



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

Triton Knoll Electrical System

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Energy and Climate Change**

Examining Authority

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Richard Allen
Guy Rigby**

3 June 2016

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The ExA's findings, conclusions and recommendation in respect of 'the Triton Knoll Electrical System (TKES)' which is required to transmit the electricity from the consented Triton Knoll Offshore Wind Farm (TKOWF) to the National Grid.

File Ref EN090019

The application, dated 23 April 2015, was made under section 37 of the Planning Act 2008 and was received in full by the Planning Inspectorate on 24 April 2015.

The Applicant is Triton Knoll Offshore Wind Farm Limited.

The application was accepted for examination on 21 May 2015.

The examination of the application began on 3 September 2015 and was completed on 3 March 2016.

The development proposed is to construct and operate an electrical system to connect the consented Triton Knoll Offshore Wind farm to the national grid.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached.

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APPENDIX B: EXAMINATION LIBRARY INCLUDING RIES

APPENDIX C: LIST OF ABBREVIATIONS

APPENDIX D: RECOMMENDED DEVELOPMENT CONSENT ORDER

ERRATA SHEET – Triton Knoll Electrical System – Ref. EN020019

Examining Authority`s Report of Findings and Conclusions and Recommendation to the Secretary of State for the Department of Energy and Climate Change, dated 3 June 2016

Corrections agreed by the Examining Authority prior to a decision being made

Page No.	Paragraph	Error	Correction
1	Heading	File Ref EN090019	EN020019
16	2.4.8	“..are considered at 5.25 of this..”	“..are considered at 5.26 of this..”
20	3.5.1	Footnotes 1 and 2 are not referenced.	
65	Heading	“iv Other matters”	“v Other matters”
121	5.16.70/ 5.16.71	Paragraph is repeated	
159	5.21.16	“..(Viking Link) in Section 5.25..”	“..(Viking Link) in Section 5.26..”
230	Heading	“Principle CA powers..”	“Principal CA powers..”
244	8.7.53	“..November 2105..”	“..November 2015..”
253	8.9.23	“..put at CAH on 13 November 2016..”	“..put at CAH on 13 November 2015..”
295	Heading and 8.18.9 (various)	“R H Mowbary”	“R H Mowbray”
339	9.4.23	“..the Applicant The Applicant..”	“..the Applicant..”

1 INTRODUCTION

1.1 BACKGROUND

- 1.1.1 The proposed development is an electrical system 'the Triton Knoll Electrical System (TKES)' which is required to transmit the electricity from the consented Triton Knoll Offshore Wind Farm (TKOWF) to the national grid. A description of this project is provided at the start of Chapter 2, below.
- 1.1.2 The proposed development is not a nationally significant infrastructure project (NSIP) as set out in section 14(1)(a)-(p) of the Planning Act 2008 (as amended) (PA2008). Under section 35 of the PA2008, the Secretary of State (SoS) may give a direction for development to be treated as development for which development consent is required. The SoS gave such a direction in respect of the TKES on 14 November 2013 [OD-001].
- 1.1.3 The application was received by the Planning Inspectorate on 24 April 2015 and was accepted for examination under s55 of the PA2008 on 21 May 2015 [PD-001].
- 1.1.4 The Applicant gave notice of the accepted application to the required persons identified in accordance with s56 of PA2008 and publicised the accepted application in the required manner [OD-003]. In response, 192 Relevant Representations (RR) were received by the Planning Inspectorate [RR-001 to RR-192].
- 1.1.5 On 26 May 2015, a Panel of Examining Inspectors was appointed to hold the examination of the application under s65 PA2008. Kelvin MacDonald was appointed lead member and Chair of the Panel. The Examining Authority (ExA) comprises Kelvin MacDonald FAcSS FRTPI MCIH FRSA, Richard Allen BSc (Hons) PGDIPL MRTPI and Guy Rigby LLB ACGI CEng FICE FIHT.
- 1.1.6 The Applicant formally provided notification under Regulation 6(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the EIA Regulations) that it proposed to provide an Environmental Statement. Therefore in accordance with Regulation 4(2)(a) of the EIA Regulations the proposed development is determined to be EIA development.

1.2 THE EXAMINATION AND PROCEDURAL DECISIONS

- 1.2.1 The main events of the Examination and procedural decisions taken during the Examination can be seen at Appendix B of this report.
- 1.2.2 On 30 July 2015 the Panel wrote to all Interested Parties (IP), Statutory Parties and Other Persons under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) [PD-007]. This letter set out:

- administrative arrangements for the preliminary meeting;
- agenda for the preliminary meeting;
- initial assessment of principal issues;
- draft timetable for examination of the application;
- availability of RRs and application documents; and
- notice of appointment of the ExA.

1.2.3 The ExA's first written questions (FWQ) and requests for information [PD-009] and procedural decisions were set out in the Rule 8 letter [PD-008] which was issued to all IPs, Statutory Parties and Other Persons on 11 September 2015. This included, at Annex C:

- (a) a request for the Applicant to produce a Schedule of Compulsory Acquisition;
- (b) a request for Statements of Common Ground (SoCG);
- (c) a procedural decision to accept a number of updated documents:

From the Applicant -

- Access to Works and Street Plans
- Book of Reference
- Consultation Report
- draft Development Consent Order (DCO) (clean version)
- Environmental Impact Assessment (EIA) Evidence Plan
- Hedgerow Plans
- Land Plans and Crown Plans
- Order limits Plans
- Public Rights of Way (PRoW) Plans
- Response to s.51 Advice and table of amended documents
- Statement of Reasons
- Works Plans

(d) From Western Power Distribution -

- A representation

(e) From Norfolk County Council -

- A representation

Following the preliminary meeting, the ExA received two additional submissions from:

- Matt Warman MP and Victoria Atkins MP
- Triton Knoll Cable Group

1.2.4 On 11 December 2015, the ExA issued second written questions (SWQ) and requests for information [PD-014]. At the same time, the ExA made a procedural decision to accept two change requests submitted by the Applicant, as described in Section 2.3 of this

Recommendation Report. The letter of 11 December 2015 also included a Rule 8(3) change to the Examination timetable.

- 1.2.5 On 10 February 2016, the ExA issued third written questions (TWQ) [PD-016], a consultation draft DCO [PD-017] and a Report on the Implications for European Sites (RIES) for consultation [PD-018].
- 1.2.6 On 23 February 2016, the ExA issued a Rule 17 request for further information and a Rule 8(3) change to the Examination timetable [PD-019].
- 1.2.7 A number of requests for an Open Floor Hearing (OFH) were received; therefore three hearings were held under s93 PA2008 on 10, 11 and 16 November 2015 with two in Skegness and one in Boston. Two of these hearings - one in Skegness and one in Boston - were held during the evening.
- 1.2.8 The ExA held a number of Issue Specific Hearings (ISH) under s91 PA2008 in Skegness, covering a number of topics:
- the DCO (12 November 2015 and 22 January 2016);
 - onshore issues including construction (17 November 2015);
 - landscape and visual impacts (18 November 2015);
 - socio-economic issues (19 November 2015); and
 - local impacts (19 January 2016).
- 1.2.9 A number of Affected Persons (AP) made requests for a CAH (CAH); therefore a hearing was held under s92 PA2008 on 13 November 2015. A second CAH was held on 20 January 2016, continuing on 21 January 2016.

1.3 SITE INSPECTIONS

- 1.3.1 The Panel undertook an unaccompanied site inspection on 1 September 2015 continuing on 2 September 2015. A note of this can be seen at EV-003. An accompanied site inspection took place 10 November 2015, continuing on 11 November 2015.

1.4 OTHER CONSENTS REQUIRED

- 1.4.1 As set out in APP-121 there are a number of other consents/licences required as a part of this application. They are listed as follows:
- a decommissioning scheme under Chapter 3 of Part 2 of the Energy Act 2004;
 - approvals from the relevant planning authority pursuant to the requirements contained in the DCO;
 - approvals from the Marine Management Organisation (MMO) pursuant to the conditions contained in the deemed Marine Licence (DML);

- a licence under s10 of the Protection of Badgers Act 1992;
- an environmental permit under the Environmental Permitting (England and Wales) Regulations 2010 in relation to discharge to water or groundwater;
- a water abstraction licence under ss24 and 25 of the Water Resources Act 1991; and
- approval from the highways authority to undertake any works to the public highway and, if necessary, completion of an agreement under s278 of the Highways Act 1980.

In addition, to enable implementation:

- approval from (1) the Crown Estate Commissioners (CEC), and (2) the Highways Agency Historical Railways Estate which confirms the relevant authority's consent to inclusion of the following in the DCO:
 - provisions which authorise the Compulsory Acquisition (CA) of interests in land in which the authority has an interest, other than the interests of the authority; and/or
 - any other provision applying in relation to Crown land, as appropriate, for the purposes of sub-sections 135(1) and (2) of PA2008 respectively.

1.4.2 The ExA noted that the Highways Agency became Highways England on 1 April 2015 before the start of the Examination of this application. Therefore the Highways Agency Historical Railways Estate is referred to as the Highways England Historical Railways Estate (HEHRE) in subsequent parts of this Recommendation Report.

1.4.3 The following additional consent which is not included within the DCO may be required for the TKES [APP-121] this is:

- a licence from Natural England (NE) under regulations 53 to 55 of the Conservation of Habitats and Species Regulations 2010 in relation to Great Crested Newts.

1.5 REQUESTS TO BECOME OR WITHDRAW FROM BEING AN INTERESTED PARTY (S102A, S102B AND S102ZA)

1.5.1 No party sought IP status through s102A of PA2008. No party requested removal as an IP. A number of representations were withdrawn during the Examination. These have been marked as 'withdrawn' in the Examination Library (see Appendix C).

1.6 UNDERTAKINGS/OBLIGATIONS GIVEN TO SUPPORT APPLICATION

1.6.1 There were no undertakings or obligations given to support the application. However, the Applicant's Response to Deadline 8 Submissions [REP8-032] states in paragraph 2.6 that:

"The Lincolnshire Wildlife Trust has signed an agreement with Triton Knoll Offshore Wind Farm Limited (TKOWFL) to receive a £25,000 Mitigation Fund for the Lincolnshire Coastal Grazing Marshes (LCGM) project should the Development Consent Order for the Triton Knoll Offshore Wind Farm electrical infrastructure be consented."

1.6.2 Paragraph 7.4 of Boston Borough Council's (BBC) Local Impact Report (LIR) [LIR-002] states, in relation to the NGET substation at Bicker Fen that:

"The Council invites the ExA to consider an Article 4 Direction under the Town and County Planning (General Permitted Development) (England) Order 2015 such that the Enabling Works, as far as the Council understands them must be the subject of specific planning application and approval to this local planning authority."

1.6.3 BBC's update on their position and withdrawal of its request to the ExA for an Article 4 Direction in relation to the Bicker Fen Electricity Substation [AS-050] states that; *"the Borough Council wishes to withdraw its request to the ExA for an Article 4 Direction"*.

1.7 STRUCTURE OF REPORT

1.7.1 The Panel has had regard to each and every representation made in the conclusions it has reached. This report addresses important and relevant issues and statutory requirements to reach conclusions applying the statutory tests under s105 of PA2008, taking all relevant matters into account.

1.7.2 The contents of the report are set out as below:

- Chapter 1 introduces the application and sets out in summary the Examination and procedural decisions;
- Chapter 2 sets out the main features of the proposed development;
- Chapter 3 identifies and summarises the policy and legal context applicable to the application;
- Chapter 4 sets out the ExA's findings and conclusions in relation to policy and factual issues;
- Chapter 5 looks at the potential effects of the proposed development on the offshore and onshore environment;
- Chapter 6 deals with the findings and conclusions in relation to Habitats Regulation Assessment (HRA);
- Chapter 7 sets out the ExA's findings and conclusions on the case for development consent, taking into account all application

documents and written and oral representations submitted to the Examination;

- Chapter 8 deals with CA and other land related matters;
- Chapter 9 considers the proposed draft DCO including requirements and any changes which were made to it during the course of the Examination;
- Chapter 10 presents the ExA's overall conclusions and recommendations to the SoS;
- Appendix A sets out the abbreviations used in this report;
- Appendix B lists the main events that occurred during the Examination;
- Appendix C provides the Examination library, which allocates a unique identifier for each document, categorised either by document type or by the deadline to which it was submitted; and
- Appendix D comprises the recommended DCO and DML.

1.7.3 Where document references are presented in square brackets [] in the text of this report, that reference can be found in the Examination library (Appendix C). Where deadlines are referenced, these will be abbreviated by 'D' followed by the deadline number.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

2.1 THE APPLICATION AS MADE

2.1.1 The Applicant is Triton Knoll Offshore Wind Farm Limited (TKOWFL), which is a joint venture owned in equal shares by RWE Innogy UK and Statkraft UK.

2.1.2 Development Consent was granted for the Triton Knoll Offshore Wind Farm (TKOWF) on 11 July 2013 (SI 2013 No. 1734). This is an offshore array of up to 288 turbines with a maximum generating capacity of up to 1200MW together with associated inter-array cabling and up to four offshore substation platforms. The TKOWF Development Consent Order (DCO) application did not include associated electrical infrastructure such as offshore export cables, onshore cables and associated substations necessary to transport power onshore for connection to the national grid. The Triton Knoll Electrical System (TKES) would provide the infrastructure to connect the consented TKOWF to the national grid and would include, in summary, the following:

- submarine cable route for exporting electricity generated by the offshore wind farm to the shore along a route of around 66km;
- a landfall site with associated jointing of offshore and onshore cables to the north of the village of Anderby Creek;
- onshore underground cable along a route of around 60km;
- an Intermediate Electrical Compound, east of the village of Orby;
- a new onshore substation for TKOWF to the north west of the village of Bicker; and
- a connection to the existing National Grid substation at Bicker Fen [APP-018]

Full details of all the works are set out in Schedule 1, Part 1 of the recommended DCO at Appendix D. The application includes 56 individual works.

2.2 LOCATION

2.2.1 As described in the application form [APP-002] the consented TKOWF array is located approximately 33km east of the Lincolnshire coast and 48km north of the North Norfolk coast. The application site of the TKES comprises the majority of the array area and an offshore cable corridor connecting the array to the proposed landfall infrastructure just north of Anderby Creek, Lincolnshire. On land, the application site comprises an onshore cable corridor through the local authority areas of East Lindsey District Council (ELDC) and Boston Borough Council (BBC) in Lincolnshire, terminating at the existing National Grid substation at Bicker Fen, Boston. The IEC is to be located near to Orby Marsh and the new substation is proposed at Bicker Fen.

2.2.2 The location of the project is shown at Figure 1-1 in the Environmental Statement (ES) Non-Technical Summary (NTS) [APP-018].

- 2.2.3 The predominant onshore land use along the cable route is agriculture:

"Land use within the study area is principally agricultural predominantly comprising medium-sized open arable fields surrounded by drainage ditches, with networks of narrow drains and farm tracks" [APP-046].

The land is of high quality, ES [APP-046] explains that the route traverses Grades 1, 2 and 3 agricultural land.

- 2.2.4 Paragraph 5.10.8 of the Overarching Energy National Policy NPS EN-1 states that Applicants should seek to minimise impacts on the best and most versatile agricultural land and should seek to minimise impacts on soil quality, and paragraph 5.10.19 says that applicants should seek to minimise effects on existing or planned uses by the application of good design principles, including the layout of the project. Furthermore, paragraph 5.10.15 of NPS EN-1 states that the decision maker should ensure that applicants do not site schemes on the best and most versatile agricultural land without justification

- 2.2.5 Tourism is also an important contributor to the local and regional economy: paragraph 5.10.24 of NPS EN-1 states that rights of way, National Trails and other rights of access are important recreational facilities for walkers, cyclists and horse riders, and that the decision maker should expect applicants to address adverse effects on coastal access, National Trails and other rights of way. *"Lincolnshire is the 4th most popular coastal county in the UK (Greater Lincolnshire LEP (2014)) for tourism" [APP-044].*

2.3 THE APPLICATION AT THE CLOSE OF EXAMINATION

CHANGE REQUESTS

- 2.3.1 The Applicant submitted two change requests to the application during the examination. The first was submitted on 9 November 2015 [APP-134] in which the Applicant proposed a relocation of its proposed works associated with the National Grid Bicker Fen substation. At a hearing into the draft DCO held on 12 November 2015, the ExA requested additional documentation from the Applicant to show any consequential amendments to the draft DCO. In response the Applicant submitted Bicker Fen - Schedule of amendments to the DCO and Application Documents [AS-036] on 16 November 2015.
- 2.3.2 In addition, the Applicant submitted a revised version of the Bicker Fen Extension and Reconfiguration Note [APP-136], Updated Bicker Fen Figures [APP-138], a Bicker Fen Extension and Reconfiguration Note – Joint Position Statement [APP-139].
- 2.3.3 These changes were summarised in paragraphs 2.1 to 2.5 in AS-036:

"Draft development consent order (DCO) – minor changes would be required to Schedule 5 of the draft DCO to split Plot 48/17 into two separate Plots, 48/17A and 48/17B. Both new Plots retain the same rights as for Plot 48/17. Plot 48/17B is allocated additional unlicensed connection rights.

Land Plans - Sheet 48 of the Land Plans would need to be amended to reflect the split of Plot 48/17 into Plots 48/17A and Plot 48/17B.

Works Plans - Minor amendments will need to be made to the location of Work Nos 53 and 54 on sheet 48.

Book of Reference – a minor change is required to include separate rows for Plot 48/17A and Plot 48/17B.

No changes are required to the articles or other Schedules of the draft DCO."

2.3.4 The Applicant submitted an ES addendum [APP-137] in support of this change request which concluded that there would no change to the assessments presented within the original ES submitted with the application.

2.3.5 This proposed change to the request for CA involves plots located within the area of BBC. In paragraph 2.1 of its Submissions to D3 (30 November 2015) [REP3-020], BBC confirmed that:

"The Council has no objection to the acceptance of the applicant's Change Request. The Unlicensed Works (as now defined at para 2.2 to Appendix A of the Bicker Fen Extension and Reconfiguration Note published 13 November 2015) are to be placed outside of the present NGET substation secure boundary but within the existing Order limits. The Environmental Statement Addendum which accompanies the Change Request demonstrates that a Review of the impacts has been undertaken and the Council can confirm that it considers that this assessment and review is robust and has been properly undertaken. The scope, scale or magnitude of the Unlicensed Works would not change; it is just the proposed location of this point of connection that is different. The updated traffic information and cumulative assessment shows that there are further traffic impacts in the vicinity of the Bicker Fen Substation but these are concerned with the Substation Extension Works (as defined), and are beyond the control of the applicants and not formally within this DCO application."

2.3.6 The second change request, dated 30 November 2015 was received as an Order limits Reduction Request - Appendix 16 of the Applicant's Response to D3 [REP3-052]. The change involved the removal of Work No.47B which was one of the two proposed construction compounds at the point where the proposed new access road for the Triton Knoll Substation abuts the A17 main road.

- 2.3.7 In its response to our question DCO 1.22 [PD-009], the Applicant explained that:
- "The Applicant has determined that the proposed temporary construction compound shown at plot 44/03a on the Land Plan (doc ref 2.3), i.e, the southern compound, is not required. The relevant landowner approached the Applicant shortly before finalisation of the Application, requesting that the compound be moved from the southern location to the northern location. The Applicant has now determined that it is technically possible to use the northern location for a temporary construction compound" [REP1-044].*
- 2.3.8 As a consequence of the relocation of the construction compound from Plot 44/03a to Plot 44/03b, the Applicant sought to reduce the Order limits to remove Plot, 44/03 and 44/03a from CA and to reduce the size of Plot 44/04.
- 2.3.9 At the same time the Applicant also sought to reduce the size of plots 44/02 and 45/12 and to limit the CA over plot 45/15 to permanent rights instead of permitting CA of the freehold. These changes were requested following discussions with the landowner.
- 2.3.10 In respect to this change request, the Applicant confirmed in paragraph 3.1 [REP3-052] that there were no changes to the Environmental Impact Assessment (EIA) undertaken and presented in the original ES submitted with the application as the changes constituted a reduction to the Order limits.
- 2.3.11 In the ExA's procedural decision of 11 December 2015 [PD-013], we concluded that the information contained in the two change requests did not change the nature and description of the proposed development as set out in the draft DCO and associated documentation.
- 2.3.12 In coming to our conclusions, we had regard to the Wheatcroft¹ test and the Guidance published by SoS Communities and Local Government². We considered that all IPs and APs had an opportunity to comment on the proposed changes during the examination.
- 2.3.13 We concluded that the changes did not result in a change to the EIA presented within the ES.
- 2.3.14 Neither of the changes involved the introduction of additional land over which CA powers were requested and, therefore, the ExA concluded that the provisions of the *Infrastructure Planning (Compulsory Acquisition) Regulations 2010* were not triggered.

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment (1982) 43 P & CR 222

² Bernard Wheatcroft Ltd v Secretary of State for the Environment (1982) 43 P & CR 222 and Guidance for the Examination of Nationally Significant Infrastructure Projects, March 2015

Amendments to the draft DCO

- 2.3.15 The Applicant submitted a series of revisions to the draft DCO throughout the Examination in response to issues raised. These revisions and the amendments they contain are detailed in the introductory paragraphs to Chapter 10 of this Recommendation Report.

2.4 RELEVANT PLANNING HISTORY

- 2.4.1 The relationship of this proposed scheme to the consented TKOWF is covered above.

- 2.4.2 The LIR from BBC [LIR-002] states in paragraph 2.1 that:

"The linear nature of the on shore application site means that there are no relevant applications or approvals that need to be referred to here. The proposed Substation site has no history of applications or approvals except for the Request for the Scoping Opinion made to the Council in July 2013 by RSK on behalf of TKOWFL"

- 2.4.3 It goes on to set out the planning history of the operational Bicker Wind Farm, the Existing Bicker Fen substations operated by National Grid (400kV) and Western Power Distribution (132kV) and the permanent access road which was constructed around the west side of Bicker, at Bicker Friest between the A52 and Ings Drove.

- 2.4.4 The LIR from ELDC [LIR-001] states in paragraph 3.6 that:

"Planning history relevant to the on-shore proposal is difficult to address, as the 'site is so large and extends through approximately half the district. There are no specific applications that 'interfere' with the route of the proposal within East Lindsey."

- 2.4.5 The LIR from NKDC [LIR-004] states in paragraph 3.1 that:

"As the site is not located within North Kesteven District, we have no site history pertinent to the development proposals."

- 2.4.6 The LIR from LCC [LIR-003], states in paragraph 3.7 that:

"Planning history relevant to the on-shore proposal is difficult to address, as the site is so large and extends through approximately half the district of East Lindsey and most of Boston Borough Council."

- 2.4.7 The ExA notes, therefore, that none of the LIRs draws our attention to any specific items of relevant planning history.

Viking Link Limited

- 2.4.8 A number of RRs and specifically a RR from National Grid Viking Link Ltd [RR-005] drew the Panel's attention to the Viking Interconnector, an electrical interconnector that could potentially be constructed in the

same locality as the TKES project. This proposal is in the pre-application stages and the potential cumulative effects of this are considered at 5.25 of this Recommendation Report.

3 LEGAL AND POLICY CONTEXT

3.1 INTRODUCTION

- 3.1.1 This chapter sets out the relevant legal and policy context for the application which was taken into account and applied by the Panel in carrying out its examination and in making its findings and recommendations to the Secretary of State for Energy and Climate Change (SoS).
- 3.1.2 The Applicant has set out the policy that it considers relevant in the Planning Statement [APP-096] and the Environmental Statement (ES), Chapter 2: Consents, Policy and Legislation [APP-021].
- 3.1.3 The policy framework is also set out in Local Impact Reports (LIR) from East Lindsey District Council (ELDC) [LIR-001], Boston Borough Council (BBC) [LIR-002], Lincolnshire County Council (LCC) [LIR-003] and North Kesteven District Council (NKDC) [LIR-004].
- 3.1.4 The agreed policy context is set out in Statements of Common Ground (SoCG) with BBC [REP2-035] and LCC [REP8-043], whilst the SoCG with ELDC [REP2-036] sets out those parts of the policy context that are and are not agreed.

3.2 PLANNING ACT 2008

- 3.2.1 The application is for a Development Consent Order (DCO) under the Planning Act 2008 (as amended) (PA2008). A DCO is required where development is, or forms part of, a Nationally Significant Infrastructure Project (NSIP). The development of Triton Knoll Electrical System (TKES) proposed by Triton Knoll Offshore Wind Farm Ltd (TKOWFL) does not fall within the definition of a NSIP as set out in Part 3 of the PA2008.
- 3.2.2 Following submission of a qualifying request from the Applicant, on 14 November 2013, the SoS made a Direction under s35(1) of PA2008 directing that the Triton Knoll project is nationally significant [OD-001].
- 3.2.3 The reasons given for this were:

"It is needed to deliver the electricity generated by the consented Triton Knoll Offshore Wind Farm array (a project of national significance) into the national grid transmission system.

In addition the project:

- *Will benefit from the application being determined in a timely and consistent manner by the same decision maker as the nationally significant Triton Knoll Offshore Wind Farm;*

- *Will benefit from the entire grid connection infrastructure being examined under the streamlined planning process, removing the need to apply for separate consents by the Marine Management Organisation and local planning authorities."*

3.2.4 The SoS therefore directed, under s35 of PA2008, that:

"...the development, together with any matters associated with it is to be treated as development for which development consent is required."

3.2.5 Although the SoS has directed that the proposed development is to be treated as development for which development consent is required, there is not strictly an NPS that has effect in relation to development of this description. The application therefore falls to be decided under s105 of PA2008. Section 105(2) requires the SoS to have regard to the following in deciding the application:

- relevant LIRs submitted by local authorities;
- relevant prescribed matter; and
- any other matters which the SoS thinks are both important and relevant to the SoS's decision.

3.2.6 While the SoS must take the above into account, she must also be satisfied that the decision made on the application would not lead to the United Kingdom being in breach of any of its international obligations or lead to the SoS being in breach of any duty imposed by law or making an unlawful decision. The SoS must also consider whether the adverse impacts of the proposed development outweigh its benefits, and whether any condition prescribed for deciding an application otherwise than in accordance with an NPS is met.

3.2.7 This report sets out the Panel's findings, conclusions and recommendations taking these matters fully into account and applying the approach set out in s105 of PA2008.

3.3 NATIONAL POLICY STATEMENTS

3.3.1 As this application falls to be determined under s105 of PA2008, NPS are cited here as being matters which the SoS thinks are both important and relevant to the SoS's decision.

3.3.2 It should be noted that whilst National Policy Statement (NPS) EN- 5 applies to nationally significant electricity networks infrastructure, at paragraph 1.8.2 the NPS states:

"This NPS covers above ground electricity lines whose nominal voltage is expected to be 132kV or above. Any other kind of electricity infrastructure (including lower voltage overhead lines, underground or sub-sea cables at any voltage, and associated infrastructure as referred to above) will only be subject to the Planning Act 2008 – and so be covered by this NPS – if it is in England and it constitutes

associated development for which consent is sought along with an NSIP such as a generating station or relevant overhead line."

3.3.3 The proposed development is not associated development to the Triton Knoll Offshore Wind Farm (TKOWF) which has already obtained development consent but it can be considered as akin to such associated development. The proposed development is development which would have been associated development if it had been included within the application for TKOWF. Furthermore, the SoS considers the proposed development to be of national significance because it is needed to deliver the energy generated by TKOWF. The relevant energy NPSs are therefore important and relevant matters to be taken into account in accordance with s105(2)(c).

3.3.4 As this is a project for electricity networks infrastructure there are two relevant NPSs which the Panel recommend that the SoS take into account. In addition, given the relationship of the proposed development to the consented Triton Knoll Offshore Wind Farm, the NPS for Renewable Energy Infrastructure is also relevant. The relevant energy NPSs are therefore:

- NPS EN-1: Overarching National Policy Statement for Energy;
- NPS EN-3: National Policy Statement for Renewable Energy Infrastructure; and
- NPS EN-5: Electricity Networks Infrastructure.

3.3.5 The above NPSs were produced by the Department for Energy and Climate Change (DECC) and received designation by the SoS for Energy and Climate Change on 19 July 2011.

3.4 MARINE AND COASTAL ACCESS ACT 2009

3.4.1 The Marine and Coastal Access Act 2009 (MCA) introduced the production of marine plans and designation of Marine Conservation Zones (MCZ) in the United Kingdom (UK) waters as well as establishing the Marine Management Organisation (MMO). The UK Marine Policy Statement (MPS) and marine planning are dealt with below. Under the MCA the Secretary of State for Environment, Food and Rural Affairs (Defra) has designated to date 50 MCZs around the English coast to form part of a network of Marine Protected Areas (MPA).

3.4.2 As the proposed development is located partly offshore the Applicant's draft DCO includes, at Schedule 9, a deemed marine licence (DML) pursuant to s149A of PA2008 for licensable marine activities under the MCA.

UK Marine Policy Statement

3.4.3 The UK MPS was prepared and adopted for the purposes of s44 of the MCA and was published on 18 March 2011 by all the UK

administrations as part of a new system of marine planning being introduced across UK seas.

- 3.4.4 The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment. It contributes to the achievement of sustainable development in the UK marine area. The UK marine area includes the territorial seas and offshore area adjacent to the UK, which includes the area of sea designated as the UK Exclusive Economic Zone (the Renewable Energy Zone until the Exclusive Economic Zone comes into force) and the UK sector of the continental shelf. It includes any area submerged by seawater at mean high water spring tide, as well as the tidal extent (at mean high water spring tide) of rivers, estuaries and creeks³.
- 3.4.5 The MPS is the framework for marine planning systems within the UK. It provides the high level policy context, within which national and sub-national Marine Plans will be developed, implemented, monitored and amended and will ensure appropriate consistency in marine planning across the UK marine area. The MPS also sets the direction for marine licensing and other relevant authorisation systems.
- 3.4.6 The MPS is a matter which the SoS thinks is both important and relevant to the SoS's decision.

East Inshore and East Offshore Marine Plans

- 3.4.7 The Applicant's Planning Statement [APP-096] refers to the East Inshore and East Offshore Marine Plans (EIEOMP) as the relevant regional marine plans for this proposed development. They were published in April 2014 and cover an area that extends from Flamborough Head in the north to Felixstowe in the south. The offshore elements of the proposed TKES will be entirely within the areas covered by the EIEOMP.
- 3.4.8 Under s105(c) of PA2008 the SoS must have regard to important and relevant matters, this includes the appropriate marine policy documents. The appropriate marine policy documents are the MPS and the EIEOMP.

3.5 EUROPEAN REQUIREMENTS AND RELATED UK REGULATIONS

- 3.5.1 Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe came into force on 11 June 2008. The Directive consolidates four directives¹ and one Council decision² into a single directive on air quality. Under the Air Quality Directive Member States are required to assess ambient air quality with respect to sulphur dioxide, NO₂ and NO_x,

³ see Marine and Coastal Access Act 2009 s.42(3) and (4)

particulate matter (PM₁₀ and PM_{2.5}), lead, benzene and carbon monoxide. The Directive set limiting values for compliance and establishes control actions where these are exceeded. It is transposed into UK statute through regulations made under the Environment Act 1995 (EA1995).

- 3.5.2 Part IV of the EA1995 requires all local authorities in the UK to review and assess air quality in their area. If any standards are being exceeded or are unlikely to be met by the required date, then that area should be designated an Air Quality Management Area (AQMA) and the local authority must draw up and implement an Air Quality Action Plan (AQAP) aimed at reducing levels of the pollutant.
- 3.5.3 This has now been supplemented by the Defra Air Quality Plan published in December 2015 in response to the Supreme Court judgement of April 2015 on the United Kingdom's response to the Air Quality Directive.

Council Directive on the Assessment of the Effects of Certain Public and Private Projects on the Environment (the 'EIA Directive') 2011/92/EU

- 3.5.4 The EIA Directive first came into force in 1985. It defines the procedure by which information about the environmental effects of a project is collected and taken into account by the relevant decision making body before consent is granted for development to go ahead. It applies to a wide range of public and private projects, which are defined in Annexes I and II of the Directive. The Directive has been amended three times: in 1997, 2003 and 2009, and was consolidated and codified by Directive 2011/92/EU on 13 December 2011. The most recent EIA Directive is 2014/52/EU, which entered into force on 15 May 2014. The 2014 Directive is not yet transposed to UK law and has transitional arrangements, thus the proposed development falls to be considered under the UK legislation related to 2011/92/EU (see Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) below).

Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the 'EIA Regulations')

- 3.5.5 The EIA Regulations establish the minimum information to be supplied by the Applicant within an ES, as well as information that the ExA can request as being reasonably justified given the circumstances of the case. Part 2 of Schedule 4 represents the minimum requirements for an ES under the EIA Regulations and this is reinforced by Regulation 3(2), which sets out the core duty of the decision maker in making a decision on EIA Development. Regulation 3(2) of the IP EIA Regulation states:

“the decision-maker must not make an order granting development consent unless it has first taken the environmental information into consideration, and it must state in its decision that it has done so.”

- 3.5.6 The proposed development is EIA development under Schedule 2 of the EIA Regulations. The Applicant has provided an ES [APP-018 to APP-091] as part of the submitted application and submitted notification to the Planning Inspectorate of their intention to submit an ES under Regulation 6(1)(b) in March 2014.
- 3.5.7 The ExA in reaching its conclusions and recommendation has taken into consideration the environmental information, as defined in Regulation 3(1) (including the ES and all other information on the environmental effects of the development).

Renewable Energy Directive 2009

- 3.5.8 The Renewable Energy Directive sets out legally binding targets for European Union (EU) Member States with the expectation that by the year 2020, 20% of the EU's energy mix and 10% of transport energy will be generated from renewable energy sources. The UK's contribution to the 2020 target is that by then 15% of energy will be from renewable sources. The UK Renewable Energy Strategy 2009 (Renewable Energy Strategy) sets out how the UK proposes to meet the targets.
- 3.5.9 This is relevant to the application due to the fact that the proposed development requires consent to connect the TKOWF which will contribute to the UK's renewable energy.

Council Directive on the Conservation of Natural Habitats and Wild Fauna and Flora (92/43/EEC) (the 'Habitats Directive')

- 3.5.10 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds (Wild Birds Directive) (Birds Directive)) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection. The directive protects over 1000 animals and plant species and over 200 habitat types (for example: special types of forests; meadows; wetlands; etc.), which are of European importance. It requires the designation of Special Areas of Conservation (SACs) for habitats listed on Annex I and species listed on Annex II of the Directive.
- 3.5.11 The Habitats Directive (together with the Council Directive on the conservation of wild birds (2009/147/EC) (below)) has been transposed into UK law through the Conservation of Habitats and Species Regulation 2010 (as amended) (see below) in respect to the terrestrial environment and in territorial waters out to 12 nautical miles, and through the Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007 (as amended) for UK offshore waters (see below).

Council Directive on the Conservation of Wild Birds (2009/147/EC) (the 'Birds Directive')

- 3.5.12 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. The directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.
- 3.5.13 The Birds Directive bans activities that directly threaten birds, such as the deliberate killing or capture of birds, the destruction of their nests and taking of their eggs, and associated activities such as trading in live or dead birds. It requires Member States to take the requisite measures to maintain the population of species of wild birds at a level which corresponds, in particular, to ecological, scientific, and cultural requirements while taking account of economic and recreational requirements.
- 3.5.14 The Birds and Habitats Directive has been transposed into UK law through the Conservation of Habitats and Species Regulation 2010 (as amended) and the Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007 (as amended) (see below).

The Conservation and Species Regulations 2010 (as amended) (the 'Habitats Regulations')

- 3.5.15 The Conservation of Habitats and Species Regulations 2010 (as amended) are the principal means by which the Habitats Directive is transposed into domestic law in England and Wales in the terrestrial environment and in territorial waters out to 12 nautical miles. They provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites.

Offshore Marine Conservation (Natural Habitats, etc.) Regulations 2007 (as amended) (the 'Offshore Habitat Regulations')

- 3.5.16 The Offshore Marine Conservation (Natural Habitats, etc.) Regulations 2007 (as amended) apply to the UK's offshore marine area which covers waters beyond 12 nautical miles, within British Fishery Limits and the seabed within the UK Continental Shelf Designated Area. These Regulations fulfil the UK's duty to comply with European law beyond inshore waters and ensure that activities regulated by the UK that have an effect on important species and habitats in the offshore marine environment can be managed. Under the Regulations, any competent authority has a general duty, in the exercise of any of their functions, to have regard to the EU Habitats and Wild Birds Directives.

- 3.5.17 Together, the Habitats Regulations and the Offshore Habitats Regulations provide the UK legal framework for Habitats Regulations Assessment (HRA). Wherever an application for development consent has the potential to have a significant effect on the conservation objectives of a Natura 2000 site, whether directly or in-combination with other plans and projects, the Habitats Regulations and the Offshore Habitats Regulations require that an appropriate assessment (AA) is undertaken by the competent authority prior to any decision being made. An application can only be consented where it can be demonstrated that there will be no adverse effect on the integrity of a Natura 2000 site.
- 3.5.18 The Applicant provided a 'Report to Inform Appropriate Assessment' (RIAA) [APP-017] with the application to inform the HRA.
- 3.5.19 The RIES [PD-018] issued for consultation compiles, documents, and signposts information in relation to potential effects on European sites that was provided within the application and submitted throughout the Examination by both the Applicant and IPs, up to 10 February 2016. The ExA has set out its findings and conclusions in relation to HRA in Chapter 6.

Establishing a Framework for the Community Action in the Field of Water Policy (2000/60/EC) (the 'Water Framework Directive') and the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (the 'WFD Regulations')

- 3.5.20 The Water Framework Directive (WFD) is concerned with water management. Amongst other objectives, it requires EU Member States to prevent deterioration of surface water bodies, groundwater bodies and their ecosystems and improve the quality of surface and groundwater bodies by progressively reducing pollution and by restoration.
- 3.5.21 The WFD requires Member States to identify 'river basin districts'. The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 (the WFD Regulations) implement the WFD in England and Wales. They require the 'appropriate agency' (the Environment Agency (EA)) to prepare River Basin Management Plans (RBMPs) for each river basin district, for the approval of 'the appropriate authority' (the Secretary of State). The river basin district, and associated RBMP, relevant to the proposed development is the Anglian River Basin District (RBD) and the Witham catchment.
- 3.5.22 The RBMPs must relate to a specified period and include information specified in relevant provisions of the WFD Regulations. Environmental objectives for the district must be proposed, together with a programme of measures to achieve them. Detailed provision is made in the regulations for public participation on the content of the RBMPs.

- 3.5.23 The environmental objectives to be included in RBMPs are those required to comply with Article 4 of the WFD Regulations. Broadly the WFD Regulations require that there be no deterioration in status and that good ecological and chemical status be achieved by 2015 (extended to 2021 and 2027, subject to derogations).
- 3.5.24 The WFD Regulations (Regulation 3) place a general duty on the SoS and EA to exercise their 'relevant functions' so as to secure compliance with the WFD Regulations. PA2008 is not a 'relevant function' for this purpose. However, they together with public bodies, also have a specific duty to have regard to the relevant RBMP and any supplementary plans made under it in exercising their functions, which would include functions under the PA2008. Additionally, to be in compliance with NPS EN-1, the SoS must take the relevant RBMP and WFD Regulations compliance into account.
- 3.5.25 The WFD Regulations and its implications are addressed in section 6.9 of this report.

Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (the 'Marine Strategy Framework Directive')

- 3.5.26 The Marine Strategy Framework Directive (MSFD) forms the environmental pillar of the European Commission's Integrated European Marine Policy⁴ which aims to provide a coherent legislative framework for the joined-up governance of the marine environment.
- 3.5.27 The MSFD establishes four European Marine Regions. The North East Atlantic Marine Region includes UK waters in the Celtic Seas and the Greater North Sea of which the latter is the location of the TKOWF which this proposed development will link to.
- 3.5.28 The Panel has had regard to the MSFD in its examination of the application.

3.6 OTHER LEGAL AND POLICY PROVISIONS

United Nations Environment Programme Convention on Biological Diversity 1992

- 3.6.1 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to this Convention in its consideration of the likely impacts of the proposed development and appropriate objectives and mechanisms for mitigation and compensation. In particular the ExA finds that compliance with the UK provisions on EIA and Transboundary matters, referred to below,

⁴ http://ec.europa.eu/maritimeaffairs/policy/index_en.htm

satisfies, with regard to impacts on biodiversity, the requirements of Article 14.

- 3.6.2 The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs who promote the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.6.3 This Convention is of relevance to biodiversity, biological environment and ecology which are considered in Chapter 5, section 5.5 of this Report.

The Ramsar Convention on Wetlands of International Importance 1971

- 3.6.4 The Ramsar Convention on Wetlands of International Importance 1971 (as amended) (the Ramsar Convention) is an international treaty that provides a framework for national action and international cooperation for the conservation and wise use of wetlands and their resources. The Convention applies a broad definition of wetlands, which includes lakes, rivers, aquifers, marshes, wet grasslands and estuaries. Participating nations are expected to designate relevant sites, known as 'Ramsar sites' to be included on the Ramsar List of Wetlands of International Importance, and the UK Government has designated a number of such sites. The Government has chosen to apply, as a matter of policy, the provisions that apply to the consideration of Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) to Ramsar sites (and potential SPAs), even though these are not European sites as a matter of law.
- 3.6.5 The Ramsar Convention and its implications have been taken into account in considering the application, and these are addressed in Chapter 6 of this Recommendation Report.

The National Parks and Access to the Countryside Act 1949 (as Amended)

- 3.6.6 The National Parks and Access to the Countryside Act 1949 (as amended in the Environment Act 1995) provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty (AONBs) as clarified in the Countryside and Rights of Way Act 2000. It also establishes powers to declare National Nature Reserves (NNR) and for local authorities to establish Local Nature Reserves (LNR).
- 3.6.7 National Parks and AONBs are designated for their landscape qualities and have statutory protection in order to conserve and enhance the natural beauty of its landscape. The purpose of designating a National Park or AONB is to conserve and enhance their natural beauty; including landform, geology, plants, animals, landscape features and the rich pattern of human settlement over the ages.

- 3.6.8 Further consideration of the statutory provisions that apply in relation to AONBs is set out in the text below on the Countryside and Rights of Way Act 2000.
- 3.6.9 In relation to the application, the Applicant notes the proximity of the proposed development to the Lincolnshire Wolds AONB. This matter has been considered further in Section 6.15 of this Recommendation Report.

The Wildlife and Countryside Act 1981 (as Amended)

- 3.6.10 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of Sites of Special Scientific Interest (SSSIs). These sites are identified for their flora, fauna, geological or physiographical features by the relevant nature conservation bodies (in England, Natural England). The Act also contains measures for the protection and management of SSSIs.
- 3.6.11 The Act is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way and Part IV on miscellaneous provisions.
- 3.6.12 In relation to the application, the Applicant identified five SSSIs in the marine physical environment as relevant to the application (table 2.9 of Chapter 2 of the ES [APP-029]). The Applicant identified three terrestrial SSSIs as relevant to the proposed application (figure 4.1 of Chapter 4 of the ES [APP-045]). These matters have been addressed in Section 5.1 of this Recommendation Report.

The Countryside and Rights of Way Act 2000

- 3.6.13 The Countryside and Rights of Way Act brought in new measures to further protect AONBs, with new duties for the boards set up to look after AONBs. These included meeting the demands of recreation, without compromising the original reasons for designation and safeguarding rural industries and local communities.
- 3.6.14 The role of local authorities was clarified, to include the preparation of management plans to set out how they will manage the AONB asset. There was also a new duty for all public bodies to have regard to the purposes of AONBs. The Act also brought in improved provisions for the protection and management of SSSIs.
- 3.6.15 This is relevant in the Examination of effects on and mitigation in relation to impacts on any AONB affected by the proposed development.

Natural Environment and Rural Communities Act 2006

- 3.6.16 The Natural Environment and Rural Communities Act (NERC) made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this, regard must be given to the United Nations Environment Programme Convention on Biological Diversity of 1992.

3.7 MADE DEVELOPMENT CONSENT ORDERS

- 3.7.1 The TKOWF made DCO⁵ is relevant to this application due to the fact that the proposed development would enable the electricity generated by TKOWF to be exported to the National Grid. The Applicant has made reference to, and drawn support from, other DCOs for offshore wind farms. This report refers to such references where the Panel consider them to be important and relevant to our recommendations.

3.8 TRANSBOUNDARY EFFECTS

- 3.8.1 The Secretary of State for the Department for Communities and Local Government (SoSCLG) undertook a screening exercise to determine whether the proposed development would result in any likely significant effects on the environment in another European Economic Area (EEA) State. This is set out in the Transboundary Screening Matrix [OD-002].
- 3.8.2 Under Regulation 24 of the EIA Regulations and on the basis of the information available from the Applicant, the SoSCLG is of the view that the proposed development is not likely to have significant effects on the environment in another EEA State.
- 3.8.3 In reaching this view the SoSCLG applied the precautionary approach (as explained in the Planning Inspectorate Advice Note 12 Transboundary Impacts Consultation). Transboundary consultation under Regulation 24 of the EIA Regulations was therefore not considered necessary in relation to this application.
- 3.8.4 The ExA has had regard to their ongoing duty under Regulation 24 to have regard to Transboundary matters throughout the Examination.
- 3.8.5 ***The ExA did not consider that any new information came to light during the Examination that would have prompted the***

⁵ The Triton Knoll Offshore Wind Farm Order 2013 SI No.1734

need to reconsider the SoSCLG's Transboundary screening opinion.

- 3.8.6 *The ExA is also satisfied that, in respect of Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, there are no Transboundary biodiversity matters needing to be addressed and there are no matters outstanding in relation to Transboundary effects that would argue against the DCO being made.*

3.9 OTHER RELEVANT POLICY STATEMENTS

UK Renewable Energy Strategy (July 2009)

- 3.9.1 *The UK Renewable Energy Strategy (July 2009) sets out plans to increase the use of renewable electricity, including from offshore wind farms. The ExA have taken this strategy into account.*

Planning our electric future: a White Paper for secure, affordable and low carbon electricity (July 2011).

- 3.9.2 *Planning our electric future: a White Paper for secure, affordable and low-carbon electricity (July 2011) sets out the Government's commitment to transform the UK's electricity system to ensure that the future electricity supply is secure, low-carbon and affordable. The ExA have taken this white paper into account.*

3.10 NATIONAL PLANNING POLICY FRAMEWORK

- 3.10.1 *The National Planning Policy Framework (NPPF) was published in March 2012 and sets out the Government's planning policies for England and how these are expected to be applied. The NPPF replaces all Planning Policy Statements (PPS) and Planning Policy Guidance (PPG).*

- 3.10.2 *The NPPF is considered to be a matter which the SoS thinks is both important and relevant to the SoS's decision.*

- 3.10.3 *At paragraph 4.36 of their Planning Statement [APP-096] the Applicant draws attention to paragraph 7 of the NPPF which refers to the planning systems role including to:*

"...adapt to climate change including moving to a low carbon economy." The Applicant states at paragraph 4.39 of their Planning Statement [APP-096] that "...where the NPPF is applicable or given weight, it offers very strong support for the development of renewable energy..."

3.11 LOCAL IMPACT REPORTS

- 3.11.1 *Section 105(2) of PA2008 states that, in deciding the application, the SoS must have regard to any LIR within the meaning of s60(3) of PA2008.*

- 3.11.2 There is a requirement under s60(2) of PA2008 to give notice in writing to each local authority falling under s56A inviting them to submit LIRs. This notice was given on 30 July 2015 [PD-007].
- 3.11.3 LIRs have been submitted by ELDC [LIR-001], BBC [LIR-002], LCC [LIR-003], and NKDC [LIR-004].
- 3.11.4 The principal matters raised in the LIRs are:
- ELDC are primarily concerned with landscape impact; tourism impact; impact on Lincolnshire Coastal Grazing Marsh project; impact on the Coastal Country Park; proximity to Sibsey Northlands Lancaster Memorial; and cumulative impact of Viking Link;
 - BBC are primarily concerned with impacts on traffic and agricultural land drainage;
 - LCC are primarily concerned with landscape impact; tourism impact; impact on Lincolnshire Coastal Grazing Marsh project; impact on the Coastal Country Park; proximity to Sibsey Northlands Lancaster Memorial; cumulative impact of Viking Link; soil conditions; and highways; and
 - NKDC are primarily concerned with impacts of works from the construction of the Bicker Fen substation.
- 3.11.5 These are considered specifically at Section 4.6 and throughout this Report.

3.12 DEVELOPMENT PLANS

- 3.12.1 As stated in the Applicant's Planning Statement [APP-096], the proposed development is located in the administrative areas of ELDC and BBC. These local authorities lie within the administrative area of LCC. NKDC is adjacent to the Bicker Fen substation site but the Order limits do not lie within this local authority area.
- 3.12.2 ELDC's LIR [LIR-001] states that their Development Plan comprises the East Lindsey Local Plan Alteration 1999; policies A4: Protection of General Amenities and A5: Quality and Design of Development. They also list their emerging Core Strategy as relevant policy.
- 3.12.3 BBC's LIR [LIR-002] states that their adopted development plan is the Boston Borough Local Plan 1999. BBC noted policies; G1: Amenity, G2: Wildlife and Landscape Resources, G6: Vehicular and Pedestrian Access, G8: Air and Soil Resources, G10: External Lighting Schemes, ED11: Renewable Energy and CO1: Development in the Countryside.
- 3.12.4 LCC's LIR [LIR-003] as the County Authority states that the following documents and policies are considered relevant:

- Boston Adopted Local Plan 1999;
- Interim Plan (Non-Statutory Development Control Policy) February 2006;
- South East Lincolnshire Emerging Local Plan 2015;
- East Lindsey Local Plan Alteration 1999 (Policy A4 - Protection of General Amenities; Policy A5 - Quality and Design of Development); and
- East Lindsey Emerging Core Strategy.

3.12.5 NKDCs LIR [LIR-004] refers to the Saved North Kesteven Local Plan as being the policy relevant to the proposals. NKDC noted policies; C2: Development in the Countryside, C5: Effects on Amenities, C10: Floodrisk, C17: Renewable Energy, C18: Design, C19: Landscape, C22: External Lighting Schemes, T4: Safety, LW: Landscape Conservation and HE5; Development affecting the setting of a Listed Building.

3.13 THE SECRETARY OF STATE'S POWERS TO MAKE A DCO

3.13.1 The Panel had regard to the need to consider whether any changes to the application meant that the application had changed to the point where it was a different application to that originally submitted and whether the SoS would have power therefore under s114 of PA2008 to make a DCO having regard to the development consent applied for.

3.13.2 The Panel had regard to the March 2015 updated Planning Act 2008: Guidance for the examination of applications for development consent⁶, paragraphs 109 to 115, which provides guidance in relation to changing an application post acceptance. The view expressed by the Government during the passage of the Localism Act that s114 (1) places the responsibility for making a DCO on the decision-maker, and does not limit the terms in which it can be made.

3.13.3 The ExA received two change requests from the Applicant during the course of the Examination. These are considered in Section 2.6 of this report.

3.13.4 In exercising this power, the SoS may wish to take into account the following views of the ExA on proposed changes to the application:

- The Applicant's proposed change of location of works at National Grid's Bicker Fen Substation does not change the nature and description of the development as set out in the draft DCO neither as submitted [APP-128] nor in the ExA's recommended DCO at Appendix D to this report; and
- The Applicant's proposed removal of Work No. 47B request does not change the nature and description of the development as set out in the recommended DCO and associated documentation.

⁶ DCLG "Planning Act 2008: examination of applications for development consent" updated 26 March 2015

3.13.5 The ExA's procedural decision of 11 December 2015 [PD-013] sets out the reasons for accepting these proposed changes.

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

4.1 MAIN ISSUES IN THE EXAMINATION

4.1.1 The ExA made an initial assessment of principal issues in Annex C of our Rule 6 letter issued on 30 July 2015 [PD-007]. In drawing up our initial list, we had had regard to the application documents and to the 192 Relevant Representations (RR) received. Our letter made it clear that this was not a comprehensive or exclusive list of all relevant matters and that we would have regard to all important and relevant matters when we write our Recommendation Report to the Secretary of State (SoS).

4.1.2 The initial list of principal issues was as follows:

Alternatives – to include:

- choice of onshore interface point;
- choice of landfall point and positioning of the Transitional Joint Bays (TJB);
- site choice for the onshore Electricity Substation;
- route selection – offshore and onshore;
- requirement for, and site choice of, the Intermediate Electrical Compound (IEC); and
- the choice between undergrounding and the use of pylons.

Archaeology and Heritage – to include

- adequacy of surveys;
- adequacy of the Outline Written Schemes of Investigation (WSI); and
- effect on Sibsey Lancaster Memorial and war grave.

Compulsory Acquisition – to include:

- alternatives to compulsory acquisition (CA);
- the Applicant's liaison with affected persons and others;
- interface with the consented wind farm in relation to plot 01a/01;
- funding – including the availability of funds;
- Crown land;
- special category land;
- position of Statutory Undertakers (SUs); and
- access to survey sites – including the possible use of s53 of the Planning Act (PA2008) (as amended)

Environmental Issues: Offshore – to include:

- cumulative effects;
- interface with existing and proposed services and operations;
- effects of the construction; operation; maintenance and decommissioning methods, including waste management;

- use of cable protection;
- bathing water quality; and
- adequacy of monitoring.

Environmental Issues: Onshore – to include:

- cumulative effects, including the relationship to the Viking Link Interconnector;
- interface with existing and proposed services and operations;
- effects of construction, operation, maintenance and decommissioning methods including waste and soil management;
- adequacy of surveys;
- adequacy of monitoring;
- opportunities for enhancement;
- flood risk, including sea defences;
- public health – including possible effects from electromagnetic fields (EMF);
- noise;
- effects on the Lincolnshire Coastal Grazing Marsh (LCGM) project;
- Habitats Regulations Assessment (HRA);
- the HRA screening process; and
- possible effects on European Protected Sites (EPS) and species including on Inner Dowsing, Race Bank, and North Ridge Site of Community Importance (SCI).

Landscape and Visual Effects – to include:

- design of the Intermediate Electrical Compound (IEC) and onshore electricity substation;
- landscaping and planting schemes; and
- number, and impact, of temporary construction compounds (TCC).

Socio-economic issues – to include:

- effects on agriculture – including land drainage/depth of cables, possible heat transfer, biosecurity, severance, the number, and effects of the inspection chambers, and the effects on soils;
- fishing;
- shipping and navigation;
- impact on undersea infrastructure;
- effects on tourism/holiday trade, including on the Lincolnshire Coastal Country Park (LCCP);
- effects on other businesses, including aggregates;
- scope for local employment; and
- community benefits.

Traffic and Transport – to include

- port access;
- means and effects of transporting materials and personnel;

- effects of construction traffic on rural and other roads including off-site highway works;
- Public Rights of Way (PRoW).

4.1.3 This initial assessment was discussed as agenda item 5 at the Preliminary Meeting held on 3 September 2015 [PD-007] and the note of that meeting summarised the points made [EV-001]. The ExA took into account discussion during the Examination but did not see any specific need to amend its initial assessment of principal issues.

4.1.4 The principal issues set out above were used specifically to structure first and subsequent written questions with questions being grouped and labelled under the above issues.

4.1.5 We also used this list to frame both the overall subjects of, and the agenda for, the Issue Specific Hearings (ISH).

4.1.6 The structure of this Recommendation Report is also informed by our initial assessment with specific headings and sub-headings from the list above forming Section headings of this report. The Recommendation Report however draws upon offshore and onshore issues, pulling together information from the relevant topics. Furthermore, discussions on alternatives have been dealt with under the relevant sections headings rather than a section on its own.

4.2 ISSUES ARISING FROM WRITTEN AND ORAL SUBMISSIONS

4.2.1 The ExA received 192 RRs, 24 submissions labelled as Written Representations (WR) and some 490 other representations and a number of oral submissions were made at the hearings held. We have had careful regard to the issues raised, information provided, concerns expressed and opinions given in these representations.

4.2.2 The chapters in this Recommendation Report reference specific issues arising from the written and oral submissions where relevant.

4.3 ISSUES ARISING IN LOCAL IMPACT REPORTS

4.3.1 We received four Local Impact Reports (LIR) – from:

- East Lindsey District Council (ELDC) [LIR-001];
- Boston Borough Council (BBC) [LIR-002];
- Lincolnshire County Council (LCC) [LIR-003]; and
- North Kesteven District Council (NKDC) [LIR-004].

4.3.2 ELDC states in paragraphs 4.1 and 4.2 [LIR-001] that:

"The preparation of this Local Impact Report has been made easier by the agreement to a statement of common ground. Where there is agreement, there is seen as no need to be repetitive. As such we have concentrated on specific impacts that can be identified over which we raise concerns.

ELDC will be producing a written statement which will examine in more detail four issues only:

- (a) Landscape impact (including background to site selection);*
- (b) Tourism impact;*
- (c) Project specific impact:
 - i) Coastal grazing marsh project;*
 - ii) Country Park;**
- (d) Sibsey Northside Memorial."*

4.3.3 BBC [LIR-002] set out concerns, *inter alia*, (in paragraph 4.3) that:

"... the impacts of Enabling, Licensed or Unlicensed Works, as set out by the applicants in Vol 3 Chapter 1 paras 1.213 to 1.229 are not fully understood and it seems that this DCO will address the two unlicensed bays within the existing Substation but that the works by NGET are not in front of the ExA."

Additionally, it states in paragraph 5.5, that:

"The Council believes that the roads in the Bicker area, west of the village are unsuitable and incapable of accommodating the volumes of traffic expected by the TKES project."

but continues in paragraph 5.11 that:

"It is accepted that the applicant's proposal to use the new permanent haul road from the A17 in the vicinity of Swineshead Bridge from the north west to access the new Substation site removes ... these concerns at a stroke and, up to a point, also addresses the connection traffic and route of the 400kV underground connection between the existing and proposed Substations."

4.3.4 Finally, in paragraph 7.4, BBC invites the ExA to consider an Article 4 Direction. This request was subsequently withdrawn [AS-050].

4.3.5 LCC states in paragraph 4.1 of its LIR [LIR-003] that:

"The preparation of this Local Impact Report has been made easier by the agreement to a statement of common ground. Where there is agreement, there is no need to be repetitive. As such LCC has concentrated on specific impacts that can be identified over which we raise concerns, namely:

- (a) Landscape impact;*
- (b) Tourism impact;*
- (c) Project specific impact:
 - i) Coastal grazing marsh project;*
 - ii) Country Park;**
- (d) Sibsey Northside Memorial;*
- (e) Cumulative impact of Viking Link;*
- (f) Soil Conditions;*

(g) Highways."

4.3.6 NKDC state in paragraph 1.2 [LIR-004] that the element of the proposal of most relevance to North Kesteven District is the erection of the new substation at Bicker Fen, and the associated impacts of such works.

4.3.7 The LIR goes on to state in paragraphs 7.1 and 7.2 that:

"... the Council considers that the negative (adverse) social and environmental impacts upon the District and its residents associated [with] the construction of the Bicker Fen substation are greater than the associated economic impacts. In particular, the District Council considers that the predicted impacts of operational noise on the closest residential property within the District (Drove Farm) cannot be fully relied upon"

and

"... by virtue of its scale and the extent of built development proposed, the Council considers that the proposals would visually conflict with some of the key characteristics of the Fenland landscape character area"

4.3.8 Other sections in this Recommendation Report, particularly in Chapter 5, show how these issues have been dealt with and where they have been contested by Applicant or others.

4.3.9 All the issues raised in these LIRs have been taken into account by the ExA in coming to our conclusions.

4.4 CONFORMITY WITH THE DEVELOPMENT PLAN POLICIES

4.4.1 Section 3.12 of this report sets out the policies which the Councils determine relevant to the examination of this application.

4.4.2 Paragraph 3.10 of ELDC's LIR [LIR-001] lists two policies in East Lindsey Local Plan Alteration 1999 which are considered by the Council to be relevant to the consideration of this application:

- Policy A4 – Protection of General Amenities
- Policy A5 - Quality and Design of Development

4.4.3 ELDC's overall conclusions in its LIR are set out in Section 1.4, above.

4.4.4 BBC's LIR [LIR-002] lists in paragraph 3.3 the principal saved development plan policies that it considers are material. These are policies:

- G1: Amenity;
- G2: Wildlife and Landscape Resources;
- G6: Vehicular and Pedestrian Access;
- G8: Air and Soil Resources;

- G10: External Lighting Schemes;
- ED11: Renewable Energy; and
- CO1: Development in the Countryside.

- 4.4.5 BBC's overall conclusions in its LIR are set out in Section 1.4, above.
- 4.4.6 LCC's LIR [LIR-003] lists in paragraph 3.9 those plans of the relevant Borough and District Council's that it considers relevant to the consideration of this application but does not comment on them.
- 4.4.7 NKDC's LIR [LIR-004] contains a section (7.0) forming an *Assessment of Compliance with the Policies of the Saved North Kesteven Local Plan*. This shows potential negative impacts with policies on the character or appearance of the countryside and on noise. In considering the applicability of these policies to the application, the ExA bore in mind that no part of the Order limits lie within the boundaries of NKDC. We have, therefore, only referred to NKDC's specific policy where it is considered important and relevant in our consideration of a particular issue, such as 'noise' in Chapter 5 of this Report. NKDC's overall conclusions in its LIR are set out in Section 1.4, above.
- 4.4.8 The ExA have noted, in particular those development plan policies which the relevant local planning authorities (LPAs) have identified as both being relevant and have considered these in the relevant sections of Chapter 5 of this report.
- 4.4.9 As is stated in Section 3.10, above, paragraph 3 of the NPPF states that it does not contain specific policies for Nationally Significant Infrastructure Projects (NSIPs) for which particular considerations apply.
- 4.4.10 ELDC [LIR-001], LCC [LIR-003], and the Applicant (Planning Statement [APP-096]) refer to paragraphs 93 and 97 of the NPPF dealing respectively with supporting the delivery of renewable and low carbon energy and associated infrastructure and the responsibility on all communities to contribute to energy generation from renewable or low carbon sources. The Applicant also refers to paragraph 7 which mentions moving to a low carbon economy.
- 4.4.11 The ExA considers that these paragraphs do form a relevant consideration and have taken them into account in making our recommendations.

4.5 THE PRINCIPLE OF THE DEVELOPMENT

- 4.5.1 The development as applied for is designed to connect an already consented NSIP, the Triton Knoll Offshore Wind Farm (TKOWF) (SI 2013 No. 1734), with the national grid through a National Grid Electricity Transmission (NGET) substation at Bicker Fen.

- 4.5.2 As stated in Section 3.2 of this report, on 14 November 2013 the SoS for Energy and Climate Change (SoS) made a Direction under s35(1) of the Planning Act 2008 (PA2008) being of the opinion that the Triton Knoll Electricity System (TKES) project is nationally significant [OD-001].
- 4.5.3 Section 2.2 also states that although the SoS has directed that the proposed development is to be treated as development for which development consent is required, s104 does not apply and therefore there is not a designated National Policy Statement (NPS) that has effect in relation to development of this description.
- 4.5.4 One reason given by the SoS for making a Direction was:
- "It is needed to deliver the electricity generated by the consented Triton Knoll Offshore Wind Farm array (a project of national significance) into the national grid transmission system."*
- 4.5.5 The ExA consider that this is the primary specific need for the project. This is supported, as considered below, by reference to statements within NPS EN-1 relating to the overall need for energy and, in particular, the need for NPS EN-3 renewable energy.
- 4.5.6 The Applicant's Written Summary of The Applicant's Oral Case put at the CAH (CAH) on 13 November 2015 [REP3-038] states in paragraph 1.78 that:
- 4.5.7 *"The need for the proposed development is explained in the Planning Statement [APP-096]. In summary:*
- There is an urgent need for new (and particularly low carbon) energy Nationally Significant Infrastructure Projects ("NSIPs") to be brought forward as soon as possible and certainly in the next 10 to 15 years. New renewable energy projects need to continue to come forward urgently to ensure that the UK meets its target of sourcing 15% of its total energy from renewable sources by 2020 (required by the 2009 EU Renewable Energy Directive) (EN-1 paragraph 3.4.1). This means that 30% of electricity will have to come from renewables. Offshore wind is expected to provide the largest single contribution towards the 2020 renewable energy generation targets (NPS EN-1 paragraph 3.4.3).*
- Given the level and urgency of need for such infrastructure, NPS EN-1 makes clear that the SoS should start with a presumption in favour of granting consent to applications for energy NSIPs unless any more specific and relevant policies set out in the relevant NPS clearly indicate that consent should be refused (EN-1 paragraph 4.1.2).*
- The proposed development is integral to the delivery of the Triton Knoll Offshore Wind Farm with an installed capacity of up to 900 MW. This will make a substantial contribution to the 2020 renewable energy*

generation target and meeting the need as set out in the NPS for new renewable energy NSIPs".

- 4.5.8 In addition, the ExA consider that the arguments surrounding the reason or need for this development have already been considered during the examination of the application for the TKOWF. The SoS's decision letter for the application for the proposed TKOWF Order on dated 11 July 2013 states that:

"... making the Order would be consistent with energy National Policy Statements EN-1 (Overarching NPS for Energy) and EN-3 (NPS for Renewable Energy Infrastructure), which set out a national need for development of new nationally significant electricity generating infrastructure of the type proposed by TKOWFL."

- 4.5.9 As Section 4.2, above, and as subsequent Chapters of this report indicate, the overall need for the development as applied for has not been a principal issue in the Examination.
- 4.5.10 For all the above reasons, **the ExA conclude that the need for this proposed development** is evident and uncontested and did not require further detailed examination.

4.6 CONFORMITY WITH NPSS, MPS AND MARINE PLANS AND OTHER KEY POLICY STATEMENTS

- 4.6.1 The application for TKES is not a NSIP as set out in s14(1)(a)-(p) of PA2008. However, the SoS issued a direction under s35 of PA2008 in respect of TKES on 14 November 2013 [OD-001]. The development is, therefore, treated as development for which development consent is required.
- 4.6.2 As stated in Section 1.7, above, we consider that, whilst specific parts of NPS EN-1, NPS EN-3, NPS EN-5 are cited in other sections of this report, the primary specific need for the development is set out in the SoS's Direction [OD-001] in that:
- "It is needed to deliver the electricity generated by the consented Triton Knoll Offshore Wind Farm array (a project of national significance) into the national grid transmission system."*
- 4.6.3 The relationship between the proposed development and the UK Marine Policy Statement (MPS) and to the East Inshore and East Offshore Marine Plans are considered in Section 3.4, above, and it has been agreed by the MMO in their SoCG that MPS policy has been considered within the ES [REP1-080].
- 4.6.4 Section 1.5, above, shows that BBC did request that the ExA consider the inclusion of a Direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) but withdrew that request in its final submission to the

Examination [AS-050]. Guidance in paragraph 4.1.8 of NPS EN-1 is not, therefore, engaged in the consideration of this application.

4.6.5 Section 9.15 of this report, below, assesses the financial and funding aspects of this application.

4.7 ENVIRONMENTAL STATEMENT AND ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

4.7.1 As stated in paragraph 1.2 of the SoS Scoping Opinion for TKES [APP-093], on 24 March 2014, the Applicant notified the Planning Inspectorate under regulation 6(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) (the EIA Regulations) that an Environmental Statement (ES) would be provided in respect of the proposed development. Therefore the proposed development was determined as EIA development in accordance with Regulation 4(2)(a) of the EIA Regulations.

4.7.2 The DCO application was accompanied by an ES [APP-018 to APP-091] which satisfied the definition in Regulation 2(1) of the EIA Regulations and the requirements of NPS EN-1⁷.

4.7.3 The Applicant submitted a report with its DCO application to inform a Habitats Regulations Assessment (HRA) under Regulation 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 entitled 'Report to Inform Appropriate Assessment' (RIAA)[APP-017]. The information in the Applicant's RIAA was determined sufficient to accept for examination. Chapter 6 of this Recommendation Report sets out the analysis and conclusions relevant to HRA.

4.7.4 A range of issues have been assessed in the ES. The ES includes details of measures proposed to mitigate any likely significant effects (LSE) identified by the Applicant. Additional information was provided by the Applicant throughout the Examination, including in response to our written questions and in ISHs - particularly those on 'Onshore issues', and 'Landscape and Visual impacts' held in November 2015 and on 'Local Impacts' held in January 2016.

4.7.5 We have addressed these matters in Chapter 5 of this Report dealing with offshore and onshore matters.

4.7.6 The Applicant provided information within the ES on the main alternatives studied and the rationale for site selection [APP-023]. We deal with these matters throughout the report under each of the relevant sections and in section 9.13 in relation to Compulsory Acquisition (CA).

⁷ NPS EN-1, para 4.2

4.7.7 ***The ExA is satisfied that the ES, together with the additional information provided during the course of the Examination, was adequate and meets the requirements under the EIA Regulations.***

5 THE POTENTIAL EFFECTS OF THE PROPOSED DEVELOPMENT ON THE OFFSHORE AND ONSHORE ENVIRONMENTS

INTRODUCTION

- 5.1.1 The following sub-sections set out the Panel's examination of the Application. Each sub-section includes a summary of the potential effects from the construction, operational, decommissioning and cumulative phases of the proposed development on the specific matter. We examine mitigation (if any is proposed) and whether this would have any bearing on the level of significance. We report on the main matters discussed during the Examination and questions we raised, followed by our conclusions and recommendations. The final sub-section summarises the cumulative effects of each chapter; examines the inter-related effects; and comments on the National Grid Viking Link Limited (NGVLL) Interconnector project.
- 5.1.2 The Application is for both offshore and onshore works. The Environmental Statement (ES) analyses these separately. Our Recommendation Report follows this structure in reporting on offshore matters and then onshore matters.
- 5.1.3 The starting point for much of the offshore work has been to build upon the work already done for the Triton Knoll Offshore Wind Farm (TKOWF), which already benefits from development consent [SI 2013 No.1734]. As will be reported in this Chapter, the statutory bodies had no substantive concerns with the methodology approach or the findings in the ES [APP-029, APP-030, APP-031, APP-032, APP-033, APP-034 and APP-037]. The Panel raised a number of questions and clarification points in relation to the marine physical environment, marine ornithology and the decommissioning phase in relation to marine archaeology.
- 5.1.4 The offshore environment was not a matter of major controversy. Taking matters raised in representations into consideration, the ExA's view is that there are no instances of important and relevant matters that indicated against the making of the Order.
- 5.1.5 The Chapter then deals with the examination of the Onshore Environment. A number of these topic areas proved to be contentious during the Examination. The effect of the proposed development on Agriculture and Soils was of particular concern to the farming community and a number of questions were posed by the ExA on this topic. Landscape and visual, traffic and transport, and the historic environment also proved to be areas of concern for interested parties (IPs) particularly later into the Examination.
- 5.1.6 The Panel also received a number of representations in respect to the NGVLL Interconnector Project and whether it should, amongst other things, be considered alongside the Application before us. We deal

with this question and others in the Cumulative sub-section of our report.

APPROACH TO CUMULATIVE ASSESSMENT

- 5.1.7 The ES [APP-043, APP-044, APP-045, APP-046, APP-047, APP-048, APP-049, APP-050, APP-051 and APP-052] has undertaken a cumulative assessment of the proposed development taken with other known and planned projects. The methodology is consistent for each ES and follows the approach taken as set out in the Cumulative Impact Assessment Guidelines issued by RenewableUK in June 2013, and divides all projects into 'tiers' to reflect their current stage within the development process. Tier 1 encompasses other projects which are under construction, or have planning permission but are yet to be implemented. Tier 2 is those projects/ plans that are consented but not yet implemented and/ or submitted applications not yet determined.

POLICY CONTEXT

- 5.1.8 In reaching the conclusions and recommendation in these Chapters, the Panel has had regard to the comments provided by East Lindsey District Council (ELDC), Boston Borough Council (BBC), and Lincolnshire County Council (LCC) in their Local Impact Reports (LIRs) [LIR-001], [LIR-002] and [LIR-003] respectively.
- 5.1.9 We have also had regard to Local Plan policies as put forward by ELDC [LIR-001] and [REP1-006], and BBC [LIR-002] insofar as they are relevant to the matter being considered. For the Landscape and Visual Impact Assessment (LVIA), we have also had regard to the East Lindsey and Boston Borough Landscape Character Assessments 2009 in respect to the Landscape and Visual Impact Assessment Chapter. The Panel has also taken into consideration the initiatives set out by LCC in their LIR [LIR-003] in respect of the locally designated Lincolnshire Coastal Country Park (LCCP) area and the Lincolnshire Coastal Grazing Marsh (LCGM).
- 5.1.10 The Panel has had regard to the paragraphs in National Policy Statement (NPSs) EN-1, EN-3 and EN-5 insofar as they are relevant and each Chapter will draw specifically on the relevant parts of the NPS. However as set out in Chapter 3 of our Recommendation Report, the Application is being considered under s105 of the Planning Act 2008 (PA2008) such that it does not require compliance with the NPS other than as a relevant and important consideration to take into account.
- 5.1.11 As the proposed development does not pass through any part of NKDC, its policies as outlined in their LIR [LIR-004] have not been taken into consideration by the Panel. This has not precluded the views of NKDC being taken into consideration.

EVIDENCE PLAN PROCESS

5.1.12 During the pre-application phase, the Applicant applied the Evidence Plan process for both HRA and EIA topics [APP-116 and APP-132]. The aim of the plan was to produce a:

"non-legally binding agreement between the developer and the relevant statutory authority(ies) and advisers and other relevant stakeholders on those matters to be addressed by the EIA and HRA process, the data that will be used to support the assessments and the methods to be applied in analysing the data and assessing the potential impacts of a scheme together with such other matters as the Parties to the EIA Evidence Plan seek to cover during the process".

5.1.13 The Applicant submitted an EIA Evidence Plan document [APP-116 and APP-132] with their application which provides a detailed explanation of the process. However, to summarise, the topics covered were:

- Habitats Regulations Assessment;
- Terrestrial ecology;
- Terrestrial historic environment;
- Marine historic environment;
- Hydrology and flood risk;
- Landscape and visual;
- Noise and vibration;
- Socioeconomics, tourism and recreation; and
- Traffic and access.

5.1.14 The parties who participated in the process were:

- Natural England (NE);
- Marine Management Organisation (MMO) (with their advisers Cefas);
- Environment Agency (EA);
- Lincolnshire County Council (LCC);
- Boston Borough Council (including Heritage Trust for Lincolnshire);
- East Lindsey District Council;
- Historic England;
- Witham Fourth District Internal Drainage Board;
- Lindsey Marsh Drainage Board;
- Black Sluice Internal Drainage Board; and
- The Lincolnshire Wildlife Trust (LWT).

5.1.15 The Evidence Plan document [APP-116 and APP-132] contains 'Evidence Plan Logs of Agreements/Disagreements' (Appendix III) along with copies of emails and letters from all participant (Appendix IV) (except LCC highways and Lindsey Marsh Drainage Board) confirming the document is a reasonable reflection of the process and agreed/disagreed/outstanding issues (Note: Witham Forth IDB and Black Sluice IDBs responses were conditional).

- 5.1.16 In examining the application, the Panel has had regard to the Evidence Plan document process, however this has not precluded us from taking into account new material presented to us throughout the examination.

THE OFFSHORE ENVIRONMENT

APPLICANT'S APPROACH

- 5.1.17 The ES [APP-029, APP-030, APP-031, APP-032, APP-033, APP-034 and APP-037] set out the scope and methodology used to assess the potential effects of the proposed development including the survey area, on the marine physical environment, subtidal and intertidal ecology, fish and shellfish, marine mammals, marine conservation sites, marine ornithology and marine archaeology (herein collectively known as the offshore environment). It also identifies the potential effects on receptors from the construction, operation and decommissioning of the proposed development, identifying the sensitivity of the receptor, the magnitude of change and whether that change would be significant.
- 5.1.18 The ES [APP-029, APP-030, APP-031, APP-032, APP-033, APP-034 and APP-037] set out the embedded mitigation measures considered to minimise any effects from the proposed development. Identified mitigation is secured within Condition 7 and Paragraph 4 of the recommended Deemed Marine Licence (DML) (Appendix D) which requires MMO approval of:
- an Offshore Construction Method Statement;
 - a Cable Armouring Plan;
 - a Project Environmental Management Plan;
 - an Annex I Mitigation Scheme;
 - an Offshore Written Scheme of Investigation;
 - an Offshore Construction Method Statement; and
 - a Decommissioning Programme
- 5.1.19 The ES [APP-029, APP-030, APP-031, APP-032, APP-033, APP-034 and APP-037] states that for the construction, operation, and decommissioning phases of the proposed development, and for potential cumulative effects, there would be no significant effects from the proposed development on the offshore environment.
- 5.1.20 The Panel did not receive any representations from IPs which disputed or disagreed with the methodology approach to assessing the offshore environment, the embedded mitigation proposed, or the assessment and findings in the ES [APP-029, APP-030, APP-031, APP-032, APP-033, APP-034 and APP-037].

EXAMINATION

- 5.1.21 NPS EN-1 Part 4.3 states the Secretary of State (SoS) must:

"consider whether the project may have a significant effect on a European site, or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects". Part 5.3 states that "the applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests". Part 5.15 states that "the applicant should undertake an assessment of the existing status of, and impacts of the proposed project on, water quality, water resources and physical characteristics of the water environment as part of the ES".

- 5.1.22 Chapter 2 of the UK Marine Policy Statement (MPS) sets out the UK vision for the marine environment, the approach to marine planning and marine plans, and the detailed considerations development should have regard for. They are largely consistent with those set out in NPS EN-1. Paragraph 3.3 is specific to energy production and infrastructure development, stating that:

"contributing to securing the UK's energy objectives, while protecting the environment, will be a priority for marine planning". Paragraphs 3.3.16 to 3.3.25 identify the potential benefits of renewable energy and the potential impacts they may cause to the marine environment. The East Inshore and East Offshore Marine Plans sit underneath the MPS and set in detail the approach to the management of the marine area.

- 5.1.23 The Panel at the Issues Specific Hearing (ISH) on Socio-Economic Issues held on 19 November 2015 [EV-028] raised concerns that there was a lack of clarity or transparency on the details of the construction of the cable corridor. The Applicant responded with two documents entitled "Further Detail Regarding the TKES Cable Corridor" [REP4-056, REP4-057, REP4-058 and REP4-059] and "Indicative Extent of Cable Duct Installation Techniques along the Onshore Cable Corridor", [REP4-074 and REP4-075] both submitted at D4. These provide a statement on the construction of the cable route as well as drawings of the details of the layout and sections within the cable corridor, and a cable route construction technique plan indicating where 'open cut' and trenchless technique methods would be used. We find these submissions have addressed our concerns.

- 5.1.24 The documents listed above state that the 60m wide cable corridor would comprise the cable trenches, temporary haul road, and storage areas of topsoil and subsoil. The working width would be reduced to 30m where possible for watercourses and hedgerow crossings, which is set out in the Outline Landscape Strategy and Environmental Management Plan (LSEMP) (Revision D). It also confirms that the majority of the cable route would be constructed using the 'open cut' method which would comprise trench excavation, cable laying and backfilling. Table 1-2 of the ES [APP-042] states that the cable route construction work would take 54 months of activity over a 60 month period. The construction activity would include site mobilisation, fencing and plant delivery; earthworks, drainage works and haul road

construction; open cut and trenchless duct installation, cable pulling, joint bay construction and cable jointing; and reinstatement, demobilisation and landscaping.

- 5.1.25 Various questions and clarification points were discussed during the Examination in relation to the marine physical environment, marine ornithology and marine archaeology decommissioning.

5.2 MARINE PHYSICAL ENVIRONMENT

- 5.2.1 Natural England (NE) in their Relevant Representation (RR) [RR-175] raised a number of concerns in respect to the construction of the proposed development on the marine physical environment. The Panel took up those concerns in first written question (FWQ) EOf 1.2, EOf 1.4, EOf 1.5, EOf 1.6 and EOf 1.8 [PD-009] in respect to minimising secondary cabling to protect the benthic environment, defining the cable depths and construction techniques, and sandwave crest preparation. The Applicant responded [REP1-044] that such matters had been considered but also stressed that for cable installation and depths, and sandwave preparation, such matters require individual sign off from the MMO, and that such matters were secured in Condition 7 of the draft DML. NE confirmed in its response [REP4-025] to second written question (SWQ) EOf 2.1 [PD-014] that it was satisfied with the answers provided by the Applicant.

- 5.2.2 NE also raised concerns for the need for post construction monitoring in respect of potential disruption of sediment transport to designated sites, which the Panel took forward in SWQ EOf 2.2 [PD-014]. The Applicant amended the wording of Condition 12 of the draft Deemed Marine Licence (DML) to include specific wording in this regard. NE confirmed in its Statement of Common Ground (SoCG) with the Applicant submitted at D5 [REP5-044] that it was content with the revised wording of Condition 12 of the draft DML. This Condition is now Condition 13 of the recommended DML (Revision G).

- 5.2.3 The Panel asked the Applicant in FWQ EOf 1.10 [PD-009] to explain how the sediment release would be managed and whether a cofferdam would be used. The Applicant responded [REP1-044] that:

“sediment released through drilling will be captured with the landfall site and/or trench box and material disposed of in accordance with the waste management and disposal arrangements agreed with the MMO required by Condition 7(1)(d) of the recommended DML. Cofferdams would only be required where micro boring and/or pipe jacking are the trenchless method of cable installation, and not anticipated for HDD”.

- 5.2.4 The Panel raised in third written question (TWQ) EOf 3.1 [PD-016] whether Condition 12, (which as stated above is now Condition 13 of the recommended DML (Appendix D), made adequate provision for reef survey work prior to maintenance activities. NE in their response [REP6-011] felt that Condition 7 of the draft DML was sufficiently precise to deal with such matters.

- 5.2.5 The EA in their RR [RR-106] raised concerns over the landfall works and the risk in raising bacti levels thus affecting the bathing water quality at Anderby. Their request for a risk assessment was put forward by the Panel in FWQ EOf 1.7 [PD-009]. The Applicant's REP1-044 stated that the draft DML would be amended to insert wording to protect bathing water quality. This forms Condition 14 of the recommended DML (Appendix D).
- 5.2.6 The EA in their response to D8 [REP8-014] stated that they had reached agreement with the Applicant in respect of all matters of environmental protection and regulation, the drafting of protective provisions and restrictive covenants and matters pertaining to the EA land interests. Accordingly, the EA, in its capacity as a Statutory Consultee and Statutory Undertaker, withdrew the objection made to the Application, as detailed in its RR (RR-106), dated 10 July 2015 and WR (REP1-040), dated 5 October 2015. It signed a SoCG with the Applicant confirming their agreement [REP5-043 and REP7-054].
- 5.2.7 ES Chapter 4 of Volume 1 [APP-023] sets out the alternatives sought in respect to the offshore cable route. The Panel sought clarification in FWQ Alt 1.25 [PD-009] whether engineering solutions would permit crossing the Silver Pit. In response [REP1-044], the Applicant stated that while possible, cable installation would be more challenging because of the steep slopes and would require additional cable amount without guarantee that the cables would be secured through the lifetime of the project Alternatives.
- 5.2.8 No further representations from IPs were received in this respect. ***The Panel were satisfied with the answers given by the Applicant to the questions raised.***
- 5.2.9 **The ExA is content that matters relating to the construction effects on the marine physical environment have been satisfactorily answered through the examination process. The Panel is also content that the effect from the construction of the cable route on the marine physical environment would not be significant.**

5.3 MARINE ORNITHOLOGY

- 5.3.1 The Panel raised a number of questions (EOf 1.12, EOf 1.14, EOf 1.15) [PD-009] in respect of the vessel management and the effect of noise and disturbance to birds. The Applicant's response [REP1-044] stated that noise levels would not be considerable from vessel activity and having regard to the limited construction time, there would be no significant effect. The control of vessels would be approved by the MMO under Condition 7 of the recommended DML (Appendix D).
- 5.3.2 NE in their RR [RR-175] stated that they wished to see the construction programme restricted to only one wintering season. Additionally, the National Trust (NT) in their RR [RR-158] raised concerns about migrating birds on the shoreline. The Panel took both

concerns forward in FWQ EOf 1.16 and EOf 1.17. The Applicant stated in its response [REP1-044] that:

"flexibility was needed to allow the 12-month time to construct the cables to extend over a 24-month period, but that this was a relatively short time period was such that there would be no significant effects".

- 5.3.3 Although the Applicant has stated [REP1-044] that they cannot restrict the construction period to one wintering season, the SoCG signed between NE and the Applicant [REP5-044] states that NE is satisfied on this point. No further response was received from NT during the Examination.
- 5.3.4 No further representations from IPs were received in this respect. ***The Panel were satisfied with the answers given by the Applicant to the questions raised.***
- 5.3.5 **The ExA is content that matters relating to the construction effects on marine ornithology have been satisfactorily answered through the examination process. The Panel is also content that the effect from the construction of the cable route on marine ornithology would not be significant.**

5.4 MARINE ARCHAEOLOGY DECOMMISSIONING

- 5.4.1 Paragraph 11.189 and Table 11-19 of the ES [APP-038] states that the decommissioning of the proposed development has the potential to cause direct impacts to archaeological deposits and material, disturbance or destruction of relationships between deposits and their wider surroundings, and damage to the historic seascape caused by the removal of the cables, and from the use of vessels and anchors. However the ES states that it would not be significant in its effects.
- 5.4.2 The Panel had some concern with the Applicant's assertion in paragraph 11.123 of the ES [APP-038] in which it is stated that many of the likely effects on the character of the historic seascape would be time limited and many would be reversible following decommissioning. The Panel asked the applicant in FWQ AH 1.19 [PD-009] to justify the reversibility claim. The Applicant responded [REP1-044] that these were matters to be identified at the decommissioning stage.
- 5.4.3 The Panel were not content and probed further with this response and in SWQ AH 2.11 [PD-014] asked whether the statement on reversibility was erroneous. The Applicant accepted in its response [REP4-027] that the change in character from the presence of the cable would not, be reversible and the change should be considered permanent. However the Applicant went on to say that the change to the historic seascape character from the presence of the cable is considered negligible, and that paragraph 4 of the draft DML does not permit the decommissioning of the project, and that no decommissioning may commence, until a decommissioning programme has been approved by the SoS.

5.4.4 No further representations from IPs were received in this respect. The Panel felt the response given by the Applicant addressed out concerns in respect to the effects of the proposed development on historic seascapes. In the absence of any representations from IPs which disputed or disagreed with response given, we were content not to examine this matter further.

5.4.5 **The ExA is content that matters relating to the decommissioning effects on marine archaeology have been satisfactorily answered through the examination process. The ExA is also content that the effect from the decommissioning of the cable route on marine archaeology would not be significant.**

Statements of Common Ground (SoCGs)

5.4.6 The Panel notes that SoCGs have been signed between the Applicant and NE [REP5-044], the EA [REP5-043], the MMO [REP5-045], and HE [REP1-069]. The matters in agreement are the scope and methodology undertaken in the ES [APP-029, APP-030, APP-031, APP-032, APP-033, APP-034 and APP-037], the existing environment, the key parameters for assessment and embedded mitigation, and the assessment of impacts, mitigation, potential cumulative impacts and inter-related effects.

5.4.7 In addition to the SoCG above and in respect of marine archaeology, the SoCG between the Applicant and HE [REP1-069] states the following:

- *"It is agreed that the Outline Offshore Written Scheme of Investigation (WSI), provides a suitable prescription for the final offshore WSI that is required to be submitted and approved in writing pre-construction by the MMO under amended Condition 7 and agreed with Historic England under Condition 8 of the draft DML".*
- *"It is agreed that the present Outline Offshore WSI describes appropriate measures for further archaeological work to be detailed through a final and agreed WSI, in order to ensure appropriate mitigation pre-construction, during construction and post construction including archaeological investigation, assessment, recording, archive and dissemination."*
- *"With respect to mitigation measures, it is agreed that the embedded mitigation measures are suitable for minimising potential impacts to the marine historic environment as a result of the construction, operation and decommissioning of the project, and that agreeing further investigation work through sign off of the Offshore WSI and identifying appropriate mitigation measures during the pre-construction stage is a structured approach to ensuring potential historic environment impacts are mitigated."*

5.4.8 The SoCG between the Applicant and the MMO [REP5-045] also stated that:

"with respect to mitigation measures, it is agreed that given the generally low level of significance likely to be experienced by Marine Historic Environment and HSC receptors during the construction, operation and decommissioning of the project, no specific applied mitigation or monitoring is required beyond that secured by the production of a Written Scheme of Investigation in Condition 7(g)"

CONCLUSION AND RECOMMENDATION

5.4.9 The Panel has examined the ES in respect to the Applicant's approach to the assessment, and the construction, operation, decommissioning and cumulative impacts caused by the proposed development on the offshore environment. In each case, the ES states [APP-029, APP-030, APP-031, APP-032, APP-033, APP-034 and APP-037] that there would not be any significant effects from the construction, operation and decommissioning phases of the proposed development. There would also not be any significant cumulative effects from the construction, operation and decommissioning phases of the proposed development.

5.4.10 Having regard to the ES, all representations and responses to questions from parties, and the SoCGs outlined above, the ExA agrees with the findings in the ES [APP-029, APP-030, APP-031, APP-032, APP-033, APP-034 and APP-037] and concludes that there would be no significant effects from the construction, operation, and decommissioning phases of the proposed development. There would also not be any significant cumulative effects.

5.4.11 The ExA concludes that mitigation is adequately secured in the recommended DML (Appendix D) to ensure the proposed development would address any effects the proposed development would cause.

5.4.12 The Panel considers the proposed development would accord with the Parts 4.3, 5.3 and 5.15 of NPS EN-1. It would also accord with Chapter 2 and Chapter 3.3 of the UK Marine Policy Statement (MPS) and with the East Inshore and East Offshore Marine Plans.

5.4.13 Accordingly, the ExA is of the view that the effects on the offshore environment would be limited in scope and would not prevent the Order from being made.

THE ONSHORE ENVIRONMENT

5.5 AGRICULTURE AND SOIL MANAGEMENT

APPLICANT'S APPROACH

5.5.1 The Applicant assessed the effects on agriculture and soils within Chapter 5 of Volume 3 of the ES [APP-046] (Land Use, Soils and Agriculture).

- 5.5.2 Paragraphs 5.15 to 5.22 of the ES [APP-046] set out the scope and methodology used to assess the effect of the proposed development on agricultural matters, including baseline data, an assessment matrix to ascertain the significance of impact and details of the study area. Paragraph 5.15 of the ES sets out the legislative framework relating to agricultural matters which include the Countryside and Rights of Way Act 2000 and the Wildlife and Countryside Act 1981.
- 5.5.3 Paragraphs 5.32 to 5.36 and Table 5-1 of the ES [APP-046] identifies the agriculture land classification (ALC) on which the proposed development would be built upon. It states/shows that approximately 12.2% of the study area would fall within ALC Grade 1 (the highest grade), 54.6% within ALC Grade 2 and 31.8% as Grade 3.
- 5.5.4 A number of the agriculture enterprises within the Order limits are part of an 'agri-environmental' scheme. Paragraph 5.45 of the ES [APP-046] states that 11.9% of the study area falls within 'entry level plus higher level stewardship', 31% within 'entry level stewardship'.
- 5.5.5 Paragraph 5.38 of the ES [APP-046] identifies three key soil types along the study area as being:
- loamy and clayey soils of coastal flats with naturally high groundwater;
 - slowly permeable seasonally wet slightly acid but base-rich loamy and clayey soils; and
 - loamy and sandy soils with naturally high groundwater and a peaty surface.
- 5.5.6 Paragraphs 5.53 to 5.96 of the ES [APP-046]] set out the potential effects from the construction, operation and decommissioning of the proposed development, identifying the sensitivity of routes, the magnitude of change that would occur and whether in the Applicant's view that change would be significant.
- 5.5.7 Table 5-7 of the ES [APP-046] sets out the mitigation measures in respect to agriculture matters considered to minimise any effects from the proposed development. It states that for the project design, the:
- "cable routing process has given specific regard to minimising potential impacts on agricultural land through aligning the cable route along the edges of fields where possible, to minimise temporary disruption during construction, and to minimise permanent impacts associated with the location of jointing bay link box man-hole covers".*
- 5.5.8 For construction, Table 5-7 of the ES [APP-046] states that:
- for cable trench backfilling, stabilised cement bound sand would be packed around the ducts in order to aid heat dissipation;
 - for agricultural operations; crossing points would be used in suitable places in order that livestock and vehicles can cross the working width. General disruption impacts would be mitigated

early in the construction planning process by allowing a sufficient time period between the serving of notice for entry and the commencement of on-site activities;

- for land take, the Applicant would liaise with landowners to agree commercial terms with affected parties including any loss of ongoing payments;
- for soil management, all soil handling, placing, compaction and management would be undertaken in accordance with best practice; and a Soil Management Plan (SMP) would be prepared in advance of construction to ensure protection, conservation and reinstatement of soil material; and plant and traffic movements would be confined to designated routes (e.g. haul routes and vehicle access routes) to minimise the potential for soil disturbance, compaction and indirect contamination;
- for reinstatement, an Agricultural Liaison Officer (ALO) would record existing crop regimes, position and condition of field boundaries, existing drainage and access arrangements and private water supplies (as far as reasonable investigations allow) and liaise with affected landowners to record potential constraints and mitigations to be entered into a pre-entry record of condition for the affected landowner. The ALO would also help with the agreement of re-instatement measures after completion of works; and
- other measures are proposed for matters relating to injurious weeds/invasive plants; notifiable scheduled diseases, reinstatement and utilities.

5.5.9 For operation, Table 5-7 of the ES [APP-046] states that in relation to permanent land take, the Applicant would discuss with affected parties and secure commercial terms with them. For agricultural operations, the Applicant would ensure that any permanent restriction of certain activities above the cable would be discussed with affected parties and secured in the commercial terms with them, and that the Applicant would discuss with affected parties and secure commercial terms with them including the loss of any ongoing payments or fines.

5.5.10 For decommissioning, and in relation to land use, soils and agriculture, Table 5-7 of the ES [APP-046] states that any new legislation or guidelines published prior to decommissioning would be adhered to and incorporated into mitigation design prior to any decommissioning taking place.

5.5.11 The above mitigation is secured by the requirement to submit for approval of the local planning authority a Construction Method Statement (CMS) and a Soil Management Plan (SMP) as part of Code of Construction Practice (CoCP) set out in Requirement 14; a Traffic Management Plan set out in Requirement 19, and a Decommissioning Plan as set out within Requirement 22 of the recommended DCO (Appendix D).

EXAMINATION

- 5.5.12 The Examination deals firstly with the construction and operational phases of the proposed development, and the discussions and questions put by the Panel. An assessment of the decommissioning and cumulative effects follows. We then set out our conclusions and recommendations on the effects of the proposed development on the agriculture and soils.
- 5.5.13 BBC and ELDC have stated in their LIRs [LIR-002 and LIR-001 respectively] the Local Plan policies which they consider apply to the proposed development. None, however, are specifically relevant to this subject matter.
- 5.5.14 The Panel has also had regard to paragraphs in the NPS EN-1 in particular paragraphs 5.10.8 and 5.10.15, which seek to minimise impacts on the best and most versatile agricultural land and to ensure that applicants do not site their scheme on the best and most versatile agricultural land without justification.

CONSTRUCTION EFFECTS

- 5.5.15 Paragraphs 5.53 to 5.77 of the ES [APP-046] state that the following matters would potentially be affected by the construction of the proposed development:
- temporary disruption to marginal agricultural land holdings;
 - temporary disruption to large agricultural land holdings;
 - impacts on ALC land through soil disturbance;
 - impacts on soil resources;
 - impacts on land subject to agri-environmental schemes; and
 - spread of animal/plant diseases and injurious weeds/invasive plants.
- 5.5.16 In all cases the Applicant determined that the effects would not be significant because the effects are time limited.
- 5.5.17 Notwithstanding the findings in the ES, it was evident at the outset of the examination of the application that agricultural matters were of concern to a considerable number of IPs. The Panel received a large number of RRs and subsequent representations raising concerns relating to the construction of the cable route and the effect this would have on farming practices. No concerns were raised as to the construction of the TJBs, IEC and proposed substation on agricultural practices. These matters were also identified part of the principal issues as follows:
- whether the existing the field drainage systems would be compromised by the cable route; and whether the Applicant had a proper understanding of field drainage;
 - the location of link boxes and their removal at decommissioning stage;

- soil reinstatement and management, and
- the role of the Agricultural Liaison Officer (ALO).

- 5.5.18 The Panel has had regard to all written submissions, and oral submissions made at the ISH hearings on Socio-Economic Issues held on 19 November 2015 [EV-028] and on Local Impacts held on 19 January 2016 [EV-034]. The Panel concludes that all submissions have been encapsulated by the National Farmers Union (NFU) and the Lincolnshire Association of Agricultural Valuers (LAAV), which collectively are known with others as the Land Interest Group (LIG) in their representation to us. We heard at the ISH [EV-028] that the NFU/LAAV/LIG represented a large number of the farmers and landowners that individually made representations to us. Accordingly, we refer only to the representations of the NFU/LAAV/LIG in our Examination below.
- 5.5.19 The Panel undertook unaccompanied site inspections on 1 and 2 September 2015 [EV-003] and accompanied site inspections on 10 and 11 November 2015 [EV-004 to EV-011] which included visiting many farmers' fields who had submitted RRs.
- 5.5.20 The drainage matters discussed below relate only to the effect on agricultural practices. Flood risk matters are dealt with under the Flood Risk and Water Quality chapters of our Recommendation Report.
- 5.5.21 Matters relating to electromagnetic fields (EMF), which were raised as concerns by IPs are discussed further under the Health and Safety chapter of our Recommendation Report.
- 5.5.22 The representations received also accused the Applicant of failing to undertake any meaningful or adequate engagement or discussions with the landowners and farmers at any point prior to the submission of the application. While these issues form part of the overall concerns raised in respect to agriculture, the adequacy of consultations is discussed further within the chapter on Compulsory Acquisition (CA) in this Recommendation Report.
- 5.5.23 Matters relating to Restrictive Covenants at Schedule 5 of the recommended DCO (Appendix D) are examined within the CA chapter of this Recommendation Report.

i) Effect on existing field drainage systems

- 5.5.24 The Applicant's approach to field drainage, as they set out at D2 [REP2-015], within its Land Drainage Clarification Note [REP2-026] and within the original Outline Soil Management Plan (SMP) (Revision A) [APP-103] is that they would deal with drainage matters at the detailed design stage. In REP2-015 and REP3-041, the Applicant states that:

"the most suitable approach to land drainage is for each specific location to be examined once the detailed design of the onshore electrical infrastructure has been settled during the pre-construction phase, rather than attempting to design drainage schemes for each land parcel before detailed design is settled", and that " it is neither reasonable nor practical for the Applicant to be required to produce detailed designs on every parcel of land prior to entering into private treaty agreements".

5.5.25 In the cases where field drainage pipes would need to be severed within the Order limits, they would be reconnected after the construction of the cable route.

5.5.26 The NFU stated [REP1-012] that:

"farms are very well drained by a network of clay or plastic land drains laid in parallel every 20 metres or so across the field at depths of up to 1.8 metres draining into a field edge ditch or dyke. These drainage systems prevent water pooling in fields and increase the productive capacity of the agriculture in the area enormously. Good land drainage increases farm productivity by keeping waterlogging to a minimum, increasing soil strength by reducing water content, gives higher soil temperatures and leads to more efficient use of applied fertilisers".

5.5.27 The NFU specified at the outset from the acceptance of the application [RR-048] that:

"farmers will wish to see the cables and their protective covering deep enough so as to not affect farming operations". The NFU go on to say that *"farmers will wish to see the cable ducts put below field drainage systems with mitigation measures put in place where field drains are broken by the construction of the cable ducts".*

5.5.28 A significant number of representations from IPs raised concerns with the Applicant's approach. The main issue of concern is the effectiveness of the operation of field drainage pipes once they have been severed and reconnected. Underlying these concerns is whether the depth of the proposed cables under the existing field drainage pipes would be sufficient. Volume 3, Chapter 1 of the ES [APP-042] states that that cable would be laid at a minimum depth of 900mm from the top of the subsoil, and the cables would also be laid 300mm below the existing field drainage pipes, although this would not necessarily prevent the need in some cases to sever the drainpipes and reconnect them after construction of the cable route has been completed.

5.5.29 The Applicant response at D4 [REP4-027] to our SWQ maintained that 300mm is considered to be an appropriate depth to lay the cables below the existing field drainage and agreed to raise the minimum depth for the installation of the cable ducts to 1.2m.

- 5.5.30 The Outline CMS (Revision C) [REP4-048] was updated to reflect this and it remains within the Revision F version submitted prior to the close of the Examination [AS-052]. The NFU/LAAV/LIG consider however in its responses [REP5-007 and REP6-010] that they would still like the minimum depth of the cables to be 1.5m from the surface to account for soil shrinkage and would, therefore, not result in the cables damaging the existing field drainage pipes. By the close of the examination, this matter had not been agreed by the parties. We discuss this later in this Section.
- 5.5.31 The Panel sought to establish at the ISH on Socio-Economic Issues held on 19 November 2015 [EV-028] whether the existing drainage pipes could be severed and reconnected successfully without compromising field drainage and, therefore, farming practices. The Panel heard from the NFU/LAAV that their specific concern lay in understanding the soil structure.
- 5.5.32 They were principally concerned with matters relating to 'soil shrinkage', that after settling, the soil would affect the gradient of the replaced section of pipe, and thus potentially compromise the flow of water to the drain or dyke. The Panel also heard from IPs at the ISH that reconnecting multiple cuts where the cable route would sever a drainage pipe in more than one place could lead to a high-degree of failure of the field drainage system.
- 5.5.33 The Panel also heard from the NFU/LAAG/LIG at the ISH on Socio-Economic Issues held on 19 November 2015 [EV-028], and also confirmed in writing at D3 [REP3-027] that, in their view, the Applicant did not carry out any surveys or obtain field drainage plans from landowners and that suggested changes to the route which would have had a less effect on drainage were not heeded to. The NFU/LAAG/LIG further stated that they were dissatisfied with the approach taken by the Applicant, that it demonstrated:
- "a lack of understanding by the Applicant on the issue of field drainage and the impact the scheme will have on the field drainage and agricultural land"*
- and gave no real guarantees to the farmers that the drainage pipes would be effective should they need to be severed and replaced.
- 5.5.34 The Applicant disputed that the approach taken is wrong. At the ISH on Socio-economic ISH held on 19 November 2015 [EV-028], the Applicant was asked specifically by the Panel to respond to the concerns that field drainage pipes cannot be severed and repaired, and be expected to work as efficiently as before. The Applicant responded stating that there was no reason why field drainage could not operate as efficiently as prior to the construction works if such works were undertaken by competent persons, and undertaken in the correct manner. The Applicant also asserts that the detailed design stage would ascertain the appropriate drainage strategy for each field

accounting for the soil structure and field drainage systems. This was confirmed in their written response at D3 [REP3-035].

- 5.5.35 Following the ISH on Socio-economic Issues held on 19 November 2015 [EV-028], the Panel posed a series of questions on drainage matters and soil understanding. SWQ SE 2.9, SE 2.14, SE 2.16 and SE 2.17 asked the Applicant, amongst other things, whether the Applicant's approach was appropriate and whether they could provide more precise details of how field drainage would be managed pre and post-construction. In response, the Applicant submitted 4no. Theoretical Land Drainage Design plans [REP4-079] indicating how the cables could be installed alongside existing drainage, but stated in their written response [REP4-027] that in their view the Outline SMP was sufficient to deal with such matters and that the precise wording of the Chapter 4 of the Outline SMP would be agreed with the NFU/LAAV/LIG.
- 5.5.36 The NFU/LAAV was not content with the Applicant's approach to agricultural land drainage and soils aftercare in its outline SMP [REP4-053] and proposed several modifications in respect of field drainage designs and amendments to the outline SMP wording [REP5-007]. The Applicant submitted a joint statement [REP6-034] and a revised outline SMP [REP7-039].
- 5.5.37 Drainage repair beyond the Order limits was also raised in the examination by the NFU/LAAV/LIG in their written response to D3 [REP3-027]. The Applicant amended the Outline SMP at D4 (Revision B) [REP4-052] which added provisions for agricultural land drainage which included a requirement to reinstate drainage beyond the Order limits. Paragraph 4.11 of the Outline SMP (Revision E) [REP7-039] states that:
- "where it is reasonable for the reinstatement of drainage to involve works outside of the Order limits it will be done subject to the agreement of the landowner".
- No further representations were received from NFU/LAAV on this point.
- 5.5.38 The Panel notes the concerns of the NFU/LAAV/LIG that a more thorough approach and understanding of each field's drainage and soil structure should have been undertaken by the Applicant so as to provide a strategy of how the cable would be constructed in each field. However, no specific evidence was put forward that the approach taken by the Applicant to resolve such matters at the detailed design stage would be unacceptable and would undermine the drainage of agricultural fields.
- 5.5.39 The Panel notes that the Outline SMP is now in its fourth version (Revision E) [REP7-039]. The comparison with the Outline SMP Revision A [APP-103] indicates that Chapter 4 on Agricultural Land Drainage has been considerably rewritten. In addition to the measures

mentioned above to reinstall drainage systems to the landowner's reasonable satisfaction, Chapter 4 commits the Applicant to:

- install temporary drainage within the cable corridor and land drainage systems will be maintained during construction and reinstated on completion following clarification sought by the NFU/LAAV on how drainage would work during the construction period;
- consult with landowners prior to the installation of cable ducts;
- to employ a suitably qualified drainage consultant to act as a drainage expert during the detailed design process to agree with landowners the pre- and post-construction drainage schemes required;
- to establish a dispute resolution service to include an independent expert;
- to allow landowners inspection opportunities;
- to commit to undertaking all reasonable care to minimise physical damage to land as a result of pumping of water from construction trenches;
- to photograph and reference any cut or disturbed field drainage pipe;
- to compensate for proven loss of any damages or losses caused as a direct result of the use of, or access from the easement strip; and
- to reinstate drainage works outside the Order limits subject to the agreement of the landowner.

5.5.40 Of particular note is paragraph 4.3 of the Outline SMP [REP7-039], which states that the Applicant:

"would reinstate drainage systems to the landowner's reasonable satisfaction ensuring that the drainage system is put back in a condition that is at least as effective as the previous condition and consult with the landowner, prior to the installation of the cables, on the design of any land drainage works required, both pre- and post-installation".

5.5.41 Having regard to the considerable amendments undertaken to the Outline SMP during the examination to address the concerns and omissions identified by the NFU/LAAV/LIG, we are satisfied that the measures set out in the Outline SMP would be adequate to manage and protect the drainage of agricultural fields, and are adequately secured by Requirement 14 of the recommended DCO (Appendix D).

5.5.42 We note that considerable progress was made between the Applicant and the NFU/LAAV/LIG to resolve the concerns raised by IPs during the Examination. The Panel also notes that a significant number of late representations were received at D8 [REP8-002 to REP8-010, REP8-015, REP8-016, REP8-022 to REP8-024 and REP-026 to REP8-028] from parties representing landowners and farmers withdrawing their representations. These are covered in Chapter 8.

5.5.43 The Panel would have preferred the Applicant and the NFU/LAAV/LIG to have reached an agreement over the minimum cable depth. However the Panel notes that the NFU/LAAV/LIG did not object outright to the minimum depth of 1.2m as proposed by the Applicant nor did it put forward evidence as to why 1.2m would not be sufficient to protect existing field drainage systems.

5.5.44 On that basis, ***the ExA concludes that the Applicant's approach including the proposed cable depth of 1.2m from the surface, and the measures set out in the Outline SMP (Revision E) [REP7-039] would ensure that drainage would be protected during the construction of the proposed cable route.***

ii) Link boxes

5.5.45 Paragraph 1.142 of the ES [APP-042] states that link boxes would be required along the cable route. Link boxes are described as cable-testing pits measuring 900mm by 1200mm and would be located at every 600 - 1000m along the cable route. The link boxes would comprise a manhole set in a concrete plinth at ground level. Their exact locations would be determined at the detailed design stage.

5.5.46 The NFU in its RR [RR-048] raised particular concerns as to the placement of the manholes and the effect this would have on farming and ploughing of fields. At the ISH on Socio-economic Issues held on 19 November 2015 [EV-028] and on Local Impacts held on 19 January 2016 [EV-034], and in FWQ SE 1.12 [PD-009] and SE 2.6 [PD-014], the Panel asked whether negotiations with landowners had commenced and whether manhole covers could be placed where they would be least problematic for the operation of the farm. The Applicant responded [REP4-027] that it is not possible to know the locations of the link boxes until the detailed design stage, but that their locations, orientation and grouping will be informed through discussions with the landowners at the detailed design stage.

5.5.47 The Panel questioned at the ISH on Socio-economic Issues held on 19 November 2015 [EV-028] how the presence of manhole covers, should they be located within the middle of a field, would affect agricultural operations or would damage machinery. The Applicant stated in their written response to D3 [REP3-041] that the link boxes could be demarcated in some way and covers would be installed on top of the link boxes which would be capable of taking agricultural vehicle loads.

5.5.48 Paragraph 2.24 of the Outline SMP (Revision E) [REP7-039] states:

"The ALO will be responsible for ensuring that the location, orientation grouping and demarcation of the link boxes are informed, subject to overriding constraints, through discussions with the landowner".

5.5.49 The Outline SMP is secured by Requirement 14 of the recommended DCO (Appendix D). However the Panel notes that the commitment to install covers over the link boxes to allow agricultural machinery to

pass safely over the link boxes is not set out in the Outline SMP or within the Outline CoCP or the Outline CMS [both AS-052]. The Panel considers this provision is essential so as the presence of link boxes do not become unduly prohibitive to agricultural practices.

5.5.50 **The ExA therefore recommends to the SoS that this provision is sought within Paragraph 2.24 of the Outline SMP before any development consent is granted.**

5.5.51 The NFU/LAAV/LIG's response at D3 [REP3-027] states it is essential that the link boxes are removed at decommissioning stage. The Panel sought clarification at SWQ SE 2.21 as to the Applicant's intentions. This question was not answered by the Applicant in their response to D5 [REP5-013]. However the Panel notes that paragraph 5.11 of the Outline SMP (Revision E) [REP7-039] states that:

"the Applicant will remove unless otherwise requested by a landowner any infrastructure located from the surface to a depth of 1.2m below the surface of the Easement area unless statutorily obliged to do otherwise".

5.5.52 The Panel finds this would satisfactorily make provision for the removal of the link boxes at decommissioning stage. The Outline SMP is secured by Requirement 14, and a Decommissioning Plan is secured by Requirement 22 of the recommended DCO (Appendix D).

5.5.53 The ExA is satisfied that the placement of link boxes within agriculture fields, their demarcation and decommissioning would be undertaken in consultation with landowners and the provision is secured within the recommended DCO (Appendix D). The ExA requests the SoS to give careful consideration to the amendment to Paragraph 2.24 of the Outline SMP in order to ensure that provision is made for the link boxes to be adequately protected to allow agriculture machinery to pass over them to seek to ensure that the proposed link boxes would not cause significant harm to agricultural practices.

iii) Soil reinstatement and aftercare

5.5.54 The NFU/LAAV state in their response to D3 [REP3-027] that soil reinstatement is an important part of the construction process, and that the role of the ALO will be crucial.

5.5.55 As stated above, the Outline SMP has undergone many revisions. Chapter 5 of the final version of the Outline SMP (Revision E) submitted in the examination [REP7-039] sets out how soil management including aftercare would be dealt with. The measures cover a commitment to undertake soil handling, storage, replacement and management in accordance with DEFRA 2009 best practice. It sets out construction mitigation matters, compaction, topsoil and subsoil stripping, storage, reinstatement and aftercare.

- 5.5.56 Pre-construction soil surveys and the role of the ALO has also raised some concerns from IPs and the NFU/LAAG/LIG. As originally submitted, the role of the ALO amounted to four paragraphs as set out in the Outline SMP (Revision A) [APP-103]. At the ISH on Socio-Economic Issues held on 19 November 2015 [EV-028], the NFU/LAAG/LIG and other IPs felt the Outline SMP was vague on the role, quantum of, and requirements of the ALO. The Panel sought further details in SWQ SE 2.12 [PD-014] of the ALO. The Outline SMP (Revision E) [REP7-039] contains 24 paragraphs specifying the role of the ALO, and includes the measures sought by the NFU/LAAG/LIG in their response to D5 [REP5-007] including 24-hour contact during the construction period.
- 5.5.57 The Panel asked the Applicant in SWQ respond to the concerns of the NFU/LAAG/LIG at D3 [REP3-027] that no details exist on how the aftercare of soils would be carried out once reinstatement had been completed, and that soil condition surveys should be carried out for at least 10 years after reinstatement. In the originally submitted Outline SMP [APP-103] no such aftercare provisions was set out.
- 5.5.58 The Applicant stated that they and the NFU/LAAG/LIG had met and agreed the wording which now forms paragraph 5.12 of the Outline SMP (Revision E) [REP7-039]. This states that:
- "a schedule of aftercare maintenance will be agreed between the undertaker and landowner and (if relevant) the occupier for each landholding. The schedule of aftercare maintenance will define a target specification to include soil condition, soil nutrient level and organic content. Soil testing, appropriate to the target specification, will be undertaken for a period of five years following completion of the construction work until the target specification is met. The target specification will be informed by the pre-entry record of condition for each farm holding along with information received from the landowners or tenants on cropping yields. If the target specification is not met within five-years a further period will be agreed. The schedule of aftercare maintenance will highlight what action will be undertaken by the landowner or occupier to mitigate any loss and to improve the soils, at the cost of the Applicant where appropriate".*
- 5.5.59 No further substantive representations on soil restoration and aftercare were raised.
- 5.5.60 On the evidence presented to the Panel, we are satisfied that the ES [APP-042] and the Outline SMP (Revision E) [REP7-039] adequately assesses the soil types within the Order limits, and that the Outline SMP would adequately manage the restoration and aftercare of soils. The requirement of a SMP is captured as part of a CoCP within Requirement 14 of the recommended DCO (Appendix D).

iv) Cable sequencing

5.5.61 At the ISH on Socio-economic Issues held on 19 November 2015 [EV-028], the Panel sought to clarify how in practice the construction of the proposed development would take place, and when landowners and farmers could expect associated equipment would be removed and the land returned to them. The Applicant stated at the ISH and in its written response to D3 [REP3-027] that:

"the length of time spent on any one land holding will depend on the construction programme and when works are commenced on that land and that a number of factors may influence this. The average duration for the construction 'site' to be across any given landholding is 3.5 years. This will however be less in some cases and potentially more in others with a maximum worst case of 54 months".

5.5.62 Following the ISH, the Applicant provides further information on its construction timetable within the Sequencing, Cable Testing and Joint Bay Clarification Note submitted at D3 [REP3-058]. Here, the Applicant stated that:

"following the start of construction at the substation and IEC sites, the cable installation will commence. The cable corridor has been split into 18 different sections. Due to the cable route construction works being linear in nature, construction can be underway on several cable sections along the route can be active at any one time".

5.5.63 The Note goes on to say that once the installation of the cable ducts has been completed, the trench is filled. However:

"The TCCs, topsoil strip across the working width of the construction corridor and haul road in any cable route section will remain in situ until completion of construction and testing for that entire portion of the cable route (for example, from Onshore Substation to IEC). The retention of the haul road for this period is necessary to retain access along the route to prepare the cable for test, install any monitoring equipment that may be required and carry out any remedial works identified during the testing process. Once the end to end test of that particular route section has been completed, any remedial works carried out and the cable system proven, the TCCs, haul road and topsoil reinstatement can be reinstated for that section".

5.5.64 The Applicant confirmed in its response to D5 [REP5-014] that the perimeter fencing would also remain during this period.

5.5.65 The Panel asked at the ISH on Local Impacts held on 19 January 2016 [EV-034] whether farmers would be able to use land within the Order limits and the fenced area between the period following the end of the construction of the cable ducts, and the completion of the testing period once the development as a whole was completed. The Applicant confirmed that they would not.

- 5.5.66 In SWQ CA 2.108 [PD-014] the Panel sought to quantify the construction time with the financial impacts from crop losses to farmers and landowners. The Applicant estimated this in its response [REP4-027] to be approximately £4m across the cable route based on a three-and-a-half year occupancy of the site. The NFU/LAAG/LIG considered in its response to D5 [REP5-007] that the length of time would be around five-years, therefore the crop loss would be higher.
- 5.5.67 The Panel were concerned during the Examination that the farmers and landowners did not know when their fields would be used for the construction of the cable route, or for how long. We were particularly concerned that this lack of clarity prevented farmers from field planning in future years. As a result of our concerns, the Applicant inserted new wording into Requirement 5 of the draft DCO (Revision E) [REP4-042] which required the Applicant to submit a cable sequencing plan so that greater clarity could be given as to when and in what order the cable route would be used. The recommended DCO (Appendix D) provided changes to that wording and additional paragraphs.
- 5.5.68 Following changes to the DCO as stated above, the ExA is satisfied that farmers would have greater clarity on cable sequencing and construction. Financial loss during this period is a private matter of compensation between the farmers/landowners and the Applicant.

iv) Other matters

- 5.5.69 The Panel examined, and raised a SWQ SE 2.7 and SE 2.8 [PD-014] whether alternative routes were considered, primarily whether the route could navigate under field boundaries to avoid disruption to agricultural practices. The Applicant's response [REP5-027] states that a number of engineering, landscape, ecological and archaeological constraints were considered in deciding the cable route. No further representations were received on this matter.
- 5.5.70 The Panel asked the Applicant at the ISH on Socio-Economic Issues held on 19 November 2015 [EV-028] what measures it intended to put in place during construction to control and prevent the spread of weeds, eg blackgrass, from severed areas to productive areas. The Applicant responded, and set out in their written response [REP3-041], that the measures set out in its Weed Control and Soil Protection Clarification Note [REP1-058] would ensure the protection of areas from weeds and invasive plants, which would include measures such as covering stored soil, sowing of ground cover, regular weed strimming, herbicide applications, and mechanical control of weed seedling. The Panel notes that these measures are set out in paragraph 3.11 of the Outline SMP (Revision E) [REP7-039].
- 5.5.71 Neither ELDC or BBC in their respective LIRs [LIR-001 and LIR-002] raised any specific concerns in respect to the effect of the proposed development on agricultural practices; BBC stated that they were not qualified to give such an opinion.

- 5.5.72 LCC in their LIR [LIR-003] however raised similar concerns to the effect of the proposed development on agriculture practices and soil management as already discussed above and raised by the NFU/LAAV/LIG.
- 5.5.73 The SoCG signed between the Applicant and LCC [REP8-043] states that LCC:
- *“does not agree that the Outline SMP provides a suitable indicative form for the final SMP required to be submitted and approved under the draft DCO (Revision G);*
 - *LCC does not agree that the implementation of a Soil Management Plan (SMP), and the employment of a suitably qualified Agricultural Liaison Officer (ALO), will ensure appropriate protection, conservation and reinstatement of the land during and following the construction phase. LCC has concerns whether a single ALO will have the capacity to deal with the entire scheme, and if they will be available at times when needed; and*
 - *LCC does not agree that the description and occurrence of peat and peaty soils in the Study Area, as set out in paragraphs 6.71 – 6.81 of the ES [APP-047] is accurate and appropriate”.*
- 5.5.74 LCC has not stated specifically what they consider to be the objectionable matters in the Outline SMP. They have not advised the ExA on what matters they would expect the Outline SMP to cover, or to provide alternative Outline SMP which they consider to be more robust.
- 5.5.75 The Examination of agricultural matters resulted in considerable changes to the Outline SMP, which the ExA finds have gone some considerable way to addressing the originally identified concerns from IPs and concerns raised by the Panel. In the absence of any compelling evidence from LCC to the contrary, the ExA considers the accuracy and robustness of the Outline SMP, secured by Requirement 14 of the DCO, would ensure there would be no significant effect on agricultural practices and soil management from the construction of the proposed development, and that LCC’s continued objections have not been substantiated in evidence before us.

Conclusion on construction effects

- 5.5.76 Having examined the evidence before us and for the reasons set out above, the Panel concludes that the Applicant has revised the Outline SMP such that the measures now included would adequately ensure the proposed development would not have any significant effect to the existing field drainage systems or soil management, reinstatement and aftercare of agriculture fields.
- 5.5.77 The Panel notes the intention of the Applicant is to consult landowners on the siting of the proposed link boxes and to install measures to ensure they would be demarked so as they would not present hazards

to farming machinery. This provision is set out in Paragraph 2.24 of the Outline SMP, and therefore secured by Requirement 14 of the recommended DCO (Appendix D). However the commitment by the Applicant to protect link boxes with matting to ensure farm machinery would be able to pass over them without damage to the machinery or the link boxes itself is not set out within the Outline SMP. Such measures are essential and the ExA recommends that the SoS seeks a revised wording to Paragraph 2.24 to link box protection is included and thus secured by Requirement 14 of the recommended DCO (Appendix D).

- 5.5.78 Therefore for the reasons set out above, the ExA finds that there would be no significant effects from the proposed development on agricultural practices and soil management.

Operational effects

- 5.5.79 Paragraphs 5.78 to 5.93 of the ES [APP-046] states that the following matters would be affected by the operation of the proposed development:

- permanent change of land use;
- impacts on ALC land;
- permanent restriction of land use within the cable easement;
- impacts on land subject to agri-environmental schemes; and
- impacts on crops as a result of heat dispersion from buried cables.

- 5.5.80 In all cases the Applicant determined that the residual effects would not be significant because of the embedded mitigation measures proposed, agreed commercial terms with the landowners; or the relatively little land take within the wider East Midlands ALC areas.

- 5.5.81 The Panel did not receive any representations from IPs which raised any specific concerns in respect to the operation from the proposed development on agricultural matters. The Panel felt no further questions were necessary during the examination of the proposed development in this regard.

Decommissioning effects

- 5.5.82 Paragraph 5.94 of the ES [APP-046] states that:

"it is assumed that during decommissioning, the onshore cable ducts will remain in-situ with cables removed via jointing pits if required. It is assumed that above ground infrastructure at the Substation, Intermediate Electrical Compound and landfall will be removed and the land fully reinstated".

Paragraphs 5.95 and 5.96 of the ES state that:

"potential adverse impacts on agricultural operations, ALC land, soil resources, and land subject to agri-environmental schemes as a result of cable decommissioning would relate to those specific areas where the cable will be pulled from the ducts, and would therefore be expected to be less than experienced during construction. Any new legislation or guidelines published prior to decommissioning will be adhered to and incorporated into mitigation design prior to any decommissioning taking place".

- 5.5.83 The Panel did not receive any representations from IPs which raised any specific concerns in respect to the decommissioning from the proposed development on agricultural matters with the exception of removal of link boxes, which are discussed above. However the NFU in their written response to D3 [REP3-027] stated that it:

"would like to confirm that it is essential that link boxes are removed at the end of the scheme due to the disturbance and cost to an agricultural business. The NFU would like to see that this is confirmed in the DCO".

- 5.5.84 A Decommissioning Plan is secured by Requirement 22 of the recommended DCO (Appendix D). The ExA is satisfied that matters relating to decommissioning have been robustly assessed and would not have a significant impact on agricultural practices.

Cumulative effects

- 5.5.85 Table 5-8 and paragraphs 5.97 to 5.119 of the ES [APP-046] identify nine 'Tier 1' developments, and two 'Tier 2' which are identified within the radius of the cable corridor. Table 5-8 of the ES states that potential direct impact arises from a cumulative disruption of agricultural operations, soil resources, ALC land, and land subject to agri-environmental schemes as a result of construction and other developments within or immediately adjacent to the Order limits. Table 5-10 of the ES states it would not be significant in its effects.
- 5.5.86 The ExA did not receive any representations from IPs which raised any specific concerns in respect to the assessment and views reached by the Applicant in respect of the cumulative effects from the proposed development on agriculture and so it did not become an examination issue and there were no further comments throughout examination on this point.
- 5.5.87 Having examined the evidence before us including mitigation measures which is set out in the main chapter on this subject, and having regard to the representations, the ExA concludes there would be no significant impact caused from the cumulative impacts of other planned projects taken with the proposed development on agriculture and soils.

REASONING AND CONCLUSION

- 5.5.88 On the evidence before us, the Panel is satisfied that the construction of the cable route would, subject to approval of the CoCP and a SMP as part of Requirement 14 of Part 5 of Schedule 2 of the recommended DCO (Appendix D) not significantly harm existing field drainage.
- 5.5.89 Having examined the evidence before us, the Panel concludes and recommends to the SoS that there would be no significant effects caused from the construction, operation and decommissioning of the proposed development on agricultural practices and soils, and we are satisfied that the Outline SMP (Revision E) [REP7-039] and the embedded mitigation is adequately secured within the recommended DCO (Appendix D).
- 5.5.90 As set out above, the ExA is content that the placement of link boxes within agriculture fields, their demarcation and decommissioning would be undertaken in consultation with landowners and the provision is secured within Requirement 14 of the recommended DCO (Appendix D). However for the reasons set out above, the ExA requests the SoS to give careful consideration to the amendment to Paragraph 2.24 of the Outline SMP in order to ensure that provision is made for the link boxes to be adequately protected to allow agriculture machinery to pass over them to seek to ensure that the proposed link boxes would not cause significant harm to agricultural practices.
- 5.5.91 Accordingly, the ExA is content that the construction, operation, decommissioning and potential cumulative effects from proposed development would accord with part 5.10 of the NPS EN-1.

5.6 AIR QUALITY ASSESSMENT

APPLICANT'S APPROACH

- 5.6.1 Chapter 10 of Volume 3 of the Environmental Statement (ES)[APP-051] is the air quality assessment of the onshore element of the scheme. Detailed data which informed the ES is set out in the Air Quality Assessment [APP-088].
- 5.6.2 Paragraphs 10.5 to 10.41 of the ES [APP-051] set out the statutory and policy context and scope and methodological approach taken by the Applicant, including details of the study area. The air quality impact assessment has been carried out with reference to the Institute of Air Quality Management's (2014) Guidance on the assessment of dust from demolition and construction; and with the Environmental Protection (UK)'s Development Control: Planning for Air Quality (2010 Update) in respect to assessing the effects of road traffic emissions.
- 5.6.3 Table 1 of the Air Quality Assessment in the ES [APP-088] lists the sensitivities of the area to air quality in respect of dust soiling, human

receptors and ecological receptors. Paragraph 10.42 of the ES [APP-051] confirms that the onshore route does not pass through or near to any Air Quality Management Areas (AQMAs).

5.6.4 Embedded mitigation measures in respect to construction and decommissioning phases of the proposed development are set out in Table 10-5 of the ES [APP-051]. Operation effects are not assessed as there will not be any significant air emissions arising from this phase of the proposed development, and it was scoped out of the assessment at the Evidence Plan stage.

5.6.5 The identified mitigation in Table 10-5 of the ES [APP-051] is secured in the Requirements 14, 19 and 22 of the recommended DCO (Appendix D) which requires the submission of:

- an AQMP, which sets out amongst other things how control measures and mitigation, communication, dust management earthworks and monitoring would be undertaken a
- a Communications Plan;
- a Traffic Management Plan; and
- a Decommissioning Plan.

5.6.6 The Panel did not receive any representations from IPs which disputed or disagreed with the Applicant's approach to assessing air quality, and no representations were received in respect to compliance with the Air Quality Directive.

EXAMINATION

5.6.7 In reaching the conclusions and recommendation in this section of the report, the Panel has had regard to the Air Quality Directive (Council Directive 2008/50/EC).

5.6.8 BBC and ELDC have stated in their LIRs [LIR-001 and LIR-002], the Local Plan policies which they consider apply to the proposed development. They are:

East Lindsey Local Plan Alteration 1999:

- Policy A4 - Quality and Design of Development;

Boston Borough Local Plan 1999:

- Policy G1 - Amenity;
- Policy G8 - Air and Soil Resources;
- Policy ED11 - Renewable Energy

5.6.9 The Panel has also had regard to paragraphs in NPS EN-1 in particular part 5.2. This advises the Applicant to assess air quality if the project is likely to have adverse effects on air quality, what it should include, and whether mitigation would be necessary.

Construction effects

- 5.6.10 Paragraphs 10.50 to 10.64 of the ES [APP-051] identify risk from the construction of the proposed development from fugitive dust and construction plant emissions, and from construction traffic. However the ES states that the implementation of the measures set out in the AQMP [APP-102] would have the desired effect of reducing the risk such that there would not be any significant effects to air quality.

Operational effects

- 5.6.11 Paragraph 10.65 of the ES [APP-051] in respect to operation effects, states that:

"it is not considered that there will be any significant air emissions arising from the operational phase of the proposed development, and as agreed during the scoping stage, this has not been assessed further".

Decommissioning

- 5.6.12 Paragraphs 10.66 to 10.71 of the ES [APP-051] identifies that the decommissioning phase would mirror those for the construction phase identified above.

Cumulative effects

- 5.6.13 Paragraphs 10.72 to 10.96 of the ES [APP-051] identifies a number of offshore wind projects and a water pipeline as 'Tier 1' development, and two energy schemes and one residential development as 'Tier 2'. Table 10-10 states:

"the increase in cumulative traffic on the local road network due to the proposed development and other identified projects is not considered significant that quantitative assessment (dispersion modelling) would be required. No likely significant effects are therefore predicted".

- 5.6.14 The Panel did not receive any representations from IPs, including ELDC and BBC which raised air quality matters as an issue during the Examination.
- 5.6.15 Having examined the ES [APP-051], the Panel was content with its findings and that mitigation matters were adequately secured in the DCO. We therefore did not consider it necessary to probe air quality matters further during the Examination.

SoCGs

- 5.6.16 The Panel notes that SoCGs have been signed between the Applicant and ELDC [REP2-036] and BBC [REP2-035] in which the scope and methodology, the existing environment, the key parameters for assessment and embedded mitigation, assessment of impacts,

mitigation, potential cumulative impacts and inter-related effects as set out in the ES [APP-051] are matters agreed between the parties.

CONCLUSIONS AND RECOMMENDATION

- 5.6.17 The Panel did not receive any representations from IPs which raised any specific concerns in respect to the methodology approach to air quality, or the findings from the construction, operation and decommissioning effects from the proposed development on air quality.
- 5.6.18 Having examined the evidence before us including mitigation measures which is set out in the main chapter on this subject, and the absence of representations received and the SoCGs, the ExA is content with the Applicant's assessment presented in the ES [APP-051] as were ELDC and BCC, and the Panel concludes and recommends to the SoS that there would be no significant effects caused from the construction, operation and decommissioning of the proposed development on air quality.
- 5.6.19 The ExA is content that identified mitigation is adequately secured within the recommended DCO at Appendix D.
- 5.6.20 The proposed development would accord with the Air Quality Directive, with ELLP policy A4 and BLP policies G1, G8 and ED11, and with part 5.2 of NPS EN-1.

5.7 BIODIVERSITY, BIOLOGICAL ENVIRONMENT, ECOLOGY AND GEOLOGICAL CONSERVATION

APPLICANT'S APPROACH

- 5.7.1 The Applicant submitted a range of documents relevant to this issue with the application. These include Chapter 4 of Volume 3 of the ES on Terrestrial Ecology [APP-045], Chapter 6 of Volume 3 on Geology, Hydrogeology and Ground Conditions [APP-047], the Ecology Baseline Report Parts 1, 2 and 3 [APP-077, APP-078, APP-079], the Geology Baseline [APP-081], the Mitigation Strategy [APP-115] and the outline Construction Environmental Management Plan (CEMP) [APP-107].
- 5.7.2 The ES [APP-045] confirms that the ecological assessment was informed by the Chartered Institute of Ecology and Environmental Management (CIEEM) Guidelines for Ecological Impact Assessment in the UK (2006), as well as various species-specific best practice survey guidelines which are described throughout the ES chapter.

Baseline

- 5.7.3 Paragraphs 4.51 and 4.52 of Chapter 4 of Volume 3 of the ES [APP-045] state that:

"No internationally designated sites are located within 5 km of the Proposed Development Boundary.⁸ Three Sites of Special Scientific Interest (SSSI) and 42 locally designated wildlife sites were found between 0.2 km and 3.9 km of the Proposed Development Boundary.

The Proposed Development Area of the cable corridor crosses three non-statutory designated Local Wildlife Sites (LWS)."

5.7.4 This chapter of the ES does not list the Sites of Special Scientific Interest (SSSI's) but Figure 4-1a shows the location of Chapel Point to Wolla Bank and Sea Bank Clay Pits as SSSIs and Figure 4-1b shows the location of Bratoft Meadows SSSI.

5.7.5 Paragraph 6.69 of Chapter 6: Geology, Hydrogeology and Ground Conditions [APP-047] describes two of the SSSIs as:

"Chapel Point to Wolla Bank, recorded as an Earth Heritage SSSI and relates to a buried fossilised saltmarsh and forest; and

Sea Bank Clay Pits that relates to fen marsh and swamp lowland."

5.7.6 The Local Wildlife Sites (LWSs) identified in Table 4-9 of Chapter 4 of Volume 3 of the ES [APP-045] are:

- Huttoft Bank Dunes LWS;
- Old River Lymn LWS; and
- South Forty Foot Drain LWS.

5.7.7 Paragraph 4.54 of Chapter 4 of Volume 3 of the ES [APP-045] states that:

"No ancient woodland sites (also classified as non-designated sites) were identified within the Proposed Development Boundary or within 2 km of the cable route corridor or within 5 km of the Intermediate Electrical Compound and Substation".

5.7.8 Paragraphs 4.65 to 4.98 of Chapter 4 of Volume 3 of the ES [APP-045] list the fauna that were recorded during species group surveys. These are:

- badger;
- otter;
- water vole;
- bats;
- birds - with 32 being listed as red or amber Birds of Conservation Concern (BoCC), of these, 14 species are also listed as species of principal importance (SPI) on the NERC Section 41 list and two

⁸ This refers to the onshore cable only. The offshore cable goes through the IDRBNR SCI. Offshore issues are dealt with in separate sections, below.

species, the barn owl (*Tyto alba*) and the marsh harrier (*Circus aeruginosus*), are listed on Schedule 1 Part 1 of the WCA (1981); and

- reptiles - a single grass snake was recorded.

5.7.9 Paragraph 4.92 states that no Great Crested Newts were recorded in any of the water bodies surveyed within the study area. Possible issues surrounding Great Crested Newts are considered below in this Section of the Recommendation Report.

Mitigation

5.7.10 Paragraph 4.103 and Table 4-17 of Chapter 4 of Volume 3 of the ES [APP-045] set out the key ecological mitigation measures which are included within the Outline LSEMP [APP-109] (to be secured through Requirement 13 of our recommended DCO which requires an ecological management plan to be produced in accordance with the outline LSEMP) the mitigation measures embedded into the project design. These include:

- restoring habitat disturbed along the cable route;
- a reduced working width (30m) for open cut crossing ecologically sensitive watercourses and hedgerows;
- maintaining the form of hedgerows for birds and bats as far as possible;
- removing hedgerows, trees and scrub outside of the bird breeding season, wherever possible
- trenchless techniques to install cable ducts at the location of ecologically sensitive receptors;
- further bat and water vole surveys if required prior to commencement of ground works;
- employing an Ecological clerk of works; and
- minimising light scatter through the use of down lighting.

Applicant's Assessment

5.7.11 Table 4-18 of Chapter 4 of Volume 3 of the ES [APP-045] lists ecological receptors that have been scoped out from further impact assessment. Mitigation measures have been taken into account in formulating this list. The receptors scoped out are:

- Old River Lymn LWS;
- South Forty Foot Drain LWS;
- habitats: arable, agriculturally improved grassland, semi improved grassland, ruderal, woodland, scrub, sand-dune grassland (Dune /coastal), open /standing water (including ditches), developed land and running water;
- otter; and
- Great Crested Newts.

5.7.12 Table 4-19 of Chapter 4 of Volume 3 of the ES [APP-045] lists ecological receptors that have been included in the construction phase assessment as follows:

- Huttoft Bank Dunes Local Wildlife Site (LWS);
- LCGM Project Priority Field Sites;
- hedgerows;
- badgers;
- water voles;
- bats;
- birds; and
- reptiles (grass snake).

5.7.13 The "Summary of effects" (paragraphs 4.187 and 4.188 of Chapter 4 of Volume 3 of the ES [APP-045]) states:

"The assessment has identified that potential effects of terrestrial ecology receptors will be of a negligible or minor adverse effect without additional 'applied' mitigation. Following application of 'applied mitigation' the effects on terrestrial ecology will be negligible or minor positive. No impact of moderate significance or above has been identified through the course of this assessment. Therefore, long term adverse effects to terrestrial ecology are not expected to occur and no significant EIA effects as a result of the proposed development are anticipated."

5.7.14 Table 4-33 shows that the only feature for which the impact is deemed to be significant without applied mitigation is the LCGM Priority Field Sites (minor adverse). The ES proposes additional mitigation in the form of techniques to safeguard soil structure and reinstatement of wet grassland habitat and these have been set out in Appendix 1 of the *Outline Construction Method Statement* (Revision E), submitted as Appendix 29 of the Applicant's response to D7 [REP7-037] and, with these mitigation measures being put in place, the residual effect is assessed as negligible.

5.7.15 The LCGM Project is considered below in this section of the Recommendation Report.

5.7.16 All ecological receptors were scoped out of both the operational phase assessment (Table 4-29) and the decommissioning phase assessment (Table 4-30).

5.7.17 In respect of SSSIs, Paragraph 6.86 of Chapter 6 of the ES [APP-047] states that due to the absence of designated geological sites and Mineral Safeguarding Areas (MSA's) located in close geographic proximity to the Proposed Development, potential impacts to these receptors as a result of construction activities is not possible. Therefore an assessment of damage to geologically designated sites including SSSI's is not required.

- 5.7.18 Paragraph 4.21 Chapter 4 of Volume 3 of the ES [APP-045] states that:
- "Completion of an impact assessment is not required for all features and all activities.... to assess the impacts on the ... sites of Special Scientific Interest (SSSI) was deemed unnecessary by Natural England and 'no likely significant effect' concluded."*
- 5.7.19 This is confirmed in NE's RR [RR-175] which states that:
- "Natural England does not believe that any SSSI's will be damaged by this application."*
- 5.7.20 Given the above, **the ExA are satisfied that SSSI's will not be damaged by this application.**

Cumulative Assessment

- 5.7.21 Table 4-31 of Chapter 4 of Volume 3 of the ES [APP-045] lists 11 projects which have been considered in a cumulative assessment of possible impacts of the proposed scheme on ecological receptors. Paragraph 4.183 of Chapter 4 of Volume 3 [APP-045] concludes that:
- "... overall there are not considered to be any significant impacts between the construction of the Triton Knoll Electrical System and other known or planned activities. No additional mitigation or controls on the proposed development are therefore considered to be required."*
- 5.7.22 The cumulative assessment does not include the proposed Viking Link Interconnector project (Viking Link).
- 5.7.23 We have considered the issue of the proposed Viking Link in section 5.24 of this chapter of this Recommendation Report. We have noted there that paragraph 6.8.2 of [REP1-032] states that:
- "It is Natural England's view that there is insufficient information currently available in relation to the Viking Link Interconnector project to undertake a cumulative/in-combination assessment of the landfall and cable route, particularly as an indicative land fall and route has not been decided on by National Grid. It is our view that the onus is on the Viking Link Interconnector project to consider the Triton Knoll Electrical System in-combination at the appropriate time. However, Natural England's does consider that it may be possible to consider a worst-case scenario for an additional converter station at Bicker fen".*
- 5.7.24 The Applicant did not implement the suggestion contained in the final sentence of the above quote.
- 5.7.25 Subsequently, in the agreed SoCG between the Applicant and NE, submitted as Appendix 31 of the Applicant's response to D5 [REP5-044], NE agreed in paragraph 4.93 that:

"... the projects scoped into the cumulative impact assessment, as detailed in Table 4-31, Volume 3, Chapter 4 of the ES are appropriate and reasonable in order to undertake the cumulative assessment for terrestrial ecology".

Licences

- 5.7.26 Paragraph 4.104 of Chapter 4 of Volume 3 of the ES [APP-045] states that:

"It has been identified that a badger licence issued by Natural England, following approval of a mitigation method statement, will be required to enable construction works to continue. Natural England has agreed that no other licences, except for the draft badger licence, will be required, at pre-submission stage, for European or other nationally protected species."

- 5.7.27 Paragraph 6.6.2 of NE's WR [REP1-032] states that:

"After review of the supporting information and clarification with the Applicant, Natural England issued a letter of no impediment (dated 3rd September 2015) to the applicant under reference 2015-15287-SPM-NSIP1. This letter provides confirmation that Natural England does not see any reason why a formal badger licence would not be granted for this proposal, provided that technical points in the letter are clarified prior to submission."

- 5.7.28 We note that the letter of no impediment has been provided as Appendix 44 of the Applicant's Submission for D1 [REP1-065] and, therefore, **the ExA conclude that we have no reason to believe that the licences will not be granted by the relevant nature conservation body.**

- 5.7.29 The issue of the possible need to obtain a European Protected Species License in respect of Great Crested Newts is discussed below in this Section.

EXAMINATION

- 5.7.30 In examining issues related to Biodiversity, Biological Environment, Ecology and Geological Conservation, the ExA had regard to the guidance contained in section 5.3 of NPS EN-1. This states, *inter alia*, in paragraphs 5.3.7 and 5.3.8 that:

"As a general principle, and subject to the specific policies below, development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives; where significant harm cannot be avoided, then appropriate compensation measures should be sought."

In taking decisions, the IPC should ensure that appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity; and to biodiversity and geological interests within the wider environment."

- 5.7.31 Following our analysis of the application documents and of other pre-examination submissions, including RRs we identified "On-shore Environmental Issues" as being a principal issue in our Rule 6 letter [PD-007] with relevant issues under this heading including:
- Effects of construction, operation, maintenance and decommissioning methods including waste and soil management;
 - Adequacy of surveys;
 - Adequacy of monitoring;
 - Opportunities for enhancement; and
 - Effects on the Lincolnshire Coastal Grazing Marsh project (LCGMP).
- 5.7.32 We examined biodiversity, biological environment, ecology and geological conservation through eleven questions in our FWQ [PD-009]. Specifically, questions EOn 1.5 and 1.6 dealt with surveys; question EOn 1.7 dealt with terrestrial vertebrates, and non-native invasive species; question EOn 1.8 related to operational effects, including EMF; questions EOn 1.9, 1.10 and 1.18 focussed on LCGM areas; question EOn 1.11 dealt with mitigation measures; question EOn 1.25 looked at the assessment of associated development; question EOn 1.26 requested a plan showing areas of trenchless working and question EOn 1.27 asked about phasing.
- 5.7.33 We asked two questions relevant to this issue in our SWQ [PD-014]. Specifically, question EOn 2.4 dealt with LCGM and EOn 2.10 dealt with enhancement at the landfall site.
- 5.7.34 We examined this issue at our 17 November 2015 ISH on Onshore Issues [EV-022] and at our 19 January 2016 ISH on Local Impacts [EV-034].
- 5.7.35 The issues arising in the course of the Examination are considered below under the relevant headings set out in the ExA's principal issues. First, we consider the views of other parties on the appropriateness of the approach to assessment and of the findings.

Adequacy of surveys

- 5.7.36 Paragraph 4.46 Chapter 4 of Volume 3 of the ES on *Terrestrial Ecology* [APP-045] states that:

"It was not possible to gain permission from all of the private landowners who owned /managed land within the Study Areas to undertake all the necessary surveys. This prevented habitat and species surveys being carried out within these areas. In order to gain

as much data as possible, given the lack of access to certain areas of land, approximately 24% of the area within the Proposed Development Boundary was subject to aerial Phase 1 survey followed by confirmation visual assessment from public land (if possible) to gather baseline data on the broad habitats types that were present."

- 5.7.37 However, concerns were raised by Lincolnshire Wildlife Trust (LWT) in its RR [RR-165] which stated that it had:

"serious concerns regarding the onshore cable route" and that its "... main concerns relate to ... incomplete survey coverage of the cable corridor" and "inadequate assessment of semi-natural habitats".

- 5.7.38 LWT expanded on this in its response to our question EOn 1.6 [REP1-015] by stating that:

"In the areas where assessment has relied on aerial surveys LWT considers that a robust assessment of impacts on any semi-natural habitats cannot be carried out until ecological surveys have been carried out on the ground. It is therefore vital that in the event that consent is granted for the development robust plans must be in place for pre-construction surveys to assess the habitats and species present and ensure that there is sufficient time to put in place any mitigation or compensation that may be required."

- 5.7.39 The ExA note these concerns, however has also taken on board the SoCG with NE [paragraphs 4.62 to 4.96 of REP5-044] and ELDC [Section 8 of REP2-036] which both confirm agreement of the Applicant's approach to the assessment and to the outcomes of the assessment and the proposed mitigation. We also note that BBC in their SoCG [paragraph 8.1 of REP2-035] stated it would defer to NE in relation to terrestrial ecology.

- 5.7.40 We also note that LWT participated in the EIA Evidence Plan process and that paragraphs 5.8 and 5.9 of the EIA Evidence Plan [APP-132] state that in relation to terrestrial ecology:

"The study area extents, data coverage and baseline characterisation and survey approaches, identification of sensitive receptors to be included in the assessment, habitat mapping and assessment approaches for the terrestrial ecology assessment have been agreed by all of the members of the Review Panel group ..."

and, more specifically, that:

"The approach to dealing with areas where access has not been possible (principally a subset of the ponds that lie within the study area and Order limits, but outside of the proposed development boundary) has also been agreed with Natural England. This agreement includes both the adequacy of the existing data for all areas for the purposes of assessment and the commitment to undertaking pre-

construction surveys in order to confirm mitigation requirements in line with the outline ecological and landscape management strategy."

- 5.7.41 We note that the final signed version of the SoCG with LWT [REP4-064] agrees that the use of aerial surveys was appropriate but acknowledges that it had limitations.
- 5.7.42 Given the above, ***the ExA conclude that baseline information is adequate in this case.***

LCC's concerns over the ecological assessment

- 5.7.43 The SoCG between the Applicant and LCC [REP8-043] also agreed to the Applicant's approach although mitigation and monitoring, as set out below, was agreed but unsigned. However, the SoCG also states in paragraphs 5.17 and 5.18 that:

"LCC does not agree that paragraphs 4.109 – 4.162 of Volume 3, Chapter 4 of the ES present an assessment of the potential impacts on terrestrial ecology arising from the construction, operation and decommissioning of the development, in accordance with the requirements of relevant policy and legislation.

LCC does not agree that all potential impacts are predicted to be Minor Adverse or below and are therefore Not Significant as summarised in Table 4-33 of Volume 3, Chapter 4 of the ES."

- 5.7.44 The Applicant submitted as Appendix 12 of its response to D8 [REP8-044] which states in paragraphs 3.48 and 3.49 that:

"The Applicant considers that LCC has not, through its written submissions, or during the meetings held with the Applicant, substantiated its case with respect to its disagreement to these aspects of the assessment.

It is the Applicant's position that a robust assessment of the likely effects on terrestrial ecology has been undertaken, as presented in Volume 3, Chapter 4 of the ES."

- 5.7.45 The Applicant's response goes on to cite the conclusion of NE already cited in this section of the Recommendation Report.

- 5.7.46 At the same deadline, LCC submitted *their response to the Examining Authority's final questions* [REP8-017]. This commented on the process of developing the SoCG, stating in paragraph 5.1 that:

"The County Council have been assisting the applicant in this process. The reason being that the applicant has made requests of County Council in that they required information to be provided within the document. The County Council have complied with all requests but the applicant has followed an inconsistent approach to this and has rejected all additions to the document despite it being their request."

- 5.7.47 LCC's response to TWQ [REP8-017] lists the points relevant to terrestrial ecology that, it states, were "removed" from the agreed but unsigned SoCG. These include LCC's stated concerns about the lack of "on the ground" surveys, corrections to the numbers and names of Local Wildlife Sites (LWS) contained in Chapter 4, the assertion that table 4.29 should include local coastal grazing marsh and that the cable route identified will prevent the creation of new grazing marsh habitat and the assertion that further additional mitigation measures are required for this.
- 5.7.48 In considering this final submission from LCC, the ExA noted that, whilst the *SoCG between TKOWFL and LCC* dated 29 February 2016 submitted as Appendix 11 of the Applicant's response to D8 [REP8-043] was not signed by a the named representative of LCC, an e-mail from LCC attached to the SoCG stated that "*the clean copy is as per ... agreed with RWE*".
- 5.7.49 The ExA consider it somewhat confusing that LCC should submit a statement on the same day as the agreed SoCG which calls into question that SoCG.
- 5.7.50 We note that, given that D8 fell three days before the close of the Examination, the Applicant did not have a chance to respond to LCC's assertions about the SoCG nor to the information that LCC's Response to the ExA's TWQ contained.
- 5.7.51 The ExA note that the above were not raised in LCC's RR [RR-062], which only dealt with the relationship to Viking Link or in LCC's WR [REP3-024] but its other WR [REP1-037] which focussed on LCC's Farms Estate also dealt with, inter alia, the adequacy of surveys.
- 5.7.52 Paragraphs 4.88 to 4.112 of the first draft of the SoCG [REP1-079] listed a series of agreements on terrestrial ecology including on matters which were then matters of dispute in the final version of the SoCG. However, we note that LCC subsequently stated in REP3-024 that this SoCG was not agreed despite it containing an e-mail from LCC stating that it was "... the currently agreed version."
- 5.7.53 These matters in LCC's response to TWQ [REP8-017] were, the ExA notes, included in paragraphs 6.5 to 6.11 of the draft SoCG submitted for D5 [REP5-053]. This version of the SoCG was as marked up by LCC and was not agreed by the Applicant. However, the D5 version of the SoCG does state in paragraph 4.103, that it is agreed that paragraphs 4.109 – 4.162 of Volume 3, Chapter 4 of the ES present an assessment of the potential impacts on terrestrial ecology arising from the construction, operation and decommissioning of the development, in accordance with the requirements of relevant policy and legislation - although it does go on to express concern about the reliance on aerial surveys.
- 5.7.54 In coming to our conclusions on the adequacy of the Applicant's approach to surveys, the ExA have had regard to the concerns

expressed by LCC, although we also note the timings in the process of the Examination at which LCC have brought forward their concerns. However, we note the conclusions reached by NE, the statutory adviser to Government on nature conservation in England, in the SoCG between the Applicant and NE which confirms agreement of the applicant's approach to the assessment and to the outcomes of the assessment and the proposed mitigation [paragraphs 4.62 to 4.96 of REP5-044].

- 5.7.55 We also note that BBC [paragraph 8.1 of REP2-035]. We also note that paragraphs 5.8 and 5.9 of the EIA Evidence Plan [APP-132] state in relation to terrestrial ecology that the approach to dealing with areas where access has not been possible (principally a subset of the ponds that lie within the study area and Order limits, but outside of the proposed development boundary) has also been agreed with NE.
- 5.7.56 On balance, whilst we recognise the concerns expressed by LCC, ***the ExA conclude that the approach to surveys has been adequate in this case.***

Great Crested Newts

- 5.7.57 As shown above, Great Crested Newts have been scoped out of the assessments on the basis that no Great Crested Newts were recorded in any of the water bodies surveyed within the study area. However, the ES [APP-045] explains that access was not granted to the entire great crested newt study area and therefore not all ponds were surveyed during the pre-application phase.
- 5.7.58 As a result, the Applicant agreed with NE to undertake surveys of ponds not previously surveyed within 250 metres of the proposed development boundary; should a population of great crested newt be found during the pre-construction surveys then a European Protected Species License application would be made to Natural England in accordance with Requirement 19 of the draft DCO. These measures are detailed in the Outline Landscape Strategy and Ecological Management Plan (LSEMP) [APP-109].
- 5.7.59 The SoCG between the Applicant and NE [REP5-044] agrees that this approach would ensure that no significant effects would arise on the species.
- 5.7.60 The provisions in the Outline LSEMP [REP7-034] are secured in the ExA's recommended DCO (Appendix D) through Requirement 13 - *Ecological Management Plan and removal of hedgerows* .
- 5.7.61 Taking into account the foregoing, ***the ExA conclude that, despite the lack of full coverage of on the ground surveys of this species, measures are secured in the recommended DCO that will ensure that no significant effects would arise on Great Crested Newts.***

Adequacy of monitoring

- 5.7.62 We did not receive any representations on the adequacy of monitoring and ***the ExA conclude that the adequacy of monitoring is not an issue requiring further examination.***

Opportunities for enhancement

- 5.7.63 In considering this issue, the ExA had regard to, inter alia, the guidance in paragraph 5.3.4 of EN-1 which states that:

"The applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests."

and to paragraph 5.3.18, which states that:

"... the applicant should demonstrate that ... opportunities will be taken to enhance existing habitats and, where practicable, to create new habitats of value within the site landscaping proposals."

- 5.7.64 LWT RR [RR-165] stated that it had concerns relate to inter alia "the lack of biodiversity enhancements proposed."

- 5.7.65 Paragraph 6.3.2 of the NE's WR [REP1-032] states that:

"Natural England has also provided the Applicant with clarification as to our position in relation to certain onshore topics, particularly the Lincs Coastal Grazing Marsh project. The Applicant has subsequently agreed to provide a document as an annex to the Statement of Common Ground (SoCG) explaining what future habitat creation options are possible in the cable easement and in the fields where the cable passes."

- 5.7.66 The document cited in the final sentence, above, was not attached to the final SoCG between the Applicant and NE [AS-052]. However, the issue of enhancements was not the subject of further representations.

- 5.7.67 However, at the close of the Examination, paragraph of the 2.6 the Applicant's D8 submission [AS-052] states that:

"The Applicant and LWT have ... agreed the following statement to be included in this response:

The Lincolnshire Wildlife Trust has signed an agreement with Triton Knoll Offshore Wind Farm Limited (TKOWFL) to receive a £25,000 Mitigation Fund for the Lincolnshire Coastal Grazing Marshes (LCGM) project should the Development Consent Order for the Triton Knoll Offshore Wind Farm electrical infrastructure be consented."

- 5.7.68 ***The ExA have had regard to the advice in NPS EN-1 cited above and conclude that, given the nature of representations on this***

subject and given the agreement cited above, the question of the need for enhancements has been dealt with satisfactorily.

Effects on the Lincolnshire Coastal Grazing Marsh project

- 5.7.69 The LCGMP is described in Chapter 4 Volume 3 of the ES [APP-045] as a partnership to regenerate grazing marsh habitat which is traditionally associated with pastoral farming. It covers three target areas in East Lindsey of which the cable route crosses two: Anderby / Huttoft and Burgh le Marsh.
- 5.7.70 Paragraphs 4.122 - 4.125 of Chapter 4 Volume 3 of the ES [APP-045] consider the potential implications of the proposed development on Priority Field Sites (Sites B, C and D); these are areas where some regeneration works have already taken place, including the creation of wet grassland to benefit waders and breeding birds.
- 5.7.71 The ES concludes that approximately 3.66 ha of LCGM habitat within the Priority Field Sites B, C and D would be impacted during the construction phase but that habitat loss is reversible and "future grazing marsh creation would not be adversely effected" (sic). The overall significance is therefore considered by the Applicant to be minor adverse.
- 5.7.72 Consequently, paragraph 4.186 of the ES states that applied mitigation is required for LCGM habitat.
- 5.7.73 Proposed mitigation is set out in Appendix 1 of the Outline CMS Revision E [REP7-037] in relation to existing LCGM sites and future habitat creation.
- 5.7.74 REP7-037 states that the measures outlined for all 7 sites have been agreed as suitable with Lincolnshire Wildlife Trust (LWT), who are responsible for managing the LCGM.
- 5.7.75 The CMS is secured through Requirement 14 in our recommended DCO (Appendix D) which states that the CoCP (onshore) must include a construction method statement.
- 5.7.76 Paragraph 4.123 of Chapter 4 Volume 3 of the ES [APP-045] states that:
- "TKOWFL will consult with the LCGM Project regarding construction techniques and mitigation strategies to ensure that impacts on Project Priority Field Sites are minimised and that future potential for grassland wetland creation projects in the LCGM target areas are not compromised."*
- 5.7.77 However, LWT stated in its RR [RR-165] that the Trust has serious concerns regarding the potential impacts of the proposed cable installation on habitats and species within the LCGM project target areas at Anderby and Burgh-le-Marsh and confirmed in its response

[REP1-015] to our first written question EOn 1.9 that it considers that these proposals would compromise grazing marsh priority habitats and the likelihood of further habitat creation along the cable corridor.

5.7.78 This issue was also raised in RRs from ELDC [RR-008], Anderby Parish Council [RR-054] and J E Spence & Son [RR-146]. The issue of Site E / Field 6 to which some of these concerns refer, is considered later in this Section of the Recommendation Report.

5.7.79 More generally, paragraph 6.6.4 of the NE's WR [REP1-032] states in relation to its concerns about impacts upon the LCGM project area that:

"Natural England has agreed that the Applicant has committed to a reasonable scheme of mitigation within the Code of Construction Practice document; however Natural England advised the Applicant to provide further clarification on the land area that will be affected by the cable installation and the effects this will have on the land directly above it (i.e. – its ability to be wetted to create floodplain and grazing marsh habitat)."

5.7.80 The agreed SoCG between the Applicant and NE [REP5-044] states that;

"In relation to LCGM Sites 1 to 7, it is agreed that applied mitigation has been developed through consultation and agreed with the Lincolnshire Wildlife Trust ..."

5.7.81 The agreed SoCG between the Applicant and LWT [REP4-064] sets out the agreed mitigation measures in Appendix 1 and states that:

"It is agreed that suitable mitigation measures can be implemented in grazing marsh habitats along the cable route, during the construction and restoration phases of the project, to reduce the significance of effect on biodiversity to minor adverse."

and that:

"It is agreed that all potential impacts, following mitigation, are predicted to be Minor Adverse or below ... and are therefore Not Significant."

Site E / Field 6 of the LCGM Project

5.7.82 A particular issue was examined in relation to Site E / Field 6 of the LCGM project. The location of Field 6 is shown in Appendix 2 of the outline CMS (revision E) [REP7-037].

5.7.83 Potential impacts on Site E / Field 6 were not assessed within of Chapter 4 Volume 3 of the ES (Terrestrial Ecology) [APP-045]. This did assess sites B, C and D as they are valued at the County level of importance for nature conservation

5.7.84 We received a RR from Mr Spence [RR-146], the owner of the site, which covered, amongst other points:

"Destruction of my higher level stewardship wetland site - The route goes straight through the middle of this site. The field is in a higher level scheme and also forms part of the Lincolnshire Coastal Grazing Marsh project (operated by East Lindsey district Council). The field is a proven breeding ground for Lapwing and Redshank to name but a few of the many species that have been seen. There has been no environmental survey of the site nor has there been any discussion on how the developers are going to carry out their works and more importantly restore the site back to its current beautiful state. I have spent many years managing the site and creating it to get it to the current state."

5.7.85 The ExA visited Site E / Field 6 on our accompanied site inspection (ASI) on 10 and 11 November 2015 [EV-004] at the suggestion of LWT [REP1-014] which stated that:

"... nine grazing marsh and grassland sites will be directly affected by the cable installation. These include sites within Environmental Stewardship schemes and some which have been supported by the LCGM project. One such site is wet grassland which supports breeding waders including redshank and lapwing (site identified as E on Figure 5 of Document 8.7.1). The proposed cable corridor cuts across the middle of the site and will therefore have a significant adverse impact on breeding success at the site."

5.7.86 The Applicant provided a description of this site in its relevant Site Inspection Pack - Part 5 [EV-009].

5.7.87 Mr Spence submitted a letter on behalf of JE Spence & Sons for D3 [REP3-011] which stated, inter alia, that the only option not to destroy the site is to horizontal directional drill under the site. That letter included an aerial photograph of the suite with the suggested boundaries of the corridor superimposed on it.

5.7.88 The Applicant provided a Response to submission from Mr J.E. Spence and Son at D3 as Appendix 5 at D4 [REP4-032]. This quoted the Applicant's response to Question EOn 2.5:

"It is acknowledged that LWT have expressed a preference for Site E/Field 6 to be crossed using HDD or that the working area be realigned to the field boundary However, as the impact predicted is not significant in EIA terms, the Applicant is of the opinion that the increased engineering and scheduling risks associated with these mitigation measures is not warranted"

5.7.89 We asked a SWQ [Eon 2.5, PD-014] focussing on alternative approaches including HDD and avoiding works during the breeding season.

- 5.7.90 We also asked a SWQ [LV 2.10, PD-014] which references Site E. The Applicant's response to this was cross referenced in its answer to our question SE 2.19 [REP4-027].
- 5.7.91 In its response to our SWQ [REP4-025], NE stated that:
- "Natural England recognizes that that all three options are feasible mitigation measures to reduce the impacts to Lincolnshire Coastal Grazing Marshes, However, we have no preference for one particular option over another and advise that the pros and cons of each are considered based on the best available evidence. This information may not be available until nearer the time of construction. Therefore, it may be appropriate to ensure that there is a mechanism in place post consent to ensure that that can happen."*
- 5.7.92 The ExA considers that the approach set out below in relation to the CMS [REP7-037] is in accord with the process suggested by NE, above.
- 5.7.93 As part of its response to question Eon 2.5 [REP4-027], the Applicant stated that:
- "It is acknowledged that LWT have expressed a preference for Site E/Field 6 to be crossed using HDD or that the working area be realigned to the field boundary. However, as the impact predicted is not significant in EIA terms, the Applicant is of the opinion that the increased engineering and scheduling risks associated with these mitigation measures is not warranted."*
- 5.7.94 In respect to avoiding works during the breeding season, the Applicant's response [REP4-027] stated that:
- "It should be noted that mitigation regarding the scheduling of works to avoid impacts on breeding birds has been included within the proposed mitigation."*
- 5.7.95 The outline CMS (revision E) [REP7-037] states at Appendix 1 that :
- "During detailed construction scheduling duct installation will be scheduled to begin within this field between August and October to minimise potential disturbance of breeding lapwing."*
- 5.7.96 LWT sought to clarify its position on mitigation measures for Site E / Field 6 in its response to the TWQ [REP6-008] which states that it:
- "... would like to reiterate that the Trust has only agreed to mitigation measures in the event that consent is granted with the cable route as currently proposed crossing through the middle of the site. The Trust's preference would be for Field 6 / Site E to be crossed by trenchless means or the suggested alternative route adjacent to the ditch and road. This was stated in our response to Question EOn 2.5 and at the hearing on 19 January 2016."*

5.7.97 Mr Spence sought further clarification of the mitigation measures to be employed in his submission for D4 [REP4-017]. It was Mr Spence's understanding in that submission that RWE would not HDD across the field or move the route to run along the roadside field boundary.

5.7.98 We received three representations from Mr Wardle [REP3-030, REP4-040 and REP6-039] consultant to LWT on the Grazing Marshes Project who also accompanied us on our accompanied site inspection provided evidence at the ISH into this issue. In his representation for D6 [REP6-039] he stated that:

"It has been proved that a trenchless method is a perfectly viable methodology. Adopting this approach has very low risk of compromising the current very successful water retention and with the added advantage of minimal habitat disturbance if carried out with the correct timing."

and concluded that:

"I find it very difficult to understand how the applicant has reached the conclusion that digging 6 deep trenches directly through the middle of a known breeding wader site is acceptable. It is not tolerable and poses a much higher risk to either of the proposed alternatives that are supported by LWT and Mr Spence. Neither is it consistent with what should be expected of a company required to protect the environment on a project of this scale."

5.7.99 At D7, the Applicant revised the CMS [REP7-037] to confirm that:

"the entire length of LCGM Site E / Field 6, will be crossed using a horizontal direction drilling technique If following site investigation a horizontal direction drill of the entire length of LCGM Site E / Field 6 is deemed to be not technically feasible a trenched crossing will be reserved as a back-up option between the drain crossings."

5.7.100 The CMS is secured through Requirement 14(2)(a) of the recommended DCO (Appendix D).

5.7.101 In its *Response to the Examining Authority's Request for Further Information* [REP8-018] LWT commented on Revision E of the Outline CMS by stating that it welcomes this decision as it means that direct impacts to the grazing marsh habitats within the site would be much reduced.

5.7.102 It also stated, however that:

"Whilst we welcome the decision to cross site 6 by trenchless means there is still the chance that the Applicant might find that it is not technically feasible to drill under the entire field. If this is the case and the field has to be trenched across then we would wish to ensure that the mitigation measures agreed in the Trust's statement of common ground with the Applicant would still stand."

5.7.103 The Applicant responded to LWT's concerns [REP8-032] and confirmed in paragraph 2.3 that it had:

"updated the Outline CMS to Revision F, [the ExA assumes this to be Revision E] detailing mitigation for both eventualities, i.e. for both where HDD is technically feasible and in case it is not."

5.7.104 The Applicant also provided an LCGM Site E / Field 6 Mitigation Update Note [REP8-047].

5.7.105 REP8-032 goes on to state in paragraphs 2.4 and 2.5 that:

"The Applicant notes that the commitment to HDD Site is captured in the Crossing Schedule [REP7-015], and that if it is not technically possible to HDD Site E / Field 6 Requirement 5(10) of the DCO states that this would need to be agreed with the relevant planning authority."

The Applicant asks the ExA to note that the Outline CMS (Revision F) has been updated and is captured by the updated Outline Code of Construction Practice (CoCP) (Revision C), [the ExA assumes this to be Revision B] provided at Appendix 4 of this response and to which the draft DCO refers."

5.7.106 The ExA note that the representations from Mr Spence were withdrawn at the close of the Examination [AS-048].

5.7.107 The ExA have had regard to all the submissions made and evidence presented in respect of Site E / Field 6 of the LCGM Project and note the commitment made in the revised CMS [REP7-037] and conclude that the issues related to Site E / Field 6 have been dealt with satisfactorily.

CONCLUSION AND RECOMMENDATION

5.7.108 ***The ExA conclude that in respect to terrestrial ecology, we are satisfied with the approach taken by the Applicant. We find the findings to be sound and that any mitigation relied upon is adequately secured in our recommended DCO (Appendix D).***

5.8 CIVIL AND MILITARY AVIATION AND DEFENCE INTERESTS

APPLICANT'S APPROACH

5.8.1 There is no reference to aviation within the ES [APP-041], the Scoping Opinion [APP-093], or the EIA Evidence Plan [APP-132].

5.8.2 In terms of defence interests, Paragraph 3.80 of the SoS's Scoping Opinion [APP-093] scopes out unexploded ordnance and Ministry of Defence practice and exercise areas (PEXAs) in terms of Other Marine Users.

EXAMINATION

5.8.3 The Panel have had regard to the guidance on civil and military aviation and defence interests contained in NPS EN-1 section 5.4.

5.8.4 We did not receive any representations raising issues of civil or military aviation or defence interests with the exception of those considered below.

5.8.5 We received RRs from Mr Harry Rogers (RR-068) and from Leigh Rogers (RR-069) both of which state that:

"I run an active airfield that could seriously be affected by this development, should it cross our land."

John Aubrey Rogers (RR-112) and Shirley Patricia Rogers (RR-111) both state that:

"My daughter runs an active airfield that could seriously be affected by this development, should it cross our land."

5.8.6 Neither Harry, Leigh, John Aubrey or Shirley Patricia Rogers were cited in the Book of Reference (APP-014). No further representations or submissions were received from Harry, Leigh, John Aubrey or Shirley Patricia Rogers.

REASONING AND CONCLUSIONS

5.8.7 The ExA received no further evidence as to any possible effect on this airfield and the fact that this site is not mentioned in the book of Reference does not demonstrate that the proposed development would cross the Rogers' land. Given this, and in the absence of further evidence, we cannot conclude that this airfield would seriously be affected.

5.8.8 Given this and given the nature of the proposed development being largely underground, we did not identify this as a key issue in our Rule 6 letter and did not ask any questions on it during our four rounds of questions.

5.8.9 ***The ExA do not consider that this Application raises any relevant or important issues related to civil or military aviation or defence interests and consider that this issue has been dealt with satisfactorily.***

5.9 CLIMATE CHANGE MITIGATION AND ADAPTATION

EXAMINATION

5.9.1 The Panel have had regard to the duty placed on us by s10 of the PA2008 and to the guidance on climate change mitigation contained in NPS EN-1 section 4.8 on Climate Change adaptation.

5.9.2 Paragraph 4.8.6 of this section requires, inter alia, that the decision maker:

"... should be satisfied that applicants for new energy infrastructure have taken into account the potential impacts of climate change using the latest UK Climate Projections available at the time the ES was prepared to ensure they have identified appropriate mitigation or adaptation measures. This should cover the estimated lifetime of the new infrastructure."

5.9.3 We have also had regard to Part 2.4 of the NPS EN-5 which requires that we consider, in particular, flooding, particularly for substations that are vital for the electricity transmission and distribution network; higher average temperatures leading to increased transmission losses; and earth movement or subsidence caused by flooding or drought (for underground cables).

5.9.4 In considering the issue of climate mitigation and adaption, we have applied considerable weight to the fact that the purpose of the proposed development is to link energy derived from a project that has already been consented SI 2013 No.1734 to the Grid. Thus, the principle of securing energy from an offshore wind farm in this location has already been examined and determined.

5.9.5 We have considered issues relating to those particular aspects which are related to climate change mitigation and adaption in other sections on this Chapter of our Recommendation Report. But in particular relation to flooding, our Flood Risk Examination (see section 5.11, below) concludes that that the Applicant's assessment in the ES [APP-048], including the FRA [APP-084], complies with the requirements of NPS EN-1 in relation to flood risk and that the exception and sequential tests have been applied to the proposed development such that there would be no significant effects arising from the risk of flooding.

5.9.6 Paragraph 5.8 of the Final Outline CMS [AS-052] states that:

"The depth of each cable at every watercourse or flood defence crossing will be determined through the Crossing Schedule in consultation and agreement with the relevant consenting body. This will include any Internal Drainage Board or Environment Agency owned/maintained watercourses on a case-by-case basis in collaboration with the respective owner / operator to ensure that routine maintenance, repairs and any engineering works to adapt to climate change can be undertaken in the future."

REASONING AND CONCLUSIONS

5.9.7 Taking all the above in account, ***the ExA is content that the issues surrounding climate change mitigation have been thoroughly examined both through the consenting of the proposed off-shore wind farm*** [SI 2013 No.1734] and within the ES [APP-048]

and the FRA [APP-084], and other chapters in our Recommendation Report.

- 5.9.8 The ExA therefore concludes that the proposed development would accord with Parts 4.8 of NPS EN-1 and 2.4 of NPS EN-5 and that the proposed development ***serves to maximise its contribution towards the mitigation of climate change.***

5.10 COASTAL CHANGE AND EROSION

EXAMINATION

- 5.10.1 The ES [APP-029] assesses the potential for changes to beach morphology resulting from installation of the export cable at the landfall. The ES acknowledges that the Lincolnshire coastline south of the Humber Estuary has suffered from long term erosion and that the shoreline management strategy for the coast is to 'hold the line'; this strategy is implemented via a beach replenishment programme managed by the EA. Furthermore, the ES acknowledges that climate change is likely to lead to sea level rise which could increase the rate of beach erosion and shoreline retreat. As such the overall level of effect of significance is assessed by the Applicant as being negligible.
- 5.10.2 In its RR [RR-175], NE noted that the beach re-nourishment scheme is due to cease in 2015. NE recognised some form of coastal protection may still continue, but that there was no guarantee as to what it would be. Therefore, NE considered cable burial depths should take into account increased erosion and possible beach lowering and that potential operations and maintenance requirements to rebury the cable over the life time of the project should also take this into account.
- 5.10.3 In response to the RRs received, the Applicant [REP1-045] confirmed that it had agreed with NE that discussions should continue when the burial assessment have been undertaken and more is known regarding how the shoreline will be managed in the future. The Panel notes that this approach was confirmed in SoCG between the Applicant and NE [REP5-044] and between the Applicant and the MMO [REP5-045].
- 5.10.4 Condition 7(1)(f)(ii) of the recommended DML (Appendix D) requires the Applicant to produce a detailed cable laying plan including a "burial risk assessment to ascertain suitable burial depths" which must be submitted to and approved in writing by the MMO.
- 5.10.5 No other representations were received which raised concerns over coastal erosion matters during the Examination period.

CONCLUSION AND RECOMMENDATION

- 5.10.6 Having examined the ES, the response from the Applicant to NE's RR, and the subsequent SoCG between the Applicant and NE and the MMO, ***the ExA are satisfied that coastal erosion matters have***

been properly and robustly assessed and mitigated, and is adequately secured in the recommended DML.

5.11 COMMON LAW NUISANCE AND STATUTORY NUISANCE

EXAMINATION

- 5.11.1 In considering the issue of common law nuisance and statutory nuisance, the ExA had regard, inter alia, to section 4.14 of the NPS EN-1.
- 5.11.2 The recommended DCO (Appendix D) contains an Article - Article 7 - dealing with the defence to proceedings in respect of statutory nuisance. In considering this Article, we have taken into account the guidance contained in section 4.14 of NPS EN-1.
- 5.11.3 Section 79(1) of the Environmental Protection Act (EPA) 1990 specifies the following issues related to considerations of nuisance:
- air quality (in relation to Section 79(1)(c and d) of the EPA 1990);
 - accumulations and deposits (in relation to Section 79(1)(e) of the EPA 1990);
 - artificial light (in relation to Section 79(1)(fb) of the EPA 1990); and
 - noise and vibration emitted from or caused by a vehicle, machinery or equipment in a street (in relation to Section 79(1)(ga) of the EPA 1990).
- 5.11.4 The application documents included the *Environmental Protection Information - Statement of Engagement* [APP-016] which states in paragraph 3.3 that:
- "Save for the potential impact of construction noise from works associated with trenchless cable installation techniques TKOWFL does not consider that any of the matters in section 79(1) are engaged by the proposed TKES. This is supported by the conclusions of the Environmental Statement."*
- 5.11.5 The updated Explanatory Memorandum [REP7-019] states that Article 7 follows Model Provision 7. We note, however, that, in line with the Applicant's own conclusions cited in the previous paragraph, this Article only specifies statutory nuisance in relation to Section 79(1)(g) of EPA1990.
- 5.11.6 The Applicant's conclusions in respect to statutory nuisance under the EPA 1990 were not disputed by any interested party during the course of the examination.
- 5.11.7 ***The ExA conclude that Article 7 of the ExA's recommended DCO at Appendix D is adequate to deal with issues of common law nuisance and statutory nuisance.***

5.12 FLOOD RISK

- 5.12.1 Lincolnshire is characterised by its flat low-lying landscape and complex network of drainage infrastructure [APP-082].
- 5.12.2 The drainage of the area is pumped drainage, with the Lindsey Marsh Drainage Board, the Witham Fourth District IDB and the Black Sluice IDB managing water levels across the catchments.
- 5.12.3 The EA is responsible for some watercourses, including the Steeping River [APP-084]. The Canal and River Trust is responsible for other watercourses, including the River Witham at Langrick Bridge.
- 5.12.4 Most of the onshore elements of the proposed development lie within Flood Zone 3, including the landfall, the IEC and the majority of the cable route and substation. Some parts of the cable route and some parts of the substation site are within Flood Zones 1 and 2 [APP-084].
- 5.12.5 This section of the report deals with impacts on EA and IDB managed drainage. Impacts on landowners' drainage have been considered in the agriculture and soils section of this chapter of the report.

APPLICANT'S APPROACH

- 5.12.6 The Applicant's approach to the assessment of flood risk has been to consider the onshore elements of the proposed development, including cumulative effects, against baseline conditions, in order to establish whether, and to what extent, the proposed development would be at risk from flooding or would increase flood risk elsewhere.

Baseline

- 5.12.7 Full baseline descriptions, data sources and assessment methodology are presented in the Hydrology and Flood Risk Baseline Report [APP-082].
- 5.12.8 General information on baseline conditions was obtained from the EA, including its flood zone risk map, and also from the ELDC and BBC strategic flood risk assessments.
- 5.12.9 For the baseline assessment, the study area was taken to be the entire footprint of the proposed development boundary, and the landfall site, the IEC, the substation site. The cable routes were each considered separately.
- 5.12.10 The baseline assessment noted that at the landfall site the land behind the sea defences is at a lower level than the crest level of the coastal defences for several kilometres inland, putting large areas at risk of flooding should the coastal defences be severely overtopped or breached. Surface water flooding is not a significant issue at the IEC site, but the South Forty Foot Drain runs adjacent to the proposed substation site and presents a significant strategic flood risk.

5.12.11 It is also noted [APP-082] that it will be important during the construction phase to ensure that works do not create blockages of flow paths on the floodplain or cause an increase in rates and volumes of runoff.

Applicant's Assessment

5.12.12 Flood risk is assessed within ES Volume 3 Chapter 7, Hydrology and Flood Risk [APP-048] and in the FRA [APP-084] which forms an appendix to the ES.

5.12.13 The assessment has considered the potential impacts of the landfall site, the onshore cable route, the IEC, the substation and the unlicensed works at the existing National Grid substation.

5.12.14 During pre-application, several potential impacts were scoped out of further assessment through the SoS's Scoping Opinion [APP-093]. Table 7-1 of Chapter 7 of Volume 3 of the ES (Hydrology and Flood Risk) [APP-048] shows which potential impacts remained scoped in.

5.12.15 The FRA [APP-084] identifies the main risks as being tidal flooding at the landfall, the cable route between the landfall and Burgh le Marsh, the cable route between the Steeping River and the River Witham, and the IEC; and fluvial flooding where the cable route is adjacent to watercourses, the substation site and the existing National Grid substation site.

5.12.16 The FRA states that there is low risk of flooding from groundwater, reservoirs, canals and other artificial structures; that there would be no impact of surface water flooding; and that there is a low risk of flooding from the sewerage network [APP-084].

5.12.17 Table 7-15 of Chapter 7 of Volume 3 of the ES [APP-048] summarises the Applicant's assessment of the effects of the proposed development on flood risk for the construction, operation and decommissioning phases. It concludes that when taking mitigation into account (see below) the potential impacts of the project alone, or cumulatively with other plans or projects, would be either negligible or minor adverse and not significant.

5.12.18 The FRA [APP-084] identified the FRA flood risk vulnerability classification of the proposed development as essential infrastructure, i.e. essential utility infrastructure which has to be located in a flood risk area for operational reasons.

5.12.19 The FRA applied both the sequential and exception tests to the proposed development and concludes that both tests are passed [APP-084].

Cumulative impacts

- 5.12.20 The Applicant's cumulative assessment [APP-025] considered the potential for simultaneous operation with other plans and/or projects to affect flood risk and surface water drainage.
- 5.12.21 On the assumption that other projects would properly manage flood risk and drainage issues, the ES concluded that impacts would be of limited physical extent, short term in duration and occur infrequently. The significance of potential effects was considered to be minor and not significant.

Mitigation

- 5.12.22 The onshore cable has been routed to avoid key areas of sensitivity regarding flood risk, such as settlements and land allocated for significant development.
- 5.12.23 Other embedded mitigation measures have also been proposed by the Applicant that would be employed during the design, construction, operation and decommissioning of the proposed development. These are summarised in Table 7-10 of Chapter 7 of Volume 3 of the ES [APP-048] and include (but are not limited to):
- piling for foundations at the IEC and substation to be less than the depth to the underlying chalk aquifer;
 - the use of trenchless techniques to construct the cable under watercourses and flood defences;
 - the use of industry best practice and published guidelines;
 - positioning construction materials and spoil in a manner that does not constrain potential flood waters;
 - reinstating existing land drainage;
 - proper management of potential pollutants; and
 - a drainage strategy [APP-084] for attenuating runoff from impermeable areas within the IEC and substation, to be within the IDB specified rate.
- 5.12.24 These measures were included in the Outline CEMP [APP-107] and the Outline CMS submitted with the application [APP-099] and secured by Requirement 14 of the Applicant's draft DCO [APP-010].
- 5.12.25 Table 7-10 of Chapter 7 of Volume 3 of the ES [APP-048] also notes that electrical infrastructure would be raised to above the (0.1%) 1 in 1000 year plus climate change annual probability flood level. The flood raising criterion has been determined within the FRA [APP-084] as 1.8m above ground level or 3.24m AOD(N) with a 300mm freeboard for the IEC; 0.8m above ground level or 2.29m AOD(N) with a 300mm freeboard for the substation; and 0.8m above ground level or 2.69m AOD for the works at the existing National Grid substation [APP-084].
- 5.12.26 Under requirement 5(5) of the draft DCO submitted with the application [APP-010], the finished floor levels of the IEC and the

substation must, following consultation with the EA, be based upon results of topographic surveys and be submitted to and approved by the relevant planning authority.

- 5.12.27 Requirement 10 of the draft DCO submitted with the application [APP-010] secures surface water drainage schemes for the IEC, substation and the unlicensed works at the National Grid substation.

EXAMINATION

- 5.12.28 Paragraph 5.7.4 of NPS EN-1 says that all proposals for energy projects located in Flood Zones 2 and 3 in England should be accompanied by a Flood Risk Assessment (FRA): paragraphs 5.7.4, 5.7.5 and 5.7.7 of NPS EN-1 set out what the FRA should contain.
- 5.12.29 In terms of decision making, NPS EN-1 paragraph 5.7.9 states that the decision maker should be satisfied that the sequential test has been applied as part of site selection.
- 5.12.30 Paragraph 5.7.12 of NPS EN-1 says that the decision maker should not consent development in Flood Zone 3 in England unless satisfied that both the sequential and exception test requirements have been met.
- 5.12.31 Saved policy C10 in the NKDC Local Plan advises that planning permission will be granted for proposals only if they will not be at unacceptable risk of flooding or would unacceptably increase flood risk elsewhere [LIR-004].
- 5.12.32 The BBC and ELDC Local Plans do not have any specific policies in respect of flood risk. However, the relevant LIRs were taken into account by the ExA [LIR-002 and LIR-001].
- 5.12.33 The EA confirmed in its RR [RR-106] that it had worked closely with the Applicant during the pre-application phase, that the application was supported by an appropriate FRA and that suitable measures to mitigate against the risks identified had been proposed by the Applicant. Lindsey Marsh IDB made a RR [RR-121].
- 5.12.34 The EA also confirmed, in relation to the change request for the reconfiguration of works at the existing National Grid substation, that it was satisfied with the proposed principle for surface water management and that the final solution would need to be secured by a suitably worded condition on any planning permission granted [REP3-032].
- 5.12.35 In respect of the proposed bund wall at the IEC, the Panel asked the EA why it had requested in its relevant representation [RR-106] that DCO Requirement 9 be reworded: EA confirmed that there had been a misunderstanding as to the nature and extent of the proposed bund and it was now satisfied and did not need any further assessment of flood risk to be undertaken by the Applicant [REP3-021].

Closure of existing pumping stations

- 5.12.36 The ExA noted the EA's statement that the FRA was appropriate, but wished to clarify a matter raised in written representations [REP3-006, REP3-019] stating that the EA had confirmed an increased flood risk due to the closure of pumping stations at the Black Sluice pumping station at Boston. The ExA therefore requested that the Applicant and the EA respond to this matter (EOn 2.9) [PD-014].
- 5.12.37 In response, the EA confirmed that it was considering decommissioning the Black Sluice pumping station as an option as part of a review of flood risk in the Boston area, but that no decision had yet been taken. It confirmed that the Applicant's FRA had already taken the failure of the pumping station into account and that adequate mitigation would be incorporated into the design of the proposed development. This would include suitable floor levels, to be secured through the certified plans under Article 35 and to be agreed through the discharge of Requirement 5(5) of the draft DCO [REP4-019].
- 5.12.38 All matters of concern to the ExA were agreed between the EA and the Applicant prior to the close of the examination [REP5-043].

Impacts on third parties during construction

- 5.12.39 The Panel also wanted to know to what extent techniques used during construction of the cable route would impact on drainage locally, thus increasing flood risk elsewhere during the construction period, and examined this at the ISH into local impacts [EV-037].
- 5.12.40 The Applicant [REP5-014] acknowledged that there could be a risk of surface water flooding, which would likely manifest as highly localised ponding in areas of active construction where the topsoil had been stripped. However, the Applicant stated that this would be unlikely to affect areas outside the proposed development and that any pooled water would be manually collected and discharged into a suitable watercourse.
- 5.12.41 The Applicant also explained that there would be protection to avoid surface water runoff which would be placed where necessary to avoid any contamination of water courses or flooding of neighbouring properties. The CEMP confirms that relevant industry best practice and published guidelines would be followed to reduce pollutant and sediment movement during construction [REP7-043].

Impacts on IDB maintenance activities

- 5.12.42 The IDBs did not submit relevant representations; however, the draft (unsigned) SoCG between the Applicant and the three IDBs submitted at D1 [REP1-081] showed agreement that the Applicant would work in collaboration with the relevant consenting body to assess and obtain IDB agreement to the depth of cable crossings at every IDB

maintained watercourse. The minimum depth at which the top of the cable would be buried would have to be a minimum of 2 metres beneath the hard bed level plus a safe working separation distance confirmed by the IDB's as 900mm in REP3-001. However, within the draft SoCG, the IDBs requested that this should also be agreed with the IDBs for non-IDB maintained watercourses ('ordinary watercourses').

- 5.12.43 The ExA had some reservations relating to the ability of the IDBs to continue to exercise their statutory maintenance activities, planned strategic statutory obligations and future-proofing for climate change. The ExA therefore requested an update on the issue of cable depth from the IDBs and the Applicant at the ISH on Onshore issues [EV-025].
- 5.12.44 The IDBs [REP3-001] confirmed that each IDB has statutory powers to maintain or improve existing watercourses or to construct new works and that each is responsible for, and has statutory powers in relation to all watercourses within its district. The IDBs argued that the need might arise at any time in the future to deepen, widen, desilt or reform a watercourse as a result of climate change, whether or not IDB maintained; it would therefore be illogical to agree a particular depth for one type of watercourse but not another.
- 5.12.45 The Applicant subsequently agreed to secure the minimum crossing depth for all watercourses as 2.9m unless otherwise agreed with the IDBs such that, where appropriate, the clearance could be reduced to a minimum of 1.9m [REP5-014], and updated the CMS [REP7-037] accordingly.
- 5.12.46 LCC, as the lead local flood authority, did not raise any concerns relating to flooding during the examination.

REASONING AND CONCLUSIONS

- 5.12.47 The ExA was satisfied with the Applicant's overall approach, but had specific concerns relating both to the impact of the proposed development on third parties and to the extent to which techniques used during construction of the cable route would increase flood risk elsewhere.
- 5.12.48 The ExA examined these issues both orally and in writing and was satisfied with the Applicant's responses.
- 5.12.49 By the close of the examination, the Applicant had submitted SoCGs with LCC [REP8-043], the EA [REP5-043] and the three IDBs [REP8-040] which confirmed that all matters in relation to hydrology and flood risk were agreed.
- 5.12.50 The ExA are also satisfied that all necessary mitigation is adequately provided for within the CMS, the CEMP and Requirement 10 of the

recommended DCO. The ExA did not consider it necessary to propose any changes to the Applicant's draft DCO in relation to flood risk.

- 5.12.51 The ExA conclude that the Applicant's assessment, including the FRA, complies with the requirements of NPS EN-1 in relation to flood risk. The ExA is satisfied that the exception and sequential test has been applied to the proposed development and is satisfied that there would be no significant effects arising from the risk of flooding.

5.13 GEOLOGY AND GROUND CONDITIONS

APPLICANT'S APPROACH

- 5.13.1 The Applicant's approach to the assessment of geology and ground conditions has been to consider the potential for impacts, including cumulative effects, against baseline conditions.
- 5.13.2 The main relevant application document is ES Volume 3 Chapter 6: Geology, Hydrogeology and Ground Conditions [APP-047]: other relevant application documents referred to are:
- ES Volume 3 Chapter 5: Land Use, Agriculture and Soils [APP-046];
 - ES Volume 3 Chapter 7: Hydrology and Flood Risk [APP-048];
 - ES Volume 5 Annex 6-1: Geology and Ground Conditions Baseline Study [APP-081]; and
 - ES Volume 5: Hydrology and Flood Risk Baseline Report [APP-082].

Baseline

- 5.13.3 The available information in respect of geology and ground conditions was assembled and reviewed by the Applicant to produce a standalone baseline study [APP-081]. Related information in respect of hydrology is presented in [APP-082].
- 5.13.4 The majority of the land within the application site is underlain by superficial drift deposits of low permeability of 10 - 26m overlying chalk aquifers. The deposits are chiefly silt and clay, with peat between Stickney and New Leake, midway between the IEC and the proposed substation [APP-081].
- 5.13.5 The ES identifies two SSSIs south of the application site at Anderby Creek:
- Chapel Point to Wolla Bank, recorded as an Earth Heritage SSSI and relates to a buried fossilised saltmarsh and forest; and
 - Sea Bank Clay Pits that relates to fen marsh and swamp lowland.
- 5.13.6 There are no geological conservation review sites located either within or in close proximity.

Assessment

- 5.13.7 The assessments have considered the potential impacts of the landfall works, the onshore cable route, the IEC, the substation and the unlicensed works at the existing National Grid substation.
- 5.13.8 During pre-application consultation undertaken by the Applicant, operational, decommissioning and cumulative impacts were found to be not significant and were scoped out of further assessment through the SoS's Scoping Opinion [APP-093]. This is discussed in paragraphs 6.23 and 6.150, and in table 6.2 of Volume 3 Chapter 6 of the ES [APP-047].
- 5.13.9 Paragraph 6.86 of the ES [APP-048] stated that, due to the absence of designated geological sites in close geographic proximity to the proposed development, an assessment of potential damage to geologically designated sites is not required. This was not disputed by any IPs during the examination.
- 5.13.10 The principal impacts identified by the Applicant [APP-047] were related to construction:
- Creation of pathways for contamination of groundwater and surface water;
 - Damage to land drains;
 - Contamination due to spillages; and
 - Accidental contamination of material.
- 5.13.11 The embedded mitigation measures proposed by the Applicant are shown in Table 6-7 of [APP-047] and include:
- The routing of the cable corridor to avoid sites of known contamination;
 - The use of trenchless techniques at suitable locations;
 - Adherence to relevant legislation and guidance;
 - Avoidance of chalk strata;
 - Use of clay stanks to prevent creation of preferential pathways;
 - Replacement of subsoils in reverse order in the trench excavations;
 - Pre-construction ground investigations;
 - Stopping of work if any previously unidentified contamination is found;
 - Service clearance and utility surveys;
 - Preparation of a PPEIRP to be followed in an environmental emergency;
 - Control of storage of materials and waste on site.
- 5.13.12 All embedded mitigation is secured by DCO Requirement 5(11) in respect of the crossing schedule, and DCO Requirement 14 in respect of the CEMP, the CMS, the SMP, the PPEIRP and the SWMP [APP-115].

- 5.13.13 These impacts have all been assessed, with proposed embedded mitigation measures, as being negligible or minor adverse, ie not significant [APP-047].

EXAMINATION

- 5.13.14 The ExA had specific concerns relating to the potential for movement of cables post-installation, and the possibility of encountering previously unidentified contamination during construction, both of which are discussed below.
- 5.13.15 Concerns relating to accidental pollution of groundwater and aquifers during construction, and damage to land drains during construction are discussed elsewhere in this report.

Cable movement post-installation

- 5.13.16 The potential for movement of cables post-installation was not assessed by the Applicant in the ES. However, at the Local Impacts Hearing [EV-034 and REP5-014] the LIG referred to examples of buried infrastructure moving significantly post-installation.
- 5.13.17 The Panel asked the LIG in TWQ (SE 3.7) [PD-016] to provide evidence of instances where buried infrastructure has moved significantly post-installation so as to pose a risk to agricultural operations. The LIG response [REP6-010] did not provide named examples of pipelines which have reduced cover, but did request that annual inspections of the buried cable would be undertaken and secured accordingly in the DCO. The Applicant stated in its response [REP8-032] that it had requested details from the LIG but that no examples of electricity cables rising to the surface or being exposed close to the surface were known to them.
- 5.13.18 In the absence of evidence to the contrary, the ExA does not consider cable movement post-installation to be a significant issue.

Previously unidentified contamination

- 5.13.19 The EA [RR-106] agreed with the Applicant's proposals of ground investigation at all HDD crossings, landfill sites or contaminant sources and that work should stop if any previously unidentified contamination were to be encountered during construction. To ensure that this action is secured, the EA requested the inclusion of a Requirement in Schedule 1 Part 3 of the DCO.
- 5.13.20 The Applicant responded [REP1-045] that this matter was under discussion and referred the ExA to paragraphs 4.18 and 5.2 of the SoCG [REP1-078]. In [REP2-011] the Applicant explained that the detail for dealing with previously unidentified contamination would be dealt with through management plans, which are secured by Requirement 14. The Applicant considered that this requirement already secured that the undertaker must consult the EA prior to

submission of the CoCP and that this would ensure the detail required by the EA.

- 5.13.21 The EA [REP3-021] disagreed with this, stating that this was a generic process for dealing with unsuspected contamination and would not provide the EA with the ability to sign off a scheme should specific contamination be encountered. The EA was also concerned that the exclusion of remedial work from the definition of 'commence' in Article 2 of the DCO would remove the EA's ability to comment on a scheme to deal with such contamination.
- 5.13.22 The EA welcomed [REP4-019] the deletion of the exclusion of 'remedial work in respect of any contamination or other adverse ground conditions' from the definition of 'commence' in Article 2 of Revision D of the Applicant's draft DCO [REP3-043]. However, in response to question DCO 2.27 [PD-014], the EA remained of the opinion that unidentified contamination could not be adequately dealt with through the CoCP and that an additional requirement was needed [REP4-019]. The Applicant therefore included a new Requirement 15 in Revision F of its draft DCO [REP5-035] and this was agreed with the EA in the SoCG [REP5-043].

REASONING AND CONCLUSIONS

- 5.13.23 The ExA examined the issue of potential cable movement post-installation and did not consider it to be a significant effect which warranted annual inspections.
- 5.13.24 The ExA also examined concerns surrounding unidentified contamination and was satisfied that these are secured by the inclusion of a new Requirement 15 in the Applicant's draft DCO Revision F [REP5-035].
- 5.13.25 Overall, the Panel is satisfied with the Applicant's assessment of impacts on geology and ground conditions and that the relevant NPS policies have been satisfied.
- 5.13.26 Issues relating to accidental pollution of groundwater and aquifers during construction, and damage to land drains during construction have been examined, and conclusions reached, elsewhere in this report.

5.14 HAZARDOUS SUBSTANCES

APPLICANT'S APPROACH

Onshore

- 5.14.1 The Outline Pollution Prevention and Emergency Incident Response Plan (Revision C) (PPEIRP) [REP7-041] states that in any areas where there is an increased risk of hazardous substance spillage (e.g. storage compounds), additional precautions would be undertaken.

These would include berms and bunding in accordance with EA Pollution Prevention Guidance, impermeable bases, suitable drainage systems and siting away from open drainage channels. Good construction practice and appropriate mitigation and monitoring are therefore essential for prevention of potential pollution from any of the sources noted above.

- 5.14.2 The Outline PPEIRP [REP7-041] also states that suitable precautions would be taken to prevent spillages from equipment containing small quantities of hazardous substances (for example, chainsaws and jerry cans) including:
- each container or piece of equipment would be stored in its own drip tray made of a material suitable for the substance being handled; and
 - containers and equipment would be stored on a firm, level surface.
- 5.14.3 The Outline PPEIRP [REP7-041] also lists measures to deal with hazardous substances in respect of fuel delivered through a pipe permanently attached to a take or bowser, management of oil drums and deliveries. The Outline PPEIRP also states that all flammable and hazardous substances would be kept in a secure bunded cupboard, cabinet or tank constructed of materials which are chemically resistant to its contents.
- 5.14.4 The requirement to produce a PPEIRP forms part of a requirement to submit a CoCP, which is secured by Requirement 14 the recommended DCO (Appendix D).

Offshore

- 5.14.5 Paragraph 1.160 of the ES [APP-028] states that a limited amount of potentially hazardous or polluting material may be used during offshore construction. These are categorised as drilling fluid, bentonite, fuel and lubricants.
- 5.14.6 Paragraph 1.161 of the ES [APP-028] states that where possible all materials used in the installation of the offshore cable route will be selected with reference to the List of Notified Chemicals, which have been assessed for use by the offshore oil and gas industry under the Offshore Chemical Regulations 2002. Should any materials be required which are not contained on this list, consent will be sought from the Licensing Authority prior to commencement of work.
- 5.14.7 Paragraph 1.158 of the ES [APP-028] states that a Project Environmental Management Plan (PEMP), a Marine Pollution Contingency Plan (MPCP) and an Emergency Response Cooperation Plan (ERCoP) will be in place throughout construction, and decommissioning of the project. The PEMP will be put in place to reduce the risks of pollution events occurring. A MPCP will also be developed which will provide procedures in the event of a spill or

collision incident which will contain and minimise the impact should an incident occur. These documents are required and secured by Condition 7 of the recommended DML (Appendix D).

- 5.14.8 An ERCoP would also be in place to coordinate the response to any emergency activity, such as a pollution incident and this is secured by Condition 3 of the recommended draft DML (Appendix D). The need to approve the use of chemicals is secured by Condition 5 of the recommended DML (Appendix D).

EXAMINATION

- 5.14.9 The Panel confirms that ELDC, BBC or LCC have not identified or put forward any relevant Local Plan Policies within their LIRs [LIR-001, LIR-002, LIR-003] which apply to hazardous substances. The Panel has had regard NPS EN-1 in particular part 4.12, which advises the Applicant to consult the Health and Safety Executive (HSE) if hazardous substances consent is necessary.

- 5.14.10 The Panel also notes from the Consultation Report [APP-015] that the HSE were consulted at the pre-application stage and that no representations were received from them during the examination period. Furthermore, the HSE were invited by the ExA to participate in the examination through both the Rule 6 and Rule 8 letters [PD-007 and PD-008]. The views of the HSE would have been welcomed by us during this Examination.

- 5.14.11 In respect to the onshore effects, the EA stated in its response to the Outline PPEIRP and following acceptance of the application [RR-106] (and in response to the now superseded Revision A of the document [APP-106]) that they:

"recommend that this plan identifies details of one or more UK Spill accredited pollution response contractors who the Applicant would be able to contact in the event of a large scale incident."

- 5.14.12 In the latest version of the Outline PPEIRP [REP7-041], the section entitled 'Emergency Incident Response' has been considerably expanded from Revision A. Paragraph 5.38 states that:

"pollution response contractors, accredited by the UK Spill Association, shall be identified and named in the final PPEIRP, such that, should a spill incident occur for which the construction contractors require assistance with containment and clean-up, one of the named pollution response contractors will be contacted".

- 5.14.13 The Panel notes the SoCG signed between the Applicant and the EA [REP5-043] states that:

"it is agreed that the updated OPPEIRP provides a suitable indicative form for the final PPEIRP required under the draft DCO and is

adequate for ensuring the prevention of pollution to water bodies and the protection of water quality".

- 5.14.14 The Panel did not receive any representations from IPs which raised any specific concerns in respect to the onshore, or offshore, construction of proposed development in respect to hazardous substances, and the Panel felt no questions were necessary during the examination of the proposed development in this regard. No issues arose during the examination period in respect to hazardous substances.

CONCLUSION AND RECOMMENDATION

- 5.14.15 The ExA are satisfied that there is a suite of legislation and regulations which control the use and disposal of hazardous substances.
- 5.14.16 Having examined the evidence before us and the views of the EA, the ExA conclude and recommend to the SoS that the Applicant's regard to hazardous substances has been sufficiently robust and the necessary mitigation measures have been secured within the recommended DCO and DML (Appendix D).
- 5.14.17 The ExA concludes that the proposed development would accord with Part 4.12 of NPS EN-1.

5.15 HEALTH AND SAFETY

APPLICANT'S APPROACH

Applicant's Assessment

- 5.15.1 The ExA noted that no particular legislation and guidance relating to health and safety matters was identified in Chapter 2 of Volume 1 of the ES (Consents Policy and Legislation) [APP-021].
- 5.15.2 The Applicant set out mitigation measures to deal with health and safety issues in paragraphs 4.10 and 4.11 of the outline onshore CoCP [APP-098], which requires the Applicant to prepare a Health and Safety Plan in accordance with the outline Health and Safety Plan [APP-100], secured through Requirement 14(2)(b) of the draft DCO [APP-010].
- 5.15.3 The Applicant has also prepared outline mitigation plans for other aspects of health and safety management, as follows:
- A scheme for noise and vibration management during construction [APP-101], secured in Requirement 14(2)(c) of the draft DCO [APP-010];
 - An air quality management plan [APP-102], secured in Requirement 14(2)(d) of the draft DCO [APP-010];
 - An artificial light emissions plan [APP-104], secured in Requirement 14(2)(f) of the draft DCO [APP-010];

- A site waste management plan [APP-105], secured in Requirement 14(2)(g) of the draft DCO [APP-010];
- A pollution prevention and emergency incident response plan (PPEIRP) [APP-106], secured in Requirement 14(2)(h) of the draft DCO [APP-010];
- A communications plan [APP-108], secured in Requirement 14(2)(j) of the draft DCO [APP-010]; and
- A traffic management plan (TMP) [APP-110], secured in Requirement 18 of the draft DCO [APP-010].

5.15.4 The Applicant has confirmed in paragraph 1.8 of the Safety Zone Statement [APP-092] that it will not be making an application for safety zones for the offshore works.

EXAMINATION

5.15.5 Paragraph 4.13.1 of NPS EN-1 says that energy production has the potential to impact on the health and well-being of the population and paragraph 4.13.2 says that, as described in the relevant sections, where the proposed project has an effect on human beings, the ES should assess these effects, including cumulative effects.

5.15.6 Paragraph 4.11.1 of NPS EN-1 says that applicants should consult the HSE on matters related to safety.

5.15.7 This section of the report deals in particular with health issues related to EMF insofar as they have not been covered elsewhere in this report. Health issues related to air quality, flood risk, water quality, hazardous substances, noise, pollution, waste, dust and other nuisance are covered elsewhere in this report.

5.15.8 Safety issues pertinent to this application relate to common law and statutory nuisance, security considerations and traffic and transport, and are covered elsewhere in this Recommendation Report.

5.15.9 Several representations mentioned or inferred health considerations from EMF from high voltage (HV) cables close to properties. RR-154 referred to safety issues with the cables being underground.

5.15.10 In its RR [RR-162], PHE said that it could see no record of an onshore EMF assessment having been carried out by the Applicant and asked whether this had in fact been done or whether an assessment of EMF impacts had been scoped out of the ES.

5.15.11 PHE had also raised the matter in its response to the Rule 6 letter [AS-020] so the ExA asked the Applicant (EOn 1.4) [PD-009] to provide further details. The Applicant responded [REP1-044] that it had produced a Health Impacts and EMF Clarification Note [REP1-053] which drew together the various parts of the application and explained how health impacts and the effects of EMF had been assessed in the application. The Applicant also included a letter from PHE [REP1-073] which confirmed that PHE had no further concerns.

- 5.15.12 The ExA also asked the Applicant (EOn 1.8) [PD-009] to explain how operational EMF effects had been scoped out of the assessment, and the Applicant replied that due to the shielding of the cables the level of magnetic field produced above ground will be below the International Commission on Non-Ionizing Radiation Protection (ICNIRP) exposure threshold [REP1-044].
- 5.15.13 Orby Parish Council put in a written submission at D3 [REP3-029] expressing concern about the levels of EMF produced during the routine daily functioning of the cable route, and the Panel was concerned about the wording in the Health Impacts and EMF Clarification Note [REP1-053] and asked the Applicant how it had concluded that the levels of EMF were within safe limits and how it had complied with ICNIRP and DECC guidance (EOn 2.1) [PD-014]. In its response to the ExA, the Applicant explained, using its own detailed calculation, that the level of EMF produced would be well within the ICNIRP limit [REP4-027]. Orby Parish Council did not make any subsequent written submissions.
- 5.15.14 The ExA was also concerned about EMF effects offshore and asked the Applicant (SE 1.5) [PD-009] where the effects from export cables had been considered and assessed. The Applicant explained where these effects had been assessed in the ES and said that the conclusion of negligible significance had been agreed with the MMO [REP5-045] and NE [REP1-072] in their SoCGs. NE signed the SoCG [REP1-072] and confirmed that it had nothing further to add on the matter [REP2-003]; having signed the SoCG [REP5-045], MMO made no further representation on the matter.
- 5.15.15 The ExA was satisfied with these responses.
- 5.15.16 The HSE is a statutory party in respect of this application, but did not register as an IP and did not provide any representations to the ExA during the Examination.
- 5.15.17 An updated outline CoCP was submitted during the Examination [REP7-031] and Requirement 14 of the final draft DCO (Revision G) [REP7-018] confirms that the final CoCP must be in accordance with the outline CoCP. The final versions of the other outline mitigation plans listed previously in this section of the report will form appendices to the final CoCP.
- 5.15.18 The outline Traffic Management Plan (TMP) was also updated during the Examination [REP6-030] and by the end of the Examination was secured in Requirement 19 of the final draft DCO [REP7-018].

REASONING AND CONCLUSIONS

- 5.15.19 The Panel is satisfied that the Applicant's assessment of health and safety issues complies with the requirements of NPS EN-1, and that there would be no significant health and safety effects arising from the proposed development.

- 5.15.20 The Panel was satisfied with the Applicant's overall approach, but had specific concerns relating both to the levels of onshore EMF produced during operation of the proposed development and to offshore EMF effects.
- 5.15.21 The ExA examined these issues in writing and was satisfied with the Applicant's responses.
- 5.15.22 *All parties were in agreement at the end of the examination, and the ExA concluded that all mitigation was secured in the draft DCO and that the proposed development did not raise any health and safety issues.***

5.16 HISTORIC ENVIRONMENT

APPLICANT'S APPROACH

- 5.16.1 The Applicant has assessed the potential effects on the historic environment within Chapter 8 of Volume 3 of the ES [APP-049]. Offshore effects are assessed in Chapter 11 of Volume 2 of the ES [APP-038].
- 5.16.2 Paragraphs 8.21 to 8.48 of APP-049 set out the scope and methodology used to assess the effect of the proposed development on the historic environment, including baseline data, an assessment matrix to ascertain the significance of impact and details of the area of survey.
- 5.16.3 Paragraphs 8.21 and 8.22 of the ES [APP-049] state that the study area to assess the heritage environment extended to 500m along either side of the cable route, and included the landfall area, the IEC and the proposed Substation. Paragraph 8.23 also confirms that the study area extended to the Mean Low Water mark at Anderby Creek.
- 5.16.4 Paragraphs 8.97 and 8.98 of the ES [APP-049] state that construction ground works have the potential to disturb archaeological remains at any stage of the construction process. Paragraph 8.103 of the ES states that there would be no indirect impacts from construction on designated archaeological assets. Table 8-8 of the ES lists 171 identified archaeological assets that could be directly affected by the construction ground works. Effects of negligible or minor significance are identified in respect to most of the undesignated archaeological assets; however significant effects (moderate or major adverse) are predicted in respect to the disturbance of six assets comprising of the remains of green glaze and redwave pottery, flint scrapers and briquetage material. The importance and impact significance of the majority of the 171 identified heritage assets in Table 8-8 of the ES are recorded as uncertain, as limited information on these assets is available.

- 5.16.5 LCC state in their SoCG with the Applicant [REP8-043] that they do not agree with the Applicant's approach to archaeology. This is discussed further below.
- 5.16.6 Paragraph 8.29 of the ES [APP-049] states that there are no Scheduled Ancient Monuments, Registered Parks and Gardens, battlefields or World Heritage Sites within the study area. Paragraph 8.30 states that there is a single Grade II listed structure within the study area which is a Draining Scoop Wheel and Channel which lies to the north of Deangate House (identified as Ref RSK ID 699 and as shown on Map 10, Figure 1.1 within document [APP-085]). Map 10 of [APP-085] illustrates that the cable route and a temporary construction compound (TCC No. 21) would be to the south east of the listed structure, and both are separated from the listed structure by Deangate House.
- 5.16.7 The National Trust (NT) property and historic gardens at Gunby Hall, which is a Grade I listed building, are located 4.8km from the nearest point of the proposed development Order limits, and is therefore outside of the study area. Notwithstanding, paragraph 8.122 of the ES [APP-049] confirms that an assessment of the visual impacts of the Hall was carried out. As no likely significant visual effects, or effects on the setting of Gunby Hall or its associated features were anticipated, an assessment of the effects on this heritage asset was scoped out of the EIA. This view was not disputed by any representation made by IPs during the examination period.
- 5.16.8 Paragraphs 8.32 to 8.36 and Tables 8-3, 8-4, and 8-5 of the ES [APP-049] set out the methodology used by the Applicant to assess the significance of effects. These identify the importance of the asset and the magnitude of change, ranging from a scale of 'very high' to 'negligible/uncertain'. This then informs the significance of impact of the proposed development. A scale of either 'major' or 'moderate' is considered by the Applicant to have a significant impact. A scale of 'minor' and 'negligible' is considered not to be significant.
- 5.16.9 Paragraphs 8.40 to 8.48 of the ES [APP-049], state that the Applicant was not able to gain access to all the land within the Order limits. As such a walkover survey was only possible for parts of Order limits area, and the remainder of the assessment has been undertaken as a Desktop survey. Irrespectively, the Applicant proposes to undertake targeted intrusive investigation works prior to the construction of the development in accordance with a WSI to be agreed post consent. LCC has objected to this approach taken. This will be discussed further below.

EXAMINATION

- 5.16.10 BBC and ELDC have stated in their LIRs [LIR-002 and LIR-001 respectively] the Local Plan policies which they consider apply to the proposed development. They are:

5.16.11 East Lindsey Local Plan Alteration 1999:

- Policy A5 - Quality and Design of Development; and
- Policy C15 – Coastal Conservation.

East Lindsey emerging Local Plan Core Strategy:

- Policy SP17 – Renewable Energy

Boston Borough Local Plan 1999:

- Policy G1 - Amenity; and
- Policy ED11 - Renewable Energy.

5.16.12 The Panel has also had regard to paragraphs in NPS EN-1 in particular part 5.8.8 and 5.8.10, which advises that the level of detail within the ES should be proportionate to the importance of the heritage assets and no more than is sufficient to understand the potential impact of the proposal on the significance of the heritage asset.

Construction effects

5.16.13 The main issues are potential effects on the Grade II listed Draining Scoop Wheel and Channel; the potential effects on historic hedgerows; and the potential effects from the construction of the proposed development to known and unknown archaeological assets as a result of ground works.

i) Grade II listed structure

5.16.14 Paragraph 8.102 of the ES [APP-049] states that there would be no direct physical impacts on the Drainage Scoop Wheel and Channel which lies to the north of Deangate House.

5.16.15 The Panel asked a FWQ AH 1.10 [PD-009] for evidence that there would be no significant harm to the Drainage Wheel given the positioning of a TCC adjacent to it. The Applicant responded [REP1-044] that the Drainage Wheel had been incorrectly plotted on the maps [APP-085], and that the heritage asset is in fact located at a point slightly further to the north and is separated from the TCC by a private residence. The Applicant concluded that there would be negligible significance to the setting of the listed structure.

5.16.16 The Panel also asked a SWQ AH 2.8 [PD-014] and a TWQ AH 3.1 [PD-016] whether the assessment of the effect on the listed structure remained valid in the ES. Historic England's (HE) responses [REP4-011 and REP6-006] stated that it acknowledged the incorrect plotting on its maps, and confirmed that the proposed construction of the development and the TCC would not significantly harm the setting of the listed structure.

- 5.16.17 The Panel did not receive any representations to disagree or dispute HE's advice, and no further questions were deemed necessary in the examination.
- 5.16.18 The Panel acknowledges that a SoCG exists between the Applicant and HE [REP1-069] on which all matters are agreed upon. The Panel agrees with the assessment in the ES [APP-049] and with the views of HE that there would be no significant impact on the Grade II listed structure caused from the construction of the cable route and the presence of a TCC.

ii) Historic hedgerows and landscapes

- 5.16.19 The Hedgerow Plans (Revision C) [REP7-014] and Schedule 10 of the recommended DCO (Appendix D) identify the hedgerows which would need to be removed to construct the cable route. The Outline Landscape Strategy and Ecological Management Plan (LSEMP) (Revision D) [REP7-033] and Requirement 13 (2) of the recommended DCO (Appendix D) requires the submission for approval from the relevant planning authority of an implementation timetable and measures to be taken to reinstate hedgerows on completion of the relevant stage of the onshore works.
- 5.16.20 Hedgerow removal is discussed in greater depth in the Landscape and Visual section of this Chapter. However, in respect of the historic environment, the Panel asked FWQ (AH 1.13) [PD-009] to the Applicant on why they had not categorised historic hedgerows in the ES [APP-049]. The Applicant responded [REP1-044] and explained that the effect on hedgerows was not considered to be significant and that any hedgerow that was removed would need to be replanted as required by Requirement 13 of the recommended DCO (Appendix D).
- 5.16.21 The Panel also sought clarification in FWQ AH 1.15 [PD-009] as to why only a negligible significance was assessed for the removal of medieval ridge and furrow and field systems. The Applicant responded [REP1-044] that the heritage significance of ridge and furrow is principally derived from the aesthetic contribution to the landscape and that this value could be restored during reinstatement works.
- 5.16.22 The Panel did not receive any other representations to disagree or dispute with the effect on historic hedgerows or landscapes, and no further questions were deemed necessary in the examination.
- 5.16.23 The ExA agree with the assessment in the ES [APP-049] and with the views of HE that there would be no significant impact on long term effect on historic hedgerows or landscapes due to the construction of the cable. The ExA are also satisfied that hedgerow replacement would be adequately controlled and regulated within the Outline LSEMP [REP7-033] and in Regulation 13 of the recommended DCO (Appendix D).

iii) Archaeology

- 5.16.24 Table 8-6 of the ES [APP-049] states that prior to the construction of the proposed development, a WSI would be submitted and approved by the local authority. This is secured by Requirement 12 of the recommended DCO (Appendix D). The WSI [REP7-035] would be guided by initial geophysical survey and targeted trial trenching within the Order limits, in order to specify and programme which assets would be either 'preserved in situ', or 'preserved by record'.
- 5.16.25 Paragraph 8.175 to 8.178 of the ES [APP-049] identify measures which would be used to 'preserve assets in situ' including the use of trenchless techniques, narrowing the cable corridor, or "bog matting" laid over archaeological remains to permit plant traffic across the remains and the micro-siting of the cable route within Order limits to avoid impacts. Paragraphs 8.179 to 8.190 of the ES [APP-049] identify the 'preserve by record' approach as topographical survey and reinstatement, formal excavation, 'strip, map and sample (SMS) (which comprises a recording material and securing areas for archaeological mapping and sample excavation to the satisfaction/specification of local planning authority archaeologists, before the area is returned to the main works contractor), and a watching brief. Both measures are secured within the outline WSI [REP7-035] and by Requirement 12 of the recommended DCO (Appendix D).
- 5.16.26 The following matters in relation to archaeology were pursued by the Panel in further questions and discussions:
- the Applicant's approach to pre-construction field surveys;
 - the appropriateness of 'preserve by record' as a form of mitigation;
 - the adequacy of the Outline WSI for pre-construction surveys; and
 - the absence of an assessment in the ES of the Sibsey Memorial.

a) The Applicant's approach to pre-construction field surveys

- 5.16.27 Until the ISH on Local Impacts, held on 19 January 2016 [EV-034], the Panel had received no WR from LCC other than initial doubts in the Evidence Plan that they had any specific concern with archaeology matters.
- 5.16.28 However, at the ISH on Local Impacts [EV-034] and in their subsequent responses [REP5-005 and REP8-017]; and in the D8 SoCG with the Applicant [REP8-043]; LCC stated that they objected to the approach taken by the Applicant to assess potential effects on archaeology. LCC considered that the approach taken by the Applicant to rely on Desktop survey results to undertake their assessment and not to undertake intrusive pre-determination field evaluations was insufficient. LCC stated that without intrusive field evaluation, LCC considered that the evidence base was insufficient to inform the

identification of important heritage assets and to ascertain the extent of any potential effect on such assets.

- 5.16.29 As such, and as set out in the SoCG [REP8-043], LCC did not agree that the baseline data and methodologies which underpin the assessment of effects on the historic environment are appropriate, that the study area adopted for the purposes of the assessment is acceptable, that the Outline WSI does not secure appropriate measures for archaeological investigation and as such Requirement 12 of the recommended DCO (Appendix D) is inadequate. As a consequence, they did not agree with the findings of the archaeological assessment presented in paragraphs 8.102 to 8.192 of the ES [APP-049].
- 5.16.30 In respect to the adequacy of the baseline data, the Applicant stated in its response to LCC's views [REP8-044] that geophysical survey and trial trenching were not considered necessary prior to determination of the application, because the baseline study was considered sufficiently robust to develop a mitigation strategy which can accommodate the discovery of any archaeological remains.
- 5.16.31 The Applicant stated in its response [REP6-035 and REP8-044], and orally put at the ISH on Local Impacts held on 19 January 2016 [EV-034], that the baseline data required and methodology adopted for the archaeological assessment was set out and agreed at the Evidence Plan stage, such that the representations from LCC were somewhat of a surprise to them. In response at the ISH, and confirmed in their subsequent written response [REP5-005], LCC stated their stance had not changed. LCC stated they had made clear at the Evidence Plan stage that they disagreed with the approach for post determination (pre-construction) geophysical survey and trial trenching.
- 5.16.32 The Panel asked LCC at the ISH on Local Impacts held on 19 January 2016 [EV-034], whether in their view, the ES [APP-049] was flawed and inadequate, such that it did not meet the tests of the EIA Regulations. LCC responded that they were not arguing that was the case, but that they expected the ES to be underpinned by more robust and more detailed pre-construction surveys.
- 5.16.33 LCC in their response [REP5-005] further questioned the need for a 60m wide cable corridor, and whether it is required in order to mitigate the effects of the development on unknown archaeology via micro-siting, because the Applicant has undertaken insufficient pre-construction surveys to inform the ES and allow for a more refined route to be defined. The Applicant's response [REP6-035] was that unknown archaeology is just one feature that could be identified either during the pre-construction geophysical and trial trenching surveys or during the construction activities themselves, which could require the line of the cables to deviate.
- 5.16.34 The Applicant states in their response [REP8-044] that the study area is adequate for the purposes of describing the baseline environment

and understanding the potential impacts upon known and potential heritage assets as a result of the proposed development. The Applicant stated that they are not aware that an alternative study area has ever been suggested by LCC.

- 5.16.35 The views expressed by LCC are not shared by HE. Paragraph 4.7 of the SoCG with HE [REP1-069] states that:

"the Applicant's approach to establishing the historic environment baseline to inform impact assessments without understanding geophysical surveys and trial trenching pre-application, when combined with the implementation of measures set out in the Onshore WSI, is a structured substitute approach to ensuring potential historic environmental impacts are appropriately mitigated".

- 5.16.36 Both SoCGs with ELDC [REP2-036] and BBC [REP2-035] agree all matters relating to archaeology and the historic environment. The adequacy of the baseline study has been further substantiated through agreements confirmed with Historic England, [REP1-069], ELDC [REP2-036] and BCC [REP2-035] in the SoCGs and LCC position had not changed by the close of the examination and has been reaffirmed in the SoCG [REP8-043] and response [REP8-017].

Conclusions on pre-construction field surveys

- 5.16.37 Although LCC object to the approach taken by the Applicant, the Panel notes LCC's answer to our question at the ISH on Local Impacts held on 19 January 2016 [EV-034] that they do not consider the ES [APP-049] is flawed or unreliable. Furthermore, LCC did not present in their evidence to the Panel any alternative approach, baseline data, study areas or other methodology which disputed or undermined that which is set out in the ES.

- 5.16.38 On that basis, and having regard to the views of HE as set out in their SoCG with the Applicant [REP1-069], the Panel concludes the following:

- the study area as set out in the ES was appropriate and justified by the Applicant in the absence of any reasonable alternatives provided;
- that the baseline conditions have been accurately established based on the information available and sufficient data has been provided in accordance with the EIA Regulations;
- that the need for intrusive field evaluations is appropriately secured within Requirement 12 of the recommended DCO (Appendix D) and the Panel is satisfied that the outline WSI demonstrates the necessary commitments;
- that regardless of the fact that this work would be carried out post consent, the necessary evaluation data will be available to inform the mitigation strategy;

- that the extent of the cable corridor will give the Applicant appropriate flexibility to undertake any mitigation measures required; and
- that all aspects of the Applicant's assessment and approach to undertaking further survey work have been agreed with BBC, ELDC and HE in their SoCG [REP2-035, REP2-036 and REP1-069 respectively].

5.16.39 The ExA acknowledge that LCC dispute the approach to undertaking intrusive work and refining the mitigation strategy post consent. However, the Panel is content for the reasons given above that the scope of the works and agreement of the mitigation measure will be within the ultimate control of LCC through the discharge of the requirements.

5.16.40 In coming to our conclusion, we note that HE and the local planning authorities are content with the approach taken by the Applicant

5.16.41 The ExA therefore find the approach to pre-construction field surveys is acceptable.

b) Outline Onshore Written Scheme of Investigation (WSI)

5.16.42 For the reasons set out above in the Applicant's approach to pre-construction field surveys, LCC in their response to SWQ AH 2.10 [REP4-009], and in the SoCG between themselves and the Applicant [REP8-043], stated that the Outline WSI does not provide a suitable indicative form for the final onshore WSI that is required to be submitted and signed off pre-construction by the relevant local authority under the recommended DCO (Appendix D). LCC maintains that appropriate mitigation cannot be determined until informed by evaluation results from pre-construction surveys. LCC also considers the WSI does not adequately secure appropriate measures for further archaeological investigation, in order to ensure appropriate mitigation is applied during construction. The Applicant's response, as set out above, was that the approach taken has been agreed with HE and is set out in the SoCG between HE and the Applicant [REP1-069].

5.16.43 Requirement 12 of the recommended DCO (Appendix D) requires a WSI, based on the Outline WSI (Revision B) [REP7-035] to be submitted to the local planning authority which would set out how archaeological works would be carried out during construction. The WSI must identify areas where archaeological work is required, and the measures to be taken to protect, record or preserve any considerable archaeological remains that may be found, as defined in the Outline WSI (Revision B) [REP7-035].

5.16.44 As originally submitted, the Requirement 12 of the draft DCO (Revision G) [REP7-018] and the measures set out in the originally submitted Outline WSI] would only apply to the construction period. This is because Article 2 of the draft DCO (interpretation) excludes

from the definition of 'construction' "the pre-construction archaeological investigations".

- 5.16.45 The Panel raised in SWQ AH 2.1 [PD-014] and orally at the ISH on Local Impacts held on 19 January 2016 [EV-034] whether Requirement 12 of the draft DCO should capture pre-construction field testing. The Applicant agreed and a new paragraph 4 was inserted into Requirement 12 to deal with pre-construction surveys. A revised Outline WSI was submitted at D7 [REP7-035]. The Panel did not receive any further representations in relation to the insertion of paragraph 4 to Requirement 12 of the draft DCO (Appendix D). The Panel acknowledges that LCC dispute the content of the Outline WSI [REP7-035]. However, the Panel is that the scope of the works and agreement of the mitigation measure would be within the ultimate control of LCC through the discharge of the requirements.
- 5.16.46 The Panel therefore finds the approach taken in the Outline WSI [REP7-035] is acceptable and is adequately secured in the outline WSI (Revision B) [REP7-035] and Requirement 12 of the recommended DCO (Appendix D).

c) Appropriateness of 'Preserving by Record'

- 5.16.47 The Panel raised in FWQ AH 1.4 [PD-009], and SWQ AH 2.2 [PD-014] whether 'preservation by record' is an appropriate mitigation measure. The questions respond to the wording in paragraph 5.8.19 of NPS EN-1 in which it states that:

"a documentary record of our past is not as valuable as retaining the heritage asset and therefore the ability to record evidence of the asset should not be a factor in deciding whether consent should be given".

- 5.16.48 The Applicant's response [REP4-027] stated that in their judgement, NPS EN-1 does not establish that recording is not an appropriate mitigation activity, rather that it is not as valuable as retaining heritage assets. The Applicant further states that paragraph 5.8.20 of NPS EN-1 should also be read with 5.8.19, as this stated that where the loss of the whole or a material part of a heritage asset's significance is justified, excavation and recording should be undertaken. The purpose of this is to avoid applicants asserting that any impact can be successfully mitigated by recording itself, and thereby inviting the destruction of archaeological remains which would have otherwise best been preserved in situ.
- 5.16.49 The Applicant further points out that if a heritage asset is found during the pre-construction and construction periods, in accordance with the Onshore WSI the Applicant can seek to microsite the cables around or away from the asset (where the 60m corridor width is otherwise unconstrained); or install the cables beneath the archaeological assets using trenchless techniques. The Panel questioned at ISH on Local Impacts held on 19 January 2016 [EV-034] whether this was technically feasible if an archaeological asset of high importance was

found. The Applicant responded that this was unlikely but that a solution would have to be found if such a find occurred, and that this is secured in the outline WSI [REP7-035] and in Requirement 12 of the recommended DCO (Appendix D).

- 5.16.50 The Panel did not receive any representations which disputed or disagreed with the Applicant's approach to 'preserve by record', and the Panel did not pursue this matter further in third questions. The Panel acknowledges that a SoCG exists between the Applicant and Historic England (HE) [REP1-069] on which all matters are agreed upon.
- 5.16.51 The Panel is satisfied that the Applicant has provided robust reasoning to 'preserve by record' if necessary, and that such measures are adequately secured in the outline WSI (Revision B) [REP7-035] and Requirement 12 of the recommended DCO (Appendix D).

d) Sibsey Memorial

- 5.16.52 The Sibsey Memorial at Sibsey Northlands has not been identified as a heritage asset by the Applicant in the ES [APP-049]. Both ELDC and LCC stated in their LIRs [LIR-001 and LIR 003] that the Sibsey Memorial relates to a crashed Lancaster bomber in WWII where lives were lost and not all remains recovered. The site is therefore seen as a 'war grave'. The proposed route does not pass through the memorial field, but the circumstances of the crash are not fully known and debris may have spread beyond the immediate crash site. LCC and ELDC both state that they would wish for assurances and guarantees that the crash site would be safeguarded during the construction phase. In particular the area should be hand worked by metal detectors prior to any works.
- 5.16.53 In response to FWQ AH 1.14 [PD-009], the Applicant issued a document entitled the Sibsey Lancaster Memorial Clarification Note at D1 [REP1-054]. Here, the Applicant sets out its understanding of the Sibsey Memorial, how access to the Memorial would be maintained and how potential archaeological assets would be protected during the construction of the proposed development.
- 5.16.54 The Panel further explored the issue by asking SWQ AH 2.3, AH 2.4, AH 2.5, AH 2.6 and AH 2.7 [PD-014] in respect to how access to the Memorial would be maintained and managed during the construction of the proposed development, how the Applicant intends to communicate with the Sibsey Memorial Trust to inform them of construction activities, and how human remains or artefacts associated with the crash site would be handled if encountered. The Applicant responded [REP4-027] stating that the access would remain open and managed during construction and all matters relating to construction and restoration of access are controlled by Requirements 14 and 21 of the recommended DCO (Appendix D). Human remains were controlled by other legislation however the Article 4 Part 4 of the

draft DCO includes a procedure for dealing with human remains. The Panel did not receive any further representations from IPs.

- 5.16.55 The ExA are satisfied that the Sibsey Memorial would be adequately safeguarded during the construction of the proposed development and that the Applicant has had due regard to the Memorial and had demonstrated that mitigation measures would be in place to protect the memorial and potential crash finds.

Overall conclusion on construction effects

- 5.16.56 The Panel acknowledges the objections raised by LCC in respect to the approach taken by the Applicant to pre-construction surveys and the Outline WSI [REP7-035]. However in the absence of any robust evidence to the contrary and for the reasons set out above, the Panel finds the approach to archaeology would be acceptable, that there would be no significant effects on the historic environment caused by the construction of the proposed development, and that mitigation is adequately secured by Requirement 12 of the recommended DCO (Appendix D).

Operational effects

- 5.16.57 Paragraph 8.120 of the ES [APP-049] states that once installed, the onshore elements of the TKES would have no direct or indirect effects on built heritage within the study area. Paragraph 8.121 of the ES states that there will be no further excavation of undisturbed ground. Repair work to established infrastructure would make use of the structures in place (for example transition bays and jointing pits). There are no anticipated significant impacts on the historic environment arising from the operation of the proposed development. Paragraph 8.122 of the ES states that there would be no significant I impacts on the setting of heritage assets from the above ground elements of the project, namely the substation and the IEC.
- 5.16.58 The Panel did not receive any written or oral representations in respect to the operation of the proposed development on the onshore heritage environment, as such, the ExA is content with the findings of the ES in this regard.

Decommissioning

- 5.16.59 Paragraph 8.123 of the ES [APP-049] states that decommissioning works will only take place within the footprint of the original construction ground works, and will therefore not introduce any additional direct archaeological or historic physical impacts for consideration. The paragraph goes on to state that with the agreement of the consultees, further consideration of impacts during decommissioning has been scoped out of the EIA. The Panel did not receive any representations from IPs to dispute or disagree with ES. The Panel did not raise any questions in this regard and did not raise the matter further in the examination.

5.16.60 The Panel is satisfied that decommissioning matters would not have any direct or indirect effects on archaeology or the historic environment.

Cumulative effects

5.16.61 Table 8-9 and paragraphs 8.124 to 8.151 of the ES [APP-049] identify five 'Tier 1' developments, and two 'Tier 2' which are identified within the radius of the cable corridor. Table 8-10 of the ES states that the maximum adverse scenario would be a situation where the same element of a heritage asset located within the Proposed Development Boundary is physically impacted upon on more than one occasion. Paragraph 8.149 states that the nature of archaeological remains is such that direct impacts cannot occur more than once to the same receptor (or part of a receptor); the impact is either avoided and the receptor preserved in situ, or impacted and destroyed. Where it is to be destroyed during development works, if the impact is considered significant the site is 'preserved by record' by mitigation measures and it cannot therefore be damaged again during a subsequent development at the same location. Accordingly, paragraph 8.151 states that the cumulative direct physical impacts on the historic environment would not be significant.

5.16.62 The ExA did not receive any representations from IPs which raised any specific concerns in respect to the assessment and views reached by the Applicant in respect of the cumulative effects from the proposed development on the archaeology and historic environment matters. The Panel felt no questions were necessary during the examination of the proposed development in this regard.

5.16.63 Having examined the evidence before us including mitigation measures which is set out in the main chapter on this subject, and having regard to the RRs received including SoCGs also set out in the main chapter, the Panel concludes that there would be no significant impact caused from the cumulative impacts of other planned projects taken with the proposed development on archaeology and the historic environment.

SoCG

5.16.64 The Panel notes that SoCGs have been signed between the Applicant and ELDC [REP2-036], BBC [REP2-035] along with HE [REP1-069] already discussed above in which the scope and methodology, the existing environment, the key parameters for assessment and embedded mitigation, assessment of impacts, mitigation, potential cumulative impacts and inter-related effects as set out in the ES [APP-049] are matters agreed between the parties.

CONCLUSION AND RECOMMENDATION

5.16.65 The ExA agrees that the construction of the proposed development and the placement of a TCC in the vicinity of the Grade II Listed

Draining Scoop Wheel and Channel would not have a significant impact on its setting. The ExA is satisfied that hedgerow replacement is adequately controlled and regulated within the OLSEMP [REP7-033] and in Requirement 13 of the recommended DCO (Appendix D).

- 5.16.66 The ExA has examined the objections raised by LCC in respect to the approach taken by the Applicant to pre-construction surveys and the Outline WSI [REP7-035]. However in the absence of any robust evidence to the contrary and for the reasons set out above, the Panel finds the approach to archaeology would be acceptable, that there would be no significant effects on the historic environment caused by the construction of the proposed development, and that mitigation is adequately secured by Requirement 12 of the recommended DCO (Appendix D).
- 5.16.67 The ExA is satisfied that 'preservation by record' has been justified as an appropriate means of mitigation should archaeological remains be found.
- 5.16.68 The ExA are satisfied that the Sibsey Memorial would be adequately managed and maintained and not harmed during construction of the proposed development, and such matters are secured through Requirements 14 and 21 of the recommended DCO (Appendix D).
- 5.16.69 The ExA is therefore satisfied that there would be no significant effects from the construction, operation, and decommissioning phases on the historic environment. There would also not be any significant potential cumulative effects. The ExA is satisfied that mitigation is adequately set out in the recommended DCO (Appendix D) and on which control for discharging those requirements rests with LCC.
- 5.16.70 The ExA is therefore satisfied that there would be no significant effects from the construction, operation, and decommissioning phases on the historic environment. There would also not be any significant potential cumulative effects. The ExA is satisfied that mitigation is adequately set out in the recommended DCO (Appendix D) and on which control for discharging those requirements rests with LCC.
- 5.16.71 The ExA concludes that the proposed development would accord with ELDC Local Plan policies A4, C15 and SP17, and with BBC Local Plan policies G1 and ED11 and with Part 5.8 of NPS EN-1.

5.17 LAND USE

APPLICANT'S APPROACH

- 5.17.1 Chapter 5 of Volume 3 of the ES [APP-046] deals with Land Use, Soils and Agriculture. This is covered in Section 5.4 of this Chapter.
- 5.17.2 Chapter 5 of Volume 3 of the ES [APP-046] states in paragraphs 5.25 and 5.26 that the land use overall is:

"... principally agricultural predominantly comprising medium-sized open arable fields surrounded by drainage ditches, with networks of narrow drains and farm tracks. At the landfall point, the land is a flat coastal zone which largely consists of open arable land. There are coastal protection bunds and sand dunes located between the farmland and beaches.

The Intermediate Electrical Compound site is located across two medium sized arable fields and is relatively flat. The Substation site is also flat and comprises medium to large sized open arable fields which are geometrically even in their layout and are separated by a network of narrow drainage ditches and farm tracks."

EXAMINATION

- 5.17.3 In considering issues related to Land Use, the ExA have had regard to section 5.10 NPS EN-1. This section covers open space, sports and recreational buildings and land, the best and most versatile agricultural land in grades 3b, 4 and 5, coastal recreation sites and features green belt and green infrastructure.
- 5.17.4 In terms of open space, sports and recreational buildings and land including coastal recreation sites and green belt and green infrastructure, part of the study area includes land identified as Lincolnshire Coastal Grazing Marsh (LCGM).
- 5.17.5 Whilst Chapter 5 of Volume 3 of the ES [APP-046] states that there are no areas of open access land or common land within the study area (paragraph 5.29), the Applicant does state in paragraph 11.27 of the updated Statement of Reasons (Revision C) [REP7-029] that a section of beach at Anderby Creek may be considered to be open space because it is used by members of the public for recreational purposes. The issue of open space in these terms is dealt with in the Chapter on CA in this Recommendation Report.

REASONING AND CONCLUSIONS

- 5.17.6 Issues related to soils and agriculture are considered in Section 5.3 of this Chapter of the Recommendation Report. Therefore, this Section deals with aspects of land use only.

The LIRs of ELDC [LIR-001], BBC [LIR-002], NKDC [LIR-004] and LCC [LIR-003] do not raise issues of land use related to green belt or green infrastructure. Table 5-1 of the ES Volume 3: Chapter 5 [APP-046] states that:

"Neither Boston Borough Council nor East Lindsey District Council Local Plans define areas of Green Belt in the vicinity of the proposed development."

- 5.17.7 ***The ExA have taken into account the fact that the proposed development would not, if consented, impinge on any green***

belt and consider that this application does not raise additional issues related to land use that are not considered in Sections of this report dealing with agriculture, tourism and recreation and compulsory acquisition.

5.18 LANDSCAPE AND VISUAL IMPACT ASSESSMENT

APPLICANT'S APPROACH

- 5.18.1 The Applicant has assessed the potential effects on the landscape and identified visual receptors within Chapter 2 of Volume 3 of the ES [APP-043]. No assessment was undertaken in the ES in respect to Seascape Effects, however in accordance with paragraph 5.9.1 of NPS EN-1, we examine potential effects below.
- 5.18.2 Paragraphs 2.17 to 2.86 of the ES [APP-043] set out the scope and methodology approach used to assess the effects of the proposed development on landscape and visual, including baseline data, an assessment matrix to ascertain the significance of impact and details of the area of survey.
- 5.18.3 It states that the assessment on landscape character has been drawn from relevant Landscape Character Assessments 2009 for both ELDC and BBC. The assessment is based upon the methodology approach and guidance set out in the Landscape Institute and the Institute of Environmental Management and Assessment 2013 entitled 'Guidelines for Landscape and Visual Impact Assessment Third Edition'.
- 5.18.4 The assessment on visual effects has been ascertained through identified visual receptor points selected by the Applicant using a radius of 3km around the above ground installations at the IEC; the proposed Substation and the NGET Substation; and 1km around the below-ground cable route. The Panel asked at FWQ LV 1.3 [PD-009] the reasons for the radii chosen. In response, ELDC [REP1-004], BBC [REP1-002] and the Applicant [REP1-044] stated that the approach had been agreed by the LPAs at the Evidence Plan stage and that the distances were considered to be appropriate to assess the visual impact. Tables 2-8 and 2-9 of the ES [APP-043] provide an explanation for the specific selected viewpoints chosen. Both ELDC and BBC agreed with the chosen viewpoint locations and did not feel any additional were necessary. The Panel did not receive any representations to the contrary.
- 5.18.5 Table 2-8 of the ES [APP-043] shows that the proposed IEC was assessed from 12 viewpoint locations. Table 2-9 shows that the proposed Substation was assessed from 11 viewpoint locations, and eight of these were simultaneously used for the assessment of the visual effects of the construction and operational 'Unlicensed Works' at the existing NGET Substation. Photomontages submitted with the application [APP-067 to APP-072] illustrates the proposed development, together with mitigation planting at year 15 from some viewpoints following completion of the development.

- 5.18.6 Viewpoint 10 for the IEC, and Viewpoint 8 for the proposed Substation lie outside the 3km search area. Viewpoint 10 for the IEC is 6.2km distance from the site for the IEC and lies within the Lincolnshire Wolds AONB. The Applicant states in the ES [APP-043] that it was important to consider the effects in this regard. Viewpoint 8 in respect to the proposed Substation was selected because of the presence of a residential receptor and that it lay just outside the search area, such that a precautionary approach was taken.
- 5.18.7 The selection process for the chosen sites for the IEC and proposed Substation are set out in the Chapter 4 Volume 1 of the ES (Site Selection and Alternatives) [APP-023]. Paragraphs 4.129 to 4.145 in respect of the IEC, and 4.209 to 4.218 in respect of the proposed Substation of the ES set out the criteria used to identify the long list of sites, which include matters such as consideration of the sites' proximity to wildlife areas, landscape importance areas, listed buildings and conservation areas.
- 5.18.8 Table 2-14 of the ES [APP-043] sets out the mitigation measures. For construction, the ES states that, amongst other things, careful design of the IEC, proposed Substation and cable route to avoid areas of sensitivity and loss of vegetation, control of artificial lighting (which is secured by Requirement 14 of the recommended DCO (Appendix D), and reduction of working widths to watercourses and hedgerows are all measures that would be implemented.
- 5.18.9 In respect of the IEC and proposed Substation during construction and operation, mitigation in the form of planting around would be proposed in accordance with the LSEMP revision D [REP7-033] which is secured through Requirement 6 of the recommended DCO (Appendix D).
- 5.18.10 The methodology was not challenged during the Examination. However at D8, LCC in its SoCG with the Applicant [REP8-043] stated that it does not agree with the ES in that a detailed assessment has been undertaken, or that no significant effects on the landscape and visual context are predicted beyond those identified. This is discussed further below.

EXAMINATION

- 5.18.11 The Examination deals firstly with the construction and operational phases of each component part of the proposed development, and the discussions and questions put by the Panel. An assessment of the decommissioning and cumulative effects follows. We then set out our conclusions and recommendations on the effects of the proposed development on landscape and visual.
- 5.18.12 BBC and ELDC have stated in their LIRs [LIR-002 and LIR-001 respectively] the Local Plan policies which they consider apply to the proposed development. They are:

East Lindsey Local Plan Alteration 1999:

- Policy A4 - Protection of General Amenities; and
- Policy A5 - Quality and Design of Development

East Lindsey emerging Local Plan Core Strategy:

- Policy SP15 - Landscape

The East Lindsey District Landscape Character Assessment 2009.

Boston Borough Local Plan 1999:

- Policy G1 - Amenity;
- Policy G2 - Wildlife and Landscape Resources;
- Policy G10 - External lighting schemes;
- Policy ED11 - Renewable Energy; and
- Policy CO1 - Development in the Countryside

The Boston Borough Landscape Character Assessment 2009.

- 5.18.13 The Panel has also had regard to paragraphs in NPS EN-1 in particular parts 4.4 and 5.9. Part 4.4 advises on alternatives and states that applicants are obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied, which should include an indication of the main reasons for the applicant's choice, taking into account the environmental, social and economic effects. Part 5.9 advises on landscape and visual matters including the matters the Applicant should examine in its assessment of its scheme, decision making, and mitigation.

The Transitional Joint Bays (TJB) at the Landfall at Anderby Creek North

Construction effects

- 5.18.14 Tables 1-2 of the ES [APP-042] (Onshore Project Description) and 2-13 of the ES [APP-043] set out the detailed description of the works involved, and the timescales involved in the construction of the TJBs. The Outline CMS (Revision F) [AS-052] states that the final choice of the type of trenchless crossing for the beach area will be determined through further studies and the final approval of the CMS would be secured through Requirement 14 of the recommended DCO (Appendix D).
- 5.18.15 Volume 5 Annex 2.1 of the ES [APP-065], and paragraph 2.398 of the ES [APP-043] state that the landfall lies within the J1: Tetney Lock to Skegness Coastal Outmarsh as defined within the East Lindsey District Landscape Character Assessment 2009. ELDC's responses to D1 [REP1-005] and the LIR [LIR-001] state that Anderby Creek lies within the K1: Donna Nook to Gibraltar Point Naturalistic Coast. The Panel is not clear from the evidence before us which Character Area the

landfall site lies, and as such we have had regard to both in our Examination.

- 5.18.16 The area of the landfall also falls within the LCCP and the LCGM. Both ELDC and LCC in their LIRs [LIR-001] and [LIR-003] state that the LCCP is a LCC initiative with a vision to provide:
- "a dynamic and extensive Coastal Country Park, along the Lincolnshire Coast...providing high quality facilities for people and better protection for wildlife" and "a more sustainable, varied and attractive coastal landscape".*
- 5.18.17 LCGM is defined as a partnership of bodies with a project aim to conserve and enhance marshland.
- 5.18.18 Paragraphs 2.393 to 2.403, and 2.438 to 2.446 of the ES [APP-043] assesses the landscape and visual effects from construction at the landfall area. It states that because users of the LCCP and surrounding PRoW would experience a notable change to the quality and character of the area, the level of landscape and visual effects of construction would be significant. However because the significance relates only to the construction period, the ES states that the effects would be not long-term and the effects would be reversible.
- 5.18.19 Paragraph 7.16 of the Outline LSEMP (Revision D) [REP7-033] states in relation to mitigation embedded in the project design:
- "Considering the landfall point specifically, the beach area at Anderby Creek will be returned as far as is practicable to its original condition. In addition, the TJBs have been located away from the beach area and will be situated within inland of the sand dunes, within the onshore cable corridor in fields. Each TJB will require land raising of up to 1.5 m. However, the completed TJBs will appear similar in appearance to earth bunds which are typical within the locality, beside drains, albeit smaller in scale and with two manhole covers (1.1 sq m) evident above ground."*
- 5.18.20 As the site lies within the LCGM, the Outline CMS (Revision G) [AS-052] states that additional specific mitigation measures would be undertaken by seeding the area of raised ground with an appropriate native wild flower rich grassland mix that reflects similar habitats in the surrounds using where possible, a seed source of local provenance. Both the Outline LSEMP and the Outline CMS are secured by Requirements 6 and 14 of the recommended DCO (Appendix D).
- 5.18.21 As a result of the mitigation, and having regard to its temporary construction time period, the ES [APP-043] states that there would be no permanent or residual effects after mitigation planting following construction works.

Operational effects

5.18.22 The ES [APP-043] states that because the transitional joint bays (TJBs) would be below ground, there would be no operational effects on landscape and visual receptors.

Discussion

- 5.18.23 The Panel received a number of representations on the choice of Anderby Creek as the landfall point. The Panel concluded the main issues were:
- whether alternative landfall locations and interface connections points had been properly considered by the Applicant, particularly whether at the Humber Estuary where existing infrastructure exists; and
 - whether Anderby Creek South would be a preferable site for the landfall.
- 5.18.24 On the matter of the alternative landfall sites, the Panel sought to explore in FWQ Alt1.1, and Alt 1.3 to Alt 1.8 [PD-009] whether the Applicant had adequately explained why existing energy infrastructures, particularly around the Humber Estuary could not be used.
- 5.18.25 The Applicant responded [REP1-044], reiterated by NGET in their response [REP1-034] that NG have a duty under Section 9 of the Electricity Act to not only accept application to connect to the Grid, but to ensure those connections and the design of elements of the transmission network are economic and efficient. The infrastructure at the Humber Estuary would, they say, need to be considerably reinforced, such that they would not be the most economical solution. The existing NGET Substation at Bicker Fen, on which the proposed development would connect to the Grid, could accommodate the project with only minor modifications.
- 5.18.26 On the matter of Anderby Creek South, the Panel questioned the choice of Anderby Creek North and requested the Applicant in the FWQ Alt 1.20, Alt 1.21 and Alt 1.22 [PD-009] to respond to a representation from the NFU [RR-048] which stated that Anderby Creek South would be "*considerably preferable and would enjoy the support of the local community*". The Applicant responded [REP1-044] stating that LWT, which owned the land at Anderby Creek South, had plans to enhance the wildlife value of the area by creating seasonally and permanently flooded areas. The Applicant also states that to construct the landfall and the TJBs at Anderby Creek South would have resulted in "*greater environmental and construction challenges to avoid disturbances to such wildlife*". By contrast, the Applicant stated that although more rural and tranquil in character, landfall at Anderby Creek North was "*less environmentally harmful*". LWT's response [REP1-014] and the SoCG [REP4-064] corroborate the Applicant's response. The use of Anderby Creek South as a landfall option was not challenged in any further representations.

Conclusion on TJBs and Landfall works

- 5.18.27 Whilst the Humber Estuary was put forward as an alternative by IPs the ExA received satisfactory answers from both the Applicant and NG as to why the Humber Estuary was not a viable or reasonable alternative for the interface point, and the Panel did not receive any counter arguments to persuade us that the Humber Estuary was an obviously preferable location in landscape and visual terms. Having heard the evidence from LWT, the Panel is also satisfied that Anderby Creek South was not a viable alternative the proposed landfall site. We therefore find the Applicant accords with the requirements set out in Part 4.4 of NPS EN-1.
- 5.18.28 The ExA agrees with the assessment in the ES that the construction effects of the proposed development on the landscape character and visual receptors at Anderby Creek would be significant. The ExA agrees however that the construction period would not result in any permanent significant effects and would be reversible in a reasonable time period, and that mitigation planting within the LCGM would be sufficient to ensure there would be no residual significant landscape or visual effects. The ExA is satisfied that the mitigation planting measures set out in the Outline LSEMP and the Outline CMS are secured within Requirements 6 and 14 of the recommended DCO (Appendix D).
- 5.18.29 The ExA is satisfied that the construction and operational phases of the TJBs and landfall works would accord with ELDC Local Plan policies listed above and with Part 5.9 of NPS EN-1.

The Intermediate Electrical Compound (IEC) at Orby

Construction effects

- 5.18.30 The site for the IEC would be on agricultural land located on the south side of Marsh Lane at Orby [Works Nos 9 and 9A]. The land is largely open; but is surrounded on two sides by the Skegness Stadium and a grain store. A temporary construction compound (TCC 4) would be sited to the south of the existing adjacent grain store and to the south west of the IEC [Works No.10].
- 5.18.31 Table 1-2 of the ES [APP-042] and Table 2-10 of the ES [APP-043] set out the detailed description of the works involved, and the timescales involved in the construction of the IEC. The maximum building heights and total area are secured in Requirement 5 of the recommended DCO (Appendix D).
- 5.18.32 The site for the IEC is not designated for any purpose within the ELDC Local Plan. However the Landscape Character Assessment 2009 identifies the site as falling within the J1: Tetney Lock to Skegness Coastal Outmarsh landscape character area. Paragraph 2.93 of the ES [APP-043] describes the key characteristics of this landscape character as:

"a component part of a large-scale flat open landscape with a predominance of intensively farmed arable fields. As the landform is flat and the land is largely open agricultural there are wide open views with only a small proportion of views enclosed by gentle undulations, embankments and trees".

- 5.18.33 Paragraphs 2.153 to 2.161 of the ES [APP-043] assess the effects of the proposed development on the landscape character. It states that because the development is considered to affect only a very small part of the overall J1: Tetney Lock to Skegness Coastal Outmarsh landscape character area, the level of effects upon would not be significant.
- 5.18.34 Paragraphs 2.162 to 2.247 of the ES [APP-043] state that with the exception of Viewpoints 4 and 5, the visual effects from the construction of the IEC would not be significant effects, because they are either considered to be sufficiently distant from the IEC site, or that intervening landform, structures or planting prevent a more severe visual effects. Paragraphs 2.187 to 2.199 identify that the two viewpoints would have a significant visual because of the proximity of the construction works to residential properties, but the significance would be time limited and reversible.

Operational effects

- 5.18.35 Paragraphs 2.472 to 2.580 of the ES [APP-043] state that the landscape and visual effects from the operation of the IEC would be similar to the construction effects discussed above, and therefore there would be no significant landscape effects from the operation of the IEC. The significant visual effects that would occur from the two viewpoints owing to the size of the buildings and the proximity of the residential receptors. However mitigation through planting would be successful in reducing the residual significance to negligible effects. Planting mitigation is discussed below.

Discussion

- 5.18.36 ELDC stated in its LIR [LIR-001] that:

"it has particular concern regarding the potential for the industrialisation of what is essentially a rural landscape. Whilst one expects to see agricultural buildings of various types and sizes in the area, one does not expect to see more industrial type infrastructure such as the IEC which can be at odds with the prevailing character".

- 5.18.37 LCC stated in its LIR [LIR-003] that the site for the IEC is:

"an intact rural landscape with a distinctive character reflecting its largely natural, unspoilt and unchanged appearance" and that "the prospect of a nationally significant engineering project ploughing through unspoilt open countryside despoiling such precious assets is anathema to LCC".

5.18.38 The Panel received a number of representations in this regard, and the Panel concluded the main issues were:

- whether an alternative site at Wainfleet Industrial Estate (The Brown Zone 'Site Int_ZA' as referred to in paragraph 4.155 of the ES [APP-023]) would be more appropriate in landscape and visual terms; and
- whether the Applicant's planting mitigation strategy would be effective and whether the photomontages as originally submitted were accurate particularly in relation to the size depicted for the adjoining grain store;

i) Alternative siting of the IEC at the 'Brown Zone'

5.18.39 Table 4-7 and Figure 4-12 of the ES [APP-023] show that a long list of 29 sites were initially identified for the IEC, but these were referred down to three, including the proposed site. Much of the subsequent debate during the examination focused on one of the three shortlisted sites, land identified in the ES as 'Site_ZA, the Brown Zone', at Wainfleet Industrial Estate.

5.18.40 Paragraph 4.164 of the ES [APP-023] states that the Applicant initially chose 'the Brown Zone' for the site for IEC and this was announced by the Applicant in a newsletter in June 2013. However the Applicant goes on to state in paragraph 4.164 of the ES that "*further information [came] to light*" in respect of the 'Vision for Skegness' for the economic expansion of Skegness, part of which would take place within 'the Brown Zone'. The Applicant concluded that it would be "*extremely complicated for the two developments to be co-located*" and therefore chose to switch the IEC to the location proposed within the application.

5.18.41 The Panel sought clarification at FWQ and SWQ (Alt 1.32, Alt 1.33, Alt 1.34, Alt 1.35, LV 2.12 and LV 2.13) [PD-009 and PD-014] on precisely what the 'Vision for Skegness' is and how and why the decision was made to switch the siting of the IEC from 'the Brown Zone' to the proposed site at what appeared to be late in the process.

5.18.42 ELDC in its response to D1 [REP1-005] and in its response to SWQ LV 2.12 [REP4-004] stated that its preference was for the IEC to be located at 'the Brown Zone' and not the proposed site, because it would be less visually harmful and exposed as compared to the proposed site. ELDC explained in its written response to FWQ Alt 1.33 [REP1-005] that the 'Vision for Skegness' is a scheme promoted by the landowner of Wainfleet Industrial Estate for a new road linking the A158 and the A52 together with a northern link road from the A158 to Ingoldmells. ELDC wished to support the 'Vision for Skegness' scheme. As such ELDC withdrew its support for 'the Brown Zone' before the examination of this application. The Applicant stated in its response at D4 [REP4-027] that its decision to switch to the proposed site for the IEC was because in its view, the cable route alignment would not have been compatible with this proposed new road.

- 5.18.43 LCC clarified in its written response [REP4-009] following the ISH on Landscape and Visual held on 18 November 2015 [EV-026] that the 'Vision for Skegness', is "an aspiration" and is not a planned project. The Panel sought further clarification of this point at ISH on Local Impacts held on 19 January 2016 [EV-034]. ELDC, stated that that the Council had never been made aware that the 'Vision for Skegness' was an aspiration only, and stated that it may wish to review its position in respect to the suitability of 'the Brown Zone' for the IEC. ELDC did not subsequently confirm this position or submit a summary of its oral evidence following the ISH on Local Impacts held on 19 January 2016.
- 5.18.44 LCC did not raise any specific concerns over the proposed location of the IEC. It stated in its response to the Panel's SWQ LV 2.13 [REP4-009] that as 'the Brown Zone' already benefits from an extant planning consent for an 84 bed hotel, petrol filling station, public house, drive through restaurant, detached office accommodation and industrial units, and as such the IEC would have been incompatible with those approved uses.
- 5.18.45 The Panel finds that the decision to relocate the siting of the IEC to the proposed site was done so on the basis of the construction of the Skegness bypass which, on the evidence before, appears highly unlikely to be built. It is probable that set against other development, the siting of the IEC at 'the Brown Zone' may have had less significant landscape and visual effects than the proposed site, having regard to the fact the ES [APP-043] identifies significant visual effects from construction and operation phases from two residential receptor points.
- 5.18.46 The ExA will conclude on this point after we have assessed the planting mitigation below.

ii) Photomontages and planting mitigation

- 5.18.47 The Panel sought clarification from the Applicant in FWQ LV 1.12 and LV 1.13 [PD-009] about the relationship between the proposed IEC buildings and the adjacent grain store and Skegness Stadium as shown on photomontage plates 1-1-1a to 1-1-5 [APP-067] and 1-1-11e to 1-1-11i [APP-069] . The Applicant's initial response [REP1-044] stated that the preparation of the photomontages was undertaken to the "*relevant industry standard*".
- 5.18.48 However, the Applicant acknowledged in the same written response that:
- "all photomontages of the GIS building were illustrated incorrectly. The photomontages had been modelled on the IEC GIS building being 11m wide; 41.4m long and 11.5m high, when in fact it should be 12.6m wide, 63m long and 13m high".*
- 5.18.49 Subsequent updated photomontages were submitted by the Applicant [REP1-055, REP1-056 and REP1-057], which the Applicant considered

did not substantially amend the photomontages or affect or undermine the ES assessment on visual impact.

- 5.18.50 Paragraphs 2.562 to 2.569 of the ES [APP-043] state that the assessed visual effects from Viewpoint 11, which is taken directly outside the site on Marsh Lane, would not be significant. The Panel queried this interpretation in FWQ LV 1.9 [PD-009] because we were unclear as to why a more severe impact would not occur having regard to the scale and size of the buildings and the land raising. The Applicant's response [REP1-044] stated that the 'less severe' interpretation was reached because the representative views are only experienced by road users, such that there would only be a low susceptibility to visual change, which affected the outcome of the overall assessment.
- 5.18.51 The ES [APP-043] states that mitigation in the form of tree and shrub planting around the perimeter of the IEC is proposed to offset the identified significant visual effects of the proposed IEC. The planting mitigation would take 15 years to establish and be fully effective. Paragraph 2.473 states that the proposed mitigation planting would be completed in accordance with the Outline LSEMP [REP7-033], which is secured by Requirements 6 and 7 of the recommended DCO (Appendix D).
- 5.18.52 The Panel asked in FWQ LV 1.19 [PD-009] the species of trees proposed by the Applicant and its likelihood of successfully establishing by 'year 15'. The Applicant responded [REP1-044] stating that 27 species of trees that would be used around the IEC, and the Applicant confirms that all are capable of maturing by 'year 15'. The species mentioned do not form part of the LSEMP Revision D [REP7-033], but Requirements 6 and 7 of the recommended DCO (Appendix D) requires the relevant LPA to approve the scheme and for it to be managed and maintained. No further comments were received in respect to the species of planting proposed.
- 5.18.53 The Panel sought to establish in FWQ LV 1.19 and LV 1.20 [PD-009], and at the ISH on Landscape and Visual matters held on 18 November 2015 [EV-026] when 'year 1' actually was. The Applicant responded at the ISH that 'year 1' would be the completion of the development. The Panel questioned whether, for a 25-year project, 15 years was too greater time for the planting to establish, leaving the IEC exposed for a large part of the operational phase. The Panel questioned whether planting could commence at construction stage. The Applicant responded that 'limited planting' could begin at the construction stage, thus allowing further time for the planting to mature. The Panel sought written confirmation of this in SWQ LV 2.15 [PD-014], which the Applicant duly confirmed in its response to D4 [REP4-027].
- 5.18.54 The Panel also queried the term 'limited planting' at the ISH on Local Impacts held on 19 January 2016 [EV-034]. The Applicant and BBC's response at the ISH was that in its interpretation, 'limited planting' referred to the areas around the IEC (and Substation) construction

sites on which planting could be take place rather than a reduced level of planting. BBC and ELDC both stated that in their view it was reasonable approach as set out in the Outline LSEMP [REP7-033] and reiterated their content that construction planting was adequately secured by Requirements 5 and 6 of the recommended DCO (Appendix D).

- 5.18.55 The Panel sought confirmation from both BBC and ELDC at the ISH on Local Impacts held on 19 January 2016 [EV-034] whether they were satisfied that Requirement 6 of the draft DCO Revision F [REP5-035] (unchanged within the recommended DCO (Appendix D) and with the requirements set out in the Outline LSEMP Revision C (unchanged for Revision D) [REP7-033], and whether they were content to control planting mitigation. Both Local Authorities confirmed they were content.
- 5.18.56 The Panel did not receive any comments or objections from IPs following the submission of the updated photomontages, and the Panel is satisfied that the up to date photomontages are fit for purpose as a tool for illustrating the visual assessment.

SoCGs

- 5.18.57 The Panel notes that the SoCG signed between ELDC and the Applicant [REP2-036] agrees that the predicted landscape and visual effects for the IEC would not be significant except for two viewpoints, but that embedded mitigation during the operation and decommissioning of the project would reduce this significance.
- 5.18.58 However the SoCG signed between LCC and the Applicant [REP8-043] states that LCC does not agree with the ES that a detailed assessment has been undertaken, or that no significant effects on the landscape and visual context are predicted beyond those identified. The SoCG arrived shortly before the close of the Examination and as such allowed no time for the ExA to raise additional questions to LCC or the Applicant concerning the views raised in the SoCG.
- 5.18.59 LCC did not make clear in the SoCG whether it was referring to individual component parts of the proposed development such as the IEC in this case, or the project as a whole. Furthermore, the Panel has not received any representations from LCC throughout the Examination to substantiate these views or to specify with which elements of the landscape and visual assessment they disagreed with. The Panel finds that landscape and visual effects have been thoroughly examined and the assessment within the ES [APP-043] is sound.

Conclusion on IEC works

- 5.18.60 As stated above, the ExA finds that the decision to move the siting of the IEC from 'the Brown Zone' to the proposed site was done so on the rather incorrect assumption by the Applicant that Skegness bypass was going to be built. This we have established is highly unlikely to be

the case in the medium term. Nevertheless the Applicant has fulfilled its duty to examine alternative sites and the Application accords with Paragraph 4.4 of NPS EN-1.

- 5.18.61 The ExA agrees with the assessment in the ES [APP-043] that there would be no significant landscape effects from the construction and operation of the IEC.
- 5.18.62 The ExA agrees with the assessment in the ES [APP-043] that there would be significant visual effects from the construction and operation of the IEC from two residential receptor points. The construction phase would be temporary and not long-term, and would be reversible in a reasonable time period.
- 5.18.63 Planting is proposed to mitigate the identified significant visual effects from the operation of the IEC. The ExA finds that the photomontage plate 1-1-4C submitted with the Application [APP-067] indicate that even at year 15, the planting would not fully screen the large buildings and in places would appear as alien features in an otherwise flat and treeless landscape.
- 5.18.64 However, the ExA finds that with a project of this scale and size, such infrastructure is necessary, and needs to be accommodated into the landscape. The planting although indicated as not fully masking the buildings, would have the desired effects such that the buildings would not be readily and obviously visible. Although planting in an otherwise open landscape may appear alien, we judge its presence would be considerably more preferable than having no mitigation at all and the proposed Substation fully exposed.
- 5.18.65 The designs of the building were not raised as an issue in the Examination. However the Panel is satisfied that the approval of design matters is secured by Requirement 5(2) of the recommended DCO (Appendix D). Building heights and the site area is restricted to the maximum assessed in the ES and also secured in Requirement 5 of the recommended DCO (Appendix D). During the Examination, ELDC stated they were content to control such matters.
- 5.18.66 Notwithstanding the views of LCC raised in their SoCG at D8 [REP8-043], the ExA finds that it has robustly examined the methodology approach in the ES [APP-043] and its findings. The ExA finds no reason to disagree with the content of the ES.
- 5.18.67 The ExA concludes that the residual effects after planting mitigation particularly earlier implementation into the construction phase, there would be no significant visual effects from the operation of the proposed IEC.
- 5.18.68 The ExA is satisfied that the construction and operational phases of the IEC works would accord with ELDC Local Plan policies listed above and with Part 5.9 of NPS EN-1.

- 5.18.69 The ExA is satisfied that the Outline LSEMP is robust and adequately secured through Requirements 6 and 7 of the recommended DCO (Appendix D).

The Substation at Bicker Fen

Construction effects

- 5.18.70 The site for the proposed Substation would be on land currently in use as an agricultural field (Works No. 50A). The land is largely open; although its western boundary lies close to the Forty-Foot Drain embankment. The Substation building design is not fixed, as it would depend on the technology used. Two options are proposed. Air Insulated Switchgear (AIS) and Gas Insulated Switchgear (GIS). The proposed Substation, regardless of which technology is ultimately used, would also be served by a permanent access road which would lead from the northern boundary of the site towards with access/egress on to the A17.
- 5.18.71 Table 1-2 of the ES [APP-042] and Table 2-11 of the ES [APP-043] set out the detailed description of the works involved, whether AIS or GIS, and the timescales involved in the construction of the proposed Substation. The maximum building heights and total area are secured in Requirement 5 of the recommended DCO (Appendix D).
- 5.18.72 The site for the proposed Substation is not designated within the current local plan. The BBC Landscape Character Assessment 2009 identifies the site as being within the A1: Holland Reclaimed Fen character area, which is identified as being a very large-scale, open landscape which is sparsely populated and consists almost entirely of farmland.
- 5.18.73 Paragraphs 2.248 to 2.255 of the ES [APP-043] assess the effects of the proposed development on the landscape character from the construction of the proposed Substation. It states that there would be no significant effects because the development amongst other things is considered to affect only a very small part of the overall landscape character area, and that the surrounding landscape already comprises of electrical infrastructure such as the Bicker Fen Wind Farm, the existing NGET Substation and high voltage pylons.
- 5.18.74 Paragraphs 2.256 to 2.332 of the ES [APP-043] state that with the exception of with the exception of Viewpoints 2, 4 and 6, the visual effects from the construction of the proposed Substation would not be significant, because they are either considered to be sufficiently distant from the proposed Substation site, or that intervening landform, structures or planting prevent a more severe visual effects. Because Viewpoint 2 is a Public Rights of Way (PRoW), and Viewpoints 4 and 6 are from the point of view from residential properties, the ES considers that the visual effects from these receptors would be significant in its effects. However the construction period would time limited and its effects would be reversible.

Operational effects

- 5.18.75 Paragraphs 2.581 to 2.679 of the ES [APP-043] state that the landscape and visual effects from the operation of the proposed Substation would be similar to the construction effects discussed above, and therefore there would be no significant landscape effects from the operation of the proposed Substation. Mitigation through planting would be successful in reducing the operational significance to negligible effects.

Discussion

- 5.18.76 LCC's LIR is set out above. BBC stated in their LIR [LIR-002] that:

"the Council accepts the need for the development in this location and that the measures, mitigation and draft regulations that are proposed will go a considerable way to ensuring that the development, in isolation, will not have an adverse impact upon the area".

- 5.18.77 NKDC stated in their LIR [LIR-004] that:

"the Council considers that the proposal would fail to preserve or enhance the character or appearance of the countryside when viewed from within North Kesteven District by virtue of the size of the substation site". NKDC also state that the proposed development would "fail to protect or be well integrated with the Fenland Landscape Character Area when viewed from North Kesteven District. Whilst from some of the Viewpoints the substation would be viewed against the backdrop of the Bicker Fen windfarm and associated substation, nevertheless as a result of the scale of the site and extent of built development proposed, the Council considers that the proposals would visually conflict with some of the key characteristics of the Fenland character area, including its low lying and generally flat relief and generally extensive vistas to level horizons and huge skies. Existing electricity infrastructure is already noted in the LCA as a local landscape detractor. In the Council's view, this would outweigh any positive social or economic impacts upon the residents of the District".

- 5.18.78 The Panel felt the following points required further discussion:

- why the Applicant is unable to direct the Panel as to which technology, AIS or GIS, would be used; and
- whether an alternative site at Cow Bridge ('the Green Zone') would be more appropriate and less visually harmful to the landscape character and visual appearance of the area.

i) AIS vs. GIS technology

- 5.18.79 The Panel queried in FWQ LV 1.4 [PD-009], in SWQ LV 2.9 [PD-014] , and at the ISH on Landscape and Visual Impacts held on 18 November 2015 [EV-026] whether the Applicant was able to confirm which technology it intends to use and the proposed Substation. The

Applicant's response [REP1-044 and REP3-035] continued to state that it is not possible or appropriate at this time to confirm the technology. This is because it forms part of the detailed design stage and the available equipment at the time, but also that the tendering process retains flexibility.

- 5.18.80 The Panel is disappointed with the Applicant's response and considers that it would have been helpful to the SoS, and to local residents, to have some degree of certainty as to which technology would be used and subsequently the size of the buildings that would be constructed. However the Panel recognises that the ES has assessed the worst-case scenario for both technologies, and that maximum building heights for both technologies and the area are secured within Requirement 5 of the recommended DCO (Appendix D).
- 5.18.81 The ExA agrees with the assessment in the ES [APP-043] that there would be no significant landscape effects from the construction and operation of the proposed Substation because such works would not be long-term or permanent and reversible. The Panel agrees that the visual effects from the construction and operation would also not be significant with the exception from three viewpoints. However because construction works would not be permanent, the significant visual effects from those viewpoints would not be long-term and would be reversible.
- 5.18.82 The ExA has detailed its concerns in respect to mitigation planting in its Examination of the IEC, which equally apply to the proposed Substation. The ExA is satisfied that the residual effects after mitigation would ensure that there would be no significant visual effects from the operation of the proposed Substation, whichever technology would be used.

ii) Alternative siting of the proposed Substation at the 'Green Zone'

- 5.18.83 As set out above, Table 4-8 and Figure 4-18 of the ES [APP-023] show that a long list of 19 sites were initially identified for the Substation, which were whittled down to four, including the proposed site.
- 5.18.84 The Panel noted that 'the Green Zone', one of the sites ultimately not selected, is located adjacent to the existing NGET Substation. We asked BBC in FWQ Alt 1.38; Alt 1.39; Alt 1.41 and Alt 1.42 [PD-009] to explain the approach taken to select the proposed Substation site over a site adjoining the NGET Substation, known as Cow Bridge, 'Site Sub_F' 'The Green Zone' and to explain the balance given to the decision.
- 5.18.85 BBC responded [REP1-002] that the visual effects were only one of a number of aspects considered. The provision of a permanent access road, rather than the use of existing residential roads, was a key determining factor in its decision to support the proposed site. BBC responded that it was confident the proposed site had the support of

local residents. The Panel further asked in SWQ LV 2.14 [PD-014] whether 'the Green Zone' could equally have been accessed by a permanent access road. BBC stated in its response [REP4-024] that whilst a permanent road could serve 'the Green Zone', it would not be capable of linking directly to a main road. The proposed site would be accessed directly from the A17, thus for BBC the site was preferable.

- 5.18.86 The Panel is satisfied with the responses provided to our questions and that alternative sites for the proposed Substation have been properly considered in accordance with paragraph 4.4 of NPS EN-1.

SoCG

- 5.18.87 The Panel notes that the SoCG signed between BBC and the Applicant [REP2-035] agrees that the predicted landscape and visual effects would not be significant except for three viewpoints, but that embedded mitigation during the operation of the project would reduce this significance, such that there would be no significant landscape effects from the construction or operation of the proposed Substation, that there would be no significant visual effects from the construction of the proposed Substation, or any residual significant visual effects after planting mitigation from the operation of the proposed Substation.
- 5.18.88 LCC SoCG with the Applicant [REP8-043] is set out above, along with ExA's conclusions on its views.

Conclusion on the proposed Substation works

- 5.18.89 As stated above, the ExA finds that alternative sites were properly considered including 'the Green Zone', and reasons for its selection of the proposed site are clear and justified. The Applicant has fulfilled its duty to examine alternative sites and the Application accords with Paragraph 4.4 of NPS EN-1.
- 5.18.90 The ExA agrees with the assessment in the ES [APP-043] that there would be no significant landscape effects from the construction and operation of the proposed Substation because the construction phase would not be long-term and reversible, and the operation phase would affect only a small part of the overall landscape character area.
- 5.18.91 The ExA agrees with the assessment in the ES [APP-043] that there would be significant visual effects from the construction and operation of the IEC from three residential receptor points. The construction phase would however be temporary and not long-term, and would be reversible in a reasonable time period.
- 5.18.92 Planting is proposed to mitigate the identified significant visual effects from the operation of the proposed Substation. The ExA also finds that the photomontages plates 1-2-2C, 1-2-4C and 1-2-6C submitted with the Application [APP-070 and APP-071] indicate that even at year 15, the planting would not fully screen the large buildings and in places

would appear as alien features in an otherwise flat and treeless landscape.

- 5.18.93 However, the ExA finds that with a project of this scale and size, such infrastructure is necessary, and needs to be accommodated into the landscape. The planting although indicated as not fully masking the buildings, would have the desired effects such that the buildings would not be readily and obviously visible. Although planting in an otherwise open landscape may appear alien, we judge its presence would be considerably more preferable than having no mitigation at all and the proposed Substation fully exposed.
- 5.18.94 The designs of the building were not raised as an issue in the Examination. However the Panel is satisfied that the approval of design matters is secured by Requirement 5(2) of the recommended DCO (Appendix D). Building heights and the site area is restricted to the maximum assessed in the ES and also secured in Requirement 5 of the recommended DCO (Appendix D). During the Examination BBC stated they were content to control such matters.
- 5.18.95 Notwithstanding the views of LCC and NKDC which are stated above, the ExA finds that it has robustly examined the methodology approach in the ES [APP-043] and its findings. The ExA finds no reason to disagree with the content of the ES.
- 5.18.96 The ExA concludes that the residual effects after planting mitigation particularly earlier implementation into the construction phase, there would be no significant visual effects from the operation of the proposed Substation.
- 5.18.97 The ExA is satisfied that the construction and operational phases of the TJBs and landfall works would accord with BBC Local Plan policies listed above and with Part 5.9 of NPS EN-1.
- 5.18.98 The ExA is satisfied that the Outline LSEMP is robust and adequately secured through Requirements 6 and 7 of the recommended DCO (Appendix D).

The Onshore Cable Route and the Temporary Construction Compounds (TCCs)

- 5.18.99 Table 1-2 of ES [APP-042] set out the detailed description of the works involved. Figure 4-9 of the ES [APP-023] identifies three areas of search that were considered for the cable route.
- 5.18.100 The Hedgerow Plans (Revision C) [REP7-014] and Schedule 10 of the recommended DCO (Appendix D) identify the hedgerows which would need to be removed to construct the cable route. Paragraph 6.19 of the Outline LSEMP [REP7-033] states that where hedgerows are being crossed by the cable corridor the width of the cable corridor will be reduced to 30m. Paragraph 6.19 goes on to say that the temporary gaps that would be created in the hedgerows will be filled with the cut

brash to maintain a linear structure during the construction phase, prior to the replanting of the hedgerow.

- 5.18.101 Paragraphs 2.393 to 2.433 of the ES [APP-043] assess the effects of the proposed development on the landscape character from the construction of the cable route. It identifies there would be a significant effects at the landfall point and where the TJBs would be constructed (this is examined above), but elsewhere along the cable route and presence of TCCs would not have significant landscape effects from construction because the development amongst other things is considered to affect only a very small part of the overall landscape character area, and because of its temporary nature.
- 5.18.102 Paragraphs 2.434 to 2.471 of the ES [APP-043] assess the effects of the proposed development on visual receptors from the construction of the cable route. Paragraph 2.470 states that:
- "Significant visual effects have been identified to users of publicly accessible locations within the vicinity of the landfall point; and a relatively small number of residential receptors which are located in close proximity to the construction operations and/or are in close proximity to the proposed location of the construction compounds".* However *"visual effects are temporary"*.
- 5.18.103 The ES [APP-043] states that because the cable route would be entirely underground, and the TCCs would be removed after the completion of the construction phase, there would be no landscape or visual effects, significant or otherwise, from the operation of the proposed development.

Discussion

- 5.18.104 The Panel raised a FWQ LV 1.18 [PD-009] whether the draft DCO [REP7-018] and the Outline LSEMP (Revision D) [REP7-033] were sufficiently precise and robust to ensure that the Applicant would ensure that removed hedgerows would be replaced as existing, and in a timely fashion. The Applicant responded [REP1-044] that the Outline LSEMP [APP-109] and Requirement 13 (2) of the recommended DCO (Appendix D) requires the Applicant to submit an implementation timetable and measures to be taken to reinstate hedgerows on completion of the relevant stage of the onshore works, such that in the Applicant's view, it was sufficiently precise. At the ISH on Landscape and Visual held on 18 November 2015 [EV-026], the Panel sought the views of other parties on this point. ELDC and BBC both stated that they were content that Requirement 13 of the recommended DCO (Appendix D), was precise and clear, and they were content to control such matters.
- 5.18.105 The Panel raised in FWQ LV 1.1 [PD-009] whether the TCCs which would be sited within the LCCP or the LCGM areas would be subject to special measures of landscape protection. The Applicant responded [REP1-044] stating that no specific measures would be proposed,

however each TCC has been located to minimise visual harm such as siting close to field boundaries.

- 5.18.106 No other specific concerns relating to the landscape and visual impact of the cable route were raised in representations by IPs.

Conclusion on cable route and TCCs

- 5.18.107 The Panel notes that Schedule 10 of the recommended DCO lists a considerable number of hedgerows which would be removed. The Panel sought clarification during the Examination that hedgerows that would be removed would be reinstated, and in a timely manner. The Panel accepts the views of BBC and ELDC that Requirement 13 of the recommended DCO is sufficiently precise to ensure hedgerows would be reinstated, and that they are content to control this process of reinstatement.
- 5.18.108 On that basis, the ExA agrees with the assessment in the ES [APP-043] that the construction of the cable route excluding the landfall area which has been already examined, would not have any significant landscape effects caused by the construction of the cable route and the presence of the TCCs.
- 5.18.109 The ExA agrees with the assessment in the ES [APP-043] that significant visual effects occur in the circumstances detailed above. However because the construction works would be temporary, they would not be long-term and would be reversible.
- 5.18.110 The ExA agrees with the assessment in the ES [APP-043] that there would be no significant landscape or visual effects from the operation of the proposed cable route.
- 5.18.111 The ExA is satisfied that the construction and operational phases of the cable route works would accord with ELDC Local Plan policies listed above and with Part 5.9 of NPS EN-1.

The 'Unlicensed Works' at the existing National Grid Electricity Transmission (NGET) Substation

Construction effects

- 5.18.112 Paragraphs 2.336 to 2.343 of the ES [APP-043] identify that 'Unlicensed Works' would be required to the existing NGET Substation at Bicker Fen in order to connect the proposed development to the Grid. It states that because the construction works would be within an existing electricity compound, which is already screened by trees and planting, there would be no significant effects from construction on the landscape character. Paragraphs 2.344 to 2.393 of the ES identify similar reasons to state that there would be no significant visual effects from construction works at the NGET Substation.

Operational effects

- 5.18.113 Paragraphs 2.680 to 2.688 of the ES [APP-043] state that only a relatively small increase in the built form at the NGET substation would occur, such that there would not be any significant landscape effects. Paragraphs 2.689 to 2.735 of the ES state that for similar reasons, there would not be any significant visual effects from identified viewpoints caused by the operation of the NGET substation.

Discussion

- 5.18.114 BBC in its LIR [LIR-002] raised concerns that the information provided within the ES [APP-043] should have taken into account any 'licensed works' which NG would undertake. BBC initially stated that it is:

"concerned that the impacts of Enabling, Licensed or Unlicensed Works...are not fully understood and it seems that this DCO will address the two unlicensed bays within the existing Substation but that the works by NGET are not in front of the Panel".

- 5.18.115 As such, BBC requested at the Preliminary Meeting [EV-001] and within the LIR [LIR-002] that an 'Article 4 Direction' be imposed to restrict the use of licensed works permitted development rights by NG at the existing Substation.

- 5.18.116 However during the course of the Examination, this matter was resolved. While the SoCG between the parties [REP2-035] confirmed this matter remains under discussion, a response received from BBC at the close of the Examination [AS-050] states:

"as an agreed mechanism is likely to be put in place which addresses the Council's concerns, the Borough Council wishes to withdraw its request to the Panel for an 'Article 4 Direction".

- 5.18.117 On 9 November 2015, the Applicant submitted documentation [APP-136] and [APP-135] to request a change to the application by amending the layout and works required to the NGET Substation. The change request relates to the alteration of the location of works which would enable the connection to be made to the Grid. For this change request, the Applicant submitted an ES addendum (Appendix A) [APP-137] which concluded no alteration to the assessments were required. BBC in its response to D3 [REP3-020] raised no objection to the change request and confirmed that the Applicant's review of the ES had been robust.

- 5.18.118 The Panel, having applied the Wheatcroft Principles, decided that the changes were not significant and did not materially alter the application before us, and no party would be prejudiced from commenting on these changes. Accordingly, the Panel formally accepted these amendments into the examination on 11 December 2015 [PD-013].

Conclusion on NGET Substation works

- 5.18.119 For the reasons set out above, the ExA agrees with the assessments in the ES [APP-043 and APP-137] that the additional 'Unlicensed Works' to the existing NGET Substation would not have any significant landscape effects during construction or operation of those works.
- 5.18.120 The ExA also agrees with the assessments in the ES [APP-043] and [APP-137] that the additional 'unlicensed works' to the existing NGET Substation would not have any significant visual effects during construction or operation of those works.
- 5.18.121 The ExA is satisfied that the construction and operational phases of the 'unlicensed works' at the NGET Substation would accord with BBC Local Plan policies listed above and with Part 5.9 of NPS EN-1.
- 5.18.122 The parameters of works are secured in Requirement 5 of the recommended DCO (Appendix D).

Decommissioning

- 5.18.123 The decommissioning works would facilitate the dismantling and removal of any above ground built components of the IEC and the Substation. In respect to the cables, these would be pulled from the cable ducts, leaving the latter in place.
- 5.18.124 Paragraphs 2.736 to 2.745 of the ES [APP-043] state that that for the IEC, Substation and the 'Unlicensed Works' at the NGET substation, the decommissioning work activities would be contained within their respective compounds, which would be encompassed by established planting, such that they would have little influence on the surrounding landscape character or visual appearance of the area.
- 5.18.125 The exact details of decommissioning are not known at this stage. Requirement 22 of Part 5 of Schedule 2 of the recommended DCO (Appendix D) states that an onshore decommissioning plan must be submitted to the relevant planning authority for approval.
- 5.18.126 The Panel received no representations from IPs which disputed or disagreed with the Applicant's approach to decommissioning.
- 5.18.127 The Panel agrees with the assessment in the ES [APP-043] and finds that there would be no significant landscape or visual effects caused from the decommissioning phase. The Panel is satisfied that decommissioning is secured by Requirement 22 of the recommended DCO (Appendix D).

Cumulative effects

The Intermediate Electrical Compound

- 5.18.128 Table 2-29 of The ES [APP-043] identifies the known and planned projects that fall into 'Tier 1' and 'Tier 2'. Table 2-32 of the ES states

that there would be no significant cumulative landscape effects from the construction or operational phases of the IEC because cumulative construction projects would affect a small part of the overall landscape character area.

5.18.129 Table 2-32 of the ES [APP-043] states that there would be no significant cumulative visual effects from the construction or operational phases of the IEC except in the case of two residential receptors, which would be significant in its effects. However as stated in the IEC Examination section of our Recommendation Report, because the construction phase would be temporary, the significance visual effects would not be long-term and reversible. Mitigation in the form of planting would ensure that there would be no significant cumulative residual visual effects from operation of the IEC.

5.18.130 The Panel did not receive any representations from IPs which disputed or disagreed with the cumulative assessment.

5.18.131 The Panel agrees with the assessment in the ES [APP-043] as set out above.

The proposed Substation and 'Unlicensed Works'

5.18.132 Table 2-30 of The ES [APP-043] identifies the known and planned projects that fall into 'Tier 1' and 'Tier 2'. Tables 2-33 and 2-34 of the ES states that there would be no significant cumulative landscape effects from the construction or operational phases of the proposed Substation and NGET Substation works, because cumulative construction projects would affect a small part of the overall landscape character area.

5.18.133 Table 2-33 of the ES [APP-043] states that there would be no significant cumulative visual effects from the construction or operational phases of the proposed Substation except in the case of three residential receptors which would be significant in its effects. However as stated in the proposed Substation Examination section of our Recommendation Report, because the construction phase would be temporary, the significance visual effects would not be long-term and would be reversible. Mitigation in the form of planting would ensure that there would be no significant cumulative residual visual effects from operation of the proposed Substation. Existing planting at the NGET Substation would ensure that there would be no significant cumulative visual effects from the operation of the NGET Substation.

5.18.134 The Panel did not receive any representations from IPs which disputed or disagreed with the cumulative assessment.

5.18.135 The Panel agrees with the assessment in the ES [APP-043] as set out above.

Landfall works and the cable route

- 5.18.136 Table 2-31 of the ES [APP-043] identifies known and planned projects that fall into 'Tier 1' and 'Tier 2'. Table 2-35 of the ES [APP-043] state that there would be significant cumulative landscape effects from the construction of the landfall works. However because the construction phase would be temporary, the significant cumulative landscape effects would not be long-term and would cease at the end of the construction phase. Table 2-35 states that there would be no significant cumulative landscape effects from the construction of the cable route.
- 5.18.137 For similar reasons outline above, Table 2-31 of the ES [APP-043] states that significant cumulative visual effects would occur from construction of the landfall works, but would not be long-term. There would be no significant cumulative visual effects from the construction of the remainder of the cable route.
- 5.18.138 Because the landfall works and the cables would be underground, there would be no significant cumulative landscape or visual effects from the operation of the proposed development.
- 5.18.139 The Panel did not receive any representations from IPs which disputed or disagreed with the methodology assessment or the findings for the potential cumulative effects.
- 5.18.140 The Panel agrees with the assessment in the ES [APP-043] as set out above.

Seascape Effects

- 5.18.141 Paragraph 5.9.1of NPS EN-1 requires seascape to be considered when assessing landscape. Paragraph 2.6.5 of the UK MPS states that:
- "there is no legal definition for seascape in the UK but the European Landscape Convention (ELC) defines landscape as an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors. In the context of this document, references to seascape should be taken as meaning landscapes with views of the coast or seas, and coasts and the adjacent marine environment with cultural, historical and archaeological links with each other".*
- 5.18.142 As set out above, the Applicant has not undertaken a seascape appraisal in the ES. Table 2-2 of the ES [APP-043] states that, following the scoping stage, its understanding was that the requirement to assess seascape matters related only to the historic seascape character which is assessed in [APP-038]. The Panel received no representation for IPs that disputed or disagreed with this approach.

- 5.18.143 LCC in their LIR [LIR-003] raised concerns in respect to the effects of the proposed development on the seascape, particularly in respect of the proposed development at Anderby Creek.
- 5.18.144 As stated above, the ES [APP-043] states that there would be significant effects to landscape character and visual receptors from the construction of the proposed development and the landfall area. Because the offshore works would involve the presence of vessels and barges necessary to lay the offshore cables, the ExA concludes that the construction works would have significant effects on seascape character.
- 5.18.145 As stated above, the beach area at Anderby Creek North would be returned to its original state as practicably possible, and onshore TCCs and offshore construction traffic vessels would be removed. The ExA therefore finds the construction works including vessel traffic would be temporary, such that the identified significant effects to the seascape character would not be long-term and would be reversible.

REASONING AND CONCLUSION

- 5.18.146 The ExA concludes that the methodology approach set out in the ES is robust and accurate.
- 5.18.147 The ExA fully examined and accepts assessment in the ES and the responses from the Applicant that alternative landfall sites particularly relating to the Humber Estuary were explored. The ExA agrees with the assessment in the ES [APP-043] that the construction of the proposed TJBs at the landfall area would have significant landscape and visual effects, but that these would be temporary and not long-term. There would be no significant landscape and visual effects from the operation of the proposed development.
- 5.18.148 The ExA examined fully the alternative sites for the IEC in particular 'the Brown Zone' site. The ExA accepts the assessment in the ES [APP-043] that there would be no significant landscape effects from the construction or operation of the proposed IEC. From two identified viewpoints, significant visual effects are predicted from the construction and operation of the IEC. However construction works would not be long term, and mitigation planting would have the desired effect such that the residual visual effects from mitigation would not be significant. While the proposed site for the IEC is largely free of tree screening, the ExA judges that planting mitigation would be preferable in visual terms to leaving the IEC exposed.
- 5.18.149 The ExA examined fully the alternative sites for the proposed Substation in particular 'the Green Zone' site. The ExA accepts the assessment in the ES [APP-043] that there would be no significant landscape effects from the construction or operation of the proposed Substation. From three identified viewpoints, significant visual effects are predicted from the construction and operation of the proposed Substation. However construction works would not be long term, and

mitigation planting would have the desired effect such that the residual visual effects from mitigation would not be significant. While the proposed site for the Substation is largely free of tree screening, the ExA judges that planting mitigation would be preferable in visual terms to leaving the proposed Substation exposed.

- 5.18.150 The ExA accepts the assessment in the ES [APP-043] that there would be no significant landscape or visual effects from the construction or operation of the cable route and siting of the TCCs.
- 5.18.151 The ExA accepts the assessment in the ES [APP-043] that there would be no significant landscape or visual effects from the construction or operation of the 'unlicensed works' at the NGET Substation works.
- 5.18.152 The ExA accepts the assessment in the ES [APP-043] that there would be no significant landscape or visual effects from the decommissioning of the proposed development.
- 5.18.153 The ExA accepts the assessment in the ES [APP-043] that potential significant cumulative landscape and visual effects from construction of the TJBs at the landfall would occur. There would also be potential significant cumulative visual effects from the construction and operation of the IEC and proposed Substation from certain residential receptor points. However for the reasons set out above, they would be limited to the construction period and mitigation planting would ensure that the residual cumulative visual effects from the operation of the IEC and proposed Substation would not be significant.
- 5.18.154 Although no seascape assessment was undertaken by the Applicant, the ExA concludes that, as with the landfall works and construction of the TJBs, and when taken with the vessel traffic required to construct the offshore cable route, there would be a significant landscape and visual effects from the construction phase. However because the works would be temporary, the effects would not be long-term. The ExA is satisfied that there would be no significant seascape effects from the operation of the proposed development.
- 5.18.155 The ExA has noted the matters not agreed by LCC in their SoCG with the Applicant [REP8-043] and in NKDC's LIR [LIR-004]. However for the reasons already set out, the ExA is satisfied that the construction, operational, decommissioning phases of the proposed would have no significant landscape and visual effects, or no residual significant landscape and visual effects after mitigation planting. There would also be no potential significant cumulative effects on landscape character and visual receptors for reasons already given.
- 5.18.156 The proposed development would accord with ELDC Local Plan A4, A5 and SP15, and with BBC Local Plan policies G1, G2, G10, ED11 and CO1, and with Parts 4.4 and 5.9 of NPS EN-1 and paragraph 2.6.5 of the MPS.

5.19 NOISE AND VIBRATION

APPLICANT'S APPROACH

5.19.1 Noise and vibration were assessed in the ES through ES Volume 3 Chapter 11 Noise and Vibration [APP-052] which had three Annexes: a Noise and Vibration Baseline Report [APP-089], a Noise Modelling of IEC [APP-090] and an Onshore Substation Noise Modelling Report [APP-091].

5.19.2 The ES states that the general approach to assessment was agreed with both BBC and ELDC during the pre-application phase. It identifies the standards and guidance as of relevance to assessing noise impacts. The SoCGs with BBC [REP2-035] and ELDC [REP2-036] both confirm that the impact assessment approach is based on appropriate methodologies and is fit for purpose.

5.19.3 In addition, in its application documents, the Applicant submitted an Outline Noise and Vibration Management Plan (NVMP) [APP-101].

5.19.4 Paragraph 11.1 of Chapter 11 of Volume 3 of the ES [APP-052] states that it:

"... presents an assessment of the potential construction, operational and decommissioning noise and vibration effects ... on people."

5.19.5 It explains this apparent limitation by stating that:

"Effects of noise and vibration on other receptors (e.g. buildings, structures, infrastructure etc.) will be insignificant and therefore are not considered in this assessment."

5.19.6 Paragraphs 11.166 to 11.168 of Chapter 11 of Volume 3 of the ES [APP-052] summarise the assessed impacts of noise and vibration thus:

"The construction noise assessment has identified that all construction noise impacts other than trenchless works are expected to result in, at worst, short term, temporary minor adverse effects. During these works, short term, temporary, major adverse effects are possible during night-time working, depending on the ultimate locations of the trenchless works compounds and when the works actually take place. As such specific mitigation measures have been identified in order to reduce the noise impact of these works.

The operational noise assessment has identified that, whilst the operation of the proposed Substation and Intermediate Electrical Compound will inevitably result in some change in the noise environment in the local vicinity, this impact of operational noise will be at worst a long term, minor adverse noise effect.

Whilst noise impacts from decommissioning cannot be assessed in detail at this stage, the potential effects from decommissioning works

would be similar to or less than those predicted during construction, therefore decommissioning would be expected to result in short term, temporary, minor adverse effects."

- 5.19.7 The Applicant clarified this latter point in respect to decommissioning in paragraph 11.133 of Chapter 11 of Volume 3 of the ES [APP-052], which states that:

"... it is not expected that any trenchless works or excavation of cables would be required during decommissioning, as cables would generally be removed by pulling from the jointing pits. Since all construction noise and vibration effects other than trenchless works are predicted to be of, at worst, minor (adverse) significance, it can be stated that noise and vibration impacts during decommissioning would also be, at worst, short term and temporary and have a minor adverse effect."

- 5.19.8 In respect of traffic, paragraph 11.113 of Chapter 11 of Volume 3 of the ES [APP-052] states that, in relation to noise and vibration:

"From the assessment contained within Volume 3 Chapter 9, 'Traffic and Access', there are no road links that are expected to experience a change in total traffic flow of 10% or greater during construction (see Table 9-17 of Chapter 9). As such, the impact of construction traffic on the local road network can be considered a short term, temporary, minor adverse effect (i.e. an impact of Low or Very Low magnitude at a receptor of High sensitivity)."

- 5.19.9 In respect of, noise and vibration emitted from or caused by a vehicle, machinery or equipment in a street (in relation to Section 79(1)(ga) of the EPA 1990), we note, first, that paragraph 11.113 of Chapter 11 of Volume 3 of the ES [APP-052] stated that the impact of construction traffic on the local road network can be considered a short term, temporary, minor adverse effect.

- 5.19.10 We note, second, that the May 2014 Scoping Opinion from the SoS, quoted in Table 11-2 of Chapter 11 of Volume 3 of the ES [APP-052] stated (para 3.158, third bullet point) that no significant noise and vibration impacts from road traffic vehicles during maintenance visits are likely.

Mitigation

- 5.19.11 Embedded mitigation relating to noise is summarised in Table 11-7 of the ES [APP-052]. This includes (but is not limited to) the following measures for the construction phase:

- restricting noisy activities to the hours of 07:30 to 19:00 on weekdays and 08:00 to 13:00 on Saturdays;
- avoiding night time working where possible and notify the local authority of works outside the construction hours;
- adhering to best practices outlined in BS 5228;
- producing a NVMP prior to commencement of works;

- constructing temporary noise barriers prior to preparation of a temporary construction compound within 100m of a residential property;
- sheet steel piling would utilise vibratory piling rather than impact piling (as detailed in the outline CMS); and
- installing temporary noise barriers around trenchless compounds.

5.19.12 Unless indicated otherwise, these measures are included in the outline CoCP [APP-098] and/or Outline NVMP [APP-101] that were provided with the application. The CoCP would be secured through Requirement 14 of the recommended DCO (Appendix D).

5.19.13 Paragraphs 11.161 to 11.165 of Chapter 11 of Volume 3 of the ES [APP-052] acknowledge the potential for major noise impacts during the night-time if unmitigated. The ES therefore proposes additional mitigation measures to be put into place in relation to night-time trenchless works, such as HDD, which the ES states, could result in major noise impacts during night-time if unmitigated and at distances of less than 400m.

5.19.14 The proposed mitigation measures are threefold (and are included within the outline CoCP [APP-098]):

- to locate the temporary construction compounds as far from residential properties as is reasonably practical;
- night-time drilling works will not be undertaken at locations that are within 100m of a residential property without consultation with the resident;
- where residential properties might be anticipated to experience significant noise effects due to night-time works, temporary re-housing for the duration of those works will be discussed with, and offered to, the residents of the properties.

5.19.15 In relation to the operational phase, Requirement 17 of the draft DCO puts in place controls for noise from the IEC and the substation. In addition, Table 11-7 of the ES [APP-052] states that where possible, the layout of the IEC and substation would be chosen to separate noisy plant items from residential receptors by the maximum possible distances. The ES also states that the mitigation measures in Annexes 11-2 [APP-089] and 11-3 [APP-091] would be applied.

EXAMINATION

5.19.16 The NPS EN-1 provides guidance on 'Noise and Vibration' in section 5.11 to which the ExA have had regard.

5.19.17 Paragraph 5.11.9 of NPS EN-1 states that the SoS:

"... should not grant development consent unless it is satisfied that the proposals will meet the following aims:

- *avoid significant adverse impacts on health and quality of life from noise;*
- *mitigate and minimise other adverse impacts on health and quality of life from noise; and*
- *where possible, contribute to improvements to health and quality of life through the effective management and control of noise."*

5.19.18 Section 2.9 of the NPS EN-5 covers 'Noise and Vibration'. Whilst the majority of the guidance contained in this section deals with noise arising from transmission lines and is, thus, not applicable to this application, paragraph 2.9.7 does state that:

"Audible noise effects can also arise from substation equipment such as transformers, quadrature boosters and mechanically switched capacitors. Transformers are installed at many substations, and generate low frequency hum. Whether the noise can be heard outside a substation depends on a number of factors, including transformer type and the level of noise attenuation present (either engineered intentionally or provided by other structures). Noise may also arise from discharges on overhead line fittings such as spacers, insulators and clamps."

5.19.19 The ExA received some 20 RRs which specifically mentioned noise as an issue and two which mentioned vibrations. These RRs raised concerns, inter alia, about potential noise during construction, including noise from construction traffic; noise from the substation and from the IEC, including low-level noise; about the quality of the noise survey; and measures to mitigate noise.

5.19.20 Consequently, we identified noise in our initial assessment of principal issues [PD-007] as a principal issue within the heading of "Environmental Issues: Onshore".

5.19.21 The ExA examined this issue through FWQ [PD-009]; the 17 November 2015 ISH on Onshore issues [EV-022]; the 19 January 2016 ISH on Local Impacts [EV-034]; and SWQ [PD-014].

5.19.22 Potential noise impacts in the offshore environment are covered in Chapter 5 of this Recommendation Report. Possible impacts on the EDF Bicker Fen wind farm (EOn 2.2) are discussed in the Chapter 8 of this Recommendation Report.

Local Impact Reports

5.19.23 The local authorities did not raise concerns about the methodologies applied in assessing potential noise impacts in their LIRs. ELDC's LIR [LIR-001] does not deal with noise or vibration. BBC's LIR [LIR-002] quotes its saved development plan policy ED11 and concludes that:

"The Council considers that the impacts of the development in terms of landscape and visual, noise, flood risk, certain aspects for construction access are satisfactorily addressed in the Draft."

5.19.24 NKDC's LIR [LIR-004] states that:

"whilst no highway routes associated with the erection of the substation are expected to experience 10% or greater increases in traffic flows during construction, noise impacts associated with construction vehicle movements (in particular along the A17 and A153 within North Kesteven) are still predicted to be 'minor adverse'."

5.19.25 LCC's LIR [LIR-003] deals with noise solely in a section on the cumulative impacts potentially arising from the "*National Grid Interconnector Holdings Limited and its development partner Energinet.dk interconnector between Denmark and the UK known as the Viking Link*". The putative Viking Link is dealt with in sub-section 5.26 of this Chapter of the Recommendation Report.

Noise monitoring

5.19.26 At the 17 November 2015 ISH on Onshore issues [EV-022], the ExA considered the procedures to be implemented to monitor construction noise and referred to the outline NVMP [APP-101]. The outline NVMP confirmed that noise mitigation measures would be monitored by the Ecological Clerk of Works during the construction phase.

5.19.27 This was reiterated by the Applicant in a construction noise monitoring clarification note [REP3-056] which also gave further consideration to the matter. As a result, the Applicant included new wording in Revision B of the Outline NVMP [REP4-050] confirming that:

"Noise levels within construction areas will be monitored as part of the standard monitoring procedures that will be employed to ensure construction plant and equipment is operating within expected parameters, and these measurements will be forwarded on to the Local Authorities on request."

Operational noise impacts on Drove Farm

5.19.28 Taking account of the above, our Examination of issues surrounding noise and vibration focussed primarily on the one issue raised by NKDC - the predicted impacts of operational noise of the substation on the closest residential property within the District, Drove Farm.

5.19.29 NKDC's LIR [LIR-004] states that:

"the District Council considers that the predicted impacts of operational noise on the closest residential property within the District (Drove Farm) cannot be fully relied upon in the absence of further justification for the transmission losses (applied dB reduction) from external to indoor areas at the 100Hz level. The noise modelling results demonstrate a compliance with adopted criterion of only 2dB..."

5.19.30 NKDC [REP1-029] was concerned that insufficient information had been presented by the Applicant to justify the transmission loss applied from external to internal areas at Drove Farm. It also

considered additional information could have been provided in relation to alternatives to the internal layout and arrangement of the substation, to assess whether scope would exist through detailed design proposals to provide additional mitigation of landscape/visual and noise impacts.

- 5.19.31 NKDC's WR also queried how the Applicant's proposed Requirement 17, which would limit operational noise from the substation to 35dB, to include any relevant penalties for tonal or impulsive noise, would be met in the absence of any further information and confidence on the actual external to internal transmission reductions that would be applied at Drove Farm.
- 5.19.32 The Applicant responded to NKDC [REP2-017] confirming that the method of assessing low frequency noise impacts was agreed with ELDC and BBC and confirmed that a 5dB allowance was made for external to internal attenuation which was considered to be a conservative estimate. The Applicant therefore considered that the ES had predicted higher internal noise levels than are likely to be experience in practice.
- 5.19.33 Furthermore, the Applicant confirmed that the noise limits proposed in Requirement 17 are based on guidance set out in BS 4142:1997 and relates to external noise levels in the vicinity of any residential property and provided clarity over the assessment presented within the ES.
- 5.19.34 Following this submission, NKDC clarified at D3 [REP3-028]) that:
- "the Council is now satisfied that predicted noise levels at Drove Farm associated with the operation of the Onshore Substation are within guidelines provided by the World Health Organisation Guidelines for Community Noise, and that the proposed 35dB noise limit currently recommended in Draft Requirement 17 is acceptable."*

REASONING AND CONCLUSIONS

- 5.19.35 The ExA notes that the SoCGs with BBC [REP2-035] and ELDC [REP2-036] both agree that all matters relating to noise are agreed.
- 5.19.36 In its comments on information submitted at D2 [REP3-028] NKDC stated that:
- "The Council is now satisfied that the Onshore Substation can operate in accordance with accepted standards, having regard to noise impacts anticipated to the property known as Drove Farm."*
- 5.19.37 We are content that the mitigation measures proposed by the Applicant to mitigate noise are adequate and satisfactorily secured through the recommended DCO either through Requirement 17 or as part of the NVMP and the CoCP (Requirement 14). We are also

satisfied that the effectiveness of the measures to be employed during the construction phase will be monitored.

- 5.19.38 The Panel is satisfied that the Applicant's assessment meets the relevant requirements of the NPS and that with the mitigation measures in place, there would be no significant adverse noise impacts from the construction or operation of the proposed development.

5.20 POLLUTION CONTROL & OTHER ENVIRONMENTAL REGULATORY REGIMES

- 5.20.1 This section of the report deals with issues relating to pollution control and other environmental regulatory regimes not already covered elsewhere.

APPLICANT'S APPROACH

Pollution control

- 5.20.2 The Applicant has addressed pollution control and related matters in various sections of the ES and in particular in its outline PPEIRP [APP-106], which is an appendix to the outline CoCP secured through Requirement 14 of the DCO [APP-010]. The Outline CoCP was updated during the examination and the final version [REP7-031] is secured in the Applicant's final draft DCO (Revision G) [REP7-018] and subsequently the recommended DCO (Appendix D).
- 5.20.3 The objective of the PPEIRP is to ensure the prevention of pollution to land, air or water and compliance with environmental legislation and best practice advice, such as the EA Pollution Prevention Guidelines.
- 5.20.4 The outline PPEIRP identifies potential sources of pollution, such as runoff, wheel washes, fuel and chemical storage, and leaking or vandalised plant and equipment. It then identifies areas where there is an increased risk of spillage, such as storage compounds, and proposes suitable mitigation measures, such as berms and bunding in accordance with EA guidelines [APP-106].
- 5.20.5 The outline PPEIRP sets out general pollution prevention measures, such as:
- Oil and diesel storage facilities to be at least 30m from any watercourse and 50m from any borehole or well;
 - Spill kits to be provided;
 - Secure storage facilities to prevent vandalism; and
 - Correct labelling of all containers
- 5.20.6 The outline PPEIRP also sets out an emergency response procedure, including the responsibilities of essential personnel and the procedure to be followed in the event of a major incident.

Other regulatory regimes

- 5.20.7 The additional consents required to facilitate the proposed development and associated regulatory regimes are set out in the 'Additional Consents' document [APP-121].

EXAMINATION

- 5.20.8 Paragraph 4.10.3 of NPS EN-1 says that the decision maker should work on the assumption that the relevant pollution control and other environmental regulatory regimes will be properly applied and enforced by the relevant regulator, and should not seek to duplicate them; and paragraph 4.10.7 says that, before granting consent, the decision maker should be satisfied that:
- The relevant pollution control authority is satisfied that potential releases can be adequately regulated under the pollution control framework; and
 - The effects of existing sources of pollution in and around the site are not such that the cumulative effects of pollution when the proposed development is added would make that development unacceptable.
- 5.20.9 The Panel has also had regard to certain local plan policies as put forward in their LIR and WR by ELDC [LIR-001, REP1-006] and BBC's LIR [LIR-002] insofar as they are relevant to pollution control and other regulatory regimes.
- 5.20.10 ELDC policy A4 seeks to avoid substantial harm to amenity [LIR-001], as does BBC policy G1 [LIR-002]. BBC Policy G8 confirms that planning permission should not be granted for developments which would have an adverse effect upon the quality of air or soil. BBC Policy G10 refers to the prevention of light pollution and renewable energy policy ED11 confirms that planning permission for development that will provide a renewable energy source should not be granted if it generates levels of traffic, dust, noise, smell or other pollution which will significantly harm the environment, local living or working conditions, or the operation of nearby land uses [LIR-002].
- 5.20.11 Because the proposed development does not pass through any part of NKDC, its policies as outlined in their LIR [LIR-004] have not been taken into consideration by the Panel. This has not precluded the views of NKDC being taken into consideration.

Pollution control

- 5.20.12 The ExA has examined the Applicant's assessment of pollution control matters in the following sections of this report:
- emissions to air (Air quality and emissions);
 - soil pollution (Biodiversity, biological environment, ecology and geological conservation);

- water pollution (Flood risk, Water quality and resources and Hazardous substances);
- light pollution (Common Law and nuisance); and
- noise emissions (Noise and Vibration).

Other regulatory regimes

- 5.20.13 In respect of protected species licences, NE provided confirmation in its SoCG [REP5-044] that it had issued a Letter of No Impediment (LoNI) in respect of a draft application for a licence under the Protection of Badgers Act 1992 to close or interfere with badger setts within the proposed development boundary on 3 September 2015 [REP1-065].
- 5.20.14 The EA acknowledged [RR-106] the potential need for an Environmental Permit for discharges of dewatering water or any other trade effluent from the construction works to inland freshwaters and confirmed that it has been agreed with the Applicant that it would be appropriate to seek them after the DCO is in place.
- 5.20.15 The outline Access Management Plan (AMP) [REP6-028] confirms that prior to the construction of the proposed development detailed layouts for each permanent access would be confirmed by the Principal Contractor and agreed with the Highway Authority as part of a section 278 Agreement. LCC confirmed in paragraph 4.140 of its SoCG with the Applicant [REP8-043] that the AMP, secured by Requirement 8 of the draft DCO [APP-010], would secure acceptable design and location of access, and that the outline AMP sets out acceptable proposals for accesses to the site.
- 5.20.16 The following regulatory matters have been addressed within the DCO Chapter of this Report:
- A decommissioning scheme under Chapter 3 of Part 2 of the Energy Act 2004;
 - approvals from the relevant planning authority pursuant to the requirements contained in the DCO;
 - approvals from the MMO pursuant to the conditions contained in the deemed Marine Licence;
 - the disapplication of the Water Resources Act 1991 in the draft DCO; and
 - compulsory acquisition of Crown land and land associated with the Highways England Historical Railways Estate (HEHRE).

REASONING AND CONCLUSIONS

- 5.20.17 The Panel is satisfied that the Applicant's approach to and assessment of pollution control and other environmental regulatory regimes complies with the requirements of NPS EN-1 and of local plan policies as put forward in their Local Impact Reports (LIR) by ELDC [LIR-001 and REP1-006] and BBC [LIR-002] insofar as they are relevant.

- 5.20.18 The ExA has no specific concerns not addressed elsewhere in this report.
- 5.20.19 The ExA is also satisfied that no impediment to the granting of other consents has been identified during the course of the examination by the relevant regulatory bodies.

5.21 SECURITY CONSIDERATIONS

APPLICANT'S APPROACH

- 5.21.1 The Applicant's description of security measures designed into the development is set out in Chapter 1 of Volume 3 the ES [APP-042].
- 5.21.2 During the construction of the proposed development the temporary construction compounds (TCCs) would include a security hut if 24 hour security is required on site (para 1.91) [APP-042].
- 5.21.3 Paragraph 1.169 of the ES [APP-042] confirms that a permanent security fence would surround the IEC, and a security gate would be in place on Marsh Lane during the operational lifetime of the IEC (para 1.172).
- 5.21.4 The application documents also included a Safety Zone Statement [APP-092]. This stated that the Safety Zone Statement for the consented TKOWF confirmed the Applicant's intention to submit an application for safety zones following completion of the detailed design of TKOWF and prior to start of construction.
- 5.21.5 However, it confirmed that the Applicant would not, and was not required to, submit an application for safety zones associated with the proposed TKES. This is because the proposed TKES is not an Offshore Renewable Energy Installation (OREI) under Section 95 and Schedule 16 of the Energy Act 2004.

EXAMINATION

- 5.21.6 Paragraph 4.15.2 of NPS EN-1 states, *inter alia*, that:
- "Government policy is to ensure that, where possible, proportionate protective security measures are designed into new infrastructure projects at an early stage in the project development. Where applications for development consent for infrastructure covered by this NPS relate to potentially 'critical' infrastructure, there may be national security considerations"*.
- 5.21.7 We received a RR, from Cllr. Anthony Cox [RR-006] which covered issues of security and from Jennifer Hayes [RR-014] which expressed, *inter alia*, the need for government security or protection for the site from terrorists.
- 5.21.8 In its relevant representation [RR-099], EDF Energy Renewables expressed concern that construction and operation of the proposed

development could impact on its current operations in respect of, inter alia, security.

- 5.21.9 We did not include security as a principle issue in our Rule 6 letter [PD-007] but did examine it through our FWQ (SE 1.17)[PD-009], through SWQ EOn 2.2, in respect of EDF's concerns [PD-014] and through examining this issue at the Socio-economic ISH on 19 November 2015 [EV-028].
- 5.21.10 None of the local authority LIRs [LIR-001, LIR-002, LIR-003, LIR-004] raised security as an issue.
- 5.21.11 The ExA consider that there are two, interrelated aspects to security related to this application. The first is whether the development proposed in this application may form 'critical' infrastructure in terms of paragraph 4.15.1 of EN-1 which refers to the Centre for the Protection of National Infrastructure (CPNI). The second is the adequacy of security provisions during the construction and operation of the proposed development.

Critical infrastructure

- 5.21.12 In respect of critical infrastructure, in considering this issue, we had regard to the fact that the Examination had not been informed by DECC or other relevant body or department that this application should be considered to be potentially 'critical' infrastructure.
- 5.21.13 The RR, from Cllr. Anthony Cox from Anderby Parish Council [RR-006] mentioned:
- "Security of National Infrastructure in a remote location compared to existing alternatives such as Theddlethorpe. This includes terrorism. Lines are close enough to the surface to be attacked with rudimentary equipment and routes easily traced"*.
- 5.21.14 This point was examined at our Socio-economic ISH on 19 November 2015 [EV-028]. In its Summary of Oral Case [REP3-041], the Applicant stated in paragraphs 1.89 and 1.90 that:

"A representative from Anderby Parish Council queried whether the Applicant has consulted the Centre for Protection of National Infrastructure (CPNI).

In response the Applicant confirmed that it has not. The Department of Energy and Climate Change (DECC) is the responsible body for determining what is critical infrastructure in the Energy sector. Whilst the Triton Knoll Electrical System is critical to the TKOWF it is not critical national infrastructure. The Applicant further confirmed that safety and security are taken very seriously by both the joint venture companies involved in the TKOWF project."

5.21.15 In response to this, Cllr. Cox from Anderby Parish Council [REP-012] stated that a:

"... further point was that, taken together with Viking Link, this is likely to form [critical national infrastructure] CNI. Not necessarily TKES alone."

5.21.16 This Recommendation Report considers the relationship between this application and proposals for the Viking Link Interconnector Project (Viking Link) in Section 5.25 and has concluded that the Applicant has taken into account the NGVLL project in as far as they are able to do so, based on limited evidence and data, such that the Examination into TKES could not consider cumulative effects or interrelationships between this application and any putative application for Viking Link. This conclusion remains true for any implications for security.

5.21.17 Cllr. Cox continued, *inter alia*, that:

"I'm a bit alarmed that no specialist security advice is being sought by the Applicant in the current climate. There appears to be a curious complacency by the Applicant in this regard despite their bland assurance that "safety and security are taken very seriously by both the joint venture companies involved in the TKOWF project."

and that:

"... despite admitting they had taken no specialist security advice, they now imply that DECC have been consulted and confirm that TKES is not of any concern re: CNI."

5.21.18 In considering this, we have had regard to the guidance set out in paragraph 4.15.3 that:

"DECC will be notified at pre-application stage about every likely future application for energy NSIPs, so that any national security implications can be identified."

5.21.19 The ExA have taken into account that DECC was aware of this application at pre-application stage and did not submit any correspondence to specify that the proposed development is deemed 'critical infrastructure'.

5.21.20 We conclude that whilst this application has security implications, we have not received evidence that this application poses additional issues to other national infrastructure schemes.

Construction and operational security

5.21.21 In respect of construction and operational security, the Applicant states [REP1-045] that:

"Providing appropriate security is a key consideration in any nationally significant infrastructure project. Volume 3, Chapter 1 Onshore Project

Description of the ES (document reference 6.2.3.1) provides information relating to security provision. Paragraph 1.85 states that provision of security and fencing is part of the site establishment of the landfall works; paragraph 1.91 of the same chapter states that a typical TCC includes a security hut (if 24 hour security are required on site); paragraph 1.114 of the same chapter states that security is part of the site enabling works for each cable route section; and paragraphs 1.169 and 1.192 state that permanent security fencing will surround the IEC and Substation."

5.21.22 We examined this issue at our Socio-economic ISH on 19 November 2015 [EV-028].

5.21.23 Paragraph 1.85 of [REP3-041] states that, in that hearing:

"The Applicant explained that it has a duty as a generator and operator of an electrical system to ensure the safety of the public, and contractors under health and safety and other legislation including the Health and Safety at Work etc. Act 1974, and the Construction (Design and Management) Regulations 2015 (CDM 2015). The Applicant highlighted that it has to comply with those regulations in order to deliver the project in a way that is safe for the public. The Applicant will ensure appropriate measures and controls will be implemented properly and will ensure the safety of the public is appropriately managed."

5.21.24 The final (Revision F) draft Outline CMS, as set out in the Applicant's D8 response [AS-052] deals with security insofar as it states in paragraph 2.7 that:

"... each TCC will be fenced using bolted and anchored Herras fencing or its equivalent and there will be on-site security at all times."

in paragraph 2.35, that:

"There will be 24/7 coverage at the TCC sites. Elsewhere, there will be out of hours coverage only when materials are stored. Full out of hours coverage will be provided at each joint bay during cable installation and jointing operations."

and, in paragraph 3.11 that:

"Prior to the commencement of construction of the relevant stage, each PRoW that crosses the Development Boundary within that stage will be risk assessed and will have suitable fencing specified to meet health and safety requirements of users and security requirements of the site."

5.21.25 The final (Revision C) draft Outline CoCP, submitted at D8 [AS-052] also deals with security in that, first, paragraph 3.12 states that a permanent security fence will surround the Intermediate Electrical

Compound and that paragraph 3.15 states that a security fence will surround the compound of the onshore substation.

5.21.26 Second, the Outline CoCP deals with site security in paragraph 5.9 stating that:

"Adequate security of the TCCs will minimise the opportunity for unauthorised entry, protect the public, and prevent theft from and damage to the works. Site gates will be secured when there is no site activity and appropriate security measures will be implemented. Where possible, access to construction areas will be limited to specified entry points and all personnel entries/exits will be recorded for security and health and safety purposes."

5.21.27 The outline CoCP is secured in the recommended DCO (Appendix D) to this Recommendation Report, through its inclusion in Article 36 as a document that will be submitted to the SoS for certification and through Requirement 14 which states that:

"(1) No stage of the onshore works may commence until for that stage a code of construction practice in accordance with the outline code of construction practice (onshore) has, after consultation with the Environment Agency, been submitted to and approved by the relevant planning authority."

5.21.28 The Outline CMS is secured in the recommended DCO (Appendix D) to this report, through Requirement 14 which states that:

*"(2) The code of construction practice must include–
(a) construction method statements"*

5.21.29 In respect to the RR from EDF Energy Renewables cited above [RR-099], EDF did not raise issues related to security in its WR [REP1-025] and made no further submissions to the Examination.

5.21.30 The Applicant's [REP8-039] states that:

"The Applicant has engaged in consultation with EDF with discussions on the matters raised in their relevant representation and a possible SoCG. The Applicant has provided a draft Good Neighbour Agreement to EDF for comment, held a call to discuss matters on 19 February 2016.

The Applicant and EDF are working towards submitting a SoCG commenting on these matters at prior to the completion of the Examination. The Applicant reserves it right to submit a statement setting out its position should a joint statement not be agreed."

5.21.31 The ExA did not receive any SoCG between the Applicant and EDF nor any further statement from the Applicant by the time the Examination closed on 3 March 2016.

- 5.21.32 In respect of construction and operational security, the ExA have taken into account the statements on security in the draft Outline CoCP and CMS and the fact that these documents are secured in the recommended DCO (Appendix D). We have also taken into account the fact that we received no evidence to challenge the Applicant's assertions that it will ensure appropriate measures and controls will be implemented properly and will ensure the safety of the public is appropriately managed.

REASONING AND CONCLUSIONS

- 5.21.33 Given the above, ***the ExA concludes that, in respect of construction and operational security, this issue has been dealt with satisfactorily by the Applicant and measures to seek to ensure this are secured in our recommended DCO.***

5.22 SOCIO-ECONOMIC IMPACTS

- 5.22.1 This section of the report examines the following socio-economic activities which could potentially be affected by the proposed development:

- Tourism, including the LCCP;
- Fishing, shipping and navigation;
- Business and employment, including other commercial impacts; and
- Community benefit

- 5.22.2 The value of tourism to East Lindsey's economy is considerable, and of particular note are the LCCP and Anderby Creek as well as Skegness [LIR-003]. Although there is a local rail link to Skegness, car is by far the most used mode of transport to the coast, and the roads "carry the life blood of the coast - visitors" [LIR-003]. Traffic and transport issues, particularly in respect of the effects of construction and operation of the proposed development on tourist traffic and transport links, are therefore important.

APPLICANT'S APPROACH

- 5.22.3 The Applicant's approach to the assessment of socio-economic impacts has been to consider the potential for impact, including cumulative effects, against baseline conditions.
- 5.22.4 The Applicant's assessment methodology for socio-economics, tourism and recreation is set out in Volume 3 Chapter 3 of the ES [APP-044]; for commercial fisheries in Volume 2 Chapter 8 of the ES [APP-035]; for shipping and navigation in Volume 2 Chapter 9 of the ES [APP-036]; and for other marine users in Volume 2 Chapter 10 of the ES [APP-037].
- 5.22.5 Baseline information for these topics is set out in the relevant ES chapters detailed above, along with the following annexes to the ES:

- Socio-economic baseline study [APP-074];
- Recreational fishing baseline [APP-075];
- Socioeconomics impact study [APP-076]; and
- Commercial Fisheries Technical Baseline report [APP-061].

5.22.6 The Applicant's ES considered the following aspects which could be potentially affected by the proposed development:

- Tourism [APP-044] - including the potential effects on the locally designated LCCP; recreation activities (including beaches and PRow); Blue Flag beaches and designated bathing waters; diving and watersports; and recreational fishing.
- Commercial fisheries (including employment issues) [APP-035], shipping and navigation [APP-036];
- Onshore business and employment [APP-044] - including opportunities for business; impacts on employment within the local area; and other commercial impacts not assessed elsewhere [APP-037] including potential impacts on cables, pipelines and marine aggregate extraction; and
- Community benefit [APP-044] primarily in terms of job opportunities and upskilling.

5.22.7 The Applicant's findings are summarised in Table 13-5 in Volume 3 Chapter 13 of the ES [APP-054] in respect of socio-economics, recreation and tourism; in Table 13-7 in Volume 2 Chapter 13 of the ES [APP-040] in respect of commercial fisheries; in Table 13-8 in Volume 2 Chapter 13 of the ES [APP-040] in respect of shipping and navigation; and in Table 13-9 in Volume 2 Chapter 13 of the ES [APP-040] in respect of other marine users, chiefly pipeline and aggregate operators.

5.22.8 The Applicant concludes that when taking into account mitigation (see below) the residual effects associated with the majority of impacts will be tolerable or of negligible significance, with some of minor adverse significance. There will also be the potential for some minor positive impacts. All these impacts are assessed by the Applicant as not significant [APP-040 and APP-054].

5.22.9 The Applicant concludes that there is limited scope for inter-related effects to arise beyond those already identified in the assessments due to limited spatial overlap in activities and states that no significant inter-related effects are anticipated [APP-039 and APP-053].

5.22.10 During pre-application consultation undertaken by the Applicant it was agreed that certain potential impacts in relation to these topics could be scoped out from further assessment. These are detailed in the Planning Inspectorate Scoping Opinion [APP-093]. No concerns were raised during the examination in relation to these topics.

5.22.11 The ExA did not receive any RRs from IPs which disputed or disagreed with the Applicant's approach to assessing any of the socio-economic matters covered in this section, nor the adequacy of the provisions

made within draft DCO and DML [APP-010]. However, the ExA was concerned about the level and quality of information used by the Applicant to underpin a robust assessment of socio-economic issues, and asked the Applicant to provide evidence that this was sufficient (SE 1.9) [PD-009]. The Applicant's response explained to the ExA's satisfaction the guidance followed and the approach taken [REP1-044].

- 5.22.12 The ExA concludes that the baseline descriptions and assessments comply with the requirements of NPS EN-1.

Mitigation

- 5.22.13 The project design includes various embedded mitigation measures in respect of the socio-economic matters covered in this section of the report.

Socio-economics, tourism and recreation

- 5.22.14 On-shore measures are given in table 3-8 of Volume 3 Chapter 3 of the ES [APP-044] and include:

- Avoiding existing buildings and settlements;
- Use of trenchless technology at landfall and at road crossings;
- Keeping all PRow open or diverted within the proposed development boundary to minimise impact for users and communicating these measures to LCC and others including parish councils;
- Minimising the use of artificial light; and
- Informing nearby caravan parks, chalet sites etc. of construction activities which may affect their usual operations.

- 5.22.15 Embedded mitigation in respect of business and employment is shown in Table 3-8 of Chapter 3 of Volume 3 of the ES [APP-044] and is to inform local employers and suppliers of the proposed construction works and to encourage participation of local and regional companies in the tendering process. Paragraphs 3.205 and 3.206 state that no further mitigation is proposed [APP-044].

- 5.22.16 This mitigation is secured by the submission of a Crossing Schedule in accordance with Requirement 5(11), and through the submission of an Outline CMS, an Outline CP and an Outline Artificial Light Emissions Plan, all in accordance with Requirement 14, of the Applicant's final draft DCO [REP7-018].

Commercial fisheries

- 5.22.17 Embedded mitigation measures are set out in table 8-10 of Chapter 8 of Volume 2 of the ES [APP-035] and include:

- Regular notices to mariners and charting updates;
- The appointment of a Fisheries Liaison Officer (FLO);

- Appointing a Marine Traffic Co-ordinator;
- Reporting seabed snags and lost equipment;
- Post-construction debris removal;
- Advance warning and details of construction and maintenance operations;
- Use of guard vessels;
- Marking of fishing gear;
- Burial of cable at 1.5m below stable seabed, or cable protection;
- Cable burial assessment; and
- A decommissioning plan.

5.22.18 These are secured by Conditions 2 and 4, through the requirement for the submission of an Offshore CMS secured by Condition 7, of Part 2 of the DML, and a Decommissioning Plan required by paragraph 4 of Part 1 of Schedule 9 of the Applicant's final draft DML [REP7-018].

Shipping and navigation

5.22.19 Embedded mitigation measures are set out in Table 9-15 of Volume 2 of Chapter 9 of the ES [APP-036] and relate to:

- Manning and maintenance of vessels;
- Information to mariners;
- Vessel operations;
- Guard vessels; and
- Cable burial.

5.22.20 Further mitigation measures are set out in Table 9-19 [APP-036], relating to the need to ensure adequate sea room for passing vessels during cable installation.

5.22.21 These are secured by Conditions 2 and 4 and through the requirement upon the Applicant for the submission of an Offshore CMS secured by Condition 7 and a Decommissioning Plan required by Paragraph 4 of Part 1 of Schedule 9 of the recommended DML (Appendix D).

Other marine users

5.22.22 Embedded mitigation is shown in Table 10-11 of Chapter 10 of Volume 2 of the ES [APP-037] and relates to the offshore cable. Measures proposed include:

- Information to mariners;
- Pipeline crossing and proximity agreements;
- HDD under sea defences at landfall;
- Use of guard vessels; and
- Safety buffers.

5.22.23 The ExA was concerned about where these proposed mitigation measures would be secured, and asked the Applicant to explain in FWQ (SE 1.8) [PD-009]. The Applicant stated [REP1-044] that the dissemination of information would be secured in Conditions 2(8) and

3(3) of the DML, that quarterly reports on the working condition of navigation aids would be secured by Condition 4(3) of the DML, the provision of data to UKHO by Conditions 12(2)(b) and 13(2)(b) of the DML; that guard vessels and CMS would be secured by Condition 7(1)(c) of the DML and trenchless techniques by DCO Requirement 5(11) (Appendix D).

- 5.22.24 The ExA was satisfied with the Applicant's approach to mitigation measures relating to these issues.

Cumulative impacts

- 5.22.25 The plans and projects considered by the Applicant in the cumulative assessment are identified in Table 3-10 of [APP-044] for tourism, business and employment, in Table 8-11 of [APP-035] for commercial fisheries, and in Tables 9-16 and 9-17 of [APP-036] for shipping and navigation. The Applicant concludes that cumulative impacts associated with the socio-economic issues discussed in this section of the report will be no worse than those already assessed [APP-044, APP-035, APP-036 and APP-037].

- 5.22.26 In respect of aggregate extraction the Applicant concludes that proximity agreements and standard vessel management practices mean that there is no effect-receptor pathway that could result in a cumulative impact [APP-037].

- 5.22.27 The ExA did not receive any representation from IPs which disputed or disagreed with the Applicant's assessment of cumulative impacts. The ExA is satisfied with the Applicant's approach and with the results of the Applicant's cumulative assessment.

EXAMINATION

- 5.22.28 Paragraph 4.2.2 of NPS EN-1 says that the decision maker will find it helpful if the Applicant sets out information on the likely significant social and economic effects of the development and paragraph 5.12.2 of EN-1 states that, where the project is likely to have socio-economic impacts at local or regional levels, the Applicant should undertake an assessment of these impacts as part of the ES.

- 5.22.29 Paragraph 5.12.3 of NPS EN-1 states that the assessment should consider all relevant impacts, and paragraph 5.12.4 says that applicants should describe the existing (ie baseline) socio-economic conditions in the areas surrounding the proposed development and how the impacts of the proposed development correlate with local planning policies.

- 5.22.30 In terms of decision making, NPS EN-1 paragraph 4.1.3 states that the decision maker should take into account potential benefits, including job creation, and potential adverse impacts, including any long term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts, and paragraph 5.12.7

states that the decision maker may conclude that limited weight be given to assertions of socio-economic impacts not supported by evidence.

- 5.22.31 With particular reference to tourism, paragraph 5.10.24 of NPS EN-1 states that rights of way, National Trails and other rights of access are important recreational facilities and that the decision maker should expect applicants to address adverse effects on them.
- 5.22.32 The ExA has had regard to local plan policies as put forward by ELDC, BBC, LCC and NKDC in their LIRs [LIR-001, LIR-002, LIR-003, LIR-004] and representations insofar as they are relevant to socio-economic impacts.
- 5.22.33 The ExA has also taken into consideration the initiatives set out by LCC in its LIR [LIR-003] in respect of the locally designated LCCP. The LCGM is considered elsewhere in this Recommendation Report.
- 5.22.34 Following a review of the application and RRs, the principal socio-economic issues initially identified by the ExA and presented at the Preliminary Meeting [EV-001] have been considered below as follows:
- Effects on tourism, principally the holiday trade and the LCCP;
 - Fishing, shipping and navigation;
 - Effects on other businesses, scope for local employment and other commercial impacts; and
 - Community benefits.
- 5.22.35 The other principal socio-economic issue to be identified by the ExA in its initial assessment was the effects of the proposed development on agriculture. This is dealt with separately elsewhere in Section 5.3 of this Recommendation Report.

EFFECTS ON TOURISM

- 5.22.36 A significant number of the RRs received raised tourism as an issue. Of specific concern were potential impacts on the Gunby Hall and Estate, tourist traffic, the LCCP, PRowS and closure of the beach at the landfall. In particular, LCC had a number of concerns related to tourism. These issues are discussed below.

Potential Impacts on Gunby Hall and Estate

- 5.22.37 In its RR [RR-158], the NT stated concerns with the potential for construction traffic to disrupt the main A158 road which is used by tourists to access Gunby Hall and Estate. NT supported the fact that there would be no construction activity on Sundays or Bank Holidays but requested that the developer consult, and subsequently notify, local visitor attractions of any variations to working hours and regular updates on the construction schedule.

- 5.22.38 In response to FWQ TT 1.13 [PD-009], the Applicant confirmed that the Outline Communications Plan [APP-108] (which forms part of the CoCP to be secured by Requirement 14 of the draft DCO) provided for communication with relevant parties on the timing of construction works.
- 5.22.39 The SoCG with NT [REP1-083] agreed that the implementation of a communications plan was an adequate framework for managing the communications during construction and that the Outline TMP, to be secured through Requirement 18 of the draft DCO, was generally acceptable as a means of managing the potential impacts of construction traffic.

Tourist traffic

- 5.22.40 Taking into account the concerns raised by ELDC [RR-008], the Panel asked the Applicant how interference with the free flow of traffic to and from the coast, particularly in the holiday season, would be mitigated (FWQ TT 1.14) [PD-009]. The Applicant's response [REP1-044] had highlighted that most vehicle movements would be before 8am and after 6pm, with HGV movements being restricted to minimise impact on the road network, and that paragraph 4.25 of the Outline TMP [APP-110] was designed to enable these impacts to be minimised.
- 5.22.41 In response to the SWQ (TT 2.10) [PD-014], ELDC, LCC and BBC all confirmed that they were satisfied with the measures proposed by the Applicant in the outline TMP [APP-110] to mitigate effects of the project on tourist traffic [REP4-004, REP4-009 and REP4-024 respectively]. NKDC [REP4-023] suggested additional measures such as the use of tracking devices for construction traffic, but the ExA considered that the measures described in the outline TMP were satisfactory. NKDC made no further representations on this issue and the matter was not discussed further in the examination.

The LCCP

- 5.22.42 The ES [APP-044] explains that the LCCP is located at the landfall area of the proposed development. It is an 8km stretch of coast between Sandilands and Chapel St Leonards and provides "*facilities for visitors and enhanced nature reserves and wildlife areas*", but has no national or local statutory designations for nature or landscape conservation [REP2-027].
- 5.22.43 The potential impacts of the proposed development on the LCCP were raised in a number of RRs, including those from ELDC [RR-008], the Lincolnshire Wildlife Trust (LWT) [RR-165], Anderby Parish Council [RR-054], Huttoft Parish Council [AS-017], Triton Knoll Cable Group [RR-016], and from other IPs [RR-014, RR-020, RR-045, RR-073 and RR-080].
- 5.22.44 Paragraph 3.18 of ELDC's LIR [LIR-001] set out the background, aims and objectives of the LCCP, and paragraph 3.28 explained the value

and importance of tourism, highlighting in particular the LCCP, the coast at Anderby Creek and holiday traffic. The LCCP was also highlighted by LCC as "a valued community, tourism and natural asset for the enjoyment of all" in [LIR-003]. Plans of the LCCP were also submitted by LCC [REP4-010].

- 5.22.45 In response to the numerous concerns raised, the Applicant provided an LCCP Clarification Note [REP2-027]. This included further details of the site selection and alternatives and of the consultation undertaken at both the pre- and post-application stages. It also provided further information on landscape and visual impacts, tourism and recreation impacts and terrestrial ecology impacts. The Applicant concluded that there would be no residual effects on the site and that it had been adequately and proportionately considered in the assessment.
- 5.22.46 At the onshore issues hearing [EV-024], LWT confirmed that its concerns related primarily to the LCGM. The ExA then probed LCC's assertion in its LIR [LIR-003] that the proposed development put the LCCP at risk. At the hearing, LCC explained the background to the LCCP project and the money spent to date, and outlined the uncertainties over project timescale. LCC stated that the project would lead to a perception of an industrialised landscape, with the TJB being visible from PRow when completed. LCC also raised the possibility that budget constraints might stop it investing in the LCCP if it is unable to realise tourism and economic benefits [EV-024]. LCC's concerns were presented in detail in [REP3-024 and REP3-025]; these also stated that the proposed development would result in a degraded landscape which could deter future external investment and grant funding.
- 5.22.47 The Applicant responded [EV-024 and REP3-039] that it did not see the project as a threat to the LCCP and that it had been adequately considered bearing in mind it has no statutory designation. The Applicant also reiterated at the hearing that all the infrastructure is below ground, that the area around the TJB would not look materially different and, bearing in mind the LCCP as a long term project, that the long term impacts were assessed as negligible.
- 5.22.48 The Applicant [REP4-027] also explained that LCC had been consulted extensively at the Evidence Plan stage; that LCC had signed the Evidence Plan on 17 April 2015; and that the Applicant and LCC were not currently in any further discussions.
- 5.22.49 Furthermore, the Applicant produced the Tourism Clarification Note [REP5-023]. The note reiterated the conclusions of the ES and stated that:

"that there are no predicted residual significant effects and the landscape will be returned to its former condition following completion of construction. Therefore, any impact on the LCCP and its tourism offer is temporary in nature and no long term impacts are expected". The note also highlighted mitigation relating to the LCCP.

- 5.22.50 In relation to concerns over funding for the LCCP, the Tourism Clarification Note [REP5-023] highlighted that LCC had not given any examples of comparable situations where such a withdrawal of funding has occurred. It concluded that there would be no significant adverse effects on tourism; therefore, there would be no adverse effects on any of the funding available to the LCCP.
- 5.22.51 The ExA was satisfied with the Applicant's responses in respect of all matters relating to the LCCP.

PRoW (Hutt/10/4) and closure of the beach at the landfall

- 5.22.52 As noted in paragraph 3.117 of [APP-044], a PRoW at the landfall (Hutt/10/4) would be closed for separate periods of time during access track improvement works and when mobilising and demobilising the temporary construction compound (TCC) and trenchless equipment; this would be a maximum combined duration of up to six months.
- 5.22.53 The ExA queried [EV-031] why it was necessary to close the PRoW rather than divert it as was the case for other PRoWs. The Applicant stated [EV-031 and REP3-041] that PRoW (Hutt/10/4) would form the construction access track from Roman Bank, that it would need to be closed on grounds of public safety and that there were several nearby PRoW which would be used as diversions and signed accordingly, so access to the beach would not be prevented. The Applicant confirmed that all PRoWs would be managed in accordance with the Outline CMS and the outline Communications Plan, both secured through Requirement 14 in the DCO (Appendix D), and reiterated in response to a request from LCC that it would liaise with LCC's PRoW department at the detailed design and pre-construction stages of the project.
- 5.22.54 This position was reiterated in the Applicant's response [REP4-027] to the ExA's SWQ (SE 2.4). The Applicant also said that the approach to closing the PRoW had been discussed with LCC at the Evidence Plan stage and explained that LCC had not responded to the Applicant's offer of a meeting to discuss the matter further. The Applicant concluded that given the minor significance of effects on tourism during construction and the continued access to the beach, the temporary closure would not impact on LCC's aspirations to expand the tourist season, move to green tourism, encourage a year round tourism or further develop the coastal country park. The ExA was satisfied with the Applicant's response.
- 5.22.55 At the Socio-economic ISH [EV-031], the ExA also wanted to know whether it would be necessary to completely close the beach while the landfall works were carried out, or whether work could be phased to keep the beach open. The Applicant responded orally at the hearing explaining that the work would be staged, so access to certain areas would be restricted while the landfall works were constructed, but that the beach would remain open for the duration of the works and walkers would be able to pass along the beach [REP3-041]. The ExA was satisfied with this response.

Other matters

- 5.22.56 Hogsthorpe Parish Council was concerned that the IEC would be on a main tourist route to the coast and that the work would not be conducive to the tourist role and economic needs of the area [RR-067]. In response, the Applicant confirmed [REP1-045] that the ES had assessed potential tourism effects as not significant. No further representations were received from Hogsthorpe Parish Council.
- 5.22.57 The Tourism Clarification Note [REP5-023] also outlined the Applicant's understanding of the overall tourism figures produced by LCC. In particular, the Applicant noted that the LCC figures were not from the existing Lincolnshire Local Enterprise Partnership (LEP) Strategic Plan, were not publicly available as they had not been approved by the LEP board, and were not therefore available for use at the time the ES was prepared: see also paragraph 2.8 of the Applicant's response to LCC's response to D5 [REP6-035]. The ExA noted that this was at variance with the version of the SoCG marked up by LCC and submitted to the ExA at D5 [REP5-053] which stated that out of date tourism data had been used in Volume 3 Chapter 3 of the ES [APP-044]. The Applicant noted in paragraph 2.37 that the LEP plan, which was available, had been referred to in the Applicant's socio-economic baseline study [APP-074].
- 5.22.58 The ExA queried in FWQ (SE 3.3) [PD-016] how the tourism figures provided by LCC [REP3-024, REP5-005 and REP5-006] had been arrived at and how they demonstrated the expected impact of the project on tourism. LCC reiterated information previously provided and did not address the question of what impact the project would have on tourism [REP6-007].
- 5.22.59 LCC's summary of oral submissions made at the Local Impacts ISH [EV-034] set out in detail, its position in respect of tourism issues in paragraphs 19, 20 and 44-49 [REP5-005], and included extensive background information [REP5-005 and REP5-006] but nothing further to substantiate its tourism figures.
- 5.22.60 The Applicant and LCC did not reach agreement over the potential impacts of the proposed development on tourism. LCC [REP3-025 and REP8-017] considered the works would deter visitors and damage the reputation of the area as being unspoilt. However, the Applicant [REP8-044] asserted that its assessment of socio-economic, tourism and recreation impacts had been adequate and noted that this was supported by the relevant planning authorities (ELDC and BBC).
- 5.22.61 The ExA considered all submissions and responses in respect of the LCCP and tourism issues, and was satisfied that the Applicant's assessment of all tourism matters was adequate.

EFFECTS ON FISHING, SHIPPING AND NAVIGATION

- 5.22.62 Of the 192 RRs received, a minority made reference to fishing, shipping and navigation issues.
- 5.22.63 In its RR [RR-036], the Eastern Inshore Fisheries and Conservation Authority (EIFCA) said that its representations would be outlined fully in its s56 consultation response, but no further representations were received.
- 5.22.64 In its RR [RR-190], the Maritime and Coastguard Agency (MCA) expressed itself as satisfied with the ES and stated that all its previous comments had been incorporated into the latest version of Chapter 9 of Volume 2 of the ES [APP-036].
- 5.22.65 In its RR [RR-040], Associated British Ports (ABP) Harbour Master Humber stated that it represented the interests of navigational safety for vessels servicing the works within the statutory harbour authority area, and offered no further comment.
- 5.22.66 In its RR [RR-084], Trinity House (the general lighthouse authority for England, Wales, the Channel Islands and Gibraltar) said that it was likely that it would have further comments to make on the application and the draft DCO, but no further representations were received by the ExA.
- 5.22.67 Referring to Table 2 of the Commercial Fisheries Technical Baseline report [APP-061], which shows the various organisations consulted and the issues raised, the Panel was unclear as to which issues were outstanding and how mitigation would be secured. Therefore the ExA requested that the Applicant to provide an update in response to FWQ (SE 1.3) [PD-009].
- 5.22.68 The Applicant replied [REP1-044] that commercially sensitive discussions were continuing, and noted that the ES did not identify any effects arising from the proposed development and that no commercial fishermen, commercial fishing businesses or fishermen's organisations had registered as IPs or made any RR with regard to the proposed development.
- 5.22.69 The ExA also wanted to know in FWQ (SE 1.3) [PD-009] what distinction, if any, had been drawn in the assessment methodology between the potential impacts on major commercial fisheries and on small dayboat fishing operations.
- 5.22.70 The Applicant replied that smaller dayboat operations had a smaller operational range and might therefore be considered to have a higher sensitivity in terms of potential impact, for example the sensitivity of disruption of fishing activity by construction vessels had been considered to be medium for the potting industry but low for other fleets with greater flexibility [REP1-044]. Nevertheless, the overall effect on fishing was considered by the Applicant to be negligible.

5.22.71 The ExA was satisfied with these responses. Matters relating to shipping and navigation were therefore not examined further.

EFFECTS ON BUSINESS AND EMPLOYMENT

5.22.72 This section of the report deals with opportunities for business, impacts on employment within the local area and other commercial impacts not assessed elsewhere.

Opportunities for business

5.22.73 The ExA wanted to find out more about opportunities for business presented by the proposed development and noted that paragraph 3.7 of the Applicant's Regeneris Socioeconomics Impact Study [APP-076] had used the Gwynt Y Mor economic impact analysis figures to estimate how much business might be secured. The ExA asked the Applicant in FWQ (SE 1.13) [PD-009] why the Gwynt Y Mor project had been chosen. The Applicant explained that although the proposed development excluded the offshore array it was still considered suitable as it was recent and of a similar size, so the economic impacts generated were therefore considered relevant [REP1-044].

5.22.74 The ExA probed this matter further (SE 2.1) [PD-014] asking the Applicant to explain more fully the similarities between the Gwynt Y Mor project and the proposed development, why the induced impacts were considered to be relevant, what account had been taken of operation and decommissioning, and why only one project had been considered. The Applicant explained [REP4-027] that the proposed development was unusual as it was separated from the offshore array, but that without the proposed project the economic benefits of the already consented offshore construction would not be realised. Gwynt Y Mor was recent and of the same type and size with similar impacts and therefore considered suitable. Operational impacts were considered to be minimal and further assessment of decommissioning impacts had been scoped out. The Applicant considered that using other projects with less correlation for comparison purposes might skew the results [REP4-027].

5.22.75 The ExA sought clarification from the Applicant on discussions with the LEP on local business opportunities at the Local Impacts ISH [EV-034]. The Applicant responded that it was extremely keen to ensure that local businesses could compete successfully for contracts on the project, that a response had been received from the LEP and that it hoped to meet to discuss these matters in the very near future [REP5-014].

5.22.76 The ExA was satisfied with the Applicant's responses in respect of opportunities for business.

Impacts on employment within the local area

- 5.22.77 The ExA did not receive any RRs that mentioned impacts on employment other than those related to agriculture and tourism, which are considered elsewhere in this Section. However LCC's LIR [LIR-003] stated at paragraph 3.26 that:
- "all the environmental and human cost and benefit will be borne by the people of Lincolnshire whilst the economic benefit of turbine manufacture, transport offshore, assembly and maintenance will benefit the Humber energy estuary Projects to enhance ... apprenticeships in construction trades should be provided for young job seekers".*
- 5.22.78 The Applicant had set out what it considered to be the maximum adverse scenarios for employment in terms of job opportunities and upskilling in Table 3.7 of Volume 3 Chapter 3 of the ES [APP-044]. In view of LCC's comments in its LIR [LIR-003], the ExA asked the Applicant in FWQ, to provide evidence to support its assertion and to explain the maximum adverse scenario assessed (SE 1.14) [PD-009].
- 5.22.79 The Applicant confirmed that the evidence was contained in the Regeneris Socioeconomics Impact Study [APP-076] and that it had estimated that the construction phase of the proposed development would support an average of over 300 full-time equivalent jobs per year in the East Midlands, increasing to around 500 nationally, consistent with the Office for National Statistics (ONS) UK National Accounts. The Applicant also stated that the "maximum adverse scenario assessed" should have read "maximum impact scenario assessed", and that the assessments were indeed in respect of an increase in employment opportunities and upskilling [REP1-044].
- 5.22.80 The ExA was satisfied with this response, but was concerned that the draft DCO did not contain any requirements that sought to ensure that local people would benefit from employment opportunities during the construction period. The ExA put a SWQ to the Applicant (SE 2.2) [PD-014] asking why this was, whether the Applicant had discussed the matter with the LEP, what the LEP might want to see in a local employment requirement, and whether the Applicant would consider putting such a requirement in the DCO.
- 5.22.81 The Applicant responded [REP4-027] that such a requirement might be deemed to be in breach of procurement legislation but that it would be developing, in consultation with the LEP and others, a Supply Chain Plan to ensure local employment is maximised as part of its Contract for Difference (CFD) application to DECC. The Applicant said that it had sought to engage with the LEP but that it did not wish to comment yet on what the LEP might want to see in a local employment requirement, and that as it was developing a Supply Chain Plan it did not consider that a DCO requirement was necessary.

- 5.22.82 The ExA considered these responses and sought clarification from the Applicant on discussions with the LEP on local employment opportunities at the Local Impacts ISH [EV-034]. The Applicant responded that a response had been received and that it hoped to meet the LEP to discuss these matters in the very near future [REP5-014].
- 5.22.83 The ExA was satisfied with the Applicant's responses in respect of local employment, and is satisfied that an employment and skills plan to promote employment and upskilling is adequately secured in Requirement 23 in the Applicant's final draft DCO [REP7-018] and that discussions were continuing with the LEP.

Other commercial impacts

- 5.22.84 RRs were received from Westminster Gravels Limited (WGL) [RR-002], EDF [RR-099] and ConocoPhillips [RR-115].
- 5.22.85 The RRs from WGL [RR-002] raised concerns over a potential conflict of interest from the proposed development and the marine aggregate extraction licence Area 515/1 (formerly Area 440) that it operates. It requested a buffer zone, mitigation and compensation for sterilisation of resources unless the export cable was moved. At D1, the Applicant confirmed [REP1-044 and REP1-045] that a SoCG had been submitted [REP1-075] agreeing that the parties would continue to work together to resolve outstanding issues and that the Applicant would update the ExA on progress. WGL provided an update on progress [REP3-002] confirming that a mitigation and compensation package was under review. A final SoCG was subsequently submitted [EV-050] confirming that a:

"Compensation and Co-operation Agreement has now been developed and signed between RWE Innogy and WGL (signed January 2016) relating to the export cable corridor for the proposed development... It is agreed that this agreement covers the issues raised by WGL in their Relevant Representation, and that WGL no longer hold an objection to the TKES DCO and are supportive of project."

- 5.22.86 The RR from EDF [RR-099] expressed concern about how construction of the substation would impact on its current operations in terms of noise, energy yield, piling, dust, access, damage to existing tracks and security. Various discussions took place during the Examination leading to production of a joint statement after D8 but before the close of the examination [AS-052] saying that a commercial agreement was substantially agreed and there were no impediments to reaching agreement.
- 5.22.87 In relation to potential pipeline crossings, Table 10-3 of Volume 2 Chapter 10 of the ES [APP-037] identified ConocoPhillips (COPUK) and Perenco as relevant oil and gas operators and explained that meetings had been held between August 2008 and March 2011. The Panel requested an update on the position of these parties since March 2011

in FWQ(SE 1.6) [PD-009] and the Applicant confirmed it had held a number of meetings with the parties.

- 5.22.88 In relation to Perenco, the operator of the Pickering A to Theddlethorpe gas and methanol pipeline which would be crossed by the Applicant's export cables, the Applicant submitted a copy of a Consent Support letter from Perenco [REP1-046]. This stated that Perenco had no objection to the proposed development and that discussions would continue with the Applicant to conclude a commercial agreement. The Applicant also submitted a SoCG with Perenco [REP1-068], in which it was agreed that Perenco would withdraw its objection, in respect of telecommunications links there were no significant barriers to reaching commercial agreement and in respect of pipeline crossings agreements are routinely agreed and are based on recognised, standard commercial terms.
- 5.22.89 In its RR [RR-115], COPUK noted that the proposed export cables would cross three major pipelines (the COPUK lines) transporting gas to the Theddlethorpe gas terminal, but confirmed that COPUK had no objection to the proposed development subject to commercial crossing agreements being concluded with the Applicant. The ExA tested this in FWQ to the Applicant (SE 1.6, SE 1.10) [PD-009] and the Applicant replied [REP1-044 and REP1-045] that it would continue to discuss matters with a view to submitting a SoCG. COPUK reiterated its position [REP3-009] and a final SoCG was submitted by the Applicant setting out the agreed technical details of pipeline crossing and proximity, including the need for the approval of COPUK before certain works are carried out. The SoCG confirmed that the matters listed would be included in a Proximity and Crossing Agreement which was being discussed concurrently [REP7-052].
- 5.22.90 The ExA see no reason why commercial agreements with Perenco and COPUK would not be reached in due course and these matters were not discussed further in the examination. The ExA was satisfied with the Applicant's responses in respect of the commercial impacts discussed above.

COMMUNITY BENEFIT

- 5.22.91 Of the 192 RRs received, only a few mentioned community benefit issues. In its RR [RR-046], Little Hale Parish Council said that it had an interest in any potential community benefits that might arise from the development, and Anderby Parish Council said that there was no compensation to Anderby or Anderby Creek residents [RR-054]. No further representations were received and there was no further discussion of these matters during the examination.
- 5.22.92 In its RR [RR-077], NKDC said that it would make further representations on the proposed community benefits package, but did not do so.

5.22.93 LCC made no mention of community benefit in its RR [RR-062]. However, in paragraph 3.26 of its LIR [LIR-003] and in its submission at D3 [REP3-024] in response to the Applicant's Community Investment Fund (CIF) questionnaire, LCC commented on the proposed lump sum and revenue figures, stating that they were inadequate, and suggested much higher figures, but did not substantiate them and there was no further discussion on this matter during the examination.

Use of the new permanent access route from the A17

5.22.94 BBC [RR-096] said that it saw the construction of a new permanent access route from the A17 to the proposed new substation at Bicker Fen as a very positive contribution from the Applicant, and that the way that this was used, managed and shared was fundamental to the success of the Bicker end of the scheme. The Panel wanted to know whether there might be any potential benefit to the local community in encouraging the use of this proposed permanent access road by other parties during the lifetime of the proposed project, and asked the Applicant about this in SWQ (TT 2.6) [PD-014].

5.22.95 The Applicant explained [REP4-027] that, having acquired the freehold, it could grant rights to third parties but that this might not be practicable as it required exclusive possession and control of the permanent access road to ensure safe operation of the substation. The Applicant also explained that the access road would have a security gate both to prevent unauthorised access and to ensure that the Applicant would have unhindered access whenever required. Given that the permanent access road would only run to the new substation, the Applicant did not see any potential for further enhancement or why the public might require the use of the new access road.

5.22.96 Despite this, BBC suggested [REP4-024] that there could be a use of the permanent access road for recreational purposes, to access the South Forty Foot Drain and for boating purposes such as the Fens Waterway regeneration project.

5.22.97 The ExA therefore decided to probe the matter further at the Local Impacts ISH [EV-034]. The Applicant explained that when this matter had first been raised by BBC in 2013, the Applicant had consulted the relevant landowners who had expressed concerns about access and trespass, particularly in relation to illegal hare coursing, so the Applicant had not considered the idea further. BBC said that it was satisfied with the Applicant's response [EV-039 and REP5-014]. The ExA was also satisfied that the option had been raised and consider and inline with these responses did not see a need to pursue this further.

REASONING AND CONCLUSIONS

5.22.98 The ExA was satisfied with the Applicant's overall approach to socio-economic issues, and that it complies with all relevant policy.

- 5.22.99 The ExA saw no reason why commercial agreements with Perenco and COPUK would not be concluded successfully and, although disagreements remained at the close of the examination between LCC and the Applicant in relation to the LCCP, tourism and community benefit, the ExA is satisfied that all relevant and important issues have been examined thoroughly and sufficiently and that the Applicant's assessment of all the issues is adequate.
- 5.22.100 The ExA is satisfied that all mitigation measures are adequately secured, and did not consider it necessary to propose any changes to the Applicant's draft DCO.

5.23 TRAFFIC AND TRANSPORT

APPLICANT'S APPROACH

- 5.23.1 The Applicant has assessed the traffic and transport effects within Chapter 9 of Volume 3 of the ES [APP-050]. Paragraph 9.15 of the ES [APP-505] states that the 'Guidelines for the Environmental Assessment of Road Traffic' produced by the Institute of Environmental Management and Assessment (IEMA) in 1993 are intended for the assessment of the environmental effect of road traffic associated with major new developments, and that the following rules, taken from the IEMA guidelines, have been used as a screening process to define the scale and extent of the assessment:
- Rule 1 – Include road links where traffic flows would increase by more than 30%; (or the number of HGVs) would increase by more than 30%); and,
 - Rule 2 – Include any other specifically sensitive areas where traffic flows would increase by 10% or more.
- 5.23.2 Paragraphs 9.21 to 9.34 of the ES [APP-050] set out the scope and methodology used to assess the potential effects of the proposed development on traffic and transport. ES Volume 5 Annex 9.1 [APP-086] sets out the survey area and the scope of the baseline data collection on the A and B classified roads expected to be used both the movement of materials and employees, during the construction phase of the proposed development. Figure 9-1 and Table 9-6 of the ES [APP-050] identify 44 routes which were studied to ascertain the effect of the proposed development on the local highway network.
- 5.23.3 During pre-application consultation undertaken by the Applicant, it was agreed that potential onshore impacts during operation could be scoped out from further assessment; this is set out further in paragraph 3.152 of the SoS's Scoping Opinion [APP-093]. Paragraphs 9.163 to 9.165 of the ES reiterate that operational phase effects have been scoped out of the assessment due to the low level and frequency of the traffic movements anticipated [APP-050].
- 5.23.4 Paragraph 9.23 of the ES [APP-050] states that the baseline data for the study area have been collected from a variety of sources, namely

the Department for Transport's (DfT) historic traffic data for a number of roads across the study area in the form of annual average daily traffic flows including HGV volumes, the most up to date being from 2012. The ES confirms that LCC also carries out traffic surveys at a number of key locations across the County. Both the DfT and LCC data is presented in ES Figure 9-2 [APP-050]. Paragraph 9.24 lists a number of other roads where additional traffic counting has been undertaken by the Applicant.

- 5.23.5 As part of the application, the Applicant has provided access to works and streets plans [APP-007] showing proposed access routes from the public highway to the various TCCs needed to build the proposed development.
- 5.23.6 Paragraphs 9.141 to 9.167 of the ES [APP-050] set out the potential effects from the construction and decommissioning of the proposed development, identifying the sensitivity of routes, the magnitude of change that would occur and whether in the Applicant's view the subsequent effect would be significant. The potential impacts considered are listed in paragraph 9.147 of the ES and include severance, driver delay, pedestrian delay and amenity, fear and intimidation, accidents and road safety. A summary of the predicted significance of effects is given in Table 9-20 [APP-050]. No significant effects have been identified.
- 5.23.7 Table 9-16 of the ES [APP-050] sets out the mitigation measures proposed to minimise any effects from the proposed development. It states that mitigation has been built into the project design, but also through access arrangements, traffic management and the promotion of sustainable transport.
- 5.23.8 For the construction phase, the ES states that for the project design, careful location of the temporary construction compounds for the cable route has been planned to minimise use of minor roads, and the proposed use of the temporary haul road from the A158 to serve the IEC would avoid routing HGVs along Marsh Lane through the village of Orby. Access arrangement, traffic management and promotion of sustainable travel would be controlled through the implementation of an Access Management Plan (AMP), a Traffic Management Plan (TMP) and a Travel Plan respectively, and trenchless techniques will be used at all adopted road crossings.
- 5.23.9 For decommissioning, Table 9-16 of the ES states that the Applicant *"will implement a Traffic Management Plan to secure appropriate routing of HGV movements for the Intermediate Electrical Compound and Substation"*.
- 5.23.10 The above mitigation is secured in Requirements 19 (Construction Traffic), Requirement 8 (AMP), Requirement 14 (CoCP), and Requirement 22 (Decommissioning Plan) as set out in Part 3 of Schedule 1 of the recommended DCO (Appendix D).

- 5.23.11 The Panel received representations from LCC which raised concerns with the Applicant's approach to assessing traffic and transport impacts and the proposed mitigation strategy. These are set out in the Examination section of this Chapter below.
- 5.23.12 The cumulative assessment of the proposed development with other known and planned projects is presented in the ES [APP-050]. The methodology is consistently applied in each topic chapter, and follows the approach set out in the Cumulative Impact Assessment Guidelines issued by RenewableUK in June 2013. The Applicant has not identified any significant cumulative effects (Table 9-20) [APP-050].
- 5.23.13 None of the representations received from IPs raised any concerns or disputed the Applicant's approach to the cumulative traffic and transport assessment.
- 5.23.14 Inter-related effects have been scoped out of further assessment on the basis that such an assessment is an inherent part of the approach already undertaken in Chapter 9 of Volume 3 of the ES: see Table 12-2 of Chapter 12 of Volume 2 of the ES [APP-039] and Table 12-2 of Chapter 12 of Volume 3 of the ES [APP-053].

EXAMINATION

- 5.23.15 In reaching the conclusions and recommendation in this section of the report, the Panel has had regard to the paragraphs in NPSs EN-1, EN-3 and EN-5 insofar as they are relevant to traffic and transport matters, which are set out in more detail in Chapter 2 of this Recommendation Report.
- 5.23.16 The Panel has also had regard to the Local Plan policies as set out by ELDC [LIR-001 and REP1-006], BBC [LIR-002], LCC [LIR-003] and NKDC [LIR-004] in their LIR insofar as they are relevant to traffic and transport.

Construction effects

- 5.23.17 Tables 9-5 to 9-8 of the ES [APP-050] indicate the anticipated traffic generation from the construction of the proposed development for the IEC, proposed substation, landfall works and cable route. The proposed development requires the construction of 26 onshore TCC as part of a strategy to mitigate the impacts of construction traffic, the locations of these can be found in Figure 1-1 Maps 1,2,3 and 4 within ES Chapter 1 Volume 3 (Onshore Project Description) [APP-042].
- 5.23.18 Paragraph 9.147 states that the IEMA Guidelines identify that changes in traffic volumes could give rise to landscape and visual, air quality and noise effects. The effects of the proposed development on those matters are examined in other Sections of this Recommendation Report. Paragraph 9.147 also identifies severance, driver delay, pedestrian delay and amenity, fear and intimidation, accidents and

road safety and hazardous loads and potential effects from the construction of the proposed development.

5.23.19 Paragraphs 9.141 to 9.162 of the ES [APP-050] set out the effects from construction traffic on the local highway network. Applying the 'rules' as specified in the IEMA Guidelines and set out above 12 of the 44 routes within the study area would exceed the thresholds.

5.23.20 However paragraphs 9.148 and 9.149 of the ES in respect to severity of traffic states that:

"the IEMA guidelines at paragraph 4.31 suggests that changes in traffic flows of 30%, 60% and 90% are regarded as producing 'slight', 'moderate' and 'substantial' changes in severance respectively. The peak change in total traffic flow for all links is less than the lowest 30% threshold for assessing severance and therefore the effect on severance is assessed as being temporary and negligible".

5.23.21 In respect to temporary changes to driver delay, pedestrian amenity, fear and intimidation and accidents and road safety, the ES states that magnitude of impact would be low and taking into account the sensitivity of the receptors, the effects would not be significant.

Discussion

i) LCC

5.23.22 LCC in their LIR [LIR-003] stated that:

"whilst there is a rail link to Skegness, by far the most used mode of transport to the coast is the private motor car. The roads carry the life blood of the coast – visitors. LCC has been assured by the Applicant that all crossings of roads by the cable route will be undertaken by means of directional drilling under the carriageways. LCC needs the Panel to be content that such an assurance is 'copper-bottomed' and that, if not, the timing of such crossings takes place outside the holiday season. LCC would not tolerate traffic chaos on the routes into or out of the coastal resorts. LCC is working with the Applicant to ensure the proper implementation of Access and Traffic Management Plans. This will ensure that the proposed scheme, should it go ahead, provides the necessary routing, signposting and restricted access according to the latest industry standards of good practice. Guaranteeing the safety of the public is of paramount concern to LCC"

5.23.23 The Panel explored a number of these concerns in our FWQ [PD-009] covering a range of matters relating to details of the access tracks, traffic management, vehicle movements and occupancy, vehicle routing, management of vehicles with abnormal indivisible loads, and monitoring and enforcement. The Panel were satisfied with the responses provided by the Applicant at D1 [REP1-044]. However the Panel felt that responses to FWQ TT 1.4 (delivery of abnormal loads), TT 1.7 (evidence for vehicle occupancy), TT 1.9 (vehicle routing on

minor roads), and TT 1.12 (monitoring and enforcement of construction traffic), failed to demonstrate that mitigation measures were secured and robust justification had not been provided such that further questioning was required.

5.23.24 Additional questions probing these matters were included in the SWQ [PD-014]. The Applicant provided [REP4-027] further clarification and justification particularly in respect of vehicle routing, which the Panel considered adequately addressed the outstanding concerns. No further questions were considered necessary during the remainder the examination.

5.23.25 Within the SWQs the Panel also sought to establish LCCs outstanding concerns at this stage in respect to highways matters in addition to their existing comments on the content of the Outline AMP, the Outline CoCP and the Outline TMP, and how these could be addressed during the remainder of the examination (SWQ TT 2.11) [PD-014]. LCC responded [REP4-009] to confirm that whilst it now agreed with most outstanding issues in relation to highways, LCC considered that the Applicant:

"has failed to appreciate or understand the issues within the ES relating to the impact of traffic and traffic movements on the A17 and A158, and in particular the impact on the railway crossing at Swineshead where there have been a number of accidents including a fatality. Neither have they appreciated that the highways impacted by this scheme are the main tourist routes into the east coast. The information provided is either confused or lacks the relevant detail upon which a decision can be made".

5.23.26 The Applicant responded [REP5-022] disputing LCC's comments, stating that matters had been considered within the ES and the Outline AMP and that adequate mitigation, particularly in relation to the management of the Swineshead level crossing could be managed in consultation with Network Rail.

5.23.27 It is noted that LCC confirmed in response to SWQ TT 2.9 that having seen the evidence on traffic and transport matters, they were satisfied with the control measures proposed in the Outline TMP [APP-110] in respect of monitoring and enforcement of restrictions on construction traffic movements [REP4-009].

5.23.28 LCCs position was discussed at the ISH on Local Impacts held on 19 January 2016 [EV-034]. LCC stated that they retained concerns about the restricted access routes for construction traffic and the level of detail provided within the latest version of the Outline TMP (Revision A) at that time [APP-110], particularly the scale of the plan showing access routes and the suitability of these routes to accommodate HGV and abnormal load movements. The Applicant responded [REP5-022] stating that the Outline TMP identified the road network that would be used by HGV construction traffic and that construction access routes would need to be agreed with LCC as part of each stage specific TMP.

5.23.29 Following a meeting between the Applicant and LCC [REP5-022], the Applicant submitted a revised Outline TMP (Revision B) [REP6-030] to address the concerns raised by LCC including:

" a commitment to undertake route surveys as part of each stage specific TMP. These surveys will identify where minor improvements may be required within the existing highway boundary to accommodate HGV movements, such as provision of passing bays and widening on bends. Alternatively, traffic management measures may be used to control the flow of HGV movements to minimise the risk of large oncoming vehicles meeting at pinch points on the network".

5.23.30 LCC reiterated their concern at the ISH on Local Impacts held on 19 January 2016 [EV-034] that the indicative arrangements for traffic management and accommodation works at each of the access points was generic and would not comply with the requirements of the Design Manual for Roads and Bridges (DMRB). The Applicant responded [REP5-022] stating that such matters would be determined at the detailed design stage and agreed through the TMP, and this was a reasonable point at which to resolve such matters. LCC remained concerned that any traffic management options would have to comply with the Traffic Signs Manual and other legislation [REP8-017] and also raised concerns as to whether the accident data used in the ES was up to date; the Applicant confirming that in their view it was.

5.23.31 In respect to PROWs, the Applicant states in its response to D6 [REP6-035] that only PRow reference Hutt/10/4, which is located at Anderby and close to the TJB construction site, would need to be closed for a six month period during the construction to allow the establishment and removal of the TCC. This is because construction traffic would need to use the PRow to access the TJB site. LCC stated in its response to D5 [REP5-053] and to D8 [REP8-043] that it agreed:

"that the Outline CMS [the most up-to-date version is Revision F [AS-052] sets out an appropriate approach on how public rights of way (PRow) diversions will be managed, and the broad principles that will ensure the use of PRows during construction would be managed safely and that any disruption caused to the general public would be minimised".

5.23.32 No further responses were received from LCC during the Examination until D8. An updated unsigned SoCG was submitted between LCC and the Applicant [REP8-043] which stated that all traffic and transport matters were agreed. It stated:

- *It is agreed that Applicant has consulted the County Council with respect to the scope and methodology of the Traffic and Access assessment, as detailed in the EIA Evidence Plan and It is agreed that the appropriate data sources have been used to inform the baseline study;*

- *It is agreed that the inclusion of a temporary haul road within the cable corridor for use during the construction of the onshore works, is embedded mitigation and will reduce the impacts of construction traffic on the local road networks;*
- *It is agreed that the commitment to cross all classified roads using trenchless techniques, is an appropriate approach for minimising impacts and road closures in the local areas;*
- *It is agreed that the implementation of a Traffic Management Plan (TMP) will secure appropriate routing of construction traffic, and that the approach set out in the Outline is adequate to manage the potential impacts of construction traffic;*
- *It is agreed that the implementation of an Access Management Plan (AMP) will secure acceptable design and location of accesses to temporary working areas, and that the Outline AMP sets out acceptable proposals for accesses to the site;*
- *It is agreed that the implementation of a Contractor Travel Plan, which will form a part of the final TMP, is adequate for encouraging sustainable travel and minimising the impact on the road network;*
- *It is agreed that the impacts on traffic and access during the operational phase have been appropriately scoped out of the assessment as the onshore cable route will require less than one visit per month and the IEC and substations(s) will require only up to two visits per week, no significant impacts are therefore anticipated;*
- *With respect to further applied mitigation measures it is agreed that given there are no significant adverse effects predicted on traffic and access no further specific mitigation is required beyond that which is already embedded into the project design and secured through the management plans required by the DCO; and*
- *It is agreed that the specific projects scoped into the cumulative impact assessment are appropriate and reasonable in order to undertake the cumulative assessment for Traffic and Access.*

5.23.33 Based on the above agreement, the Panel was satisfied that the Applicant had appropriately engaged with LCC during the course of the examination to address the outstanding matters and no further questions were considered necessary.

ii) Other relevant authorities

5.23.34 Both BBC's LIR [LIR-002], WR [REP1-076] and SoCG [REP1-076], and ELDC's LIR [LIR-001], WR [REP1-077], and SoCG [REP1-077] have agreed with the assessment and methodology and conclusions reached within the ES and the appropriateness of the mitigation secured in the draft DCO.

5.23.35 The Panel asked BBC, ELDC and NKDC in SWQ TT 2.9 [PD-014] whether, having seen the evidence on traffic and transport matters, they were satisfied with the control measures proposed in the Outline

TMP [APP-110] in respect of monitoring and enforcement of restrictions on construction traffic movements.

- 5.23.36 ELDC [REP4-004] confirmed that they were satisfied. NKDC [REP4-023] expressed some reservations, stating that while they supported a log of vehicle movements would be maintained, they wished to see additional measures such as the use of tracking devices fitted to construction traffic/contractor's vehicles to ensure that movements (in particular along prohibited routes) can be more robustly monitored, and any appropriate penalty/s or corrective measures applied where necessary. Penalties, restrictions or corrective measures should be stipulated and agreed beforehand through the discharge of the relevant Requirement. The Applicant made no response to this response from NKDC and the recommended measures were not taken forward at this stage as they can properly be discussed and agreed at the detailed design stage.
- 5.23.37 BBC responded [REP4-024] stating that the Outline TMP Revision A [APP-110] made "*no firm commitments for a Travel Plan Coordinator, how it might be funded and how the Travel Plan might be monitored and amended as necessary*". The Panel notes that the Outline TMP Revision B [REP6-030] now includes this stipulation and the Outline TMP is secured by Requirement 19 of the recommended DCO (Appendix D) [REP7-018], which also includes revised wording at 19(2) requiring the permanent access road off the A17 to be used to access the substation and for this to be included in the CMS.

iii) Other interested parties

- 5.23.38 Following acceptance of the application and throughout the examination, representations from IPs raised concerns in respect to the effect of the proposed development on the local highway network and local communities. Of the 192 RRs received, over a quarter raised traffic and transport as an issue. Of these, many were concerned about the condition of the local highway network and country roads in the area, and questioned their suitability for construction traffic. The Panel has had regard to these matters in its Examination of the Application.
- 5.23.39 The Panel noted that representation from Mr JRM Mackinder at D3 [REP3-014] queried whether the Applicant had considered an alternative route from the A158 to the IEC using the Ingoldmells Road to Marsh View Farm. The Panel sought clarification from the Applicant on this matter in SWQ TT 2.2 [PD-014]. The Applicant responded [REP4-027] to explain that this route had not been considered for reasons set out in the ES, listing a number of principles that guided how people and materials were transported to site. The Applicant deemed that the alternative route did not comply with these. In a representation from DDM Agriculture on behalf of various parties [AS-048] Mr Mackinder withdrew his representations made during the Examination.

Conclusion on construction effects

- 5.23.40 The Panel acknowledges the concerns raised by IPs and initial concerns raised by LCC in respect traffic and transport matters. The concerns raised were progressed by the Panel in FWQ and SWQ, and the Panel is satisfied that the responses from the Applicant adequately addressed our initial concerns. The Panel has applied considerable weight to the submission of an agreed but unsigned SoCG between LCC, the relevant highway authority for the proposed development, and the Applicant at the end of the Examination which records the agreement between the two parties exists on traffic and transport impacts and the mitigation measures required [REP8-043].
- 5.23.41 The comments of NKDC are noted in respect of additional monitoring. However it was not demonstrated that such measures were absolutely necessary or that proposed measures by the Applicant as set out in the OTMP (Revision B) [REP6-030] were insufficient to manage construction traffic. Requirement 19 of the recommended DCO (Appendix D) [REP7-018] requires the Applicant to seek the approval of the relevant planning authority and this measure, if deemed necessary, could be a matter of agreement between the parties. The above mitigation is secured in Requirements 19 (Construction Traffic), Requirement 8 (AMP), Requirement 14 (CoCP), and Requirement 22 (Decommissioning Plan) as set out in the recommended DCO (Appendix D).

Operational effects

- 5.23.42 The Panel did not receive any representations from IPs that disagreed or disputed operational effects identified in the ES and so it did not become an examination issue and there were no further comments throughout examination on this point.
- 5.23.43 Having regard to the above, the Panel is satisfied that there would be no significant effects on traffic and transport matters from the operation of the proposed development.

Decommissioning

- 5.23.44 Paragraphs 9.166 and 9.167 of the ES [APP-050] state that:

"it is anticipated that the underground cables would not need to be removed upon decommissioning and, therefore, it is likely that decommissioning activities will only focus around the Intermediate Electrical Compound and Substation/Unlicensed Works at Bicker Fen. However, if a decision is ultimately made during the life of the project that the cables are to be removed, the conduit would be retained and the cables pulled through the existing jointing pits (these activities should represent an impact of no worse, and potentially substantially less, than for construction). The level of traffic associated with the decommissioning of these facilities will therefore be less than that encountered for the construction and thus will have a reduced impact

compared to that assessed for construction activities. On the above basis, the Applicant considers the effects during the construction phase will be less significant during the decommissioning phase. The residual effects associated with the Intermediate Electrical Compound and the Substation will remain as negligible".

- 5.23.45 Requirement 19 of the recommended DCO (Appendix D) requires the submission of a CTMP to be approved by the relevant planning authority but only in relation to the construction traffic. As set out above, the Applicant is also seeking to rely on the TMP for decommissioning traffic in relation to the removal of the IEC and proposed substation buildings. However this is not specified in Requirement 19. Requirement 22 requires a decommissioning plan but is not specific in requiring a TMP.
- 5.23.46 The Panel did not receive any representations from IPs that disagreed or disputed decommissioning effects identified in the ES and so it did not become an examination issue and there were no further comments throughout examination on this point.
- 5.23.47 Having regard to the above, the Panel is satisfied that there would be no significant effects arising from traffic and transport matters as a result of the decommissioning of the proposed development.

Cumulative effects

- 5.23.48 Table 9-18 and paragraphs 9.168 to 9.187 of the ES [APP-050] identify four 'Tier 1' developments, and four 'Tier 2' which are identified within a 5km radius of the cable corridor. Table 9-19 confirms that the only potential cumulative impact would be temporary increases in traffic flows as a result of the construction of the proposed development with other developments. Table 9-20 states there would be no significant cumulative effects because of the temporary period in which construction would take place. There would also be no significant cumulative effects from the operation and decommissioning effects from the proposed development.
- 5.23.49 The ExA did not receive any representations from IPs which raised any specific concerns in respect to the assessment and views reached by the Applicant in respect of the cumulative effects from the proposed development on the traffic and transport matters. The Panel felt that no questioning was necessary during the examination of the proposed development in this regard.
- 5.23.50 Having examined the evidence before us, including mitigation measures, which are set out under 'construction' in section 1.4 'Examination' above, the ExA concludes that there would be no significant traffic and transport effects caused from the cumulative impacts of other planned projects alongside with the proposed development.

CONCLUSION AND RECOMMENDATION

- 5.23.51 The Panel has examined the ES in respect to the Applicant's approach to the assessment, and the construction, operation, decommissioning and cumulative impacts caused by the proposed development on the traffic and transport matters. In each case the ES confirms that there would be no significant effects. At the close of the Examination there were no outstanding matters in respect to the approach taken by the Applicant in the ES or with the assessment findings.
- 5.23.52 Concerns were raised by IPs in respect to construction traffic generation and the ability of local road networks to cope with the additional traffic. However the ExA find traffic generation is an inevitable consequence of major infrastructure projects, and based on the evidence provided during the course of the examination, is satisfied that the Applicant's proposed mitigation measures would ensure that there would be no significant effects associated with traffic and transport as a result of the proposed development.
- 5.23.53 The ExA are content that the proposed mitigation is adequately secured within Requirement 8 (AMP), Requirement 14 (Code of Construction Practice (CoCP), Requirement 19 (TMP), and Requirement 22 (Decommissioning Plan) of the recommended DCO (Appendix D).
- 5.23.54 The Panel has had regard to the representations received from the Local Authorities in particular LCC as the local highway authority, and notes that it now agrees with the assessment and findings in the ES.
- 5.23.55 Having regard to the information provided in the ES, all representations and responses to questions from IPs, and the SoCGs referred to above, the Panel is satisfied that there would be no significant effects arising from the construction, operation, decommissioning and cumulative effects with other planned projects on the highway network. The Panel is satisfied that a suitable mitigation strategy has been proposed by the Applicant as set out above, and would be sufficient to ensure the proposed development would mitigate against any identified harm caused, and that the measures are secured within the recommended DCO (Appendix D).
- 5.23.56 The Panel considers the proposed development would accord with the NPSs and Local Plan policies which are set out in more detail in Chapter 3 of this Recommendation Report.

5.24 WASTE MANAGEMENT

APPLICANT'S APPROACH

- 5.24.1 Paragraphs 1.10 and 2.2 of the Outline Site Waste Management Plan (SWMP) [APP-105] identify the purpose of an Outline SWMP, which is to set out the roles and responsibilities of the Applicant and its contractors (including any subcontractors) to ensure that the project

complies with its waste obligations (under waste legislation) and current environmental best practice by:

- ensuring compliance with all legal and contract requirements for waste management;
- ensuring all the necessary paperwork is collated and stored on site in accordance with UK regulations;
- minimising the amount of waste disposal from site by aiming to reduce, reuse waste on site or recycle;
- ensuring that the requirements are understood by all those involved; and
- ensuring the roles and responsibilities are defined for managing the activities of installation contractors.

5.24.2 Paragraph 3.3 of the Outline SWMP [APP-105] states that:

"the Principal Contractor is responsible for all waste generated under its control and will identify the persons responsible on site for managing the waste, identify the types of wastes to be generated, state how the wastes will be managed, record details of the waste contractors used and indicate the expected quantity of wastes to be generated. These details will be entered into a SWMP spread sheet template to record and report the various details of the site waste handling activities".

5.24.3 Paragraphs 4.5 and 4.6 of the Outline SWMP [APP-105] state that site induction and training will be undertaken to ensure Principal Contractors are aware of the requirements of the Outline SWMP once approved, including roles and responsibilities if hazardous waste is removed.

5.24.4 Paragraph 4.12 of the Outline SWMP [APP-105] states that the approved SWMP must include a 'statement of conformity' required by the Waste Regulations 2011 to ensure the 'waste hierarchy' has been adopted, which requires stages of prevention, re-use, recycling and other recovery to have been undertaken before the waste is disposed of. Paragraph 6.4 sets out a list of the waste expected to be generated during the construction activities and the preferred management method.

5.24.5 Paragraphs 5.1 to 5.5 of the Outline SWMP [APP-105] state that for site arrangements:

- each of the waste containers, covered skips or larger skips (e.g. for wood waste) will be clearly marked to describe the wastes that will be accepted within it;
- the Principal Contractor will produce and display a site plan to show the areas of the site where wastes will be accepted for disposal;
- the Principal Contractor will encourage the use of recycled materials on site;

- materials used on site will be from a sustainable source wherever possible; and
- a "just in time" strategy will be adopted to keep stocks of materials on site to a minimum.

EXAMINATION

- 5.24.6 The Panel confirms that ELDC, BBC or LCC have not discussed, or identified or put forward any relevant Local Plan Policies within their LIRs [LIR-001, LIR-002 and LIR-003] which apply to waste management. The Panel has had regard NPS EN-1 in particular part 5.14, which advises that the 'waste hierarchy' must be adopted in managing waste, and that the applicant should prepare a SWMP covering waste recovery and disposal system for all waste generated by the development, and an assessment of the impact of the waste arising from development. The applicant should also seek to minimise the volume of waste produced and the volume of waste sent for disposal unless it can be demonstrated that this is the best overall environmental outcome.
- 5.24.7 Paragraph 4.16 of the Outline SWMP [APP-105] states that waste management is controlled by primary and secondary legislation, and the paragraph lists sixteen such Acts and Regulations that apply.
- 5.24.8 Paragraph 2.5 of the Outline SWMP states that it:
- "will be in place throughout the construction phase of proposed development. All waste from the site based works, or that received at the site from the various vessels working on the project, will be dealt with in accordance with the Waste (Duty of Care) in section 34 of the Environmental Protection Act 1990(3), the Waste (England & Wales) Regulations 2011, the Hazardous Waste (England and Wales) Regulations 2005 and any other associated waste regulations. All materials will be handled efficiently and waste managed appropriately".*
- 5.24.9 The requirement to produce a SWMP forms part of a requirement to submit a CoCP, which is set out in Requirement 14 of Part 5 of Schedule 2 of the recommended DCO (Appendix D). Paragraph 2.4 of the Outline SWMP [APP-105] states that Local Authorities and the EA have power to enforce the regulations relating to land based activities, via fixed penalty notices or prosecution.
- 5.24.10 The EA stated in its RR [RR-106] that they :
- "have reviewed the OSWMP and this is satisfactory. The obligation to produce SWMPs has been lifted; however, it is important that waste is managed in accordance with waste management regulations, particularly the Waste Framework Directive and the Duty of Care regulations, in order to prevent environmental harm".*

- 5.24.11 The Panel did not receive any representations from IPs which raised any specific concerns in respect to the construction of proposed development in respect to waste management, and the Panel felt no questions were necessary during the examination of the proposed development in this regard.
- 5.24.12 Having examined the evidence before us and the views of the EA, the ExA concludes and recommends to the SoS that matters relating to waste management are sufficiently regulated by other legislation as outlined in the Outline SWMP [APP-105], and through the submission of a SWMP as part of a CoCP required by Requirement 14 of Part 5 of Schedule 2 of the recommended DCO (Appendix D).
- 5.24.13 The ExA is content that the Applicant's approach to waste management accords with part 5.14 of NPS EN-1, details of which are described above.

5.25 WATER QUALITY AND RESOURCES

- 5.25.1 Lincolnshire is characterised by its flat low-lying landscape and complex network of drainage infrastructure which is predominantly used to support a rural agricultural economy: abstractions from surface water are made primarily for irrigation purposes [APP-082].
- 5.25.2 Tourism is a significant contributor to the local and regional economy [LIR-003], so water quality issues, particularly in respect of bathing water quality, are therefore important.

APPLICANT'S APPROACH

- 5.25.3 The Applicant's approach to the assessment of water quality and resources impacts has been to consider the potential for impact on bathing water quality, watercourses and aquifers including cumulative effects, against baseline conditions.

Baseline

- 5.25.4 Full baseline descriptions, data sources and assessment methodology are presented in the Hydrology and Flood Risk Baseline Report [APP-082] and in Chapter 7 of Volume 3 of the ES [APP-048].
- 5.25.5 General information on baseline conditions was obtained from the EA, including its flood zone risk map, and also from the ELDC and BBC strategic flood risk assessments. The EA flood maps indicate that the landfall site, the IEC and part of the substation site are in Flood Zone 3.
- 5.25.6 For the baseline assessment, the study area was taken to be the entire footprint of the proposed development boundary, and the landfall site, the IEC, the substation site and the cable route were each considered separately.

- 5.25.7 The baseline assessment noted that there are no onshore WFD watercourses within 250m of the landfall site or the IEC. At the proposed substation site, the South Forty Foot Drain and the New Hammond Beck currently achieve Moderate ecological status, and the watercourses along the cable route mostly have a WFD status of Moderate, with some of Good ecological status.
- 5.25.8 The baseline assessment also noted that the EA records show no pollution incidents within 250m of the landfall site, the IEC or the proposed substation, and no significant pollution incidents within 250m of the cable route.

Assessment

- 5.25.9 The assessments are described in Chapter 2 of Volume 2 of the ES [APP-029] and Chapter 3 of Volume 3 of the ES [APP-044] and the findings are summarised in Chapter 13 of Volume 3 of the ES [APP-054]. The majority of impacts will be negligible or minor adverse, which is not significant.
- 5.25.10 The assessment has considered the potential impacts of the landfall site, the onshore cable route, the IEC, the substation and the unlicensed works at the existing National Grid substation.
- 5.25.11 During pre-application consultation undertaken by the Applicant, several potential impacts were found to be not significant and were scoped out of further assessment through a Planning Inspectorate Scoping Opinion [APP-093]. Table 7-1 of Chapter 7 of Volume 3 of the ES [APP-048] shows which potential impacts remain scoped in.
- 5.25.12 In its scoping opinion consultation response, EA agreed with the Applicant that the proposed development should have a negligible impact on water quality as long as the appropriate construction guidelines are followed: this is noted in Table 7.4 of Chapter 7 of Volume 3 of the ES [APP-048].

Bathing water quality

- 5.25.13 The Applicant has considered bathing water quality in relation to blue flag beaches and designated bathing waters, and the associated recreational activities such as swimming and watersports, in Chapter 3 of Volume 3 of the ES [APP-044].
- 5.25.14 The impacts considered by the Applicant in paragraph 3.132 of Chapter 3 of Volume 3 of the ES [APP-044] are in respect of recreational visitors and tourists. They relate to elevations in suspended sediment levels from any of the trenchless techniques, and release of lubricant into the water through HDD operations at the landfall. The Applicant considers that all other trenchless techniques will employ an exit pit above mean high water springs which will remove the potential for release of lubricant into the water [APP-044].

- 5.25.15 The findings of the offshore physical processes assessment are reported in Chapter 2 of Volume 2 of the ES [APP-029]: the Applicant concludes that the magnitude of impact (as defined in Table 2.6) upon Designated Bathing Waters is anticipated to be very low and that the receptor sensitivity (as described in Table 2.5) is judged to be medium. In paragraphs 2.120 and 2.121 of Chapter 2 of Volume 2 of the ES [APP-029] the Applicant explains that the effect is adverse but temporary, experienced at a local level for a short period of time.
- 5.25.16 The Applicant therefore judges that the overall level of direct effect of construction will be negligible, ie not significant (paragraphs 3.137 and 3.138 of Chapter 3 of Volume 3 of the ES [APP-044]).

Watercourses

- 5.25.17 Impacts relating to watercourses are considered and assessed in the Applicant's WFD assessment [APP-083], undertaken by HR Wallingford, which is Annex 7-2 to Volume 3 Chapter 7, Hydrology and Flood Risk [APP-048] of the ES.
- 5.25.18 The Applicant concludes that there are no negative or positive, temporary or permanent effects, assuming that all embedded mitigation measures are implemented [APP-083].

Aquifers

- 5.25.19 Impacts relating to aquifers are considered and assessed in the Applicant's WFD assessment [APP-083], undertaken by HR Wallingford, which is Annex 7-2 to Volume 3 Chapter 7, Hydrology and Flood Risk [APP-048] of the ES. Paragraph 2.1.2 states that the main aquifers in the area are chalk and are used for public water supply, industry and agriculture: the chalk aquifer is at least 30m below the surface along the proposed route and there are no plans to penetrate the chalk.
- 5.25.20 Provided that the embedded mitigation steps proposed are taken, the Applicant concludes that no impacts on the aquifer are anticipated [APP-083].

Mitigation

- 5.25.21 The project design includes various mitigation measures to prevent adverse effects on water quality, listed in the WFD assessment [APP-083]:
- Use of HDD under all watercourses;
 - Appropriate management of potential pollutants; and
 - Management of sediment in any runoff from construction compounds.
- 5.25.22 Mitigation also includes the use of HDD at landfall (Table 3-8 of Chapter 3 of Volume 3 of the ES [APP-044]). Other embedded mitigation measures have also been proposed by the Applicant that

would be employed during the design, construction, operation and decommissioning of the proposed development. These are summarised in Table 7-10 of Chapter 7 of Volume 3 of the ES [APP-048] and include (but are not limited to):

- the use of trenchless techniques to construct the cable under watercourses and flood defences;
- the use of industry best practice and published guidelines;
- obtaining consent where the works may affect the flow, quality or purity of water in any watercourse, or the conservation, distribution or use of water resources; and
- following industry best practice pollution prevention guidelines, including EA guidance notes.

5.25.23 These measures were included in the outline CEMP [APP-107], the outline PPEOIRP [APP-106] and the Outline CMS [APP-099], all secured by Requirement 14 of the Applicant's draft DCO [APP-010].

Cumulative impacts

5.25.24 The Applicant's assessment has considered the potential for cumulative effects. Inter-related effects have also been considered, both in Tables 12.7, 12.10 and 12.11 of Chapter 12 of Volume 2 of the ES [APP-039] and in Tables 12.7, 12.10 and 12.11 of Chapter 12 of Volume 3 of the ES [APP-053] and the Applicant has concluded that there are no significant additional effects beyond those already considered in the relevant topic chapters. Residual effects are summarised in Tables 13.5, 13.8 and 13.9 of Chapter 13 of Volume 3 of the ES [APP-054] and the Applicant has concluded that there are no significant residual effects.

EXAMINATION

5.25.25 Paragraph 5.15.1 of NPS EN-1 says that infrastructure development can have adverse effects on the water environment, and that there may be an increased risk of spills and leaks of pollutants to the water environment.

5.25.26 Paragraph 5.15.2 says that the Applicant should undertake as part of the ES an assessment of the existing status of, and impacts of the proposed project on water quality and resources, and further details are given in paragraph 5.15.3, including any impacts under the WFD(2000/60/EC).

5.25.27 In respect of mitigation, paragraph 5.15.8 of NPS EN-1 suggests the use of a construction management plan and paragraph 5.15.9 says that the risk of impacts can be reduced through careful design and good pollution control practice.

5.25.28 BBC Local Plan policy G4 states that planning permission will not be granted for developments which will have an adverse effect on the water environment, or the quality of surface or ground water.

- 5.25.29 ELDC Local Plan policy ENV2 in respect of water quality has been deleted: however, policy ENV21 relating to river corridors states that development will be permitted where it can be shown that it will not harm nature conservation importance or recreational importance.
- 5.25.30 These local plan policies and the LIRs [LIR-001 and LIR-002] were taken into account by the ExA.
- 5.25.31 The main items examined were preventing accidental pollution of watercourses and maintaining bathing water quality during construction. These matters are considered in turn.
- 5.25.32 In its RR [RR-106], the EA stated that it had two main concerns in respect of water quality and resources.
- 5.25.33 The first concern was in respect of groundwater and aquifer protection where HDD is undertaken, and whether any contamination would be encountered during onshore cable laying works.
- 5.25.34 The second concern of the EA was compliance with the Bathing Water Directive (2006/7/EC) should cable burial works, which have the potential to increase bacteria in the seawater due to disturbed sediments, be undertaken during the bathing water season, which is 15 May to 30 September.
- 5.25.35 The ExA was also concerned with the sensitivity of Blue Flag beaches and designated bathing waters, and what mitigation measures were in place to prevent an increase in suspended sediment levels and release of lubricant into the water.

Accidental pollution of watercourses

- 5.25.36 In its RR [RR-106], the EA expressed concern with the outline PPEIRP [APP-106] and recommended that it should identify details of one or more UK Spill accredited pollution response contractors who the Applicant would be able to contact in the event of a large scale incident.
- 5.25.37 The ExA was satisfied that the final PPEIRP, written in accordance with the outline PPEIRP [APP-106], would be submitted and approved as part of the Outline CoCP [APP-098] in order to comply with requirement 14 in the draft DCO [APP-010]. However, the ExA was concerned that section 5 of the Outline PPEIRP [APP-106] which did not make specific reference to who would be called upon in the event of an emergency incident such as a major spillage.
- 5.25.38 The ExA therefore put a FWQ to the Applicant (EOn 1.16) [PD-009], asking whether such a contractor had been identified and, if so, whether any understanding, arrangement or provisional contract had been entered into.

- 5.25.39 The Applicant replied [REP1-044] that an additional paragraph had been inserted in Revision B of the outline PPEIRP [REP1-060] to say that pollution response contractors accredited by UK Spill would be identified and named in the final PPEIRP, which would be prepared and submitted in accordance with Requirement 14 in the draft DCO [APP-010], but that no understanding, agreement or provisional contract had been entered into at this stage.
- 5.25.40 In its SoCG, the EA said it was content [REP1-078] however, the ExA was not completely satisfied with the Applicant's response in respect of a large scale spill incident and how this would be dealt with, and put a SWQ (EOn 2.3) [PD-014] to the Applicant.
- 5.25.41 The Applicant responded [REP4-027] to say that the additional paragraph in the outline PPEIRP submitted at D1 had been redrafted, the wording agreed with EA and the amendment recorded in the Schedule of Amendments [REP4-047]. The ExA were satisfied with this response.
- 5.25.42 In its RR [RR-106], the EA also had a concern in respect of the Outline CEMP [APP-107], in that it made no mention of preventing water pollution/protecting water quality, and said that in its view any works carried out in the vicinity of watercourses must be undertaken in a manner that does not cause pollution, eg by sediment disturbance and runoff. EA requested a section in the Outline CEMP [APP-107] showing how the works would comply with both Pollution Prevention Guidance Note 6 (Working at construction and demolition sites) and Pollution Prevention Guidance Note 5 (Working in or near water).
- 5.25.43 The ExA was satisfied that the final CEMP, written in accordance with the Outline CEMP [APP-107], would be submitted and approved as part of the Outline CoCP [APP-098] in order to comply with Requirement 14 in the draft DCO [APP-010], but was concerned as to how the works would comply with the Pollution Prevention Guidance Notes 5 and 6.
- 5.25.44 The ExA therefore put a FWQ to the Applicant (EOn 1.17) [PD-009], asking whether it considered the section requested by EA to be necessary and, if so, how it proposed to satisfy EA's request.
- 5.25.45 The Applicant responded [REP1-044] that Chapter 3 of Volume 7 of the ES [APP-048] already included these items as embedded mitigation, and this was reiterated in paragraph 2.35 of the outline CEMP [APP-107], the Applicant therefore considered that the EA request was satisfied.
- 5.25.46 The ExA were satisfied with this response, and did not receive written or oral submissions from the EA or any other IP to the contrary.

Bathing water quality

- 5.25.47 In its RR [RR-106], EA expressed concern that the landfall works have the potential to increase bacti levels significantly, thus affecting the bathing water quality status at Anderby, which is currently excellent, and requesting that a risk assessment be carried out on the potential impacts on bathing water quality at Anderby and Moggs Eye beaches.
- 5.25.48 The EA request for a risk assessment was put forward by the Panel in FWQ (EOf 1.7) [PD-009]. The Applicant's response [REP1-044] was that such matters were to be controlled by Condition 14 of the draft DML, which was subsequently updated for D3 [REP3-043] to reflect this.
- 5.25.49 Additionally, the Panel wanted to know on what basis the Applicant had stated in paragraph 3.138 of Chapter 3 of Volume 3 of the ES [APP-044] that Blue Flag beaches and designated bathing waters had been judged to be of low sensitivity, and raised a FWQ (EOn 1.12) [PD-009], asking the Applicant to explain its assertion and to explain how it proposed to ensure that bathing water quality at Anderby and Moggs Eye would not be adversely affected by the proposed development.
- 5.25.50 The Applicant responded [REP1-044] that the EA had agreed that the matter be scoped out of further assessment in the SoS's Scoping Opinion [APP-093] and had agreed use of the EIA methodology provided in the SOCG between EA and the Applicant at Appendix 29 to the Applicant's response to D1 [REP1-078]. The Applicant's position was that this assessment still stood and that it had been agreed with EA that any effect would be of low magnitude and short duration, and therefore negligible. The Applicant therefore saw no need for any further risk assessment.
- 5.25.51 The Panel also wanted to know what mitigation measures, if any, were proposed to prevent an increase in suspended sediment levels and release of lubricant into the water, and put another question to the Applicant (EOn 1.13) [PD-009].
- 5.25.52 The Applicant responded [REP1-044] that the use of trenchless methods at the landfall site would ensure that any material would be released into a receptor pit and disposed of in accordance with the final site waste management plan. The ExA was satisfied with these responses.
- 5.25.53 The EA was also content with the Applicant's responses and, in its response to D8 [REP8-014] stated that it had reached agreement with the Applicant in respect of all matters of environmental protection and regulation, the drafting of protective provisions and restrictive covenants and matters pertaining to the EA's land interests.
- 5.25.54 Accordingly, the EA, in its capacity as a Statutory Consultee and Statutory Undertaker, withdrew the objection made to the proposal, as

detailed in its RR [RR-106] and WR [REP1-040]. The EA has signed a SoCG with the Applicant confirming this [REP5-043 and REP7-054].

REASONING AND CONCLUSIONS

- 5.25.55 The Panel was satisfied that the baseline descriptions and assessments comply with the requirements of paragraphs 5.15.2 and 5.15.3 of NPS EN-1.
- 5.25.56 The Panel was satisfied with the Applicant's overall assessment approach, but had specific concerns relating to water quality, namely accidental pollution of watercourses and bathing water quality. These issues had been raised in part by EA in its RR.
- 5.25.57 The ExA examined these issues and was satisfied with the Applicant's responses. EA was also content with the Applicant's responses.
- 5.25.58 By the close of the examination, the Applicant had submitted SoCGs with the EA [REP5-043 and REP7-054] which confirmed that all matters in relation to water quality and resources were agreed.
- 5.25.59 The ExA is also satisfied that all necessary mitigation is adequately provided for within the outline CEMP [APP-107], the outline PPEIRP [APP-106] and the outline CMS [APP-099], all secured by Requirement 14 of the Applicant's draft DCO [APP-010]. No further representations were put forward by other IPs.

5.26 THE CUMULATIVE EFFECTS, INTER-RELATIONSHIPS AND THE NATIONAL GRID VIKING LINK INTERCONNECTOR PROJECT

OFFSHORE CUMULATIVE EFFECTS

- 5.26.1 The offshore cumulative effects for the marine physical environment, intertidal and subtidal ecology, fish and shellfish, marine mammals, marine ornithology, marine conservation sites and marine archaeology are considered within the Offshore chapter of our Recommendation Report.
- 5.26.2 In each case, the ES [APP-029 to APP-034 and APP-038] concludes that there would be no significant cumulative effects from the proposed development when taken with other known and planned projects. The Panel did not receive any representations from IPs which disputed the methodology taken by the Applicant in the ES or the assessment findings.
- 5.26.3 The Panel notes that SoCGs have been signed between the Applicant and HE [REP1-069], NE [REP5-044] the EA [REP5-043] and the MMO [REP5-045] in which cumulative matters are agreed.
- 5.26.4 The ExA did not have any specific concerns with the ES in respect to the cumulative impacts assessments, and no questions were raised during the Examination of the application. We were satisfied with the robustness of the methodology adopted within the ES and on the

evidence before us, are satisfied with its findings that there would be no significant cumulative effects.

ONSHORE CUMULATIVE EFFECTS

- 5.26.5 A cumulative impact assessment has been undertaken in the ES in respect of:
- landscape and visual;
 - socio-economic, tourism and recreation;
 - terrestrial ecology;
 - agriculture and soils;
 - geology, hydrogeology and ground conditions;
 - hydrology;
 - the historic environment;
 - traffic and access;
 - air quality; and
 - noise and vibration
- 5.26.6 We have considered the assessment of all cumulative effects listed above in the individual sections of our Recommendation Report. Commercial fisheries, shipping and navigation, and other marine users [APP-035 to APP-037] have been addressed within the socio-economic and tourism chapter of our Recommendation Report.
- 5.26.7 With the exception of landscape and visual, and noise and vibration, the ES [APP-044 to APP-051] concludes that there would be no significant cumulative effects from the proposed development when taken with other known and planned projects.
- 5.26.8 For landscape and visual, the ES [APP-043] states that construction activities could cause potential significant cumulative landscape and visual effects at the landfall area. However these effects would be time limited, not permanent and would be reversible. Potential significant cumulative visual effects could occur from the operation of the IEC and proposed Substation. However planting mitigation would have the desired effect of reducing this significance to a negligible effect. Mitigation planting is secured through the Requirements 6 and 7 of the recommended DCO (Appendix D).
- 5.26.9 For noise and vibration, the ES [APP-052] states that without mitigation, there would be significant adverse cumulative effects caused by the trenchless construction techniques of the cable route to nearby residents within 50-70m of the activity or if micro-boring or pipe jacking trenchless techniques are used. The most severe effect would be from trenchless construction at night time on nearby properties. The noise chapter of our Recommendation Report identifies embedded mitigation and the ES states that such mitigation, including re-housing affected residents within proximity of night-time trenchless construction would ensure that the residual significance of the cumulative effects would be negligible.

- 5.26.10 The Panel notes that SoCGs have been signed between the Applicant and ELDC [REP2-036], BBC [REP2-035], HE [REP1-069], NE [REP5-044] and the EA [REP5-043] in which cumulative matters are agreed.
- 5.26.11 LCC state in the SoCG [REP8-043] that it does not agree that cumulative effects have been adequately considered and that it is appropriate and reasonable to scope a cumulative assessment of Geology, Hydrogeology and Ground Conditions out of the ES. However, the Panel notes that LCC did not raise this as a matter in the Examination until the submission of the SoCG at D8. Furthermore, LCC did not provide any evidence to justify why they objected to the Applicant's approach taken in the ES [APP-047] or provide any information in planned projects which together with the proposed development could result in likely significant cumulative effects.
- 5.26.12 The ExA did not have any specific concerns with the ES in respect to the cumulative impacts assessments, and no questions were raised during the Examination of the application. We were satisfied with the robustness of the methodology of the ES and on the evidence before us, are satisfied that subject to the embedded mitigation as identified in the ES chapters, that there would be no significant long-term cumulative effects.

INTER-RELATIONSHIP EFFECTS

- 5.26.13 Inter-relationships are assessed in the ES [APP-039] for offshore and [APP-053] for onshore. The two documents are similarly worded.
- 5.26.14 Paragraphs 12-11 to 12-25 of the ES [APP-039 and APP-053] set out the approach to, and scope of the offshore and onshore assessment of inter-relationships.
- 5.26.15 Table 12-2 states that for offshore inter-relating effects, the marine physical environment, marine ornithology; marine mammals and nature conservation sites were scoped out of assessment, the reasons for this are set out in the Table. For onshore, Table 12-2 states that commercial fisheries, shipping and navigation, other marine users, traffic and access and air quality were scoped out of assessment of inter-relationships, again the reasons are set out.
- 5.26.16 For offshore, Tables 12-3 (subtidal and intertidal ecology), 12-4 (fish and shellfish) and 12-5 (marine archaeology) of the ES [APP-039] identify; fish and shellfish; and marine archaeology set out the inter-related effects. For subtidal and intertidal ecology and fish and shellfish, the ES states that the construction and operational phases would have no potential for multiple effects, and as these phases are mutually exclusive there is no potential for temporal overlap and therefore no potential for inter-related effects. In respect to offshore archaeology, the ES states that there would be very limited scope for significant inter-related effects on archaeological resources as a result of the interactions of the various impacts as any such effects will be avoided via the implementation of standard mitigation measures

through the offshore WSI secured in Condition 7(g) of the recommended DML (Appendix D).

- 5.26.17 Tables 12-6 (landscape and visual); 12-7 (socio-economic and tourism); 12-8 (terrestrial ecology); 12-9 (agriculture and soils); 12-10 (geological/hydrogeological resources and ground conditions); 12-11 (hydrology and flood risk), 12-12 (archaeology) and 12-13 (noise) set out the onshore inter-related effects. In each case, the ES states that:
- "the inter-related assessment for the proposed development does not identify any significant inter-related effects. Certain individual effects were identified that did interact with each other, however these were not considered to lead to any greater significance of effect than the individual impacts when considered in isolation"*.
- 5.26.18 With the exception of LCC in their SoCG with the Applicant [REP8-043], the Panel did not receive any representations from IPs which disputed or disagreed with the assessment in the ES [REP-039 and APP-053] in respect to inter-relationships.
- 5.26.19 LCC however states in its SoCG with the Applicant [REP8-043], and in respect of landscape and visual; geology, hydrogeology and ground conditions; and socio-economic and tourism, matters, that it *"does not agree that the assessment undertaken and detailed in the ES [APP-039 and APP-053] is appropriate, accurate, and further does not agree that no significant effects are predicted"*.
- 5.26.20 However, the Panel notes that LCC did not raise this as a matter in the Examination until the submission of the SoCG at D8. Furthermore, LCC did not provide any evidence to justify why they objected to the Applicant's approach taken in the ES [APP-047], or put forward what they would have expected to see in the ES.
- 5.26.21 The Panel notes that SoCGs have been signed between the Applicant and ELDC [REP2-036], BBC [REP2-035], HE [REP1-069], NE [REP5-044], the EA [REP5-043] and the MMO [REP5-045] in which all such matters are agreed.
- 5.26.22 The ExA did not have any specific concerns with the ES in respect to the assessment of inter-related effects, and no questions were raised during the Examination of the application. On the evidence before us, the ExA concludes that we are satisfied with the robustness of the methodology of the ES [APP-039 and APP-053] and with its findings that that there would be no significant inter-related effects.

THE NATIONAL GRID VIKING LINK INTERCONNECTOR

- 5.26.23 The Panel were made aware of the existence of a project known as the National Grid Viking Link Limited Interconnector (NGVLL) project from the outset of the examination following submission of the application from a significant number of numerous RRs.

- 5.26.24 NGVLL proposes the construction of a direct current underground cable connecting electricity generated in Denmark, via an undersea and underground cable where it would connect to the National Grid at the interface connection point at the National Grid Bicker Fen substation; the same interface for the proposed development.
- 5.26.25 The RRs received state the landfall would be at the same or similar area as the proposed scheme at Anderby Creek North, and would likely follow the same cable route to Bicker Fen. Accordingly, the RRs state that the Applicant's proposal and NGVLL should be considered together, and as such the examination of the proposed scheme should be suspended until NGVLL has been submitted and that both schemes should be assessed together and cumulatively.
- 5.26.26 The Panel found that we were faced with three issues to contend with, which were:
- whether the examination of the application should be suspended because of the existence of NGVLL;
 - whether the existence NGVLL should be a main issue for the examination of the TKES application; and if so
 - whether the NGVLL should be cumulatively assessed as part of the assessment of the TKES application, having specific regard to the stage in which the NVGLL is at.

Suspension of the application

- 5.26.27 At the Preliminary Meeting, held on 3 September 2015 [EV-001], the Panel stated that in its view, no provision exists within the PA2008 which allowed for the suspension of the application, once accepted for examination, for the circumstances outlined above. As such, the Panel advised those present that it had no power to suspend the application, and its examination would open as planned on Friday 4 September 2015.

Whether NGVLL is a main issue

- 5.26.28 On the second issue, the Panel considered from its initial identification of the issues that NGVLL project had the potential to have a bearing, on the examination of the TKES application, depending on how far advanced the NGVLL project was at. Consequently, the Panel identified the NGVLL as a principal issue in its 'Rule 6' letter [PD-007].
- 5.26.29 In response, NGVLL stated [AS-005] that they were:
- "very concerned at the inclusion of the cumulative impacts as set out in the Rule 6 letter" [PD-007], and "while Bicker Fen would be the connection point, the project is at a very early stage in development". NGVLL go on to state in the same response that "they remain uncertain as to the project programme and as such are sceptical as to the extent cumulative impacts can be assessed".*

'The Panel noted the comments from NGVLL in respect of the inclusion of the NGVLL project as a principal issue.

Whether cumulative assessment is required

- 5.26.30 The Applicant states in ES Chapter 4 Volume 1 [APP-023], and reaffirmed in its response to D3 [REP3-039], that the NGVLL project could not be cumulatively assessed as there was insufficient information to allow a complete assessment, but that NGVLL will have to assess cumulative impacts with the TKES.
- 5.26.31 The Panel sought clarification in FWQ EOn 1.1 and EOn 1.2 [PD-009] as to the stage the NGVLL project was at. In their response [REP1-043], NGVLL remained of the view that the project was at an early stage, with a submission unlikely until 2017 and construction to commence in 2019. NGVLL 'did not agree with the comments of some IPs in respect of where the project would potentially make landfall stating that "there was no substance to it". NGVLL also confirmed that their scheme would be submitted under the Town and Country Planning Act 1990 (TCPA) legislation and they had no plans to requests the SoS to consider the project as an NSIP under s35 of the PA2008.
- 5.26.32 The Panel asked a series of questions to NGVLL at the ISH on Onshore Matters, held on 17 November 2015 [EV-022], to further ascertain the stage of the project. This was largely in responses received to D1 and D2, particularly in light of evidence presented by LCC at D2 [REP2-002] of a 'PowerPoint' presentation prepared by NGVLL to local authorities. The Panel considered that these slides illustrate that some detailed thought has been given to the cable route and the possible landfall areas, the latter indicating Anderby Creek North and South as options. The Panel was told by the representatives of NGVLL that the slides were a "high level" investigation and should not be relied upon, and that no decisions on the landfall had been made. LCC in their response to D3 [REP3-024] disputed NGVLL's oral response.
- 5.26.33 ELDC [LIR-001, REP1-005 and REP3-008] has stated throughout the examination that it "*wishes to see a collaborative approach between the TKES and NGVLL projects*". The Panel raised this matter at the ISH on Onshore Matters, held on 17 November 2015 [EV-022], however both the Applicant and NGVLL stated that such an approach was not possible. NGVLL reiterated that their scheme was at an early stage where only the interface connection point at Bicker Fen was certain, which they confirmed in their response at D3 [REP3-018].
- 5.26.34 The Applicant stated, confirmed in their response [REP3-039], that even if the landfall and cable routes were in similar areas, sharing of equipment would not be not feasible or possible, and not permissible under the PA2008. The Applicant further states that NGVLL would need to undertake the extensive process to identify the optimal route including consultation with statutory bodies, public and landowners to identify the best route, which may not be the same as for the TKES

and should not be pre-judged on the assessments carried out for TKES.

- 5.26.35 The Panel asked for an update to the progress of NGVLL project at the ISH on Local Impacts held on 19 January 2016 [EV-034]. However there was no representative from NGVLL present. The Panel raised no further written questions on Viking Link.

Conclusion on NGVLL

- 5.26.36 The Panel concluded that it had no power under the PA2008 to suspend the examination into the TKES because of the existence of the NGVLL project.
- 5.26.37 The Panel was told by NGVLL in written and oral responses, as detailed above, that the NGVLL project was at an early stage, and detailed decisions would not be taken until final environmental surveys had taken place. Furthermore, the NGVLL would not be an NSIP, and consent for it would be sought through the TCPA.
- 5.26.38 However, the Panel was presented with evidence in the form of a 'PowerPoint' slide presentation presented to local authorities in the Summer of 2015 which showed some work had been undertaken to establish options for the landfall point and the cable route. Nevertheless, the Panel accepts that there is little substantial evidence of the details of the NGVLL project to suggest that the project is at an advanced stage. The Panel finds that the Applicant has taken into account the NGVLL project in as far as they are able to do so, based on limited evidence and data, such that a cumulative assessment for this project is not necessary. The Panel is satisfied with the responses given by the Applicant in respect to sharing infrastructure.
- 5.26.39 The Panel agrees with the Applicant's overall assessment given in its response to D3 [REP3-039] that, should the SoS be minded to grant the DCO for the TKES, it would be for NGVLL to assess the cumulative impacts of its projects with TKES and others.

CONCLUSION AND RECOMMENDATION

- 5.26.40 For the reasons set out above, and notwithstanding the views of LCC as stated in their SoCG with the Applicant [REP8-043] the ExA concludes that there would be no significant offshore and onshore cumulative and inter-related effects of the proposed development, and that identified embedded mitigation, which is set out in more detail in each chapter, would be adequate. The ExA is also satisfied that such mitigation is adequately secured in the recommended DCO and DML (Appendix D).
- 5.26.41 The ExA is also satisfied that the Applicant was not in a position to cumulative assess the NGVLL project.

5.26.42 The ExA therefore recommends to the SoS that the proposed development has been robustly examined for its cumulative and its inter-related effects, and that the proposed development would not be significant in its effects.

6 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

- 6.1.1 This chapter of the Recommendation Report sets out the analysis and conclusions relevant to Habitats Regulations Assessment (HRA). The Competent Authority has certain duties under the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the Habitats Directive), as transposed in the UK through The Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations).
- 6.1.2 The Examining Authority (ExA) does not carry out an appropriate assessment or any subsequent stage of assessment or decision making under HRA. This role is reserved to the Secretary of State (SoS) as the Competent Authority. However, the ExA has been mindful throughout the examination process of the need to ensure that the SoS has an adequate basis of information from which to carry out its duties as Competent Authority. This is important because consent may only be granted on the basis that the potential adverse effects the proposed development could have on European sites have been assessed and that the Competent Authority considers it passes the relevant tests in these Habitats Regulations.
- 6.1.3 The Applicant submitted a report with their DCO application to inform a HRA under Regulation 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 entitled 'Report to Inform Appropriate Assessment' [APP-017] ('the RIAA'). The information in the applicant's RIAA was determined sufficient to accept for examination.
- 6.1.4 During the examination, the ExA issued written questions regarding HRA matters; first written questions (FWQ) on 11 September 2015 [PD-009], second written questions (SWQ) on 11 December 2015 [PD-014] and third written questions (TWQ) 10 February 2016 [PD-016].
- 6.1.5 The ExA held Issue Specific Hearings (ISHs) on onshore issues on 17 November 2015 and on local impacts on 19 January 2016, which both discussed matters relating to the potential impacts of the proposed development on European sites.

THE REPORT ON THE IMPLICATIONS ON EUROPEAN SITES

- 6.1.6 Under the Habitats Regulations the Competent Authority must, for the purposes of an appropriate assessment, consult the appropriate nature conservation body and have regard to any representation made by that body within such reasonable time as the authority specifies.
- 6.1.7 The ExA prepared a Report on the Implications for European Sites (RIES), with support from the Planning Inspectorate Environmental Services Team, based on screening and integrity matrices prepared by the applicant. The purpose of the RIES and the consultation responses received in relation to it is to compile, document and signpost

information provided within the DCO application and the information submitted throughout the examination by both the Applicant and interested parties. The RIES made reference to the screening and integrity matrices provided by the Applicant with their DCO application [APP-017] and those updated by the Applicant during the examination [REP1-052 and REP3-055].

6.1.8 The RIES was issued for consultation, including to Natural England (NE) as the relevant statutory nature conservation body (SNCB), for the purposes of Regulation 61(3) of the Habitats Regulations. Consultation was undertaken between 10 February 2016 and 24 February 2016. The RIES was not updated upon receipt of consultation responses concerning the RIES.

6.1.9 Comments on the RIES were received from:

- NE [REP7-006] - who confirmed agreement with the conclusions made in the RIES but who, however, had a number of comments on the detail within the RIES; and
- The Applicant [REP7-009] - who confirmed agreement with the findings of the RIES.

6.1.10 The ExA considers that the consultation on the RIES may be relied upon by the SoS for the purposes of Regulation 61(3) of the Habitats Regulations in the event that it is concluded that an appropriate assessment is required.

Relevant European sites and their qualifying features/interests

6.1.11 The Applicant’s RIAA considered European sites⁹ within a regional study area of 40km (see Table 1). The 40km study area was considered by the Applicant to be a conservative initial filter based on the *“nature of the proposed development, the associated nearfield nature of the cable itself and associated secondary protection, and the low level of disturbance associated with increases in suspended sediment”* [FWQ HRA 1.19 of REP1-044].

6.1.12 Within this study area, the RIAA identified eight European sites for which the UK is responsible; these are detailed in Table 1 below.

Table 1: European Sites identified in the Applicant’s RIAA

Name of European site
Inner Dowsing, Race Bank and North Ridge Site of Community Importance (IDRBNR SCI)
Greater Wash future Special Protection Area (SPA)
Humber Estuary Special Area of Conservation (SAC)

⁹ The term European Sites in this context includes Sites of Community Importance (SCIs), Special Areas of Conservation (SACs), candidate SACs and possible SACs, Special Protection Areas (SPAs), potential SPAs, Ramsar sites, proposed Ramsar sites and any sites identified as compensatory measures for adverse effects on any of the above.

Humber Estuary SPA
Humber Estuary Ramsar site
Wash and North Norfolk Coast SAC
Saltfleetby-Theddlethorpe Dunes and Gibraltar Point SAC
North Norfolk Coast Ramsar site

6.1.13 Of these European sites, the offshore section of the application site overlaps with the IDRBNR SCI, as shown on Figure 1 of the applicant's RIAA [APP-017]. The IDRBNR SCI has two qualifying features:

- *Sabellaria spinulosa* reef
- Sandbanks slightly covered by sea water at all times

6.1.14 The qualifying features of the remaining seven European sites are provided in the RIAA [APP-017].

6.1.15 In its relevant representation (RR) [RR-175], NE confirmed that all of the European sites identified in the Applicant's RIAA were relevant to the application (with the exception of the Greater Wash future SPA¹⁰).

6.1.16 NE's RR [RR-175] also identified an additional six European sites (see Table 2 of this Recommendation Report) that may be affected by the proposed development. However, NE confirmed that these sites were scoped out. NE later confirmed in response to the RIES consultation [REP7-006] that there were no pathways for impacts to qualifying/interest features of these sites. The qualifying/interest features of these sites are provided in [REP3-055].

Table 2: European sites noted in NE's relevant representation [RR-175] for which impact pathways were ruled out

Name of European site
North Norfolk Coast SPA
Flamborough Head and Bempton Cliffs SPA
Gibraltar Point SPA
Gibraltar Point Ramsar site
The Wash SPA
The Wash Ramsar site

6.1.17 In addition to the European sites identified in the RIAA and by NE, the Applicant's ES [APP-030] considered the potential effects of the proposed development on the little gull qualifying feature of Hornsea Mere SPA and the red throated diver qualifying feature of the Outer

¹⁰ NE's relevant representation [RR-175] did not identify the Greater Wash future SPA as relevant to the application, however potential impacts on this site were discussed during the examination, as detailed below in this Recommendation Report.

Thames Estuary SPA. NE's RR [RR-175] did not identify either of these European sites as relevant to the proposed development.

- 6.1.18 Volume 2 Chapter 6 of the Applicant's ES (Marine Mammals) [APP-033] also considered the Haisborough, Hammond and Winterton SCI and the Dogger Bank SCI. At the time of submission of the DCO application, these were both candidate SACs (cSACs) with a potential marine mammal interest. The Applicant explained [REP1-052] that since submission of the DCO application, these cSACs were adopted by the European Commission to become SCIs but neither had marine mammals as a qualifying feature of the SCI; as such they were not considered further by the applicant. No comments were received from other interested parties in relation to these European sites during the examination.
- 6.1.19 During the examination, the ExA also noted that a formal consultation was held by NE in January 2014 on the designation of Flamborough and Filey Coast pSPA and requested at the ISH on 17 November 2015 [EV-022] that the Applicant considers the site. NE confirmed during the examination [REP3-026] that the site had been appropriately considered within the assessment for the Flamborough Head and Bempton Cliffs SPA.
- 6.1.20 A complete list of all European sites considered in the application documents and during the examination is provided as Table 2.3 of the RIES [PD-018]¹¹.

Conservation objectives

- 6.1.21 The conservation objectives for reef (biogenic; *S. spinulosa*) in the IDRBNR SCI, as recorded in the formal Regulation 35 advice for the site, were detailed in Table 4 of the Applicant's RIAA [APP-017].

THE APPLICANT'S APPROACH

- 6.1.22 The Applicant confirmed that the project is not directly connected with, or necessary to, the management of any of the European sites considered within the Applicant's assessment [APP-017].
- 6.1.23 As noted above, the Applicant's RIAA [APP-017] identified eight European sites for which the UK is responsible and that are located within the regional study area of 40km (see Table 1 of this Recommendation Report). Paragraph 1.1 of the RIAA [APP-017] stated that:

"As informed by discussions and agreements to date, the consideration of potential effects is focused specifically on those within

¹¹ As identified by NE in its response to the RIES consultation [REP7-006], the Wash and North Norfolk Coast SPA does not exist and was included in Table 2.3 of the RIES in error; this should therefore be ignored

the Inner Dowsing, Race Bank, and North Ridge Site of Community Importance (IDRBNRSCI; 'the Site'). Other sites initially considered within a regional study area (40km) [were] subsequently screened out on the basis of there being no pathway for a likely significant effect..."

6.1.24 With regards to the IDRBNR SCI, a likely significant effect (LSE) on the "Sandbanks which are slightly covered by seawater at all times" qualifying feature was ruled out by the applicant. Paragraph 1.12 of [APP-017] explained that:

"A LSE is defined, in this context, as any effect (either alone or in-combination with other projects) that may be reasonably predicted as a consequence of a plan or project to affect the conservation objectives of the features for which the Site was designated, but excluding trivial or inconsequential effects. On this basis the focus of this report is on S. spinulosa reefs and not the sandbank features (Table 8). As shown on Figure 1 the designated sandbank features comprise 183km² of which some 0.02km² (0.01%) of the feature extends 180m into the cable corridor."

6.1.25 The RIAA was therefore prepared for the *S. spinulosa* reef feature of the IDRBNR SCI, and the following potential impacts were considered (paras 1.30-1.38 and Table 5 of [APP-017]):

- physical/direct damage during construction, operation and decommissioning;
- increased suspended sediment/smothering during construction and decommissioning; and
- habitat loss during operation (resulting from the presence of artificial seabed infrastructure).

6.1.26 Tables 6 and 7 of the RIAA [APP-017] detail the maximum impact scenario that was considered in the assessment based on construction, operation and decommissioning of the proposed development.

In-combination impacts

6.1.27 The RIAA considered the potential for impacts to *S. spinulosa* reef of the IDRBNR SCI from the proposed development to act in-combination with impacts from other projects which all overlap with the boundary of the IDRBNR SCI. These are listed below and shown on Figure 3 of [APP-017]:

- Race Bank Offshore Wind Farm (OWF) (array and export cable route);
- Lincs OWF (cable protection and maintenance impacts only);
- Lynn and Inner Dowsing (LID) OWF (cable protection and maintenance only);
- Aggregate renewal areas 515 (formerly 440 with a now reduced footprint), 107 and 439; and
- Aggregate areas 480 and 481/1 and 481/2.

- 6.1.28 There is no evidence that the Applicant agreed with NE those projects that should be considered in the in-combination assessment. However, Table 3 of the RIAA [APP-017] notes that during pre-application discussions, NE stated that the assessment of impacts on IDRBNR SCI should consider in-combination impacts with other proposed maintenance activities for LID, Lincs and Race Bank OWFs.

The applicant's conclusion

- 6.1.29 The RIAA screened out a LSE on *S. spinulosa* feature of the IDRBNR SCI from the project alone on the basis that the proposed development boundary avoids any known reef locations [para 1.52 of APP-017] and taking into account the rapid recoverability of *S. spinulosa* to short term or intermediate levels of disturbance [para 1.55 of APP-017]. Impacts on unknown reef features from construction activities would be mitigated through the development of an Annex I Mitigation Plan that would be informed by a pre-construction Annex I habitat survey; this would facilitate the micro-siting of the cable and associated secondary protection (paragraphs 1.40 and 1.45 of APP-017). The mitigation scheme and pre-construction survey are included in Conditions 7(h) and 12(2)(a) respectively of the Deemed Marine Licence (DML) of the recommended DCO (Appendix D).
- 6.1.30 The Applicant did however screen in a LSE for potential in-combination operational phase impacts on the functional biological community of the *S. spinulosa* when considered with other plans and projects (Table 2 of [APP-017]). The RIAA assessed the potential for in-combination impacts on *S. spinulosa* reefs of the IDRBNR SCI from loss of habitat or disturbance to habitat [paras 1.82-1.93 of APP-017]. It concluded that given:

*"The highly localised nature of the secondary protection to be employed within the proposed Triton Knoll Electrical System development in addition to the IDRBNR SCI relevant findings of the Docking Shoal, Race Bank and Dudgeon Appropriate Assessment indicates that there will not be an adverse effect on *S. spinulosa* reef potential within the IDRBNR SCI during the operational and decommissioning phases, either alone or in-combination with Race Bank" [paragraph 1.93 of APP-017].*

EXAMINATION

- 6.1.31 Matters relating to HRA that were discussed during the examination are detailed below.

Assessment of likely significant effects resulting from the project alone and in-combination

- 6.1.32 HRA matters relating to the identification of LSE that were considered during the examination were:

- evidence to support the conclusions of no LSE for all European sites except IDRBNR SCI;
- potential impacts on the Greater Wash future SPA;
- potential impacts on SACs for marine mammals;
- potential impacts on sandbank features of the IDRBNR SCI;
- potential impacts of cable protection on the IDRBNR SCI;
- potential impacts of sediment on IDRBNR SCI and Saltfleetby-Theddlethorpe Dunes and Gibraltar Point SAC; and
- potential impacts on the IDRBNR SCI during operation and maintenance phase.

Evidence to support the conclusions of no LSE for all European sites except IDRBNR SCI

- 6.1.33 As noted above in this Recommendation Report, the Applicant's RIAA [APP-017] focused on the potential impacts of the proposed development on the *S. spinulosa* reef feature of the IDRBNR SCI. Paragraph 1.1 of the RIAA [APP-017] states that the assessment approach was agreed during discussions and agreements with the Triton Knoll EIA Evidence Plan Offshore Ecology Technical Review Panel¹² [APP-132]. The RIAA provided screening and integrity matrices for only the IDRBNR SCI.
- 6.1.34 During the examination, we noted that although limited consideration had been given to other European sites in the Applicant's RIAA [APP-017], consideration had been given to European sites throughout the ES. The ExA also noted that NE agreed in their RR [RR-175] and written representation (WR) [REP1-032] to scope out all European sites except for the IDRBNR SCI. Nevertheless, the ExA sought assurances [FWQ HRA 1.4 of PD-009] that a robust screening process had been undertaken and that all qualifying features/interests of the identified European sites had been given due consideration within the screening process by requesting screening matrices for all European sites considered.
- 6.1.35 In response to the FWQ [HRA 1.4 of PD-009] and questioning at the Onshore Impacts ISH on 17 November 2015 [EV-023, EV-024 and EV-025], the Applicant provided screening matrices for the following European sites [REP1-052 and REP3-055] (see Table 2.3 of the RIES [PD-018] for further details):
- IDRBNR SCI;
 - The Greater Wash future SPA;
 - Humber Estuary SAC;
 - Humber Estuary SPA and Ramsar site;

¹² The EIA Evidence Plan [APP-132] was prepared by the Applicant during the pre-application phase and was aimed at producing a non-legally binding agreement between the Applicant and the relevant statutory bodies on EIA and HRA matters. As part of the plan, the Applicant held a number of 'Review Panels' which met to discuss the sufficiency of the evidence provided and agree key topics and issues for both the EIA and HRA process. A draft RIAA was also issued to NE for comment during the pre-application stage.

- The Wash and North Norfolk Coast SAC;
- Saltfleetby to Theddlethorpe Dunes and Gibraltar Point SAC;
- North Norfolk Coast SPA and Ramsar site;
- The Wash SPA and Ramsar site;
- Gibraltar Point SPA and Ramsar site;
- Outer Thames Estuary SPA;
- Flamborough Head and Bempton Cliffs SPA;
- Flamborough and Filey Coast pSPA; and
- Hornsea Mere SPA

6.1.36 Within the Applicant's RIAA [APP-017], consideration of potential in-combination impacts was only given to the IDRBNR SCI. However, the screening matrices provided by the Applicant during the examination [REP1-052 and REP3-055] concluded that there were no in-combination impacts on any other European sites.

6.1.37 NE [REP3-026] confirmed their general agreement with the content of the screening matrices. No further comments on the Applicant's screening exercise (including the content of the screening matrices) were received during the examination.

Applicant Potential impacts on the Greater Wash future SPA

6.1.38 Paragraph 1.4 of the Applicant's RIAA [APP-017] noted that an area of search has been identified within the Greater Wash to be promoted as a candidate SPA. It stated that the Evidence Plan process had confirmed there would be no LSE on the Greater Wash future SPA either alone or in-combination; this was based on the information provided in the EIA Evidence Plan [APP-132] and the red throated diver technical note [APP-057].

6.1.39 The SoCG between the Applicant and NE [REP5-044] confirms that the assessment of potential impacts on red throated diver [APP-057] is appropriate; and that significant effects on the Greater Wash future SPA can be ruled out.

6.1.40 In response to the RIES consultation, NE [REP7-006] confirmed that a conclusion of no LSE was based on best practise mitigation being adopted in relation to vessel movements. Offshore safety management is secured through Condition 3 of the recommended DML (Appendix D), which requires an Emergency Response Co-operation Plan (ERCOP) to be produced which is in accordance with, inter alia, MGN543 "Offshore Renewable Energy Installations" (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues.

Potential impacts on SACs for marine mammals

6.1.41 Table 2 of the RIAA [APP-017] noted that a LSE had been ruled out for the grey seal qualifying feature of the Humber Estuary SAC and the harbour seal qualifying feature of the Wash and North Norfolk Coast SAC. No further information was provided in the RIAA, however, the

ES Volume 2 Chapter 6: Marine Mammals [APP-033] assessed the potential impacts of the proposed development on the grey seal qualifying feature of the Humber Estuary SAC and the harbour seal qualifying feature of the Wash and North Norfolk Coast SAC.

6.1.42 In its RR, NE [RR-175] confirmed that, based on the ES, it has no major concerns about impacts to marine mammals from SACs. However, it highlighted the potential for sites around the UK to be designated for harbour porpoise including in the Southern North Sea. NE [REP1-032] confirmed that JNCC and the country agencies have issued formal draft advice to all four UK governments on draft SACs (dSACs) for harbour porpoise and that a formal consultation may commence within the examination period.

6.1.43 Despite this, NE further confirmed [REP3-026] that the:

"proposed development does not involve activities that could cause a potential risk of disturbance through noise generated during any phase of the development and both Natural England and the Applicant are in agreement on the lack of any potential impact pathway based on current information arising from the proposed development on harbour porpoise in the area".

6.1.44 The ExA note that the consultation for possible SACs, including the Southern North Sea, commenced on 19 January 2016 and closed on 19 April 2016¹³ (after the close of examination).

6.1.45 The SoCG between the Applicant and NE [REP5-044] agrees that the Applicant will continue to liaise with NE and the JNCC to discuss any implications arising from the potential designations of SACs with harbour porpoise as a qualifying feature.

Potential impacts on sandbank features of the IDRBNR

6.1.46 As noted above in this Recommendation Report, the applicant's RIAA [APP-017] ruled out a LSE on the sandbank feature and this conclusion was recorded in the RIES [PD-018].

6.1.47 NE's RR [RR-175] noted some discrepancies in the application documents in relation to sandwave preparation prior to cable installation. In response, the Applicant provided a clarification note [REP2-025] addressing the maximum adverse scenario used for the assessment within the ES and the RIAA, which NE subsequently confirmed [REP4-025] it was satisfied.

6.1.48 In response to the RIES consultation, NE [REP7-006] stated that it agrees with there being no LSE to sandbank features. However, it wished to:

¹³ <http://jncc.defra.gov.uk/page-7059>

"highlight that although sand waves may only cover a small area, they form part of the Annex 1 sandbank sediment system within the IDRBNR SCI and it is important that the movement of sediment in and around them is not interrupted. Therefore, our preference would be that sand waves are levelled sufficiently to ensure cables can be adequately buried and cable protection is only placed where it is absolutely essential i.e. at cable crossings. Sand waves should be levelled by moving the sand to the side to allow it to stay within the site, as opposed to it being removed."

6.1.49 NE continued to state that commitments to this were made by the Applicant in the clarification note [REP2-025]. These commitments are secured through pre-construction documents within Condition 7 Pre-construction plans and documentation of the recommended DML (Appendix D), specifically:

- Condition 7(a), a plan showing the length and arrangement of the offshore cables;
- Condition 7(c), a construction method statement;
- Condition 7(e) a cable protection plan; and
- Condition 7(f), a cable specification and installation plan.

Potential impacts of cable protection on the IDRBNR SCI

6.1.50 The RIAA [APP-017] noted that seabed infrastructure (cable protection and pipeline crossings) would be deployed onto the seabed where the cable would not be buried. The RIAA acknowledged that this could lead to physical damage (i.e. crushing *S. spinulosa* reef, see paragraph 1.32) and physical habitat loss (i.e. the loss of natural substrate for *S. spinulosa* reef colonisation and the impairment of future reef formation, see paragraph 1.38). The RIAA assessed a worst case scenario for the number of cable crossings, cable installation, protection and repair and detailed this worst case scenario in Table 6 of [APP-017].

6.1.51 However, NE's RR [RR-175] raised concerns over the type of cable protection to be used, its removability at decommissioning and the quantity to be used (in order to establish a worst case scenario of the maximum footprint), particularly within the IDRBNR SCI. NE considered that cable protection should be used as a last resort and should be removed at decommissioning.

6.1.52 Further discussions between the Applicant and NE ensued and ultimately NE agreed [REP1-032] that the construction method statement as secured in the recommended DML, Part 2, Condition 7(1)(c) and 7(1)(e) (Appendix D) was sufficient to address their concerns. The CMS would include details on the type, sources, quantity and installation methods for cable armouring and the total area and volume to be installed and would need to be agreed with the MMO in consultation with NE (and the Maritime and Coastguard Agency and Trinity House, as appropriate) prior to construction.

Potential impacts of sediment on IDRBNR SCI and Saltfleetby-Theddlethorpe Dunes and Gibraltar Point SAC

6.1.53 NE raised concerns over the use of cable protection and its potential to cause long-term interruption to sediment transport which could lead to a reduction in the supply of sediment to IDRBNR SCI and Saltfleetby-Theddlethorpe Dunes and Gibraltar Point SAC. NE considered that further bathymetric monitoring should be committed to by the Applicant [REP3-026 and REP4-025]. NE provided a paper entitled 'The Greater Wash – Evidence of unanticipated impacts in relation to benthic and coastal processes receptors' [REP4-025] which suggested that the realised impacts in relation to benthic ecology and physical processes (sediment transport regimes) are greater than those assessed in the original Environmental Statements for Round Two offshore wind farms in the Wash.

6.1.54 Nevertheless, NE stated that whilst they:

"do not foresee that there will be an adverse effect on the integrity of the Inner Dowsing, Race Bank and North Ridge SCI or Saltfleetby-Theddlethorpe Dunes and Gibraltar Point SAC, we have advised the Applicant that the next version of the DML should be amended to incorporate the requirement to undertake bathymetric monitoring in years 1 and 3 post-construction" [REP4-025].

6.1.55 The Applicant subsequently agreed to undertake a targeted bathymetric survey on agreed locations to demonstrate that any changes to bedforms or sediment movement are within the ranges predicted in the ES. The surveys are secured in Conditions 13(2)(b) and 13(2)(c) of the recommended DML (Appendix D) and would be approved by the MMO in consultation with the statutory nature conservation body. The SoCG between the Applicant and NE [REP5-044] agreed that these conditions were adequate.

Potential impacts on the IDRBNR SCI during operation and maintenance phase

6.1.56 With regard to operational impacts, the Applicant's RIAA [APP-017] assessed the permanent loss of natural substrate for *S. spinulosa* reef resulting from the presence of artificial seabed and the potential for direct physical damage to *S. spinulosa* reef from cable repair/remediation. The RIAA screened out a LSE on the IDRBNR SCI during the operational phase for the project alone.

6.1.57 However, in its RR, NE advised that:

"that there remains uncertainty in relation to potential impacts to Annex I habitats such as S. spinulosa reef that have the ability to establish post-installation and may therefore be affected by maintenance operations" [paragraph 4.3.2 of RR-175].

- 6.1.58 The Applicant stated "*that it is not anticipated significant maintenance work will be required for the operational phase*" [REP5-044]. The Applicant provided an outline offshore operations and maintenance (O&M) plan with the DCO application [APP-114] which requires the export cable to be periodically inspected during the operational phase to ensure cable burial and integrity. Condition 7(1)(i) of the recommended DML (Appendix D) stipulates that works must not commence until an O&M plan (drafted in accordance with the outline plan) is submitted to and approved in writing by the MMO; this should be submitted to the MMO at least four months prior to the commencement of operation and will be reviewed and resubmitted every three years during operation. The SoCG between the Applicant and NE [REP5-044] agreed that "the outline O&M plan is appropriate and reasonable to inform the final O&MP".
- 6.1.59 The Applicant stated [REP1-044] that the cable surveys required under the O&M plan would identify repair areas that are coincidental with areas of core biogenic reef that have formed on the cable since installation and appropriate measures would be identified in consultation with the MMO and the appropriate statutory advisor.
- 6.1.60 The SoCG between the Applicant and NE [REP5-044] noted that:

"whilst it is not possible to avoid disturbance of any such reef that has developed over a cable that requires lifting, the survey will provide information on the development of reef on the seabed post construction (cable installation) disturbance or on cable protection material, both of which would provide confidence that the re-establishment of reef over the infrastructure is likely to occur after the maintenance activities have been completed".
- 6.1.61 The SoCG subsequently agreed that:

"appropriate surveys will be undertaken prior to maintenance activities to confirm if any S. spinulosa reef has formed post-installation and will be used to inform recovery of Annex I reef from ongoing activities over the lifetime of the project".
- 6.1.62 NE confirmed during the examination that all required surveys, including reef surveys prior to maintenance works, were adequately covered in the O&M Plan (secured by condition 7 of the recommended DML (Appendix D)) and do not need to be secured separately elsewhere [REP6-011].
- 6.1.63 There was a disagreement between the Applicant and the NE throughout the examination as to whether a LSE for impacts on the IDRBNR SCI from the proposed development alone could be ruled out. The Applicant considered that due to the scale of the potential effects on the features of the SCI from the proposed development alone, any potential for a LSE is minimal and noted that NE agreed to this during the Evidence Plan process [APP-132, REP2-007 and REP4-027].

6.1.64 However, NE considered that in line with advice given for other developments, there is the potential for LSE from the project alone and in-combination with other projects [REP1-032, REP3-026 and REP4-025]. This was on the basis that, whilst Annex I habitats will be avoided during construction, there is potential for Annex I reef to establish over the cables over the lifetime of the project that may be impacted by operation and maintenance activities; therefore NE considered there is the potential for LSE over the lifetime of the project from operation and maintenance activities alone and in-combination with other projects. NE believed that drafting errors in the RIAA had led to confusion [REP1-032].

6.1.65 This remained a matter of disagreement between the two parties throughout the examination, however both NE and the Applicant ultimately agreed [REP5-044] that:

"the project will not have an adverse effect on the features of the IDRBNR SCI either alone or in-combination with other projects, therefore meeting the current conservation objectives for this site feature, as described and concluded in the Report to Inform Appropriate Assessment".

FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY OF EUROPEAN SITES

6.1.66 With the exception of the debate between NE and the Applicant as to whether a LSE for the project alone could be screened out (as detailed above in this Recommendation Report), there were no issues raised during the examination in relation to the applicant's assessment of effects on integrity by any other IPs.

REASONING AND CONCLUSIONS

6.1.67 The ExA has taken into account the information provided within the applicant's RIAA [APP-017] and the relevant examination documents as discussed in this chapter. The ExA has considered the views expressed by interested parties, namely NE as the statutory nature conservation body, and believes that there is sufficient evidence to enable the Secretary of State to undertake its duties under the Habitats Regulations to consider the potential effects of the proposed development, alone and in-combination with other plans and projects, on European sites.

6.1.68 The ExA is content that all relevant European sites and all qualifying/interest features have been considered in the application documents and during the examination. The ExA is satisfied that an assessment of the potential effects of the proposed development alone, and in-combination with other plans or projects, has been undertaken which considers all relevant impacts, the maximum impact scenario and all relevant plans or projects.

- 6.1.69 The ExA agrees with the Applicant and NE that a LSE can be ruled out for all European sites except the IDRBNR SCI.
- 6.1.70 The ExA notes the disagreement between NE and the Applicant regarding whether or not to screen in a LSE for impacts on *S. spinulosa* for the project alone for the operation and maintenance phase. The ExA also notes that all parties agreed that a LSE could not be excluded for potential in-combination impacts on *the S. spinulosa* reef feature of the IDRBNR SCI for the operation and maintenance phase. Bearing in mind the precautionary principle, the ExA agrees with NE that a LSE should not be ruled out for the project alone and recommends that the Secretary of State undertakes an appropriate assessment of the potential impacts of the operational and maintenance phase of the proposed development on the *S. spinulosa* qualifying feature of the IDRBNR SCI both alone and in-combination with other projects.
- 6.1.71 The ExA recommends that an adverse effect on the IDRBNR SCI can be excluded from the project alone and in-combination with other plans or projects, when considering the qualifying features in view of the site's conservation objectives and having regard to the mitigation and monitoring measures secured in the version of the draft DCO as recommended to the SoS.

7 THE EXA/PANEL'S CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

7.1 THE PLANNING BALANCE

- 7.1.1 In this Chapter of the Recommendations Report we consider all the evidence, arguments and conclusions in the foregoing Chapters in order to assess the planning basis for our overall recommendation on this application.
- 7.1.2 In doing so, we draw on Chapter 3 of the report which sets out the legal and policy context for our Examination of the application and on Chapter 4 which summarises our findings and conclusions on this context. We then summarise our findings in relation to Habitats Regulations set out in Chapter 6 of this report.
- 7.1.3 We then take the headings used in Chapter 5 to summarise our conclusions on the potential impact of the proposed development on specific aspects of the offshore and onshore local environment, ecology and economy.
- 7.1.4 As considered in Chapter 3, above, the application falls to be decided under s105 of PA2008.
- 7.1.5 In looking at the legal and policy context, we consider that NPSs are matters which the SoS thinks are both important and relevant to the SoS's decision and have considered in each section of this report the relevant national policies contained in EN-1, EN-3 and EN-5. Where relevant, we have referenced the National Planning Policy Framework (NPPF).
- 7.1.6 We have had clear regard to relevant national primary and secondary legislation including the Equality Act 2010 and the Human Rights Act 1998 and, where relevant, European legislation and Directives.
- 7.1.7 Our starting point for the consideration of local policy has been the Local Impact Reports (LIRs) produced by East Lindsey District Council (ELDC) [LIR-001], Boston Borough Council [LIR-002], Lincolnshire County Council [LIR-003] and from North Kesteven District Council (NKDC) [LIR-004]. These drew our attention to specific policies in the local plans of these local authorities and we have had regard to the issues identified in each LIR in reaching our recommendations.
- 7.1.8 First, we conclude that there is an established national need for this project both in terms of national energy policy and in terms of the fact that it is required to facilitate an already consented nationally significant infrastructure project.
- 7.1.9 We also conclude that it does not conflict with the local policy framework contained in local plans and supplemented where relevant by the NPPF.

- 7.1.10 The ExA is satisfied that, in respect of Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, there are no Transboundary biodiversity matters needing to be addressed and there are no matters outstanding in relation to Transboundary effects that would argue against the DCO being made.
- 7.1.11 The relationships between the proposed development and the UK Marine Policy Statement (MPS) and to the East Inshore and East Offshore Marine Plans are considered in Section 3.4, above, and it has been agreed by the MMO in their SoCG that MPS policy has been considered within the ES [REP1-080].
- 7.1.12 The ExA conclude that there is no conflict between the proposed development and the provisions of the MPSs and Marine Plans. In relation to the potential impacts of the proposed development on the environment offshore, the ExA conclude that there are no outstanding issues in relation to impacts that would militate against the Order being consented.
- 7.1.13 The ExA is content that matters relating to the construction effects on the offshore environment have been satisfactorily answered through the examination process. The Panel is also content that the effect from the construction of the cable route on the offshore environment would not be significant. These conclusions are supported by the SoCG provided with MMO, Natural England, the Environment Agency and Historic England and the arrangements for a Written Scheme of Investigation secured under condition 8 of the DML.
- 7.1.14 The ExA is satisfied that the ES, together with the additional information provided during the course of the Examination, is adequate and meets the requirements under the EIA Regulations.
- 7.1.15 In relation to the potential impacts of the proposed development on the environment onshore, the ExA conclude that there are no significant outstanding issues in relation to impacts that would militate against the Order being consented.
- 7.1.16 In arriving at this conclusion, we have assessed, and concluded on all of the topics outlined in Chapter 5. In each case we have considered the impacts against the tests set out in the relevant NPS and in relation to legislation such as the Countryside and Rights of Way Act and the Wildlife and Countryside Act.
- 7.1.17 In relation to agriculture and soil management the Examination has considered the safeguards to the stability and maintenance of the area which includes Grade 1 material. The Soil Management Plan and the Construction Method Statement is set out in Requirement 14 and includes arrangements for the reinstatement of drainage which is vital in this location. With this in place the ExA is content that the construction, operation, decommissioning and potential cumulative effects from proposed development would accord with part 5.10 of the

NPS EN-1. There would also be no residual impacts on land use as a result of the project and no Green Belt is engaged.

- 7.1.18 In relation to air quality, the ExA is content that identified mitigation is adequately secured within the recommended DCO at Appendix D. The proposed development would accord with the Air Quality Directive, with ELLP policy A4 and BLP policies G1, G8 and ED11, and with part 5.2 of NPS EN-1.
- 7.1.19 In respect to terrestrial ecology, we examined the impacts on protected species and protected sites. After extensive consideration agreement was reached between the Applicant and Natural England in relation to the Lincolnshire Coastal Grazing Marsh managed by the Lincolnshire Wildlife Trust for agreed mitigation to reduce the impacts to minor adverse or below.
- 7.1.20 As such, we are satisfied with the approach taken by the Applicant which gives findings which are sound and that any mitigation relied upon is adequately secured in our recommended DCO (Appendix D). Therefore there are no significant impacts on biodiversity which weigh against the making of the Order
- 7.1.21 An adequate Flood Risk Assessment was made which was also considered by the Environment Agency (EA). The outline Construction Management Strategy provides for arrangements to be agreed with the EA and the Internal Drainage Boards for where the cable will cross drainage routes. Taking these provisions in to account we are satisfied that the tests in part 4.8 of NPS EN-1 and 2.4 of EN-5 have been met. Hence there are no outstanding issues in relation to climate change, or flooding which weigh against the Order being made.
- 7.1.22 Management of the Lincolnshire Coast is part of the EA strategy for the Humber Estuary and its surrounds. Natural England considered that the cable burial depths could be made adequate for the continuance of its beach re-nourishment scheme and this was agreed in the SoCG between the Applicant, NE and the MMO and secured through the DML. There are no outstanding issues in relation to coastal erosion to weigh against the making of the Order.
- 7.1.23 The ExA conclude that Article 7 of the ExA's recommended draft DCO at Appendix D is adequate to deal with issues of common law nuisance and statutory nuisance. There are also no matters in relation to Civil and Military considerations which militate against the Order.
- 7.1.24 The ExA concludes that, in respect of construction and operational security, this issue has been dealt with satisfactorily by the Applicant and measures to seek to ensure this are secured in our recommended draft DCO. A draft Good Neighbour Agreement was prepared by the applicant in relation to EDF Renewables although this did not have a formal resolution by the end of the examination. There are no security impacts which are considered to weigh against the proposed Order.

- 7.1.25 The Panel is satisfied with the Applicant's assessment of impacts on geology and ground conditions and that the relevant NPS policies have been satisfied.
- 7.1.26 A suite of legislation and regulations control the use and disposal of hazardous substances. The ExA conclude that the Applicant's regard to hazardous substances has been sufficiently robust and the necessary mitigation measures have been secured within the recommended DCO and DML (Appendix D) and that the proposed development would accord with Part 4.12 of NPS EN-1.
- 7.1.27 Similarly, the ExA concluded that all mitigation was secured in the draft DCO such as the Traffic Management Plan and that the proposed development did not raise any health and safety issues. The Panel is satisfied that the Applicant's approach to and assessment of pollution control and other environmental regulatory regimes complies with the requirements of NPS EN-1 and of local plan policies as put forward in their LIR by ELDC [LIR-001 and REP1-006] and BBC [LIR-002] insofar as they are relevant. The ExA is also satisfied that no impediment to the granting of other consents has been identified during the course of the examination by the relevant regulatory bodies.
- 7.1.28 In relation to the historic environment, the ExA agrees that the construction of the proposed development and the placement of a Temporary Construction Compound in the vicinity of the Grade II Listed Draining Scoop Wheel and Channel would not have a significant impact on its setting and this was agreed with Historic England. We are also satisfied that the Sibsey Memorial would be adequately managed and maintained and not harmed during construction of the proposed development, and such matters are secured through Requirements 14 and 21 of the recommended DCO.
- 7.1.29 The ExA is satisfied that hedgerow replacement is adequately controlled and regulated within the OLSEMP [REP7-033] and in Requirement 13 of the recommended DCO.
- 7.1.30 The ExA is therefore satisfied that there would be no significant effects from the construction, operation, and decommissioning phases on the historic environment and no outstanding issues that weigh against making the Order.
- 7.1.31 In relation to Landscape, Seascape and Visual Impacts the ExA concludes that the methodology approach set out in the ES is robust and accurate. We agree with the assessment in the ES [APP-043] that the construction of the proposed TJBs at the landfall area would have significant landscape and visual effects, but that these would be temporary and not long-term. There would be no significant landscape and visual effects from the operation of the proposed development.
- 7.1.32 We conclude that there would be no significant landscape effects from the construction or operation of the proposed IEC. However, from two identified viewpoints, significant visual effects are predicted from the

construction and operation of the IEC. Mitigation planting would have the desired effect such that the residual visual effects from mitigation would not be significant.

- 7.1.33 We agree with the assessment in the ES [APP-043] that there would be no significant landscape effects from the construction or operation of the proposed Substation. From three identified viewpoints, significant visual effects are predicted from the construction and operation of the proposed Substation. Mitigation planting would have the desired effect such that the residual visual effects from mitigation would not be significant.
- 7.1.34 The ExA accepts the assessment in the ES [APP-043] that there would be no significant landscape or visual effects from the construction or operation of the cable route, and siting of, the TCCs nor of the 'unlicensed works' at the NGET Substation works.
- 7.1.35 The ExA accepts the assessment in the ES [APP-043] that there would be no significant landscape or visual effects from the decommissioning of the proposed development.
- 7.1.36 The ExA accepts the assessment in the ES [APP-043] that potential significant cumulative landscape and visual effects from construction of the TJBs at the landfall would occur. There would also be potential significant cumulative visual effects from the construction and operation of the IEC and proposed Substation from certain residential receptor points. However for the reasons set out above, they would be limited to the construction period and mitigation planting would ensure that the residual cumulative visual effects from the operation of the IEC and proposed Substation would not be significant.
- 7.1.37 The ExA is satisfied that there would be no significant seascape effects from the construction, operation or decommissioning of the proposed development.
- 7.1.38 The ExA has noted the matters not agreed by LCC in their SoCG with the Applicant [REP8-043] and in NKDC's LIR [LIR-004]. However for the reasons already set out, the ExA is satisfied that the construction, operational, decommissioning phases of the proposed would have no significant landscape and visual effects, or no residual significant landscape and visual effects after mitigation planting. There would also be no potential significant cumulative effects on landscape character and visual receptors for reasons already given.
- 7.1.39 The proposed development would accord with ELDC Local Plan A4, A5 and SP15, and with BBC Local Plan policies G1, G2, G10, ED11 and CO1, and with Parts 4.4 and 5.9 of NPS EN-1 and paragraph 2.6.5 of the MPS. None the less, for the reasons set out above we conclude that there are limited adverse visual impacts from elements of the project and that these weigh against the development.

- 7.1.40 The ExA was satisfied with the Applicant's overall approach to socio-economic issues, and that it complies with all relevant policy. Although disagreements remained at the close of the examination between LCC and the Applicant in relation to the LCCP, tourism and community benefit, the ExA is satisfied that all relevant and important issues have been examined thoroughly and sufficiently and that the Applicant's assessment of all the issues is adequate. There are therefore no socio-economic matters to weigh against the DCO.
- 7.1.41 At the close of the Examination there were no outstanding matters in respect to the approach taken by the Applicant in the ES or with the assessment findings in respect to construction traffic generation and the ability of local road networks to cope with the additional traffic. We are satisfied that the Applicant's proposed mitigation measures would ensure that there would be no significant effects associated with traffic and transport as a result of the proposed development.
- 7.1.42 The ExA are content that the proposed mitigation is adequately secured within Requirement 8 (AMP), Requirement 14 (Code of Construction Practice (CoCP)), Requirement 19 (TMP), and Requirement 22 (Decommissioning Plan) of the recommended DCO (Appendix D). The Panel has had regard to the representations received from the Local Authorities in particular LCC as the local highway authority, and notes that it now agrees with the assessment and findings in the ES.
- 7.1.43 We are satisfied that a suitable mitigation strategy has been proposed by the Applicant and would be sufficient to ensure the proposed development would militate against any identified harm caused, and that the measures are secured within the recommended DCO (Appendix D). The Panel considers the proposed development would accord with the NPSs and Local Plan policies which are set out in more detail in Chapter 3 and nothing remains to weigh against the DCO.
- 7.1.44 The ExA concludes that matters relating to waste management are sufficiently regulated by other legislation as outlined in the Outline Site Waste Management Plan (SWMP) and through the submission of a SWMP which will contain must include a 'statement of conformity' required by the Waste Regulations 2011. The SWMP is listed as part of a Code of Construction Practice secured through R14 of the recommended DCO (Appendix D).
- 7.1.45 The ExA is content that the Applicant's approach to waste management accords with part 5.14 of NPS EN-1.
- 7.1.46 In our assessment of water quality and resources impacts we considered the potential for impact on bathing water quality, watercourses and aquifers.
- 7.1.47 The baseline assessment noted that there are no onshore WFD watercourses within 250m of the landfall site or the IEC. At the proposed substation site, the South Forty Foot Drain and the New

Hammond Beck currently achieve Moderate ecological status, and the watercourses along the cable route mostly have a WFD status of Moderate, with some of Good ecological status.

- 7.1.48 The project design includes various mitigation measures to prevent adverse effects on water quality, including the use of horizontal directional drilling under all watercourses; the appropriate management of potential pollutants; and the management of sediment in any runoff from construction compounds.
- 7.1.49 With regard to bathing water quality, an additional Requirement was inserted into the draft DCO to further protect Bathing Water Quality Directive status.
- 7.1.50 The EA stated in its final response to the Examination that it had reached agreement with the Applicant in respect of all matters of environmental protection and regulation.
- 7.1.51 The ExA is satisfied that all necessary mitigation is adequately provided for within the Construction Environmental Management Plan, the Pollution Prevention and Emergency Incident Response Plan and Construction Methods Statement all secured through Requirement 14 of the recommended draft DCO.
- 7.1.52 The ExA is content that the Applicant's approach to water quality accords with part 5.15 of NPS EN-1 and there are no conflicts with the Water Framework Directive.
- 7.1.53 The ExA has been mindful throughout the examination process of the need to ensure that the SoS has an adequate basis of information from which to carry out its duties as Competent Authority under the Council Directive 92/43/EEC of 21 May 1992 as transposed in the UK through The Conservation of Habitats and Species Regulations 2010 (as amended).
- 7.1.54 The ExA prepared a Report on the Implications for European Sites (RIES), with support from the Planning Inspectorate Environmental Services Team, based on screening and integrity matrices prepared by the applicant which was issued for consultation, including to Natural England (NE) as the relevant statutory nature conservation body.
- 7.1.55 The ExA consider that the consultation on the RIES may be relied upon by the SoS for the purposes of Regulation 61(3) of the Habitats Regulations in the event that it is concluded that an appropriate assessment is required.
- 7.1.56 The ExA believes that there is sufficient evidence to enable the Secretary of State to undertake its duties under the Habitats Regulations to consider the potential effects of the proposed development, alone and in-combination with other plans and projects, on European sites.

- 7.1.57 The ExA is satisfied that an assessment of the potential effects of the proposed development alone, and in-combination with other plans or projects, has been undertaken which considers all relevant impacts, the maximum impact scenario and all relevant plans or projects.
- 7.1.58 The ExA agrees with the Applicant and NE that a LSE can be ruled out for all European sites except the Inner Dowsing, Race Bank and North Ridge Site of Community Importance.
- 7.1.59 However, the ExA recommends that an adverse effect on the IDRBNR SCI can be excluded from the project alone and in-combination with other plans or projects, when considering the qualifying features in view of the site's conservation objectives and having regard to the mitigation and monitoring measures secured in the version of the draft DCO as recommended to the SoS.

7.2 THE BALANCE OF ISSUES

- 7.2.1 The preceding paragraphs of this Chapter show both that the matters weighing significantly in favour clearly outweigh the matters weighing significantly against and that, through the Examination process, potentially adverse factors were addressed and either removed or reduced in their importance. Thus the balance in favour of the potential project was increased through the Examination process.

7.3 OVERALL CONCLUSION

- 7.3.1 Having had regard to all the above factors, the ExA conclude that balance in planning terms shows that the Triton Knoll Electrical System should be consented in the form of the recommended Order attached.
- 7.3.2 We now turn to issues of Compulsory Acquisition and other land related matters.

8 COMPULSORY ACQUISITION AND LAND RELATED MATTERS

8.1 THE REQUEST FOR COMPULSORY ACQUISITION AND LAND RELATED POWERS

- 8.1.1 The Applicant submitted a draft Development Consent Order (draft DCO) [APP-010], which contained Articles in Part 5 which allowed for powers of compulsory acquisition. The draft DCO was accompanied by a Statement of Reasons [APP-012], a Funding Statement [APP-013] a Book of Reference [APP-014] and Land Plans and Crown Plans [APP-006].
- 8.1.2 The versions of the relevant documentation used in this Chapter are the draft DCO Revision G [REP7-018], the Updated Statement of Reasons - Revision C - Submission for D7 of 24 February 2016 [REP7-029], the Updated Funding Statement - Submission for D7 of 24 February 2016 [REP7-027] the Book of Reference Revision C - Submission for D7 of 24 February 2016 [REP7-055] and the Land Plans and Crown Land Plans - Submission for D7 of 24 February 2016 [REP7-016].
- 8.1.3 In addition, in our question CA 1.1 [PD-009], the Panel requested that the Applicant provide regular updates of a Schedule of Compulsory Acquisition. This was provided for Deadlines: 1 of 5 October 2015 [REP1-049]; 2 of 27 October 2015 [REP2-019]; 3 of 30 November 2015 [REP3-048]; 4 of 5 January 2016 [REP4-041]; 5 of 1 February 2016 [REP5-040]; 6 of 17 February 2016 [REP6-018]; 7 of 24 February 2016 [REP7-026]; 8 of 29 February 2016 [REP8-034] and, finally, the Applicant submitted its Response to D8 Submissions on 3 March 2016 [REP8-034], with Appendix 6 containing an updated Schedule of Compulsory Acquisition.
- 8.1.4 The Applicant's approach was to seek CA powers over land along the whole extent of the proposed cable route including the creation of rights to protect the works and temporary possession (TP) powers for areas required during survey works, construction and for maintenance. The proposed route of approximately 60km runs from the offshore connector via a landing point on the beach north of Anderby Creek, Lincolnshire, to connect to the national grid at a National Grid Electricity Transmission (NGET) sub-station at Bicker Fen, Lincolnshire.
- 8.1.5 The nature of the land involved in the request for powers of CA is set out in the project description in Chapter 2.
- 8.1.6 The Applicant seeks CA and other land related powers within its draft DCO (Revision G) [REP7-018] through the following articles:
- Article 13 - Authority to survey and investigate land;
 - Article 15 - Compulsory acquisition of land;

- Article 16 - Compulsory acquisition of land - incorporation of the mineral code;
- Article 17 - Time limit for exercise of authority to acquire land compulsorily;
- Article 18 - Compulsory acquisition of rights;
- Article 19 - Private rights;
- Article 20 - Power to override easements and other rights;
- Article 21 - Application of the Compulsory Purchase (Vesting Declaration) Act 1981;
- Article 22 - Acquisition of subsoil only;
- Article 23 - Rights under or over streets
- Article 24 - Acquisition of part of certain properties;
- Article 25 - Temporary use of land for carrying out the authorised project;
- Article 26 - Temporary use of land for maintaining the authorised project;
- Article 28 - Statutory undertakers;
- Article 38 - Guarantees in respect of payment of compensation; and
- Article 41 - Crown Rights.

Together with the following schedules:

- Schedule 5 - Land in which only new rights etc. may be acquired;
- Schedule 6 - modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants; and
- Schedule 8 Protective provisions.

8.1.7 Power to use land on a temporary basis for carrying out the authorised project, is sought in Article 25 together with Schedule 7 (Land of which temporary possession may be taken) and the temporary use of land for maintaining the authorised project in Article 26. Power to survey and investigate land is sought in Article 13.

8.1.8 Section 123(2) requires that the decision-maker is satisfied that one of the conditions in subsections (2) to (4) is met.

8.1.9 A request was contained by the inclusion in the draft DCO [APP-010] of Articles in Part 5 relating to powers of acquisition and by the inclusion in the application documents of a draft Book of Reference [APP-014], Statement of Reasons [APP-012] and Land Plans [APP-006].

8.1.10 ***The ExA is satisfied that the condition in s123(2) is met in that the application for the order included a request for compulsory acquisition of the land to be authorised.***

8.2 THE PURPOSES FOR WHICH LAND OR RIGHTS ARE REQUIRED

8.2.1 The works and associated development for which the recommended DCO (Appendix D) is stated to be required are set out below.

8.2.2 Land for which CA or TP is stated to be required is summarised in paragraph 10.11 of the updated *Statement of Reasons* (Revision C) [REP7-029] thus:

"Freehold Title – Required for above ground infrastructure such as the new substation to the north west of the existing National Grid Bicker Fen substation. Where the acquisition of the freehold title to land is required, this land is shown coloured pink on the Land Plan (see Article 15 of the Order).

Permanent Rights (including restrictive covenants) – Required to facilitate the installation and maintenance of the onshore infrastructure and to ensure its protection and continuous operation. These permanent rights, which are described in the Book of Reference as 'packages' according to their purpose, are proposed to be secured by Article 18 (Compulsory acquisition of rights) and Schedule 5 (Land in which only new rights etc. may be required) of the Order. The land in respect of which permanent rights are sought is shown coloured yellow on the Land Plan.

Temporary Possession Powers (construction compounds and access only) – Required for the purpose of access to and/ or use as a temporary construction compound during the construction phase only. Land subject to powers of temporary possession only, pursuant to Article 25(1)(a)(i) of the Order, is detailed in Schedule 7 (Land of which temporary possession may be taken) of the Order and shown coloured blue on the Land Plan."

8.2.3 In addition to the above, the draft DCO intends that, by virtue of Article 13 of the Order, any land within the Order limits, or which may be affected by the authorised project, may be entered for the purpose of carrying out surveys and investigations.

8.2.4 Paragraph 10.41 of the *updated Statement of Reasons* (Revision C) [REP7-029] states there are 8 parcels of land (which accommodate nine ponds) which have been included in the Order solely for the purposes of undertaking such surveys, and in respect of which no other form of permanent acquisition and/or temporary possession rights are sought.

Principle CA powers - land and rights

8.2.5 Article 15 permits the undertaker to CA so much of the Order land as is required for the authorised project or to facilitate, or is incidental to it. The "Order land" is defined in Article 2 as "the land shown on the land plans which is within the limits of land to be acquired or used and described in the Book of Reference". The power in Article 15 is also subject to article 18(2) (compulsory acquisition of rights) and article 25(9) (temporary use of land for carrying out the authorised project). The applicant explains in the *Statement of Reasons* [REP7-029] at 10.12 that the freehold interest is only sought for 19 plots:

"TKOWFL only seeks the acquisition of freehold title to the Order land in a limited number of circumstances for the purposes of the above-ground onshore infrastructure, including the intermediate electrical compound (Work Number 9, plot number 10/07), the Substation (Work Number 50, plot numbers 47/03, 47/04, 47/09 and 47/10), the permanent access road into the Substation (Work Number 48, plot numbers 44/02, 45/12, 45/14, 45/15, 45/17, 45/18, 45/19, 45/22, 45/24, 46/01, 46/03, 46/06, 47/02) and transition joint bays (Work Number 3A, plot number 01/03)."

- 8.2.6 During the examination the width of the access road was reduced to accommodate the request of the landowner which resulted in a reduction in the area of plots 44/02 and 45/12 and a change to the CA request so that only rights were sought in plot 45/15. Further detail of this can be found in the Applicant's order limits reduction request [REP3-052] as discussed below.
- 8.2.7 Having reviewed the Book of Reference and the Land Plans the ExA note that there are 19 plots which are subject to freehold acquisition. These include the ones listed above by the applicant in the Statement of Reasons (disregarding plot 45/15) and Plot 10/06. It appears that this was not included in the Statement of Reasons by error given its status in the Book of Reference and the Land Plans. The ExA note that the schedule of compulsory acquisition also records that a freehold interest is sought in this plot and is satisfied that the applicant has consulted all persons interested in Plot 10/06 on that basis.
- 8.2.8 Article 18 permits the undertaker to CA such rights and impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 15 (compulsory acquisition of land) by creating them as well as acquiring rights already in existence. Article 18(2) makes it clear that CA of the plots listed in schedule 5 is limited to the creation of new rights and imposition of restrictive covenants as may be required for the purpose listed in that schedule. The Statement of Reasons [REP7-029] explains the different type of new rights that are contained in schedule 5 - cable rights, access rights, landfall access rights, unlicensed connection rights, drainage rights, associated development rights and restrictive covenants.

8.3 MODIFICATIONS TO THE REQUEST FOR COMPULSORY ACQUISITION

- 8.3.1 During the course of the examination of this application, two change requests were made by the Applicant at D1 [APP-134] subsequently superseded by [APP-136] and at D3 [REP3-052] following discussion at the November 2015 DCO Hearing.
- 8.3.2 Both these change requests and the reasons for the ExA accepting them are set out in Section 2.3 of this Recommendations Report. The accepted change requests have two implications for the Applicant's request for powers of CA and of temporary possession.

- 8.3.3 The first was that changes were required to split Plot 48/17 into two separate Plots, 48/17A and 48/17B. Both new Plots retain the same rights as for Plot 48/17. Plot 48/17B is allocated additional unlicensed connection rights in Schedule 5 of the recommended DCO (Appendix D).
- 8.3.4 The second was that two plots - 44/03 and 44/03a - were removed from the relevant Land Plan and from the Book of Reference and Schedule 7 of the recommended DCO (Appendix D). Plots 44/02, 44/04 and 45/12 were reduced in size and the nature of the CA sought over plot 45/15 changed from freehold acquisition to the acquisition of rights.
- 8.3.5 The ExA conclude that none of the changes to the Book of Reference, Land Plans and draft DCO involve the introduction of additional land over which CA powers were requested and, therefore, the provisions of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 were not triggered.
- 8.3.6 In addition to the change requests described above, *The Book of Reference (BoR) – Revision B Comparison document* (Appendix 4) provided for D6 [REP6-020] shows a number of changes to details of persons with an interest in the order land / persons who may be able to make a relevant claim.
- 8.3.7 Our question CA 4.1 [PD-019] asked the Applicant to state the reasons for these apparent additions and whether and how any additional persons with an interest in the order land / persons who may be able to make a relevant claim were contacted.
- 8.3.8 In its response [REP8-032] the Applicant stated that the revised BoR:

"... shows a number of apparent new parties that have an interest in the Order land. These have been revealed through discussions with landowners and Land Agents when negotiating Heads of Terms (HoTS) for private agreements since the first version of the BoR was submitted as part of the application documents in April 2015."
- 8.3.9 Page 20 of the Applicant's response contains a table detailing each 'new' person with an interest in the order land / person who may be able to make a relevant claim. We have considered this table carefully and conclude that all the parties listed, with the exception of five dealt with below, were already listed in the BoR as submitted [APP-130] but that the correct detailed names or other details had been clarified.
- 8.3.10 The exceptions are John Holden's Charity (plots 11/15, 11/16, 12/01, 12/12, 16/13, 16/14 and 16/15), Michael Bennett (plots 16/17, 16/18, 16/19, 16/20 and 16/21) Robert Collin Limited (plots 20/16, 20/17, 20/18, 20/19, 21/01, 21/02, 21/03, 21/04, 21/05 and 21/06), GH Caudwell Limited (plots 31/05, 31/06, 31/07, 31/08 and 31/09), Evelyn Hall (plots 33/14 and 33/15).

- 8.3.11 Robert Collin Limited (plots 20/16, 20/17, 20/18, 20/19, 21/01, 21/02, 21/03, 21/04, 21/05 and 21/06) is a tenant of LCC. Correspondence between Mr Collin and the Applicant was included in Letters to landowners, submitted as Appendix 14 of the Applicant's Response to D8 [REP8-046] with Mr Collin introducing himself as the new tenant on 23 November 2015 and a response from the Applicant dated 1 December 2015 setting out the nature of the proposed project, the timetable for examination and its relevance for those plots on which Robert Collin Limited had a tenancy. These plots are considered below when consideration is given to the holdings of Lincolnshire County Council (LCC).
- 8.3.12 We note that, first, none of the plots listed in the preceding paragraphs are additional plots to those listed in the BoR submitted as part of the application documents [APP-130].
- 8.3.13 We note, second, that all the new parties have been contacted by the Applicant prior to the submission of BoR Revision B [REP6-019] and that John Holden's Charity, Michael Bennett, GH Caudwell Limited and Evelyn Hall have agreed Heads of Terms (HoT).
- 8.3.14 ***The ExA conclude that none of the changes to APs and to other persons involve the introduction of additional land over which CA powers were requested and, therefore, the provisions of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 were not triggered.***

8.4 HOW THE EXA EXAMINED THE CASE FOR COMPULSORY ACQUISITION

- 8.4.1 The ExA asked a number of rounds of questions with each containing questions on issues relating to CA and other land matters. The first written questions (FWQ), published on 11 September 2015 [PD-009], contained 21 CA questions; the second written questions (SWQ), published on 11 December 2015 [PD-014], contained 23 CA questions; the third written questions (TWQ), published on 10 February 2016 [PD-016], contained 14 CA questions; and the fourth written questions (FourthWQ), published on 23 February 2016 [PD-016], contained four CA questions;
- 8.4.2 There were two CAHs (CAH) held on 13 November 2015 [EV-019] and on 21 and 22 January 2016 [EV-040].

8.5 THE REQUIREMENTS OF THE PLANNING ACT 2008

- 8.5.1 CA powers can only be granted if the conditions set out in sections 122 and 123 of the PA2008 are met.
- 8.5.2 S122(2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to that development. In respect of land required for the

development, the land to be taken must be no more than is reasonably required and be proportionate.

- 8.5.3 S122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is affected
- 8.5.4 In addition, the ExA had regard to the 2013 DCLG Guidance on Compulsory Acquisition (Planning Act 2008: guidance related to procedures for the compulsory acquisition of land). A number of general considerations also have to be addressed either as a result of following this applicable guidance or in accordance with legal duties on decision-makers –
- all reasonable alternatives to CA must be explored
 - the Applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available; and
 - the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.
- 8.5.5 These tests are considered in this Chapter, below.
- 8.5.6 TP may itself be an alternative to CA and consideration has also been given to this as an alternative. The powers in the DCO giving TP for access, construction etc are considered alongside the other powers in the DCO as being necessary to deliver the project, as discussed in Chapter 9, but are not subject to the tests in s122 and s123. They may also raise Human Rights Act considerations and these are discussed further below.

8.6 THE APPLICANT'S CASE

- 8.6.1 The Applicant's overall case for seeking powers for the CA of land or rights over land is set out in the *Statement of Reasons* [REP7-029] particularly in Section 10 of that Statement. This states, inter alia, that:

"Each plot of land described in the Book of Reference (Application Document 4.3) and shown on the Land Plan (Application Document 2.3) is required either for the purposes of the TKES, or is needed to facilitate, or is incidental to the project.

However, rather than seek to acquire the freehold title to all of this land, TKOWFL is taking a proportionate approach and is seeking acquisition of a combination of freehold title and permanent rights (such as rights of access and rights to install and maintain cables) as well as temporary possession powers. TKOWFL is also seeking the imposition of 'restrictive covenants' (positive rights) to prevent interference with the underground infrastructure forming part of the

TKES and thus any associated damage to the infrastructure or injury to members of the public."

and that:

"TKOWFL has sought to acquire the rights and interests in land which are required to deliver TKES through private treaty negotiation. TKOWFL considers that it has taken a proportionate approach to land assembly, having regard to the impact on those holding interests in the Order land. TKOWFL has sought to acquire only such land and/or interests which are absolutely necessary for the TKES to proceed.

Notwithstanding the substantial efforts which have been made to seek to acquire interests in land by way of voluntary agreement, as at the date of the Application, TKOWFL has been unable to secure those interests by negotiation. It is therefore necessary to seek a range of compulsory powers, including temporary possession powers, to enable delivery of the TKES."

- 8.6.2 The more detailed case for CA powers in relation to individual plots is referenced in specific sections in subsequent parts of this Chapter of the Recommendation Report.

8.7 THE CASE UNDER SECTION 122(2) - THE LAND FOR DEVELOPMENT

- 8.7.1 Whether the land subject to a request for CA is required for the development to which the development consent relates or is required to facilitate or is incidental to that development and whether the land to be taken is no more than is reasonably required and is proportionate, formed one relevant and important aspect of the Panel's examination of the case for CA.
- 8.7.2 The Applicant has requested powers of CA over most of the Order land. In the opinion of the Panel, they did not provide a full explanation of whether CA was required on land within the Order Limits which might only be used temporarily during the construction period and would not be required either for access and maintenance or for the protection of the asset during the operational phase.
- 8.7.3 The Applicant set out its position on this in its *Statement of Reasons* (Revision C) [REP7-029]. This states in para 4.23 that:
- "The 60m width required for the cable corridor is based on a number of assumptions which will be confirmed through the final design process, and includes space for cable trenches; space to temporarily store topsoil and subsoil; a temporary haul road; as well as space to store any equipment required for that section of work during construction."*
- 8.7.4 The *Statement of Reasons* (Revision C) [REP7-029] shows that within this 60m corridor, there is a proposed temporary haul road with a

width of 6m (para. 4.36) and a topsoil storage area with a width allowed for stockpiled material of approximately 8.6m and 5.8m for topsoil and subsoil respectively each side of cable route (para. 4.28) and a buffer.

8.7.5 The ExA considered that it was logical to assume that, if part of the 60 metre corridor was made up by temporary requirements such as the soil dump and haul road then the whole of the corridor would not be required in terms of the permanent acquisition of rights over land.

8.7.6 The Panel first sought justification from the Applicant for its approach in our FWQ CA 1.6 [PD-009]. The Applicant responded that:

"The final width of the permanent easement & restrictive covenant required in respect of the cable corridor cannot be confirmed due to the fact that the width required cannot be finalised prior to having settled the design of the onshore electrical infrastructure during the pre-construction phase. For the avoidance of doubt, there is no intention to amend the Order Limits to reduce the scope of the permanent rights sought over the cable corridor prior to the SoS' decision. The Applicant needs to secure the ability to construct and maintain the development anywhere within the Order Limits and requires the corresponding rights over the identified land. The permanent rights sought are therefore necessary for the proposed development, and/ or are required to facilitate the proposed developed."

and that:

"Subject to any revisions required as a result of constraints that come to light during construction, the width of the permanent easement will be finalised during the pre-construction stage when the detailed design for the project is undertaken."

8.7.7 We examined this further at the November 2015 CAH [EV-019] seeking to understand, *inter alia*, the timing and process of the finalisation of the permanent easement, and whether this process was secured through the draft DCO.

8.7.8 Other bodies represented at this CAH also expressed concerns at this approach. For example, paragraph 5.6 of the written submission of the NFU and Lincolnshire Association of Agricultural Valuers (LAAV) from the CAH on the 13 November [REP3-027] states that:

"The width of the permanent easement was a matter of great concern to affected persons and the NFU/LAAV did not consider that the Applicant had established that a permanent easement of 60m in width was required either for the development or to facilitate the development. To seek permanent rights over the entire width of the cable corridor, in circumstances where the infrastructure would not extend to that full width, was more than was reasonably required and

amounted to a disproportionate interference with the rights of the landowners."

8.7.9 Following this Hearing, the Applicant submitted a *Compulsory acquisition clarification paper* [REP3-053] which sought to justify its approach further. This stated that the Applicant proposes to use TP powers for construction purposes and to only exercise CA powers when the scope of the easement width is known.

8.7.10 We pursued this issue through our SWQ CA 2.7 [PD-014] and again in our examination at the January 2016 CAH.

8.7.11 The Applicant's response to our SWQ CA 2.7 [REP4-044] states, first, that:

"the undertaker is restricted from acquiring rights compulsorily over land which is not required for, or incidental to the proposed development. To do so would be ultra vires."

8.7.12 It goes on to state that:

"... it is not possible or indeed wise to reduce the 60 metre corridor any further at this stage. To do so could risk the Applicant having to halt the delivery of the proposed development and to seek additional compulsory purchase powers at a later date. Furthermore, to draw a narrower corridor would risk rendering the project undeliverable."

and that:

"Given the number of imponderables, such as spacing, depth and rating of cable circuits; the location of the temporary haul road; the potential number of constraints/obstructions which will need to be routed around; it is essential that the compulsory acquisition of rights is authorised over all of this land."

8.7.13 The Applicant also submitted an *Addendum A: Further Detail Regarding the TKES Cable Corridor: Appendix 29 to the Applicant's Deadline 4 response* [in four parts - REP4-056, REP4-057, REP4-058 and REP4-059]. This set out, *inter alia*, the determinants of the final width of the corridor in any one place. These are:

- Whether the cables have been buried in a trench, or using a trenchless crossing technique;
- The safety buffer that is imposed either side of the cables (the closer the cables to the surface, the greater the safety buffer that is required);
- The soil conditions;
- Whether an unforeseen obstacle required the cables to deviate, taking more space than originally envisaged; and
- Where a trenchless crossing is used, the size and nature of the feature that is being crossed.

- 8.7.14 At the January 2016 CAH, the Applicant presented five slides (*Slides presented at hearings on the 19th and 21st January 2016: Submitted as Appendix 6 of the Applicant's response to D5 [REP5-019]*) which sought to clarify issues surrounding the necessity or otherwise for CA powers to be granted over the full width of the corridor.
- 8.7.15 The *Written Summary of The Applicant's Oral Case put at CAH on the afternoon 20 January and 21 January 2016 [REP5-015]* summarised the Applicant's case.
- 8.7.16 The ExA consider that, following the extensive Examination outlined above, the Applicant's case as set out in the written summary of oral case [REP5-015] can be divided into three main arguments which, for clarity of conclusion, are dealt with below.
- 8.7.17 The first, set in paragraph 1.61 of the summary of case [REP5-015], is that:
- " ... so far as the trenchless construction is concerned that the full width of the 60 m will need to be acquired. Wherever the trenchless technique is employed, the infrastructure required for six circuits will occupy up to the full 60 m so there is a need to be able to acquire permanent rights over the full 60 m."*
- 8.7.18 The ExA recognise the validity of this argument for those areas where trenchless techniques are to be used and that the stretches for which this will be the preferred construction method are not defined at this stage.
- 8.7.19 The second argument set in paragraph 1.63 of the summary of case, is that:
- "Where it is possible for trenched techniques to be used, cables are laid at a shallower depth, with a narrower separation distance in between, which may result in a reduced area over which rights need to be acquired. However, it is not possible for the Applicant to argue at this stage that anything other than the full 60 m will be required, even where it may currently be proposed to undertake trenched construction techniques. The indicative layout shown in Figure 6 of the TKES cable corridor in the paper at Appendix 29 to the Applicant's Deadline 4 response [REP4-057] demonstrates that it may be possible for the permanent width of the cable corridor to be limited to around 40 m in some stretches of the cable corridor where the cables are buried in trenches. However, where obstacles are encountered, the cable circuits may need to be micro-sited around an obstruction resulting in an increased width of the permanent corridor."*
- 8.7.20 The above statement from the summary of the Applicant's case shows that, in some areas, it may be the case that some 20 metres - or one third of the corridor - will not be required but that the location of the stretches of reduced width will not be known in advance.

- 8.7.21 Additionally, in areas of hedgerow removal, the Applicant points out in Further Detail Regarding the TKES Cable Corridor [REP4-056], for very short distances it would be possible to narrow the working width by stockpiling spoil in adjacent parts of the cable corridor. This would reduce the working width of the corridor at these points to 30 metres.
- 8.7.22 However, the Applicant continues that there may be some areas of the cable corridor where it is necessary to remove longer lengths of hedgerow within the working width, for example, where an obstacle is encountered during the construction phase.
- 8.7.23 The Applicant's case in this respect is summarised by the statement in paragraph 1.69 of the *Summary of The Applicant's Oral Case put at CAH* [REP5-015] that:
- "it cannot be said that any of the land so referenced is not required".*
- 8.7.24 The Applicant has stated that, in paragraph 1.65 of the *Summary of The Applicant's Oral Case put at CAH* [REP5-015] that:
- "It is simply not possible or practicable to have carried out all the investigations required to identify all the possible constraints at this stage and there is a continuing duty on all promoters to mitigate environmental effects."*
- 8.7.25 The ExA consider that it may have been more desirable for the Applicant to have gained a greater understanding of ground conditions and of possible obstacles in advance of the submission of the application. However, we acknowledge that, as set out in Chapter 5 of this Recommendations Report, this approach to surveys has, ultimately, been accepted by Natural England and by the local planning authorities and by parties involved in the Evidence Plan process.
- 8.7.26 We also recognise that the acknowledged lack of some detailed on-the-ground pre-application investigation does lead to a conclusion by the Applicant that it cannot be said that any of the land so referenced is not required rather than a conclusion that it can be confirmed that all of the land so referenced is required.
- 8.7.27 Instead the Applicant has relied on the approach whereby the combination of powers in the DCO to access and survey land, to take TP during construction and to secure CA to procure and protect the final works layout is a justified approach which is valid under s122(2). At the same time the Applicant has sought to acquire land or rights by agreement as witnessed by the updated schedule submitted.
- 8.7.28 The Applicant's related argument is that to seek to limit the CA could risk the Applicant having to halt the delivery of the proposed development and to seek additional compulsory purchase powers at a later date. We note the statement in the SoS's Direction under s35 of PA2008 [OD-001] that the issuing of the Direction will mean that the

project, which is needed to deliver the electricity generated by a consented project, will benefit from the application being determined in a timely manner.

- 8.7.29 A further argument is cited above and is set out in paragraph 1.71 of the *Summary of The Applicant's Oral Case put at CAH* [REP5-015] that:

"The legislative and judicial framework ensures that it is inherent in the nature of compulsory acquisition that, when exercising the powers under any DCO which has been made, one can only lawfully acquire such land as is actually needed for the development. This is a matter of judgment and discretion for the body to whom compulsory acquisition powers are granted, subject ultimately to the supervisory jurisdiction of the Courts, whether through direct or collateral challenge."

- 8.7.30 The ExA recognise the veracity of this argument, although we do not wish to give any impression of encouraging an approach which may rely on affected persons, individually or in groups, having the resources and time to challenge the implementation of CA powers on a plot by plot basis.

- 8.7.31 Partly with this in mind we sought a means whereby a greater degree of certainty may be afforded to landowners, should the Application be consented, and the design for the cable corridor had identified an exact - and, potentially narrowed - corridor width, prior to construction commencing.

- 8.7.32 One potential method of achieving this would be to enable scrutiny of the final construction plans, thus enabling landowners and tenants to know the actual land take in advance through the plans being considered by the local planning authority.

- 8.7.33 Therefore, in the January 2016 DCO Issue Specific Hearing (ISH) [EV-047], we suggested the addition of a further requirement stating that:

"xx.—(1) No stage of the connection works shall commence until details of the layout, scale, levels and external appearance of that stage have been submitted to and approved by the relevant planning authority. The connection works must be carried out in accordance with the approved details."

- 8.7.34 In its *Written Summary of the Oral Case put at the DCO Hearing held on 22 January* [2016] [REP5-016], the Applicant stated that it is unclear why we consider such a requirement to be necessary as, in its opinion, sufficient and proportionate controls are considered to be included within the draft DCO to ensure that the relevant planning authority can regulate the construction and operation of the project.

- 8.7.35 It did, however, propose adding further provisions to the updated *Outline Soil Management Plan*, submitted at Appendix 14 to the

Applicant's D5 submission [REP5-027] which deals with provision of plans to landowners and tenants pre- and post-construction.

8.7.36 The Soil Management Plan will be approved and secured as part of the relevant Code of Construction Practice.

8.7.37 Additionally, reflecting the ExA's concerns on this issue, Requirement 5(11) was inserted by the Applicant to Revision D of the DCO dated 5th January 2016 [REP4-043]. This sub-clause required:

"(11) (a) At least three months prior to the commencement of the onshore cable works the undertaker must:

(i) submit a cable route sequencing plan to the relevant planning authority including details of the indicative sequencing of the onshore cable works; and

(ii) notify the public and landowners of the sequencing of the onshore cable works in accordance with the Communications Plan agreed as part of the Code of Construction Practice;

(b) any cable route sequencing plan submitted in accordance with subparagraph (i) may be updated, as required, from time to time, and communicated to landowners and the public in accordance with the Code of Construction Practice."

8.7.38 We consider this Requirement to be useful and, consequently, we did not include our suggested requirement in our consultation draft DCO [PD-107]. However, we did put forward an amendment to Requirement 5(11) - Detailed design onshore - that proposed that the local planning authority should have the power to approve the cable route sequencing plan following notification to the public of a draft plan and that the plan should include details of width and alignment of the cable corridor post construction and of the indicative sequencing of the onshore cable works.

8.7.39 In its response to our consultation draft DCO [REP6-017], the Applicant stated that it does not consider that the wording proposed met the tests for a requirement, citing paragraph 226 of the NPPF, and went on to show its reasoning as to why the suggested amendment was not necessary, relevant to planning and to the development to be permitted, enforceable precise and reasonable in all other respects.

8.7.40 However, in its final draft DCO (Revision G) [REP7-018], the Applicant suggested the insertion of two additional subclauses:

"(b) prior to construction of any stage of the onshore cable works submit to the relevant planning authority copies of the cable installation plans provided to the landowners in accordance with the Soil Management Plan approved as part of the Code of Construction Practice;

(c) within three months of the completion of the installation of the cable circuits for any stage of the onshore cable works submit to the relevant planning authority as built plans for that stage showing the alignment of the cable circuits."

- 8.7.41 The ExA welcome the insertion of 5(11) as it evolved during the latter stages of the Examination. However the ExA note that in the Applicant's final draft DCO (Comparison of Revision F and Revision G) [REP7-020] the Applicant has removed reference to the "landowners" in 5(11)(a)(ii) and 5(12). The Applicant has not explained the reason for this amendment.
- 8.7.42 The ExA consider that specific reference to "landowners" in these sections is important to achieve the certainty required regarding the extent of CA that will be needed and have recommended that these references are included in the recommended DCO (Appendix D).
- 8.7.43 Taking all the above into account, ***the ExA conclude that the Applicant's approach to setting the limits of land over which powers of CA are sought are pragmatic and reasonable in the circumstances of this case.***
- 8.7.44 Additionally, the ExA conclude that the addition of Requirement 5(11)(a)(ii), as originally drafted and as included in the ExA's recommended DCO (Appendix D), should ensure that the extent of the rights required compulsorily or by agreement will be satisfactorily communicated to land owners.
- 8.7.45 Given this, ***the ExA recommend that Requirement 5 should be included in the final DCO should it be consented by the SoS as amended in the ExA's recommended DCO (Appendix D).***
- 8.7.46 We had a further related concern. Chapter 5, discusses that the Applicant has yet to decide whether the switchgear in the electricity sub-station (Work No 50A with enabling works at No. 50) would be air insulated or gas insulated. These two methods of insulation give rise to different footprints - with air insulated switchgear requiring 8.6m² and gas insulated switchgear requiring 6.9m².
- 8.7.47 We asked during the CAH held on 13 November 2015 whether the Order limits in the vicinity of Work No 50A were drawn to reflect a substation using air insulated switchgear or using gas insulated switchgear.
- 8.7.48 In its Written Summary of The Applicant's Oral Case put at CAH on 13 November 2015 [REP3-038] the Applicant stated that:
- "Whilst the two technologies may therefore result in different configurations in terms of the footprint of the buildings which will house the IEC, the area of proposed freehold acquisition of land for the IEC goes beyond that which is required for the substation. This is a result of the difference in the overall function of the IEC compared to*

the substation; as well as the need to install drainage systems for the IEC; the need to allow access for maintenance purposes; and the requirement for appropriate landscaping and fencing of the entire IEC area. As a result, the overall footprint of the IEC is not determined solely by the choice of switchgear, and it will be the same overall footprint in both cases."

- 8.7.49 We recognise the validity of this argument and ***the ExA conclude that the Applicant's approach to setting the limits of land over which powers are sought for the CA of land for Plots related to the substation and, in particular, Plots 47/09 and 47/10, are pragmatic and reasonable in the circumstances of this case.***
- 8.7.50 The second relevant and import aspect which we examined relating to the reasonableness and proportionality of the nature and extent of the rights sought in Article 18 - Compulsory acquisition of rights - focusing in particular on the restrictive covenant as this was a significant source of objections and is also an interference with rights.
- 8.7.51 The draft restrictive covenant was set initially in Schedule 5 of the draft DCO submitted with the application [APP-010].
- 8.7.52 We examined the nature of the restrictive covenant in detail in item 15 on the agenda for the November 2015 CAH [EV-019]. In this hearing, we referred specifically to Protocol 1 Article1 of the European Convention on Human Rights and focussed initially on some specific provisions including sub-clauses a), b), c) and d) of the draft restrictive covenant as set out below:

"(a) prevent anything being done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto);

(b) prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);

(c) prevent anything to be done by way of excavation of any kind or agricultural practices (including but not limited to ploughing) exceeding 0.6 metres in depth in the Order land or any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the undertaker save as are reasonably required to be carried out by National Grid in order to exercise their rights in relation to their apparatus within the Order land;

(d) prevent the planting or growing within the Order land of any trees, shrubs or underwood without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project.

8.7.53 Concerns as to whether the covenant, as then drafted, was over-restrictive came from a number of those attending and represented at the November 2105 CAH.

8.7.54 For example, *the National Farmers Union and Lincolnshire Association of Agricultural Valuers (NFU/LAAV) written submissions from the oral hearing on the Compulsory Acquisition on the 13 November 2015 [REP3-027]* states in paragraph 7.1 that:

"The NFU/LAAV considered that the proposed restrictive covenants amounted to swingeing restrictions for affected persons trying to work their farms effectively, sustainably and profitably. They were more onerous than anything the agents had seen in respect of other such projects."

8.7.55 In particular, the NFU/LAAV stated that:

"In respect of requirement (a), the prevention of 'works of any kind' was too widely drafted;

Covenants (a) and (c) would prevent farmers from re-draining their fields; and

covenant (b), ... would prevent the construction and maintenance of farm roadways, and the covenant was wholly unacceptable in its current form"

8.7.56 These concerns about the possible over-restrictive nature of the provisions of the draft restrictive covenant were shared by other bodies. For example, *CAH (13th November 2015) Joint Submissions Of Black Sluice Internal Drainage Board, Lindsey March Drainage Board And Witham Fourth Internal Drainage Board [REP3-001]* states in paragraph 4.10 that:

"As presently drafted, the restrictive covenants set out in Schedule 5 would prevent those IDBs that own the land on which a watercourse is situated (in particular, Witham Fourth IDB and perhaps the other two IDBs⁴) from exercising their statutory powers. To take the most egregious example, paragraph (c) would prohibit Witham Fourth IDB from deepening or desilting those of its watercourses caught by the restrictive covenant provision. Paragraph (a) would appear to prohibit any works upon its land. Paragraph (d) would appear to prohibit cutting vegetation within the watercourse channel and along the bank tops."

8.7.57 As a further example, the *Summary of Oral Representations* made by the Environment Agency (EA) at the ISH on 12, 13 and 17 November 2015 [REP3-021] stated that the EA representative at the CAH:

"... advised that the use of such restrictive covenants is not standard practice and it is the first time officers in this area have been asked to accept them. It is our opinion that the EA's statutory powers override these covenants and that the proposed 'one size fits all' approach is not suitable for the EA as either a landowner or flood risk management authority. We are likely to need to carry out important excavations beyond the 0.6m depth (as imposed by restrictive covenant (c) in Schedule 5."

8.7.58 Following this Hearing, the Applicant put forward a *Note on proposed modifications to form of Restrictive Covenant* as Appendix 30 of its response to D4 [REP4-060] but did not, at that time, incorporate this revision into an amended draft DCO. Revised wording was also included in the Applicant's Response to EA representations on form of Restrictive Covenant [REP4-062].

8.7.59 Paragraphs 2.4 to 2.8 of the *Note on proposed modifications to form of Restrictive Covenant* [REP4-060] sought to explain the reasoning behind each of the sub-clauses of the draft covenant and section 3 of the document sets out proposed modifications related to specific areas of concern raised by interested parties.

8.7.60 In particular, the Applicant suggested that:

- Sub-clause b) of the covenant be amended to make it clear that it does not relate to existing hard surfacing or works consisting of the laying or relaying of hard core surfaces/tracks that do not involve manholes, access chambers or other access points on the surface of the land and that the reference to expense is removed;
- Activities are specified in sub-clause c), which will not jeopardise the physical integrity of the proposed development, and which may be undertaken without the need to obtain the Applicant's prior consent;
- Sub-clause b) Covenant amended to make it clear that it does not relate to existing planting but prohibits new planting or growing without consent (including permitting such growth) and that the reference to expense is removed.

8.7.61 The discussion at the January 2016 CAH [EV-040] focussed on this revised wording.

8.7.62 In their Submissions of the NFU/LAAV in answer to Requests for Further Information from the ExA dated 29 February 2016 [REP8-019] the NFU/LAAV stated that they:

"... are concerned that the time limit of 24 hours to provide consent to a farmer has not been included within the wording under "Restrictive Covenants" in relation to mole draining under the latest draft of the

DCO at Schedule 5. It has though been stated in the Soil Management Plan in Section 2 paragraph 2.8 –third bullet point. The NFU/LAAV would like clarification that the 24 hour time limit will be met or will the wording under Restrictive Covenants in the DCO override the wording in the Soil Management Plan?"

- 8.7.63 The ExA notes that the final version of the Outline Soil Management Plan (Revision E) submitted as Appendix 31 of the Applicant's Response to D7 [REP7-039] does state that:

"Consent requests for mole drainage to be determined within 24 hours not including weekend or bank holiday hours."

- 8.7.64 The ExA recognise that the Soil Management Plan is secured through Requirement 14(e) of the recommended DCO (Appendix D) but consider that this commitment in the outline Plan should be strengthened by its inclusion in the recommended DCO (Appendix D).

- 8.7.65 **The ExA recommend** that the phrase contained in Schedule 5 of the Applicant's Revision G of the draft DCO [REP7-018] dealing with the restrictive covenant at (c) (iii)

"...without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed if the proposed activity would not cause damage to the relevant part of the authorised project nor make it materially more difficult to access or maintain the authorised project, with such consent being subject to such reasonable conditions as the undertaker may require)"

be amended to read:

"...without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed {with consent requests for mole drainage to be determined within 24 hours not including weekend or bank holiday hours} if the proposed activity would not cause damage to the relevant part of the authorised project nor make it materially more difficult to access or maintain the authorised project, with such consent being subject to such reasonable conditions as the undertaker may require)"

- 8.7.66 This recommended amendment has been included in the schedule at the end of Chapter 9 on the DCO.

- 8.7.67 As is considered above, the specific question of the potential impact of the proposed restrictive covenant on the statutory duties and activities of statutory undertakers and of statutory bodies, including the IDBs was also considered and in the November 2015 [EV-019] and January 2016 [EV-040] CAHs.

- 8.7.68 Following this consideration, the Applicant has further amended the draft restrictive covenant to state that:

"Nothing in the preceding restrictions ... above shall restrict ... any ... body from exercising their respective statutory functions, statutory powers, statutory rights, statutory duties, statutory responsibilities or statutory obligations."

8.7.69 Following the insertion of this sub-clause, the agreed *Statement of Common Ground between Triton Knoll Offshore Wind Farm Limited and Black Sluice Internal Drainage Board, Lindsey Marsh Drainage Board and Witham Fourth District Internal Drainage Board, published on February 2016* [REP8-040] states that:

"It is agreed that the Restrictive Covenants set out in Schedule 5, Part 3 of the draft DCO (Revision G), submitted as Appendix 9 of the Applicant's response to Deadline 7, do not impede the IDBs from exercising their statutory right, or carrying out their duties under the Land Drainage Act 1991 (as amended)."

8.7.70 The final agreed but unsigned *SoCG between the Applicant and Lincolnshire County Council* [REP8-043] states in paragraph 4.154 that LCC's:

"position in respect of the Restrictive Covenant is now covered by the acceptance on behalf of the Applicant that no part of the covenant is capable of being applied to any land or interest held by the County Council when undertaking any of its Statutory Functions". As explained at paragraph 9.3 of the Applicant's Response to Deadline 5 [REP5-013], to address concerns that the restrictive covenant would prevent the exercise of LCC's statutory functions, a new paragraph (f) has been inserted which makes it clear that nothing in paragraphs (a) to (e) restricts the exercise of statutory functions, powers, rights, duties, responsibilities or obligations."

8.7.71 In its Summary of Oral Representations made by the EA at the CAH and ISH on 20 – 22 January 2016 [REP5-003] the EA stated that:

"The EA and the applicant were in agreement that the covenants could not bind the EA in the exercise of its statutory powers. ... the EA's concern was that as currently drafted the only clarification of this is in relation to paragraph (c) and the EA would want this clarification to apply to the Restrictive Covenant in its entirety. Otherwise the EA is content with the wording of the Restrictive Covenant."

8.7.72 The ExA note that the final version of the restrictive covenant as submitted by the Applicant in Schedule 5 of Revision G of the draft DCO [REP7-018] contains sub-clause f) which relates the reference to EA to all the foregoing sub-clauses.

8.7.73 We shared the concerns expressed by parties as to the possible over-restrictive nature of the restrictive covenant as originally drafted. We recognise that the changes proposed to the restrictive covenant by the Applicant and included in its final draft DCO (Revision G) [REP7-018] do address those concerns and that parties have accepted them.

8.7.74 Therefore, ***the ExA recommend that the Restrictive Covenant as drafted in the recommended DCO at Appendix D be included in the final DCO should this be approved by the SoS.***

8.7.75 There remains one further issue in respect of the restrictive covenant. The final draft DCO submitted by the Applicant at D7 [REP7-018] shows in Schedule 5 that the covenant would apply to plot 01/01. The *Response of the Lincolnshire County Council to Matters Raised at the Second Round of Hearings, Submitted for Deadline 5 (01/02/2016)* [REP5-005] states that:

"LCC remains of the view that the covenant cannot be applied to any of its landholding where it owns land pursuant to a statutory process and where no other interests are known to exist. In reality the [Public Open Space at Plot 01/01] POS should be excluded from that reference. The Applicants suggestion that it should remain to guard against any future alteration to land by means of the construction of beach huts or the like is without foundation as the land was acquired as open space and the future intention is for it to remain open and at all times undeveloped."

8.7.76 The ExA have considered this point and conclude that the restrictive covenant as worded both provides a safeguard for the Applicant and does not restrict LCC from exercising its statutory functions, powers, rights, duties, responsibilities or obligations on this plot.

8.7.77 ***The ExA recommend that the reference to plot 01/01 in Schedule 5 in relation to the imposition of a Restrictive Covenant should remain in the version of the DCO as approved by the SoS.***

8.8 THE CASE UNDER S122(3) - PUBLIC BENEFIT

8.8.1 S122(3) of PA2008 requires that there must be a compelling case in the public interest which means that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is affected.

8.8.2 We examined the issue of public benefit both through examining the issue of public interest in general and through considering the cases for the granting of powers of CA on specific plots below.

8.8.3 Our starting point for the consideration of whether there is a compelling case in the public interest is whether there is an established need for the project. We reached the conclusion in Chapter 6 that the need for the project has been established. In that Chapter we conclude that the need for this proposed development is evident and uncontested and did not require further detailed examination.

8.8.4 In weighing the public benefit against the private loss we had regard to the guidance given in the 2013 DCLG CA Guidance. In considering private loss, therefore, we have had regard to the conclusions drawn

in other parts of this Recommendation Report as summarised in part above.

- 8.8.5 At a more detailed level, we examined the possible quantification of private loss in the February 2016 CAH. In respect of quantification, we discussed in particular an estimate for the value of crop loss put forward by the NFU/LAAV at the November CAH of some £4m. In its Written Summary of The Applicant's Oral Case put at CAH on the afternoon 20 January and 21 January 2016 [REP5-015], the Applicant a global figure of £4 million for private loss would be correct.
- 8.8.6 In its written summary of its evidence at the January 2016 CAH [REP5-054] the NFU/LAAV did not demur from this figure.
- 8.8.7 The ExA recognise that any quantification of private loss can only be indicative as it does not seek to quantify such matters as disturbance and because items such as crop loss will form part of a calculation for compensation.
- 8.8.8 Given the above, the ExA conclude that, in general, the public benefit derived from the CA does outweigh any private loss that would be suffered by those whose land is affected.
- 8.8.9 This conclusion should be read in conjunction with the conclusion set out below.

8.9 ALTERNATIVES

- 8.9.1 The guidance contained in the DCLG's September 2013 PA2008 Guidance related to procedures for the CA of land states that:

"The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored."

- 8.9.2 The ExA has considered this in terms of the selection of the site, the scale of the development proposed, the use of an agreement as an alternative to CA and then in relation to the proposed acquisition of each plot of land where an objection to CA remained at the end of the Examination as set out below, in this Chapter, in the Sections on those plots.

The site selected

- 8.9.3 The overall Examination of issues relating to the choice of the corridor selected are dealt with above. Of particular relevance in dealing with CA is the degree to which the Applicant selected the proposed route for the project applied for in way that sought to minimise the amount of land affected or the number of land owners and tenants affected.
- 8.9.4 Taking account of this guidance, we asked the Applicant in our question CA 1.2 [PD-009] to show how the selection of the route took

into account considerations of minimising the need to acquire land and/or rights compulsorily.

- 8.9.5 The Applicant responded [REP1-044] by referring to Section 6 of the Site Selection and Design Report [APP-117] on *Onshore Cable Route Selection and Design of the Site Selection and Design Report* and, in particular, to section 6.3 of that document and concluded that:

"The principles described in the Site Selection and Design Report of aspiring to select the least impacting and most direct route, whilst balancing environmental, technical and commercial constraints, has the positive consequence of minimising the number of landowners affected by the proposed development. However, given the scale of the proposed development and total number of affected land interests, the Applicant recognised during the development process that an element of compulsory acquisition would form part of the application, even with the highest levels of consultation and engagement with landowners."

- 8.9.6 The ExA conclude that the need to reduce the potential number of land interests affected by the proposed route did form one part, amongst others, of the determination of the cable route.

The use of an agreement as an alternative to CA

- 8.9.7 The Panel examined a number of aspects in relation to the issues as to whether the need for CA could have been reduced had a different approach been adopted to seeking to reach an agreement with landowners.

- 8.9.8 The Panel's approach to this was informed by the Applicant's statement in the *Statement of Reasons* [REP7-029] that:

"TKOWFL has sought to acquire the rights and interests in land which are required to deliver TKES through private treaty negotiation."

- 8.9.9 Given this, the aspects examined included:

- Whether there are alternatives to the request for a permanent easement; and
- Whether agreements may have been reached had the Applicant adopted a different approach to liaison with those with an interest in land.

Whether there are alternatives to the request for a permanent easement

- 8.9.10 The request for the powers of CA included in the application documents was based on an approach which seeks a permanent easement combined with a restrictive covenant.

- 8.9.11 In our FWQ CA 1.5 [PD-009] we asked the Applicant to justify the request for permanent easements.
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8.9.12 The Applicant responded [REP1-044], *inter alia*, in paragraphs 3.445 and 3.449 that:

"An Easement will endure for the entire duration of the proposed development and provide valuable flexibility in terms of 'rights management,' whereas a Lease will be of limited duration by definition. As such, it is beneficial from both Applicant & landowner perspective as the rights put in place and the cable constructed, further disruption to the landowner will be limited to periods of maintenance, if so required. As Leases will be time limited, future discussions may be necessary to 're-grant' Leases at a later date, so increasing administrative burden on all parties which can be avoided through use of an Easement.

An Easement would allow the landowner & relevant third parties to continue to operate on the surface subject to the restrictive covenants which are being sought in order to prevent interference with the Applicant's operations. Furthermore, the grant of the Easement would not involve any partitioning of the landowner's subterranean interest from the surface ownership."

8.9.13 The use of a permanent easement was the subject of a number of submissions. For example, the Written Summary of Oral Submissions Made on Behalf of the NFU/LAAV at the CAH on 13 November 2015 [REP3-027] explains that a number of the agents giving evidence stated that a main concern of their clients was the request for a permanent easement rather than a lease.

8.9.14 We pursued this issue through our SWQ and at the January 2016 CAH. *The Applicant's Written Summary of The Applicant's Oral Case put at CAH on the afternoon 20 January and 21 January 2016* submitted as Appendix 2 of the Applicant's response to D5 [REP5-015] states, in paragraph 1.82, that the Applicant confirmed that negotiations with the [NFU/LAAV] are progressing well.

"In response to submissions towards the end of 2015 that the landowners would not accept a permanent easement, the Applicant proposed a private treaty alternative of a time limited easement to all landowners in December 2015."

8.9.15 This was reflected in the *National Farmers Union and Lincolnshire Association of Agricultural Valuers Response to the Examining Authority's Third Questions- Submission for Deadline 6 of 17 February 2016* [REP6-010] which stated that:

"TKOWFL were seeking a Permanent Easement, and would not consider any alternative arrangement. Our clients do not consider that a permanent right is required for a temporary project and that a conventional subterranean lease for the same period as the lease for the offshore wind farm itself would be both adequate and appropriate. Very recently TKOWFL have proposed a lease of rights and the Agents

have requested the opportunity to have an independent review of this latest proposal as compared to a subterranean lease."

- 8.9.16 In coming to our conclusions on this issue, we note that the Applicant's final updated Schedule of CA [REP8-034] lists 124 affected persons, or groups of affected persons. The updated Schedule of CA [REP8-034] states that some 106 of that 124 had agreed Heads of Terms (HoTs).
- 8.9.17 This figure can be contrasted with the slow progress in reaching agreement with landowners recorded in previous updated Schedules of CA. Whilst cause and effect cannot definitively be established in this respect, we have taken account of the evidence cited above that the offer of a permanent easement without apparently considering all the alternatives was one block to the achievement of an agreement and conclude that the offer of a time limited easement would have contributed to the achievement of a higher proportion of agreement of Heads of Terms at an earlier stage.
- 8.9.18 In its written summary of its evidence at the January 2016 CAH [REP5-054] the NFU/LAAV states that:

"The NFU/LAAV believe that, until the meetings which took place with TKES (sic) in December 2015 and January 2016, a compelling case did not exist to take land because TKES had not tried to negotiate to take the land and also had not given consideration to taking lesser rights than the permanent acquisition. It was only at the meeting on the 22nd December that an offer of a time limited easement was finally made"

Liaison with those with an interest in land

- 8.9.19 The issue of whether or not the Applicant had liaised sufficiently with APs was raised on a number of occasions in submissions and we considered this in both the November 2015 and January 2016 CAH.
- 8.9.20 Our FWQ CA 1.3 [PD-009] expressed concern that a number of RRs from APs had expressed concerns about the level of liaison with them and we referenced a number of those RRs in that question.
- 8.9.21 In its response to FWQ CA 1.3 [REP1-044], the Applicant stated that it refutes the assertions that there has been limited liaison regarding the project proposals. It provided a table of events and actions to date and also listed contacts made specifically with those APs referenced in our question.
- 8.9.22 APs continued to express concerns with, for example, a written representation from Mr and Mrs J. R. M. and Claire, Luke, Mary and Annie Mackinder [REP3-014] stating that:

"There has been no meaningful dialogue between myself and the applicants to sort out a mutually agreeable cable route."

and a submission from James Mowbray [REP4-016] stating that:

"We have had no purposeful discussions regarding the acquisition of our land."

- 8.9.23 In its *Written Summary of the Applicant's Oral Case put at CAH on 13 November 2016* submitted as Appendix 2 of the Applicant's response to D3 [REP3-038] the Applicant addressed the points raised by parties concerning liaison including, in paragraph 1.38 that:

"Heads of Terms for private treaty agreements were first sent to landowners in December 2014. This was after the statutory consultation required by section 42 of the Planning Act 2008. It is the Applicant's opinion that it would have been premature to have issued Heads of Terms prior to that consultation."

- 8.9.24 The Applicant also responded by submitting a *Schedule of Landowner Negotiation Contact. Appendix 43 of Submission for Deadline 4 of 5 January 2016* [REP4-073]. This provided a record of contact from December 2014 (when HoTs were issued) onwards.

- 8.9.25 This document is drawn upon, where relevant, in considering individual parties, below.

- 8.9.26 In its paragraph 1.39 of its *Written Summary of the Applicant's Oral Case put at CAH on 13 November 2016* [REP3-038] that Applicant stated that:

"The contact schedules demonstrate the attempts made to discuss the Heads of Terms. The Applicant has engaged with land agents on the proposed commercial terms where the Applicant was advised that agents had been instructed to represent landowners, in accordance with standard RICS. The Applicant has not sought to exclude any persons with an interest in land from engaging with the project."

- 8.9.27 It was also clear that the Applicant continued the process of liaison during the period of the Examination. In paragraph 1.85 of its *Written Summary of the Applicant's Oral Case put at CAH on the afternoon 20 January and 21 January 2016* submitted as Appendix 2 of the Applicant's response to D5 [REP5-015] the Applicant stated that:

"The offer of site meetings has been reiterated and these have been taken up by a number of landowners and are to be scheduled as a matter of urgency. Where parties are not represented by agents, the Applicant continues to make contact by e-mail and telephone and is hopeful that agreement can be reached."

- 8.9.28 For example it stated in its Response to submission from NFU/LAAV at D3, submitted as Appendix 10 of the Applicant's Response to D4 [REP4-037], that it had written directly to all affected landowners and tenants on 7 December 2015 inviting them to a series of 4 drop in sessions being held on 17 and 18 December and 7 and 8 January, at

which a range of specialists from the Applicant's project team would be present to answer any questions. The Applicant stated that the letter also invited landowners to request a meeting with the Applicant at their property where any further site specific concerns could be discussed.

- 8.9.29 During the Examination, the ExA had concerns about the degree of liaison with parties and were informed in this concern by the amount and consistency of evidence provided by affected persons and by their representatives. However, we also had regard to the Applicant's information such as the Schedule of Landowner Negotiation Contact. [REP4-073] and recognised that there is evidence on both sides of this issue. Nevertheless, we were surprised by statements such as those in paragraph 1.50 of The Applicant's Written Summary of The Applicant's Oral Case put at CAH on 13 November 2015 [REP3-038] in which the Applicant stated that it was thankful to the various parties for raising matters at the Hearing, noting that many points were being raised with the Applicant for the first time, particularly in respect of the negotiations.
- 8.9.30 In balancing our concerns we had regard to the fact that the final updated Schedule of CA [REP8-034] states that 106 of the 124 Affected Persons (AP) listed had agreed HoTs.
- 8.9.31 On balance we consider that by the end of the Examination, the Applicant had achieved a significant number of agreements to Heads of Term and that the approach to liaison, particularly in the latter stages of the Examination, had contributed that that figure.
- 8.9.32 Therefore, ***the ExA conclude that the Applicant's approach to exploring all reasonable alternatives to compulsory acquisition through seeking to reach agreement was adequate in this case.***

8.10 LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

- 8.10.1 Article 25 of the ExA's recommended DCO (Appendix D) deals with the temporary use of land for carrying out the authorised project and Schedule 7 contains details of the plots for which only TP may be taken and sets out the purposes for that TP and the relevant works to those plots.
- 8.10.2 Article 25(9) as amended prevents the undertaker from compulsorily acquiring land in schedule 7. The Applicant's revision B of the DCO [APP-128] permitted the CA of new rights and imposition of restrictive covenants and the acquisition of part of the subsoil in the land listed in schedule 7. In our FWQ DCO 1.21 [PD-009] we set out that Article 25(9) permits the compulsory acquisition of new rights and existing rights in subsoil or airspace land and permits the imposition of restrictive covenants. We were concerned that land listed in Schedule 7 was not just for TP.

- 8.10.3 The Applicant recognised this concern and, in its response [REP1-044] stated that the draft DCO shall be amended so that the reference in Article 25[9] to the ability to acquire new rights, subsoil or restrictive covenants is not included in the revised draft DCO to be submitted to the ExA by 27 October 2015.
- 8.10.4 Article 25 in the ExA's recommended DCO (Appendix D) has omitted the previous sub-clauses (a) and (b) dealing with the acquisition of new rights or of subsoil and the imposition of restrictive covenants.
- 8.10.5 More generally, the Applicant is also seeking TP powers over all of the order land where the CA powers have not been exercised. We have considered the issue of the need for the Applicant to seek powers of CA over the totality of the land within the Order limits, with the possibility of only using some of the land temporarily, in this Chapter above. We concluded that the Applicant's approach was reasonable in this case.
- 8.10.6 The ExA consider that such temporary powers are therefore necessary to, for example, access land to do surveys and works before the final area over which CA is required for the cable can be determined.
- 8.10.7 The applicant also seeks power to enter on and take TP of land within the order limits for the purpose of maintaining the project for a 5 year period in Article 26.
- 8.10.8 In coming to our conclusions on land of which TP may be taken, we have had regard to the following factors:
- We received no representations that raised the issue of TP per se and this was not raised by parties as an issue at the November 2015 or the January 2016 hearings.
- Articles 25 and Article 26 limit the time that the undertaker may remain in possession of any land, require service of notice prior to entry on the land, require the land to be restored to the reasonable satisfaction of the owners and contain compensation provisions to address any loss or damage caused.
- We consider Human Rights Act 1998 considerations in the next Section of the Recommendation Report as the powers sought for TP of land could constitute an interference with owners' and tenants' peaceful enjoyment but that such interference is proportionate and justified in the public interest.
- 8.10.9 Given all the above, the ExA conclude that the powers requested for the TP of land are necessary and proportionate for the delivery of the project, subject to the consideration of the rights of individual APs which are discussed below.
- 8.10.10 ***The ExA conclude that the amended Article 25 and Article 26 should be retained in the final DCO should it be consented by***

the SoS and that the powers of TP over the plots listed in Schedule 7 and the rest of the order land where the CA process has not begun, should be granted.

8.11 HUMAN RIGHTS ACT 1998 CONSIDERATIONS

- 8.11.1 The ExA's consideration of any potential interference with human rights which would occur if CA powers are granted and, in particular whether Article 1 of the First Protocol¹⁴ as set out in Schedule 1, Part II of the Human Rights Act 1998 is potentially interfered with focussed, in particular, on the issues related to the request to impose a restrictive covenant.
- 8.11.2 The proposed restrictive covenant is considered above in this Chapter. That Section showed that the ExA considered that the restrictive nature of the original covenant had the potential to impinge on the rights of those whose property is to be compulsorily acquired and interfere with their peaceful enjoyment of their property.
- 8.11.3 However, as evidenced above, in this Chapter, the ExA conclude that the revised drafting of the restrictive covenant put forward by the Applicant addressed those concerns directly. Article 1, Protocol 1 is still engaged because there will still be an interference with owners and tenants peaceful enjoyment but that the interference is proportionate and justified in the public interest.
- 8.11.4 In considering wider issues relating to Article 1, we have taken into account the previous Sections of this Chapter in which we have considered the conditions set in statute and in Government guidance to conclude that these tests are met in each case.
- 8.11.5 We have also considered the cases of APs who have made representations on the Applicant's request for CA powers in relation to their land and conclude that there is no evidence specific to these plots that demonstrates that the public benefits that would be derived from the CA of these plots will not outweigh the private loss that would be suffered by those whose land is to be acquired.
- 8.11.6 Taking all this into account and having regard to the totality of Article 1 relating to right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest, ***the ExA conclude the request for powers of CA of land, rights over land and the powers sought for TP of land,***

¹⁴ Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

would constitute an interference with owners' and tenants' peaceful enjoyment but that such interference is proportionate and justified in the public interest.

- 8.11.7 We considered whether Article 6, which entitles those affected by CA and TP powers sought for the project to a fair and public hearing of their objections, has been complied with.
- 8.11.8 In considering this, we have taken account of the facts that, first, we specifically requested that the Applicant prepare a *Schedule of Compulsory Acquisition* focussing on the position in terms of negotiations with individual land owners rather than focussing on plots and we required that the Applicant update this on a regular basis - as detailed above.
- 8.11.9 Second, we addressed questions to a range of APs as well as to their representatives and to umbrella organisations. We note that, in addition to representations and submissions from representative bodies and groups - such as the Land Interest Group - we received submissions from a number of individual land owners including Paul Anderson, C. G. Banham, Ian Grant, J. E. Spence & Son, Theo and Miriam Fox, C & JRM Mackinder and M. Thomas.
- 8.11.10 Third, we invited all parties to suggest locations that the ExA may visit during our Accompanied Site Inspection held on 10 and 11 November 2015. We were pleased to visit sites with Ian Grant, J. E. Spence & Son, C & JRM Mackinder in attendance [EV-004] and, with the permission of Mr Grant, to mark a minute's silence on 11 November at the Sibsey Memorial.
- 8.11.11 Fourth, we held three Open Floor Hearings (OFH) at different times - with afternoon and evening hearings - and at different locations - one at Boston and two at Skegness - that were designed to encourage the greatest attendance [EV-012]. At all three Hearings, individual landowners spoke and set out the nature of their concerns and provided us with information.
- 8.11.12 Fifth, landowners and their representatives were encouraged to play a full part in the November 2015 and January 2016 CAH - and in other ISHs. This was partly achieved through the establishment of a grouping between the NFU, LAAV and County Land and Business Association (the Land Interest Group). However, additionally, a number of individual land owners including, for example, Mr Banham, Mr Spence, and Mr Hands spoke in person at the Hearings.
- 8.11.13 Finally, we allocated agenda items at the January 2016 CAH first to allow oral representations from APs present and/or formally represented (Agenda item 15) and then to consider issues raised by those APs who have made a specific or identifiable objection to CA in Relevant or other Representations insofar as they have not been dealt with in the hearing thus far (Agenda item 16) [EV-040].

- 8.11.14 Given the above, **the ExA consider that Article 6 has been complied with and that those affected by CA and TP powers sought for the project were afforded a fair and public hearing of their objections.**
- 8.11.15 In relation to Article 8, we note that request for CA did not involve any request for CA of any residential properties.
- 8.11.16 The Applicant's SoR [REP7-029] states that:
- "In designing the cable route, TKOWFL has sought to maintain a buffer from residential properties, where environmental and engineering constraints allow, and without conflicting with the principles of developing 'an efficient, co-ordinated and economical system of electricity transmission'."*
- 8.11.17 We have considered other impacts of the scheme on other residential properties and, specifically, possible effects on Drove Farm and on an area of private garden (shown as plot 12/06 on the Land Plan).
- 8.11.18 Chapter 5 considers the possible noise impact on Drove Farm. In that Chapter we state that NKDC clarified at D3 [REP3-028]) that:
- "the Council is now satisfied that predicted noise levels at Drove Farm associated with the operation of the Onshore Substation are within guidelines provided by the World Health Organisation Guidelines for Community Noise, and that the proposed 35dB noise limit currently recommended in Draft Requirement 17 is acceptable."*
- 8.11.19 We consider the Applicant's request for rights in relation to Mr Theobald, the owner of plot 12/06, later in this Chapter and conclude that that there is no evidence specific to these plots that demonstrates that the public benefits that would be derived from the compulsory acquisition of these plots will not outweigh the private loss that would be suffered by those whose land is to be acquired.
- 8.11.20 In terms of Article 8, we note that the Applicant's SoR [REP7-029] states that:
- "... in one case, the cable easement crosses an area of private garden (shown as plot 12/06 on the Land Plan). To minimise the impacts on the owner-occupier, TKOWFL has committed to locating the haul road in the adjoining agricultural land parcel; and to use trenchless construction techniques (such as horizontal directional drilling) to avoid the need to create open trenches in the private garden."*
- 8.11.21 Taking the above into account, we consider **that Article 8, which relates to the right of the individual to 'respect for his private and family life, his home ...' is engaged in this application but that the approach taken by the Applicant in this respect is appropriate and proportionate and that any interference is in**

accordance with the law and necessary in the interests of the economic well-being of the country.

8.12 FUNDING

8.12.1 The DCLG's September 2013 PA2008 Guidance related to procedures for the compulsory acquisition of land (2013 CA Guidance) sets out guidance related to issues of funding. The ExA have had regard to the relevant guidance issued.

8.12.2 The Applicant submitted a Funding Statement with the application [APP-013]. Subsequently, it submitted an Updated funding Statement [REP7-027] and an Updated Funding Statement Comparison Document [REP7-028] at D7.

8.12.3 We examined issues of funding in our first round of questions [PD-009], in particular FWQ CA 1.18 to CA 1.21, in our SWQ [PD-014], particularly questions CA 2.13 to CA 2.18, and in both the November 2015 and January 2106 CAH [EV-019 and EV-040].

The adequacy of funding required

8.12.4 The Funding Statement as submitted [APP-013] did not contain any details or estimates of either the total cost of the project or of the costs arising from the acquisition, compulsorily or by agreement, of land and of rights over land, including compensation and any claims arising.

8.12.5 This does not accord with the advice in paragraph 17 of the 2013 CA Guidance which states that the Funding Statement:

"should provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required."

8.12.6 We, therefore, requested an evidenced estimate of the costs of CA in our question CA 1.18 [PD-009].

8.12.7 In response, the Applicant [REP1-044] provided a headline breakdown of costs stating that the estimate of costs for acquiring all necessary rights and compensation was £18,000,000 plus estimated promoter's fees (£250,000), plus a 10 per cent contingency to reach a total cost of £20,075,000.

8.12.8 The general assumptions upon which this estimate was based were set out in the Applicant's response [REP1-044] at paragraph 3.533.

8.12.9 We examined these assumptions and, first, we queried the statement that no compensation claims will be substantiated for loss of value to residential property resulting from the works under s10 of the Compulsory Purchase Act 1965, given that the BoR [APP-130] contained a number of potential s10 interests.

8.12.10 The Written Summary of The Applicant's Oral Case put at CAH on the afternoon 20 January and 21 January 2016 submitted as Appendix 2 of the Applicant's response to D5 (The Summary of the Applicant's Case put at the January 2016 CAH) [REP5-015] first explained its reference to residential property stating that:

"The Applicant explained that it had understood that the ExA's First question CA 1.18 related to residential property and so it had not provided detail in that response regarding the likelihood of section 10 claims from non-residential land."

and then stated in paragraph 1.124 that:

"The Applicant confirmed that in respect of rural access rights that it is seeking, the likelihood of a section 10 claim by a landowner would be minimal because the Applicant is providing alternative accesses. The Applicant confirmed that, nonetheless, the possibility of a section 10 claim from non-residential landowner has been accounted for in the cost estimates referred to in CA 1.18."

8.12.11 In our FWQ CA 1.19 [PD-009] we questioned why paragraph 4.1 of the Funding Statement [APP-013] stated that the Applicant did not anticipate that any claim for blight that may be submitted will be successful.

8.12.12 In querying this, we had regard to the 2013 DCLG CA Guidance which states, in paragraph 18, that:

"Applicants should be able to demonstrate that ... the resource implications of a possible acquisition resulting from a blight notice have been taken account of."

8.12.13 In response, the Applicant [REP4-044] set out eight reasons why it considered this statement to be valid but concluded that:

"The Applicant does not envisage that a blight notice will be served. Nevertheless, if a blight notice is served and substantiated then it is likely that the notice would be in relation to agricultural land. The risk of blight has been taken into account when calculating the likely compensation in question CA 1.18. The Applicant confirms that it has sufficient funding, as highlighted in its Funding Statement, to acquire any such interests should they arise to ensure delivery of the proposed development."

8.12.14 Finally, as considered above, in the November 2015 CAH, we queried what amount had been estimated for compensation for crop loss and the basis for this estimation. In its response to our question CA 2.18 [REP4-044], the Applicant stated that its:

"... estimate for crop loss is approximately £4million and such losses would be included within the compensation payment scheme. This figure assumes a 3.5 year occupation of the cable easement; with full

crop loss for the first year after construction; 50% loss for the second year after construction; and 25% loss for the third year after construction. Again, the figures are worst-case to provide a robust estimation."

- 8.12.15 Given all the above, ***the ExA is satisfied that the Applicant has taken all relevant factors into account in coming to its broad estimate of the funding required.***

Availability of Funds

- 8.12.16 Of particular relevance to questions of funding is the advice in paragraph 9 of the 2013 CA Guidance that the Applicant:

"should also be able to demonstrate that there is a reasonable prospect of the requisite funds for acquisition becoming available."

and the section of the Guidance on the "Resource implications of the proposed scheme" (paragraphs 17 and 18) states, inter alia, that in paragraph 18 that:

"Applicants should be able to demonstrate that adequate funding is likely to be available to enable the compulsory acquisition within the statutory period following the order being made, and that the resource implications of a possible acquisition resulting from a blight notice have been taken account of."

- 8.12.17 The Funding Statement submitted with the application [APP-013] set out the adequacy and availability of funding in terms of the two parent companies of the Applicant (TKOWFL) (RWE AG, listed in Germany, and Statkraft SF which is 100% owned by the Norwegian Ministry of Trade, Industry and Fisheries) providing the funding necessary for the project, including the costs associated with CA, from their own resources. The Funding Statement as originally submitted [APP-013] stating in paragraph 1.5 that:

"The acquisition of land and interests, along with the construction of the TKES will be ultimately funded by RWE AG (listed in Germany), via its subsidiary RWE Innogy GmbH and by Statkraft SF, via its subsidiary Statkraft AS. Barring any unprecedented and currently unforeseen circumstances, no funding shortfalls are anticipated."

- 8.12.18 However, during the course of the Examination one of the parent companies - Statkraft SF - announced (see Appendix 1 to the updated Funding Statement [REP7-027]) that it will no longer invest in new offshore wind projects. In the case of the proposed Triton Knoll project, Statkraft will participate in the development of the Triton Knoll project, but not invest further.
- 8.12.19 In our SWQ CA 2.13 [PD-014] we queried that Applicant's statement in paragraph 3.3 of the Funding Statement [APP-013] that it will not

be necessary to obtain any third party funding in respect of the land assembly requirements of TKES.

8.12.20 In response, the Applicant [REP4-044] stated that:

"TKOWFL confirms that Statkraft will continue to fund the development of the Triton Knoll project in accordance with the joint venture arrangements entered into with RWE in February 2015. The Statkraft and TKOWFL communications confirm that Statkraft will remain committed to Triton Knoll until at least the award of a Contract for Difference (CFD) when a process for the injection of new investment will be progressed; this remains as originally foreseen when the joint venture was entered into, although it was not clear at that point the quantities of shareholding that Statkraft and RWE would be selling down."

8.12.21 In the CAH we queried the timescale for this and in paragraph 1.129 of the Summary of the Applicant's Case put at the January 2016 CAH [REP5-015] that Applicant stated that it had:

"... clarified for the ExA that there is no certain date for the next round of CfD auctions but it is expected that it will be at the end of 2016 and that a decision will be released in early 2017."

8.12.22 Finally, the Summary of the Applicant's Case put at the January 2016 CA Hearing [REP5-015], the Applicant stated, in paragraph 1.126, that:

"... on a project of this scale it is usual for shareholders to change through the duration of this type of project. This has happened before, and in fact Statkraft themselves only joined the project in 2015."

The source of the funding

8.12.23 As stated above, the Funding Statement submitted with the application [APP-013] set out the source of the funding in terms of the two parent companies of the Applicant (TKOWFL) providing the funding necessary for the project, including the costs associated with CA from their own resources.

8.12.24 However, TKOWFL has reconsidered its funding strategy to allow for the possibility that some of the required funding may be found through an element of borrowing.

8.12.25 Thus, the amended Funding Statement [REP7-027] states that:

"The funding required in relation to land assembly can be provided by TKOWFL and/ or its two aforementioned parent companies. Both groups have made allowances for the cost of funding the land assembly for TKES, as they would with any large infrastructure project they undertake, and have ensured that the necessary funds will be available when they are due."

While it will not therefore be necessary to obtain any third party funding in respect of the land assembly requirements of TKES, there is noted below the potential for third party funding to be considered as an option."

8.12.26 Related to this, RWE AG announced in December 2015 (see Appendix 2 to the updated Funding Statement [REP7-027]) that it is to transfer its renewables, grid and retail operations in Germany and abroad to a new subsidiary which it intends to list on the stock market towards the end of 2016.

8.12.27 The Applicant's response [REP4-044] to our question CA 2.13 states that:

"The precise financing strategy for TKOWFL beyond CFD award is currently under development amongst the shareholders. Whilst TKOWFL and its shareholders have sufficient funds to meet land assembly costs within the TKOWFL budget, it may be that, as a result of the eventual approved funding structure for the construction and initial operation of TKOWFL, some of the land assembly costs will come from project debt financing. This is not a "necessity", because TKOWFL and its shareholders already hold sufficient resources, and therefore paragraph 3.3 of the funding statement is still correct; but it remains possible that TKOWFL may, in the ordinary course of managing its financing, draw on funds that have been debt financed."

8.12.28 The Summary of The Applicant's Case put at the January 2016 CAH [REP5-015] stated in paragraph 1.131 that:

"It may be that, as a result of the eventual approved funding structure for the construction and initial operation of TKOWFL, a project financing solution is the preferred strategy and as a result, some of the land assembly costs will be paid through project financing. This is not a "necessity", because TKOWFL and its shareholders already hold sufficient resources to fund such costs, and therefore paragraph 3.3 of the funding statement is still correct; but it remains possible that TKOWFL may, in the ordinary course of managing its financing, draw on funds that have been borrowed from banks through a project finance structure."

and in paragraph 1.134 that:

"One such example is the Galloper Offshore Wind Farm. That project was to be financed by the two utilities, but towards the end of the project it was seen as advantageous to adopt project financing. RWE, one of the two owners of Triton Knoll Offshore Wind Farm Limited, was one of the sponsors of the Galloper project that successfully raised £1.1bn of project finance in October 2015."

8.12.29 In the January 2016 CAH [EV-040] we queried both how the Applicant would ensure the credit worthiness of the new partner and whether there was the consequent need to undertake a new risk assessment.

8.12.30 On the former point, the Summary of the Applicant's Case put at the January 2016 CAH [REP5-015] states, in paragraph 1.141, that the Applicant explained that:

"... RWE would ensure that the creditworthiness of the company stepping in to any parent company guarantee will need to meet the creditworthiness of the company stepping out."

and on risk, the above document [REP5-015] stated, in paragraph 1.135, that:

"In terms of risk, it improves the position, meaning that more financing is available, it goes through greater scrutiny and due diligence by third parties, and the risks are reduced as a result. Both RWE and Statkraft are very creditworthy but if you put the backing of large banks behind them, it improves the project's overall creditworthiness. For everyone concerned it is de-risking the project."

8.12.31 ***The ExA conclude that, albeit that the funding strategy is not fixed at this stage, the necessary funds will be available.***

Securing the funding

8.12.32 Article 38 of the recommended DCO (Appendix D) sets out that the undertaker cannot begin to exercise certain powers unless it has first put into place a guarantee or an alternative form of security in respect of any liability of the undertaker to pay compensation under the Order.

8.12.33 In our FWQ CA 1.20 [PD-009] we queried why Article 38 of the originally submitted draft DCO [APP-010] required that an alternative form of security is approved by the SoS (Article 38(1)(b)) but does not require that the guarantee described in Article 38(1)(a) is so approved.

8.12.34 As a consequence, the Applicant added a phrase to Article 38(1)(a) requiring that the guarantee must be approved by the SoS.

8.12.35 In our FWQ CA 1.21 [PD-009], we asked the two relevant local planning authorities, BBC and ELDC whether they would prefer to be the body approving a guarantee or an alternative form of security relating to that part of the project lying within their areas.

8.12.36 In response, BBC [REP1-002] stated that the Council has no wish to be involved in the forms of security or guarantee and is content that this is a role for the SoS and ELDC [REP1-004] stated that ELDC do not wish to be the body approving a guarantee and that it is content with the suggestion in Article 38.

8.12.37 In our SWQ CA 2.16 [PD-014] we queried what forms of security the Applicant is considering and it responded [REP4-044] that it is considering a range of forms of security and that there are a variety of

approaches, including parent company guarantees and bonds, that Statkraft and RWE may adopt but the appropriate form will depend on the remaining estimated compensation liability at the stage that the security needs to be put in place.

- 8.12.38 We also queried in our SWQ CA 2.17 [PD-014] whether any parent company guarantee will be legally valid in the jurisdictions of the countries in which the companies are listed and the Applicant responded [REP4-044] that the validity of the parent company guarantees will be supported by legal opinions from a recognised law firm in the relevant jurisdictions and these opinions will be provided if necessary to the SoS as part of the approval process.
- 8.12.39 Taking into account all the information provided by the Applicant and the fact that no other party queried the adequacy and availability of funds, ***the ExA conclude that the funding is potential available and adequate in terms of the 2013 DCLG Guidance and that Article 38 of the ExA's recommended DCO does serve to secure the availability of funding through a guarantee or alternative form of security.***

8.13 INCORPORATION AND MODIFICATION OF STATUTORY PROVISIONS

- 8.13.1 Section 120(5)(a) of PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the DCO and s117(4) provides that, if the DCO includes such provisions, it must be in the form of a Statutory Instrument.
- 8.13.2 The recommended DCO seeks to apply s120(5)(a) in that Article 6 seeks to dis-apply or modify provisions in the 1997 Hedgerow Regulations, the 1991 Water Resources Act and the 1991 Land Drainage Act. Article 5(5) seeks to modify Part 4 of the 2009 Act. This article is considered in Chapter 9, below.
- 8.13.3 Article 21 of the recommended DCO (Appendix D) also seeks to incorporate the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981, with modifications, and in Schedule 6 seeks to modify the 1965 Compulsory Purchase Act 1965 and the Land compensation act 1973 to apply to new rights.
- 8.13.4 ***The ExA confirm that the recommended DCO is in the form of a statutory instrument.***

8.14 THE CASE UNDER S130

- 8.14.1 The request for CA and the application as a whole did not involve any land held by the National Trust (NT) and, thus, subject to the provisions of s130 of the PA2008.
- 8.14.2 Therefore, ***the ExA conclude that s130 does not apply.***

8.15 THE CASE UNDER S131 AND S132 - SPECIAL CATEGORY LAND

8.15.1 Plot 01/01 is identified by the Applicant and by the owner, Lincolnshire County Council, as being open space land. This plot is subject to a request for the CA of rights over the plot and is, therefore, subject to the provisions of s132 of PA2008.

8.15.2 The SoCG between the Applicant and LCC [REP8-043] states in paragraphs 4.157 and 4.158 that it is agreed that the Applicant does not seek to compulsorily acquire the freehold of Plot 01/01 and that the Applicant seeks to acquire rights and to impose restrictive covenants over Plot 01/01 as set out in Schedule 5 of the draft DCO (Revision F).

8.15.3 The plot is described in the amended *Book of Reference* (Revision C) [REP7-055] as being:

"20420.75 square metres of land being beach, sand dunes, public footpath (Hutt/10/5), trees and shrubbery up to the mean high water mark to the north of Anderby Creek, Lincolnshire."

with a request for the Acquisition of rights under Article 18 and Schedule 5 (a restrictive covenant and rights for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project).

8.15.4 S132 of PA2008 requires that:

"An order granting development consent is subject to special parliamentary procedure ... unless the Secretary of State—

(a) is satisfied that one of subsections (3) to (5) applies"

8.15.5 The Applicant has stated in its Written Summary of The Applicant's Oral Case put at CAH on 13 November 2015, submitted as Appendix 2 of the Applicant's response to D3 [REP3-038] that, in the case of this plot, it seeks to rely on the exception in subsection (3) of section 132.

8.15.6 S132(3) states that:

"(3)... the order land, when burdened with the order right, will be no less advantageous than it was before to the following persons—

(a) the persons in whom it is vested, .

(b) other persons, if any, entitled to rights of common or other rights, and .

(c) the public."

8.15.7 The examination of this issue focussed on this subsection in the legislation. The final agreed *SoCG between the Applicant and*

Lincolnshire County Council [REP8-043] states in paragraph 4.156 that:

"It is agreed that the section 132(3) test needs to be satisfied in terms of the impact on Plot 01/01 only as it concerns the Secretary of State's decision as to whether or not the acquisition of the new rights (i.e. easement and restrictive covenant) should be authorised over special category land."

- 8.15.8 The status of this land as open space was not at issue in this Examination. The clarification of this status in the Examination was informed by the submission of a copy of the Lindsey County Council (Sandhills Act 1932 (22 & 23 G_{EO}. 5) [REP3-022] into the Examination. This Act referred to the land, or parts of the land, as:

"... open and freely used by the public ...".

- 8.15.9 Paragraph 1.31 of the *Written Summary of The Applicant's Oral Case put at CAH on the afternoon 20 January and 21 January 2016* [REP5-015] states that:

"The Applicant – whilst expressly reserving its right to argue the contrary elsewhere, should that become necessary or appropriate - accepted that it is sensible to assume, for the purposes of this examination, that Plot 01/01 forms part of the land designated as public open space pursuant to section 9 of the Sandhills Act, notwithstanding that it is difficult to reconcile the plans showing the land designated by the Sandhills Act and the Land Plans showing the extent of plot 01/01."

- 8.15.10 However, in respect of whether the order land, when burdened with the order right, will be no less advantageous than it was before, the Applicant and LCC maintained opposing positions as to whether this test set in s132(3) had been met and these positions remained unreconciled until the end of the Examination.

- 8.15.11 The final agreed *SoCG between the Applicant and LCC*[REP8-043] states in paragraph 4.155 that:

"The Applicant and LCC have made their respective positions clear through the evidence presented to the Examining Authority and at the Hearings in the responses to the Examining Authority's questions. There is clear disagreement between the parties as the effect of the proposal on the public open space. It is agreed that it will be for the Examining Authority and Secretary of State to reach their own conclusions on these effects based upon the evidence submitted to the examination by the two parties."

- 8.15.12 Before setting out and considering the cases made by each of the two parties involved in this question, it is necessary to record that, at the November 2015 DCO ISH [EV016 to EV-018], LCC queried whether

the Applicant had followed the correct procedure in respect of the s132 land.

- 8.15.13 The ExA stated our position at the November 2015 CAH [EV-019] that the provisions in the PA2008 in respect of special category land have been modified by the Growth and Infrastructure Act 2013 and a separate application for a certificate from the SoS is no longer required. However, the requirement for special parliamentary procedure still applies unless the SoS is satisfied that one of three tests is satisfied and that fact is recorded in the DCO. In this case, the Applicant is seeking to show that the test under s132(3) will apply that the land will be no less advantageous than it was before.
- 8.15.14 We confirmed that we considered that the correct procedure had been followed.

The position of Lincolnshire County Council

- 8.15.15 The position of LCC was set out in paragraphs 38 to 42 its *Written Representation submitted for D3* [REP3-024]:

"... The construction period will last for a period of up to 14.7 months out of 36 scheduled. It will entail the creation of an area to allow the cables to be driven through and for space to accommodate the exit on the beach itself. It will require fencing at various times throughout that period which will inevitably interfere with the ability to use and enjoy the space. It will also require the closure, without direct compensation of the footpath access to the beach and the alteration of it to form a vehicular access track to the area where the physical works will be carried out. Other footpaths namely Huttoft 965/1 and Anderby17 will also be driven over to allow for the movement of vehicles.

Once the works are complete the continued need to enable maintenance and access to all the works will ensure a continued physical presence which will be widely visible in the area.

In the LCC's view the works themselves as well as the continued and permanent works will fundamentally alter the area and will bring with it consequential effects. The first and most obvious being that it cannot be said, as a result of the construction and then post construction works that the area remains as being no less advantageous than it was before. Before it was unspoilt and devoid of these modern influences. After it will be known to have been subject to a lengthy and prolonged period of construction, which will of itself have an effect. After that the remnant of the construction will continue to be visible and will intrude into the area and further a road access will have been created where previously a footpath use existed.

Taken together the situation cannot be said to meet the applicable test and cannot therefore enable the compulsory acquisition of the public open space and further it will have changed the pristine and unspoilt

nature of the Park which is the fundamental fabric of the public open space.

The Park and the public open space within it will no longer be as they were before the activity and that change requires the justification for the approach to be clear and weighty. Given the lack of adequate consideration of alternatives, which was relied upon by the LCC in its original representations, the loss of this area is not justified."

- 8.15.16 This was repeated verbatim as the County's position when we sought clarification in our SWQ CA 2.20 [PD-014]. In addition, the County added in response to that question [REP4-009] that:

" ... during the hearings the County Council referred to the fact that the County Council is progressing the statutory English Coastal path with Natural England under the Marine & Coastal Access Act 2009 this will fall within the landfall site."

- 8.15.17 In respect of the closure of the footpath referred to by LCC, above, Paragraph 3.5 of the Outline Construction Method Statement (CMS) (Revision E) submitted as Appendix 29 of the Applicant's response to D7 [REP7-037] states:

"For the safety of the general public, there will be a requirement to temporarily close PRow HUT10/4 for a combined maximum period of 6 months across a number of discrete periods. Closure may be required during periods of landfall access track upgrade works, landfall site establishment and site demobilisation, and during periods of heavy construction traffic use of the access road."

- 8.15.18 This overall stance was considered further at the January 2016 CA Hearing. However, as the County Council's states in paragraph 26 of its *Written summary of the oral representation made at the hearings. Submission for Deadline 5 of 1 February 2016 (Part 1 of 2) [REP5-005]*:

"The ExA raised additional matters with the LCC but due to the witness not being available the matter could not be dealt with during the Hearing."

- 8.15.19 Despite this, in its *Written summary of the oral representation made at the hearings. Submission for D5 of 1 February 2016 (Part 1 of 2) [REP5-005]*, LCC added some further issues in stating at paragraph 36 that:

"If the TJB [transition joint bays] are granted consent in this location the effect on the [Public Open Space] POS and also the [Lincolnshire Coastal Country Park] LCCP would be obvious and apparent and would be at odds with the nature of the area to such an extent that it cannot be said that the POS itself would meet the test of being no less advantageous. To conclude that it would be is to limit that test to a simple test of whether the POS could physically be used, which it could

physically be, without taking into account the nature and extent of the use, the significance placed upon it and the enjoyment made of it. If the proposals were to proceed then the LCC view would be that enhanced mitigation within the LCCP to ensure that there is no net loss of biodiversity or public enjoyment in the LCCP would be essential."

8.15.20 In our TWQ CA 3.4 [PD-016] we asked LCC to provide authority for its proposition that open space is less advantageous if views out from it are affected and, with reference to the final sentence quoted above, to specify what enhanced mitigation it would require to ensure, in its view, no net loss of biodiversity or public enjoyment in the LCCP.

8.15.21 In its response [REP6-007] LCC stated that:

"... the County Council would refer the ExA to Greenwich LBC v Secretary of State for the Environment [1993] where the Court was asked to examine a very similar principle; although that case was directed to the application of "the equally advantageous " test rather than something being "less advantageous" under section 19 of the Acquisition of Land Act. Mr Justice Hutchinson in that case indicated when seeking to determine whether exchange land was equally advantageous, that the decision maker was not required to just look at the way the public enjoyed all aspects of the original land to see whether the exchange land was equally advantageous to them. He was entitled to a degree of flexibility in deciding whether advantages of one sort could be offset against advantages of a different sort and in so doing he was permitted to take into account future developments which could affect either or both parcels of land."

8.15.22 The Applicant's overall position is set out below but it is worth noting here that in *The Applicant's Response to Deadline 8* [REP8-032] the Applicant sets out its reasons why it considers that the Greenwich case has no material bearing on the approach that the Secretary of State should take to the assessment of s132 of the PA2008 in connection with the proposed compulsory acquisition of rights over Plot 01/01. The ExA agree with the applicant that the case is not directly comparable to the situation in the Greenwich case and each case must turn on its own facts. However the ExA have considered the impact on Plot 01/01 in the round when considering whether the public's enjoyment of the land would be no less advantageous.

8.15.23 In our question CA 3.4 [PD-016] we asked LCC to specify what enhanced mitigation it would require to ensure, in its view, no net loss would occur. In its response [REP6-007], LCC cited other evidence it had presented including its LIR and additional representations dated 30 November 2015 and stated that the thrust of both being that if the scheme were to go ahead a minimum sum of money (identified as £2.3m) was required from the applicants for habitat creation and improvements within the LCCP.

8.15.24 The Applicant's overall position is set out below but it is worth noting here that in The Applicant's Response to D8 [REP8-032] the Applicant cites paragraph 2.15 of the Tourism Clarification Note [REP5-023] and states that:

"The assessment of the effect of the TKES project on the Lincolnshire Coastal Country Park has concluded that there the effect on recreation and tourism is minor adverse which is Not Significant. As such, it is not considered necessary for the Applicants to make such a payment of the level demanded by LCC for habitat creation and improvements."

8.15.25 In its supplemental response indicated in the document submitted for Deadline 5- sections omitted from the original document [REP6-007], LCC stated that it considers that the applicant has not fully appreciated and considered the effects of the scheme on the Lincolnshire Coastal Country Park (LCCP) and that, in paragraph 1.4, that it is concerned that this development will damage the image of the area, deterring visitors which will lead to a reduction in visitor spend which will have a detrimental effect on the local economy that already suffers from deprivation.

8.15.26 Finally, in its Response to the ExA's FourthWQ questions [REP8-017], Lincolnshire County Council states in paragraph 4.9, *inter alia*, that:

"Anderby Creek is the centre of the LCCP and is a focal point for visitors to enjoy the LCCP. Visitors mainly use the beach or the footpaths to the north and south to enjoy the area. The overall construction phase in the vicinity will be over a number of seasons. The will give the impression of a damaged /scarred landscape /area to new visitors, who will be deterred from revisiting. Even regular visitors who already enjoy and appreciate the quiet unspoilt qualities of the area will be deterred from revisiting due to the length of time that works will be taking place."

8.15.27 and stated, in paragraph 4.12, that:

"The TJB will not be visible from the beach due to the dunes (the County Council have never claimed that they will be). They will be visible from the dunes the public footpaths (Huttoft 10/5 , Huttoft 10/4 immediately to the site and footpath from Anderby Creek to Marsh Yard, which is the proposed route of the England coast path and Moggs Eye POS and LWS".

The position of the Applicant

8.15.28 The Applicant has set out its position on this issue in a number of documents, in a number of responses to our questions and at the November 2015 and January 2016 CAH. The ExA have had full regard to all this evidence in reaching our conclusions.

8.15.29 We have set out the Applicant's responses to some specific points made by LCC in paragraphs above.

- 8.15.30 However, for clarity in this Recommendation Report we refer in particular to the Applicant's position as recorded in paragraphs 6 to 9 of the Applicant's response to our SWQ CA 2.20 [REP4-027]:

"In respect of the assumed use of Plot 01/01 by the public at large, the Applicant has confirmed that whilst small sections of the Plot will need to be temporarily closed off to the public to enable construction works to be carried out, once the works are complete the public will be able to use the land as before. Given that the infrastructure will be installed underground, following the construction phase, there will be no visual impact which could discourage recreational users of Plot 01/01.

Works to be undertaken on the beach during construction, including the areas to be fenced and timescales for fencing, are set out in Table 1-3 of Chapter 1, Volume 3 Onshore Project Description of the ES [APP-042]. The fencing off of small areas of the beach will be for discrete periods of time and during the construction period only. Once the small areas of beach required for the installation of the offshore export cable have been reinstated there will be no further need for any fencing or any other above ground presence on the beach for the remainder of the construction period or the operational period. Access to the beach from the landfall Temporary Construction Compound (located within Work 3 on private land) during the construction period will be via the existing access across the dunes, and, as stated in paragraph 1.78 of APP- 042 that access will not be closed at any time during the construction period. A limited number of construction vehicles will need to access the beach using that access, but safety marshalls will be employed to ensure that the public's access to the beach is safely maintained during those periods.

Once the proposed development is operational, any operational works that may be required, such as annual cable joint checks, would be undertaken within the private field where the Transition Joint Bays will be located (Work 3).

The Applicant disagrees with LCC's assertion that the 'remnant of the construction will continue to be visible'. Given the physical processes that affect the beach (tide, wave, wind) and given that there will be no ongoing post-construction above ground physical presence, the visible effects of construction on the beach will be very short lived."

CONCLUSIONS AND RECOMMENDATION

- 8.15.31 In coming to our conclusion and recommendation on this issue, the ExA have had careful regard to the wording of s132(3) and the ExA took into account all the submissions and statements made by parties related to this issue.
- 8.15.32 First, we note that the status of plot 01/01 as open space for the purposes of s132 PA2008 was not at issue in this Examination and

that there were no submissions or discussion concerning the need for other plots to be given this status.

- 8.15.33 We consider that the effects of the order right will differ during and post-construction.
- 8.15.34 During construction the effects on parties specified in s132(3)(c) will be both visual and in terms of access. Parties will be able to see the works and will be denied access across a number of discrete periods for a combined maximum period of 6 months.
- 8.15.35 In paragraph 1.17 of its *Written Summary of The Applicant's Oral Case put at CAH on 13 November 2015* [REP3-038], the Applicant referred to Table 1-3 of the *Onshore Project Description Chapter of the Environmental Statement* [APP-042] and clarified that small sections of the beach will need to be closed for temporary periods of an estimated 2 to 4 weeks for installation of each of the 6 cable circuits (2 weeks being the anticipated norm, unless technical difficulties are experienced). It stated that installation of the circuits will need to be sequential as it is only possible to have one horizontal directional drill working at any one time, so the maximum total period for which the beach will be affected by works is six months.
- 8.15.36 In relation to visual impact, as stated above, LCC also raised the concern that the construction of the transition joint bay (TJB) would be visible from the dunes and the footpath.
- 8.15.37 In considering this, we note that first that the proposed transition joint bays lie outside of the parcel of special category land and that LCC has stated that the TJB will not be visible from the beach.
- 8.15.38 We also note that part of the dunes and footpath in question lie within plot 01/02 and not in plot 01/01. However, given that part of the dunes and footpath does lie within the open space, the partial exclusion does not affect the overall argument.
- 8.15.39 Given the visual effects and effects on access during the construction period, the ExA conclude that, for the construction period only, there would be some impact on use of the land as open space.
- 8.15.40 In stating this, we have noted that the Applicant has sought to reduce the impact by securing in the draft DCO by requirement 9(3) that the temporary fencing associated with Work No. 2 and works relating to the installation of cable ducts and cable circuits within Work No 3 shall be removed at the completion of construction of these works (excluding testing) rather than at the completion of all stages.
- 8.15.41 In considering the permanent effects on the open space if burdened with the order right we focus on both the potential visual effects and on the argument put forward by LCC that new and regular visitors will be deterred from revisiting.

- 8.15.42 On visual effects, we accept the Applicant's argument, as stated above, that, given the physical processes that affect the beach (tide, wave, wind) and given that there will be no ongoing post-construction above ground physical presence, the visible effects of construction on the beach will be very short lived.
- 8.15.43 We conclude, therefore, that there will not be any permanent visual impact on the beach from the works.
- 8.15.44 There remains the argument from LCC that the TJB will be visible from the dunes and the public footpaths. It was apparent from our November 2015 accompanied site inspection [EV-004] that this is the case.
- 8.15.45 In considering this argument we note that, first, the view is not from the beach itself.
- 8.15.46 We note, second, that paragraph 4.7 of the *Outline Construction Method Statement* (Revision E), submitted as Appendix 29 of the Applicant's response to Deadline 7 [REP7-037] states that:
- "Within the TJB Search Area, an area of up to 0.5 hectares will have its ground level raised by up to 1.5m within that search area to accommodate the TJBs so that the TJBs sit above the existing ground level".*
- and that Appendix 1 of REP7-037 states that the undertaker will:
- "Seed the area of raised ground (~0.5 ha) with an appropriate native wild flower rich grassland mix that reflects similar habitats in the surrounds using, where possible, a seed source of local provenance. Seeding will take place following completion of TJBs (i.e. earlier than end of construction phase) and the grassland managed appropriately during the operational life of the project."*
- 8.15.47 We consider the visual impact of the TJBs in Chapter 5 and consider that, set against the wider landscape, the raised height of the land would not have any significant effects on the landscape character or from visual receptors.
- 8.15.48 We note that the seeding of the area of raised ground is set out in the OCMS (Appendix 1) [AS-052] and is, thus, secured by Requirement 14.
- 8.15.49 We do not consider that, following this mitigation, the change in the view from part of the open space would be such as to make the open space less advantageous.
- 8.15.50 We have considered the argument put forward by LCC that new and regular visitors will be deterred from revisiting. We consider this argument to be a circular one in that any deterrence would result from the open space being less advantageous rather than the deterrence

being a contributory factor in causing the open space to be less advantageous.

- 8.15.51 The ExA conclude that, while there would be some disruption to use of the land as open space during construction, this would only be temporary in nature and would not affect use of the land as open space in the longer term.
- 8.15.52 Therefore, taking a proportionate approach, the ExA conclude that the SoS can be satisfied that the land when burdened with the order rights will be no less advantageous to the persons in whom it is vested, other persons if any entitled to rights of common or other rights and the public. This is also consistent with other made DCOs in respect of cable crossing of POS locations.
- 8.15.53 ***The ExA recommend that the statement in the fourth paragraph of the preamble of our recommended DCO at Appendix D should remain in the final DCO should it be approved by the SoS.***

8.16 THE CASE UNDER S135 - CROWN INTERESTS

- 8.16.1 The Queen's Most Excellent Majesty in Right of Her Crown is the freehold owner of Plots 01a/01, 43/10 and 43/11 and has a Category 2 interest in plot 22/20.
- 8.16.2 Before considering all these plots, it is necessary to establish the position of Plot 01a/01 in respect of The Crown Estate (TCE) as TCE do not, for example, refer to this plot in its representation dated 26 February 2016 [REP8-012] considered below. Nor has the Applicant included the phrase "*excluding all interests of The Queen's Most Excellent Majesty In Right Of Her Crown and all interests of The Crown Estate Commissioners*" in the updated Book of Reference Revision C [REP7-055] in relation to this plot.
- 8.16.3 The joint statement between TKES and TCE explains that this is because all interests in plot 01a/01 are interests of TCE [REP3-050]. The Applicant has, therefore, removed the reference to "new rights" in the BoR and the land plans do not show the plot as being subject to any CA.
- 8.16.4 In the joint statement [REP3-050], TCE confirmed it is satisfied that the draft DCO does not authorise either the CA of any Crown interest held by it or the CA of any rights over a Crown interest.
- 8.16.5 As the articles authorising CA relate to the Order land, meaning the land shown on the land plans and described in the BoR, and in consideration of the position of TCE, the ExA concludes that no CA is authorised over Plot 01a/01.

- 8.16.6 A letter dated 11 September 2015 from The Crown Estate Commissioners was submitted at Deadline 1 [REP1-064]. This stated that:
- "Subject to:*
- 1. The Commissioners' approval of any amendments to the draft DCO which do or may impact upon Crown land forming part of the Crown Estate; and*
 - 2. The inclusion of Article 41 in the version of the draft Development Consent Order that is attached to the recommendation to the Secretary of State*
- The Commissioners consent to the making of the DCO for the purposes of sub-sections (1) and (2) of section 135 of the Act."*
- 8.16.7 We note that, in respect to sub-clause 2, above, Article 41 of the ExA's recommended DCO at Appendix D to this Report remains unchanged from the draft DCO that formed part of the application [APP-010].
- 8.16.8 In a representation dated 26 February 2016 [REP8-012] the Crown Estate referred to providing the ExA with a letter confirming consent to the making of the proposed Order for the purposes of sub-sections (1) and (2) of Section 135 of the 2008 Act on 11 September 2015 and stated that:
- "The Commissioners do not consider there to be any impediments to concluding the agreement and the Commissioners will update the SoS following conclusion."*
- 8.16.9 The Secretary of State for Transport as administered by Highways England Historical Railways Estate has a category 1 interest in plots 24/02, 24/09, 24/10, 25/02, 25/06, 25/11, 25/14, 25/16, 25/18, 25/19, 25/23, 37/18 and 37/19.
- 8.16.10 The ExA noted that the Highways Agency became Highways England (HE) on 1 April 2015 before the start of the Examination of this application.
- 8.16.11 A joint statement between the Highways England Historical Railways Estate (HEHRE) and the Applicant was submitted at D3 [REP3-051]. Appendix 1 of this statement contained a letter from Highways England confirming that, subject to the proviso that the Historic Railways Estate is kept fully informed of any amendments to the draft DCO which impact upon any of the plots listed, the Historic Railways Estate consent, on behalf of the Secretary of State for Transport, to the making of the DCO in relation to the listed plots, as required by s135 (1) and (2) of PA2008.
- 8.16.12 The Crown Estate Commissioners and HEHRE 'Non impediment' letters relating to land acquisition submitted as Appendix 3 of the Applicant's

Response to D8 [REP8-035] contains a letter from Highways England which referred to providing the ExA with a letter confirming consent to the making of the proposed DCO for the purposes of sub-sections (1) and (2) of s135 of PA2008 on 6 November 2015 and stated that:

"HEHRE has agreed and signed heads of terms for a private treaty agreement with TKOWFL for the necessary land rights for the proposed development."

- 8.16.13 The ExA recognised that permissions had been given but we were still concerned that Article 41 as it was drafted did not prevent the CA of Crown land or interests that were owned by the Crown. We recognised that it does require the Crown to consent before "taking, using or entering or interfering with Crown land" but consider that this effectively would permit the CA of Crown land owned by the Crown with the consent of The Crown Estate Commissioners, which is not permissible by s135.
- 8.16.14 There are also a number of plots which are owned by HEHRE. SoS for Transport has confirmed that these plots owned by HEHRE will not be transferring to HE and will remain Crown land therefore the interest owned by the Crown in these plots also needs to be excluded from CA.
- 8.16.15 The BoR as submitted [APP-128] stated that "new rights" will be created in these plots in accordance with the relevant DCO article without excluding any interest owned by the Crown.
- 8.16.16 In the discussion at the November 2015 CAH, we recommended that this could be remedied by inserting "*except for the interests of the crown*" after the description of the rights sought over the plot.
- 8.16.17 The updated *Book of Reference* [REP7-055] now includes the phrase "*excluding all interests of The Queen's Most Excellent Majesty In Right Of Her Crown and all interests of The Crown Estate Commissioners*" in plots 22/20, 43/10, 43/11, and the phrase "*excluding all interests of the Secretary of State for Transport*" in plots 24/02, 24/09, 24/10, 25/02, 25/06, 25/11, 25/14, 25/16, 25/18, 25/19, 25/23, 37/18 and 37/19.
- 8.16.18 The ExA have had regard to the letter and statement provided both by the Crown Estate [REP1-064] and the HEHRE [REP3-051] cited above and the fact that the final draft Book of Reference excludes the acquisition of Crown interests from all relevant plots.
- 8.16.19 Therefore, ***the ExA conclude that the provisions of s135 of PA2008 are satisfied.***

8.17 THE CASES UNDER S127 OR S138 - STATUTORY UNDERTAKERS (SU)

- 8.17.1 If a SU has made a representation about the CA of their land or a right over their land and this has not been withdrawn s127 of PA2008

applies. In these circumstances the DCO may only include provision authorising the CA of that land or right if the SoS is satisfied that the land or right can be purchased without serious detriment to the undertaker or that the land can be replaced, or detriment made good by use of alternative land, without serious detriment.

8.17.2 Section 138 applies where there a SU has a right or apparatus in land over which CA is sought. In those circumstances the DCO can only authorise the extinguishment of the right or removal of the apparatus if the SoS is satisfied that the extinguishment or removal is necessary for the purpose of carrying out the development to which the Order relates.

8.17.3 There are ten statutory undertakers potentially involved in this application:

- the Environment Agency;
- Network Rail Infrastructure;
- National Grid Gas plc;
- National Grid Electricity Transmission plc;
- Anglian Water;
- Canal & River Trust;
- Western Power Distribution;
- British Telecommunications plc;
- Conoco Phillips (U.K.) Limited;
- EDF Energy Renewables.

8.17.4 The majority of the above bodies are the subject of specific or generic Protective Provisions in Schedule 8 of the ExA's recommended DCO (Appendix D) to this report.

8.17.5 In addition, the draft DCO provides protective provisions for the relevant Drainage Authorities (Black Sluice Internal Drainage Board, Lindsey Marsh Drainage Board and Witham Fourth District Internal Drainage Board) although The Applicant's Written Summary of The Applicant's Oral Case put at CAH on 13 November 2015 [REP3-038] records that:

"Counsel for the IDBs, Mr David Altaras, confirmed that the IDBs do not fall within the definition of "statutory undertakers" for the purposes of section 127 (statutory undertaker's land) of the 2008 Act. Post-hearing, the Applicant checked the position and can confirm that it agrees that the IDBs do not fall within the definition of "statutory undertakers" for the purpose of section 138 of the 2008 Act."

8.17.6 The following statutory undertakers are listed as having an interest in in the relevant plots the updated *Book of Reference* [REP7-055] and in the updated Schedule of Compulsory Acquisition [REP8-034] to have a Category 1 interest in land:

- the Environment Agency
- Network Rail Infrastructure

- National Grid Gas plc
- National Grid Electricity Transmission plc
- Anglian Water
- Canal & River Trust
- Western Power Distribution
- British Telecommunications plc

8.17.7 Schedule 8 of the recommended DCO (Appendix D) contains Protective Provisions for:

- the Environment Agency and drainage authorities (Part 1);
- Network Rail Infrastructure Limited (Part 2);
- National Grid Gas plc and National Grid Electricity Transmission plc (Part 3);
- Anglian Water (Part 4);
- Canal & River Trust (Part 5);
- Electricity, gas and sewerage undertakers (Part 6);
- Operators of electronic communications code networks (Part 7);
- Western Power Distribution (Part 8).

8.17.8 These are dealt with in turn, below.

The Environment Agency and drainage authorities

8.17.9 The EA has a category 1 interest in some 28 plots. In the case of three plots (45/18, 45/19 and 45/22) the request is for the acquisition of the freehold. These plots lie within the route of the proposed permanent haul road (Works nos. 48 and 49). For four plots (30/04, 30/05, 30/06 and 30/12) the rights requested are for access only. For the remainder of the plots, the rights requested to be acquired are Cable Rights and Associated Development Rights.

8.17.10 The EA submitted a RR [RR-106] and a Written Representation (WR) [REP1-040]. The table in paragraph 8.2 of the WR sets out those plots in which EA has an interest over which the Applicant's proposed restrictive covenant, as set out in Schedule 5 of the draft DCO [APP-128], would apply and those plots (45/18, 45/19 and 45/22) where all interests in land would be acquired under Article 15. In paragraph 8.6 of the WR, the EA object to the acquisition of this land, which, it states:

"... will restrict our access to the Drain, may impede our ability to maintain the Drain and the nature of the works proposed by the Applicant could undermine the integrity of the flood defence and restrict our ability to improve it in future years."

8.17.11 However, in its D8 (final) submission [REP8-014], the EA's Principal Planning Adviser:

"... confirm[s] that we have now reached agreement with the Applicant in respect of all matters of environmental protection and regulation, the drafting of protective provisions and restrictive covenants and

matters pertaining to the Environment Agency's land interests. Accordingly, the Environment Agency, in its capacity as a Statutory Consultee and Statutory Undertaker, withdraws the objection made to the proposal, as detailed in its Relevant Representation, dated 10 July 2015 and Written Representation, dated 5 October 2015."

8.17.12 On the basis of the above statement, ***the ExA conclude that, as the Environment Agency has withdrawn its objection, s127 does not apply in the case of the Environment Agency.***

8.17.13 In respect of drainage authorities -

Witham Fourth District Internal Drainage Board

8.17.14 Witham Fourth District Internal Drainage Board (IDB) has a Category 1 interest in some 43 plots. For fifteen plots the rights requested are for access only. For the remainder of the plots, the rights requested to be acquired are Cable Rights and Associated Development Rights.

8.17.15 In addition, Witham Fourth District IDB would potentially be affected by the proposed restrictive covenant on the latter plots. However, we have noted earlier in this Chapter that the Applicant amended the final submitted version of the restrictive covenant to state that nothing in the covenant restricted the ability of statutory bodies to fulfil their responsibilities and functions.

8.17.16 While Witham Fourth District IDB is not technically a statutory undertaker for the purposes of s127 or 138 of PA2008, the Applicant has stated [paragraph 4.10 of *The Applicant's Response to Deadline 8 Submissions*, AS-052] that it has treated Witham Fourth District IDB as such for the purpose of the Examination.

8.17.17 The ExA notes that Witham Fourth District IDB, in an e-mail dated 29 February 2016 [REP8-030] confirmed that:

"Witham Fourth IDB has agreed heads of terms for, and is close to concluding, a private treaty agreement with Triton Knoll Offshore Wind Farm Limited ("the Applicant") for the necessary land rights for the proposed development.

Witham Fourth IDB does not consider there to be any impediments to concluding the agreement and will update the Secretary of State following conclusion of such agreement."

8.17.18 The Applicant has confirmed [paragraph 4.10 of *The Applicant's Response to Deadline 8 Submissions*, [AS-052] that the position set out in Witham Fourth District IDB's e-mail to the ExA dated 29th February 2016 [REP8-030] is correct and states that:

"The Applicant does not foresee any impediments to concluding the necessary land agreement with the Board and will update the Secretary of State as soon as possible following conclusion."

8.17.19 We consider that the statements made by Witham Fourth IDB jointly with the Applicant show a high degree of commitment to reach agreement and we recognise that no impediment to doing so has been identified by Witham Fourth IDB or by the Applicant. We further recognise that Witham Fourth IDB has expressed its intention to withdraw its objections to the proposed scheme.

8.17.20 We have also taken into account the assertion by the IDBs that they are not statutory undertakers as defined in the PA2008. Given this, ***the ExA conclude that neither s127 nor s138 apply in relation to the interests of Witham Fourth IDB.***

Lindsey Marsh Drainage Board and Black Sluice Internal Drainage Board

8.17.21 Lindsey Marsh Drainage Board and Black Sluice IDB are shown to have a Category 1 interest in some 21 plots in the case of Lindsey Marsh Drainage Board and some 20 plots in the case of Black Sluice IDB.

8.17.22 However, for both these IDBs, the *updated Schedule of Compulsory Acquisition* [REP8-034] states that the Applicant:

"Do not believe party has a freehold interest in affected land."

8.17.23 This is confirmed in the case of Lindsey Marsh IDB in the *Joint submission of Black Sluice IDB, Lindsey Marsh Drainage Board and Witham Fourth IDB. Oral case put at CAH on 13 November 2015* [REP3-001] which states in paragraph 4.9 that:

"Lindsey Marsh IDB owns no land affected by the present scheme."

and is confirmed, by implication, in the case of Black Sluice Internal Drainage Board in the *Joint Statement between Triton Knoll Offshore Wind Farm Limited, Black Sluice Internal Drainage Board, Lindsey Marsh Drainage Board and Witham Fourth District Internal Drainage Board. Appendix 37 of Submission for Deadline 4 of 5 January 2016* [REP4-067] which only cites (paragraph 3.3) Witham Fourth District IDB as the only IDB having an interest in plots.

8.17.24 Given that neither Lindsey Marsh Drainage Board nor Black Sluice Internal Drainage Board contest the Applicant's contention that they do not have landowning interests affected by the request for CA, ***the ExA recommends that the Secretary of State requests that the final version of the BoR to be submitted for certification is amended to reflect the fact that neither Lindsey Marsh Drainage Board nor Black Sluice IDB have landowning interests affected by the request for CA. This may be best done by retaining their status as 'Occupiers' but removing their status as 'Freehold Owners' in Part 1 of the final certified Book of Reference.***

8.17.25 *The Statement of Common Ground between Triton Knoll Offshore Wind Farm Limited and Black Sluice Internal Drainage Board, Lindsey Marsh Drainage Board and Witham Fourth District Internal Drainage Board: Appendix 8 of the Applicant's Response to Deadline 8 [REP8-040]* states in paragraph 4.4 that:

"It is agreed that the inclusion of Protective Provisions in the draft DCO (Revision F) are necessary for the protection of drainage works (as described therein) which are the responsibility of the IDBs. The wording of the Protective Provisions set out in Schedule 8, Part 1 of the draft DCO (Revision F) submitted as Appendix 22 of the Applicant's response to Deadline 5 are agreed between the IDBs and the Applicant."

8.17.26 Having regard to the above statements, ***the ExA conclude that the protective provision for the Environment Agency and drainage authorities have been agreed by those bodies and, therefore, recommend that it be included in the final approved DCO as set out in the recommended DCO at Appendix D.***

Network Rail Infrastructure Limited (Part 2)

8.17.27 Network Rail Infrastructure Limited has a category 1 interest in plots 18/07, 18/08, 22/12, 22/14, 43/12. All of these plots lie on the proposed cable corridor and, therefore, the rights requested to be acquired are Cable Rights and Associated Development Rights. In addition, Network Rail would have been affected by the restrictive covenant as originally proposed.

8.17.28 Network Rail Infrastructure Limited submitted a RR [RR-135] which stated that, *inter alia*:

"Network Rail objects to any proposed compulsory acquisition of its land or any rights in, over or under its land."

8.17.29 Network Rail submitted a WR [REP1-031] which stated, *inter alia*, that:

"The Draft DCO does contain protective provisions in favour of Network Rail but these have not yet been agreed between the parties. As such, unless and until such time as protective provisions are included in the DCO in a form approved by Network Rail, Network Rail must sustain its objection to the making of the DCO."

and that:

"It is clear that Section 127 of the 2008 is engaged in this case."

and that:

"In view of the fact that Network Rail has not yet agreed protective provisions to control the access to its land, it considers that these powers cannot be taken without the potential for serious detriment to

the carrying on of its railway undertaking and it therefore objects to these powers applying to the Network Rail land."

8.17.30 Network Rail made no further submissions to the Examination until the submission of a *Joint Statement between Triton Knoll Offshore Wind Farm Limited and Network Rail* (Appendix 10 of the Applicant's Response to D8) [REP8-042].

8.17.31 Paragraph 1.2 of the Joint Statement states that:

"The parties have agreed the protective provisions that are required to safeguard Network Rail's existing apparatus."

and paragraphs 1.3 to 1.5 state that:

"Agreed heads of terms have now been reached between the parties which provide for the acquisition by the Applicant of the land rights it requires over Network Rail's interests and the parties are currently negotiating the specific terms of the necessary overarching agreement (a Deed of Undertaking) and the land agreements to be put in place pursuant to these heads of terms. These land rights will be in substitute for those rights set out at Schedule 5 of the Proposed Order.

Until such time as the Deed of Undertaking is signed including the agreed form of the necessary land agreements between the Applicant and Network Rail, Network Rail is not in a position to withdraw its objection to the Application.

At this stage Network Rail does not consider there to be any material impediments to concluding the negotiation of the Deed of Undertaking and the necessary land agreements and will update the Secretary of State as soon as it is able to confirm whether it is in a position to withdraw its objection to the Application."

8.17.32 We consider that the statements made by Network Rail jointly with the Applicant show a high degree of commitment to reach agreement and we recognise that no impediment to doing so has been identified by Network Rail or by the Applicant. We further recognise that Network Rail has expressed its intention to withdraw its objections to the proposed scheme.

8.17.33 However, at the time that the Examination closed on 3 March 2016, Network Rail had not withdrawn its objection made in its Relevant Representation [RR-135]. Given this, s127 of PA2008 is engaged in the case of Network Rail.

8.17.34 In considering this, we have had regard to the fact that the Applicant has submitted, in paragraphs 4.2 and 4.3 of its *Comments on the responses submitted at Deadline 8* [AS-052] that in the event that it is not possible to conclude the necessary land agreement on the terms sought, the rights required for the proposed development can be

purchased without serious detriment to the carrying on of Network Rail's undertaking.

- 8.17.35 The reasons the Applicant gives for this includes the reasoning that only rights, and not the freehold is requested to be acquired, that Network Rail is protected by agreed Protective Provisions and that the restrictive covenant will not restrict the exercise of Network Rail's statutory functions and duties.
- 8.17.36 In respect to this latter point, we have noted earlier in this Chapter that the Applicant amended the final submitted version of the restrictive covenant to state that nothing in the covenant shall restrict the ability of statutory bodies to fulfil their responsibilities and functions.
- 8.17.37 First, we conclude that Network Rail is protected by agreed Protective Provisions ***the ExA conclude that the protective provision for Network Rail Infrastructure Limited has been agreed by that body and, therefore, we recommend that it be included in the final approved DCO as set out in the recommended DCO at Appendix D.***
- 8.17.38 Second, we conclude s127 still applies in the case of Network Rail but, given the statements cited above, ***the ExA recommend that the SoS can be satisfied that the test is met in that the SoS can be satisfied that the CA of new the rights over the SU land can be purchased without serious detriment to the carrying on of the undertaking.***

National Grid Gas plc and National Grid Electricity Transmission plc

- 8.17.39 National Grid Gas plc is stated to have a Category 1 interest in four plots (excluding the two on which temporary access is requested) (plots 13/07, 28/02, 45/02, and 45/12). For one plot (plot 45/12) the request is for the acquisition all interests in the land. For the remainder of the plots, the rights requested to be acquired are Cable Rights and Associated Development Rights.
- 8.17.40 In addition, National Grid Gas plc would have been affected by the restrictive covenant as originally proposed. However, we have noted earlier in this Chapter that the Applicant amended the final submitted version of the restrictive covenant to state that nothing in the covenant shall restrict the ability of statutory bodies to fulfil their responsibilities and functions.
- 8.17.41 National Grid Electricity plc is stated to have a category 1 interest in six plots (plots 48/14, 48/15, 48/17A, 48/17B, 48/18 and 48/19). For one plot (plot 45/12) the request is for Unlicensed Connection Rights. For two plots (plots 48/15 and 48/18) the rights requested are for access only. For the remainder of the plots, the rights requested to be acquired are Cable Rights and Associated Development Rights. In

addition, National Grid Electricity plc would have been affected by the restrictive covenant as originally proposed.

8.17.42 National Grid stated in a WR [REP1-035] that:

"NGET and NGG object to the acquisition of any land or any right or interest in land owned by NGET and NGG or any of NGET and NGG apparatus, including the overriding/extinguishment of any easements and other rights associated with this apparatus in relation to the Triton Knoll Electrical System Development Consent Order (the Order) promoted by Triton Knoll Offshore Wind Farm Limited (the Applicant)."

8.17.43 National Grid and the Applicant provided a joint statement in lieu of National Grid's appearance at the January 2016 CAH which reported on progress both in agreeing protective provisions and in agreeing heads of terms stating that:

"The promoter agrees not to exercise compulsory rights in the Order as against National Grid in lieu of the entering into of the land documents. In such circumstances, National Grid does not need to continue to object to the Order."

8.17.44 Paragraph 3 of a *Joint Statement of National Grid and the Applicant* dated 29 February 2016 [REP8-045] states that:

"The parties have agreed the protective provisions and other measures that are required to safeguard National Grid's existing apparatus and mechanisms for the implementation of the Order in so far as it may affect National Grid's assets. Documentation relating to the protection of National Grid's assets is in agreed form. This takes the form of an asset protection agreement."

8.17.45 Having regard to the above statement, ***the ExA conclude that the protective provision for National Grid Gas plc and National Grid Electricity Transmission plc has been agreed by those bodies and, therefore, we recommend that it be included in the final approved DCO as set out in the recommended DCO at Appendix D.***

8.17.46 In an e-mail dated 3 March 2016 [AS-050] DLA Piper stated that that:

"We act on behalf of National Grid Electricity Transmission Plc and National Grid Gas Plc (together "National Grid")."

On the basis of commitments provided by the promoter, National Grid withdraws its objection to the development consent order ..."

8.17.47 On the basis of the above statement, ***the ExA conclude that, as National Grid has withdrawn its objection, s127 does not apply in the case of National Grid.***

Anglian Water Services Limited

- 8.17.48 Anglian Water Services Limited is stated to have a Category 1 interest in some 51 plots. For three plots (plots 11/05, 11/08 and 11/09) the rights requested are for access only. For the remainder of the plots, the rights requested to be acquired are Cable Rights and Associated Development Rights.
- 8.17.49 In addition, Anglian Water would have been affected by the restrictive covenant as originally proposed. However, we have noted earlier in this Chapter that the Applicant amended the final submitted version of the restrictive covenant to state that nothing in the covenant shall restrict the ability of statutory bodies to fulfil their responsibilities and functions.
- 8.17.50 The updated draft BoR [REP7-055] only lists Anglian Water Services "*in respect of apparatus*" rather than as a freeholder, lessee or tenant
- 8.17.51 Anglian Water Services submitted a RR (RR-047) in which it stated, in paragraph 11, that:
- "Any attempt to obtain rights over [its] assets as a result of their location within the boundary of the development would be opposed by Anglian Water."*
- 8.17.52 Anglian Water Services made five additional submissions to the Examination including two draft [REP2-031 and REP5-042] and one final [REP6-022] Statement of Common Ground (SoCG).
- 8.17.53 The final SoCG [REP6-022] states in paragraphs 3.4 and 3.5 that:
- "It is agreed that the standard protective easement widths will be adopted for all of Anglian Water assets."*
- It is agreed that no property agreements are required between Anglian Water and the Applicant."*
- 8.17.54 Subsequently, Anglian Water Services submitted a response to our final questions [REP8-001]. This deals with the wording of Article 12 of the draft DCO. This is dealt with in Chapter 9 of this report. However, in the context of requests for CA, Anglian Water Services states in that document that its:
- "previous objection to ... the DCO pursuant to Section 127 of the Planning Act can be treated as withdrawn."*
- 8.17.55 The Applicant has submitted, in paragraphs 4.2 and 4.3 of its *Comments on the responses submitted at Deadline 8* [AS-052] that it:
- "... notes that Anglian Water withdrew its objection to the Order in its letter to the Examining Authority dated 29th February 2016."*

- 8.17.56 We also note that in the final SoCG both parties agree that no property agreements are required between Anglian Water and the Applicant. We have already noted, above, that the updated draft BoR [REP7-055] only lists Anglian Water Services in respect of apparatus.
- 8.17.57 Paragraph 3.9 of the *Statement of Common Ground between Triton Knoll Offshore Wind Farm Limited and Anglian Water Services Limited: Appendix 6 of the Applicant's Response to Deadline 6* [REP6-022] states that:
- "It is agreed that Schedule 8, Part 4 Protection for Anglian Water of the draft DCO (Revision F) adequately sets out and secures the provisions required for the protection of Anglian Water."*
- 8.17.58 Having regard to the above statement, ***the ExA conclude that the protective provision for Anglian Water has been agreed by that body and, therefore, we recommend that it be included in the final DCO should it be consented by the SoS as set out in the recommended DCO at Appendix D.***
- 8.17.59 On the basis of the above, ***the ExA conclude that, as Anglian Water has withdrawn its objection, s127 does not apply in the case of Anglian Water.***

Canal and River Trust

- 8.17.60 The Canal and River Trust has a Category 1 interest in plots 37/20 and 37/21. Both these plots lie on the proposed cable corridor as it traverses the River Witham and, therefore, the rights requested to be acquired are Cable Rights and Associated Development Rights. In addition, the Trust would have been affected by the restrictive covenant as originally proposed.
- 8.17.61 The final *updated Schedule of Compulsory Acquisition* [REP8-034] states that:
- "Discussions are proceeding well with the representative and the HoTs are nearly concluded."*
- and that the Applicant does not see any envisaged impediments to the achievement of reaching a mutual commercial agreement.
- 8.17.62 The Canal and River Trust made a RR [RR-152] which stated that:
- "We object to the inclusion in the draft Order of powers to compulsorily acquire our land or rights over our land. We note under Schedule 7 Part 5 article 14 of the draft Order that the Trust may enter into agreements with the undertaker to transfer land, property, rights or obligations, however this is qualified by article 3(1) which provides that the Trust may not unreasonably withhold or delay consent."*

We will instead seek to reach prior agreement with the Promoter with a view to granting the land and rights that are strictly necessary for the development covered by the draft Order."

8.17.63 The Canal and River Trust was not represented at any of the Hearings.

8.17.64 The Trust made no further submissions to the Examination until the submission of an agreed and signed *Joint Statement between Triton Knoll Offshore Wind Farm Limited and Canal and River Trust* (Appendix 9 of the Applicant's Response to Deadline 8) [REP8-041].

8.17.65 Paragraphs 3.1 and 3.2 of the *Joint Statement between Triton Knoll Offshore Wind Farm Limited and Canal and River Trust* states that:

"The Applicant and the Trust discussed the draft Protective Provisions included in Revision F of the draft DCO [REP5-035] on 23 February 2016 and agreed a revised form of Protective Provisions on 24 February 2016.

The Applicant has included the agreed Protective Provisions for the benefit of the Trust at Schedule 8 Part 5 of Revision G of the draft DCO, submitted at Deadline 7."

8.17.66 Having regard to the above statement, ***the ExA conclude that the protective provision for the Canal and River Trust has been agreed by that body and, therefore, we recommend that it be included in the final DCO should it be consented by the SoS as set out in the recommended DCO at Appendix D.***

8.17.67 This joint statement states in paragraphs 3.4 to 3.6 that:

"In relation to the Trust's land interests, the Applicant and the Trust have made significant progress towards agreeing appropriate Heads of Terms for a private treaty agreement. At the date of this Statement the Heads of Terms are substantially agreed, with two outstanding points to be resolved before signature.

The Trust does not consider there to be any impediment to concluding the private treaty agreement and will update the Secretary of State once it has been completed.

The Trust will also withdraw its objection to the TKES at that time.

On conclusion of the private treaty agreement, the Applicant will confirm the same to the Secretary of State, and also explain to the Secretary of State that:

- *The Trust is a statutory undertaker for purposes of s127 of the 2008 Act;*
- *The Trust will have the benefit of/ protection afforded by the agreed Protective Provisions;*

- *The cables will be installed at a depth which means there will be no interference with the carrying out of the Trust's undertaking; and*
- *That section 127(6) of the 2008 Act is satisfied and that the rights over land required for the proposed development can be purchased without serious detriment to the carrying out of the Trust's undertaking."*

- 8.17.68 We consider that the statements made by the Trust jointly with the Applicant show a high degree of commitment to reach agreement and we recognise that no impediment to doing so has been identified by the Trust or by the Applicant. We further recognise that the Trust has expressed its intention to withdraw its objections to the proposed scheme.
- 8.17.69 However, at the time that the Examination closed on 3 March 2016, the Canal and River Trust had not withdrawn its objection made in its RR [RR-135]. Given this, s127 of PA2008 is engaged in the case of the Canal and River Trust.
- 8.17.70 In considering this, we have had regard to the fact that the Applicant has submitted, in paragraphs 4.5 and 4.6 of its *Comments on the responses submitted at Deadline 8* [AS-052] that in the event that it is not possible to conclude the necessary land agreement on the terms sought, the rights required for the proposed development can be purchased without serious detriment to the carrying on of the Canal and River Trust's undertaking.
- 8.17.71 The reasons the Applicant gives for this includes the reasoning that only rights, and not the freehold is requested to be acquired, that the Trust is protected by agreed Protective Provisions and that the restrictive covenant will not restrict the exercise of the Trust's statutory functions and duties.
- 8.17.72 In respect to this latter point, we have noted earlier in this Chapter that the Applicant amended the final submitted version of the restrictive covenant to state that nothing in the covenant shall restrict the ability of statutory bodies to fulfil their responsibilities and functions.
- 8.17.73 We have also stated above that we conclude that the Canal and River Trust is protected by agreed Protective Provisions.
- 8.17.74 We conclude s127 still applies in the case of the Canal and River Trust but, given the statements cited above, ***the ExA recommend that the SoS can be satisfied that the test is met in that the SoS can be satisfied that the CA of new the rights over the Canal and River Trust land can be purchased without serious detriment to the carrying on of the undertaking.***

Operators of electronic communications code networks (Part 7)

- 8.17.75 The final *updated Schedule of Compulsory Acquisition* [REP8-032] shows British Telecommunications plc as having a Category 1 interest in some 61 plots and the amended *Book of Reference* [REP7-055] shows that these interests are in respect of apparatus.
- 8.17.76 British Telecommunications plc has not made any submissions or representations to the Examination.
- 8.17.77 Given this, ***the ExA conclude that s.127 of PA2008 is not engaged and that British Telecommunications plc are content that the protective provisions for operators of electronic communications adequately protects their interests.***

Western Power Distribution

- 8.17.78 Western Power Distribution is listed in the *Book of Reference* (Revision C) [REP7-055] as having interests in respect of electricity apparatus on some 121 plots.
- 8.17.79 Western Power Distribution provided the Examination with a series of updates on progress with their discussions with the Applicant. These were provided in response to our Rule 6 letter [AS-024], prior to the Preliminary Meeting [AS-030] and prior to the November 2015 DCO ISH [AS-033] and at D1 [REP1-019], D5 [REP5-011] and D7 [REP7-007a]. None of these submissions stated that Western Power Distribution objected to the proposed development or to the CA of rights over land in which it had an interest.
- 8.17.80 Finally, a letter from Osborne Clarke on behalf of Western Power Distribution dated 3 February 2016 (the ExA conclude that this letter was misdated and should have been dated 3 March 2016) [AS-049] stated that:
- "We confirm on behalf of WPD that the Protective Provisions as shown in the Applicant's final draft Development Consent Order [REP7-018] are agreed between WPD and the Applicant."*
- 8.17.81 First, having regard to the above statement, ***the ExA conclude that the protective provision for Western Power Distribution has been agreed by that body and, therefore, we recommend that it be included in the final approved DCO as set out in the recommended DCO at Appendix D.***
- 8.17.82 In coming to our conclusion about s127 of PA2008, we have had regard to the fact that a representation has been made by Western Power Distribution about an application for an order granting development consent before the completion of the examination of the application, and the representation has not been withdrawn. However, we also note, first, that none of the representations made direct

objections to the proposed scheme or to the potential CA of rights and, second, that the recommended DCO contains protective provisions in respect of Western Power Distribution (in Schedule 8, Part 8) that have been agreed by Western Power Distribution.

8.17.83 Taking the above into account, ***the ExA conclude that, in respect to Western Power Distribution, the right can be purchased without serious detriment to the carrying on of the undertaking and that the test in s127 is met.***

8.17.84 In addition to the above statutory bodies, covered by protective provisions, we received submissions from ConocoPhillips (U.K.) Limited ("COPUK") and from EDF Energy Renewables.

COPUK

8.17.85 COPUK is not listed in the Book of Reference Revision C [REP7-055] as having any interests in land. COPUK submitted an RR [RR-115] which stated that:

"COPUK note that the export cables for the Triton Knoll Wind farm will, subject to the Development Consent Order ("DCO"), cross three major gas pipelines operated by COPUK, together known as the "COPUK Lines". These are –

36" Loggs PP to Theddlethorpe Gas pipeline and associated Methanol line (known as the "LOGGS Pipeline").

26" Murdoch MD to Theddlethorpe Gas pipeline and associated Methanol line (known as the "CMS Trunkline").

28" Viking AR to Theddlethorpe Gas pipeline and associated Methanol line (known as the "VTS Pipeline")."

8.17.86 It went on to state that:

"COPUK as Operator of the COPUK Lines confirms that it has no objection in principle to the proposed crossings, subject to agreements, consistent with the Oil & Gas UK standard agreements, between the entities to govern the proposed crossings and the relative rights and obligations of both the crossed and crossing party being agreed."

8.17.87 COPUK submitted an Update on discussions with the Applicant. Submission for D3 of 30 November 2015 [REP3-009] and jointly submitted a signed and agreed Joint Statement between TKOWFL and ConocoPhillips UK Limited - Submission for D7 [REP7-052].

8.17.88 The joint statement sets out a series of agreements reached by the two parties but states that:

"The Applicant acknowledges that sufficient technical detail is not currently available to address specific COPUK concerns, and COPUK

reserves the right to raise further concerns following review of such technical detail as it becomes available."

8.17.89 It concludes that:

"The Applicant and COPUK agree that all matters above will be included in the Pipeline Crossing Agreements which are currently being discussed. The Applicant acknowledges the challenges COPUK faces regarding the not yet fully defined scope of work, and as such the draft Proximity and Crossing Agreement (PCA) is subject to technical review and may need to be amended to reflect the finalised scope of work. The PCA will include provision related to liabilities and indemnities from the Applicant, and sufficient comfort (for example, in the form of security) that the Applicant will be able to fulfil its obligations under the agreement."

8.17.90 In coming to our conclusions, we have taken into account the following factors:

- there is no intention to CA any land or rights in land in which COPUK has an interest;
- powers sought in the DCO which could potentially interfere with COCPs rights/ apparatus are necessary for the purpose of carrying out the development;
- whilst there is no protective provision specific to COPUK, there is a protective provision for "electricity, gas and sewerage undertakers at Schedule 8, Part 6 of our recommended DCO which includes "a gas transporter within the meaning of Part 1 of the Gas Act 1986"
- we have not received any evidence to dispute that COPUK's interests will be protected by the pipeline crossing agreements which are currently being discussed and by the protective provision at Schedule 8, Part 6,

8.17.91 Given this, the ExA conclude that, by virtue of the fact that the Applicant is not seeking any rights over land in which COPUK Has an interest, s127 of PA2008 is not engaged.

8.17.92 However, ***the ExA recommend that the SoS seek an update on the position on the pipeline crossing agreements before concluding on COPUK.***

EDF Energy Renewables

8.17.93 EDF Energy Renewables is not listed in the Book of Reference (Revision C) [REP7-055] as having any interests in land.

8.17.94 EDF Energy Renewables submitted an RR [RR-099] which stated that:

"The proposed site for the substation is in close proximity to Bicker Fen Wind Farm, consisting of 13 turbines that has been operational

since 2008. The RR went on to raise concerns about noise, possible effects on energy yield operational impacts and access."

8.17.95 EDF subsequently submitted a WR [REP1-025] which concluded that:

"EDF does not object to the principle of the Proposed Development. However, EDF's operation of BFWF will be affected by the Proposed Development.

In order to minimise the impact of the Proposed Development, EDF requires the following measures:

A requirement or agreement between the parties specifying the measures to be taken to address noise complaints;

To take all reasonable steps not to negatively impact upon energy yield and, where such impact occurs, to compensate EDF for loss of yield'; and

A commitment from the Applicant not to impact upon the operation of BFWF during the construction and operation of the Proposed Development."

8.17.96 EDF did not make any further submissions to the Examination and was not represented at any of the Hearings.

8.17.97 ***The ExA conclude that, by virtue of the fact that the Applicant is not seeking any rights over land in which EDF Energy Renewables has an interest, s127 of PA2008 is not engaged.***

8.17.98 ***The ExA conclude that we are content that EDF's interests are protected and would potentially benefit from the protective provisions for electricity, gas and sewerage undertakers.***

OVERALL CONCLUSION: S127 AND S138

8.17.99 The ExA conclude, overall, that ten statutory undertakers that are potentially affected by the provisions of s127 and/or s138 of PA2008 are covered by Protective Provisions. With the exception of British Telecommunications plc, all relevant statutory undertakers have specifically accepted the draft provisions as set out in Schedule 8 of the ExA's recommended DCO. British Telecommunications plc has not made any submissions or representations to the Examination.

8.17.100 Second, the ExA has concluded above that, by virtue either of no representations having been made or by virtue of representations having been withdrawn by seven undertakers, s.127 need only be considered in respect of Network Rail Infrastructure Limited, the Canal and River Trust and Western Power Distribution

8.17.101 In the case of these three statutory undertakers the ExA recommend that the SoS can be satisfied that the test is met in that the SoS can be satisfied that the CA of the new rights over the SU land can be

purchased without serious detriment to the carrying on of the undertaking.

- 8.17.102 Having considered and concluded on the cases of all the statutory undertakers affected by the request for CA powers of land or of rights over land, we conclude in respect of s138 of PA2008 that the ExA are satisfied that any extinguishment of rights or removal of apparatus are necessary for the development and that their interests are protected.

8.18 THE CASE FOR SPECIFIC PLOTS

The Objector's case

- 8.18.1 The main generic issues raised by objectors have been covered in those previous Sections of the Chapter which consider the request for powers of CA against the tests set in statute or in guidance and, in particular the alternatives presented by the Applicant and the terms of the draft Restrictive Covenant. This section of the Chapter looks at individual cases related to particular owners and to particular plots.
- 8.18.2 The Applicant's final *updated Schedule of Compulsory Acquisition* [REP8-034] lists some 124 affected persons, or groups of affected persons. The updated Schedule of CA states that some 106 of that 124 had agreed Heads of Terms (HoTs).
- 8.18.3 Some eighty of the 124 APs made Relevant or other Representations and at the end of the Examination on 3 March 2016, some 64 of these had been formally withdrawn.
- 8.18.4 This section of the CA Chapter deals with those APs who had not agreed HoTs and those who had agreed HoTs but had not withdrawn their representations. The case for the granting of CA powers over those plots on which HoTs have been stated to have been agreed and representations either not made or, if made, have been withdrawn are not dealt with individually as agreement has been reached with those APs.
- 8.18.5 The Applicant explains in their Updated Statement of Reasons [REP7-029] that where agreement is reached with landowners the land needs to be retained within the order land to override, suspend or extinguish any third party interests that may subsist in the land or which might otherwise delay impede or prevent the implementation or operation of TKES
- 8.18.6 In the case of all those plots not included in the list of owners whose case is examined in detail below, the ExA recommend that CA powers are granted.

Ritson Riggall and Susan Bunn

- 8.18.7 One AP, Ritson Riggall and Susan Bunn was not shown as having agreed HoTs in the final *updated Schedule of Compulsory Acquisition*

[REP8-034] but their agent, DDM Agriculture Limited, informed us by e-mail dated 2 March 2016 [AS-048] that R J Riggall & Ms S M Bunn wish to withdraw their relevant representations and all subsequent submissions made by them, or by their agent on their behalf, during the examination.

8.18.8 Given that the representation by Ritson Riggall and Susan Bunn [RR-118] has now been withdrawn, these owners are not included in the list of owners whose case is examined in detail, below.

R H Mowbary Ltd

8.18.9 We note that two RRs were received by us. One was on behalf of R H Mowbary Limited [RR-134] and was from Giles Johnston; the other was on behalf of R H Mowbray Limited [RR-148] and was from J B Boulton. Neither the BoR (Revision C) [REP7-055] nor the updated Schedule of CA [REP8-034] lists R H Mowbary Limited.

8.18.10 We have, therefore, not considered the RR on behalf of R H Mowbary Limited [RR-134] from Giles Johnston.

8.18.11 One AP has neither agreed HoTs nor withdrawn Representations they made:

- David Hand, Graham Hand and Hand Bros

8.18.12 The following APs have not agreed HoTs but did not make any representations:

- William George
- Herbert Paul and Annie Paul
- Hazel Carr (Sg) Services, Daniel Fairburn, LJ Fairburn & Son Limited, Stuart Fairburn and Judith Fairburn
- Kathryn and Michael Evans
- Andrew Greetham
- Shirley Pugh and S & S Pugh & son
- Bicker United Charity
- Nick Pocklington

8.18.13 One AP has agreed HoTs but has not withdrawn all the Representations he made:

- Peter Theobald

8.18.14 These three groups are dealt with in turn, below.

8.18.15 The positions of statutory undertakers which are also stated to have an interest in land affected have been dealt with above.

David Hand, Graham Hand and Hand Bros

8.18.16 David Hand, Graham Hand and Hand Bros have a Category 1 interest in four plots. Two of these – plots 09/02 and 09/04 are stated to be

required for cable rights and associated development rights and would be subject to restrictive covenants. The other two plots – 09/06 and 10/03 – are stated to be required for rights of access.

- 8.18.17 Graham Hand on behalf of Hand Brothers did not make a Relevant Representation but, in a submission dated 23 August 2015 [AS-026] stated that:

"...the cable route across the field of Hand Brothers is not necessary because it is not the best line for the cable."

- 8.18.18 Mr Hand has made a number of subsequent representations to the Examination, was in attendance at the Accompanied Site Inspection (ASI), attended the OFH and spoke at the Socio-economic ISH held on 19 November 2015 [EV-028].

- 8.18.19 Mr Hand's submission dated 14 September 2015 [REP1-008] states that:

"The main thrust of my objection is that the proposed section of the easement route which concerns me does not follow a logical line, and will be much more expensive to install than my suggested alternative route."

- 8.18.20 This letter also stated that comments on the easement route were sent to Ardent on 8 October 2104.

- 8.18.21 At Mr Hand's request, we visited his land during our ASI [EV-004] and saw the lines of the proposed and the suggested alternative routes for the cable corridor.

- 8.18.22 Following the ISH held on 19 November 2015 [EV-028] Mr Hand submitted a copy of the statement read out at that hearing [REP3-033] which contained a map showing the proposed and the suggested routes. This issue was also discussed at the January 2016 Local Impacts ISH [EV-034] and we raised this issue in our question SE 2.8 [PD-014].

- 8.18.23 Mr Hand re-stated his position in response [REP6-005] to the issuing of the ExA's consultation draft DCO stating that it was his understanding that it could be possible for the proposed cable route to be varied along the lines proposed by him and requested that this position be addressed directly. Consequent on this, we asked the Applicant in our FourWQ CA 4.3 [PD-019] to set out its position on Mr Hand's request and whether that position had been communicated to Mr Hand.

- 8.18.24 The Applicant's response to CA 4.3 [REP8-032] stated that:

"The Applicant's land agent wrote to Mr Hand on 09 January 2015 and explained:

"Your request to amend the cable route has been considered against all the relevant constraints. The proposed cable route has previously been aligned to follow field boundaries as far as reasonably practicable. Implementing your suggestions would have impacts on a number of other smaller fields. In assessing our cable route options, we have to assume that proposals which are significantly far advanced through the planning process will go ahead and plan accordingly."

- 8.18.25 One of the constraints referred to is set out in paragraph 5 of the Applicant's response to our question (and in paragraph 11 of *Appendix 5 of the Applicant's response to Deadline 8* [REP8-037]):

"The Orby Wind Farm the subject of a planning appeal at the time of the original route change request. The proposed route amendment would pass through the red line site of the Orby Wind Farm. The latest appeal for the Orby Wind Farm was dismissed. However, since the planning application for the wind farm has been re-submitted a number of times since 2002, it is the Applicant's position that this remains a relevant constraint for the siting of the cable route. This is because there is a reasonable chance that a planning application for wind turbines on that site may be made again in the future."

- 8.18.26 The ExA notes that the Applicant considers that this remains a relevant constraint because there is a reasonable chance that a planning application for wind turbines on that site may be made again in the future. The Applicant appeared to base this reasonable chance on the fact that such an application had been re-made in the past.

- 8.18.27 We consider that the fact that applications have been made and failed in the past does not constitute evidence they are likely to be made again in the future.

- 8.18.28 Appendix 5 of the Applicant's response to D8 [REP8-037] provided a response to Mr Hand's submission for D6. This response recognised that Mr Hand has proposed the alternative route several times pre-application and explained that:

"The cable route had previously been amended by the Applicant as far as reasonably practicable in response to an earlier route change request from Mr Hand. In amending the route, the Applicant reduced the length of cable route affecting Mr Hand's land, and the cable route changed from crossing two of Mr Hand's fields to only crossing one field."

- 8.18.29 This change is set out on Sheet 9 of Figure 6-4 and Table 6.3 in the *Site Selection and Design Report* [APP-117].

- 8.18.30 In considering this issue we have had regard to the advice contained in the 2013 DCLG Guidance on CA that the applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored.

- 8.18.31 First, we recognise that the Applicant has already taken steps to address some of the issues raised by Hand Brothers by amending the route between the initial consultation on it and the route applied for.
- 8.18.32 Second, we recognise the validity of the case made by Mr Hand in respect of Hand Brother's land at plots 09/02 and 09/04, both in terms of drainage issues and in terms of the avoidance of land in that ownership.
- 8.18.33 Third, we consider that at least one of the constraints on the route cited by the applicant - that of the possible re-submission of an application for Orby Wind Farm - has a degree of uncertainty which reduces its strength as a relevant constraint.
- 8.18.34 Finally, we also recognise that, whilst a re-alignment of the route along the lines suggested by Hand Brothers may obviate the need to request powers of CA on plots 09/02 and 09/04, this possible re-alignment would rely on using adjoining land lying outside the current Order Limits.
- 8.18.35 The ExA are not empowered to make recommendations on land lying outside the current Order Limits.
- 8.18.36 The ExA conclude there is no evidence specific to these plots that demonstrates that the public benefits that would be derived from the compulsory acquisition of these plots will not outweigh the private loss that would be suffered by those whose land is to be acquired.
- 8.18.37 Given the balance of the arguments set out above, ***the ExA recommend, the granting of CA powers over plots 09/02, 09/04, 09/06 and 10/03.***

William George

- 8.18.38 William George had a Category 1 interest in plots 28/12, 29/01, 29/09, 29/10, 29/11, 29/12, 29/13, 29/14, 29/15, 29/16, 29/17 and 29/18. Of these 28/12, 29/01, 29/11 and 29/14 are stated to be required for access rights, 29/09, 29/12, 29/17 and 29/18 Restrictive Covenants, Cable Rights, Associated Development Rights,
- 8.18.39 Four plots are requested for temporary rights - 29/10 and 29/16 for temporary compounds and 29/13 and 29/15 for temporary access.
- 8.18.40 William George did not submit a Relevant or other representation. However, in a submission for D8 [REP8-013], Mr George's agent, Escritt Barrell Golding informed the ExA that sadly Mr George died on 27 January 2016 and therefore, until the agent received the Grant of Probate it will not be in a position to sign any documentation.
- 8.18.41 The ExA have taken into account that fact that no representations or submissions were received from Mr George or his agent before Mr George's death.

- 8.18.42 In the case of those plots in which William George had an interest, the ExA consider that there is no evidence specific to these plots that demonstrates that the public benefits that would be derived from the compulsory acquisition of these plots will not outweigh the private loss that would be suffered by those whose land is to be acquired.
- 8.18.43 Therefore, ***the ExA recommend that the request for powers of CA over plots 28/12, 29/01, 29/09, 29/10, 29/11, 29/12, 29/13, 29/14, 29/15, 29/16, 29/17 and 29/18 be granted.***

Herbert Paul and Annie Paul

- 8.18.44 Herbert Paul and Annie Paul have a category 1 interest in plot 04/07. This plot comprises a section (312.41 m²) of private track and public footpath (Mumb/61/2) to the south of Wesley House, Mumbly and is stated to be required for Acquisition of rights under Article 18 (compulsory acquisition of rights) and Schedule 5 which lists this plot as being required only for rights of access.
- 8.18.45 The final *updated Schedule of Compulsory Acquisition* [REP8-034] states that:
- "Landowner is not prepared to sign an agreement"*.
- 8.18.46 Herbert Paul and Annie Paul have made no representations or submissions to the ExA.
- 8.18.47 In the case of those plots in which Herbert Paul and Annie Paul have an interest, the ExA consider that there is no evidence specific to these plots that demonstrates that the public benefits that would be derived from the CA of these plots will not outweigh the private loss that would be suffered by those whose land is to be acquired.
- 8.18.48 Therefore, ***the ExA recommend that the request for powers of CA over plot 04/07 be granted.***
- Hazel Carr (Sg) Services, Daniel Fairburn, LJ Fairburn & Son Limited, Stuart Fairburn and Judith Fairburn*
- 8.18.49 Hazel Carr (Sg) Services, Daniel Fairburn, LJ Fairburn & Son Limited, Stuart Fairburn and Judith Fairburn have a Category 1 interest in plots 12/03, 12/05, 12/07 and 12/09.
- 8.18.50 These plots lie within the intended cable corridor and, therefore, the rights requested relate to the construction, installation, operation, maintenance and decommission of the intended cable and the plots would be subject to the proposed restrictive covenant.
- 8.18.51 Hazel Carr (Sg) Services, Daniel Fairburn, LJ Fairburn & Son Limited, Stuart Fairburn and Judith Fairburn have not made any representations or submissions to the Examination. The final *updated Schedule of Compulsory Acquisition* [REP8-034] states that:

"There has been no response from these landowners for several months despite numerous letters, emails and phone calls having been sent/made by the Applicant seeking engagement".

- 8.18.52 The Applicant had submitted a *Schedule of Landowner Negotiation Contact* as Appendix 43 to its Response to D4 [REP4-073]. This schedule shows that, according to the Applicant, Hazell Carr (Sg) Services, Daniel Fairburn, LJ Fairburn & Son Limited, Stuart Fairburn and Judith Fairburn were approached on fourteen occasions between 2 March 2015 and 18 November 2015.
- 8.18.53 In the case of those plots in which Hazel Carr (Sg) Services, Daniel Fairburn, LJ Fairburn & Son Limited, Stuart Fairburn and Judith Fairburn have an interest, the ExA consider that there is no evidence specific to these plots that demonstrates that the public benefits that would be derived from the compulsory acquisition of these plots will not outweigh the private loss that would be suffered by those whose land is to be acquired.
- 8.18.54 Therefore, ***the ExA recommend that the request for powers of CA over plots 12/03, 12/05, 12/07 and 12/09 be granted.***

Kathryn and Michael Evans

- 8.18.55 Kathryn and Michael Evans have a Category 1 interest in plot 39/10. This plot consists of 1174.70 m² of land being grass field to the north of Kirton Drove, Brothertoft.
- 8.18.56 This plot lies within the intended cable corridor and, therefore, the rights requested relate to the construction, installation, operation, maintenance and decommission of the intended cable and the plot would be subject to the proposed restrictive covenant.
- 8.18.57 Kathryn and Michael Evans have not made any representations or submissions to the Examination. The final *updated Schedule of Compulsory Acquisition* [REP8-034] states that these landowners *"are very hard to make contact with and are not returning any calls, emails or letters"*.
- 8.18.58 The Applicant had submitted *A Schedule of Landowner Negotiation Contact* as Appendix 43 to its Response to D4 [REP4-073]. This showed that, according to the Applicant, Kathryn and Michael Evans were approached 13 times between 2 March 2015 and 17 November 2015.
- 8.18.59 In the case of those plots in Kathryn and Michael Evans have an interest, the ExA consider that there is no evidence specific to these plots that demonstrates that the public benefits that would be derived from the compulsory acquisition of these plots will not outweigh the private loss that would be suffered by those whose land is to be acquired.

8.18.60 Therefore, ***the ExA recommend that the request for powers of CA over plot 39/10 be granted.***

Andrew Greetham

8.18.61 Andrew Greetham has a Category 1 interest in plots 42/02, 42/05, 42/06 and 42/13.

8.18.62 These plots lie within the intended cable corridor and, therefore, the rights requested relate to the construction, installation, operation, maintenance and decommission of the intended cable and the plots would be subject to the proposed restrictive covenant.

8.18.63 Andrew Greetham has not made any representations or submissions to the Examination. The final *updated Schedule of Compulsory Acquisition* [REP8-034] states that this landowner

"is very difficult to contact".

8.18.64 The Applicant had submitted a *Schedule of Landowner Negotiation Contact* as Appendix 43 to its Response to D4 [REP4-073]. This schedule shows that, according to the Applicant, Andrew Greetham was approached nine times between 2 March 2015 and 23 November 2015.

8.18.65 In the case of those plots in Andrew Greetham have an interest, the ExA consider that there is no evidence specific to these plots that demonstrates that the public benefits that would be derived from the compulsory acquisition of these plots will not outweigh the private loss that would be suffered by those whose land is to be acquired.

8.18.66 Therefore, ***the ExA recommend that the request for powers of CA over plots 42/02, 42/05, 42/06 and 42/13 be granted.***

Shirley Pugh and S & S Pugh & son

8.18.67 Shirley Pugh and S & S Pugh & son have a Category 1 interest in six plots. For three of these plots – 45/22, 45/24 and 46/01 the request for CA is for the freehold of the plots. These plots are situated on the route of the proposed permanent haul road designed to provide access to the proposed sub-station at Bicker Fen (Work No. 48).

8.18.68 The other three plots – 45/23, 45/25 and 46/02 - lie within the intended cable corridor and, therefore, the rights requested relate to the construction, installation, operation, maintenance and decommission of the intended cable and the plots would be subject to the proposed restrictive covenant.

8.18.69 Shirley Pugh and S & S Pugh & son have not made any representations or submissions to the Examination. The final *updated Schedule of Compulsory Acquisition* [REP8-034] states that:

"Discussions are continuing with the land agent and the Applicant hopes to conclude HoTs at the earliest opportunity."

- 8.18.70 In the case of those plots in which Shirley Pugh and S & S Pugh & son have an interest, the ExA consider that there is no evidence specific to these plots that demonstrates that the public benefits that would be derived from the compulsory acquisition of these plots will not outweigh the private loss that would be suffered by those whose land is to be acquired.
- 8.18.71 Therefore, ***the ExA recommend that the request for powers of CA over plots 45/22, 45/23, 45/24, 45/25, 46/01 and 46/02 be granted.***

Bicker United Charity

- 8.18.72 Bicker United Charity has a Category 1 interest in plot 47/10.
- 8.18.73 The request for CA for this plot is for the acquisition of freehold. This plot is within the boundary of the order limits for the proposed sub-station at Bicker Fen (Work Nos 50 and 50A).
- 8.18.74 Bicker United Charity has not made any representations or submissions to the Examination. In the final *updated Schedule of Compulsory Acquisition* [REP8-034] the Applicant states that:
- "Principles of the HoTs have been agreed and the Applicant hopes to achieve signed HoTs at the earliest opportunity."*
- 8.18.75 In the case of the plot in which Bicker United Charity have an interest, the ExA consider that there is no evidence specific to this plot that demonstrates that the public benefits that would be derived from the compulsory acquisition of the plot will not outweigh the private loss that would be suffered by those whose land is to be acquired.
- 8.18.76 Therefore, ***the ExA recommend that the request for powers of CA over plot 47/10 be granted.***

Nick Pocklington

- 8.18.77 Nick Pocklington has a Category 1 interest in five plots. Four of these plots – 47/22, 48/05, 48/07 and 48/08 - lie within the intended cable corridor and, therefore, the rights requested relate to the construction, installation, operation, maintenance and decommission of the intended cable and the plots would be subject to the proposed restrictive covenant.
- 8.18.78 The CA request for the other plot, 48/06, is for rights of access.
- 8.18.79 Mr Pocklington has not made any representations or submissions to the Examination. The final *updated Schedule of Compulsory Acquisition* [REP8-034] simply indicates that there are no envisaged

impediments to the achievement of reaching a mutual commercial agreement.

8.18.80 In the case of those plots in which Nick Pocklington has an interest, the ExA consider that there is no evidence specific to these plots that demonstrates that the public benefits that would be derived from the CA of these plots will not outweigh the private loss that would be suffered by those whose land is to be acquired.

8.18.81 Therefore, ***the ExA recommend that the request for powers of CA over plots 47/22, 48/05, 48/06, 48/07 and 48/08 be granted.***

Peter Theobald

8.18.82 Peter Theobald has a category 1 interest in plots 12/04, 12/06 and 12/08.

8.18.83 These plots lie within the intended cable corridor and, therefore, the rights requested relate to the construction, installation, operation, maintenance and decommission of the intended cable and the plot would be subject to the proposed restrictive covenant.

8.18.84 The final *updated Schedule of Compulsory Acquisition* [REP8-034] states that HoTs have been agreed.

8.18.85 Peter Theobald made a Written Representation at Deadline 1 [REP1-027]. After stating that he wished to be recorded as an interested party as a landowner subject to possible land acquisition, Mr Theobald made five points

- *The land in question is private wild garden not agricultural land, and as such I am concerned about the following;*
- *Land drainage problems due to easement excavation and crossing of dykes.*
- *Possible close proximity exposure to magnetic fields during outdoor activities. Will exposure levels be below public exposure limits both current and new guideline limits set in 2010 by ICNIRP during the construction period?*
- *The potential for other non health but nuisance effects such as noise or electromagnetic interference.*
- *Protection of persons engaged in outdoor activities from potential catastrophic failure of underground conductors and or utilities.*

8.18.86 Mr Theobald made no further representations or submissions to the Examination.

8.18.87 The ExA consider that, whilst Mr Theobald has made a representation [REP1-027] to the Examination which has not been withdrawn, that representation, as quoted above, focusses on possible effects of the proposal itself rather than the specific effects of and CA of Mr Theobald's land. This conclusion is reinforced by the fact that the final

updated Schedule of Compulsory Acquisition [REP8-034] states that HoTs have been agreed.

- 8.18.88 In the case of those plots in which Mr Theobald has an interest, the ExA take into account that the Applicant has stated that he has agreed to HoTs and additionally consider that there is no evidence specific to these plots that demonstrates that the public benefits that would be derived from the compulsory acquisition of these plots will not outweigh the private loss that would be suffered by those whose land is to be acquired.
- 8.18.89 Therefore, ***the ExA recommend that the request for powers of CA over plots 12/04, 12/06 and 12/08 be granted.***

Lincolnshire County Council

- 8.18.90 Lincolnshire County Council has a Category 1 interest in in some 126 plots. These interests are in terms of LCC being a freehold owner - such as of plot 01/01 considered above, in terms of the holdings of Lincolnshire County Farms and with a significant number of plots being identified in the Book of Reference Revision C [REP7-055] as being in in respect of adopted highway and/or public right of way.

LCC (County Farms)

- 8.18.91 Jonathan Wood of Savills (UK) Limited submitted a RR [RR-163] on behalf Lincolnshire County Council County Farms which raised concerns about the adequacy of consultation, the lack of detail with respect to land drainage and soil structure, the permanent nature of right to be required and future Health and Safety concerns. Given the nature of some of the concerns expressed, this RR is construed by the ExA as an objection to CA.
- 8.18.92 LCC (County Farms) submitted a WR [REP1-037]. That WR lists 22 plots in which the County Farms Estate have an interest - 20/17, 20/18, 20/19, 21/01, 21/02, 21/03, 21/04, 21/05, 21/06, 22/19, 22/20, 23/01, 27/08, 27/09, 27/10, 27/12, 27/13, 28/01, 38/10, 38/11, 39/01 and 42/51.
- 8.18.93 This WR focussed on the adverse impact on land use, agriculture and soils and the quantity of land taken for the proposed easement route. The ExA construe this as an objection to CA in respect of these plots. The Applicant responded to these points in its Written Representation Response to LCC submitted as Appendix 5 of the Applicant's Response to Deadline 2 [REP2-012].
- 8.18.94 These issues are considered in their generality in other Sections, above, of this Recommendation Report.
- 8.18.95 In its final updated Schedule of Compulsory Acquisition [REP8-034], the Applicant states in respect of LCC's farm estate that:

"The Applicant understands that the land agent appointed to represent Lincolnshire County Council (LCC) for their farm estate has now been instructed to discuss an agreement for all the LCC land, which includes the land at the landfall site as well as the LCC owned farms that are crossed by the cable route. The land agent is part of the Land Interest Group (LIG) and we are therefore hopeful that HoTs will be concluded before the end of the examination."

- 8.18.96 The agreed but unsigned SoCG between TKOWF and LCC submitted as Appendix 11 of the Applicant's response to D8 [REP8-043] did not refer to the holdings of the County Farms Estate.
- 8.18.97 In respect of plots 20/17, 20/18, 20/19, 21/01, 21/02, 21/03, 21/04, 21/05, 21/06, 22/19, 22/20, 23/01, 27/08, 27/09, 27/10, 27/12, 27/13, 28/01, 38/10, 38/11, 39/01 and 42/51, the ExA note the statement from the Updated Schedule of CA cited above but also note that there has been no corroboration from LCC.
- 8.18.98 We also note that REP1-037, which is construed by the ExA as an objection to CA has not been withdrawn. In coming to our conclusion on these plots, we note that the points raised by the agent for LCC (County Farms) have been considered elsewhere in this report and in each case, after detailed examination, we have considered that the approach taken by the Applicant to each of these issues is satisfactory.
- 8.18.99 ***The ExA recommend that, in light of the statement in the final Updated Schedule of CA, the SoS should seek an updated joint position statement from the Applicant and LCC (County Farms) on progress in reaching agreement.***
- 8.18.100 However, at the close of the Examination LCC's representations in respect of its holding as LCC County Farms had not been withdrawn.
- 8.18.101 In coming to our conclusion, we had regard to the issues raised by LCC in respect of these plots and to our conclusions, in general, on these issues in previous sections of this Chapter. Additionally, we consider that there is no evidence specific to these plots that demonstrates that the public benefits that would be derived from the compulsory acquisition of these plots will not outweigh the private loss that would be suffered by those whose land is to be acquired.
- 8.18.102 Therefore, the ExA recommend that the request for powers of CA over plots 20/17, 20/18, 20/19, 21/01, 21/02, 21/03, 21/04, 21/05, 21/06, 22/19, 22/20, 23/01, 27/08, 27/09, 27/10, 27/12, 27/13, 28/01, 38/10, 38/11, 39/01 and 42/51 be granted.
- 8.18.103 The case in respect of Plot 01/01 has been considered above in this Chapter.
- 8.18.104 We have not received any representations specifically referencing in those plots identified in the Book of Reference Revision C [REP7-055] as being in respect of adopted highway and/or public right of way.

8.18.105 However, we note that in LCC's WR [REP3-024] they set out at para 21-32 why they do not consider the Applicant has justified the CA sought in the order. We also note that in LCC's response to matters raised at the second round of hearings [REP5-005] (Feb 2016) they say at para 50 and 51 that:

"LCC raised the matter of the justification for the use of Compulsory acquisition powers during the response it made following the earlier set of Hearings..... LCC remains of the view, however that there are many significant matters remaining in relation to the use of the Compulsory acquisition powers and whether they have been justified."

8.18.106 In coming to our conclusion on those plots in which LCC has an interest as being in respect of adopted highway and/or public right of way, we had regard to the issues raised by LCC in respect of these plots and to our conclusions, in general, on these issues in previous sections of this Chapter.

8.18.107 Additionally, we consider that there is no evidence specific to these plots that demonstrates that the public benefits that would be derived from the compulsory acquisition of these plots will not outweigh the private loss that would be suffered by those whose land is to be acquired.

8.18.108 Therefore, the ExA recommend that the request for powers of CA over plots in which LCC has an interest as being in respect of adopted highway and/or public right of way be granted.

8.19 THE EXA'S CONCLUSIONS ON PUBLIC BENEFIT

8.19.1 The ExA concludes that that there is a clear public benefit and in general, that benefit does outweigh the loss that would be suffered by those whose land is affected.

8.19.2 Having considered the cases for individual plots in the preceding Section of this Chapter, the ExA further conclude that the public benefit derived from the CA does outweigh any private loss in respect of all of the land over which CA is sought. The ExA therefore conclude that there is a compelling case in the public interest for the land to be acquired compulsorily.

8.20 THE EXA'S OVERALL CA CONCLUSIONS

8.20.1 The ExA's approach to the question whether and what compulsory acquisition powers we should recommend to the SoS to grant has been to seek to apply the relevant sections of the Act, notably s122 and s123, the 2013 DCLG CA Guidance, and the Human Rights Act 1998; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

- 8.20.2 The draft DCO deals with both the development itself and CA powers. The case for compulsory acquisition powers cannot properly be considered unless and until the Panel has formed a view on the case for the development overall, and the consideration of the CA issues must be consistent with that view.
- 8.20.3 The ExA has shown in the Conclusion to Chapter 7 that we have reached the view that development consent should be granted. The question therefore that the ExA addresses here is the extent to which, in the light of the factors set out above, the case is made for CA powers necessary to enable the development to proceed.
- 8.20.4 ***The ExA conclude that the case has been made for CA and the conditions set out in statute and guidance have been fulfilled in all respects.*** The ExA also conclude that the case for temporary possession powers has been made and recommend that they are included in the recommended DCO as discussed in the next chapter.

9 DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

- 9.1.1 A draft Development Consent Order (DCO) [APP-010] and Explanatory Memorandum (EM) [APP-011] were submitted with Triton Knoll Offshore Wind Farm Ltd's (TKOWFL) application for development consent. The Explanatory Memorandum describes the purpose and form of the draft DCO and each of its articles and schedules.
- 9.1.2 Subsequent to this, the Examining Authority (ExA) accepted [PD-008] a revised version into the Examination. This differed from the originally submitted only in that some minor typographical errors have been corrected in this version. They do not change any provision in the draft DCO.
- 9.1.3 This was published on 9 September 2015 [APP-128]. It is this version that is used as the base comparator version when detailing changes that occurred to the draft DCO and Deemed Marine Licence (DML) during the Examination.
- 9.1.4 During the Examination, five further drafts of the DCO were submitted by the Applicant incorporating progressive changes arising from the ExA's written questions, points made by Interested Parties (IPs) and from the proceedings at the Issue Specific Hearings (ISH).
- 9.1.5 The interim versions of the draft DCO were:
- Revision C at D2 [REP2-021]
 - Revision D at D3 [REP3-043]
 - Revision E at D4 [REP4-042]
 - Revision F at D5 [REP5-035]
- 9.1.6 In addition, the Applicant submitted comparison versions showing changes between Revisions and it submitted DCO Schedules of Amendments at D2, D3, D4 and D5 (REP2-023, REP3-046, REP4-045 and REP5-038) and DCO Schedules of Amendments Explanatory Documents at D3, D4 and D5 (REP3-047, REP4-046 and REP5-039).
- 9.1.7 The final documentation related to the draft DCO submitted by the Applicant for D7 consisted of:
- Applicant's Final Draft DCO and Deemed Marine Licence (DML) (Revision G) [REP7-018];
 - Final Draft DCO and Deemed Marine Licence - Comparison of Revision F and Revision G [REP7-020];
 - Final Draft DCO and Deemed Marine Licence - Comparison of Revision B and Revision G [REP7-021]
 - Final Draft DCO and Deemed Marine Licence - Comparison of Revision A and Revision G [REP7-022] DCO Schedule of Amendments [REP7-023]; and
 - Updated Explanatory Memorandum - Revision B [REP7-019].

- 9.1.8 It is this set of documentation, particularly the Applicant's Final Draft DCO and Deemed Marine Licence (DML) (Revision G) [REP7-018] that is used as the basis for reporting in this Chapter of the Recommendation Report.
- 9.1.9 In addition, the ExA prepared and circulated a Consultation Draft Development Consent Order in the form of a table of recommended changes on 10 February 2016 [PD-017].
- 9.1.10 The Applicant responded to our Consultation Draft DCO at D6 [REP6-017].
- 9.1.11 This chapter highlights any differences between the ExA's recommended version and the Applicant's final draft DCO (Revision G) and makes recommendations for further amendments or additions to the draft to DCO to form the recommended draft DCO contained at Appendix D to this Recommendation Report.
- 9.1.12 A schedule of the recommended changes is set out at the end of this Chapter.
- 9.1.13 Having taken into account all the iterations of the draft DCO throughout the Examination and all the submissions made and guidance given, ***the ExA recommends the DCO in the form attached at Appendix D to this report.***
- 9.1.14 There have been a significant number of changes during the evolution of the draft DCO and DML. Leaving aside those that are either drafting changes or are so minor as to have no effect on the impact or effectiveness of the DCO, the main ones are related to the following parts of the draft DCO:

Part 1

- Article 2 Definitions
- "commencement"
- External electrical equipment
- Limits of deviation (including Art 3)
- Unlicensed works

Part 2

- Article 3 - Development consent etc. granted by the Order
- Article 5 - Transfer of benefit of Order
- Article 6 - Application and modification of legislative provisions

Part 3

- Article 9 - Temporary stopping up of streets

Part 4

- Article 13 - Authority to survey and investigate the land
- Article 14 - Removal of human remains

Part 5

- Former Article 23 - Apparatus and rights of statutory undertakers in stopped up streets

Part 7 - Miscellaneous and general

- Article 35 - Felling or lopping of trees and removal of hedgerows, including
- Article 2 - Interpretation and Requirement 13 - Ecological management plan and removal of hedgerows (including Requirement 21)
- Article 36 - Certification of plans etc.

Schedule 1

Part 1

Part 2

Part 3 – Requirements

- Interpretation
- Requirement 3 - Detailed offshore design parameters
- Requirement 4 - Offshore decommissioning
- Requirement 5 - Detailed design onshore
- Requirement 7 - Implementation and maintenance of landscaping
- Requirement 9 - Fencing and other means of enclosure
- Requirement 12 - Archaeology
- Requirement 14 - Code of construction practice (onshore)
- Requirement 15 - Unexpected contamination
- Requirement 16 - Control of operational artificial light emissions
- Requirement 17 - Construction hours
- Requirement 19 - Construction traffic
- Requirement 20 – European protected species
- Requirement 21 - Restoration of land used temporarily for construction
- Requirement 22 -Onshore decommissioning
- Requirement 23 - Local employment

Schedule 5 - Land in which only new rights etc. may be acquired

- Land in which only new rights etc. may be acquired (the Restrictive Covenant)

Schedule 7 - Land of which temporary possession may be taken

- Insertion of Plot 39/05

Schedule 8 - Protective provisions

Schedule 9 - Deemed licence under the Marine and Coastal Access Act 2009

Part 2 - Conditions

- Condition 2 - Notifications and inspections
- Condition 4 - Aids to navigation
- Condition 5 - Chemicals, drilling and debris
- Condition 7 - Pre-construction plans and documentation
- Former Condition 11 - Equipment and operation of vessels engaged in licensed activities
- Condition 13 - Post construction
- Condition 14 - Bathing Water Quality

Schedule 11 - Discharge of Requirements

- 5 - Fees

9.1.15 The items listed above are considered below and form the structure of this Chapter of the Recommendation Report.

STRUCTURE OF DCO

9.1.16 The draft DCO consists of seven parts and eleven schedules, the content of each are set out below:

- Part 1 - this part contains the preliminary provisions providing for commencement, citation and interpretation contained in Articles 1 and 2;
- Part 2 - this part sets out the works provisions, with Article 3 to 7 containing the principal powers;
- Part 3 - this part sets out the provisions for works to streets in Articles 8 to 11;
- Part 4 - this part sets out the supplemental powers in relation to watercourses, surveying and the removal of human remains in Articles 12 to 14;
- Part 5 - this part contains the powers in relation to acquisition and possession of land, with Articles 15 to 31;
- Part 6 - this part relates to the operations under the deemed marine licence contained in Article 32;
- Part 7 - this part contains a number of miscellaneous and general provisions in Articles 33 to 41;
- Schedule 1 sets out the Authorised Project and the requirements; and
- Schedules - Schedules 2 to 11 of the DCO contain information referred to in the articles to the Order such as Streets subject to street works and to be stopped up, access to works, land in which one new rights may be required, modification of compensation and compulsory purchase, land of which temporary possession may be taken, provisions for the protection of specified undertakers, deemed marine licences, removal of hedgerows and discharge of requirements.

9.2 ARTICLES

9.2.1 The draft DCO seeks to grant development consent for, and authorise the construction, operation and maintenance of the electrical system

works required for the TKOWF together with all necessary and associated development.

9.2.2 It authorises the compulsory acquisition of land and rights in land, as well as overriding easements and other rights and authorises the discharge of water into watercourses and public sewers and drains. The DCO imposes requirements in connection with the development for which it grants development consent.

9.2.3 The DCO also grants a DML for the marine licensable activities, being the deposit of substances and articles and the carrying out of works involved in the construction of the electrical works and associated development.

PART 1

Article 2 - Definitions

"ancillary works", "associated development" and "authorised development"

9.2.4 First, FWQ DCO 1.1, DCO 1.2 and DCO 1.3 [PD-009] and ISH into the draft DCO on 12 November 2015 [EV-016], we queried the differentiation between the terms "ancillary works", "associated development" and "authorised development".

9.2.5 Our particular concern related to the need or otherwise to have a definition for "associated development" given that "authorised development" is defined in article 2 as the development and associated development described in Part 1 of Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the Planning Act 2008 (as amended) (PA 2008).

9.2.6 Schedule 1 section 1 relates to the development for which development consent is required pursuant to the s.35 direction and comprises work no 1 – 53 and section 2 relates to associated development which comprises works no 54-56.

9.2.7 In our FWQ 1.2 [PD-009] we requested a definition of "associated development" as this phrase occurs in a number of parts of the draft DCO.

9.2.8 In its response [REP1-044], the Applicant stated that it did not consider it necessary to have such a definition but suggested a form of words should one be required.

9.2.9 ***The ExA have considered this and do not consider that a definition of "associated development" is useful or necessary.***

9.2.10 Second, in order to ensure that no works could be undertaken which had not been subject to environmental assessment, we suggested in our question DCO 1.1 [PD-009] the phrase "*and which fall within the*

scope of the work assessed by the environmental statement" should be added to the definition of "ancillary works".

9.2.11 In response, the Applicant agreed that this phrase should be inserted in the draft DCO but suggested placing it at the start of Schedule 1 Part 2. This phrase is in the recommended draft DCO at Appendix D.

9.2.12 ***The ExA recommend that the addition of the phrase "and which fall within the scope of the work assessed by the environmental statement" into Schedule 1 Part 2 is helpful in ensure that no works could be undertaken which had not been subject to environmental assessment and should, therefore, be retained in the final DCO as approved by the Secretary of State.***

"commencement"

9.2.13 We pursued a number of points during the course of the Examination in relation to the definition of "commencement". In particular, we were concerned that some activities that were excluded from the definition as set out in the interpretation section could result in work being undertaken before the need for certain requirements to be discharged by the relevant authority.

9.2.14 We discussed these points through our FWQ DCO 1.1 [PD-009], DCO 2.5, DCO 2.6, DCO 2.7, and SWQ DCO 2.8 [PD-014] and through discussion at both the November 2015 [EV-016] and 22 January 2016 DCO ISHs [EV-047].

9.2.15 Our initial concerns were set out in our FWQ DCO 1.4 [PD-009]. We focused on the following exclusions from the definition of "commence" as set out in version A of the draft DCO [APP-128]:

- demolition work;
- archaeological investigations;
- the removal of hedgerows;
- remedial work in respect of any contamination or other adverse ground conditions; and
- other exclusions including the erection of any temporary means of enclosure; site clearance; environmental surveys; investigations for the purpose of assessing ground conditions; and the diversion and laying of services.

9.2.16 These are considered in turn below.

"Commencement" - Demolition work

9.2.17 The definition excludes demolition work. We were concerned about the possible conflict between this exclusion and Requirement 14(1), which prevents commencement until, for that stage, a code of construction practice has been approved.

9.2.18 We examined this at the November 2015 ISH on the draft DCO [EV-016]. In its Written Summary of The Applicant's Oral Case put at DCO ISH on the 12 November 2015, submitted as Appendix 1 of the Applicant's response to D3 [REP3-037] the Applicant stated that:

"The Applicant agreed to review the wording and consider in light of the apparent inconsistency with the plans and schemes secured by the Requirements in Part 3 of Schedule 1 of the draft DCO. The Applicant has reviewed the drafting of this definition and has proposed ... the deletion of reference to "demolition work".

9.2.19 The Panel's recommended draft DCO (Appendix D) excludes "demolition" with the Applicant explaining in its response [REP4-027] to our question DCO 2.5 that it had proposed the deletion of "demolition work" on the basis that no demolition work is proposed for the carrying out of the authorised development.

9.2.20 ***The ExA are satisfied with that explanation and the consequent removal of this phrase.***

"Commencement" - archaeological investigations

9.2.21 The definition excludes archaeological investigations. This issue is dealt with in when we consider Article 35, below.

"Commencement" - the removal of hedgerows

9.2.22 The definition excludes the removal of hedgerows. We consider this in our related consideration of Article 35 - Felling or lopping of trees and removal of hedgerows, below.

"Commencement" - remedial work in respect of any contamination or other adverse ground conditions

9.2.23 The definition excluded remedial work in respect of any contamination or other adverse ground conditions. We were concerned about the possible conflict between this exclusion and Requirement 14 which requires that a code of construction practice, including such matters as soil and waste management, is submitted and approved before commencement of each stage.

9.2.24 The Applicant responded [REP1-044] that:

"Whilst the environmental surveys undertaken have not identified any areas of contamination, in certain circumstances it could be that such works would need to be undertaken to make a site safe [both in terms of contamination and ground conditions] before any further surveys or preliminary work can take place. It is to protect against this position that remedial works have been excluded."

9.2.25 We examined this at the November 2015 ISH on the draft DCO [EV-016]. In its Written Summary of The Applicant's Oral Case put at DCO Issue Specific Hearing on the 12 November 2015, submitted as _____

Appendix 1 of the Applicant's response to D3 [REP3-037] the Applicant stated that:

"The Applicant agreed to review the wording and consider in light of the apparent inconsistency with the plans and schemes secured by the Requirements in Part 3 of Schedule 1 of the draft DCO. The Applicant has reviewed the drafting of this definition and has proposed ... the deletion of reference to ... "remedial work in respect of any contamination or other adverse ground conditions".

9.2.26 The Applicant stated in its response [REP4-027] to our question DCO 2.5 that it has proposed the deletion of "remedial work in respect of any contamination or other adverse ground condition" following discussions with the Environment Agency in relation to their concerns regarding contamination.

9.2.27 ***The ExA are satisfied with that explanation and the consequent removal of this phrase.***

"Commencement" - temporary means of enclosure

9.2.28 The definition excluded the erection of any temporary means of enclosure. We were concerned about the possible conflict between this exclusion and Requirement 9(1), which states that no stage of the onshore works shall commence until for that stage written details of all proposed permanent or temporary fences, walls or other means of enclosure have been submitted to and approved by the relevant planning authority.

9.2.29 The Applicant stated in its response [REP4-027] to our question DCO 2.5 that it desired to retain this phrase on the basis that:

"The temporary means of enclosure referred to in this definition relate to temporary means of enclosure as required for the carrying out of any of those activities listed as being excluded from commencement. All other temporary means of enclosure must be approved in accordance with Requirement 9."

9.2.30 In order to make this clear, the Applicant inserted the phrase "related to pre-construction archaeological investigations and environmental surveys" after "temporary means of enclosure".

9.2.31 ***The ExA are satisfied with this explanation and this amendment.***

"Commencement" - other exclusions

9.2.32 In our question DCO 1.4 [PD-009] we asked the Applicant to justify the exclusion of "site clearance", "environmental surveys", "investigations for the purpose of assessing ground conditions" and "the diversion and laying of services" from the definition of "commencement".

- 9.2.33 We discussed all the above concerns at the November 2015 ISH on the draft DCO [EV-016].
- 9.2.34 In paragraph 1.6 of its Written Summary of *The Applicant's Oral Case put at DCO Issue Specific Hearing on the 12 November 2015*, submitted as Appendix 1 of the Applicant's response to Deadline 3 [REP3-037] the Applicant stated that:

"The Applicant is considering the drafting of this definition in the context of the plans and schemes secured by the Requirements and is discussing with the relevant consultees appropriate wording that would allow necessary surveys that will inform the discharge of those requirements to be undertaken with the appropriate controls in place."

- 9.2.35 The Applicant then stated in its response [REP4-027] to our question DCO 2.5 that it desired to retain "site clearance", "environmental surveys", "investigations for the purpose of assessing ground conditions" and "the diversion and laying of services" in the definition of "commencement" and gave explanations for the efficacy of each of these in a table in its response.

The ExA are satisfied with those explanations.

- 9.2.36 The ExA conclude that the final changes made to various aspects of the definition of "commencement" serve to clarify that definition and to adequately limit the activities that are excluded.
- 9.2.37 Therefore, ***the ExA recommend that the definition of "commencement" should be retained in the final DCO should it be consented by the Sos as drafted in our recommended draft DCO.***

"Commencement" - construction compound

- 9.2.38 Following our question DCO 1.5 [PD-009] and discussion at the November 2015 ISH on the draft DCO [EV-016], the Applicant modified the definition of "construction compound" to make it clear that these were always temporary.
- 9.2.39 ***The ExA recommend that the addition of the word "temporary" into the definition of construction compound is helpful in clarifying the status of these works and should, therefore, be retained in the final DCO should it be consented by the SoS.***

"Commencement" - Electrical circuit

- 9.2.40 Our FWQ DCO 1.7 [PD-009] queried the use of overlapping phrases such as "electrical circuit" and "cable circuit". In response [REP1-044], the Applicant put forward a revision of the definition of "electrical circuit" explaining that:

"There is a distinction between the phraseology used in respect of the onshore works and the offshore works which reflects the differences in the required electrical infrastructure. In respect of the offshore works 'cable' and 'cable circuit' can be used interchangeably whereas for the onshore works 'electrical circuits' is the correct term. The definition of electrical circuits will be revised as follows to clarify any potential confusion."

- 9.2.41 ***The ExA recommend that the revision of the definition of "electrical circuit" is helpful in removing uncertainty over differing terms and should, therefore, be retained in the final DCO should it be consented by the SoS.***

"Commencement" - External electrical equipment

- 9.2.42 We considered the need for a definition of the term "external electrical equipment". In its response to our question LV 2.6 [REP4-027] the Applicant stated that it did not consider that further clarification of the terms 'Electrical Transmission Components' and 'external electrical equipment' is required as the terms have the same meaning. However, it did put forward a definition of "external electrical equipment" should the ExA feel that a definition is required in Article 2.

- 9.2.43 At the January 2016 ISH on the draft DCO [EV-047] we informed the Applicant that given that the term is used in a number of parts of the draft DCO, we do consider that such a definition would be useful.

- 9.2.44 In paragraphs 1.56 and 1.6 of its Written Summary of the Oral Case put at the DCO Hearing held on 22 January submitted as Appendix 3 of the Applicant's Response to Deadline 5 [REP5-016] the Applicant stated that:

"The Applicant confirms that the following definition would be included in the draft DCO submitted for Deadline 5."

- 9.2.45 This amendment was made at D5 [REP5-035] and the ExA's recommended draft DCO at Appendix A does contain a definition of the term "external electrical equipment".

- 9.2.46 ***The ExA recommend that the definition of the term "external electrical equipment" is retained in Article 2 of the final DCO should it be consented by the SoS.***

"Commencement" - Unlicensed works

- 9.2.47 The issue of the definition of "Unlicensed works" was raised by Boston Borough Council before the start of the Examination in its RR [RR-096]. We subsequently pursued this issue through our FWQ DCO 1.10 [PD-009] and SWQ DCO 2.25 [PD-014] and through the November 2015 ISH on the draft DCO [EV-016].

- 9.2.48 At the November 2015 DCO Hearing it was suggested that the definition of 'unlicensed works' could be clarified, perhaps drawing upon the definitions contained in section 3 of the *Bicker Fen Extension and Reconfiguration Note* [APP-136]. Consequently, the Applicant changed the definition of 'unlicensed works' to add a greater specificity in terms of the types of work this covered.
- 9.2.49 The ExA consider that the revised definition serves to indicate more clearly which activities are covered by this phrase.
- 9.2.50 The ExA consider that this definition clarifies the meaning of this term and, therefore, ***recommend that the definition of the term "unlicensed works" is retained in Article 2 of the final DCO should it be consented by the SoS.***

PART 2 - PRINCIPAL POWERS

Article 3 - Development consent etc. granted by the Order

"Limits of deviation"

- 9.2.51 The wording of Article 3 in version A of the Applicant's draft DCO [APP-128] stated that:
- "(2) Each of the scheduled works authorised by this Order shall only be constructed and maintained within the limits of deviation for that work.*
- (3) In carrying out any of the scheduled works the undertaker may deviate from the situations shown on the works plans and described in Schedule 1 to the extent of the limits of deviation."*
- 9.2.52 In our question DCO1.11 [PD-009] we sought a definition of "Limits of Deviation". In its response [REP1-044], the Applicant stated that:
- "The limits of deviation correspond with the Order limits. The Applicant therefore considers that a definition of 'limits with deviation' in Article 2 is not required. Additionally, the limits of deviation are not identified separately on the Works Plans as they replicate the Order limits which are shown."*
- 9.2.53 In the November 2015 ISH on the draft DCO [EV-016], we queried whether, if the limits of deviation are the same as the order limits, why the phrase "limits of deviation" is used at all in this article.
- 9.2.54 The Applicant inserted the definition "*limits of deviation means the Order limits as shown on the Order limits plans*" into the revised draft DCO [REP3-043].
- 9.2.55 We again queried the value of using the phrase "limits of deviation" in Article 3 and in Schedule 8, Part 1 instead of the phrase "Order limits" [SWQ DCO 2.9, PD-014] and examined this in the January 2016 ISH on the draft DCO [EV-047].

9.2.56 In this hearing we considered the wording put forward by the Applicant and incorporated in the Applicant's draft DCO (Revision F) [REP5-035] namely that:

"limits of deviation" means the situations as shown on the works plans."

9.2.57 In our consultation draft DCO [PD-017] we acknowledged that the revised definition does refer to the works plan but considered that the definition was not precise enough or effective in terms of, for example, Article 3 or Schedule 8, Part 1.

9.2.58 In that consultation draft we recommended an amendment to read:

"limits of deviation" means the limits for the scheduled works as shown on the works plans."

9.2.59 The Applicant's revision G of the draft DCO [REP7-018] contained this definition.

9.2.60 Given that Revision G adopted our recommended definition, ***the ExA recommend that the definition of the term "limits of deviation" is retained in Article 2 of the final DCO should it be consented by the SoS.***

9.2.61 A related issue raised in the Examination was the need or otherwise for specifying vertical limits of deviation. We raised this at the January 2016 ISH on the draft DCO [EV-047]. The Applicant responded in its Written Summary of the Oral Case put at the DCO Hearing on 22 January 2016 [REP5-016]. This states, first, that:

"None of the offshore wind farm development consent orders that include the relevant electrical system works include vertical limits of deviation for the underground electrical circuits. This includes the following offshore wind projects that include a significant length of underground cable circuits."

9.2.62 It then cites a number of consented DCOs in support of this assertion and went on to state that:

"To apply a blanket obligation would unnecessarily and unreasonably constrain the cable installation and would prevent the Applicant from burying the cables at a shallower depth where this is needed for technical or engineering reasons."

9.2.63 We note that the final Outline Construction Method Statement (Revision E) submitted as Appendix 29 to the Applicant's D7 submission [REP7-037] states at paragraph 5.5 that:

"Where open cut trenches are used for the excavation of the cable route, the following measures will be implemented:

- *Cable ducts will be laid at a minimum depth of 1.2 m below the ground surface in agricultural land.*
 - *Cables will be buried to a sufficient depth to allow maintenance and repair of drainage systems to be carried out in a safe and controlled manner.*
-"

9.2.64 The Outline Construction Method Statement [REP7-037] is secured in the recommended draft DCO (Appendix D) to this Report through Requirement 14 - *Code of construction practice (onshore)* - which requires that the CoCP must include construction method statements.

9.2.65 Having taken into account the evidence presented by the Applicant and having noted paragraph 5.5 in the Outline Construction Method Statement, ***the ExA do not consider it necessary or valuable to recommend the inclusion of vertical limits of deviation with our recommended draft DCO.***

Article 5 - Transfer of benefit of Order

9.2.66 There was significant discussion on aspects of Article 5 which relates to the Transfer of benefit of Order.

9.2.67 The Applicant has included additional wording as article 5(5) to disapply section 72 of the Marine and Coastal Access Act 2009 and we asked the Marine Management Organisation (MMO) to indicate its acceptance, or otherwise, of this change in our question DCO 2.12 [PD-014].

9.2.68 The MMO responded [REP4-012] that:

"The MMO re-iterate our objection to the details of Article 5 (Transfer of Benefit of Order) on the grounds that all transfers or grants should follow the Article 5 (1) regardless of whether it is the transferee / grantee is a section 6 licence holder. Our position has not deviated from those submitted within our written response to the Section 56 consultation dated 13 July 2015 (RR-190) ..., our written response to Deadline 1 dated 29 September 2015 (REP1-036), our oral representations given at the Issue Specific Hearing held on the 12 November 2015 (REP3-037) and our written response to Deadline 3 dated 25 November 2015 (REP3-010)."

9.2.69 However, the MMO's response went on to state that:

"... with specific regard to the inclusion of Article 5(5) we are content for this drafting to be included."

9.2.70 The MMO was unable to attend the January 2016 ISH on the DCO so submitted comments [EV-054]. With regard to Article 5, the MMO stated that 5(1)(b) and 5(4) could be interpreted to imply that the undertaker and the transferee may decide upon which regulatory obligations are transferred under the DML.

"The MMO therefore remain opposed to any partial transfer that is not in accordance with Article 5(1), and would have significant concerns if the new wording allowed the undertaker or transferee to choose which conditions they transfer."

and that:

"Our position on this issue has not altered, indeed we have the same concerns over partial transfer requests which are not conducted in accordance with 5(1), which provides regulatory oversight."

- 9.2.71 The Applicant inserted a new Sub-paragraph in its final draft version of the draft DCO (Revision G) [REP7-018]:

5(7) "The undertaker must notify the MMO at least 28 days before any transfer pursuant to paragraph 5(1) in a case where the Secretary of State's consent to such a transfer is not required (because paragraph 5(6) applies)."

- 9.2.72 In its response [REP6-009] to our third questions in which this wording was foreshadowed, the MMO stated that this wording would potentially aid its monitoring and compliance powers as a legislative body

- 9.2.73 We made a request for further information related to the transfer of the benefit of the Order at questions DCO 4.2, DCO 4.3 and DCO 4.4 [PD-019].

- 9.2.74 The MMO stated in its Response to the ExA's D7 [REP7-004] that it is:

"... content that Appendix 22: Revised Draft Development Consent Order and Deemed Marine Licence – Revision F (submitted by the applicant to the ExA on 1 February 2016) contains our preferred drafting of the Transfer of Benefit – not withstanding our continuing objection to any transfer, partial or otherwise, being permitted without an approval process.

The drafting ensures that any transfer is done in line with Article 5 - paragraph 1 and 5(4) ensures that all liabilities are transferred and that the "cherry picking" of conditions has thus been eliminated.

Additionally 5(7) 15 ensures that any transfer notification contains the information required by the MMO to carry out its legislative duties as designated by the Marine and Coastal Access Act 2009."

¹⁵ NB in revision G of the DCO this is now 5(8) because of the insertion of new 5(5)

9.2.75 Given all the above, ***the ExA concludes that Article 5 as drafted in our recommended draft DCO at Appendix D should be included in the final DCO should it be consented by the SoS.***

Article 6 - Application and modification of legislative provisions

9.2.76 Article 6 seeks to dis-apply specified parts of the following legislation:

- section 109 and the provision of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 of the Water Resources Act 1991; and
- section 23 and the provisions of any byelaws made under section 66 of the Land Drainage Act 1991

9.2.77 The consents, above, that the Applicant seeks to dis-apply are prescribed consents listed in schedule 1 of the *Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015* which came into force 6 April 2015 and applies to this application. This means that, for the final DCO to include the disapplication of these prescribed consents, express consent must be given by the consenting authority.

9.2.78 Additionally, this Article also seeks to dis-apply all the provisions of the Lindsey County Council (Sandhills) Act 1932.

9.2.79 These dis-applications are dealt with in order below.

9.2.80 In respect of parts of the Water Resources Act 1991 and of the Land Drainage Act 1991, the Applicant has sought to justify this in paragraph 4.9 of the updated Explanatory Memorandum [REP7-019] by stating that:

"There are consents for activities which may be a necessary part of the project. The Order disapplies this requirement for in-principle consent in order to ensure that the project can proceed and instead provides for approval of detailed plans in the protective provisions for the Environment Agency and the relevant drainage authorities in Schedule 8."

9.2.81 The EA provided a *Letter of consent under s150 Planning Act 2008* [REP6-040] which stated that it confirms that:

"... the Environment Agency gives consent under s150 Planning Act 2008 to the dis-application of the legislation listed in Article 6 of the draft DCO Revision F - REP5-035 - submitted by the applicant on 1 February 2016.

This consent is conditional on the inclusion of Protective Provisions in the form (subject to any minor corrections) of the draft Protective Provisions set out in Schedule 8 Part 1 of the draft DCO Revision F - REP-035 - within any DCO granted by the Secretary of State pursuant to the above application."

9.2.82 With reference to the second paragraph of this consent, in its Final submission- Submission for D8 of 29 February 2016 [REP8-014], the EA confirmed that

"... we have now reached agreement with the Applicant in respect of all matters of environmental protection and regulation, the drafting of protective provisions and restrictive covenants and matters pertaining to the Environment Agency's land interests. Accordingly, the Environment Agency, in its capacity as a Statutory Consultee and Statutory Undertaker, withdraws the objection made to the proposal"

9.2.83 The Applicant submitted a SoCG between TKOWFL and Black Sluice Internal Drainage Board, Lindsey Marsh Drainage Board and Witham Fourth District Internal Drainage Board as Appendix 8 of the Applicant's Response to D8 [REP8-040]. This stated in paragraph 4.2 that:

"It is agreed that there is no objection in principle to the inclusion of Article 6 in the draft DCO, and the IDBs thereby agree to the disaplication of the legislative provisions relevant to them under the Land Drainage Act 1991 (as amended), subject to the inclusion of Protective Provisions as set out within Schedule 8, Part 1 of the draft DCO (Revision F)."

9.2.84 We note, in respect to the final caveat, above, that the Protective Provisions for the Environment Agency and drainage authorities contained at Part 1 of Schedule 8 of the ExA's recommended draft DCO contained at Appendix D are the same as those contained at Revision F.

Lindsey County Council (Sandhills) Act 1932

9.2.85 The existence and potential relevance of the Lindsey County Council (Sandhills) Act 1932 was brought to the attention of the ExA by Lincolnshire County Council in the November 2015 ISH on the draft DCO and copy of the full document [REP3-022] was submitted by Lincolnshire County Council for deadline 3 on 30 November 2015.

9.2.86 This Act was an early example of planning legislation and sought to:

"provide for regulating certain lands in Part of Lindsey Lincolnshire known as the Sandhills to confer powers upon the county of the said Part of Lindsey with reference thereto and other purposes." [REP3-022]

9.2.87 The relevance of the Lindsey County Council Sandhills Act 1932 to special category land defined under s132 of PA2008 (plot 01/01) is considered in Chapter 8, above.

9.2.88 The updated Explanatory Memorandum [REP7-019] states that:

"Paragraph (3) dis-applies the Lindsay County Council (Sandhills) Act 1932 which (inter alia) restricts the disposal of land assumed to comprise open space and the erection of structures upon it."

9.2.89 LCC confirmed in paragraph 6 of its *Response of the Lincolnshire County Council to Matters Raised at the Second Round of Hearings, Submitted for Deadline 5 (01/02/2016)* [REP5-005] that:

"LCC agree to the inclusion of the Lindsey County Council (Sandhills Act) 1932 within Article 6 of the DCO and is aware of the consequences of this inclusion. The inclusion was suggested by LCC to ensure that the matter was fully dealt with."

9.2.90 In addition to these dis-applications, Article 6(1) seeks to modify Regulation 6 of the Hedgerows Regulations 1997.

9.2.91 The Applicant has sought to justify this in paragraph 4.9 of the updated Explanatory Memorandum [REP7-019] by stating that this:

"... provides for the modification of Regulation 6(1)(j) of the Hedgerows Regulations 1997 to provide that removal of any hedgerow to which the Regulations apply is permitted for carrying out development which has been authorised by a Development Consent Order made pursuant to the 2008 Act."

9.2.92 In our question DCO 1.15 [PD-009] we asked both Boston Borough Council (BBC) and East Lindsey District Council (ELDC) whether they are content that this provision should be modified and whether they are content that this provision should apply to all land within the Order Limits.

9.2.93 In its response, BBC [REP1-002] stated that it has no objection to this implication of the DCO. In its response [REP1-004], ELDC stated that it is content with both points.

9.2.94 As shown above the dis-applications and the modifications of legislation have been expressly consented by the relevant authorities.

9.2.95 Therefore, ***the ExA recommend that the provisions of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 have been fulfilled and that Article 6 should be included in the final DCO should it be consented by the SoS.***

PART 3 - STREETS

Article 9 - Temporary stopping up of streets

9.2.96 Article 9(4)(a) requires that the relevant planning authority shall be notified of the temporary stopping up of any street. In our question DCO 1.16 [PD-009] we asked the Applicant whether a timescale should be set for this notification. The Applicant responded that:

"No request has been made by the relevant planning authorities for the inclusion of a time period for notification ... however the Applicant would have no objection to agreeing a notification period at the request of the relevant planning authorities."

- 9.2.97 BBC stated in paragraph 2.7 of its *Summary of oral cases put at November Hearings 2015* [REP3-020] that it is content with a 28-day notification period and ELDC responded in its response [REP4-004] to our question DCO 2.14 that, as considered below, that it is content to see the Highway Authority take the lead on this issue.
- 9.2.98 In paragraph 1.20 of its *Written Summary of The Applicant's Oral Case put at DCO Issue Specific Hearing on the 12 November 2015* [REP3-037] that Applicant stated that it had :
- "... noted the request by the relevant planning authorities for 28 days' notice, and is discussing this separately with them and will update the ExA on any agreement in relation to the timing of notice..."*
- 9.2.99 We asked the local planning authorities in our second written questions [PD-014] whether they agreed with this time limit. ELDC responded [REP4-004] that it is content to see the Highway Authority take the lead on this issue. Whilst it would wish to be consulted, it is content for the Highway Authority to deal with it.
- 9.2.100 LCC responded [REP4-009] stating that:
- "... the County Council require a minimum of 13 weeks notification of any proposal to temporarily stop up any highway including public rights of way, to allow for the necessary statutory processes to be followed."*
- 9.2.101 In paragraph 1.12 of its Response to submission from BBC at D3 submitted as Appendix 1 of the Applicant's Response to D4 [REP4-027] the Applicant stated that it
- "... would note that it has ... agreed with the Council, in a telecom on the 21 December 2015, that this time period could appropriately be reduced to 14, rather than 28 days."*
- 9.2.102 Consequently at D4 [REP4-042], the Applicant inserted a sub-paragraph into its draft DCO (Revision E) setting a timescale of 14 days for notification under this Article.
- 9.2.103 Article 9(5) in the Applicant's final draft DCO (Revision G) [REP7-018] retains the timescale of 14 days *"... save as agreed in advance by the relevant planning authority ..."*.
- 9.2.104 Given the statements from the local authorities quoted above, the ExA conclude that Article 9 as worded in our recommended DCO at Appendix D should be included in the final DCO should this be consented by the SoS.

9.2.105 In a related issue, we considered the roles and responsibilities of the Highways Authority - LCC - in relation to this Article. In its response [REP4-009] to our question DCO 2.15 stated:

"The County Council is of the view that the wording should be amended to allow the County Council to be informed of any works or stopping up of highways and that the district councils should be notified of any such requests. In addition in order to perform its statutory duties under highway legislation in particular the requirements to manage the road network within their area under the Traffic Management Act 2004, the County Council require a minimum of 13 weeks notification of any proposal to temporarily stop up any highway including public rights of way, to allow for the necessary statutory processes to be followed."

9.2.106 As stated above, ELDC stated in its response to our question DCO 2.14 [REP4-004] that:

"ELDC are content to see the Highway Authority take the lead on this issue. Whilst ELDC would wish to be consulted, we are content for the Highway Authority to deal with it."

9.2.107 However, BBC stated in its response to our question DCO 2.14 [REP4-024] that:

"In this instance it is the Council's view that this is not about taking on a highway authority function but that it is better procedurally that all parties know that there is a single consenting/ discharging authority for each district. In any event, there is no question in this instance that the precise requirement would not have been discussed in advance between the applicant and the highway authority direct - but any actual or future notification(s) would be all held and recorded in one place."

9.2.108 LCC did not cover this Article in its agreed but unsigned SoCG [REP8-043].

9.2.109 ***The ExA recommend that Article 9(4), with its reference to '14 days' be retained in the final DCO should it be consented by the SoS.***

PART 4 - SUPPLEMENTAL POWERS

Article 13 - Authority to survey and investigate the land

9.2.110 Article 13 authorises the undertaker to take certain specified actions in relation to surveying and investigating land.

9.2.111 Our first questions related to this Article focused on aspects of CA. These aspects are considered in Chapter 9, above. CA 1.16, CA 1.17

9.2.112 We received a representation from LCCI [REP3-024] which states that:

"... the effect of Article 13 is to give power not only to the Order Lands but also for other areas of land to be the subject of survey and investigation; although Article 13(5) would prevent trial holes without the Highway Authorities permission."

9.2.113 We, therefore, asked the Applicant in our question DCO 2.16 [PD-014] why the phrase "*any land which may be affected by the authorised project*" has been used rather than simply stating "*any land shown within the Order limits*".

9.2.114 In its response [REP4-027], the Applicant cited Provision 16 of The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (No. 2265) and stated that:

"The Applicant has not identified any land outside of the Order limits to which it may need to gain access, however, in common with other statutory undertakers, should the proposed development have an affect (sic) on land which is outside of the Order limits, the Applicant requires a corresponding ability to access that land to investigate and/or survey to understand the nature of the affect and ascertain what, if any, mitigation measures or remedial measures might be required."

and that:

"This power is necessary in the interests of all concerned, including the relevant landowner; without it, it would be necessary for the Applicant to initiate what might be potentially lengthy procedures under either the Planning Act 2008 or the Electricity Act 1989 in order to gain access to land".

and that:

"It should be noted that this is not an unqualified power of entry. Prior written notice must first be given before entry is taken and the Applicant is under an obligation to pay compensation in the event of any loss or damage to the landowner or occupier."

9.2.115 In coming to our conclusions, we acknowledge the existence of this phrase in the Model provisions, but note that from 1 April 2012 these provisions no longer have any formal status. We also acknowledge that the power to enter on any land is constrained by the phrase "*which may be affected by the authorised project*" and is constrained in some other respects by sub-clauses in this Article.

9.2.116 We also note the reasons given by the Applicant for requiring this phrase to remain in this Article and are satisfied that these reasons are relevant and valid.

9.2.117 In respect of a related matter relevant to Article 13, The ExA notes that, Plots 03/07, 05/34, 07/07, 11/14, 12/19, 12/23, 15/14, 33/08 and 33/09, coloured green ('Environmental Survey Access') on the

Land Plans is land which, according to the BoR – *Revision C Appendix 47 of the Applicant's Response to Deadline 7* [REP7-055] will only be subject to the Article 13 survey power. Thus they are excluded from other potential powers of CA by virtue of the description of them in the BoR and land plans.

- 9.2.118 In respect of these plots, we asked at question DCO 3.11 [PD-016] whether the Applicant was content that Article 13 grants the undertaker a right of access over land where this is required to reach the land on which they need to undertake the environmental surveys.
- 9.2.119 In response [REP6-016] the Applicant proposed an amendment to the descriptions in the Book of Reference (at Appendix 3 to this Response) so as to accord with the powers conferred by Article 13 as follows:
- 9.2.120 *"New rights (pursuant to Article 13) to survey and investigate, and to take entry for that purpose, over..."*
- 9.2.121 Given that the Applicant is satisfied that this drafting would authorise the necessary rights they require we do not propose any amendments to this and ***the ExA conclude that we are satisfied with the evidence put forward and recommend that Article 13 remain in final DCO should it be consented by the SoS as drafted in our recommended draft DCO.***

Article 14 - Removal of human remains

- 9.2.122 Article 14 was inserted into the draft DCO by the Applicant in its version F of the draft DCO submitted as Appendix 23 of the Applicant's Response to D5 [REP5-035] dated 1 February 2016. This followed a request by the ExA at the January 2016 DCO ISH [EV-047].
- 9.2.123 Our concern was that, whilst we understood the Applicant's desire not to include extraneous provisions in the draft DCO [REP5-016], we felt that this would be potentially useful, particularly given both the length and extent of the works and the fact that, as discussed above, there is still the need for further surveys to be undertaken in advance of commencement should the project be permitted.
- 9.2.124 We also took into consideration the Applicant's understanding that if, as cited in para 1.22 of the Sibsey Lancaster Memorial Clarification Note [REP1-054], any military remains might be found in the vicinity of the Lancaster Memorial, there is a separate process governed by Protection of Military Remains Act 1986. However, we note that this would not apply if non-military remains were found anywhere along the cable route.
- 9.2.125 It was felt by the ExA that the inclusion of such an Article would provide comfort and security for all in relation to how such findings would be dealt with.

- 9.2.126 For the reasons set out in the preceding paragraphs, ***the ExA recommend that Article 14 should be included in the final DCO should it be consented by the Secretary of State.***

PART 5 - POWERS OF ACQUISITION

- 9.2.127 Aspects of Compulsory Acquisition relating to the Articles in Part 5 are considered in Chapter 8, above.

Former Article 23 - Apparatus and rights of statutory undertakers in stopped up streets

- 9.2.128 The Applicant deleted former Article 23 between Revision B [APP-128] and Revision C [REP2-021] of the draft DCO submitted at D2.
- 9.2.129 The Schedule of DCO Amendments, submitted at D2 [REP2-023] stated that this was done because the former Article was relevant to permanently stopped up streets only and the Applicant is proposing temporarily stopping up streets only.
- 9.2.130 Article 9 deals with the temporary stopping up of streets. However, we expressed our concern at the November 2015 ISH on the draft DCO [EV-016] that the first two sections of Article 23 served to protect the rights of, and place an obligation on, statutory undertakers in temporarily stopped up streets.
- 9.2.131 The first two sections of former Article 23 stated that:

"23.— Where a street is temporarily stopped up under article 9 (temporary stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

- 9.2.132 *(2) Where a street is stopped up under article 9 (temporary stopping up of streets), any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker shall—*

(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or

(b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a) above."

- 9.2.133 The Applicant did not cover this issue in its Written Summary of The Applicant's Oral Case put at the ISH on the draft DCO on the 12 November 2015 [REP3-037] and we note that Article 9 has not been amended by the Applicant to include the relevant original text from Article 23.

9.2.134 However, the removal of these phrases was done early on in the Examination and all the statutory undertakers covered by Protective Provisions have subsequently indicated that they are content with those provisions, as we note in Chapter 8, above.

9.2.135 ***The ExA are satisfied with the exclusion of former Article 23 from the final draft DCO should it be consented by the SoS.***

Article 25 - Temporary use of land for carrying out the authorised project

9.2.136 This Article is considered in Chapter 8, above, on Compulsory Acquisition.

9.2.137 For the reasons set out in that Chapter, ***the ExA recommend that Article 25 should be included in the final DCO should it be consented by the Secretary of State in the form included in the ExA's recommended draft DCO at Appendix D.***

PART 7 - MISCELLANEOUS AND GENERAL

Article 35 - Felling or lopping of trees and removal of hedgerows

9.2.138 Including Article 2 - Interpretation and Requirement 13 - Ecological management plan and removal of hedgerows (including Requirement 21)

9.2.139 In dealing with Article 35 in this Report, we also deal with the issue of the exclusion of the phrase "the removal of hedgerows" from the definition of "commence" in Article 2 and Requirement 13 - Ecological management plan and removal of hedgerows (including Requirement 21). The proposed modification of Regulation 6 of the Hedgerows Regulations 1997 has been considered earlier in this Chapter.

9.2.140 The definition of commence excludes the removal of hedgerows. We were concerned that the exclusions from the definition of commence would enable hedgerows to be removed other than in accordance with the EMP secured by requirement 13

9.2.141 As a consequence, the Applicant inserted a new sub-clause to R13 as included in its final draft DCO (Revision G) [REP7-018] which stated that

"Any hedgerow removal must be carried out in accordance with the details set out in the outline landscape strategy and ecological management plan."

9.2.142 We noted, in our question DCO 3.6 [PD-016], however, that paragraph 6.18 of the Outline Landscape and Ecological Management Plan [APP-019] stated that:

"Hedgerows which will have been removed during the construction period will be replanted, including on the cable route".

9.2.143 We were concerned that the inclusion of the phrase "during the construction period" could mean that this commitment to replanting in the Outline Landscape and Ecological Management Plan does not apply to those hedgerows removed pre-commencement. We therefore queried in our question DCO 3.6 [PD-016] whether the words "during the construction period" should be removed from paragraph 6.18 of the *Outline Landscape and Ecological Management Plan*.

9.2.144 In its response [REP6-016], the Applicant confirmed that the *Outline Landscape Strategy and Ecological Management Plan* (Revision C) submitted as Appendix 16 of the Applicant's Response to Deadline 6 had been updated to remove the phrase "during the construction period".

9.2.145 In this response, the Applicant also confirmed that the commitment to replant hedgerows applies to all hedgerows removed pre-commencement and equally to those hedgerows removed during construction.

9.2.146 The Applicant added an additional phrase to sub-clause 2 as included in its final draft DCO (Revision G) [REP7-018] stating that the ecological management plan must include ...:

"... measures to be taken to reinstate hedgerows on completion of the relevant stage of the onshore works."

9.2.147 In its response to our question DCO 3.6 [REP6-002], BBC stated that:

"The Council would observe that Requirement 13(2) requires the EMP to specify a hedgerow reinstatement timetable and this, the Council would suggest, is the mechanism to ensure all replacements, irrespective of when they are removed...pre-or post-commencement."

9.2.148 Given the above, ***the ExA recommend that Requirement 13(2) and 13(3) are included in the final DCO should it be consented by the SoS as drafted in our recommended draft DCO at Appendix D.***

Article 36 - Certification of plans etc.

9.2.149 Article 36 lists those plans and documents which the undertaker must submit to the Secretary of State copies for certification that they are true copies of the documents referred to in this Order. These are:

- (a) the works plans (Rev. C)
- (b) the Order limits plans (Rev. C)
- (c) the land plans (Rev. C)
- (d) the book of reference (Rev. C)
- (e) the environmental statement (Rev. A)

- (f) the access to works and streets plans (Rev. C)
- (g) the hedgerow plans (Rev. C)
- (h) the public rights of way plans (Rev. C)
- (i) the crossings schedule (Rev. 4.0)
- (j) the design principles document (Rev. A)
- (k) the outline code of construction practice (onshore) (Rev. B)
- (l) the outline landscape strategy and ecological management plan (Rev. D)
- (m) the outline traffic management plan (Rev. B)
- (n) the outline onshore written scheme of investigation (Rev. B)
- (o) the outline offshore written scheme of investigation (Rev. A)
- (p) the outline access management plan (Rev. B) and
- (q) the outline offshore operations and maintenance plan (Rev. A).

9.2.150 These plans are all described in Part 1, Article 2 of the draft DCO - *Interpretation*.

9.2.151 First, in our question DCO 1.27 [PD-009] we requested a definition of "hedgerow plans" (cited at (g) in Article 35). This is now contained, to the ExA's satisfaction, in Article 2 of the ExA's recommended draft DCO.

9.2.152 Second, the Applicant provided [REP5-035] further specification of the plans to be certified by the SoS by suggestion the addition of a reference to the specific version after each plan or document cited.

9.2.153 Third, in its Appendix 7: *Development Consent Order Schedule of Amendments Explanatory Document* submitted as Appendix 7 of the Applicant's post Deadline 8 Response [AS-052] , the Applicant requested that the reference to "the outline code of construction practice (onshore) Rev. B" in the final Applicant's version of the draft DCO (Version G) [REP7-018] be changed to reflect the latest version of that document - to read, therefore, "the outline code of construction practice (onshore) Rev. C". ***The ExA accept this minor change and the amended reference has been included in the ExA's recommended draft DCO and in the Schedule of recommended DCO amendments at the end of this Chapter.***

9.2.154 ***The ExA recommend that Article 36 should be included in the final DCO as approved by the Secretary of State in the form included in the ExA's recommended draft DCO at Appendix D.***

9.3 DESCRIPTION OF WORKS

SCHEDULE 1

Part 1 - Authorised development

9.3.1 There are twelve types of works described in Schedule 1, Part 1 of the ExA's recommended draft DCO. These are:

- up to 6 cables for the transmission of high voltage alternating current electricity laid on or beneath the seabed between the collector substations and Work No 2 including pipeline crossings and cable protection (Work No 1)
- up to 6 cables for the transmission of high voltage alternating current electricity laid on or beneath the seabed and/or underground in cable ducts from mean low water connecting Work No 1 and Work No 3 (Work No 2)
- up to 6 cables connecting up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground including in cable ducts connecting Work No 2 and Work No 5; Work No 3A; access to Work No 2, including the construction of haul roads; and Work No 3B (Work No 3)
- up to six landfall transition joint bays including ground preparation and ground raising (Work No 3A)
- a temporary construction compound (Works Nos 3B, 51, 53) and a temporary construction compound including access from the public highway, (Works Nos 6, 7, 10, 12, 13, 15, 18, 20, 23, 25, 27, 28, 30, 32, 34, 35, 36, 38, 40, 41, 43, 45 and 47)
- upgrading of the existing access to provide a permanent access from Roman Bank to Work Nos 2 and 3 (Work No 4)
- up to 6 electrical circuits for the transmission of high voltage alternating current electricity laid underground in cable ... including access for construction from the public highway and temporary haul roads (Works Nos 5, 8, 11, 14, 17, 19, 21, 22, 24, 26, 29, 31, 33, 37, 39, 42, 44 and 46)
- the IEC enabling works (Work No 9) and the intermediate electrical compound (Work No 9A) CHECK description
- a permanent access from the A17 to Work No 50, including security gates (Work No 48)
- a temporary access from the A17 to Work No 50, including security fencing and access from the public highway (Work No 49)
- the substation enabling works (Work No 50) and the substation compound (Work No 50A)
- up to 4 electrical circuits for the transmission of high voltage alternating current electricity including earthing connections ... laid underground in cable ducts ... including ... accesses for construction, operations and maintenance (Work No 52).

9.3.2 The draft DCO contains at Schedule 1 Part 1 (2) five works described as Associated Development:

- *Work No 54 – unlicensed works at the National Grid substation at Bicker Fen including cable ducts and cabling;*
- *Work No 54A –connecting bays at the northern part of the National Grid substation at Bicker Fen housing circuit breakers, cable sealing ends, dis-connectors, surge arrestors, transformers, busbars and busbar clamps, measuring equipment and relay/marshalling rooms;*
- *Work No 54B –a connection bay at the southern part of the National Grid substation at Bicker Fen housing circuit breakers,*

cable sealing ends, dis-connectors, surge arrestors, transformers, busbars and busbar clamps, measuring equipment and relay/marshalling rooms;

- *Work No 55 – up to 2 electrical circuits for the transmission of high voltage alternating current electricity including earthing connections between Work Nos 52 and 54 laid underground in cable ducts from Work No 52 in a generally southerly direction for a distance of 0.3 kilometres to Work No 54B including landscaping; and*
- *Work No 56 – temporary highways alterations.*

and a list of "further associated development".

9.3.3 Part 2 of Schedule 1 of the ExA's recommended draft DCO at Appendix D contains five works described as Ancillary works:

"(a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development;

(b) temporary or permanent buoys, beacons, fenders and other navigational warning or ship impact protection works;

(c) temporary works for the protection of land or structures affected by the authorised development;

(d) cable route preparation works including grapnel runs and pre-lay jetting; and

(e) the removal, reconstruction or alteration of the position of subsea cables."

9.3.4 During the course of the Examination issues arose related to specific works. These are considered below.

Work No. 2

9.3.5 In our question DCO 1.28 [PD-009], we sought clarification as to why Work No. 2 et al specify up to 6 cables whilst paragraph 2.3 of the Explanatory Memorandum [APP-011] stated that the grid connection infrastructure specified within the section 35 documentation included up to eight export cables.

9.3.6 The Applicant responded [REP1-044] that:

"The section 35 direction was made on the basis that the TKOWF Order 2013 was granted for an offshore wind farm of up to 1200MW. Since the s35 direction was made further project work has taken place and the decision made to only develop 900MW, and it is for this reason that only 6 cables or electrical circuits are required."

9.3.7 ***The ExA are satisfied with that explanation.***

Former Work No. 47B

- 9.3.8 The Applicant stated in paragraph 12.11 of the *Statement of Reasons* [APP-012] that two temporary construction compounds have been included at plots 44/03a and 44/03b. However, only one of these compounds will be required. Additionally, Requirement 5(8)(a) of the draft DCO [APP-128] originally stated that only one of either Work Nos 47A and 47B shall be used for the construction of the onshore works
- 9.3.9 We queried the process for selecting which of these plots and works would be used in our questions DCO 1.22 and DCO 1.36 [PD-009].
- 9.3.10 These questions were superseded by the fact that, on 30 November 2015 the Applicant submitted an Order Limits Reduction Request [REP3-052] which resulted in a reduction in the Order limits which removed the need for Work 47B (Plot No. 44/03a). This was one of the two proposed construction compounds at the point where the proposed new access road for the Triton Knoll substation abuts the A17. This change did not result in a change in the environmental information submitted with the application.
- 9.3.11 The Change Request is dealt with in Chapter 2, above, which shows that the ExA concluded that that the change did not result in a change to the EIA presented within the ES and did not involve the introduction of additional land over which CA powers were requested.

Work No. 54

- 9.3.12 We were concerned to understand the justification for the fact that the Explanatory Memorandum [APP-011] stated, at paragraph 2.4, that Work No. 54 is not included in the stages for the discharge of requirements as all the works are within the existing National Grid substation compound so the standard pre-commencement requirements are not necessary.
- 9.3.13 The Applicant's response our question DCO 1.29 stated that this exclusion related to the fact that Work No. 54 is 'unlicensed work' within the existing footprint of the current Bicker Fen substation but that the requirement (R10) for a surface water drainage scheme does apply to Work 54A and 54B.
- 9.3.14 The ExA were satisfied with this response and ***recommend the exemption of Work No. 54 from some stages for the discharge of requirements.***

Work No. 56

- 9.3.15 Our question DCO 1.30 queried why the Explanatory Memorandum [APP-011] stated that Work No. 56 is not included in stages for discharge of requirements. In its response, the Applicant explained that the temporary nature, scale and nature of these works meant

that it did not consider that the various schemes secured by the DCO requirements are necessary for these temporary alterations.

- 9.3.16 The ExA were satisfied with this response and ***recommend the exemption of Work No. 56 from the stages for the discharge of requirements.***

PART 2 - ANCILLARY WORKS

- 9.3.17 Part 2 of Schedule 1 states that ancillary works are:
- 9.3.18 "*Works and operations within the Order limits and which fall within the scope of the work assessed by the environmental statement*"
- 9.3.19 The insertion of the phrase "*...which fall within the scope of the work assessed by the environmental statement....*" is discussed in Section 9.2 of this Chapter.

9.4 REQUIREMENTS

SCHEDULE 1, PART 3 - REQUIREMENTS

- 9.4.1 In considering the Requirements set out in the draft DCO as submitted [APP-128], the subsequent iterations of the draft DCO and the suggestions for amendments made by parties and the amendments that we have suggested, we have had regard to the Guidance set out in Circular 11/95 (as revised) and transposed to the National Planning Policy Framework (NPPF) and, in particular, the conditions set out in paragraph 206 of the NPPF.
- 9.4.2 ***The ExA conclude that the conditions for the imposition of planning conditions, where relevant to the imposition of Requirements, have been followed in the ExA's recommended draft DCO.***

Interpretation - "stage"

- 9.4.3 The ExA's initial concern related both to what constituted a "stage" and whether Boston BC and ELDC, which, as the local planning authorities would be responsible for signing off the discharge of Requirements for each stage, were content with this approach.
- 9.4.4 In their responses to our question DCO 1.32 [PD-009], both BBC [REP1-002] and ELDC [REP1-004] expressed their contentment with the approach taken by the Applicant in defining "stage" in this way.
- 9.4.5 Given this, ***the ExA recommend that Interpretation of "stage" in Schedule 1, Part 3 - Requirements remain in the final draft DCO should it be consented by the SoS.***

Requirement 3 - Detailed offshore design parameters

- 9.4.6 We drew the Applicant's attention [question DCO 1.33, PD-019] to the fact that Requirement 3(2) in the draft DCO and Condition 1(3) of the draft DML state that the total amount of cable protection for the cables comprising Work No 1 must not exceed 367,200m².
- 9.4.7 However, the worst case figures total 361,200m² in Table 6 of the Report to Inform Appropriate Assessment [APP-017]. We queried this apparent discrepancy.
- 9.4.8 The Applicant explained [REP1-044] that the apparent discrepancy is the absence of the J-Tube secondary protection within the assessment of impacts to the IDRBR SCI in the RIAA as these do not fall within the boundary of the SCI.
- 9.4.9 ***The ExA are satisfied with this explanation and recommend that Requirement 3(2) in the draft DCO and Condition 1(3) of the draft DML remain as drafted in our recommended draft DCO at Appendix D.***

Requirement 4 - Offshore decommissioning

- 9.4.10 In our question DCO 1.34 [PD-019], we asked whether the 'written decommissioning programme' cited in this Requirement should be a 'certified' plan or document listed in Article 36.
- 9.4.11 In its response [REP1-044] the Applicant explained that the written decommissioning programme will be prepared and submitted following the issuing of a notice by the SoS as set out in Requirement 4.
- 9.4.12 ***The ExA are satisfied that the preparation and submission of the written decommissioning programme is adequately secured in Requirement 4 of our recommended draft DCO at Appendix D.***

Requirement 5 - Detailed design onshore

- 9.4.13 First, the ExA considered that in sub-clause (4) of this Requirement and in Requirements 8(2), 8(4) and 14(1), the words "where relevant" are too subjective and could lead to uncertainty and lack of transparency as unspecified parties decide what is relevant and what is not.
- 9.4.14 In the ExA's consultation draft DCO [PD-017] we suggested that these words should be deleted from these requirements stating as justification that we:
- "... consider that the retention of the phrase 'where relevant' in [these] Requirement[s] has the potential to allow a broad and lax interpretation of which parts of the [named] document must be adhered to. [We] consider that, in practice, if there are parts of the*

[named] document that are not relevant, then these should be identified"

- 9.4.15 In its response [REP6-017], the Applicant stated that it:
- "... confirms that the phrase "where relevant" is used to ensure that the details being provided are relevant to the specific stage of the authorised development, in this case being the IEC or substation, as the Design Principles Document covers a number of elements of the proposed development."
- 9.4.16 Accordingly, in its final submitted version of the draft DCO (Revision G) [REP7-018] the Applicant substituted the words "... where relevant to that stage ..." for the words "... where relevant ..." in Requirements 5(4) and 14(1) and deleted the words "... where relevant ..." in Rs 8(2) and 8(4).
- 9.4.17 We are satisfied with the explanation given by the Applicant and **the ExA recommend the substitution of the words "... where relevant to that stage ..." for the words "... where relevant ..." in Requirements 5(4) and 14(1) and the deletion of the words "... where relevant ..." in Rs 8(2) and 8(4).**
- 9.4.18 Second, Requirement 5(8)(a) as originally drafted [APP-128] stated that only one of either Work Nos 47A and 47B shall be used for the construction of the onshore works. The deletion of Work No. 47B, has been covered in this Chapter, above.
- 9.4.19 Third, the Applicant inserted new sub-clauses (11), (12) and (13) into this Requirement relating to the provision of a cable route sequencing plan. These new clauses are considered in Chapter 8, above.
- 9.4.20 In the Applicant's final draft DCO revision G [REP7-018], the Applicant has included brackets around sub-clause (11)(b) and (c) and around part of sub-clause (12) because they do not consider the wording necessary. As concluded in Chapter 8 the **ExA consider they wording is required and therefore recommend that the brackets are removed from the DCO should it be consented by the SoS** and these have been removed in the recommended draft DCO at Appendix D.
- 9.4.21 For the reasons given in Chapter 8, additionally **the ExA recommend the insertion of the phrase "and landowners" in 11(a)(ii) after "the public" and in 11(12) the phrase "landowners and" after "communicated to" in the DCO should it be consented by the SoS.** These changes have been made to the recommended draft DCO in Appendix D.

Requirement 7 - Implementation and maintenance of landscaping

- 9.4.22 In our question DCO 1.39 [PD-009] we sought clarification on the relationship between "landscaping scheme" cited in this Requirement and the "written landscaping scheme and associated work programme" cited in Requirement 6.
- 9.4.23 In its response, the Applicant The Applicant confirmed that the landscaping scheme cited in Requirement 7 is a reference to the "written landscaping scheme and associated work programme" cited in Requirement 6 of the draft DCO and referred to Requirement 7(1) which makes direct reference to the "landscaping scheme approved under Requirement 6".
- 9.4.24 ***The ExA are satisfied with this explanation.***

Requirement 8 - Highway accesses and improvements

- 9.4.25 As detailed in this Chapter, above, the Applicant agreed to delete the words "where relevant" from sub-clauses (2) and (4) of this Requirement.

Requirement 9 - Fencing and other means of enclosure

- 9.4.26 In its Relevant Representation [RR-106], the Environment Agency suggested the following wording be added to Requirement 9 as 9(5):
- "No walls or solid means of enclosure around Work Nos 9A and 50A shall be constructed until a flood risk assessment, which demonstrates that there will be no increased risk of flooding to third parties resulting from the enclosure, has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency."*
- 9.4.27 In its response to our question DCO 1.41 [PD-009] the Applicant stated [REP1-044] that:
- "... the EA's concern had been raised in the context of the bunded gravel area at the IEC and whether it poses an increased flood risk to third parties.*
- Following discussions between the Applicant and EA and an EA confirmation that 'we do not have any issues with the proposed bund. If a breach were to occur the Skegness area would be significantly inundated therefore the bund would not pose an issue to third parties.'*
- 9.4.28 The EA formally withdrew its request in its response [REP1-041] to our question DCO 1.41 [PD-009].
- 9.4.29 ***The ExA recommend that Requirement 9 remain in the final DCO should it be consented by the SoS as worded in our recommended draft DCO.***
-

Requirement 12 - Archaeology

- 9.4.30 The definition of "commencement in Article 2 of the draft DCO as submitted [APP-128] excluded "archaeological investigations". We were concerned about the possible conflict between this exclusion and Requirement 12(1), which prevents commencement until a written scheme of investigation has been approved.
- 9.4.31 We examined the Applicant's approach to pre-construction archaeology through our ISHs in November 2015 on Onshore Issues [EV-022 to EV-025] and in January 2016 on Local Impacts [EV-034 to EV-039]. The evidence presented and the evolution of the approach to be adopted is described in Chapter 5, above, where we conclude that we find the approach to archaeology would be acceptable.
- 9.4.32 Part of the approach proposed by the Applicant during the course of the Examination was to agree that pre-construction archaeological investigations should be linked to a written scheme of investigation.
- 9.4.33 As a consequence, the Applicant added a further sub-clause (4) to Requirement 12 as set out in its draft DCO Revision G [REP7-018] stating that:
- "Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive ground works must only take place in accordance with a specific written scheme of investigation which is itself in accordance with the details set out in the outline onshore written scheme of investigation, and which has been submitted to and approved by the relevant planning authority."*
- 9.4.34 Given the above, **the ExA recommend that Requirement 12(4) in the draft DCO is included in the final DCO should it be consented by the SoS as drafted in our recommended draft DCO at Appendix D.**

Requirement 14 - Code of construction practice (onshore)

- 9.4.35 First, as detailed in this Chapter, above, the Applicant agreed to delete the words "where relevant" from sub-clause (1) of this Requirement.
- 9.4.36 Second, in its Written Summary of The Applicant's Oral Case put at ISH on the draft DCO of 12 November 2015 [REP3-037], the Applicant recorded that, at the hearing there was discussion regarding the management of public rights of way during construction and explained that the detail regarding the management of public rights of way during construction is included within the outline CMS. However, for clarity, it suggested a specific reference to the management of public rights of way be included in R14(2)(a).
- 9.4.37 Third, the Applicant inserted the phrase "main river crossings must be undertaken using trenchless methods only;" into R14(2)(a). This

accorded with a request from the EA in its RR [RR-106] that this phrase be inserted.

9.4.38 Fourth, Natural England's (NE) RR [RR-175] requested that condition 14(2) include a construction method statement for the landfall works (paragraph 14.1). In our question DCO 1.45 to the Applicant [PD-009] we noted that the outline construction method statement [APP-199] does include this information.

9.4.39 In its response [REP1-044] the Applicant confirmed that Paragraph 1.11 of the Outline CMS confirms that, works landward of mean low water (MLW), which includes the landfall works, are included within the scope of the Outline CMS.

9.4.40 We note that the Outline CMS is secured through R14 in our recommended draft DCO.

9.4.41 Given the above, ***the ExA conclude that Requirement 14 as worded in our recommended draft DCO be included in the final DCO should it be consented by the SoS.***

Requirement 15 - Unexpected contamination

9.4.42 In its RR [RR-106] the Environment Agency requests a new Requirement be added to deal with the identification of previously unidentified contamination.

9.4.43 In response to our question DCO 1.51 [PD-009], the Applicant did not support this change stating that:

"It is the Applicant's position ... that the Outline CEMP already commits to this request."

9.4.44 Although it also stated that it was in discussion with the Environment Agency (EA) in relation to this matter.

9.4.45 In its Written Representation [REP1-040] EA clarified that its request for this additional Requirement is borne out of concern that although there is reference in various documents that further consultation and agreement on construction methods will be undertaken with the EA, there is uncertainty in the way this is written. EA's WR went on to state that it would like to amend the Requirement wording to separate out the issue of unexpected contamination from the need for ground investigations/risk assessments at the HDD crossings. It, therefore, requested the addition of two Requirements to read:

"(1) If, during any stage of the development, contamination not previously identified is found to be present at the site then no further development of that stage shall be carried out until a written scheme to deal with the associated risks has been submitted to, and approved by, the relevant planning authority in consultation with the Environment Agency."

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by the local planning authority, to identify the extent of any contamination and the remedial measures to be taken for that stage to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) No remedial work constituting a material operation in respect of contamination of any land, including groundwater within the Order limits is to be carried out until the scheme has been approved.

(4) Remediation must be carried out in accordance with the approved scheme."

and, secondly,

"No stage of the onshore works that involves the use of horizontal directional drilling (HDD) operations shall take place until a written scheme to deal with the associated risks has been submitted to and approved by the relevant planning authority, in consultation with the Environment Agency. In locations where it can be demonstrated that there is no risk to the underlying groundwater and no contamination has been found to be present, a ground investigation summary will be acceptable. Where the HDD depth approaches the Chalk aquifer or contamination is present, a hydrogeological risk assessment will need to be submitted to demonstrate that such operations will not cause an unacceptable risk to groundwater. HDD operations shall be carried out in accordance with the approved scheme."

9.4.46 We pursued this issue at the November 2015 ISH on the draft DCO ISH [EV-016] and in our question DCO 2.27 [PD-014]. In response to this [REP4-027], the Applicant stated that, "... following discussion ... wording has been agreed for inclusion as 'Requirement 15 Unexpected contamination' in to the draft DCO."

9.4.47 There was discussion at the January 2016 ISH on the draft DCO [EV-047 to EV-049] on the nature and timing of the consultation with the EA as set out in this Requirement. In its Written Summary of the Oral Case put at the DCO Hearing held on 22 January [REP5-016], the Applicant states that:

"The Applicant explained its position regarding consultation with the EA - that, in line with the process set out in the other requirements in the DCO, the Applicant would consult with the EA prior to submitting the scheme to the relevant planning authority in order to save time post-submission and its expectation being that the relevant planning authority would wish to confirm this itself and would automatically consult with the EA prior to signing off the scheme. However, following the discussion at the hearing the Applicant has reviewed the wording of Requirement 15 and accepts the suggested amendment of the EA"

9.4.48 The wording included in the Applicant's final draft DCO (Revision G) [REP7-018] does move to reference to consultation with the EA to the end of the sub-section

9.4.49 Whilst the wording of Requirement 15 in the Applicant's final draft DCO (Revision G) [REP7-018] varies from that originally proposed by the EA, the agreed SoCG between the Applicant and the EA [REP5-043] states that:

"It is agreed that Requirement 15 of the draft DCO (Revision F) (submitted as Appendix 22 of the Applicant's response to Deadline 5) adequately secures a scheme for encountering unexpected contamination during the construction works."

9.4.50 Given the above, ***the ExA recommend that new Requirement 15 is included in the final DCO should it be consented by the SoS as drafted in our recommended draft DCO at Appendix D.***

Requirement 16 - Control of operational artificial light emissions

9.4.51 In our question DCO 1.46 [PD-009] we queried whether "written scheme for the management and mitigation of artificial light emissions" cited in Requirement 16 should be one of the documents to be certified by the Secretary of State as listed in Article 36

9.4.52 In its response [REP1-044], the Applicant stated that the written scheme for the management and mitigation of artificial light emissions will be produced as part of the final project design and that there is a separate artificial light emissions plan (for construction only) in the Code of Construction Practice (CoCP) which will be approved as part of the CoCP in accordance with Requirement 14(2)(f).

9.4.53 ***The ExA are satisfied with that response.***

Requirement 17 - Construction hours

9.4.54 We asked the Applicant in our question DCO 1.47 [PD-009] to justify the need to work a 12 hour day, including on Saturdays.

9.4.55 In its response [REP1-044], the Applicant gave a number of reasons for this including that a 0700hrs - 1900hrs working day is required to ensure efficient working practices to achieve an optimum construction programme and to allow the supply chain to service (deliveries and collections) construction activities at suitable times to avoid traffic management issues.

9.4.56 It also referred us to the Outline Code of Construction Practice [REP7-031] which contains additional constraints, in Paragraph 5.2, on activities that generate potentially significant noise levels at the nearest noise sensitive receptor being restricted to the hours of 07:30 to 19:00 on weekdays and 08:00 to 13:00 on Saturdays.

9.4.57 We note that LCC has stated in paragraph 4.152 of the *Statement of Common Ground between Triton Knoll Offshore Wind Farm Limited and Lincolnshire County Council: Appendix 11 of the Applicant's response to Deadline 8* [REP8-043] that:

"It is agreed that the wording of Requirement 17 ... of the draft DCO (Revision G) adequately secures appropriate restrictions to the working hours permitted under the Order."

9.4.58 Similarly, BBC's response to our third questions [REP6-002] states that the Council is content that adequate restrictions to working hours are secured in the current drafting.

9.4.59 Therefore, ***the ExA recommend that new Requirement 15 is included in the final DCO should it be consented by the SoS as drafted in our recommended draft DCO at Appendix D.***

Requirement 19 - Construction traffic

9.4.60 Paragraph 1.31 of the *Written Summary of The Applicant's Oral Case put at DCO Issue Specific Hearing on the 12 November 2015*, submitted as Appendix 1 of the Applicant's response to Deadline 3 [REP3-037] states that BBC has proposed additional wording to the Applicant for Requirement 18 of the draft DCO (construction traffic) to secure the use by such traffic of the accesses provided within Work Nos 48 and 49 and will update the ExA with any agreed drafting at Deadline 4.

9.4.61 Consequently, the Applicant inserted a further sub-clause (2) stating that:

"Construction and contractor traffic related to the authorised development must only use Work No 48 or 49 to access Work Nos 50 to 55 inclusive and the timings for the construction of Work Nos 48 and 49 must be included within the Construction Method Statement approved as part of the relevant Code of Construction Practice."

9.4.62 ***The ExA recommend that Requirement 19 be included in the final DCO should it be consented by the SoS as worded in our recommended draft DCO.***

Requirement 20 – European protected species

9.4.63 In our question DCO 1.48 [PD-009] we sought confirmation that NE was content with the wording of this Requirement.

9.4.64 In its response [REP1-033], NE set this requirement within the context of issues with refusal of access meaning that certain parcels of land (and their ecological features such as ditches and ponds) could not be surveyed in accordance with agreed standard methodologies.

9.4.65 In its response, NE stated that:

" ... on the basis of the information provided to date, and the amount of ecological survey that has reasonably been possible, Natural England is satisfied with the current conclusions of no significant impact upon legally protected species for the purposes of assessment by the Examining Authority. This advice is entirely dependent on the pre-construction surveys (and any resultant mitigation) being undertaken during each "work", as committed by the applicant and as stipulated by Requirement 19."

- 9.4.66 Given the above, ***the ExA recommend that Requirement 19 be retained as worded in the final DCO should it be consented by the SoS.***

Requirement 21 - Restoration of land used temporarily for construction

- 9.4.67 BBC's response to our question DCO 3.15 [REP6-002] states that
"There is no timescale for the submission of details of reinstatement nor for when any approved details should have been implemented by. Presently this Requirement is therefore imprecise and unenforceable."

- 9.4.68 The Applicant inserted the phrase "within six month of completion of the relevant stage of the onshore works" as contained in its final draft DCO (Revision G) [REP7-018].

- 9.4.69 ***The ExA recommend that Requirement 21 be retained as worded in the final DCO should it be consented by the SoS.***

Requirement 22 -Onshore decommissioning

- 9.4.70 In our question DCO 1.49 [PD-009], we asked whether the 'onshore decommissioning programme' cited in this Requirement should be a 'certified' plan or document listed in Article 36.

- 9.4.71 In its response [REP1-044] the Applicant explained that the onshore decommissioning plan will be prepared and submitted to the relevant planning authority for approval within 6 months of the cessation of commercial operations of the onshore works. Submission of the onshore decommissioning plan just prior to commencement of decommissioning works will ensure that the plan or programme complies with the relevant legislation and best practice at the time.

- 9.4.72 ***The ExA is satisfied with this explanation.***

Requirement 23 - Local employment

- 9.4.73 In the January 2016 ISH on the draft DCO [EV-047] we raised the desirability or otherwise of having a Requirement for the promotion of local employment opportunities and the development of local skills

- 9.4.74 This issue is covered in Chapter 5, above.

9.4.75 Consequently, we suggested the wording for a Requirement dealing with local employment in our consultation draft DCO [PD-017].

9.4.76 This read:

"xx. – (1) No stage of the authorised development may commence until for that stage a written scheme for the promotion of local employment opportunities and the development of local skills has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must set out the means by which the undertaker will work with local agencies, including the relevant local enterprise partnership and local authorities, to secure as far as reasonably practicable the use of local labour, contractors, goods and services during the construction stage of the authorised development.

(3) The approved scheme must be implemented in full for the entire duration of the construction stage of the authorised development."

9.4.77 We justified this by stating in the consultation draft DCO that:

"The ExA have taken into account the Applicant's stated approach to local employment and skills development as set out in paragraphs 1.43 to 1.53 of the Applicant's Written Summary of the Oral Case put at the DCO Hearing held on 22 January [REP5-016] and welcome this statement. The ExA consider that the inclusion of this additional Requirement will support and help to secure the achievement of such an approach by the undertaker of the project should the DCO be granted. The ExA further consider that the wording of the proposed Requirement does not conflict with any relevant procurement legislation or other binding requirements."

9.4.78 In its response [REP6-004] to our question DCO 3.3 ELDC stated that:

"East Lindsey welcome the inclusion of the requirement for a local employment scheme which echoes comments and submissions made by the District throughout the Inquiry. The wording, which requires the submission of a scheme is acceptable to the District and requires no change."

9.4.79 However, the wording submitted by the Applicant in its final draft differs from our proposed wording and reads:

"23.—(1) No stage of the onshore works within the relevant planning authority's area may commence until, following consultation with the relevant planning authority and local enterprise partnership, a plan detailing arrangements to promote employment and skills development opportunities related to the onshore works has been notified to the relevant planning authority.

(2) The plan is to include proposals for working with the local enterprise partnership and the relevant planning authority to promote such local opportunities.

(3) The employment and skills plan is to be implemented and maintained for the duration of the construction of the onshore works.

(4) For the purpose of this requirement "the local enterprise partnership" means the Greater Lincolnshire Local Enterprise Partnership."

- 9.4.80 First, the Applicant's wording does not include the need for a plan for each stage. This omission was supported by BBC which, in its response [REP6-002] to our third questions [PD-016] stated that the Council would suggest that it is unnecessarily onerous to seek to require a written scheme for each stage of the development and before each stage might commence. The ExA are satisfied with this argument.
- 9.4.81 Second, whilst the Applicant's wording does not specify "the promotion of local employment opportunities and the development of local skills", we consider that the requirement to consult with the local planning authorities and with the local enterprise partnership would serve to focus on local employment opportunities and the development of local skills.
- 9.4.82 We note that in its response to our question DCO 3.1, LCC [REP6-007] requested that the LEP are consulted on the written scheme for the promotion of employment and that the final approval is given by the local planning authority.
- 9.4.83 The Applicant included brackets around this requirement in its final draft DCO (revision G) [REP7-018] these have been removed in the recommended draft DCO indicating that they do not consider this requirement necessary. For the reasons given above the ExA conclude that it is necessary and the brackets have been removed in the ExA recommended draft DCO at Appendix D.
- 9.4.84 Given the above, ***the ExA recommend that Requirement 23 be retained in the final DCO should it be consented by the SoS as worded in our recommended draft DCO at Appendix D.***

Requirement 25 – Amendments to approved details

- 9.4.85 In our question DCO 1.50 [PD-009] we asked whether the reference to Article 35 in Requirement clause (2) of this Requirement should, instead, be a reference to Article 36.
- 9.4.86 In its response, [REP1-044] the Applicant confirmed that the reference to Article 35 in Requirement 23(2) is a typographical error and the correct reference is Article 36.

9.4.87 The ExA note, however, that the final draft DCO (Revision G) [REP7-018] submitted by the Applicant still refers to Article 35. Therefore, ***the ExA recommend that the reference to Article 35 in Requirement 25(2) be amended to read Article 36 in the final DCO should it be consented by the SoS*** and we have made the necessary correction in our recommended draft DCO at Appendix D and added this amendment to the schedule at the end of this Chapter.

9.5 PROTECTIVE PROVISIONS

9.5.1 Schedule 8 contains Protective provisions for protection for:

- the Environment Agency and drainage authorities (Part 1);
- Network Rail Infrastructure Limited (Part 2);
- National Grid Gas plc and National Grid Electricity Transmission plc (Part 3);
- Anglian Water (Part 4);
- the Canal & River Trust (Part 5);
- electricity, gas and sewerage undertakers (Part 6);
- operators of electronic communications code networks (Part 7); and
- Western Power Distribution (Part 8).

9.5.2 Protective provisions are dealt with in Chapter 8 dealing with Compulsory Acquisition, above. The Chapter considers, *inter alia*, the extent to which each of these has overcome issues arising in relation to s.127 and s.138.

9.6 OTHER SCHEDULES

Schedule 5 - Land in which only new rights etc. may be acquired (the Restrictive Covenant)

9.6.1 The inclusion of a restrictive covenant in Schedule 5 and, in particular, some of the form of words adopted in the draft DCO as applied for [APP-128] was the subject of a number of submissions and significant discussion during the Examination.

9.6.2 This issue has been considered in Chapter 8 of this Recommendation Report, dealing with CA issues, above.

9.6.3 Given our conclusions as set out in that Section, ***the ExA recommend that Schedule 5 be retained in the final DCO should it be consented by the SoS as worded in the final approved version of the DCO.***

Schedule 7

9.6.4 The Applicant's *Final Draft Development Consent Order and Deemed Marine Licence – Comparison of Revision A and Revision G* submitted as Appendix 14 of the Applicant's Response to Deadline 7 [REP7-022] shows the insertion of Plot 39/05- in Schedule 7 - Land of which

temporary possession may be taken.

- 9.6.5 The Applicant explained this post submission insertion in *Appendix 23 of the Applicant's response to Deadline 2 - the Schedule of DCO amendments* - and summarised it in paragraphs 1.10 and 1.11 of the Written Summary of *The Applicant's Oral Case put at DCO Issue Specific Hearing on the 12 November 2015*, submitted as Appendix 1 of the Applicant's response to Deadline 3 [REP3-037]:

"Plot 39/05 was included in the Book of Reference [APP-] and shown coloured blue on Sheet 39 of the Land Plans submitted as part of the Application. An entry should therefore have been included in the draft Development Consent Order but was not included by mistake."

- 9.6.6 We accept this explanation and, given that this plot was included in the BoR and identified in the Land Plans as land of which temporary possession may be taken, we do not consider that any prejudice will be caused by permitting this correction. The provisions of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 Regulations are not triggered by this amendment as compulsory acquisition is not sought over this plot.

- 9.6.7 Therefore, ***the ExA recommend that plot 39/05 be included in Schedule 7 in the final version of the DCO should this be consented by the SoS.***

9.7 DEEMED MARINE LICENCE

- 9.7.1 The MMO has signified overall agreement with the conditions set out in the draft DML in the Statement of Common Ground between Triton Knoll Offshore Wind Farm Limited and the Marine Management Organisation, submitted as Appendix 32 of the Applicant's response to Deadline 5 [REP5-045] stating in paragraph 4.136 that:

"... it is agreed that the conditions set out in the draft DML contained in Schedule 9 Part 2 of the draft DCO are appropriate and reasonable".

- 9.7.2 In its response to our request for comments on the Schedule of the ExA's recommended amendments to the Applicant's draft DCO [DCO 3.1, PD-016], Trinity House responded [REP6-012] that it had reviewed the schedule and had no comments and that it has no outstanding objection.

- 9.7.3 The response of the Maritime and Coastguard Agency (MCA) to our question DCO 2.29 on Condition 5(13) [REP4-003] is set out in the relevant section below. The MCA made no further representations to the Examination.

- 9.7.4 Given this measure of agreement, the following paragraphs of this Recommendations Report set out in brief the changes to articles and conditions in the draft DML during the course of the Examination, highlighting any issues.

Schedule 9 - Deemed licence under the Marine and Coastal Access Act 2009

PART 1 - LICENCED MARINE ACTIVITIES

- 9.7.5 In its *Response to the Examining Authority's Second Questions*, the MMO [REP4-012] stated that it had concerns related to:

"... the exclusion of HDD works within the definition and the inclusion of "commence" within condition 9. The MMO consider that the HDD punch out is a licensable activity under Part 4 of The Marine and Coastal Access Act 2009 and should be included within the definition of commence. However, we understand that the applicant does not wish the HDD works to trigger all other "commence" notifications/monitoring requirements within the DML. "

- 9.7.6 The MMO response suggested "including exit for HDD" be removed from the definition of commence.

- 9.7.7 In paragraph 1.7 of its *Written Summary of The Applicant's Oral Case put at DCO Issue Specific Hearing on the 12 November 2015*, submitted as Appendix 1 of the Applicant's response to Deadline 3 [REP3-037], the Applicant stated that:

"In response to comments from the MMO regarding the definition of commencement within the dML, the Applicant has checked the definitions and amended the definition in article 2 to reflect the change made to the dML at the request of the MMO.

"The wording of Clause 4 of Part 1 of the draft DML was amended to read:

"This licence does not permit the decommissioning of the authorised project. No decommissioning activity may commence until a decommissioning programme has been approved by the Secretary of State under section 106 of the Electricity Act 2004. Furthermore, at least 4 months before carrying out any decommissioning activity, the undertaker must notify the MMO of the proposed activity to establish whether a marine licence is required for the activity."

- 9.7.8 ***The ExA recommend that the definition of commence in Part 1 of Schedule 9 be retained in the final DCO should this be consented by the SoS as drafted in our recommended draft DCO.***

PART 2 - CONDITIONS

Condition 2 - Notifications and inspections

- 9.7.9 A further sub-clause (11) was added as contained in its final draft DCO (Revision G) [REP7-018]:
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"In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the identification of damage, destruction or decay, notify Trinity House, MMO, MCA and the UKHO."

- 9.7.10 Given the agreements cited at the start of the section of this report on the DML, ***the ExA recommend that Condition 2 be retained in the final DCO should this be consented by the SoS as drafted in our recommended draft DCO.***

Condition 3 - Offshore safety management

- 9.7.11 Paragraph 2.11 of its RR [RR-189] the MMO stated that Condition 3(1) and (3) appear to be identical and that the MMO would be content for (3) to be removed.

- 9.7.12 However, the *SoCG between the Applicant and the MMO* (Appendix 32 of the Applicant's response to Deadline 5 [REP5-045]), stated that

- 9.7.13 *"... it is agreed that the MMO have deferred any amendments to Condition 3 Offshore Safety Management of the draft DML for agreement between the Applicant and the Maritime Coastguard Agency (MCA) as set out in Row 42 of Appendix A. The Applicant and the MCA have agreed that the drafting of Condition 3 will be retained and is appropriate and reasonable."*

- 9.7.14 Given this, ***the ExA recommend that Condition 3 of the DML is retained as drafted in the final DCO should it be consented by the SoS.***

Condition 4 - Aids to navigation

- 9.7.15 A further sub-clause (4) was added as contained in its final draft DCO (Revision G) [REP7-018]:

"The undertaker must notify Trinity House and the MMO of any failure of the aids to navigation including timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the detection of any such failure."

- 9.7.16 Given the agreements cited at the start of the section of this report on the DML, ***the ExA recommend that Condition 4 be retained in the final DCO should this be consented by the SoS as drafted in our recommended draft DCO.***

Condition 5 - Chemicals, drilling and debris

- 9.7.17 Paragraph 2.12 of the MMO's RR [RR-189] stated that the MMO request clarification as to what constitutes "waste" and whether the applicant has given consideration to the Waste Framework Directive. No waste should be left below MHWS, especially through 1 tidal cycle

as it is likely to have been washed away and potentially contaminated the environment.

- 9.7.18 The Applicant removed the reference to "waste" from Condition 5(6) as contained in its final draft DCO (Revision G) [REP7-018] and the SoCG between the Applicant and the MMO (Appendix 32 of the Applicant's response to Deadline 5 [REP5-045]) states that:

"... it is agreed that the amendments to Condition 5(6) Chemicals, Drilling and debris of the draft DML are appropriate and reasonable as set out in Row 24 of Appendix A."

- 9.7.19 Paragraph 2.13 of the MMO's RR [RR-189] stated that the applicant has committed to supplying the MMO with audit sheets, whilst this approach has been adopted on previous projects, we believe the condition may result in an administrative burden on the applicant and we suggest the applicant only reports those items that become "lost".

- 9.7.20 The Applicant amended this Condition as contained in its final draft DCO (Revision G) [REP7-018] to read:

"(10) As an alternative to the completion of an audit sheet, with written approval from the MMO, the undertaker may introduce a dropped object procedure. If a dropped object procedure is introduced, any dropped objects must be reported to the MMO using the dropped object procedure form within 6 hours of the undertaker becoming aware of an incident. On receipt of the dropped object procedure form, the MMO may require relevant surveys to be carried out by the undertaker (such as side-scan sonar), and the MMO may require obstructions to be removed from the seabed at the undertaker's expense.

- 9.7.21 *(11) The undertaker must agree with the MMO, before commencement of works, whether the dropped object procedure or audit sheet is to be used."*

- 9.7.22 The SoCG between the Applicant and the MMO (Appendix 32 of the Applicant's response to Deadline 5 [REP5-045]) states that:

"... it is agreed that the proposed revisions to Condition 5 Chemicals, Drilling and debris of the draft DML are appropriate and reasonable in order to maintain the alternative dropped objects procedure to ensure the most appropriate method is used as set out in Row 43 of Appendix A."

- 9.7.23 The MMO's response [REP4-012] to our question DCO 2.29 [PD-014] stated that it would question whether a 48 hour delay in notification is appropriate given there may be a potential for navigational safety to be compromised dependant on the amount of rock material lost and its position within the marine environment.

9.7.24 The Applicant amended Condition 5(13) as contained in its final draft DCO (Revision G) [REP7-018] to read:

"... the undertaker must report the loss to the MMO, Trinity House, MCA and UKHO as soon as possible and in any event within 6 hours."

9.7.25 The deadline of 6 hours replaced the deadline of 48 hours included in the draft DML as submitted with the application [APP-128].

9.7.26 The MCA responded to our question DCO 2.29 on Condition 5(13) [REP4-003] that it is content with the amended wording of this condition

9.7.27 Given all the above, ***the ExA recommend that Condition 5 of the DML is retained in the final DCO should it be consented by the SoS as amended in our recommended draft DCO at Appendix D.***

Condition 7 - Pre-construction plans and documentation

9.7.28 Paragraph 2.14 of the MMO's RR [RR-189] stated that NE should also be included as a consultee in this condition to ensure no Annex 1 habitat is placed at risk.

9.7.29 However, the SoCG between the Applicant and the MMO [REP5-045] states that it is agreed that the MMO will consult with the relevant statutory body prior to the plan being approved and that consideration can be given to naming the relevant statutory bodies (including the statutory nature conservation body) in the condition if requested by the relevant statutory body.

9.7.30 In paragraph 2.16 of the MMO's RR [RR-189] the MMO requested that the HDD works are added to this condition in order to ensure the proposed methods are appropriate, have been provided and assessed within the ES, and include appropriate mitigation.

9.7.31 ***The ExA recommend that Condition 7 be retained in the final DCO should this be consented by the SoS as drafted in our recommended draft DCO.***

Condition 8

9.7.32 Paragraph 1.28 of the *Written Summary of The Applicant's Oral Case put at DCO Issue Specific Hearing on the 12 November 2015*, submitted as Appendix 1 of the Applicant's response to Deadline 3 [REP3-037] states that:

"Historic England requested at the hearing that additional wording was included within condition 8(2) of the dML relating to the timing of the submission of and agreed archaeological report."

9.7.33 This has been included in the revised draft - Revision D - submitted for D3 [REP3-043]:

"(2) The undertaker must ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment (NRHE), by submitting a Historic England OASIS form with a digital copy of the report within 6 months of the completion of construction of the authorised scheme. If the report relates to the intertidal area the undertaker must notify the MMO and Lincolnshire County Council that the OASIS report has been submitted to the NRHE within two weeks of the submission."

- 9.7.34 ***The ExA recommend that Condition 8 of the DML is retained in the final DCO should it be consented by the SoS as amended in our recommended draft DCO.***

Condition 9

- 9.7.35 The Applicant added an additional Condition - 9 - as contained in its final draft DCO (Revision G) [REP7-018]:

"(1) HDD works within Work No 2 must not commence until the following have been submitted to and approved in writing by the MMO including as relevant to those works—

(a) a construction method statement in accordance with the details assessed within the environmental statement including details of contractors, vessels and vessel transit corridors;

(b) a written scheme of archaeological investigation; and

(c) a marine pollution contingency plan.

(2) The undertaker must also comply with conditions 2(6), 2(7), 2(8), and 2(9) prior to horizontal directional drilling works commencing."

- 9.7.36 Given the agreements cited at the start of the section of this report on the DML, ***the ExA recommend that Condition 9 of the DML is retained in the final DCO should it be consented by the SoS as amended in our recommended draft DCO.***

Former Condition 11 - Equipment and operation of vessels engaged in licensed activities

- 9.7.37 In its response to our D3 [REP3-010] the MMO state that it is content for this section to be removed and that the topics detailed here are covered within other legislation and are no longer necessary.

- 9.7.38 ***The ExA recommend that former Condition 11 should not be retained in the final DCO should this be consented by the SoS.***

Condition 13 - Post construction

- 9.7.39 Paragraph 3.3 of the MMO's RR [RR-189] stated that:

"The MMO request that a condition be included within the DML to submit an "as constructed" plan. This will allow the MMO to verify that the project has been constructed in accordance with approved preconstruction plans and documents."

- 9.7.40 The Applicant put forward amendments to Condition 13) as contained in its final draft DCO (Revision G) [REP7-018]:

"(2)(b) a swath bathymetric survey to IHO Order 1a within 12 months of the completion of the licenced marine activities across the area(s) within the offshore Order limits within which licenced marine activities have to be carried out to:

(i) ensure the cables have been buried and located within the Order limits; and

(ii) provide information on bedform morphology

and the data and survey report(s) are to be provided to the UKHO. The results of the post cable lay survey must be submitted to the MMO as part of a cable burial risk assessment which must include detail of cable burial management including surveys and notification of cable exposure over the lifetime of the project.

(c) a subsequent swath bathymetric survey, focused on agreed locations to demonstrate that any changes to bedforms or sediment movement are within the ranges predicted in the environmental statement."

- 9.7.41 Given the agreements cited at the start of the section of this report on the DML, ***the ExA recommend that Condition 13 of the DML is retained in the final DCO should it be consented by the SoS as amended in our recommended draft DCO at Appendix D.***

Condition 14 - Bathing Water Quality

- 9.7.42 In its RR [RR-106] the EA requested a new Requirement be added to require that a scheme to protect the current Bathing Water Directive status be submitted to and approved by the relevant planning authority, following consultation with the Environment Agency before Works No. 2 and 3 are undertaken.
- 9.7.43 In our question DCO 1.52 [PD-009] we asked the EA whether the suggested scheme should be a 'certified' plan or document to be listed as such in Article 36. The EA responded [REP1-041] that as the scheme is being requested post consent and will only be required should the works take place during the bathing water season it considers that the document should not be a 'certified' plan.
- 9.7.44 During the course of the Examination, the wording of the new Condition 14 was amended from that first suggested by the EA to exclude reference to Work No. 3 and to refer to the need for a review

of the EA baseline data and to require that the scheme be submitted to and approved in writing by the MMO, following consultation with the EA and ELDC.

9.7.45 In the SoCG between the Applicant and the MMO [REP5-045] the MMO agrees that Condition 14 Bathing Water Quality adequately secures the requirement.

9.7.46 The agreed SoCG between the Applicant and EA [REP5-043] states that:

"It is agreed that Condition 14 of the deemed Marine Licence adequately secures a scheme to protect the Bathing Water Quality Directive status."

9.7.47 ***The ExA recommend that Condition 14 of the DML is retained in the final DCO should it be consented by the SoS as amended in our recommended draft DCO at Appendix D.***

Schedule 11 - Discharge of Requirements

Fees

9.7.48 In paragraph 1.24 of the *Written Summary of The Applicant's Oral Case put at DCO Issue Specific Hearing on the 12 November 2015*, [REP3-037], the Applicant confirmed that the fee payable in accordance with paragraph 5(1) of Schedule 11 is per requirement discharged, not per request (i.e. a single request to discharge a number of requirements would attract a fee per requirement) and stated that the drafting at that time was sufficiently clear and did not require amendment.

9.7.49 However, in its *Submissions to Deadline 3 (30 November 2015) from Boston Borough Council* [REP3-020], BBC recorded that it had suggested at the Hearing that any doubt can be addressed by the insertion of "...or any defined stage within a requirement ..." after "...requirement" in subclause 5(1) to Schedule 11.

9.7.50 The applicant included this in Revision E of its draft DCO [REP4-042]. We conclude that the insertion of this phrase clarifies the implementation of the discharge of requirements.

9.7.51 ***The ExA recommend that Schedule 11 subclause (5)(1) is retained in the final DCO should it be consented by the SoS as amended in our recommended draft DCO at Appendix D***

9.8 OTHER LEGAL AGREEMENTS/RELATED DOCUMENTS

9.8.1 There are no other legal agreements or related documents relevant to our consideration of the draft DCO. However, for the record, the ExA note two points.

9.8.2 First, The Applicant's Response to Deadline 8 Submissions [REP8-032] states in paragraph 2.6 that:

"The Applicant and LWT have ... agreed the following statement to be included in this response:

The Lincolnshire Wildlife Trust has signed an agreement with Triton Knoll Offshore Wind Farm Limited (TKOWFL) to receive a £25,000 Mitigation Fund for the Lincolnshire Coastal Grazing Marshes (LCGM) project should the Development Consent Order for the Triton Knoll Offshore Wind Farm electrical infrastructure be consented."

9.8.3 Second, in its LIR [LIR-002], BBC stated that:

"The Council invites the ExA to consider an Article 4 Direction under the Town and County Planning (General Permitted Development) (England) Order 2015 such that the Enabling Works, as far as the Council understands them must be the subject of specific planning application and approval to this local planning authority."

9.8.4 This requested was considered at different stages during the Examination and in its Update on BBC's position and withdrawal of its request to the ExA for an Article 4 Direction in relation to the Bicker Fen Electricity Substation [AS-050] stated that "the Borough Council wishes to withdraw its request to the ExA for an Article 4 Direction."

9.9 SCHEDULE OF EXA RECOMMENDED AMENDMENTS TO THE DRAFT DCO

Draft DCO Revision G	Amendment
Article 36	Change: "the outline code of construction practice (onshore) Rev. B" to "the outline code of construction practice (onshore) Rev. C"
Requirement 5(11)(a)(ii)	Insertion of: "and landowners" after "notify the public"
Requirement 5(11)(b) and 5(11)(c)	Remove square brackets "[]" around Requirement 5(11)(b) and Requirement 5(11)(c)
Requirement 5(12)	Remove square brackets "[]" and insert "landowners and" so that Requirement 5(12) reads: "(12) Any plans submitted in accordance with paragraphs 5(11)(a) and 5(11)(b) may be updated from time to time and must be submitted to the relevant planning authority and communicated to landowners and the public in accordance with the Code of

	Construction Practice."
Requirement 23	Remove square brackets "[]" around the whole of Local employment Requirement 23
Requirement 25	Change Article 35 to Article 36
Schedule 5 - restrictive covenant at (c)(iii)	Insertion of "with consent requests for mole drainage to be determined within 24 hours not including weekend or bank holiday hours," after "unreasonable withheld or delayed"

- 9.9.1 ***Taking into account all the evidence presented to us in representations and in the November 2015 and January 2016 DCO Hearings, the ExA conclude that, subject to the recommended changes set out in the above schedule, the ExA's recommended draft DCO contained at Appendix D of this Report provides a sound basis on which to consent the proposed development should the SoS be minded to do so.***
- 9.9.2 Version F of the draft DCO submitted as Appendix 23 of the Applicant's Response to D5 [REP5-035] dated 1 February 2016. This followed a request by the ExA at the January 2016 DCO ISH [EV-047].
- 9.9.3 Our concern was that, whilst we understood the Applicant's desire not to include extraneous provisions in the draft DCO [REP5-016], we felt that this would be potentially useful, particularly given both the length and extent of the works and the fact that, as discussed above, there is still the need for further surveys to be undertaken in advance of commencement should the project be permitted.
- 9.9.4 We also took into consideration the Applicant's understanding that if, as cited in para 1.22 of the Sibsey Lancaster Memorial Clarification Note [REP1-054], any military remains might be found in the vicinity of the Lancaster Memorial, there is a separate process governed by Protection of Military Remains Act 1986. However, we note that this would not apply if non-military remains were found anywhere along the cable route.
- 9.9.5 It was felt by the ExA that the inclusion of such an Article would provide comfort and security for all in relation to how such findings would be dealt with.
- 9.9.6 For the reasons set out in the preceding paragraphs, ***the ExA recommend that Article 14 should be included in the final DCO should it be consented by the Secretary of State.***

10 SUMMARY OF FINDINGS AND CONCLUSION

SUMMARY OF FINDINGS AND CONCLUSIONS

- 10.1.1 The Examining Authority (ExA) consider that the application is in line with, and supports, the Government's policy objectives for energy as set out in the Secretary of State's Direction under s35 of PA2008 and National Policy Statements (NPS) EN-1, EN-3 and EN-5.
- 10.1.2 We consider that this project contributes to meeting the need for energy capacity and, in doing so, will bring benefits to the area in terms of economic activity.
- 10.1.3 We consider that the application fulfils the relevant legal requirements including the UK Government's relevant international obligations.
- 10.1.4 We consider that, taking into account the mitigation measures set out in the recommended DCO (Appendix D), the implementation of the project would not put the UK in breach of the Habitats Directive and would maintain the coherence of Natura 2000.
- 10.1.5 We conclude that there are impacts of the scheme in terms of landscape and visual impacts which weigh against making the proposed Order.
- 10.1.6 We conclude that there were impacts on the scheme which would potentially weigh against making the recommended DCO in relation to agriculture and, in particular land drainage, but which are mitigated through actions secured in strategies plans secured in the recommended DCO. We conclude that there is no conflict with the Water Framework Directive.
- 10.1.7 We conclude, therefore, that on balance the benefits of this proposal would outweigh its impacts.
- 10.1.8 We conclude that the project as applied for conforms to, and supports, local planning policy supported by the NPPF where relevant.
- 10.1.9 In reaching our recommendation, full regard has been given to the Local Impact Reports submitted and all other matters raised and representations made have been taken into account.
- 10.1.10 In considering these matters we found no relevant matters of such importance that they would individually or collectively lead to a different recommendation to that set out below.
- 10.1.11 We have considered the requests for powers to compulsorily acquire land and rights which formed part of the application. We conclude that the requests for powers are proportionate and meet the tests set out in statute and in guidance.

- 10.1.12 In reaching this conclusion we have had regard to the Human Rights Act and consider that the interference with rights is proportionate and in the public interest.
- 10.1.13 In reaching this conclusion, we have also considered whether one plot defined as open space satisfies the relevant condition under s132 of PA2008 and we conclude, taking account of all the evidence that was submitted, that the order land, when burdened with the order right, will be no less advantageous than it was before.
- 10.1.14 In respect to Crown Land, the ExA have had regard to a letter and statement provided both by the Crown Estate stating that the Commissioners consent to the making of the DCO for the purposes of sub-sections (1) and (2) of s135 of PA2008 and from the Highways England Historical Railways Estate providing the Historic Railways Estate consent, on behalf of the Secretary of State for Transport, to the making of the DCO in relation to the listed plots, as required by s.135 (1) and (2) of PA2008.
- 10.1.15 We also had regard to the fact that the final draft Book of Reference excludes the acquisition of Crown interests from all relevant plots.
- 10.1.16 The ExA, therefore, conclude that the provisions of s135 of PA2008 are satisfied.

10.2 RECOMMENDATION

- 10.2.1 For all of the above reasons and in the light of our findings and conclusions on important and relevant matters set out in the report, the ExA under the Planning Act 2008, recommend that the Secretary of State should make the Order in the form attached.