

From: [Griff Parry](#)
To: [Mona Offshore Wind Project](#)
Cc: [Stephens, Jake](#)
Subject: RE: MNOW-AFP079: MNOW-AFP129: MNOW-AFP130: MNOW-AFP131
Date: 20 December 2024 23:31:09
Attachments: [REDACTED]

F.A.O. Caroline Jones, Planning Inspector

Please find attached copies of the following Deadline 6 Submissions:

- Rebuttal Submissions to Doc No. MOCNS-J3303-DMC-103453
- Hearing Points to DCO-ISH6 Hearing 11-12-24 and
- Summary of Hearing Points to DCO-ISH6 Hearing 11-12-24

This is submitted on behalf of Harriet Mary Parry, Robert Wynne Parry, Griffith Wynne Parry and Elizabeth Wynne Wade in respect of and in objection to the application by Mona Offshore Wind Limited for an order granting development consent for the Mona Offshore Wind Farm.

Their reference numbers are MNOW-AFP079: MNOW-AFP129: MNOW-AFP130: MNOW-AFP131.

Please do not hesitate to let me know should you require further information.

Yours faithfully

Griff Parry

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PLANNING ACT 2008

**APPLICATION BY MONA OFFSHORE WIND LIMITED FOR AN
ORDER GRANTING DEVELOPMENT CONSENT FOR THE MONA
OFFSHORE WIND PROJECT**

LAND TO THE EAST OF THE A548

COMPRISING

PLOTS 06/102 - 06/105 (INCLUSIVE)

**PLANNING INSPECTORATE REFERENCE NUMBER
EN010137**

MNOW-AFP079: MNOW-AFP129: MNOW-AFP130: MNOW-AFP131

SUPPLEMENTARY WRITTEN REBUTTAL SUBMISSION

IN RESPONSE TO

PROMOTER'S DOC NO. MOCNS-J3303-DMC-10453

BY

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DEFINITION /GLOSSARY

1 This document uses the same definitions as in the previous Written Submissions. These are as follows:

- Mona Offshore Wind Limited ("**Promoter**")
- Planning Act 2008 (the "**2018 Act**")
- Development Consent Order ("**Order**")
- Mona Offshore Windfarm ("**Scheme**").
- Plots 06-102 to 06-105 inclusive ("**Plots**")
- Mrs HM Parry, Mrs EW Wade, Mr RW Parry and Mr GW Parry ("**Objectors**").
- The Plots and other surrounding land owned by the Objectors ("**Property**")
- Nationally Significant Project ("**NSP**").
- Preliminary Environmental Information Report ("**PEIR**")
- The Gas and Electricity Markets Authority grants ("**GEMA**")
- Distribution Network Operators ("**DNOs**")
- Scottish Power Electricity Networks ("**SPEN**").
- Document Reference S_D1_5.6 Document No. MOCNS-J3303-RPS-10277 entitled Appendix to Response to Hearing Action Point: Indicative onshore cable corridor crossing section and trenchless technique crossing long-section ("**Hearing Action Point Submission**")
- Written Submissions of Griffith Parry dated August 7th ("**August 7th Submissions**")
- Drawing number ED13798-GE-1015 Rev F ("**Drawing**")
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- Supplementary Written Submissions of Griffith Parry dated August 27th ("**August 27th Supplementary Submissions**")
- Further Supplementary Written Submissions dated 30th September ("**September 30th Rebuttal**")
- Expert Working/ Steering Group ("**EWG**")
- COMMENTS ON PROMOTER HEARING (CAH01) POINTS Submitted by Deadline 4 ("**DL4 Comments on CAH01 Promoter Hearing Points**")
- COMMENTS ON MONA DCO ORDER Submitted by Deadline 4 ("**DL4 Comments on DCO Order**")
- HEARING POINTS WRITTEN SUMMARY Submissions dated 4th November 2024 ("**DL4 CAH01 Hearing Submissions**")
- SUPPLEMENTARY WRITTEN REBUTTAL SUBMISSION IN RESPONSE TO
- DOC NO. MOCNS-J3303-DMC-10372 ("**DL5 December 3rd Rebuttal**")
- Land Compensation Act 1973 ("**LCA 1973**")
- Acquisition of Land Act 1981 ("**ALA 1981**")
- Compulsory Purchase (Vesting Declarations) Act 1981 ("**CP(VD)A1981**")
- Notice to Treat and/ including Notice of Intention to Vest ("**NTT**")
- Notice to Enter and/ including Notice to Vest ("**NTE**")
- DCO HEARING-ISH6-WRITTEN NOTES OF HEARING POINTS ("**DL6 December 20th Hearing Note Submissions**")
- SUPPLEMENTARY WRITTEN REBUTTAL SUBMISSION IN RESPONSE TO
- DOC NO. MOCNS-J3303-DMC-103453 ("**DL6 December 20th Rebuttal**")

INTRODUCTION

- 2 These Supplementary Written Rebuttal Submissions are submitted in response to the Promoter's Document No. MOCNS-J3303-DMC-10453. It is recommended that this document be read alongside the corresponding Promoter's document above as this will enable easy and rapid comparison to the points seeking to be addressed in this document.
- 3 This document follows the Planning inspectorate's written submission numbering in the document library and the Promoter's numbering convention for the issues.

REP4-121.1 – Whether the Objectors plots are necessary and land take is excessive and REP4-121.20

- 4 The Objectors disagree that the land take is necessary and proportionate and refer the Panel to their responses in REP1-083.9, REP1-083.21, REP3-108.13 and would further add that sections 9.2.3 and 12 of the August 7th Submissions and the entirety of the August 27th Supplementary Submissions together with the first section of DL4 Comments on CAH01 Promoter Hearing Points.

REP4-121.2 – Whether Alternatives Considered also REP4-121.3 and REP4-121.5 and REP4-121.7

- 5 Existence of reasonable alternatives and whether they have been considered has been discussed in more detail in sections 9.2.1 and 10 of the August 7th Submissions, section 3,1 of the DL4 CAH01 Hearing Submissions, the Objectors response to REP1-083.2 REP1-083.9 REP1-083.15 REP1-083.21, REP1-083.24, REP1-083.26 in the September 30th Submission.
- 6 The Promoter's new claim of a purported "reset" is discussed in the Objectors response to REP3-108.2. in **DL5 December 3rd Rebuttal**.
- 7 In light of the above evidence the Objectors do not consider that all reasonable alternatives have been considered. Neither do they consider that a route "reset" has taken place.
- 8 At REP4-121.7 The Promoter claims to have reviewed these alternatives however in a meeting on 17/09/2024 they advised that they hadn't been considered and would not be considered as their route was correct and it "*was simply too late in the process*". The "*process*" of course, had already been completed prior to the EWG December 2021.

REP4-121.4 – Consultation on Routes that had already been eliminated and REP4-121.8 and REP4-121.9 and REP4-121.10 and REP4-121.11

- 9 The Objectors refer the Panel to Section 9.2.2 and Section 11 of the August 7th Submissions and their response in REP1-083.3. REP1-83.16 and Appendix 02 of the

September 30th Rebuttal and their CAH01 Hearing Points Summary Submitted by Deadline 4, as well as their response to REP3-108.4 in DL5 December 3rd Rebuttal

- 10 Events, timescales and basic facts simply do not support the Promoter's assertion that a "reset" of the site search took place. Despite this the Promoter undertook 2 bouts of non-statutory consultation and submitted a scoping report consulting on matters and routes that had already been eliminated.
- 11 The Objectors cannot understand how the Promoter can claim to have complied with the Sedley Gunning principles and Section 49 of the 2008 Act when the route was so clearly predetermined prior to public or private consultation commencing.

REP4-121.12 – Proving a Compelling Case Outweighing the harm done and REP4-121.13

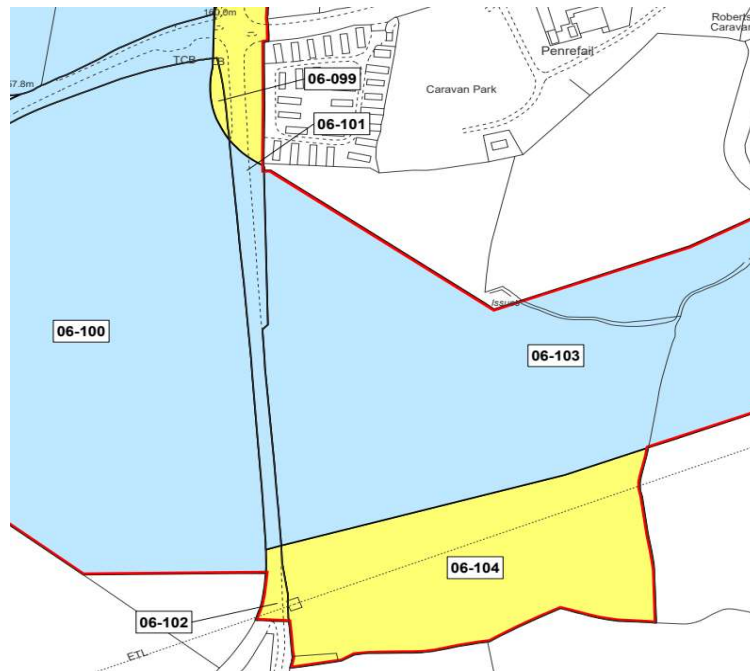
- 12 The Objectors refer the Panel to Sections 9.2.1 and 13 of its August 7th Submissions, its response at REP1-083.18 in the 30th September Submission and Section 3.3 of CAH01 Hearing Points Summary Submitted by Deadline 4. The objectors response to REP3-108.22 in DL5 December 3rd Rebuttal also refers.
- 13 Guidance has been provided evidencing that the Promoter should justify its case taking impacts on parties on either side into account rather than leave it hanging for the Secretary of State to draw their own conclusions as suggested at CAH01.
- 14 The proposed alternative routes could deliver 100% of the public benefits with a reduction of near 100% of the harm done to Robert Parry's scheme but the Promoter continues to refuse these reasonable alternatives contrary to the requirement of the 2008 Act and guidance.

REP4-121.15 – Width of Easement also REP4-121.16 and REP4-121.17 and REP4-121.18

- 15 Section 9.2.3 and 12 of the August 7th Submissions show clearly that there are considerably more efficient and less wasteful ways of utilising land to narrow the easement corridor than is currently proposed by the Promoter.
- 16 The August 27th Supplementary Submission has also debunked the Promoter's construction methodology proposals and especially its working and permanent cross section proposals.
- 17 The current extent of the Limited of Deviation include excessive land included for "convenience" which needs to be removed from the Order.

REP4-121.19 – Length of Limits along frontage with A548

- 18 As the Panel can see the limits of deviation take in the entire boundary of the Plots with the A548 which totals 280m. the boundary of the A548 with plot 06-103 accounts for the 213m referred to by the Promoter. The remaining length of @ 67m is accounted for by plot 06-104.

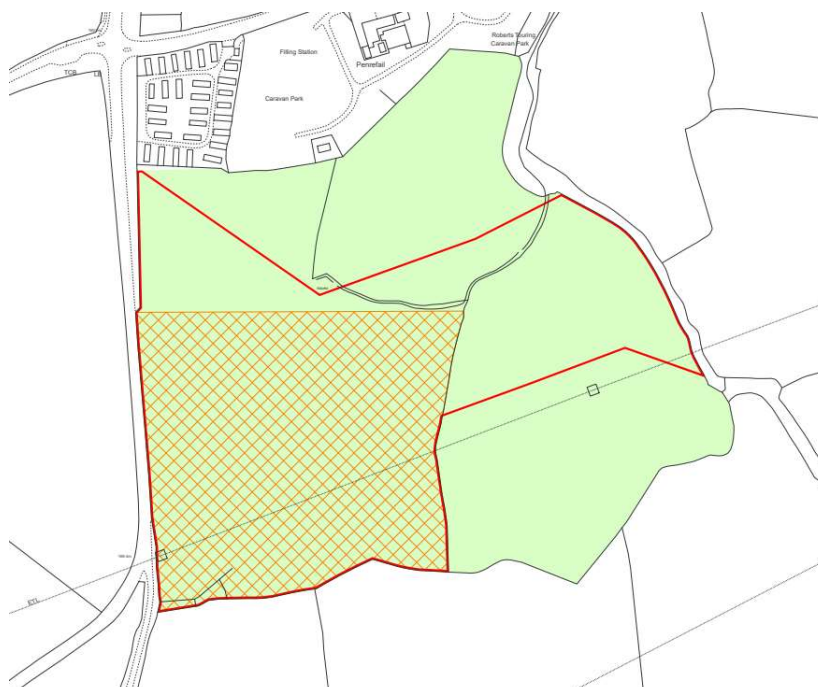


REP4-121.21 – Alternatives D and E and REP4-121.22

19 The Objectors would refer the Panel to their response in REP3-108.3 in the DL5 December 3rd Rebuttal.

REP4-121.23 – Compound Size.

20 An extract from a Promoter provided plan showing the extent of the compound that is proposed. The compound is not a perfect square however, if it is scaled then the Panel will note that it does indeed approximate measure some 188m by 192m. This in turn gives an area of circa a little over 36,000m².



REP4-121.24 – Temporary Powers

21 The Objectors refer the Panel to their comments on the matter of temporary occupation in Section 9 of the DCO HEARING-ISH6 (11/12/2024) WRITTEN NOTES OF HEARING POINTS (“DL6 December 20th Hearing Note Submissions”) co-submitted with this document.

REP4-121.25 – Project Timing, Timescales and Gant Chart

22 The Gant Chart was submitted as a visual aid to easily demonstrate the best and likely worst case scenario. It may well be “speculative” however it is not unrealistic and represents a fair indication of how long landowners could have to tolerate this uninvited disruptive intrusion on their land.

REP4-121.26 – Notice serving timescales and REP4-121.27 and REP4-121.28 and REP4-121.29

23 The Objectors have provided a further full response to this matter in Section 6.0 of DL6 December 20th Hearing Note Submissions.

24 The Objectors would also care to draw the Panel’s attention to Section 3.0 of DL6 December 20th Hearing Note Submissions which identifies why the Promoter cannot merely rely on precedents to achieve undesirable Articles in its DCO.

REP4-121.30 – Funding and REP4-121.31

25 The Objectors refer to section 9.2.5 and 14 of the August 7th Submissions, their response to REP1-083.39 in the September 30th Rebuttal, Section 3.0 of the DL4 Comments on CAH01 Promoter Hearing Points, REP3-108.23 in DL5 December 3rd Rebuttal. The Objectors still consider that funding is a material risk and at the very least give rise to high risk of a long delay, but have nothing further to add.

REP4-121.32 – Heads of Terms – gagging clauses

26 The Promoter, being clearly aware, that non-objection clauses are not enforceable in heads of terms, begs the question why even include them?

27 The reason for doing so is likely to be because it deters affected parties who have been cajoled and coerced into entering into the heads of terms from making representations to the ExA regardless of whether they may have serious and relevant issues to raise.

REP4-121.33 – Compliance with Consultation requirements and REP4-121.34, REP4-121.35, REP4-121.36

28 The Objectors refer to REP4-121.4 earlier and would note that the Promoter has a very different perspective on consultation to the Objectors. The Promoters also have a very different interpretation of their duties under section 42 to 49 of the 2008 Act and guidance and the Sedley Gunning principles.

REP4-121.37 – Compensation Matter

- 29 The Promoter cites compensation legislation here yet the Objectors primary objective is to protect Robert Parry's ability to implement his proposals for the land which is not a compensation matter.
- 30 The Objectors have sought to be constructive towards finding a way of collaborating with the Promoter to achieve both schemes which they consider possible however the Promoter is not minded to compromise in any way whatsoever and so the Objectors are left with no option but to demonstrate their case to the Panel and appeal to the Panel to recommend constraints on the Scheme in order that Robert Parry can proceed.
- 31 The primary constraints required take the form of:
- a. Shorter notice serving timescales and scheme timescales generally
 - b. Reduced land take temporarily and permanently (narrower Limits of deviations)
 - c. Cable alignment route to be kept as far south of the land as possible and follow alternative route options D or E
 - d. Other matters that can ensure mutually satisfactory future working.
- 32 In the absence of any cooperation with the Promoter then the Objectors would welcome the opportunity to work with the Panel to develop a suitable package of binding measures such that its objection could be withdrawn.

REP4-121.39 – Engagement with the Promoter

- 33 The Objectors remain willing to engage with the Promoter as well. However this must be to develop measures to safeguard both schemes. To date no progress has been made in this regard due to the Promoter's belligerence towards its own scheme.

REP4-122.1 – Section 122 of the 2008 Act “ Required”, “Facilitate”, “Convenience” and REP4-122.2, and REP4-122.3

- 34 The Objectors refer to their response in REP4-121.1 above and in particular sections 9.2.3 and 12 of the August 7th Submissions and section 1.0 of DL4 Comments on CAH01 Promoter Hearing Points.
- 35 The excessive amount of land that the Promoter desires is neither required or necessary for the accomplishment of Mona and neither does this land conform with the definition of facilitate or can it be incidental to the scheme.
- 36 The land is merely included for convenience and as such fails the test set down in the Sharkey case and needs to be excluded from the Limits.

REP4-122.4 – Compelling Case

- 37 The Objectors refer to REP4-121.12 above also REP1-083.38 in the September 30th Rebuttal and REP3-108.22 in DL5 December 3rd Rebuttal.

38 Merely listing potentially relevant policies such as in Section 1.4 of APP-09 and providing an unrelated essay on climate change in the Environmental Statement is not sufficient.

39 Moreover there has been no attempt to quantify or even consider the harm done to those affected so that a judgement as to whether it is outweighed can be drawn.

REP4-122.5 – Funding

40 The Objectors refer to REP4-121.30 above and have nothing further to add other than the heavy reliance on precedent is not helpful to the Promoters case for the reasons explained in Section 3.0 of DL6 December 20th Hearing Note Submissions.

REP4-120.1, REP4-120.2, REP4-120.3, REP4-120.4, REP4-120.5, REP4-120.6, REP4-120.7, REP4-120.8, REP4-120.9, REP4-120.10, REP4-120.11, REP4-120.12, REP4-120.13

41 The above REPs are all either superceded or addressed in DL6 December 20th Hearing Note Submissions which is co-submitted with this document.

Griffith Wynne Parry MRICS

Senior Consultant

The Brown Rural Partnership

Dated 20 December 2024

PLANNING ACT 2008

**APPLICATION BY MONA OFFSHORE WIND LIMITED FOR AN
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LAND TO THE EAST OF THE A548

COMPRISING

PLOTS 06/102 - 06/105 (INCLUSIVE)

**PLANNING INSPECTORATE REFERENCE NUMBER
EN010137**

MNOW-AFP079: MNOW-AFP129: MNOW-AFP130: MNOW-AFP131

DCO HEARING-ISH6 on 11/12/2024

WRITTEN NOTES OF HEARING POINTS

OF

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2.0 INTRODUCTION

2.1 The Objectors have a number of concerns regarding the current drafting of the DCO and the powers that will potentially be granted to the Promoter on confirmation of the current

draft without modification. The Objectors' primary concerns are set out in the following text.

3.0 **INITIAL COMMENT REGARDING “PRECEDENT”**

- 3.1 The Promoter refers to precedent throughout its submissions and representations for instance, pages 7 and 8 of the Exploratory Memorandum (Document MOCNS-J3303-BGS-10002) provides list of “precedent” Orders which the Promoter considers underpin the grounds for granting the Order for Mona.
- 3.2 The Promoter also refers only to “precedents” in most of its response to the Objectors for instance, most recently in REP4-120.2, REP4-121.24, and REP4-122.5 in document MOCNS-J3303-DMC-10453.
- 3.3 Judicial decisions are bound by decisions of higher or equivalent courts. This is referred to as the doctrine of precedent. However the confirmation of a DCO is not judicial, it merely comprises an administrative process to confirm a piece of subordinate legislation and so it is only bound by its own enabling Act and Guidance. The strongest weight that can be given to previously confirmed DCOs is that they have a “persuasive precedent” status but they are certainly not binding on subsequent Panels or decision makers.
- 3.4 Further the DCO's own guidance supports this, for instance “Nationally Significant Infrastructure Projects - Advice Note Fifteen: drafting Development Consent Orders” Published⁽¹⁾ states:

“1. Justifying the approach

- 1.1 ***The Explanatory Memorandum is an aid to the Examining Authority (ExA), to Interested Parties and to the Secretary of State as decision-maker to help understand what is proposed in the draft Development Consent Order (DCO), why particular provisions have been included and from where the wording has been derived.***
- 1.2 ***A thorough justification should be provided in the Explanatory Memorandum for every Article and Requirement, explaining why the inclusion of the power is appropriate in the specific case. The extent of justification should be proportionate to the degree of novelty and/ or controversy in relation to the inclusion of that particular power.***
- 1.5 ***If a draft DCO includes wording derived from other made DCOs, this should be explained in the Explanatory Memorandum. The Explanatory Memorandum should explain why that particular wording is relevant to the proposed draft DCO, for example detailing what is factually similar for both the relevant consented NSIP and the Proposed Development. It is not sufficient for an Explanatory Memorandum to simply state that a particular provision has found favour with the Secretary of State previously; the ExA and Secretary of State will need to understand why it is appropriate for the scheme applied for.”*** (emphasis added)

¹ Nationally Significant Infrastructure Projects - Advice Note Fifteen: drafting Development Consent Orders: Published 1 July 2018

3.5 The Promoter is therefore unable to merely rely on matters consented in previous orders as justification for them in the Mona Order.

4.0 ARTICLE 8 d) – PROVISIONS OF NEIGHBOURHOOD PLANNING ACT 2017

4.1 Article 8d) – if temporary possession powers are to be deployed in this Order then this item should remain in the DCO for reasons explained in sections 9.3 to 9.5 of this submission.

5.0 ARTICLE 16 - DISCHARGE OF WATER (REP4-120.3)

5.1 There are several protections and dispute resolution measures for water and sewerage and drainage undertakers however no protections against private watercourse owners. The Promoter advises that it will seek to reach agreement but in the event that it can't reach a mutually agreeable arrangement then it will use its CPO powers which renders landowners defenceless against any and all proposals that may detriment their land but not be able to be financially commuted and dealt with as compensation, for instance wet areas in a field or new infrastructure or channels forming a new obstacle to permanently work around.

5.2 The Objectors consider that is appropriate to have a means of 3rd party resolution in the same way as they are afforded to statutory undertakers.

6.0 ARTICLE 21 -TIME LIMITS TO AQUIRE LAND COMPULSORILY (REP4-120.5)

6.1 Paragraphs 1.4.1.77 to 1.4.1.81 of the Explanatory Memorandum refer to time limits and refer to the repealed model provisions that provided for 5 years – the main crux of the justification however seems to be precedent Orders which as explained in Section 3 above are, at best, merely “*persuasive*”.

6.2 Regulation 6 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015⁽²⁾ requires notice to be served and the development commenced within 5 years and the guidance to this is. Section 154 of the 2008 Act does permit a longer notice service period in exceptional circumstances however the guidance to this section states :

*“.....given the uncertainties that a lengthy delay to implementing approved compulsory acquisition powers can have for some landowners, **seeking a period of longer than five years will require justification to persuade the Secretary of State that this is warranted.**”⁽³⁾ (emphasis added)*

6.3 The Explanatory Memorandum goes on to mention in passing, the scale of the project – securing contract for difference -before commencement – high demand / competition for suppliers / flexibility for procurement contracts and finally collaboration with Morgan

² Regulation 6(1) and (2) Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015

³ Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects

Paragraph 011 Reference ID 04-011-20240430

offshore – procurement construction – economies of scale. At paragraph 1.4.1.80, the Promoter bizarrely states :

“The Applicant does not yet understand the particular commercial pressures it may face and requires flexibility to meet the constraints of the market at the time.”

- 6.4 It is clear that the promoter is seeking to “learn on the job” and is self-absorbed with its own commercial ends and has not given any consideration to how this affects those who are caught up in the inevitable delays . No consideration has also been given to section 67 of the Compulsory Purchase in Wales and ‘The Criche Down Rules (Wales Version, 2020).
- 6.5 7 years is entirely unfair and clearly against guidance and even more so due to strategic NTT serving extensions that are available to the Promoter. Barry Denyer Green recommends that land that is to be acquired permanently should not be subject to temporary powers or if it is then the temporary powers should have a maximum life of 12 months. The absolute maximum period should be the standard 5 years period for which most CPOs are confirmed although the Objectors remain of the view that 3 years as provided in in Section 4 of the CPA 1965 is more than adequate.

7.0 ARTICLE 22 - (COMPULSORY PURCHASE OF RIGHTS) (MATERIAL DETRIMENT) (REP4-120.6)

- 7.1 The Promoter advises that its modifications to Article 22 seek to ensure that the provisions of Section 2A of the CPA 1965 still apply when acquiring rights and having reread this I believe that this is in fact, correct.
- 7.2 To an extent however, the issue is academic in any event because the Promoter is seeking to do virtually all the works under temporary powers which do not involve serving an NTT on landowners and so they have, effectively engineered a means to bypass this valuable and well tested landowner protection anyway.
- 7.3 By the time that a Notice to Treat is actually served then all the “*inconvenience and loss of amenity impact tests*” of Schedule 2A will likely be “*in the past*” and will have already been suffered by the affected party and the counter-notice will fail the test which obviously is much to the benefit of the Promoter and to the expense of the affected party.
- 7.4 Further the DCO has conveniently made no provision for Section 53 to 58 of the LCA 1973 although these protections are also undermined and circumvented by use of temporary powers and avoidance of service of NTT in the current draft DCO.

8.0 ARTICLE 26 – ACQUISITION OF SUBSOIL ONLY (MATERIAL DETRIMENT) (REP4-120.7)

- 8.1 The Promoter is however, definitely seeking to exclude itself from the protections of Section 8 and Schedule 2a of the CPA 1965 in this article and is misdirecting the Panel regarding the extent of the Section 8 and Schedule 2a of CPA 1965.
- 8.2 In fact the Upper Tribunal test of “material detriment” is set down in section 26) Subsection 2) a), b) and c) of Schedule 2A of the CPA 1965

“26)(2) In making its determination, the Upper Tribunal must take into account—

(a)the effect of the severance,

(b)the proposed use of the land proposed to be acquired, and

(c)if that land is proposed to be acquired for works or other purposes extending to other land, **the effect of the whole of the works and the use of the other land.**” (emphasis added)

8.3 Subsequent caselaw has refined these tests and Subsection (2)c) would apply in the following way to the impacts of Mona:

	Impact on the Property (inc unaffected/other land) from the actual works to be constructed on the Land in question DURING Construction	Impact on the Property (inc unaffected/other land) from the actual works to be constructed on the Land in question POST Construction	Impact on the Property (inc unaffected/other land) of the Wider MONA Scheme DURING Construction	Impact on the Property (inc unaffected/other land) of the Wider MONA Scheme POST Construction
Convenience Impacts - Access				
Convenience Impacts - Parking				
Amenity Impacts - noise and vibration				
Amenity Impacts - dust and fumes				
Amenity Impacts - visual intrusion and privacy / security				
Amenity Impacts - views				
Ability to sell the property				

8.4 So the Promoter has ignored and/or misinterpreted the test criteria for material detriment and erroneously only taken the direct property post construction impact into account in its statement at REP4- 120.7

“In the majority of cases, acquisition of the subsoil only below a house, building or factory would not interfere with the continued use above ground of said house, building or factory and it is therefore reasonable and proportionate to disapply Schedule 2A ”

8.5 The above statement or assumption is therefore incorrect and the Promoter should not try and exclude itself from the safeguarding provisions of legitimate Acts of Parliament that seek to protect innocent affected parties.

8.6 The Panel is respectfully requested to decline this modification to the Order and instead retain these protective provisions and to permit the material detriment test to remain and decide whether or not the circumstances apply.

9.0 ARTICLES 29 and 30-TEMPORARY POWERS (REP4-120.2 REP4-120.8, REP4-121.24)

9.1 SOURCE OF POWERS OF TEMPORARY POWERS

9.1.1 As a statutory Instrument, a DCO comprises secondary legislation, subordinate to primary legislation such as Acts of Parliament from which it can only invoke provisions. Subordinate legislation is unable to create or grant new powers or rights that did not exist in primary legislation prior to the DCO.

9.1.2 Section 122(1) of the 2008 Act clearly authorises the “*the compulsory acquisition of land*” (providing certain provisions are met). It does not mention temporary powers and neither does its guidance.

9.1.3 Accordingly, it was suggested that the Promoter be asked “*to clarify what statutory provision it relies on to support the inclusion of Articles 29 and 30 in the draft Order*”.

9.1.4 In its response to the Objectors at REP4-120.8, submitted at Deadline 05, the Promoter makes reference to temporary powers being enabled by Section 120 of 2008 Act – particularly subsection 3 and 5 c).

“120 What may be included in order granting development consent

(5) An order granting development consent may—

(c) include any provision that appears to the decision-maker to be **necessary** or **expedient** for giving full effect to any other provision of the order;”(emphasis added)

9.1.5 Section 120 of the 2008 Act is clarified by paragraph 17 of the Guidance Note “Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects⁽⁴⁾ and also paragraphs 207-213 of the Planning Act 2008 Explanatory Notes.⁽⁵⁾

9.1.6 Subsection 4 of Section 120 directs readers to Schedule 5 of the 2008 Act which list the matters that subsection 3 and consequently subsection 5)c) can insert “*provisions*” for. Subsection Section 5)c) is therefore merely a conduit for other “**provisions**” in primary acts of parliament to be brought into the DCO to give full effect to “**any other**”

⁴ Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects : Guidance on the content of a Development Consent Order required for a Nationally Significant Infrastructure Project. Paragraph 017 (Reference ID 04-017-20240430 Published: 30/04/2024)

⁵ The Planning Act 2008 : Explanatory Notes.

provision of the order” as would be expected with secondary legislation such as the DCO.

9.1.7 Part 1 of Schedule 5 of the 2008 Act refers to :

“The acquisition of land, compulsorily or by agreement.”

9.1.8 The predecessor to the CPA1965 Act was the 1845 Land Clauses Consolidation Act which contained powers for both the *compulsory acquisition of land*, AND the taking of *“temporary possession for certain purposes”*, (in the Railway clauses) showing that Parliament distinguishes between those two very different powers.

9.1.9 This distinction is supported by the model clauses in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009. For instance in model clauses Articles 28, 29 and 35 (which the Promoter has replicated in its own Articles 29 and 30), subsection 8) prohibits acquisition of rights over land occupied temporarily and subsection 9) states:

*“(9) Where the undertaker takes possession of land under this article, the undertaker shall **not be required to acquire the land or any interest in it.**”*
(emphasis added)

9.1.10 Accordingly the model clauses are clear that there is a distinction between temporarily occupied and permanently acquired lands and made no allowance for land to be subject to both “powers”.

9.1.11 Parliament still therefore distinguishes very clearly between the two different powers as indeed clearly does the Promoter.

9.1.12 Further, past DCOs that have already been confirmed make a very clear distinction between land or rights to be acquired and land to be temporarily occupied and land that can be subject to both.

9.1.13 Temporary powers of occupation are therefore not an *“acquisition of land”* they are merely consent for an occupation that would otherwise be a trespass.

9.1.14 The ALA 1981 sets out the procedure for the authorisation of a CPO but makes no reference to the extent of the powers that may be authorised.

9.1.15 The CPA 1965 and the CP(VD)A 1981 contain procedures for the acquisition of land once a CPO has been confirmed but neither Act addresses the extent of the powers that may be authorised.

9.1.16 If temporary powers were in fact, an *“acquisition of land”* then either a notice to treat or notice of intention to vest would need to be served on *“all the persons interested in, or having power to sell and convey or release, the land”* in line with Section 5 of the CPA 1965 or the CP(VD) Act 1981 rather than be able to be authorised on 14 or 28 days notice (i.e. in the model clauses).

9.1.17 The grant of temporary powers of occupation and possession are therefore entirely different to a grant of powers to acquire land or permanent rights in land or indeed to place restrictive covenants on land.

9.1.18 Schedule 5 of the 2008 Act does not provide for any other form of acquisition of land either temporarily or permanently. However, Part 2 of Schedule 5 of the 2008 Act refers to :

*“The creation, suspension or extinguishment of, or **interference with, interests in or rights over land** , compulsorily or by agreement..”*

9.1.19 The “*suspension*” and especially “*extinguishment*” of the rights of others in land would seem to be something for which either a NTT or a formal conveyancing process would be necessary and it sounds doubtful that a proactive act of occupation by another party could stem from it.

9.1.20 Likewise some kind of formal process would be required for the “*interference with, interests in or rights over land*” and again an act of proactive occupation seems to go further than that text alone would suggest.

9.1.21 So section 120 5)c) can also be a conduit to bring in provisions from primary legislation that permit and fulfil Part 2 i.e. “.... *Interference with ...interests.....rights* ”

9.1.22 However, the question therefore still remains, since Section 120)5)c) of the 2008 Act is merely an enabling conduit to other primary legislation, then the Promoter still needs to clarify precisely what statutory provision from which primary legislative Parliamentary Act it is relying on to give it the temporary powers (including those to interfere with interests and rights) that it is seeking to rely on for Articles 29 and 30 of the DCO.

9.2 TEST FOR WHETHER TEMPORARY POWERS APPROPRIATE (EXPEDIENT)

9.2.1 Notwithstanding the question of lawfulness above it is also worth exploring the wording of 120)5)c) in more detail, it states:

“120 What may be included in order granting development consent

(5) An order granting development consent may—

*(c) include any provision that appears to the decision-maker to be **necessary or expedient** for giving full effect to any other provision of the order;”(emphasis added)*

9.2.2 However there are a number of issues with this as follows:

Definition of “Necessary”

9.2.3 The definition of this word along with “*required*” and “*facilitate*” and “*incidental to*” has been the subject of extensive disagreement between the Objectors and the Promoter (see sections 9.2.3 and 12 of the August 7th Submissions and the entirety of the August 27th Supplementary Submissions together with the first section of DL4 Comments on CAH01 Promoter Hearing Points). The Objectors have nothing further to previous submissions to assist the Panel in its consideration of this area.

Definition of Expedient

9.2.4 “**Expedient**” refers to :

*“an action that achieves a particular purpose, **but may not be morally right.**”⁽⁶⁾
(emphasis added)*

Or

*“helpful or useful in a particular situation, but **sometimes not morally acceptable**”⁽⁷⁾: (emphasis added)*

9.2.5 The implication is that invoking expedient activities is likely to give rise to adverse or at least in some way disagreeable consequences.

9.2.6 Where legislation involves deciding whether a matter is expedient or not then it is often accompanied by legal tests to consider the consequences in order to enable a fair and balanced judgement to be made.

9.2.7 Section 119(6)a)b)c) of the Highways Act 1980 set down 3 tests for qualifying “**expediency**” and were considered by Lord Livesey in *Open Spaces Society v Secretary of State*⁽⁸⁾, where the fact that there are benefitting and dis-benefitting parties he determined at paragraph 42

*“in deciding whether it is expedient to confirm a public path diversion order.... in the exercise of the power conferred by section 119(6) of the 1980 Act, the decision-maker must have regard to the effect of the matters specified in paragraphs (a) to (c) and **may have regard to any other relevant matter, including if appropriate the interests of the owner or occupier of the land over which the path currently passes, or the wider public interest**” –Lewis L.J. paragraph 42. (emphasis added)*

9.2.8 The Court of Appeal has therefore determined that the test for expediency requires the consideration of a very broad range of issues when determining whether it is appropriate to deem that something is “*expedient*”.

9.2.9 In the case in hand i.e. as to the expediency of temporary powers of possession then a particularly relevant matter that would need to be weighed up would be the negative consequences of the impact on landowners affected by their use. Section 9.3 is therefore a list of non-exhaustive negative impacts on landowners:

9.3 ADVANTAGES AND DISADVANTAGES OF TEMPORARY POWERS

Notice Periods

⁶ Collins Dictionary API: HarperCollins Publishers:2024

⁷ Cambridge Dictionary : Cambridge University Press & Assessment 2024

⁸ *Open Spaces Society v Secretary of State for Environment, Food and Rural Affairs* [2021] EWCA Civ 241 (25 February 2021)

- 9.3.1 The model clauses suggest 14 days' notice for temporary occupation which the Promoter has extended to 28 days in the current draft DCO. However even 28 days is negligible amount of time for a fully functioning business to be able to make plans and alternative arrangements to accommodate the loss of use of a valuable factor of production for an unknown period of time which, as the Promoter clearly intends is going to be long term in the case of Mona.
- 9.3.2 Permanent land and rights acquisitions entitle owners to a two notice process, an NTT followed by NTE. Either way the earliest possible acquisition period is 3 months and very often much longer.
- 9.3.3 In any event it seems extremely unlikely that parliament envisaged that land could be long term occupied indefinitely (i.e. 7 years notice serving period then the full duration of works until 12 months post completion i.e. a decade plus) on only 14 or 28 days' notice. The model clauses give no checks and balances and protections and using temporary powers in this way clearly exceeds what was intended when that text was developed prior to its repeal in any event.

Valuation Date

- 9.3.4 No early valuation date on date of entry for assessment of compensation for the permanent acquisition (i.e. losses arise due to the temporary powers possession is set rather than under the NTT and NTE and so there is a risk that they are "lost" to the landowner/ occupier).

Condition of the Property on the Valuation Date (and extent of the "scheme")

- 9.3.5 No clear and fair record of condition on the vesting date – i.e. the NTE valuation date could be many years hence and the land greatly changed (for the worse) a result of the scheme on that future date. Current caselaw favours applying the principle of strictly restricting the valuation of an interest in land as it exists at the valuation date and not making any adjustments to the facts regarding the condition of the land, its occupation and the interests in it i.e. to disregard the "*narrower scheme*".

Lack of statutory or judicial guidance as to compensation

- 9.3.6 Subsection 5) of Articles 29 and 30 state that the "*Undertaker shall pay compensation*" with section 6) stating that disputes shall be determined under Part 1 of the 1961 Act. There is no further guidance or direction to, for example, the LCA 1961 and its well refined guidance and principles.

Advance Payments (Under Section 52 of the LCA 1973)

- 9.3.7 Section 52 of the LCA 1973 entitles landowners to an advance payment equating to 90% of the Acquiring Authority's estimate of compensation on the later of either 3 months' notice or actual land entry i.e. following NTE. These are, of course, notices that will not be served in the event of temporary possession and so the Promoter effectively circumvents its advance payment obligations under Section 52. In fact there are no provisions as to the timing of compensation payment at all and so if the Promoter occupies the land for 6 years then it may be possible for the Limitation Act 1980 to be brought into operation to bar an action to recover compensation before the land is fully vacated and returned (i.e. 1 year post completion of all works) when the compensation can be fully assessed.

9.3.8 The lack of visibility of the Promoter's timescale, coupled with the ambiguous and unresponsive compensation arrangements mean that landowners are not provided with the financial means to acquire alternative resources in order to mitigate losses. The application of the mitigation duty to find substitute land becomes very uncertain.

Statutory Interest

9.3.9 The lack of statutory interest is a particular concern as the compensation may not be paid for some time after a loss is incurred. If statutory interest were to be introduced, consideration would need to be given to the date(s) from which it should be paid.

Long term occupation i.e. 6 years plus but no entitlement to occupiers basic loss

9.3.10 Many CPO schemes would acquire the land outright and offer it back to the dispossessed vendor when works complete within timescales similar to Mona. Regardless of the ultimate buyback, that compulsory acquisition would have entitled the dispossessed landowner to a property and or basic loss payment under sections 33-38 of the LCA 1973 equating to 10% of the valuation of the interest taken which is also circumvented by temporary notices.

Material Detriment / Section 8 of CPA 1965 and Sections 53-58 of LCA 1973

9.3.11 As no NTT will be served for the temporary possession then no entitlement to serve a Counter notice will arise until permanent rights notices are served at the very end of the works when all the disrupting matters on landowners that this legislation is intended to protect against will have been endured by the parties anyway. By the time that notices are served then the remaining as yet un-suffered impacts are unlikely to be enough to qualify for Material detriment.

Landowner Uncertainty

9.3.12 Losing possession of land, and being denied any advance payment, landowners are left with the uncertainty of not knowing how long the land will be occupied for and how much land or what rights will be permanently required and where the new interests and restrictive covenants will apply.

9.3.13 The unresponsive compensation arrangements combined with general uncertainty mean that landowner are left in long term limbo helplessly unable to plan or deal with all the serious disruption caused or do anything to improve their circumstances.

9.3.14 There appears to be neither a need nor any incentive on a statutory undertaker to serve any notice to treat other than the notice period reserved by Article 21 of the current draft DCO.

9.3.15 The use of these temporary powers on plots 06-103 to 105 will cause, at the very least, long delays to Robert Parry's scheme at the end of which he is likely to find that the permanent rights taken sterilise the prime section of the land in any event – the redress available to him will be derisory in relation to the actual loss suffered.

9.4 THE ADVANTAGES OF USING TEMPORARY POWERS TO THE PROMOTER

9.4.1 Conversely, the advantages of temporary powers to the Promoter are numerous and non-exhaustively include:

- a) Ability to take long term access on very short notice;
- b) Scheme costs are greatly reduced by not having to acquire land outright and recover funds by way of disposals at scheme end;
- c) Promoter can avoid advance payments of compensation altogether;
- d) Promoter can avoid basic and occupiers loss payments;
- e) Promoter can avoid statutory interest;
- f) Compensation liabilities can be managed in such a way as to backload payments so that the Promoter's cashflow is greatly eased;
- g) The Promoter can maintain maximum flexibility in its permanent design with no risk of additional cost or claim in doing this;
- h) Lack of statutory guidance and general ambiguity (e.g. regarding the extent of the scheme at valuation date) leading to unequal negotiations towards compensation thereby further reducing the Promoters overall costs;
- i) Promoter can avoid material detriment and other counter-notice processes;
- j) There is no pressure to serve a NTT or NTEs other than the excessive time limit reserved under Article 21 of the draft DCO.

9.4.2 Barry Denyer Green suggests the following to protect against the abuse of temporary possession powers:

- a) that there should be geographical limits over the amount of land that can be occupied temporarily when compared to the amount of land to be affected permanently;
- b) A return to the principles in the **Land Clauses Consolidation Acts** and the Model Clauses Provisions that land to be permanently acquired (or rights therein) should not be able to also be temporarily occupied;
- c) Time limits on how long temporary powers can be used i.e. he suggested temporary possession power to have a life of a maximum of 12 months before which a NTT has to be served;
- d) A return of section 35 of Railways Clauses Consolidation Act 1845 whereby an affected landowner of temporary land can serve a counter-notice to refute the temporary occupation on the grounds that the land is required by the owner (to be determined by 2 Justices);
- e) A return of section 42 of Railways Clauses Consolidation Act 1845 whereby an owner of temporary land can serve a counter-notice on the acquiring authority requiring the outright purchase of the land;
- f) A return of section 43 of Railways Clauses Consolidation Act 1845 whereby Promoter is obliged to pay all losses arising from the occupation within 1 month of entry and also to pay ongoing compensation on a 6 monthly basis.

9.5 **PROVISIONS OF THE NEIGHBOURHOOD PLANNING ACT 2017**

9.5.1 Chapter 1 (sections 18 to 31) of the Neighbourhood Planning Act 2017 (as yet unenacted) described in DL4 Comments on DCO Order and make the following provisions for temporary possession powers:

- **Section 18** sets out and clarifies which land can be temporarily occupied
- **Section 19** requires that the land for temporary occupation be precisely identified with a full description of the purpose intended and why required and the timescale for occupation

- **Section 20** requires 3 months' notice to be given and required NTT to be served within 3 years of occupation being taken.
- **Section 21** enables an occupier to serve a counternotice repudiating the temporary occupation or requiring full acquisition of the land or in the event of a landlord then they can set a 6 year maximum period of temporary occupation
- **Section 22** deals with refusal to give up possession
- **Section 23** deals with compensation, reduces risk of Limitation Act becoming effective and awards statutory interest
- **Section 24** deals with Advance Payments of 90% of the acquiring authority's estimate of compensation following 28 days of written request
- **Section 25** deals further with statutory interest
- **Section 26** deals with consequential amendments including modifications to section 150 of Town and Country Planning Act 1990 and Blight Notices
- **Section 27** deals with what acquiring authorities are able to do on land occupied temporarily under this Act.
- **Section 28** deals with the impact of temporary powers on tenancies
- **Section 29** deals Supplementary provisions

9.5.2 Whilst not yet enacted the above provisions are generally accepted as a welcome and well balanced approach to the matter of temporary possession. Clearly they are much fairer to landowners than the model clauses that the Promoter seeks to rely on, (advantageous to itself). The Promoter however rejects the Neighbourhood Planning Act provisions stating that as they are not yet enacted then they are untested and instead seeks to rely on the model clauses which by its own admission in 1.4.1.1 of the Explanatory Memorandum have been repealed and are not referred to anywhere in the 2008 Act or any of the associated guidance.

9.5.3 Without prejudice to the Objectors' position on the lawfulness of the temporary powers, in the event they are to be granted the Objectors urge the adoption of a combination of both Barry Denyer Green's recommendations and/ or the provisions of the NPA 2017 in order to redress the current disproportionate power imbalance in favour of the Promoter.

Griffith Wynne Parry MRICS

Senior Consultant

The Brown Rural Partnership

Dated 20 December 2024

PLANNING ACT 2008

**APPLICATION BY MONA OFFSHORE WIND LIMITED FOR AN
ORDER GRANTING DEVELOPMENT CONSENT FOR THE MONA
OFFSHORE WIND PROJECT**

LAND TO THE EAST OF THE A548

COMPRISING

PLOTS 06/102 - 06/105 (INCLUSIVE)

**PLANNING INSPECTORATE REFERENCE NUMBER
EN010137**

MNOW-AFP079: MNOW-AFP129: MNOW-AFP130: MNOW-AFP131

DCO HEARING-ISH6 on 11/12/2024

SUMMARY OF

WRITTEN NOTES OF HEARING POINTS

OF

GRIFFITH W. PARRY MRICS

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1.0 DEFINITION /GLOSSARY

1.1 Definitions are as per the main document and previous submissions

2.0 INTRODUCTION

2.1.1 This is a summary of the Objectors' primary concerns on the current drafting of the DCO.

3.0 INITIAL COMMENT REGARDING "PRECEDENT"

3.1 The Promoter attributes considerable weight to precedents from existing DCOs and it is necessary to point out that the doctrine of precedent applies to judicial proceedings rather than to administrative processes to determine secondary legislation such as the matter in hand.

3.1 The DCO's own guidance supports this, "Nationally Significant Infrastructure Projects - Advice Note Fifteen: drafting Development Consent Orders" states:

"1. Justifying the approach

1.1 The Explanatory Memorandum is an aid what is proposed in the draft Development Consent Order (DCO), why particular provisions have been included and from where the wording has been derived.

1.2 A thorough justification should be provided in the Explanatory Memorandum for every Article and Requirement, explaining why the inclusion of the power is appropriate in the specific case.

1.5 It is not sufficient for an Explanatory Memorandum to simply state that a particular provision has found favour with the Secretary of State previously; the ExA and Secretary of State will need to understand why it is appropriate for the scheme applied for."
(emphasis added)

3.1 The Promoter is therefore unable to merely rely on matters consented in previous orders as justification for them in the Mona Order.

4.0 ARTICLE 8 d) – PROVISIONS OF NEIGHBOURHOOD PLANNING ACT 2017

4.1 Article 8d) – the Objectors believe it may be necessary to retain Article 8d for reasons described in sections 9.3 to 9.5 of the main report.

5.0 ARTICLE 16 - DISCHARGE OF WATER (REP4-120.3)

5.1 The Objectors consider that the power to connect to private watercourses should have similar means of referral to third party in the event of a dispute as does the ability to connect to a water sewerage and drainage undertakers' networks.

6.0 ARTICLE 21 -TIME LIMITS TO ACQUIRE LAND COMPULSORILY (REP4-120.5)

- 6.1 The 7 year notice serving period requested by the promoter is excessive is contrary to several pieces of important guidance. Section 154 of the 2008 Act states that:

“....., seeking a period of longer than five years will require justification to persuade the Secretary of State that this is warranted” (emphasis added)

- 6.1 The Explanatory Memorandum cites precedent DCOs in justification and gives passing mention to scale of the project – securing contract for difference -before commencement – high demand / competition for suppliers / flexibility for procurement contracts and finally collaboration with Morgan. These are very vague and unspecific reasons to be awarded such an excessive period of time.

- 6.1 The Panel are respectfully requested to reduce this period to an absolute maximum of 5 years although the Objectors remain of the view that 3 years as provided in in Section 4 of the CPA 1965 is more than adequate.

7.0 ARTICLE 22 - (COMPULSORY PURCHASE OF RIGHTS) (MATERIAL DETRIMENT) (REP4-120.6)

- 7.1 The Promoter advises that its modifications to Article 22 seek to ensure that the provisions of Section 2A of the CPA 1965 still apply when acquiring rights and having this does appear to be correct.

- 7.1 To an extent however, the issue is academic in any event because the Promoter is seeking to do the works under temporary powers which circumvent the NTT process thereby engineering a means to bypass this valuable landowner protection anyway.

8.0 ARTICLE 26 – ACQUISITION OF SUBSOIL ONLY (MATERIAL DETRIMENT) (REP4-120.7)

- 8.1 The Promoter is definitely seeking to exclude itself from the protections of Section 8 and Schedule 2a of the CPA 1965 in this article and is misdirecting the Panel regarding the extent of these provisions.

- 8.1 In fact the Upper Tribunal test of “material detriment” is set down in section 26) Subsection 2) a), b) and particularly c) of Schedule 2A of the CPA 1965.

- 8.1 Subsequent caselaw has refined these tests and subsection (2)c) would apply tests for i.e:

Convenience Impacts – Access, – Parking,
Amenity Impacts -noise and vibration -dust and fumes -visual intrusion and privacy / security -views as well as Ability to sell the property

For both affected and unaffected land both during and post construction **as well as** the impact of the wider works generally again on the affected and unaffected land both during and post construction

- 8.1 The Promoter incorrectly asserts that only the actual affected land post works is to be considered which is far too narrow an interpretation.

8.1 The Panel is respectfully requested to reinsert Schedule 2A to the Order and allow the material detriment test to determine the circumstances as Parliament intended.

9.0 ARTICLES 29 and 30-TEMPORARY POWERS (REP4-120.2 REP4-120.8, REP4-121.24)

9.1 SOURCE OF POWERS OF TEMPORARY POWERS

9.1.1 Section 9.1 of the main document describes how as secondary or subordinate legislation this DCO has to rely on invoking provisions from primary legislation and is unable to create new rights or rights itself.

9.1.2 For instance Section 122(1) of the 2008 Act clearly authorises the “*the compulsory acquisition of land*” (providing certain provisions are met). It does not mention temporary powers and neither does its guidance.

9.1.3 The Promoter has demonstrated that Section 120 of the 2008 Act and particularly 120) 5)c) is a catch all provision to allow the Secretary of State to:

*“120 5) (c) include any **provision** that appears to the decision-maker to be necessary or expedient for giving full effect to any other **provision** of the order;”*
(emphasis added)

9.1.4 So subsection 5)c) can insert “*provisions*” and is therefore merely a conduit for other “**provisions**” in primary acts of parliament to be brought into the DCO to give full effect to “**any other provision of the order**”.

9.1.5 Sections 9.1.8 to 9.1.22 explain how temporary powers are not a right in land and are instead merely a permission for something that would otherwise be a trespass and that Parliament, the Model Clauses, and previous DCO’s have all treated the two matters and rights to use them entirely separately.

9.1.6 Powers of acquisition of land or rights in land therefore are separate to powers of temporary possession and so it is still necessary to understand what legislative Parliamentary Act it is being relied on for Articles 29 and 30 of the DCO.

9.1 TEST FOR WHETHER TEMPORARY POWERS APPROPRIATE (EXPEDIENT)

9.2.1 Notwithstanding the question of lawfulness above it section 9.2 deals with the “*expedient*” test that is

*“120 5) (c) include any provision that appears to the decision-maker to be necessary or **expedient** for giving full effect to any other provision of the order;”*
(emphasis added)

9.2.2 The test for expediency was considered by Lord Livesey in *Open Spaces Society v Secretary of State* 2021, who determined that the decision maker :

“...have regard to any other relevant matter, including if appropriate the interests of the owner or occupier of the land over which the path currently passes, or the wider public interest”.

9.2.3 The test for expediency requires the consideration of a very broad range of issues and would include the negative consequences of their impact on landowners affected by their use. Section 9.3 of the main document is therefore a list of non-exhaustive negative impacts on landowners whilst 9.4 looks at the advantage to the Promoter of temporary powers. These have been tabulated here

9.1 And 9.4 DISADVANTAGES OF TEMPORARY POWERS ON LANDOWNERS AND THEIR BENEFITS TO PROMOTERS

DISADVANTAGES TO LANDOWNER	BENEFIT TO PROMOTER
<u>Notice Periods</u>	
Promoter can occupy the land long term on minimal 14 / 28 days notice	Ability to take long term access on very short notice;
<u>Valuation Date</u>	
No early or fixed valuation date on date of entry Losses due to temporary notice possibly lost from main claim	No material impact
<u>Condition of the Property on the Valuation Date (and extent of the “scheme”)</u>	
No clear and fair record of condition on the vesting date – i.e. condition changed (deteriorated) due to temporary notice and current case law “disregards narrower scheme”	Can lead to lower compensation settlements - good for Promoter’s Budget
<u>Lack of statutory or judicial guidance as to compensation</u>	
Imbalance in negotiating positions can lead to unequal negotiation and claimant not recovering full losses	Can lead to lower compensation settlements - good for Promoter’s Budget
<u>Advance Payments (Under Section 52 of the LCA 1973</u>	
Landowner has no mechanism to recover an advance payment leading to negative impact on cashflow which can be long term	Can greatly assist the Promoter’s cash flow
<u>Statutory Interest</u>	

No advance payment and no interest to make good for any delays for receipt of compensation leading to negative impact on cashflow	Can lead to lower compensation settlements - good for Promoter's Budget
<u>Long term occupation i.e. 6 years plus but no entitlement to occupiers basic loss</u>	
Landowner would have been assisted by Property & Basic Loss Payments in the event of outright purchase which is not applicable on temporary occupation	Can lead to lower compensation settlements - good for Promoter's Budget
<u>Material Detriment / Section 8 of CPA 1965 and Sections 53-58 of LCA 1973</u>	
Mat Det process circumvented so landowners and occupiers lose right to claim	No claims and settlements for material detriment - good for Promoter's Budget
<u>Landowner Uncertainty</u>	
With limited Cashflow / under-recovery of compensation and no visibility as to the length of occupation the landowner is in a very precarious situation.	Conversely Promoter can continue in full certainty of open ended and unfettered occupation - There appears to be neither a need nor any incentive on a Promoter to serve any notice to treat other than the notice period reserved by Article 21 of the current draft DCO.

9.4.1 Section 9.4.2 of the main report shows Barry Denyer Green suggestions of approaches to the powers that would protect against the abuse of temporary possession powers.

9.4.2 Section 9.5 gives an outline of the provisions of the as yet unenacted provisions of the Neighbourhood Planning Act 2017 which are more balanced and equitable than the model provisions.

9.4.3 Without prejudice to the Objectors' position on the lawfulness of the temporary powers, in the event they are to be granted the Objectors urge the adoption of a combination of both Barry Denyer Green's recommendations and/ or the provisions of the NPA 2017 in order to redress the current disproportionate power imbalance in favour of the Promoter.

Griffith Wynne Parry MRICS
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 Dated 20 December 2024