

MONA OFFSHORE WIND PROJECT

Hearing Summary (CAH1) Compulsory Acquisition Hearing 1

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Image of an offshore wind farm

MONA OFFSHORE WIND PROJECT

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1 Summary of Oral Submission at Compulsory Acquisition Hearing 1

ID	Agenda item	Notes
1	Welcome, introduction, arrangements for the hearing	
2	Purpose of the Compulsory Acquisition Hearing	
3	<p>The Applicant’s case for CA and TP</p> <p>TP including addressing the following matters:</p> <ul style="list-style-type: none"> • Identification of the powers sought and their purposes. • Relevant draft Development Consent Order (dDCO) provisions. • How the relevant statutory and policy tests under the Planning Act 2008 (PA2008) (including s122, s123, s127, s132 and s138) and Department for Communities and Local Government guidance related to CA would be met. • The Applicant’s strategy/ criteria for determining whether to seek powers for CA of land, CA of rights or TP of land. • Consideration of alternatives to CA/ TP. • Human rights considerations. <p>The ExA may ask questions in relation to the Applicant’s case for CA and TP.</p>	<p>(1) The Applicant confirmed that draft development consent order (dDCO) (as submitted at Deadline 4 with reference C1 F05) seeks powers to compulsorily acquire land and rights (both temporary and permanent and new and existing) that are required to carry out or to facilitate or are incidental to the of the construction, operation and maintenance of the authorised development as defined in the Order. The Applicant explained that every parcel of land that is affected by the potential compulsory acquisition (CA) of land or rights is identified on a plot by plot basis in the Book of Reference (BoR) (REP 3-006) and the Land Plans (REP1-004) and a unique number has been ascribed to each plot. The Applicant confirmed that the plots are shown on the Land Plans which accompany the DCO and the details of the interests in that land and the purposes for which the land or rights is required are set out in the BoR. The Applicant continued that for each plot the BoR identifies whether the Applicant is seeking the power to acquire that plot outright, the power to create and/or acquire permanent rights including the potential for interference with existing rights, or the power to create and/or acquire temporary rights of possession and use.</p> <p>(2) The Applicant outlined that Part 5 of the draft DCO deals with powers of acquisition and confirmed that although it is seeking to acquire the land and rights it needs voluntarily, it is seeking CA powers in the draft DCO to ensure that the development is deliverable in case rights cannot be secured voluntarily.</p> <p>(3) The Applicant referred to Article 20 of the draft DCO which deals with CA of land and authorises the Applicant to acquire so much of the order land as is required to carry out, facilitate or is incidental to the authorised project (being the authorised development plus ancillary works). The Applicant highlighted that there is a continuing obligation through the exercise of CA powers (if needed) to only take</p>

land or rights that are needed to carry out or to facilitate the development. The Applicant explained that this is an ongoing obligation on the Applicant once any CA powers are exercised. The Applicant confirmed that this wording follows section 122 of the Planning Act 2008 in terms of what land may be acquired and sets out that land must be required (a) for the development to which development consent relates, (b) is required to facilitate or (c) is incidental to that development or is replacement land. The Applicant confirmed that point (c) does not apply in this case as the Applicant is not seeking acquisition of replacement land.

- (4) The Applicant confirmed that order land over which freehold CA is sought is only in respect of the plots around the substation, for the substation itself, new permanent access to the substation, or for necessary landscape and/or ecological mitigation. The Applicant confirmed that CA under the draft DCO is required for these plots as the Applicant requires exclusive possession and control of this land and the proposed development would involve a material change of use from the land's current use. The Applicant submitted that there is no situation in which the existing landowner could continue to occupy and use the land around the substation.
- (5) The Applicant explained Article 21 of the draft DCO which sets a time limit of 7 years from the date on which the order is made for any CA to be sought through either method of notice to treat or general vesting declaration, following precedent in terms of timing and preventing rights existing over landowner's interests for an unreasonable period of time. The Applicant summarised paragraph 2 of this article which clarifies that this timeframe does not end the period of temporary possession of land if that possession was taken within the 7 year period. The Applicant confirmed that this 7 year period aligns with the 7 year period for implementation of the draft DCO.
- (6) The Applicant went through Article 22 of the draft DCO which deals with the CA of rights and authorises the Applicant to acquire or create new rights or impose restrictive covenants on land, which is how necessary rights and restrictions over installed cables will be secured. The Applicant explained that Schedule 8 of the draft DCO prescribes land in which only new rights may be acquired and the purpose of such rights by reference to specified plots. The Applicant confirmed that the majority of plots where rights are being sought is in respect of the cables, but also includes rights to undertake and maintain ecological mitigation works, and for access to those works. The Applicant added that Article 22 also includes provisions relating to statutory undertakers where a right is being exercised by the Applicant to relocate statutory undertaker equipment and provides ability for the Applicant to transfer powers to that statutory undertaker.

- (7) The Applicant confirmed that Article 23 deals with CA of land and minerals, and incorporates part of the Acquisition of Land Act 1981 to address how mines and minerals are to be dealt with under the draft DCO and the process if they are to be acquired. The Applicant explained that Article 24 deals with private rights, paragraph 1 of which deals with acquisition of land and paragraph 2 of which deals with acquisition of rights and restrictions. The Applicant explained that if there are any existing private rights or covenants over order land that are inconsistent with interests the Applicant is seeking to acquire that such rights or restrictions will cease to have effect. The Applicant confirmed that this article also applies to any land over which temporary possession is taken, as long as the Applicant is in possession of the land. The Applicant explained that this prevents a situation where a private right exists that could then undermine or prevent delivery of the proposed development. The Applicant added that paragraph 4 of Article 24 provides for compensation in the event that rights or covenants are extinguished, and statutory undertaker's interests are excluded.
- (8) The Applicant explained that Article 25 is the application of the Acquisition of Land Act 1981 which incorporates relevant CA procedures. The Applicant outlined Article 26, which allows the acquisition of subsoil rights only so that the undertaker is not required to take more rights than it needs rather than having to take interest in the whole of the land. The Applicant added that Article 27 provides modifications to the Compulsory Purchase Act 1965 which deals with inconsistent provisions. The Applicant then went on to explain Article 28, which deals with rights under or over streets and provides a power for the Applicant to enter and take appropriate rights over any street within the Order limits and to use subsoil and airspace for any ancillary purpose. The Applicant added that paragraph 4 of this article provides for compensation where there would not otherwise be an entitlement, as no land or interest is being taken.
- (9) The Applicant explained Article 29, which is an important article providing for the temporary use of land for the carrying out of the authorised project. The Applicant continued that this article provides the powers for the undertaker to enter the Order land and use that land for various purposes including the construction of the development, which would be all elements of the project prior to taking an interest in that land. The Applicant explained that this provision is fundamental to the approach that the project is taking in terms of securing necessary rights over land, and this article means that the Applicant can go into the land to install its infrastructure, and only needs to take the rights and restrictions over the area where the infrastructure has been located, rather than taking a much wider area of land before the infrastructure has actually been installed. The Applicant explained that this article ensures that when permanent rights are taken, they are over a reduced

area than would otherwise be possible if the Applicant had been required to exercise CA powers over the whole of the Order land prior to construction and allows the Applicant necessary flexibility in terms of its infrastructure location. The Applicant confirmed that this approach is precedented in a number of offshore wind farm projects in relation to cable infrastructure. In relation to the specific provisions of this Article, the Applicant added that paragraph 1 sets out that the Applicant can enter and take possession of land within column 1 of Schedule 7 of the draft DCO for purposes set out in that schedule. The Applicant confirmed that in addition to this land, it can enter any of the Order land as long as it takes the necessary steps to compulsorily acquire that land or rights. The Applicant explained that paragraphs (b) to (g) of Article 29 set out the activities that may take place on land subject to temporary possession. In relation to notification, the Applicant confirmed that paragraph 2 of Article 29 requires the Applicant to give at least 28 days' notice of temporary possession before it enters the land, which is a minimum standard notice period for entry under temporary possession and has been included in recent development consent orders, including the Sheringham and Dudgeon Extension Order. The Applicant explained that paragraph 3 of Article 29 provides a time limit for temporary possession, being one year following completion of the relevant works (for land identified in Schedule 7 and permanent works). Again, the Applicant confirmed that this is a standard period adopted in a number of other offshore wind farm development consent orders. The Applicant set out the following further paragraphs of Article 29:

- paragraph 4, which ensures that temporary works are removed before giving up possession, where acquisition of permanent rights and restrictions have not been secured for permanent works;
- paragraph 5, which provides a right to compensation where damage is caused to land through the exercise of the temporary powers;
- paragraph 6, which includes provisions for dispute resolution in relation to compensation;
- paragraph 8, which provides clarity regarding the acquisition of land identified in Schedule 7;
- paragraph 10, which incorporates provisions from the Compulsory Purchase Act 1965; and

- paragraph 11, which provides further clarity that temporary possession powers are limited to land identified for acquisition of land or rights.
- (10) The Applicant set out Article 30, which includes a provision for the temporary use of land for maintaining the authorised project, allowing the Applicant to go back onto land if needed to undertake maintenance, with a requirement for 28 days' notice. The Applicant explained that Article 31 relates to statutory undertakers and that Article 32 allows anyone whose connection is removed through CA powers to seek compensation. The Applicant explained that Article 33 relates to funding, which is an important consideration whereby the Secretary of State must be satisfied that there is sufficient funding in place to meet any liability for compensation under the DCO, unless the Secretary of State confirms in writing that this is not required, there would be a guarantee or alternative security put in place for any compensation claims, which could either be a company guarantee or other security. The Applicant confirmed that there is additional wording provided in this article that is preceded through the Sheringham Shoal and Dudgeon Extension Order providing that the Secretary of State can confirm if it considers that the Applicant has sufficient standing that a guarantee or financial security is not required. The Applicant emphasised that it is for the Secretary of State to determine the circumstances in which this would be appropriate.
- (11) The Applicant went through the Schedules to the DCO which are relevant to CA. The Applicant confirmed that Schedule 7 identifies land of which only temporary possession may be taken and relates to Article 29.
- (12) The Applicant went through Schedule 8 which identifies land in which only new rights may be acquired (as also set out in Table 2 of the BoR) and relates to Article 22. The Applicant explained that this Schedule identifies the type of right required, called the 'menu of rights', with different rights for different plots depending on the type of works being carried out so that a plot is not burdened unnecessarily with rights that aren't relevant to the works being carried out at that plot. For example, the Applicant explained that there are cable rights and restrictive covenants, which is a different package of rights to where cables are going under existing infrastructure, which requires different rights because the Applicant is not seeking to control the surface of the land in the same way. The Applicant continued that there are also cable corridor access rights so that the Applicant can access the cable corridor; hedgerow enhancement rights to allow access to land to maintain enhancements; rights over landscaping and ecological mitigation works; and rights for the National Grid connection.

- (13) The Applicant confirmed that in relation to temporary possession, there are certain parcels of land which are identified in yellow on the land plan (AS-005) which are only temporary possession and only create rights for construction, meaning no permanent infrastructure will be located in these areas. The Applicant confirmed that for these areas, once temporary possession has ceased, the land will be returned to the landowner. The Applicant also confirmed for plots coloured blue on AS-005 that both temporary possession and permanent rights are being sought. The Applicant confirmed this is because temporary possession may be sufficient for some of this land, in that the Applicant may only need to take rights over areas where infrastructure is installed, meaning any remaining areas can be returned to the landowner. The Applicant gave an example of use of trenchless crossing for the cable corridor that may require extension for example to accommodate a compound where the angle of the drill is not known, temporary possession is likely to be taken over the whole of the land and once the cable is installed a permanent easement over the area would be taken. The Applicant confirmed that this approach means there will be less permanent land taken whilst allowing the Applicant flexibility to deliver the project.
- (14) The Applicant outlined that Schedule 9 of the DCO deals with modification of compensation and compulsory purchase enactments and that Schedule 10 sets out protective provisions. The Applicant confirmed that it has had due regard to the relevant statutory and policy tests and indicated that the guidance published by the Department for Communities and Local Government on 20 September 2013 (the Guidance) which has not yet been updated. The Applicant confirmed that the guiding principle it has had regard to has been to minimise the extent of interference with land and rights which would give rise to permanent change of use and reflect the need for when permanent rights would be needed. The Applicant confirmed that where there are overlapping works areas, acquisition of the highest level is taken as an overriding right as the draft DCO needs to be structured in this way. As an example of this, the Applicant indicated that the Order land includes a 74m export cable corridor width to ensure the development can be delivered. The Applicant confirmed that it anticipates permanent rights will only be needed over a 30m cable width post-construction, reducing the area over which permanent rights will be sought.
- (15) In terms of statutory tests, the Applicant confirmed that section 122 of the Planning Act 2008 only allows a development consent order to include provisions authorising CA if the tests have been met, requires the land needed for the development to facilitate or be incidental to that development, and requires there to be a compelling case in the public interest. The Applicant continued that section 123 of the Planning Act 2008 allows the DCO to include a provision authorising CA of land if the

Secretary of State is satisfied that one of the conditions apply which here is that the Applicant made a request for CA within the order. The Applicant explained that these tests are supplemented by general considerations set out in the Guidance. The Applicant submitted that the ExA and Secretary of State must have regard to the following in deciding whether to include provisions authorising CA in the DCO:

- All reasonable alternatives to CA including that modifications to the scheme have been explored and it is for the Applicant to demonstrate the rights are being sought for a legitimate purpose and are necessary and proportionate (paragraph 8);
- The Applicant must have a clear idea of how it intends to use the land which it proposes to acquire, and that there is a reasonable prospect of the funds needed to deliver the scheme being available (paragraph 9); and
- The Secretary of State must be persuaded that the purposes for which the DCO is authorising CA are legitimate and sufficient to justify the interference with human rights of those with an interest in land in terms of Article 1 of the European Convention on Human Rights (article 8 not being applicable here because there is no acquisition of dwellings) (paragraph 10).

(16) The Applicant submitted that it considers these tests have been met and it has made a clear case that all of the Order land identified is either required for the project or required to facilitate or is incidental to the project. In relation to what is meant by required in these tests, the Applicant submitted that this means the acquisition is necessary in the circumstances of the case; does not need to be indispensable but is needed to deliver the scheme proposed. The Applicant cited LJ McCowan in Court of Appeal in *Mr. L. Sharkey, Mr C. Fitzgerald v The Secretary of State for the Environment v South Bucks District Council 1991 WL 838501*: “*The local authority do not have to go so far as to show that the compulsory purchase is indispensable to the carrying out of the activity or the achieving of the purpose; or to use another similar expression, that it is essential*” and “*required*... means ‘*necessary in the circumstances of the case*’”.

(17) The Applicant then referred to paragraph 11 of the Guidance, which says that the Applicant must be able to demonstrate to the satisfaction of the decision maker that the land in question is needed for the development for which the consent is sought, and the decision maker should be satisfied that the land to be acquired is no more than is reasonable required for the purposes of the development. The Applicant confirmed that its case is that all of the land to be acquired is no more than is reasonably required for the purposes of this development. The Applicant referred again to paragraph 11 of the Guidance in relation to acquisition of land for

landscaping, which requires the Secretary of State to be satisfied that the development could only be landscaped to a satisfactory standard if the land in question were to be compulsorily acquired and the land taken is no more than is reasonably necessary for that purpose and is proportionate. The Applicant submitted that it is reasonably necessary in this case. The Applicant also referred to the provisions in the revised National Policy Statements (NPS), in particular paragraphs 2.6.5 and 2.6.6 of EN-5 which recognise that CA of land may be needed for onshore electrical infrastructure such as new substations and for associated mitigation effects such as for landscape enhancement or biodiversity net gain. The Applicant cited Section 122(3) of the Planning Act 2008, which requires the Secretary of State to be satisfied that there is a compelling case in the public interest, and paragraph 13 of the Guidance, which explains that in those circumstances, the Secretary of State needs to be persuaded that there is compelling evidence that the public benefits that would be derived from the CA will outweigh the private loss.

(18) The Applicant outlined its position in relation to the compelling case in the public interest. The Applicant submitted that the benefits of the project to the public is clear and compelling, the scheme being supported by a cascade of international and national obligations that place the UK on a path to reducing CO2 emissions and creating safe, affordable and reliable energy. The Applicant highlighted that the UK Government is committed to reducing greenhouse gas (GHG) emissions by 100% of 1990 levels by 2050 through the Climate Change Act 2008 and has made it clear that offshore wind plays a key role in achieving that net zero target with targets of 30GW by 2030 having been increased to 50GW in 2022. The Applicant submitted that the Mona Offshore Wind Project will make an important contribution to meeting these targets, and in overall terms Mona would meet approximately 35% of Wales' annual domestic electricity consumption per annum, thereby making a significant contribution towards Wales' target of 100% renewables by 2050. The Applicant submitted that there is a clear and urgent need for this project, and referenced the pledge made at COP28 held in Dubai in November 2023 by the United Nations Framework Convention on Climate Change (UNFCCC) committing to working together to triple the world's installed renewable energy generation capacity to at least 11,000GW by 2030 and to double the global annual average annual rate of energy efficiency improvements from around 2% to 4%. The Applicant referenced the UK's 6th Carbon budget which requires a reduction in UK GHG emissions of 78% by 2035 relative to 1990 levels, which demonstrates the scale and pace of action to reduce GHG emissions. The Applicant submitted that rapid progress must be made otherwise the UK's legally binding targets will not be met. The Applicant submitted that it is clear that energy demand is expected to grow substantially and as carbon intensive sources of energy are displaced. The Applicant submitted that

substantial weight must be given to the energy policy objectives set out in the NPS in relation to the urgent need for renewable energy generation, including offshore wind. The Applicant submitted that the Mona Offshore Wind Project can make a large and meaningful contribution to decarbonisation and security of supply while helping to lower bills for consumers, thereby addressing important aspects of the UK's legal obligations and government policy, and reducing Wales and the wider UK's dependency on hydrocarbons which has important security of supply, electricity cost and fuel poverty avoidance benefits. The Applicant confirmed that there are also wider benefits of the scheme that would need to be taken into account in that balance, which include the biodiversity benefits set out through the project, through the enhancement of existing habitats and increased connectivity of those habitats as set out in the Biodiversity Benefit and Green Infrastructure Statement (APP-193). The Applicant highlighted that the project will provide socio-economic benefits to local businesses through the construction and operation phase, with the ability to support 9380 jobs and £675 million in GVA, as set out in the Statement of Reasons (REP3-004) and Planning Statement (APP-186).

(19) The Applicant recognised the importance of Article 1 of the European Convention on Human Rights, where every natural or legal person is entitled to the peaceful enjoyment of his possessions. The Applicant nonetheless submitted that the public interest for the Mona Offshore Wind Project is clear and compelling and that there is an urgent need for this project. The Applicant confirmed that its approach to seeking those powers is necessary to deliver the project and that it has been compliant with the legal requirements. The Applicant submitted that the approach it has taken to CA of rights and temporary possession is to seek a proportionate approach and minimise interference with rights as far as possible. Although it is ultimately a matter for the Secretary of State, the Applicant submitted that it considers that not only has it met those tests in section 122 of the Planning Act 2008, but also that there is a compelling case in the public interest here for land to be acquired compulsorily. The Applicant referred to paragraphs 8 to 10 of the Guidance, which requires that all reasonable alternatives to compulsory acquisition have been explored. The Applicant broke this down into two elements: (1) is there an alternative way to secure the rights that are needed? and (2) would an alternative project or an alternative approach have avoided CA? The Applicant confirmed that it has been engaging with landowners since March 2022, seeking to secure voluntary agreements necessary to deliver this whilst recognising that for most linear projects, the number of land interests means that CA will be required to deliver the project. The Applicant confirmed that this approach is recognised in paragraphs 25 and 26 of the Guidance, which states that where proposals would entail the CA of many separate plots of land, such as long linear schemes, it may not always be

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	<p>practicable to acquire each plot of land by agreement, and where this is the case, it is reasonable to include provision authorising CA covering all the land at the outset of a project. The Applicant also outlined that this guidance states that the Applicant should consider at what point the land they are seeking to acquire will be needed and as a contingency measure, should plan for CA at the same time as conducting negotiations. The Applicant confirmed that this approach is also set out in Section 2.6.2 of NPS EN-5, which confirms that where an applicant does not own or wish to own the land in question (which is the case for the Applicant), it may seek to acquire rights compulsorily. The Applicant confirmed that its position is that there are no alternatives that would avoid the CA of land or rights in land as these are needed to underpin the scheme. The Applicant confirmed that whilst negotiations are ongoing with all the landowners, it isn't the case that that CA should be something that follows on after those negotiations, but needs to be run in parallel with them to ensure that there isn't a delay or a potential delay to the delivery of the project. The Applicant added that heads of terms have been signed with 67% of the cable corridor landowners, which represents 72% of the cable corridor length.</p>
<p>The ExA will invite submissions from Affected Persons (APs) who wish to raise general matters in relation to the Applicant's case for CA and TP. However, site-specific submissions will be reserved to agenda items 4 and 5.</p>	<p>(20) The Applicant submitted that it is important to understand the framework within which CA can be acquired, which is separate to any discussions on voluntary agreements. The Applicant explained that in a voluntary agreement parties can agree what they like, however when looking at acquisition of land and rights in land, options are limited. The Applicant explained that in respect of freehold acquisition, seeking exclusive use of land in perpetuity would exclude existing landowners and requires complete control of that land, which is the only option under CA. The Applicant explained that it is not possible to acquire land compulsorily for a specific period of time but must be acquired in perpetuity through freehold acquisition. The Applicant explained that some rights have been tied to an amount of time for e.g. environmental mitigation required to be maintained, but that this is different to specifying period of time (e.g. 25 years) which isn't something that can be done. The Applicant reiterated that its only option under CA is freehold acquisition of land or permanent acquisition of rights. For the purposes of this order, the Applicant confirmed that these rights must exist in perpetuity as the consent being sought is not time limited but is a permanent consent that effectively lasts in perpetuity. The Applicant submitted that this approach to seeking temporary possession is a longstanding, accepted approach to the development consent for offshore wind projects. The Applicant explained that because the DCO is a statutory instrument, it can apply and disapply various provisions of legislation that are relevant or not relevant to this project. The Applicant submitted that its approach to seeking CA powers is legitimate and lawful and well preceded in previous development consent orders.</p>

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- (21) The Applicant referred to paragraph 2.6.1 of the NPS EN-5 in respect of electricity infrastructure which states that applicants must have a sufficient interest in the land to deliver their project. The Applicant then cited paragraph 2.6.4 of EN-5 which states that in cases where CA of rights is sought, permanent arrangements are strongly preferred over voluntary wayleaves which could be terminated on notice by the landowner in virtue of their greater reliability and economic efficiency, reflecting the importance of the relevant infrastructure to the nation's net zero goals. The Applicant submitted that it is following the approach set out in the NPS, which advises that seeking permanent rights is preferable to take a project forward. The Applicant also submitted that voluntary wayleaves are more commonly used by statutory undertakers, whereas in this case the Applicant will be transferring the transmission infrastructure to the Offshore Transmission Network Operator (OFTO) who will require more permanent rights in land.
- (22) In response to submissions made by Ms Staples on behalf of the National Farmers Union (NFU), the Applicant submitted that it is possible to agree a number of scenarios through voluntary agreements, but the Applicant is constrained in what it can include in the DCO. The Applicant confirmed that it is in discussions with the NFU and others in respect of voluntary agreements, and reiterated that these discussions are separate to what can be included in the DCO.
- (23) In response to submissions made by Mr Parry, the Applicant reiterated that the rights and land it is seeking to acquire compulsorily are necessary for the purposes of this project and in the circumstances of this case.

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<p>4</p>	<p>Site specific issues for the Applicant</p> <p>The ExA will ask the Applicant to provide an update on the progress of negotiations with APs and the timetable for their conclusion.</p> <p>The ExA will ask questions of the Applicant about negotiations and matters arising from written and oral submissions.</p>	<p>(24) The Applicant confirmed that it has been seeking engagement with the affected parties and the associated land interests since March 2022. The Applicant explained that it has consulted with the parties through the non-statutory consultation in June to August 2022 and September to November 2022 and then further through the Statutory consultation in April 2023. Alongside this, the Applicant confirmed that it has continued individual engagement through meetings relating to the development, surveys, the subsequent intrusive works to aid design and latterly through voluntary negotiations for the rights to be acquired. The Applicant confirmed that the current position as to the status of negotiations for acquisition of rights by voluntary agreement is included within the Land Rights Tracker (REP3-076) where an update on the negotiations with landowners, occupiers and statutory undertakers has been provided at each deadline. The Applicant confirmed that since the submission of the latest land rights tracker at Deadline 3 there has been further progress on the voluntary agreements, and that to date the Applicant have agreed 26 sets of heads of terms for the onshore cable corridor easement and hedgerow enhancement works, which represents 67% of landowners and 72% of the corridor. The Applicant submitted that it considers negotiations to be at an advanced stage with the majority of landowners and would expect to have secured heads of terms with a number of additional parties by the end of the examination period. The Applicant explained that with those landowners and occupiers where negotiations are less advanced, the Applicant will endeavour to engage with the affected parties and their appointed representative as appropriate beyond the end of the examination period with a view to resolving the outstanding points of difference.</p> <p>(25) The Applicant added that a meeting has been arranged for 11 November 2024 with the executors of the estate of the late David Watkin Williams-Wynn (the Cefn Estate) and the Applicant submitted that it is looking forward to progressing matters with the Cefn Estate for the substation and associated cable corridor. The Applicant confirmed that it is confident it will make good progress on the heads of terms outstanding and will continue to provide updates to the Land Rights Tracker at the relevant deadlines.</p> <p>(26) The Applicant explained that the LAG as referred to in the Land Rights Tracker means the Land Agent Group which was set up at the beginning of 2024 with a representative of the NFU. The Applicant explained that the LAG includes 6 land agents representing 16 landowners, which accounts for 36% of the cable corridor. The Applicant confirmed that it has been negotiating heads of terms through this forum through a number of meetings through Microsoft Teams and face-to-face. The Applicant updated that the majority of the template heads of terms have been agreed for voluntary agreements for the majority of the LAG. The Applicant added that it has made sure that landowners are updated on discussions to date and have</p>
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been represented by their land agents where required. The Applicant explained that it has been on the ground to engage with landowners and is trying to reach voluntary agreements. It confirmed that it has made real efforts to meet face-to-face with landowners or their land agents, and explained that the reason for the LAG is to ensure consistency with different agents and ensure approaches do not differ between landowners. The Applicant explained that the LAG therefore allows consistency in terms of approach to voluntary negotiations. The Applicant confirmed that there are only three outstanding heads of terms with the LAG.

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Site-specific representations by APs

The ExA will ask APs to briefly set out any outstanding concerns in relation to CA/ TP for the land in which they have an interest that have not been addressed by the Applicant.

The ExA may ask questions of APs about matters arising from written and oral submissions.

(27) In relation to submissions made on behalf of GL Evans & Sons, the Applicant submitted that it is in advanced negotiations stages with GL Evans & Sons on heads of terms and hopes to reach agreement in the coming weeks and months. In relation to the length of commitment to use trenchless techniques, the Applicant confirmed that it is in negotiation with landowners on this point, and emphasised that it requires flexibility in relation to detailed design at this point in the project.

(28) The Applicant submitted that submissions made on behalf of the Cefn Estate do not reflect the Applicant's understanding of the efforts it has made to engage with the Cefn Estate and the Applicant strongly refuted all suggestions made by the Cefn Estate surrounding lack of engagement on the part of the Applicant. The Applicant requested that the script from which the representative of the Cefn Estate was reading be submitted to the examination in order that the Applicant can respond in detail to the points made. The Applicant explained that the Cefn Estate raised a number of matters that had not been raised previously and it is important that the Applicant is given the opportunity to respond to these points. The Applicant added that as it previously submitted, the Applicant's land take is justified and it is only taking land that is necessary for the project. In relation to site selection and the proposed land take, the Applicant confirmed that both the local planning authority and NRW are happy with the amount of landscaping and biodiversity being provided, and that the reason for CA for the purpose of this landscaping is that it needs to be maintained alongside the onshore substation itself. The Applicant referred to the Outline Landscape and Ecology Management Plan (REP2-034) and explained that Appendix F of this document shows exactly which plots are required for landscaping and the reason for their acquisition. In relation to engagement with the Cefn Estate, the Applicant confirmed that a meeting was held with the Cefn Estate to discuss the location of the substations [**post hearing note**: meetings were held with the Cefn Estate on 13 September 2022 where the Cefn Estate made the Applicant aware of its plans for the proposed St Asaph Solar Farm and on 17 April 2023 where the Applicant confirmed that substation options 2 and 7 were being taken forward to statutory consultation]. The Applicant confirmed that a meeting was planned for 21 October 2024 which the Cefn Estate had to cancel, with the 11 November 2024 being suggested as replacement date for this meeting [**post hearing note**: which has since been confirmed]. The Applicant confirmed that it welcomes a meeting with the Cefn Estate as soon as possible. The Applicant clarified that the exploration of a leasehold interest being acquired can be done through voluntary agreements, which is separate to the CA rights being sought within the DCO.

(29) In relation to submissions made by Mr Parry, the Applicant submitted that in 2021 the Applicant undertook a high level study to consider a number of possible grid

connection points and landfalls. The Applicant explained that an Expert Working Group Steering Group was set up pre-EIA scoping regarding the offshore Evidence Plan Process when 6 potential locations had been identified for the point of interconnection. The Applicant continued that once the point of connection was determined the site selection process started and the Applicant looked at the entire North Wales coast line (as identified in document AS-016) and assessed all 6 identified landfall options for viability. The Applicant confirmed that the site selection process was then narrowed down to 2 locations and Llanddulas was identified as the landfall area. The Applicant confirmed that there was no pre-determination of the location of the landfall or onshore cable route. The Applicant confirmed that it has met with Mr Parry and his representatives to discuss what is required in respect of his land and that Mr Parry has seen the alternatives put forward by the Applicant at PEIR and responded to these in written representations. The Applicant added that the other land available as referred to by Mr Parry all involves other third party land and even if these options were suitable, noting that the Applicant does not believe they are, they would still require CA of land.

(30) In relation to heads of terms being negotiated with the LAG, the Applicant submitted that the heads of terms for the occupiers are currently with the LAG to come back with their comments on these. The Applicant submitted that it did not seem appropriate to progress these until it had agreed the heads of terms with the freeholder, but confirmed that it is keen to progress occupier consents now it has the majority of the freeholder voluntary agreements in place.

(31) In relation to submissions made by Mr Bibby who is acting for various affected parties, the Applicant submitted that meetings were held with Mr Bibby and his client Arthur Elwy Morris Owen on 22 September 2022 and 18 April in relation to site selection. More recently the Applicant confirmed that it has had ongoing dialogue with the occupier, whilst acknowledging that due to limited engagement with the landowner the occupier had communicated to the Applicant that it did not think it appropriate to have detailed discussions with the Applicant. The Applicant confirmed that it has offered a meeting to Mr. Owen and hopes that this will take place in the near future, potentially in conjunction with that of the Cefn Estate. **[Post hearing note:** two meeting date have been suggested to Mr Bibby to meet with his client and the Applicant's agents await a response to this request]. The Applicant confirmed that negotiations in relation to this land need to be led by the landowner and that ultimately it is for the landowner to manage its agreements with any tenants on its land. The Applicant submitted that it does not want to undermine the relationship between tenant and landlord.

(32) In relation to Mr Bibby's client Eifion Willam Roberts, the Applicant submitted that it is aware of the conditions set by the Highway Authority in relation to the listed building consent application and is aware of Mr Roberts' concerns in relation to liability. The Applicant confirmed that the listed building consent only applies to listed assets and there will be a full design of access to be agreed with the Highways Authority and Local Lead Flood Authority which will be shared with the landowner at the time of production prior to submission, which should hopefully reassure the landowner that there is no possibility of any liability falling to the landowner. The Applicant confirmed that it is looking at designs presently and will share them with the landowner as soon as it can. The Applicant confirmed that once this design is produced it will update the Outline Highways Access Management Plan (APP-028) accordingly. The Applicant confirmed that the proposed condition on the listed building consent as requested by the Highways Authority is a statement condition, and that it does not see any impediments to achieving fulfilment of this condition. The Applicant added that it is not appropriate for the Highways Access Management Plan to include liabilities in respect of landowners as this is a contractual matter and the Applicant suggested that this is dealt with in the negotiations between the parties. In terms of the mitigation, the Applicant confirmed that the highways accesses will be designed to include mitigation. The Applicant confirmed that it expects the listed building consent to be issued at the end of this month [**post hearing note:** the Applicant can confirm that the listed building consent was granted on 25th October 2024].

(33) The Applicant confirmed that plot 02-024 is part of a historic landfill and will be part of the landfill drill, which will be one continuous drill from the landfill compound which is located at plot 02-023. The Applicant confirmed that it has sought provisions in the menu of rights to tailor rights depending on the circumstances, and that this particular plot is subject to cable rights and restrictions and in the event that rights have to be secured by CA, there are certain restrictions that apply to the Applicant. The Applicant confirmed it needs rights in this area for installation and maintenance of cables, but confirmed that in this plot it is likely for there to be trenchless cable installation that will go from plot 02-023 underneath the intervening land exiting at the point of the offshore export cables beyond mean low water. The Applicant referred Mr Bibby to the BoR at REP3-006, Table 2 in which sets out the various restrictions to which each rights sought are subject.

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Statutory Undertakers

The ExA will ask the Applicant to summarise any outstanding matters arising from representations by Statutory Undertakers.

(34) The Applicant submitted that there are a number of statutory undertakers who will be affected by the development, full details for whom, including relevant plots and rights sought through compulsory acquisition, are set out in the Mona Land Rights Tracker (REP3-076). The Applicant submitted that within the draft DCO there are standard protective provisions have been included for electronic communications code operators and electricity, gas, water and sewerage undertakers. The Applicant confirmed that no changes have been made to the standard protective provisions. The Applicant explained that these standard provisions can be relied on by all statutory undertakers of those types, but where bespoke provisions have been included in the draft DCO, the statutory undertaker specified in the relevant provisions can rely specifically on those. The Applicant confirmed that it has been in negotiations regarding bespoke protective provisions for a number of statutory undertakers and that these discussions commenced in the pre-application period and are ongoing, save for where provisions have been agreed.

(35) The Applicant explained the bespoke protective provisions, of which there are 6 (4 for electricity, gas, water and sewerage undertakers and 2 for transport undertakers). The Applicant confirmed that these are the sets which were included in the application version of the draft DCO. The Applicant explained that the bespoke protective provisions which are included in Schedule 10 of the draft DCO for the benefit of electricity, gas, water and sewerage undertakers are in:

- Part 3: For Dŵr Cymru;
- Part 4: For SP Manweb;
- Part 5: For Wales and West Utilities; and
- Part 7: For National Grid Electricity Transmission.

(36) The Applicant confirmed that the protective provisions with Dŵr Cymru have been agreed and that the agreed set of provisions have been included in Part 3 of Schedule 10 within the draft DCO.

(37) In relation to SP Manweb the Applicant confirmed that the parties have agreed a set of protective provisions and that the Applicant will update the drafting in Schedule 10, Part 4 of the Draft DCO at Deadline 4 [**post hearing note**: this was updated in the draft DCO submitted at Deadline 4 with reference C1 F05]. Following that, it is also expected that SP Manweb will write to the examining authority to withdraw its representations.

(38) With regards to Wales & West Utilities, the Applicant confirmed that bespoke protective provisions are included at Schedule 10, Part 5 of the Draft DCO and that

the parties have been in discussion on the drafting of these provisions which are ongoing. The Applicant explained it sought to reflect the provisions included in the Awel y Mor Development Consent Order for the benefit of Wales & West Utilities Limited on the basis that the position would be similar for the Mona Offshore Wind Farm. The Applicant outlines that Wales & West' legal representatives have confirmed to the Applicant that they are seeking instructions from their client on the drafting of the provisions and will provide comments to the Applicant in due course. **[Post hearing note:** the Applicant will record any available updates to this position in the land rights tracker submitted at each Deadline].

(39) The Applicant confirmed that protective provisions for the benefit of National Grid Electricity Transmission are included in the Draft DCO at Part 7 of Schedule 10. The Applicant submitted that parties are in discussions in relation to the protective provisions and how those provisions apply to interactions at the onshore substation as well as along the onshore cable corridor. The Applicant confirmed that discussions are ongoing and the parties are seeking to arrange a meeting in the first week of November to further progress matters.

(40) The Applicant confirmed that bespoke protective provisions which are included for the benefit of transport undertakers are in:

- Schedule 10 part 6 for the Welsh Ministers as strategic highway authority; and
- Schedule 10 part 8 for Network Rail.

(41) The Applicant updated on protective provisions with Network Rail Infrastructure Limited as a rail undertaker which are in Part 8 of Schedule 10 to the draft DCO. The Applicant confirmed that these are subject to ongoing negotiations and the Applicant is seeking a call with Network Rail's legal representatives to further understand Network Rail's position for the week following the hearings **[Post hearing note:** the Applicant will record any available updates to this position in the land rights tracker submitted at each Deadline].

(42) The Applicant confirmed that in relation to the protective provisions at Schedule 10, Part 6, these are included for the Welsh Ministers in respect of their role as road transport undertaker and strategic highways authority for the A55. The Applicant confirmed that it is in discussion with the Welsh Ministers regarding the drafting of these and that the parties are close to agreement.

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	<p>(43) The Applicant confirmed it is in discussion with Awel y Mor Offshore Wind Farm Limited to find appropriate means of managing the interactions between the two projects at the Bodelwyddan National Grid substation. The Applicant confirmed that Awel y Mor is considering the latest proposals sent by the Applicant and a meeting is being arranged between the parties for the first week of November to further discuss this.</p> <p>(44) The Applicant added that save for where protective provisions are agreed, negotiations with statutory undertakers are ongoing. The Applicant highlighted that as such these provisions in the draft DCO are expected to change during the course of the examination. The Applicant added that good progress has already been made already and the Applicant is confident that agreed positions will be reached with all statutory undertakers before the end of examination.</p> <p>(45) In relation to the timing of negotiations with statutory undertakers, the Applicant confirmed that if at the end of examination the Applicant has not been able to reach an agreement with statutory undertakers, it is for parties to present their position with regards to the tests in sections 172 and 138 of the Planning Act 2008. The Applicant confirmed that whilst it intends to have protective provisions agreed by the close of examination it is often not possible to conclude these within this timeframe and negotiations may fall into the period after examination. The Applicant clarified that in this case, the parties would then need to report to the Secretary of State directly rather than to the examining authority in relation to their respective positions.</p>
<p>Any Statutory Undertaker or other relevant body in attendance and wishing to speak in relation to an objection or issue raised that is relevant to the effects of the Proposed Development on its undertaking, apparatus or land will be invited to put oral submissions to the ExA.</p>	
<p>The ExA may ask questions of the Statutory Undertaker or other relevant body, and the Applicant, about matters arising from written and oral submissions.</p>	<p>See above</p>
<p>The ExA wants to examine whether the Proposed Development satisfies the legal tests primarily set out in Sections 127 and/or 138 of the Planning Act 2008.</p>	<p>(46) The Applicant confirmed it is confident that the tests in sections 127 and 138 of the Planning Act 2008 will be satisfied. The Applicant confirmed it has followed precedent with regards to ensuring suitable protections are included in the draft DCO. For example, the Applicant explained that by including the standard protective provisions in Schedule 10 and entering into negotiations on bespoke provisions as</p>

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Protective Provisions and any commercial/side agreements will be considered at the Issue Specific Hearing concerned with the draft Development Consent Order [REP2-004].

required, statutory all affected statutory undertakers will have the benefit of adequate protections.

- (47) The Applicant explained that section 127 specifies that it is within the Secretary of State's power to grant compulsory acquisition powers in a DCO *only* where they are satisfied that the exercise of those powers by an undertaker would not lead to the statutory undertaker suffering a 'serious detriment' to their undertaking. The Applicant explained that the inclusion of protective provisions is usually the means by which Applicants ensure a serious detriment is not suffered and confirmed that it has followed that approach. As set out earlier, the Applicant reiterated that it has included standard protective provisions for statutory undertakers in the draft DCO which can be relied on by those categories of undertaker. In addition, the Applicant confirmed that bespoke provisions will apply to certain statutory undertakers who can rely on those specific to the and confirmed that it is committed to seeking agreement with those statutory undertakers and good progress is being made to that end.
- (48) The Applicant explained that section 138 specifies that the Secretary of State can include powers in the draft DCO which would lead to the extinguishment of rights or the removal of apparatus of statutory undertakers but *only* if the Secretary of State is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the order relates. The Applicant confirmed that both of these rights are sought in the draft DCO. The Applicant explained that the ability to extinguish subsisting private rights in land is included in the draft DCO at Article 24. The Applicant clarified that the use of this power is restricted in relation to any right to which section 138 of the Planning Act 2008 applies or article 31 (statutory undertakers) applies (the drafting for which being set out in article 24 subparagraph (5)).
- (49) The Applicant confirmed that some of the protective provisions offer further protection for statutory undertakers, for example in paragraph 3 of the Dwr Cymru protective provisions which are in part 3 of schedule 10 of the draft DCO, the undertaker agrees not to use their powers of compulsory acquisition to '*override or extinguish any easement or other interest of DC*' without their prior approval. The ability to extinguish Dwr Cymru's rights will therefore be subject always to Dwr Cymru's approval. The Applicant explained that on the ability to remove apparatus, powers to remove relevant apparatus are included within the draft DCO through the definition of the authorised project which in turn refers out to the description of associated development in Schedule 1. The Applicant clarified that the description of associated development provides for the removal of apparatus anywhere within the order limits, however, the ability to do that is subject *always* to the restriction that

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		<p>those works must be '<i>necessary or expedient for the purposes of or in connection with the relevant part of the authorised development</i>'.</p> <p>(50) The Applicant explained that similar to the power to extinguish rights, the power to remove apparatus is also subject to elements of the protective provisions. The Applicant provided an example in the Wales and West protective provisions which are in part 5 of schedule 10, paragraph 6 applies in the event apparatus of Wales and West has to be removed and relocated. The Applicant continued that in particular those provisions require the undertaker to provide replacement apparatus to a standard which is to Wales and West's reasonable satisfaction and that must take place before the undertaker can remove the apparatus. The Applicant confirmed that the provisions also include giving details of those works to Wales and West Utilities for prior approval.</p>
7	<p>Crown Land</p> <p>The ExA will ask the Applicant (and any Crown authorities present) to provide an update on matters relating to Crown land and s135 of PA2008 and advise on implications for the Proposed Development should the relevant Crown authority consents not be forthcoming by the close of the Examination.</p>	<p>(51) The Applicant confirmed it is actively engaging on obtaining section 135 consents. In relation to Welsh Ministers, the Applicant confirmed it has provided Welsh Ministers with a template section 135 letter for their consideration, and will continue to support Welsh Ministers with any additional information that they need. The Applicant confirmed it is expected that the section 135 consent from the Welsh Ministers will be forthcoming before the end of Examination. The Applicant confirmed it has made contact with the Crown Estate's legal representatives and that following a request from the Crown Estate, the Applicant is working to provide the details of what needs to be covered by the section 135 consent letter for their consideration. The Applicant confirmed it is expected that the section 135 consent from the Crown Estate will be forthcoming in advance of the end of Examination.</p>
8	<p>Funding</p> <p>The ExA does not have any questions relating to the Funding Statement. However, the Applicant may want to advise of any updates or other parties may raise associated issues or queries.</p>	<p>(52) The Applicant confirmed that the funding statement (APP-025 to APP-028) sets out the position of the Applicant's parent companies and information is provided about these organisations. The Applicant confirmed that it is a standard process for a joint venture to be created for such a project and the funding statement demonstrates that the necessary funding sits with the parent company to be drawn down at the relevant point. The Applicant referred to the diagram on page 2 of APP-025 which sets out the Applicant's organisational structure.</p>
9	Review of issues and actions arising	
10	Any other business	
11	Closure of the hearing	