

EAST ANGLIA THREE EXAMINATION

**SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER**

(Forming part of Annex F)

For examination at the Issue Specific Hearing into the DCO on Wednesday 29 June 2016, Agenda Item 6.

**Articles**

| <b>Provision</b>                    | <b>Function</b>          | <b>Explanation<br/>(from Explanatory Memorandum)</b> | <b>ExA Issues</b>   |
|-------------------------------------|--------------------------|--|---|
| <b>Structure<br/>(Sch 1)</b>        | (Requirements)           | None   | The requirements are not set out in their own schedule, instead forming a part of a broader schedule which also defines the project. There are no obvious technical / drafting concerns that arise from this, but it is different from some other made Orders which do place the requirements in a separate schedule.   |
| <b>Structure<br/>(Schs 10 – 15)</b> | (Deemed Marine Licences) | None   | <p>The Deemed Marine Licences (DMLs) have been drafted using a standardised template in which equivalent provisions receive the same number in every licence and some provisions that are not relevant to individual licences are included without content and marked as '[Not used]'. This approach has assisted the ExA and interested parties in comparing provisions between the six licences.</p> <p>That being said, a similar approach was advocated by the applicant in Dogger Bank Teesside A &amp; B but was not supported by the Secretary of State on the basis that it is not provided for in current statutory drafting conventions. This in turn required changes to that Order and to cross</p> |

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|                  |                                    |  | <p>references between provisions during the approval period. If multiple DMLs are retained (see <b>Article 28</b> and <b>Schedules 10 to 15</b> below) the applicant is advised to remove provisions marked as '[Not used]' and to renumber remaining provisions in sequence during this examination. A table of comparison highlighting equivalent provisions between the six DMLs in this Order should be made. Comments on this are also sought by Trinity House, the Marine Management Organisation and the Maritime and Coastguard Agency who have been carrying out joint work on the standardisation of some DML provisions.</p> |
| <b>Structure</b> | (Relationship with made EA1 Order) | None   | <p>The made EA1 Order has been amended by the EA1 Offshore Wind Farm (Corrections and Amendments) Order 2016. The ExA will need to compare provisions between the current draft Order and the EA1 Order and to consider the merits of proposed amendments to the EA1 Order. For these purposes, the applicant is requested to prepare and bring to the hearing a consolidated version of the EA1 Order into which the correcting and amending provisions from the EA1 Offshore Wind Farm (Corrections and Amendments) Order 2016 have been inserted, shown in tracked changes.</p>  |

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| <b>Explanation</b> | (The explanatory memorandum references to the model provisions) | None   | The explanatory memorandum makes extensive references to the model provisions. These have no current statutory force. Whilst they were invaluable in the drafting of early Orders in respect of which there were no examples arising from practice, there is now a large body of made Orders for offshore wind farm development, the effect of which in a number of instances has been to develop practice from the approach in the model provisions. The applicant is requested in the remainder of this schedule to refer the ExA to examples drawn from recent practice and is encouraged to explain the use of any model provision with reference to relevant changes that may have arisen in more recent practice. |
| <b>Generally</b>   | (The word "shall" throughout the draft)                         | None   | <p>The word "shall" is used frequently in the draft DCO. PINS' DCO drafting advice note (AN15) advises at para 2.1 that use of the words "shall" or "will" should be avoided because of ambiguity over whether they are an imperative or a statement of future intention. More recent practice also suggests that a substitution of "must" for "shall" will not always result in appropriate drafting.</p> <p>The applicant is asked to individually review all drafting in which the term "shall" has</p>  |

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|                  |                             |  | been used and to advise its approach to replacement terms.  |
| <b>Article 1</b> | (Citation and commencement) | Provides for the commencement and citation of the Order. It includes the date on which the Order comes into force, which may or may not be the date on which the Order is made.  | No comments at this stage   |
| <b>Article 2</b> | (Interpretation)            | Provides for the interpretation of the Order. Amongst other things, the definition of Order limits includes cross reference to the works plan and to the grid coordinates for the offshore Order limits contained in Schedule 1 of the Order. The Article also defines the offshore substations and foundations and other structures such as wind turbine generators and the meteorological masts. | <p><b>Article 2(1)</b> definitions of terms</p> <p><b>“commence”...</b></p> <p>In comparison with definitions in similar made Orders, this definition in respect of onshore works (b) is broad. It permits works more widely than the more normal practice which is that a DCO should not permit works that are likely to have significant environmental effects or in respect of which particular mitigation has been proposed to commence before the discharge of any requirement that delivers the appropriate management or mitigation.</p> <ul style="list-style-type: none"> <li>• Archaeological works are capable of being carried out as pre-commencement activity onshore. How does this fit with requirement 20 (Archaeology)? It does not appear to prevent onshore works that could affect archaeological significance being undertaken before a written scheme of investigation is</li> </ul> |

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|           |          |  | <p>approved. The effect is that archaeological works (or site clearance and demolition works with archaeological implications – see below) could be carried out before the requirement is discharged and there is no alternative requirement for those pre-commencement works to be in accordance with the outline archaeological scheme or any other scheme.</p> <ul style="list-style-type: none"> <li>• Similar considerations apply to demolition work and site clearance works, both of which are capable of being carried out as pre-commencement activity onshore.</li> <li>• Where any substantial works that are of a greater than preparatory nature are enabled as pre-commencement activity, there are possibly significant implications for the interests protected by the following requirements in addition to requirement 20: <ul style="list-style-type: none"> <li>○ 18 (Surface and foul water drainage)</li> <li>○ 19 (Contaminated land and ground water)</li> <li>○ 21 (Ecological management plan)</li> <li>○ 22 (Code of construction practice)</li> <li>○ 29 (European protected species onshore)</li> </ul> </li> </ul> |

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|           |          |  | <p><b>“deemed generation assets marine licences”...</b><br/>                     The reference to ‘Marine and Coastal Access Act 2009’ is to ‘the Marine and Coastal Access Act 2009’. However, given that this legislation is already proposed to be defined as <b>“the 2009 Act”</b> in this article, a better response would be to ensure that this and all further references to the 2009 Act in the Order use the proposed defined term.</p> <p><b>“East Anglia ONE Order”...</b><br/>                     The definition needs to include a reference to the 2014 made Order as amended by the East Anglia ONE Offshore Wind Farm (Corrections and Amendments) Order 2016 (SI No 447).</p> <p><b>“maintain”...</b><br/>                     In comparison with definitions in similar made Orders including that for EA1, this definition is quite broad and appears to enable some activities beyond more normal definitions of the term. The made Order for Dogger Bank Teesside A&amp;B (DBTA&amp;B) provides as follows:<br/> <i>“maintain” includes upkeep, inspect, repair, adjust, alter, relay and remove, to the extent assessed in the environmental statement; and any derivative of maintain must be construed accordingly...’</i></p> <p>Is there any reason why an equivalently limited and simple provision could not be used here?</p> |

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|           |          |  | <p><b>“pin piles”...</b><br/>                     What is the intended meaning of the drafting ‘for fixity of’ used in this definition? A clearer definition would be beneficial.</p> <p><b>“statutory undertaker”...</b><br/>                     This term is defined by reference to PA2008 s127. PA2008 s138 contains a different definition of a statutory undertaker and those that come within it might not also fall within the s127 definition and so may be excluded from the definition in this Order. Why has the applicant limited the definition to s127 undertakers and is there any reason why it should not be broader?</p> <p><b>“Trinity House”...</b><br/>                     A relevant representation from Trinity House seeks changes to the definition of that body. What changes are sought?</p> <p><b>“undertaker”...</b><br/>                     This is a key term in the draft Order as it describes the entity or entity that would implement the development. Made Orders for similar offshore wind farm developments that include phased or multiple entity delivery (Dogger Bank Creyke Beck (DBC), DBTA&amp;B, Hornsea 1) include definitions for phases and / or terms for delivery bodies responsible for delivering phases. (For</p> |

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|           |          |  | <p>example, the Dogger Orders refer to future delivery bodies for different phases as 'Bizcos'). A delivery body model is not used in this draft and there are no definitions of phases or delivery bodies for phase delivery.</p> <p>The term 'undertaker' in this Order means East Anglia THREE Limited. The term is widely used in the singular throughout the draft Order in a manner that may give rise to uncertainty if two undertakers ever need to operate in tandem and both require the powers granted to the undertaker. The use of this term in the singular would also raise questions if the benefit of part of the Order (be that a phase or a component) were to be transferred to another entity. Other provisions in the draft Order do anticipate that transfer of benefit may occur (see article 5 below). The applicant is requested to review the approach taken to this issue in other recent made Orders and to consider how to provide greater clarity for plural undertakers and for transfers of benefit. Given the extent of this usage in the Order, this point is not raised individually in every provision below to which it is relevant.</p> <p><b>"wind turbine generator" or "WTG"...</b><br/>This definition applies the same meaning to two terms. It is best practice for a single term to be employed.</p> |

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|                  |  |  | Is there a need for the inclusion of a definition of “ <b>jointing bay</b> ” or “ <b>jointing works</b> ”, or of any other technical terms widely employed in the Order and particularly Schedule 1, Part 1 (Authorised Development)?  |
| <b>Article 3</b> | (Development consent etc. granted by the Order)      | Would grant development consent for the authorised development within the Order limits, thereby authorising the construction of the main development, associated development and ancillary works. The authorised development means the development described in Part 1 of Schedule 1 (Authorised development). Part 2 describes the ancillary works. These are defined together as the authorised project. In identifying the development authorised by this Order, Article 3 also makes provision for the offshore and onshore works authorised by this Order to be constructed within the Order limits. All the authorised development must be carried out in accordance with the requirements set out in Part 3 of Schedule 1 (Requirements). | <b>Article 3(2)</b> appears to be superfluous. Can the applicant please consider why it is required and provide a justification for its retention, with reference to recent made Orders for similar projects?<br><br>If a reference to delivery vehicles and / or phases were to be included in the Order, Article 3 could be a useful place to set out which body benefits from which powers. |
| <b>Article 4</b> | (Power to construct and maintain authorised project) | Makes provision for the construction and maintenance of the authorised project. This Article follows the wording within the model provisions.  | The article does not contain a provision clarifying that matters not covered in the DMLs but that are licensable activities in the marine environment need a separate Marine Licence.  |

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|                  |                        |   | <p>See for example the equivalent provision in the made Dogger Bank Teesside A &amp; B Order:</p> <p><i>'(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under Part 4 of the 2009 Act (marine licensing).'</i></p> <p>Can the applicant and the Marine Management Organisation (MMO) advise whether this absence has any adverse effect?</p> <p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.</p> |
| <b>Article 5</b> | (Benefit of the Order) | Provides for the transfer of the whole or part of the benefit of the Order with the consent of the Secretary of State, subject to certain exceptions. It also provides for the transfer of any of the deemed marine licences with the consent of the Secretary of State. The wording of this Article is based on the East Anglia ONE Order. | <p><b>Transfer of benefit</b> is potentially a key concept for this Order.</p> <p>The offshore generating station can be delivered in two phases, each supported by a DML. It appears that the applicant envisages these being delivered by the same body and in sequence. However, as identified in the discussion of delivery bodies under Article 2 above, there are aspects of the drafting in the Order which do not exclude the potential for transfer of benefit between the phases but the approach to drafting does not fully support</p>   |

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|           |          |  | <p>this. The applicant is asked to clarify its approach.</p> <p>Because the phases could be delivered at different times, each is also supported by a separate DML providing for its own connector cable to the shore and its own interconnector cable to the East Anglia ONE project (EA1). Can the applicant confirm that these assets are intended to be transferred to offshore transmission operators (OFTOs)?</p> <p>Most recent offshore wind farm examinations have received written and oral representations from the MMO seeking clarifications and changes to the approach taken to potential transfer of benefit under their Orders. The MMO relevant representation in this case does not raise the same concerns with transfer of benefit. Can the MMO clarify whether there are any remaining concerns, with specific reference to its position in recent examinations in respect of transfers where the consent of the Secretary of State is not required? In responding to this question, both the applicant and the MMO are asked to note the Secretary of State’s now established view that a partial transfer of benefit under a DML is permissible – a matter that is taken up below in relation to the DMLs.</p> |

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|           |          |  | <p><b>Article 5(4)</b> permits transfer without SoS consent where Article 5(8) applies.</p> <p><i>Article 5(8)(a)</i> applies where the transferee or lessee is a person who holds a licence under the Electricity Act 1989 and <i>Article 5(8)(b)</i> where the time limits for compulsory acquisition (CA) compensation claims have expired. The ExA understands that the provisions of Article 5(8)(b) are necessary onshore, where it is important that benefit is not transferred without clarity that the transferee is able to discharge any outstanding liability for CA compensation. However, the applicant is asked to explain how the time limits for CA claims is relevant to a transfer of an offshore transmission asset in respect of which no such claims could arise? Is there a need for a further provision for OFTO assets (or indeed any assets that are not generation assets, but are wholly offshore and not subject to CA considerations)?</p> <p>In that regard, is the wording of <b>Articles 5(5), (6) and (10)</b> correct where it refers to 'paragraphs (1) and (2)'? The applicant is requested to confirm whether this reference should this be to 'paragraphs (1) or (2)', as per the made EA1 Order?</p> |

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|                  |  |  | <p>The drafting in <b>Article 5(5)</b> makes reference excepting paragraph (8). This appears to be an erroneous reference. Can the applicant please review and explain this?</p> <p>In <b>Article 5(9)(a)</b>, should the reference to 'Works No.' instead be to 'Works Nos.'?</p>  |
| <b>Article 6</b> | (Application and modification of legislative provisions) | 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. | <p>Subject to its relationship with <b>Article 31</b> and <b>Schedule 9</b> (which should also be explained) this article as drafted would provide a blanket authorisation for hedgerow removal. Can the applicant please explain how this accommodates circumstances where affected hedgerows are significant in biodiversity, landscape and visual or heritage terms? Can they also explain how it would relate to the discharge of requirements 14, 15, 17 and 21? Is there an argument for the inclusion of an important hedgerows approval requirement? How for example would mitigation works emerging from the Outline Landscape and Ecology Management Strategy (OLEMS) and / or an Arboricultural Method Statement be secured or agreed by the relevant local planning authority?</p> <p>It will be important to distinguish between hedgerow works authorised under the EA1 made Order and the additional works</p> |

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|                  |   |  | <p>necessary to implement this Order. It is not clear that this provision assists in meeting that need.</p> <p>See also <b>Article 31</b> and <b>Schedule 9</b>.</p>   |
| <b>Article 7</b> | (Defence to proceedings in respect of statutory nuisance) | <p>Reflects model provision 7 and provides that no-one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out or maintenance of the authorised project and for which notice has been given under section 60 or consent obtained under section 61 or 65 of the Control of Pollution Act 1974 or if the noise is unavoidable. As stated in the Statement of Engagement submitted with the Application (Document 5.3), it is not considered that any properties will be affected beyond statutory nuisance thresholds, as mitigation measures will be used to control noise emissions. However, EATL considers that this Article should be included in the event that proceedings are brought under Section 82 of the Environmental Protection Act 1990. This was accepted in the East Anglia ONE Order. East Anglia THREE comprises nationally significant infrastructure and as a result it is appropriate that the project is protected.</p> | <p>Defences to statutory nuisance proceedings are justified by the priority accorded to Nationally Significant Infrastructure Projects (NSIPs) in National Policy Statement EN-1 (NPS EN-1) at section 4.14, which makes clear that the defence provision is conferred 'only to the extent that the nuisance is the inevitable consequence of what has been authorised'. The ExA takes an inevitable nuisance to be a residual nuisance (allowing for all applicable mitigations) which does not meet statutory nuisance thresholds, but is argued to be justified given the need for and benefit of the project.</p> <p>If no impact beyond statutory nuisance thresholds is expected once mitigation has been applied, it appears that this provision is seeking to provide a defence for occasional and incidental as distinct from inevitable instances of nuisance. Is the policy meant to apply to circumstances such as this and is this provision supported by EN-1? If the applicant is referring to similar provisions in made Orders, it would be useful to accompany these with an</p> |

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|                  |                |  | <p>explanation of whether there was an inevitable nuisance.</p> <p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.</p>   |
| <b>Article 8</b> | (Street works) | <p>Is adapted from model provision 8 and confers authority on the undertaker to place and maintain works under the streets specified in Schedule 2 (Streets subject to street works) within the Order limits and for the purposes of the authorised project. The authority given by this right is a statutory right for the purposes of sections 48(3) (streets, streets works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991.</p> | <p>This article does not appear to include a power to tunnel or bore under streets? This suggests that horizontal directional drilling (HDD) is not intended to be used to cross streets, although given the proposed use of EA1 infrastructure then little such work may be necessary. Does the applicant wish to have the right to use this technique? If so, does it consider that the current proposed wording is sufficient to enable HDD if this is required?</p> <p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.</p> |

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| <b>Article 9</b>  | (Temporary stopping up of public rights of way) | Is adapted from the model provisions to allow the temporary stopping up of public rights of way during the construction of the onshore part of the authorised development. It refers to Schedule 3 (Public rights of way to be temporarily stopped up) which lists those rights of way which may be stopped up temporarily. | The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article. |
| <b>Article 10</b> | (Temporary stopping up of streets)              | Reflects model provision 11 and provides for the temporary stopping up of streets, subject to the consent of the local highway authority concerned which may attach reasonable conditions to any such consent.  | The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article. |
| <b>Article 11</b> | (Access to works)                               | Reflects model provision 12 and authorises accesses to and from public highways to be created at locations specified in Schedule 4 (Access to works) and for any other access, with the approval of the planning authority after consulting the highway authority.  | The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article. |
| <b>Article 12</b> | (Agreements with street authorities)            | Reflects model provision 13 and authorises street authorities and the undertaker to enter into agreements relating to any temporary stopping up, alteration or diversion of a street authorised by the Order, or the carrying out of works in the streets referred to in Article 8 (Street works).                          | The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article. |

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| <b>Article 13</b> | (Discharge of water)                                   | Reflects model provision 14 and enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised project with the approval and superintendence (if provided) of the authority to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to other conditions. | <p>If pre-installed ducts developed for the EA1 project are to be used onshore (on the basis of which the Environment Agency's relevant representation suggests that it is satisfied that the project will cause limited impact to the water environment onshore), is this power necessary? Could it be confined to specific locations or works rather than being a general power?</p> <p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.</p> |
| <b>Article 14</b> | (Authority to survey and investigate the land onshore) | Reflects model provision 16 and confers upon the undertaker a power to survey and investigate land, including the ability to make trial holes, to use and leave apparatus on the land in question and to enter onto land. The article also makes provision in relation to the payment of compensation.  | <p>The applicant is requested to consider if paragraphs (4) and (5) could be consolidated.</p> <p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.</p>   |
| <b>Article 15</b> | (Compulsory acquisition of land)                       | Confers on the undertaker powers of compulsory acquisition of so much of the Order land as is required for the authorised project or to facilitate it, or is incidental to it. The model provisions have not been followed in that paragraph (2) of model provision 18 has been revised. The model provisions at paragraph (2) provide  | On the face of it this article appears to provide a wide power to permit the applicant to CA any of the Order land, although in reality the applicant only seeks to acquire the freehold in a handful of plots (450, 453, 454, 454B, 454C, 457-463), within the context of a proposed hierarchy of approach by the applicant:   |

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|           |          | <p>for automatic extinguishment of rights applying to the Order Land as soon as it is vested in the undertaker. This is inconsistent with both the undertaker's intentions and the provisions of Article 18 (Private rights) which is based on the model provisions applicable to railways orders. It is varied to provide for the extinguishment of rights upon entry onto the land concerned. Entry may take place ahead of vesting of the Order Land (if indeed vesting ever occurs) pursuant to the powers of temporary possession in the Order, or by agreement. Article 18 (Private rights) also provides for rights to be excluded from extinguishment where extinguishment via statutory process is not appropriate or required. As a result, Article 18 (Private rights) has been expanded to deal with rights in general and the corresponding provision omitted from this draft Article.</p> <p><u>Article 15 provides broad powers. It is considered necessary to make it clear, in the main, operative provision that the whole of the Order land is potentially subject to powers of compulsory acquisition. In practice, however, pursuant to the other Articles, the powers of compulsory acquisition are limited, and for</u></p> | <ul style="list-style-type: none"> <li>• to use existing EA1 infrastructure paths;</li> <li>• to take temporary possession only if this is sufficient; and if not</li> <li>• to acquire rights or subsurface interests only if these are sufficient; and if not or if negotiations fail</li> <li>• to carry out full CA (the 'backstop' power).</li> </ul> <p>The approach is summarised in the paragraph from the explanatory memorandum extracted and underlined in this table.</p> <p>The applicant is requested to further explain this approach in the light of the following observations.</p> <ul style="list-style-type: none"> <li>• The power to acquire the freehold is limited by article 17(2) and article 23(8).</li> <li>• Article 17(2) prevents the CA of any interest in the land contained in Schedule 5, other than the CA of the new rights for the purpose described in the Schedule.</li> <li>• Article 23(8) prevents the CA of the freehold and any existing rights in the land contained in Schedule 7.</li> <li>• Thus the power to CA land outright is limited to the land which is not contained in Schedule 5 or Schedule 7 and this may be argued to limit any 'backstop' power.</li> </ul> |

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|                   |   | <p><u>the great majority of the East Anglia THREE Order land, will be restricted to some combination of the acquisition of specified new rights (Article 17), and specified powers of temporary possession.</u></p> <p>Articles 17 and 23 also limit the application of Article 15. More detail is given below.</p> | <p>It appears possible that the effect of re-using EA1 infrastructure might be to extend the duration over which these assets are used, beyond the life originally intended for them as assessed in the EA1 EIA process and secured in the made EA1 Order, a matter also raised with reference to <b>Article 39</b>. The hearing Agenda seeks an explanation of the implications of this effect, including for EIA purposes. If it is to proceed, it is not clear that this Order proposes to amend the EA1 Order with sufficient precision.</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and temporary possession (TP) articles.</p> |
| <b>Article 16</b> | (Time limit for exercise of authority to acquire land compulsorily) | Reflects model provision 20 and imposes a time limit of five years from the coming into force of the Order for the exercise of powers of compulsory acquisition of land.  | <p>Some made Orders provide for longer periods for equivalently scaled projects.</p> <p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.</p>  |

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|--------------------------|---|---|---|
|                          |   |   | <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and temporary possession (TP) articles.</p>   |
| <p><b>Article 17</b></p> | <p>(Compulsory acquisition of rights)</p> | <p>The model provisions have been amended to reflect that a right to compensation is now provided in Article 18 (Private rights) rather than in this Article. Reference is also made to Schedule 6 (Modification of compensation and compulsory purchase enactments for creation of new rights) in the modifications of compulsory purchase legislation to apply appropriate provisions regarding material detriment etc to the acquisition of new rights.</p> <p>Further it is to be noted that the undertaker is seeking to impose new restrictive covenants as scheduled in Schedule 5 (Land in which only new rights etc. may be acquired) to the Order for the protection of the cables, jointing bays and any ducts that will be installed as part of the authorised development. Such protection has been given in Transport and</p> | <p>Similarly to Article 15, this article provides a wide power to acquire rights compulsorily (both existing rights and new rights) or impose restrictive covenants over the Order land as may be required for any purpose for which land can be acquired under Article 15. The applicant has explained that this enables the undertaker to acquire rights over land including new rights and existing rights if applicable. It is not clear what existing rights the applicant may wish to CA. Is this article intended to be limited only to existing rights in the land in which the applicant also seeks to CA the freehold, given the assertion in the explanatory memorandum that all plots other than those are in Schedule 5 where CA powers are limited to the new rights listed in that Schedule?</p> <p>Reference has been made above to the</p> |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum)  | ExA Issues   |
|-----------|----------|---|--|
|           |          | <p>Works Orders (notably relating to Docklands Light Railway) to protect the structure of subterranean development such as tunnels. It was also included in the East Anglia ONE Order. It is considered that the nature of the authorised development is appropriate for such restrictive covenants and the predominantly agricultural nature of the Order lands would not be unduly burdened by the imposition of restrictive covenants, particularly on the basis that where restrictive covenants are being sought, a right of access for maintenance purposes over the same area is also being sought.</p> <p>Paragraph 2 provides for the acquisition of new rights as are specified in Schedule 5 (Land in which only new rights etc. may be acquired) rather than permitting the compulsory acquisition of land.</p> <p>Paragraph 3 states that the undertaker will not be required to acquire a greater interest in the land than an existing right where existing rights are proposed to be acquired in the land to which paragraph 1 of Article 17 applies.</p> <p>Paragraph 4 refers to modifications to enactments in relation to the creation of</p> | <p>absence of clarity around the effect transfer of benefit and phased delivery might have within CA provisions where ‘the undertaker’ is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and temporary possession (TP) articles.</p> |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum)  | ExA Issues |
|-----------|----------|---|------------|
|           |          | <p>new rights and their compensation as a result of the creation of a new right. It is considered that such a modification to the statutory provisions relating to the acquisition of new rights is necessary because they do not operate clearly in relation to the creation of new rights over land. Accordingly a new schedule (Modification of compensation and compulsory purchase enactments for creation of new rights) has been incorporated, modelled on numerous Transport and Works Act Order equivalents as well as the provisions of the Local Government (Miscellaneous Provisions) Act 1976 which apply in relation to compulsory purchase orders made by local authorities.</p> <p>Paragraphs 5 and 6 provide a mechanism for the transfer of rights to statutory undertakers with the consent of the Secretary of State.</p> <p>Articles 17(1) and (2) provide that, for Order Land specified in Schedule 5 (Land in which only new rights, etc, may be acquired), the undertaker's rights are limited to the acquisition of such new rights or restrictive covenants that are set out in column 2 of Schedule 5. These rights are precisely drafted. For illustration</p> |            |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision         | Function         | Explanation<br>(from Explanatory Memorandum)  | ExA Issues  |
|-------------------|------------------|---|---|
|                   |                  | <p>as to the extent of land that is subject to this restriction, all of the plots in the Order, with the exception of Plots 450, 453, 454, 454B and 454C, and 457-463 are scheduled for the permanent acquisition of new rights only.</p> <p>The Statement of Reasons anticipates that the acquisition of land will include the acquisition of new rights, and sets out the compulsory acquisition case for both types of acquisition.</p>  |   |
| <b>Article 18</b> | (Private rights) | <p>Has been amended as has partly been explained in relation to Article 15 (Compulsory acquisition of land). It is required to apply to private rights generally and not just to rights of way over land. Reference to section 152 of the 2008 Act is included in paragraph (4) to confirm that compensation payable under this Article is in accordance with the principles for the payment of compensation for injurious affection to land that would ordinarily apply to schemes where statutory authority is relied upon and a claim under section 10 of the Compulsory Purchase Act 1965 arises. Such claims instead arise under section 152 of the 2008 Act rather than section 10 of the Compulsory Purchase Act 1965 as a result of the contents of section</p> | <p>This article contains a slight variation in drafting from some previous made Orders as it is expressed as 'extinguishing' rights (or suspending them for the duration of TP in paragraph (3)).</p> <p>The DBT A&amp;B made Order undertakes the same function in the following terms:</p> <p>'From the relevant date (see article 22(4)), the land over which any new right is acquired is <u>discharged from all rights, trusts and incidents to which it was previously subject</u>, so far as their <u>continuance would be inconsistent</u> with the exercise of that new right'.</p> <p>This formulation appears to both be broader (in that no relevant rights are missed out) but yet more nuanced (rights are not discharged unless they are inconsistent with</p> |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision         | Function   | Explanation<br>(from Explanatory Memorandum)  | ExA Issues  |
|-------------------|--|---|---|
|                   |  | 152 of the 2008 Act. The model provisions are accordingly not followed in full and are adjusted so as to apply to both land and rights over land acquired pursuant to the Order. Paragraphs 6 and 7 allow the undertaker to provide notice to the contrary to the provisions of the Article, allowing the undertaker to confirm to the relevant owner of a dominant tenement that the rights that would by operation of this Article be extinguished or overridden are not so extinguished or overridden. | <p>the needs of the project). The applicant is invited to consider and comment on this approach.</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and TP articles.</p> |
| <b>Article 19</b> | (Application of the Compulsory Purchase (Vesting Declarations) Act 1981) | Reflects model provision 23. It provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981 and provides for that Act to have effect subject to certain modifications. It gives the undertaker the option to acquire land by this method rather than through the notice to treat procedure.   | The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.   |
| <b>Article 20</b> | (Acquisition of subsoil only)  | Reflects model provision 24. It authorises the undertaker to acquire the subsoil in any Order land without acquiring the whole of that land. In certain cases it may be necessary only to acquire a stratum of land below the surface and in the absence of this article the undertaker would be obliged to acquire the whole interest in the   | <p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have</p>  |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision         | Function                                    | Explanation<br>(from Explanatory Memorandum)  | ExA Issues   |
|-------------------|---|---|--|
|                   |   | land. There are precedents for this in, for example, the Glasgow Airport Rail Link Act 2007.  | within CA and related provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and TP articles.   |
| <b>Article 21</b> | (Acquisition of part of certain properties) | Reflects model provision 26 and provides an alternative procedure where the undertaker compulsorily acquires part only of certain types of properties, subject to the right of the owner to require the whole of the property to be acquired, if part cannot be taken without material detriment to the remainder. This replaces section 8(1) of the Compulsory Purchase Act 1965 and unlike that provision sets out a process and timescales for dealing with claims of material detriment. Such provisions are usual in Transport and Works Orders containing compulsory powers such as, for example, article 32 of the Network Rail (West Coast Main Line) Order 2003. | The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.<br><br>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and TP articles. |
| <b>Article 22</b> | (Rights under or over streets)              | Reflects model provision 27 and provides that the undertaker may use a street within the Order limits for the authorised project without being required to acquire any part of the street or any easement or right in the street. Provision is made for   | The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.  |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision                | Function   | Explanation<br>(from Explanatory Memorandum)   | ExA Issues  |
|--------------------------|--|--|---|
|                          |  | <p>the payment of compensation to an owner or occupier of land where their interest in land is not acquired and who suffers loss as a result.</p>  | <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where ‘the undertaker’ is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and TP articles.</p>  |
| <p><b>Article 23</b></p> | <p>(Temporary use of land for carrying out the authorised project)</p> | <p>Will allow the undertaker to take temporary possession of the land included in Schedule 7 (Land of which temporary possession may be taken).</p> <p>Additionally to the model provisions, the Article also provides for other Order land in respect of which notice of entry has not yet been served under Section 11 of the Compulsory Purchase Act 1965 and no vesting declaration has been made under the Compulsory Purchase (Vesting Declarations) Act 1981 to be taken possession of and used, temporarily, for certain specified purposes. It also allows for new rights in land to be acquired compulsorily after temporary possession has been taken; and for permanent works to be constructed whilst temporary possession notices are in place but before permanent rights have been acquired. This follows a number of recent Development</p> | <p>Although this article is framed as providing powers for TP, Article 23(8)(a) permits the compulsory acquisition of new rights and the imposition of restrictive covenants in the land as defined in Article 17. These are CA powers and the ExA will need to be satisfied that the CA tests are met in relation to this land.</p> <p>As currently drafted Article 17 (1) permits the CA of rights / imposition of restrictive covenants over all of the Order land for any purpose for which that land may be acquired under Article 15 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.</p> <p>Article 15 permits the CA of any Order land as is required for the authorised project or to facilitate it or is incidental to it. “Order land” means the land shown on the land plan which is within the limits of land to be</p> |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum)   | ExA Issues   |
|-----------|----------|--|--|
|           |          | <p>Consent Orders, including the East Anglia ONE Order, and allows greater flexibility in the event that, following further design work, it is either decided by the undertaker or agreed with the relevant landowner that temporary occupation rather than permanent acquisition is appropriate. A benefit of structuring the Order powers in this way is also to limit the amount of land that need be ultimately acquired, or over which new rights are acquired, from landowners. As works may be constructed prior to permanent acquisition of land, elements of the scheme can be acquired "as built", with no need to account for uncertainties in the final design in terms of land acquired.</p> <p><u>Article 23 provides that powers to take possession of land temporarily, if land is specified in Schedule 7 (Land of which temporary possession may be taken), may be used only for the specific purposes set out in column 3 of Schedule 7. These temporary powers are "overlaid" onto many of the plots that are also scheduled for the acquisition of permanent new rights.</u></p> <p><u>For plots that are scheduled for temporary possession, Article 23(8)(a) excludes</u></p> | <p>acquired and described in the Book of Reference.</p> <p>This means that, save for the land in Schedule 5, which is carved out for the CA of only new rights by Article 17(1), the undertaker can create new rights in all of the Order land. Thus by virtue of Article 23(8)(a), it appears that new rights and restrictive covenants can be imposed in any of the land in Schedule 7. This is not limited to the new rights that are described in Schedule 5 and effectively permits the CA of any right in the Schedule 7 land as long as it is required for the authorised project or to facilitate it or is incidental to it.</p> <p>From the explanatory memorandum (see underlining) it appears that the applicant intends to limit the CA of new rights in the land in Schedule 7 to land which is also in Schedule 5 where the new rights are described. However, it is not clear that the applicant has achieved this through the current drafting. The applicant is invited to review the current drafting and advise if changes are required.</p> <p>In this respect, the applicant asserts that all plots, except those of which the freehold is required, are in Schedule 5. If this is correct then an amendment may not be</p> |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum)  | ExA Issues   |
|-----------|----------|---|--|
|           |          | <p><u>freehold compulsory acquisition, but still permits the acquisition of permanent rights under Article 17 (as set out in Schedule 5).</u><br/><u>In this way, the power in Article 15 is further limited.</u></p> <p>Article 23(8)(b) permits the acquisition of subsoil rights in any of the land subject to Article 15, or Article 17. This provision could potentially allow the undertaker to acquire additional rights to those set out in Schedule 5, in case a need for a subsoil right becomes apparent that is currently unforeseen. As the great majority of the land to be acquired under the Order comprises new rights for an underground cable and related works, this provision is unlikely to be used, but could be relied on in rare circumstances to assist the delivery of the nationally significant infrastructure project. This provision was accepted in the East Anglia ONE Order, and is commonly used on Transport and Works Orders. A similar provision was included in the Network Rail (Ordsall Chord) Order 2015.</p> <p>The power to temporarily possess "any other Order land" (in respect of which notice of entry has not yet been served under Section 11 of the Compulsory Purchase Act 1965 and no vesting</p> | <p>necessary because all plots in Schedule 7 will also be in Schedule 5. If this is the case then effectively the applicant seeks CA powers over the entirety of the Order land and no land is only for temporary use.</p> <p>The Land Plans do not identify which land is for temporary use, permanent rights and freehold as would normally be expected – and in this regard the ExA would be greatly assisted by a revised set of annotated land plans categorising the nature of CA, rights or TP required for each plot.</p> <p>The combination of re-use of EA1 infrastructure for the application proposal together with the effects of phasing could extend the duration of TP effects on some parcels of land. Please explain how this has been taken into account for both TP and EIA purposes. Reference should also be made to the need to amend the made EA1 Order with precision (see <b>Article 39.</b>)</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other</p> |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision         | Function  | Explanation<br>(from Explanatory Memorandum)  | ExA Issues   |
|-------------------|---|---|--|
|                   |   | <p>declaration has been made under the Compulsory Purchase (Vesting Declarations) Act 1981), in addition to the land specified in Schedule 7, is unlikely to be exercised for the East Anglia THREE project, as all of the Order land, save for the freehold plots (Plots 450, 453, 454, 454B and 454C, and 457-463) is included in Schedule 7 for some purpose (either for access, use for temporary construction compounds, or for purposes of construction of the authorised project).</p> <p>In a departure from the model provisions, there is no requirement on the undertaker to remove from the relevant land works that have been constructed for the purposes of the authorised project. Compensation is available to owners whose land is taken possession of pursuant to this Article.</p> <p>In all cases where powers of temporary possession are exercised, compensation must be paid to the landowner and any occupiers for loss or damage arising from their exercise where claimed.</p> | CA, rights and TP articles.  |
| <b>Article 24</b> | (Temporary use of land for maintaining authorised | Reflects model provision 29 providing that the undertaker may take temporary possession of land within the Order limits required for the purpose of maintaining the   | This article is relevant to consideration of the effect of re-using (or extending the use of) land that has already been subject to TP powers for the EA1 project. |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision         | Function                | Explanation<br>(from Explanatory Memorandum)  | ExA Issues  |
|-------------------|-------------------------|---|---|
|                   | project)                | authorised project, and to construct such temporary works as may be reasonably necessary for that purpose for a period of five years from the date on which that part of the authorised development is first used. Provision is made for notice and compensation. This power does not apply with respect to houses, gardens or any other buildings for the time being occupied. | <p>The re-use of EA1 infrastructure for the application proposal could extend the duration of TP for maintenance effects on some parcels of land. Please explain how this has been taken into account for both TP and EIA purposes. Reference should also be made to the need to amend the made EA1 Order with precision (see <b>Article 39.</b>)</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and temporary possession (TP) articles.</p> |
| <b>Article 25</b> | (Statutory undertakers) | Authorises the undertaker to acquire land and new rights in land belonging to statutory undertakers as shown on the land plans within the limits of the land to be acquired or used and described in the Book of Reference. Paragraphs (a) and (c) of model provision 31 have been combined.  | Where a statutory undertaker objects to CA and the objection is not withdrawn PA2008 s127 applies. Where a statutory undertaker or telecommunications code operator objects to the acquisition / extinguishment of rights or the removal of apparatus and the objection is not withdrawn PA2008 s138 applies. The inclusion of appropriate protective provisions will normally be sufficient to ensure the withdrawal of outstanding representations.   |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum) | ExA Issues   |
|-----------|----------|--|--|
|           |          |  | <p>Whilst Schedule 8 includes some protective provisions, it is not clear whether these are a complete list, or whether those included there have been agreed with the specific statutory undertakers whose land, rights or apparatus could be affected by the Order. The ExA seeks engagement from all statutory undertaker interested parties to confirm their satisfaction or otherwise with the protective provisions currently set out in Schedule 8 and to indicate whether concerns are resolvable through the examination process and so whether amended provisions are likely to be developed.</p> <p>Network Rail has made a relevant representation which clearly articulates such an objection. The ExA would wish to hear a progress update on negotiations between the applicant and Network Rail and views as to whether appropriate protective provisions can be drafted and what they might contain.</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other</p> |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision         | Function   | Explanation<br>(from Explanatory Memorandum)   | ExA Issues  |
|-------------------|--|--|---|
|                   |  |  | CA, rights and TP articles.   |
| <b>Article 26</b> | (Recovery of costs of new connections)                         | Reflects model provision 33 providing for compensation to owners or occupiers of property where apparatus is removed in accordance with Article 25 (Statutory undertakers). It departs from the model provision only by amending paragraph (3), which is not relevant as the Order does not contain an article dealing with the apparatus and rights of statutory undertakers in stopped-up streets.               | The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.   |
| <b>Article 27</b> | (Operation of generating station)                              | Is not a model provision but authorises specifically the undertaker to operate the authorised project in accordance with the provisions of this Order or an agreement made under this Order. This aspect is included pursuant to section 140 of the 2008 Act.  | Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where 'the undertaker' is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and TP articles. |
| <b>Article 28</b> | (Deemed licences under the Marine and Coastal Access Act 2009) | Adopts the form of model provision 37 but adapted to the provisions of the 2009 Act. It provides for six deemed licences, the terms of which are set out in Part 1 of Schedules 10 to 15, required for the deposit at sea within the Order limits of the specified substances and articles and the construction of works in or over the sea and/or on or under the seabed. As explained at paragraph 4.6 above the | The ExA understands the basis for the approach taken in this article and in Schedules 10 – 15 as arising from a view that a partial transfer of the benefit under a DML cannot be made and so separate DMLs are required for each element of the project that may require to be the subject of a transfer of benefit. This has the effect of requiring six DMLs.                |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum)  | ExA Issues  |
|-----------|----------|---|---|
|           |          | <p>approach of splitting the Deemed Marine Licences into six separate licences is to provide for a situation where generation or transmission assets in each phase (should the project be constructed in phases) will be held by different companies (including OFTOs) post-construction.</p> | <p>Recent Secretary of State decisions in relation to applications accompanied by Orders containing multiple DMLs have taken the view that such separation is not legally necessary. The Secretary of State has not amended the DMLs to remove duplicated provisions. However, given this development, combined with a larger than normal number of DMLs in this particular Order leading to apparently avoidable complexity, there is an argument that there would be benefits in consolidating these provisions to the extent that this is considered legally sound. The applicant and the MMO are asked to consider whether the DML Schedules can be simplified and the level of reiteration reduced, whilst still providing fully for the anticipated needs of this project.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• Unless the construction phases are clearly intended to result in separate generation assets with separate ownerships, could the generation assets DMLs (Schedules 10 and 11) be unified?</li> <li>• Could OFTO DMLs (Schedules 12 and 13) be unified?</li> <li>• Could interconnection DMLs (Schedules 14 and 15) be unified and / or merged with a relevant OFTO DML?</li> </ul> |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision         | Function                                 | Explanation<br>(from Explanatory Memorandum)   | ExA Issues  |
|-------------------|--|--|---|
|                   |  |  | <p>The MMO’s views are also sought on this issue.</p> <p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.</p> <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where ‘the undertaker’ is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and TP articles.</p> |
| <b>Article 29</b> | (Application of landlord and tenant law) | Reflects model provision 35 and overrides the application of landlord and tenant law in so far as it may prejudice the operation of any agreement for leasing the whole or part of the authorised development or the right to operate the same and any agreement for the construction, maintenance, use or operation of the authorised development or any part of it entered into by the undertaker. | <p>Reference has been made above to the absence of clarity around the effect transfer of benefit and phased delivery might have within CA and related provisions where ‘the undertaker’ is referred to in the singular. The applicant is requested to apply its consideration of this issue as raised in response to Article 2(1) to this and to other CA, rights and TP articles.</p> <p>The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach</p>   |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision         | Function   | Explanation<br>(from Explanatory Memorandum)   | ExA Issues  |
|-------------------|--|--|---|
|                   |  |  | taken in the model provision used as the source for this article.   |
| <b>Article 30</b> | (Operational land for the purposes of the 1990 Act)    | Reflects model provision 36 and provides that for the purposes of section 264(3) of the Town and Country Planning Act 1990 the development consent granted by the Order shall be treated as a specific planning permission.  | The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.   |
| <b>Article 31</b> | (Felling or lopping of trees and removal of hedgerows) | Enables the undertaker to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised project and danger to the authorised project. Provision is included for the payment of compensation for loss and damage. It varies from model provision 39 as it also enables the undertaker to remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development and remove the important hedgerows that are within the Order limits and specified in Schedule 9 (Important hedgerows). | <p>Please refer to <b>Article 6</b> and <b>Schedule 9</b>.</p> <p>This article contains a wide power to fell or lop any tree or shrub (31(1)) and remove any hedgerow within the Order limits (31(4)). While the applicant has limited removal of important hedgerows to those in Schedule 9, PINS' DCO drafting advice note AN15 says at para 24 that as a matter of good practice "[h]edgerows should be identified in a schedule to and on a plan accompanying the DCO. The schedule and plan could also helpfully identify those hedgerows that are 'important' hedgerows". The intention underlying this advice is not that the Schedule should only list important hedgerows to be removed. It is intended to facilitate engagement by interested parties in the question of whether any hedgerows should be removed, assisting by indicating those considered to be important.</p> <p>The ES refers to an Outline Landscape and Ecology Management Strategy (OLEMS),</p> |

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| Provision | Function | Explanation<br>(from Explanatory Memorandum) | ExA Issues  |
|-----------|----------|--|---|
|           |          |  | <p>and the preparation of an Arboricultural Method Statement to secure mitigation in relation to tree and hedgerow works<sup>1</sup>. The means by which these would be agreed and secured is not clear from this provision.</p> <p>There is also an overlap between tree hedgerow works permitted under the EA1 made Order and additional works sought to be permitted under this Order. It would also assist to be clear which trees and hedgerows to be removed pre-exist both EA1 and the application proposal and which have been planted as EA1 mitigation. It may be that there is no case for a general felling, lopping or removal authorisation in this Order, or alternatively this provision could be targeted more closely to just those trees and hedgerows for which removal is sought for this project?</p> <p>Can the applicant please address these issues and then provide a Schedule that addresses the advice in AN15?</p> |

<sup>1</sup> ES Chapter 23 at para 130 – Table 23.20 – Summary of potential impacts identified for ecological receptors. Paragraph 236 also states in relation to hedgerows: *'[t]he substation would be subject to a specific Landscape Management Scheme which will include provision for replacement planting for all hedgerows permanently lost during substation construction.'*

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| <b>Provision</b>  | <b>Function</b>              | <b>Explanation<br/>(from Explanatory Memorandum)</b>  | <b>ExA Issues</b>  |
|-------------------|------------------------------|---|--|
| <b>Article 32</b> | (Certification of plans etc) | Reflects model provision 41 and requires the undertaker to submit copies of the documents, plans and sections referred to in the Order to the decision maker, for certification as true copies following the making of the Order.   | The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.                                |
| <b>Article 33</b> | (Arbitration)                | Adapts model provision 42 and makes provision for any dispute arising under the provisions of the Order and, unless otherwise provided for, to be settled by arbitration. These will include circumstances where the agreement of the relevant local authority is needed but cannot be reached. It will not apply to any appeals against approval or non-determination of requirements.   | The applicant is requested to consider whether subsequent practice gives rise to considerations that influence the approach taken in the model provision used as the source for this article.                                |
| <b>Article 34</b> | (Requirements, appeals etc)  | Deems the requirements which relate to works landward of mean low water, and hence within the area of the relevant planning authority, as planning conditions under section 72 of the Town and Country Planning Act 1990, and includes a modification to the application of that Act to provide for the normal right of appeal in relation to the discharge of a planning condition. This Article avoids the need for the Secretary of State to have the role of determining detailed approvals under the relevant onshore requirements, which would otherwise be necessary under the 2008 Act. | Do all parties agree that the requirements operating landward of mean low water and to which the appeals provisions under the 1990 Act are intended to apply are those listed in this provision (requirements 11-33 and 36)? |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision         | Function                                  | Explanation<br>(from Explanatory Memorandum)   | ExA Issues  |
|-------------------|---|--|---|
| <b>Article 35</b> | (Abatement of works abandoned or decayed) | Authorises the Secretary of State to issue a written notice to the undertaker requiring the repair, restoration or removal of Works No. 1(a) to (d) or 2 where they have been abandoned or allowed to fall into decay. This power is stated to be without prejudice to any notice served under section 105(2) of the Energy Act 2004 requiring the submission of a decommissioning scheme.                                 | No comments at this stage   |
| <b>Article 36</b> | (Saving provisions for Trinity House)     | Is a standard provision taken from the harbour model clauses and was also included in Transport and Works Orders for offshore windfarms, including that for Scarweather Sands.   | A relevant representation from Trinity House seeks changes to incorporate what is now suggested to be a standard saving provision. What are those changes?  |
| <b>Article 37</b> | (Crown rights)                            | Is not a model provision, but protects the Crown's position in relation to its own estates, rights, powers, privileges, authorities and exemptions and ensures that the Crown's written consent is required where any land, hereditaments or rights are to be taken, used, entered or interfered with as a result of granting of the Order. This article reflects recent Orders and has been agreed with The Crown Estate. | <p>The Crown Estate (TCE) has requested equivalent provisions in a number of now made Orders. However, it appears that it may not be necessary for two reasons.</p> <ul style="list-style-type: none"> <li>In this case the only Crown land is land owned by TCE and their interests have been excluded from CA in the plot description in the Book of Reference (BoR). There is no Crown land owned on behalf of TCE over which CA could be sought (previous Highway Agency land has been transferred to Highways England and is no longer Crown land) and no PA2008 s135(1) consent is required.</li> </ul> |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision         | Function                | Explanation<br>(from Explanatory Memorandum)  | ExA Issues   |
|-------------------|-------------------------|---|--|
|                   |                         |   | <ul style="list-style-type: none"> <li>PA2008 s135 (2) consent will be required from TCE for the provisions in the DCO which apply to Crown land. As currently drafted, this article appears to anticipate that this consent may not be forthcoming until after the Secretary of State has decided the application and also that it may be conditional (hence importing considerations that have not been examined or considered by the Secretary of State). It appears desirable that an unconditional Crown consent should be achieved within the examination period and if that is achieved, then the provision in Article 37(2) enabling a Crown consent after the making of the Order is not required.</li> </ul> <p>The applicant is requested to discuss this issue with TCE and to provide updated advice.</p> |
| <b>Article 38</b> | (Protective provisions) | Gives effect to the protective provisions in Schedule 8 (Protective provisions).  | See <b>Article 25</b> .  |
| <b>Article 39</b> | (East Anglia ONE Order) | <u>Provides for the East Anglia ONE Order to be varied to the extent necessary to give effect to requirement 32 which relates to remedial works to protect ducts and cables from coastal retreat.</u> | The ExA has significant concerns about this article and the corresponding <b>requirement 32</b> . These arise from the fact that this is the first instance in which a new Order seeks to amend a made Order, and that this Order is not written to specifically amend the made EA1 Order, but seeks to do so in generic and hence potentially uncertain terms.  |

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| Provision | Function | Explanation<br>(from Explanatory Memorandum) | ExA Issues  |
|-----------|----------|--|---|
|           |          |  | <p>For these reasons, the applicant is asked to provide legal submissions on the ability of one Order to amend another Order and for an explanation of why they consider this approach to be lawful and to be the most appropriate way to change the made EA1 Order as opposed to applying to change it in accordance with Schedule 6 of PA2008.</p> <p>Even if it is both lawful and appropriate, the drafting in this Order which describes the amendments sought is vague and would not adequately secure amendments to the EA 1 Order in a manner that is sufficiently clear and certain. For example, there is no description of how the EA1 Order is to be varied. This article says that the EA1 Order is varied to the extent necessary to give effect to <b>requirement 32</b> (decommissioning of work No. 5B and work No. 7). This approach appears provisionally to the ExA to be unacceptable. Arguably there needs to be sufficient clarity and certainty as to how the EA1 Order is varied, much in the same way as would be done in a DCO correction order or in amending legislation. This approach appears to be necessary to ensure that the interests of the EA1 undertaker (which may not always be EA One Ltd and / or associated with the EA</p> |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum) | ExA Issues  |
|-----------|----------|--|---|
|           |          |  | <p>Three undertaker) are properly protected. It also appears to be necessary so that relevant LPAs know the content and extent of both Orders, in case any enforcement action needs to be taken.</p> <p><b>Requirements 32</b> in the EA1 Order and the EA3 Order are almost identical. Both require a report detailing the extent of coastal retreat and any remedial works or mitigation measures which have been undertaken / are proposed for works at Bawdsy cliffs. Both state that if it cannot be demonstrated that the relevant works will not have a significant impact on coastal processes then they must be decommissioned. Both require this report to be submitted after a period of 24 years but before the expiration of 25 years following completion of the works.</p> <p>The EA1 works comprise:</p> <ul style="list-style-type: none"> <li>• <i>Work No. 3B</i> – onshore connection works consisting of up to four cables and up to eight additional cable ducts laid underground from mean low water at Bawdsey Cliffs to Work No. 4 together with new temporary horizontal directional drilling compounds and a new temporary secondary construction</li> </ul> |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum) | ExA Issues   |
|-----------|----------|--|--|
|           |          |  | <p>consolidation site; and</p> <ul style="list-style-type: none"> <li>• <i>Work No. 4</i> – up to twelve transition cable jointing bays, with associated cables, connecting Work No. 3B to Work No. 5 to the east of Ferry Lane, Bawdsey together with new temporary horizontal directional drilling compounds and a new temporary secondary construction consolidation site.</li> </ul> <p>The EA3 works comprise:</p> <ul style="list-style-type: none"> <li>• <i>Work No. 5B</i> – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from mean low water springs at Bawdsey Cliffs to Work No. 7 together with a temporary transition bay compound; and</li> <li>• <i>Work No. 7</i> – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 5B to Work No. 8, together with up to four transition bays and a temporary transition bay compound, and a new temporary vehicular access track from Ferry Road.</li> </ul> <p>Requirement 32(3) in EA3 purports to supersede the requirement in EA1:</p> |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum) | ExA Issues  |
|-----------|----------|--|---|
|           |          |  | <p><i>Upon completion of Work No. 5B and Work No. 7 the obligation of the undertaker under paragraphs (1) and (2) above shall supersede the obligation in respect of the ducts within which circuits have been pulled through, as part of Work No. 5B and Work No.7, pursuant to requirement 32 of the East Anglia ONE Order which shall then no longer take effect in respect of the relevant ducts.</i></p> <p>The explanatory memorandum describes this in the following terms:</p> <ul style="list-style-type: none"> <li>• For this article – as underlined in this table.</li> <li>• For requirement 32 in this Order:</li> </ul> <p style="padding-left: 40px;"><i>Requirement 32 - (Decommissioning of Work No. 5B and Work No. 7) provides that after a period of 25 years following completion of construction of Work No. 5B and Work No. 7, the undertaker must submit a report to the relevant planning authority detailing the extent of coastal retreat since construction of the relevant ducts, remedial works or mitigation measures. If it cannot be demonstrated that, taking into account any proposals for such remedial works or mitigation measures, Work No. 5B and Work No. 7 will not have a significant impact on coastal processes then those works must be decommissioned. This replicates the requirement included in the East Anglia ONE Order, but separates and transfers the obligations in respect of the project (i.e. the</i></p> |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum) | ExA Issues   |
|-----------|----------|--|--|
|           |          |  | <p><i>ducts and cables for East Anglia THREE) to the OFTO for East Anglia THREE. The remaining ducts and cables are still covered by the East Anglia ONE Order and will therefore be managed by the East Anglia ONE OFTO.</i></p> <p>The applicant is attempting to transfer the costal reporting obligations in respect of the ducts and cables to be used by EA3, but for which consent was granted under the EA1 Order to the EA3 undertaker. It is not clear that this has been achieved without specific amending re-drafting to include detail of how the EA1 Order is to be varied in detailed terms.</p> <p>The applicant should also provide a more detailed explanation of the implications of this proposed amendment, including the implication that the ducts used by both EA1 and EA3 could potentially be there for more than 25 years after the completion of works for EA1 before a report is made.</p> <p>The original requirement in the EA1 Order was included at the request of the LPAs because the ES for that project only assessed significant effects for a 25 year period. The LPAs were concerned that EA3 &amp; EA4 could extend the operational life of this facility at the landfall. This provision together with requirements 31 and 32 and the ES do not reference the EA1</p> |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum) | ExA Issues  |
|-----------|----------|--|---|
|           |          |  | <p>decommissioning plan or process, either in terms of specifically amending it or securing a decommissioning process for EA3 that would be compliant with it.</p> <p>LPAs' and statutory nature conservation bodies' comments are also sought on the implications of this change for EIA and HRA purposes.</p> <p>Related technical issues are raised in respect of <b>requirement 36</b> of the Order where EA3 Ltd is required to submit a scheme for approval by the relevant planning authority for the reuse of temporary works installed by EA1. Under <b>requirement 30</b> of the Order, EA3 Ltd is required to reinstate land used temporarily for construction of the connection works.</p> <p>On completion of the EA1 onshore cable laying works (including laying the ducts) EA1 Ltd is required to restore any land used temporarily for construction by <b>requirement 28</b> of the EA1 Order. Restoration must take place as soon as reasonably practicable and in any event within 12 months of completion of the relevant stage of the connection works. The areas of land to be used temporarily will comprise, broadly, the land required for the</p> |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision                                      | Function  | Explanation<br>(from Explanatory Memorandum) | ExA Issues  |
|--|---|--|---|
|  |   |  | <p>haul road and soil storage areas along the onshore cable corridor, the primary and secondary construction consolidation sites, and temporary vehicular access tracks. The applicant has suggested in the explanatory report at paragraph 5.18 that '[t]he relevant planning authority, when approving details of any reinstatement proposals, may permit the partial retention of temporary works installed by [EA1] in a form which can then be reused by [EA3]. This would reduce the disruption which would otherwise be involved in [EA1] fully reinstating the temporary works and then [EA3] reinstalling them. However, the performance of this understanding is not secured at present. It will be at the discretion of the relevant LPA when discharging EA1 requirements. Is some form of security required? If so, what steps should be required and should these seek to amend the EA1 Order? Comments are sought from the applicant and LPAs.</p> |
| <p><b>Missing provision from articles?</b></p> | <p>Guarantees for payment of compensation for CA &amp; TP</p> | <p>None</p>                                  | <p>There is no article to establish a mechanism of guarantee for payment of compensation for CA, acquisition or rights and TP. It may be that this is to be secured another way (eg by a contract or deed under seal or a TCPA planning obligation). The applicant is requested to identify how this issue is to be managed. If LPAs are to be requested to administer planning obligations under the</p>   |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function                  | Explanation<br>(from Explanatory Memorandum) | ExA Issues   |
|-----------|---------------------------|--|--|
|           |                           |  | 1990 Act that should be made clear and their agreement and comments should be sought.  |
|           | CA provision for minerals | None   | There is no article addressing the compulsory acquisition of land: minerals. Is there any need to incorporate Part 2 of Schedule 2 to the Acquisition of Land Act 1981 (minerals) in this Order? The applicant is requested to identify how this issue is to be managed. |

**Schedules**Schedule 1 (Authorised Project)*Includes requirements*

| Provision     | Function                                 | Explanation<br>(from Explanatory Memorandum)  | ExA Issues  |
|---------------|--|---|---|
| <b>Part 1</b> | Authorised development (primary works)   | Part 1 of Schedule 1 specifies the authorised development comprising the scheduled works. | Schedule 1 Work No. 1 provides that the maximum installed capacity of the wind farm is 1,200 MW, with up to 172 turbines, up to one accommodation platform, up to two meteorological masts, up to 12 buoys and inter-array cables. Work No. 2 provides for up to 6 offshore substations. Works Nos. 3-5A provide for cables to connect the works including interconnection with the EA1 wind farm. There is no reference to the phasing of any of the offshore works in Schedule 1, |
| <b>Part 2</b> | Authorised development (ancillary works) | The ancillary works are set out in Part 2.  |   |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum) | ExA Issues   |
|-----------|----------|--|--|
|           |          |  | <p>and these in turn would drive the phasing of onshore works from 5B to 69.</p> <p>The explanatory memorandum discusses phasing and confirms at 4.1.1 that EA3 will either be constructed in a single phase or in a two phase approach.</p> <p>Whether phased or not, the description of the maximum number of turbines in Work No. 1(a) accords with the assessed maximum number in the ES. However, there does not appear to be a limitation (by way of a description of the works in Schedule 1 or in a requirement in Schedule 3) which refers to a minimum number of turbines or allocates such a number between phases. The ES describes the proposed development as comprised between 100 and 172 turbines. Is it necessary to secure delivery of a minimum number of 100 turbines to ensure that what is constructed accords with what was assessed?</p> <p>If a two phase approach is taken it is suggested that it would be constructed in phases each consisting of up to 600MW and comprising 86 wind turbines, 3 electrical stations and a defined maximum length of subsea electrical connections. The accommodation platform, one or both meteorological masts and some or all buoys</p> |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum) | ExA Issues   |
|-----------|----------|--|--|
|           |          |  | <p>may be constructed as part of either phase. That being said, the sequence and timing of this division is not secured.</p> <p>Onshore, each phase will comprise of underground electrical connections comprising up to two transition bays and up to two circuits and one onshore substation / converter station.</p> <p>Requirement 11 provides that:<br/> <i>The connection works (defined in article 2 as works 4B-69) may not be commenced until a written scheme setting out whether:</i><br/> <i>(a) <u>the connection works are to be carried out in a single onshore phase or in two onshore phases.....</u></i></p> <p><i>have been submitted to and approved by the relevant planning authority.</i></p> <p>Article 2 defines:<br/> <i>"single onshore phase" as 'carrying out the connection works as a single construction operation'</i><br/> <i>"two onshore phases" as 'carrying out of the connection works as two separate construction operations linked to two offshore phases'</i><br/> <i>"Two offshore phases" is defined as meaning the offshore works as 2 separate construction operations pursuant to the DMLs in Schedules 10,12 and 14 (phase 1)</i></p> |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum) | ExA Issues  |
|-----------|----------|--|---|
|           |          |  | <p>and 11,13 and 15 (phase 2).</p> <p>The explanatory memorandum at 4.8 explains that requirement 11(1)(a) secures the two phased approach by permitting the submission of pre-commencement details to the LPA, setting out whether the connection works will be carried out in a single onshore phase or in two onshore phases. However, it does not explicitly limit the phases to the ones contained in the DMLs, i.e. to splitting the works in half, and could permit the applicant and the relevant LPA to agree a different split between phases which might not have been assessed in the ES or agreed to by the MMO.</p> <p>DML condition 13 - Pre-construction plans and documentation requires submission of a construction and monitoring plan which must confirm whether works are to be carried out as a single offshore phase or as two offshore phases.</p> <p>The ExA's initial understanding is that the definition of two offshore phases being tied to the split in the DMLs appears to secure the split of the development as set out in the DMLs. However, it would also be possible to amend the DMLs separately from the DCO by application to the MMO and this in turn could effectively amend the phasing</p> |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum) | ExA Issues   |
|-----------|----------|--|--|
|           |          |  | <p>in the DCO at a later stage without appropriate consideration of the implications of this for the onshore works.</p> <p>The effect of these provisions taken together would appear to enable the precise framing of a project phase to be varied from onshore, without consideration by the relevant offshore authority or reflection in offshore provisions, and vice versa from offshore.</p> <p>On this basis, the ExA asks the applicant and all relevant interested parties whether it would be better to secure the phasing in the DCO itself. This could be done by a specific requirement (for example, an addition to requirement 12) or by amending the definitions of onshore and offshore phases. Undertaking such work could also address broader questions about project definition and the relationship between project phases and transfers of benefit identified in the hearing agenda and earlier in this schedule.</p> <p>At 3.14 of the statement of reasons (SoR), the applicant states that if the project were to be constructed in two phases, the second phase would start approximately 18 months after the first, but there is nothing in the DCO to secure this. It is also unclear how a</p> |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision     | Function     | Explanation<br>(from Explanatory Memorandum)   | ExA Issues   |
|---------------|--------------|--|--|
|               |              |  | <p>decision on phasing will be communicated to the landowners. Again, some greater specification and clarity could address the possibility of a range of potential outcomes, including that the phases might be delivered concurrently, or might be delivered separately and it is not currently clear that the worst case scenario has been assessed. Whatever conclusion is reached on these points, the DCO needs to secure what has been assessed and consulted on.</p> <p>As the benefit of the DCO can be transferred in whole or in part, it could be possible for different undertakers to construct each phase, it should therefore be clear how the different phases will be co-ordinated and who will be responsible for exercising the powers in the DCO, in particular in relation to the CA powers.</p> <p>The applicant, MMO, LPAs, statutory nature conservation bodies, Environment Agency and all other interested parties participating in the hearing are invited to address these issues.</p> |
| <b>Part 3</b> | Requirements | Part 3 sets out certain requirements that the undertaker must meet in relation to the construction and operation of the authorised project. These requirements take a similar form to planning conditions. | The applicant is asked to explain why the requirements are set out as Part 3 to Schedule 1 as opposed to being a schedule in their own right?  |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision                  | Function                              | Explanation<br>(from Explanatory Memorandum)  | ExA Issues  |
|----------------------------|---------------------------------------|---|---|
|                            |                                       | <p>The requirements are based upon those contained in Schedule 4 of the model provisions (the model requirements). The model requirements are, however, necessarily general, designed for development on land and cover a wide range of schemes. Model requirements which are not relevant to the authorised development have been omitted.</p> <p>With regard to the structure of the onshore requirements, it should be noted that the principles informing the onshore mitigation are largely set out in a number of outline documents submitted with the Application. This follows the approach agreed with the local planning authorities for East Anglia ONE.</p> | Any requirements based on model provisions should also be reviewed in the light of relevant practice in recent made Orders.   |
| <b>Requirement 1</b>       | (Time limits)                         | Specifies the time limit for commencing the authorised development as 5 years from the date of the Order, as provided for in Regulation 3 of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010.  | No comments at this stage.  |
| <b>Requirements 2 to 9</b> | (Detailed offshore design parameters) | Set out the detailed design parameters within which the authorised development must be constructed. Requirement 2 deals with the dimensions and other characteristics of WTGs. Requirement 3 limits the dimensions of the offshore electrical stations, accommodation platform, meteorological masts and buoys.   | <p>All offshore interested parties are asked to identify whether these parameters adequately describe the Rochdale envelope for this project and secure this.</p> <p><b>Requirement 2</b><br/>References in the ES, the explanatory memorandum and the Order to the height of</p> |

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| Provision | Function | Explanation<br>(from Explanatory Memorandum)   | ExA Issues  |
|-----------|----------|--|---|
|           |          | <p>It also restricts offshore platforms (both electrical stations and accommodation platforms) from being constructed in a location identified on the offshore works plan as a 'Platform Exclusion Zone', and for which grid co-ordinates are also provided within Requirement 3. Requirement 4 limits the total length of export, inter-array/inter-substation and interconnector cables and specifies the maximum amounts of cable protection. Requirements 5-8 restrict the dimensions of the different foundation types and Requirement 9 limits the amount of scour protection for the various structures. The purpose of these various restrictions is to ensure that the authorised development is restricted to that which has been assessed in the Environmental Statement.</p> | <p>turbines or their components above sea level do not refer to the same terms. Requirement 2 uses lowest astronomical tide (LAT) and mean high water springs (MHWS) as references for turbine height, generator shaft or hub height and blade separation from sea level respectively. It sets the maximum hub height at 150.6m above LAT. MHWS is used as the reference point for minimum blade separation from sea level. Article 2(1) defines, and the explanatory memorandum additionally refers to, mean low water springs (MLWS), although this term is not used in the requirement. The explanatory memorandum<sup>2</sup> describes 150.6m from LAT as being equivalent to 150m from MLWS 'as assessed in the ES'. However, the ES<sup>3</sup> describes turbine height above sea level with reference to a third measure – mean sea level (MSL). MSL is not defined in Article 2(1) or employed in this requirement. Nor does the ES show or reference MLWS.</p> <p>Due to the inconsistent use of these terms between these documents, it is not clear that the proposed design parameters accurately reflect and secure the worst case</p> |

<sup>2</sup> Explanatory Memorandum: List of Order Parameters at pg 38 and footnote.

<sup>3</sup> ES: Chapter 5, paragraph 26 and Table 5.4

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| Provision | Function | Explanation<br>(from Explanatory Memorandum) | ExA Issues   |
|-----------|----------|--|--|
|           |          |  | <p>scenario assessed in the ES. The applicant and MMO are invited to comment on the need for amendments to the requirement to ensure that development is delivered within the Rochdale envelope.</p> <p><b>Requirement 3</b><br/>Should requirement 3(1) limit the total number of meteorological masts to two?</p> <p>In requirement 3(2) should “any” be changed to “the” because there can only be one accommodation platform?</p> <p>Requirement 3(6) provides that buoy dimensions must not exceed 4m in length. The maximum width and height of buoys are specified in the ES<sup>4</sup> but the length is not specified there. The ES refers to a maximum 1m sea bed penetration, but this is not secured in the requirement.</p> <p>The applicant and MMO are invited to comment on consistency between the provisions in the requirement and the Rochdale envelope as assessed in the ES.</p> <p><b>Requirement 4</b><br/>Requirement 4(1) provides that the total cable protection volume for Work No. 3 (the</p> |

<sup>4</sup> ES: Chapter 5: paragraphs 136 - 137

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum) | ExA Issues  |
|-----------|----------|--|---|
|           |          |  | <p>platform links) is 28,480m<sup>3</sup>. The total volume identified is the same in the ES<sup>5</sup> but it is shown there divided between two values: 21,600m<sup>3</sup> and 6,880m<sup>3</sup> respectively. The same approach has been taken to the information provided on Work No. 4 (the interconnection) and Work No. 5A (the export cable). The applicant and MMO are invited to comment on consistency between the figures used in the requirement and the Rochdale envelope as assessed in the ES.</p> <p><b>Requirement 5</b><br/>Requirement 5(3)(b) provides for a maximum pin pile diameter of 4m, but the ES<sup>6</sup> appears to have assessed a maximum dimension of 3.5m. The applicant and MMO are invited to comment on consistency between the figures used in the requirement and the Rochdale envelope as assessed in the ES.</p> <p><b>Requirement 8</b><br/>Should “an” in both requirement 8(1) and 8(2) be changed to “the” because there can only be one accommodation platform?</p> |

<sup>5</sup> ES: Chapter 5: Table 5.25 and Table 5.27

<sup>6</sup> ES: Chapter 5, pg 20, Table 5.5

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| Provision             | Function   | Explanation<br>(from Explanatory Memorandum)   | ExA Issues  |
|-----------------------|--|--|---|
|                       |  |  | <p><b>Missing requirements or plans</b></p> <p>Should there be a requirement to provide for the provision of aviation lighting to meet CAA requirements and the maximum illumination provided by this and by other offshore lighting?</p> <p>Should there be a means of requiring the WTG arrays to be laid out in a linear fashion, via the approval of a layout plan?</p>   |
| <b>Requirement 10</b> | (Offshore decommissioning)                             | Requires a decommissioning programme to be agreed with the Secretary of State prior to the commencement of the offshore works and replicates the wording used on consents for offshore windfarms granted under the Electricity Act 1989 (and now the 2008 Act) following the relevant provisions of the Energy Act 2004 coming into force. | No comments at this stage   |
| <b>Requirement 11</b> | (Phasing and stages of authorised development onshore) | Reflects model requirement 3 and requires a written scheme setting out all the phasing and stages of the onshore connection works to be approved by the relevant planning authority before commencement of any onshore works.  | See <b>Schedule 1</b> . In addition to requiring notification of phasing, 11(b) requires the applicant to submit details of the stages of the onshore connection works. This would enable pre-commencement details to be submitted and discharged for each stage of the work as opposed to submitting the details for the whole scheme before any works can commence. It would apply to requirements 16, 17, 18, 20, 22, 23, 24, 27, 29 and 36. |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision             | Function                             | Explanation<br>(from Explanatory Memorandum)  | ExA Issues  |
|-----------------------|--------------------------------------|---|---|
|                       |                                      |   | The applicant has not fully explained why they need this or how many stages they anticipate the project being split up into and, further to questions raised above, the ExA would welcome a clearer justification for this staged approach and explanation of its implications. Views are also sought from LPAs, statutory nature conservation bodies, Environment Agency and all other interested parties participating in the hearing.  |
| <b>Requirement 12</b> | (Detailed design parameters onshore) | Follows model requirement 4 in requiring approval of details of the proposed works at the onshore substations by the relevant planning authority. It specifies parameters in terms of the maximum size of the equipment and buildings for the onshore substations / converter stations. The maximum footprint of the construction consolidation sites and the details of the kiosks are also included. Taken together these restrictions ensure that the impact of the onshore works is minimised in line with the assessment and commitments contained in the Application. | <p>Can the applicant provide a clear explanation of the design relationship between EA1 and EA3, setting out which of the onshore elements provided by EA1 are proposed to be used or re-used by EA3?</p> <p>All onshore interested parties are asked to identify whether these parameters adequately describe the Rochdale envelope for this project and secure this.</p> <p>There is a possible discrepancy between existing ground level as recorded in requirement 12(5) (57m above ordnance datum (AOD)) and that of the finished compound and substation halls' floor levels as described in the ES<sup>7</sup>. Can the applicant please explain this?</p> |

<sup>7</sup> ES: Chapter 5: Table 5.48 ) refers to the substation halls' finished floor levels as approximately 54m AOD and rest of the compound as slightly lower.

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision             | Function                    | Explanation<br>(from Explanatory Memorandum)  | ExA Issues  |
|-----------------------|-----------------------------|---|---|
|                       |                             |   | <p>With reference to <b>requirement 12(8)(a)</b> it should be noted that the EA1 Offshore Wind Farm (Corrections and Amendments) Order 2016 amended the equivalent requirement 10(10)(a) in the made EA1 Order to delete a reference to the ‘number, location, scale and appearance’ of kiosks to be located in the onshore cable corridor and to replace this with a reference to ‘details of the scale and appearance’ of the kiosks. Can the applicant please explain the rationale for this change and whether it is sought here? Relevant local planning authorities’ views on the need to approve the number and location of kiosks are sought.</p> |
| <b>Requirement 13</b> | (Landfall method statement) | <p>Provides that the landfall works (Work No. 5B, Work No. 6 and Work No. 7) cannot commence until a method statement which includes measures to minimise the impact of the works on cliff stability and coastal erosion, has been submitted to and approved by the relevant planning authority in consultation with Natural England.</p> | <p>See <b>Schedule 1</b>. Can the applicant provide a clear explanation of the design relationship between EA1 and EA3, setting out which landfall elements provided by EA1 are proposed to be used or re-used by EA3 and the implications of this for the duration of those elements at the landfall site? Reference should be made to existing submitted material in the ES<sup>8</sup> to draw this explanation together.</p>  |

<sup>8</sup> ES: Chapter 5. Information describing the landfall works is contained within paragraphs 332-352 (construction), 353-355 (operation), and 356-357 (decommissioning).

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision      | Function  | Explanation<br>(from Explanatory Memorandum)  | ExA Issues  |
|----------------|---|---|---|
| Requirement 14 | (Provision of landscaping)                      | Follows model requirement 7 and requires a landscaping management scheme to be approved by the relevant planning authority before the relevant stage of the connection works may commence. The landscaping scheme must be in accordance with the outline landscape and ecological management strategy submitted with the Application. Landscaping is proposed in the onshore substation location. As well as landscaping to the north (Work No. 69) which relates solely to the project, landscaping works to the east (Work No. 64) and the west (Work No. 68) have been included in the works description. <u>It is anticipated that East Anglia ONE will carry out the landscaping works to the east (Work No. 64) and the west (Work No. 68), but if not the Applicant will require the ability to do so as part of their own landscaping scheme for the project.</u> | Underlined text in the explanatory memorandum for requirement 14 identifies the relationship between EA3 and EA1 in respect to landscaping. Can the applicant clarify if CA powers are sought over the land to which these works relate for the purpose of landscaping and identify which plots of land these works relate to so that relevant questions can be fully considered in the CA hearing?<br><br>Will any landscaping provided for EA1 (as both landscape / visual and natural environment mitigation) need to be removed and re-provided? Is any additional provision needed to secure this?<br><br>Will phasing require the removal and re-provision of any landscaping provided for EA3? Is this adequately secured? |
| Requirement 15 | (Implementation and maintenance of landscaping) | Follows model requirement 8 and requires the undertaker to implement the approved landscaping management scheme and to replace trees or shrubs which die within 10 years of planting.   |   |
| Requirement 16 | (Highway accesses and improvements)             | Follows part of model requirement 10 in requiring approval of details of any permanent or temporary means of access to a highway, or any alteration to an existing means of access, by the relevant   | No comments at this stage   |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision             | Function                               | Explanation<br>(from Explanatory Memorandum)   | ExA Issues                |
|-----------------------|--|--|---------------------------|
|                       |  | planning authority in consultation with the relevant highway authority. It also provides that no stage of the connection works may commence until for that stage a scheme of traffic management measures (in accordance with table 2 of the outline traffic management plan) has been approved and brought into use.   |                           |
| <b>Requirement 17</b> | (Fencing and other means of enclosure) | Follows model requirement 13 and provides that temporary and permanent fencing and other means of enclosure shall be approved before that stage of the onshore connection works is commenced, that construction consolidation sites shall be securely fenced, temporary fencing removed after completion of the works and that the permanent fencing around Work No. 67 (the onshore substations) is in place before it is used. | No comments at this stage |
| <b>Requirement 18</b> | (Surface and foul water drainage)      | Provides that the relevant stage of the connection works shall not be commenced until details of the surface and foul water drainage system for that stage have been approved by the relevant planning authority in consultation with the sewerage and drainage authorities.   | No comments at this stage |
| <b>Requirement 19</b> | (Contaminated land and ground water)   | Requires that Work No. 41 must not commence until a scheme to mitigate the potential release of contaminants has been submitted to and approved by the relevant planning authority (following consultation   | No comments at this stage |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision             | Function                     | Explanation<br>(from Explanatory Memorandum)  | ExA Issues   |
|-----------------------|------------------------------|---|--|
|                       |                              | with the Environment Agency). It also requires the scheme to be implemented as approved. This Requirement has been included to reflect the specific site conditions at the location of Work No. 41. Although cables will be pulled through pre laid ducts it is not known whether, for example, jointing bays may need to be located within Work No. 41, and Requirement 19 is required to secure mitigation in that event. |  |
| <b>Requirement 20</b> | (Archaeology)                | Follows model requirement 16. It provides that the relevant stage of the connection works shall not commence until a scheme of investigation has been agreed with the relevant planning authority (in consultation with Historic England and Suffolk County Council). At the request of the relevant planning authorities, the scheme is to cover the matters set out in the Requirement.                                   | See comments in relation to works pre-commencement in <b>Article 2(1)</b> above.   |
| <b>Requirement 21</b> | (Ecological management plan) | Reflects model requirement 17 and provides that the onshore connection works shall not commence until an ecological management plan for that stage of the connection works reflecting the surveys, mitigation and enhancement measures in the Environmental Statement has been approved by the relevant planning authority. The scheme shall be implemented as approved.  | See comments in relation to works pre-commencement in <b>Article 2(1)</b> above. See also <b>Missing Provisions</b> below in respect of mitigation for wintering <i>Brent geese</i> at Deben Estuary SPA/Ramsar. |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision      | Function  | Explanation<br>(from Explanatory Memorandum)   | ExA Issues   |
|----------------|---|--|--|
| Requirement 22 | (Code of construction practice)                               | Provides that the relevant stage of the connection works shall not commence until a code of construction practice for that stage of the connection works has been submitted and approved by the relevant planning authority. The code must cover all the matters in the outline code submitted with the Application and be implemented as approved.  | Requirement 23(1) and (2) appear to replicate requirement 22(f), albeit in more detail. Why it is necessary to have an artificial light emissions plan in the CoCP as well as a separate artificial light emissions plan and how they will interact?<br><br>Requirement 24(1) and (2) appear to replicate requirement 22(d), albeit in more detail. Why it is necessary to have a noise and vibration management scheme in the CoCP as well as a separate scheme and how they will interact? |
| Requirement 23 | (External lighting and control of artificial light emissions) | Adapts model requirement 21 and provides for written details of any external lighting proposed to be used for the relevant stage of the connection works to be submitted and approved by the relevant planning authority before works commence on that stage of the connection works. It also requires that Work No. 67 (the onshore substations) shall not be commenced until a scheme for management and mitigation of artificial light emissions has been approved for the operation of that work. The approved scheme shall be implemented and observed. | See comments in relation to works pre-commencement in <b>Article 2(1)</b> above with respect to requirement 24.  |
| Requirement 24 | (Control of noise during construction)                        | Requires a scheme for noise management during construction of the relevant stage of the connection works, which accords with the outline code of construction practice, to be submitted to and approved by the relevant planning authority before works to that stage of the connection works commence. Construction works must be   |  |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision             | Function                                    | Explanation<br>(from Explanatory Memorandum)   | ExA Issues   |
|-----------------------|---|--|--|
|                       |   | undertaken in accordance with the approved scheme.   |  |
| <b>Requirement 25</b> | (Construction hours)                        | Adapts model requirement 24 and provides for construction hours for the connection works on specified days, with none on Sundays or bank holidays, for the relevant works, with exceptions for certain continuous operations, delivery of abnormal loads, works on the foreshore and other cases agreed with the relevant planning authority.  | No comments at this stage  |
| <b>Requirement 26</b> | (Control of noise during operational phase) | Specifies noise limits for noise arising from Work No. 67 (the onshore substations) and with specified locations for measuring the noise.  | See comments in relation to works pre commencement in <b>Article 2(1)</b> above. |
| <b>Requirement 27</b> | (Traffic)                                   | Requires that the connection works must not commence until a traffic management plan (in accordance with the outline traffic management plan), a travel plan (in accordance with the outline travel plan) and an access management plan (in accordance with the outline access management plan) have been submitted to and approved by the relevant planning authority. The Requirement requires that the plans are implemented on commencement of the connection works. | No comments at this stage  |
| <b>Requirement 28</b> | (Port travel plan)                          | Requires that a travel plan for the onshore port-related traffic to and from the selected base port during construction and operation is approved by the relevant  | See comments in relation to works pre commencement in <b>Article 2(1)</b> above. |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision             | Function  | Explanation<br>(from Explanatory Memorandum)  | ExA Issues  |
|-----------------------|---|---|---|
|                       |   | planning authority in consultation with the relevant highway authority (for this Requirement only, being the planning or highway authority in whose area the relevant port is located).   |   |
| <b>Requirement 29</b> | (European protected species onshore)                    | Reflects model requirement 34 and provides that no stage of the connection works shall be commenced until a final pre-construction survey has been carried out to establish whether there are any European protected species present, or likely to be affected by the works. If so the requirement provides that the relevant stage of the works shall not commence until a scheme for protection and mitigation has been approved, which shall be implemented as approved. | See comments in relation to works pre-commencement in <b>Article 2(1)</b> above.  |
| <b>Requirement 30</b> | (Restoration of land used temporarily for construction) | Provides that any land (landward of mean low water) used temporarily as part of the onshore works shall be restored to its prior condition or such other condition as the relevant planning authority shall approve (save, for the avoidance of doubt, where the land forms part of the approved permanent works or the approved landscape scheme) within a specified period after completion of the relevant stage of the onshore works.                                   | Can the applicant provide a clear explanation of the construction relationship between EA1 and EA3, setting out which land used temporarily by EA1 is proposed to be used or re-used by EA3 and implications of this for restoration? |
| <b>Requirement 31</b> | (Onshore decommissioning)                               | Provides that upon the cessation of commercial operation of the connection works, an onshore decommissioning plan   | This relates to "cessation of the connection works <u>or</u> work 5B and 7" but the connection works are defined as works 4B-66, which  |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision             | Function  | Explanation<br>(from Explanatory Memorandum)   | ExA Issues   |
|-----------------------|---|--|--|
|                       |   | must be submitted to and approved by the relevant planning authority.  | includes works 5B and 7. Can the applicant please explain the difference and propose any necessary revisions to drafting?  |
| <b>Requirement 32</b> | (Decommissioning of Work No. 5B and Work No. 7) | Provides that after a period of 25 years following completion of construction of Work No. 5B and Work No. 7, the undertaker must submit a report to the relevant planning authority detailing the extent of coastal retreat since construction of the relevant ducts, remedial works or mitigation measures. If it cannot be demonstrated that, taking into account any proposals for such remedial works or mitigation measures, Work No. 5B and Work No. 7 will not have a significant impact on coastal processes then those works must be decommissioned. This replicates the requirement included in the East Anglia ONE Order, but separates and transfers the obligations in respect of the project (i.e. the ducts and cables for East Anglia THREE) to the OFTO for East Anglia THREE. The remaining ducts and cables are still covered by the East Anglia ONE Order and will therefore be managed by the East Anglia ONE OFTO. | See <b>Article 39</b> . If the EA1 Order is to be amended, this needs to be provided for in certain terms and the practical implications need to be explained, so that the ExA can assure itself that they have been assessed. |
| <b>Requirement 33</b> | (Ministry of Defence surveillance operations)   | Has been included to ensure appropriate mitigation to prevent or remove any adverse effects which the operation of the authorised development will have on the air defence radar at Remote Radar Head  | No comments at this stage  |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision                 | Function                           | Explanation<br>(from Explanatory Memorandum)  | ExA Issues  |
|---------------------------|------------------------------------|---|---|
|                           |                                    | (RRH) Trimingham and the Ministry of Defence's air surveillance and control operations.   |   |
| <b>Requirement 34</b>     | (Requirement for written approval) | Provides that where any requirement requires the approval of the Secretary of State or the relevant planning authority such approval shall be in writing.   | No comments at this stage   |
| <b>Requirement 35</b>     | (Amendments to approved details)   | Amends model requirement 37 and provides that any details approved pursuant to any requirement shall be taken to include any amended details which are subsequently approved, provided that any amendments to or deviations from the approved details are in accordance with the principles set out in the Environmental Statement. | No comments at this stage   |
| <b>Requirement 36</b>     | (Re-use of temporary works)        | Provides that if it is proposed to use any temporary works constructed pursuant to the East Anglia ONE Order a scheme which accords with the Outline Temporary Works Reinstatement Plan must be approved by the relevant planning authority.  | See <b>Article 39</b> .<br>If the EA1 Order is to be amended, this needs to be provided for in certain terms and the practical implications need to be explained, so that the ExA can assure itself that they have been assessed.<br><br>Requirement 36(b) refers to requirement 30 of EA1 which appears to relate to the skills strategy. Can the applicant confirm the correct reference and suggest any necessary amendment to drafting? |
| <b>Missing Provisions</b> | Skills strategy                    | None  | The made EA1 Order included requirement 30 providing for a skills strategy. The   |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision         | Function                                 | Explanation<br>(from Explanatory Memorandum) | ExA Issues  |
|-------------------|--|--|---|
| from Requirements |  |  | applicant is requested to explain why there is no equivalent provision in this Order and relevant local planning authorities are asked to consider whether one is required.   |
|                   | Transmission system                      | None   | The EA1 Offshore Wind Farm (Corrections and Amendments) Order 2016 inserted requirement 35 into the EA1 Order providing for the undertaker to notify the Secretary of State and the MMO of its choice to construct a generating station providing electrical output for HVDC or HVAC transmission. The applicant and the MMO are asked whether an equivalent requirement should be included here? |
|                   | Marine Mammal Mitigation Protocol (MMMP) | None   | The EA1 Offshore Wind Farm (Corrections and Amendments) Order 2016 inserted requirement 36 into the EA1 Order providing for a MMMP. The applicant and the statutory nature conservation bodies are asked whether an equivalent requirement should be included here?<br><br>Please note that relevant environmental considerations will be considered at a later stage in the examination.         |
|                   | Wintering Brent geese mitigation         | None   | The applicant and Natural England have agreed a timing restriction in relation to works at the Deben Estuary to avoid impacts on wintering Brent geese, which are a qualifying feature of the Deben Estuary SPA and Ramsar site. This is included in the ES   |

SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | Explanation<br>(from Explanatory Memorandum) | ExA Issues   |
|-----------|----------|--|--|
|           |          |  | <p>and other submitted documents<sup>9</sup>. It is described as embedded mitigation and would be delivered through the implementation of the OLEMS (see <b>requirement 21</b>).</p> <p>The timing restriction does not appear to be secured in the DCO. It may be that requirement 21 will deliver all of the ecological aspects of the OLEMS, including the timing restriction in relation to Brent geese; however, at present it is not clear that this fully secures the restrictions so as to avoid impacts on the geese and the SPA/Ramsar. Comments are invited from the applicant and SNCBs.</p> |

Schedule 2

(Streets subject to street works) sets out those streets which are to be the subject of street works.

No comments at this stage.

Schedule 3

(Public rights of way to be temporarily stopped up) sets out those public rights of way which are to be temporarily stopped up.

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<sup>9</sup> ES: Chapter 24 (Table 24.3); HRA report (paras 299 to 303); and OLEMS (para 191).

**SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER**

From the commencement of this schedule, page numbering in the draft Order appears to be incorrect. The applicant is requested to review and correct the pagination in the remainder of the Order.

Schedule 4

(Access to works) sets out details of access points to the Works.

No comments at this stage.

Schedule 5

(Land in which only new rights etc may be acquired) sets out details of such land. It sets out the purposes for acquisition of new rights over specified plots. In accordance with the Guidance issued by the Secretary of State, it specifies rights that apply to the relevant plots set out in the Book of Reference and also details, where relevant, the restrictive covenants that apply to the relevant plots to protect the installed cables.

No comments at this stage.

Schedule 6

(Modification of compensation and compulsory purchase enactments for creation of new rights) sets out changes to the operation of the legislation relating to compulsory purchase, principally the material detriment provisions contained in Section A of the Compulsory Purchase Act 1965.

The paragraph numbering in this schedule appears to be incorrect (it starts at paragraph 37). The applicant is requested to review and correct this.

Schedule 7

(Land of which temporary possession may be taken) sets out details of such land that may be occupied under temporary powers.

No comments at this stage.

**SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER**

Schedule 8

(Protective provisions) sets out protective provisions for statutory undertakers affected by the authorised development.

See comments above.

Schedule 9

(Removal of important hedgerows) sets out those important hedgerows to be removed.

See comments on Articles 6 and 31 above.

Schedules 10 - 15

(Deemed licences under Marine and Coastal Access Act 2009).

| <b>Provision</b> | <b>Function</b>                               | <b>ExA Issues</b>  |
|------------------|---|--|
| <b>Generally</b> | DMLs  | The undertaker for all 6 DMLs is currently identified as EA3, but article 5 of the DCO permits the transfer of any of the DMLs to another person. This means that there could be different undertakers for each DML. It is therefore essential that it is clear how the DMLs will interact in practice.  |
| <b>All DMLs</b>  | Definitions                                   | All of the DMLs refer at paragraphs 6 to 'section 106 of the 2004 Act'. This appears to be a reference to the Energy Act 2004, but this legislation is not defined under Part 1 1(1) in any of the DMLs. If a reference of this nature is to be used, the applicant is required to include a definition of <b>"the 2004 Act"</b> ... in PART 1 1(1) of each DML. |
|                  | Amending provisions proposed by Trinity House | The representation from Trinity House (TH) seeks amendments to the following provisions in the DMLs. These changes are suggested to address work undertaken between TH, the Marine Management Organisation (MMO) and the Maritime and Coastguard Agency (MCA) to standardise DML provisions and, unless otherwise noted,   |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision | Function | ExA Issues   |
|-----------|----------|--|
|           |          | <p>the same amendment is sought to the relevant provision in all six DML schedules. The detail of the changes sought is set out in the <a href="#">representation</a><sup>10</sup> to which the ExA will refer during the hearing.</p> <p>TH, the MMO and the MCA as necessary will be invited to explain and justify the requested amendments and comments will be sought from the applicant and other interested parties.</p> <p><b>Paragraphs 1</b><br/>Amendments are requested to sub-paragraphs (1) (definition of TH) and (4)(c) (correct address for TH).</p> <p><b>Paragraphs 7</b><br/>Amendments are requested to drafting in sub-paragraphs (6), (8), (9) and (11), suggested to improve legal precision in provisions relevant to navigation.</p> <p><b>Paragraphs 8</b><br/>Amendments are requested to drafting in sub-paragraphs (1), (2), (2)(c), (3) and (4) suggested to improve legal precision in provisions relevant to navigation. TH is asked to clarify that the changes proposed to sub-paragraphs (3) and (4) are intended to replace the entirety of those paragraphs as submitted.</p> <p><b>Paragraphs 13</b><br/>TH seeks the deletion of references to '<i>and the MCA</i>' from sub-paragraphs (k) in these provisions.</p> <p><b>Paragraphs 14</b><br/>TH seeks the addition of reference to '<i>in consultation with the MCA</i>' at the end of the sentences in sub-paragraph (4) in these provisions.</p> <p>In Schedules 10, 12, 13, 14 and 15, TH seeks replacement provisions in sub-paragraphs (5), requiring MMO approval in consultation with the MCA for Emergency</p> |

<sup>10</sup> A copy of the Trinity House representation can be obtained from this link, from which suggested wordings for the requested amendments can be followed.

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision          | Function                  | ExA Issues  |
|--------------------|---------------------------|---|
|                    |                           | <p>Response Cooperation Plans (ERCOPs) in accordance with MGN 543 and providing that the ERCOPs must be regularly reviewed and kept up-to-date.</p> <p>In Schedule 11 sub-paragraph 5 alone, TH asks whether it is necessary to refer to an ERCOP. The views of the MCA, the MMO and the applicant are sought.</p>  |
| <b>Schedule 10</b> | Generation assets phase 1 | Both Schedules permit the construction of an offshore wind turbine generating station (WTG station) with a capacity of 600mw comprising up to 86 WTGs (half of the amount permitted by the DCO) over the same area as the DCO, i.e. the DML limits are completely overlapping and both generating stations (phase 1 and phase 2) will be able to be constructed anywhere within the area identified in the works plans as Work No. 1. This means that there will need to be co-operation between each of the licence holders.   |
| <b>Schedule 11</b> | Generation assets phase 2 | <p>Can the applicant explain how the licences will interact in practice, particularly if they are transferred to different undertakers? For example, how will co-ordination of both generating stations be secured and how will the MMO be made aware of what is being constructed under which licence and who it should enforce against? A co-operation requirement between licence holders and the MMO such as in the made Hornsea 1 DCO or in the EA1 interconnections licences (see condition 20) could be an appropriate way to secure this.</p> <p>Both DMLs authorise the construction of an accommodation platform, up to 2 masts and up to 12 buoys - the total permitted by the DCO. Condition 2(1) states that, <u>within the authorised scheme</u>, the maximum number of accommodation platforms must not exceed one; condition 2(3) limits the masts <u>within the authorised scheme</u> to a total of two; and condition 2(7) limits the total number of buoys <u>within the authorised scheme</u> to 12. However, the "authorised scheme" is defined as "<i>the Work no 1 described in the licence</i>". The work described in the licence is not the same as the work described in the DCO, but is half of Work No. 1 to which the specific licence applies. These conditions therefore do not appear to prevent one accommodation platform / two masts / 12 buoys being built under each DML in breach of the DCO. The DMLs should not authorise activities that are outside of the works permitted by the DCO.</p> |

## SCHEDULE OF ISSUES ARISING FROM THE DRAFT DEVELOPMENT CONSENT ORDER

| Provision                    | Function                       | ExA Issues  |
|------------------------------|--------------------------------|---|
|                              |                                | The MMO and the applicant are asked to review and comment on this drafting and the applicant is asked to propose amendments to these DMLs.  |
| <b>Schedule 12</b>           | Transmission assets phase 1    | These DMLs cover Works Nos. 2, 3 & 5a. Each DML authorises up to 3 offshore electrical stations, a network of subsea cables and up to 2 export cables. This indicates a complete split of the total development permitted for these works in the DCO. However the phase 2 licence has a higher maximum for cable length and protection for work No. 3 than work No. 2 (although the 2 add up to the maximum secured in the DCO). This difference is not explained.<br><br>The ExA needs to understand how the works will be co-ordinated between these overlapping DMLs if there are different licence holders for each one.<br><br>Part 1 section 1 contains definitions of the generation and interconnection DMLs but no further reference is made to these in either DML. The definition appears to be superfluous.<br><br>The MMO and the applicant are asked to review and comment on this drafting and the applicant is asked to propose amendments to these DMLs. |
| <b>Schedule 13</b>           | Transmission assets phase 2    |   |
| <b>Schedule 14</b>           | Interconnection phase 1        | As with the other DMLs, the limits are overlapping. There needs to be clarity about how the works will be co-ordinated. It is also unclear if they overlap with the EA1 Order limits (although sensibly it appears that they must).<br><br>The DMLs do not define the EA1 offshore wind farm. While it is defined in the DCO it should also be defined in these DMLs as they are designed to be standalone licences.<br><br>The MMO and the applicant are asked to review and comment on this drafting and the applicant is asked to propose amendments to these DMLs.  |
| <b>Schedule 15</b>           | Interconnection assets phase 1 |   |
| <b>Missing DML condition</b> | Coexistence                    | Condition 10(I) of the DMLs included in the made EA1 Order call for a 'coexistence statement' demonstrating how the scheme design and construction methods, including cable specification, installation and armouring, reasonably avoids or mitigates effects on other marine users, including fisheries. The applicant and the MMO are asked to comment on the potential need for such a provision in these DMLs.  |