DCO on “stages” (the ExA being more familiar with “phases” but this is already used elsewhere).

Requirement 8, Code of Construction Practice (CoCP)

- 3.2.26 The ExA queried whether the CoCP was a full or outline plan. The Applicant responded that it is intended to be a full plan not an outline as per the drafting. The Applicant considers that enough information is available at this time for a full plan to be produced.



3.2.27 Suffolk County Council submitted that they would prefer an outline plan followed by a detailed provision. The Applicant notes that the CoCP is not proposed to cover the activities within Suffolk given that the only works proposed within that area are the erection of a fence for LBBG compensation.

Requirement 12, Landscape and ecology management plan

3.2.28 Essex County Council submitted that Essex is a very dry county and the aftercare period of 5 years set out in the OLEMP is not, in their view, sufficient. The Essex County Council noted that it is requesting 10 years aftercare be provided. The Applicant advised that within the OLEMP, aftercare and long-term management are separate items. The reference made by Essex County Council to the monitoring and management, in particular of landscape planting for screening, would move from aftercare to long-term management.

3.2.29 The Applicant does not accept that 5 years aftercare is insufficient for hedgerow planting; rather, the Applicant submits that seeking 10 years is a disproportionate interference with the landowners' ability to resume their own use of their land. This is because the Applicant would require to control the planting in the aftercare and the landowners' use of the area, including taking access and preventing landowners from removing any planting within the period for which the Applicant is responsible for that aftercare.

3.2.30 The Applicant is updating the OLEMP to seek to clarify this point.

Requirement 18, Skills and employment strategy

3.2.31 Suffolk County Council submitted that they wished to be consulted on the plan by the discharging authority. The Applicant noted that they are listed as a consultee within the outline plan with whom the Applicant must undertake consultation in developing the final plan before it is submitted for approval. The Applicant does not consider it helpful for the discharging authority to have to carry out consultation within the determination period where that has already been carried out by the Applicant in developing the final plan.

Requirement 26

3.2.32 The ExA queried whether reference to a written approval should be included in each requirement. The Applicant will consider and respond in due course in writing however it noted that this would result in repetition and duplication.

3.3 AGENDA ITEM 3.2: OTHER CONSENTS, LICENCES AND AGREEMENTS

3.3.1 The Applicant advised that the other consents, licences and agreements set out in the Details of other Consents and Licences document (APP-060) are post consent processes which will not be progressed during the DCO examination.



3.4 AGENDA ITEM 3.3: CONSISTENCY/INCONSISTENCY BETWEEN THE DRAFT DEVELOPMENT CONSENT ORDERS FOR THE PROPOSED FIVE ESTUARIES AND NORTH FALLS OFFSHORE WIND FARMS

- 3.4.1 The Applicant noted that each project had been given the opportunity to review the other's draft order prior to the relevant DCO applications being made. The Applicant is content that that they sit together. The Applicant and North Falls are working collaboratively to ensure that the orders are compatible. They are also negotiating protective provisions jointly to reduce the burden and duplication for stakeholders as well as promote consistency.
- 3.4.2 There are some stylistic differences, and there are some presentational differences because they were drafted by different legal teams and consenting teams. So, for example, the work numbers are not identical, but the substance is the same in so far as it needs to be.