

East Anglia THREE  
Offshore Windfarm

East Anglia THREE

# Applicants Comments on Responses to the ExAs second written questions

Document Reference – Deadline 6 / Comments on  
ExA 2<sup>nd</sup> WQs / Applicant

Author – Royal HaskoningDHV  
East Anglia THREE Limited  
Date – November 2016  
Revision History – Revision A

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# 1 Introduction

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1. This document contains the Applicants comments on responses to the ExA's second written questions submitted to the East Anglia THREE examination.

## 1.1 Anglian Water

ID	Comment and Applicants response
	We have reviewed the questions directed to interested parties including Anglian Water and have no comments as the issues identified fall outside our remit as a water company.
Applicant's response	The Applicant has no further comment.
	<p>Anglian Water has previously sought the inclusion of protective provisions specifically for the benefit of Anglian Water to be included in the DCO for the above project. The suggested wording is included in Schedule 8 Part 4 of the Draft DCO (examination document REP4-003) submitted by the applicant.</p> <p>However it is considered that there would also be merit in revising the existing wording to allow the developer to undertake any necessary works at Anglian Water's election (upon Anglian Water giving the developer reasonable notice).</p> <p>The inclusion of additional wording would provide greater flexibility and would help to ensure that the project could be delivered in the timescale envisaged by the applicant, as the necessary resources Anglian Water potentially requires to undertake the works may not be available in the timeframes envisaged by the developer</p> <p>We would welcome further dialogue with the applicant regarding this issue. As part of which it would be helpful to agree whether a side agreement could be entered into with Anglian Water in relation to this issue.</p>
Applicant's response	The Applicant and Anglian Water have agreed that there is sufficient flexibility in Part 4 of Schedule 8 (Protective Provisions for the benefit of Anglian Water) to deal with their concern and that no further changes need to be made to Part 4. Anglian Water has requested that an amendment is included to Part 1 of Schedule 8 to clarify that Part 4 applies to Anglian Water and not Part 1. The Applicant has proposed an amendment to Part 1 of Schedule 8 of the draft Order accordingly. Anglian Water has confirmed that they are content with the amendment.

## 1.2 Local Planning Authorities

ID	Comment and Applicants response
ELO10	<p>1) The measures for skylark mitigation have been agreed.</p> <p>2) The measures are outlined and funding provided for their implementation, on land under the control of SCC, in a letter from the</p>

ID	Comment and Applicants response
	<p>applicant to SCC dated 05/10/16. The measures are as follows: That for a period of 10 years the skylark plots will be created and managed in accordance with the requirements of the Countryside Stewardship Scheme option AB4, on suitable land under the control of SCC. Specifically as set out under the terms of the Countryside Stewardship Option AB4 ;</p> <ul style="list-style-type: none"> <li>• Create fallow plots at least 3m wide and with a minimum area of 16 square metres in winter cereal fields</li> <li>• Space plots across the field at a minimum density of 2 plots per ha, making sure they are located away from tramlines, boundaries and margins to minimise nest predation</li> <li>• Create plots either by turning off the drill during sowing to leave an unsown plot, or by sowing the crop as normal and spraying with herbicide to create the plot by 31 December</li> <li>• After drilling, the plots can be managed with the same treatments as the remainder of the field.</li> <li>• There is no need to keep the plots weed-free but spot-treating with herbicide in April will help skylarks to access their nesting sites.</li> <li>• Mechanical weeding of crops containing skylark plots will destroy any nests present and is not recommended.</li> </ul> <p>3) The measures will be secured by agreement between SCC and one of their farming tenants. It is anticipated that the agreement will be broadly in line with the draft agreement attached to this response.</p>
Applicant's response	<p>Correspondence between the Applicant and SCC outlined by the LPAs above identified "two plots [to be] located and prepared in accordance with the Countryside Stewardship option AB4, measuring not less than two metres by two metres, to be managed for ten years specifically as skylark habitat".</p> <p>Following discussion with SCC, the Applicant has written to SCC regarding the discrepancy between this definition and the requirements of Countryside Stewardship option AB4. The Applicant confirmed that the full requirements for skylark mitigation as specified in AB4 will be accommodated within the payment as per the terms of the letter of 13 October. SCC have responded accepting this and indicating that agreement in principle has been reached for mitigation plots on land with a SCC tenant farmer.</p> <p>A copy of both of these letters is submitted at Deadline 6.</p>
CL10	<p>The Inquiry into the appeal against the refusal of outline planning permission for up to 215 dwellings etc is due to start on 21 March 2017 and is currently scheduled to last 6 days. The applicant is aware of the cable corridor and therefore the indicative layout submitted with the application shows the length of the cable corridor being retained as public open space within the development. The submitted Planning Statement states that EAOW have agreed that the easement strip through which the cables will run can be used as open space within the site.</p>
Applicant's response	Noted
CL11	<p>SCDC are satisfied that the amendment to the dDCO is a reasonable response to the coastal management issues raise. The amendment expands the scope of liability upon the developer which in turn strengthens SCDC's position. SCDC is also satisfied that there are sufficient future submission and approval processes in place, regarding the developer's detailed proposals for works,</p>

ID	Comment and Applicants response
	for the concerns raised in earlier correspondence to be dealt in a fashion that protects SCDC interests
Applicant's response	Noted
TT8	SCC insists that Henley Road, rather than Lower Road, is used to serve access 'AD'. This is the arrangement agreed with EA1 based on an assessment of the options. These took into account road widths and geometry and the number of properties on each route. There was a clear preference to use Henley Road.
Applicant's response	The Applicant has agreed to use Henley Road rather than Lower Road, this is now shown in Figure 1 of the revised Outline Access Management Plan.
SE10	<p>To support the statement that SCC made around the significant change in the labour market several factors were considered. DWP have reported a sharp decline in the last two years of those on Job Seekers Allowance, therefore the availability of unemployed workers is significantly reduced compared with the position when EA1 was submitted. There is also evidence that construction skills shortages are having a negative impact on the delivery of projects across the region. After the prolonged downturn, in which the sector lost people and skills, there has been a period of significant growth (the sector grew more than any other in 2014 [ONS 2016]). This has resulted in firms struggling to find skilled labour in professional roles and manual trades.</p> <p>The historic downturn in the economy also resulted in a reduction in the pipeline of young people choosing to train in the construction trades. The impact on colleges and universities was a reduction in intake of those studying within their construction departments. Using SFA data overall apprenticeship starts for the construction related areas in New Anglia have fallen from 4.2% in 2011/12 to 3.6% in 2014/15. The Construction Industry Training Board (CITB) in their recent research (CITB New Anglia LEP Construction Labour and Skills Research, February 2016) estimate that more than £5.4bn will be invested in construction projects over the next four years leading to the growth of 4260 jobs being creating every year for the next five years in the East of England. This has prompted the New Anglia LEP to work in partnership with industry bodies, training providers and local authorities to produce a Sector Skill's Plan to ensure that the Suffolk and Norfolk can begin to address the significant shortfalls in availability skilled labour. This situation is likely to become more acute as growth continues to accelerate in East Anglia</p>
Applicant's response	<p>The Applicant considers that the socio economic assessment undertaken remains robust and that all relevant and appropriate up to date information available was incorporated.</p> <p>It should also be noted that the Applicant did not include the EA1 skills strategy in the baseline assessment that determines labour market sensitivity for the EA3 socio economic assessment. This matter was discussed in detail during the Issue Specific Hearing on Environmental Matters of 25 October 2016.</p> <p>Following the meeting of 22nd September 2016 between the Applicant and SCC, during which a way forward on the approach to skills was discussed, both parties confirmed they are committed to develop the skills agenda to ensure that full benefits can be realised for East Anglia THREE.</p>

ID	Comment and Applicants response
	<p>SPR and SCC have agreed to work in partnership and are jointly developing overarching principles. The existing East Anglia ONE skills strategy is now being delivered and SPR / SCC are reviewing the various initiatives to ensure that they can be expanded to deliver skills benefits through East Anglia THREE investment. Both SPR and SCC have agreed that this is best achieved outwith the formal planning process and should not be included in the draft Order.</p> <p>To this end, SPR and SCC have agreed a position statement on skills which has been signed by both parties and is submitted as part of Deadline 6. (DOC REF).</p>
DCO1	Noted and we intend to respond at Deadline 6.
Applicant's response	Noted
DCO2	Noted and we intend to respond at Deadline 6.
Applicant's response	Noted
DCO4	Noted and we intend to respond at Deadline 6.
Applicant's response	Noted

### 1.3 Marine Management Organisation

ID	Comment and Applicants response
ECMM17	<p>The MMO has discussed question ECMM17 with the applicant and concurs with the applicant's understanding of the MMO's position with regard to consultation on the Marine Mammal Mitigation Protocol. In addition, should the Secretary of State wish to retain the option to determine who needs to be consulted on the MMMP until post consent, this condition should be included within the DCO rather than the DML.</p>
Applicant's response	<p>The Applicant has no further comment to make on the MMO's response. However the Applicant would reiterate that it has made a commitment through the SIP to consult with TWT and WDC during preparation of the SIP. This is the most appropriate and influential point for consultation. Therefore, the Applicant does not consider that it is necessary or appropriate to name TWT or</p>

ID	Comment and Applicants response
	WDC in the DMLs.
HRA13	<p>(1) The MMO has reviewed the draft Site Integrity Plan (SIP) submitted by the applicant at Deadline 4 and is, in general, content with the approach taken. However, further clarity is required in respect of in-combination assessment. It is the MMO’s view that in-combination effects should be considered based upon what is known at the time of decision, and should not be scoped out as stated at paragraph 5 on page 3 of the plan.</p> <p>(2) Consideration should be given within the SIP as to how the Review of Consents may affect the mitigation and management measures outlined in the Plan. The review will consider previously consented projects and may require further mitigation measures to be applied to projects, through variation to DCO/DML conditions.</p> <p>(3) Paragraph 18, on page 6 refers to the development of a post consent consultation programme. This programme should be approved in writing by the MMO.</p> <p>(4) The MMO welcomes the inclusion of a timetable for refinement and agreement of the plan (Table 1) but queries whether submission of a draft plan, (at 12 months prior to commencement of pile driving), noise prognosis, (at 9 months prior to pile driving) and final design, (at 9 months prior to construction) can be dealt with in a more streamlined manner. Can a draft plan be adequately reviewed before noise propagation is known?</p> <p>(5) The Noise Prognosis referred to in Table 1 states that it will be submitted to the MMO but has no further action. It should be made clear in the Plan that the MMO will disseminate the Noise Prognosis to such parties as it deems necessary in order to facilitate consultation on the Final Design.</p> <p>(6) Final Plan sign-off referenced in Table 1 is to be submitted 4 months prior to commencement of pile driving; this must have MMO written approval prior to any piling works commencing.</p> <p>(7) Paragraph 33 on page 12 states that, upon completion, the Appropriate Assessment (AA) may be used to determine any additional mitigation and management measures; however this should also include reference to any new conservation objectives and any review of consent outcomes, as these may also result in additional mitigation requirements.</p> <p>(8) Paragraph 37 states that the final MMMP will be ‘agreed’ with the MMO; this should be amended to state that the MMMP will require ‘written approval’ from the MMO at least 4 months prior to construction.</p> <p>(9) The practicalities of scheduling pile driving, as described in paragraph 48 on page 14 of the plan requires further consideration, particularly in reference to the level of in-combination assessment conducted as part of the HRA process. Initiating and managing a prohibition or restriction on pile driving for this and/or other projects may be problematic and thought should be given as to the appropriate authority for undertaking the necessary assessment and determination. It is advisable that the AA should consider in-combination effects (based upon the details currently known), that the need for scheduling of piling between projects should be considered and identified, where possible, prior to the determination of the application.</p> <p>(10) On a broader point, it is advisable that the draft AA should be consulted on prior to determination of the application, in order to ensure that that any mitigation required has been clearly identified and secured within the DCO / DML.</p>



ID	Comment and Applicants response
	<p>The MMO has considered the drafting proposed by the applicant in Version 3 of the DCO (submitted at Deadline 4). The MMO is to content with the drafting of Condition 13(2) of the dDMLs to the extent that it secures the requirement to submit for approval by the MMO the SIP for assessment of effects on the Southern North Sea pSAC. However, the MMO considers that Condition 13(3) is not necessary as it restates existing requirements under the relevant habitats regulations, and as such does not meet the National Planning Policy Framework tests for planning condition.</p>
Applicant's response	<p>(1) The Applicant will continue to consult the MMO on the In Principle Site Integrity Plan (SIP) and hopes to agree any further revisions that may be required prior to the close of the Examination period. This will not be completed prior to Deadline 6. The below responses outline the points where the Applicant believes further edits to the In Principle SIP should and should not be made prior to submission of a final version of the In Principle SIP.</p> <p>The Applicant does not scope out in-combination assessment in the SIP and paragraph 5 will be amended to clarify this. In-combination effects have been assessed in detail as part of the Information for the HRA (Document Reference: Deadline 6 / HRA / The Applicant) and will be a key consideration for the Appropriate Assessment. However, it is not considered necessary to repeat this within the SIP. The final SIP will take account of projects that may give rise to in-combination effects at the time of construction of East Anglia THREE and as stated in paragraph 33 of the document:</p> <p><i>“Following completion of the AA by the competent authority it is acknowledged that the Plan may require revision to reflect the conclusions of the AA. The AA will be used to determine any mitigation and management measures that need to be secured in the Plan post consent.”</i></p> <p>In addition, Table 1 of the SIP commits the Applicant to conduct an updated assessment if necessary, approximately 9 months prior to construction:</p> <p><i>“Based on the final project design, an updated assessment will be undertaken if necessary, this will include consideration of in-combination effects. Updates to the assessment that could impact the conclusions of the AA may be subject to further assessment if deemed appropriate in consultation with the relevant authority.”</i></p> <p>(2) The Applicant is aware that ‘the Review of Consents may affect the mitigation and management measures outlined in the Plan’ and that the ‘review will consider previously consented projects and may require further mitigation measures to be applied to projects, through variation to DCO/DML conditions.’</p> <p>To take this into account and as detailed in Table 1, throughout the refinement of the SIP there would be several opportunities to update the SIP prior to construction, as stated above this will include a review of the in-combination assessment, and will also include a review of the mitigation measures. As the SIP is refined more detail can be added with regard to the Review of Consents and the potential implications of the review, and any further mitigation measures that may be applied to projects. As such the Applicant considers that it is not necessary to make any further amendments to the SIP in relation to this.</p> <p>(3) The Applicant proposes to amend paragraph 18 of the SIP to:</p> <p><i>“This programme will be approved in writing by the MMO”.</i></p>

ID	Comment and Applicants response
	<p>(4) It should be noted that paragraph 19 of the SIP, states:  <i>'It is not possible at this stage to determine exact dates for agreement and refinement of the Plan. However, key milestones have been outlined in Table 1 to signpost the likely development of the Plan between consent and construction'.</i></p> <p>As such, the suggested timelines are only indicative of when the milestones presented in Table 1 may be completed. Table 1 states that the draft Plan will be submitted a 'Minimum of 12 months prior to commencement of pile driving' and the noise prognosis would be a 'Minimum of 9 months prior to pile driving'. It may well be the case that the two activities run in parallel. In order to obtain the most accurate noise prognosis, it is fundamental to wait until the final foundation and installation design has been approved. However, it may be possible to make significant updates to the SIP prior to this, including reviewing approaches to assessments and mitigation measures, based on latest findings and current guidance at the time. Therefore, the Applicant considers it is not necessary or appropriate to amend the indicative timetable at this stage.</p> <p>(5) The Applicant proposes to amend Table 1 of the SIP as follows:          "The updated noise assessment based on final foundation design and installation must be submitted to the MMO. The MMO will disseminate the Noise Prognosis to such parties as it considers necessary in order to facilitate consultation on the Final Design."</p> <p>(6) The Applicant proposes to amend Table 1 of the SIP as follows:          "The Final Plan will submitted a minimum of four months prior to the commencement of pile driving for the MMO's written approval prior to any piling works commencing."</p> <p>(7) The Applicant proposes to amend paragraph 33 of the SIP as follows:          "The AA, assessment against conservation objectives, management measures and any review of consent outcomes will be used to determine any mitigation and management measures that need to be secured in the Plan post consent."</p> <p>(8) The Applicant proposes to amend paragraph 37 of the SIP as follows:          "The MMMP is secured under Condition 13(1)(f) of the Deemed Marine Licences (DML), and the final MMMP will require written approval from the MMO at least four months prior to construction."</p> <p>(9) The Applicant acknowledges that the practicalities of scheduling pile driving, as described in paragraph 48 on page 14 of the SIP requires further consideration. Initiating and managing a prohibition or restriction on pile driving for this and/or other projects needs to be agreed at a strategic level, as stated in paragraph 5 and outlined above, this is outwith the scope of the SIP. The Applicant agrees that the AA should consider in-combination effects (based upon the details currently known and has provided as much information as possible in this regard in the Information for the HRA (Document Reference: Deadline 6 / HRA / The Applicant) in order to support the AA which will be undertaken by the Competent Authority.</p> <p>(10)The Applicant agrees with the MMO that consultation on a draft AA would be advisable. The Applicant would welcome the opportunity to comment on a draft AA and support the Competent Authority by providing as much information as possible during the AA prior to determination of the application.</p>

ID	Comment and Applicants response		
	<p>To maximise time and efficiency the Applicant would respectfully request that this is undertaken at the latest opportunity to use best available information at that time and avoid reassessment, unless against published and agreed parameters.</p> <p>To reflect the MMO (and TWT) comments the following updates to Table 1 in the SIP are proposed:</p>		
	<p><b>Table 1: Milestones for refinement and agreement of the Plan (Indicative only)</b></p>		
	Indicative stage	When	Action
	In-principle Plan developed	Prior to close of examination	Drafted by EATL, review and agreement in approach.
	Consent granted and AA	Summer 2017	EATL review in principle Plan, identify areas for revisions/updates.
	Southern North Sea pSAC final Conservation Objectives and Management measures are defined/ further advice is provided/site is adopted.	Unknown (it is not possible to determine when this may occur)	EATL review in principle Plan, identify areas for revisions/updates once further guidance on the pSAC is received. If required EATL will undertake consultation to ensure any required thresholds for disturbance or noise levels are captured in the Plan.
	Draft design - if applicable	Pre-construction	EATL will be refining the project design during the pre-construction period. Updates to design that could impact the conclusions of the AA may be subject to further assessment if deemed appropriate in consultation with the relevant authority. Any updated assessment will also require consideration of mitigation and
	Internal only		

ID	Comment and Applicants response			
			management measures outlined in the Plan.	
	Submission and review of draft Plan and any associated documentation	Minimum of 12 months prior to commencement of pile driving	The Plan will be updated to capture all assessments and mitigation measures. Alongside the draft Plan implementation plans, methods statement and monitoring requirements will also be drafted for any required measures.	MMO and Natural England, (with copies sent to TWT and WDC)
	Noise Prognosis	Minimum of 9 months prior to pile driving	An updated noise assessment based on final foundation and installation design and installation shall be submitted to the MMO. The MMO will disseminate the Noise Prognosis to such parties as it considers necessary in order to facilitate consultation on the Final Design.	MMO and NE, with copies sent to TWT and WDC.
	Final design	Approximately 9 months prior to construction	EATL will confirm the project design and installation techniques during the pre-construction period. Updates to design that could impact the conclusions of the AA may be subject to further assessment if deemed appropriate in consultation with the relevant authority. Based on the final project design, an updated assessment will be undertaken if necessary, this will include consideration of	MMO, Natural England, and potentially Secretary of State; with copies sent to TWT and WDC.

ID	Comment and Applicants response				
			<p>in-combination effects. Updates to the assessment that could impact the conclusions of the AA may be subject to further assessment if deemed appropriate in consultation with the relevant authority. Any assessment will also include the efficacy of mitigation or management measures.</p>		
	Final Plan sign-off	Minimum 4 months prior to commencement of pile driving	<p>The draft Plan will be updated and finalised. The Final Plan will be submitted four months prior to the commencement of pile driving for written approval from the MMO prior to any piling works commencing.</p>	MMO for sign off.	
	Construction monitoring and reporting	Construction (not expected before 2021)		MMO	
HRA19	<p>Firstly, the MMO is not seeking to comment on the merits of the assessment as such but on the possible mitigation required as a result of the HRA, to the extent it is adequately defined, secured within the DML and is deliverable post consent.</p> <p>The MMO considers that it is important that any mitigation required in order to reduce the potential impacts to acceptable levels is clearly outlined, its effectiveness and ability for its delivery is clearly understood and it is appropriately secured as part of the DCO/DML. For example, if a seasonal restriction is required, the actual start and end dates should be determined prior to a decision being made (rather than stating a seasonal restriction is required).</p> <p>Noting the uncertainty regarding the pSAC conservation objectives, management measures etc., the SIP helps identify and define appropriate mitigation for harbour porpoise, outlining what clearly is or is not possible and the reasoning behind the proposals, in order to help ensure that any potential mitigation is both effective and deliverable.</p> <p>The MMO does not necessarily expect that all mitigation measures will be detailed within the draft SIP noting potential for future changes due to advances in knowledge and/or technology, changes in conservation objectives, management measures, updated</p>				

ID	Comment and Applicants response
	<p>in-combination assessments due to changes in construction timings etc. The SIP should provide a framework for discharging requirements post consent including timings and detail of information which will be provided by the applicant.</p> <p>In order to fully understand how the mitigation has been considered as part of the HRA, it is advised that the draft AA, should it be required, is consulted upon prior to the determination of the application.</p>
Applicant's response	<p>The Applicant considers that it is not possible to determine specific mitigation measures (such as start and end dates of any potential seasonal restriction) at this stage given uncertainty of the delivery timescales of those projects which may give rise to an in-combination effect. As such, the Applicant considers that such detail cannot be included in the DCO/DML. As stated in the Written Summary of Oral Submissions (Document Reference – Deadline 4/ DCO ISH/Hearing Written Summary of Oral Submissions):</p> <p><i>‘Potential mitigation measures are not set out on the face of the condition. These are set out more fully in the in-principle SIP while allowing scope for refinement of the measures through consultation once final conservation objectives and management measures are available for the pSAC and once final construction methods for the project have been confirmed. This will enable use of the most appropriate project related measures to be confirmed based on best knowledge, evidence and proven available technology at the time of construction. This approach will also remove the need to revise the DML wording should the proposed measures change between the time of consent and construction.’</i></p> <p>The MMO has confirmed that they favour this approach rather than the approach put forward in the Hornsea 2 condition. As stated above the Applicant would welcome the opportunity to comment on a draft AA and support the Competent Authority by providing as much information as possible during the AA prior to determination of the application.</p>
FN11	<p>The MMO is of the opinion that sufficient surveys and reporting mechanisms can be secured within the dDMLs to identify cable exposure and ensure appropriate action is taken. Draft Conditions 13(1)(g)(iii) and 19(2)(b) ensure ongoing assessment of cable burial or protection, although we would advise that the requirement for a cable burial risk assessment should be carried through to a post consent requirement. Draft Conditions including 7(11) and 8(5) ensure appropriate reporting and notification of any navigational hazard as a result of damage or decay to any part of the scheme, as well as specific requirements for a Fishery Liaison Officer and a Fisheries Coexistence Plan.</p>
Applicant's response	<p>Draft Condition 13(1)(g)(iii) refers to:</p> <p><i>“cable protection during the operational lifetime of the authorised scheme which includes a risk based approach to the management of unburied or shallow buried cables”.</i></p> <p>Therefore the cable burial risk based approach is carried through to the operational phase. It is recognised that this is secured in condition 13 <b>“Pre-construction plans and documentation”</b> and therefore as requested by the MMO the Applicant has amended</p>

ID	Comment and Applicants response
	<p>Condition 19(4) of the DMLs (Schedules 10 to 13) to include the following:</p> <p><i>“Following installation of cables, the cable monitoring plan required under condition 13(1)(g)(iii) must be updated with the results of the post installation surveys. The plan must be implemented during the operational lifetime of the project and reviewed as specified within the plan, following cable burial surveys, or as instructed by the MMO.”</i></p>
FN14	<p>The MMO believes there are sufficient surveys and reporting mechanisms secured within the dDMLs to provide the information required by third parties to make an informed decision on whether it is safe to fish a particular area of the site (as discussed in our response to FN11 (above)).</p> <p>It is important to note that it is not the responsibility of the MMO to inform individuals of where and when it is safe to fish.</p>
Applicant’s response	Noted
DCO1	<p>The MMO notes the Examining Authority’s questions regarding the definitions of “commence” and “maintain”. As the definition of these terms is relevant to activities seawards of MHWS the MMO would appreciate opportunity to comment on any proposed changes. The MMO is content with the current definition of these terms</p>
Applicant’s response	Noted
DCO3	<p>The MMO has previously discussed Article 5 with the applicant and is in agreement that any division of works would be secured during commercial negotiations between prospective undertakers. The MMO further believes that current drafting of the dDMLs, such as Schedule 10, Part 2 Conditions, 2(1), 2(3) and 2(7) ensures that the design parameters of the scheme cannot be exceeded, should multiple undertakers be appointed.</p>
Applicant’s response	Noted
DCO4	<p>MMO Response The MMO is content with the current wording of this provision and has previously engaged with the applicant regarding drafting.</p>

ID	Comment and Applicants response
Applicant's response	Noted

### 1.4 Natural England

ID	Comment and Applicants response
ECMM16	<p>Natural England was not present for the discussions pertinent to this question at the first DCO Issue Specific Hearing on 29th June 2016, and therefore cannot comment on the content of those discussions.</p> <p>However, Natural England can confirm that we are satisfied with the piling assessment undertaken in the Environmental Statement. We are content that the worst case scenario of maximum hammer energy of 2,000KJ (as a proxy for 1,800KJ) for 3.5m jacket piles was assessed. Although 4m diameter piles are larger, fewer of them would be required. Therefore it is immaterial whether 3.5m or 4m diameter piles are used as the Applicant proposes. (See table 12.2 of Chapter 12 Marine Mammal Ecology for details).</p>
Applicant's response	The Applicant has no further comment.
EL9	<p>Natural England's view is that restrictions on winter working are essential measures in relation to mitigating any potential impacts on wintering Brent Geese on the Deben Estuary SPA. We are content that the detail on the working restrictions is included in the Outline Landscape and Ecological Management Strategy (OLEMS). However, as agreed in the Statement of common ground we would suggest that the draft DCO includes a signpost to this particular element of the OLEMS.</p>
Applicant's response	<p>Requirement 21 (3) of the draft Order secures the mitigation by sign posting to the relevant section of the OLEMS. Natural England has confirmed that it agrees that this is sufficient to secure the embedded mitigation measures which must be incorporated into the ecological management plan (including seasonal working restrictions to mitigate potential impacts on wintering Brent Geese).</p>
HRA12	<p>After discussions with Natural England, the Applicant has confirmed that they will provide a copy of the requested document to the Examining Authority.</p>



ID	Comment and Applicants response
Applicant's response	The Applicant provided this document at Deadline 5 (Document Reference: Deadline 5/ Second Written Questions/ JNCC and NE suggested tiers for CIA/ HRA12).
HRA13	<p>Natural England has previously submitted comments on the draft In-Principle Site Integrity Plan at Deadline 4.</p> <p>Natural England submitted comments on the Applicant's assessment of effects on the Southern North Sea pSAC at Deadline 4 and has subsequently had further discussions with the Applicant regarding the assessment. Following consultation with Natural England, we understand that the Applicant will now be undertaking further assessment work to be submitted at Deadline 6. It is also Natural England's intention to submit comments on the updated assessment at Deadline 6.</p> <p>Natural England is satisfied that the drafting of condition 13 adequately secures the Site Integrity Plan.</p>
Applicant's response	<p>The Applicant has consulted with Natural England (and the MMO) on an updated version of the draft HRA. The Applicant has sought to address all comments received (as detailed in Appendix A of the HRA) in the final updated version which will be submitted at Deadline 6 (Document reference: Deadline 6/HRA/The Applicant).</p> <p>The Applicant notes that 'Natural England is satisfied that the drafting of condition 13 adequately secures the Site Integrity Plan' and has no further response, at this stage.</p>
HRA20	<p>Natural England is satisfied that the approach taken by the Applicant will be sufficient to avoid an adverse effect on the integrity of the Southern North Sea pSAC. In order to meet the requirements of the Habitats Directive, the Secretary of State, acting as the relevant competent authority, must be satisfied that mitigation measures aimed at minimising or removing the negative impacts of the plan or project are secured. Natural England considers the SIP to be a pragmatic approach to the present status of the pSAC. While the full details of mitigation are not currently presented in the SIP, Natural England is confident that the SIP provides a pathway to appropriate mitigation measures, the fine detail of which will be subject to further approval by MMO, acting as the then relevant competent authority, in consultation with Natural England. This will happen before the development can proceed, in accordance with the requirements of the Habitats Directive.</p>
Applicant's response	<p>The Applicant welcomes Natural England's support for the approach taken in the SIP and will continue to develop the SIP in consultation with Natural England and the MMO, and where stated (Table 1 of the SIP) the Secretary of State, The Wildlife Trusts and Whale and Dolphin Conservation.</p>
CL11	<p>Natural England welcomes the amendments that have been made to Schedule 1 Part 3 Requirement 13(2) in the dDCO as they ensure that consideration is given to ongoing monitoring and maintenance of the project infrastructure over the lifetime of the</p>

ID	Comment and Applicants response
	<p>project.</p> <p>However, this amendment does highlight potential issues for managing any infrastructure left in situ beyond the lifetime of the project. Natural England advises that this will need to be considered at the time of decommissioning.</p>
Applicant's response	Noted. It is the Applicant's intention that this will be a consideration of the decommissioning plan.
DCO1	<p>Natural England supports the Examining Authority's question and probing of this issue. However, Natural England acknowledges that it is for the Applicant to find a solution. With regards the amended wording that the Applicant provides, it is for the LPAs to comment when they have it. We will also comment on it if we have any concerns.</p>
Applicant's response	Noted
	<p>NE comments on Collision Risk Model submitted at Deadline 5</p> <p>This document comprises Natural England's comments on the above document, which was provided to Natural England on the 29th September 2016 and will be submitted to the Examining Authority by the Applicant at Deadline 5 of the East Anglia Three Examination.</p> <p>Natural England welcome the proposal to increase the draft height to 24m across 70% of the windfarm site. We accept the principle that raising the draft height will result in a reduction in collision risk. Natural England also acknowledge that (subject to the reductions in the EA1 design being legally binding), the updated cumulative totals including EA3 are lower than the most recently consented totals for Hornsea Project 2.</p> <p>The clarification of the differences in the cumulative totals in Section 2.3 is helpful, and Natural England do not have any further questions or comments to raise on the issue. Natural England have no further comments to make on this document at this time.</p>
Applicant's response	<p>Following Natural England's response above (submitted at Deadline 5), Natural England confirmed in a written submission to the ExA (submitted for the second issue specific hearing on Environmental issues held on 25<sup>th</sup> October 2016) that:</p> <p><i>"Natural England stated its position on the increase in the turbine draught height at Deadline 5. Further to this Natural England is now in agreement with the applicant that the increased draught height is sufficiently secured by the proposed amendments to the design parameters outlined in schedule 10 of the DCO."</i></p>

ID	Comment and Applicants response
	It should also be noted that corresponding amendments to the draft Order have been made to the parameters in Schedule 11 and in the Requirements.

### 1.5 RSPB

ID	Comment and Applicants response
ECO12	Please find the Green et al (2016) paper in Appendix 1.
Applicant's response	The Applicant has no further comment.
ECO13	The RSPB agrees with Natural England; as an approach it is valid, but more work is required to determine whether it is the best approach for future assessment.
Applicant's response	The Applicant welcomes RSPB and NE's agreement that the approach taken in the PVA is valid for the current assessment.
ECO14	<p>The RSPB's concerns regarding significance of cumulative and in-combination impacts on gannet, kittiwake and great black-backed gull have been reduced as a result of a commitment from the Applicant to raise the height of the turbines by 2m over 70% of the East Anglia THREE site (see our recalculations of potential collision risk in Appendix 2 below). This, in combination with the reduction in turbine numbers for the consented East Anglia ONE site, has reduced the contribution from the project and the East Anglia zone to projected collision mortality to an extent such that we do not consider that further engagement from us regarding this project is required. This position is subject to the satisfactory resolution of our query raised in response to ECO17 (see below) regarding legal certainty of the reduction in turbine numbers for East Anglia ONE, and subject to the increase in turbine height for East Anglia THREE being secured through an appropriate condition within the DCO. We are currently engaged in discussions regarding these matters with the Applicant. In addition, the RSPB reserves the right to add to and/or amend its position in light of any changes to position or new information submitted by the Applicant.</p> <p>The RSPB does have residual concerns about some approaches and scientific procedures used in the 3 assessment of impacts by EATL. The RSPB has explained these within our Written Representations [REP2-024] but they are summarised below, in order</p>

ID	Comment and Applicants response
	<p>to outline the procedures which should be used in order to provide confidence to the Examining Authority both in this case, and in future cases.</p> <p>We recommend the following with regard to the assessment approach (for this and future projects):</p> <ul style="list-style-type: none"> <li>• use of the 98% AR for gannet during the breeding season CRM due to the lack of available evidence for a 98.9% AR relating to breeding birds.</li> <li>• the assessment should be based on the standard breeding season, as the migration-free breeding season may exclude some birds establishing nest sites and fledging at the beginning and end of the breeding season respectively. Attribution of birds to breeding and migration may be required in these crossover months.</li> <li>• use of the most precautionary Band Option for the CRM (Option 1 or 2) in the absence of any biologically meaningful reason to prefer one over the other.</li> <li>• use of PVA (rather than PBR) to assess impacts on populations. We support Natural England’s position that PBR is not suitable for use in the assessment of mortality effects of windfarms on any species.</li> <li>• use of density independent outputs from the PVA. We support Natural England’s position that there is a lack of evidence as to the strength and form of any density dependence operating on these populations, hence density independent outputs should be used.</li> </ul>
Applicant’s response	<p>The Applicant welcomes the RSPB’s position on the revised collision risk modelling predictions. The Applicant proposes that the increase in draught height is secured through a new parameter in the DMLs (Sch 10 to 13) and within the parameters contained in the Requirements to the draft Order.</p> <p>In relation to the RSPB residual concerns and recommendations for collision modelling and population modelling, the Applicant has previously provided justifications for the parameters and methods used. These were discussed in detail with Natural England and the RSPB during the Evidence Plan process, with agreement reached with Natural England and the RSPB on most aspects. The outputs provided in the assessment, and the methods used, reflected these discussions and in many cases the assessment provided outputs from both the Applicant’s and the RSPB or Natural England’s preferred methods.</p>
ECO15	<p>The RSPB welcomes the PVA carried out by MacArthur Green for the Applicant for great black-backed gulls. Using the RSPB and NE preferred metric, the counterfactual of population size for a density independent model, this shows that the mortality attributed to East Anglia THREE alone is not sufficient, in the context of the UK North Sea biologically defined minimum population scale, to raise concern. We would, however note the following:</p>

ID	Comment and Applicants response
	<p>We do not accept the arguments for including compensatory density dependence put forward by the authors. In addition to the reasons given at length during previous submissions to this and other offshore windfarm Examinations, are those published and peer-reviewed in Green et al., 2016 (please see Appendix 1 attached below), and subsequently agreed with in the review of those arguments by the BTO (Cook and Robinson, 2015). These arguments are not that density dependence does not exist, rather that we do not have the means to accurately quantify the strength and form of it in a biologically meaningful way in order to incorporate it into PVA, and the manner in which the authors have done this for this PVA report is essentially arbitrary. Furthermore, as acknowledged by the authors, very little is known about the demographic processes of greater black-backed gull populations. This is important to acknowledge because, density dependence is not always compensatory, as implied by the authors, but can also be depensatory, slowing the rate of population growth at lower population densities. In other words, a population decline arising from an offshore wind farm could have larger consequences on the population than are predicted by the compensatory density dependent or even density independent models. Horswill and Robinson (2015) identified depensation occurring in three gull species (blacklegged kittiwake, black-headed gull and herring gull). As such it would be very wrong to simply assume that density independent outputs are “highly precautionary”, given the large uncertainties as to how density dependence would act on the North Sea population, rather they are the most sensible to use for assessment.</p> <p>The modelling suggests that cumulative mortality arising from wind farms could cause a population reduction of 21% after 25 years. The RSPB does not accept the assertion of the authors of this PVA report that a population reduction of 21% “would not be considered unsustainable”. This would be unacceptable, however as a consequence of the changes in turbine dimensions for East Anglia THREE and the reduction in turbine numbers for East Anglia ONE, the RSPB accept this mortality will be reduced to previously consented levels and that the contribution to this population reduction attributable to the project and the East Anglia zone is of a level that minimizes our concerns for this Application.</p>
Applicant’s response	<p>The Applicant acknowledges the points raised by the RSPB in relation to population modelling methods. However, the Applicant notes that RSPB accepts that East Anglia THREE contributes a very small number to the cumulative collision total, such that RSPB’s concerns have been minimised.</p>
ECO16	<p>As stated above for gannet, the RSPB’s concerns have been reduced by the Applicant’s commitment to raise draft height by 2m across 70% of the windfarm site. This, along with the reduction in turbine numbers for the East Anglia ONE project, reduces the contribution of the project and the East Anglia zone to in-combination and cumulative collision risk to kittiwake (please see Appendix 2 below) such that we do not feel it necessary to make further representations on these issues (subject to inclusion of a suitable DCO condition to secure the increase in turbine height for East Anglia THREE and legal certainty regarding the turbine reduction for East Anglia ONE). Again as stated above, we reserve the 5 right to add to and/or amend our position in light of any changes to position or new information submitted by the Applicant.</p>

ID	Comment and Applicants response
Applicant's response	The Applicant welcomes the RSPB's position on this matter and will continue discussions with regards the legal basis for the reduced collision estimates.
ECO17	From our reading of the East Anglia ONE Offshore Windfarm (Corrections and Amendments) Order 2016, it appears that the developer must submit a notification to the Secretary of State informing him of whether the option to build a HVDC windfarm of up to 1200MW and 240 turbines or an HVAC windfarm of up to 750MW and 150 turbines has been chosen. We understand that the developer has now submitted a notification of their intention to build the HVAC option to a capacity of 714MW using 102 turbines. We therefore request clarification regarding whether this further reduction to 714MW and 102 turbines has been legally secured, or whether the option to build up to a capacity of 750MW with 150 turbines remains.
Applicant's response	<p>It is correct that there was a requirement on East Anglia ONE to write to the Secretary of State (SoS) to confirm the choice of technology that would be taken forward to construct the East Anglia ONE project. Such a notification was made in a letter dated 16<sup>th</sup> September 2016 (REP5-025) which confirmed to the SoS that the HVAC option has been selected and that the wind farm would consist of 102 x 7MW turbines (less than the 150 turbines provided for in the 2016 Change Order). On making this notification, the right to revert to the 1,200MW and up to 240 turbine option fell away.</p> <p>To provide further confidence that the East Anglia ONE array will not consist of more than 102 turbines, it should be noted that a contract has been signed with Siemens (publicly announced in April 2016) for the supply and maintenance of 102 x 7MW turbines. Other contracts will be progressed on a similar basis and in line with the projects obligations under the secured CfD which are one of the key aspects driving the project programme.</p> <p>The Contracts for Difference (CfD) regime introduces tight deadlines and strict penalties for developers of renewable energy projects successful in winning a CfD, with the risk of contracts being cancelled if deadlines are not met.</p> <p>Key contracts to construct the East Anglia ONE projects are being placed on the basis of meeting CfD timelines. The timelines set the following requirements:</p> <ul style="list-style-type: none"> <li>• Significant financial commitment (demonstrating 10% of total pre commissioning costs spent or entering into material contracts – i.e. turbines and foundations) 1 year after contract signing</li> <li>• Building the project within the set timelines             <ul style="list-style-type: none"> <li>○ commissioning 80% of the capacity for a phase within the target commissioning window or face erosion of the CFD term</li> <li>○ commissioning at least 85% of the capacity for the phase prior to the longstop date else face termination</li> </ul> </li> </ul> <p>CfD requirements are therefore a critical driver for project delivery in terms of economic penalties or contract termination and leave</p>

ID	Comment and Applicants response
	<p>very little scope for major shifts in wind farm construction contracting strategy.</p> <p><b>Notes</b></p> <p>The “commissioning window” is specified by the developer at the point on application and lasts for a period of one year. If the project has not been commissioned within this window then then the payment term begins to erode.</p> <p>The “longstop date” lasts for 2 years following then end of the “commissioning window”. If the project is not commissioned by the end of this date the CfD will be terminated.</p> <p>In their Rule 17 response the RSPB state that:</p> <p><i>“Whilst the proposal to build 102 turbines would make a lower contribution to cumulative/in-combination collision risk, given the additional changes to turbine height for EA3, we accept that the 150 turbine scenario does not result in a significantly higher contribution. We understand that the 102 turbine scenario cannot be legally secured at this time, but acknowledge that the Applicant has clearly stated their intention to build to this lower level. However, should the worst case scenario of 150 turbines be realised, we do not consider that this would materially change the conclusions regarding potential impacts from collisions. As stated in our previous response at Deadline V [REP5-005], the changes to the specifications for both windfarms have reduced our concerns regarding cumulative/in-combination collision risk at this stage.”</i></p>
HRA11	<p>The RSPB has had continued and constructive dialogue with the Applicant and welcome their commitment to increase draught height by 2m across 70% of the windfarm site. We are currently in discussion with the Applicant regarding a suitable condition to be included in the DCO to secure this increase. As explained above, this, along with the reduced number of turbines for East Anglia ONE (subject to legal certainty), reduces our concerns around collision risk impacts.</p>
Applicant’s response	<p>The Applicant welcomes the RSPB’s position on this matter and has proposed an additional parameter in the relevant DMLs and in the Requirements to the draft Order to secure the increase in draught height of 70% of the turbines.</p>
HR15	<p>Please see our response to ECO16.</p> <p>However, the RSPB is concerned by Natural England’s Written Submission of the Oral Answers provided to questions at the Issue Specific Hearing (ISH) on Environmental Matters, Wednesday 7th September 2016 as set out in paragraphs 1.27 to 1.29 of its Deadline 4 submission namely –</p> <p>“1.27 Q. Is there a remaining scientific doubt as to whether the project could have a material effect on the in-combination total and therefore a LSE in-combination? Would it help if NE caveated the incombination impact with ‘but it is not EA3 contingent’?”</p>

ID	Comment and Applicants response
	<p>1.28 NE advises while there is uncertainty and we haven't ruled out the in-combination effect, we are confident that further modelling would not change any conclusions. NE are confident that the project alone does not have an impact, but equally the contribution to the in-combination total which EA3 makes is so small that it won't make a material difference. NE further advises that the uncertainty around in-combination impacts is driven by other projects potentially exceeding the threshold. NE is not saying there is no issue, just the figures for EA3 are not sufficiently high to give initial concern and the potential impacts must be considered in the wider context of other projects in-combination.</p> <p>1.29 For additional clarity NE advises that whilst the precautionary principle is a key component of the Habitats Regulations, there is also a risk in that it can become over precautionary. Five years ago this became an issue when the directive and regulations were seen as a block to economic growth. The Habitat Regulations review was commissioned to ensure that this was not an issue. The review fundamentally concluded that the directive, regulations and methods for implementation were appropriate, but in some respects the precautionary principle was over precautionary. As a result the recommendation was for the additional principle of proportionality. The advice around the avoidance of any scientific doubt in this case is precautionary, but by recognising that the possible impact of EA3 is so small (immaterial) that the impact of EA3 in-combination should be considered proportionally."</p> <p>As NE recognises in paragraph 1.28, set out above, there is still much uncertainty around possible impacts to the SPA and its species and modelling has to be used as part of the assessment process due to the lack of empirical data. Therefore to suggest that the precautionary principle should be considered with the proportionality principle, in our view is not appropriate.</p> <p>Within its marine advice JNCC explains that:[1]</p> <p>"The Precautionary Principle is one of the key elements for policy decisions concerning environmental protection and management. It is applied in the circumstances where there are reasonable grounds for concern that an activity is, or could, cause harm but where there is uncertainty about the probability of the risk and the degree of harm.</p> <p>The Precautionary Principle has been endorsed internationally on many occasions. At the Earth Summit meeting at Rio in 1992, World leaders agreed Agenda 21, which advocated the widespread application of the Precautionary Principle in the following terms:</p> <p>'In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.' (Principle 15)"</p> <p>Although Defra's Habitats Regulations Review[2] does include a reference to proportionality what it actually states is</p> <p>"Improving the quality, quantity and sharing of data</p> <p>6. The Government is determined to improve the quantity and quality of data on protected sites and species. We are also keen to</p>



ID	Comment and Applicants response
	<p>ensure proportionality in the standard of evidence required, as uncertainties and gaps in evidence, particularly in the marine environment, lead to slow and/or overly precautionary decisions by regulators. To do this, we will:</p> <ul style="list-style-type: none"> <li>• Introduce by September 2012 a new process for agreeing upfront evidence requirements for the ‘top 40’, and other nationally significant, infrastructure projects.</li> <li>• Establish by July 2012 a Habitats and Wild Birds Directives Marine Evidence Group to address marine data sharing issues, evidence gaps and ways of improving post construction monitoring.</li> <li>• Consult by November 2012 (to be finalised by March 2013) on new consistent standards on the acceptable range and quality of evidence needed to enable statutory bodies to provide their advice.</li> <li>• Facilitate by December 2012 agreement by all parties on a practical plan to share more widely environmental data, while recognising the need to respect commercial sensitivities.</li> <li>• Work closely with environmental NGOs and others to improve existing surveillance of protected species and pilot new approaches.“</li> </ul> <p>Thus recognising the lack of empirical data particularly in the marine environment but only introducing proportionality in relation to the quantity and quality of the data required, NOT in relation to how the required precautionary principle, in light of the lack of robust empirical data, should be applied.</p> <p>In our view the precautionary principle is a proportionate response in light of the lack of empirical data. As certainty over potential impacts increases the need to apply the principle will of course reduce. Therefore at present, particularly for offshore windfarms it is crucial that this principle is applied without any caveats.</p>
Applicant’s response	<p>Proportionality is defined in the Defra HRA review in terms of the standard of evidence required to reduce the level of precaution applied to an assessment, not the quantity or quality of data per se. This recommendation (of proportionality in the weight of evidence required) is consistent with Natural England’s stated approach, since many of the arguments made by the RSPB in favour of applying precaution (alone) are based on their position that the evidence base for reducing precaution is too limited. Natural England have applied proportionality by acknowledging that the minimal contribution of East Anglia THREE offsets some of the precaution in the methods used.</p>

### 1.6 Suffolk Preservation Society

ID	Comment and Applicants response
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ID	Comment and Applicants response
LH18	Suffolk Preservation Society cannot fully endorse the Schedule of Listed Heritage Assets or agree that the approach taken by the Applicant to assess these is fully acceptable, however the supplementary submission by Babergh and Mid Suffolk District Councils (REP4-027) does provide a certain level of assurance that the effects of the proposed project upon designated heritage assets have been appropriately assessed. As such the Society does not wish to make any further representation on the methodology used, subject to our further comment in response to question LH20 below.
Applicant's response	Noted
LH19	<p>Suffolk Preservation Society considers that the revised and updated LVIA is an acceptable assessment subject to recognition that:</p> <ul style="list-style-type: none"> <li>• The assessment may have placed undue weight of the impact from EA1 infrastructure on the sensitivity of what will become the baseline landscape.</li> <li>• The time for the on-site landscaping to become effective mitigation will be between 15 to 20 years rather than the stated 15 years.</li> <li>• That the overall mitigation proposals still rely heavily on off-site planting that may or may not be achieved as this remains subject to informal agreement with local landowners.</li> </ul>
Applicant's response	Noted
LH20	<p>Suffolk Preservation Society is pleased that the local authority has undertaken an independent review of the assessment of the impact upon setting of a number of the designated heritage assets that could be affected through this development. We note that the Local Authority has employed a recognised stepped methodology that the Society would endorse in these circumstances.</p> <p>While we acknowledge MSDC's use of the orthodox methodology, we note however that this does not extend to a consideration of step 4 namely an exploration of ways to avoid or minimise harmful effects, such as the moderate changes to the setting identified on Tye Farm and Bullenhall Farm. The report moves straight to step 5, namely the formulation of conclusion that no harmful effects will arise from the development either singularly or cumulatively with other projects. Inevitably the quantification of magnitude of effects is subjective, but nevertheless we find it surprising that a development of this scale and with such potential cumulative effects does not warrant any off site mitigation of impacts to designated heritage assets for which the existing Section 106 off site mitigation clearly does not accommodate for. We therefore recommend that a time-limited environmental fund be provided for off-site mitigation for unanticipated impacts upon the setting of heritage assets, identified post construction.</p>
Applicant's response	As previously stated, the Applicant does not consider that an environmental fund is necessary or, therefore, that it can be lawfully required given the conclusions of the assessment.

## 1.7 The Crown Estate

ID	Comment and Applicants response
DCO5	<p>Article 37 is so drafted to enable TCE Commissioners to comply with their duties under the Crown Estate Act 1961 (“the Act”) Under the Act it is the duty of the Commissioners to maintain and enhance the value of the estate and the return obtained from it with due regard to the requirements of good management and to achieve best consideration when selling, leasing or otherwise disposing of any land or rights.</p> <p>Such duties may not be discharged if the Commissioners unconditionally consent to the acquisition of third party interests in Crown Land before a DCO is made because the interests may not be acquired for several years. At that point in time, different circumstances may apply and have a bearing on how the Commissioners would have discharged their statutory duties in relation to the relevant land.</p>
Applicant’s response	Noted
CA22	The Crown Estate and EATL have commenced discussions in relation to this matter
Applicant’s response	The Applicant is continuing to engage with TCE in order to reach agreement as to the wording to be included in Article 37.

## 1.8 The Wildlife Trusts

ID	Comment and Applicants response
ECMM17	<p>1.1 We welcome the willingness of the applicant to involve The Wildlife Trusts in the post consent schedule in the Site Integrity Plan (SIP) and would be pleased to take part in the drafting process with the Applicant. However, we would like to reiterate our strong concerns about the lack of publicity clause in mitigation protocols/EPs licence applications/SIP where decision making is passed solely to the MMO. It is ultimately the MMO who have the responsibility to ensure mitigation measures will be in place to prevent an adverse effect on site integrity of the Southern North Sea pSAC. It is therefore public consultation on this stage of the process, rather than just drafting by the Applicant, which we believe is required.</p> <p>1.2 We draw your attention to the precedent set in the Hornsea 2 DMLs and compliance with the Aarhus Convention (pillar 2 on public participation and decision making). We wish to pursue the same level of consultation here.</p>
Applicant’s response	The Applicant is in agreement with the MMO on their response to this question, and has no further comment.

ID	Comment and Applicants response
HRA13	<p>Likely Significant Effect (LSE) Alone</p> <p>1.3 We have concerns that the LSE test on the impact of East Anglia Three has been assessed against only the Management Unit reference population for harbour porpoise. The European Commission has made clear in guidance that “the expression ‘integrity of the site’ shows that focus is here on the specific site. Thus, it [a plan or project] is not allowed to destroy a site or part of it on the basis that the conservation status of the habitat types and species it hosts will remain favourable within the European territory of the Member State” 1 . Based on this guidance, to understand the impact on the integrity of the site, we believe a site-based assessment on the impact of the project on harbour porpoise is required rather than assessing the impact in relation to the Management Unit. We understand that the site-based approach is also advised by the SNCBs. JNCC have made it clear in discussions around the pSACs, that in HRAs, the disturbance impact should be considered in terms of the amount of habitat which would become temporarily unavailable to harbour porpoise through displacement due to piling. We therefore, disagree with the conclusions in paragraph 89 that there is no likely significant effect in relation to conservation objective 1 and 2.</p> <p>1.4 In paragraph 86 of the Information on the Habitats Regulations Assessment document, the applicant states “There is no evidence that harbour porpoise displaced from windfarms, or by vessels, suffer any mortality as a consequence of displacement; any mortality due to displacement would most likely be a result of increased density in areas outside the affected area, resulting in increased competition for food where density was elevated”. We do not agree with this statement and believe there is considerable uncertainty around both the individual and population consequences of displacement. The effort being put into projects such as DEPONS and the Interim PCoD model highlight these high levels of uncertainty. In fact, there is evidence to suggest that harbour porpoise feed continuously day and night to meet their energetic demands. This leaves little margin for compensation when foraging if faced with disturbance and could have severe fitness consequences at an individual or population level2 . Considering the displacement area as part of the assessment further backs up the argument to undertake a site based assessment of this nature.</p>
Applicant's response	<p>1.3 The updated Information for the HRA (Document Reference: Deadline 6 / HRA / The Applicant) includes spatial assessments of the potential effect of disturbance from underwater noise in relation to the total area of the summer pSAC, the winter pSAC and the North Sea MU. This assessment has been based on the advice provided by Natural England on 28<sup>th</sup> September 2016 (Document Reference: Deadline 5/Second Written Questions.NE advice and meeting mote/HRA13). The updated assessment for underwater noise during construction (Information for the HRA (Document Reference: Deadline 6 / HRA / The Applicant), still concludes that no potential for LSE from the East Anglia THREE project in isolation, based on the first or second draft Conservation Objectives for the site. The potential impacts based on the worst-case and maximum scenarios presented are predicted to be less than 20% of the seasonal component of the pSAC at any one time or less than an average of 10% of the seasonal component of the pSAC (as per current best available advice from NE).”</p> <p>1.4 As outlined above in response to 1.3, the updated Information for the HRA (Document Reference: Deadline 6 / HRA / The Applicant) includes spatial assessments of the potential effect of disturbance from underwater noise in relation to the total</p>

ID	Comment and Applicants response
	<p>area of the summer pSAC, the winter pSAC and the North Sea MU. This assessment concludes no potential for LSE from the East Anglia THREE project in isolation. The conclusion of in-combination assessment is that <i>“there is the potential for the in-combination effect of UK offshore wind farms in the summer area of the Southern North Sea pSAC (assuming pile driving at location with maximum overlap with the pSAC) resulting in significant disturbance to harbour porpoise.”</i></p> <p>As outlined in the response to 1.9, the level of uncertainty in completing an in-combination assessment further supports the need for strategic assessment rather than developer led assessment. The Applicant agrees that ongoing work streams, such as the DEPONS projects and the interim PCoD will allow consideration of the biological fitness consequences of disturbance from underwater noise, and the conclusions of a quantitative impact assessment to be put into a population level context. The Applicant is supportive of these strategic initiatives, and will continue to work alongside other developers, Regulators and SNCBs in order to further understand the potential for significant in-combination impacts, and reductions in these impacts where appropriate.</p>
HRA13	<p>Likely significant effect in-combination</p> <p>1.5 We welcome the proposal by the applicant to produce a SIP to identify mitigation and management measures in relation to the pSAC and agree that no LSE can be ruled out in relation to the in-combination effect from piling activity.</p> <p>1.6 As highlighted in paragraph 111 and 112, there is uncertainty in the assessment process at the project level and in-combination assessment. There is a clear need for strategic assessment of in-combination effects on marine mammals across the pSAC and this should be undertaken at the earliest opportunity to inform both the management proposals for the site and the assessments for activities within it.</p> <p>1.7 We do not agree with the conclusion of no potential LSE in-combination effects in relation to prey species as identified in section 5.5.3. as a fully quantified assessment has not been undertaken. Commercial fishing has not been included in this assessment.</p> <p>1.8 We do not agree with the conclusion of no potential in-combination effects to collision risk as identified in 5.5.4 as a fully quantified assessment has not been undertaken.</p> <p>1.9 In order to be able to conclude no adverse in-combination effects there can be no scientific doubt. We assert that there are considerable levels of uncertainty around many aspects of the in-combination assessment.</p>
Applicant's response	<p>1.5 The Applicant acknowledges that TWT welcome the proposed approach to produce a SIP to identify mitigation and management measures in relation to the pSAC. Also see response to comment 1.8 below regarding in-combination assessment.</p> <p>1.6 The Applicant agrees that there is a need for strategic assessment of in-combination effects on marine mammals across the</p>

ID	Comment and Applicants response
	<p>pSAC and this should be undertaken at the earliest opportunity to inform both the management proposals for the site and the assessments for activities within it. Also see response to comment 1.9 below.</p> <p>1.7 The cumulative impacts upon prey species were assessed as part of the ES, Chapter 11 Fish and Shellfish Ecology (APP-119) assessment, Natural England agreed in the SoCG that:</p> <p><i>“the assessment of impacts for construction, operation and decommissioning presented is appropriate and, assuming the inclusion of the embedded mitigation described, impacts on Fish and Shellfish Ecology are likely to be non-significant in EIA terms.”</i></p> <p>It was agreed with Natural England during the Evidence Plan process that commercial fisheries were part of the baseline. Commercial fisheries were therefore included in the assessment in this way.</p> <p>1.8 The Applicant considers that it is not possible at this stage to undertake a full quantified assessment of in-combination collision risk. The approach taken for the assessment has been consulted on and agreed with Natural England.</p> <p>1.9 As stated in the updated Information for the HRA (Document Reference: Deadline 6 / HRA / The Applicant):</p> <p><i>“It should be noted that a large amount of uncertainty is inherent in the completion of an in-combination assessment. At the project level, uncertainty in the assessment process has been expressed as a level of the confidence in the data used in the assessment. This relates to confidence in both the understanding of the consequences of the effects on marine mammals, but also the information on the existing environment used to inform the predicted magnitude of effect.</i></p> <p><i>In the in-combination assessment, the potential for effects over wide spatial and temporal scales means that the uncertainty of a large number of plans or projects can lead to low confidence in the information used in the assessment, but also the conclusions of the assessment itself. To take this uncertainty into account, where possible, a precautionary approach has been taken at multiple stages of the assessment process. However, it should be noted that building precaution on precaution can lead to unrealistic worst-case scenarios within the assessment.</i></p> <p><i>The level of uncertainty in completing an in-combination assessment further supports the need for strategic assessment rather than developer led assessment. Ongoing work streams, such as the Disturbance Effects on the Harbour Porpoise Population in the North Sea (DEPONS) projects and the interim Population Consequences of Disturbance (iPCoD) will allow consideration of the biological fitness consequences of disturbance from underwater noise, and the conclusions of a quantitative impact assessment to be put into a population level context. EATL is supportive of these strategic initiatives, and will continue to work alongside other developers, Regulators and Statutory Nature Conservation Bodies (SNCBs) in order to further understand the potential for significant in-combination impacts, and reductions in these impacts where appropriate.”</i></p> <p>The Applicant also believes that the draft condition proposed for the DMLs (condition 13(2)) and development of the SIP approach will enable refinement of any mitigation measures that may be required to ensure beyond reasonable scientific</p>

ID	Comment and Applicants response
	<p>doubt that there is no potential for LSE.</p>
HRA13	<p>Draft Site Integrity Plan (SIP) [REP4-013]</p> <p>1.10The Wildlife Trusts welcome the SIP as an approach to the delivery of mitigation and management measures to address the impact of the in-combination effects of pile driving noise on the Southern North Sea pSAC. At this stage we cannot agree with the conclusion of no LSE for the project alone. Therefore, the SIP may also be required to deliver mitigation measures for the project alone.</p> <p>1.11The Wildlife Trusts support the mitigation measure principles as outlined in section 5.4.1 to 5.4.4 of the SIP. The applicant has outlined themselves that detailed mitigation and management measures cannot be fully defined until a number of parameters have been agreed or defined, e.g. construction methodology, assessment against final conservation objectives and management advice for the pSAC. Due to this uncertainty, we would welcome a SIP expert working group to assist in the development and delivery of this document post consent. It would be useful to see further detail of the mitigation in future iterations of the SIP.</p> <p>1.12Section 5.4.5 outlines that seasonal restrictions on pile driving are not included in the Plan because the project lies within both summer and winter areas of the pSAC. However, we believe it would be beneficial to include some consideration on seasonality of piling activity. Specifically, we know very little in relation to seasonality with regards to breeding and calving3 and as more information becomes available, it would be useful to consider this.</p> <p>1.13The Schedule of Agreement of the plan in section 2.3 provides useful indicative timescales for key milestones and we are pleased to see The Wildlife Trusts listed as a consultee in some sections. However, we would request to be fully listed in the “final submission and review of the draft Plan and any associated documentation” (not only draft), and also be listed under “noise prognosis”, “final design” and “Final plan sign-off”. We also feel that noise prognosis and final design should be listed before the submission and review of draft Plan and associate documents and the timescales altered to reflect this. We consider it appropriate for the timescales to be listed as a condition of the application..</p> <p>1.14The applicant notes in paragraph 35 that “the dMMMP is in line with the current best practice to prevent mortality and injury to marine mammals from pile driving”. We would like to note that we believe this guidance is out of date and is not fit for purpose for such large-scale wind farm developments. We accept that the Applicant has no other guidance to go on, but this is why we advocate strong precaution in relation to mitigation</p> <p>1.15Please refer to our point in paragraph 1.1 and 1.2 of our response that The Wildlife Trusts request to be included as a named consultee in relation to the SIP.</p>

ID	Comment and Applicants response																				
Applicant's response	<p>1.10 Throughout the refinement of the SIP there will be several opportunities to update the SIP prior to construction; this will include a review the project alone and in-combination mitigation measures that may be required.</p> <p>1.11 As outlined in Table 1 of the SIP, there is a proposed timetable for the development and review of the SIP and an opportunity through consultation for input into the development and delivery of the SIP post consent. The Applicant will consider and discuss the possibility of an expert working group, however at this time feels this might be more appropriate at a strategic, rather than project, level.</p> <p>1.12 The Applicant acknowledges that currently very little is known with regards to breeding and calving in relation to the proposed pSAC. If, or when, more information becomes available the SIP approach allows flexibility for this to be considered further and incorporated in the SIP if appropriate.</p> <p>1.13 As stated previously Table 1 provides an indicative programme. The MMO have also provided comments on Table 1 and the Applicant will be revising Table 1 in consultation with relevant parties. To reflect TWT (and MMO) comments, the Applicant proposes to amend Table 1 in the SIP as follows:</p> <p style="text-align: center;"><b>Table 1: Milestones for refinement and agreement of the Plan (Indicative only)</b></p> <table border="1" data-bbox="450 799 1751 1380"> <thead> <tr> <th data-bbox="450 799 714 863">Indicative stage</th> <th data-bbox="714 799 978 863">When</th> <th data-bbox="978 799 1391 863">Action</th> <th data-bbox="1391 799 1751 863">Relevant Authority/Consultee</th> </tr> </thead> <tbody> <tr> <td data-bbox="450 863 714 927">In-principle Plan developed</td> <td data-bbox="714 863 978 927">Prior to close of examination</td> <td data-bbox="978 863 1391 927">Drafted by EATL, review and agreement in approach.</td> <td data-bbox="1391 863 1751 927">MMO and Natural England; TWT and WDC</td> </tr> <tr> <td data-bbox="450 927 714 1027">Consent granted and AA</td> <td data-bbox="714 927 978 1027">Summer 2017</td> <td data-bbox="978 927 1391 1027">EATL review in principle Plan, identify areas for revisions/updates.</td> <td data-bbox="1391 927 1751 1027">Internal only</td> </tr> <tr> <td data-bbox="450 1027 714 1353">Southern North Sea pSAC final Conservation Objectives and Management measures are defined/ further advice is provided/site is adopted.</td> <td data-bbox="714 1027 978 1353">Unknown (it is not possible to determine when this may occur)</td> <td data-bbox="978 1027 1391 1353">EATL review in principle Plan, identify areas for revisions/updates once further guidance on the pSAC is received. If required EATL will undertake consultation to ensure any required thresholds for disturbance or noise levels are captured in the Plan.</td> <td data-bbox="1391 1027 1751 1353">MMO and Natural England, potentially SoS, TWT and WDC</td> </tr> <tr> <td data-bbox="450 1353 714 1380">Draft design</td> <td data-bbox="714 1353 978 1380">Pre-construction</td> <td data-bbox="978 1353 1391 1380">EATL will be refining the project</td> <td data-bbox="1391 1353 1751 1380">Internal only</td> </tr> </tbody> </table>	Indicative stage	When	Action	Relevant Authority/Consultee	In-principle Plan developed	Prior to close of examination	Drafted by EATL, review and agreement in approach.	MMO and Natural England; TWT and WDC	Consent granted and AA	Summer 2017	EATL review in principle Plan, identify areas for revisions/updates.	Internal only	Southern North Sea pSAC final Conservation Objectives and Management measures are defined/ further advice is provided/site is adopted.	Unknown (it is not possible to determine when this may occur)	EATL review in principle Plan, identify areas for revisions/updates once further guidance on the pSAC is received. If required EATL will undertake consultation to ensure any required thresholds for disturbance or noise levels are captured in the Plan.	MMO and Natural England, potentially SoS, TWT and WDC	Draft design	Pre-construction	EATL will be refining the project	Internal only
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ID	Comment and Applicants response			
	- if applicable		design during the pre-construction period. Updates to design that could impact the conclusions of the AA may be subject to further assessment if deemed appropriate in consultation with the relevant authority. Any updated assessment will also require consideration of mitigation and management measures outlined in the Plan.	
	Submission and review of draft Plan and any associated documentation	Minimum of 12 months prior to commencement of pile driving	The Plan will be updated to capture all assessments and mitigation measures. Alongside the draft Plan implementation plans, methods statement and monitoring requirements will also be drafted for any required measures.	MMO and Natural England, with copies sent to TWT and WDC
	Noise Prognosis	Minimum of 9 months prior to pile driving	An updated noise assessment based on final foundation and installation design and installation shall be submitted to the MMO The MMO will disseminate the Noise Prognosis to such parties as it considers necessary in order to facilitate consultation on the Final Design.	MMO and NE, with copies sent to TWT and WDC.
	Final design	Approximately 9 months prior to construction	EATL will confirm the project design and installation techniques during the pre-construction period. Updates to design that could impact the	MMO, Natural England, and potentially Secretary of State; with copies sent to TWT and WDC.

ID	Comment and Applicants response			
			<p>conclusions of the AA may be subject to further assessment if deemed appropriate in consultation with the relevant authority.</p> <p>Based on the final project design, an updated assessment will be undertaken if necessary, this will include consideration of in-combination effects. Updates to the assessment that could impact the conclusions of the AA may be subject to further assessment if deemed appropriate in consultation with the relevant authority.</p> <p>Any assessment will also include the efficacy of mitigation or management measures.</p>	
	Final Plan sign-off	Minimum 4 months prior to commencement of pile driving	<p>The draft Plan will be updated and finalised.</p> <p>The Final Plan will be submitted four months prior to the commencement of pile driving for written approval from the MMO prior to any piling works commencing.</p>	MMO for sign off.
	Construction monitoring and reporting	Construction (not expected before 2021)		MMO
<p>1.14 The Applicant notes The Wildlife Trusts comment and as outlined in the ES and Information for the HRA a precautionary approach has been taken throughout the assessments on which the required mitigation will be determined.</p> <p>1.15 Please refer to the Applicant's response to the ExA's original question. The Applicant has nothing further to add.</p>				

ID	Comment and Applicants response
HRA13	<p>Drafting of Condition 13 of the dDMLs to secure the SIP [REP4-003 and 004]</p> <p>1.16 In a previous iteration which we viewed of the SIP, the following text was included in terms of the draft dDMSLs “consulting such persons as the Secretary of State may specify”. We request this text is included and that the Secretary of State is minded to include The Wildlife Trusts as a named consultee (please see our previous comments regarding question ECMM17).</p> <p>1.17 We welcome the clarification in paragraph 10 of the SIP in relation to the requirements of the DMLs. “Any requirement for capturing mitigation requirements in relation to mortality and injury to marine mammals is captured by the MMMP (and secured in Condition 13(f) of the DML). Any requirements to reduce acoustic disturbance in relation to European Protected Species (EPS) will be captured through the EPS Licencing process (see Section 5.3.1) and any requirements in relation to the Southern North Sea pSAC will be secured by conditions 13-(2) to 13-(4) of the DML.” We understand that the MMO has provided the Applicant with a letter of comfort that they see no objections to the granting of an EPS licence. However, we would like to highlight concern for the potential cumulative effects of multiple EPS licences which may be granted by the MMO for wind farm developments and the potential risk that this would have for the harbour porpoise population.</p>
Applicant's response	<p>1.16 Please refer to the Applicant's response to the ExA's original question. The Applicant has nothing further to add.</p> <p>1.17 Noted</p>

### 1.9 Whale and Dolphin Conservation

ID	Comment and Applicants response
ECMM15	<p>In the Applicants response to WDC's Written Representation [REP3-005], the applicant states that in condition 18 of the DML Schedules 1 and 2, that the noise generated by first four piled foundations will be monitored. We do not feel this alone is adequate or robust enough on which to base an assessment. This will only give a snapshot of the impacts of noise from pile driving, which will not generate sufficient data on which to assess the accuracy of the noise modelling or extrapolate the impacts of pile driving on harbour porpoises for the duration of the construction period.</p> <p>To fully ground-truth the noise modelling assessment, the monitoring and reporting should continue, preferably, for the duration of the construction period and certainly in different parts of the development site over a longer period of time at the start, in the middle and towards the end of the construction period. It would be helpful if the acoustic data collected were contributed to the Noise Registry.</p> <p>We are pleased to see that the applicant supports sharing of non-sensitive data to further the knowledge base for future developments. However, we would like to see details of the non-sensitive data the applicant will be sharing, a timescale and</p>

ID	Comment and Applicants response
Applicant's response	<p>details of how the data would be available. The data will only be useful to stakeholders if it scientifically robust.</p> <p>The monitoring of the first four piles is required to determine that the predicted noise modelling is comparable to the actual noise levels as soon as possible, in order to verify that the mitigation measures based on the predictive noise modelling are adequate.</p> <p>If the monitoring of the first four piles is deemed not to be adequate to determine that the predictive noise modelling reflects actual noise measurements and therefore that the mitigation is adequate, then the MMO would request further noise measurements are required.</p> <p>Condition 18(3) of the DMLs (Sch 10 to 13) states:</p> <p><i>"The results of the initial noise measurements monitored in accordance with sub-paragraph (1) must be provided to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type. The assessment of this report by the MMO will determine whether any further noise monitoring is required."</i></p> <p>Therefore, there is already a provision for further monitoring should it be required. The Applicant is also committed to:</p> <p>(1) Submit information on the expected location, start and end dates of impact pile driving to the Marine Noise Registry, in order to satisfy the 'Forward Look' requirements of the Registry, prior to the commencement of the licensed activities. This will include notifying the MMO of the successful submission of 'Forward Look' data within 7 days of the submission.</p> <p>(2) Submit the exact locations and dates of impact pile driving to the Marine Noise Registry, in order to satisfy the 'Close out' requirements of the Registry, at 6 month intervals from the commencement of impact pile driving. The final data will be submitted within 12 weeks of completion of impact pile driving. The MMO will be notified of the successful submission of 'Close out' data within 7 days of the submission.</p> <p>This is secured by condition 20 of the DMLs (Sch 10 to 13) which states:</p> <p><i>"20.— (1) Only when driven or part-driven pile foundations or detonation of explosives are proposed to be used as part of the foundation installation the undertaker must provide the following information to the UK Marine Noise Registry—</i></p> <p><i>(a) prior to the commencement of the licenced activities, information on the expected location, start and end dates of impact pile driving/detonation of explosives to satisfy the Marine Noise Registry's Forward Look requirements;</i></p> <p><i>(b) at six month intervals following the commencement of pile driving/detonation of explosives, information on the locations and dates of impact pile driving/detonation of explosives to satisfy the Marine Noise Registry's Close Out requirements;</i></p> <p><i>(c) within 12 weeks of completion of impact pile driving/detonation of explosives, information on the locations and dates of impact pile driving/detonation of explosives to satisfy the Marine Noise Registry's Close Out requirements</i></p>

ID	Comment and Applicants response
	<p><i>(2) The undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to paragraph (1) above within 7 days of the submission.</i></p> <p><i>(3) For the purpose of this condition—</i></p> <p><i>(a) "Marine Noise Registry" means the database developed and maintained by JNCC on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas;</i></p> <p><i>(b) "Forward Look" and "Close Out" requirements are as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) or any updated information document."</i></p> <p>The Applicant is also committed to the voluntary submission of site investigation works as appropriate to the MMO via the voluntary process (as applicable).</p> <p>It is not possible, at this stage to provide further details of what this data will be as it will depend on the noise modelling and monitoring undertaken, as well as the mitigation measures used.</p>
ECMM17	We welcome the opportunity to be involved in the post consent schedule in the Site Integrity Plan (SIP), and we would be pleased to be consulted on the drafting process
Applicant's response	The Applicant acknowledges the WDC's comment and as outlined in Table 1 of the SIP, will consultant with WDC as the SIP is refined.
HRA13	We would like to draw your attention to The Wildlife Trusts response to this question, as we echo their concerns and fully support, and agree with, their detailed response on this question.
Applicant's response	Please see response to The Wildlife Trust (HRA13).

**ScottishPower Renewables**  
**Offshore Wind Development**

Address: 4th Floor, 1 Atlantic Quay, Glasgow, G2 8JB

[Eastangliathree@ScottishPower.com](mailto:Eastangliathree@ScottishPower.com)

