



ESTUARIES

OFFSHORE WIND FARM

FIVE ESTUARIES OFFSHORE WIND FARM

10.24 APPLICANT'S SUMMARIES OF ORAL SUBMISSIONS - ISH3, CAH2, ISH4

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DEFINITION OF ACRONYMS

Acronym	Definition
AIL	Abnormal Indivisible Load
AONB	Area of Outstanding Natural Beauty
BMV	Best Most Versatile
BNG	Biodiversity Net Gain
CAH	Compulsory Acquisition Hearing
CFD	Contract for Difference
CFWG	Commercial Fisheries Working Group
CSIP	Cable Specification and Installation Plan
dDCO	Draft Development Consent Order
DEFRA	Department for Environment, Food and Rural Affairs
DEP	Dudgeon Extension Project
DESNZ	Department for Energy Security and Net Zero
DML	Deemed Marine License
EA	Environment Agency
EACN	East Anglia Connection Node
ECC	Export Cable Corridor
EIA	Environmental Impact Assessment
ES	Environmental Statement
ETG	Expert Topic Groups
ExA	Examining Authority
FLCP	Fisheries Liaison and Co-existence Plan
HDD	Horizontally Direct Drilling
HGV	Heavy Goods Vehicle
HRA	Habitat Regulation Assessment
ICES	International Council for the Exploration of the Sea
LEMP	Landscape and Ecological Management Plan
LIR	Local Impact Report
LPA	Local Planning Authority
LVIA	Landscape and Visual Impact Assessment
MMO	Marine Management Organisation
NE	Natural England
NF	North Falls Offshore Wind Farm
NFFO	National Federation of Fishermen's Organisations
NH	National Highways

NIP	Navigation and Installation Plan
NPS	National Policy Statement
OLEMP	Outline Landscape and Ecological Management Plan
OnSS	Onshore Substation
OWF	Offshore Wind Farm
PINS	Planning Inspectorate
PLA	Port of London Authority
PPA	Planning Performance Agreement
RIAA	Report to Inform Appropriate Assessment
SAC	Special Area of Conservation
SCC	Suffolk County Council
SEP	Sheringham Extension Project
SLVIA	Seascape and Landscape Visual Impact Assessment
SSSI	Sites of Special Scientific Interest
TCPA	Town and Country Planning Association
TDC	Tendring District Council
UK	United Kingdom
UXO	Unexploded Ordnance
VE	Five Estuaries
VEOWF	Five Estuaries Offshore Wind Farm
WTG	Wind Turbine Generator
ZTV	Zone of Theoretical Visibility

1. ISSUE SPECIFIC HEARING 3 (ISH3)

TUESDAY 29 OCTOBER 2024 AND WEDNESDAY 30 OCTOBER 2024

1.1.1 This note summarises the submission made by Five Estuaries Offshore Windfarm Limited (the Applicant) at the Issue Specific Hearing 3 on 29 and 30 October 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: EFFECTS FOR FARMING

a) Temporal impacts on agricultural activity

1.2.1 In relation to the Technical Note - Onshore Civils and Electrical [REP2-030], the ExA asked the Applicant to confirm the following: where haul roads are retained in situ in order to facilitate cable pulling, how long after trenching and ducting would cable pulling commence. The Applicant confirmed that the Applicant cannot give an exact number but indicated a 6-9 month period is likely. For different sections of cable installation, the time period will be different.

1.2.2 The ExA asked the Applicant to confirm how long the joint pits would be exposed, (assuming that these would be wholly for Five Estuaries) and the associated backfill soils stockpiled between trenching, ducting and cable pulling. The Applicant confirmed that the timescales are approximately the same as previously stated, being 6-9 months. The Applicant clarified that the pits will, not be left as exposed holes in the ground, they will be backfilled with subsoil pending final works in order to protect the pits.

1.2.3 The Applicant explained that the process is as follows: cutting the trench, putting the ducts in and back-filling. Cable pulling comes after the backfilling once the ducts are in the ground. Within the worst case assessment it has been considered that the topsoil would be re-instated after the cable pulling is done and the haul road reinstated. The Applicant may reinstate the topsoil before the cable pulling, however this is not the maximum scenario.

1.2.4 The ExA further asked the Applicant to clarify whether the top soil (in relation to the joint boxes) will be stockpiled for a prolonged period of time to allow the cable pulling to happen after the joint boxes have been installed. The Applicant confirmed that, in the worst-case scenario (which has to be included in the ES), the Applicant will stockpile the topsoil until after the cable is pulled, although in reality this would be on a case by case basis and if there was a reasonable gap between the duct installation and the cable pulling the top soil would be reinstated. The Applicant explained that where the top soil was put back in before the cabling, and subsequently it is established that there is an issue (for example, with the manufacturing of the cable or the ducts) the topsoil would then have to be handled a second time, which could potentially cause a more significant impact than the longer storage period. In line with guidance, the Applicant seeks to avoid double-handling of topsoil, where practical, but notes this would need to reflect the timing between the duct installation and the cable pulling, and where areas of haul road needed to be retained to support the ongoing construction.

1.2.5 The Applicant noted that it has already submitted a technical note on works duration on the cable corridor and will reflect on whether anything that can meaningfully be added to it. The Applicant reiterated that there is a balance to be struck with the risk of double-handling the topsoil if the soil is reinstated before cable pulling, and that the relevant timelines reflect the worst-case scenario.

b) Drainage

1.2.6 The Onshore Project Description [AS-004] table 1.3 (Onshore Export Cable Construction Maximum Design Scenario) states that the haul road will be 6m wide (10m including verges and drainage). The Applicant explained that the width of the road will be 6m with provision for drainage on the sides. The 6m width of the haul road is the worst case scenario which allows for two vehicles to pass. The Applicant explained that there are different considerations to consider when building a temporary haul road which includes how permeable the base is and therefore what drainage is required. What the exact parameters will be is a question for detailed design but could include drainage swales. The Applicant anticipates that drainage swales if required would be up to two metres wide either side of the haul road, hence a worst case of 10m.

1.2.7 The Applicant explained that the best-case scenario in terms of minimising width is that there is no need for drainage on temporary haul roads; the worst case is that swales will be included. An alternative is channels, which are drains that go down the side, designed to interact with the pre- and post-construction drainage as part of the normal design process.

1.2.8 The ExA asked the Applicant if they are considering including passing bays along the routes. The Applicant confirmed that passing bays are being considered where they would be sufficient. The Applicant reiterated that they are required to assess the worst-case scenario to support the Rochdale Envelope approach.

1.2.9 With regard to verges, the Applicant noted that in a worst-case scenario there requires to be a gap between the road surface and drainage which has been called verge. These 'verges' do not serve a meaningful engineering function.

1.2.10 The ExA referenced the EA's representations RR-026 and RR-020 which discuss the implied possibility of hydraulic continuity and that the needs further investigation. The Applicant stated that further discussion with EA is being sought however a meeting date is not yet arranged, therefore, a deadline cannot be committed to at this time. The Applicant notes that the ExA asked to be updated once the Applicant has scheduled a meeting.

c) Effects on soil quality associated with the providing a haul road and the haul road's use by Abnormal Indivisible Loads of up to 400 tonnes between Bentley Road and site for the proposed onshore substation

1.2.11 The ExA asked the Applicant to confirm whether the Applicant has fully considered routing the internal haul roads to field margins and headlands in fields where the ECC crosses productive land or to access the OnSS.

- 1.2.12 The Applicant confirmed that the haul roads will be within the Order Limits. The specific design of the haul road is part of detailed design. The Applicant confirmed that during the operation of the onshore substation, any access for AILs is planned to come down a private access road built by National Grid. It is however noted that it is unlikely that AILs would be needed during the operation of the onshore substation. The Applicant agreed to provide a technical note on the haul roads between Bentley Road and the OnSS, including outlining where it is likely to be, and covering a number of items requested by the ExA. The Applicant confirmed that it will not be commenting on the decisions taken by North Falls in the technical note.
- 1.2.13 The Applicant explained that the Applicant cannot confirm the maximum weight that can be accommodated by different types of temporary trackway. Various considerations need to be considered including different weight limits and the interaction with the sub-base. The Applicant agreed to provide a written note explaining the maximum weight that specialist trackways can accommodate.
- 1.2.14 The Applicant advised that the construction strategy would be defined by the preferred contractor at the detailed design stage within the limits of the DCO, and is not set out in detail at this time. The Applicant notes that the measures it has proposed are secured with regard to soil management, the construction and use of haul roads in the CoCP. The contractors have to comply with the CoCP which would apply to the onshore construction activities under the DCO.
- 1.2.15 The ExA asked the Applicant to explain the orientation of the OnSS within the site. The Applicant noted that it has already responded to a written question on the orientation of the onshore substation footprint (SLV.1.01 [PD-011]) . There are existing pylons on the northern side and a standoff distance needs to be maintained between the Applicant's works and those pylons. The Applicant noted that the EACN will be in the field to the west of the Applicant's substation, and the Applicant needs to be able to trenchlessly cross under that road, which requires a trenchless working area. The Applicant also notes that the orientation within the site does not impact the sterilisation of land.
- 1.2.16 The orientation also took account of noise receptors and visual impacts and the need to minimise any potential impacts from those through siting as far as possible and ensuring sufficient area is available for screening. The orientation also has to account for the temporary compounds needed to build the substation. The triangle to the southwest is the temporary compound site that is needed for construction. In addition, another consideration is the ability to share as much infrastructure as possible with the North Falls substation, such as the access roads. The Applicant emphasised that the orientation of the substation is not driven by ecological matters.
- 1.2.17 On ecology and the protection of hedgerow habitat, the Applicant advised that dormice move and have multiple nests, occupying these at different times of the year for different purposes. The survey carried out by the Applicant was a presence/absence survey which established the presence of dormouse at the recorded locations, however, this would change in the future and dormice may not be present in particular hedgerow or may become present in a hedgerow they are not currently in. The Applicant confirmed that this is why the pre-construction surveys for dormice (as well as other species) are required.

- 1.2.18 Any actions that would be required or not required at construction would then be identified based on the results of those pre-construction surveys. For the purpose of EIA, the Applicant is required to use the existing survey data to date, and the proposals are based on the existing survey data. The project has retained the option of being able to avoid some hedgerow in the event that dormice are present in that hedgerow in the future. This is because Natural England would need to issue a licence for works that would affect dormouse habitat, and one of the first tests that Natural England would apply would be whether there was an alternative to the design, which would minimise the impact on the habitat. In this case, there is an alternative design which would minimise the impact to dormice in that hedge by going around it, and a licence would not be granted. Therefore the route around the hedgerow has to be included in the application.
- 1.2.19 If there are no dormice in a particular hedgerow pre-construction and a licence is not required to interfere with that hedgerow, then a different route within the cable corridor can be considered.
- 1.2.20 The Applicant noted that within the Outline Landscape and Ecological Management Plan [REP2-022], there is a commitment to carry out the pre-construction surveys and the document sets out the scope of those surveys. The document also states how far in advance of any works starting on site the surveys would be carried out.

1.3 AGENDA ITEM 3.5: EFFECTS FOR ONSHORE ECOLOGY

- 1.3.1 The ExA asked the Applicant to explain the approach to BNG and environmental mitigation at the OnSS. The ExA also asked the Applicant to explain the differences between what North Falls is proposing and what the Applicant is proposing.
- 1.3.2 The Applicant noted that it can only explain the decisions that the Applicant has made. North Falls have made different judgment calls in relation to some issues.
- 1.3.3 The design of the scheme at the onshore substation has not been driven by the requirements of the Statutory Metric ("BNG") given that the scheme is not subject to mandatory BNG. The Applicant explained that the OLEMP has been updated for Deadline 2 [REP2-022] in order to more clearly present the development of the landscape and ecological mitigation, compensation and enhancement at the Onshore substation location. The Applicant summarised the position as follows:
- (a) Engineering considerations were applied first, following which, landscape screening was designed. Biodiversity compensation and enhancements were then added to, or interwoven within the landscape design in order to comply with the existing legislative and policy requirements to deliver biodiversity mitigation and enhancement. The provision of permanent landscape and ecological mitigation, compensation and enhancement in the same location represents a more efficient mitigation proposal that reduces the overall long-term land-take of the project..
 - (b) The Statutory Metric is a tool to quantifiably measure the change in biodiversity following a change of land use. The Applicant used this tool to meet the requests of the consultees to provide a measure quantifying the overall biodiversity benefit. Once the design had developed to an appropriate stage, the starting and outcome positions were assessed through that metric. The Applicant emphasised that the metric tool was used after considering matters related to engineering, screening and biodiversity enhancements, and is therefore not in any way driving the design or land take.
 - (c) The project has committed to deliver as much biodiversity enhancement within the OnSS order limits as it can. If the project does not achieve 10% BNG (using

the Metric together with the relevant assumptions that are set out in the BNG Report [APP-149] to assess that) then the project will seek to deliver the difference off site.

- 1.3.4 The Applicant explained that the impacts that it has assessed are associated with Five Estuaries only and the assessment does not take into account North Falls.
- 1.3.5 The Applicant confirmed that it is in a dialogue with Essex County Council about the options that are available to the project for offsite provision of BNG where required, and that these conversations are well progressed.
- 1.3.6 The Applicant does not accept that the orchard planting does not perform a screening function given that the receptor it addresses is Grange Road, where the people affected will be relatively close to the screening. Therefore it will be of a suitable height to provide effective screening, especially when reinforced as per the layered approach with hedgerow planting. Screening planting options in this location are constrained by the presence of existing overhead electrical lines to Lawford substation, limiting the height of planting which can be used, and the future underground cables to the EACN limiting the root depth of planting which can be used.
- 1.3.7 In accordance with legislation and good practice, ^{1, 2} the Applicant has compensated for the loss of biodiversity as a result of permanent habitat loss at the substation area as close to where the loss would happen as possible. In addition, the Applicant has to provide biodiversity enhancement as part of the scheme in order to comply with the current, relevant legislation and policy.
- 1.3.8 The Applicant notes that the current use of the land as agricultural land does not mean it has no ecological value. In particular, its classification as BMV does not override or remove its ecological value. The land which will be permanently lost has ecological value, that value has been assessed in defining the compensation needed. That agricultural land in general has intrinsic ecological value can be demonstrated by the fact that the DEFRA metric has values for such land use, it cannot be discounted for biodiversity because it is BMV.
- 1.3.9 The Applicant further reinforces that areas around the substation (including the orchard in particular) are important in the overall landscape design. The Applicant has chosen orchard trees because these also provide a biodiversity benefit in addition to performing the landscaping screening function, making the best use of planting which was already needed.

1.4 AGENDA ITEM 3.2: EFFECTS FOR SOCIO ECONOMIC AND RESIDENTIAL LIVING CONDITIONS

- 1.4.1 a) Effects for the Fishing Industry, including fish species and fishing methods that might be affected and. Discussion to be led by the ExA and involving representatives from the fishing industry and the Applicant and b) Cumulative effects of Five Estuaries OWF with other existing and proposed OWF developments on fishing grounds

¹ CIEEM (2018) Guidelines for Ecological Impact Assessment in the UK and Ireland: Terrestrial, Freshwater, Coastal and Marine version 1.3. Chartered Institute of Ecology and Environmental Management, Winchester;

² Principle 8 within Defra (2024) Statutory Biodiversity Metric User Guide

- 1.4.2 The Applicant confirmed that it has had productive engagement with the Harwich Harbour Fishermen's Association and other commercial fisheries through the Commercial Fisheries Working Group since 2021. The Applicant has held several meetings which focused on the commercial fisheries baseline environment in the relevant area. The Applicant added that a recent meeting was held to discuss the outline fisheries liaison and co-existence plan. The feedback from the working group has been considered and reflected in the updated document which has been submitted at Deadline 2.
- 1.4.3 The Applicant notes that Harwich Harbour Fisheries Association do not consider that all methods of fishing which would be disrupted have been assessed. The Applicant does not agree. The Applicant provided a summary of the main findings in the Commercial Fisheries Baseline Report [APP-127] and responded to the points made by the Harwich Harbour Fishermen's Association.
- 1.4.4 The Potential effects of VE on the fishing industry have been assessed in line with the assessment criteria set out in APP-077 (ES Volume 6, Part 2, Chapter 8: Commercial Fisheries).
- 1.4.5 The following potential effects have been assessed for the construction, operation and maintenance, and decommissioning phases of VE:
- > Reduction in access to, or exclusion from established fishing grounds;
 - > Displacement leading to gear conflict and increased fishing pressure on adjacent grounds;
 - > Disturbance of commercially important fish and shellfish resources leading to displacement or disruption of fishing activity;
 - > Increased vessel traffic associated with VE within fishing grounds leading to interference with fishing activity;
 - > Physical presence of infrastructure leading to gear snagging; and
 - > Additional steaming to alternative fishing grounds for vessels that would otherwise fish within the VE area.
- 1.4.6 The key findings of the assessment are summarised as follows.
- 1.4.7 As stated in APP-077 (e.g. para 8.10.3), during construction of VE, commercial fisheries will be prevented from fishing where construction activities are taking place (i.e. where construction vessels and partially installed infrastructure are present, and within the footprint of Safety Zones of 500 m diameter, which will be sought around significant infrastructure under construction). This is the case both within the array area and export cable corridor. Outside of these areas, fishing will be able to continue. The commercial fisheries impact assessment reflects this assumption.
- 1.4.8 As set out in APP-077, potential significant temporary impacts during the construction phase resulting from reduced access are identified for the following fishing fleets:
- > UK potting fleet (targeting whelk, lobster and brown crab);
 - > UK fixed and drift net fleet (targeting bass, sole and rays); and
 - > UK hooked gear (handlines and longlines) fleet (targeting bass, sole and rays).

- 1.4.9 This assessment outcome reflects that these fleets may be required to temporarily relocate their gear from fishing grounds within VE construction areas. These fleets will therefore experience loss of earnings for the time taken to relocate gear, and (potentially) a loss of earnings associated with not being able to fish the specific grounds under construction (e.g., if alternative grounds are not as productive). The assessment outcome also reflects the relatively smaller operational range of the predominantly inshore fishing vessels in these fleets that operate over more distinct areas of ground in areas that may already be heavily exploited.
- 1.4.10 To address these potentially significant effects, the Applicant has committed to further mitigation beyond embedded measures, as set out in APP-077 and APP-247 (ES Volume 9, Report 16: Outline Fisheries Liaison and Co-existence Plan). In summary, where significant residual impacts remain, the Applicant will consider evidence-based commercial cooperation agreements with fishers from affected fishing fleets as identified in the ES (namely UK potting, fixed net and drift net, and hooked gear fleets) in line with established FLOWW (e Fishing Liaison with Offshore Wind and Wet Renewables Group) (2014) and FLOWW (2015) fisheries liaison guidance and redrafting efforts.
- 1.4.11 No other significant effects are identified in the construction phase.
- 1.4.12 The Applicant has held several Commercial Fisheries Working Group (CFWG) meetings with the local fishermen's associations since the Pre-Application phase, to present the approach to and outcomes of the commercial fisheries impact assessment, and the proposed content of the Outline Fisheries Liaison and Co-existence Plan. The concerns of the CFWG have been recorded and considered in undertaking the commercial fisheries impact assessment for VE, and in developing the outline FLCP. It is noted that the outline FLCP has been updated in response to feedback from the CFWG and NFFO.
- 1.4.13 The Applicant confirmed that, as a worst case, the Applicant will be working simultaneously in both array areas. The Applicant confirmed that it cannot state that working will be sequential from one array area to the second, there are additional considerations and factors that it will need to take into account in relation to sequencing of work. It is reasonable to assume that the foundation work needs to be completed before the turbines are installed. However, sequencing is more complicated than doing all of the works in (for example) the southern array, followed by all of the works in the northern array. For example, different water depths can require different construction equipment or vessels which would carry out all of the work for that particular work type, which may be spread across the array areas.
- 1.4.14 The ExA asked the Applicant to confirm which scenario – being the installation of 41 larger or 79 smaller turbines – will have the greatest impact from the commercial fishing perspective only. The Applicant noted that the question is fundamentally misconceived. This is because this DCO application (together with every offshore wind application) has been submitted on the basis that there are a range of permutations. The Applicant is not seeking consent to do one of two options. The Applicant is seeking consent for a range of options in terms of turbine sizes and turbine numbers. The Applicant is very concerned that this notion (i.e. that there are only two options) has keeps being raised in this Examination. The Rochdale Envelope is based on having a range of options within it, and the commerciality of the scheme depends on that.

- 1.4.15 Suffolk CC noted that in its interpretation the Offshore Project Description [APP-069] indicates that there is a choice between 41 and 79. The Applicant explained that the use of “up to” in “up to 41 large, or up to 79 smaller WTGs are planned for VE. A range of WTG models will be considered” in the Offshore Project Description [APP-069] makes it clear that the choice is not binary.
- 1.4.16 The ExA asked the Applicant to confirm (on a without prejudice basis) which scenario – being the installation of 41 larger or 79 smaller turbines – will have the greatest impact on commercial fisheries. The Applicant confirmed that the assessment is based on a maximum design scenario for commercial fisheries of 79 turbines. This is the maximum design scenario for this impact as it this results in smaller spacing between the turbines and, therefore, the least navigable sea area for commercial fishing activity to resume. This is confirmed in Table 8.8 of the Commercial Fisheries ES Chapter [APP-077].
- 1.4.17 The Applicant confirmed that the spacing for the largest turbines is around 1km-1.3km. The Applicant cannot provide the exact number since the Applicant cannot confirm the details of the selected turbine or the final layout at this time, however this is the minimum spacing for largest turbines.
- 1.4.18 In response to submissions, the Applicant confirmed that search and rescue considerations are factored into the design. Whatever layout is approved, appropriate search and rescue access will be provided for.
- 1.4.19 The ExA asked for an update on the SoCG between the Applicant and the National Federation of Fishermen's Organisations including an indication of whether there are any areas of significant disagreement that are emerging. The Applicant confirmed that the SoCG is currently in a draft form. It has not been submitted yet to the National Federation of Fishermen's Organisations. A meeting has been arranged to discuss the SoCG including any areas of disagreement.
- 1.4.20 The Applicant confirmed that it is happy to open the discussions about a SoCG with the Harwich Harbour Fishermen's Association.

c) Living conditions

- 1.4.21 Essex CC confirmed to the ExA that it is content with the noise assessment carried out by the Applicant but noted that there is no mention of piling in the context of HDD. The Applicant explained that the assessment process identifies the maximum noise limits and the equipment operates within that limit. Any piling that would be needed at for trenchless installation pits would be limited to sheet piling for the edges of the wall (if required) as part of the set up. The nighttime working of trenchless installation is to allow for a situation where the Applicant cannot stop an ongoing drilling operation until that operation reaches an appropriate stage. There is no proposal that the Applicant will pile at night.
- 1.4.22 The Applicant confirmed that it has not assessed night-time working on Bentley Road. The timings of works to the junction of the A120 will need to be agreed by National Highways. Once this level of detail is provided by National Highways, the Applicant will review the types of works that have been assessed and consider whether additional consents need to be sought (i.e. section 61 of the Control of Pollution Act 1974). There are discussions in relation to realigning the road junction slightly (circa 2m) in order to mitigate impacts and increase safety at the junction which would require kerb re-alignment.

- 1.4.23 Given the nature of Bentley Road (where there are a number of residential properties which are in very close proximity to the roadway) the Applicant was asked why is there any need to do any work to Bentley Road during night-time hours instead of the day time hours. The Applicant reiterated that (given that the works are at the National Highways junction) National Highways may require the Applicant to do some relevant works at night. However, the Applicant doesn't envisage such works being significant or for a long duration. The Applicant agreed to provide a note outlining what works may be done at the junction between A120 and Bentley Road during night-time hours. The Applicant noted that it would need to discuss with National Highways in order to provide an indication of the potential for night works. The Applicant will then be able to provide an opinion on the potential for noise impacts.
- 1.4.24 The ExA queried the ES conclusion that the noise impact on dwellings on Bentley Road is negligible as provided at paragraph 9.10.72 in the Airborne Noise and Vibration ES Chapter [APP-091]. The Applicant clarified that paragraph 9.10.72 provides that a noise level of 65 dB or below would be negligible and there are a number of locations in table 9.39, which para 9.10.72 makes reference to, that would be exposed to that level of noise. Para 9.10.72 does go on to confirm greater impacts at the remaining locations. It is not saying the conclusion at all locations is negligible.
- 1.4.25 In the assessment of cumulative noise impact for construction of the three substations (Five Estuaries, North Falls and the EACN) the Applicant has (in the absence of detailed information being available for North Falls and the EACN) adopted a simplified approach, applying its worst case noise levels across the piece. The ExA queried whether that approach is reasonable given that the EACN substation is significantly larger than the other two substations. In response, the Applicant noted that, while the EACN is larger, the construction activities and equipment will be similar. The construction methods required and the processes that the Applicant has assessed are comparable.
- 1.4.26 The Applicant explained that assessment assumes that the three projects would be undertaking their noisiest construction phase at the same time, while this is used as the worst case it is considered to be very precautionary as this is unlikely to happen in practice. As part of the assessment, the Applicant included a number of precautionary assumptions, for example, the number of plant that would be involved in each of the activities and the sound power of each of those items of plants tend to be in the upper end of the range that is available.
- 1.4.27 The Applicant has acknowledged that the cumulative construction traffic noise on Bentley Road may not be adequately mitigated by the implementation of the proposed 40 mph speed limit, and that further mitigation may be required, which could take the form of:
- (a) reducing the speed limit on Bentley Rd below 40mph;
 - (b) re-routing the HGV traffic ; and
 - (c) undertaking sound insulation works.
- 1.4.28 The Applicant explained that these methods would be effective as lowering the speed limit would lower the source noise level from vehicles. Noise mitigation can be applied to the relevant properties by improving their sound insulation properties, this is an established and very common form of mitigation. The Applicant noted that there are not many viable options to reroute the VE HGV traffic and it would not be proposing to reroute its own HGVs.

- 1.4.29 For the operational side of the substation, given that the precise design for the proposed onshore substation is unknown at this time, the ExA queried what reliance can be placed on the modelling of the substations operation noise (especially since the modelling is based on an indicative substation); and how sensitive would the predictions for operational noise be to changes to the layout and or plant composition for the substation.
- 1.4.30 The Applicant assessed noise based on a modelling exercise using known noise levels for the electrical components which will be required on site. An assumed layout within the substation is a robust approach as, when looking at the source of noise that is several hundred metres away from the receiver location, for example moving the source 10-20m would not have a material impact on the calculations. The Applicant has adopted the approach of working to a noise limit at sensitive receptors which provides a level which protects them and reduces the reliance placed on the model. The Applicant confirmed that the assessment used an air insulated switchgear substation as the worst case for assessment.
- 1.4.31 The Applicant explained that the components for onshore substations are designed with noise output in mind. Different suppliers have different equipment with different ranges which are suitable for different locations depending on the noise landscape. There are also options such as noise enclosures and sound walls that can be used to achieve the desired output level of noise.
- 1.4.32 The Applicant confirmed that primary noise mitigation measures for the OnSS are the use of quieter equipment, noise barriers and noise enclosures. These considerations have to be taken into account as part of the holistic design and working with the selected equipment supplier. Measures such as noise enclosures and noise barriers would be situated close to the source (within the substation footprint) as this is most effective.
- 1.4.33 The Applicant confirmed that the existing Lawford substation forms part of the existing baseline for noise. The ExA asked the Applicant to confirm how representative the Lawford substation is compared to more modern substations. The Applicant explained that this is a challenging question and that it is difficult for the Applicant to comment on how a different body's substation/equipment is operating.
- 1.4.34 The ExA asked about the level of confidence in the cumulative noise predictions for the three new substations. The Applicant explained that the governing factor is the noise limit that will be set for the nearby properties, which the parties have agreed and sets the 35dB limit. The noise assessment refers to the individual apportioned limits for each of the substations that feed into the overall 35dB. It is down to the individual project to design their substation to ensure that their respective noise limits are adhered to. The Applicant is very confident that this is achievable and that a level of 35dB for the three substations would not be exceeded at any of the receptor locations.

- 1.4.35 Where an issue arises with noise, the Noise Investigation Protocol will set out how that is investigated in order to work out which source was causing the problem. The Applicant referred the ExA to the Noise and Vibration Assessment [APP -091] table 9.53 page 132. The table apportions the overall limit of 35dB to each project. The first step would be to determine whether the relevant dB limit is being exceeded at the location where the concern has been raised; if that is the case then further investigation works are likely to involve some near field noise measurements of the equipment within the three individual substations. It is possible to identify individual item of plants which may be exceeding their designed noise levels, this can be done through a process of elimination.
- 1.4.36 The Applicant is confident that through that process of elimination, the source could be found and then move on to working out what to do to rectify, the investigation is an iterative process. If the noise limit has been exceeded at a receptor location, then logically, something is producing a higher level of noise. By moving closer to each of the noise sources, the signal will only get stronger. This process provides a high level of confidence of which item of equipment is at fault.
- 1.4.37 The Applicant confirmed that an outline Noise Investigation Protocol will be submitted following discussion with North Falls and National Grid and suggested Deadline 5 for that submission.
- 1.4.38 The ExA asked the Applicant to confirm whether the assessment has taken into account tranquillity in respect of the construction and the impact of the Dedham Vale AONB. The Applicant confirmed that the relevant area is circa 1.5 km away. The study area is 650 m beyond which the impacts diminish. The AONB is therefore outside of the study area.
- 1.4.39 The ExA queried whether it would be reasonable to expect that the piling noise would not affect the tranquillity within the AONB. The Applicant explained that the assessment focuses on the closer receptors as this generally offers a worst-case assessment given that the noise will diminish with increasing distance. Whilst it is recognised that spaces like the AONB can be considered as noise sensitive areas, these areas are of a lower sensitivity class than residential dwellings. In addition, coupled with the increased distance, the impacts are going to be much lower than reported for the dwellings that are situated much closer to the source.
- 1.4.40 It is noted that the National Landscape Partnership submitted that the AONB is itself a receptor rather than the residents within it. As well as the noise, the partnership considers that assessment should consider the light impact (which is also an indicator of tranquillity).
- 1.4.41 The Applicant noted that the light point can be best addressed in the agenda item related to the landscape. The Applicant summarised the measures in the Code of Construction Practice [REP1-041] to control light which provide that construction lighting, as well as being temporary would be task based, cowled and directed at the tasks being undertaken. It's not the intention to direct lots of light up into the sky.
- 1.4.42 There is no permanent operational lighting proposed, so in the operational phase there would be no impact on the AONB or dark skies. The operational lighting would be either motion sensitive security lighting or task based where operations were going on site, it would not be 'always on' lighting

1.5 AGENDA ITEM 3.3: EFFECTS FOR NAVIGATION AND SHIPPING

- 1.5.1 The ExA asked the Applicant to provide a brief update on any progress made or discussions that have taken place on navigation and shipping matters since ISH1.
- 1.5.2 The Applicant noted that good progress is being made in relation to shipping and navigation related issues. Statements of common ground have been issued to all interested parties and all issues are either fully mitigated or waiting to be mitigated in terms of addressing final points within the navigation and installation plan and the cable burial in proximity to the Sunk and Trinity Deep Water Routes, which the Applicant is liaising with the various ports and interested parties on.
- 1.5.3 The Applicant stated that they had two productive face to face meetings with the ports in the last few weeks since the last set of hearings regarding the issue of cable burial. Those discussions were productive, and the Applicant is continuing to work with the ports to define the parameters to which it can commit.
- 1.5.4 An updated, Revision C navigation and installation plan is out for consultation with the interested parties and, awaiting comment back from those parties and will update the navigation installation plan at a future deadline.
- 1.5.5 The Applicant added that deadline 4 would be reasonable as a timescale for the NIP update.
- 1.5.6 On the principle that, within the Deep Water Routes, the cables will be buried to a depth to allow future dredging of the Deep Water Routes to 22m below chart datum. The Applicant confirmed that this is accepted and there is an on-going discussion around the commitment that needs to be made.
- 1.5.7 In relation to defining the area where this burial depth needs to apply, the Applicant explained that the Applicant had face to face meetings with the relevant ports and the Applicant is preparing a plan of the relevant areas for the ports' consideration. Responding to the ExA's question on whether the plan can be secured in the DCO as a certified document, the Applicant confirmed that the plan will be included in the outline CSIP (which is a certified document) and secured through the DML.
- 1.5.8 In relation to the comment made by the PLA in their deadline two submission [REP2-066] (that the Applicant should use the most effective method of cable laying in terms of speed as there are concerns around the potential delays associated with the tidal current), the Applicant explained that this topic has been discussed with the PLA and that a balance needs to be struck between "deep" and "fast" and the ports are aware of this constraint.
- 1.5.9 Responding to the PLA's request to approve any surveys or monitoring or pre-construction activities that could affect the DWRs, the Applicant confirmed that this is controlled in the DML and it is for the MMO to approve as the regulator, and not the PLA.
- 1.5.10 With regards to the concerns (raised by IPs) over a lack of controls over a disposal of inert materials within the export cable corridor due to dredging activities that will occur in the corridor, the Applicant noted that the Applicant is preparing a sediment disposal plan to be secured in the DML in order to capture the restrictions around sediment disposal within the export cable corridor.

- 1.5.11 The Applicant is engaging with the Harwich Haven Authority following the concerns they raised in their relevant representation [RR-043] around the Sunk areas and maintaining the required depth for clearance.
- 1.5.12 On the topic of decommissioning and the PLA's preference for the cables to be removed or to remain in situ, the Applicant noted that it couldn't commit to either option at this time because the Applicant will need to seek a Marine Licence for the most appropriate option at a future date.

1.6 AGENDA ITEM 3.6: EFFECTS FOR OFFSHORE ECOLOGY

- 1.6.1 The ExA asked the Applicant to provide a brief update on any progress made or discussions that have taken place on offshore ecological matters since ISH1 and the Applicant provided the following summary:
- (a) Fish – the Applicant has submitted a revised Herring Seasonal Restriction Note – Revision B [REP1-024] at Deadline 1, addressing queries raised by the MMO on the methodology used to calculate the peak herring spawning period, and subsequently define the piling restriction. The revised piling restriction for spawning herring now reflects spawning later in the season, with a piling restriction now proposed from 25th November to 3rd January. The Applicant also added the revised timing restriction on piling in the array area to the generation DML in revision B of the draft DCO.
 - (b) With regard to the request for clarification that sediment disposal would not be carried out in a manner which will impact herring spawning, the Applicant is preparing a sediment disposal plan to set out how this is controlled. It is under consideration whether that needs to be a stand-alone plan or if it can be included in an existing plan. Further, considering the request for a temporal restriction on dredging activities in the array area, the Applicant would like to confirm that the use of gravity-based foundations have been removed from the project design envelope, which will significantly reduce the area of seabed preparation required.
 - (c) The Applicant held a meeting with the MMO's advisors Cefas on 2 October 2024 where these concerns were discussed in more detail.
 - (d) Marine mammals – The Outline Marine Mammal Mitigation Protocols (one for piling, one for UXO) was updated in response to the representations received and the revised version submitted at deadline 1 [REP1-033 and REP1-035 respectively]. The only comment which the Applicant does not consider has been addressed is around soft start on piling. This is because the modelling does not capture soft start.
 - (e) The Marine Mammal iPCoD Modelling – Project Alone was submitted in responses to the representations received at deadline 1 [REP1-056]. The iPCoD modelling shows that for disturbance from piling of WTGs and OSPs at Five Estuaries alone, the magnitude score is Negligible for all species. This aligns with the magnitude scores assigned in 6.2.7 Marine Mammal Ecology [APP-076].
 - (f) Ornithology – HRA – the RIAA has been updated in response to representations [REP1-016]. The Applicant understands that the updated RIAA is now in line with the NE approach and that this should resolve their comment. The Applicant has been progressing discussion on the without prejudice compensation measures and a number of outline implementation plans were submitted at deadline 2. The Applicant understands that all the measures are not agreed and that NE are seeking progress on how those are secured. The Applicant is preparing without prejudice wording for that.
 - (g) On kittiwake, the Applicant noted that the ExA had requested timelines for progress on that. The Applicant has set out in the updated Kittiwake Implementation and Monitoring Plans [REP2-014] the outcome of discussion on

apportionment within the tower. In summary, VE would acquire a 20% stake in the tower.

(h) Benthic – The Applicant has updated the M&LS SAC benthic mitigation plan to clarify the need for pre-construction site survey to establish cable burial suitability and refine the cable protection proposals. This has been submitted at Deadline 2, [REP2-020].

- 1.6.2 The Applicant further added that no surveys are outstanding.
- 1.6.3 **Action Point:** the Applicant agreed to confirm in writing that the screening matrices include all of the qualifying features of the sites that have been screened and provide the full citations and data sheets for the designated sites (if full citations are not already provided) by Deadline 3.
- 1.6.4 The Applicant was asked to consider (1) whether commuting bats are a qualifying feature of any European site or designated site and (2) advise whether any assessments in relation to bats as connected to designated sites has been carried out by the Applicant in order to establish if they should be considered under the assessments for those sites. The Applicant confirmed that it is for the NE to review and update the designations and not for the Applicant. The Applicant is not aware that NE are currently doing so for these species, and it would not change any of the conclusions of the Applicant's assessments at this stage.
- 1.6.5 The ExA asked the Applicant to confirm whether the increase in the number of offshore turbines has had an impact on the flight pattern and altitude of the protected species, whether there is recent evidence which shows how the species are adapting to the turbines and which protected species adapt quicker and to a greater degree.
- 1.6.6 The Applicant confirmed that there is no evidence related to bats that support this. There is evidence that avoidance rates are different for different bird species. However, this evidence will not have an impact on the Applicant's conclusions.
- 1.6.7 On the topic of mitigation measures related to bats and the possibility of reducing the cut-in speed of the turbines during migratory periods, the Applicant confirmed that there is no relevant data in the UK to support any case for this as mitigation. In addition, NE has not flagged this as an issue. The Applicant has identified that there are no significant effects in relation to the bat crossings.
- 1.6.8 The Applicant confirmed the migratory periods for bats (April to mid-June and August to mid-November).
- 1.6.9 On the topic of the precautionary approach adopted by the Borssele Offshore Wind Farm (raised in the Suffolk CC LIR), the Applicant noted that the Applicant has not had a chance to review the LIRs. The Applicant will respond to the LIRs in writing.
- 1.6.10 By way of an update in relation to the key outstanding methodological disputes with IPs and the relevant timings, the Applicant noted that (there are three primary areas of disagreement that the Applicant is working to resolve with NE (1) apportionment of adult birds for lesser black-backed gull (2) displacement rates for auks and (3) the use of the upper confidence intervals in compensation calculations. The Applicant confirmed that the next meeting with NE is on 11 November.
- 1.6.11 The Applicant further added that similar discussions are happening on the Kittiwake tower and that the discussions are on-going.

1.6.12 The ExA asked the Applicant to confirm the reason for the reduction in cod numbers in the Thames estuary in last 12 years. The Applicant confirmed that the ICES, 2024 stock assessment (ICES, 2024) indicates a decline in cod stocks over the North Sea (the spawning biomass reached its lowest point in 2020). At the time, it was reported that the reason for the decline was unsustainable exploitation. The decline in cod stocks correlated with an increase in fishing pressure up to 2018, at which point it reduced due to the implementation of fisheries management measures. The cod stocks have been since shown good growth in the Southern North Sea.

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

a) Any differences in seascape effects associated with wind turbine arrays of either 41 “large” or 79 “smaller” wind turbine generators

1.7.1 The ExA asked the Applicant to confirm whether there any differences in seascape effects associated with wind turbine arrays of either 41 “large” or 79 “smaller” wind turbine generator.

1.7.2 The Applicant provided the following summary:

- (a) The Applicant wishes to clarify that the proposal is not to develop either 41 ‘large’ or 79 ‘smaller’ WTGs.
- (b) The commitment in the DCO is that the number of WTGs will not exceed 41 at the maximum blade tip height (370m) and 79 at the minimum height (324m).
- (c) The final design (confirmed through engineering design studies post consent) may therefore have between 41 and 79 turbines; and WTGs between 324m and 370m in height (with the ultimate balance controlled by commitments in the draft DCO in respect of the maximum height, maximum number and maximum rotor swept area).
- (d) To provide a precautionary but robust impact assessment, a realistic worst-case scenario has been defined in terms of the potential effects that may arise. This Rochdale Envelope approach to EIA is common practice for developments of this nature, as set out in Planning Inspectorate Advice Note Nine: Rochdale Envelope (PINS, 2018).
- (e) In the SLVIA, the maximum height WTG that could be installed under the DCO is considered as the worst-case scenario (APP-079, table 10.17), in which the number of WTGs will not exceed 41 at the maximum height.
- (f) This is considered worst-case due to the larger apparent scale of the ‘larger’ WTGs, their scale comparisons with operational WTGs; their visibility and wider extent of ZTV compared to the ‘smaller’ WTGs (Figure 10.7 and 10.8).
- (g) The ‘range of configurations’ or differences in effects resulting from the two extremes of the project design does not need to be assessed as the worst-case scenario has been assessed under the Rochdale Envelope approach.
- (h) IPs agree that this is the worst-case scenario and that the effects are not significant in EIA terms. Therefore, all ‘lesser’ options, including those with ‘smaller’ turbines, will have lower impact than the worst cases assessed.
- (i) Additional wireline visualisations showing a 79 ‘smaller’ WTG layout (324m) and a 41 WTG layout at 370m were submitted at Deadline 1 and 2 to allow comparison but cannot be taken to mean that the Applicant is proposing an either or between these configurations.
- (j) The Applicant considers that the effects of the 79 ‘smaller’ WTG layout are likely to be of slightly lower magnitude due to the smaller apparent height of the 324m WTGs (in comparison to 370m); and the lesser extent of the ZTV, however the

difference is relatively subtle and unlikely to change the effects below the thresholds already assessed for the worst-case scenario 'larger' WTG layout in the ES.

- (k) These effects are already assessed as generally being of low magnitude and no greater than moderate/minor and not significant EIA terms for, and this is accepted by IPs.
- (l) The Applicant is unable to commit to building the 'least harmful' or lowest impact option. Designing the layout in the most optimal way involves balancing a number of competing technical, economic, functional and environmental factors. Turbine selection for the project cannot be driven by non-significant AONB impacts, which do not result in any assessed harm to the AONB special qualities nor compromise its purpose, and do not justify committing to the smallest turbine as a form of mitigation beyond the measures already embedded within the project design.
- (m) The DCO Application needs to allow for required flexibility in the final design, as the scale of the wind farm needs to be sufficient to be commercially viable, achieve a CFD and utilise the optimal turbine technology available on the market at the time of construction, in order to maximise energy generating potential in response to UK Government policy

1.7.3 In the relation to the comments made by Suffolk in LIR regarding the harm caused in the AONB, the Applicant noted that it needs to consider the full submission made by Suffolk in the LIR. The Applicant's headline position is that there is no harm due to the distance.

b) Effects of the offshore safety lighting

1.7.4 On the topic of lights and the types of lightning that would be used on the turbines, the Applicant confirmed that the turbines will be operated to the same requirements as the existing ones. The DCO commits the Applicant to operate the lights under the Air Navigation Order 2016. The lighting will include the red aviation lighting and (at the platform level) there will be yellow/orange lights (for marine navigational safety). The Applicant doesn't believe that these lights will be visible from the low-lying coastline at such long range due to the Earth curvature and the distance offshore. The relevant assessment can be found in the Seascape, Landscape and Visual [APP-079] where the Applicant has assessed the effects of the offshore aviation lighting of the turbines. The Applicant made the following point in relation to the embedded mitigation: in accordance with Air Navigation Order 2016, the angle of the plane of the beam of peak intensity emitted by the light must also be elevated above the horizontal plane; and not more than 10% of the minimum peak intensity is to be visible at 1.5° or more below the horizontal plane. This provides embedded mitigation as low-lying coasts and seas (below the horizontal plane of the nacelle) would experience lighting at reduced intensity.

1.7.5 When drawing a distinction between the lighting that is required for navigational purposes and the lighting that is required for aviation purposes, the Applicant explained that the marine navigational lightning is required by the Trinity House and it is secured in the DML. The DML itself will be approved by the MMO. In the DCO there is a requirement that refers to the Air Navigation Order 2016 which controls the aviation lighting.

1.7.6 Responding to the ExA's query relating to the making of further assessments of night-time viewpoints from the Clacton Frinton area, the Applicant confirmed that the night-time viewpoints in the SLVIA were selected via the ETG process which involved Essex CC. Essex CC confirmed that no further night viewpoints are needed.

d): The need for additional viewpoint assessments

- 1.7.7 By way of an update on the discussions with Babergh and Mid Suffolk District Councils in relation to including an additional wireline viewpoint, the Applicant confirmed that the Applicant has had discussions and agreed to include a new viewpoint. The Applicant emphasised that the significant effects are very localized, extending out to 1.3km in respect of landscape character and 1.4km in respect of visual amenity. The closest boundary to Dedham Vale AoNB is at 2 km. The Applicant has an existing viewpoint (viewpoint 9) which illustrates the very limited visual effect. The Applicant noted that it believes that the IPs are agreed in the understanding that this impact on this viewpoint will not be significant, but the purpose of it will be to demonstrate that point. The Applicant noted that, in terms of the timescales, the Applicant hopes to achieve this by the end of 2024 (this is weather dependent and the exact viewpoint needs to be confirmed).

e) Cumulative visual effects of the proposed onshore substation

- 1.7.8 Responding to the ExA question on whether the viewpoint presented by figures 2.16D and 2.16E in [APP-182] is representative, the Applicant confirmed that the viewpoint is an appropriate viewpoint on Ardleigh Road. There are not many visual receptors, so it seemed appropriate to attribute that to where there are residential properties, which would typically indicate a higher sensitivity. In terms of the visualizations, the Applicant follows the relevant guidance. The Applicant noted that although one of the frames did not show anything, this is needed to ensure that there is consistency between the visualisations for every viewpoint.
- 1.7.9 On the cumulative assessment, the Applicant confirmed that within the LVIA [APP-084] the Applicant has set out the cumulative assessment (where it is assumed that Five Estuaries, North Falls and EACN station are already constructed). The conclusions of this assessment are similar to the assessment of the Five Estuaries' onshore substation alone where there are very localised significant effects.
- 1.7.10 In relation to the pylons (as part of Norwich to Tilbury electricity transmission line) , the Applicant confirmed at the time of the assessment there was not sufficient information to include in order to ensure that there was a meaningful assessment. The Applicant noted, however, that even if the information was available, it is unlikely to change the assessment due to the following reasons:
- (a) the EACN is on the western side of Grange Road. The Norwich to Tilbury electricity transmission goes in a western direction, so it goes westwards and then it goes north west. Therefore, it's on the opposite side of the substation. The assessment includes a couple of viewpoints that show the EACN, and it has a limited influence on the cumulative assessment.
 - > There is a possibility of one transmission tower in the westerly direction being visible, however, these towers will have a very limited additional effect on the Applicant's assessment. In addition, there is lots of woodland on the western side which will add to the screening effect.
- 1.7.11 The Applicant concluded, therefore, while there will be an additional effect, the focus of the cumulative assessment inevitably will very much centre on the interaction between North Falls and Five Estuaries onshore substations, because they are both large developments within close proximity.

- 1.7.12 Responding to the points raised by Suffolk in LIR in relation to discharging the duty under section 245(6) of the Levelling Up and Regeneration Act 2023 (i.e. "...to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty"), the Applicant explained that the Applicant does not agree that there is residual harm nor that the "duty to seek to further" means that the Applicant has to explore every possible measure to enhance when the Applicant does not agree that there is any harm. The Applicant noted that the duty is expressed as applying in the exercise of a function, and the function is the determination of the planning application.
- 1.7.13 The SEP/DEP decision (the DCO decision for an offshore windfarm made in 2024) considered this "duty" and it was found that the duty has been met in that case, because that applicant had taken reasonable precautions to avoid compromising the purpose of the designation (per the wording of the decision letter). Equally, the Applicant submits that this duty has been met in this DCO.
- 1.7.14 On the topic of security fencing around the substation, the Applicant explained that there are standards on the substation security fencing set out by NG which the Applicant has to comply with. The Applicant will provide a copy of these.
- 1.7.15 Following the discussion on whether the works (for drainage, foundations and substation platforms) are likely to be at the existing land levels or whether these works would elevate the site (which may impact the highest piece of equipment on the site), the Applicant explained that the design of the substation platform is likely to be greater than the existing ground levels since it has to account for drainage, flooding etc. This is accounted for in the maximum elevation that is included in the draft DCO. In addition, the visualisations are used to illustrate the onshore substation and correlate with the finished floor levels.
- 1.7.16 In response to the points made by Essex CC related to the period for mitigation planting to take effect, the Applicant explained that the within the LVIA significant effects are mitigated within the first 15 years. The growth rates that have been applied are standard growth rates for this sort of area (east coast of England). After 5 years, there would be approximately 2.8-3.2m of growth and 4.8-5.8m after 10 years. The landscape mitigation planting has been designed using the idea that if the mitigation planting is close to the visual receptors (such as close to Ardleigh Road or Grange Road) then that proximity allows the mitigation planting be an effective screen (if you consider the height of a car or the height of a person) height. The Applicant has control over density and the Applicant can use different levels of planting to achieve that.
- 1.7.17 The Applicant further added (following a comment from Essex CC in relation to using mature trees) that using whips (rather than mature trees) is a better option because whips can establish better root systems (especially in the dry conditions in Essex).
- 1.7.18 The Applicant also clarified (following a comment from Essex CC in relation to a five-year aftercare period) that there is a distinction between the aftercare (i.e.. replacement of hedgerow planted along the route) and mitigation planting maintenance (i.e. planting around the substation). The mitigation planting is maintained for the life of the development, as is set out in the Outline Landscape and Ecological Management Plan [REP2-022].

- 1.7.19 On the topic of how the Applicant has assessed landscape value, the Applicant explained that the Applicant followed a standard approach by attributing landscape value in accordance with the relevant designations. There are national and county level designations which provides an objective guide as well as a consistency across the country. The Applicant noted that even if the designations are removed from the assessment, the conclusion would remain the same (i.e. medium value for the landscape).
- 1.7.20 The Applicant further clarified (following the ExA's question) that the missing plan 2.1.13 in the Landscape and Visual Impact Assessment Figures [APP-180] is the same as the plan in the Outline Landscape and Ecological Management Plan [REP2-022].
- 1.7.21 Explaining the reasoning as to why the magnitude of change (going from an open agricultural landscape to one containing hedgerows and a tree belt) is "negligible", the Applicant noted that in relation to that viewpoint (the view of the onshore substation) there is a significant effect. However, over time (as a result of the mitigation planting which is growing) the effect will no longer be significant. In addition, the visual impact of trees is a positive significant effect. In addition, there remains an open aspect to the south that even though that particular view (looking in that northerly direction) has changed, the fuller 360 degree view is still representative of the baseline rural landscape.

1.8 AGENDA ITEM 3.7: EFFECTS FOR TERRESTRIAL TRAFFIC AND TRANSPORTATION

a) Road traffic surveys and predicted traffic generation, including assessment methodology and impacts on junctions during construction

- 1.8.1 The ExA asked the Applicant to provide a brief update on any progress made or discussions that have taken place on traffic and transportation matters since ISH1.
- 1.8.2 The Applicant has undertaken further discussions with both National Highways and Essex County Council Highways since the Issue Specific Hearing 1 and has made progress of addressing issues that have been raised during the Examination.

NATIONAL HIGHWAYS

- 1.8.3 The Applicant and National Highways have met a number of times to progress various elements, such as Protective Provisions. This also included a meeting on the 2 October to discuss the comments raised in its' Technical Note 7 and the Applicant's responses to this, issued to National Highways on the 26 September, relating to the traffic and transport assessment.
- 1.8.4 Following the issue of the National Highways responses to the Examining Authority's written questions at Deadline 2, there are 6 remaining issues to further resolve, 3 of which require further clarifications from the Applicant, with the other 3 requiring the Applicant to undertake some additional work, to endeavour to resolve these.
- 1.8.5 The Applicant and National Highways are progressing discussions on the Road Safety Audit for the A120 / Bentley Road junction and hope to be able to arrange a date shortly for this to be undertaken.

ESSEX COUNTY COUNCIL

- 1.8.6 A meeting was held with Essex County Council on the 24 October to discuss the comments by the local highway authority, submitted at Deadline 1 and referenced in the Essex County Council Local Impact Report.
- 1.8.7 As a result of the discussion, the Applicant is updating the Outline Workforce Travel Plan [APP-259] and the Outline Construction Traffic Management Plan [AS-055] with a number of further measures, controls and monitoring regimes, to endeavour to resolve the issues raised related to these documents. Drafts of these updated documents will be issued to Essex County Council for review prior to submitting these to the Examining Authority and therefore we propose to submit these at Deadline 4 or 5.
- 1.8.8 The Applicant is also preparing a detailed response to the comments related to the traffic and transport assessment, which will be shared with Essex County Council before a further meeting, to endeavour to resolve Essex County Council's comments on these points.

BOTH STAKEHOLDERS

- 1.8.9 The Applicant submitted a draft version of the Abnormal Indivisible Load Technical Note to National Highways and Essex County Council on the 8 October, for early comments prior to this being submitted to the Examining Authority at Deadline 2 in response to the actions at Issue Specific Hearing 1.
- 1.8.10 The Applicant further added that the Applicant is providing further clarification and evidence on the outstanding issues. The Applicant will then look into and consider carrying out the capacity assessments. The meetings with NH will continue to happen. The ExA asked the Applicant to clarify why the updated Traffic and Transport Chapter [REP1-018] includes references to Little Bromley Road and Ardleigh Road. The Applicant clarified that, as part of the change request, the Applicant added access point 13 (to support the construction of the operational drainage connection) and, as part of the wider review, the Applicant noticed that it could be clearer that construction traffic would move between access point 12 and the EACN. Therefore, there would be limited use of that roadway between the two access sites.
- 1.8.11 Following the comments made by Suffolk CC (in relation to the construction traffic impacts on Suffolk local road network raised in the LIR), the Applicant noted that further detail is needed from Suffolk CC (for example, confirmation that Suffolk is looking to control the AILs and not all materials and workforce traffic).
- 1.8.12 In relation to the ports construction management plan, the Applicant does not agree that this is necessary to be provided. The Applicant has set out its position on this in responses to Deadline 2, in particular in its response to the LIRs.
- 1.8.13 In relation to the point raised by Suffolk CC in approving the construction traffic management plan at Orford Ness, the Applicant also does not agree that this is necessary. The only works the Applicant is consenting at Orford Ness is the erection of a fence and there would be very limited traffic movements associated with this.

2. COMPULSORY ACQUISITION HEARING 2 (CAH2)

THURSDAY 31 OCTOBER 2024

2.1.1 This note summarises the submissions made by Five Estuaries Offshore Windfarm Limited (the Applicant) at the Compulsory Acquisition Hearing 2 on 31 October 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: 3.1 SUMMARY OF CASES FROM AFFECTED PERSONS ATTENDING CAH2

2.2.1 The Applicant notes that this item was primarily directed at other parties and it only responded to issues arising.

HOLMES AND HILL LLP, SOLICITORS ON BEHALF OF THE EXECUTORS OF THE ESTATE OF MR C TABOR

2.2.2 In response to the representations made on behalf of the Executors of the estate of Mr C Tabor, the Applicant submitted that it has already addressed these points and would provide the references to the relevant submissions in this summary.

- (a) That the Applicant does not require plot 17-025: the Applicant rejects this submission. The siting of the substation and the reasons for the selection of the plot are set out in the site selection and alternatives chapter of the ES [APP-066] and in response to first written question GC.1.08 [REP2-039]. The need for the plot is set out in the Statement of Reasons [REP1-014]. The explanation of the orientation of the substation within the plot was also covered in ISH3 and the summary of the Applicant's submission in that regard is included in this document.
- (b) That the acquisition sought does not meet the legal test set out in s122 of the Planning Act 2008; the Applicant rejects this submission. The compelling case in the public interest for the powers sought is set out in the Statement of Reasons [REP1-014].
- (c) That provision of BNG is not mandatory on site and should be delivered elsewhere: the Applicant agrees that this submission is factually correct however in context it appears that the affected party has misunderstood the Applicant's proposals. The Applicant is not seeking to acquire any of the land at the substation to deliver BNG. Land is sought to be acquired for landscaping and ecology enhancement, the provision of which is fed into the overall BNG unit calculations for the development, but no land is sought to be acquired to provide BNG as an outcome. This was explained by the Applicant in ISH3 and the oLEMP submitted at Deadline 2 [REP2-022] which has been updated to try and help clarify the approach.
- (d) That it is not legitimate to take in account North Falls. The Applicant not only submits that it is legitimate but in the circumstances it is required to do so by the terms of the NPS and also to address cumulative impacts, The Applicant addressed this in its post CAH1 written submissions [REP1-059].

MR LOUIS FELL ON BEHALF OF LIANA ENTERPRISES AND STRUTT AND PARKER FARMS

- 2.2.3 In response to submissions made by Mr Fell on behalf of Liana Enterprises and Strutt and Parker Farms, the Applicant reiterated that it is entirely normal and necessary for linear projects to adopt a corridor approach whereby a wider corridor than will be finally needed is adopted in the DCO application with the detailed routing within that determined post consent at detailed design.
- 2.2.4 In response to Mr Fell's specific submissions around 'drilling under' the water bodies to the north of plot [07-011], the Applicant advised that the routing in this area is constrained by utilities, such as the need for a stand off from the Affinity water main and where it is crossed that an angle as close to perpendicular as possible is achieved. The Applicant noted that it had altered the route in this location after pre-application consultation and has already moved this as far north as is possible towards the reservoirs.
- 2.2.5 The Applicant agreed as Action Point 1 from CAH2 [EV6-016] to submit plan showing the line of the Affinity water main and that has been submitted along with this summary.

MR GWYN CHURCH OF BROOKS LENEY (CLIENTS UNSPECIFIED)

- 2.2.6 Mr Gwyn Church of Brooks Leney submitted that the land take was excessive both temporarily and compulsorily. The Applicant rejects that submission in whole as being unsupported by any evidence. The Applicant has set out the need for the land sought in the Statement of Reasons. Mr Church further submitted that there had been a lack of collaboration with North Falls. The Applicant noted that the submission made are inconsistent on this point. To argue both that the land take is excessive because of the allowance presumed to be made for collaboration with North Falls, and that there has been a lack of collaboration with North Falls, cannot both be correct.

- 2.2.7 Mr Church objected to the approach of seeking separate permanent protective easements, for each of the Ve and NF cable routes which, in his submission, would 'sterilise' the land between them if they are placed at such a distance that the easements do not in effect 'abut' or overlap. The Applicant considers this argument misconceived. The Applicant notes that the land over the buried cables will generally be returned to its current use (outside of the onshore substation). It is therefore obviously not sterilised from its current use. What Mr Church is actually arguing is that the potential for other development to come forward on the land may be affected. The Applicant notes 2 points on this: firstly that this is a land valuation and therefore compensation point about the potential for hope value on the land for future development, there are no known proposals on the route which have not been engaged with so this is an entirely speculative position. Where the hope value could be evidenced at the compensation stage the Applicant would be liable to compensate for any enhanced value. Secondly, this position is inconsistent with various submissions made that the Applicant should be avoiding the area as the BMV status of the land makes it very valuable to farming and the proposed development will adversely affect farming businesses. If the land is so valuable to farming why would landowners be seeking to put other development on it which would result in a permanent loss rather than the Applicant's temporary cable corridor impacts? The Applicant considers that it is unsustainable to argue both that the land is so valuable for farming that the impact of the proposed development is intolerable and that landowners would be unreasonably restricted from developing the land (for entirely unknown, unspecified, proposals) by the presences of cables.
- 2.2.8 The Applicant notes that Mr Church submitted that discussion has been ongoing for 3 years with the Applicant.
- 2.2.9 The Applicant welcomes Mr Church's acknowledgement that screening was required for Norman's Farm and that this being closer would mean it was more effective more quickly. The Applicant however notes that the request for planting of maturer trees is contrary to the advice from ECC that this is the driest county in England and planting must be selected having regard to that. As the Applicant's landscape specialist submitted in ISH3, whips establish better roots systems and tolerate drought better than older specimens. The Applicant accordingly cannot commit to precisely what size of planting will be selected as a balance of factors applies. The LEMP is subject to approval by the LPA, meaning that engagement with them will be required in reaching that balance to ensure that approval can be obtained.

MRS TAM SIN FAIRLEY ON BEHALF OF THE T FAIRLEY FARMING PARTNERSHIP

- 2.2.10 Mrs Tamsin Fairley on behalf of the T Fairley Farming partnership objected to the land take in plot 17-024, the 'enclosing' of the yard of Norman's farm by planting, and requesting that part of the plot be removed. The Applicant notes that this screening is assessed as required to mitigate the landscape and visual impacts of the substation. It notes that the primary views southward from the residential property at Norman's Farm are unaffected by the development. To the north of the residential property are agricultural buildings which will be in proximity to the tree planting but will also provide offset between the residential property and the screening.
- 2.2.11 Mrs Fairley submitted that she considered the proposals lacked clarity as to what was environmental mitigation and what was BNG. The response to the Executors of the Estate of Mr C Tabor is referred to in response to that point.

2.2.12 It was further submitted by Mrs Fairley, that the 'split' haul route in plot 17-004 and 17-005 was unnecessary. As set out in response to first written question EO.1.1(c) [REP2-039], the Applicant, based on mapping, survey and the advice of its specialists, has assessed the area over the cable corridor near Ardleigh Road as lowland meadow, a Section 41 habitat of principal importance in England.

MR [ROBERT] FAIRLEY ON BEHALF OF H FAIRLEY

2.2.13 Mr Fairley submitted that the hydrology survey was undertaken in inappropriately dry weather, that the diversion route identified for Bentley Road was over his private farm track and unsuitable for that purpose and that cables already in situ under his land had long term crop loss implications.

2.2.14 The Applicant noted that the survey to which Mr Fairley was referring was a walkover survey, which while it does seek to identify drainage ditch and watercourse routes, was not a survey primarily to identify land drainage water volumes in wet periods. For ecology in particular it is important to know how often such features are dry as well as wet as that affects what species are likely to use them as habitat.

2.2.15 The Applicant was aware of Mr Fairley's objection to the proposed diversion route and noted it had been investigating and has identified an alternative which would be included in the next revision of the Outline Construction Traffic Management Plan (oCTMP).

2.2.16 With regard to the effects of other cables, the Applicant cannot speak to the methods used by another developer and works undertaken by another party, presumably some considerable time ago if the submission that the link boxes and manholes on that cable are now due to be replaced is correct. The Applicant has set out in the CoCP [REP1-041] its commitment to soil management and the standards it agrees are necessary for this development to adequately protect the reinstatement of agricultural land.

EXA QUESTIONS

2.2.17 The ExA noted that in CAH1 the Applicant submitted that seeking compulsory powers for all of the cable corridor and substation accords with S122 of the Planning Act 2008. The ExA referred to the case of FCC Environment (UK) Limited v The Secretary of State for Energy and Climate Change v Covanta Rookery South Limited and noted that its understanding of the Court's approach included that compliance with the NPS did not automatically mean that there is a compelling case in the public interest. The Applicant was asked to submit a note considering this case and any other case law as CAH2 Action Point 2. The Applicant will do so, but notes it does not consider that the judgement in the case cited created any new understanding of the law. The NPS sets out the need for the development, which forms an important element of the compelling case but is not the only point which must be considered. The Applicant considers that the compelling case is set out in the Statement of Reasons, but will submit a full legal response including references to any other applicable case law at Deadline 4.

2.3 AGENDA ITEM 3.2: APPLICANT'S LAND RIGHTS NEGOTIATION UPDATE

2.3.1 The Applicant provided the following update:

- > The Applicant has been in dialog with all the agents individually and have now met with, arranged further meetings and requested meetings with those affected to discuss land holding specific matters with a view to finalise voluntary

agreements. The latest update since the last hearings on the status of negotiations with affected parties is set out in the Land Rights Tracker [REP1-048].

- > To date 36 Heads of Terms have been issued to affected parties 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 and have become, through the negotiations over the past 18 months, composite documents setting out a lot of detail that will make up the main option agreement.
- > Of the remaining Heads of Terms, 15 are represented by Brooks Leney whom the Applicant has had recent meetings with to further discussion on the outstanding points. We have made some progress and we expect to be in position to finalise these terms in the coming months once we have addressed the outstanding comments that are on the agenda for a meeting on 01 November.
- > Since CAH 1, the Applicant and its advisors held a meeting on 18 October with the Fairly Farming partnership regarding the rights being sought across their interests but with specific focus on the land subject to the proposed substation. The key areas of disagreement and concern were discussed, with reasoning being provided by the Applicant, and feedback taken on board from the landowner. Constructive dialogue is ongoing and the Applicant is hopeful of reaching a voluntary agreement.
- > The Applicant has issued populated Heads of Terms to Cobra Mist on the 18 October for the land at Orford Ness. The Applicant understands that Mr Gold is not yet content with the commercial content of those terms and commercial discussions are ongoing.
- > For the remaining Heads of Terms the general outstanding points relate to intricate commercial points regarding solar farm option agreements and some agreements where despite the Applicant's best efforts it is yet to receive any recent comments from those landowners, or their instructed representatives.

2.3.2 Mr Church submitted that there had been a lack of meaningful engagement by the Applicant. The Applicant notes that given Mr Church had acknowledged earlier in this hearing that discussions had been ongoing for 3 years, it entirely rejects that submission.

2.3.3 Mr Church again raised the 'sterilisation' point and submitted that it was the main issue for the majority of his clients (unnamed). The Applicant notes that what Mr Church is seeking would pre-empt the detailed design and curtail the reasonable flexibility the Applicant needs to balance all of the applicable factors in reaching that detailed design including (but not limited to) the outcomes of detailed ground investigation, updated ecology surveys, engineering constraints and contractor methodology input as well engagement with landowners and the obligation to act reasonably in seeking accommodations with them. The final impact on landowners can materially impact the compensation payable and it is therefore in the Applicant's interests to work constructively with them.

2.3.4 The Applicant noted the ExA query arising from the National Highways' submission [REP1-066 at 6.1] that its ownership was not properly reflected in the Book of Reference. The Applicant submitted that it considered that the ownership is correctly referenced. The Applicant notes the request that it clarify the ownership status of National Highways in writing as action point 6, which the Applicant has responded to in document 10.25 Applicant's Responses to Action Points - ISH3, CAH2, ISH4 submitted as part of Deadline 3.

3. ISSUE SPECIFIC HEARING 4 (ISH4)

THURSDAY 31 OCTOBER 2024

3.1.1 This note summarises the submissions made by Five Estuaries Offshore Windfarm Limited (the Applicant) at the ISH4 (DCO) on 31 October 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) The Applicant's explanation of any substantive changes made to the dDCO and Explanatory Memorandum submitted at either Examination Deadlines 1 or 2, most particularly with respect to the proposed Articles and Schedules 1 (Authorised Development) and 2 (Requirements)

3.2.1 The Applicant provided the following brief summary of the changes made to the DCO:

- > Article 7, benefit of the order: the Applicant has added new paragraphs 9 and 10 concerning notifying of transfer in response to the MMO request
- > Article 8. The Applicant has added disapplication of need to get SSSI assent for work only to provide in the unlikely situation where there is breakout from trenchless installation which we consider it would be beneficial to be able to deal with promptly.
- > Article 16 has been expanded as to what is meant by traffic regulation to more explicitly cover the permitting or restriction of the use of the road through imposition of traffic control. This change was made to increase clarity and align with North Falls given that as the project are seeking substantially the same street works, we consider consistency on this is helpful to the highways authorities.
- > New article 17, power to later layout of streets. This may be required on Bentley Road and, in much more minor instances, where we are creating accesses. This addition also increases alignment with North Falls.
- > Article 38 was amended to include authority to lop the TPOd trees now specified in schedule 12 as it has been identified they may need to be lopped or have the root protection area encroached on.
- > Requirements. Following comments received from the ExA the Applicant has sought to combine various elements of the requirements regarding the OnSS into one more cohesive requirement now called onshore substation works.

3.2.2 The Applicant notes that the following corrections are required to Schedule 2, table 1:

Maximum total seabed footprint for wind turbine generators (excluding scour protection) (metres squared)	992,274
Maximum total seabed footprint for offshore substation platforms (excluding scour protection) (metres squared)	33,700
Maximum total scour protection volume for offshore substation platforms foundations (metres cubed)	125,450

- 3.2.3 The Applicant notes the ECC request for clarification as to what has been assessed in the ES re hydraulic fracture break out in the SSSI to support the addition to Article 8. The Applicant does not consider that this would be a likely, or a 'likely significant effect' so it has not been assessed in the ES in detail as it does not rise the level of requiring such assessment. The Applicant's Onshore Biodiversity and Nature Conservation Chapter [APP-086] does not assess impacts from frac-out at any point along the cable corridor, including Holland Haven Marshes SSSI, as it is not a significant risk for the construction of the Five Estuaries Offshore Windfarm Project with the implementation of appropriate mitigation.
- 3.2.4 The Applicant's Hydrology, Hydrogeology and Flood Risk Chapter [APP-088], assesses the likelihood of bentonite breakout from trenchless crossing techniques during construction and concludes the following:
- > "For inland watercourses the impact on water quality from the trenchless crossing works would be direct and of an intermittent nature and of short duration.
 - > The sensitivity of the receptors ranges from low to high. Given the mitigation in place and that any direct pollution from activities would be small, the magnitude of impacts to watercourses directly draining the inland trenchless crossing areas (Holland Brook, Kirby Brook, Tendring Brook and smaller tributaries and ditches) is deemed to be low. The magnitude of impact to watercourses downstream of the Order Limits is deemed to be negligible. The significance of effect on inland watercourses would, therefore, be minor adverse for watercourses directly draining the trenchless crossing work areas and minor adverse or negligible for watercourses downstream of the Order Limits. These are not significant effects in EIA terms."
- 3.2.5 Controls within the Applicant's Code of Construction Practice [REP1-041] will be implemented to prevent any potential release of drilling fluid (bentonite) to the water environment. Site investigation prior to works, monitoring during works and appropriate frac-out contingency plans including response equipment will be detailed in the plan. Appropriate control measures committed to in the Code of Construction Practice include the following:
- > Undertaking appropriate ground investigation/desk study to inform drilling parameters such as drilling pressures;
 - > Monitoring of drilling fluid properties (i.e. mud weight, viscosity, gel strength, volume and pressure) during drilling to prevent frac-outs;
 - > Stopping drilling if unexpected variations or trends are observed and investigating the cause;
 - > Having frac-out contingency plans and response equipment such as sand bags and clean-up equipment in place, and detailed in the activity Risk Assessments and Method Statement; and
 - > Regular inspections should also be conducted along the drill path during pilot hole drilling.

- 3.2.6 ECC requested that schedule 2, part paragraph 5 be amended to, allow for bespoke arrangements in sub-paragraph (1) and delete the repayment of fees in sub-paragraph (2). The Applicant submitted and maintains that there is nothing in sub-paragraph (1) which prevents or excludes the agreement of a bespoke arrangement, which it understands to mean a planning performance agreement (PPA) or similar. Rather it notes that it is not uncommon for a bespoke arrangement to be put in place in addition to a fee where appropriate.
- 3.2.7 On sub-paragraph (2), the Applicant has deleted the repayment sub-paragraph.
- 3.2.8 The Applicant notes the SCC submission that the TCPA fees regulations are only a proxy and more work can be involved in discharge than this would necessarily cover. The Applicant entirely agrees however it notes that this is true for all planning applications not just this DCO, and that Parliament has not put in place any fee regulations at all for the discharging of requirements under a DCO. Indeed, in the recent review of the fees for the application stage and in bringing in a statutory ability for some bodies to charge for participation in an Examination the Government had a clear opportunity to revisit the position on fees for discharge and did not make any change. The Applicant accordingly considers that in this area, where the law does not provide for the payment of any fee at all, the application of the TCPA fees regime is the most suitable available proxy. That does not mean that the Applicant will not discuss a PPA with ECC/TDC (as the primary host and most affected LPAs), but it is not willing to commit to higher fees than required by legislation here, especially in light of the SCC submission on its request for port traffic plans (the need for which is not accepted) which would result in the Applicant having to make numerous, entirely otiose submissions to unknown, uninterested LPAs within whose areas the ports are located and for which having a set fee is necessary as otherwise none would be payable at all.
- 3.2.9 The Applicant considers that given the very limited works outside of the ECC administrative area the fee would be entirely appropriate to the work involved for determining any approval which may be needed for Orford Ness given that the works consist of erection of a fence and can not reasonably be said to involved more work than any average application for discharge of a planning condition.
- 3.2.10 SCC noted its previous submission that the DCO should be subject to a Grampian condition that the development should be phased to prevent works going ahead before there is certainty on the EACN and that the Applicant should not be able to 'choose' between turbine numbers and heights but must be restricted to the 'last harmful' option.

- 3.2.11 The Applicant will respond to the substance of the SCC points in response to the SCC deadline 2 submissions. The Applicant noted, again, that it is not seeking a set configuration and that the 2 configurations (41 and 79 turbines) used in the ES represent the worst cases for assessment purposes only, they are not binary choice of turbines parameters. The idea of the DCO fixing the turbine parameters against the Applicant's will and without any regard to the effect that would have on turbine procurement and therefore deliverability and efficiency of the windfarm, not only entirely undercuts the principle of using the application of Rochdale envelope to retain the necessary flexibility but would be fundamentally destructive to any DCO granted being fit for purpose. The Applicant reiterates in the strongest terms that it simply is not the case that there is a binary choice here between two options of turbines.
- 3.2.12 The Applicant notes that it advised that in the previous hearing that it wishes to see SCCs submission in full on these points before responded and therefore did not intend to respond until it had fully reviewed the LIR. The Applicant finds the SCC submission that it should have responded to the summary of the oral submission at Deadline 2 and not waiting for the LIR entirely unsustainable given that the Applicant had no way to know what would or would not be included in the LIR until it received it. The Applicant accordingly maintains that the SCC request that it be forced to provide wording for requirements with which it fundamentally disagrees before it has had a chance to respond on the principles is entirely unreasonable.
- 3.2.13 SCC reiterated its request that it be named as consultee in requirements 7 and 16 as the subject matter would have impacts within the SCC remit. The Applicant maintains its position that this is unnecessary, there is no impact on SCC which would justify this inclusion, and it continues to object to any insertion.

ExA questions

- 3.2.14 In response to questions from the ExA:
- > The Applicant agreed to delete the final sentence of Article 17(5).
 - > The Applicant was asked to provide an explanation of Article 47. The applicant considers that this is required to allow appeal from SoS DESNZ to SoS DEFRA where matters under the compensation schedule are not approved. The Applicant submits that this is appropriate as SoS DEFRA is ultimately responsible for the national site network and the delivery of strategic compensation measures under the marine recovery fund for example and would have the appropriate knowledge to determine any dispute.
 - > Schedule 1 – swept path and cable parameters: noted that the ExA will ask question on these in the second written questions.
 - > Requirement 5, the Applicant agreed to add 'colour and material' to item 5(1)(f).
 - > Schedule 2, part 2, paragraph 6(11), the Applicant, having noted ECC have no objection, will delete the second sentence of this paragraph.

3.3 AGENDA ITEM 3.2: UPDATE WITH RESPECT TO THE DRAFTING OF THE DEEMED MARINE LICENCES INCLUDED IN SCHEDULES 10 AND 11 OF THE DDCO

- 3.3.1 In the absence of the MMO, the ExA asked the Applicant if any of the points on drafting raised by MMO remain unresolved. The Applicant noted that the parties remain fundamentally not agreed on the principle of whether the deemed marine licences should be included in the scope of a transfer under article 7. The Applicant currently anticipates that remaining a not agreed point at the end of Examination. This has been a common point of non-agreement on recent OWF DCOs as set out in the Applicants response to the MMO's RR [REP1- 048].

3.4 AGENDA ITEM 3.3: UPDATE WITH RESPECT TO THE PROTECTIVE PROVISIONS INCLUDED IN SCHEDULE 9 OF THE DDCO

- 3.4.1 The Applicant notes that various parties in attendance at ISH4 provided updates on the PPs with which it concurred and had nothing further to add.



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