



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008

East Anglia THREE Offshore Wind Farm

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Business, Energy and Industrial Strategy**

Examining Authority

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ExA's findings and conclusions and recommendation in respect of an application by East Anglia THREE Limited for a Development Consent Order granting consent for the East Anglia THREE Offshore Wind Farm.

File Ref EN010056

The application, dated 18 November 2015, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on the same date.

The Applicant is East Anglia THREE Limited.

The application was accepted for examination on 15 December 2015.

The examination of the application began on 28 June 2016 and was completed on 28 December 2016.

The development proposed comprises an offshore wind generating station in the North Sea, and all offshore and onshore infrastructure necessary to connect to the National Grid. The installed generating capacity from up to 172 wind turbine generators would be up to 1,200 Megawatts. The western boundary of the wind turbine generator area would be approximately 69 kilometres at its closest to the East Anglian coast, the area being some 305 km² in extent. The transmission cables would come ashore at Bawdsey Cliffs in Suffolk. They would then run underground for some 36km around the northern side of Ipswich to up to two new substations at Bramford, from where electricity would be provided to the adjacent National Grid Substation.

Summary of Recommendation:

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

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1 INTRODUCTION

1.1 INTRODUCTION

1.1.1 This is the Examining Authority (ExA)'s report to the Secretary of State (SoS) for Business, Energy and Industrial Strategy following the Examination of an application for a Development Consent Order (DCO) for the East Anglia THREE (EA3) Offshore Wind Farm. The Applicant for the Proposed Development is East Anglia THREE Limited which, when the application was submitted, was a joint venture owned equally between ScottishPower Renewables (UK) Limited and Vattenfall Wind Power Limited.¹ The report sets out the findings and conclusions of the ExA and its recommendations to the SoS.

1.1.2 The EA3 Offshore Wind Farm (the Proposed Development) application [APP-001 to APP-301] was submitted to the Planning Inspectorate (the Inspectorate) on 18 November 2015 under section (s) 37 of the Planning Act 2008 as amended (PA2008) and accepted for examination under s55 of PA2008 on 15 December 2015.

1.2 THE PROPOSED DEVELOPMENT

1.2.1 The Applicant proposes to construct an offshore wind farm with a generating capacity of up to 1,200 Megawatts (MW) off the coast of East Anglia, within the area known as Zone 5, under the Round 3 Offshore Wind Licensing Arrangements.

1.2.2 In summary, the Proposed Development which comprises the Nationally Significant Infrastructure Project (NSIP) is:

- An offshore electricity generating station of up to 1,200 MW, comprising up to 172 wind turbine generators (WTG) fixed to the bed of the North Sea, approximately 69 kilometres (km) from the Suffolk coast at Lowestoft;
- Up to one accommodation platform;
- Up to two meteorological masts;
- Up to twelve buoys; and
- A network of inter-array sub-sea cables.

1.2.3 The Proposed Development also requires the following elements of associated development:

- A sub-sea electrical connection between the proposed EA3 wind farm and the consented East Anglia ONE (EA1) offshore wind farm;
- Up to six offshore electrical stations;

¹ The updated Statement of Reasons [REP8-009] notes that East Anglia THREE Limited is now a wholly-owned subsidiary of ScottishPower Renewables (UK) Limited.

- A sub-sea electrical connection between the offshore electrical stations, and from those electrical stations to a landfall at Bawdsey Cliffs;
- Up to four transition bays;
- An underground electrical connection comprising up to four circuits (each with up to three cables) pulled through ducting which would be pre-laid pursuant to the East Anglia ONE Offshore Wind Farm Order 2014 (as amended);
- Up to two new onshore substations housing electrical equipment located adjacent to the existing National Grid Substation at Bramford; and
- An underground electrical connection comprising up to four circuits pulled through pre-laid ducting or laid directly underground in the location of the proposed onshore substation(s) and the National Grid Substation.

1.2.4 The Order for development consent also requires:

- Six deemed marine licences (DMLs) under s66(1) of the Marine and Coastal Access Act 2009 (MCAA); and
- Powers to acquire land, or rights, compulsorily for the construction and operation of the Proposed Development.

1.2.5 The Proposed Development is explained more fully in Chapter 2 of this report.

1.3 STRUCTURE OF REPORT

1.3.1 This Report is structured as follows:

- **Chapter 2** - sets out the main features of the Proposed Development;
- **Chapter 3** - summarises the legal and policy context applicable to consideration of the application;
- **Chapter 4** - sets out the Principal Issues identified by the ExA at the outset of the Examination, discusses under topic headings the relevant and important issues that were examined, and sets out the ExA's conclusions in relation to the issues considered in this chapter;
- **Chapter 5** - discusses the topics of biodiversity, biological environment and ecology, and sets out the ExA's findings and conclusions in relation to these;
- **Chapter 6** - assesses the application against the Habitats Regulations;
- **Chapter 7** - draws the individual conclusions presented under Chapters 4 to 6 together, considers the balance of impacts against the public benefit, and provides the ExA's conclusion on the case for development consent;
- **Chapter 8** - assesses the requests for Compulsory Acquisition (CA);
- **Chapter 9** - addresses the draft DCO; and

- **Chapter 10** - sets out the ExA's overall conclusions and recommendation to the SoS.

1.3.2 The following appendices are included within this Report:

- **Appendix A** - details the main events occurring during the Examination and the main procedural decisions taken by the ExA;
- **Appendix B** - contains the Examination Library which lists the documents submitted by the Applicant and others in connection with the application, and identifies the references used in this report;
- **Appendix C** - is a list of abbreviations used in this report; and
- **Appendix D** - contains the DCO which the ExA recommends the SoS should make, hereafter referred to as the ExA's recommended DCO.

The application and representations

1.3.3 The application, dated 18 November 2015 [APP-001], was made under s37 of the PA2008 and was received in full by the Inspectorate on 18 November 2015 [PD-002].

1.3.4 The Scoping Opinion, dated November 2012 [APP-276], confirms that a letter from the Applicant dated 12 November 2012 accompanying the Applicant's Scoping Report formally notified the SoS under Regulation 6(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) (EIA) Regulations 2009 (as amended) (the EIA Regulations) that it was proposed to provide an Environmental Statement (ES) in respect of the Proposed Development. Therefore, in accordance with Regulation 4(2)(a) of the EIA Regulations, the Proposed Development was determined to be EIA development, and an ES was accordingly included as part of the application [APP-109 to APP-273].

1.3.5 The Applicant confirmed in the Explanatory Memorandum (EM) [APP-026] that the Proposed Development was an NSIP within the meaning of s14(1)(a) and s15(3) of PA2008. The EM stated that as the proposed generating station is to have a capacity of up to 1,200MW and as s31 of PA2008 provides that development consent is required to the extent a development is or forms part of an NSIP, the proposed generating station qualifies as an NSIP in its own right. The ExA concurs.

1.3.6 The application was accepted for examination on 15 December 2015 [PD-001].

1.3.7 Thirty-nine Relevant Representations (RRs) were received in total [RR-01 to RR-039].

Compulsory Acquisition

1.3.8 The application seeks Compulsory Acquisition (CA) powers for the acquisition of land and permanent rights (such as easements and

rights of access) to the land for the construction of the Proposed Development. Temporary possession and use of land is also sought.

- 1.3.9 A Book of Reference (BoR) [APP-029 to APP-033] and Statement of Reasons (SoR) [APP-027] were submitted as part of the application. These were updated during the Examination to their final form presented at the close of the Examination [REP8-011 and REP8-009 respectively].
- 1.3.10 The Applicant submitted a Section 132 Statement [APP-034] as part of the application. This was because the Applicant considers that the acquisition of the rights of the open space land (which makes up part of the land for which rights are to be acquired compulsorily for the purposes of the Order) will not be any less advantageous to persons in whom it is vested, any other persons who are entitled to rights of common or other rights, and/or the public, and that therefore s132(3) of PA2008 applies.

1.4 APPOINTMENT OF THE EXA

- 1.4.1 On 31 March 2016, Philip Asquith (Panel lead), Peter Braithwaite, Gavin Jones and Rynd Smith were appointed as a Panel of Inspectors (the ExA), under delegation from the SoS, to examine the application under s65 of PA2008 [PD-005].

1.5 THE EXAMINATION AND PROCEDURAL DECISIONS

- 1.5.1 The Examination began on 28 June 2016 and concluded on 28 December 2016. It should be noted that the six-month delay between the acceptance of the application and the commencement of the Examination was at the request of the Applicant, who sought an extension to the normal pre-application period.
- 1.5.2 A Preliminary Meeting (PM) was held on 28 June 2016 to which all Interested Parties (IPs) were invited via issue of a Rule 6² letter dated 24 May 2016. The letter included a draft timetable for the Examination and the ExA's initial assessment of Principal Issues [PD-005].
- 1.5.3 The Rule 6 letter also included the following procedural decisions set out by the ExA under s89(3) and s93(1) of PA2008:
- to accept material into the Examination which was submitted by the Applicant and other parties during the pre-Examination period;
 - a request for the provision of Statements of Common Ground (SoCGs) from the Applicant and other IPs, the deadlines for which were set within the draft Examination Timetable; and
 - to hold an early Issue Specific Hearing (ISH) regarding the definition of the Proposed Development, and the draft DCO.

² Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)

1.5.4 The PM was attended by the following parties:

- The Applicant (represented by ScottishPower Renewables and Bond Dickinson LLP)
- Suffolk County Council
- Suffolk Coastal District Council
- Waveney District Council
- Babergh and Mid Suffolk District Councils
- Martlesham Parish Council
- The Environment Agency

1.5.5 A note of the PM was published on 6 July 2016 [EV-002] along with an audio recording [EV-001]. The Applicant also provided a note of the PM and DCO ISH [EV-007].

Written Representations

1.5.6 Full opportunity was provided for all parties to make Written Representations (WR) drawing the ExA's attention to the issues that they considered arose from the application proposal.

Local Impact Report

1.5.7 A letter was issued by the ExA on 6 July 2016 under s60 of PA2008, requesting Local Impact Reports (LIRs) from all host and neighbouring authorities [PD-013].

1.5.8 A joint LIR was received from Suffolk County Council, Mid Suffolk District Council and Suffolk Coastal District Council [REP2-001] at Deadline (D) 2 of the Examination Timetable (27 July 2016). The Applicant provided its comments on this at D3 (10 August 2016) [REP3-010].

The Panel's written questions and requests for information

1.5.9 The ExA issued two rounds of written questions:

- the first round of written questions (FWQ) was issued on 6 July 2016 [PD-012]; and
- the second round of written questions (SWQ) was issued on 22 September 2016 [PD-018].

1.5.10 For each round, all participants were given the opportunity to respond to the answers given by others, as set out in the Examination Timetable, which was included in the ExA's Rule 8 letter [PD-011].

- 1.5.11 Letters under Rule 17³, asking additional questions, were issued by the ExA on 28 October 2016 [PD-019] and 17 November 2016 [PD-023].
- 1.5.12 A Rule 13 and 8(3) letter⁴ was issued by the ExA on 3 August 2016 [PD-015] giving notice of forthcoming hearings and an Accompanied Site Inspection (ASI). It also provided notification of the Applicant's decision to voluntarily undertake public consultation on updated environmental information in relation to the Proposed Development's likely effects on the Orford Inshore recommended Marine Conservation Zone (MCZ); an additional Traffic Impact Assessment; and updated Seascape, Landscape and Visual Amenity Impact Assessment with visualisations, as this information was not part of the original application.
- 1.5.13 The Rule 13 and 8(3) letter also advised that if the information was subsequently accepted into the Examination, the documents would be published on the Inspectorate's project webpage, and IPs would be invited to provide comment either at the ISHs or by D4 of the Examination Timetable.
- 1.5.14 A Rule 17 letter was issued on 7 September 2016 [PD-016] advising that the Applicant's documents as described above had been accepted into the Examination, and reminding parties of the deadline for receipt of comments on these.
- 1.5.15 A Rule 13 and 8(3) letter was issued by the ExA on 22 September 2016 [PD-017] giving notice of hearings, and advising of the procedural decision to amend the Examination Timetable so that there would be no hearings held on Thursday 27 and Friday 28 October 2016, and all hearings as originally planned would take place on Tuesday 25 and Wednesday 26 October 2016.
- 1.5.16 The ExA also issued a consultation draft version of its DCO as a procedural decision on 17 November 2016 [PD-022]. This also included a number of questions set by the ExA under Rule 17, with a deadline for responses by D8 of the Examination Timetable (15 December 2016).

Statements of Common Ground

- 1.5.17 As part of the Rule 6 letter [PD-005], the ExA requested the preparation and submission of SoCGs from the Applicant and other parties. The deadlines for submission of, and comments/responses on, these were included within the Examination Timetable.
- 1.5.18 The following SoCGs were requested as part of the Rule 6 letter:

³ Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)

⁴ *Ibid*

- **Offshore ecology (ornithology)** from Natural England (NE)/the Joint Nature Conservation Committee (JNCC), the Royal Society for the Protection of Birds (RSPB) and the Marine Management Organisation (MMO);
- **Offshore ecology (marine mammals)** from NE/JNCC, Whale and Dolphin Conservation (WDC) and The Wildlife Trusts (TWT);
- **Onshore ecology** from NE, the Environment Agency (EnvA), relevant local authorities, RSPB and Suffolk Wildlife Trust;
- **Marine and coastal physical processes** from NE/JNCC, MMO and EnvA;
- **Water Framework Directive** from the EnvA;
- **Marine and onshore archaeology, heritage and built environment** from Historic England (HistE), relevant local authorities and the Suffolk Preservation Society (SPS);
- **Landscape, seascape and visual impact** from HistE, relevant local authorities and the SPS;
- **Shipping and navigation** from the Maritime and Coastguard Agency (MCA), the MMO, the Royal Yachting Association (RYA), Trinity House and Rijkswaterstaat (RWS);
- **Aviation and radar** from the Civil Aviation Authority (CAA) and the Defence Infrastructure Organisation (DIO)/Ministry of Defence (MoD);
- **Fishing** from the National Federation of Fishermen's Organisations (NFFO), Harwich Fishermen's Association (HFA) and VisNed;
- **Local socio-economic impacts** from relevant local authorities.

1.5.19 The ExA has taken the content of all submitted SoCGs into account, within the context of other written representations and oral submissions and evidence provided throughout the Examination.

1.6 HEARINGS AND SITE INSPECTIONS

Hearings

- 1.6.1 Notifications of hearings were published on 3 August 2016 [PD-015] and 22 September 2016 [PD-017]. Notification of the early DCO ISH held on the day after the PM was provided within the Rule 6 letter [PD-005].
- 1.6.2 The ExA decided not to hold an Open Floor Hearing as no requests to hold such a hearing were received.
- 1.6.3 Six hearings took place during the Examination, which were as follows:
- Early ISH on the definition of the project and the draft DCO: 29 June 2016 [EV-003 to EV-006];
 - ISH on Environmental and other Matters: 7 September 2016 [EV-014 and EV-015];
 - ISH on the draft DCO: 8 September 2016 [EV-016 and EV-017];

- ISH on Environmental Matters: 25 October 2016 [EV-019 and EV-020];
- CA Hearing: 25 October 2016 [EV-021];
- ISH on the draft DCO: 26 October 2016 [EV-022 to EV-024].

1.6.4 The hearings that took place in September 2016 were held at the Ipswich Town Hall, Cornhill, Ipswich IP1 1DH. All other hearings were held at the Novotel Ipswich Centre Hotel, Gainsborough Suite, Grey Friars Road, Ipswich IP1 1UP.

1.6.5 The ExA had originally decided to hold hearings between Tuesday 25 and Friday 28 October 2016 [PD-005] but a decision was made to amend the timetable so that all hearings as advertised could be held on Tuesday 25 and Wednesday 26 October 2016 only. Notification of this decision was issued on 22 September 2016 [PD-017].

1.6.6 Details from these hearings are provided where relevant later within this report. The ExA has taken into account all submissions and evidence arising from all the hearings.

Site Inspections

1.6.7 The ExA undertook an unaccompanied site inspection (USI) on 28 June 2016, after which a note was made and published [EV-008]. The purpose of the USI was to view the proposed application site as was shown on the Location Plan Onshore [APP-005], as well as locations prospectively within the setting of the Proposed Development as set out in the application.

1.6.8 An ASI was held on 6 September 2016 [EV-009] and, along with the ExA, PINS case team and the Applicant, was attended by the following parties:

- Suffolk County Council;
- Babergh and Mid Suffolk District Councils;
- Suffolk Coastal and Waveney District Council;
- Professor Yvonne Rydin (observing only) from University College London.

1.7 OTHER CONSENTS REQUIRED

1.7.1 A list of consents and licences required under other legislation was provided as part of the application documents [APP-108].

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

1.8.1 A request to become an IP under s102A of PA2008 was received from Mr Paul Lines.

1.8.2 The request was considered and subsequently refused by the ExA, as it did not consider Mr Lines qualified under any of the categories set out in s102B of PA2008, and so therefore did not meet the criteria

defined within s102A. However, the ExA decided to accept Mr Lines's submission into the Examination [AS-018], and invited him to attend and speak at any future hearings.

1.9 UNDERTAKINGS/OBLIGATIONS GIVEN TO SUPPORT THE APPLICATION

- 1.9.1 There were no agreements or obligations under s106 of the Town and Country Planning Act 1990 (as amended) specifically related to the Proposed Development. However, a previously concluded s106 obligation relating to landscaping in connection with the EA1 consented development was referred to during the Examination. This is considered in Chapter 4 of this report.
- 1.9.2 Mitigation for impact on skylarks was agreed between the Applicant and Suffolk County Council in accordance with s40 and s41 of the Natural Environment and Rural Communities (NERC) Act 2006 [REP5-031 and REP6-027] and is discussed further in section 5.3 of Chapter 5 below.

2 MAIN FEATURES OF THE PROPOSAL AND SITE

2.1 THE APPLICATION AS MADE

2.1.1 The application is for development consent to construct an offshore wind farm consisting of up to 172 WTG, each with a rated capacity of between 7 and 12MW, providing a total installed generating capacity of up to 1,200MW.

Site described - Offshore

2.1.2 The EA3 wind farm site is located in the southern North Sea within the East Anglia Zone, an area of sea off the coast of East Anglia. At its closest, the WTG array site would be 69km from the East Anglian coast, 101km from the Netherlands and 132km from Belgium [APP-113, Table 5.3]. It would cover an area of about 305km².

2.1.3 Water depths within the proposed WTG array site range typically from between 35 to 45m relative to the lowest astronomical tide (LAT), with a maximum depth of 49m and a minimum depth of 25m (relative to LAT).

2.1.4 The Applicant is considering either a High Voltage Direct Current (HVDC) or a Low Frequency Alternating Current (LFAC) electrical solution for the Proposed Development. It has confirmed that the final decision would be made post-consent based on the best available technology and best cost-to-benefit for electricity consumers [APP-113].

2.1.5 On submission of the application, the Applicant was considering construction in either a single phase or as a two-phased approach. Under the single phase the Proposed Development would be constructed in one single build period that would span approximately 41 months. Under the two-phased approach the Proposed Development would be constructed in a 'staggered' way over 45 months, with construction of the second phase commencing a maximum of 18 months after the start of onshore construction of the first phase, with each phase consisting of up to 600MW generating capacity.

Principal works described

2.1.6 The principal works as proposed are set out in the Applicant's draft Development Consent Order (dDCO) submitted with the application (Schedule 1, Part 1, Authorised Development). Work No.1 comprises the NSIP, with Work Nos. 2 - 69 comprising associated development [APP-025]⁵ (APP-025).

⁵ Apart from two very minor alterations the description of principal works remained constant throughout the Examination [see REP8-005 (comparison Version 1 to 5) and REP8-023 (comparison Version 5 to 6)].

2.1.7 The key components of Work No. 1 would comprise:

- Offshore WTG and their associated foundations;
- Sub-sea cables (inter-array, and those connecting WTG and offshore electrical stations);
- An accommodation platform with associated foundations;
- Up to two meteorological masts and associated foundations for monitoring wind speeds during the operational phase; and
- Up to 12 buoys fixed to the seabed.

2.1.8 The maximum WTG hub height was initially proposed to be 150m above mean sea level, with a maximum blade tip height of 247m above lowest astronomical tide [APP-113]. At D5 the Applicant submitted confirmation [REP5-012] that it had agreed to increase the draught height of 70% of the turbines by 2m. Further information on this change is provided later in this chapter (The Application at the Close of Examination) and in the Report on the Implications for European Sites (RIES) [PD-021].

Associated development

2.1.9 The application included associated development (Work Nos 2 - 69). This comprises works which are not aims in themselves but which are required to receive and export the electricity produced by the offshore generating station, with suitable electrical transformation at both the offshore electrical stations and the onshore substation(s). The following elements are associated development as part of the Proposed Development:

- A sub-sea electrical connection between the EA3 and EA1 Offshore Wind Farms. This would allow for an alternative route for the export of electricity from either wind farm in the event of a technical fault with the export cable. It would also allow one wind farm to supply power to the other to let that wind farm commence operation without the need to import power from the mainland in the event of a loss of power [REP2-028, answer to FWQ PN6];
- Up to six offshore electrical stations;
- A sub-sea electrical connection between the offshore substations, and from those substations to a landfall at Bawdsey Cliffs;
- Up to four transition bays (underground pits where the offshore export cables are jointed to the onshore connection works);
- An underground electrical connection comprising up to four circuits (each with up to three cables) pulled through ducting pre-laid pursuant to the EA1 DCO;
- Up to two new onshore substations housing the principal electrical equipment, located adjacent to the existing National Grid Bramford Substation;
- An underground electrical connection comprising up to four circuits pulled through pre-laid ducting or laid directly underground in the location of the proposed onshore substation(s) and the National Grid Substation at Bramford; and

- Landscaping works including bunding and planting.

Ancillary works

2.1.10 Ancillary works are also included within the Applicant's dDCO (Schedule 1, Part 2, Ancillary Works)⁶, and may consist of:

- Temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development;
- Buoys, beacons, fenders and other navigational warning or ship impact protection works; and
- Temporary works for the benefit or protection of land or structures affected by the authorised development.

Key location maps and plans

2.1.11 The Applicant submitted plans with the application documents. Those which provide a useful oversight of the Proposed Development include:

- Location Plan Offshore [APP-004] and Onshore [APP-005]; and
- Land Plan Offshore [APP-006] and Onshore [APP-007 and APP-008].

2.2 THE APPLICATION AT THE CLOSE OF THE EXAMINATION

2.2.1 The Applicant notified the ExA at D5 that it would be increasing the draught height of 70% of its WTG for the Proposed Development by 2m [REP5-012]. This was in response to concerns relating to collision risk for certain bird species. As a result of this change, revised Collision Risk Modelling (CRM) information for birds was submitted at D5 [REP5-026]. This matter is considered in Chapters 5 and 6 of this report.

2.2.2 The Applicant stated during the Examination, and confirmed within the revised Explanatory Memorandum, [REP8-007] submitted towards the close of the Examination, that the onshore cabling for the connection works would be undertaken as a single phase, rather than the possibility of in two phases as originally stated. The possibility of single-phased or two-phased construction for the offshore works and the onshore substation(s) works remains.

2.2.3 The following documents and plans were provided by the Applicant during the Examination to clarify, supplement and correct matters raised during its course. These were accepted by the ExA into the Examination. The ExA considers the basis for their acceptance in paragraphs from 3.10.8 below and concludes that none involved a material change to the application:

⁶ These remain the same in the ExA's recommended DCO (Appx D).

- Land Plans [REP2-059 to REP2-062];
- Works Plan Offshore [REP4-010];
- Outline Access Management Plan [REP6-034 to REP6-040];
- In Principle Monitoring Plan [REP5-018 and REP5-019];
- Public Right of Way Plans [REP2-063 to REP2-068];
- East Anglia ONE Landscape Masterplan [REP2-069 to REP2-072];
- Node Plan for Grid Coordinates [REP2-074];
- Site Integrity Plan [REP4-013, REP7-029 and REP7-030];
- East Anglia ONE Architectural Plan [REP4-015];
- Action Plans and Plan of Plans [REP5-015, REP6-032, REP6-033, REP8-016 and REP8-017];
- Hedgerow Plans [REP1-010];
- Land Plan and Works Overlay Plans [REP5-016 and REP5-017];
- Access and Egress Plan for PCCS (Primary Construction Consolidation Sites) [REP6-041];
- Protective Provisions Plan [REP7-031].
- Revised Outline Code of Construction Practice [REP6-057 to REP6-065];
- Revised Outline Landscape and Environmental Management Strategy [REP6-046 to REP6-048];
- Revised Outline Written Scheme of Investigation (Onshore) [REP6-49 and REP6-050];
- Revised Outline Written Scheme of Investigation (Offshore) [REP6-051 and REP6-052];
- Other Environmental Information [AS-019 to AS-039];
- Revised Versions 2 to 6 of the draft Development Consent Order [REP1-004, REP4-003, REP6-024, REP8-003 and REP8-022];
- Schedule of Mitigation (Onshore) [REP6-053];
- Schedule of Mitigation (Offshore) [REP6-055];
- Protective Provisions Plan [REP7-031];
- Updated Explanatory Memorandum [REP8-007];
- Updated Statement of Reasons [REP8-009];
- Updated Book of Reference [REP8-011];
- Landowner Negotiations Update [REP8-013]; and
- Plan of Plans [REP8-016].

2.3 RELEVANT PLANNING HISTORY

2.3.1 The Crown Estate Commissioners awarded Vattenfall Wind Power Ltd exclusive rights in December 2009 to develop approximately 7,200MW of wind capacity within the East Anglia Zone, which was given to the company as part of The Crown Estate's UK Round 3 Offshore Wind Licensing process.

2.3.2 The first project to be consented within the East Anglia Zone was the EA1 Offshore Wind Farm, a DCO being made on 16 June 2014. Changes to this Order were subsequently made in the East Anglia ONE Offshore Wind Farm (Corrections and Amendments) Order 2016, on 24 March 2016. This latter Order made non-material changes to the 2014 Order, and included the authorisation of a High Voltage Alternating Current (HVAC) transmission system for the EA1 project.

- 2.3.3 The consent for the EA1 project authorised the provision of cable ducting additional to that necessary for that project. The intention of this was that the ducting could be used to accommodate cabling for up to two future offshore wind farm projects, of which the EA3 Proposed Development is one.
- 2.3.4 The Proposed Development is the second project to seek consent in the East Anglia Zone. Proposals for East Anglia ONE North and East Anglia TWO are in the pre-application stage.

3 LEGAL AND POLICY CONTEXT

3.1 INTRODUCTION

- 3.1.1 This chapter sets out the relevant legal and policy context for the application which was taken into account and applied by the ExA in carrying out its examination and in making its findings and recommendations to the SoS.
- 3.1.2 The Applicant's Planning Statement [APP-282] sets out the policy position in relation to the Proposed Development. The document includes an assessment of the project against the policy requirements of the energy National Policy Statements (NPSs) EN-1, Overarching, EN-3 Renewables and EN-5 Networks. There are no other NPSs that are deemed to be relevant to the Proposed Development.
- 3.1.3 The 'Policy and Legislation Context' chapter of the ES [APP-111] also sets out the policy position, with specific focus on international obligations, the national policy context and the local policy context. Individual chapters of the ES provide specific policy background relating to particular topics. Throughout all these policy levels, three main themes are covered: reducing emissions; renewable energy; and managing the environment.
- 3.1.4 The Councils' LIR [REP2-001] includes the local authorities' positions on applicable development plan policies and other local strategies.

3.2 PLANNING ACT 2008

- 3.2.1 The ExA finds that the proposal falls within the terms of s14(1)(a) of PA2008 in that it consists of the construction of a generating station and is within s15(3) as the capacity exceeds 100MW. Section 104 of PA2008 applies:
- "(...)in relation to an application for an order granting development consent if a national policy statement has effect in relation to development of the description to which the application relates."*
- 3.2.2 Section 104(3) requires the SoS to decide the application in accordance with any relevant NPSs that have effect in relation to this application, subject to certain exceptions as specified in subsections 104(4) to (8). Details of the specific NPSs that apply to this project are set out below.
- 3.2.3 Section 104(2) of PA2008 sets out the matters to which the SoS must have regard in deciding an application submitted in accordance with PA2008. In summary, the matters set out in s104(2) include any relevant NPS, any designated Marine Policy Statement (MPS), any LIR, any matters prescribed in relation to the development, and any other matters the SoS thinks are both important and relevant to the decision.

3.2.4 This report sets out the ExA's findings, conclusions and recommendations taking these matters into account and applying the approach set out in s104 of PA2008.

3.3 NATIONAL POLICY STATEMENTS

3.3.1 The ExA considers that the relevant NPSs, setting out Government policy on different types of national infrastructure development, which are relevant in this case are:

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

NPS EN-1 (OVERARCHING NPS FOR ENERGY)

3.3.2 This NPS sets out national policy for energy infrastructure, including the role of offshore wind, which is expected to provide the largest single contribution towards the Government's 2020 renewable energy targets. Part 4 of EN-1 makes clear that the assessment of applications for energy NSIPs "...should start with a presumption in favour of granting consent..." and sets out the assessment principles to be applied. Therefore, the ExA has applied the tests set out in EN-1 as one of the primary bases for its examination of the application.

3.3.3 Section 4.2 of NPS EN-1 sets out the policy principles applicable to the use of a 'Rochdale Envelope' approach in energy development consenting. It states:

" ... [w]here some details [of a proposal] are still to be finalised the ES should set out, to the best of the applicant's knowledge, what the maximum extent of the proposed development may be in terms of site and plant specifications, and assess, on that basis, the effects which the project could have to ensure that the impacts of the project as it may be constructed have been properly assessed."

3.3.4 For development with impacts on the marine environment, decision-makers are bound by duties imposed under s125 and s126 of the Marine and Coastal Access Act 2009 (MCAA). The MCAA is dealt with below. Therefore, decision-makers must have regard to the effects of a proposal on any MCZ as may be relevant. The NPS requires decision-makers to have regard to sites that are protected nationally, regionally and locally for their biodiversity significance. The NPS also draws attention to the need to safeguard the interests of other habitats and species that have their own, sometimes individual protection, under a range of legislative provisions.

3.3.5 Further aspects of NPS EN-1 are referred to as relevant throughout this report.

NPS EN-3 (RENEWABLE ENERGY INFRASTRUCTURE)

- 3.3.6 This NPS sets out additional policy specific to renewable energy applications, including proposed offshore wind generating stations exceeding 100MW. Section 2.6 of EN-3 sets out detailed assessment principles for offshore wind proposals, and these have been applied by the ExA as one of the primary bases for its examination of the application.
- 3.3.7 Section 2.6 of NPS EN-3 goes on to consider the implications of the Rochdale Envelope approach in the context of renewable energy development. As a matter of policy, NPS EN-3 makes clear that matters such as, but not necessarily limited to, those listed below may not be able to be specified precisely in an application:
- precise location and configuration of turbines and associated development;
 - foundation type;
 - exact turbine tip height;
 - cable type and cable route; and
 - exact locations of offshore and/or onshore substations.
- 3.3.8 The NPS provides them as examples, but does not seek to prescribe closely which matters must be assessed precisely and which matters are capable of assessment within a more flexible Rochdale Envelope-based approach.
- 3.3.9 NPS EN-3 sets out more detailed considerations relevant to offshore wind farms. In terms of generic impact, NPS EN-3 makes clear that the designation of an area as a Natura 2000 site (a European site) *"...does not necessarily restrict the construction or operation of offshore wind farms in or near that area..."* (para. 2.6.69). It makes clear that mitigation should be considered in terms of the careful design of the development itself and of the construction techniques employed. Ecological monitoring is likely to be appropriate, both to enable the better management of the project itself and also, given the lack of scientific knowledge, to provide further useful information relevant to the management of future projects.
- 3.3.10 Further aspects of NPS EN-3 are referred to where relevant throughout this report.

NPS EN-5 (ELECTRICITY NETWORKS INFRASTRUCTURE)

- 3.3.11 This NPS (paras 1.8.1 and 1.8.2) sets out policy relevant to electricity transmission (400 kilovolt (kV) and 275kV) and distribution systems from transmission systems to the end user (130kV to 230kV). It also covers substations and converter stations.
- 3.3.12 The NPS is therefore relevant to this application insofar as it applies to sub-sea interconnecting cables, sub-sea export cables, onshore undergrounded cables, offshore collector stations and converter stations and the onshore HVDC or LFAC substation(s).

- 3.3.13 EN-5 also establishes the need for applicants to address possible issues arising from electromagnetic fields that would be created by high-voltage cables.

3.4 MARINE AND COASTAL ACCESS ACT 2009 (MCAA)

- 3.4.1 The MCAA introduced the production of marine plans and designation of MCZs in UK waters, as well as establishing the Marine Management Organisation (MMO). Under the Act, the SoS for Environment, Food and Rural Affairs designated, on 21 November 2013, 27 MCZs around the English coast to form part of a network of Marine Protected Areas (MPAs). Subsequently, a further 23 MPAs have been designated. The UK MPS and marine planning are dealt with below.

UK Marine Policy Statement

- 3.4.2 Under s104(2)(aa) of PA2008 the SoS must have regard to "*...the appropriate marine policy documents.*" The appropriate marine policy documents are the MPS and the adopted East Inshore and East Offshore Marine Plans (EIEOMP).
- 3.4.3 The MPS was prepared and adopted for the purposes of s44 of the MCAA and was published on 18 March 2011 by all the UK administrations as part of a new system of marine planning being introduced across UK seas.
- 3.4.4 The MPS provides the high level policy context, within which national and sub-national Marine Plans will be developed, implemented, monitored, and amended and will ensure appropriate consistency in marine planning across the UK marine area. The UK marine area includes the territorial seas and offshore area adjacent to the UK, which includes the area of sea designated as the UK Exclusive Economic Zone (the Renewable Energy Zone until the Exclusive Economic Zone comes into force) and the UK sector of the continental shelf.⁷
- 3.4.5 The overarching policy context for the ExA's consideration of the application for offshore works and DMLs is provided by the MPS.
- 3.4.6 Paragraph 2.6.1.3 of the MPS refers to the need to avoid harm to marine ecology, biodiversity and geological conservation interests through location, mitigation and consideration of reasonable alternatives. Paragraph 2.6.1.5 states that:

"Marine plan authorities should apply precaution within an overall risk-based approach, in accordance with the sustainable development policies of the UK Administrations. The marine plan authority should ensure that appropriate weight is attached to designated sites; to protected species; habitats and other species of principal importance

⁷ See Marine and Coastal Access Act 2009 s.42(3) and (4)

for the conservation of biodiversity; and to geological interests within the wider environment".

East Inshore and East Offshore Marine Plans

3.4.7 The East Inshore and East Offshore areas are the first areas in England to be selected for the production of marine plans. The Proposed Development is within both the East Inshore and East offshore areas, which were formally adopted on 2nd April 2014. The East Inshore Marine Plan applies to the landfall and offshore cable route from mean high water out to 12nm; the East Offshore Marine Plan applies to the remainder of the cable routes and offshore infrastructure.

3.4.8 The ExA notes that the plans contain a number of objectives and policies that must be taken into consideration, particularly Objective 3 in paragraph 67, which states that the plan should:

"...(R)realise sustainably the potential of renewable energy, particularly offshore wind, which is likely to be the most significant transformational economic activity over the next 20 years in the East marine plan areas, helping to achieve the UK's energy security and carbon reduction objectives".

3.4.9 Policies elaborate the ten objectives of the plans and cover economic growth and employment benefits, renewable energy, support for communities, conservation of heritage assets and seascape, conservation of the marine ecosystem, protection of and recovery of biodiversity, support for MPAs, support for climate change adaptation and mitigation, and integration with other plans.

3.4.10 The Applicant considered the implications of marine policy and plans in section 2.3 of its Planning Statement [APP-282].

3.5 EUROPEAN DIRECTIVES AND RELATED UK REGULATIONS

Council Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the 'EIA Directive')

3.5.1 The EIA Directive first came into force in 1985 (85/337/EEC) and was implemented through over 40 different secondary regulations in 1988. It defines the procedure by which information about the environmental effects of a project is collected and taken into account by the relevant decision-making body before consent is granted for a development. It applies to a wide range of public and private projects, which are defined in Annexes I and II of the Directive.

3.5.2 The Directive has been amended four times: in 1997, 2003 and 2009, and was consolidated and codified by Directive 2011/92/EU on 13 December 2011. The most recent EIA Directive is 2014/52/EU, which entered into force on 15 May 2014. The 2014 Directive is not yet transposed to UK law and has transitional arrangements, thus the

proposed development falls to be considered under the UK legislation related to 2011/92/EU (see Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (as amended) below).

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

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

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

- 3.5.4 The proposed development is EIA development under Schedule 2 of the EIA Regulations. The Applicant has provided an ES [APP-109 to APP-273] as part of the submitted application.
- 3.5.5 The ExA, in reaching its conclusions and recommendation, has taken into consideration the environmental information, as defined in Regulation 3(2) (including the ES and all other information on the environmental effects of the development) (see Chapters 4 to 6 of this report).

Council Directive 2009/28/EC on the promotion of the use of energy from renewable resources ('the Renewable Energy Directive')

- 3.5.6 The Renewable Energy Directive sets out legally binding targets for Member States with the expectation that by the year 2020, 20% of the European Union's energy mix and 10% of transport energy will be generated from renewable energy sources. The UK's contribution to the 2020 target is that by then 15% of energy will be from renewable sources. The UK Renewable Energy Strategy 2009 (Renewable Energy Strategy) sets out how the UK proposes to meet the targets.
- 3.5.7 This Directive is relevant and referenced in the Applicant's need case for the project contained in the Statement of Reasons [APP-027 and REP8-009].

Council Directive 2008/50/EC on ambient air quality and cleaner air for Europe (the 'Air Quality Directive')

- 3.5.8 The Air Quality Directive came into force on 11 June 2008. The Directive consolidates four directives and one Council decision into a single directive on air quality. Under the Air Quality Directive Member States are required to assess ambient air quality with respect to

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

Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive')

- 3.5.9 The Habitats Directive (together with Council Directive 2009/147/EC on the conservation of wild birds ('the Birds Directive')) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites, and the strict system of species protection. The Directive protects over 1,000 animals and plant species and over 200 habitat types (for example, special types of forests, meadows, wetlands etc) which are of European importance. It requires designation of such areas as Special Areas of Conservation (SACs).
- 3.5.10 The Habitats and Birds Directives are transposed into UK law through the Conservation of Habitats and Species Regulations 2010 (as amended) in respect of the terrestrial environment and territorial waters out to 12nm; and through the Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007 (as amended) for UK offshore waters.

Council Directive 2009/147/EC on the conservation of wild birds ('the Birds Directive')

- 3.5.11 The Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union (EU). The directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.
- 3.5.12 The Birds Directive bans activities that directly threaten birds, such as the deliberate killing or capture of birds, the destruction of their nests and taking of their eggs, and associated activities such as trading in live or dead birds. It requires Member States to take the requisite measures to maintain the population of species of wild birds at a level which corresponds, in particular, to ecological, scientific, and cultural requirements while taking account of economic and recreational requirements.
- 3.5.13 The relevance of these Directives to this application is set out in Chapter 6 of this report.

The Conservation of Habitats and Species Regulations 2010 ('the Habitats Regulations')

The Conservation of Habitats and Species (Amendment) Regulations 2012

- 3.5.14 The Habitats Regulations 2010 replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales. The Habitats Regulations (which are the principal means by which the Habitats Directive is transposed into national law in England and Wales) updated the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994.
- 3.5.15 The Habitats Regulations apply in the terrestrial environment and in territorial waters out to 12nm. The EU Habitats and Birds Directives are transposed in UK offshore waters by separate regulations – The Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007 (as amended).
- 3.5.16 The Conservation of Habitats and Species (Amendment) Regulations 2012 came into force on 16 August 2012. These Regulations amend the Habitats Regulations. They place duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild birds. They also make a number of further amendments to the Habitats Regulations to ensure certain provisions of the Habitats Directive and the Birds Directive.
- 3.5.17 The relevance of these regulations to this application is set out in Chapter 6 of this report.

The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended) (the 2007 Offshore Regulations)

The Offshore Marine Conservation (Natural Habitats &c.) (Amendment) Regulations 2012

- 3.5.18 The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (as amended) transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) and Council Directive 2009/147/EC on the conservation of wild birds (Birds Directive) into national law. They came into force on 21 August 2007.
- 3.5.19 These regulations apply to the UK's offshore marine area which covers waters beyond 12nm, within British Fishery Limits and the seabed within the UK Continental Shelf Designated Area.
- 3.5.20 The 2007 Offshore Regulations fulfil the UK's duty to comply with European law beyond inshore waters and ensure that activities regulated by the UK that have an effect on important species and habitats in the offshore marine environment can be managed. Under

the Regulations, any competent authority has a general duty, in the exercise of any of their functions, to have regard to the EU Habitats and Birds Directives.

- 3.5.21 The Offshore Marine Conservation (Natural Habitats &c.) (Amendment) Regulations 2012 came into force on 16 August 2012 and amend the 2007 Offshore Regulations. They place duties on competent authorities in relation to the offshore marine area, to take steps to meet the objective of preserving, maintaining and re-establishing habitat for wild birds, and use all reasonable endeavours to avoid any pollution or deterioration of habitats for wild birds. They also provide for a duty on the SoS to take such steps to encourage research and scientific work relating to the offshore marine area considered necessary for the purpose of the protection, management and use of wild bird populations.
- 3.5.22 The relevance of these Regulations to this application is set out in Chapter 6 in this report.
- 3.5.23 Together, the Habitats Regulations and the 2007 Offshore Habitats Regulations provide the UK legal framework for Habitats Regulations Assessment (HRA). Wherever an application for development consent has the potential to have a significant effect on the conservation objectives of a Natura 2000 site, whether directly or in combination with other plans and projects, the Habitats Regulations and the 2007 Offshore Habitats Regulations require that an appropriate assessment is undertaken by the competent authority prior to any decision being made.
- 3.5.24 Under the Habitats Regulations, an application can only be consented where it can be demonstrated that there would be no adverse effect on the integrity of a Natura 2000 site, or unless further tests are met (compliance with conditions, alternative solutions, imperative reasons of overriding public interest, compensatory measures).
- 3.5.25 Within the application a number of Natura 2000 sites were identified for which there was potential for the Proposed Development to have a significant effect. This is considered in Chapter 6 of this report.

Council Directive 2000/60/EC establishing a framework for Community action in the field of water policy (the Water Framework Directive 'WFD')

- 3.5.26 The WFD was adopted on 23 October 2000, establishing a framework for Community action in the field of water policy. Some amendments have been introduced into the WFD since 2000⁸.
- 3.5.27 NPS EN-1 at paragraph 5.15.3 states that an ES should describe:

⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:02000L0060-20090625:EN:NOT>

“Existing physical characteristics of the water environment (including quantity and dynamics of flow) affected by the proposed project and any impact of physical modifications to these characteristics; and any impacts of the proposed project on water bodies or protected areas under the Water Framework Directive.”

- 3.5.28 The WFD is concerned with water management. Amongst other objectives, it requires EU Member States to prevent deterioration of surface water bodies, groundwater bodies and their ecosystems and improve the quality of surface and groundwater bodies by progressively reducing pollution and by restoration. Consideration of water quality and management is contained in Chapter 4 of this report.

Council Directive 2008/56/EC establishing a framework for Community action in the field of marine environment policy ('the Marine Strategy Framework Directive')

- 3.5.29 The Marine Strategy Framework Directive forms the environmental pillar of the Integrated European Marine Policy which aims to provide a coherent legislative framework for the joined-up governance of the marine environment. It sets a primary aim of achieving a 'good environmental status' of European Seas by 2020.
- 3.5.30 The Directive establishes four European Marine Regions; the Proposed Development is located within the Eastern Zone. As such, the ExA has had regard to the Directive in its examination of the application, particularly in relation to the matters considered in Chapters 4 to 6 of this report.

3.6 OTHER LEGAL AND POLICY PROVISIONS

United Nations Environment Programme Convention on Biological Diversity 1992

- 3.6.1 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the ExA has had regard to this Convention in its consideration of the likely impacts of the proposed development and appropriate objectives and mechanisms for mitigation and compensation. In particular, the ExA finds that compliance with the UK provisions on environmental impact assessment and transboundary matters, referred to below, satisfies, with regard to impacts on biodiversity, the requirements of Article 14.
- 3.6.2 The UK Government ratified the Convention in June 1994. Responsibility for the UK contribution to the Convention lies with the Department for Environment, Food and Rural Affairs (DEFRA) which promotes the integration of biodiversity into policies, projects and programmes within Government and beyond.
- 3.6.3 This is of relevance to biodiversity, biological environment, ecology, HRA and EIA matters, which are considered in Chapters 5 and 6 of this report.

The Ramsar Convention on Wetlands of International Importance 1971 (as amended) ('the Ramsar Convention')

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

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

- 3.6.7 The Act provides the framework for the establishment of National Parks and Areas of Outstanding Natural Beauty (AONBs). It also establishes powers to declare National Nature Reserves (NNRs), to notify Sites of Special Scientific Interest (SSSIs) and for local authorities to establish Local Nature Reserves (LNRs).
- 3.6.8 National Parks and AONBs have statutory protection in order to conserve and enhance their natural beauty including landform, geology, plants, animals, landscape features and the rich pattern of human settlement over the ages.
- 3.6.9 In relation to this application, part of the onshore cable corridor passes through the Suffolk Coast and Heaths AONB, to which reference is made in Chapters 4 and 5 of this report.

Wildlife and Countryside Act 1981 (as amended)

- 3.6.10 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of SSSIs. These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England, Natural England (NE)).
- 3.6.11 The Act is divided into four parts: Part I relating to the protection of wildlife; Part II relating to designation of SSSIs and other designations; Part III concerning public rights of way; and Part IV relating to miscellaneous provisions. If a species protected under Part I is likely to

be affected by development, a protected species licence will be required from NE.

3.6.12 This has relevance to consideration of impacts on SSSIs and on protected species and habitats.

3.6.13 In relation to the application, the Applicant has, in Chapter 5 of the ES [APP -113], identified effects on three SSSIs identified below and which are discussed further in Chapter 5:

- Bawdsey Cliffs;
- Flamborough Head;
- Deben Estuary.

Countryside and Rights of Way Act 2000 ('the CRoW Act')

3.6.14 The CRoW Act brought in new measures to further protect AONBs, with new duties for the boards set up to look after AONBs. These include meeting the demands of recreation, without compromising the original reasons for designation, and safeguarding rural industries and local communities.

3.6.15 The role of local authorities was clarified, to include the preparation of management plans to set out how they will manage an AONB asset. There was also a new duty for all public bodies to have regard to the purposes of AONBs. The CRoW Act also brought in improved provisions for the protection and management of SSSIs.

3.6.16 In the present case, this is relevant to the examination of effects and mitigation in relation to impacts on the Suffolk Coast and Heaths AONB. This is considered under landscape and visual effects in Chapter 4 of this report.

Natural Environment and Rural Communities Act 2006 ('the NERC Act')

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

3.6.18 This is of relevance to biodiversity, biological environment and ecology and landscape matters reported in Chapters 4 and 5 of this report.

3.7 MADE DEVELOPMENT CONSENT ORDERS

3.7.1 Of direct relevance to the Proposed Development is the made DCO for the East Anglia ONE Offshore Wind Farm 2014, as amended by The East Anglia ONE Offshore Wind Farm (Corrections and Amendments)

Order 2016. The particular relevance is that the onshore cables for the Proposed Development would be laid within ducting already consented under the EA1 Order.

- 3.7.2 Reference was also made during the Examination to the relevance of the Hornsea Project Two Offshore Wind Farm, particularly within the context of the consideration of impacts on birds and marine mammals. Chapters 5 and 6 of this report refer to this made Order where relevant.

3.8 TRANSBOUNDARY EFFECTS

- 3.8.1 During the pre-application stage, and under the EIA Regulation 24 process, the Inspectorate undertook transboundary screening, on behalf of the SoS, of the proposed development in January 2013 [OD-001]. As a result, transboundary issues notification under Regulation 24 of the EIA Regulations was considered necessary for the EEA States of Belgium, Denmark, France, Germany, Norway and the Netherlands. All were notified in January 2013, and a notice was placed in the London Gazette on 23 January 2013 [OD-004].
- 3.8.2 Following acceptance of the DCO application, as part of the ongoing EIA Regulation 24 process, the SoS reconsidered the pre-application transboundary screening decision [OD-001] and all of the other EEA States identified above were re-notified, with Sweden and Ireland additionally notified. A notice was placed in the London Gazette on 16 March 2016 [OD-006].
- 3.8.3 Of the countries notified, the Netherlands registered as an IP to the Examination [RR-016]. Representations made by the Netherlands (the Ministry of Infrastructure and Environment (Rijkswaterstaat)) as an IP are discussed further in Chapters 4 to 6 of this report. Belgium responded in April 2016 to confirm that it wished to be consulted. The Brussels-Capital Region confirmed in July 2016 [REP2-004] that it did not wish to participate in the Examination. No further responses were received from Belgium.
- 3.8.4 Any correspondence received in relation to transboundary issues will be passed to the SoS who must have regard to transboundary considerations and to any responses made by any EEA State.

3.9 OTHER RELEVANT POLICY STATEMENTS

- 3.9.1 Other relevant Government policy has been taken into account by the ExA, including:
- Energy White Paper: Meeting the Challenge (May 2007);
 - UK Low Carbon Transition Plan (2009);
 - National Strategy for Climate and Energy (July 2009);
 - UK Renewable Energy Strategy (July 2009);
 - Planning our electric future: a White Paper for secure, affordable and low carbon electricity (July 2011);
 - The National Infrastructure Plan 2011;

- The National Infrastructure Plan update 2012;
- The National Infrastructure Plan 2013;
- The National Infrastructure Plan 2014;
- National Planning Policy Framework (NPPF) 2012; and
- National Planning Practice Guidance 2014.

3.10 LOCAL IMPACT REPORT

3.10.1 Section 104(2) of PA2008 states that in deciding the application the SoS must have regard to any LIR within the meaning of s60(3).

3.10.2 There is a requirement under s60(2) of PA2008 to give notice in writing to each local authority falling under s56A inviting them to submit LIRs. This notice was given on 6 July 2016 [PD-011].

3.10.3 A joint LIR was submitted by Suffolk County Council (SCC), Mid Suffolk District Council (MSDC) and Suffolk Coastal District Council (SCDC) [REP2-001]. On submission, the one remaining principal matter raised in the LIR was:

- socio-economic issues, where the local authorities did not believe the assessment of effects provided by the Applicant was satisfactory in that it is likely to understate the sensitivity of the labour market and thus the impact of the Proposed Development.

3.10.4 The LIR states that the majority of outstanding issues are likely to be resolvable through the discharge of requirements. In all other areas the local authorities broadly consider that the DCO, in combination with the proper implementation of ancillary documents it provides for and that the Applicant is required to be bound by, would ensure that the impacts of the development are acceptable and thus accord with local policy.

3.10.5 These matters are considered in Chapters 4 and 5 of this report.

THE DEVELOPMENT PLAN AND LOCAL POLICY BACKGROUND

3.10.6 As outlined in the Applicant's Planning Statement [APP-282] and the joint LIR [REP2-001], the following statutory and non-statutory local planning policy documents are relevant to the consideration of this application:

Development Plan

- Mid Suffolk Core Strategy Development Plan Document (2008) [REP2-001];
- Mid Suffolk Core Strategy Focussed Review [REP2-001];
- Stowmarket Area Action Plan (2013) [REP2-001];
- Mid Suffolk Local Plan (1988) Saved Policies [REP2-001];
- Suffolk Coastal District Local Plan – Core Strategy and Development Management Policies Development Plan (2013) [REP2-001]; and

- Suffolk Coastal Local Plan (1994) incorporating First (2001) and Second (2006) Alterations, remaining Saved Policies [REP2-001].

Other policy documents

- Local Transport Plan 2011-2031 [REP2-001];
- Rights of Way Improvement Plan 2006-2016 [REP2-001];
- Section 106 Developer's Guide to Infrastructure Contributions in Suffolk, 2016 [REP2-001];
- Air Quality Management and New Development (2011) [REP2-001];
- Suffolk Flood Risk Strategy (2016) [REP2-001];
- The Suffolk Growth Strategy (2013) [REP2-001];
- The Sizewell C Suffolk Coast and Heaths Area of Outstanding Natural Beauty and Special Qualities Indicators (2015) [REP2-001];
- Suffolk Biodiversity Action Plan Priority Species and Habitats (2015) [APP-131];
- The Suffolk Shoreline Management Plan (2012) [REP2-001]; and
- The Suffolk Coast and Heaths Area of Outstanding Natural Beauty Management Plan [REP2-001].

3.10.7 Issues of conformity with development plan policies are covered in Chapter 4 of this report. As stated in paragraph 4.1.5 of NPS EN-1, if there is any conflict between the above documents and an NPS then the NPS takes precedence because of the national significance of the infrastructure.

THE SECRETARY OF STATE'S POWERS TO MAKE A DCO

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

3.10.9 The SoS will be aware of the March 2015 updated Planning Act 2008: Guidance for the examination of applications for development consent, paragraphs 109 to 115, which provides guidance in relation to changing an application post-acceptance⁹. The view is expressed by Government during the passage of the Localism Act that s114(1) places the responsibility for making a DCO on the decision-maker, and does not limit the terms in which it can be made.

3.10.10 In exercising this power the SoS may wish to take into account the following conclusion of the ExA. During the course of the Examination the Applicant made a number of changes to the Proposed Development, as set out in detail in Chapter 2 of this report. The ExA

⁹ <https://www.gov.uk/government/publications/planning-act-2008-examination-of-applications-for-development-consent>

does not consider that these changes result in a DCO which is materially different from that proposed in the original application.

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

4.1 INTRODUCTION

4.1.1 This Chapter deals with the generality of issues covered in the Examination arising from the assessment of principal issues made by the ExA, written and oral submissions, and the LIR. The Chapter also covers the principles of the development and conformity with various plans, policies and regulations. Biodiversity, biological environment and ecology are considered separately in Chapter 5, followed by consideration of Habitats Regulation Assessment (HRA) which is in Chapter 6.

4.2 INITIAL ASSESSMENT OF PRINCIPAL ISSUES

4.2.1 The ExA made an initial assessment of the principal issues in accordance with s88(1) of PA2008, and issued these to all IPs on 24 May 2016, as Annex B within the Rule 6 letter giving notice of the Preliminary Meeting [PD-005]. The principal issues as set out in the Rule 6 letter were:

Principal issue	Brief amplification
Nature of development and relationship with East Anglia ONE and other projects	Onshore and offshore: relationship between EA1 and EA3, including timetabling, sequencing and possible phasing/splitting of development; scope of proposals in terms of the 'Rochdale Envelope' approach; construction techniques; relationship, timetabling and co-existence with other possible projects.
Construction impacts	Onshore and offshore: onshore construction and temporary construction compounds (Construction Consolidation Sites), traffic, dust, noise and disturbance, flood risk, drainage, National Grid connection; temporal and sequencing relationship with EA1 and reinstatement/restoration; implications of coastal retreat; offshore cable routes, cable cover and turbine layout.
Ecology - offshore	Ornithology and marine mammals: baseline data, various elements of methodology and guidance, HRA, cumulative and in-combination issues, mitigation and post-

	construction monitoring, trans-boundary issues.
Ecology - onshore	Timing and relationship of works with EA1 in terms of mitigation measures.
Aviation and Ministry of Defence	Mitigation of the offshore wind farm in relation to MoD radar and operations.
Marine processes	Marine processes and cable burial; marine water and sediment quality.
Navigation and marine	Shipping routes, marine safety issues, marine archaeology, oil, gas and dredging interests and transboundary issues.
Fish and fisheries	Impacts on fishing practices and activities including cumulatively with other projects, appropriate management measures, co-existence planning and transboundary issues.
Socio-economic	Impact on the local labour market and availability of local skills, relationship with the Skills Strategy for EA1.
Visual, Landscape and Heritage	Onshore cable route impact issues and mitigation measures, particularly in relation to timing/phasing and relationship with EA1, archaeology and heritage assets, and impact of and mitigation for the onshore substation(s) at Bramford.
Content of DCO	Relevant definitions, application and modification of legislative provisions, relationship with the EA1 DCO, discharging requirements, nature of requirements, detailing of management plans, position on agreements on protective provisions, audit trail for DCO revisions and elements of the project, and structure and content of DMLs.
Monitoring, mitigation and management plans	Operation of monitoring, mitigation and management plans throughout the life of the project (eg ornithological and marine mammal monitoring during project operation)

	and assessment of impacts of mitigation measures.
Compulsory Acquisition (CA)	Nature, extent and scope of land, rights and powers sought by CA, temporary possession powers, project funding and guarantees for compensation, human rights and consideration of alternatives. Sections 122/123/127/135/138 tests of the Planning Act 2008. Book of Reference.

4.2.2 These issues informed the conduct of the Examination through the ExA's proposals for structuring the Examination (which were not challenged), the discussion at the PM relating to possible SoCGs, and the ExA's written questions. The principal issues provided a structure for the topics covered in the various hearings held during the Examination, and for written questions. They are not exclusive, and all important and relevant matters were considered during the course of the Examination.

NEED FOR THE DEVELOPMENT

4.2.3 The in-principle need for the development was not challenged in written submissions. It should be noted, therefore, that it is not addressed as a matter of detail in this Chapter of the report. However, the ExA wishes to record at the outset that it has considered the need for the project against the tests set out in NPS EN-1 and NPS EN-3. It accepts that the strong need case for renewable energy generation infrastructure, as stated in those policies, is applicable to this Proposed Development. It accepts that the production of energy from a renewable source accords with NPS policy, provides a clear public benefit and weighs strongly in favour of the Proposed Development. Nothing in the written submissions, and no other matters that the ExA has found to be important and relevant, has indicated against the applicability of that need case or the benefit that flows from it to this application.

ISSUES ARISING FROM WRITTEN SUBMISSIONS

4.2.4 The matters raised by IPs in Written Representations (WR) for D2 largely built on the issues referred to in their Relevant Representations (RR). The ExA was satisfied that these were covered in the scope of the principal issues noted above. They were explored in more detail in the series of hearings and written questions.

ISSUES ARISING IN THE LOCAL IMPACT REPORT

- 4.2.5 The joint LIR [REP2-001] produced by the three relevant local authorities, Suffolk County Council (SCC), Mid Suffolk District Council (MSCD) and Suffolk Coastal District Council (SCDC), considered the likely impact of the Proposed Development against the local planning policy background.
- 4.2.6 As noted in Chapter 3, on submission of the application the one remaining issue of substance that the local authorities considered had not been resolved related to the possible socio-economic impact of the Proposed Development. This issue was explored in detail during the Examination through both written and oral questioning.
- 4.2.7 The LIR also noted that the Applicant's Seascape, Landscape and Visual Impact Assessment (SLVIA) was to be updated to account for the adjusted baseline reflecting the proposals for the EA1 substation at Bramford. This was provided as part of the Applicant's Other Environmental Information (OEI) [AS-024 to AS-027] and debated during the Examination.
- 4.2.8 All other issues referred to within the LIR were considered by the ExA during the Examination and are referred to later in this chapter and within Chapter 5.

ENVIRONMENTAL STATEMENT (ES) AND ENVIRONMENTAL IMPACT ASSESSMENT (EIA)

- 4.2.9 Section 4.2 of NPS EN-1 sets out in brief the legal requirements applicable to EIA and indicates the information that should be provided in the ES. The Applicant submitted a substantial ES [APP-109 to APP-274 inclusive].
- 4.2.10 During the course of the Examination other environmental information was presented. In particular, the Applicant's OEI contained an updated SLVIA, assessment of impact on the Orford Inshore recommended MCZ, and an additional Traffic Impact Assessment. Additional information also included that relating to assessment of the ornithological impact of the WTG array and likely impact on marine mammals.
- 4.2.11 The ES, and all other environmental information provided during the course of the Examination, including cumulative and in-combination effects, has been taken into account under the relevant topic areas within the Examination, as set out in this and Chapters 5 and 6. The ExA considers that the ES is legally robust and meets the test of adequacy.

HABITATS REGULATIONS ASSESSMENT

- 4.2.12 Section 4.3 of NPS EN-1 specifies the approach that needs to be taken by the decision-maker in relation to the Habitats Regulations, which

implement the relevant parts of the Habitats Directive and the Birds Directive in England and Wales.

- 4.2.13 The need for a HRA was considered as part of the Examination and by virtue of the potential impacts of the Proposed Development on features at the following European sites: Deben Estuary SPA and Ramsar site; the Outer Thames Estuary SPA and Outer Thames Estuary potential Special Protection Area (pSPA); Flamborough Head and Bempton Cliffs SPA; Flamborough Head and Filey Coast pSPA; Alde-Ore Estuary SPA and Ramsar site; Greater Wash pSPA; and the Southern North Sea possible Special Area of Conservation (pSAC) for harbour porpoise.
- 4.2.14 The Applicant submitted its HRA report [APP-101 to APP-107]. This was updated several times during the Examination [eg REP2-088, REP2-089, REP3-012, REP4-016 and REP4-017].
- 4.2.15 HRA is considered in detail in Chapter 6 of this report, and paragraphs 6.6.14 and 6.6.15 note the agreement as to which European sites and features are likely to require assessment in accordance with the Habitats Regulations.

CONSIDERATION OF ALTERNATIVES

- 4.2.16 Section 4.4 of NPS EN-1 addresses the policy requirements to consider alternatives in relation to the ES and the Habitats Regulations.
- 4.2.17 The Habitats Regulations require the competent authority (in this case the SoS as decision-maker) before authorising a project likely to have a significant effect on a European site *"to make an appropriate assessment of the implications for that site in view of the site's conservation objectives."* Anyone applying for development consent for a NSIP must provide the competent authority with such information as may reasonably be required *"for the purposes of the assessment"* or to enable them to determine whether an appropriate assessment is required. This information normally takes the form of a HRA report.
- 4.2.18 Paragraph 4.4.3 of NPS EN-1 also specifies other guiding principles that the SoS should consider when deciding what weight should be given to alternatives, and in particular:
- "...the consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner;"*
- "...the (decision-maker) should be guided in considering alternative proposals by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security and climate change benefits) in the same timescale as the proposed development."*
- 4.2.19 The Applicant set out in ES Chapter 4 'Site Selection and Alternatives' [APP-112] its approach to the consideration of alternatives for the

Proposed Development. In respect of the WTG array site and offshore cable corridor, the selection process was an iterative one. This involved consultation to refine broad areas of search having regard to technical constraints and environmental impacts, following initial zone selection by The Crown Estate.

- 4.2.20 For the onshore electrical transmission works, site selection was undertaken on the basis of an agreed National Grid connection at Bramford and the intention that the EA3 onshore cable route would follow that identified for the EA1 project, with cables laid within ducting provided as part of the EA1 scheme.
- 4.2.21 It is the ExA's view that the Applicant's approach in terms of methodology and consultation in relation to EIA requirements is reasonable.
- 4.2.22 Having regards to HRA, the RSPB suggested an alternative design solution for the WTG, involving the raising of the draught height of blades above sea level [REP2-023 and REP2-024]. This was to reduce the potential in-combination mortality of gannets from the Flamborough and Filey Coast pSPA. This matter was discussed during the Examination, with the Applicant agreeing to changes relating to predicted ornithological impacts, which are now secured within the ExA's recommended DCO (Appx D). HRA matters are considered fully in Chapter 6 of this report.

ONSHORE MATTERS

4.3 LANDSCAPE AND VISUAL MATTERS

- 4.3.1 The impact of the Proposed Development has been assessed by the Applicant in relation to its three principal components; the offshore WTG array, the onshore cable corridor, and the proposed substation(s)/converter station(s) at Bramford. As part of its EIA the Applicant undertook a Seascape, Landscape and Visual Impact Assessment (SLVIA) [APP-261 to APP-273] and which is summarised within ES Chapter 29 'Seascape, Landscape and Visual Amenity'. Although this was the title of the assessment, the offshore components of the proposed development were scoped out because of their distance from the coast. The visual impacts of the offshore components are considered briefly under Offshore Matters below in Section 4.12.
- 4.3.2 Paragraph 5.9.8 of NPS EN-1 states that:

“Projects need to be designed carefully, taking account of the potential impact on the landscape. Having regard to siting, operational and other relevant constraints the aim should be to minimise harm to the landscape providing reasonable mitigation where possible and appropriate”.
- 4.3.3 EN-1 notes that good design is a means by which many policy objectives in the NPS can be met. Paragraph 4.5.3 states that:

"(W)hilst the applicant may not have any or very limited choice in the physical appearance of some energy infrastructure, there may be opportunities for the applicant to demonstrate good design in terms of siting relative to existing landscape character, landform and vegetation".

- 4.3.4 The need for the demonstration of good design for renewable energy infrastructure in respect of landscape and visual impact is reiterated in Paragraph 2.4.2 of NPS EN-3.
- 4.3.5 The Applicant's assessment addresses the landscape, visual and cumulative impacts of the onshore components during construction, operation and decommissioning phases. Assessment followed the principles set out in the Landscape Institute's Guidelines for Landscape and Visual Impact Assessment, Third Edition (GLVIA3) [APP-269]. The potential impacts were determined by considering the worst case scenario and the effects were established having regard to mitigation embedded in the Proposed Development.
- 4.3.6 In relation to construction, both single-phased and two-phased approaches were assessed for cable installation and the substation(s). The application was amended during the course of the Examination to provide for cable-laying as a single-phase operation [REP2-029]. This would reduce the potential for short-term temporary landscape and visual impacts during construction which could arise through the possible retention of haul roads and construction compounds between phases.

a) Cable corridor

- 4.3.7 The Applicant's assessment of landscape impacts resulting from the Proposed Development are set out in Chapter 29 of the ES [APP-137]. Approximately one third of the route is located in the Suffolk Coast and Heaths AONB. In considering the landscape impact, the ExA has had regard to the purpose of conserving and enhancing the natural beauty of the AONB¹⁰. The LIR [REP2-001] notes that a further fifth of the route also runs through Special Landscape Areas between Kirton and Newbourne, and Martlesham to Tuddenham, in Suffolk Coastal District and the Gipping Valley Special Landscape Area in Mid Suffolk at Bawdsey.
- 4.3.8 A principal mitigation relating to cable provision is the laying of cables within pre-installed ducting provided through the consented EA1 development. The routing and impact of the provision of the ducting has therefore been fully assessed previously in the context of the EA1 project. The SLVIA for the current Proposed Development therefore assumes that the EA1 project has taken place. The Proposed Development cannot proceed without the EA1 scheme.

¹⁰ Section 85 of the Countryside and Rights of Way Act 2000

- 4.3.9 The presence of ducting would enable the much simpler and smaller-scale process of pulling through cables without, for the most part, Horizontal Directional Drilling (HDD) or open-cut trenching. As a consequence, of the approximately 36km onshore cable corridor, only a maximum of some 535m of the route would need to be open-trenched for the EA3 proposal. This would be at the termination of the ducting close to the substation(s) and within the application site to connect the substation(s) to the existing National Grid Substation at Bramford.
- 4.3.10 Whichever electrical solution was to be chosen (LFAC or HVDC), there would be no visible differences for landfall or the cable route as the different amounts of cabling would be contained within the same number of buried ducts.
- 4.3.11 For the majority of the cable corridor, a main feature of construction works for the Proposed Development would be construction of the jointing bays and pulling through of cables. There would clearly be some temporary localised landscape and visual impacts in terms of these works. However, they would have a lesser impact than those for the EA1 development because of the smaller scale of the works compared with the earlier laying of cable and ducting. The indicative scheduling of works on the cable route suggests a total 29-week duration [APP-113, Table 5.46].
- 4.3.12 Requirements included within the ExA's recommended DCO (Appx D) variously provide for the agreement of a landscape management scheme and associated works programme. In accordance with Requirement (R) 14, a landscape management scheme would need to accord with the terms of an outline landscape and ecological management strategy (OLEMS) [REP6-046], which would be a certified plan under Article 32 of the ExA's recommended DCO. The OLEMS [REP6-046] sets out the mitigation to be embedded in the detailed design of the development.
- 4.3.13 R22 indicates the need for agreement of a code of construction practice (CoCP) (which must accord with the certified outline code of construction practice (OCoCP) [REP6-057, and REP6-060 to REP6-065 inclusive]. R30 secures the restoration of land used temporarily for construction. R36 would provide control through the need for agreement of a scheme for the reuse of any temporary works (such as haul roads and construction compounds) that were constructed as part of the EA1 development.
- 4.3.14 Once cabling was installed and EA3 was operational, there would be limited visible evidence of the landfall location and onshore cable route. Small kiosks, if used, providing access to each of the jointing bays, would be the only above-ground feature on the onshore cable route. R12(8) of the ExA's recommended DCO sets out the parameters for such kiosks and requires details of the scale and appearance to be approved by the relevant planning authority. The requirement as

proposed in the recommended DCO is the same as R10(10) of the consented EA1 amended DCO.

- 4.3.15 The LIR [REP2-001] acknowledges that the use of pre-existing cable ducts along the route would provide significant mitigation against visual and landscape impacts. It notes that provisions exist within the Applicant's DCO to secure the restoration and replanting of hedgerows removed as part of construction works. The LIR goes on to state "*it is not therefore expected that there will be any significant residual impacts on the character of the landscape in the connection corridor arising from the use of the ducts*".
- 4.3.16 Furthermore, the LIR notes that there are sound measures set out in the outline Temporary Works Reinstatement Plan [APP-299] for the retention of temporary infrastructure between the EA1 and EA3 projects. The relevant local planning authorities are content that these measures can be secured through the discharge of EA1 requirements [REP2-001].
- 4.3.17 The above local authority assessment accords with the ES conclusion of 'no significant impact' in terms of physical elements, landscape or visual receptors [APP-137, Table 29.10]. The ExA concurs with this assessment.

b) Substation(s)

- 4.3.18 Whichever power transmission solution was to be chosen, whether HVDC or LFAC, the maximum case for the EA3 development would be two adjacent substations¹¹ within the same compound [APP-113]. Their purpose would be to change the electrical current to be compatible with the National Grid in the electrical transmission system¹².
- 4.3.19 The substation(s) would be sited to the north of the existing National Grid Bramford Substation and to the immediate north-west of the consented EA1 substation. Whichever electrical solution was to be chosen, the buildings, whether converter hall (under the HVDC solution) or substation, would be the same dimensions and there would be limited visible differences to the buildings. The LFAC solution would require a 10m wider compound.
- 4.3.20 The Onshore Works Plan [APP-011, sheet 24 of 24] shows the position of Work No. 67 (the onshore substation(s)).
- 4.3.21 The ExA's recommended DCO (Appx D) would authorise the construction of the substation(s), with R12 setting the parameters of building size and height. No building must exceed 25m in height, with

¹¹ As convenient shorthand, the term 'substation(s)' is used within this report to cover both options.

¹² In answer to an ExA question at the second Environmental Matters ISH [EV-019], the Applicant explained that LFAC is still just a concept but is an attractive option for EA3; lower frequency allows cables to extend over longer distances and the concept does not require a large and complex offshore converter.

no external equipment exceeding the height of 15m. The total footprint of buildings housing the principal electrical equipment must not exceed 116m x 85m, with the compound within which this would be sited not exceeding 3.04ha. R12(2) stipulates that details of the layout, scale and external appearance of the substation(s) must be submitted to and approved by the relevant planning authority.

- 4.3.22 The possibility of phasing of the substation(s) development has been retained. Up to two substations would be built under a single phase approach. One substation would be built during each phase under a two-phase approach. R11(2) provides that a scheme setting out whether the development is to be progressed in a single or two-phased approach shall first be submitted to and approved by the relevant planning authority.
- 4.3.23 The Applicant's SLVIA contained visualisations and photomontages to illustrate how the Proposed Development might appear [APP-263 to APP-268, with corrections to Figure 29.24 submitted as AS-007]. Landscape mitigation would be carried out as part of the EA1 substation development in accordance with a Landscape Masterplan [REP2-069 – REP2-072]. Because of the close relationship between the two projects' substations, it is the Applicant's position that mitigation for EA1 would also serve to mitigate the landscape and visual impact of the EA3 substation(s) (and a possible future wind farm substation to the immediate north-east).
- 4.3.24 The Masterplan for EA1 sets out the design principles as agreed for that project and these would be incorporated into the design of the substation(s) for EA3. The Applicant's Design and Access Statement [APP-283] sets out a series of principles that would be applied to ensure that landscape and visual impacts are reduced. The LIR notes that the design principles for EA1 have been taken forward for EA3 by the Applicant in conjunction with the relevant local authorities on a collaborative basis. Various design iterations have been produced and subsequently reviewed by the Design Council [REP2-001].
- 4.3.25 The Applicant submitted OEI to the Examination [AS-019 to AS-039]. This included an update to the SLVIA (ES Chapter 29 [AS-024 to AS-029]). The update was in response to the non-material change to the EA1 made DCO, authorised through the East Anglia ONE Offshore Wind Farm (Corrections and Amendments) Order 2016. This resulted in a change to the baseline assumed for assessment purposes at the time of submission of the EA3 application.
- 4.3.26 The non-material change to the EA1 scheme authorised the HVAC option. This would result in a reduction in the maximum height of the EA1 substation, this now being 12m [REP4-028]. Additionally, the OEI noted that East Anglia One Ltd, as promoter of the EA1 project, was undertaking a master-planning exercise to develop a coherent design for landscape mitigation for both the EA1 and EA3 projects. The updated SLVIA therefore also considered this revised mitigation [AS-020].

- 4.3.27 The revised assessment is based on the EA1 substation being constructed and operational, occupying land to the immediate south-west of the EA3 substation(s) location. Embedded mitigation, involving bunding and landscaping as part of the EA1 project, would take place to the south-west, immediate north and east. Approval of a landscape management plan to confirm compliance with the relevant requirement of the EA1 consent has been granted by the relevant local planning authority (LPA) [EV-015].
- 4.3.28 Landscaping would be supplemented by new hedgerow and tree planting within a 3km radius of the site. This is secured through a concluded s106/111 agreement between Babergh and Mid Suffolk District Councils and EA1 to address any residual visual impacts [REP2-001 and REP2-090]. MSDC is responsible for negotiating with landowners to secure this provision. As noted above, the Proposed Development cannot proceed without the EA1 scheme so the off-site landscaping would contribute to mitigating the development currently proposed.
- 4.3.29 Mitigation planting for the Proposed Development includes woodland planting to the immediate north. This would add to the screening already provided by existing woodland and the narrow band of new woodland planting that would be provided to the north as part of the EA1 landscaping. It would complement the existing mature woodland planting which provides screening to the north-west, west and north-east [see AS-027].
- 4.3.30 The updated LVIA [AS-024, section 29.10.2] predicts that proposed planting would take 15 years to reach 7m in height, albeit that some of this would be seen at a relative height of 12m owing to the elevation of earth bunding. Whilst not sufficiently tall to totally screen the substation(s), the degree of mitigation would increase through the projected 25-year life of the Proposed Development.
- 4.3.31 The surrounding landscape to the proposed substation(s) is not subject to any national or local landscape designations which would denote a special sensitivity being ascribed to the Proposed Development. The existence of the National Grid Bramford Substation with associated overhead transmission cables and pylons, and the predicted presence of the EA1 substation, establish energy infrastructure as a component of the baseline landscape character.
- 4.3.32 The Applicant made the OEI available for public consultation and responses to this were included as part of the overall OEI submission [AS-029]. The full OEI was accepted into the Examination by the ExA [PD-016], with opportunity then being given for representations on this as part of the Examination process. The ExA considered both the responses made to the Applicant's consultation exercise and those further representations submitted as part of the Examination.
- 4.3.33 The ExA carried out an unaccompanied site inspection [EV-008] within the vicinity of the substation(s) site, directly following the Preliminary

Meeting, using the original ES viewpoints, visualisations and photomontages as guides. Other visualisations, including those included in the OEI, were assessed on an accompanied site inspection on 6 September 2016, which also included access to the substation(s) site [EV-009].

- 4.3.34 The update to ES Chapter 29 [AS-024] provided as OEI concludes that there would be a 'significant' effect to landscape character during the construction phase. However, impacts would be confined within a localised area approximately 800m to the north and east. There would also be 'significant' effects from viewpoint 11 to the east and viewpoint 12 to the north, respectively representative of wider public rights of way and residents [AS-024]. Impacts on the remaining parts of the local landscape and all other landscape and visual receptors during the construction phase would be 'not significant'.
- 4.3.35 During the operational phase, the above significant effects would reduce as mitigation planting matured, with the substation(s) becoming largely enclosed by a combination of existing and mitigation planting. ES updated Chapter 29 concludes that by year 15 the screening by mitigation planting would be sufficient to reduce landscape impact, and that on viewpoints 11 and 12, to 'not significant'.
- 4.3.36 In relation to cumulative impact, ES updated Chapter 29 concludes that the EA3 substation(s), in combination with that for EA1 and a possible future East Anglia offshore wind farm substation (to the immediate north-east and shown within the plans and visualisations [AS-025 to AS-027]), would be very limited and localised. Maturing mitigation planting would reduce impact to 'not significant' after about 15 years.
- 4.3.37 The relevant local planning authorities raised concerns [RR-023 and RR-024] as to efficacy of mitigation of existing woodland in light of the implications of ash dieback disease (*Chalara fraxinea*). As a consequence, the Applicant proposes an additional 10m planting strip along the western edge of Gorbets Grove, to the north-east of the substation(s) site. This would help offset any reduction in screening that might result from the loss of existing ash trees to the disease [REP2-002, response to FWQ LH6]. This approach is agreed with the relevant local planning authorities [REP2-001 and REP2-036].
- 4.3.38 The LIR [REP2-001] was produced before the submission of the OEI. It records that R14 and R15 of the Applicant's draft DCO [APP-025] (now carried forward into the ExA's recommended DCO), in combination with the Design Principles set out in the Design and Access Statement, and the pre-existing s106/s111 agreement, would be sufficient to control the landscape and visual impacts to a level which would

provide compliance with relevant local planning policies [REP2-001]¹³. An update to the SoCG with the relevant local authorities records that *"the revised and updated LVIA presented as part of the OEI is, in general, a reasonable and effective assessment of the likely landscape and visual effects of the project"* [AS-038].

- 4.3.39 Whilst stating contentment with the Applicant's revised assessment, the relevant local authorities also noted that the assessment may have given undue weight to the impact of the EA1 project on the sensitivity of the baseline landscape. This was because of the comparatively limited height and mass of the EA1 substation, as amended, the extent of mitigation planting and the comparative greater height and massing of the EA3 substation(s) [AS-038]. The authorities also considered that in practice it would be more likely that a timescale of 15-20 years would be needed to ameliorate the majority of significant visual effects, rather than the 15 years indicated in the LVIA [AS-038].
- 4.3.40 These latter two points were reiterated by the Suffolk Preservation Society (SPS), whilst considering the revised and updated SLVIA provides an acceptable assessment [REP5-006]. The SPS also noted that the Applicant's overall mitigation proposals relied heavily on off-site planting that may or may not be achieved as this remains subject to informal agreement with local landowners.
- 4.3.41 The ExA accepts the Applicant's view that the cumulative assessment presented in the revised SLVIA improves on that provided in the original Chapter 29 of the ES as it benefits from the reduced dimensions of the EA1 substation. The sensitivity of the baseline landscape is also reduced by its already partially industrialised nature resulting from the presence of the Bramford Substation and its associated pylons and overhead lines. Furthermore, the ExA does not consider that whether landscaping is effective within 15 or within 20 years makes a material difference to the overall assessment of significance.
- 4.3.42 The Applicant's comments on responses to OEI [AS-038] note that it is the intention of the EA1 s106/111 agreement to try to mitigate the impacts of the site of all the substations more rapidly. Specific hedgerow planting and maintenance closer to receptors would be provided in agreement with local landowners. This would help to reduce the longer-term residual visual effects. A considerable index-linked sum (£112,000) is available to secure this and a draft plan has been produced as a basis for negotiation. The ExA has not seen any substantive evidence to suggest that successful planting would not be achievable.

¹³ These include Policies CL2, E12 and CS5 of the Mid Suffolk District Council Local Plan which variously seek to safeguard Special Landscape Areas, conserve the landscape as a whole and require landscaping schemes for new industrial development in the countryside.

- 4.3.43 Other than those representations from SPS, there have been no representations relating to landscape and visual impacts from local residents or parish bodies.

Conclusion

- 4.3.44 The ExA concludes that with the specified parameters for substation(s) construction, and mitigation to be secured through requirements in the ExA's recommended DCO (Appx D) and through the implementation of mitigation related to EA1, there would be no medium to long-term significant adverse landscape or visual effects.
- 4.3.45 Impacts related to cable-laying operations along the cable route would be very short-term. Any residual impacts would be highly localised and small-scale. The EA3 proposal would accord with the policy requirements of NPS EN-1 and EN-3. Consequently, the ExA does not consider that there are any outstanding issues that would weigh against the DCO being made.

4.4 ONSHORE ARCHAEOLOGY AND CULTURAL HERITAGE

Introduction

- 4.4.1 NPS EN-1 states that "*(T)he construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts on the historic environment.*"

Onshore archaeology

- 4.4.2 Much of the archaeological evaluation has been undertaken as part of the EA1 development. Further archaeological evaluation is also being undertaken and the results of this will be used to inform the Proposed Development.
- 4.4.3 The final routing of cables connecting to the substation(s) is not yet known. A maximum distance of 300m of cables from the end of the pre-installed ducts to the substation(s) would be open trenched. In addition, the Proposed Development would necessitate an additional maximum length of 235m of open trenching up to the entry point of the ducts that National Grid is to install. These areas of open trenching are to be archaeologically evaluated and this is secured in R20 of the ExA's recommended DCO.
- 4.4.4 The ducting for the cables is to be laid as part of the consented EA1 development. However, for the Proposed Development there would need to be up to 62 jointing bay compounds to facilitate the cable installation and the installation of up to 248 kiosks to provide access to the jointing bays. Some of these would be in locations that have not undergone archaeological investigations in connection with the EA1 development.
- 4.4.5 The ExA in its FWQ LH1 [PD-012] enquired as to the current status of the archaeological evaluation for EA1 and any implications for the

Proposed Development. In its response to FWQ LH1 [REP2-028], the Applicant indicated that the final version of the EA1 Written Scheme of Investigation (WSI) would be completed in late 2016, and that the EA1 strip, map and record campaign was expected to commence in the fourth quarter of 2016. In its response to SWQ LH17 [REP5-012], the Applicant stated that it was anticipated that the final WSI would be submitted to SCC in mid-November 2016. However, a final WSI had not been submitted by the close of the Examination.

- 4.4.6 In their response to FWQ LH1 [REP2-002] SCC, MSDC and SCDC reported that Suffolk County Council Archaeological Services (SCCAS) had commented on an Interim Written Scheme of Investigation (IWSI) and expressed its understanding that a revised WSI, addressing its comments on the IWSI, would be submitted once an archaeological contractor has been appointed. SCCAS considered that R20 of the Applicant's draft DCO [APP-025] was acceptable.
- 4.4.7 The LIR from SCC, SCDC and MSDC [REP2-001] concluded that the impact on onshore heritage assets was adequately controlled by R20 of the draft DCO and also the Outline Written Scheme of Investigation¹⁴. The LIR acknowledged that the WSI would need updating to reflect the groundworks associated with the substation(s) and to ensure the appropriate investigation and recording of any heritage assets that may exist in this locality.
- 4.4.8 In the revised SoCG between the Applicant and the Historic Buildings and Monuments Commission for England [REP3-015], the survey baseline data, assessment methodology, assessment conclusions and proposed mitigation are matters of agreement between the parties.
- 4.4.9 R37 of the ExA's recommended DCO requires the undertaker to obtain written determination from the relevant planning authority in regard to any archaeological investigations within Work Number 67 that may be proposed prior to the commencement of the Proposed Development, and the planning authority has 15 working days from the date of notification of such works to provide its determination. This, coupled with the need for the submission of an archaeological WSI in R20 of the ExA's recommended DCO, gives the ExA confidence that the necessary safeguards are in place to assess and record any archaeological assets that have not been subject to evaluation as part of the EA1 development, as well as those that have been identified as requiring additional evaluation.

¹⁴ The LIR specifically referenced Policies HB1, HB14 and HB15 of the Mid Suffolk Local Plan 1998, and Policy DM21 of the Suffolk Coastal Core Strategy and Development Management Policies Development Plan Document 2013. Taken together, these policies seek among other matters to protect the settings of listed buildings, ensure that design has regard to features of heritage value and satisfactory measures are taken to ensure archaeological remains are excavated, recorded and promoted as an educational resource.

Setting of heritage assets

- 4.4.10 Chapter 25 of the ES 'Onshore Archaeology and Cultural Heritage' [APP-133] identifies that there are the following designated heritage assets located within the zone of theoretical visibility (ZTV) of the substation(s): two Registered Parks and Gardens, six Grade 1 listed buildings, one Grade II* listed building and eight Grade II buildings. According to the ES a number of these designated assets have been identified as being visible from the proposed substation(s). Table 25.10 of ES Chapter 25 'Onshore Archaeology and Cultural Heritage' [APP-133] summarises the potential impacts on the settings of these designated heritage assets. It predicts 'no impact' on any of the assets, with the exception of the Grade II listed Fidgeon's Farmhouse where a 'minor' impact is predicted.
- 4.4.11 However, this matter has been disputed on a number of occasions by the SPS in its RR [RR-102], WR [REP2-011], post-Hearing submission [REP4-030] and response to the ExA's SWQs [REP5-006].
- 4.4.12 At the first Environmental Matters ISH [EV-012], the ExA requested that Babergh District Council (BDC) and MSDC provide a paper to address methodological issues arising from LVIA and heritage assessments. In addition, the ExA requested that SPS provide a list of settlements it considered were affected by the proposed substation(s). In its response [REP4-030], SPS listed a number of settlements with medieval origins but accepted that the impact on these communities would be lessened due to the proposed landscaping. However, SPS maintained that this may not be the case for some of the individual listed properties within the vicinity of the substation(s).
- 4.4.13 In response, BDC and MSDC produced a post-Hearing submission [REP4-027] in which they re-visited the assessment of the settings of the nearest listed buildings. This assessment differed from the predicted impacts in Chapter 25 of the ES [APP-135] in that it predicted the overall effects of the Proposed Development on the significance of heritage assets would be 'neutral' for all assets. This was with the exception of Tye Farm, which was assigned a 'neutral/minor' significance effect, and Bullenhall Farm and Canes Farm where the effects would be of 'minor' significance.
- 4.4.14 These listed buildings would not be directly impacted by the Proposed Development but the proposed substation(s) would be visible in some views from them. As farm buildings set within a rural environment their settings relate to the wider context of the surrounding area. Consequently, in terms of paragraph 132 of the NPPF, and taking a precautionary approach, the introduction of a new substation(s), even within an area where similar infrastructure exists, would nonetheless give rise to less than substantial harm to the settings of Tye Farm, Bullenhall Farm, Canes Farm and Fidgeon's Farmhouse.
- 4.4.15 SPS, in its response [REP5-006], stated that the additional post-Hearing submission [REP4-027] did "*provide a certain level of*

assurance". However, SPS also did not consider that the methodology used by BDC and MSDC was complete as it had omitted a consideration of ways to avoid or minimise harmful effects, such as the moderate changes to the settings of Tye Farm, Canes Farm and Bullenhall Farm that are identified.

- 4.4.16 Paragraph 5.8.14 of EN-1 sets out the criteria which decision-makers are to apply in considering the significance and value of heritage assets, and the weight to be accorded to them in considering development consent applications. It guides that "*(S)ignificance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.*"
- 4.4.17 Paragraph 134 of the NPPF notes that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. In weighing this harm, the ExA considers that the public benefits of the Proposed Development in terms of renewable energy generation would be significant. This would compare favourably when set against the less than significant effect on the settings of the Grade II listed buildings that have been identified.

Conclusion

- 4.4.18 In terms of archaeological evaluation, the LAs are content that sufficient archaeological investigation work has been undertaken. Further investigation works are being undertaken as part of the EA1 project. Any remaining archaeological assessment and mitigation for the Proposed Development would be secured through R20 of the ExA's recommended DCO (Appx D).
- 4.4.19 In terms of the effect of the Proposed Development on the setting of heritage assets, the ExA is mindful of the unresolved objections from SPS. Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 states that the decision-maker must have regard to the desirability of preserving a listed building or its setting. In addition, the NPPF states that such harm needs to be weighed against the public benefits of the Proposed Development. The production of energy from a renewable source is a clear public benefit, to which the ExA attaches significant weight, as recorded in paragraph 4.2.3 above.
- 4.4.20 Therefore, when balanced against such public benefits the less than significant harm to the settings of heritage assets as a result of the Proposed Development is considered to be acceptable. The ExA therefore concludes that there are no matters in relation to onshore archaeological or cultural heritage that would weigh against the DCO being made.

4.5 TRAFFIC AND TRANSPORT

- 4.5.1 NPS EN-1 paragraph 5.13 stipulates that the decision-maker is required to ensure that the Applicant has sought to mitigate impacts

on surrounding transport infrastructure and to consider the requirements necessary to mitigate such impacts.

- 4.5.2 In addition, NPS EN-1 states that *“(I)f a project is likely to have significant transport implications, the applicant’s ES should include a transport assessment using the NATA/WebTag methodology stipulated in Department for Transport (DfT) guidance, or any successor to such methodology”*.
- 4.5.3 Chapter 27 of the ES [APP-135] considers traffic and transport matters and includes a transport assessment. However, the Applicant has applied the Guidelines for the Environmental Assessment of Road Traffic, 1993 (GEART) rather than WebTag or NATA methodology. SCC raised concerns about this in its RR [RR-024].
- 4.5.4 In response, the Applicant contended [REP2-029] that whilst WebTag guidance is referred to in NPS EN-1, GEART remains the current guidance for producing a compliant EIA transport chapter. This is noted by SCC in the SoCG [REP2-036]. Furthermore, the use of the GEART methodology has not been objected to by Highways England (HE). In light of this, and the overall predicted traffic implications of the Proposed Development, the ExA is satisfied that the use of GEART is appropriate.
- 4.5.5 The traffic and transport effects of the Proposed Development once operational would be limited in nature. ES Chapter 27 estimates that the peak change in operational traffic flow to the substation(s) would be 20 two-way vehicle movements per day, and a peak of six two-way vehicle movements per day to any of the jointing bays. In its response to FWQ TT2, the Applicant confirmed that two-way traffic flows would be in and out, ie 20 two-way vehicle movements per day would equate to 10 inbound vehicle movements and 10 outbound vehicle movements, making 20 movements in total [REP2-028].
- 4.5.6 Therefore, the main traffic and transport impacts would be during the construction stage of the Proposed Development. Whilst the ES considers both a single phase and two phase scheme, the Applicant has subsequently confirmed in its Comments on Relevant Representations [REP2-029] that the onshore cabling works, with the potential exception of the substation(s), would be undertaken as a single phase.
- 4.5.7 As evidenced in Table 27.18 of ES Chapter 27 [APP-135], undertaking the onshore cable works as a single phase would reduce the overall duration of construction operations but at certain identified network links would increase the daily HGV movements. However, Table 27.3 of ES Chapter 27 contains details of the worst case assumptions for construction traffic for both a single and two-phased development. Therefore, the ExA considers that a single phase for onshore cabling operations has been adequately assessed in the ES.

- 4.5.8 Chapter 27 of the ES provides details of the embedded mitigation that is proposed, which includes the following measures:
- Primary Construction Consolidation Sites (PCCSs) located close to main 'A' roads and their use to control delivery times and routes to the most sensitive locations on the network;
 - the use of 37 strategic points of access close to the jointing bays to reduce the amount of temporary haul road required;
 - PCCSs, Secondary Construction Consolidation Sites (SCCSs) and the substation(s) are to be located away from sensitive receptors; and
 - a Traffic Management Plan and Travel Plan.
- 4.5.9 Chapter 27 of the ES [APP-135] provides estimates of the vehicle movements associated with various stages of the onshore construction works. The most significant number of vehicle movements would entail construction traffic entering and then leaving the two PCCSs. These have been located directly off major roads, but are not in close proximity to a significant number of sensitive receptors. The ability to manage the access and egress of vehicles from the PCCSs provides the Applicant with a control mechanism to reduce the potential impacts of construction traffic.
- 4.5.10 Little Blakenham Parish Council, in its RR [RR-033], raised concerns about inconvenience and disruption to local residents and businesses that would be caused by the works to install the onshore cables. In addition, concerns have been raised by Bawdsey Parish Council (BPC) in its WR [REP2-003] regarding, in particular, the choice of a different access point B for the Proposed Development rather than that to be used for the EA1 development. BPC indicated that this revised access point (shown on the Access to Works Plans; Sheet 1 of 20, Drawing No. EA3-DCO-2.5.1-1 Rev 3 [APP-012]) is directly opposite some residential properties and that Ferry Road is used by hikers and walkers but has no segregated footway on either side of it. As such, BPC is concerned about highway safety for the residents of the nearby properties, and pedestrians.
- 4.5.11 In response [REP2-029], the Applicant cited the use of pre-installed ducts and that an access strategy has been devised to minimise the number of HGV movements. Furthermore, the Applicant has stated its intention to reduce impacts further where possible during the design stage.
- 4.5.12 The Applicant has stated its preference for the use of a traffic management hierarchy approach with the least intrusive measures such as temporary speed limits, temporary traffic signal control and mobile traffic management preferred to hard engineering solutions such as carriageway widening. This would also include the avoidance of school start and finish times in the vicinity of local schools.
- 4.5.13 In its WR [REP2-003], BPC takes issue with reliance on such 'soft measures' for traffic control and it does not consider these to be

sufficient, particularly along part of Ferry Road where BPC has cited difficulties that would be encountered if two large vehicles meet each other. However, this overall approach has been agreed with SCC, as highway authority, as detailed in the SoCG with SCC, MSDC and SCDC [REP2-036]. Taking into account the predicted number of HGV movements and the duration of the works, the ExA is satisfied that the proposed measures would be adequate in terms of highway and pedestrian safety.

- 4.5.14 Procedures for the advance notification of construction operations are set out in the Outline Traffic Management Plan (OTMP) [APP-287 to APP-290 inclusive]. The OTMP also includes the proposed use of a 'pilot vehicle' system for controlling low HGV demand on low trafficked narrow roads, and the establishment of a public liaison mechanism. Furthermore, R27 of the ExA's recommended DCO (Appx D) requires that a Traffic Management Plan, based on the OTMP, be submitted and approved before any stage of the connection works may commence.
- 4.5.15 The programmed estimate for the duration of the onshore cable works, undertaken as a single phase, is cited as 29 weeks in Chapter 5 of the ES [APP-113]. The Applicant also predicts that the substation works if undertaken as a single phase would take 55 weeks overall, which includes 12 weeks for internal fitting. Therefore, although limited in its duration, there is, nevertheless, the potential for onshore construction works to give rise to highways impacts during those periods. The Applicant has proposed mitigation in the form of an Outline Access Management Plan (OAMP) [APP-292], which was subsequently amended [REP6-034], OTMP [APP-287 to APP-290 inclusive] and Outline Travel Plan (OTP) [APP-291].
- 4.5.16 These outline plans would need to be submitted in full, and approved by the relevant LPA, before each stage of the works could commence, as specified in R27 of the ExA's recommended DCO (Appx D). Both the OAMP and the OTMP contain mitigation measures to reduce the traffic and transport impacts, particularly during the construction phase.
- 4.5.17 In response to SWQ TT10 [REP5-012], the Applicant made reference to an indicative layout for the Paper Mill Lane PCCS being provided (in response to FWQ PN2). At the request of the ExA, the Applicant provided access and egress details for both of the proposed PCCSs for the EA1 development [REP6-041].
- 4.5.18 The Applicant, at the request of SCC, amended the routing to access AD, in particular, as depicted in Figure 1 of the OEI Volume 3 Henley Road Assessment [AS-023] to the effect that construction traffic would be routed along Henley Road rather than Lower Road. As this alternative route along Henley Road had not been specifically assessed in Chapter 27 of the ES [APP-135], the Appellant produced a bespoke assessment document for Henley Road as part of its OEI [AS-023]. In response to SWQ TT8, SCC confirmed [REP5-001] that it was satisfied that the predicted traffic and noise impacts of using Henley Road would be acceptable.

- 4.5.19 Since the onshore construction impacts are to a large degree traffic-related, the OCoCP [REP6-057, and REP6-060 to REP6-065 inclusive] is a key certified document. From this would flow the CoCPs that would be required under the terms of R22 of the ExA's recommended DCO (Appx D) to be submitted for each stage of the construction works. However, earlier versions of the Applicant's draft DCO contain wording for R22 that does not specifically make reference to a Project Environmental Management Plan (PEMP), even though this is referred to in the OCoCP.
- 4.5.20 This matter was raised by the ExA at the second Environmental Matters ISH [EV-019 and EV-020]. The LAs were asked to provide comments on this. It was the view in the joint response of SCC, SCDC, MSDC, and BDC [REP7-005] that R22 of the recommended DCO should contain specific reference to a PEMP. The ExA concurs with this view. In our opinion it would ensure that a PEMP is produced in order to provide an overarching framework document to inform the provision of subsequent documents, such as each CoCP. The Applicant has therefore included specific reference to a PEMP in R22(1)(k) of its final draft DCO submitted at D8 [REP8-022]. This has been carried forward into the ExA's recommended DCO.
- 4.5.21 SCC, in its joint LIR [REP2-001], stated that its only remaining concerns were in regard to the design of access points to the construction works. However, SCC considered that this could be resolved successfully through the finalisation of the Access Management Plan and Traffic Management Plan. The ExA concurs with this view and provision of these plans is secured in R27 of the ExA's recommended DCO.

Conclusion

- 4.5.22 The construction phase of the Proposed Development would inevitably give rise to additional traffic and, in particular, HGV traffic. Some of this construction traffic would in places need to traverse narrow, rural lanes. However, mitigation is proposed and, in addition, any impact would be for a short-lived time.
- 4.5.23 Mitigation measures include the use of temporary haul roads, traffic management and the avoidance of school opening and closing times where applicable. The Applicant has therefore sought to mitigate the impact of the Proposed Development in terms of its traffic and transport effects. The adverse effects on the highway network, including pedestrian safety, as a result of onshore construction operations would be adequately controlled through the proposed measures to the satisfaction of both SCC, in its role as highway authority, and HE.
- 4.5.24 Consequently, whilst there would be undoubtedly an impact on the local highway network, particularly during the construction stage, it is the ExA's view that such impacts would be acceptable and thus the

Proposed Development would accord with the provisions of NPS-EN1 and NPS-EN3 in this regard.

4.6 SOCIO ECONOMIC IMPACTS

Introduction

- 4.6.1 NPS EN-1 advises that "*(T)he construction, operation and decommissioning of energy infrastructure may have socio-economic impacts at local and regional levels.*" It goes on to state that "*(T)he IPC [Infrastructure Planning Commission] should have regard to the potential socio-economic impacts of new energy infrastructure*". However, NPS-EN1 also cautions that "*(T)he IPC may conclude that limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence*".
- 4.6.2 Chapter 28 of the ES 'Socio-economics, Tourism and Recreation' [APP-136] predicts that the Proposed Development would have the potential to provide employment opportunities for 2,375 full-time equivalent (FTE) jobs if undertaken as a single-phase project, and 2,485 FTE jobs if undertaken as a two-phase project. At the pre-application stage the Applicant was advised that the socio-economics, tourism and recreation section of the ES needed to consider regional as well as local effects. Chapter 28 of the ES deals with these matters.
- 4.6.3 Along with the creation of jobs, the Proposed Development would have an impact on the labour market of the area. This could result in incoming workers for the Proposed Development taking up tourist accommodation, thereby potentially affecting the local tourism sector. However, owing to the relatively low number of in-migrant construction workers, SCC agreed in the SoCG [REP2-036] that the Proposed Development would be unlikely to have a significant effect on tourist accommodation.
- 4.6.4 Overall, Table 28.24 of the ES [APP-136] summarises the potential socio-economic effects of the Proposed Development to be 'minor beneficial' except for the offshore wind farm element where the effects are predicted to be 'moderate beneficial'. In terms of tourism and recreation impacts, Table 28.24 summarises all the impacts to be 'minor adverse'.

IP comments

- 4.6.5 In its RR [RR-024], SCC stated that the application did not provide a thorough analysis of the labour market and skills context in the area, particularly the displacement impact on existing businesses. SCDC and Waveney DC in their RR [RR-023] concurred with this view.
- 4.6.6 In their joint LIR [REP2-001] SCC, MSDC and SCDC considered that the labour market information was not as up-to-date as possible. The SoCG with MSDC, SCDC and SCC [REP2-036] and the LIR indicated the view of these LAs that the East Anglia ONE Skills Strategy should be refreshed in terms of the Proposed Development. They considered

that this update should account for the stresses within the construction sector and the cumulative effect of multiple projects on the local labour market.

- 4.6.7 The Applicant's initial draft DCO [APP-025] did not specifically include a Skills Strategy. Therefore, the ExA's FWQ SE7 [PD-012] queried why R30 of the EA1 DCO necessitated the agreement and implementation of a Skills Strategy, but such an arrangement was not put forward for the Proposed Development.
- 4.6.8 In their D2 response to FWQ SE7 [REP2-002] SCC, MSDC and SCDC stated that the EA1 Skills Strategy should be seen as a foundation for further initiatives and the LAs were discussing this with the Applicant. However, SCC remained concerned that the Applicant had not analysed skills shortages that remain within the construction sector. It did not agree with the Applicant's assertion in ES Chapter 28 [APP-136] that the area has a readily available labour force and the proposal would be "*unlikely to lead to labour market pressure or distortion.*"
- 4.6.9 In the SoCG [REP2-036], SCC did not agree with the Applicant as it considered that there was already a construction skills gap. SCC asked the Applicant to substantiate its assertion that there would be a considerable number of workers available due in part to the EA1 Skills Strategy and also the potential availability of laid-off oil and gas workers, because of contractions in those industries.
- 4.6.10 This variance between the LAs and the Applicant was picked up in the ExA's SWQ SE11 [PD-018] that was addressed to the Applicant. In its response [REP5-012], the Applicant indicated that Table 28.10 of ES Chapter 28 [APP-136] demonstrated that, even under a worst case scenario, the demand for labour would not exacerbate labour market skills gaps. Furthermore, the Applicant considered that the socio-economic assessment that was undertaken for the Proposed Development remained robust, and it had updated the EA1 baseline on the labour market.
- 4.6.11 In its response to SWQ SE10 [REP5-001], SCC reiterated its view that "*there is also evidence that construction skills shortages are having a negative impact on the delivery of skills across the region.*" In addition, SCC maintained that there had been a reduction in people taking up construction-related courses and thus there would be a future shortfall in the availability of skilled labour.
- 4.6.12 In its response to SWQ SE9 [REP5-012], the Applicant maintained its belief that the socio-economic data remained robust and all up-to-date information was incorporated. In addition, the Applicant stated that ScottishPower Renewables (SPR) had met with the Applicant on 22 September and they were developing overarching principles in regard to the potential socio-economic effects of both developments. The Applicant contended that the existing EA1 Skills Strategy is being delivered and the various initiatives were being reviewed.

- 4.6.13 At the second ISH on Environmental Matters [EV-019 and EV-020], the Applicant opined that a specific Skills Strategy was not required for the Proposed Development as the socio-economic effects were assessed as being 'not significant' in Chapter 28 of the ES [APP-136]. The LAs that were present at this ISH did not disagree with this proposition.
- 4.6.14 The Applicant, at the request of the ExA's Rule 17 letter of 28 October 2016 [PD-019], submitted the updated EA1 Skills Strategy [REP6-018]. A 'position statement' between the Applicant and SCC [REP6-028] had been agreed which stated that the skills aspect is "*best addressed outwith the formal DCO process and it is not necessary or appropriate to include a Requirement relating to skills in the East Anglia THREE draft Order.*"
- 4.6.15 In its D7 response [REP7-004], Ipswich Borough Council confirmed that it had seen and been reassured by the joint statement between the Applicant and SCC regarding the development of the existing Skills Strategy. In their joint D7 response [REP7-005] SCC, MSDC, SCDC and BDC indicated that they were content with the approach as agreed in the position statement between the Applicant and SCC.
- 4.6.16 Therefore, despite some differences of opinion over the socio-economic data that have been utilised in the ES, the final position is that both the Applicant and the LAs are confident that the principle of the EA1 Skills Strategy can carry through for the Proposed Development. Consequently, the Applicant and the LAs agree that a specific requirement in the recommended DCO for the submission of a Skills Strategy for the Proposed Development is not necessary. Based on the evidence that has been presented, both in writing and orally at the second Environmental Matters ISH [EV-019 and EV-020], the ExA concurs with this view.
- 4.6.17 SPS raised the issue of an environmental fund in its RR [RR-012]. Also, the RR of Little Bealings Parish Council (LBPC) [RR-007] requested "*community compensation*". Consequently, this matter was put to the Applicant by the ExA in FWQ SE3 [PD-012]. In its response [REP2-028], the Applicant indicated that an environmental fund had not been required for the EA1 development. The Applicant also indicated that the Proposed Development contained significant investment in mitigation through the undergrounding of cables.
- 4.6.18 This position has been accepted by all of the IPs except SPS and LBPC. In the light of the reduced nature of onshore works for the Proposed Development in comparison with EA1, and the significant environmental mitigation proposed due to the use of underground cabling, the ExA considers that it is not justified to require a financial contribution by means of an environmental fund for the Proposed Development.

Conclusion

- 4.6.19 There is now agreement between the Applicant and the IPs that the best way to take forward the EA3 Skills Strategy is outwith the formal planning process. Due to this agreed approach and the predicted significance of the overall socio-economic effects of the Proposed Development, the ExA does not consider it necessary to recommend the imposition of a requirement in the draft DCO to submit a Skills Strategy. In addition, for the reasons already given, the ExA does not consider it reasonable to require the instigation of an environmental fund.
- 4.6.20 Consequently, the ExA concludes that the Proposed Development complies with NPS EN-1 and that any negative socio-economic impacts would not be significant enough as to weigh against the DCO being made.

4.7 SOILS, GEOLOGY AND GROUND CONDITIONS

- 4.7.1 NPS EN-1 states that “(W)here the development is subject to EIA the applicant should ensure that the ES clearly sets out any effects on internationally, nationally and locally designated sites of ... geological conservation importance”.
- 4.7.2 Chapter 19 of the ES [APP-127] considers soils, geology and ground conditions. It focusses on the presence of contamination and the potential for pollution linkages to sensitive receptors. Table 19.3 of the ES details embedded mitigation and includes the following measures:
- minimising the construction footprint;
 - installation of the ducts for the Proposed Development during the EA1 development;
 - developing a Code of Construction Practice; and
 - initial cable routing and site selection to avoid key sensitive land uses where possible.

Contamination and pollution risks

- 4.7.3 The Outline Code of Construction Practice (OCoCP) [REP6-057, and REP6-060 to REP6-065 inclusive] contains details regarding measures to avoid the likelihood of spills and leakages that could contaminate soils. Under the terms of R22 of the ExA’s recommended DCO (Appx D) a Code of Construction Practice (CoCP), based on the OCoCP, for each stage of the Proposed Development would be required for submission and approval. In its response to FWQ GGC3 [REP2-028], the Applicant indicated that a pollution prevention and emergency incident response plan is specifically listed within the documents required for each CoCP. This is also specified in R22 of the ExA’s recommended DCO.
- 4.7.4 In its written response to D7 [REP7-015], the Applicant confirmed that East Anglia ONE Limited had prepared a report that identifies the extent of contamination and proposes mitigation at the location of

Work No. 41. This has been agreed by the Environment Agency (EnvA), and Suffolk Coastal District Council (SCDC) and Waveney DC [Schedule 2 to REP7-015]. This is further considered below in section 4.8 on Water Resources and Flood Risk.

Soil and subsoil handling and storage

- 4.7.5 Table 19.2 of the ES [APP-127] contains details regarding the amount of material associated with key design parameters of the onshore works for the Proposed Development. However, the figures in Table 19.2 were queried by the ExA in its FWQ GGC2 [PD-012]. In its response [REP2-028], the Applicant provided amended calculations regarding the total amount of material to be stored on site along the entire onshore cable route. The Applicant also confirmed that, rather than apply a bulking factor, the ES assumes a greater volume of material is to be excavated. Having assessed these revised figures, the ExA is satisfied with this methodology for calculating material arisings resulting from the onshore connection works.
- 4.7.6 In addition, R14 of the ExA's recommended DCO (Appx D) compels a landscape management scheme, including details of all hard and soft landscaping works and to accord with the OLEMS, to be submitted and approved. In its FWQs [PD-012] the ExA required further details of the proposed methodology for the storage, management and replacement of all topsoil and subsoil arising as a result of construction operations. The Applicant's response to FWQ CL3 [REP2-028] stated that a detailed methodology was not available but made reference to the use of relevant British Standards.
- 4.7.7 However, at the first ISH on the dDCO [EV-013 and EV-017], the ExA raised concerns about the absence of a specific reference to soil handling and storage procedures within R14 of the Applicant's draft DCO [APP-025]. In response, the Applicant incorporated this into its dDCO Version 3 [REP4-003] to specifically refer to soil retention, handling and protection details being included within the landscaping management scheme. Consequently, the ExA is now satisfied that this matter has been addressed adequately in its recommended DCO.
- 4.7.8 The SoCG between the Applicant and the EnvA [REP2-041] sets out areas of common ground in relation to soils, geology and ground conditions. The EnvA agreed that for matters within its remit the assessment of effects in ES Chapter 19 is appropriate. In addition, the EnvA agreed that, subject to the effective implementation of the embedded mitigation in R19 and R22 of the Applicant's dDCO, and which has now been carried forward into the ExA's recommended DCO, the proposed mitigation is adequate. The EnvA considers that further permits to ensure that materials are appropriately managed and disposed of will be required. However, the EnvA is satisfied that such permits could be sought by the Applicant post-consent.

Geologically important sites and coastal erosion

- 4.7.9 Bawdsey Cliffs, a statutory designated site, lies within the landfall footprint. As a SSSI designated for geological reasons this is a highly sensitive site. However, the temporary ramp that is proposed would be placed in a location where the Red Crag, the feature for which the site is designated a SSSI, does not outcrop. The proposed temporary access ramp is to be free-standing to minimise loading and destabilisation of the cliff face. The ES [APP-127] contends that this would give rise to an overall 'minor adverse' impact on geology.
- 4.7.10 In its Response to Relevant Representations [REP2-029], the Applicant states that the ducts and transition bay's location will be determined by EA1 but that there would be a very low risk of the ducts becoming exposed or the transition bay compromised by erosion within the lifetime of the Proposed Development. Furthermore, the LIR [REP2-001] indicates that processes are in place to ensure that the export ducts and cables are adequately protected from erosion.
- 4.7.11 The SoCG with NE [REP2-053] did not specifically address the issue of the SSSI, but rather it addressed only the matters still in dispute, which did not include this issue. However, in its Preliminary Environmental Information Report response, which is reported by the Applicant in ES Chapter 19 [APP-127], NE is cited as indicating that the mitigation in relation to Bawdsey Cliffs SSSI is adequate. The Applicant's response to the ExA's FWQ CL4 [REP2-028] confirmed that if the short duct method is to be used then a suitable design would be included within the landfall method statement. Such design would need to be submitted to, and approved by, the relevant LPA as stated in R13 of the ExA's recommended DCO [PD-022].
- 4.7.12 The ExA therefore considers that the effects of coastal erosion have been adequately accounted for and, with the embedded mitigation in place and the additional safeguard of R13 of the ExA's recommended DCO, the Proposed Development would not have an adverse effect on the Bawdsey Cliffs SSSI and thus is in compliance with NPS-EN1.

Historic landfill

- 4.7.13 There are three historic landfill sites that encroach upon the onshore cable route at Culpho Hall, Bramford Dairy and Tuddenham St Martin. Although the exact content of these landfills is not known, they have the potential to produce leachate and landfill gases. Due to the localised nature of these sites the ES considers there to be the possibility of a 'minor adverse' impact during construction.
- 4.7.14 However, there are no proposed HDD techniques along the onshore cable route and open trenching is only to be undertaken in the vicinity of the substation(s), which, due to the distances involved, would not affect these historic landfill sites. Furthermore, any jointing bays within 250m of a landfill would be included within the Construction

Design and Management (CDM) hazard log [APP-127, para 124]. Therefore, the ExA is satisfied with the assessment of predicted impacts in the ES [APP-127] and considers that the Proposed Development is acceptable in this regard.

Conclusion

- 4.7.15 Owing to the nature of the Proposed Development it is not considered to be high risk in terms of pollution incidents. Furthermore, the IPs consider that the embedded mitigation is sufficient to minimise any residual risks. The requirement for the submission of a landfall method statement has provided sufficient comfort to the IPs such that the effects on coastal change are not considered to be significant. NE considers that there would not be an effect on any features of geological interest of the Bawdsey Cliffs SSSI.
- 4.7.16 Therefore, it is the ExA's conclusion that the Proposed Development accords with NPS EN-1 in this regard and thus the impact of the Proposed Development on soils, geology and ground conditions would not preclude the DCO from being made.

4.8 WATER RESOURCES AND FLOOD RISK

- 4.8.1 NPS EN-1 Section 5.15 sets out requirements relating to water quality and resources, specifying:

"...the applicant should undertake an assessment of the existing status of, and impacts of the proposed project on, water quality, water resources and physical characteristics of the water environment as part of the ES or equivalent" (para 5.15.2).

- 4.8.2 In terms of drainage and pollution control, NPS EN-1 notes at paragraph 4.10.2 that the planning and pollution control systems are separate but complementary. Paragraph 4.10.3 states that the decision-maker *"should focus on whether the development itself is an acceptable use of land, and on the impacts of that use, rather than the control of processes, emissions and discharges themselves"*.

- 4.8.3 Having regard to flooding, NPS EN-1 notes at paragraph 5.7.3:

"The aims of planning policy on development and flood risk are to ensure that flood risk from all sources of flooding is taken into account at all stages in the planning process to avoid inappropriate development in areas at risk of flooding..."

Issues

- 4.8.4 The Applicant assessed the impact of the construction and operation of the onshore infrastructure and protection of surface and ground waters, and flood risk arising from fluvial or tidal sources. These are considered in ES Chapter 21 Water Resource and Flood Risk [APP-129]. A Flood Risk Assessment (FRA) [APP-202] and a Water Framework Directive (WFD) Compliance Assessment [APP-203]

accompanied the application. Given that the cable route for EA3 follows that for EA1, the FRA built on the findings of the earlier EA1 FRA.

- 4.8.5 The use of pre-installed cable ducts would mostly remove the need for intrusive works which could impact on watercourses. This is acknowledged by both the EnvA [RR-038 and REP2-005] and the relevant local authorities within the LIR [REP2-001].
- 4.8.6 The substation(s) site is in Flood Zone 1 (low probability of flooding) [APP-202, section 21.2.7.2]. There are no watercourses at the substation(s) site and therefore there would be no direct impact on surface waters from this element of the Proposed Development. The design of the substation(s) compound would incorporate a sustainable drainage scheme (SuDS), with runoff managed to maintain greenfield runoff rates.

Representations

- 4.8.7 The SoCG [REP2-041] with the EnvA records the Agency's agreement that, subject to inclusion and implementation, the proposed embedded mitigation for water resources and flood risk is appropriate and adequate. This agreement is also subject to the inclusion of R18 (surface water and foul water drainage), R19 (contaminated land and ground drainage) and R22 (code of construction practice (CoCP)). Whilst the SoCG related to the Applicant's dDCO, these requirements have been carried forward into the ExA's recommended DCO (Appx D).
- 4.8.8 R18 requires the submission to and approval by the relevant planning authority of surface and (if any) foul water drainage systems, and subsequent implementation. Details must accord with the outline CoCP and any system for the substation(s) should be based on sustainable drainage principles.
- 4.8.9 R19 relates to part of the cable corridor passing to the north of Ipswich (Work No. 41). It requires agreement and subsequent implementation of a scheme to mitigate the potential for release of contaminants. East Anglia ONE Ltd has carried out geo-environmental studies and prepared a report which identifies the extent of contamination (and proposes appropriate mitigation) at the location of Work No. 41. As a result, the Applicant considers that the original clause (2) of R19 (the need for the inclusion of an assessment report to assess the extent of contamination) contained in its dDCO [APP-025] is no longer needed, the remaining provisions of R19 being sufficient to mitigate any effects arising from jointing bay works or cable pull-through [REP7-015, para 11.4].
- 4.8.10 This has been agreed by the EnvA and relevant local authorities [REP7-015] and the original clause 19(2) is deleted from the Applicant's final dDCO [REP8-022]. The ExA concurs and the original

clause 19(2) referring to the need for an assessment report is omitted from the recommended DCO.

- 4.8.11 R22 of the ExA's recommended DCO necessitates the provision of a CoCP, which should accord with the certified OCoCP. This should include, amongst other matters, a surface water and drainage management plan, watercourse crossing method statement, a site waste management plan, and a pollution prevention and emergency incident report plan. Prior consultation is necessary with relevant bodies including the EnvA and, where appropriate, SCC and relevant drainage authorities before approval of the various schemes and plans.
- 4.8.12 The EnvA in its WR [REP2-005] noted that there were some sections of the OCoCP that would benefit from being updated or amended for clarity. The Applicant has made the suggested changes in its final version of the OCoCP [REP6-057 to REP6-059]. Also within its WR, the EnvA noted its contentment with Article 13 (discharge of water) of the Applicant's dDCO, whilst suggesting some minor alteration to wording. The Applicant amended the Article accordingly in its Version 3 of the dDCO [REP4-003 and REP4-004 (track changed version)] and this has been carried forward to the ExA's recommended DCO.
- 4.8.13 Within its WR, and reiterated in the SoCG [REP2-041], the EnvA states that it is not aware of any reasons as to why it would not be able to grant the necessary Environmental Permits or abstraction licences for completion of the EA3 project.
- 4.8.14 The SoCG notes the EnvA's agreement that, given the information contained in the Water Framework Directive Compliance Assessment [APP-203], and the Applicant's commitment to work with the EnvA post-consent, the EA3 proposal should comply with the Directive.
- 4.8.15 In its RR, the EnvA noted disagreement with some of the criteria used within ES Chapter 21 to consider the sensitivity of water bodies. However, in answer to FWQ CL8 [REP2-006], and as reiterated in the SoCG [REP2-041], the EnvA does not object to the conclusions reached as to the likely magnitude of effects on surface waters. These would be no greater than 'minor' and therefore 'not significant'.
- 4.8.16 Within the LIR [REP2-001], the relevant local authorities have not identified water quality and resources or flood risk as issues of concern. They are content that the suggested requirements referred to above are acceptable to ensure control and compliance with local planning policies in regard to these matters. There were no other representations during the Examination that raised issues relating to the protection of water quality and resources, and the avoidance of flood risk.

Conclusion

- 4.8.17 The ExA is satisfied that the Proposed Development would meet the requirements of NPS EN-1 sections 4.10, 5.7 and 5.15 in terms of

adequate protection of water quality and resources, compliance with the WFD and the avoidance of flood risk. Consequently, the ExA does not consider that there are any outstanding issues that would weigh against the DCO being made.

4.9 NOISE AND VIBRATION

- 4.9.1 NPS EN-1, paragraph 5.11.1 states that excessive noise can have wide-ranging impacts on the quality of life. The potential noise associated with the Proposed Development relates to both the construction phase, and the operational phase of the substation(s).
- 4.9.2 Owing to the distances involved, the noise associated with the operation of the WTG is not considered by the Applicant to be an issue in regard to impacts at any noise-sensitive properties. Therefore, this was scoped out of the ES, as reported in Chapter 26 'Noise and Vibration' [APP-134]. In a similar manner, vibration was not considered to be a significant issue associated with the Proposed Development and was also scoped out of the ES.
- 4.9.3 In terms of the onshore construction works, Table 26.29 of ES Chapter 26 notes the noise and vibration generated during the construction phase to be of 'medium' value/sensitivity at certain key residential receptors, but of 'negligible' magnitude. Thus this would give rise to an overall 'negligible' residual impact that is considered to be 'not significant'. In terms of the operational impact of the substation(s), Table 26.27 indicates that the increased noise for residential receptors from the EA3 substation(s) operating concurrently with the EA1 substation and an additional substation(s), and all three substations operating at 100% capacity would, without mitigation, be 'major adverse' at Hill Farm, Woodlands Farm, Canes Farm, Willow Cottage and Bullenhall Farm.
- 4.9.4 The ES contains a commitment to reducing night-time noise attributable to the operation of the substation(s) to below the 35 dB $L_{Aeq, 15min}$ level. The embedded mitigation that is proposed is set out in Table 26.3 of ES Chapter 26 [APP-134] and includes management of construction hours, use of acoustic screens and use of modern well-maintained plant and equipment. Such measures are to be implemented and controlled through the Noise and Vibration Management Scheme as specified in R24 of the ExA's recommended DCO (Appx D). With this embedded mitigation in place, the residual impact at these locations is assessed by the Applicant in Table 26.30 of ES Chapter 26 to be 'negligible'.
- 4.9.5 The LIR [REP2-001] stated that the cabling operations, and the operation of construction consolidation sites and the associated HGV movements, have been areas of concern for local communities. However, the local authorities are satisfied that any noise and vibration impacts can be adequately controlled through the DCO requirements, particularly R24 and R26 of the dDCO. Thus it is considered practicable by SCC, MSDC and SCDC that a night-time

noise level, attributable to the operation of the substation(s), below 35 dB $L_{Aeq, 15min}$ can be achieved by the Applicant.

- 4.9.6 R26 of the ExA's recommended DCO relates to the control of noise during the operational phase of the Proposed Development. It specifies the rating of operational noise immissions that must not be exceeded at Bullenhall Farm, Hill Farm and Woodlands Farm. Furthermore, R26(4) of the ExA's recommended DCO requires the submission of remedial works should the immissions exceed the stated levels in R26(2).
- 4.9.7 In terms of construction noise and vibration, R24 of the ExA's recommended DCO requires a noise and vibration management scheme for each stage of construction works to be submitted to and approved by the relevant authority. Also, the hours of construction are limited by R25 of the recommended DCO.
- 4.9.8 Whilst some elements of the construction operations would give rise to additional noise, this would only be for a temporary period. The ExA considers that, subject to the mitigation proposed and with the additional safeguards provided by R24, R25 and R26 of its recommended DCO, significant intrusive noise arising as a result of the Proposed Development would be unlikely to occur.

Conclusion

- 4.9.9 Whilst the construction activities would inevitably entail a degree of noise, these would be for a limited duration. Once operational it is considered that any noise effects arising from the Proposed Development would be acceptable and, if necessary, there would be an additional control mechanism through R26 of the ExA's recommended DCO (Appx D).
- 4.9.10 Consequently, the ExA considers that the Proposed Development accords with NPS EN-1 and there are no outstanding significant issues relating to noise and vibration that would weigh against the DCO being made.

4.10 AIR QUALITY AND HEALTH

- 4.10.1 Section 5.2 of NPS EN-1 states that "*(T)he construction, operation and decommissioning phases can involve emissions to air which could lead to adverse impacts on health, on protected species and habitats, or on the wider countryside.*"

Air Quality

- 4.10.2 Chapter 20 of the ES [APP-128] assesses the likely air quality effects of the Proposed Development. Table 20.6 sets out the current Air Quality Strategy Objectives for the purposes of Local Air Quality Management (LAQM). ES Chapter 20 also notes that there are no Air Quality Management Areas (AQMA) within the onshore works, with the nearest being some 1.8 km away.

- 4.10.3 The ES considers that the main potential impacts would be dust emissions and vehicle exhaust emissions during the construction and decommissioning phases. Because of the low amount of associated vehicle movements, air quality impacts during the operational phase of the Proposed Development have been scoped out of the ES.
- 4.10.4 Embedded mitigation would consist of that used for EA1 and also measures outlined in the Institute of Air Quality Management (IAQM) Guidance¹⁵. Such mitigation would include the following measures:
- effective barriers would be erected around dusty activities on the site boundary;
 - machinery and dust-generating activities would be located away from sensitive receptors;
 - all loads entering and leaving the site would be covered; and
 - development of an Air Quality Management Plan, as part of the Code of Construction Practice (CoCP).
- 4.10.5 Chapter 20 of the ES indicates that the results of the air quality assessment predict that concentrations of NO₂ and PM₁₀ are below the annual mean air quality Objective of 40µg.m⁻³ at all receptors¹⁶.
- 4.10.6 The Applicant submitted an Outline Code of Construction Practice (OCoCP) [APP-281] and subsequently an amended version at D6 [REP6-057, and REP6-060 to REP6-065 inclusive]. The OCoCP would form the template for subsequent CoCPs to be submitted and approved by the relevant LPA before each stage of the connection works commences, as contained in R22 of the ExA's recommended DCO (Appx D). This requirement specifically stipulates that an air quality monitoring plan must be included for approval in each CoCP.
- 4.10.7 The OCoCP [REP6-057] refers to an air quality management plan, containing emission control measures, being incorporated within the Project Environmental Management Plan (PEMP). The PEMP is now specifically referenced in R22(2)(k) of the Applicant's final draft DCO [REP8-022]. Therefore, whilst R22(2)(e) only requires an air quality monitoring plan, subsequent control measures would be contained within the PEMP as required under R22(2)(k) of the ExA's recommended DCO.
- 4.10.8 The LIR [REP2-001] considers that the main air quality impacts are likely to arise from emissions from HGVs during the construction phase. The LIR goes on to state that it is not anticipated that there would be any localised impacts on air quality associated with HGV movements.

¹⁵ Institute of Air Quality Management: Guidance on the assessment of dust from demolition and construction, 2014

¹⁶ The standards and objectives relevant to the LAQM framework have been prescribed through the Air Quality (England) Regulations 2000, and the Air Quality (England)(Amendment) Regulations 2002, and µg.m⁻³ means micrograms per cubic metre.

Public health

- 4.10.9 In terms of health considerations, Little Bealings Parish Council (LBPC) in its RR [RR-007], expressed concerns that the change from HVDC to HVAC makes the Proposed Development less safe for residents. In its FWQ GA3 [PD-012], the ExA asked LBPC to clarify its comments. LBPC did not respond to this.
- 4.10.10 In its FWQ GA3 response [REP2-028], the Applicant indicated that Chapter 22 of the ES [APP-130] concluded that there would be no, or negligible, impact in terms of electrical and magnetic fields (EMF). This was because of the distances to sensitive receptors and the fact that burial of the onshore cables would provide additional shielding. Furthermore, the Applicant indicated that the Proposed Development would be constructed in accordance with the International Commission on Non-Ionizing Radiation Protection Guidelines on EMF, as stated in the submitted Health Impact Review [APP-297].
- 4.10.11 In the absence of any further substantive evidence to the contrary, the ExA considers that the Proposed Development would not give rise to any significant health impacts for local residents.

Conclusion

- 4.10.12 There would inevitably be some localised impacts on air quality which would primarily relate to the construction phase of the Proposed Development and, in particular, from construction traffic. The LAs are, however, satisfied that any impacts on air quality can be adequately controlled.
- 4.10.13 Based on the scale and duration of the proposed onshore construction works, and taking into account the baseline air quality data, the ExA considers there is no reason to disagree with the views expressed by the LAs on this matter. In conclusion, the ExA considers that with the mitigation provided in the CoCP, as required under R22 of its recommended DCO (Appx D), the air quality and health effects of the Proposed Development would be acceptable. Consequently, the ExA does not consider that there are any outstanding issues that would weigh against the DCO being made.

4.11 LAND USE

- 4.11.1 Section 5.10 of NPS EN-1 sets out considerations to be taken into account in assessing the potential impacts of an energy generating project on land use including open space, green infrastructure and Green Belt. The Applicant provides its analysis in relation to land use in ES Chapter 22 'Land Use' [APP-130].
- 4.11.2 No issues in respect of Green Belt, open space and recreation were raised during the Examination. No land covered by any local planning designations in respect of these matters within SCDC and MSDC development plans would be affected.

- 4.11.3 Part of the cable route passes through the Suffolk Coast and Heaths AONB. Any material impacts on the area would be short-lived during the construction phase. There have been no representations to suggest that the recreational attributes of the AONB would be materially affected.
- 4.11.4 The LIR [REP2-001] identifies the main issues as far as the relevant local authorities are concerned as being loss of agricultural land, disruption to agricultural activities and interference with public rights of way (PRoW)¹⁷.
- 4.11.5 The cable route passes through primarily agricultural land. The majority of the agricultural land affected by the electrical transmission works, including access to them, is Grade 3 or below as classified under the Agricultural Land Classification (ALC) [APP-130, Table 22.11]. The cabling for the Proposed Development would be pulled through ducting that would be installed as part of the EA1 project. Much of this agricultural land would be reinstated following the implementation of the EA1 project.
- 4.11.6 Works connected with the EA3 Proposed Development would be necessary to pull through the cabling and for the installation of jointing bays, and the provision of kiosks to access these. Any disturbance arising from these works would be localised. Once completed and in use it is expected that normal operational activities would resume over the cable route. R30 of the ExA's recommended DCO (Appx D) secures the restoration of land used temporarily for construction.
- 4.11.7 The majority of land at the substation(s) site is ALC Grade 2. Table 22.16 of the ES notes a 'minor adverse' effect in relation to the substation(s) site regarding land-take. However, paragraph 219 of ES Chapter 22 [APP-130] suggests a 'moderate adverse' effect at the local level because of the permanent land-take, whilst noting that this is not significant at the county scale. The area of land-take for the substation(s) compound would be some 3.04ha [APP-113, Table 5.48].
- 4.11.8 The ExA considers the location for the substation(s) to be logical, within a reasonably discrete parcel of agricultural land which is largely contained by existing woodland, the site for the EA1 substation and the National Grid Bramford Substation. There should be no issue of farm fragmentation and the use of higher grade agricultural land is in these circumstances justified. This is a position supported by the relevant LPAs [REP2-001].

¹⁷ Mid Suffolk District Council Local Plan Policy CL11 encourages the conservation of agricultural land with particular importance placed on that which is of higher grade, and Policy RT12 seeks to safeguard the footpath and bridleway network. Policy SP12 of the Suffolk Coastal District Local Plan encourages renewable energy schemes providing they are consistent with safeguarding residential amenity, the environment and landscape.

- 4.11.9 Much of the land at the landfall, along the cable route and at the substation(s) site is included under an Environmental Stewardship Scheme¹⁸. There would be potential impacts during construction. However, with embedded mitigation (set out in APP-130, Table 22.3) which includes the provision of a CoCP, the ES concludes there would be no significant effects on land-take, the Stewardship Scheme or on land drains that would need to be crossed.
- 4.11.10 The electrical transmission works would cross a number of PRow which may be disrupted during construction. This would depend on the extent of haul roads and the location of infrastructure (such as jointing bays) determined during detailed design. PRows would only need to be closed or diverted where the PRow itself was to be used as an access. Those to be temporarily stopped up are listed in Schedule 3 of the ExA's recommended DCO (Appx D).
- 4.11.11 With embedded mitigation, the ES concludes that impacts on PRow would be of negligible significance during construction, with no impact at all in the operational phase. R22 of the recommended DCO requires the approval of a CoCP, which must include a public rights of way management plan. The LIR notes that impacts on the footpath network are likely to be localised and short-term in nature and not significant [REP2-001].

Conclusion

- 4.11.12 The ExA concludes that there would be no significant adverse effects on land use of sufficient weight to weigh against consent for the Proposed Development being withheld. As a consequence, there would be no conflict with NPS EN-1, Section 5.10.

OFFSHORE MATTERS

4.12 VISUAL IMPACT

Seascape

- 4.12.1 Despite being scoped out of the SLVIA, the ES did consider the likely impact of the offshore components (WTG, offshore electrical platforms and meteorological masts) on seascape and visual receptors [APP-137, section 29.3.1]. The array site is some 69km at its nearest from the East Anglian coast.
- 4.12.2 Whilst the ES notes that it may be theoretically possible to discern some WTG blade tips from higher points along the coast in good viewing conditions, the magnitude of change would be 'negligible'. The ES concludes that the effect of the offshore components on coastal

¹⁸ These schemes provide funding and advice to farmers, tenants and land managers to encourage effective environmental management of land.

and landward receptors would not be significant. This assessment is shared by Historic England (HistE) [REP2-009].

- 4.12.3 The East Inshore and East Offshore Marine Plans (EIEOMP) identify character areas, those relevant to the Proposed Development being Suffolk Coastal Waters (inshore) and East Anglian Shipping Waters (offshore) (EIEOMP, Figure 4). The offshore array components would be about 47km from the outer boundary of the inshore area.
- 4.12.4 The ES [APP-137, section 29.3.1] notes that for the Suffolk Coastal Waters the WTG would appear as relatively small-scale elements with limited influence on the character of the seascape. Any impact would be 'not significant'. The East Anglian Shipping Waters are devoid of any special seascape features, the ES noting that the area is of low sensitivity with the impact of the array components being characterised as 'not significant'. The ExA has no reason to disagree with these assessments, which have not been questioned in any representations. Consequently, the ExA does not consider that there are any outstanding visual impact issues that would weigh against the DCO being made.

4.13 COMMERCIAL FISHERIES

- 4.13.1 NPS EN-3 sets out policy on commercial fisheries and fishing. Paragraph 2.6.132 states that the decision-maker "*should be satisfied that the site selection process has been undertaken in a way that reasonably minimises adverse effects on fish stocks, including during peak spawning periods...*".
- 4.13.2 Paragraph 2.6.133 states that the decision-maker "*should be satisfied that the applicant has sought to design the proposal having consulted representatives of the fishing industry with the intention of minimising the loss of fishing opportunity taking into account effects on the other marine interests.*"
- 4.13.3 In relation to mitigation, para 2.6.134 of NPS EN-3 advises that "*any mitigation proposals should result from the applicant having detailed consultation with relevant representatives of the fishing industry.*" Paragraph 2.6.135 goes on to suggest that "*mitigation should be designed to enhance where reasonably possible medium and long-term positive benefits to the fishing industry and commercial fish stocks*".
- 4.13.4 The decision-maker is advised in para 2.6.136 to consider whether "*the extent to which disruption to the fishing industry, whether short term due to construction or long term over the operational period, including that caused by the future implementation of any safety zones, has been mitigated where reasonably possible.*"
- 4.13.5 Policy GOV2 of the EIEOMP notes that opportunities for co-existence should be maximised wherever possible.

ES assessment

- 4.13.6 Commercial fishing within the Proposed Development WTG array site comprises principally Dutch, Belgian and UK vessels, the former representing about 84% of total sightings [APP-122, Table 14.9]. Fishing within the offshore cable corridor is more evenly split between Belgian and Dutch vessels (c.41% and 31% respectively). Vessels from the UK account for the vast majority of fishing activity (c.80%) within the area of the inshore cable corridor (roughly up to the 12nm limit, [APP-174, Fig.14.4]).
- 4.13.7 The Applicant in ES Chapter 14 'Commercial Fisheries' [APP-122] assesses impacts on commercial fisheries of the Proposed Development in all its phases, including cumulatively with other projects. It concludes that, with mitigation, all impacts would result in 'minor adverse' or 'negligible' effects and would have no significant cumulative effect [APP-122, Table 14.27]. This applies to all operations and fishing activities save in relation to UK static gear fishing in the offshore cable corridor during the construction phase where there would be a 'moderate adverse' impact. This would be reduced to a 'minor adverse' effect with effective mitigation.
- 4.13.8 When operational, on the basis of the relative area of the proposed development site in comparison to the combined potential areas of other wind farms, MCZs and aggregate dredging areas, the proportional loss of fishing area would be minor. This contribution would be further reduced as fishing could potentially resume within the operational array and cable corridor [REP2-028, Applicant's response to FWQ FN8].

Representations

NFFO/VisNED, HFA

- 4.13.9 Certain concerns were expressed by the National Federation of Fishermen's Organisations (NFFO) in its RR [RR-014] that, whilst welcoming proposed mitigation methods, such commitments needed to be strengthened. The NFFO also considered the ES did not sufficiently acknowledge the range of issues that would have a bearing on the degree to which fisheries could be limited by the Proposed Development. VisNed, a federation of Dutch fish producer organisations connected with demersal fisheries, echoed the NFFO's concerns [RR-025].
- 4.13.10 In its RR [RR-021], the Harwich Fishermen's Association (HFA) noted its belief that the Proposed Development would make certain areas un-fishable during construction and that these would remain so in its operational phase. The HFA also had concerns as to the compromising of fishing techniques and the ability to fish safely over cable routes. Furthermore, it suggested that the Proposed Development would lead to the additional restriction of already condensed available fishing grounds because of the provision of renewable energy and other

schemes. A Mr Paul Lines also sought assurances from the Applicant about the passage of the cable route through areas where he fished [AS-018].

- 4.13.11 To aid and maintain regular communication between the Applicant and local fishermen potentially affected by projects within the East Anglia Zone, a Commercial Fisheries Working Group (CFWG) has been established. A SoCG with the CFWG was drafted [REP2-043] to respond to issues raised in HFA's RR. The Applicant notes that six of the seven fishing group members of the CFWG signed the SoCG. Whilst not expressing concerns as to the content of the SoCG, the HFA did not sign, preferring to attend the first Environmental Matters ISH.
- 4.13.12 At the first Environmental Matters ISH [EV-015] the HFA stated that it was less concerned with managing interactions with EA3 during construction, noting that only two of the organisation's 16 members fished within the WTG array site boundary. Reservations were expressed about continuing to fish within the cable corridor, the HFA maintaining that fishermen would not be able or willing to fish without the risk of losing gear [REP4-006, response to ICF1].
- 4.13.13 The HFA did subsequently sign a SoCG [REP4-009]. This notes agreement on the Applicant's assessment methodology and most of the proposed management methods. However, concern is expressed as to the cumulative impact of the Proposed Development with other wind farm developments and marine activities.
- 4.13.14 The ES notes that the only receptor group for which potentially significant effects were identified was the UK inshore fishing fleet in relation to the temporary loss or restricted access to traditional fishing grounds [APP-122, section 14.6.1.2.4.3]. A 'moderate adverse' cumulative effect could arise for the static gear fleet. This almost entirely comprises under-10m vessels based at local ports along the Suffolk and Essex coasts and which have limited ranges.
- 4.13.15 With regards to those vessels operating static gear, based on the experience of agreeing mutually acceptable procedures for the relocation of static gear during survey work for EA1, the ES notes that residual effect is reduced to 'minor' significance [REP2-028]. The Applicant states it would use a disruption payment methodology agreed through the CFWG and there are commitments to embedded mitigation secured through the DMLs within the ExA's recommended DCO (Appx D).
- 4.13.16 The ES further notes that appropriate mitigation measures would be discussed through the CFWG in line with a Co-existence and Fisheries Liaison Plan [APP-122, section 14.6.4.1.2.3]. Such a plan would be secured through Condition 13(1)(d)(v) of the Generation and Transmission Assets DMLs and Condition 6(d)(v) of the Interconnection DMLs within the ExA's recommended DCO (Appx D). The scope of such a plan has been agreed between the Applicant, NFFO/VisNed and the CFWG although no drafting has taken place. In

answer to FWQ FN5 [REP2-028], the Applicant notes that as offshore construction would not be likely to start until 2022, and given the fluctuating nature of the fishing industry, it would not be appropriate to engage on this until closer to construction.

- 4.13.17 Other elements of mitigation would be secured through the recommended DMLs and are set out in the Applicant's offshore Schedule of Mitigation [REP6-055]. These include:
- the requirement for a detailed cable-laying plan, incorporating a burial risk assessment to ascertain suitable burial depths and cable-laying techniques;
 - ongoing cable monitoring;
 - a full sea floor coverage swath-bathymetry survey to assess bedform topography and such further monitoring or assessment as may be agreed to ensure cables have been buried or protected;
 - commitment to undertake trawl or drift net surveys if considered appropriate; and
 - notification requirements of exposed cabling via the SeaFish Kingfisher Information services and through Notice to Mariners.
- 4.13.18 In addition to the above, in answer to SWQ FN11 [REP5-012], the Applicant noted that technologies such as Distributed Temperature Sensing existed to help detect potential cable exposures. This was to be incorporated into the EA1 scheme. In answer to an ExA question at the second Environmental ISH [EV-020], the Applicant stated that this was fairly new technology; until there was more operational experience it was not possible to say whether it would be used for EA3.
- 4.13.19 The primary system upon which EA1 and EA3 would rely in respect of detecting cable exposure is surveying, with frequency based on perceived risk. On this basis, and given the early stages of the technology, the ExA considers it would not be appropriate to secure the provision of Distributed Temperature Sensing through a condition in the recommended DMLs [REP6-017, answer to EMHQ10].
- 4.13.20 Within its SoCG [REP4-009], the CFWG expresses doubt as to whether smaller vessels (under-10m) using trawl and drift nets may be able to fish over some types of rock and mattress cable protection. The Applicant notes that trials using such vessels have indicated that mattressing can be fished over by both netting methods. Furthermore, a hierarchical approach to cable protection options would be used, involving consultation with relevant fishing organisations. This would aim to select protection methods which would cause the least disturbance to fishing practices [REP4-009].
- 4.13.21 A joint SoCG with VisNed and the NFFO [REP2-058] records agreement on most issues relating to impact on commercial fishing and the proposed mitigation to be secured. Amongst some outstanding remaining issues was NFFO/VisNed's view that the

Applicant's assessment methodology did not explicitly account for the ability of fishing activity to co-exist in the vicinity of the Proposed Development. Nevertheless, the Applicant has noted that the methodologies used are an established approach to the assessment of potential impacts and are suitable and appropriate [REP2-058].

- 4.13.22 NFFO/VisNed believed that cumulative assessment should also take into account existing proposals and developments (not just future ones) which could limit fishing. However, the Applicant notes that existing developments are considered to represent part of the existing environment in which commercial fishing takes place and in respect of which fishing interests have adapted [REP2-058].
- 4.13.23 NFFO/VisNed also recorded concern about the potential snagging of fishing gear where cables are buried to 0.5m. It also states within the SoCG that Dutch fishermen have indicated that they would be able to fish within the EA3 array in safe conditions. Nonetheless, NFFO/VisNed consider it unlikely that fishing would take place to the same degree as in an open sea area, with fishing requiring modification to existing operating patterns [REP2-058]. Further, whilst welcoming provision within the dDMLs for trawl or drift net surveys, NFFO/VisNed considered this should also include an over-trawlability survey. This would be to cover areas trawled on the offshore cable route and inter-array cables. The ExA sought views on these matters in SWQ [PD-018].
- 4.13.24 The Applicant stated in response to SWQ FN10 [REP5-012] that it is not aware of documentary evidence of levels of fishing activity within operational wind farms. It notes, however, the acknowledgement of Dutch fishermen that they would be able to fish within the EA3 array site. Furthermore, there is a commitment to a linear turbine arrangement with specified minimum separation which would facilitate the possible resumption of fishing.
- 4.13.25 In response to SWQ FN12 [REP5-012], the Applicant notes the objective of cable burial would be to minimise as far as practicably possible effects on fishing operations. Condition 13(1)(g)(ii) of the Generation and Transmission Assets DMLs and Condition 6(f)(ii) of the Interconnection DMLs within the ExA's recommended DCO require the agreement of a detailed cable-laying plan. This would incorporate a burial risk assessment to ascertain suitable burial depths and cable-laying techniques with the objective of achieving the appropriate level of cable burial.
- 4.13.26 In responding to SWQ FN16 [REP5-012], the Applicant considered it is not necessary to undertake a trawl survey outside of the area of the transmission assets. This is because it is anticipated that appropriate burial depths would be achieved in areas where the Dutch pulse beam trawling fleet would operate. Furthermore, a fisheries liaison and coexistence plan, secured by Condition 13(1)(d)(v) of the Generation and Transmission Assets DMLs and Condition 6(d)(v) of the Interconnection DMLs in the recommended DCO, would cover in detail

consultation, recording and notification of cable burial and whether cables became exposed. There were no further representations from NFFO/VisNed or CFWG on these matters.

CRPMEM

- 4.13.27 A SoCG with Comité Regional des Pêches Maritime (Nord Pas-de-Calais Picardie) (CRPMEM) [REP3-013] records agreement on all aspects of proposed management measures relating to the interface between the Proposed Development and commercial fishing interests. CRPMEM expressed concerns regarding increasing activity on fishing grounds that are used by French fleets arising from the cumulative displacement of other fleets as a result of other wind farm developments and marine activities.
- 4.13.28 In SWQ FN13 [REP5-012] the ExA sought specific comments from CRPMEM on the cumulative assessment methodology of displacement effects used in the Applicant's ES. CRPMEM did not respond. However, the ExA considers the concern expressed appears to be generic and no evidence has been provided as to the specific impact of the Proposed Development on French fishing interests.

Norfolk County Council

- 4.13.29 In its RR, Norfolk County Council considered that the ES appropriately and satisfactorily addressed issues which could affect Norfolk's commercial fishing interests [RR-005].

Eastern Inshore Fisheries and Conservation Authority

- 4.13.30 Within its SoCG with the Applicant, the Eastern Inshore Fisheries and Conservation Authority agreed with the methodologies used to assess impact on commercial fisheries [REP2-039]. There is also agreement that with embedded mitigation there would be no significant effects in EIA terms on commercial fishing activity.

MMO

- 4.13.31 The MMO is of the view that sufficient surveys and reporting mechanisms would be secured through the DMLs to identify cable exposure, provide the information required to make informed decisions as to whether it would be safe to fish in a particular area, and ensure appropriate action [REP5-008]. In agreement with the MMO the Applicant incorporated within Version 5 of its dDCO [REP8-003] Condition 19(4) into the Generation and Transmission Assets DMLs (Condition 11(4) of the Interconnection DMLs) to secure monitoring of offshore cables, including cable protection during the Proposed Development's operational lifetime [REP6-017, response to EMHQ9]. These have been carried forward to the ExA's recommended DCO (Appx D).

Conclusions

- 4.13.32 The ExA is satisfied as to the adequacy of the Applicant's assessment of impacts on commercial fisheries. Sufficient liaison, notification and controls over impacts are secured through the provisions of the DMLs within the recommended DCO to ensure that during construction, operation and decommissioning impacts would be satisfactorily mitigated so as to avoid significant effects. We consider that the Applicant has appropriately responded to concerns raised.
- 4.13.33 Having carefully considered all the matters raised, the ExA concludes that, in addressing the potential impacts on the commercial fishing sector, the requirements of NPS EN-3, particularly paragraphs 2.6.133 and 2.6.136, as well as Policy GOV2 of the EIEOMP, have been met. As such, the ExA does not consider that there are any outstanding issues that would weigh against the DCO being made.

4.14 SHIPPING AND NAVIGATION

- 4.14.1 NPS EN-3, paragraph 2.6.161 advises that development consent should not be granted if it is considered that interference would be caused with the use of recognised sea lanes essential to international navigation. Paragraph 2.6.162 notes that site selection should be made with a view to avoiding or minimising disruption or economic loss to shipping and navigation industries.
- 4.14.2 For less strategically important shipping routes, an applicant will be expected to minimise negative impacts to as low as reasonably practicable (ALARP) (NPS EN-3, para 2.6.123). Schemes should minimise the effects on recreational craft and build in appropriate mitigation measures such as buffer areas. The cumulative effects of other relevant proposed, consented and operational offshore wind farms should be taken into account when assessing interference, obstruction or danger to navigation and shipping (para 2.6.169).

Assessment

- 4.14.3 As required by NPS EN-3 paragraph 2.6.156, the Applicant undertook a Navigational Risk Assessment (NRA) to identify existing vessel activity and navigational features in the vicinity of the Proposed Development [APP-180 to APP-184]. ES Chapter 15 'Shipping and Navigation' [APP-123] summarises the work undertaken as part of the NRA.
- 4.14.4 The NRA principally followed the methodology published by DECC and the Maritime and Coastguard Agency (MCA) Marine Guidance Note 371 (MGN 371, now MGN 543). The SoCGs with both the MCA [REP2-054] and TH [REP4-008] record agreement that the NRA was undertaken in accordance with the correct requirements.
- 4.14.5 The NRA followed a different assessment process from EIA although the approach was very similar [APP-123, section 15.4]. The result is an assessment of the risk posed by the Proposed Development to

navigation and the mitigation required to minimise those risks. The worst case scenarios were considered, including the potential two-phased approach to construction which would involve an increased number of vessel movements compared with a single-phased construction [APP-123, sections 15.3.2-15.2.4].

- 4.14.6 The Applicant assessed potential impacts for commercial, fishing and recreational users. This was for all stages of the development (construction, operation and decommissioning), together with consideration of cumulative impacts with other offshore wind farms. Operational and commercial impacts associated with fishing activities are considered above in section 4.13 of this report.

Impacts on navigational routes

- 4.14.7 Key navigational features close to the proposed WTG array site include two Deep Water Routes (DWR), which are designated International Maritime Organisation routeing measures [APP-177, Fig. 15.2]. The DWR via the DR1 light-buoy passes 1nm to the west of the EA3 array site. This carries between 8 and 10 vessels per day. As part of the EA1 Examination, assessment took place of the impacts of a 1nm separation distance between the edge of this DWR and that WTG array site. Following this, it was agreed that 1nm was an ALARP distance. To be consistent, and maintain a straight line edge between both EA1 and EA3 arrays and this DWR, a 1nm buffer is maintained for EA3 [APP-123, section 15.5.1].
- 4.14.8 A further DWR via the Traffic Separation Scheme Off Brown Ridge passes the EA3 array site to the east. This carries 10 to 11 vessels per day and is separated from the site by a 2nm buffer [APP-177, Fig. 15.2]. The SoCG between the Applicant and the Chamber of Shipping [REP2-040] notes agreement as to the sufficiency of the separation distance between the two deep water shipping routes and the wind farm array. This is similarly the case with the MCA, TH and Dutch Rijkswaterstaat (RWS), as noted in their respective SoCGs [REP2-054, REP4-008 and REP2-047].
- 4.14.9 RWS, in its RR [RR-016], raised concerns about shipping movements to the south of the EA3 site - shipping lanes passing north-west to south-east - and that the situation would be unlikely to be safe without additional measures. The NRA noted that the majority of potential allision risk¹⁹ was due in some degree to the inclusion of larger structures on the peripheral boundary of the array site and the convergence of a number of deviated routes. In light of consideration of associated risk, the ES indicates that the Applicant has committed to the removal of the potential for larger structures to be on the periphery of the site, such as accommodation platforms, collector

¹⁹ Risk of striking an object

substations and converter stations, by moving them into the array [APP-123, section 15.6.1.2].

- 4.14.10 In response to FWQ FN7, the Applicant drew attention to the SoCG with RWS [REP2-047]. This records that when the final layout of the array is available prior to construction, RWS would be consulted regarding the nautical safety aspects to the south of the array. SWQ FN15 asked how such consultation would be secured in the dDCO [PD-018].
- 4.14.11 The Applicant considered it was not necessary to name RWS as a consultee within the Order; as the development would be a UK project it would be necessary in the first instance to work with those organisations appointed to regulate, guide and implement UK and European nautical safety requirements with which it must comply. Once an array layout had been agreed with the MMO and MCA, informal consultation would take place with RWS [REP5-012].

Impacts on recreational vessels

- 4.14.12 Survey data indicate a low level of recreational activity by recreational craft (mostly sailing yachts) within 10nm of the array site (an average of one to two per day), with no residual risk either during constructional or operational phases [APP-123, section 15.6.4].
- 4.14.13 In its SoCG [REP2-048] the Royal Yachting Association (RYA) agrees that the NRA was appropriate for the project and that proposed mitigation measures are similarly appropriate and sufficient. Nevertheless, the RYA does not support the provision of operational safety zones during construction or operation. However, any safety zones that may be required would be applied for post-consent. As such, the ExA does not consider this to be an issue in the assessment of the current proposal.

Commercial vessel navigation, marine radar, ports

- 4.14.14 No issues were raised during the Examination in relation to the impact of the Proposed Development on commercial vessel navigation, marine radar or impact on ports.

Mitigation

- 4.14.15 Embedded mitigation to reduce any negative effects of the Proposed Development would include: charted information; Notice to Mariners; navigational marking and lighting; minimum blade clearance; appropriate inter-array, export and interconnector cable protection; development and implementation of an Emergency Response and Cooperation Plan (ERCoP); post-construction monitoring of cables and structures; and navigational monitoring [APP-123, Table 15.3].
- 4.14.16 Additional mitigation in respect of shipping activity near the southern boundary of the array would include consultation on final site design and provision of additional aids to navigation [APP-123, Table 15.4].

- 4.14.17 With mitigation, all residual effects are classed as 'broadly acceptable', or 'tolerable and ALARP²⁰'. The MCA, TH and the RYA agree that the proposed mitigation measures are appropriate and sufficient [REP2-054, REP4-008 and REP2-048].
- 4.14.18 Mitigation is secured through various conditions in the DMLs within the ExA's recommended DCO. These have been refined throughout the Examination and are agreed by the MMO and TH [EV-011, REP2-055, REP3-001, REP4-008, REP4-033 and REP7-021].
- 4.14.19 Condition 8 of the Generation Assets DMLs requires the appropriate aids to navigation including lights, sounds and signals as directed by TH. Condition 13 specifies the need for agreement by the MMO and the subsequent implementation of a range of pre-construction plans and documentation. These include a construction programme and monitoring plan, a construction method statement, a cable specification, installation and monitoring plan, an aid to navigation management plan, an offshore operations and maintenance plan and an ERCoP for all stages of the project.

Conclusions

- 4.14.20 The ExA is satisfied that the matters identified in NPS EN-3 as regards navigation and the safety of shipping have been properly assessed and satisfactorily addressed by the Applicant as at the end of the Examination. Conditions within the DMLs in the ExA's recommended DCO (Appx D) would ensure appropriate and adequate mitigation of effects for shipping and navigational interests. Consequently, the ExA does not consider that there are any outstanding issues that would weigh against the DCO being made.

4.15 INFRASTRUCTURE AND OTHER USES

- 4.15.1 NPS EN-3 paragraph 2.6.176 recognises that the scale and location of offshore wind development raises the likelihood of development being proposed in or close to areas where other offshore infrastructure is located (such as telecommunication cables or oil and gas pipelines) or other activities, such as oil and gas exploration/drilling, or marine aggregate dredging, take place.
- 4.15.2 Paragraph 2.6.183 of NPS EN-3 goes on to note that where a proposed wind farm potentially affects other offshore infrastructure or activity, a pragmatic approach should be taken by the decision-maker. A wind farm applicant will be expected to minimise negative impacts and reduce risks to ALARP.

²⁰ According to the risk ranking methodology 'broadly acceptable' is risk ALARP with no additional mitigations or monitoring required above embedded mitigations. 'Tolerable' is risk acceptable but may require additional mitigation measures and monitoring in place to control and reduce to ALARP [APP-125, Table 15.8].

4.15.3 Impacts of the Proposed Development on commercial fisheries, shipping and navigation, and aviation and MoD interests, are considered in sections 4.13, 4.14 and 4.16 of this chapter. The Applicant's ES Chapter 18 'Infrastructure and Other Users' [APP-126] considers impacts which could affect other activities that have a marine component.

Oil and gas interests

4.15.4 NPS EN-3 paragraph 2.6.178 notes that the Government grants licences to explore for and develop oil and gas reserves. Such activity could result in the construction of offshore infrastructure necessary for the extraction of any reserves discovered, including offshore platforms and pipelines, much of which require access for helicopters.

4.15.5 The Applicant's WTG array site overlaps with or is in close proximity to three blocks licenced under the Petroleum Act 1998 for the exploration and production of oil and gas on the UK Continental Shelf [REP2-022, Annexure A, Interface Map]. These blocks are held exclusively by Eni UK Ltd. The WTG array site directly and substantially overlaps part of block P.1965. However, it is also close to blocks P.1964 and P.2251, which Eni UK Ltd indicates it would seek to utilise concurrently.

4.15.6 Whilst benefiting from these UK Petroleum Production Licences (UKPPLs), Eni UK Ltd has not yet commenced exploration. Should this take place, and commercial quantities of oil and/or gas be discovered, the company would be authorised to move to exploitation.

4.15.7 ES Chapter 18 notes that consultation engagement between the Applicant and Eni UK Ltd had taken place, and that this would be ongoing [APP-192, section 18.6.1.5]. It states the difficulty in predicting the level of impact of the construction of the wind farm on future oil and gas activity, but that continued consultation should ensure the magnitude of impact would be low.

4.15.8 The ES further notes that the phasing of construction of the wind farm would have the potential to impact on some oil and gas activity:

4.15.9 *"(H)owever, this would be managed through consultation and it is not currently possible to determine which would be the preferred approach from the oil and gas industry's perspective. At present the impact significance of 'minor adverse' would apply to both Single Phase and Two Phased approaches"* [APP-192, section 18.6.1.5].

4.15.10 At an early stage in the Examination it was an undisputed position between Eni UK Ltd and the Applicant that there was scope for co-existence between oil and gas exploration and exploitation, and the construction and operation of the offshore wind farm [REP2-022 and REP3-005].

4.15.11 However, there was disagreement between the parties as to how such co-existence could be ensured; whether this should be by means of protective provisions to be included within the DCO, or by a

mechanism outwith the DCO-consenting process. Potential resolution of this matter became a principal Examination issue. The manner in which this issue was explored and evolved during the Examination is reported in detail in section 9.5 of Chapter 9 of this report.

- 4.15.12 The position reached by the close of the Examination was that the Applicant and Eni UK Ltd agreed on the wording of protective provisions which would satisfactorily address concerns regarding future co-existence of their respective interests. The ExA is content that the protective provisions as now contained within the recommended DCO would provide an acceptable and pragmatic mechanism to facilitate co-existence of both oil and gas exploration/exploitation and renewable energy generation interests.

Other wind farms, and cable and pipeline crossings

- 4.15.13 The closest consented wind farm project to the Proposed Development is that for EA1, which would be some 22km to the south. The ES notes that in terms of potential impacts during construction a strategic approach to developing the East Anglia Zone has been taken. Impacts on other wind farms within this zone are not therefore expected [APP-192, section 18.6.1].
- 4.15.14 The next nearest UK wind farm projects outside the East Anglia Zone are Scorby Sands, Galloper and Greater Gabbard [APP-192, Fig. 18.1]. In relation to the EA3 WTG array area, Scorby Sands would be the closest, some 65km to the west. The Round 2 Greater Gabbard Offshore Wind Farm site and the planned Round 2 extension Galloper Wind Farm are located some 80km and 74km respectively to the south-west of the EA3 WTG array area. However, they would be about 16km from the EA3 offshore cable corridor.
- 4.15.15 The EA3 export cables would need to cross both the Greater Gabbard Offshore Wind Farm and Galloper offshore export cables, in addition to a number of telecommunications cables and the Bacton to Zeebrugge gas interconnector pipeline [APP-126, section 18.6.1.3].
- 4.15.16 The ES notes that cable and pipeline crossing agreements with operators would be put in place post-consent as embedded mitigation [APP-192, section 18.6.1.3]. This would reduce the risk of impact during installation, with the significance of effect assessed as being 'minor adverse'. This would be applicable for both single- or two-phased modes of installation of the export cables.
- 4.15.17 The ES notes that in the operational phase the likelihood of damage to existing cables during maintenance activities is remote. With embedded mitigation through cable crossing agreements, significance of effect is also assessed as 'minor adverse'. Cabling would be left *in situ* so there would be no impact during decommissioning.
- 4.15.18 In its RR [RR-032], Galloper Wind Farm Ltd (GWFL) acknowledged discussion on cable crossing had taken place with the Applicant. In a

later Additional Submission [AS-045] GWFL stated its contentment that any potential interactions with regards to crossing of its cables can be resolved at the relevant time outside the DCO process.

- 4.15.19 In response to FWQ CO1 [REP2-028], the Applicant noted the agreement with both GWFL and Greater Gabbard Offshore Wind Limited that it was not at that stage necessary to enter into cable crossing agreements. During the Examination there were no further submissions from any party regarding sub-sea cable or pipeline crossings.
- 4.15.20 During construction there would be a possibility of increased burial of existing cables and pipelines. This could be from deposition of suspended sediment created during the installation of foundations and cables. The ES [APP-126, sections 18.6.1.2 and 18.6.2.2] notes that burial depths are not anticipated being sufficient to cause any damage to existing cables or pipelines or to affect maintenance. Consequently, the effect would be of 'negligible' significance. A similar assessment applies during the operational phase.

Aggregate dredging

- 4.15.21 There are no aggregate dredging areas within the proposed EA3 WTG array site [APP-126, section 18.6.1.4]. The export cable corridor lies some 926m to the south of dredging licence area 430. Cable installation works would be transient and temporary and are not expected to overlap with any aggregate sites. The ES records that no concerns were raised during consultation with the operators of licence area 430 and there would be a 'negligible' effect. This would be the case during both construction and operational phases and whether cable installation took place in either one or two phases.

Unexploded ordnance

- 4.15.22 The ES [APP-126, section 18.6.1.7] notes that there is a high number of vessel wrecks in the vicinity of the proposed development with the potential to contain unexploded ordnance (UXO). Data suggest the presence of a munitions dump site within the northern part of the WTG array site although geophysical surveys have found no evidence of this.
- 4.15.23 During construction, activities which interact with the seabed, or the placement of materials or cable installation, could disturb UXO with consequent potentially dangerous and damaging effects. To reduce the risk of UXO disturbance to ALARP, mitigation measures are proposed. These include pre-construction surveys and micro-siting of infrastructure. With these in place the risk of disturbance of UXO is considered by the Applicant to be low, with no greater risk involved if the two-phased construction approach (involving an additional offshore electrical platform and three additional platform link cables) is chosen [APP-126, section 18.6.1.7].

4.15.24 Pre-construction surveys are secured by Condition 17 of the Generation and Transmission Assets DMLs and Condition 9 in the interconnection DMLs within in the ExA's recommended DCO. However, in answer to FWQ CO3 [REP2-015] the MMO noted that the proposed:

"Condition 17 is a standard pre-construction licence condition for offshore wind farm consents. As it is not possible to fully assess the presence of unexploded ordnance at such an early stage it is standard practice for projects to apply for a separate marine licence for the assessment and clearance of UXOs following consent of the project. The MMO is content that the risk associated with UXOs can be dealt with through a separate marine licence application post-determination of the DCO".

4.15.25 The Applicant concurred with the MMO's comments [REP3-011]. Proposed Condition 17 does not contain specific reference to pre-construction surveys for UXO.

4.15.26 Risks presented by disturbance to UXO during the operational phase are assessed in the ES as 'negligible' [APP-192, section 18.6.2.6]. Mitigation measures for construction would be considered and incorporated into a decommissioning plan. The ES states that with such mitigation in place the residual risk of disturbance of UXO would be low and not significant [APP-192, section 18.6.3.2].

Ministry of Defence (MoD) activities

4.15.27 The ES records that there are no known existing MoD naval activities within the East Anglia Zone [APP-126, section 18.6.1.6]. Military practice and exercise areas (PEXA) exist to the south and south-west of the East Anglia Zone, with the Galloper PEXA some 16km south of the EA3 cable corridor. As there would be no overlap of these areas, the ES assessment is that there would be no impact. There have been no expressed concerns from the MoD in this regard.

Cumulative impacts

4.15.28 Given that the impacts assessed in this section of the report are considered to result in negligible or minor adverse effects, or are avoidable through embedded mitigation, at a cumulative level the effects upon infrastructure and other uses would be negligible and not significant.

4.15.29 The EA3 WTG array site is situated adjacent to Dutch territorial waters, where a number of offshore wind farm developments are proposed. The ES [APP-126, section 18.8] notes that the closest of the consented, but as yet unbuilt, wind farms would be some 26km distant. There would be a lack of any spatial overlap and any effect is therefore anticipated to be 'negligible' and not significant. There have been no representations to suggest a contrary view.

- 4.15.30 The ES also refers to impact on port facilities [APP-126, section 18.8]. However, as construction port(s) have yet to be decided, it is not possible to determine pathways for any impact. The selection and procurement process for the port(s) chosen for the construction phase would take account of capacities and schedules to determine the feasibility of their being able to adequately resource the requirements of the Proposed Development.

Conclusion

- 4.15.31 The ExA is content that in respect of the matters considered in this section the application complies satisfactorily with the requirements of EN-3. Consequently, the ExA does not consider that there are any outstanding issues that would weigh against DCO being made.

4.16 AVIATION

- 4.16.1 Section 5.4 of NPS EN-1 notes the need for applicants to address the possible effects of a development on civil and military aviation. This has been carried out in ES Chapter 16 'Aviation and MoD' [APP-124] and its supporting Technical Appendix [APP-187] and Figures [APP1-186].
- 4.16.2 Tables 16.9 to 16.11 of the ES [APP-124] record that for all phases of the Proposed Development (construction, operation and decommissioning), with embedded mitigation, there would be no significant effect on aviation or on military radar. This applies to the Proposed Development alone and cumulatively with other offshore wind farms.
- 4.16.3 However, without mitigation the ES notes that there would be a 'major significant' effect in respect of the operational wind farm causing permanent interference on military radar [APP-124, section 16.6.2.2] Depending on the maximum tip height of individual WTG and the detailed wind farm configuration, the EA3 array could be within radar line of sight of the MoD's Trimmingham (Norfolk) air defence Primary Surveillance Radar. When operational with rotating blades, WTG have the potential to generate false targets on radar displays as their characteristics are similar to an aircraft, so preventing the distinguishing of radar returns generated by WTG or aircraft.
- 4.16.4 The DIO's RR [RR-020] records that the MoD undertook several modelling assessments to assist the Applicant with the design parameters of the WTG array. These have been included in the Applicant's radar line of sight coverage plans within ES Appendix 16.1 [APP-187]. Appendix 16.1 concludes that the EA3 array site could accommodate WTG up to 193m above mean sea level across the entire site without the need for further mitigation. However, if WTG taller than this were to be sited within certain areas of the site, additional mitigation to prevent radar interference would be needed. ES Chapter 16 details the range of mitigation options that would be possible [APP-124, section 16.6.2.2].

- 4.16.5 The Applicant's original dDCO [APP-025] contained R33 relating to MoD surveillance operations. This requirement would prevent the construction of any WTG above specified heights within areas defined within a radar line of sight coverage plan until the SoS was satisfied, having consulted the MoD, that appropriate mitigation would be implemented and maintained for the life of the development. A radar line of sight coverage plan formed part of the application documentation [APP-023] and would be a certified plan required under Article 32(1) of the DCO.
- 4.16.6 In its RR [RR-020], the DIO referred to ongoing dialogue with the Applicant, noting that it was expecting a mitigation modelling report which would allow it to comment on the acceptability of the proposed R33. In response to FWQ AV1 [REP2-028], which asked for an update on the mitigation modelling report, the Applicant stated that a report had been submitted to the MoD and discussion on mitigation options had taken place. The Applicant's SoCG with the MoD [REP2-045] records the MoD's agreement that the assessment made in the ES is appropriate and:
- "... has made the correct conclusions insofar as (the Applicant) has identified in Appendix 16.1 and secured in draft DCO Requirement 33, the development parameters which would permit the Project to have no significant impact on the MoD's aviation and defence interests".*
- 4.16.7 R33 was carried forward unchanged to the Applicant's final dDCO (Version 6) [REP8-022] subject to minor drafting revisions. This requirement would ensure suitable mitigation and so reduce any residual effect to a level that is 'not significant' [APP-124, Table 16.9].
- 4.16.8 The Applicant noted in response to the ExA's questioning at the second Environmental Matters ISH [REP6-017] that the agreement to raise the draft height of 70% of the WTG by 2m (to reduce the chances of bird collisions) would not alter the maximum blade tip height. As such, the ExA is satisfied that R33 satisfactorily safeguards the MoD's aviation and radar interests and is thus included within the ExA's recommended DCO (Appx D).
- 4.16.9 The Civil Aviation Authority (CAA) in its RR [RR-006] indicated that it had no issues to raise concerning the Proposed Development but wished to be kept informed of progress and be consulted. The SoCG with the Applicant [REP2-038] notes the CAA's agreement to the inclusion of a requirement within the DCO. This would ensure the provision of necessary lighting as directed by the CAA and following consultation with the Defence Infrastructure Organisation Safeguarding. R32 of the ExA's recommended DCO secures this.
- 4.16.10 There were no other submissions raised regarding aviation interests during the Examination.

Conclusion

- 4.16.11 The ExA considers the application addresses adequately civil and military aviation and defence interests in accordance with Section 5.4 of NPS EN-1. Consequently, the ExA does not consider that there are any outstanding issues that would weigh against the DCO being made.

4.17 MARINE PHYSICAL ENVIRONMENT

Introduction

- 4.17.1 NPS EN-3 considers that the construction, operation and decommissioning of offshore energy infrastructure can affect the following elements of the physical offshore environment: water quality, waves and tides, scour effect, sediment transport and suspended solids. NPS-EN3 recommends that assessment "*should include predictions of the physical effect that will result from construction and operation of the required infrastructure and include effects such as the scouring that may result*".

Marine geology, oceanography, physical processes, water and sediment quality

- 4.17.2 Issues regarding marine geology, oceanography and physical processes are covered in ES Chapter 7 [APP-115]. Chapter 8 [APP-116] of the ES covers marine water and sediment quality. The worst case assumptions for the following elements of the Proposed Development are assessed in ES Chapter 7:
- wind turbine foundation footprints (Table 7.3);
 - near-surface sediment disturbance during construction (Table 7.4);
 - sub-surface sediment disturbance during construction (Table 7.5);
 - comparative test of scour hole development (Table 7.6);
 - scour protection footprints (Table 7.7);
 - foundations (Table 7.8); and
 - cables (Table 7.9).
- 4.17.3 For the potential impacts identified for marine geology, oceanography and physical processes on receptor groups, the residual impact is identified in the ES [APP-115] as 'negligible' during the construction phase. During the operational phase the residual impacts are identified as being 'minor to no impact'. The ES [APP-116] predicts all the effects of the Proposed Development on marine water and sediment quality to be 'negligible'.
- 4.17.4 In the ExA's FWQ MGPP1 [PD-012], the MMO and NE were asked to comment, in the absence of any detailed design information, in regard to the worst case scenario assumptions as detailed in Chapters 7 and 8 of the ES. In its response to FWQ MGPP1 [REP2-015], the MMO confirmed that it concurred with the Applicant's worst case scenarios regarding the potential effects on marine geology, oceanography,

physical process, marine water and sediment quality, as agreed under the Evidence Plan process, and as indicated in Appendix 7.1 of the ES [APP-145].

- 4.17.5 In its response to FWQ MGPP1 [REP2-015], NE reiterated its concerns in paragraph 5.3.2 of its RR [RR-003] that the minimum burial depth should be greater than 1m depth wherever possible to avoid potential scour effects and future exposure of the export cable. In regard to the cable burial depth concerns raised by NE, the Applicant proposed in its comments on WR [REP3-005] to amend Condition 13(g) of the draft DMLs to the effect that the cable specification and installation plan must also contain details relating to appropriate management of buried cables. This revision was included in Condition 13(1)(g)(ii) of the Generation and Transmission Assets DMLs, and Condition 6(f) of the Interconnection DMLs, of the Applicant's final draft DCO [REP8-022] and has been carried forward into the ExA's recommended DCO (Appx D).
- 4.17.6 Apart from its concerns regarding the need to secure a minimum cable burial depth, NE in its response to the ExA's FWQs [REP2-018] concurred with the Applicant's worst case scenario regarding potential effects of the Proposed Development on marine geology, oceanography, physical processes, marine water and sediment quality.
- 4.17.7 In response to FWQ MGPP6, the MMO [REP2-015] also confirmed its satisfaction that the borehole logs undertaken within the Proposed Development site, and the modelling simulations that were based on EA1, were acceptable.
- 4.17.8 The ExA's FWQ MGPP3 [PD-012] and SWQ MGPP10 [PD-018] requested that the Applicant provide further details regarding the eventual removal of concrete mattresses. In its response [REP5-012], the Applicant described various methods of removal without stipulating which of these would be adopted. Whilst the reservations expressed by NE [APP-115] are noted, the ExA has not been presented with any conclusive evidence that it would not be possible to remove the concrete mattresses on decommissioning.
- 4.17.9 In order to mitigate the elevated levels of arsenic that were found at sample site 30, the Applicant proposed [REP3-005] to include an appropriate condition in the DMLs requiring that no licensed activities take place within 250m of site 30 unless either a sediment sample survey has been submitted and approved or that sufficient mitigation has been secured. The Applicant's final dDCO [REP8-022] incorporated this mitigation by means of Condition 1 of the Transmission Assets DMLs. This is carried forward into the ExA's recommended DCO.
- 4.17.10 The Applicant and MMO completed a SoCG [REP7-021] in which it was agreed that the methodologies used for assessing the effects on physical processes were appropriate. Furthermore, it was agreed in the SoCG that, assuming the inclusion of the embedded mitigation

described in the ES, the impacts on marine geology, oceanography and physical processes were likely to be non-significant in EIA terms.

Coastal change

- 4.17.11 As regards the issue of coastal change, the LIR [REP2-001] stated that the Councils' main concern was the potential for the Proposed Development to interfere with coastal processes in the locality of the landfall point. It was contended in the LIR that the Proposed Development could have implications for cliff stability should erosion rates be affected. The specific concern was that the export cable ducts and cables would need protecting in the future. R13 of the ExA's recommended DCO (Appx D) would require a landfall method statement to be submitted and approved to address this matter.
- 4.17.12 In its SoCG [REP2-041] the EnvA confirmed that, for issues within its remit, it had no concerns in respect of the impacts of the Proposed Development on coastal processes or the proposed landfall.
- 4.17.13 The Applicant also set out in its final version of the dDCO [REP8-022] that Article 5(6) means that if a transfer or grant to another person occurred then the same restrictions, liabilities and obligations would also be transferred. This is carried forward into the ExA's recommended DCO.

Conclusion

- 4.17.14 The relevant IPs have stated that they are satisfied that the Applicant has had due regard to the marine physical environment. R13 and the conditions in the DMLs in the ExA's recommended DCO (Appx D) would provide for the submission of additional assessments in this regard prior to the commencement of any offshore works or relevant onshore works. As such, the ExA is satisfied that, overall, due consideration has been given to the marine physical environment, in accordance with NPS EN-3, and that the Proposed Development would not give rise to any significant detrimental effects in this regard.
- 4.17.15 Consequently, the ExA does not consider that there are any outstanding issues relating to the marine physical environment that would weigh against the DCO being made.

4.18 OFFSHORE ARCHAEOLOGY AND CULTURAL HERITAGE

Introduction

- 4.18.1 NPS EN-1 states that "*(T)he construction, operation and decommissioning of energy infrastructure has the potential to result in adverse impacts on the historic environment.*"
- 4.18.2 The assessment of the potential effects of the Proposed Development on offshore archaeology and cultural heritage is contained in Chapter 17 of the ES [APP-125]. In addition, a Draft Written Scheme of

Investigation: Archaeology and Cultural Heritage (Offshore) [APP-285] was submitted to accompany the application.

- 4.18.3 Later in the Examination, the Applicant submitted a revised Draft WSIO which was re-titled as 'Outline Written Scheme of Investigation: Archaeology and Cultural Heritage (Offshore)' (Outline WSIO) [REP6-051] and a Schedule of Mitigation for Offshore [REP6-055]. The Outline WSIO was amended to include references to aircraft within the model clauses and also to require the submission of a final WSIO.
- 4.18.4 Embedded mitigation is described in the ES [APP-125] as consisting of the following measures:
- implementation of Archaeological Exclusion Zones (AEZs) around known archaeological assets;
 - the design layout to avoid, where possible, the sites identified through geophysical survey as having potential archaeological interest;
 - measures to deal with unavoidable impacts to be set out in a WSI.
- 4.18.5 Whilst detailed design for the offshore works would not be undertaken until after the Order is made, R2 to R9 of the Applicant's final draft DCO [REP8-022], and also Conditions 1 to 6 inclusive of the Generation Assets and Transmission Assets DMLs, set out the design parameters for such works. These are also contained in Condition 1 of the Interconnection DMLs [REP8-022].
- 4.18.6 Additional mitigation for offshore archaeological works is contained in Conditions 13(1)(h) and 14(1) to (4) inclusive of the Generation Assets and Transmission Assets DMLs, and Conditions 6(g) and 7(1) to (4) of the Interconnection DMLs within the ExA's recommended DCO (Appx D). The ES [APP-125] makes reference to the use of AEZs for known receptors. Clarification as to the nature of the AEZs was sought in the ExA's FWQs OA1 and OA2 and was provided by the Applicant [REP2-028], to the satisfaction of the ExA.
- 4.18.7 In order to account for the offshore archaeological implications of the detailed design works, the Applicant proposes the use of the Offshore Renewables Protocol for Archaeological Discoveries (ORPAD) system for reporting and investigating any unexpected archaeological discoveries during construction and installation works [APP-125]. This would be secured as part of the written scheme of archaeological investigation in relation to the offshore Order limits seaward of mean low water that is required to be submitted and approved before any part of the licensed activities can commence.
- 4.18.8 The ES concludes that, with the proposed mitigation, the residual impacts of all stages of the Proposed Development for offshore archaeology and cultural heritage range from 'minor adverse' to either 'negligible' or 'minor beneficial'.

- 4.18.9 In its response to the ExA's FWQ OA4, the MMO [REP2-015] stated that it was content to defer to Historic England (HistE) but considered that offshore archaeology was adequately secured by Condition 13(h) of the Generation Assets and Transmission Assets DMLs. Furthermore, both the MMO [REP2-015] and HistE [REP2-010] considered that adequate assessment of the interconnector cables had been undertaken and they were addressed under the Interconnection DMLs of the draft DCO. HistE commented [REP2-010] that the mitigation measures are a standard industry approach, with ORPAD being a means to manage unexpected discoveries.
- 4.18.10 FWQ OA7 [PD-012] specifically asked HistE to comment on the Applicant's draft WSI for offshore archaeology. In its response [REP2-010], HistE indicated that in its WR [REP2-009] clarification had been sought regarding the assessment of the interconnector cables. In addition, HistE recommended that isolated discoveries of palaeoenvironmental material should be considered as being of 'medium' importance, not of 'low importance' as stipulated in Table 17.9 of the ES.
- 4.18.11 The Applicant's Comments on Written Representations [REP3-005] acknowledged a typographical error in the ES in relation to the interconnector cables and also contended that assigning a 'medium' importance for palaeoenvironmental material would not alter the outcome of the assessment in the ES [APP-125].
- 4.18.12 In response to FWQ OA7 [REP2-010], HistE requested the inclusion of a timetable for further site investigations. In its D7 response to the ExA's Rule 17 [REP7-008], HistE reiterated the concerns it had expressed in its Preliminary Environmental Information Report regarding the definition of "commence" in regard to offshore works. In response, the Applicant in its revised final dDCO [REP8-022] inserted a six month timeframe into Condition 13(1)(h) of Schedules 10 to 13, and into condition 6(g) of Schedules 14 and 15. As made clear in the Applicant's Comments on Responses to D7 [REP8-002], the Applicant had liaised further with HistE and the MMO and the Applicant's final draft DCO [REP8-022] was amended to reflect agreed wording. The amendment has been carried forward to the ExA's recommended DCO.

Conclusion

- 4.18.13 The Proposed Development has the potential to give rise to effects on offshore archaeology and cultural heritage. AEZs of 100m are proposed for those receptors that are already known. Offshore works have the potential to affect archaeological and heritage assets that are not yet known. However, mitigation for as yet unknown archaeological assets is also proposed in the form of conditions in the DMLs requiring the submission at least six months prior to the commencement of licensed activities of an archaeological WSI for the offshore Order limits seaward of mean low water.

4.18.14 Taking this into account, the ExA considers that the Proposed Development accords with NPS EN-1 and that there are no outstanding significant issues relating to offshore archaeology that would weigh against the DCO being made.

5 BIODIVERSITY, BIOLOGICAL ENVIRONMENT AND ECOLOGY

5.1 INTRODUCTION AND BACKGROUND

- 5.1.1 The Applicant's assessment of impacts on biodiversity is set out in ES Chapter 10 'Benthic Ecology' [APP-118], Chapter 11 'Fish and Shellfish Ecology' [APP-119], Chapter 12 'Marine Mammal Ecology' [APP-120], Chapter 13 'Offshore Ornithology' [APP-121], Chapter 23 'Terrestrial Ecology' [APP-131] and Chapter 24 'Onshore Ornithology' [APP-132]. These are supported by a number of appendices that contain technical reports and details of surveys and data collection.
- 5.1.2 In the DCO application documents, the Applicant [APP-113] considers constructing the offshore elements of the Proposed Development in either a single phase or in two phases. If in a single phase, the Proposed Development would be constructed in one build period of approximately 41 months. For the two-phased approach the Proposed Development would be constructed in a staggered way, with the construction of phase 2 commencing a maximum of 18 months after the start of the onshore construction of phase 1. The total construction period would span 45 months.
- 5.1.3 As explained by the Applicant in the EIA Methodology [APP-114], each of the environmental topics in the ES identifies potential impacts resulting from both a single phase and two-phased approach, the only differences in effects being during the construction phases.
- 5.1.4 The Applicant also considers both a HVDC and a LFAC electrical solution for the Proposed Development. In order for the EIA to be comprehensive and adequate, a worst case approach has been taken by the Applicant within the ES. This allows the worst case environmental impacts arising from both options to be considered, assessed and presented in this ES.
- 5.1.5 The Applicant at the close of the Examination [REP8-003] confirmed that the onshore construction element of the Proposed Development would take place as a single phase, apart from Work No.67 (the substation(s)), which would be constructed in either a single phase or in two phases. Therefore, the ExA considers that the worst case impacts have been assessed by the Applicant for the Proposed Development.
- 5.1.6 The primary biodiversity issues in relation to the Proposed Development are the potential impacts of the offshore wind farm (WTG, their foundations and cable connections) on marine mammals and offshore ornithology. Effects on European sites are dealt with in Chapter 6. This chapter of the report considers other protected sites, species and biodiversity issues.
- 5.1.7 The main EIA issues considered during the Examination included:

Offshore

- scour protection around jacket foundations;
- activities in 'site 30' (restricted area) shown on the works plan (offshore) [APP-010];
- minimum cable burial depth;
- noise impacts on harbour porpoise (*Phocoena phocoena*);
- cumulative impacts of noise on harbour porpoise;
- approach to collision risk monitoring (CRM) for birds;
- cumulative and in-combination impacts on birds; and
- ornithological monitoring.

Onshore

- maintaining connectivity for bat species;
- water voles (*Arvicola terrestris*);
- mitigation of impacts on skylark (*Alauda arvensis*); and
- impacts of disturbance on dark-bellied brent geese (*Branta bernicla bernicla*).

5.1.8 The ExA examined these issues through written questions and in two ISHs on 6 September and 25 October 2016. The concerns expressed by Whale and Dolphin Conservation (WDC) and The Wildlife Trusts (TWT) in relation to the Applicant's approach to noise assessments for harbour porpoise, and NE and the RSPB's concerns relating to assessing collision-related and displacement mortality of bird species, are considered in this chapter in relation to EIA deliberations. They are also considered in Chapter 6 in relation to HRA considerations.

5.2 OFFSHORE BENTHIC, FISH AND SHELLFISH ECOLOGY, MARINE MAMMALS AND ORNITHOLOGY

EVIDENCE PLAN

5.2.1 During the pre-application stage, the Applicant and a number of parties (including NE, the MMO, Centre for Environment, Fisheries and Aquaculture Science (Cefas), the RSPB, and SCC) engaged in an Evidence Plan process for benthic ecology, fish and shellfish ecology, marine mammals and ornithology. The agreement logs signed by NE at the time of the DCO application for Benthic Ecology are in Appendix 10.1 [APP-154], for Fish and Shellfish Ecology in Appendix 11.1 [APP-162] and for Marine Mammals in Appendix 12.1 [APP-164]. The agreement logs signed by NE, the RSPB and SCC at the point of the DCO application for both offshore and onshore ornithology are contained in the Offshore Ornithology Appendix 13.1 [APP-170].

5.2.2 The agreement logs record areas of agreement and any areas of outstanding disagreement at the point of the DCO application. NE [APP-154] stated that it "*cannot sign off on conclusions of the assessment, this can only be done once the DCO is submitted. The agreement log is welcome as an indication of what will be covered by the SoCG*".

ISSUES DISCUSSED DURING THE EXAMINATION

5.2.3 Benthic ecology

- 5.2.4 Agreement of the Applicant's methods used in the assessment of benthic ecology was achieved through the Evidence Plan process [APP-154] and was confirmed in the SoCG with NE [REP2-053, updated at REP7-023] and the MMO [REP2-055, updated at REP7-021]. No areas of disagreement were recorded.
- 5.2.5 The Applicant concludes in Chapter 10 of the ES [APP-118, Section 10.10] that the effects on benthic ecology are no greater than of 'minor adverse' significance and there is no requirement for additional mitigation measures other than those which form part of the embedded mitigation.
- 5.2.6 In FWQ BE1 [PD-012], the Applicant was requested by the ExA to clarify its reasoning behind the rationale for scour protection around suction caissons being one diameter either side of the caisson. The Applicant provided a satisfactory explanation in REP2-028, demonstrating that the estimated area of one caisson diameter either side of the caisson is a conservative estimate to allow for the scour effect of both the jacket leg and the caisson.
- 5.2.7 The Applicant assesses that a jacket structure with 10m suction caisson (the worst case for the largest WTG assessed) would require 2,827m² of scour protection and the worst case gravity base (60m) would require up to 25,500m² of scour protection. The gravity base is therefore used by the Applicant to represent the worst case scenario in terms of seabed disturbance and habitat loss.
- 5.2.8 There was a discrepancy in the total amount of scour protection between a figure of 2,673,260m² in the ES [APP-113, Chapter 5 Table 5.18] and 2.6726km² in Version 1 of the dDCO [APP-025, R9 of Schedule 1 Part 3]. The Applicant confirmed that the correct figure was 2,673,260m² and duly amended Version 3 of the dDCO [REP4-003]. The Applicant confirmed that this value was the worst case used within the assessment in the ES.
- 5.2.9 NE, in its RR [RR-003], sought further discussions with the Applicant on how the commitment to not placing gravity based structures in areas where sandwaves are greater than 5m could be secured in the dDCO.
- 5.2.10 In response to FWQ BE4 [PD-012], the Applicant proposed to include the following condition in the dDMLs, which is the same approach taken by the consented EA1 offshore wind farm:
- "No gravity base foundations may be installed in any area of the seabed with mobile sand waves of 5 metres or more, as identified by the swath-bathymetry survey carried out under condition 17(2)(b), unless otherwise agreed in writing by the MMO."*

- 5.2.11 NE [REP2-018] was content with the inclusion of this condition as Condition 16 in the Generation and Transmission Assets dDMLs [REP8-003] and there was no further comment on this issue throughout the Examination. The wording suggested for Condition 16 has been included in the ExA's recommended DCO (Appx D).
- 5.2.12 NE notes in its RR [RR-003] that, in relation to benthic ecology, elevated levels of arsenic were found to be present at sample station 30, within the offshore cable corridor. As described in section 4.17 of Chapter 4, the Applicant, NE and the MMO agreed to the need for additional survey work to be undertaken before any licensed activities take place. This is secured in Condition 1 within Schedules 12 and 13 (Transmission Assets DMLs) of the ExA's recommended DCO.
- 5.2.13 The status of the Orford Inshore recommended Marine Coastal Zone (rMCZ) was discussed in some detail during the Examination. NE in its RR [RR-003] stated that "(R)ecommended MCZ are a material consideration in the marine licensing process" and also that "Orford Inshore rMCZ contains a feature (subtidal mixed sediment) that may be affected by cable installation, operation and decommissioning." The Applicant states at paragraph 143 of ES Chapter 10 [APP-118] that "...at this stage the Orford Inshore recommended MCZ is not being considered for designation and therefore in line with guidance provided by the MMO it is not considered within this EIA."
- 5.2.14 The ExA in its FWQ BE6 [PD-012] requested clarification from NE and the MMO regarding the adequacy of the Applicant's ES and whether further assessment may be required for the marine licence in respect of the rMCZ.
- 5.2.15 Following discussions between the Applicant and NE, the Applicant agreed [REP2-028] to undertake an assessment of the potential impacts of the Proposed Development upon the Orford Inshore rMCZ. This assessment was submitted into the Examination as OEI [AS-022]. The conclusion of the assessment was that "there would be no pathway for the East Anglia THREE project to impact upon the proposed features within the Orford Inshore rMCZ, therefore no adverse effect on the site is predicted should it be designated".
- 5.2.16 During the consultation on the OEI, the Eastern Inshore Fisheries & Conservation Authority [AS-029] questioned whether the up to 2mm of predicted sediment deposits associated with cable-laying within 300m of the rMCZ boundary could affect spawning for sandeel (*Ammodytidae spp.*), Dover sole (*Solea solea*) or lemon sole (*Microstomus kitt*).
- 5.2.17 NE, at the second Environmental Matters ISH, responded that:
- "the rMCZ is proposed for mixed sediment not fisheries, so any sediment that goes into the rMCZ is not necessarily an issue. NE advises that whilst the rMCZ boundary was drawn around a specific area of mixed sediment, it is present in the wider area. The proposed*

cable installation methods (discussed in chapter 7 of the ES) are such that the impact is likely to be limited to a discrete area. Any sediment plumes that may occur as a result of foundation installation or disposal of dredge material, for example, would be short lived and NE does not have concerns for designated sites in this particular area or more generally where there is mixed sediment” [REP4-029].

- 5.2.18 The Applicant [REP4-006] concluded that sediment composition within the cable corridor closest to the rMCZ boundary is likely to be similar to that within the rMCZ and cable-laying operations close to the rMCZ would be of short duration. Therefore the Applicant “*does not anticipate that there would be any sediment deposition above that which occurs naturally within the area of the export cable corridor*”. There was no further comment from any IP on this issue throughout the remainder of the Examination.
- 5.2.19 Having carefully considered all of the evidence, and in particular given weight to the views of the Statutory Nature Conservation Bodies (SNCBs), the ExA is content that any sediment plumes arising from cable-laying operations would not have an adverse effect on the designated features of the rMCZ.
- 5.2.20 There was a discrepancy in the ES [APP-118] in the percentage of the East Anglia Zone affected by the Proposed Development, being stated in Chapter 10 paragraph 291 as 0.34%, and 0.43% in Table 10.2. The Applicant confirmed that the correct percentage is 0.43% and duly amended Version 3 of the dDCO [REP4-003], and that the error does not make a material difference to the significance of the effect on benthic ecology.
- 5.2.21 Having considered all of the evidence, and the mitigation measures relating to benthic ecology which the Applicant has included as an integral part of the application, the ExA is content that the requirements of NPS EN-1, NPS EN-3 and the MPS have been met.

Fish and shellfish ecology

- 5.2.22 The Applicant concludes in Chapter 11 of the ES [APP-119, Section 11.10] that the effects on fish and shellfish ecology are no greater than of 'minor adverse' significance and there is no requirement for additional mitigation measures other than those which form part of the embedded mitigation.
- 5.2.23 Agreement of the Applicant’s methods used in the assessment was achieved through the Evidence Plan process [APP-162] and is confirmed in SoCGs with NE [REP2-053, REP7-023] and the MMO [REP2-055, REP7-021]. No areas of disagreement are recorded.
- 5.2.24 NE, in its RR [RR-003], expressed concern that the minimum cable burial depth should be defined as 1m to mitigate for electromagnetic field (EMF) effects on sensitive fish species. However, after discussions with the Applicant, NE advised [REP4-029] that, whilst it retains its stance as a matter of principle, given the position of the export cable

and the Applicant's management details for buried cables contained in conditions of the dDMLs [REP4-004], the issue was resolved. These conditions have been carried forward into the ExA's recommended DCO as Condition 13(g) of the Generation Assets and Transmission Assets DMLs and Condition 6(f) of the Interconnection DMLs.

5.2.25 Marine Scotland [RR-031] considered it useful to acknowledge in the ES that sea trout (*Salmo trutta*) and eel (*Anguilla anguilla*) associated with Scottish waters and rivers could be present at the Proposed Development. The Applicant responded [REP-029] that as neither species were present in the site-specific fish surveys, and as the species were screened out during the Evidence Plan process, it did not propose any amendments to the ES. As no additional response was received from Marine Scotland, the issue was not investigated further.

5.2.26 Having considered the evidence and mitigation measures relating to fish and shellfish ecology which the Applicant has included as an integral part of the application, the ExA is content that the requirements of NPS EN-1, NPS EN-3 and the MPS have been met in this regard.

Marine mammal ecology

5.2.27 The Applicant concludes in Chapter 12 of the ES [APP-120] that, with the exception of cumulative impacts for underwater noise, the effects on marine mammals from the Proposed Development are no greater than of 'minor adverse' significance.

5.2.28 The key species identified as valued ecological receptors within the ES study area include harbour porpoise, grey seal (*Halichoerus grypus*) and harbour seal (*Phoca vitulina*). The overall conclusions of the ES are that, with embedded mitigation, effects on grey seal and harbour seal would be 'minor adverse' or less [APP-120, Tables 12.29 and 12.30] for the Proposed Development alone and when considering cumulative impacts.

5.2.29 Potential cumulative impacts for harbour porpoise from underwater noise due to piling are predicted in the ES to result in 'moderate adverse' effects based on the worst case scenario. However, the Applicant notes that the assessment includes a large amount of uncertainty, especially when considering which other offshore wind farms could be pile driving at the same time as the Proposed Development. The cumulative impact of piling noise on harbour porpoise is concluded, by the Applicant, to have the potential to be significant in EIA terms.

5.2.30 Agreement of the Applicant's methods used in the assessment was achieved through the Evidence Plan process [APP-164] and is confirmed in SoCGs with RWS [REP2-047], NE [REP2-053, REP7-023], the MMO [REP2-055, REP7-021], WDC [REP2-056, updated at REP7-025] and TWT [REP2-057, updated at REP7-019]. With the exception of WDC and TWT, no areas of disagreement are recorded.

- 5.2.31 Issues relating to the Southern North Sea pSAC are discussed in Chapter 6.
- 5.2.32 In its RR, NE advised [RR-003] that whilst it was satisfied that impacts to marine mammals have been thoroughly assessed in the ES, and that the proposed mitigation secured within the draft Marine Mammal Mitigation Protocol (dMMMP) is appropriate, there were several issues that it considered required attention by the ExA:
- consideration should be given to the use of the Population Consequences of Disturbance Model (PCoD) for assessing multiple pile driving operations in the English part of the North Sea;
 - the use of noise-reduction-at-source to mitigate piling level noise impacts; and
 - the Disturbance Effects on the Harbour Porpoise Population in the North Sea (DEPONS) project was due to report during the Examination and should provide further evidence of whether multiple piling operations in the North Sea are likely to have a population-level effect on harbour porpoise in the North Sea.
- 5.2.33 NE also stated that it was considering new evidence relating to corkscrew injuries to seals [RR-003]. It will discuss any further developments of this issue post consent, during future development of the MMMP as required by Condition 13(f) of the Generation and Transmission Assets dDMLs [REP6-024].
- 5.2.34 Both TWT and WDC raised concerns about the impact of the Proposed Development, particularly in relation to underwater noise from construction, in both their RR and WR [RR-022, REP2-07, and RR-002 and REP2-008 respectively]. Concerns highlighted were:
- The North Sea has a high value for cetacean populations and the potential impact on these populations from underwater noise associated with the development, particularly from pile driving is of concern. All cetaceans are afforded 'strict protection' under the Habitats Directive;
 - The harbour porpoise, which is present throughout the year, is considered particularly vulnerable to disturbance, injury or death from the noise generated by pile driving. This noise is also potentially capable of damaging hearing of harbour porpoises and driving away key prey species;
 - The DEPONS project, which aims to address the uncertainty of population consequences of disturbance, is not currently advanced enough to draw meaningful conclusions and is outside the Applicant's control;
 - The cumulative effects of this development with other industries operating in the marine environment, such as other renewable developments, shipping and oil and gas exploration, are largely unknown;
 - In relation to disturbance of harbour porpoise, the mitigation proposed in the dMMMP is not adequate as the dMMMP only

includes measures to mitigate the risk of death or injury and does not address the impacts of disturbance, particularly from cumulative impacts;

- Given the importance of the MMMP, TWT and WDC would like a commitment to wider consultation on it; and
- Further provision for impact studies at the site will be required to better understand the nature of the impact during construction and the In Principle Monitoring Plan (IPMP) should be updated to reflect this.

5.2.35 WDC suggested in both its RR [RR-002] and WR [REP2-008] a number of recommendations in the event that consent is granted:

- pile driving is not used at all during construction;
- if the recommendation of no pile driving is disregarded, that strict limits be placed on noise levels during construction, including cumulative noise, and that mitigation methods (such as a bubble curtain) are in place around the source to mitigate the impacts of radiated noise levels;
- a robust MMMP is developed for the range of species that can reasonably be impacted;
- the monitoring strategy is appropriate to consider cumulative impacts of all developments in the region;
- a robust MMMP should include shut-down when marine mammals approach within a specified distance of operations (mitigation zone);
- ground-truthing of modelled noise assessment data should be undertaken;
- should any incident that results in mortality occur during construction, activities should be halted immediately until an investigation can be completed; and
- an assessment report be publicly available within a reasonable timeframe of construction completion.

5.2.36 The Dutch Ministry of Infrastructure and the Environment, (RWS), drew attention in its RR [RR-016] to a number of issues related to marine mammals:

- There is a necessity for broad international co-ordination related to building activities in the North Sea, in order to be able to determine and minimise the effects on the environment and marine life;
- RWS has concerns regarding cumulative impacts on the harbour porpoise of wind farms in North Sea waters from different countries. A common approach for cumulative effect assessment is proposed; and
- It suggests recommendations to limit underwater noise levels to keep them below a level where significant negative effects on the harbour porpoise will not occur, and the monitoring of these noise levels.

5.2.37 All of these matters were addressed during the Examination through the ExA's written questions and during the two Environmental Matters ISHs.

Baseline Survey Methodology

5.2.38 WDC, in its WR [REP2-008], expressed concerns relating to the adequacy of the Applicant's baseline survey methodologies, commenting that:

- the methodology for the boat-based surveys used was not adequate for assessing relative marine mammal abundance;
- the area covered in the boat-based surveys was not large enough to fully assess the population of marine mammals that could be impacted;
- the surveys covered the EA1 project site and did not extend to the EA3 WTG array site, resulting in insufficient and imprecise data; and
- further dedicated marine mammal surveys should be undertaken.

5.2.39 WDC claimed that the methodology used to survey for marine mammals was designed for surveying seabirds in relation to offshore wind farms. It maintained that:

"Marine mammal surveys that are developed as an add-on to boat based bird surveys are inadequately designed monitoring programmes that cannot provide a sufficient baseline to characterise the environment".

5.2.40 The Applicant commented [REP3-005] that the boat-based surveys described in the ES [APP-120] were used only to provide context for the site-specific data, and no reliance was put on EA1 data to calculate the number of harbour porpoise in the EA3 WTG array site.

5.2.41 Estimates of abundance and density were generated from two years of site-specific (EA3 WTG array site plus 4km buffer) aerial surveys as described in the Applicant's Baseline Marine Mammal Technical Report [APP-165]. The site-specific surveys and densities generated from these surveys were determined by the Applicant to be more reliable and realistic for the Proposed Development, compared to the Small Cetaceans in the European Atlantic and North Sea surveys (SCANS II) which are now 10 years old. This was because of greater resolution and more recent dedicated survey effort. SCANS II surveys were also used for context but not to generate estimates of abundance or density.

5.2.42 The Applicant acknowledges that there may be some difficulties in identifying marine mammals to a species level from the aerial surveys. Taking a precautionary approach, all sightings classified as 'Unidentified dolphin/porpoise' in the survey data have been assumed by the Applicant to be harbour porpoise, and used to generate a maximum density for harbour porpoise.

- 5.2.43 The appropriateness of the survey methods, duration and analysis and characterisation of the baseline were agreed with NE during the Evidence Plan process [REP2-053].
- 5.2.44 WDC, in its SoCG with the Applicant [REP2-056], acknowledges that the assessment has been based on the best available evidence. WDC also agrees that:
- “the applicant has taken a precautionary approach to aerial surveys by assigning any unidentified cetaceans as harbour porpoise. We believe this is the best approach as it is well known it is hard to identify marine mammals to species level from high definition aerial surveys”.*
- 5.2.45 In the revised SoCG submitted at D7 [REP7-025], WDC stated that it is reviewing its position on aerial surveys, and its position regarding the difficulty of *“identifying marine mammal at species level from aerial surveys causes us to be cautious about the results of the survey and using these without a correlating boat-based surveys (sic) to obtain accurate baseline data”* may be subject to change. There was no further comment from WDC on this issue throughout the remainder of the Examination.
- 5.2.46 Having considered the evidence regarding the baseline survey methodology used by the Applicant in relation to marine mammals, and having given full regard both to WDC’s and NE’s submissions during the Examination, the ExA accepts that there are difficulties in accurately identifying numbers of marine mammals at species level. However, we consider that the Applicant has taken a precautionary approach and has based its assessment of abundance and density on the best available evidence.

Noise modelling

- 5.2.47 In ES Chapter 12 'Marine Mammal Ecology' [APP-120] the Applicant emphasises the level of uncertainty in completing a cumulative impact assessment and the need for strategic assessment. The Applicant refers to the DEPONS and the PCoD models, which will consider cumulative population level effects from underwater noise.
- 5.2.48 In its RR [RR-003] dated 23 March 2016, NE stated that the DEPONS project was due to report during the Examination and should provide further evidence of whether multiple piling operations in the North Sea are likely to have a population-level effect on harbour porpoise in the North Sea. A report entitled 'Comparison of the IPCOD and DEPONS models for modelling population consequences of noise on harbour porpoises'²¹ was published by DEPONS in May 2016.

²¹ Nabe-Nielsen, J. and Harwood, J. (2016). Comparison of the IPCOD and DEPONS models for modelling population consequences of noise on harbour porpoises. Aarhus University, DCE – Danish Centre for Environment and Energy, 22pp. Scientific Report from DCE- Danish Centre for Environment and Energy No 186. <http://dce2.au.dk/pub/SR186.pdf>

- 5.2.49 NE, in its response to the ExA's FWQ ECMM6 [REP2-018], stated that Version 1 of the DEPONS model had been completed, but further work was planned to improve the model and refine the input data. NE continued that "*the model still needs to be run under various scenarios which reflect the currently anticipated cumulative piling schedules of projects in the North Sea*".
- 5.2.50 NE explained in its RR [RR-003] that the PCoD approach provides a means of assessing and quantifying the potential consequences for marine mammals of any disturbance and/or injury that may result from the construction and operation of offshore marine energy developments such as wind farms. In response to the ExA's FWQ ECMM6 [PD-012], the Applicant [REP2-028] stated that, like DEPONS, the PCoD model continues to be developed and acknowledged that both of these models continue to be work in progress.
- 5.2.51 The Applicant agrees that early results suggest either model may, in the future, become a useful tool for undertaking cumulative assessments of the impact of disturbance to harbour porpoise in the North Sea. As agreed with NE [RR-003], no further work has been undertaken on this issue by the Applicant.
- 5.2.52 NE [REP2-018] provided the ExA with an update on progress with the PCoD model and concluded that "*this model is not currently set up to provide information about piling across the entirety of the North Sea*". The ExA did not explore this issue further during the Examination, but notes that once the PCoD model does become available, both the Applicant and NE consider that it would provide more information for a marine mammal mitigation protocol to draw upon.
- 5.2.53 In its WR [REP2-008], WDC stated that noise levels during construction remain a key marine mammal concern due to pile driving of pile foundations. It was concerned that monopile foundations are being considered and strongly recommended that neither monopiles nor pin piles are used.
- 5.2.54 WDC recognised that the Applicant has used worst case scenarios when modelling the noise impacts from pile driving, and agreed that this is appropriate. Nevertheless, it would like to see consideration of the full range of potential impacts from other foundations being assessed as many will still involve piling activity and will have different potential impacts. For example, gravity base foundations would create less noise, but could have a much larger impact on the benthic fauna including sandeel, a main prey species for harbour porpoise and northern minke whales (*Balaenoptera acutorostrata*).
- 5.2.55 WDC also expressed concerns about the accuracy of the noise modelling used by the Applicant in Chapter 12 of the ES [APP-120] in both its WR [REP2-008] and SoCG with the Applicant [REP2-056]. It

accepted that while Southall *et al.* (2007)²² is the only model currently available to developers, "there are many limitations to this modelling approach (acknowledged in the Southall paper itself), and they are extensive". WDC was concerned that by using this model, and not taking into account current research, the impact ranges identified by the Applicant are inaccurate and misleading.

- 5.2.56 In its comments on the WR, the Applicant [REP3-005] explained that driven piles are currently the most economic foundation in the offshore wind industry and offer flexibility within the design envelope. This is the most commonly used, tried and tested foundation type at this point in time. The Applicant continued to explain that for:
- "(P)otential impacts of underwater noise on cetaceans, the worst case scenario is considered to be foundation options that use pile driving, but other elements of the assessment consider other types of foundation. For example with respect to prey impacts, these are considered with reference to the Fish and Shellfish Ecology assessment (Chapter 11, Document reference 6.1.11). Chapter 11 considers impacts from underwater noise with reference to piled foundations but considers habitat loss with reference to gravity based foundations".*
- 5.2.57 The Applicant considers that the ES fully assesses the potential impacts and that no further consideration of alternative foundations is required.
- 5.2.58 In regard to noise modelling and the use of 'Southall *et al.*', the Applicant agreed the methods used in assessment of noise impacts with NE during the Evidence Plan process [REP2-053]. The Applicant also commented in REP3-005 that the metrics used in the assessment are consistent with the Marine Strategy Framework Directive.
- 5.2.59 At D7 WDC, in response to the ExA's R17 request [REP7-025], reiterated its concerns that 'Southall *et al.* (2007)' has been used for noise modelling.
- 5.2.60 RWS entered into a SoCG with the Applicant [REP2-047] in which both parties acknowledge that the approaches to assessment differ between the UK and the Netherlands. However, they agree that the conclusions of the impact assessment are appropriate for the UK regulations.
- 5.2.61 Both parties agree that progressive insights in underwater noise propagation and thresholds are gained on a regular basis and should be used to inform assessments without delay when applicable.

²² Southall, B.L., Bowles, A.E., Ellison, W.T., Finneran, J.J., Gentry, R.L., Greene Jr., C.R., Kastak, D., Ketten, D.R., Miller, J.H., Nachtigall, P.E., Richardson, W.J., Thomas, J.A., and Tyack, P.L. (2007). Marine Mammal Noise Exposure Criteria: Initial Scientific Recommendations. *Aquatic Mammals*, 33 (4), pp. 411-509

- 5.2.62 The ExA, in its SWQ ECMM8 [PD-018], asked whether RWS was satisfied with the proposals for consultation on the dMMMP. No further response was received from RWS by the close of the Examination.
- 5.2.63 After carefully considering all of the evidence, the ExA accepts that there remain limitations in the understanding and modelling of behavioural change on cetaceans from piling activities. However, it is accepted by all parties that the Applicant has used worst case scenarios for both cetaceans and prey species. Whilst the ExA fully accepts the shortcomings of 'Southall *et al.*' we do note the Applicant's comments in REP3-005 that the metrics used in the assessment have been agreed with NE and are consistent with the Marine Strategy Framework Directive. The ExA is, therefore, content that the noise modelling has been carried out to the satisfaction of NE.

Cumulative Impacts

- 5.2.64 Both WDC and TWT expressed concerns during the Examination relating to cumulative impacts of noise on harbour porpoise. Their concerns cover similar issues to those discussed in the in-combination effects section of the Southern North Sea possible Special Area of Conservation (SNS pSAC) which are covered in Section 6.7 of Chapter 6.
- 5.2.65 Considering the evidence relating to cumulative impacts, the ExA has carefully considered the concerns expressed throughout the Examination by WDC and TWT, and the evidence provided by NE as SNCB. The ExA is content that the Applicant has assessed the worst case scenario.
- 5.2.66 The ExA agrees with the Applicant's view that cumulative assessment includes a large amount of uncertainty [APP-120, Section 12.10]. We agree with the Applicant's assessment based on the worst-case scenario that the cumulative impact of piling noise on harbour porpoise in the absence of mitigation has the potential to have a 'moderate adverse' effect and is therefore significant in EIA terms. We are also in agreement with NE [REP5-009] that the draft Site Integrity Plan (dSIP) provides a pathway to ensure appropriate mitigation measures would be undertaken which should prevent significant effects on marine mammals.

Noise Monitoring

- 5.2.67 In its WR [REP2-008], WDC suggested that ground-truthing of modelled noise assessment data should be undertaken. The Applicant responded to a question raised by the ExA at the first Environmental Matters ISH [REP4-006] that noise monitoring will be undertaken during the installation of the first four piled foundations to verify the predictions of the noise modelling.
- 5.2.68 WDC [REP5-004] does not consider that monitoring the first four piles is either adequate or robust enough and considered that "*monitoring 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".

- 5.2.69 The Applicant responded at the second Environmental Matters ISH [REP6-017] that monitoring of the first four piles would be undertaken to determine whether the predictive noise modelling was comparable to the actual noise levels in order to verify that the mitigation measures were adequate. If the monitoring of the first four piles was considered to be inadequate then the MMO would request that further noise measurements were undertaken.
- 5.2.70 Noise monitoring of the first four piles is now secured by Condition 18(1) of the Generation Assets DMLs in the ExA's recommended DCO (Appx D). Condition 18(3) requires that the results of noise monitoring are to be provided to the MMO and, if appropriate, the MMO may then require further noise monitoring under Condition 18(2). The MMO [REP6-009] confirmed that it is content that *"there is sufficient provision within the DMLs to allow for additional noise monitoring to be undertaken if it is deemed required following assessment of initial monitoring results."*
- 5.2.71 In response to the ExA's question relating to the Marine Noise Registry (MNR) during the second Environmental Matters ISH, the Applicant stated [REP6-017] that it is *"committed to the voluntary submission of site investigation works (as appropriate) to the MMO via the voluntary process (as applicable)"*. Requirements for information to be submitted on the expected location, start and end dates of impact pile driving to satisfy the 'Forward Look' and 'Close Out' requirements of the MNR are secured in Condition 20 of the relevant DMLs in the recommended DCO (Appx D).

Noise mitigation

- 5.2.72 In Chapter 12 Section 6.1 of the ES [APP-120], the Applicant states that *"the ambient noise environment around the East Anglia THREE site would likely be dominated by local shipping ... and sea-state"* and continues that *"additional vessel movements during construction are likely to be short-term and localised in comparison to existing shipping noise"*. This results in an effect of 'negligible' significance on harbour porpoise and no further mitigation measures are considered by the Applicant beyond the embedded measures given in Section 12.3.2 of the ES [APP-120], which are stated as:
- *"At the time of the lease agreement with The Crown Estate, the East Anglia THREE site was selected to ensure there is no overlap between marine mammal designated sites at the East Anglia THREE site or offshore cable corridor.*
 - *The development of the project design has resulted in an increase in wind turbine size reducing the overall number of wind turbines. This would reduce noise impacts during construction*

and indirect impacts on prey species as a result of less pile driving and less vessel movements.

- *EATL will commit to the use of soft start and exclusion zones to prevent auditory injury to European Protected Species (EPS) during pile driving activities.*
- *EATL have provided a draft marine mammal mitigation plan (sic) (MMMP) with this application. The MMMP would be developed in the pre-construction period and will be based upon best available information and methodologies at that time in consultation with the relevant authorities.*
- *EATL will continue to review the development of alternative foundation installation (through industry and academic studies) and more efficient mitigation options for marine mammals”.*

5.2.73 WDC, in its WR [REP2-008], does not consider 'soft-start' piling to be an adequate mitigation measure to ensure there would be no significant effects from noise on marine mammals. It continues that 'soft start' is not a proven mitigation technique and so cannot be relied upon to mitigate impacts, especially for developments in close proximity to important and critical habitat areas.

5.2.74 WDC would like consideration of real-time mitigation measures including "*acoustic barrier methods and other techniques that have been proven in recent demonstration scale trial studies - Wilke (2012)*²³ *and Diederichs et al., (2013)*²⁴. *Such an approach is the only way to reduce the far reaching avoidance distances for small and large cetaceans”.*

5.2.75 Whilst NE in its RR [RR-003] considered that noise-reduction-at-source is the best mitigation to protect marine animals from injury and disturbance and that this matter requires attention by the ExA, it recognises the evolving nature of sound reduction technologies and "*is content that consideration of noise reduction measures can take place prior to construction, specifically within the Marine Mammal Mitigation Protocol”.* However, the ExA noted that there were no constraints within the dDCO originally submitted [APP-025] on the maximum hammer energy that would be used during piling.

5.2.76 In response to FWQ ECMM2 [PD-012], the Applicant agreed at D3 [REP3-011] to amend the dDCO to include a maximum hammer energy of 3500kJ, which equates to the worst case scenario assessed in the ES [APP-120]. NE [REP2-018] is in agreement with this and considers it an appropriate maximum as a condition of the dDCO. The maximum hammer energy specification has been included in the ExA's

²³ Wilke, F., Kloske, K. and Bellman, M. (2012) ESRa – Evaluation of Systems for Ramming Noise Mitigation at an Offshore Test Pile.

²⁴ Diederichs, A., Pehlke, H., Brandt, M., Bellmann, M., Oldeland, J., and Nehls, G. 2013. Does a big bubble curtain during pile driving minimise negative effects on harbour porpoises? Abstract Book. 27th Conference of The European Cetacean Society Interdisciplinary Approaches In The Study Of Marine Mammals, page 52. Available at <http://www.escolademar.pt/ecs2013/wp-content/uploads/ABSTRACT-BOOK-ECS-20132.pdf>

recommended DCO as Condition 2(9) of the Generation Assets DMLs. The MMO [REP2-015] is also content with this approach and the wording of the dDMLs in this regard [REP8-003].

- 5.2.77 Following the second ISH on Environmental Matters, the MMO stated [REP4-032] that the Applicant is required to report any exceedance of the maximum energy level during piling to the MMO. Any report would be investigated by the MMO enforcement team who may then recommend further action. This may include the variation, suspension or revocation of the DML, and/or prosecution resulting in fines and/or imprisonment. There was no further comment from any of the IPs on this issue throughout the remainder of the Examination.
- 5.2.78 Whilst TWT, in its SoCG with the Applicant [REP2-057], agreed that no additional mitigation was necessary, it provided the caveat that this was on the proviso that "*best practice was followed*". Following further examination and discussion, the Applicant produced a dSIP at D4 [REP4-013] which includes detailed mitigation measures for cumulative impacts, including noise. In its revised SoCG with the Applicant, TWT [REP7-020] added the statement that "(W)e understand that the impacts of disturbance is (sic) now included in the SIP". The development of the dSIP is discussed in detail in Section 6.7 of Chapter 6.
- 5.2.79 At D7, WDC [REP7-025] remained concerned about mitigation methods. It accepted that it is appropriate to decide on mitigation methods closer to construction to enable the use of the latest methods. However, it has remaining concerns about the robustness of baseline data, accuracy of noise modelling and that it does not consider the Joint Nature Conservation Committee (JNCC) guidance, on which the dMMMP is based, to be adequate. As such, it disagrees with the Applicant's conclusion that there would be no potential for any lethal effects or auditory injury, and that this risk to marine mammals can be reduced to within a few metres of the piling activity.
- 5.2.80 WDC reiterates that 'soft starts' are only a reduction in sound source at the initiation of a piling event and have not been proven as a mitigation measure. It has concerns that the JNCC guidance for 500m exclusion zones before commencing pile-driving is inadequate considering the potential impact range on harbour porpoise from the development.
- 5.2.81 The Applicant responded to WDC's concern about the extent of exclusion zones at D8 [REP8-002] by stating that, whilst it acknowledges that JNCC guidance includes for a 500m exclusion zone, the Applicant's assessment (as presented in APP-120) allowed for and assessed a larger zone of up to 1km.
- 5.2.82 WDC [REP7-025] maintains that:
- "Only proven mitigation methods that have been shown to reduce noise should be included in the MMMP"*. It concludes that: *"A recent*

study analysing the assessed the benefits of noise reduction to harbour porpoise during offshore wind construction found that if wind farms inside the Southern North Sea pSAC reduced their noise levels by the equivalent of around 8dB, the risk of a 1% annual decline in the North Sea porpoise population can be reduced by up to 66% (WWF, 2016). Such an approach is the only way to reduce the far reaching avoidance distances for small and large cetaceans”.

- 5.2.83 The Applicant points out in REP8-002 that the MMMP is intended only to prevent injury (and therefore also lethal effects) not disturbance, which is covered by the SIP.
- 5.2.84 The development of the dMMMP is discussed in detail in Section 6.7 of Chapter 6. To summarise, NE in its SoCG [REP7-023] agrees with the Applicant that *“the draft MMMP will be developed post consent in consultation with Natural England to reflect the most update (sic) advice on appropriate mitigation measures”.*
- 5.2.85 The MMO, in its SoCG [REP7-021], is in agreement with NE regarding the dMMMP, but also adds that it is agreed with the Applicant that *“condition 13(2) of the relevant DMLs, provide an appropriate framework for approving and securing any mitigation required post consent under the SIP for East Anglia THREE”.*
- 5.2.86 The ExA has carefully considered all of the evidence, and recognises in particular the concerns of WDC. We are content that the on-going development of both the dMMMP and SIP, with continued consultation from both TWT and WDC, provides sufficient confidence for us to recommend that appropriate mitigation measures are in place to protect marine mammals from noise impacts during the construction and operation of the Proposed Development. This, together with how consultation would be secured in the ExA's recommended DCO, is considered further within Chapter 6 of this report.

5.2.87 European Protected Species (EPS) Licence

- 5.2.88 At the first Environmental Matters ISH, the Applicant [REP4-006] acknowledged the requirement for an EPS licence for harbour porpoise, and potentially other marine mammal species.
- 5.2.89 In its response to the ExA's FWQ ECMM10 [REP2-025], NE [REP2-018] agreed with the Applicant's conclusions that a robust MMMP is required to prevent injury to EPS should pile driving be used. Therefore, as stated in section 12.3.2 of the ES [APP-120], the Applicant commits to the use of 'soft start' and the production of an MMMP in accordance with the dMMMP [REP8-003].
- 5.2.90 The dMMMP includes the establishment of exclusion zones (to a maximum of 1,000m) to prevent auditory injury to EPS during pile driving activities. Commitment to this embedded mitigation to prevent injury to marine mammals has been agreed through the Evidence Plan process with NE [APP-164] and is now secured in Condition 13 of the

Generation Assets and Transmission Assets DMLs in the ExA's recommended DCO (Appx D).

5.2.91 The ExA sought confirmation in FWQ ECMM14 [PD-013] from the MMO regarding any impediment in granting an EPS licence for harbour porpoise. The MMO responded in REP2-015 that “*based on available information and current evidence, the MMO could see no reason why an EPS licence would not be granted upon application*”. The ExA is therefore content that there is no reason in principle why an EPS licence would not be granted.

5.2.92 Having considered the evidence and mitigation measures relating to marine mammal ecology, which the Applicant has included as an integral part of the application, and the additional modifications and measures adopted during the Examination, the ExA is content that the requirements of NPS EN-1, NPS EN-3 and the MPS have been met.

Offshore Ornithology

5.2.93 The key species assessed for impacts in ES Chapter 13 'Offshore Ornithology' [APP-121] are those which the Applicant recorded during surveys and which are considered to be at potential risk either due to their abundance, potential sensitivity to wind farm impacts or due to biological characteristics (eg common flight at rotor heights) which make them potentially susceptible. The conservation status of these species as provided in the ES is given in Table 5.1.

Table 5.1 Summary of Nature Conservation Value of Key Species

Bird Species	Conservation Status
Red-throated diver (<i>Gavia stellata</i>)	BoCC Amber listed, Birds Directive Migratory Species, Birds Directive Annex 1
Black-throated diver (<i>Gavia arctica</i>)	BoCC Amber listed, Birds Directive Migratory Species, Birds Directive Annex 1
Great northern diver (<i>Gavia immer</i>)	BoCC Amber listed, Birds Directive Migratory Species, Birds Directive Annex 1
Fulmar (<i>Fulmarus glacialis</i>)	BoCC Amber listed, Birds Directive Migratory Species
Gannet (<i>Morus bassanus</i>)	BoCC Amber listed, Birds Directive Migratory Species
Arctic skua (<i>Stercorarius parasiticus</i>)	BoCC Red listed, Birds Directive Migratory Species
Great skua (<i>Catharacta skua</i>)	BoCC Amber listed, Birds Directive Migratory Species
Kittiwake (<i>Rissa tridactyla</i>)	BoCC Amber listed, Birds Directive Migratory Species
Lesser black-backed gull (<i>Larus fuscus</i>)	BoCC Amber listed, Birds Directive Migratory Species
Herring gull (<i>Larus argentatus</i>)	BoCC Red listed, Birds Directive

Bird Species	Conservation Status
	Migratory Species
Great black-backed gull (<i>Larus marinus</i>)	BoCC Amber listed, Birds Directive Migratory Species
Common tern (<i>Sterna hirundo</i>)	BoCC Amber listed, Birds Directive Migratory Species, Birds Directive Annex 1
Arctic tern (<i>Sterna paradisaea</i>)	BoCC Amber listed, Birds Directive Migratory Species, Birds Directive Annex 1
Common guillemot (<i>Uria aalge</i>)	BoCC Amber listed, Birds Directive Migratory Species
Razorbill (<i>Alca torda</i>)	BoCC Amber listed, Birds Directive Migratory Species

Note: BoCC – Birds of Conservation Concern

- 5.2.94 The Applicant concludes that during construction and operation, the impacts for any bird species from displacement or disturbance would result in effects of no greater than of 'minor adverse' significance.
- 5.2.95 The risk to birds from collisions with the WTG from the Proposed Development alone is assessed by the Applicant as resulting in effects of no greater than of 'minor adverse' significance for all species when considering all biological seasons against the most appropriate population scale. When considering the risk to birds from cumulative collisions with WTG across all wind farms the Applicant assesses the effect as no greater than of 'minor adverse' significance for all species with the exception of kittiwake, for which a 'minor to moderate adverse' effect is predicted.
- 5.2.96 Agreement of the methods used in the Applicant's assessment was achieved through the Evidence Plan process [APP-170] and is confirmed in the SoCGs with NE [REP2-053, REP7-023], RWS [REP2-047] and the RSPB [REP2-049, updated at REP7-027].
- 5.2.97 The SoCG between the Applicant and NE [REP2-053, REP7-023] confirms agreement of the baseline environment and impact assessment methodology, with the exception of agreeing relevant biological seasons for assessing displacement and the need for further population modelling. The assessment methodology and conclusions presented in the ES are agreed as being appropriate by both parties. There are, however, a number of issues with no current agreed position between the Applicant and NE in relation to the assessment of cumulative displacement impacts for guillemot, razorbill and puffin, and cumulative collision risk impacts for gannet, kittiwake and great black-backed gull.
- 5.2.98 In the SoCG between the Applicant and the RSPB [REP2-049, REP7-027], the RSPB is also not in agreement with the total cumulative collision risk to kittiwake, great black-backed gull and gannet.

- 5.2.99 Both the Applicant and RWS [REP2-047] acknowledge that the approaches to assessment methodology differ between the UK and the Netherlands.
- 5.2.100 In its RR, NE advised [RR-003] that Flamborough Head SSSI was a designated site relevant to this Proposed Development for which it had outstanding concerns regarding aggregations of kittiwake, gannet, common guillemot and razorbill breeding birds. The issues affecting the SSSI are similar to those affecting the Flamborough Head and Bempton Cliffs pSPA and are discussed further in Section 6.8 of Chapter 6.
- 5.2.101 NE had an additional five key concerns related to offshore ornithology in its RR. These were:
- use of Potential Biological Removal (PBR) vs. Population Viability Analysis (PVA);
 - EIA displacement impacts on guillemot, razorbill and puffin (*fratercula arctica*);
 - EIA impacts on kittiwake;
 - EIA impacts on great black-backed gull; and
 - Impacts on kittiwake as a feature of a European site (which is covered in Chapter 6).
- 5.2.102 NE also noted that there were no displacement matrices provided in the ES [APP-121] for the red-throated diver operational displacement assessments. NE advised that these should be included (as done for gannet and auks) for at least the EA3 WTG array site and 4km buffer with no gradient.
- 5.2.103 The RSPB's principal concern as expressed in its RR [RR-035] related to cumulative impacts associated with collision mortality to gannet and kittiwake and how these could be reduced by elevation of the hub height of the turbines to reduce collision risk.
- 5.2.104 RWS, in its RR [RR-016], requested the Applicant to reconsider the 'low to medium sensitivity' category for guillemot as research associated with other wind farms shows that guillemot have a high sensitivity to wind farms.
- 5.2.105 All of these matters were addressed during the Examination through the ExA's written questions and during the two Environmental Matters ISHs. The impact on bird species designated as European site features are considered in Chapter 6.
- 5.2.106 NE, in its RR [RR-003, Appendix 1], stated that "*kittiwake and puffin are now red listed and red-throated diver is now green listed on Birds of Conservation Concern 4 (2015)*" to which the Applicant responded to the ExA's FWQ ECO8 [REP2-028] that the changes since submission of the ES did not materially affect the assessment. NE, in its response to this question [REP2-018], stated that it is content that the changes would not materially alter the Applicant's conclusions of the impact assessment given in the ES [REP-121].

5.2.107 The RSPB stated in its response to FWQ ECO8 [REP2-025] that the change in kittiwake status added to its concerns relating to in-combination mortality, and advocated a rise in turbine height. This issue of conservation status was not addressed further in the Examination.

Ornithological Monitoring

5.2.108 NE raised concerns relating to the extent of ornithological monitoring in its WR [REP2-017]. The Applicant's original IPMP [APP-295] proposed monthly surveys during the key biologically-defined periods for kittiwake (November to February inclusive) in the three years after the Proposed Development has been commissioned.

5.2.109 Whilst NE agreed with the Applicant that the highest predicted ornithological impact is the cumulative collision-related mortality of kittiwake, it was of the view that other species should be considered. The offshore ornithological monitoring as proposed in the IPMP did not give consideration to monitoring other receptors where there is uncertainty over the impacts arising from the Proposed Development, particularly in relation to auks.

5.2.110 The extent and purpose of monitoring was discussed throughout the Examination. At D5 [REP5-018] the Applicant submitted a revised IPMP which included proposals for monitoring gannet, kittiwake and great black-backed gull for collision risk, and guillemot and razorbill for displacement. The Applicant confirmed at D4 [REP4-006] that the IPMP is a live document and discussions on appropriate species and methods of monitoring were ongoing with the relevant consultees.

Use of Potential Biological Removal vs. Population Viability Analysis

5.2.111 NE stated in its RR [RR-003] and WR [REP2-017] that, in relation to collision risk modelling, it does not advocate the use of Potential Biological Removal (PBR) modelling when Population Viability Analysis (PVA) modelling is available. It considers that the population-level impacts of predicted mortality from developments using PVA models allow the effects of factors such as population trends and varying demographic parameters to be explicitly investigated in terms of their effect on the population trajectory. PVA models also allow relative comparisons of population-level effects with and without the additional mortality to be considered in a way that is not possible with PBR.

5.2.112 Whilst the Applicant in its SoCG [REP2-053] broadly agreed with NE's position, it still considers PBR a useful preliminary tool for identifying population impacts for which more detailed modelling will be informative and those for which the relative scale of impact to population size is such that PVA is unwarranted.

5.2.113 NE advised in the SoCG [REP2-053] that PVA modelling should be carried out for great black-backed gull and up-to-date PVA modelling for gannet. The Applicant submitted a PVA for great black-backed gull

at D3 [REP3-005]. The Applicant also informed the ExA of a planned reduction in turbine numbers at the already consented EA1 offshore wind farm [REP4-006]. NE and the Applicant agreed in the revised SoCG [REP7-024] that, due to the revised design of the Proposed Development and a reduction in size of the EA1 development from a maximum of 240 to a maximum of 150 wind turbines, *“the total cumulative impact is now smaller than the consented position as of the Hornsea 2 consent”*. NE had no further concerns and stated that further modelling was not necessary.

- 5.2.114 In response to the ExA’s question in the second Environmental Matters ISH, NE [REP4-029] explained that in the case of auks it was in agreement with the Applicant that no population modelling was required. Whilst NE disagreed with the Applicant’s views on PBR, NE had come to the conclusion that 1% baseline mortality is only exceeded in excess of 70% displacement, which it believed to be appropriately precautionary, so as a consequence modelling was not required for the Proposed Development in this instance.
- 5.2.115 Whilst the Applicant did undertake PVA modelling for kittiwake [APP-173], NE questioned whether it was appropriate to rely on density dependent outputs and methods, rather than density independent, for identifying the appropriate population scale at which to assess impacts. NE’s view expressed at D4 [REP4-029] was that for the Proposed Development, due to the lack of evidence on the strength and form of density dependence, it recommended the use of independent outputs. NE advocated the presentation of both density independent and dependent outputs as a range, which the Applicant provided in Chapter 13 of the ES [APP-121].
- 5.2.116 In its comments on responses to the ExA’s FWQ ECO3 [REP3-002], the RSPB noted that the approach of using any Biologically Defined Minimum Population Scales (BDMPS) population for the PVA for kittiwake was novel, and required greater explanation and consideration from the Applicant. NE, at the second Environmental Matters ISH [REP4-029], stated that it shared the RSPB’s view that the approach was novel. Whilst NE welcomed the production by the Applicant of a PVA to assess EIA impacts on kittiwake, because of the relatively novel approach it was not clear as to the appropriate population scale.
- 5.2.117 The Applicant provided as Annex 1 of Appendix 2 to the SoCG [REP2-053] further information supporting the use of the North Sea BDMPS population scale as the best available at this time. NE accepted [REP4-029] that what the Applicant had presented was a valid option.
- 5.2.118 NE stated in its Written Submission for D4 [REP4-029] that, whilst it accepted the Applicant’s submission in the case of this Examination, NE did not want to set a precedent for future projects by stating a definitive position on what is an appropriate reference population for modelling impacts on an EIA scale.

Displacement impacts on guillemot, razorbill and puffin

- 5.2.119 NE in its RR [RR-003] and WR [REP2-017], and the RSPB in its SoCG [REP2-049], expressed concerns that they were unable to advise with certainty that the Proposed Development would not have a significant impact on guillemot, puffin, and razorbill from cumulative displacement during the operation of the wind farm.
- 5.2.120 The RSPB supported the inclusion of matrices presenting the full range of possible displacement and mortality rates for guillemot and razorbill. However, it was concerned that the figures emphasised within the ES [APP-121] are restricted to displacement of 20% to 40% and a mortality rate of 1%. The RSPB considered that displacement of up to 70% and a mortality rate of up to 10% represents an appropriate level of precaution.
- 5.2.121 NE's initial concern was that, when using the methodology that it advocates, the 1% of baseline mortality is exceeded under certain scenarios. The Applicant provided additional displacement matrices in Appendix 4 of the SoCG with NE [REP2-053] for cumulative displacement of auk species using NE's preferred methods. This included displacement of up to 100% and mortality of up to 100%.
- 5.2.122 The Applicant updated its assessment in Appendix 4 of REP2-053 to include worst case displacement mortality from the Proposed Development. This resulted in a highest PBR recovery factor of 0.167 for guillemot, 0.199 for razorbill and 0.066 for puffin. These recovery factors remain below NE's threshold of 0.2 for guillemot and razorbill and 0.1 for puffin.
- 5.2.123 The Applicant concluded that *"even using Natural England's precautionary methods for combining seasonal displacement... cumulative auk displacement is not predicted to have significant effects on the relevant populations"*.
- 5.2.124 The RSPB responded to the ExA's FWQ ECO3 relating to displacement of guillemot [REP2-025] by stating that it had had discussions with the Applicant post-acceptance and *"has no further comments regarding guillemot, razorbill and puffin displacement"*. NE confirmed, in response to the ExA's question in the second Environmental Matters ISH, [REP4-029] that using its preferred method (including summing seasonal displacement totals) for assessing guillemot, razorbill and puffin displacement, non-significant impacts were found for both the Proposed Development alone and cumulatively, and no further information was required.
- 5.2.125 RWS, in its SoCG with the Applicant [REP2-047], expressed the view that research into other wind farms shows that guillemot have a high sensitivity as far as disturbance is concerned and wished the Applicant to reconsider the category of 'low to medium sensitivity' for guillemot. NE, in its response to the ExA's FWQ ECO9 [REP2-018], recognised that the evidence is unclear but, as the Applicant had presented

matrices based on a full range of displacement and mortality, NE was content with the Applicant's assignation of sensitivity.

- 5.2.126 On considering the evidence presented during the Examination, the ExA is content to recommend that the effects of displacement from the Proposed Development both alone and cumulatively, on guillemot, razorbill and puffin would not be significant.

Impacts on kittiwake

- 5.2.127 Whilst NE in its RR [RR-003] and WR [REP2-017] welcomed the Applicant's use of PVA modelling to assess EIA impacts on kittiwake, it had a number of concerns with the approach. These included the reliance on density dependent outputs and the appropriateness of the population scale used. NE concluded that it was unable to advise with certainty that the Proposed Development would not have a significant effect on kittiwake.
- 5.2.128 The RSPB in its RR [RR-035] and WR [REP2-021] also had concerns with the potential for adverse effects on kittiwake from cumulative collision risk. It considered that these adverse effects could be significantly reduced through elevating the lower swept area of the wind turbines through a rise in hub height (thereby increasing the draught height of blades above the sea level). This would have the effect of reducing the percentage of birds flying at collision height and hence reducing collision risk.
- 5.2.129 The Applicant responded to both NE's and the RSPB's concerns at D3 [REP3-005]. Whilst there remained a disagreement between the Applicant and NE [REP4-029] about the appropriateness of density dependent or density independent modelling, the Applicant complied with NE's request to provide both outputs as a range [APP-121]. NE's and the RSPB's views about the novel approach in using BDMPS population for kittiwake are discussed above in 5.2.115.
- 5.2.130 The Applicant continued discussions with the RSPB during the Examination about the issue of increasing the draught height of the WTG. At D5 [REP5-012] the Applicant agreed to increase the draft height from 22m to 24m across 70% of the WTG array site. The draught height is defined in the dDCO [REP6-024] as "*meaning the distance between the lowest point of the rotating blade of the wind turbine generator and MHWS*". The Applicant's revised CRM [REP5-026], taking account of raising the draught height of 70% of the wind farm, reduces predicted annual collisions for kittiwake at EA3 WTG array site from 146 to 112 collisions.
- 5.2.131 NE [REP7-010] agreed with the ExA that it would be clearer if the number of WTG permitted to be developed at the 22m draught height was specified, rather than a percentage limit. The MMO confirmed [REP7-003] that it had agreed the following wording with the Applicant, NE and the RSPB that ensures enforceability of the Generation Assets dDML Condition 1(2): "*The number of turbines with*

a draught height of less than 24m from MHWS comprised in the authorised project must not exceed 52 turbines" [REP7-016]. This condition, amended to refer to wind turbine generators in accordance with the definition in Part 1 of the DMLs, is included in the ExA's recommended DCO (Appx D).

- 5.2.132 Also at D5, in response to the ExA's SWQ ECO 17, the Applicant informed the ExA and IPs [REP5-012] that East Anglia ONE Ltd had written to the SoS informing him that the HVAC option had been selected for the EA1 project and "(W)e can also advise that the HVAC offshore wind farm will comprise of one hundred and two, seven megawatt turbines." A copy of the East Anglia ONE Ltd letter is provided at REP5-025.
- 5.2.133 There was a debate between the ExA and the Applicant at the second Environmental Matters ISH [REP6-017] regarding the legal status of the statement referring to 102 turbines, as the HVAC option for EA1 allowed for "*a gross electrical output capacity of up to 750MW comprising up to 150 wind turbine generators.*" The Applicant stressed that the commercial reality is that a contract for 102 turbines has been entered into by EA1 with a supplier and only 102 turbines will be constructed. Notwithstanding this, collision risk modelling has been undertaken by the Applicant for 150 turbines, and this was presented at D5 [REP5-026].
- 5.2.134 The reduction in turbines for the EA1 project from up to 240 wind turbines to 150 has a significant effect on cumulative impacts for kittiwake at the EA3 WTG array site. The revised CRM for the updated EA1 wind farm indicates reduced predicted annual collisions of kittiwake from 314 to 209, using Band Model Option 1 and an avoidance rate of 98.9 [REP5-026, Table 5].
- 5.2.135 As described above, the Applicant has indicated that the maximum number of WTG that will be constructed for EA1 will be 102. Using this number, the Applicant demonstrates in its Revised CRM [REP5-026, Table 7] that this would result in a reduction of 173 kittiwake collisions when compared with the originally predicted number of 314. As the number of predicted kittiwake collisions for the Proposed Development, allowing for the increased draught height, is 112 this is less than the reduction in cumulative impacts arising from the lower number of WTG for EA1. Therefore, the net cumulative impact of EA3 will not exceed the original consented 314 collisions.
- 5.2.136 Whilst the RSPB [REP7-027] still has residual concerns about some approaches and scientific procedures used in the assessment of impacts by the Applicant, its concerns regarding significance of cumulative impacts on kittiwake have been reduced and it did not consider that "*further engagement from us regarding this project is required*" [REP5-005]. NE confirmed in its revised SoCG [REP7-023] that the "*updated cumulative totals including East Anglia THREE are not materially different from the most recently consented totals for Hornsea Project 2, therefore NE has no further concerns*".

5.2.137 The ExA is content that, with the reduced number of turbines for EA1 (even allowing for a total of 150) together with a maximum of 52 WTG at EA3 with a draught height of less than 24m from MHWS, the cumulative collision impact on kittiwake would not result in significant effects.

Impacts on great black-backed gull

5.2.138 NE in its RR [RR-003] and WR [REP2-017], and the RSPB in its SoCG [REP2-049], both expressed concerns that they were unable to advise with certainty that the Proposed Development would not have a significant effect on great black-backed gull. Their concerns were similar to those for kittiwake, including the reliability of depending on density dependent outputs and the appropriateness of the population scale used.

5.2.139 In its ES [APP-121], the Applicant had not carried out PVA modelling for great black-backed gull as it concluded that the cumulative impact on the population "*due to collisions both year round and during the non-breeding season is considered to be of low magnitude, and the relative contribution of the proposed East Anglia THREE project to this cumulative total is very small*".

5.2.140 NE, in its WR, re-iterated its position that a PVA was required as the total cumulative effects on great black-backed gull from collision mortality equates to 16.4% of baseline mortality for the largest BDMPS and 6.38% of baseline mortality for the biogeographic population. The RSPB, in its response to the ExA's FWQ ECO3 [REP2-025], also recommended that a PVA be developed to assess the impacts of cumulative collision risk on great black-backed gull.

5.2.141 At D3, the Applicant did provide a PVA for great black-backed gull [REP3-005] and concluded that the Proposed Development would contribute less than 5% of the cumulative collision total of 882. Whilst the RSPB [REP5-005] expressed concerns with the PVA methodology and findings, it concluded that, as a consequence of the changes in WTG draught height for EA3 and the reduction in turbine numbers for EA1, described above, it accepted the cumulative mortality would be reduced to previously consented levels.

5.2.142 As with kittiwake, the Applicant demonstrates in its Revised CRM [REP5-026] that the increase in WTG draft height from 22m to 24m across 70% of the wind farm site and the reduction in the number of wind turbines for EA1 provided a significant reduction in cumulative mortality. Table 7 of the Revised CRM predicts an annual reduction of 39 great black-backed gull collisions from the original EA1 consented 71, with a contribution from EA3 of 39. The updated cumulative total is, therefore, the same as the previously-consented total for EA1.

5.2.143 The RSPB's concerns regarding significance of cumulative impacts on great black-backed gull has been reduced and it did not consider that "*further engagement from us regarding this project is required*".

[REP5-005]. NE confirmed in its revised SoCG [REP7-023] that the *"updated cumulative totals including East Anglia THREE are not materially different from the most recently consented totals for Hornsea Project 2, therefore NE has no further concerns"* .

- 5.2.144 The ExA is content that, with the reduced number of turbines for EA1 (even allowing for a total of 150) together with a maximum of 52 WTG at the EA3 array site with a draught height of less than 24m from MHWS, the cumulative collision impact on great black-backed gull would not result in significant effects.

Impacts on gannet

- 5.2.145 The RSPB, in its RR [RR-035], identified one of its principal concerns as being the cumulative collision mortality for gannet. It considered that, as for kittiwake, the potential for adverse effects on gannets arising out of the Proposed Development could be significantly reduced through elevating the lower swept area of the WTG through a rise in hub height. The Applicant, in its Comments on RRs [REP2-029] stated that the *"project team are currently investigating the feasibility of implementing such a proposal and will continue to engage with RSPB on these matters during continued discussions"*.
- 5.2.146 NE, in its RR [RR-003], considered that further consideration of population modelling was required and it would welcome further discussions around the implications of cumulative effects. In its 'Comments on RRs' [REP2-029] the Applicant responded to NE's considerations that it was *"content that the gannet cumulative assessment is robust and demonstrates that cumulative impacts are below the level at which population consequences would be of concern"*.
- 5.2.147 Whilst the concerns regarding the cumulative CRM were explored during the Examination, the changes in the scale of the EA1 project and increases in draught height of WTG for EA3 enabled NE and the RSPB to come to an agreement with the Applicant.
- 5.2.148 As with kittiwake, the Applicant demonstrates in its Revised CRM [REP5-026] that the increase in draft height of WTG from 22m to 24m across 70% of the wind farm site, and the reduction in the number of wind turbines for EA1, would provide a significant reduction in cumulative mortality. Table 7 of the Revised CRM predicts that there would be an annual reduction of 117 gannet collisions from the original EA1 consented 213, with a contribution from EA3 of 49.
- 5.2.149 The RSPB's concerns regarding significance of cumulative effects on gannet have been reduced and it did not consider that *"further engagement from us regarding this project is required"* [REP5-005]. NE confirmed in its revised SoCG [REP7-023] that the *"the total cumulative impact is now smaller than the consented position as of the Hornsea 2 consent"*.

5.2.150 The ExA is content that, with the reduced number of turbines for EA1 (even allowing for a total of 150), together with a maximum of 52 WTG at EA3 with a draught height of less than 24m from MHWS, the cumulative collision impact on gannet would not result in significant effects.

Impacts on red-throated diver

5.2.151 NE commented in its RR [RR-003] that there were no displacement matrices provided in the ES [APP-121] for the red-throated diver operational displacement assessments. The Applicant responded in REP2-029 by explaining that, rather than present a matrix with a range of displacement values, it had used "*values derived from a study conducted over several years for a wind farm site near to the proposed development. Consequently the displacement percentages for Red Throated Diver (RTD) used in the assessment are grounded in evidence and are therefore considered to be robust and reliable*". NE made no further comments on this issue during the rest of the Examination.

5.2.152 NE calculated in its RR [RR-003] that the annual total predicted mortality for red-throated diver is 29 birds which, using the largest BDMPS (13,277 for spring/autumn migration in Furness (2015)²⁵) and the 0.228 mortality rate provided, equates to 0.96% of baseline mortality. NE considered the effect to be of 'minor adverse' significance.

5.2.153 The Applicant responded in its Comments on RR [REP2-029] by saying that it considered NE's approach of summing seasonal displacements to be overly precautionary. However, it presented an additional assessment in Annex 1 using the methods adopted by NE for the Hornsea Project 2 Examination [REP2-087]. The Applicant concludes that NE's conclusion of 'minor adverse' is the same as the estimate of significance presented in the ES [APP-121].

5.2.154 NE continued in its RR to advise that consideration should be given to operational and maintenance activities that may cause disturbance of red-throated diver as a result of transiting to the site from an operational port. However, it noted that if best practice vessel operations are adopted then there would be no significant effects either alone or cumulatively.

5.2.155 In response to the ExA's R17 letter of 17 November 2016 [PD-020], requesting comment on what best practice vessel operations entail and how these have been secured, the Applicant [REP7-018], the MMO [REP7-003] and NE [REP7-010] agreed the principles which would be used. Examples of relevant best practice include:

²⁵ Furness, R.W. (2015). Non-breeding season populations of seabirds in UK waters: Population sizes for Biologically Defined Minimum Population Scales (BDMPS). Natural England Commissioned Reports, Number 164

- restricting vessel movements to existing navigation routes (where the densities of red-throated divers are typically relatively low);
- where it is necessary to go outside of established navigational routes, selecting routes that avoid known aggregations of birds;
- maintaining direct transit routes (to minimise transit distances through areas used by red-throated divers);
- avoidance of over-revving of engines (to minimise noise disturbance); and
- briefing of vessel crew on the purpose and implications of these vessel management practices (through, for example, tool-box talks).

5.2.156 Once further information is available about the port(s) that would be used for construction, operation and maintenance, and the specific conservation objectives for red-throated diver are known, the Applicant stated in REP7-018 that it would agree with the MMO appropriate vessel traffic management measures.

5.2.157 Suitable amendments were made by the Applicant in dDCO Version 5, submitted at D8 [REP8-003] to Condition 13(1)(c) and (d) of the Generation and Transmission Assets dDMLs and Condition 6(c) and (d) of the Interconnection DMLs to cover identification of specific vessel routeing and procedures to be adopted within those routes. The amendments were discussed and agreed with both NE [REP7-010] and the MMO [REP7-003].

5.2.158 The ExA is content to recommend that the measures agreed with the MMO and NE and secured in Conditions 13 and 6 of the relevant dDMLs, which have been incorporated into the ExA's recommended DCO (Appx D), are sufficient to conclude that there would be no significant effects either alone or cumulatively on red-throated diver.

Ornithological conclusions

5.2.159 Having considered all of the evidence and the mitigation measures relating to offshore ornithology which the Applicant has included as an integral part of the application, and the additional modifications and measures adopted during the Examination, the ExA is content that the requirements of NPS EN-1, NPS EN-3 and the MPS have been met. Consequently, the ExA does not consider that there are any outstanding issues that would weigh against the DCO being made.

5.3 TERRESTRIAL ECOLOGY AND ONSHORE ORNITHOLOGY

5.3.1 The Applicant has proposed embedded mitigation in relation to terrestrial ecology which is detailed in Table 23.4 of ES Chapter 23 'Terrestrial Ecology' [APP-131]. This includes initial routeing and site selection to avoid key sensitive land uses, and the installation of cabling for the Proposed Development in ducts provided as part of the consented EA1 project.

DESIGNATED SITES

- 5.3.2 The statutory sites identified within 2km of the onshore electrical transmission works are detailed by the Applicant in Figure 23.1 of ES Chapter 23 [APP-210]. The ES records that there are three designated sites within the footprint of the onshore electrical transmission works, namely:
- Bawdsey Cliffs SSSI;
 - Deben Estuary Ramsar, SPA and SSSI; and
 - Suffolk Coast and Heaths AONB²⁶.
- 5.3.3 In terms of the statutory designated sites, Bawdsey Cliffs is a geological SSSI and is discussed further in Chapter 4 in section 4.7 on soils, geology and ground conditions.
- 5.3.4 The Deben Estuary Ramsar and SPA are discussed in Chapter 6. As for the SSSI, the ES [APP-131] states that the Deben Estuary would be crossed by pre-installed ducts and that jointing bays would not be required within the designated site. The Applicant acknowledges that there would be the potential for disturbance impacts on bird species as a result of construction noise. However, with embedded mitigation, the impact is assessed as 'minor adverse' and not significant.
- 5.3.5 Whilst the Suffolk Coast and Heaths AONB is not an ecological designation, there are however ecologically-important habitats within it such as saltmarsh, mudflat and wetland habitats. These habitats would be avoided by the use of pre-installed ducts from the EA1 project and the woodland element has also been avoided by routing and the use of pre-installed ducts.
- 5.3.6 The residual effects on these statutory designated sites are set out in Table 23.20 of the ES [APP-131]. The Applicant considers that the construction phase for the onshore cable route would give rise to a 'minor adverse/not significant' residual effect on statutory designated sites, but that there would be 'no impact' on such sites at the landfall or substation(s) elements.
- 5.3.7 In addition, there are five non-statutory designated sites, considered to be of value at county level, that lie within the footprint of the onshore electrical transmission works and access.
- 5.3.8 In terms of non-statutory designated sites, the Proposed Development is assessed in Table 23.20 of the ES [APP-131] as giving rise to a 'minor adverse' residual effect on these sites.
- 5.3.9 Effects on terrestrial ecology and ornithology have been assessed, after embedded mitigation, by the Applicant as being 'minor adverse/not significant' for all of the sites. There was no comment

²⁶ The AONB is an area designated for its landscape and recreational value.

from any IP on this assessment throughout the Examination. Having taken into account the relationship between the Proposed Development and the statutory and non-statutory designated sites, the ExA concurs with the Applicant's assessment.

Baseline Surveys

- 5.3.10 The surveys that accompany the ES were undertaken to inform the EA1 development. In addition, an updated Phase 1 habitat survey [APP-224], updated badger survey [APP-225] and an updated great crested newt survey [APP-226] were undertaken by the Applicant in 2014 and 2015. Taken together, these surveys confirmed the presence of the following species: otter (*Lutra lutra*), water vole (*Arvicola terrestris*), reptiles, including slow worm (*Anguis fragilis*) and common lizard (*Zootoca vivipara*), great crested newt (*Triturus cristatus*), bat species, badger (*Meles meles*), marsh harrier (*Circus aeruginosus*) and Cetti's warbler (*Cettia cetti*).
- 5.3.11 In the revised SoCG with NE [REP7-023] it is agreed that the survey data collected in relation to EA1 are appropriate. Furthermore, the Applicant and NE agree that the assessment of effects is appropriate and, assuming the inclusion of the embedded mitigation, is likely to be non-significant in EIA terms. They also agree in the SoCG that there are no HRA considerations with regard to terrestrial ecology.

Great crested newt

- 5.3.12 Survey information provided by the Applicant in ES Chapter 23 [APP-131] indicates that there are seven discrete areas where breeding ponds for great crested newts lie within 250m of the onshore cable route. In terms of mitigation, the Applicant in its OLEMS [REP6-046] proposes that all ponds within 250m of the onshore works will be surveyed prior to the commencement of construction operations.
- 5.3.13 An exclusion programme, using amphibian-proof fencing, is proposed in those areas identified in the survey. Indeed, at the ASI [EV-009] it was noted that such fencing had already been erected in the vicinity of the EA1 substation site. No areas of disagreement are recorded and no IPs raised any issues throughout the Examination.
- 5.3.14 The need for an EPS licence was not raised by any IP during the Examination. On the basis of the evidence available to the ExA it does not appear that there is any reason in principle why a licence would not be granted should one be required.

Reptiles

- 5.3.15 The ES [APP-131] records that the reptile presence/absence surveys in 2011 identified moderate populations in 13 locations and low populations in the majority of the other survey locations. Furthermore, optimal habitat locations were recorded in 11 locations in the 2014 survey.

- 5.3.16 The Applicant's proposed mitigation includes a hand search at the landfall area and a capture and release programme in one other area if a jointing bay is to be located there. Other mitigation measures, including hand searching followed by strimming/mowing of vegetation to discourage reptiles, are to be detailed by the Applicant in a subsequent Precautionary Method of Working document that is specified in the OLEMS [REP6-046]. No areas of disagreement are recorded and no IPs raised any issues throughout the Examination.

ISSUES DISCUSSED DURING THE EXAMINATION

Bats

- 5.3.17 The Proposed Development would entail the removal of some areas of vegetation. Whilst the Applicant did not identify any tree roosts for bats within the onshore cable route [Chapter 23 of ES, APP-131], a total of six hedgerows were identified as being of importance for bats. In addition, the Applicant states that external lighting will be required at the proposed substation(s). Proposed embedded mitigation includes a lighting strategy, minimising tree loss, micro-siting of the jointing bay locations to avoid sensitive areas, and also reducing the working width through hedgerows to 5.5m.
- 5.3.18 As discussed at the first ISH on Environmental Matters [EV-014 and EV-015], the revised OLEMS [REP6-046] has been amended to include the updated survey methodology as referenced in the updated Bat Conservation Trust Guidance²⁷.
- 5.3.19 In response to the ExA's FWQ EL7 [PD-012], the Applicant stated [REP2-028] that the EA1 construction works would be reinstated and that any gaps in hedgerows would be bridged via temporary fencing.
- 5.3.20 There was no further comment on this issue throughout the Examination.
- 5.3.21 The need for an EPS licence was not raised by any IP during the Examination. On the basis of the evidence available to the ExA, and the mitigation proposed by the Applicant, it does not appear that there is any reason in principle why a licence would not be granted should one be required.

Water Voles

- 5.3.22 In its RR [RR-024] Suffolk Wildlife Trust made reference to changes to the water vole licensing regime. In response to the ExA's FWQ EL6 [PD-012], NE confirmed [REP2-018] that pre-construction surveys should be carried out at the six watercourses that previously showed signs of water vole presence. The Applicant in its response [REP2-028] stated its belief that the requirement for a licence would be dependent

²⁷ Bat Conservation Trust: Bat Surveys for Professional Ecologists Good Practice Guidelines 3rd edition, 2016

upon whether the Proposed Development interacted with the water vole habitat, which would not be known until detailed design work has been undertaken.

- 5.3.23 The OLEMS [REP6-046] provides details of embedded mitigation for water voles including the use of dissuasion techniques. R21 of the ExA's recommended DCO (Appx D) stipulates that an ecological management plan, which accords with the OLEMS, needs to be submitted to and approved by the relevant planning authority for each stage of the construction works. Given the views expressed by NE in this regard, and the safeguard that R21 and R29 of the ExA's recommended DCO require additional survey work for EPS and additional mitigation if necessary, the ExA is satisfied with this approach.
- 5.3.24 There was no further comment on this issue from any party throughout the Examination.

General mitigation measures for legally protected species

- 5.3.25 As a precautionary measure, R29 of the ExA's recommended DCO (Appx D) requires final pre-construction survey work to be undertaken to establish the presence of any EPS. This is in addition to R21 of the ExA's recommended DCO that requires the submission and approval of an ecological management plan, to accord with the OLEMS, before any stage of the connection works can commence.
- 5.3.26 Paragraph 224 of the revised OLEMS [REP6-046] states that a Species Protection Plan would be implemented during the construction of the onshore electrical transmission works in compliance with R29 of the recommended DCO. This would act as a 'live' document to be referenced throughout the construction works.
- 5.3.27 R29 of the ExA's recommended DCO specifically refers to EPS and thus would not cover species such as badger, reptiles and Schedule 1 breeding birds whose presence the survey work has identified. However, as these species are specifically listed in the OLEMS [REP6-046], and R21 specifically requires the submission of an ecological management plan for each stage based on the OLEMS, it is the view of the ExA that the content and implementation of the Species Protection Plan would also adequately safeguard those species that have been identified as being present and which are not EPS.

Mitigation of impacts on skylark

- 5.3.28 SCC expressed concern in its RR [RR-024] that as the Proposed Development would result in a permanent loss of habitat for skylark, the impact on this Priority Species had not been mitigated by the Applicant. The Applicant, in Chapter 24 of its ES [APP-132], identified that one to two pairs of skylark would be displaced by the substation(s) site and associated planting.

5.3.29 Following discussions between the Applicant and SCC during the Examination, the parties confirmed in response to the ExA's SWQ EL10 [PD-018] that measures for skylark mitigation have been agreed [REP5-001, REP5-012]. These measures are:

- that for a period of ten years 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;
 - *"Create fallow plots at least 3m wide and with a minimum area of 16 square metres in winter cereal fields*
 - *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*
 - *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*
 - *After drilling, the plots can be managed with the same treatments as the remainder of the field.*
 - *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.*
 - *Mechanical weeding of crops containing skylark plots will destroy any nests present and is not recommended".*

5.3.30 The agreement is secured by a letter from the Applicant [REP5-031 and REP6-027], which includes a contribution for compensation. As the financial contribution was paid by the Applicant to SCC on 21 October 2016, there is no need for the payment to be secured through the DCO.

5.3.31 The ExA is content that the requirements of NPS EN-1 have been met in this regard.

General Points

5.3.32 In response to the ExA's FWQ EL3 [PD-012], the Applicant clarified the roles and responsibilities of the proposed Ecological Clerk of Works and the Arboricultural Clerk of Works [REP2-028]. The ExA is now satisfied that a clearer definition for these posts has been given, and is included in section 3.2 of the revised OLEMS [REP6-046].

5.4 CONCLUSIONS

5.4.1 The ExA considers that the Applicant has addressed the main areas of disagreement between the parties sufficiently for the purposes of satisfying NPS EN-1 and NPS EN-3.

5.4.2 The ExA's recommended DCO containing DMLs (Appx D) include modifications made by the Applicant in response to the

representations made by IPs and as agreed in the SoCGs and raised by the ExA during the Examination. We are satisfied that measures secured through the recommended DCO sufficiently mitigate the impacts on offshore benthic ecology, fish and shellfish ecology, marine mammals and ornithology.

- 5.4.3 The ExA accepts that differences remain between the Applicant and WDC regarding the accuracy of noise modelling, particularly for assessing cumulative impacts, for marine mammals, and between the Applicant, TWT and WDC regarding the nature of mitigation methods for marine mammals. However, having assessed the various documents relating to noise modelling and mitigation methods, considering the continuation of consultation with the IPs through the dMMMP and dSIP, and having given weight to the advice of NE, the ExA is content that the Applicant has complied with relevant legislation, policy and guidance.
- 5.4.4 The ExA also accepts that the RSPB has residual concerns about some approaches and scientific procedures used by the Applicant for assessing impacts on offshore ornithology. However, having assessed the various documents relating to the approaches and procedures used by the Applicant, and having given weight to the advice of NE, the ExA is content that the Applicant has complied with relevant legislation, policy and guidance in this regard.
- 5.4.5 With reference to an EPS licence for harbour porpoise, the ExA, having given due regard to the derogation tests under the EPS licensing regime, is content that these tests can be met and therefore has no reason to believe that a licence would not be granted by the MMO. The MMO gave no indication that a licence would not be forthcoming.
- 5.4.6 With regard to designated sites, the ExA welcomes the Applicant's decision, during the Examination, to increase the draught height of 70% of the WTG. This, combined with the secured reduction in turbine numbers for EA1, has satisfied the ExA that annual cumulative mortality for breeding gannet and kittiwake would have no adverse impact on the Flamborough Head SSSI. Similarly, on considering the evidence presented during the Examination, the ExA is content to recommend that displacement impacts both from the Proposed Development alone and cumulatively on guillemot and razorbill would not result in an adverse effect on the integrity of the SSSI.
- 5.4.7 The ExA is satisfied that the embedded mitigation to reduce the impacts of construction noise at the Debden Estuary SSSI would result in no significant disturbance to bird species. Adverse impacts on the ecologically-important habitats of the Suffolk Coast and Heaths AONB would be avoided by the use of pre-installed ducts from EA1 and the woodland element would also be avoided by routing and the use of pre-installed ducts.
- 5.4.8 The ExA welcomed the Applicant's agreement to undertake an assessment of the potential impacts of the Proposed Development

upon the Orford Inshore rMCZ during the Examination. We have carefully considered the evidence provided by all parties and, in particular, given weight to the views of the SNCBs. As a result, the ExA is content that any sediment plumes arising from cable-laying operations would not have an adverse effect on the protected features of the Orford Inshore rMCZ and that the requirements of NPS EN-1 have been satisfied.

- 5.4.9 The SNCB and relevant IPs agree that the Applicant has undertaken sufficient ecological assessment for the onshore element of the Proposed Development and that the mitigation provided in the OCoCP and OLEMS is appropriate. Furthermore, R29 of the ExA's recommended DCO (Appx D) provides an additional safeguard through the requirement for final pre-construction survey work for EPS, including a scheme of protection and mitigation measures if presence is found.
- 5.4.10 Some detailed issues, design matters and approvals remain to be resolved. The ExA is satisfied that these would be adequately addressed through application of the recommended DMLs. These include requirements for a construction and monitoring programme, MMMP, SIP, scour protection management, and a mitigation scheme for any features of ecological, biological and economic importance identified by pre-construction benthic surveys.
- 5.4.11 The ExA therefore concludes that the application meets the requirements of NPS EN-1 and NPS EN-3 for offshore benthic, fish and shellfish ecology, marine mammals, offshore ornithology, terrestrial ecology and onshore ornithology, and Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010. The matter is carried forward into the planning balance in Chapter 7 of this Report, where it is accorded weight in favour of the proposal.

6 FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS

6.1 INTRODUCTION

- 6.1.1 The SoS is the competent authority for the purposes of the Habitats Directive²⁸, the Habitats Regulations²⁹, and the Offshore Marine Regulations³⁰ for applications submitted under the PA2008 regime.
- 6.1.2 This chapter sets out the ExA's findings and conclusions in relation to effects on European sites³¹ and is intended to assist the SoS in performing his duty under the Habitats Regulations and the Offshore Marine Regulations.
- 6.1.3 The ExA has been mindful throughout the Examination of the need to ensure that the SoS has such information as may reasonably be required to carry out his duties as the competent authority. Consent for the Proposed Development may only be granted if, having assessed the potential adverse effects the Proposed Development could have on European sites, the competent authority considers it passes the relevant tests in the Habitats Regulations.

6.2 LEGISLATIVE BACKGROUND AND POLICY

- 6.2.1 Regulation 61 of the Habitats Regulations states that if a proposed development is likely to have a significant effect on a European Site (either alone or in combination with other plans and projects), and is not directly connected with or necessary to the management of the European site, then the competent authority must undertake an appropriate assessment of the implications for that site in view of its conservation objectives.
- 6.2.2 Consent for a proposed development can only be granted if, having assessed the effects the project would have on European sites, the competent authority's appropriate assessment concludes that the integrity of European sites would not be adversely affected, subject to Regulation 62 (considerations of overriding public interest).
- 6.2.3 Section 4.3 of NPS EN-1 specifies the approach that should be taken by the decision-maker in relation to the Habitats Regulations.

²⁸ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as codified) (the 'Habitats Directive')

²⁹ The Conservation of Habitats and Species Regulations 2010 (as amended) (the 'Habitats Regulations')

³⁰ 3 The Offshore Marine Conservation (Natural Habitats, &c) Regulations 2007 (as amended) (the 'Offshore Marine Regulations') apply beyond UK territorial waters (12 nautical miles (nm)). These regulations are relevant when an application is submitted for an energy project in a renewable energy zone (except any part in relation to which the Scottish Ministers have functions).

³¹ The term European sites in this context includes Sites of Community Importance (SCIs), Special Areas of Conservation (SACs), candidate SACs, possible SACs, Special Protection Areas (SPAs), potential SPAs, Ramsar sites, proposed Ramsar sites, and any sites identified as compensatory measures for adverse effects on any of the above. For a full description of the designations to which the Habitats Regulations apply, and/or are applied as a matter of Government policy, see PINS Advice Note 10.

Decision-makers are also enjoined to afford the same level of protection to pSPAs and to listed Ramsar sites. The National Planning Policy Framework requires decision-makers in England to also give the same level of protection to potential SPAs, possible Special Areas of Conservation (pSAC) and proposed Ramsar sites.

6.3 MATTERS CONSIDERED DURING THE EXAMINATION

- 6.3.1 The Applicant submitted a report with its DCO application to inform a HRA under Regulation 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended) entitled 'Information for the Habitats Regulations Assessment' [APP-101] (the 'HRA report'). Accompanying the HRA report were screening matrices [APP-102], integrity matrices [APP-105], and further supporting appendices [APP-103, APP-104, and APP-106].
- 6.3.2 The SoS for Communities and Local Government (SoSCLG) considered that the information provided in the HRA report was adequate for acceptance of the application for examination.
- 6.3.3 During the pre-Examination stage, the ExA accepted the submission of the following post-acceptance documents: an erratum to the HRA report regarding in-combination collision mortality of kittiwake [AS-003 and AS-008 (a duplicate of AS-003)]; and a correction to the marine mammals cumulative assessment data [AS-009].
- 6.3.4 The Applicant submitted further evidence during the Examination which included:
- an updated assessment of effects on the Southern North Sea (SNS) pSAC [REP4-016 and REP6-021];
 - updated in-combination collision risk modelling following a reduction in the number of WTG proposed for the EA1 offshore wind farm [REP4-011 and REP6-044];
 - updated collision risk modelling following a change to the draught height of the majority of WTG in the Proposed Development [REP5-029]; and
 - revised screening and integrity matrices in respect of a number of SPAs [REP2-088, REP2-089 and REP5-029] and for the SNS pSAC [REP6-022].
- 6.3.5 During the Examination some of the information provided by the Applicant in both the HRA report and subsequent evidence was the subject of dispute between the Applicant and various IPs.
- 6.3.6 The ExA sought to clarify the various disputed issues raised during the Examination through two rounds of written questions, two ISHs and requests for information under Rule 17 [PD-022 and PD-023]. This resulted in a number of IPs submitting additional evidence which is discussed below in the sections covering likely significant effects (LSE) and adverse effects on integrity (AEoI).

- 6.3.7 A Report on the Implications for European Sites (RIES) was prepared during the Examination by the ExA with support from the Inspectorate's Environmental Services Team. The purpose of the RIES [PD-021] was to compile, document and signpost information provided in the DCO application, and the information submitted throughout the Examination by both the Applicant, the relevant Statutory Nature Conservation Bodies (SNCBs), and other IPs.
- 6.3.8 The RIES [PD-021] was published on the Inspectorate's National Infrastructure planning webpage for the Proposed Development and circulated to IPs, including to the relevant SNCBs, on 17 November 2016. Consultation on the RIES was undertaken between 17 November and 8 December 2016.

6.4 RELEVANT EUROPEAN SITES AND THEIR QUALIFYING FEATURES

- 6.4.1 As described in Chapter 2 of this report, the Proposed Development comprises up to 172 WTG located in the Southern North Sea, at its closest approximately 69km east of Lowestoft in Suffolk. Connection to the National Grid would be via sub-sea cables laid between the site and the landfall at Bawdsey. From the landfall, the cables would be buried along a 36km onshore cable route to a location of new substation(s) near Bramford where a National Grid Substation exists (the cables would be pulled through pre-installed ducts laid during the onshore works for the EA1 offshore wind farm). The Proposed Development is not connected with, or necessary to the management for, nature conservation of any European site.
- 6.4.2 The full list of UK European sites considered by the Applicant during the Examination is included as a table in Annex 2 to the RIES [PD-021]. No other European sites or qualifying features potentially affected by the Proposed Development were identified by IPs during the Examination.
- 6.4.3 The onshore cable route for the Proposed Development would be located within and under the Deben Estuary SPA and Ramsar site, and the offshore cable route crosses the Outer Thames Estuary SPA and Outer Thames Estuary pSPA (an extension to the SPA). Other European sites, such as the Flamborough and Filey Coast pSPA/Flamborough Head and Bempton Cliffs SPA (FFC pSPA/FHBC SPA), are functionally linked to the Proposed Development as some of the birds which are features of these sites are present on the Proposed Development site.
- 6.4.4 A number of draft SACs (dSACs) for harbour porpoise were being considered at the point of the DCO application, and the HRA report [APP-101] identified the SNS dSAC as a site for further assessment. However, due to the absence of a public consultation on the dSAC at the time of the DCO application, members of the Evidence Plan Steering Group [APP-101 and APP-107] considered it was appropriate

for the Applicant to provide additional information at a later date, following the release of site details.

- 6.4.5 A consultation was issued for the SNS pSAC on 19 January 2016, at which point, under UK Government policy, the pSAC is treated as if it is a formally designated European site. The Applicant submitted an interim HRA report for the SNS pSAC at D3 [REP3-012] (the 'Interim SNS pSAC HRA report'). This was followed by a full HRA report for the SNS pSAC at D4 [REP4-016] ('Revision A SNS pSAC HRA report'). The latter was superseded by a further revision at D6 [REP6-021] ('Revision B SNS pSAC HRA report').
- 6.4.6 The HRA report [APP-101] included consideration of a number of European sites located within Scotland and Wales, all of which were screened out of further assessment by the Applicant. Scottish Natural Heritage (SNH) and Natural Resources Wales (NRW) were invited to the Examination by the ExA as 'other persons' [PD-007 and PD-006, respectively].
- 6.4.7 NRW did not provide any comments or representations. SNH responded to the invitation stating that for any issues affecting Scottish nature conservation interests, advice should be sought in the first instance from Marine Scotland [REP2-115]. Marine Scotland registered as an IP to the Examination, but did not provide any comments or representations in respect of European sites.
- 6.4.8 The Applicant considered potential impacts on European sites in other European Economic Area (EEA) States [APP-101 to APP-106], including European sites located within Sweden, Denmark, Germany, the Netherlands, Belgium, France and Ireland. During the pre-application stage, and as part of the EIA Regulation 24 process, the SoSCLG notified the EEA States identified above informing them about the Proposed Development. Of these, Belgium and France responded to confirm that they wished to be consulted on the proposed application.
- 6.4.9 Rijkswaterstaat (RWS), the Ministry of Infrastructure and the Environment in the Netherlands, registered as an IP to the Examination. Sweden [OD-009] and Denmark [OD-014] confirmed that they did not wish to participate in the Regulation 24 consultation process. No other EEA States responded to the SoSCLG's notification. Transboundary matters have been referred to in Chapter 3 of this report. Representations made in respect of HRA matters by RWS as an IP to the Examination are discussed below.

6.5 HRA MATTERS CONSIDERED DURING EXAMINATION

- 6.5.1 Two key HRA matters were the focus of the Examination:
- The effect of the Proposed Development in combination with other offshore wind farms on the kittiwake and gannet features of the FFC pSPA and the kittiwake feature of the FHBC SPA; and

- The effect of the Proposed Development alone and in combination with other plans and projects on the SNS pSAC.

6.6 FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS ON EUROPEAN SITES

THE HRA REPORT

- 6.6.1 Section 2 of the HRA report [APP-101] presents the Applicant's HRA screening assessment in respect of all European sites, with the exception of the SNS pSAC, which is included in the Revision B SNS pSAC HRA report [REP6-021] and discussed further below. Screening matrices for all European sites, excluding the SNS pSAC, were provided by the Applicant as APP-102, REP2-088, and REP2-089. The screening matrices for the FFC pSPA and FHBC SPA were updated by the ExA in the RIES (see Annex 4 of the RIES) [PD-021].
- 6.6.2 No concerns were raised during the Examination in respect of the methodology used by the Applicant to identify European sites likely to be significantly affected by the Proposed Development. No concerns were raised by IPs about the scope of the in-combination assessment presented in the HRA report [APP-101]. No other projects or plans were identified by IPs during the Examination in respect of the Applicant's HRA assessment in the HRA report.
- 6.6.3 The SoCG between the Applicant and NE ([REP2-053], updated at D7 [REP7-023]), did not identify any areas of concern with regard to the Applicant's approach to the in-combination and cumulative assessments. NE confirmed in the SoCG that the Applicant's screening of plans, projects and impacts for the cumulative assessments in respect of offshore habitats, benthic ecology, fish, marine mammals, terrestrial/onshore ecology, and onshore ornithology was appropriate. In respect of offshore ornithology, NE agreed that the list of wind farms included in the cumulative assessment was complete and the correct tiers had been assigned [REP7-023].
- 6.6.4 During the Examination, a SoCG was provided between the Applicant and RWS [REP2-047]. This SoCG noted agreement in respect of European sites considered for potential likely significant effects on marine mammal species that were screened out from the HRA. It stated that given the date on which the application was submitted, the correct list of European sites was considered and that it was appropriate to screen out these sites. In respect of offshore ornithology, the Applicant and RWS were in agreement that the HRA screening process had been undertaken appropriately.
- 6.6.5 During the pre-Examination stage and the course of the Examination, a number of public consultations were issued in respect of European sites. These included possible European sites for harbour porpoise in the UK (including the SNS pSAC discussed below); a proposed extension to the Outer Thames Estuary SPA and additional qualifying features (the Outer Thames Estuary pSPA); and a new site, the

Greater Wash pSPA. NE had already made the Applicant aware of the latter two European sites and these were considered and screened by the Applicant in the HRA report [APP-101 and APP-102] (for the Outer Thames Estuary pSPA features see Site 137 in REP2-088; for the Greater Wash pSPA see Site 078 in REP2-089).

OUTER THAMES ESTUARY SPA/PSPA

6.6.6 During the Examination, the ExA [PD-012] asked both NE and the Royal Society for the Protection of Birds (RSPB) whether the public consultation on the Outer Thames Estuary pSPA altered the Applicant's screening conclusion of no LSE on this site in respect of the additional qualifying features referred to in the consultation.

6.6.7 NE confirmed in response [REP2-018] that:

"NE does not consider the Outer Thames Estuary pSPA consultation will materially affect this project unless the operational port requires vessels to transit the pSPA to reach the array/export cables and in that instance best practice for vessel movement can be adopted to remove any LSE to rafting red throated divers (see point 6c in the SoCG between NE and the Applicant). Therefore, the Applicant's HRA report for the Outer Thames Estuary remains fit-for-purpose."

6.6.8 Information with regard to best practice vessel movements was provided by the Applicant at D7 [REP7-018] and is detailed in Section 5.2 of Chapter 5.

GREATER WASH PSPA

6.6.9 The ExA [PD-012] also queried whether NE agreed with the Applicant's conclusion of no LSE in respect of the Greater Wash pSPA and whether it could provide any update with regard to a possible consultation on this site. NE [REP2-018] confirmed in response that it agreed with the Applicant's screening out of the Greater Wash pSPA in the HRA report [APP-101]. It also confirmed that it had submitted formal advice on this possible European site to Defra and was awaiting confirmation of the next steps [REP2-018].

6.6.10 During the Examination, NE issued a public consultation on the proposal to create a new Greater Wash SPA for internationally-important populations of overwintering red-throated diver, common scoter (*Melanitta nigra*) and little gull (*Hydrocoleus minutus*), and to include and protect coastal feeding waters used by breeding populations of common tern, Sandwich tern (*Sterna sandvicensis*) and little tern (*Sternula albifrons*). The ExA issued a Rule 17 question on this matter to NE on 28 October 2016 [PD-019], querying whether, in light of the recent consultation, the HRA report [APP-101] sufficiently considered the Greater Wash pSPA and its proposed qualifying features.

6.6.11 NE confirmed [REP6-004] in response to the Rule 17 letter that:

“Natural England can confirm that we do not believe there to be any likely significant effects on the Greater Wash pSPA as a result of the EA3 project.”

6.6.12 The RSPB also responded at D6 [REP6-002] that it:

“(D)oes not consider that the project will give rise to likely significant effects on the Greater Wash pSPA as there is no overlap between the project area and the wintering and foraging areas for the proposed feature species.”

SNS PSAC HRA REPORT

6.6.13 The Applicant’s further assessment of the potential effects screened in to the HRA was provided in Section 5 of the Revision B SNS pSAC HRA report [REP6-021]. Appendix B of the Revision B SNS pSAC HRA report described the approach taken to the in-combination assessment on the SNS pSAC. Although the Applicant referred to 'likely significant effects' and 'no likely significant effects', the ExA took the view in the RIES [PD-021, paragraph 3.26] that these assessments should more properly be considered as an assessment of the effects on the integrity of the pSAC. This approach was not disputed by any of the IPs.

SUMMARY OF THE HRA SCREENING ASSESSMENT CONCLUSION

6.6.14 Of the 107 European sites considered during the Examination, the Applicant identified that LSE as a result of the Proposed Development (either alone or in combination with other projects or plans) is likely on the following eight European sites and the qualifying features identified below.

Table 6.1: European sites considered for adverse effects on site integrity

European site	Features for which Applicant concluded likely significant effects
SNS pSAC	Harbour porpoise Effects considered: noise impacts, prey impacts, collision risk, and in-combination effects
FFC pSPA	Kittiwake and gannet Effects considered: in-combination collision risk
FHBC SPA	Kittiwake Effects considered: in-combination collision risk
Alde-Ore Estuary SPA	Lesser black-backed gull Effects considered: in-combination collision risk

Alde-Ore Estuary Ramsar	Lesser black-backed gull Effects considered: in-combination collision risk
Deben Estuary SPA	Dark-bellied brent goose Effects considered: construction disturbance, alone and in-combination
Deben Estuary Ramsar	Dark-bellied brent goose Effects considered: construction disturbance, alone and in-combination
Outer Thames Estuary SPA	Red-throated diver Effects considered: construction disturbance, alone and in-combination

6.6.15 The conclusion of potential LSE on the European sites and qualifying features identified above was not disputed by any IPs during the Examination. No additional sites or features were identified as being likely to experience significant effects as a result of the Proposed Development.

FINDINGS OF THE EXA IN RELATION TO LIKELY SIGNIFICANT EFFECTS

6.6.16 Having received responses from NE and relevant IPs on the Applicant's HRA screening conclusions, the ExA relies on the information provided by the Applicant during the Examination and is of the opinion that there would only be LSE on the eight European sites and qualifying features listed in Table 6.1.

6.6.17 The ExA recommends that the SoS can conclude no LSE on all other European sites based on the information provided in the Applicant's HRA Report [APP-101], Appendix 2 to the HRA report (the Applicant's in-combination screening) [APP-103], the Applicant's screening matrices for these sites [APP-102, REP2-088 and REP2-089], and information provided during the Examination (see Annex 1 to the RIES). This conclusion is supported by NE, as noted in the updated SoCG provided at D7 [REP7-023], and the RPSB [REP7-027].

6.7 FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY OF EUROPEAN SITES

6.7.1 The Applicant concluded during the Examination that the Proposed Development would not adversely affect the integrity of the eight European sites and features identified in Table 6.1 above.

6.7.2 Each of the European sites carried forward to consideration of adverse effects on site integrity are discussed separately below, including any design measures or mitigation relied upon for the Applicant's conclusion of no AEoI and how this has been secured.

6.7.3 The Applicant's conclusion of no adverse effect on site integrity for the Alde-Ore Estuary SPA and Ramsar, Deben Estuary SPA and Ramsar,

and Outer Thames Estuary SPA was not disputed by any IPs during the course of the Examination for the features listed in Table 6.1 above. As the focus of the Examination was on the SNS pSAC and to a lesser degree the FFC pSPA/FHBC SPA, these sites are discussed first.

CONSERVATION OBJECTIVES

- 6.7.4 The Applicant included reference to the conservation objectives for the SPAs taken forward to the further ornithological assessment in Section 3 of its HRA report [APP-101] (ie Alde-Ore Estuary SPA, Deben Estuary SPA, FFC pSPA/Flamborough and Bempton Cliffs SPA, and Outer Thames Estuary SPA). For clarity, the ExA also requested the conservation objectives for these SPAs from NE [PD-012].
- 6.7.5 NE provided the conservation objectives for the FHBC SPA and FFC pSPA in Section 5.3 of its WR [REP2-017], as it stated in the answers to the ExA's FWQ HRA1 [REP2-018] that *these are "...the potentially impacted European sites..."*. NE also provided links to the conservation objectives for the Deben Estuary SPA, Alde-Ore Estuary SPA, and Outer Thames Estuary SPA in its response to the ExA's FWQ HRA1 [REP2-018], stating that NE considered that these sites would be *"unaffected by the project"*.
- 6.7.6 The draft conservation objectives available for the SNS pSAC were provided by the Applicant in its interim SNS pSAC HRA report [REP3-012], and included in the subsequent Revision A and Revision B versions [REP4-016 and REP6-021, respectively]. The draft objectives were also provided by NE in its WR [REP2-017]. The draft objectives are the most recent version available to the ExA.

EFFECTS ON THE INTEGRITY OF THE SNS PSAC

- 6.7.7 As described in Section 5.6 above, the Applicant's latest information to inform HRA is presented in the Revision B SNS pSAC HRA report [REP6-021]. Following advice from NE, this revision included a North Sea Management Unit (MU) population assessment, together with a spatial assessment of the potential effects in relation to the total extent of the areas used by harbour porpoise in summer and winter within the pSAC and the North Sea MU (see Figure 1 of REP6-021)).
- 6.7.8 The Applicant concludes that there would be no adverse effects on the integrity of the SNS pSAC, both alone and in-combination with other plans and projects [REP6-021 and REP6-022]. This conclusion relies upon the securing of mitigation measures, detailed in the draft Marine Mammal Mitigation Protocol (dMMMP) (current version [APP-298]) and draft Site Integrity Plan (dSIP) (current version [REP7-029]), as secured through the conditions in the applicable DMLs.
- 6.7.9 The detailed concerns of the relevant IPs and the Applicant's responses to those concerns up to the point that the RIES was released for consultation are described in Annex 3 of the RIES. NE initially advised that it could not be satisfied that an adverse effect on the integrity of the pSAC from the cumulative effects of underwater

noise could be excluded beyond all reasonable scientific doubt [RR-003]. Whale and Dolphin Conservation (WDC) and The Wildlife Trusts (TWT) raised similar concerns in their RRs [RR-002 and RR-022 respectively].

- 6.7.10 Both WDC and TWT raised concerns about the adequacy of the mitigation proposed by the Applicant. These are discussed below.
- 6.7.11 WDC also raised concerns about the adequacy of the survey work undertaken by the Applicant and advised that further survey work should be undertaken [REP2-008]. However, the SoCG between the Applicant and NE submitted at D7 [REP7-023] confirmed that NE agreed that the 'Information for the Habitats Regulations Assessment: Marine Mammal Assessment Southern North Sea pSAC' [REP6-021] is adequate and robust and that the conclusions are valid.

Mitigation and management measures

Marine Mammal Mitigation Protocol (MMMP)

- 6.7.12 A dMMMP [APP-298] was provided with the DCO application and is a certified plan identified under Article 32(1)(s) of the dDCO [REP8-022]. The final MMMP is secured through Condition 13(1)(f) of the Generation and Transmission Assets DMLs (Schedules 10 to 13) within the Applicant's final dDCO (carried forward into the ExA's recommended DCO) [Appx D]. This requires that prior to commencement of any licensed activities there should be the submission to and approval by the MMO of:

"(I)n the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol in accordance with the draft marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, following current best practice as advised by the relevant statutory nature conservation bodies."
- 6.7.13 The latest Plan of Plans document provided by the Applicant [REP8-016] states that the final MMMP will be approved post final scheme design and prior to commencement of construction. The approval body is the MMO, in consultation with NE.
- 6.7.14 The dMMMP [APP-298] is described by the Applicant as being provided to demonstrate the principles of the MMMP to be submitted for approval under Condition 13(1)(f) of the applicable DMLs and to detail contingency arrangements to respond to and minimise the impacts of piling associated with the construction of the Proposed Development.
- 6.7.15 The final MMMP proposed by the Applicant would include exclusion zones out to the maximum range of exposure that could lead to instantaneous Permanent Threshold Shift (PTS) onset, and a soft-start procedure, to ensure no marine mammals are present within proximity to pile driving which could lead to lethal injury or PTS.

- 6.7.16 WDC recommended in its RR that additional mitigation should be provided [RR-002] including: no pile driving at all; the development of a robust MMMP to include consideration of cumulative impacts of all developments within the region; and requiring shut-down when marine mammals approached within a specified distance of operations. However, in response to the ExA's FWQ ECMM10 [PD-012], NE advised that *"measures drafted in the MMMP are in line with current best practice and we do not consider it necessary to recommend no pile driving during construction"* [REP2-018].
- 6.7.17 At D7, WDC [REP7-007] commented that it does not agree with the Applicant's conclusion that there would be no potential for lethal effects or auditory injury as mitigation methods are not yet determined. The Applicant [REP8-002] responded on this point that these effects were screened out of the Applicant's HRA in agreement with NE, as a result of the embedded mitigation proposed (the MMMP).
- 6.7.18 One matter of discussion during the Examination was the extent to which TWT and WDC should be named as consultees on the final MMMP in the DMLs. WDC and TWT requested throughout the Examination that they be named as a consultee on the MMMP [REP2-007, REP6-003 and REP7-012 (TWT), and REP2-008 and REP7-007 (WDC)].
- 6.7.19 The Applicant stated in the SoCG with TWT [REP2-057] (and also in the updated SoCG [REP7-019]) that it had offered to informally consult TWT on the MMMP and that it would be a matter for the MMO, as consenting authority, to determine whether TWT should be identified in the DMLs as a formal consultee. This was also the case in respect of consulting WDC [REP2-056] (updated by REP7-025).
- 6.7.20 At D4, the MMO [REP4-033] responded in its post-hearing submission on the matter of consultation on the MMMP. The MMO stated that it:
- "(W)ould not expect the Secretary of State (SoS) to instruct the MMO who to consult as this would be a decision for the MMO to make at the time of submission. Neither would the MMO seek to consult with the Wildlife Trust (sic) as a matter of course. The MMO suggests it would be more appropriate for the applicant to consult with the Wildlife Trust during drafting unless deemed necessary, in which case the Trust should be named on the DML."*
- 6.7.21 The ExA asked the Applicant in its SWQ ECMM17 [PD-018] whether, in light of the MMO's D4 response, it would be willing to include TWT and WDC in the dDML. In the Applicant's response [REP5-012] it noted that as it had submitted the dMMMP as an application document, and Condition 13(1)(f) of the relevant DMLs required the MMMP to be in accordance with the dMMMP, the TWT had already had an opportunity to comment on the dMMMP. It considered that as both TWT and WDC had therefore already been consulted on the dMMMP, it was neither necessary nor appropriate to name them in the DMLs as consultees for the MMMP.

- 6.7.22 The MMO [REP5-008] also responded specifically to the ExA's SWQ ECMM17. It stated that it agreed with the Applicant's understanding of the MMO's position with regard to consultation on the MMMP, but that if the SoS wished to retain the option to determine who needed to be consulted on the MMMP until the post-consent stage, such a condition should be included in the DCO rather than the DMLs.
- 6.7.23 At D6, the MMO [REP6-009] acknowledged that TWT has requested that it be named in the relevant DML conditions as a consultee for the MMMP and SIP. The MMO stated that whilst it:
- "(D)oes not object to this in principle, it is not considered standard practice. The MMO will consult such bodies as it deems appropriate when considering whether to discharge post consent requirements. The MMO also notes that the Wildlife Trust (sic) has had the opportunity to comment on the draft MMMP and SIP during the examination stage, and further notes the commitment by the applicant in the draft SIP for further consultation ahead of final submission to the MMO. As stated in the hearing the MMO believes that it is more beneficial and appropriate for the Wildlife Trust to provide advice during the production of the final documents."*
- 6.7.24 The MMO [REP6-009] went on to explain that it expects the Applicant to effectively engage with all relevant bodies during the drafting of these plans prior to submission to the MMO and see resolution reached on any issues or concerns raised. The MMO confirmed that:
- "(O)n receipt of a post-consent/pre-construction plan or document the MMO will take a view on who should be consulted and this may include both statutory and non-statutory parties. The MMO would not, however, undertake a public consultation at this stage in the project."*
- 6.7.25 The MMO reiterated that if the SoS wishes to retain control over who is consulted on any post-consent documents, including the SIP, then the relevant means of doing so would be in a requirement contained within the DCO and not a condition in a DML.
- 6.7.26 It was recorded in the updated SoCG between the Applicant and TWT [REP7-019] that the Applicant has agreed to provide drafts of the MMMP to TWT as it is developed in the pre-construction phase. TWT welcomed this intention [REP7-012] but stated that it was still seeking confirmation that the MMO will consult with TWT and WDC before the final document is approved. This position was also stated in TWT's D7 [REP7-012] submission. TWT reiterated [REP7-012] that it was named in the DCO for Hornsea Project Two, stating that this allows compliance with the Aarhus Convention (pillar 2 on public participation and decision-making), and that they wished to pursue the same level of consultation on EA3.
- 6.7.27 In respect of consultation with WDC, the Applicant confirmed in its comments on responses to D7 [REP8-002] that it also planned to

conduct further informal consultation with WDC during the drafting of the MMMP post-consent.

- 6.7.28 The Applicant's final Plan of Plans document submitted at D8 [REP8-016] states that the consenting body for the final SIP is the MMO, with consultation to be undertaken with NE, TWT and WDC.
- 6.7.29 In addition to comments relating to consultation on the MMMP, WDC commented at D7 [REP7-007] that it had concerns regarding JNCC guidance for 500m exclusion zones before commencing piling, which it does not consider to be adequate. The Applicant [REP8-002] responded that, whilst it acknowledged that JNCC guidance includes for a 500m exclusion zone, the Applicant's assessment (as presented in APP-120) allowed for and assessed a larger zone of up to 1km.
- 6.7.30 WDC [REP7-007] commented that the MMMP should only include methods that have been shown to reduce noise, as this is the only way to reduce the far-reaching avoidance distances for small and large cetaceans. The Applicant [REP8-002] responded that the MMMP is intended to prevent injury only and not disturbance. Disturbance effects would be mitigated through the SIP.
- 6.7.31 The Applicant confirmed that measures being considered in the SIP include schedules of piling, alternative foundation methodologies and noise mitigation systems. The SIP also intends to consider and assess methods that may emerge in the future.

Site Integrity Plan (SIP)

- 6.7.32 During the Examination, following discussion at the first Environmental Matters ISH, the Applicant agreed to provide a dSIP. A dSIP was submitted at D4 [REP4-013] in support of the HRA assessment and updated at D7 [REP7-029 and REP7-030 (tracked changes)]. The dSIP is a certified document under Article 32(1)(t) of the Applicant's final dDCO [REP8-022]. Provision of a final SIP is secured through Condition 13(2) of Schedules 10 to 13 (the Generation and Transmission Assets DMLs) of the ExA's recommended DCO (Appx D). The wording of Condition 13(2) states:

"(2) In the event that driven or part-driven pile foundations are proposed to be used, the licenced activities, or any phase of those activities must not commence until an East Anglia THREE Project Southern North Sea pSAC Site Integrity Plan which accords with the principles set out in the In Principle East Anglia THREE Project Southern North Sea pSAC Site Integrity Plan has been submitted to the MMO and the MMO is satisfied that the plan, provides such mitigation as is necessary to avoid adversely affecting the integrity (within the meaning of the 2007 Regulations) of a relevant site, to the extent that harbour porpoise are a protected feature of that site."

- 6.7.33 The Applicant's final Plan of Plans document submitted at D8 states that the final SIP would be submitted for approval post final scheme design and prior to commencement of construction. The consenting

body is identified as the MMO, with consultation to be undertaken with NE, TWT and WDC [REP8-016].

- 6.7.34 The purpose of the dSIP was to set out the Applicant's approach to delivering any mitigation or management measures to ensure the avoidance of significant disturbance of harbour porpoise according to the pSAC conservation objectives, and therefore allow the conclusion of "*no adverse effect beyond reasonable scientific doubt*" on the pSAC [REP4-013].
- 6.7.35 The dSIP also states that (in the event that the Proposed Development is consented) the SIP may require revision post-consent to secure any measures required in order to reflect the conclusions of the competent authority's appropriate assessment. The SIP would also be updated to reflect any further guidance received from JNCC and NE with regards to the pSAC conservation objectives and management measures [REP4-013].
- 6.7.36 During the Examination, NE responded to the ExA's oral questions at the first Environmental Matters ISH in its post-hearing submission [REP4-029], advising that "*the purpose of the MMMP is to mitigate injury, and that disturbance is best dealt with in a separate document.*"
- 6.7.37 In response to an oral question from the ExA asking whether NE was content with HRA issues for the pSAC, NE stated [REP4-029] that it:

"(S)upports the Applicant following the HOWP2 [Hornsea Offshore Wind Farm Project Two] 'condition 8' approach with some amendments. Namely a freestanding In Principle Site Integrity Plan (IPSIP) which will be a certified document referred to in the DML which will list such mitigation measures as necessary to ensure no AEOI."
- 6.7.38 In Appendix 1 of its post-hearing submission [REP4-029], NE confirmed that it:

"(W)elcomes the Southern North Sea pSAC Site Integrity Plan as a stand-alone document to set out the approach to delivering any management or mitigation measures that are required to avoid significant disturbance of harbour porpoise and allow the conclusion of no adverse effect on site integrity to be made in relation to the Southern North Sea pSAC from the East Anglia THREE project."
- 6.7.39 The MMO [REP4-032] stated that it concurred with NE in relation to the purpose of the MMMP and that the proposed SIP would more appropriately address disturbance. It generally supported the Applicant's approach in respect of the SIP providing a framework for delivery of mitigation.
- 6.7.40 At the point of issue of the RIES [PD-021], NE [REP5-009] had confirmed that it was satisfied that the Applicant's draft wording of Condition 13 in the relevant dDMLs adequately secured the SIP, and that the approach taken by the Applicant in respect of the dSIP would

be sufficient to avoid an adverse effect on the integrity of the SNS pSAC. The MMO [REP5-008 and REP6-021] stated that it was content that the drafting of Condition 13(2) of the relevant dDMLs secured the requirement for the Applicant to submit the SIP to the MMO for approval.

6.7.41 The MMO expressed concern during the Examination with regard to who would be best placed to regulate scheduled piling across multiple offshore wind farm developments [REP5-008, REP6-009, REP7-003, and REP7-021]. At D6, the MMO [REP6-009] stated that it would be a decision for the SoS to determine who had sign-off of the final SIP, but stated that it was able to fulfil that function. It reiterated comments made at D5 [REP5-008] that if the SoS wished to retain control over certain aspects of the discharge of the SIP (or any other DML conditions), such as consultation, that should be reflected within the DCO.

6.7.42 TWT [REP5-007] welcomed the Applicant's intention to produce a SIP and requested that TWT be named as a consultee for the SIP.

6.7.43 Following issue of the RIES, the MMO [REP7-003 and REP7-021] responded at D7 with regard to paragraph 48 of the dSIP. The MMO stated that:

"(T)he practicalities involved in successfully and proportionally scheduling pile driving between multiple projects should be carefully considered. Further consideration is required as to the appropriate authority to undertake this assessment and determination. Difficulties maybe arise by the fact that several of these potential projects have been consented but have no corresponding requirement within their consent orders making implementation of any such scheduling problematic and potentially disproportionate against East Anglia THREE."

6.7.44 The updated SoCG between the Applicant and the MMO [REP7-021] recorded that in respect of the dSIP, the MMO was, in general, content with the approach taken to the dSIP at D4. The MMO provided further comments on the dSIP at D5 [REP5-008], which the Applicant addressed [REP6-025] with the exception of comments relating to paragraph 48 of the dSIP. This related to the request from the MMO that the ExA or SoS determine who is best placed to regulate scheduled piling across multiple developments. The final position on the SIP conditions was stated to be that:

"(I)t is agreed by both parties that condition 13(2) of the relevant DMLs, provide an appropriate framework for approving and securing any mitigation required post consent under the SIP for East Anglia THREE."

6.7.45 NE commented at D7 [REP7-010] on the dSIP, stating that it had provided comments to the Applicant after D6. NE confirmed that its only suggested changes to the dSIP were adding the potential for

seasonal restrictions as an amendment to the piling schedule in paragraph 47. NE stated that the Applicant agreed to make these changes and submit a revised dSIP at D7.

- 6.7.46 At D7, WDC [REP7-007] stated that it recognised that mitigation measures would be secured through the MMMP and the SIP and requested to be consulted on these documents to ensure appropriate mitigation methods are taken.
- 6.7.47 The Applicant provided an updated dSIP at D7 [REP7-029]. This is the Applicant's latest dSIP document. The Applicant confirmed at D7 [REP7-015] that the dSIP was updated to take account of feedback and updated documents, including the Revision B SNS pSAC HRA report and updated versions of the dDCO, including DML conditions. The updated dSIP included NE's recommended amendment at paragraph 47. Substantive changes are identified by the Applicant [REP7-015] as:
- changes to proposals for consulting TWT and WDC;
 - clarification that the Final Plan must be submitted at least four months prior to commencement of pile driving for written approval of the MMO;
 - clarification that any new conservation objectives and any Review of Consent outcomes will also be used to determine any mitigation and management measures that need to be secured in the Plan post consent; and
 - comments received from MMO, TWT and WDC which were received after D4 along with the Applicant's response to these comments.
- 6.7.48 Updated SoCGs between the Applicant and NE, the MMO, TWT and WDC were also submitted at D7. In respect of the dSIP and SIP, the following agreements were reached with these parties.
- 6.7.49 The updated SoCG with NE [REP7-023] agreed that Condition 13(2) in the DMLs (Schedules 10 to 13) secures mitigation to avoid AEOI of the SNS pSAC and that the SIP also provides a framework to secure the development and implementation of specific mitigation measures (if required) to avoid adverse effects on integrity.
- 6.7.50 The updated SoCG with the MMO [REP7-021 and REP7-022] records that it is agreed that Condition 13(2) of the relevant DMLs provides an appropriate framework for approving and securing any mitigation required post consent under the SIP for the Proposed Development. The SoCG also records that it is noted by both parties and agreed that the MMO's comments related to paragraph 48 of the SIP in its D5 response [REP5-008] have not been addressed. This is because they are comments requesting the ExA or SoS to determine who is best placed to regulate scheduled piling across multiple developments.
- 6.7.51 The SoCG between the Applicant and the MMO also records one aspect of the DMLs that the MMO does not agree with, namely, the wording

of Condition 13(3) of Schedules 10 to 13. The MMO stated in the SoCG that:

"The MMO is to (sic) 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."

6.7.52 The wording of Condition 13(3) in the Applicant's final dDCO [REP8-022] states the following:

"(3) For the purpose of paragraph (2) –

(a) the Southern North Sea possible Special Area of Conservation must be treated as a European offshore marine site until:

(i) that Area (or any part of it) becomes a European offshore marine site or a European site; or

(ii) it is decided that no part of that Area should be a European offshore marine site or a European site; and

(b) harbour porpoise must be treated as a protected feature of the Southern North Sea possible Special Area of Conservation."

6.7.53 The updated SoCG between the Applicant and TWT [REP7-019] recorded that, in respect of the SIP, TWT:

"(W)elcomes 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. It is agreed that the SIP will be developed post-consent to define specific mitigation measures for East Anglia THREE. However, due to the lack of guidance on management measures from the SNCBs, we still cannot agree no AEOI from pile drive noise disturbance on the pSAC. Once further guidance is available, TWT believes that further assessment will be required to consider mitigation for impacts alone and in-combination from underwater pile driving noise. EATL has consulted TWT on the SIP document and we welcome the consultation up to the point of submission and review of the draft plan and any associated documents. However, TWT still seeks confirmation that the MMO will consult with TWT before the final document is approved. TWT considers it important for the outcomes of the review of consents to be taken into account of when developing mitigation for the in combination effects of pile driving noise as part of the SIP."

6.7.54 The updated SoCG between the Applicant and WDC [REP7-025] stated in respect of the SIP that:

"WDC are pleased to see the SIP and that TWT have been consulted on the content of this document, who have also raised common issues of concern that we share with TWT. WDC wish to continue to be consulted as the SIP and DMLs proceed to ensure the mitigation measures are adequate to prevent AEOI."

6.7.55 The SoCG also records the comments provided by WDC in its D7 response that:

"WDC recognise that mitigation will be secured via the SIP and MMP and welcome these documents; however we have concerns over the methods that will be considered. Only proven mitigation methods that have been shown to reduce noise should be included. Soft-starts and exclusion zones are not proven mitigation methods. The SIP may also be required to deliver mitigation measures for the project alone."

6.7.56 The ExA has considered the MMO's views regarding the need for Condition 13(3) in the relevant DMLs, as set out in paragraph 6.7.52 above. We note that the condition as a whole was considered to be necessary by NE [REP5-009] to adequately secure the SIP and to provide a proper response to the SNS pSAC. On this basis, Condition 13(3) has not been deleted from the ExA's recommended DCO (Appx D).

Effects of the project alone

6.7.57 The Applicant concluded in the Revision B SNS pSAC HRA report [REP6-021] that there should be no potential for LSE from the Proposed Development alone.

6.7.58 Further to the position of NE, the MMO, TWT and WDC at the point of issue of the RIES [PD-021], NE confirmed in its D7 response [REP7-010] that it had no further comments to make on the Revision B SNS pSAC HRA report [REP6-021].

6.7.59 The updated SoCG between the Applicant and MMO [REP7-021] submitted after the issue of the RIES [PD-021] confirmed that as the MMO is neither the competent authority nor SNCB for this case, the MMO defers to the opinion of the relevant SNCB (NE), on all matters relating to HRA.

6.7.60 TWT provided comments on the Revision B SNS pSAC HRA report at D7 [REP-012]. TWT stated that it could not agree with the conclusions of no LSE for impacts of pile driving alone or in-combination (for the pSAC winter area), due to the lack of adequate formal guidance from the SNCBs.

6.7.61 TWT also called for guidance on noise disturbance management in respect of the harbour porpoise pSACs to be published and consulted upon with all interested parties as soon as possible. TWT welcomed the Applicant's intention to refine the HRA and SIP once further information and advice from the SNCBs is available. The Applicant responded to these comments at D8 [REP8-002] stating that it noted

TWT's comments but reiterated that its assessment was undertaken in line with guidance from NE and that NE had no comments on the Revision B SNS pSAC HRA report.

- 6.7.62 WDC commented on the Revision B SNS pSAC HRA report at D7 [REP7-007], also stating that whilst it welcomed the additional assessment made, it still disagreed with the Applicant that there is unlikely to be potential for LSE upon the SNS pSAC from the Proposed Development alone. It similarly disagreed with the statement made by the Applicant that there is no evidence that harbour porpoise displaced from wind farms, or by vessels, would suffer any mortality as a consequence of displacement.
- 6.7.63 WDC welcomed the intention for changes to be made to the HRA once the site boundaries, conservation objectives and management measures are known. Points were also raised in respect of in-combination effects and mitigation measures, which are discussed below.
- 6.7.64 The Applicant responded to the above comments made by WDC at D8 [REP8-002]. The Applicant reiterated that its assessment was undertaken in line with guidance from NE and that NE has no comments on the Revision B SNS pSAC HRA report. The Applicant also acknowledged that the details of the SNS pSAC were still in draft form and repeated text from the Revision B SNS pSAC HRA report and previous comments made by the Applicant [REP6-023] that the conclusions may be subject to change once final decisions in respect of the SNS pSAC have been made.
- 6.7.65 The Applicant stated that it had previously confirmed that it would review the SIP to identify areas for revision/update once further guidance on the pSAC is received [REP8-002].

The ExA's findings in respect of the SNS pSAC

- 6.7.66 The developing situation of the SNS pSAC during the Examination, and the fact that conservation objectives and management measures had not been published by the close of the Examination, meant that it has not been possible to achieve agreement by all parties of the potential adverse effects and mitigation measures. The ExA has carefully considered the evidence provided during the Examination, and has given weight to the views of the SNCBs, in arriving at the following conclusions.
- 6.7.67 Modelling of noise levels during construction remains an area of developing understanding and techniques, with tools such as DEPONS and PCoD not being sufficiently developed for current use. The ExA also fully accepts the shortcomings of using the 'Southall *et al*' approach. However, we are content that noise modelling has been carried out to the satisfaction of NE.
- 6.7.68 The conclusion drawn by the Applicant of no AEoI of the pSAC, alone or in combination with other projects and plans, relies upon the

securing of mitigation measures detailed in the MMMP and SIP and secured through the DCO.

- 6.7.69 Both TWT and WDC do not agree with no LSE for impacts of pile driving alone, primarily because of the lack of adequate formal guidance from the SNCBs.
- 6.7.70 However, the ExA is satisfied that, when considering the draft conservation objectives for harbour porpoise, AEOI from the Proposed Development alone can be excluded, provided that, once formal guidance is provided by the SNCBs, appropriate mitigation measures are implemented. We concur with NE's advice, as the SNCB, that *"measures drafted in the MMMP are in line with current best practice and we do not consider it necessary to recommend no pile driving during construction"*. If pile driving is used during construction then we are content that adequate mitigation measures can be implemented through the MMMP and SIP to ensure no adverse impacts.
- 6.7.71 Greater concern was expressed throughout the Examination about in-combination impacts of noise, as in-combination assessments include a large amount of uncertainty. However, once again these concerns are driven by the absence of final conservation objectives or management measures. Based on the evidence presented by all parties, the ExA is satisfied that AEOI from the Proposed Development can be excluded when in combination with other plans and projects, provided again that appropriate mitigation measures are implemented.
- 6.7.72 The ExA's conclusions depend heavily on the mitigation measures delivered through the MMMP and SIP being adequate and using best technologies available at the time of construction. We are content that these protocols offer sufficient security that adequate mitigation would be delivered to avoid AEOI. We are also content that the MMMP and the SIP are adequately secured through the DMLs in the ExA's recommended DCO (Appx D).
- 6.7.73 The MMO expressed concern over who would be best placed to regulate scheduled piling across multiple offshore wind farm developments, and suggested that this was a decision to be made by the SoS. It is the ExA's view, having considered all of the evidence, that the MMO as the regulatory body for marine activities in the seas around England is the most appropriate body to regulate scheduled piling activities across multiple developments.
- 6.7.74 The MMO maintained throughout the Examination that it is not necessary to name TWT and WDC as consultees in the DMLs [REP4-033, REP5-088, and REP6-008]. However, the MMO stated that if the SoS wishes to stipulate consultation, this should be included in the DCO and not the DMLs. TWT (and WDC) have requested that they be included. The Applicant agreed to consult them post-consent but agreed with the MMO that it was not necessary to name them in the DMLs.

- 6.7.75 The Applicant's final Plan of Plans document submitted at D8 [REP8-016] identifies that the final SIP would be submitted for approval post final scheme design and prior to commencement of construction. The consenting body is identified as the MMO, with consultation to be undertaken with NE, TWT and WDC [REP8-016].
- 6.7.76 The ExA has carefully considered the concerns of TWT and WDC regarding consultation on the final versions of the SIP and MMMP. The conservation objectives and management measures for the SNS pSAC have not been published but all parties accept that mitigation measures, which cannot be defined at present, are critical in protecting cetaceans. Whilst we considered adopting a similar approach to that made in the Hornsea Two DCO, where a specific condition was included within the relevant DMLs relating to consultation, the assurances given by the Applicant and the MMO during the Examination to continue consultation with IPs up to finalisation of the SIP and MMMP gives us the confidence that a specific requirement or condition in the DCO/DMLs is not required.
- 6.7.77 The ExA agrees with the MMO that Condition 13(2) in the Generation and Transmission Assets dDMLs in respect of securing the approval of the SIP by the MMO is adequate. We do not agree with the MMO that Condition 13(3) is unnecessary.
- 6.7.78 A number of references to the Applicant refining the HRA and SIP once further information and advice from the SNCBs is available have been made by TWT [REP7-012] and WDC [REP7-007]. The ExA comments that the SoS is the competent authority for the purposes of the Habitats Regulations and would be therefore responsible for the production of the HRA. Whilst the Applicant is able to update the evidence used to inform the SIP and the MMMP it is not in a position to update the HRA.

FFC pSPA/FHBC SPA

- 6.7.79 The Applicant considered that there was a potential for LSE on the kittiwake and gannet qualifying features of the pSPA as a result of collision mortality arising from the Proposed Development in combination with other wind farm projects. The Applicant therefore undertook a further assessment in respect of these features of the sites (as presented in Sections 3.5 and 3.6 of the HRA report [APP-101]).
- 6.7.80 The HRA report [APP-101] included references to the FHBC SPA, but went on to only discuss the FFC pSPA due to the kittiwake qualifying feature of the SPA (breeding kittiwake) being also included in the pSPA.
- 6.7.81 The ExA is aware of the need to consider SPAs formally designated under the Habitats Regulations, plus the UK Government policy to consider pSPAs as if they are formally designated under the Habitats Regulations. The ExA [PD-012] therefore requested that the Applicant

provide separate screening and integrity matrices for the SPA, in addition to the matrices provided for the pSPA. The Applicant provided a screening matrix for the FHBC SPA at D2 [REP2-088]. An integrity matrix for the SPA was provided at D5 [REP5-029]. As a key area of discussion during the Examination, amended integrity matrices were produced by the ExA for both the SPA and pSPA in the RIES [PD-021, Annex 4].

- 6.7.82 The Applicant concluded in its HRA report [APP-101] that there would be no adverse effects on the integrity of the FFC pSPA as a result of collision mortality on kittiwake and gannet arising from the Proposed Development alone or in combination, as in respect of gannet:

"(T)he number of predicted in-combination gannet collisions attributed to the Flamborough & Filey Coast pSPA remains below the sustainable levels estimated using potential biological removal and is not at a level which would trigger a risk of population decline. Furthermore the impact on the Flamborough and Filey Coast pSPA gannet population resulting from in-combination collisions is below the thresholds of concern proposed for recently consented developments."

- 6.7.83 In respect of kittiwake, the Applicant [APP-101] concluded:

"The number of predicted in-combination kittiwake collisions attributed to the Flamborough & Filey Coast pSPA remains below the sustainable levels estimated using PBR and on the basis of population modelling is not at a level which would trigger a risk of significant population decline. The impact on the Flamborough and Filey Coast pSPA kittiwake population resulting from in-combination collisions is below the thresholds of concern proposed for recently consented developments and furthermore the contribution to the in-combination total deriving from the proposed East Anglia THREE project is extremely small."

- 6.7.84 This conclusion was not initially agreed by NE and RSPB. However, their positions altered during the course of the Examination as a result of additional information supplied and amendments made to WTG parameters for the Proposed Development.

- 6.7.85 The RSPB's position at the start of the Examination [RR-035] was that it had outstanding concerns with regard to the kittiwake and gannet qualifying features of the FFC pSPA/FHBC SPA. The RSPB [RR-035, REP2-049 and REP3-002] did *"not have confidence that potential adverse effects on the integrity of these protected sites and their species can be avoided."* It also stated that the potential for adverse effects on gannets and kittiwakes arising out of the Proposed Development *"could be significantly reduced through elevating the lower swept area of the wind turbines through a rise in hub height"*.

- 6.7.86 The RSPB pointed out in its response to the FWQ ECO6 [REP2-025] that whilst NPS EN-3 supports ecological monitoring to mitigate adverse ecological impacts, monitoring cannot be regarded as a

mitigation measure since it has no ability to reduce or offset possible adverse effects on the SPA/pSPA nor the species for which they are designated.

- 6.7.87 As described in the RIES at Section 4 and Annex 3 [PD-021], the Applicant agreed during the Examination to increase the draught height of 70% of the WTG within the Proposed Development by 2m. The Applicant also informed the ExA of a planned reduction in WTG numbers at the already consented EA1 offshore wind farm [REP4-006]. As a result of these changes, and following questioning by the ExA [PD-018 and PD-019] regarding the legal certainty associated with the reduction in the number of WTG for the EA1 offshore wind farm, the Applicant provided updated Collision Risk Modelling (CRM) during the Examination [REP4-011, REP5-026 and REP6-044].
- 6.7.88 The revised CRM submitted at D6 [REP6-044] (which considered 150 WTG for the EA1 offshore wind farm and an increase in draught height for 70% of WTG for the Proposed Development) concluded that for the FFC pSPA the in-combination totals represent an annual increase in mortality due to all offshore wind farms combined of 3.3 and 1.2 birds for gannet and kittiwake (respectively). The CRM stated that this *"demonstrate[s] that even with the 150 turbine case the East Anglia THREE contribution to the cumulative and in-combination totals remains non-material."*
- 6.7.89 A summary table of the Applicant's predicted total annual in-combination mortality figures for kittiwake and gannet of the FFC pSPA/FHBC SPA for the different scenarios, as taken from the revised CRMs [REP5-026 and REP6-021], is included at Table 6.2 below.
- 6.7.90 The scenarios include: in-combination totals with EA1 as consented in 2014; in-combination totals with EA1 102 WTG; in-combination totals with EA1 150 WTG; in-combination totals with EA1 (with EA3 increased draught height) and the 102 EA1; and in-combination totals with EA1 (with EA3 increased draught height) and the 150 EA1 scenario.

Table 6.2: Summary of annual total in-combination mortality for the breeding gannet and kittiwake features of the FFC pSPA/ FHBC SPA by scenario, as taken from the Applicant’s CRM (150 WTGs [REP6-044])

Species	In-combination consented total up to and including Hornsea Project 2			In-combination consented total up to and including revised EA3 estimates (with 102 EA1)	In combination total up to and including revised EA3 estimates (with 150 EA1)
	With original consented EA1 estimates	With 102 WTG EA1 estimates	With 150 WTG EA1 estimates		
Gannet	173	165.2*	168.2	173	176.3
Kittiwake	322	311.6**	315.4	320	323.2

*reported as 165 in REP5-026. **reported as 312 in REP5-026

- 6.7.91 NE's position at the point of issue of the RIES was that it agreed with the Applicant’s conclusion of no AEoI of the pSPA/SPA alone (see Table 4.3 of the RIES [PD-021]). NE [REP2-053] also agreed in respect of kittiwake that the contribution of EA3, while not *de minimis*, is so small as to not materially alter the significance or the likelihood of an AEoI of the pSPA.
- 6.7.92 The RSPB [REP6-002], at the point of issue of the RIES, confirmed that the changes to the specifications for both EA1 and EA3 offshore wind farms have reduced its concerns regarding cumulative/in-combination collision risk at this stage.
- 6.7.93 On review of the RIES, NE confirmed at D7 [REP7-010] *"that the RIES has accurately captured our submissions on the Examination of East Anglia THREE and (we) do not have any further submissions to make at this time."*
- 6.7.94 The updated SoCG between the Applicant and NE submitted for D7 [REP7-023] confirmed that in respect of the kittiwake qualifying feature of the pSPA/SPA, it is agreed by both the Applicant and NE that *"the EA3 contribution while not de minimis is so small as to not materially alter the significance or the likelihood of an adverse effect on the integrity of the SPA."*
- 6.7.95 In respect of the gannet qualifying feature of the pSPA, the updated SoCG between the Applicant and NE submitted for D7 [REP7-023 and REP7-024] stated that:

"NE advises that there is no Adverse Effect on Integrity (AEoI) and no significant effect (EIA) for the project alone. However, it is not

possible to rule out significant effects to gannet when considered cumulatively, but NE agrees that due to the revised East Anglia THREE design (i.e. increase in draught height) and the reduction of the contribution to the cumulative total from East Anglia ONE (due to the adoption of the smaller HVAC wind farm), the total cumulative impact is now smaller than the consented position as of the Hornsea 2 consent. Given the above NE has no further concerns."

6.7.96 The RSPB did not provide comment on the RIES, but an updated SoCG between the Applicant and the RSPB was provided at D7 [REP7-027 and REP7-028]. The updated SoCG records that in respect of FHBC SPA/FFC pSPA:

"The RSPB's concerns regarding significance of in-combination impacts on gannet and kittiwake have been reduced as a result of a commitment from the Applicant to increase the turbine draught height of 70% of the total number of turbines to 24m above MHWS [Mean High Water Springs] for the East Anglia THREE project. This change and the change to the maximum number of turbines which can be constructed for East Anglia ONE (i.e. 150 turbines) has reduced our concerns regarding in-combination collision risk to gannet and kittiwake (see REP5-005 and REP6-002)."

6.7.97 In respect of the proposed amendments to the draught height, the Applicant provided amended wording to R2 of the DCO and Condition 1 of Schedules 10 and 11 (the Generation Assets DMLs) at D6 [REP6-024] to account for this agreed amendment to the WTG.

6.7.98 The ExA asked the Applicant, NE and the MMO, in its Rule 17 letter [PD-023] and its consultation dDCO [PD-022], whether the drafting of R2 and DML conditions was sufficiently clear, certain and enforceable, particularly having regard to the potential for build-out under the Generation Assets DMLs Condition 1(2), where it is not specified how much of the 70% must be in each licence. The ExA also asked [PD-022] whether it would be clearer to specify the number of WTG.

6.7.99 At D7, the Applicant proposed amended wording for R2 and the conditions in the DMLs in respect of the WTG draught height. This was included in the Applicant's comments on the ExA's dDCO [REP7-016], which confirmed that the Applicant had considered the ExA's comments on the proposed requirement and had discussed this further with the MMO, NE and the RSPB. The Applicant agreed the following amended wording:

- Requirement 2: *"The number of turbines with a draught height of less than 24m from MHWS comprised in the authorised project must not exceed 52 turbines";*
- Parameter for Schedule 10: *"The number of turbines with a draught height of less than 24m from MHWS comprised in the authorised scheme and the authorised scheme in licence 2 (generation) taken together must not exceed 52 turbines";* and

- Parameter for Schedule 11: *"The number of turbines with a draught height of less than 24m from MHWS comprised in the authorised scheme and the authorised scheme in licence 1 (generation) taken together must not exceed 52 turbines"*.

6.7.100 The Applicant also provided copies of emails confirming that the MMO, NE and the RSPB agree to the wording above at Part 2 of the Schedule attached to its comments on the ExA's consultation DCO [REP7-016].

6.7.101 By the end of the Examination, the Applicant's proposed wording in respect of the increase in draught height was specified at R2 and Condition 1 of Schedules 10 and 11 (the Generation Assets DMLs) of Version 6 of the dDCO submitted at D8 [REP8-022], as follows:

DCO Requirement 2:

"(2) The number of turbines with a draught height of less than 24m from MHWS comprised in the authorised project must not exceed 52 turbines";

Parameter for Schedule 10, Condition 1(2):

"The number of turbines with a draught height of less than 24m from MHWS comprised in the authorised scheme and the authorised scheme in licence 2 (generation) taken together must not exceed 52 turbines";

Parameter for Schedule 11, Condition 1(2):

"The number of turbines with a draught height of less than 24m from MHWS comprised in the authorised scheme and the authorised scheme in licence 1 (generation) taken together must not exceed 52 turbines".

6.7.102 The Applicant had also included the proposed wording for Schedules 10 and 11 in its updated SoCG with NE submitted at D7 [REP7-023]. This wording is the same as that included within Version 6 of the dDCO for Schedule 10, Condition 1(2) [REP8-022]. The updated SoCG between the Applicant and NE [REP7-023 and REP7-024] confirmed that: *"(I)t is agreed by both parties that the proposed parameter secures the increase in the draught height to 24m across 70% of the total number of East Anglia THREE turbines."*

6.7.103 The updated SoCG between the Applicant and RSPB provided at D7 [REP7-027 and REP7-028] also confirmed that, in respect of this proposed wording, the *"RSPB is content with the proposed wording of the DCO parameter"*.

6.7.104 The MMO confirmed in its response to the ExA's Rule 17 [REP7-003] (and also in its email to the Applicant provided as Part 2 of the Schedule to the Applicant's comments on the ExA's dDCO [REP7-016]) that it *"...can now confirm that wording has since been agreed with the*

applicant (on 01/12/16) that ensures enforceability of this DML condition through the use of a specific number of turbines."

- 6.7.105 The MMO [REP7-003] highlighted that whilst NE welcomed the proposal for additional mitigation in respect of WTG draught heights, NE had not requested it. The MMO commented that it defers to NE on the appropriateness of ornithological mitigation, and the necessity for it to be enforced through the DMLs.

The ExA's findings in respect of the FFC pSPA/FBC SPA

- 6.7.106 The ExA is satisfied that the AEOI of the FFC pSPA/FBC SPA conservation objectives can be excluded both from the Proposed Development alone and in combination with other plans and projects.
- 6.7.107 The ExA is content that the Proposed Development alone has no adverse effects on the integrity of the qualifying features of the FFC pSAC and FBC SPA. This was agreed between the Applicant and NE in their original SoCG [REP2-053] and was not disputed by any IP during the Examination.
- 6.7.108 We have arrived at our conclusion relating to in-combination effects by considering the Applicant's decision to raise the draught height of 70% of the WTG by 2m, together with the secured reduction of WTG at EA1 from an original maximum of 325 to a maximum of 150.
- 6.7.109 The ExA concurs with NE's conclusions that for the kittiwake qualifying feature *"the EA3 contribution while not de minimis is so small as to not materially alter the significance or the likelihood of an adverse effect on the integrity of the SPA"*.
- 6.7.110 For gannet:
- "NE advises that there is no Adverse Effect on Integrity (AEOI) and no significant effect (EIA) for the project alone. However, it is not possible to rule out significant effects to gannet when considered cumulatively, but NE agrees that due to the revised East Anglia THREE design (i.e. increase in draught height) and the reduction of the contribution to the cumulative total from East Anglia ONE (due to the adoption of the smaller HVAC wind farm), the total cumulative impact is now smaller than the consented position as of the Hornsea 2 consent. Given the above NE has no further concerns."*
- 6.7.111 The ExA has also considered the RSPB's final position that its concerns have been reduced as a result of raising the draught height of 70% of WTG and the reduced numbers of WTG for EA1.
- 6.7.112 The ExA is content that the increase in WTG draught height has been secured in the wording of R2 of the DCO and Condition 1 of the Generation Assets DMLs of Version 6 of the Applicant's dDCO [REP8-022]. This wording has been carried forward to the ExA's recommended DCO (Appx D).

- 6.7.113 The measures identified by the Applicant and the positions taken by NE and the RSPB lead the ExA to conclude that the in-combination effects on the kittiwake and gannet qualifying features of the pSPA/SPA would not be great enough to lead to AEOI.
- 6.7.114 Given the reduction in collision risk mortality identified during the Examination by the Applicant, and the positions taken by NE and the RSPB, the ExA is content that the effects on the gannet and kittiwake qualifying features are such that AEOI on the pSPA/SPA would be avoided.

Alde-Ore Estuary SPA and Ramsar

- 6.7.115 The HRA report [APP-101] states that lesser black-backed gull fly partly within the height range where they may encounter rotating turbine blades. The Applicant also described in its HRA screening that the lesser black-backed gull breeding population at the Alde-Ore Estuary may have connectivity with the Proposed Development and that this SPA holds the closest large colony of the species to the Proposed Development. Some birds from the SPA may therefore pass through the EA3 WTG array site during migration.
- 6.7.116 The Applicant considered there was a potential LSE from the project alone and in-combination with other offshore wind farms on lesser black-backed gull as a result of collision risk. A further assessment was thus undertaken by the Applicant on the lesser black-backed gull qualifying feature of the SPA and Ramsar.
- 6.7.117 Section 3.4.4.2 of the HRA report [APP-101] considered the in-combination collision risk on the lesser black-backed gull feature of the Alde-Ore Estuary SPA/Ramsar. The Applicant's calculations of the annual collision mortality attributable to the Alde-Ore Estuary SPA/Ramsar were stated to be a precautionary 57 birds (NB the integrity matrix [REP2-088] states 58 birds), compared with an estimated natural mortality of about 940 birds per year. The Proposed Development is assessed as contributing approximately 0.63 individuals to the annual mortality total. The combined annual mortality would be 997; the annual mortality rate would increase from 14.10% to 14.97%.
- 6.7.118 The HRA report went on to discuss the SoS for Energy and Climate Change's conclusions on the EA1 wind farm, together with subsequent changes to the avoidance rate since the EA1 calculations. The Applicant concluded that the contribution of the Proposed Development was so small as to not materially alter the overall in-combination mortality figure or the likelihood of an adverse effect on the integrity of the Alde-Ore Estuary SPA/Ramsar site.
- 6.7.119 NE confirmed in its RR [RR-003] that it agreed that it was reasonable to conclude that there would be no adverse effects on the Alde-Ore Estuary SPA from collisions at the Proposed Development alone. Similarly, NE also agreed that the contribution of the Proposed

Development to the in-combination total was so small as to not materially alter the overall in-combination effects.

- 6.7.120 NE also agreed in its SoCG with the Applicant [REP2-053] that the Proposed Development alone and in combination would have no adverse effects on the integrity of the Alde-Ore Estuary SPA and Ramsar site. The same position is maintained by NE in its updated SoCG with the Applicant provided at D7, near the end of the Examination [REP7-023].
- 6.7.121 The RSPB in its SoCG with the Applicant [REP2-049] stated that it agreed that the Proposed Development alone and in combination has no adverse effects on the integrity of the Alde-Ore Estuary SPA and Ramsar site. This position was also maintained by the RSPB in its updated SoCG with the Applicant provided at D7, near the end of the Examination [REP7-027 and REP7-028].
- 6.7.122 As described for the FFC pSPA/FHBC SPA above, the Applicant provided an updated CRM at D4 [REP4-011] and revised CRM at D5 [REP5-026] on the basis of a proposed reduction to 102 wind WTG to be installed at the consented EA1 offshore wind farm and a change to the design of the Proposed Development. These included revised cumulative figures for the lesser black-backed gull in respect of the Applicant's EIA assessment. The revised CRM for EIA concluded that for lesser black-backed gull, the updated cumulative totals including EA3 are lower than those used to support the most recently consented Hornsea Project Two offshore wind farm.
- 6.7.123 NE [REP4-029] had commented during the Examination on a discrepancy between the cumulative totals used by the Applicant. In Section 3 of the revised CRM [REP5-026] the Applicant provided its reasoning for the difference in cumulative numbers. For clarity, the Applicant also provided tables of cumulative numbers as Appendix 2 to the revised CRM [REP5-026]; these included Table A2.3 in respect of the lesser black-backed gull, including those apportioned to the Alde-Ore Estuary SPA.
- 6.7.124 Appendix 3 of the revised CRM [REP5-026] presented a table of monthly and annual lesser black-backed gull mortality using Band Option 1 and for three different avoidance rates, for 150 WTG instead of 102.
- 6.7.125 NE confirmed both in respect of the Applicant's updated CRM issued at D4 and revised CRM at D5, that it acknowledged that (subject to the reductions in the EA1 design being legally binding) the updated cumulative totals including the Proposed Development were lower than the totals used to support the most recently consented Hornsea Project Two offshore wind farm [REP4-029 and REP5-010]. No specific comments were made in relation to the Applicant's HRA.
- 6.7.126 At the end of the Examination, NE had confirmed at D7 [REP7-010] *"that the RIES has accurately captured our submissions on the*

Examination of East Anglia THREE and (we) do not have any further submissions to make at this time."

- 6.7.127 The updated SoCG between the Applicant and NE submitted for D7 [REP7-023] also maintained the position that the Proposed Development alone and in-combination would have no adverse effects on the integrity of the Alde-Ore Estuary SPA and Ramsar. Whilst the RSPB did not specifically comment on the RIES, the updated SoCG maintained the RSPB's position that it agrees that the Proposed Development alone and in combination would have no adverse effects on the integrity of the Alde-Ore Estuary SPA and Ramsar site.

The ExA's findings in respect of the Alde-Ore Estuary SPA and Ramsar site

- 6.7.128 The ExA is satisfied that, taking the relevant conservation objectives into account, AEoI of the Alde-Ore Estuary SPA and Ramsar site can be excluded both from the Proposed Development alone and in combination with other plans and projects.
- 6.7.129 The ExA has considered, and agrees with, the conclusions of NE and the RSPB that the predicted additional annual mortality of lesser black-backed gull apportioned to the Alde-Ore Estuary SPA and Ramsar population arising from the Proposed Development alone and in combination with other plans and projects (specifically other wind farms) would be so small such that it would not adversely affect the integrity of the Alde-Ore Estuary SPA or Ramsar site.
- 6.7.130 This conclusion has been reached in terms of the Proposed Development as originally submitted with the DCO application. However, we consider that the reduction in the proposed number of WTG for the EA1 offshore wind farm (currently reduced to up to 150 WTG), coupled with the amendments to the proposed draught height of the WTG for EA3 offshore wind farm, would further reduce the predicted collision mortality for the lesser black-backed gull and therefore further supports a conclusion of no AEoI of this European site.

Deben Estuary SPA and Ramsar

- 6.7.131 The HRA report [APP-101] identified the potential for LSE on dark-bellied brent geese as a result of construction disturbance (alone and in combination with other plans or projects), since the onshore cable route for the Proposed Development lies within (in part) the Deben Estuary SPA and Ramsar. The HRA report included a further assessment of the dark-bellied brent goose qualifying features of the Deben Estuary SPA and Ramsar site at Section 3.2.
- 6.7.132 The HRA report [APP-101] stated that potentially disturbing activities would, however, be minimal within the site boundary as cables would be inserted into pre-installed ducts including ducting under the River Deben. Nevertheless, to avoid disturbing dark-bellied brent geese, the Applicant has committed to restricting potentially disturbing

construction works between 1 November and the end of February. This was agreed through discussions with NE and RSPB as part of the Evidence Plan process (see also Evidence Plan Log with NE [APP-107]).

- 6.7.133 The Applicant included mitigation and management measures for works in the Deben Estuary area within the OLEMS [APP-286] submitted with the DCO application. The dDCO [APP-025] submitted with the DCO application did not include specific reference to the works at the Deben Estuary in respect of dark-bellied brent geese. However, it did include at R21 a written Ecological Management Plan (which accords with the OLEMS) reflecting the survey results and ecological mitigation and enhancement measures included in the ES, which is to be submitted to and approved by the relevant planning authority in consultation with NE.
- 6.7.134 The ExA, at Annex F to the Rule 6 letter [PD-005], issued a 'Schedule of Issues Arising from the draft DCO' [PD-020] to inform discussions at the ISH held on 29 June 2016 into the definition of the project. Within the Schedule of Issues, the ExA sought comments from the Applicant and SNCBs on the need or otherwise for R21 to include reference to the timing restriction in respect of dark-bellied brent geese for the works at the Deben Estuary.
- 6.7.135 The Applicant responded [REP1-011] to the Schedule of Issues stating that the mitigation was already secured through the OLEMS at Table 2 and that the Applicant had agreed with NE that these restrictions should be signposted in R21 of the dDCO, which the Applicant proposed to amend accordingly.
- 6.7.136 The SoCG between the Applicant and NE submitted at D2 [REP2-053] stated that, in respect of the management and mitigation measures, it is agreed by both parties that the OLEMS provides adequate mitigation for Schedule 1 breeding birds and water birds of the Deben Estuary. It also stated that the DCO would be amended to secure this restriction.
- 6.7.137 The OLEMS [APP-286] at Table 2 included the following avoidance and mitigation measures for dark-bellied brent geese (noting that the text remained unchanged in the updated OLEMS submitted at D6 [REP6-046 and REP6-047]):

"For the avoidance of disturbance of feeding Brent Geese, during periods of construction works, from the 1st November to 28/29th February the only activities to be undertaken at the east side of the Deben Estuary (i.e. between Ferry Road and the Deben Estuary) would be:

- *Walk-over site investigation or survey works; or*
- *Any inspections required to assess the integrity, safety and security of EATL assets; or*

- *Any response required for the purposes of ensuring the health, safety and security of employees, contractors and the general public, unless otherwise agreed with Natural England.*

Access by vehicle would be from either Access B or Access C (but not from both simultaneously to ensure that any disturbance is localised).

For the same period, during times of severe weather (prolonged cold conditions), access will only be taken for the purposes of health, safety and security unless otherwise agreed with Natural England. The definition of 'severe weather' will be the same as that used to implement the Statutory Suspension of Wildfowl Shooting in Severe Winter Weather measure under the Wildlife and Countryside Act. The severe weather condition will come into force at 00h01 following the day when the relevant Secretary of State signs the necessary Statutory Instrument to bring the requirement into force. The suspension will end after a maximum period of 14 days unless otherwise extended by the Secretary of State through the signing of a further Statutory Instrument. After the end of the shooting season and up until the end of February, the same weather criteria shall apply, albeit without a signed order from the Secretary of State: EATL shall be responsible for monitoring local temperatures for this purpose."

- 6.7.138 Revised dDCOs (Version 2) were submitted at D1 [REP1-004] and again at D4 (Version 3) [REP4-003], both of which include at R21(3) in respect of the ecological management plan the following:
- *21(3) "Construction works between Ferry Road and the River Deben must be carried out in accordance with the embedded mitigation relating to onshore ornithology contained in Table 2 of the outline landscape and ecological management strategy, which must be incorporated into the ecological management plan."*
- 6.7.139 Confirmation was sought from NE through the ExA's SWQ EL9 [PD-018] as to whether R21 of the dDCO submitted at D4 [REP4-003] sufficiently secured mitigation in relation to wintering dark-bellied brent geese. NE responded [REP5-009] that its view was that restrictions on winter working are essential measures in relation to mitigating any potential impacts on wintering dark-bellied brent geese on the Deben Estuary SPA. NE stated it was content that the detail on working restrictions was included in the OLEMS. However, as agreed in the SoCG [REP2-053], NE also suggested that the dDCO should include a signpost to this particular element of the OLEMS. The Applicant also responded to this question at D5 [REP5-012] stating that it had amended R21 of the dDCO accordingly.
- 6.7.140 NE [AS-043] subsequently responded to the ExA's published agenda for the second Environmental Matters ISH [EV-018]. It confirmed that it was now in agreement with the Applicant that there was sufficient signposting in the dDCO to the embedded mitigation measures which must be incorporated into the ecological management plan (including

seasonal working restrictions to mitigate potential impacts on wintering dark-bellied brent geese) - specifically, R21(3) of the dDCO.

- 6.7.141 An updated OLEMS [REP6-046 and REP6-047] and dDCO [REP6-024 and REP6-025] were provided at D6. The text at Table 2 in relation to the Deben Estuary SPA/Ramsar and the brent geese qualifying feature remained unchanged in the updated OLEMS [REP6-046 and REP6-047]. The wording of R21 of the dDCO also remained unchanged.
- 6.7.142 The wording of R21(3) of Version 6 of the dDCO [REP8-022] secures the works specified in the OLEMS in respect of the Deben Estuary and remains unchanged from that provided at D4 [REP4-003] and D6 [REP6-024 and REP6-025].
- 6.7.143 At the end of the Examination, NE had confirmed at D7 [REP7-010]: *"that the RIES has accurately captured our submissions on the Examination of East Anglia THREE and (we) do not have any further submissions to make at this time."* The updated SoCG between the Applicant and NE submitted for D7 [REP7-023] also maintained the position that the project, alone and in combination with other plans or projects, would have no adverse effects on the integrity of the Deben Estuary SPA and Ramsar.
- 6.7.144 Reference to the mitigation measures secured through R21 of the dDCO and the OLEMS remains unchanged in the updated SoCG stating that: *"it is agreed by both parties that the OLEMS provide (sic) adequate mitigation for Schedule 1 breeding birds and waterbirds of the Deben Estuary. The draft DCO will be amended to secure this restriction."*
- 6.7.145 The measures listed in the OLEMS in respect of dark-bellied brent geese are repeated in the SoCG between the Applicant and NE [REP7-023], which records that: *"it is agreed by both parties that the proposed mitigation measures for limiting impacts to wintering birds are suitable for the project."*
- 6.7.146 Whilst the RSPB did not specifically comment on the RIES, the updated SoCG [REP7-027] maintained the RSPB's position that it agreed with that the project alone and in combination with other plans or projects would have no AEOI of the Deben Estuary SPA.

ExA's findings in respect of Deben Estuary SPA and Ramsar site

- 6.7.147 The ExA is satisfied that, taking the relevant conservation objectives into account, AEOI of the Deben Estuary SPA and Ramsar site can be excluded both from the Proposed Development alone and in combination with other plans and projects.
- 6.7.148 We concur with the views of NE and the RSPB that the proposed mitigation measures to avoid works at the Deben Estuary as specified in the updated OLEMS [REP6-046] and as secured through R21 (and specifically R21(3)) of the ExA's recommended DCO (Appx D), adequately secure the necessary measures to avoid adverse impacts

on the dark-bellied brent geese qualifying features of the Deben Estuary SPA and Ramsar site.

Outer Thames Estuary SPA

- 6.7.149 The HRA report [APP-101] screened-in the potential for LSE on the red-throated diver qualifying feature of the Outer Thames Estuary SPA as a result of displacement during cable-laying. The Applicant [APP-101 and APP-102] screened-out disturbance to red-throated diver during operation and maintenance, stating in the screening matrix (updated version REP2-088) that:
- 6.7.150 *"Displacement/Disturbance during operation and decommissioning is considered negligible as the increase in vessel traffic within the SPA due to the wind farm will be negligible compared to baseline (ES Chapter 13, 13.7.2.1)."*
- 6.7.151 A further assessment of red-throated diver displacement during cable-laying operations (both alone and in combination with other plans or projects) was included in Section 3.3.4 of the HRA report. A worst-case scenario was applied to the assessment, which assumed that there would be 100% displacement of birds in a 2km buffer surrounding the cable-laying vessel(s).
- 6.7.152 The assessment indicated that between 18.6 and 22.8 red-throated divers would be displaced at any one time during cable-laying, which would lead to a 0.6% increase in red-throated diver density in other parts of the SPA. A worst-case scenario assuming 10% of displaced birds die would add 0.1 to 0.2% to the natural mortality during two years, which was considered too small to be detectable and was therefore considered not to be significant. The Applicant therefore concluded that there would be no AEOI of the Outer Thames Estuary SPA.
- 6.7.153 In-combination effects were considered at section 3.3.6 of the HRA report [APP-101] and concluded that the contribution of the Proposed Development to in-combination effects was assessed as fewer than two deaths per year over two successive years and that the extra 0.1 to 0.2% to the natural annual mortality in these two years would be too small to be detectable. The predicted mortality of less than two birds per annum was stated in the HRA report as to be so small as not to materially alter any overall in-combination impact. Therefore, the contribution of the Proposed Development to in-combination impact on the red-throated diver population was assessed as negligible.
- 6.7.154 NE stated in its RR [RR-003] that it agreed with the Applicant's approach of estimating the magnitude of disturbance to red-throated divers during construction on a 'worst-case' basis assuming that there would be 100% displacement of birds in a 2km buffer surrounding the cable-laying vessel(s). NE also commented that the scenario of 10% mortality was very precautionary. It therefore concluded that, even

using these precautionary assumptions, the additional mortality was likely to be less than 1%.

- 6.7.155 NE advised that consideration should be given in the HRA to operational and maintenance activities that may cause disturbance of red-throated diver arising from transiting to the site from the operational port. However, if best practice vessel operations were adopted then any likely significant effect could be removed.
- 6.7.156 As previously discussed in Chapter 5, following questions from the ExA in its R17 letter of 17 November 2016 [PD-020], the Applicant provided wording for an amendment to Condition 13 of the relevant DMLs to include the identification of vessel routing and procedures to be adopted within those routes. This wording has been included in Version 6 of the dDCO submitted at D8 [REP8-022]. It is included in respect of construction in all the DMLs. Specifically, these amendments include Condition 13(1)(c)(v) of Schedules 10 and 11, Condition 13(1)(c)(vi) of Schedules 12 and 13 and Condition 6(c)(iii) of Schedules 14 and 15. These secure details of the vessels and vessel transit corridors in the Construction Method Statement to minimise disturbance to red-throated diver.
- 6.7.157 In respect of construction and operation, procedures are secured through Condition 13(1)(d)(vi) of Schedules 10 to 13 and Condition 6(d)(vi) of Schedules 14 and 15, which are to be detailed in the PEMP, in order to minimise disturbance to red-throated diver.
- 6.7.158 The amendments were discussed and agreed with both NE [REP7-010] and the MMO [REP7-003]. The agreed wording has been carried forward into the ExA's recommended DCO (Appx D). The updated SoCG between the Applicant and NE [REP7-023] submitted at D7 maintains the position of both parties that it is agreed that the Proposed Development alone and in combination would have no AEOI of the Outer Thames Estuary SPA.
- 6.7.159 The RSPB did not provide comments after the issue of the RIES. However, an updated SoCG between the Applicant and the RSPB was submitted at D7 [REP-027]. This maintains the position that the RSPB agrees with the Applicant's conclusion that the project alone and in combination would have AEOI of the Outer Thames Estuary SPA.

ExA's findings in respect of Outer Thames Estuary SPA

- 6.7.160 The ExA is satisfied that AEOI of the Outer Thames Estuary SPA conservation objectives can be excluded both from the Proposed Development alone and in combination with other plans and projects.
- 6.7.161 We concur with the views of NE and the RSPB that, with the addition of best practice vessel control measures during construction and operation, as detailed in the Applicant's representation [REP7-018] and as secured through conditions of the DMLs in the ExA's recommended DCO (Appx D), impacts on the red-throated diver qualifying feature of the Outer Thames Estuary SPA can be minimised.

With these measures, and having considered the conservation objectives for the Outer Thames Estuary SPA, the ExA is of the view that AEOI of the SPA arising from disturbance impacts to the red-throated diver qualifying feature can be excluded.

6.8 CONCLUSIONS

6.8.1 The ExA's conclusions throughout this Chapter are based on the evidence set before us and, in particular, on the basis that no reasonable scientific doubt remains, in line with the conclusions of the Waddenzee case (European Court of Justice (C-127/02)). We have carefully considered all the information presented before and during the Examination, including the Applicant's ES and HRA, the RIES, and representations made by IPs.

6.8.2 The only site on which agreement could not be reached is the Southern North Sea pSAC, in relation to noise impacts on harbour porpoise. However, as detailed above, whilst the parties disagree in their approach to mitigation, the ExA's view is that by the Applicant developing the MMMP and SIP once the final conservation objectives and management measures are published, and with consultation with the SNCBs, TWT and WDC, an assessment of no AEOI of any European site may be reached for the Proposed Development.

Mitigation

6.8.3 The ExA concludes that the potential adverse effects on harbour porpoise of the SNS pSAC can be mitigated by detailed measures developed in the MMMP and SIP, once conservation objectives and management measures for the pSAC have been published.

6.8.4 Potential impacts from collision mortality for kittiwake and gannet of the FFC pSPA and FHBC SPA and the lesser black-backed gull of the Alde-Ore Estuary SPA and Ramsar have been reduced by the additional amendments made to the WTG parameters for the Proposed Development and the reduction in numbers of WTG for EA1. The ExA is satisfied that the measures to increase the draught height of 70% of the WTG are secured in the recommended DCO. It is satisfied that the reduction in numbers of WTG for EA1 is secured by a change to the terms of consent of that project, providing for it to construct an HVAC option with a maximum of 750MW installed capacity³².

6.8.5 The ExA is satisfied that the mitigation measures agreed between the Applicant and NE for wintering dark-bellied brent geese of the Deben

³² In the East Anglia ONE Offshore Wind Farm (Corrections and Amendments) Order 2016 (SI 2016/447) at Schedule 2 (Non-material amendments)

Article 2(1) of The East Anglia ONE Offshore Wind Farm Order 2014 (SI 2014/1599) has been amended to provide as follows:

""HVAC offshore wind farm" means a wind turbine generating station with a gross electrical output capacity of up to 750 MW comprising up to 150 wind turbine generators".

Estuary SPA and Ramsar have been secured through the ExA's recommended DCO (Appx D), with R21(3) requiring works to be carried out in accordance with the mitigation measures set out in the OLEMS.

6.8.6 The ExA agrees that, with the additional conditions in the DMLs for best practice vessel control measures during construction and operation, impacts on red-throated diver of the Outer Thames Estuary SPA can be minimised.

6.8.7 Concluding Remarks

6.8.8 Of the 107 European sites originally identified by the Applicant in its HRA screening report, there was no dispute during the Examination over the conclusions reached by the Applicant to screen out a LSE for the majority of European sites. Of the European sites for which detailed screening matrices were produced during the Examination [APP-102, REP2-089, REP6-022], the ExA agrees with the Applicant's conclusions that significant effects in combination with other projects or plans were likely as a result of the Proposed Development on eight European sites and their various qualifying features. These were:

- Southern North Sea pSAC;
- Flamborough and Filey Coast pSPA;
- Flamborough Head and Bempton Cliffs SPA;
- Alde-Ore Estuary SPA;
- Alde-Ore Estuary Ramsar site;
- Deben Estuary SPA;
- Deben Estuary Ramsar; and
- Outer Thames Estuary SPA.

6.8.9 The Applicant's conclusion of no AEoI for the Alde-Ore Estuary SPA and Ramsar, Deben Estuary SPA and Ramsar, and Outer Thames Estuary SPA was not disputed by any IPs during the course of the Examination. In respect of Flamborough Head and Bempton Cliffs SPA/Flamborough and Filey Coast pSPA, the Applicant also concluded no AEoI of these sites.

6.8.10 Whilst the RSPB and NE initially did not agree with the Applicant, once the additional amendments were made to the WTG parameters for the Proposed Development, and reduction in the numbers of WTG for EA1, they were able to agree with the assessment of no AEoI of these sites.

6.8.11 The ExA agrees with the Applicant and the SNCB that the Proposed Development would not adversely affect the integrity of qualifying features of the eight European sites listed above. We are confident that, with detailed mitigation measures developed through the MMMP and SIP, there would be no AEoI of the SNS pSAC. It is the ExA's judgement that the Applicant has taken a precautionary approach in its modelling and assessment of effects for all qualifying features at European sites.

- 6.8.12 Having regard to the relevant information contained in the application and its supporting documentation, together with the relevant information submitted during the course of the Examination and referred to in this report, the ExA considers that the SoS can be satisfied that the tests in the Habitats Regulations have been met and that the Proposed Development would not adversely affect European sites, species or habitats.
- 6.8.13 It is the ExA's judgement that there is sufficient information provided to enable the SoS in his role as competent authority, to conduct, if necessary, an appropriate assessment of the Proposed Development in terms of the effects on integrity of the features discussed in this section.

7 THE EXA'S CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

7.1 INTRODUCTION

7.1.1 The ExA has considered the issues that were raised by IPs in their various representations and those which were examined during the hearings. The policy context and the ExA's findings on individual matters are set out in the preceding Chapters 4 to 6. The overall planning balance is summarised below.

7.1.2 In relation to the granting of development consent, the ExA has reached a number of conclusions, as set out in the following sections.

7.2 CONCLUSIONS ON EXAMINATION OF OFFSHORE ISSUES

7.2.1 For the reasons set out in Chapters 4 and 5, there are no significant issues relating to the offshore construction and the operational effects of the Proposed Development and its inter-relationship with other infrastructure that would justify not recommending the DCO to be made.

7.2.2 The ExA has included within its recommended DCO protective provisions that support a co-existence relationship between the interests of the Proposed Development and the oil and gas interests of Eni UK Ltd. These provisions have been agreed between the two parties.

7.2.3 The ExA is satisfied that the Proposed Development in respect of the export, inter-array and interconnection cables accords with NPS EN-3.

7.2.4 For the reasons set out in Chapter 4, which reference the securing of a Co-existence and Fisheries Liaison Plan and other elements of mitigation, including protection and monitoring of buried cables, the ExA considers there are no outstanding significant issues relating to the impact on commercial fisheries. The Proposed Development would comply with the requirements of NPS EN-3, the MPS and the EIEOMP.

7.2.5 Also for the reasons set out in Chapter 4, there are no outstanding significant shipping and navigation, or aviation and defence issues. The Proposed Development accords with NPS EN-3 in this regard.

7.2.6 The ExA is of the view that for the reasons given in Chapter 4, due consideration has been given to the Proposed Development's impact on the marine physical environment. With mitigation secured within the recommended DCO in relation to minimum cable burial depths and activity close to site 30 where elevated levels of arsenic have been found, there is accordance with NPS EN-3.

7.2.7 For the reasons set out in Chapter 4, the ExA considers the Proposed Development would be in compliance with NPS EN-1 in relation to offshore archaeology and cultural heritage.

- 7.2.8 As set out in Chapter 6, there are eight European sites for which the Proposed Development could have a potential likely significant effect. The ExA is of the view that there would be no Adverse Effect on Integrity (AEoI) from the Proposed Development alone and in combination with other plans and projects of the Alde-Ore Estuary SPA and Ramsar, the Deben Estuary SPA and Ramsar, and the Outer Thames Estuary SPA. This is in regard to the respective qualifying features of the lesser black-backed gull, dark-bellied brent goose and the red-throated diver.
- 7.2.9 The ExA is of the view that there would be no AEoI alone of the Flamborough and Filey Coast pSPA and the Flamborough Head and Bempton Cliffs SPA in terms of their qualifying features of gannet and kittiwake. As set out in Chapter 6, because of the altered parameters of the EA3 array, with an increase in draft height of 70% of the WTG, together with the secured reduction in the number of turbines for the EA1 project, the ExA is of the same conclusion in respect of no AEoI when considered in combination with other plans and projects.
- 7.2.10 Having regard to the Southern North Sea pSAC for harbour porpoise, the ExA accepts that firm conclusions on whether there would be AEoI are difficult because of the ongoing and developing situation with the pSAC which existed at the time of the Examination, and the absence of agreed conservation objectives.
- 7.2.11 However, the need for the future agreement of a Marine Mammal Mitigation Protocol (MMMP) and a Site Integrity Plan (SIP), which is adequately secured within the recommended DCO, provides the framework to require the development and implementation of specific mitigation measures. These could utilise the best available technologies, specifically in relation to pile driving if used during construction, to prevent AEoI on this pSAC both alone and in combination with other plans and projects.
- 7.2.12 The ExA is of the view that the MMMP and SIP would provide sufficient security to ensure adequate mitigation would be delivered to avoid AEoI. However, we acknowledge that it is for the SoS to decide whether an appropriate assessment is to be carried out.
- 7.2.13 In respect of EIA, for the reasons set out in Chapter 5, including the agreed variation in draught height of WTG, the reduction in the number of turbines in the EA1 project, and mitigation measures secured through the recommended DCO, there would be no predicted outstanding significant impacts on ornithological species or sites, fish and shellfish and benthic ecology that would prevent the SoS from making the Order. The ExA is satisfied that the Proposed Development complies with the requirements of NPSs EN-1 and EN-3 in respect of these matters.
- 7.2.14 A European Protected Species licence is likely to be necessary for harbour porpoise and potentially other cetacean species. An MMMP to include measures to prevent injury to harbour porpoise would be

required, and is secured through the recommended DCO, should pile driving be used during construction of the WTG. However, the MMO confirmed that, based on the evidence presented during the Examination, it would be reasonable to assume that a licence(s) would be granted.

7.3 CONCLUSIONS ON EXAMINATION OF ONSHORE ISSUES

- 7.3.1 The laying of onshore transmission cables within pre-installed ducting provided through the consented EA1 project would considerably reduce the potential impact of the Proposed Development. As set out in Chapter 4, the proposed design parameters of the onshore cable corridor, and the proposed substation(s) at Bramford, coupled with appropriate mitigation measures that would be secured through the recommended DCO, lead the ExA to conclude that there would be no significant impact on landscape that would preclude making the Order. The requirements of NPSs EN-1 and EN-3 are accordingly met in this regard.
- 7.3.2 As set out in Chapter 4, the inclusion of R20 of the recommended DCO would ensure the adequate safeguarding of archaeological interests. Whilst noting the unresolved objection from the SPS, the Proposed Development would result in less than significant harm to a very limited number of heritage assets in terms of impact on their setting. However, this harm has to be balanced against the considerable public benefit of the provision of a major supply of renewable energy (see paragraph 4.2.3 above) which, in this case, the ExA considers clearly outweighs the less than significant harm. The Proposed Development is compliant with NPS EN-1 in this regard and there are no matters in relation to onshore archaeological or cultural heritage that would weigh against the DCO being made.
- 7.3.3 The Proposed Development would result in impacts arising from traffic generation particularly during the construction phase, as set out in Chapter 4. In part, these would be mitigated because of the reduced scale of works as a result of cable-laying within pre-installed ducts. Further mitigation is secured through R22, requiring the agreement and implementation of a Code of Construction Practice for each stage of construction works, and through R27 requiring the submission and approval of a traffic management plan, a travel plan and an access management plan. The ExA considers this mitigation would adequately address the concerns expressed by Bawdsey Parish Council and Little Blakenham Parish Council in relation to inconvenience and safety. During operation, the traffic and transport impacts would result in negligible effects. The ExA is satisfied that the Proposed Development accords with NPS EN-1 in this regard.
- 7.3.4 As set out in Chapter 4, the socio-economic effects associated with the Proposed Development are assessed within the ES as ranging from 'minor beneficial' for the onshore components to 'moderate beneficial' for the offshore elements. The ExA is content that a Skills Strategy for the Proposed Development does not need to be secured through the

DCO, but could be taken forwards outwith the DCO process. There are no socio-economic reasons why the DCO should not be made and the ExA considers there is accordance with NPS EN-1.

- 7.3.5 The ExA concludes, as set out in Chapter 4, that the requirements in relation to soils, geology and ground conditions, noise and vibration, and air quality and health, have been satisfactorily addressed. The Proposed Development would be compliant with NPS EN-1 in respect of these matters.
- 7.3.6 As set out in Chapter 4, the requirements of NPS EN-1 are met in terms of adequate protection of water quality and resources, compliance with the Water Framework Directive and the avoidance of flood risk. The ExA notes that the EnvA is not aware of any reasons why it would not be able to grant the necessary Environmental Permits or abstraction licences for completion of the Proposed Development.
- 7.3.7 The ExA considers that, as set out in Chapter 4, there would be no adverse effect on land use of sufficient weight to justify the DCO not being made. There would be compliance with the requirements of NPS EN-1 in this regard.
- 7.3.8 As set out in Chapter 5, there are three designated sites within the footprint of the onshore electrical transmission works - Bawdsey Cliffs SSSI, Deben Estuary SSSI and the landscape-designated Suffolk Coast and Heaths AONB. In addition, there are five non-statutory designated sites, considered to be of value at county level, that lie within the footprint of the onshore electrical transmission works and access.
- 7.3.9 There was no disagreement from any IP during the Examination relating to the Applicant's assessment that effects on terrestrial ecology and ornithology at these statutory and non-statutory sites would be not significant. The ExA is content that, with the embedded mitigation, the requirements of NPS EN-1 in relation to SSSIs have been satisfied.
- 7.3.10 As set out in Chapter 5, mitigation measures that would be secured through the recommended DCO or, in the case of skylark, have been agreed outwith the DCO process, would ensure that the Proposed Development would result in no significant residual effects on terrestrial ecology. The ExA is content that there is compliance with the requirements of NPS EN-1 in respect of these matters.
- 7.3.11 R21 of the recommended DCO ensures the provision of an Ecological Management Plan. This should accord with an OLEMS, which would include mitigation for bats, great crested newts and water voles.
- 7.3.12 As a precautionary measure, R29 has been included in the recommended DCO. This requires pre-construction surveys to identify the presence of any European Protected Species on land affected by the connection works. The ExA considers that this, together with R21, adequately safeguards the content and implementation of a Species Protection Plan. As a result of such mitigation, the ExA is of the view

that there would be no reason in principle why an EPS licence would not be granted.

7.4 THE PLANNING BALANCE

- 7.4.1 Apart from heritage considerations, there are no adverse impacts which would argue against the DCO being made. The Proposed Development would result in less than significant harm to the setting of a small number of heritage assets in terms of impact on their setting. The ExA concludes that this harm is clearly outweighed by the provision of a major supply of renewable energy.
- 7.4.2 The conclusion of the ExA is therefore that, for the reasons set out in the preceding chapters and summarised above, development consent should be granted, subject to the incorporation of changes it has made to the DCO, as discussed in Chapter 9 below.

8 COMPULSORY ACQUISITION AND RELATED MATTERS

8.1 INTRODUCTION

8.1.1 This chapter sets out:

- the Applicant's request for powers of compulsory acquisition (CA) to be granted as part of the DCO;
- the purpose and extent of the powers being sought in relation to the CA of land, the acquisition of existing and new rights over land; and temporary possession;
- the way in which the proposals for CA powers were examined, including issues in relation to statutory undertaker (SU) land and Crown land;
- the representations made in respect of the CA proposals;
- considerations in respect of the Human Rights Act 1998;
- the Applicant's proposals for funding the project and the compensation requirements resulting from the request for CA powers;
- whether, in each particular case, the tests set out in PA2008 in respect of CA of land and rights, Crown land and SU land and apparatus have been met;
- whether the documentation submitted as part of the application meets the requirements of the appropriate regulations and guidance.

8.2 THE REQUEST FOR COMPULSORY ACQUISITION POWERS

8.2.1 The Applicant is seeking the acquisition of a combination of freehold ownership and permanent rights (such as rights of access, repair and maintenance) and temporary possession powers as set out in its updated Statement of Reasons (SoR) [REP8-009³³].

8.2.2 The main components of the onshore works are summarised in section 4 of the SoR. They are:

- The landfall site with associated transition bays to connect the offshore and onshore cables;
- Up to four onshore electrical cables;
- Jointing bay locations each containing up to two jointing bays to be located along the cable route;

³³ The originally submitted SoR was revised on four occasions during the Examination culminating in the final version submitted at D8 [REP8-009].

- One onshore substation compound (for up to two electrical substations or converter stations³⁴, dependent on whether power transmission would be LFAC or HVDC);
 - Up to two onshore fibre optic cables; and
 - Landscaping and tree planting around the location of the substation(s).
- 8.2.3 Freehold title is sought where permanent control of the land is required or the interference with the interests of existing owners is such that acquisition of a lesser interest in the land would be inappropriate. This applies in the location of the onshore substation(s), associated compound and permanent landscaping.
- 8.2.4 The granted consent for the EA1 project included the provision of ducting to allow for the provision of cabling for the present EA3 Proposed Development. Consequently, permanent rights are now sought to:
- lay and pull the EA3 cables through the ducts already installed as part of the EA1 project;
 - install the necessary jointing bays for the cables;
 - facilitate access for the cable pull-through; and
 - maintain the onshore infrastructure and associated works.
- 8.2.5 Permanent rights are the principal type of acquisition sought for the majority of the Order Land, which comprises the cable route of some 36km from landfall at Bawdsey Cliffs to the new substation(s) compound at Bramford to the north-west of Ipswich.
- 8.2.6 Sufficient rights are sought to construct the EA3 works within primarily what will be the EA1 ducts along the cable route, with associated rights of access for construction and maintenance purposes.
- 8.2.7 Permanent rights of access are sought to access the cable corridor. Although access would for the most part be along existing routes, there are some points in remote areas where temporary haul roads are required. The provision of haul roads would be mostly temporary in duration. Nonetheless, rights of permanent access are sought to allow the same route for occasional maintenance during the operational period, as well as to secure a route for decommissioning activities.

³⁴ As referred to earlier in this report, the shorthand of 'substation(s)' is used to describe the proposed substation(s) or converter station(s), although the updated Explanatory Memorandum [REP8-007 and REP8-008 (track change version)] does not now refer to converter stations.

- 8.2.8 In addition to the principal rights for cable installation, various miscellaneous rights are sought connected with cable installation. The full list is set out in Schedule 5 of the recommended DCO but includes rights for: the laying, maintaining, repairing and removing cables by pulling cables through existing ducts; installing and improving drainage; installing and maintaining marker posts to identify cables, manhole covers and kiosks for maintenance; removing hedges, fences or other barriers to allow access to the cables; and the carrying out of environmental mitigation and enhancement works.
- 8.2.9 Powers of temporary possession of land are sought for two purposes. On land where activities would only be carried out during construction, or where construction plant, equipment and other apparatus would need to be laid down but no cables or apparatus are to be installed, temporary possession of land is sought, without the requirement to exercise powers of compulsory acquisition.
- 8.2.10 Temporary powers are also sought to allow construction activities on land where cables are to be installed, prior to any permanent rights to retain, operate and maintain those cables being acquired compulsorily (or by agreement). The purpose is to allow the Applicant to complete cable installation before committing to acquiring permanent rights, the intention being to reduce the amount of land affected by permanent rights and reduce the impact on landowners. This is considered in more detail below.
- 8.2.11 Restrictive covenants are sought over lands which would have cables and ducts installed, to protect the cables or ducts from exposure or damage, or being built over.
- 8.2.12 Together with the draft DCO [APP-025] and the SoR [APP-027] the Applicant submitted:
- (i) a draft Explanatory Memorandum (EM) [APP-026]. This was replaced at D8 by a revised version [REP8-007 and REP8-008 (comparison version)] to reflect the changes made to the dDCO during the Examination and to clarify the Applicant's intention to acquire the freehold of only a limited number of Plots and those which would only be subject to temporary possession [REP2-028, response to FWQ CA3];
 - (ii) a Book of Reference (BoR) [APP-029 to APP-033], which was updated on two occasions during the Examination. Version 2 [REP2-030 and REP2-031(track change version)] explained that Plot numbers had been kept the same as for the EA1 project but that this resulted in some Plots being not used as they do not form part of the EA3 application. In response to FWQ CA3 [REP2-028], Version 2 therefore included for clarity the words 'not used' where applicable for those Plots not required for EA3 and which do not form part of the EA3 Order land. Version 2 was also amended to ensure correct reference to the exclusion of Crown interests, in response to FWQ CA8. Version 3, submitted at D8

[REP8-011 and REP8-012 (track change version)], provided the most up-to-date information to the Examination in relation to names and addresses of Affected Persons (APs) and interests as a result of the Applicant's diligent inquiry. It also included the re-insertion of names of relevant deceased parties where a death certificate had not been provided to the Applicant [REP8-001, Table 1];

- (iii) Land Plans [APP-006 to APP-008], updated post-submission at D2 [REP2-059 to REP2-062] at the request of the ExA. They are coloured to show the land to be acquired freehold (red), land subject to temporary rights only (green) and land subject to both temporary and permanent rights (hatched blue and green). They also included an amendment to sheet 24 to identify that Plot 454A was subject to freehold acquisition rather than being the subject of temporary and permanent rights, as originally shown in error on the plan;
- (iv) Special Category Land Plan [APP-009]; and
- (v) a Funding Statement [APP-028] submitted with the application, and a signed Funding Agreement, a copy of which was provided at D2 [REP2-035] in response to FWQ CA14 [REP2-028].

8.2.13 The Applicant amended certain Articles in relation to CA powers and temporary possession powers during the course of the Examination, culminating in its Version 6 of the dDCO [REP8-022].

8.2.14 The Applicant seeks CA powers within the dDCO [APP-025] through the following Articles:

15 - Compulsory acquisition of land

16 - Time limit for exercise of authority to acquire land compulsorily

17 - Compulsory acquisition of rights

18 - Private rights

19 - Application of the Compulsory Purchase (Vesting Declarations) Act 1981

20 - Acquisition of subsoil only

22 - Rights under or over streets

25 - Exercise of powers in relation to SUs' land, rights and apparatus subject to Schedule 8 (protective provisions)

8.2.15 Power to use land on a temporary basis for carrying out the Proposed Development is sought in Article 23 and the temporary use of land for maintaining the Proposed Development in Article 24.

8.2.16 Additionally, Schedule 6 seeks to modify a number of compensation and compulsory purchase enactments to ensure they operate effectively for the creation of new rights or the imposition of restrictive covenants as well as for the acquisition of land. Schedule 8 contains protective provisions.

8.3 REQUIREMENTS OF THE PLANNING ACT 2008

8.3.1 Compulsory acquisition powers can only be granted if the conditions set out in s122 and s123 of PA2008 are met.

8.3.2 S122(2) provides that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the development, guidance suggests that the land to be taken must be no more than is reasonably required and be proportionate.

8.3.3 S122(3) requires that there must be a compelling case in the public interest. This means that the public benefit derived from the CA must outweigh the private loss that would be suffered by those whose land is affected. In balancing public interest against private loss, CA must be justified in its own right. But this does not mean that the CA proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for the Proposed Development to be carried out and there must be consistency and coherency in the decision-making process.

8.3.4 S123 requires that the SoS must be satisfied that one of the conditions in subsections (2) to (4) is met before making a DCO including provisions authorising the CA of land: The conditions are:

- subsection (2) provides that the application for the Order includes a request for CA of land to be authorised;
- subsection (3) provides that all persons with an interest in the land consent to the inclusion of the provision; and
- subsection (4) provides that the prescribed procedure has been followed in relation to the land.

8.3.5 In this case, the ExA is satisfied that the condition in subsection (2) of s123 is met because the application for the DCO included a request for CA of the land to be authorised.

8.3.6 A number of other considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers:

- all reasonable alternatives to CA must be explored³⁵;

³⁵ Ibid, para. 8

- the Applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available³⁶; and
- the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected³⁷.

8.4 THE PURPOSES FOR WHICH LAND IS REQUIRED

8.4.1 In its SoR [REP8-009³⁸] having regard to s122(2) and s122(3) of PA2008, the Applicant sets out the purposes for which the Order land is required. At paragraph 2.7 it is stated that:

"(A)ll of the Order Land, shown on the Land Plan and described in the Book of Reference, is required either for the purposes of the Project, or to facilitate the same, or for purposes incidental thereto. In order to deliver the Project, the Applicant is seeking the acquisition of a combination of freehold ownership, permanent rights (such as rights of access, repair and maintenance) and temporary rights during construction".

8.4.2 At paragraph 2.12 of the SoR the Applicant indicates that its purpose in acquiring the land compulsorily is *"to secure the land and rights required to construct and then operate East Anglia THREE within a reasonable commercial timeframe"*.

8.5 ACQUISITION OF LAND AND RIGHTS BY VOLUNTARY AGREEMENT

8.5.1 At paragraph 2.10 of the SoR [REP8-009] the Applicant notes that it will seek to continue to acquire rights and interests to deliver the Proposed Development by agreement where possible on appropriate commercial terms. It further notes that seeking CA powers whilst, in parallel, negotiations to acquire interests continue, is in accordance with both general practice and paragraph 25 of the DCLG's guidance on compulsory acquisition.

8.5.2 The SoR records that negotiations were in progress with all APs, the great majority of whom are also landowners for the EA1 project. SoR paragraph 7.55 states that negotiations with EA1 landowners are well advanced, with commercial terms agreed with all. The Applicant's stated intention is that negotiations to acquire the new EA3 land, and the new accesses needed for EA3, can be covered by amending the negotiated agreements already substantially progressed for EA1.

³⁶ Ibid, para. 9

³⁷ Ibid, para. 10

³⁸ Unless otherwise specified, the SoR to which reference is made is the last version submitted before the close of the Examination.

- 8.5.3 The SoR notes at paragraph 7.58 that land has been scheduled in the BoR even when agreement has been reached. This is to ensure that if any minor interests, such as easements, rights of way, restrictive covenants or similar interests are discovered that have not been previously negotiated away, powers are available to override those interests.
- 8.5.4 In response to SWQ CA25 [REP5-024], the Applicant provided a Plot-by-Plot analysis on negotiations and positions reached with relevant parties where land and rights acquisitions are required. This was updated at D8 [REP8-014 and REP8-015 (track change version)]. In addition, a Landowner Negotiation Update was provided at D8 [REP8-013]. The Update indicated that, near the close of the Examination, of 59 land agreements sought, 44 had been completed, Heads of Terms had been signed with negotiations continuing in 10 cases, final documents were to be exchanged in three cases, with ongoing negotiations in the remaining two cases. This is against a background of some 516 individual plots listed in the BoR and shown on the land plan.

8.6 PRINCIPAL COMPULSORY ACQUISITION POWERS

- 8.6.1 The principal CA powers are contained in Articles 15 and 17 of the recommended DCO. Article 15 relates to the power to CA land whilst Article 17 relates to the power to CA rights or to impose restrictive covenants by creating new rights as well as by acquiring rights already in existence.

Article 15

- 8.6.2 Article 15 grants the undertaker of EA3 power to acquire so much of the Order land as is required for the works, subject to Article 17 (compulsory acquisition of rights) and Article 23 (temporary use of land for carrying out the authorised project). Although Article 15 is a broad power and the whole of the Order land is potentially subject to powers of compulsory acquisition, by virtue of Articles 17 and 23 the powers of CA are, in practice, limited; Article 17(2) limits the undertaker's CA powers over the land listed in Schedule 5 to the acquisition of new rights and the imposition of restrictive covenants, whilst Article 23(8)(a) prevents the CA of land listed in Schedule 7, save that new rights and restrictive covenants can be created in land in this schedule which is also in Schedule 5.
- 8.6.3 The Applicant intends to acquire the freehold of only a limited number of plots, the land required for CA in accordance with Article 15 comprising Plots 449A, 450, 453, 454, 454A, 454B, 454C, 457-463 and 465 [REP2-028, response to FWQ CA3 and REP8-009]. These are plots required permanently for the provision of the substation(s) and compound at Bramford and land for associated landscaping (Work Nos. 62-65 and 67-69).

Article 17

- 8.6.4 Article 17 enables the undertaker to acquire rights over land, including new rights and existing rights if applicable. It also provides for the extinguishment or overriding of existing rights in land, subject to the provisions of the Article.
- 8.6.5 Articles 17(1) and (2) provide that, for the Order Land specified in Schedule 5 of the recommended DCO (Land in which only new rights etc. may be acquired), the undertaker's rights are limited to the acquisition of such new rights or restrictive covenants that are set out in the Schedule. All Plots in the Order, with the exception of Plots 449A, 450, 453, 454, 454A, 454B, 454C, 457-463 and 465, are scheduled for the permanent acquisition of new rights or the imposition of restrictive covenants and/or temporary possession [REP8-007].

The interaction between Article 15, 17 and 23

- 8.6.6 The consequence of the restrictions in Articles 17 and 23 is to ensure that the CA of the freehold of land in the Order is limited to those plots listed above needed for the onshore substation(s) and compound, and associated landscaping. The implementation of all the 'below ground' onshore works is to be achieved by the acquisition of rights and the imposition of restrictive covenants only (in those cases where rights have not been obtained by voluntary agreement).
- 8.6.7 For plots that are scheduled for temporary possession (and which are set out in Schedule 7), Article 23(8)(a) excludes compulsory acquisition except for the acquisition of new rights or the imposition of restrictive covenants under Article 17 (as set out in Schedule 5). The drafting of the Article was amended to achieve this in Version 3 of the Applicant's dDCO [REP4-004] in response to the ExA's questioning at the second DCO ISH on 8 September 2016. In answer to FWQ CA6 [REP2-028], the Applicant clarified that the:

"majority of the plots along the cable route are needed for temporary possession during construction, and are also scheduled for the acquisition of permanent rights to operate, retain, maintain and repair the cables and works. These plots appear in both Schedule 5 and Schedule 7".

Post-Examination legislative changes

- 8.6.8 On 30 January 2017 the Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017 were made. These regulations brought into force certain provisions of the Housing and Planning Act 2016 on the 3 February 2017. They include provisions amending the Compulsory Purchase (Vesting Declarations) Act 1981, the Compulsory Purchase Act 1965 and the Acquisition of Land Act 1981. The amendments apply to the CA of land authorised on or after the 3 February 2017 and will therefore apply to any CA authorised by the SoS in this DCO.

- 8.6.9 The regulations bring into force provisions which repeal s3 and s5(1) of the Compulsory Purchase (Vesting Declarations) Act 1981. Article 19 of the Applicant's draft DCO seeks to amend s3 and s5(1) of the Compulsory Purchase (Vesting Declarations) Act 1981. As these provisions have now been repealed, the proposed amendments in the DCO would be no longer effective. Therefore, these provisions have implications for sub-sections (3) – 6(a) of Article 19 of the Applicant's dDCO, Article 19 having been carried forward into the ExA's recommended DCO, and consequent amendments to the Article may be required.
- 8.6.10 The regulations also bring into force provisions which replace section s8(1) of the Compulsory Purchase Act 1965 and these may have implications for Article 17(3) and Article 21(1) of the Applicant's dDCO, which refer to s8. Paragraphs 2(3) and 5 of Schedule 6 of the Applicant's dDCO also relate to s8 of the Compulsory Purchase Act 1965. These Articles have been carried forward to the ExA's recommended DCO. As a result of the Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017 there may be implications for Articles 17 and 21, and Schedule 6.
- 8.6.11 The Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017 post-date the close of the Examination and were consequently not considered during its course. It is a matter for the SoS as to whether consultation is required on any changes to the DCO as a result of these legislative changes. This matter is referred to also within Chapter 9 below relating to the DCO.

8.7 POWERS TO MAKE TEMPORARY USE OF LAND

- 8.7.1 The grant of powers of temporary possession sits outside powers of CA. Nonetheless, because these powers still involve interference with the use of land, the ExA has treated them as akin to CA powers and hence they are covered in this Chapter.
- 8.7.2 Article 23 would enable the undertaker for the purpose of constructing the EA3 development to take temporary possession of certain land. Article 24 would enable the undertaker to take temporary possession of certain land for the purposes of maintaining the development during a specified five-year maintenance period.
- 8.7.3 Power is provided by Article 23(1)(a)(i) for land to be used temporarily if that land is specified in Schedule 7 (Land of which temporary possession may be taken) and is to be for a use specified in column 3 of that Schedule.
- 8.7.4 Article 23(1)(a)(ii) provides power for temporary possession to be taken for the rest of the Order land prior to the exercise of CA powers, with the exception of the plots which are subject to freehold acquisition. The clause was amended by the Applicant in response to

SWQ CA18 [REP5-012]. This was to clarify that powers of temporary possession would not apply to land for which it sought freehold acquisition (this being the site of the substation(s) and immediate surrounds) since certainty of control prior to the construction of key infrastructure was needed.

8.7.5 The EM states that these "*temporary powers are 'overlaid' onto many of the plots that are also scheduled for the acquisition of permanent new rights*" [REP8-007]. The SoR [REP8-009] explains that temporary possession is sought for two purposes:

- (a) where activities would only be carried out during construction, or where construction plant, equipment and other apparatus would need to be laid down but no cables or other apparatus are proposed to be installed; and
- (b) to allow construction activities on land where cables are to be installed, prior to any permanent right to retain, operate, and maintain those cables being acquired compulsorily (or by agreement).

8.7.6 The SoR [REP8-009, para. 7.5.8] explains that the purpose of the second use of temporary possession powers is to allow the undertaker:

"to complete the cable installation works... before committing to acquiring permanent rights. This is intended to reduce the amount of land affected by permanent rights, and reduce the impact on landowners accordingly". The EM [REP8-007] notes:

"(F)or plots that are scheduled for temporary possession, Article 23(8)(a) excludes freehold CA but still permits the acquisition of permanent rights under Article 17 (as set out in Schedule 5). In this way, the power in Article 15 is further limited".

8.7.7 Article 23(8)(b) permits the acquisition of subsoil rights in any land subject to Articles 15 or 17. The EM explains that this:

"provision could potentially allow the undertaker to acquire additional rights to those set out in Schedule 5, in case a need for a subsoil right becomes apparent that is currently unforeseen. As the great majority of the land to be acquired under the Order comprises new rights for an underground cable and related works, this provision is unlikely to be used, but could be relied on in rare circumstances to assist the delivery of the nationally significant infrastructure project. This provision was accepted in the East Anglia ONE Order...".

8.8 CROWN LAND

8.8.1 Crown land below Mean Low Water Springs (MLWS) is illustrated on the Crown Land Offshore Plan, which accompanied the application [APP-020]. In accordance with s135 of PA2008 this is not subject to proposals for CA.

- 8.8.2 Landward of MLWS, according to the BoR there are only five plots within the Order land which are Crown land (Plots 1, 64, 65, 66, and 190³⁹) [REP8-011]. As made clear by s135(1) of PA2008, it is not possible to compulsorily acquire land that is held by or on behalf of the Crown. However, interests in Crown land that are held otherwise than by or on behalf of the Crown may be acquired with the consent of The Crown Estate (TCE) (or other appropriate Crown authority) in accordance with s135(1). The Applicant confirmed that it does seek the right to acquire interests in Crown land other than those held by or on behalf of the Crown [REP2-025, answer to FWQ CA7].
- 8.8.3 As set out in paragraph 8.2 of the SoR [REP8-009], land in relation to the A12 and A14 that would be affected by cable installation is now owned by Highways England and is no longer Crown land. This was confirmed in response to FWQ CA17 [REP2-028].
- 8.8.4 Article 37 of the dDCO [APP-025] seeks to protect the interests of the Crown. As drafted, it would prevent the undertaker from taking, using, entering upon or interfering with any Crown land or rights without the consent of The Crown Estate Commissioners. Whilst not querying the intent of this Article, the ExA posed questions about the drafting of this Article during the Examination [PD-012, PD-018, PD-023]. The ExA's conclusions on the drafting of Article 37 are set out in section 9.5 of the DCO chapter of this report.
- 8.8.5 Having regards to the granting of Crown consent for the acquisition of third party interests in Crown land, TCE responded at D1 [REP1-008]. TCE consented to the inclusion of rights to acquire third party interests in Crown land as contained in Article 37 of the dDCO. However, it reserved its rights as regards its consent to exercise such CA powers stating the:
- "grant of consent to the exercise of compulsory acquisition powers remains at the discretion of Commissioners and will depend upon the relevant parties having first worked to find a solution which avoids the use of such powers".*
- 8.8.6 In response to FWQ CA7 [REP2-020], TCE confirmed its view in relation to s135(1) of PA2008 (provided in its letter of 22 June 2016 [REP1-008]) that the appropriate Crown authority does not need to provide consent to the acquisition of an interest in Crown land held otherwise than by or on behalf of the Crown before a DCO can be made; such consent can be deferred to a later stage through an appropriately worded article [REP2-020].
- 8.8.7 Article 37(1)(b) in the Applicant's original dDCO contained a provision which amounted to what would be a mechanism for TCE to consent to the acquisition of third party interests after the DCO was made. The

³⁹ These are: Plot 1, part of the foreshore east of Bawdsey Cliffs; Plots 64, 65 and 66 parts of the River Deben and its eastern and western foreshore; and Plot 190, part of the Martlesham Creek.

ExA sought TCE's further views on the permissibility of this approach [PD-018, SWQ DCO5].

8.8.8 *TCE responded [REP5-002], indicating:*

"Article 37 is so drafted to enable the Crown Estate Commissioners to comply with their duties under the Crown Estate Act 1961. ...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."

8.8.9 A further response was provided by TCE for D8 [REP8-025]. This followed the publication of the ExA's consultation DCO [PD-022]. The consultation draft suggested amendments to Article 37 removing the ability of TCE to consent at a later date to the exercise of powers to CA interests held otherwise than by or on behalf of the Crown. The amendment was put forward to reflect the ExA's understanding of the requirement in s135(1) of PA2008 that a DCO can only include provision authorising the acquisition of an interest held otherwise than on behalf of the Crown if the appropriate Crown authority has given unconditional consent.

8.8.10 TCE's response indicated that, without prejudice to its position, the Commissioners have reached a separate agreement with the Applicant. This *"provides the Commissioners with sufficient assurance as to the way in which compulsory acquisition powers of third party interests in Crown land forming part of the Crown estate may be exercised"*.

8.8.11 As such, TCE confirmed its consent to the CA of interests in Plots 1⁴⁰, 64, 65, 66 and 190 for the purposes of s135(1) of PA2008. This was subject to suggested wording of Article 37 which would remove the need for a second consent from the Crown before the undertaker could exercise CA powers over third party interests in Crown land.

8.8.12 Within its D8 response [REP8-025], for the purposes of s135(2) TCE provides consent to certain provisions being included in the DCO. S135(2) provides that an Order granting development consent may include any other provision applying in relation to Crown land or rights benefiting the Crown only if the appropriate Crown authority consents. The provisions to which TCE consents are specified in its letter⁴¹.

⁴⁰ Although reference is made to Plot 1, the BoR does not record any third party interests in this Plot and, as such, no TCE consent would be necessary.

⁴¹ These are: Articles 3, 4, 5, 6, 7, 11(1)(b) (but only in relation to Work No. 6), 13(3), 14, 27, 28, 29 (but not for the application of any agreement for leasing, lease or agreement entered into between TCE and the undertaker/any other person), 30, 35 and 37.

- 8.8.13 To comply with s135(2), the SoS would need to be satisfied that there are no other provisions (ie not listed in TCE's consent) that affect Crown land or rights benefiting the Crown (not being rights which benefit the general public) before making the DCO. In this regard the ExA considers there may be other Articles which apply in relation to Crown land or interests for which s135(2) consent would be required.
- 8.8.14 First, for example, the Applicant seeks temporary possession powers over all Crown land plots (Plots 1, 64, 65, 66 and 190) and these are included in Schedule 7 of the DCO. Consent for the temporary possession provisions in the DCO (Articles 23 and 24) is therefore required. TCE appears to try and cover this by consenting to their inclusion in Schedule 7 when it is giving its s135(1) consent to the inclusion of CA powers over those plots.
- 8.8.15 The ExA considers this is not the correct approach because s135(1) relates to CA and the grant of temporary possession powers does not amount to CA. Consequently, for temporary possession powers to be included over Crown land, TCE would need to give s135(2) consent to the inclusion of Article 23 (Temporary use of land for carrying out the authorised project) and Article 24 (Temporary use of land for maintaining the authorised project).
- 8.8.16 Secondly, s135(1) only relates to provisions authorising the CA of an interest in Crown land. The ExA considers the only Articles in the DCO that this definitely covers are Article 17 (Compulsory acquisition of rights) and Article 20 (Acquisition of subsoil only). In relation to other articles which relate to CA, such as Article 16 (Time limits for the exercise of authority to acquire land compulsorily), Article 18 (Private rights) and Article 19 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981, the position does not appear to be so clear cut. If they are not covered by s135(1) then they are likely to be provisions which apply in relation to Crown land or rights benefiting the Crown for which consent is required under s135(2).
- 8.8.17 Thirdly, provisions relating to requirements and appeals (Article 34) could also potentially apply in relation to Crown land as could some of the protective provisions (Article 38 and Schedule 8).
- 8.8.18 TCE finally states in its D8 response [REP8-025] that "*in the event that other provisions of the Order (than those listed in its letter) create rights benefiting the Crown the Commissioners' consent in this letter shall also apply to such provisions*". The ExA is not convinced that this constitutes express consent for the inclusion of Articles in the DCO which apply in relation to Crown land or rights benefiting the Crown as is required by s135(2).
- 8.8.19 TCE's letter was submitted very late in the Examination. The ExA did not consider it was feasible at that stage to seek clarification or confirmation as to which articles TCE considers are covered by its s135(1) consent, and to ask for revision to its s135(2) consent to include temporary possession provisions, and potentially also include

those articles discussed above. The ExA therefore recommends that the SoS seeks this clarification from TCE. This would be to ensure satisfaction that s135(2) consent has been given for all the provisions in the DCO that affect Crown land, or rights benefiting the Crown (not being rights which benefit the general public). Further reference to this is provided in section 9.5 of the DCO Chapter of this report.

8.9 STATUTORY UNDERTAKERS

8.9.1 In the SoR [REP8-009] the Applicant summarises the application of s127 of PA2008. This applies to SU's land held for the purpose of the undertaking if that SU has made a representation about the proposed DCO before the completion of the examination of the application and that representation has not been withdrawn.

8.9.2 The Applicant notes:

"(If that representation has not been withdrawn; and if that decision-maker is satisfied the land is used for the purposes of the carrying out of the statutory undertaking, then statutory undertakers' land may only be included for acquisition in a development consent order if the Secretary of State is satisfied that the land may be purchased and not replaced without serious detriment to the carrying on of the undertaking or it can be replaced with other land belonging to or available for acquisition by the undertaking without serious detriment to the carrying on of the undertaking".

8.9.3 S138 of PA2008 is engaged by Article 25 of the DCO (Statutory undertakers). This permits the CA of land or rights of undertakers, or enables the Applicant to extinguish, remove or relocate the rights or apparatus of SUs. Such power may only be included in the Order if the SoS is satisfied the extinguishment or removal is necessary for the project.

8.9.4 Article 25 is expressed to be subject to protective provisions agreed between the Applicant and relevant undertakers. Proposed protective provisions form Schedule 8 to the Order.

8.9.5 The SoR referred to negotiations with National Grid Electricity Transmission plc, Eastern Power Networks plc, Anglian Water Services Limited, Centrica plc, Thus Limited and Network Rail Infrastructure Limited. During the Examination, representations were received from, and the ExA was notified of, negotiations between the Applicant and the SUs listed below:

- Anglian Water Services [RR-017, REP2-014, REP4-026, REP5-003, REP6-006 and REP7-001];
- Network Rail Infrastructure Ltd [RR-026, AS-044, REP1-002, REP2-021 and REP4-001];
- National Grid Plc (on behalf of National Grid Gas Plc and National Grid Electricity Plc) [RR-013, REP2-012, REP7-014 and REP8-019];
- East Anglia ONE Ltd [REP2-037]; and

- Eni UK Ltd [AS-041, REP2-022, REP4-031, REP6-007, REP6-045, REP7-013 and REP8-020].

8.9.6 No representations were received from Eastern Power Networks, Centrica and Thus Limited. The Applicant considers that the general protective provisions contained in the Order protect these statutory undertakers [REP2-028, answer to FWQ CA11]. By the close of the Examination representations were withdrawn and protective provisions agreed with all SUs whose interests are engaged by s127 and s138 of PA2008. Section 127 is not triggered in respect of the interests of Eni UK Ltd since these interests are offshore.

8.9.7 The ExA considers the SoS can be satisfied that the extinguishment of any relevant SU rights or the removal of any relevant SU apparatus is necessary for the purpose of carrying out the development to which the Order relates.

8.10 OPEN SPACE LAND

8.10.1 Plots 1 to 7 of the Order land form part of the beach and foreshore at Bawdsey, required for the cable route. The SoR [REP8-009] notes that works to install the export cables from the offshore array so that they can connect to the onshore transition jointing bay would be carried out by way of pulling through the cables. Surface access to the beach may be required for survey and monitoring but would not impede public access. The new rights sought to be compulsorily acquired would be to allow the pulling through of the cables and for the repair, maintenance, renewal, replacement and removal of the cables once installed [APP-034].

8.10.2 The Applicant's s132 Statement [APP-034] sets out the reasons why it is believed that when burdened with these new rights these plots will be no less advantageous to persons in whom they are vested, other persons entitled to rights, and the public.

8.10.3 In response to FWQ CA9 the Applicant stated that:

"(O)n 6 March 2014, the SoSCLG certified his satisfaction for the East Anglia One Offshore Wind Farm that the land, when burdened with the rights granted in accordance with the East Anglia One Order as made, would be no less advantageous to persons in whom it is vested, other persons entitled to rights, and the public. The Applicant considers that the rights sought over plots 1-7 as part of the draft Order are less onerous than those sought for the East Anglia ONE Order as made, given that rights are only sought to pull cables through existing ducts. The Applicant is not aware of any disagreement with its assessment. There will be no permanent surface features".

8.10.4 TCE is the owner of Plot 1 and has not indicated any disagreement with the Applicant's assessment.

8.10.5 The owner of Plots 4 to 7 has confirmed that once the proposed works for EA3 are completed he does not anticipate that the 'open space'

beach would be any less useful or subject to any more onerous restrictions than it is currently [REP2-073]. The ownership of Plots 2 and 3 is unknown. The Applicant's diligent inquiry has not revealed ownership of these plots [REP2-028, response to FWQ CA29].

8.10.6 The ExA considers that the SoS can be satisfied that, in accordance with s132(3) of PA2008, the land when burdened with the Order rights will not be any less advantageous to persons in whom it is vested, other persons, if any, and to the public. Accordingly, neither exchange land nor Special Parliamentary Procedure will be necessary. The ExA is also satisfied that s132(2) of PA2008 is complied with in that the preamble to the recommended DCO records this.

8.11 HOW THE EXA EXAMINED THE CASE FOR COMPULSORY ACQUISITION

8.11.1 The case for CA was examined through two rounds of written questions, a further request for information under Rule 17⁴², a Compulsory Acquisition Hearing (CAH), the submissions and written summaries which followed, and both accompanied and unaccompanied site visits.

8.11.2 In FWQ [PD-012], the ExA sought to clarify the purpose of the CA provisions in the dDCO. The questions CA1 – CA17 referred particularly to:

- Clarification of which plots outright acquisition of the freehold was sought and the listing of plots in Schedules 5 and 7;
- Interests in Crown land and the need for amendment to the BoR in relation to Crown interests;
- Acquisition of rights over the beach and foreshore at Bawdsey;
- Protective provisions;
- Implications for CA of post-consent determination of the precise position of jointing bays; and
- Funding Statement.

8.11.3 In the ExA's SWQ [PD-018], questions CA18 to CA28 were asked particularly on:

- The relationship between Articles 15, 17 and 23;
- Crown consent;
- Further explanation of the implications of jointing bay locations;
- Communication with landowners in respect of the extent of the cable corridor; and
- Update of negotiations and positions reached with APs.

8.11.4 A CAH was held on 25 October 2016 [EV-021]. Following this, the ExA produced a table of action points arising from matters discussed at the Hearing [EV-026].

⁴² The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended)

- 8.11.5 A Rule 17 letter was issued on 17 November 2016 [PD-023] which sought responses to various questions posed by the ExA in its Consultation draft DCO. Amongst these questions were those relating to the Crown rights Article and protective provisions.
- 8.11.6 By the close of the Examination there were no outstanding questions other than those relating to TCE consent discussed in section 8.8 above regarding the Applicant's purpose in pursuing powers of CA and temporary possession and the extent to which the CA of land and new rights were sought.
- 8.11.7 In response to SWQ CA25, the Applicant provided a Plot-by-Plot Analysis Table [REP5-024]. This lists each of the plots affected including a description of the land, whether acquisition is sought, ownership of the plot, what rights are sought and the status of negotiations. This analysis was subsequently updated at D6 [REP6-042 and REP6-043 (track change version)] and D8 [REP8-014 and REP8-015 (track change version)].

Book of Reference

- 8.11.8 In the BoR submitted with the application [APP-029] the phrase *'Excluding all interests of The Queen's Most Excellent Majesty In Right Of Her Crown and all interests of The Crown Estate Commissioners'* was included in column 2 of part 1 headed *'Extent, description and situation of land'*, was inserted which describes the extent of the land over which CA is sought. This phrase also appeared in other parts of the BoR where it was not appropriate. This was pointed out in FWQ CA7 [PD-012]. In this, the ExA asked for the BoR to be amended in order to adequately exclude Crown interests owned by TCE from CA authorised by the DCO. This was corrected in Version 2 and subsequent versions of the BoR.

8.12 THE APPLICANT'S CASE

- 8.12.1 Section 2 of the SoR [REP8-009] summarises the purpose of the application and the approach to the CA of land and rights. The Applicant's purpose in acquiring the Order land compulsorily, if required, is to secure the lands and rights required to construct and then operate the EA3 development within a reasonable commercial timeframe.
- 8.12.2 All of the Order land shown on the Land Plan and described in the BoR is required either for the purposes of the Proposed Development, to facilitate it or for purposes incidental to it. To deliver the development a combination of freehold ownership, permanent rights and temporary possession powers are sought.
- 8.12.3 The freehold of only a limited number of plots is sought, these plots being for the provision of the substation(s) and compound, and associated landscaping at Bramford. The acquisition of permanent rights is sought over the majority of plots to allow the operation, retention, maintenance and repair of the export cabling. The majority

of plots along the cable route are also required for temporary possession during construction.

Need for the Proposed Development

- 8.12.4 Section 5 of the SoR [REP8-009] sets out the policy support for the application. The Applicant notes that the:

"Project directly responds to the urgent need to decarbonise the UK energy supply and enhance the UK's energy security and diversity of supply identified in the Government's statement of national policy in NPS EN-1 and EN-5. The proposed development would make a significant contribution towards the achievement of the Government's renewable energy targets".

The Applicant's case under s122

- 8.12.5 Section 7 of the SoR [REP8-009] sets out the justification for the use of CA powers. As noted above, the acquisition of a combination of freehold ownership, permanent rights (such as rights of access, repair and maintenance) and temporary possession powers is sought.
- 8.12.6 In terms of freehold acquisition, only Plots 449A, 450, 453, 454 454A, 454B and 454C and 457-463 comprise the land required permanently for the substation(s) and associated landscaping, and a new access would be formed on Plots 449A to 450 (Works 62-69). These are the plots coloured pink on the Land Plan [REP2-062, Sheet 24].
- 8.12.7 There would be a considerable degree of work necessary for the construction of the substation(s), cable-laying (by pulling through the ducts laid as part of the EA1 project) and by other direct laying methods between the end of the ducts and the EA3 substation(s). Additionally, there is the need for a secure compound and considerable landscaping. Freehold acquisition is sought to minimise disruption to landowners and allow an extensive landscaping programme.
- 8.12.8 For the vast majority of the onshore route cables would be laid within the ducting to be provided as part of the consented EA1 project. In respect of the cable corridor, powers to enter lands within an area to be acquired or used with a width of 75m are sought. The anticipated standard working space for construction would be approximately 55m in width at most locations.
- 8.12.9 An additional 20m is included in the cross-section to enable the Applicant to carry out cable installation works with the minimum of inconvenience to affected landowners. This would allow for minor variations in the cable corridor to avoid potential engineering difficulties. The additional 20 metres would also allow sufficient space within the Order limits for a range of other necessary activities as set out in paragraph 7.16 of the SoR. These include habitat surveys, accommodation works, lay-down and compound areas, areas for

footpath diversions or temporary access routes where appropriate, and to avoid the removal of trees and hedges.

- 8.12.10 The Applicant notes that at this stage it cannot be confirmed exactly where within the 75m corridor the cables and ducts would be laid by EA1 or identified accurately where only temporary possession would be sufficient. As such, the whole of the 75m width of cable corridor has been included in the land to be acquired or used [REP8-009, para. 7.17].
- 8.12.11 The exact location of the cables/ducts would not be finally fixed until detailed surveys have been carried out under the powers in the EA1 Order, and discussed with landowners. The Applicant would therefore intend to take possession of the relevant Order land on a temporary basis in the first instance, relying on the powers in Article 23 of the DCO (Temporary use of land for the carrying out of the project). Once it was clear what land would be required permanently within the area of land to be acquired or used, and what land would be needed to be occupied only on a temporary basis, then the process of compulsory acquisition for those permanent rights would begin.
- 8.12.12 At the CAH, the ExA asked the Applicant to provide clarification of the corridor widths that would be required as this was unclear from the earlier versions of the SoR [EV-026]. Version 4 of the SoR was accordingly provided [REP6-030 and REP6-031 (track change version)]. This noted that post construction, a permanent cable corridor of between 35m and 42m in width is anticipated to be required for most of the cable corridor, save where construction processes or other reasons necessitate a wider permanent easement being required. The Applicant states that the permanent corridor is justified on the basis that all cables would be laid within this.
- 8.12.13 Overall, within the 75m width of the land to be acquired or used, there would be a potential for 33 to 40m in the cross-section being required only temporarily, with the remaining 35m to 42m in the cross section being required on a permanent basis.
- 8.12.14 In relation to jointing bay locations, the ExA asked the Applicant questions in both rounds of written questions as to implications for CA [PD-012 FWQ CA15, and PD-018 SWQ CA27]. In providing a more comprehensive answer to CA27 [REP5-008] the Applicant stated:
- "Until the ducts have been installed as part of the East Anglia One Wind Farm project, and the construction and design methodology has been finalised, the Applicant will not be able to confirm the location of the cable jointing bays. It has therefore sought flexibility to be able to install cable jointing bays along the full extent of the cable route".*
- 8.12.15 In addition, the Applicant noted:
- "the land required for the jointing bays satisfies the tests for compulsory acquisition set out in section 122 of the Planning Act 2008 as the land is required for the development to which the development*

consent relates and there is a compelling case in the public interest for the land to be acquired compulsorily. The compelling case exists as without the land for the jointing bays, the EA THREE project cannot be delivered. Jointing bays are essential to ensure that cables can be securely joined together at appropriate intervals along the entire cable route and that their integrity is preserved e.g. via inspection, monitoring and where necessary maintenance”.

- 8.12.16 The Applicant also noted that, as far as possible, jointing bays would be positioned in suitable locations to ensure minimum disruption to the affected land.
- 8.12.17 From the foregoing, the ExA considers that the Applicant's explanation provides full and adequate justification for the powers sought in relation to the cable corridor and jointing bays.
- 8.12.18 There have been no representations objecting to the proposed use of CA powers. The Applicant has achieved agreement with the majority of APs, the Applicant responding at the CAH that approximately two-thirds of landowners have entered agreements, with negotiations continuing to seek agreement with the balance [REP6-016]. The Landowner Negotiation Update submitted at D8 indicates that agreements had been reached in almost three-quarters of cases [REP8-013].
- 8.12.19 In answer to SWQ CA18 [REP5-012], the Applicant stated that agreements had been completed in respect of all plots specified for freehold acquisition except two (Plots 454B and 454C), with negotiations continuing. Paragraph 7.59 of the SoR [REP8-009] notes that, despite the above position, it cannot be anticipated that all of the interests in the Order land necessarily would be acquired within a reasonable commercial timeframe.

8.13 THE CASE UNDER S127 AND S138

- 8.13.1 Article 25 of the Applicant's dDCO enables the CA of land and rights owned by SUs and the extinguishment of their rights or removal or relocation of rights or the repositioning of apparatus.
- 8.13.2 As noted above, the SoR [REP8-009] identified a number of SUs with whom the Applicant was in negotiations. Additionally, there was engagement during the Examination by additional SUs. By the close of the Examination representations had been withdrawn and agreement on protective provisions reached with all SUs who had made representations.
- 8.13.3 Schedule 8 of the recommended DCO sets out the protective provisions agreed with SUs and other utility providers.
- 8.13.4 Part 7 of Schedule 8 relates to protective provisions for oil and gas licensees, with Eni UK Ltd being the currently relevant body which engaged in the Examination in light of its interests within, and in proximity to, the offshore WTG array site. As its interests lie entirely

offshore, neither s127 nor s138 issues arise because CA is not sought for land offshore owned by the Crown. The protective provisions issue in relation to Eni UK Ltd is considered in detail in section 9.5 of the DCO chapter of this report.

8.14 THE EXA'S CONSIDERATION OF THE COMPULSORY ACQUISITION ISSUES

8.14.1 The ExA's approach to the question whether and what CA powers it should recommend to the SoS to grant has been to seek to apply the relevant sections of PA2008, notably s122 and s123, the DCLG Guidance, and the Human Rights Act 1998; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

8.14.2 However, the Applicant's dDCO deals with both the proposed development itself and CA powers. The case for CA powers cannot properly be considered unless and until the ExA has formed a view on the case for the development overall, and the consideration of the CA issues must be consistent with that view.

8.14.3 It has been shown in the conclusion to the preceding Chapter of this report that the ExA has reached the view that development consent should be granted. The question therefore that is addressed here is the extent to which, in the light of the factors set out above, the case is made for CA powers necessary to enable the development to proceed.

The public benefit

8.14.4 The effect of s122(1) and (2) of PA2008 is to provide that the land to be subject to CA must be required for the development to which the development consent relates; effectively that the land needs to be acquired, or rights over or under it acquired, or impediments upon it removed, in order that the development can be carried out. This is not in relation to the temporary use of land.

8.14.5 To reach a judgement on this requirement the approach the ExA took was to examine:

- (i) the case which has been made for the grant of CA powers in respect of all plots included in the BoR;
- (ii) the justification for the inclusion of the plots in the SoR;
- (iii) the type and extent of interests sought;
- (iv) the stated use of the Order land and whether there are clear and necessary proposals in relation to each plot sought; and
- (v) the potential effects and consequences of taking the land proposed.

8.14.6 The ExA notes that the Applicant seeks to limit the use of CA powers by:

- relying on the acquisition of new permanent and existing rights and the imposition of restrictive covenants to retain, protect and maintain the Proposed Development. This is apart from 14 plots (449a, 450, 453, 454, 454A, 454B, 454C, and 457-463) where freehold acquisition of land is sought to construct up to two substations and compound with associated landscaping at Bramford;
- restricting the acquisition of new permanent and existing rights and the imposition of restrictive covenants to the onshore cable corridor;
- elsewhere, securing delivery of the onshore development through powers of temporary possession (which sit outside the powers of CA) to enable construction and temporary access; and
- seeking to secure the acquisition of interests by voluntary agreement [REP8-009].

8.14.7 The ExA is satisfied that, in the event of the grant of development consent for EA3 as applied for and now recommended, there would be a need to acquire the land and rights and interests in the land within the DCO; that the land and rights sought are necessary; and that the powers sought in the DCO would be required to implement the development.

8.14.8 The ExA is further satisfied that the powers granted by the recommended DCO (Appx D) in respect of the acquisition of new rights and the imposition of restrictive covenants as proposed in Article 17 is limited to the Order land specified in column 1 of Schedule 5 for the purposes set out in column 2 and are defined in terms that meet the tests of s122(a) and (b) of PA2008.

8.14.9 With regards to s122(3), in considering whether there is a compelling case in the public interest, there are a number of issues to be considered in balancing the public interest against the private loss which would occur.

8.14.10 The need for new energy NSIPs is recognised by NPSs EN-1, EN-3 and EN-5. NPS EN-1 explains that electricity meets a significant proportion of our overall energy needs and our reliance on it is likely to increase. It states that the UK needs all the types of energy infrastructure covered by it in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions. EN-1 further advises that all applications for such development should be assessed on the basis that there is a need for those types of infrastructure. It sets out, in section 3.3, the key reasons why the Government believes that there is an urgent need for new electricity NSIPs.

8.14.11 The NPPF acknowledges the pre-eminence of NPSs in policy terms when considering NSIPs. It is clear from the relevant NPSs that there is a national need for electricity generating capacity of the type that is

the subject of the application. There is a need in the public interest to protect the cables/ducts, once installed, and to ensure that the supply of electricity is not impeded. This represents a significant public benefit to be weighed in the balance.

- 8.14.12 In the ExA's opinion, in accordance with the three NPSs, the public benefits associated with the construction and use of EA3 would be clear, substantial and compelling.

Private loss

- 8.14.13 The ExA has considered what assessment had been made of the effect upon APs and their private loss that would result from the exercise of compulsory powers, in light of paragraph 13 of the DCLG Guidance.
- 8.14.14 It is recognised that the onshore element of the proposed development has been designed so that the majority of works would take place beneath the ground. Cabling would be installed within ducting that forms part of the already consented EA1 project. The cable corridor route is that which has already been selected and seeks to minimise visual impact, avoid sensitive land uses such as development land, urban and residential land, non-agricultural businesses and other infrastructure. The extent of any private loss has therefore been mitigated both through the selection of the route and the undergrounding of the cables along it.
- 8.14.15 The majority of the plots would be agricultural land which, in the long-term, would be relatively insensitive to the proposed onshore infrastructure works. The undergrounding of the cables and, for the most part, the pulling through of cables within ducting that has already been consented and would be installed, would minimise constructional disruption. It would enable the land to be returned to its original agricultural purpose post-construction, although subject to new permanent rights and restrictive covenants following CA or voluntary agreement.
- 8.14.16 In the ExA's opinion, there is compelling evidence that the private loss imposed by the Proposed Development has been minimised and is outweighed by the public benefits that would be derived from the use of CA where necessary. As noted above, there have been no expressed objections to the use of CA powers. The ExA considers that the test of s122(3) of PA2008 - that there is a compelling case in the public interest for the land to be acquired compulsorily - is met.

Alternatives

- 8.14.17 The DCLG Guidance requires (para 8) that: *"(T)he applicant should be able to demonstrate to the satisfaction of the SoS that all reasonable alternatives to CA (including modifications to the scheme) have been explored..."*.
- 8.14.18 Chapter 4 of the ES considers site selection and alternatives [APP-112]. It sets out the Applicant's case for and the process of

considering alternative sites and locations for the cable landfall, cable corridor and substation(s) site and the consultation that took place.

8.14.19 For the onshore electrical transmission works (ie landfall, onshore cable route and onshore substation(s)) the site selection process was driven by two factors: the agreed National Grid connection at Bramford; and the intention that the cable route would utilise ducting provided as part of the consented EA1 project.

8.14.20 Paragraph 7.68 of the SoR [REP8-009] confirms that:

"(T)he selection of the landfall, onshore cable corridor and substation / converter station location was determined during the development of the onshore electricity transmission works for the consented East Anglia ONE. From the outset (during the planning for the East Anglia ONE), careful routeing of the onshore electrical transmission works has set out to avoid key areas of sensitivity where possible.... The land scheduled in the Book of Reference is necessary and appropriate; there are no other suitable alternatives".

8.14.21 The Applicant has sought, and continues to seek, a negotiated solution to each of the identified required interests. In each case the Applicant has chosen to secure land or rights in a way that minimises disruption to the relevant owners.

8.14.22 The ExA considers that against this background the Applicant's approach to alternatives is a reasonable one. It is also mindful of: the size of the proposed development; its ability to contribute to national renewable energy sources; the testing of proportionality and reasonableness in the land and rights, etc. sought through CA; the importance of securing land along the entire length of the 36km cable corridor in order for the project to be viable; and the progress that has been made in securing land and rights through negotiations with APs.

8.14.23 In the light of these considerations the ExA concludes that the land for which CA powers are being sought is required to enable the construction, operation and maintenance of the onshore elements of EA3 proposed development.

8.15 THE EXA'S OVERALL COMPULSORY ACQUISITION CONCLUSIONS

Human Rights Act 1998 considerations

8.15.1 A key consideration in formulating a compelling case is a consideration of the interference with human rights which would occur if CA powers are granted.

8.15.2 It is acknowledged by the Applicant in Section 8 of the SoR [REP8-009] that the DCO engages a number of the Articles of the European Convention on Human Rights which are incorporated into the Human Rights Act:

- (i) Article 1 of the First Protocol protects rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property is to be interfered with;
- (ii) Article 6 entitles those affected by CA powers sought for the Proposed Development to a fair and public hearing; and
- (iii) Article 8 protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of the country.

8.15.3 In the SoR [REP8-009] the Applicant states that it has weighed the potential infringement of Convention Rights in consequence of the inclusion of compulsory powers within the Order with the public benefits if the Order was made.

8.15.4 Having regard to the relevant provision of the Human Rights Act, the ExA has considered the individual rights with which there would be interference. There were no representations made by APs in relation to any such interference. The ExA is satisfied that:

- (i) in relation to Article 1 of the First Protocol the proposed interference with an individual's rights would be lawful, necessary, proportionate and justified in the public interest;
- (ii) in relation to Article 6, there were no objections raised but all parties were given the opportunity to fully participate in the Examination; and
- (iii) in relation to Article 8, any interference is in accordance with the law, is proportionate and is necessary in the interests of the economic well-being of the country.

Availability and adequacy of funds

8.15.5 DCLG Guidance requires that an application for a DCO is accompanied by a statement explaining how both the acquisition of land and the implementation of the proposed development would be funded and that the funding would be available in a timely fashion within the time limits for implementation set by the DCO.

8.15.6 A Funding Statement (FS) was submitted with the application [APP-028]. Version 2 of the SoR [REP2-033], and subsequent versions, indicate that the Applicant, East Anglia THREE Limited, is a wholly owned subsidiary of East Anglia Offshore Wind Limited, which has been created to take the Proposed Development forward. Its sole shareholder is ScottishPower Renewables (UK) Limited (SPR). SPR is a subsidiary of ScottishPower Renewable Energy Limited, which itself is a subsidiary of ScottishPower UK plc (SPUK). This situation indicates a change from the FS, which stated that East Anglia Offshore Wind Limited was jointly owned by Vattenfall Wind Power Ltd and SPR.

- 8.15.7 SPR and SPUK are part of the Iberdrola Group, which the SoR notes is one of the largest utilities in the world and a leading wind energy producer with a renewables capacity of over 24,900MW. Paragraph 2.3 of the FS states that the total assets of SPR at the end of 2014 amounted to nearly £14 billion.
- 8.15.8 The FS states that the Applicant intends to secure funding for the construction of the Proposed Development after the Order is made, the tender process is complete for the major construction contracts and the investment case has been satisfied, following which a Final Investment Decision would be made to irrevocably commit funding. The principal models for the provision of funding would be from: capital reserves of the parent company; parent company finance (company debt); directly from an external lender (project finance); or a combination of these.
- 8.15.9 The ExA considers there is sufficient evidence to satisfy the SoS that there is a reasonable prospect that the Applicant would be able to procure the funding to enable the proposed development to proceed.
- 8.15.10 Funding is necessary for the cost of acquiring land and interests identified in the Order and also the cost of compensation that would be otherwise payable in accordance with the Order. The FS notes that the Applicant has been advised that the total property cost estimates for the acquisition of the required interests in land within the Order should not exceed £3,742,114. In response to FWQ CA13 [REP2-028], the Applicant referenced the professional source of this advice. It noted that the quoted figure took account of all costs including compensation for disturbance during construction, and professional/legal fees.
- 8.15.11 The Applicant submitted a copy of a completed Funding Agreement at D2 [REP2-035]. The Agreement is between itself and SPUK and secures the funding for acquisition and compensation payments up to the above assessed level. The Applicant notes at Section 4 of the FS that, whilst it is not anticipated that successful claims for statutory blight would arise, the Agreement makes provision for funding of blight claims before the making of the Order.
- 8.15.12 The Applicant further states that:
- "(S)hould claims for blight arise as a consequence of the application for the Order being made, and before it is known whether EATL's project will proceed, the costs of meeting blight claims that are upheld will be met from (its) capital reserves or Scottish Power UK plc".*
- 8.15.13 In its SWQ CA24 [PD-018] the ExA suggested that the recitals to the Agreement were incorrect in that they referred to Vattenfall Wind Power Ltd as being a shareholder of the Applicant company and that a revised Funding Agreement should be provided to reflect this.
- 8.15.14 In response, the Applicant stated:

“it is correct that the agreement erroneously refers to Vattenfall Wind Power Ltd being a shareholder of East Anglia Offshore Wind Ltd in the recitals. This was the correct position at the time the document was originally prepared. However, at the time that the agreement was signed and dated, the sole shareholder of East Anglia Offshore Wind Ltd was Scottish Power Renewables. Notwithstanding this, as the reference to Vattenfall Wind Power Ltd is only in the recitals of the agreement, it does not affect the operative provisions or the validity of the funding agreement. There are no obligations on Vattenfall Wind Power Ltd in the agreement, and indeed the agreement is not signed by Vattenfall Wind Power Ltd”.

- 8.15.15 On this basis the ExA accepts that the Agreement is validly made.
- 8.15.16 The ExA is satisfied that the Funding Agreement provides an adequate means of securing the funding for all the CA compensation costs of the Proposed Development. The FS and the Funding Agreement support the existence of a compelling case for the grant of compulsory acquisition powers.

8.16 THE EXA'S RECOMMENDATION ON THE GRANTING OF COMPULSORY ACQUISITION POWERS

- 8.16.1 The ExA considers that the SoS can be satisfied that there is compliance with s123(2) of PA2008 in that the application for the DCO included a request for the authorisation of the CA of land.
- 8.16.2 Having examined the Applicant's case under s.122 of PA2008 as described above, the ExA concludes that the proposed DCO meets the tests of s122(2)(a) and (b). Further, bearing in mind the overriding need for the generation of renewable energy, in the ExA's opinion the test of s122(3) of PA2008, that there is a compelling case in the public interest for the land to be acquired compulsorily, is also met.

s.122(2)

- 8.16.3 This section of PA2008 sets out the purposes for which CA may be authorised. In the light of the DCLG's CA Guidance, it is necessary to consider whether the Applicant has justified its proposals for the CA of the land.
- 8.16.4 The ExA is satisfied that the legal interests in all the plots of land included in the revised BoR and shown on the Land Plans (as amended) would be required for both the principal development and the associated development identified in the application. The requirements of s122(2)(a) of PA2008 are therefore met.

s122(3)

- 8.16.5 The ExA concludes that:

- (i) the development for which the land is sought would be in accordance with national policy as set out in the relevant NPSs and development consent should be granted;
- (ii) the NPSs identify a national need for electricity generating capacity of the type that is the subject of the application;
- (iii) there is a need to secure the land and rights required and to construct the development within a reasonable commercial timeframe, and the development represents a significant public benefit to weigh in the balance;
- (iv) the private loss to those affected has been mitigated through the selection of the application land, the undergrounding of the cables and the extent of the rights and interests proposed to be acquired;
- (v) the Applicant has explored all reasonable alternatives to the CA of the rights and interests sought. There are no alternatives which ought to be preferred;
- (vi) adequate and secure funding would be available to enable the compulsory acquisition within the statutory period following the DCO being made; and
- (vii) the resource implications of a possible acquisition resulting from a blight notice have been taken into account.

8.16.6 Considering these factors together, the ExA therefore concludes that there is a compelling case in the public interest for land and interests to be compulsorily acquired and therefore the proposal would comply with s122(3) of PA2008.

8.17 CONCLUSION

8.17.1 The ExA has examined against the tests in PA2008 the Applicant's request to be granted powers of CA to ensure the EA3 Proposed Development can be implemented. As a consequence, it recommends that powers of CA be granted as set out in the recommended DCO (Appx D). The ExA is further satisfied that the powers of temporary possession sought by the Applicant are reasonable and proportionate in this case.

9 DRAFT DEVELOPMENT CONSENT ORDER (DCO)

9.1 INTRODUCTION

- 9.1.1 The application draft DCO (Version 1) [APP-025] and an Explanatory Memorandum [APP-026] were submitted by the Applicant as part of the application for development consent. The Explanatory Memorandum describes the purpose of the draft DCO as originally submitted, with each of its articles and schedules.
- 9.1.2 The application draft DCO was broadly based on the model provisions (the now-repealed Infrastructure Planning (Model Provisions) (England and Wales) Order 2009), but departed from those clauses to draw upon drafting used in made Orders for similar development under PA2008, the Transport and Works Act 1992 and other Acts authorising development [APP-026].
- 9.1.3 This Chapter provides an overview of the changes made to the DCO during the Examination process, between the application draft and a final preferred draft DCO submitted by the Applicant at D8 [REP8-022] (Version 6). It then considers proposed changes to arrive at the ExA's recommended DCO.
- 9.1.4 The following sections of this chapter:
- report on the processes adopted by the ExA to examine the draft DCO and its progress through the Examination;
 - report on the structure of the draft DCO;
 - summarise changes made to the DCO during the Examination up to D8 that were not the subject of contention (where, following consultation and dialogue as necessary, the Applicant and relevant IPs supported the changes);
 - report in more detail on those changes that were the subject of contending submissions in written representations and or hearings; and
 - set out final changes proposed by the ExA subsequent to D8 that address matters of drafting convention.

9.2 EXAMINATION OF THE DCO

- 9.2.1 The ExA's review of the Version 1 draft DCO [APP-025] (the application version) commenced before the formal start of the Examination. The ExA documented matters arising from the application version during the pre-examination period, as part of its preparation for the PM. The ExA's Rule 6 Letter [PD-005] was accompanied by a schedule of matters for examination relating to the draft DCO [PD-020], made available to the Applicant and IPs before the start of the Examination, a process which in turn enabled the ExA to hold its first ISH on the DCO on 29 June 2016, the day after the PM and the initial USI [EV-003 to EV-006].

- 9.2.2 Matters for examination arising from the DCO and progress on them were tracked throughout the Examination, using further ISHs on the DCO, held as follows:
- 8 September 2016 [EV-010 and EV-016 to 17];
 - 26 October 2016 [EV-018 and EV-022 to 24];
- 9.2.3 The draft DCO was updated several times during the Examination, responding to issues raised by IPs and by the ExA, through both written representations and as a consequence of the hearing process. At each revision, the Applicant submitted a clean copy and a copy showing tracked changes from the previous clean copy version. The 'work-in-progress' versions of the draft DCO submitted by the Applicant during the Examination were as follows:
- Version 2 [REP1-004] (clean copy) and [REP1-005] (tracked changes) was submitted in response to matters raised in the DCO ISH on 29 June 2016;
 - Version 3 [REP4-003] (clean copy) and [REP4-004] (tracked changes) was submitted in response to matters raised up to and in the DCO ISH on 8 September 2016; and
 - Version 4 [REP6-024] (clean copy) and [REP6-025] (tracked changes) was submitted in response to matters raised up to and in the DCO ISH on 26 October 2016.
- 9.2.4 The ExA published a draft DCO and commentary for consultation [PD-022] towards the end of the Examination on 17 November 2016. This was based on the Applicant's then preferred draft: the Version 4 draft DCO [REP6-024]. The Applicant and IPs were invited to comment on the ExA's draft DCO and commentary by D7, 8 December 2016. The ExA's draft was commented on in substantive terms by: the Applicant [REP7-016, 032 and 033]; Anglian Water Services Ltd [REP7-001]; TCE [REP7-002]; the MMO [REP7-003]; Ipswich Borough Council [REP7-004]; Suffolk County Council with Suffolk Coastal, Mid-Suffolk and Babergh District Councils [REP7-005 and 006]; HE [REP7-008]; NE [REP7-010]; Eni UK Ltd [REP7-013]; and National Grid [REP7-014].
- 9.2.5 Following consideration of the matters raised in comments at D7, the Applicant submitted a preferred draft Version 5 DCO [REP8-003] (clean copy), [REP8-004] (tracked changes from Version 4) and [REP8-005] (tracked changes from Version 1) at D8, 15 December 2016.
- 9.2.6 Having submitted its preferred draft Version 5 on time for D8, the Applicant then passed this version through the standard Statutory Instrument template validation process provided by The Stationery Office, to ensure that it was formatted correctly. This process identified two further minor and non-substantive typographical errors, to which the Applicant responded in a late submission on 23 December 2016, seeking to correct these and to replace its original D8 DCO submissions. It provided a final preferred draft Version 6 DCO [REP8-

022] (clean copy), [REP8-023] (tracked changes from Version 5) and [REP8-024] (the validation report from the template validation process).

- 9.2.7 Given the late submission of the final preferred draft Version 6 DCO [REP8-022] on 23 December 2016, the ExA gave careful consideration to whether the changes in this draft affected the interests of any IP in the Examination. However, having reviewed these changes, it was clear that they were non-substantive and technical in nature and the ExA was content that they did not affect the interests of any IP. On this basis, they were accepted as late submissions and no further opportunity to respond was provided to IPs.
- 9.2.8 Additional responses to D7 comments were submitted for D8 by the Applicant [REP8-001 to 017 and REP8-021] (late), Eni UK Ltd [REP8-020], EA [REP8-018], National Grid [REP8-019] and TCE [REP8-025] (late). On consideration by the ExA, none of the issues raised in these comments were in any way affected by the Applicant's late submission of its final preferred draft Version 6 DCO [REP8-022].
- 9.2.9 The Applicant did not update the Explanatory Memorandum [APP-026] on a continuous basis during the Examination, but did accompany each revised draft version of the DCO with a table setting out the basis for the changes from the previous iteration [REP1-076, REP4-005, REP6-026 and REP8-006]. Taken together with the Explanatory Memorandum, these tables allow the reader to understand the reasons for the proposed drafting changes as they progressed throughout the Examination. The Applicant's preferred draft DCO Version 5 [REP8-003 to 005] was accompanied by a consolidated updated Explanatory Memorandum [REP8-007 and REP8-008 (comparison version)] which explains provisions as changed throughout the Examination process and tracks the changes from the initial version. Given the non-substantive nature of the changes at Version 6 [REP8-022], the ExA is content that it remains up-to-date.
- 9.2.10 Unless specifically indicated otherwise, all references to provisions in the draft DCO in this chapter are based on the final preferred draft Version 6 DCO [REP8-022].

9.3 THE STRUCTURE OF THE DRAFT DCO

- 9.3.1 The draft DCO follows a form that has become conventional for offshore generating station development and closely mirrors the drafting approach taken in the made East Anglia ONE Order (SI No. 1599). The structure of the draft DCO (taken from the Applicant's preferred draft Version 6 DCO [REP8-022]) can be summarised as follows:

Articles

Part 1: Preliminary matters

- Citation, commencement and interpretation.

Part 2: Principal powers

- Development consent granted by the DCO;
- Power to construct and maintain the authorised development;
- Benefit of the Order;
- Application and modification of legislative provisions; and
- Defence to proceedings in respect of statutory nuisance.

Part 3: Streets

- Street works;
- Temporary stopping up of public rights of way and streets;
- Access to works; and
- Agreements with street authorities.

Part 4: Supplemental powers

- The discharge of water, surveying and investigating land onshore.

Part 5: Powers of acquisition

- Compulsory acquisition of land and rights;
- Temporary use of land;
- Statutory undertakers; and
- Recovery of the costs of new connections.

Part 6: Operations

- Power to operate the generating station; and
- Deemed Marine Licences (DMLs).

Part 7: Miscellaneous and general

- Other necessary provisions including provision for the certification of plans, arbitration, appeals on requirements, Crown rights and protective provisions.

Schedules

Schedule 1: Authorised project

- The authorised development set out as numbered works;
- Ancillary works; and
- Requirements.

Schedule 2: Streets subject to street works

- A tabulation of streets subject to street works, with reference to the works plan.

Schedule 3: Public rights of way to be temporarily stopped up

- A tabulation of public rights of way to be temporarily stopped up, with reference to the public rights of way to be temporarily stopped up plan.

Schedule 4: Access to works

- A tabulation of works access locations, with reference to the access to works plan.

- *Schedule 5: Land in which only new rights etc may be acquired*
A tabulation of numbered plots and the purpose for which the new rights and restrictive covenants may be acquired, with reference to the land plan.

Schedule 6: Modification of compensation and compulsory acquisition enactments for creation of new rights

- Specific provisions modifying relevant provisions of the Land Compensation Act 1973 and the Compulsory Purchase Act 1965.

Schedule 7: Land of which temporary possession may be taken

- A tabulation of local authority areas and numbered plots and the purpose for which temporary possession may be taken, with reference to the land plan.

Schedule 8: Protective provisions for the benefit of electricity, gas, water and sewerage undertakers:

- Operators of telecommunications code networks;
- Network Rail;
- Anglian Water Services;
- National Grid Gas and National Grid Electricity Transmission;
- East Anglia ONE; and
- Oil and Gas Licensees (Eni UK Ltd) (as addressed further in Section 9.5 of this chapter below).

Schedule 9: Removal of hedgerows

- A tabulation of local authority areas, in which hedgerows and important hedgerows would be authorised to be removed, with reference to the hedgerows plan.

Schedules 10 - 15: Deemed Marine Licences

- Two DMLs for generation assets - WTG arrays (in two phases, phase 1 and phase 2);
- Two DMLs for transmission assets (connecting each phase of generation assets known as phase 1 and phase 2 to the shore); and
- Two DMLs for interconnection assets (connecting each phase of transmission assets known as phase 1 and phase 2 to the consented EA1 offshore wind farm development).

9.3.2 The ExA is content that the structure of the DCO is fit for purpose and does not recommend any changes to the structure as outlined above.

9.4 SUMMARY OF UNCONTENTIOUS CHANGES IN THE EXAMINATION

9.4.1 All but two changes to the draft DCO that were proposed during the Examination process are documented in the Applicant's Schedule of Changes submitted for D8 [REP8-006]. Two additional changes were included in the preferred draft Version 6 DCO [REP8-022 to 023] submitted on 23 December 2016. Changes that were not a matter of

contention with the Applicant or between the Applicant and IPs (including those in the late submission) are summarised below.

9.4.2 **Changes to Articles**

Part 1: Preliminary matters

- **Art 2(1), Interpretation:** changes were made to refer to legislation using consistent citations and to ensure that commonly referenced legislation was referred to using an abbreviated term defined in Art 2(1).
- Changes were made to introduce commonly used technical terms ("jointing bay", "jointing works") to Art 2(1), to define others ("draught height") and to refine other definitions (including public communications providers within the definition of "statutory undertaker", and removing a duplicate definition for "wind turbine generator").
- Unclear terminology was revised (such as "fixity", replaced with "to secure").
- Changes were made to ensure that defined terms related consistently to the description of the authorised works in Schedule 1 (the reference to works in the definition of Connection Works was clarified to refer to 5B as distinct from 4B).
- The definition of "maintain" in Article 2(1) was reviewed to eliminate duplicated terms in the initial drafting and to ensure that the definition was not self-referring. The term "maintain" is no longer defined as including a power to maintain: this is replaced with "upkeep", a well-understood term, to ensure that the scope of this definition is clear.
- The definition of "maintain" was also amended to limit the power to "remove, reconstruct and replace" to the carrying out of ancillary works in Part 2 of Sch 1 and any component part of any WTG, offshore electrical station, accommodation platform or meteorological mast (not including alteration, removal or replacement of foundations). The original wording was considered by the ExA to be too broad, as it permitted removal, reconstruction and replacement of all parts of the development.
- The definition of "single onshore phase" and "two onshore phases" was refined to ensure that onshore phases were understood in a manner consistent with the Rochdale Envelope as defined in the ES and consistent with the latest delivery programme for EA1, with which the application proposal would share cable ducts. The two-phased construction approach onshore would relate only to Work No. 67 - Works comprising onshore substations, which would have to be separated if the application were to be delivered in a phased manner. This approach is consistent with the minimisation of disturbance and ecological effects due to onshore works.
- All definitional changes reported upon here are recommended by the ExA and consequential amendments have been applied as necessary in the remainder of the DCO.

Part 2: Principal powers

- **Art 4, Power to construct and maintain authorised project:** has been amended to clarify (in Art 4(2)) that the power to maintain the authorised project does not relieve the undertaker of the need to obtain such Marine Licences as may be required for works not provided for in the DMLs granted with the Order. The ExA supports this change.
- **Art 5, Benefit of the Order:** relevant LPAs requested notification of any transfer of the benefit of the Order to ensure that they are clear about the entity(ies) enjoying the powers of the undertaker and a change has been made (in Art 5(10)) to provide for this. The ExA supports this change.

Part 3: Streets

- **Art 10, Temporary stopping up of streets:** has been amended (in Art 10(5)) in a manner consistent with other made offshore wind farm Orders to provide deemed consent for the temporary stopping up of streets. No concerns were raised by the relevant street authorities or other IPs about this proposal. The ExA supports this change.
- **Art 11, Access to works:** has been amended (in Art 11(2)) in a manner consistent with other made offshore wind farm Orders to provide deemed consent for access to works applications where no decision is forthcoming after 28 days. No concerns were raised by the relevant street authorities or other IPs about this proposal. The ExA supports this change.

Part 4: Supplemental powers

- **Art 13, Discharge of water:** has been amended (in Art 13(5)) to add a consent requirement for works within 16m of a tidally-influenced main river, discharged by the EnvA. No concerns were raised by the EnvA or other IPs about this proposal. The ExA supports this change.
- This article has also been amended (in Art 13(9)) in a manner consistent with other made offshore wind farm Orders to provide deemed consent for discharge of water where no decision on a discharge application is forthcoming after 28 days. No concerns were raised by relevant consenting bodies about this proposal. The ExA supports this change.
- **Art 14, Authority to survey and investigate the land onshore:** has been amended (in Art 14(7)) in a manner consistent with other made offshore wind farm Orders to provide deemed consent for access and investigation applications relating to streets and highways where no decision is forthcoming after 28 days. No concerns were raised by the relevant highway or street authorities or other IPs about this proposal. The ExA supports this change.

Part 5: Powers of acquisition

- **Art 18, Private rights:** has been amended (In Art 18(1), (2), (3), (6) and (7)) to clarify that private rights over land affected by acquisition powers and temporary possession powers only

cease to have effect in so far as their continuance would be inconsistent with the exercise of powers under Art 15, Art 17 and Art 23, reducing the adverse effect of this provision on APs. The article was also amended to provide that it applies to the imposition of restrictive covenants under Art 17 and to refine drafting. No concerns were raised by the APs or IPs about this proposal. The ExA supports this change.

- **Art 22, Rights under or over streets:** has been amended (in Art 22(1)) in a manner consistent with other made offshore wind farm Orders to provide rights to the undertaker to enter air space above land. No concerns were raised by the APs or IPs about this proposal. The ExA supports this change.
- **Art 23, Temporary use of land for carrying out the authorised project:** has been amended (in Art 23(1)(a)(ii)) to provide that specific identified plots from the BoR/land plans, which are for freehold acquisition, are not subject to temporary possession powers prior to the exercise of CA powers. The ExA supports this change.
- This article has also been amended (in Art 23(8)(a)) to clarify that the power to compulsorily acquire land subject to temporary possession set out in Sch7, is limited to the creation of new rights and imposition of restrictive covenants described in Sch5 (land in which only new rights etc may be acquired). The ExA supports this change.

Part 6: Operations

- **Art 28:** the title of this article was amended to refer to the "2009 Act", the term provided for in Art 2(1) and consistently adopted for reference to MCAA. No other changes have been made to this Part. The ExA supports this change.

Part 7: Miscellaneous and General

- **Art 31, Deemed marine licences under the 2009 Act:** a reference has been added (in Art 31(4)) to Part 1 and Part 2 of Sch9, to clarify which hedgerows are subject to a removal power provided in this article. The ExA supports this change.
- **Art 32, Certification of plans etc:** in the DCO as applied for, the Applicant envisaged that there might be two stages of onshore cable-laying, one for each phase of offshore construction. In such circumstances it might have proven necessary to require submission of a plan providing for the reinstatement of certain temporary works onshore. However, on the basis that the Applicant has agreed that all onshore cable works will be inserted into a shared conduit, there is no need for such a plan and references to it have been deleted. The ExA supports this change.
- However, a reference to the "In-principle East Anglia THREE Project Southern North Sea pSAC Site Integrity Plan" (the SIP) has been added to secure this plan sought by SNCBs and natural environment interest group IPs. The ExA supports this change.
- **Art 34, Requirements, appeals, etc:** minor cross-referencing corrections have been made. The ExA supports these changes.

- **Art 37, Crown rights:** provides for Crown Consent from TCE. This matters is addressed further in section 9.5 below.
- **Former Art 39, East Anglia ONE Order:** an article providing for a power to amend the made East Anglia ONE Order has been removed. The ExA had expressed concern about the necessity for and capacity of a power to vary the made East Anglia ONE Order in terms that could materially change what was applied for and examined, go beyond the scope of the ES or the established Rochdale Envelope for EA1 project. On further consideration and having regard to the application proposal as proposed to be delivered, the Applicant was content that this power was not necessary and agreed to its deletion from the DCO as applied for. The ExA supports this change.

9.4.3 Changes to Schedule 1 Part 3 (Requirements)

- **R2, Detailed offshore design parameters:** further to an ExA request to the Applicant, technical terminology in this requirement has been rationalised and brought into line with contemporary drafting conventions. In the interests of clarity and precision and to ensure that the Rochdale Envelope for the project cannot be exceeded, a defined maximum number of WTG (52) that are able to have a draught height of less than 24m from MHWS has been secured. The ExA supports this change.
- **R3:** for the same reason as the changes to R2 above and pursuant to an ExA request, the number of meteorological masts authorised has been restricted to two. R3(8) has also been inserted to clarify what can be constructed under each separate phase, if two phases of construction are adopted. This change is necessary to clarify and secure the total works that can be constructed under the combined DMLs, even where the corresponding phase 1 and phase 2 DMLs permit the construction of works under either licence. The ExA supports this change.
- **R9:** a typographical error in the maximum extent of scour protection has been corrected, as requested by the ExA, to make the value of 2,673,260 m³ conform to the worst case maximum extent assessed in ES Chapter 5 [APP-113] Table 5.8, to ensure that the Rochdale Envelope for the project cannot be exceeded. The ExA supports this change.
- **R11, Stages and phasing of authorised development onshore:** during the Examination, the Applicant explained the implications of delivering onshore cabling for the project in either one or two phases. It was clarified that Work No. 67 (works comprising onshore substations) cannot commence until a scheme setting out whether it is to be delivered in a single phase or two phases has been submitted to and approved by the relevant LPA. The requirement has been amended to provide for this. Further, and at the request of the LPAs, the requirement was amended to give the relevant LPAs 14 days' prior notice of the commencement of a second onshore phase. The ExA supports this change.

- **R12, Detailed design parameters onshore:** amongst other things, this provides for the submission of details of kiosks to be located in the onshore cable corridor. Before the Examination, the equivalent requirement in the made East Anglia ONE Order (10(10)(a)) was changed (in the East Anglia ONE (Corrections and Amendments) Order 2016) to substitute a reference to the submission of details of the "scale and appearance" of kiosks to the relevant LPA in place of the submission of details of "the number, location, scale and appearance" of the kiosks. No objections were raised in respect of this proposal. The ExA is persuaded of the general benefit of equivalent provisions and processes between the East Anglia ONE Order and this DCO being drafted in the same terms, unless there are good reasons to differ, and R12 now follows the drafting model set by the East Anglia ONE Order (as amended). LPAs were content with this change, which the ExA supports.
- **R13, Landfall method statement:** this requirement has been amended to secure an ongoing right for the undertaker to inspect and maintain works throughout the operational life of the Proposed Development. No objections were raised in respect of this proposal and the ExA is persuaded that it is a necessary change.
- **R14, Provision of landscaping:** as originally drafted, this provision applied to the substation(s) works. Following discussions between the Applicant and LPAs, an amendment was proposed by the Applicant to clarify that this provision also applies to the onshore cable corridor works, a change which also brings this provision into alignment with the analogous provision in the made East Anglia ONE Order. The ExA agrees that the inclusion of cable corridor works within the scope of this provision is necessary. It is persuaded of the general benefit of equivalent provisions and processes between the East Anglia ONE Order and this DCO being drafted in the same terms, unless there are good reasons to differ.
- In response to concerns expressed by the ExA, this requirement has also been changed to secure soil retention, handling and protection in the landscape management scheme. The ExA supports this change.
- **R15, Implementation and maintenance of landscaping:** the Applicant made a change to R15(2), to differentiate between the care and maintenance period for the substation(s) landscaping (10 years) and for the onshore cable corridor landscaping (5 years). The proposed amendment is driven by the need to include cable corridor works within the scope of the landscaping scheme (see R14). It also brings this provision into alignment with the analogous provision in the made East Anglia ONE Order [AS-010] Requirements 12 and 13. The ExA agrees that the inclusion of cable corridor works within the scope of this provision is necessary. It is persuaded of the general benefit of equivalent provisions and processes between the East Anglia ONE Order and this DCO being drafted in the same terms, unless there are good reasons to differ. Noting the distinction between the extensive

landscaping works required for the substation(s), for which a 10-year maintenance period is clearly necessary, and the only minor and limited works necessary within the cable corridor, the ExA agrees that a 5-year maintenance period is sufficient for the cable corridor. The ExA supports this change.

- **R19, Contaminated land and ground water:** as originally drafted, this requirement contained provision (R19(2)), that a written contamination mitigation scheme *'must include an assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination at the location of Work No. 41 and mitigation measures to be undertaken to limit impacts arising from the potential release of contaminants'*. However, during the Examination, the work to discharge this requirement was carried out as part of preparatory works for EA1. The Applicant amended R19(2) to remove this element as unnecessary and, no other concerns having been received, the ExA is content to recommend the proposed deletion.
- **R21, Ecological management plan:** the ExA requested and the Applicant has agreed to an amendment to secure appropriate mitigation for effects on dark-bellied brent geese, an HRA relevant feature, by controlling the timing of construction works between Ferry Road and the River Deben in accordance with Table 2 of the OLEMS, incorporated into the Ecological Management Plan. The ExA supports this change.
- **R22, Code of construction practice:** the ExA considered that the PEMP (as referred to in the OCoCP) should be secured by inclusion in the list of plans in this requirement. The Applicant agreed to this change which the ExA supports.
- **R30, Restoration of land used temporarily for construction:** as a consequence of the Applicant's proposal to undertake a single onshore cable-laying operation, Work No. 65 (a temporary lay down area and landscaping works including planting) may be sought to be retained between any phased construction works on Work No. 67 (the onshore substation(s)). The Applicant has proposed a change to enable the undertaker to apply to the relevant LPA for retention of Work No. 65 (a temporary lay down area and landscaping including planting) between the phases if required. The ExA supports this change.
- **R31, Onshore decommissioning:** the ExA sought correction of a drafting anomaly to clarify the Works to which this requirement would apply. The Applicant agreed to the requested change, which the ExA recommends.
- **Former and replacement R32, now Aviation Safety:** as originally submitted, this requirement dealt with coastal retreat and decommissioning of Works 5B and 7. It also attempted to transfer obligations regarding the cable ducts authorised under EA1 which the circuits comprised in Works 5B and 7 are to be pulled through. In light of the transfer provisions contained in Article 5 of the made East Anglia ONE Order, in the event that the ducts proposed to be used by EA3 are transferred so will the obligation to assess the ducts in the manner and at the time

specified in Requirement 32 of the EA1 Order be so transferred [REP1-011]. As such, the originally proposed R32 of the EA3 draft Order is not needed. The relevant LPAs and SCC were content with this deletion. The ExA agrees and recommends the deletion of the original provision.

- **R33, Ministry of Defence surveillance operations:** the Applicant has revised the drafting of this provision to accord with contemporary drafting practice. The ExA supports this change.
- **R36, Reuse of temporary works:** as a consequence of the Applicant's proposals to share cable ducts with EA1 and to undertake a single onshore cable-laying operation, this is in effect a replacement requirement. It secures the matters to be addressed by EA3 if temporary works provided for EA1 are retained pursuant to R28 of the made East Anglia ONE Order and are proposed to be re-used in the construction of EA3. There were no objections to this proposal from the relevant LPAs and the ExA recommends the change.
- **R37, Notification of site clearance and archaeological works:** the Applicant proposed substantial changes to this requirement in the Examination. These were to respond to the ExA's concerns about the need for greater clarity about the relationship between commencement and the need to ensure that archaeological evaluations are undertaken at the correct time, sufficiently early to inform detailed design and micro-siting decisions. Given that aspects of the ExA's concerns remained unresolved at the end of the Examination, it has not recommended the Applicant's proposed revisions. A detailed explanation of the ExA's preferred approach, reasoning and recommendation can be found at paragraphs from 9.6.10 below.

Changes to Schedules 10 - 15 (DMLs)

9.4.4 Paragraph numbering is shared between the six DMLs. References to DML changes are recorded below as being to the same paragraph numbers in all DMLs, to relevant provisions found in Schedules 10 and 11 (the Generation Assets DMLs for Phase 1 and Phase 2), to relevant provisions in Schedule 11 alone, to relevant provisions found in Schedules 12 and 13 (the Transmission Assets DMLs for Phase 1 and Phase 2) and to relevant provisions found in Schedules 14 and 15 (the Interconnection DMLs for Phase 1 and Phase 2), in that order. This is in the context that the Generation Assets and Transmission Assets DMLs have 20 conditions each whereas the Interconnection DMLs have only 12 conditions each.

Changes to Schedules 10 - 15: all DMLs

- **All parts (numbering):** the order and numbering of provisions has been revised throughout the Examination to ensure that all DMLs share the same provision numbering system and that common content shared between the DMLs has a common provision number. The original draft DMLs had achieved this by including provision numbers with no content, marked as "[not used]". Following the ExA's advice that this approach was not

consistent with current statutory drafting practice, the Applicant made further changes to ensure that all numbered provisions had content, but that provisions shared between more than one DML also shared the same number. The ExA supports all of these changes and values the effort expended to achieve them, which has retained the originally intended ease of reference between provision numbers.

- **All parts (drafting):** the term "shall" has been replaced as necessary to conform to contemporary statutory drafting practice. For consistency, duplicating references to both "wind turbine generator" and to "WTG" have been replaced with references only to "wind turbine generator". The ExA supports these changes.
- **Part 1 Para 1(1) (definitions):** references to legislation in the definitions have been conformed to the defined terms employed in the DCO as a whole. A definition of the Civil Aviation Authority has been removed as superfluous. A definition of "offshore cables" has been added. The definition of cable armouring has been changed to refer to "cable protection". The definition of "maintain" has been amended to conform it generally with the definition employed in Art 2(1) of the DCO. The ExA supports these changes subject to one amendment as detailed in paragraph 9.6.18 below.
- **Part 1 Para 1(4) (contacts):** the contact details for the MMO and HistE were updated and are now correct. The ExA supports this change.
- **Part 1 Para 2 (details of licensed marine activities):** the correct reference number for the disposal location (HU212) was confirmed and added. The ExA supports this change.
- **Part 2 (conditions), Condition 1 (design parameters):** Condition 1(2) has been amended to address concerns raised by the ExA and IPs to ensure that the constructed development remained within the confines of its ES and HRA assessment and Rochdale Envelope. References to a percentage of wind turbine generators have been removed. The condition now provides that no more than 52 WTG in total (taking account of any phasing) should have a draft height of less than 24m from MHWS. This clarification has been agreed by the MMO, NE and the RSPB and is supported by the ExA (see paragraphs 6.7.103 to 6.7.107 above).
- **Part 2 (conditions), Condition 7.** Condition 7(6) was amended to refer to days rather than working days and (in 7(6) to (11)) amend the notification deadlines. These changes are supported by the ExA.
- **Part 2 (conditions), Condition 8** was amended to set out requirements for the provision of reports on the availability of aids to navigation at the request of TH, the MMO and the MCA. These changes are supported by the ExA.
- **Part 2 (conditions), Condition 13** was amended:
 - further to the ExA's request of NE and the Applicant, to secure a construction method statement in accordance with the construction methods assessed in the ES and including details of

vessels and vessels transit corridors, to minimise disturbance to the red-throated diver, a qualifying feature of the Outer Thames Estuary SPA (in 13(1)(c)(v));

- further to the ExA's request of NE, the MMO and the Applicant, to secure a project environmental management plan covering the period of construction and operation to include details of procedures to be adopted within vessel transit corridors to minimise disturbance to red-throated diver (for the same reasons as above) (in 13(1)(d)(vi));
- at the request of HistE, to require a detailed Written Scheme of Investigation (WSI) for the offshore area to be submitted for the MMO's approval (in consultation with HistE) at least six months prior to commencement of licensed activities (in 13(1)(h)), minor drafting corrections and the submission of reporting details to the National Record of the Historic Environment;
- at the request of the ExA, the MMO and NE, the addition of a risk-based approach to managing unburied or shallow-buried cables during the operational lifetime of the scheme to the cable monitoring programme (in 13(1)(g)(iii)); and
- a reference (in 13(4)) to the relevant planning authority was also corrected to refer to the MMO.
- The ExA supports all of these changes.
- **Part 2 (conditions), Condition 19** was amended (in 19(4)) at the request of the MMO to require the cable monitoring plan to be updated with the results of post-implementation cable surveys and to require that the plan must be implemented and reviewed to meet its own specification or as instructed by the MMO. The ExA supports this change as necessary to secure an effective cable monitoring regime.

Changes to Schedules 10 and 11: the Generation Assets DMLs for Phase 1 and Phase 2

- **Part 1 Para 1(1) (definitions)**: a definition of "draught height" has been added. Definitions of "European offshore marine site" and of "European site" have been added, together with one of "relevant site" and "Southern North Sea possible Special Area of Conservation". The ExA supports these changes.
- **Part 2 (conditions), Condition 2** was amended so that the total number of accommodation platforms must not exceed one, the total number of meteorological masts must not exceed two and the total number of buoys must not exceed twelve, in both schedules when taken together. The effect of the change is to ensure that these facilities can be constructed under either or both schedules, but if the maximum is provided under one, then no more can be constructed under the other. This addresses a concern raised in questions by the ExA seeking to ensure that phased construction did not lead to the construction of more accommodation platforms, masts or buoys than were assessed as the maximum provision in the ES and the maximum permitted in the DCO. The ExA supports the change.
- **Part 2 (conditions), Condition 6** was amended so that the total amount of scour protection permitted under both licences

combined does not exceed the total amount assessed, in both schedules when taken together. The effect of the change is to ensure that scour protection can be provided under either or both schedules, but only to a maximum limit applicable to both. This addresses a concern raised in questions by the ExA seeking to ensure that no more scour protection was provided than the maximum assessed in the ES. The ExA supports the change.

- **Part 2 (conditions), Condition 13** was amended to require layout to be in accordance with recommendations in MGN543 (13(1)(a)(x)). It was amended (at 13(1)(f)) to ensure the application of best practice in relation to marine mammal mitigation if pile foundations are proposed to be used. It was further amended (at (13(2) and (3)) to provide that a SIP must be prepared and mitigation to avoid adversely affecting the integrity of the SNS pSAC must be applied. It also provides that the SNS pSAC must be treated as a European offshore marine site and the harbour porpoise must be treated as a protected feature of the site until the SNS pSAC is either designated (in which case it must be equivalently protected) or is not designated (in which case the special provisions cease to apply). NE is content with this position and the ExA supports these changes.
- **Part 2 (conditions), Condition 14:** the timing of the submission of plans for approval under Condition 14(2) was corrected. Condition 14(5) was amended to specify and secure the content of the ERCoP, a reference to MGN371 was corrected to MGN543 and the drafting of this condition in Schedule 11 was further amended to align it with the drafting of the same condition in Schedule 10. The ExA supports these changes.
- **Part 2 (conditions), Condition 16** was originally without content and marked as "[not used]". The ES proposed that seabed disturbance would be minimised by not placing gravity base foundations in areas where sandwaves are greater than 5m in height (such sandwaves being a prospectively protected feature of the SNS pSAC). NE and the ExA asked the Applicant to demonstrate how that assessment assumption could be secured. New content was inserted as Condition 16 to secure this. The ExA supports the inserted content and agrees that it is sufficient to secure the avoidance of gravity base foundations on the sandwaves.

Changes to Schedule 11 only: the Generation Assets DML for Phase 2

- **Part 2 (conditions), Condition 13(1)(h)** was amended to substitute the word "outline" in the title of the outline Written Scheme of Investigation (Offshore) for the word "draft". The ExA supports this change.

Changes to Schedules 12 and 13: the Transmission Assets DMLs for Phase 1 and Phase 2

- **Part 1 Para 1(1) (definitions):** definitions of "European offshore marine site" and of "European site" have been added,

together with one of "relevant site" and "Southern North Sea possible Special Area of Conservation". The ExA supports these changes.

- **Part 2 (conditions), Condition 1** has been inserted to define an area prospectively containing sediment with elevated arsenic levels (area 30) and to control the impact of works relating to that area. This meets a concern expressed by the ExA and NE. The ExA supports this amendment.
- **Part 2 (conditions), Condition 3:** NE requested the addition of a maximum hammer energy for driven piles. The ES assessed a worst case of 3,500kJ and the condition adopts that threshold as the maximum. The ExA supports this provision as necessary to ensure that the adverse effects of piling do not exceed those assessed in the ES.
- **Part 2 (conditions), Condition 13** was amended at 13(1)(f), 13(2) and 13(3) to add content in the same terms and for the same reasons as Condition 13 of Schedules 10 and 11. The ExA supports this change.
- **Part 2 (conditions), Condition 16** was originally without content and marked as "[not used]". It was amended to add content in the same terms and for the same reasons as Condition 16 of Schedules 10 and 11. The ExA supports this change.

Changes to Schedules 14 and 15: the Interconnection DMLs for Phase 1 and Phase 2

- **Part 1 Para 1(1) (definitions):** new defined terms for "East Anglia ONE Offshore Wind Farm" and "East Anglia ONE Order" have been added. The ExA supports these changes.
- **Part 2 (conditions), Former Condition 10:** this condition as drafted related to aviation safety. The Applicant proposed its deletion from these DMLs as the proposed works have no aviation safety implications. There were no objections to the proposed deletion, which the ExA supports. Other conditions are consequentially re-numbered.
- **Part 2 (conditions), Condition 7:** the guidance reference has been corrected from MGN 371 to MGN 543. The ExA supports this change.

9.4.5 Changes to Other Schedules

Other schedules generally

- Page and paragraph numbering errors in the submission draft have been corrected.
- Format errors in tables have been corrected.
- Drafting has been reviewed and amended to comply with contemporary drafting usages and conventions.

Schedule 1: (Authorised project)

- The description of **Work No.24** was changed to clarify that a new temporary access track would be provided (as opposed to the widening and upgrading of an existing access track).

- The description of **Work No.65** was changed to respond to relevant LPA requests to include landscaping and planting works.

Schedule 5: (Land in which only new rights etc may be acquired)

- Cable ducts and jointing works have been included in the purpose for which rights may be acquired.

Schedule 7: (Temporary possession)

- References to additional plot numbers have been added to the schedule, taking account of the ability of the Applicant to use land temporarily.

Schedule 8: (Protective provisions)

- **Part 1** : this part contains general protective provisions for onshore local electricity, water, gas and sewerage undertakers. It has been amended to place beyond doubt that it does not apply to or affect the more specific provisions provided in Parts 4 (Anglian Water Services Ltd), 5 (National Grid) and 6 (East Anglia ONE Ltd).
- **Part 3**: this part contains protective provisions for Network Rail Ltd. Cross-referencing and numbering errors have been corrected.
- **Part 5**: negotiations between the Applicant and National Grid plc (on behalf of National Grid Gas plc and National Grid Electricity plc) over proposed protective provisions were ongoing throughout the Examination [RR-013, REP2-012, REP7-014 and REP8-019]. Amendments were made to the protective provisions that were included in the Applicant's application draft DCO, culminating in agreed provisions included within the Applicant's final version [REP8-022].
- **Part 6**: the ExA commenced the application with questions about the relationship between the proposed EA3 project and the existing consented EA1 project. The Applicant had initially intended to include a provision in the draft DCO enabling it to amend the made East Anglia ONE Order. The ExA expressed concerns about the lack of legal precedent for such a power and its prospective breadth, enabling changes to be made that might extend beyond the EA1 Rochdale Envelope. On consideration, the Applicant's introduction of protective provisions for EA1, together with the deletion of a proposed power to amend the made East Anglia ONE Order, were sufficient to address the ExA's concerns. The ExA supports the proposed protective provisions. The reference in the Applicant's Schedule of Changes submitted for D8 [REP8-006] to Part 6 relating to protective provisions for Eni UK Ltd is a typographical error.
- **Part 7**: negotiations between the Applicant and Eni UK Ltd in respect of the appropriateness and content of protective provisions relating to rights under United Kingdom Petroleum Production Licences offshore were ongoing throughout the Examination and further detail on the issues addressed and outcome of these is set out from paragraph 9.5.8 below.

9.4.6 All the changes summarised above in paragraphs 9.4.2 (Articles), 9.4.3 (Requirements), 9.4.4 (DMLs) and 9.4.5 (Other Schedules) are, where indicated, considered by the ExA to be necessary to respond to policy and legislative requirements and/or to address concerns raised by IPs or by the ExA itself during the course of the Examination. They were all included in the Applicant's preferred draft DCO [REP8-022]. They have all been included by the ExA in the recommended DCO at Appendix D to this report.

9.5 CHANGES SUBJECT TO CONTENTION

9.5.1 The following section reports on changes to the draft DCO that were the subject of substantial negotiation, written and or oral submissions during the Examination process. Matters at issue were as follows:

- Crown consent; and
- the need for and content of offshore protective provisions for oil and gas undertakings, specifically relating to an area of overlap between United Kingdom Petroleum Production Licences benefitting Eni UK Ltd and the proposed WTG array.

Article 37 and consequential matters: Provisions relating to the Crown

9.5.2 This Article containing provisions relevant to the interests of The Crown Estate (TCE) remained un-agreed between the Applicant and TCE, with negotiations proceeding until a final late submission by TCE at D8 [REP8-025], which also purported to provide Crown consent for the purposes of PA2008 s135(1) and (2). The ExA's concerns regarding this consent are set out above at paragraphs 8.8.12 to 8.8.19. Detail of the evolution of this Article is set out at paragraphs 8.8.4 to 8.8.11 above. The final version included by the Applicant in its preferred draft DCO [REP8-022] reflects the wording included in TCE's submission [REP8-025].

9.5.3 The ExA nevertheless recommends two changes to the drafting agreed between the Applicant and TCE:

- the agreed drafting of Art 37(1) authorises the Applicant, amongst other actions, to "take" land but, noting that a DCO cannot authorise the taking of Crown land, nor does the DCO authorise this, the ExA recommends the removal of this term as suggested in its consultation draft DCO [PD-022]; and
- the Applicant's preferred draft DCO [REP8-022] includes a clause numbering error in which TCE's draft clauses 37(1)(a), (b) and (c) are numbered 37(1)(i), (ii) and (iii). The ExA recommends the correction of the numbering to adopt the lettered referencing proposed by TCE.

9.5.4 The second of these recommended changes is not substantive and the ExA does not consider that it runs to the consent provided by TCE. The first recommended change represents a change to the drafting sought. In its consultation draft DCO [PD-022] the ExA proposed the

removal of "take" from Art 37(1) as it viewed it as superfluous. TCE, in its response [REP7-002], disagreed, pointing out that the word had been included in all Crown rights wording in recently-made DCOs. In responding to the consultation draft DCO, the Applicant DCO similarly considered "take" should remain [REP7-016].

- 9.5.5 These responses do not alter the ExA's view that the word "take" should be removed because the DCO does not contain any provision authorising the "taking" of any land or rights held by or on behalf of the Crown, as this is not permissible. Furthermore, and contrary to TCE's assertion as to the word's inclusion in all recently-made DCOs, the ExA notes that "take" was not included in the relevant article in the North Wales Wind Farms Connection made DCO, of 28 July 2016.
- 9.5.6 This recommendation should be read in tandem with the reasoning of the ExA in Section 8.8 of this report above, where we consider the broader question of Crown consent and, specifically, consent under PA2008 s135(2). There, the ExA raises a concern about the limited conditional nature of the consent provided by TCE [REP8-025], the basis being that it is expressed as applying only to Articles 3 – 7, 11, 13 – 14, 27 – 30, 35 and 37. Crown consent is required under s135(2) for any provision within the DCO applying to Crown land or rights benefiting the Crown. As detailed in paragraphs 8.8.12 to 8.8.19, the ExA has concerns that the consent provided does not cover all provisions in the DCO which apply to Crown land or rights benefiting the Crown.
- 9.5.7 The SoS may wish to satisfy himself on an amended Crown consent to ensure that consent is provided in accordance with s135(2) for all provisions in the DCO which apply in relation to Crown land or rights benefiting the Crown.

**Schedule 8 Part 7:
Protective Provisions for Oil and Gas Undertakings**

- 9.5.8 Eni UK Ltd is an oil and gas undertaking and the beneficiary of United Kingdom Petroleum Production Licences (UKPPLs) P.1964, P.1965 and P.2251, which it would seek to utilise contiguously and in a single project. UKPPL P.1965 substantially overlaps with the proposed WTG array area (Work No. 1). (The extent of overlap is shown on the 'Interface Map' in Annexure A to the Eni UK Ltd WR of 27 July 2016 [REP2-022]). These are exploration licences, permitting Eni UK Ltd to explore for oil and gas, although that exploration has not yet commenced. If it were to take place and commercial quantities of oil and/or gas were to be discovered, Eni UK Ltd would be authorised to move to exploitation [REP2-022].
- 9.5.9 The Applicant's initial position was that because a commercially exploitable resource had not yet been discovered by Eni UK Ltd and a programme for exploration was not yet available, it was not yet clear that there was a justification for the DCO containing any protective or other particular provisions for Eni UK Ltd. Should an oil and gas

resource be discovered, the Applicant pointed to the standard 'oil and gas clause' in its own Crown lease, providing that an oil and gas undertaker could call for the surrender of the wind farm lease, subject to the payment of the necessary compensation to the wind farm undertaker. The Applicant was also concerned that a standard protective provision could entrench Eni UK Ltd's position in relation to the application proposal, providing it with powers to delay and limit wind farm design and construction that were inappropriate to be granted, given that it was not yet even clear that it would move to explore any of the area within the UKPPLs at issue.

- 9.5.10 In contrast, Eni UK Ltd made clear its view that the effect of the grant of the wind farm DCO would be to substantially limit the likelihood of it moving to exploit or even explore these UKPPLs. Its reasoning was that, should the wind farm be constructed, the likely compensation liability to a wind farm undertaker under the oil and gas clause would be such that an oil and gas undertaker could not afford to exercise that clause. In such circumstances, the oil and gas undertaker would have no other means to ensure that wind farm infrastructure was sited and designed in a manner necessary to enable oil and gas exploration or exploitation to proceed. The wind farm itself would be a major development, capable by way of location and scale of influencing and constraining any or all oil and gas operations. For these reasons, the potential compensation liabilities under the oil and gas clause, if removal proved necessary, could be prohibitive.
- 9.5.11 Eni UK Ltd provided high level assurances from the early stages of the Examination that oil and gas exploration and exploitation in its UKPPLs and construction and operation of an offshore wind farm could in its view co-exist [REP2-022]. This position was not disputed by the Applicant [REP3-005].
- 9.5.12 In the absence of some form of protective provisions to ensure the co-existence of these two proposed uses in proximity, it appeared to the ExA that, were an oil or gas prospect to be proven, there would be a significant risk of the first undertaker to commence activity causing an undue level of harm or constraint to the undertaker following on. In such circumstances, the first undertaker to proceed to detailed design for construction would hold a significant advantage over the second undertaker, both in terms of limiting its own risks and of generating risks for the second undertaker. It would be possible that decisions taken in respect of the first undertaker's project could even make the second undertaker's project unviable in commercial terms, and unrealisable.
- 9.5.13 In these circumstances, it appears in principle that policy in NPS EN-1 (paragraph 2.2.21), NPS EN-3 (paragraphs from 2.6.176 – 188) and EIEOMP (Policy GOV2) supports engagement between the Applicant and Eni UK Ltd to agree the terms of possible co-existence. NPS EN-3 is also clear that an ExA should be satisfied that discussions between the parties have progressed as far as possible and advises that provisions, including those providing for mitigation and engaging

arbitration in instances of dispute, can be appropriately included in a DCO (NPS EN-3 at paragraphs 2.6.187-188).

- 9.5.14 NPS EN-1 at paragraph 2.2.21 highlights that *"[i]n the medium term, we face the challenges of reducing our energy demand, replacing existing power plants due for closure and maximising the economic production of our declining domestic oil and gas reserves"*. It therefore appears contrary to policy to recommend a DCO that could enable a potentially exploitable oil or gas prospect to be sterilised, in turn suggesting that the draft DCO should contain measures developed to respond to and reduce the risk of sterilisation.
- 9.5.15 The ExA consultation draft DCO [PD-022], issued on 17 November 2016, set out the policy position above and made clear our interim view that this was not a matter on which the DCO should remain silent. However, it also made clear our view that the Applicant's concern that a traditional protective provision for the benefit of Eni UK Ltd would be inappropriate was well-founded.
- 9.5.16 Such a provision could provide Eni UK Ltd with a block over the implementation of the generating station development of uncertain justification or duration, which would appear to be unreasonable in circumstances where it is not yet known if there is a feasible oil and gas prospect and, if so, how much sea area would be required for exploration and exploitation activities. It would appear to provide no incentive to Eni UK Ltd to expedite its initial investigations of its prospect, or to take reasonable and early steps to better define, mitigate or remove its adverse effects on the generating station development.
- 9.5.17 The key considerations in drafting a provision to manage this matter are uncertainty and timing. The extent and timing of the Eni UK Ltd exploration is unclear. So, realistically, is the timing for the generating station development, pending participation in a Contract for Difference auction round.
- 9.5.18 A mechanism is needed to ensure that once there is greater certainty about the potential siting, design and commencement of either development, the relevant party has a duty to disclose that to the other party and a means to trigger the best design response in the other scheme. It may also be valuable to enable binding arbitration as a means to resolve any dispute about the content or timing of such an agreement.
- 9.5.19 In these circumstances, and having reviewed D6 submissions, the ExA consulted the parties on options for changes to the DCO:
- To incorporate a balancing protective provision under which the undertaker and Eni UK Ltd both have a power to trigger the

preparation of a 'proximity agreement'⁴³, framing matters that such an agreement must address and enabling access to binding arbitration in any instance of dispute or undue delay. This was suggested to be included under a new Schedule 8 Part 7 of the dDCO [PD-022 - Annex A, Proposal 2].

- Alternatively to the above, and more properly the substance of either new provisions in the DMLs or a new standalone Schedule, would be provisions with similar content but where a 'proximity plan' was prepared by the Applicant, in consultation with Eni UK Ltd for approval by the MMO [PD-022 - Annex A, Proposal 3].
- Views were also sought on the degree to which, if the DCO arbitration provision (Article 33) was to be used in conjunction with either of these options, any changes were needed to take account of the potentially specialist nature of any arbitration [PD-022 - Annex A, Proposal 1].

9.5.20 The ExA provided outline draft example forms of these options.

9.5.21 The D7 submissions from the Applicant [REP7-032] and Eni UK Ltd [REP7-013] set out a shared view that drafting based on Proposal 2 to be included in the draft DCO as Schedule 8 Part 7 was the preferred means of addressing the ExA's concern. Neither body, nor the MMO supported the proposition that this matter should be addressed by the preparation of a plan to the satisfaction of the MMO (Proposal 3).

9.5.22 By D8, the Applicant had included a form of drafting derived from Proposal 2 into the Version 5 [REP8-003] and then Version 6 preferred draft DCOs [REP8-022] as Schedule 8 Part 7. Eni UK Ltd made clear that it agreed with the Applicant's Version 5 drafting [REP8-020].

9.5.23 Having reviewed the proposed drafting, and on the basis of the agreement between the parties, the ExA is content that its concern about the absence of protective provisions to address the proximity between the proposed wind farm and oil and gas UKPPLs has been satisfactorily addressed.

9.5.24 In the late submission final preferred draft DCO (Version 6) [REP8-022], the Applicant proposed the correction of a typographical error in the previous version of Schedule 8 Part 7, correcting a cross-reference in paragraph 77 to delete a reference to paragraph 82 and replace it with a reference to paragraph 83. The ExA is content that this is a technical correction of a typographical error and that it can be made without any adverse effect on the interests of Eni UK Ltd. This change is also recommended.

⁴³ A 'proximity agreement' was discussed in hearings and in the ExA Consultation Draft DCO [PD-022, Annex A, Proposal 2] as an agreement whereby two sea area uses in close proximity would agree terms for the shared and mutually protective use of the same sea area.

9.6 TECHNICAL CHANGES

9.6.1 Following the Applicant's submission of its preferred draft DCO [REP8-022], the ExA has given consideration to a number of technical drafting points, which have also given rise to recommended changes to the draft DCO. It is important to note that where the ExA recommends changes to the draft DCO in such circumstances, it does so only on the basis that the recommended changes are legally/technically necessary and that by giving effect to them, no material change will be caused to the outcome the Applicant intended to achieve and as understood to be provided for in the DCO by the IPs. It follows that in accepting any of the following recommended changes, the SoS would not materially change the development outcome proposed to be secured by the DCO, but rather would ensure that there was greater certainty about the way it would be provided for.

9.6.2 Changes are recommended to the following provisions for the reasons set out below:

Article 2(1) - definition of "commence"

9.6.3 In the DCO as applied for, the Applicant included a broad definition of "commence" in Art 2(1). The ExA raised concerns about this as originally drafted, in that it potentially enabled a broad range of actions including onshore site clearance works and archaeological investigations to take place, before the substantive commencement of development controlled through the discharge of the main body of requirements. A possible effect of this approach was to enable (for example) site clearance or archaeological works to proceed, before the discharge of Requirement 20 (Archaeology) and the production of a written scheme of archaeological investigation (WSI). The effect could be to enable works that ought to be controlled through the WSI to proceed before its production and hence for harm to archaeological significance to occur without appropriate mitigation.

9.6.4 In order to respond to this concern, the Applicant sought to integrate the drafting of the definition with that of a specific requirement (R37) requiring prior notification of onshore site clearance and archaeological works to the relevant LPA before such works could start. The purpose of this change was to control against the possible harm identified in paragraph 9.6.3 above.

9.6.5 However, on considering this approach, the ExA was also concerned that it was not good drafting practice, in that in order to construe a definition, it would now be necessary also to construe a requirement with a narrow purpose that would not be applicable to the same breadth of circumstances that were intended to be met by the definition.

9.6.6 For these reasons, the ExA recommends that the definition of "commence" as set out in the Applicant's preferred draft DCO [REP8-

022] should be returned to the following definition as included in the DCO as applied for [APP-025] and this has been included in the recommended DCO:

"commence" means, (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for pre-construction surveys and monitoring and, (b) in respect of any other works comprised in the authorised project, the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements and the word "commencement" must be construed accordingly.'

- 9.6.7 The ExA's reasoning for this return is that it ensures that the definition of "commence" is retained as a self-contained provision within Article 2(1) and that R37 ceases to have the definitional function that was proposed to be delegated to it by the Applicant. This has the effect providing a definition of "commence" that can be applied to all other instances of that usage in the DCO without relying on the content of an individual requirement to enable its interpretation.
- 9.6.8 However, subject to the drafting amendments proposed below, R37 serves to address the ExA's original concern with the breadth of the Art 2(1) definition of "commence" and serves to ensure that Art 2(1) notwithstanding, prior notification must be given to the relevant LPA before any onshore archaeological or site clearance works can begin. This enables a review to ensure that harm will not be caused to archaeological interests prior to the discharge of R20.
- 9.6.9 Taking these considerations together, the ExA is content with the drafting for the Art 2(1) definition of "commence" in paragraph 9.6.6 above and recommends it to the SoS.

Requirement 37 - Notification of site clearance and archaeological investigations

- 9.6.10 For reasons set out in paragraphs 9.6.3 and 9.6.4 above, the ExA also proposes to amend R37 to ensure that it is limited to the performance of operational tasks appropriate to a requirement and that definitional drafting more properly found in Art 2(1) is removed. As recorded above, the proposed change is for statutory drafting reasons and makes no substantive difference to the outcome provided for by the requirement.
- 9.6.11 The ExA recommends that those elements of the definition of "commence" set out in R37 in the Applicant's preferred draft DCO

[REP8-022] should be returned to Article 2(1) leaving the notification elements of the requirement remaining in R37.

- 9.6.12 However, in reviewing the Applicant's drafting for this requirement, the ExA was also concerned that the requirement provided for deemed consent after five days, with the relevant LPA able to seek an extension for a further ten days, fifteen days in aggregate.
- 9.6.13 Five days (one working week) is, on reflection, an unduly short and unreasonable duration for a notice and deemed consent provision in the circumstances that apply here. The relevant LPA in this instance will be operating in a two-tier local government structure, and reasonable time is required to conduct and collate internal expert consultation responses.
- 9.6.14 Taking these factors into account, the ExA has recommended a 15-day notice period, after which deemed consent would still operate. This aggregates the Applicant's proposed five and ten day periods, but removes the need for the relevant LPA to seek an extension after five days and provides a reasonable period of time in which to carry out appropriate consultations. In the mind of the ExA, this amendment still provides sufficient recognition of the need for urgency and priority in consideration appropriate to a NSIP.
- 9.6.15 For the combination of reasons set out above, the ExA recommends amending the drafting of R37 in the terms set out below (and this has been included in the recommended DCO).

Notwithstanding the definition of "commence" in Article 2(1), site clearance works landward of MHWS and archaeological investigations within Work Number 67 may only be carried out by the undertaker before commencement, in circumstances where the undertaker has provided notice in writing to the relevant planning authority of its intention to carry out such works and investigations and:

- (i) the relevant planning authority has provided a written determination that the notified works and investigations can take place; or*
- (ii) no response has been received by the undertaker within 15 working days of the date of notification of such works and investigations.*

Article 5(5) - Benefit of the Order

- 9.6.16 The ExA takes the view that the Applicant has omitted reference to paragraph (6) in Article 5(5) in error in its preferred draft DCO [REP8-022]. The ExA consider that, in line with other made DCOs, Art 5(5) should include a reference to paragraph (6) of that article in addition to paragraph (9) and the reference has been added accordingly in the recommended DCO.

Article 32 - Certification of plans etc.

- 9.6.17 On review of this draft article in the Applicant's preferred draft DCO [REP8-022], the ExA considers that it is necessary, in addition to the plans and documents listed at Art 32(1) (a) to (t) to be certified, for a copy of the ES to be submitted and certified. Such an approach is in accord with that taken in a number of analogous recently-made Orders. A new sub-paragraph Art 32(1)(u) has been added to the recommended DCO to that effect.

Schedules 10 - 15 (All) DMLs - Para 1(1) "maintain"

- 9.6.18 On review of this draft article in the Applicant's preferred draft DCO [REP8-022], the ExA considers that it is necessary for consistency between the definitions in paragraph 1 of all of the DML Schedules with the definition of "maintain" in Art 2(1) of the draft Order and to avoid a self-referential definition, to amend the definition of "maintain" in paragraphs 1(2) to replace the word "maintain" within the definition with the word "upkeep". The ExA has amended the recommended DCO to that effect.

Schedules 10 and 11 (Generation Assets) DMLs - Conditions 1

- 9.6.19 On review of this draft condition in the Applicant's preferred draft DCO [REP8-022], the ExA considers that it is necessary for consistency with the definitions in paragraph 1 of the Schedules and with the remainder of the draft Order, to amend references to 'turbines' in Condition 1(2) to be references to 'wind turbine generators'. The ExA has amended the recommended DCO to that effect.

Schedules 10 - 13 (Generation and Transmission Assets) DMLs - Condition 13, and Schedules 14 and 15 (Interconnection) DMLs - Condition 6

- 9.6.20 For consistency and to provide the correct reference to the bird species, "red-throated diver" has been hyphenated in Condition 13(1)(c)(v) and 13 (1)(d)(vi) in Schedules 10 to 13 and Condition 6(c)(iii) and 6(d)(vi) of Schedules 14 and 15.

9.7 POST-EXAMINATION LEGISLATIVE CHANGES

- 9.7.1 Consequent on statutory changes to the CA regime explained in paragraphs 8.6.8 to 8.6.11 of the CA chapter above, before the recommended DCO can be made, the Secretary of State will need to consider changes to the draft Order to address these. Changes to address this point have not been included in the recommended DCO by the ExA because they would address provisions that commenced on 30 January 2017, after the closure of the statutory Examination period. It follows that the ExA was not able to engage with the Applicant and IPs on any changes that might be deemed necessary and so therefore should not properly make these the subject of a formal recommendation.

9.8 CONCLUSION ON THE DCO

- 9.8.1 Taking all of the matters raised above and in the remainder of this report into consideration, the Panel is content to recommend that the SoS should make the DCO in the form included as Appendix D to this report.

10 SUMMARY OF FINDINGS AND CONCLUSIONS

10.1 CONCLUSIONS

10.1.1 In relation to s104 of PA2008, the ExA concludes in summary that:

- (1) making the recommended DCO would be in accordance with NPSs EN-1, EN-3 and EN-5 and would also be in accordance with the MPS and the EIEOMP, any relevant development plans and other relevant policy, all of which have been taken into account in this report;
- (2) the ExA has had regard to the LIR produced by Suffolk County Council, Mid Suffolk District Council and Suffolk Coastal District Council in making its recommendation;
- (3) in making the DCO, the SoS would be fulfilling his duties under the relevant EU Directives as transposed into UK law by regulation, as well as the biodiversity duty under the NERC Act 2006, subject to any necessary Habitats Regulations Assessment;
- (4) whilst the SoS is the competent authority under the Habitats Regulations, the ExA concludes that in its view the Proposed Development would not adversely affect European sites, species or habitats, and the ExA has taken this into account in reaching its recommendation;
- (5) with regard to all other matters and representations received, the ExA found no important and relevant matters that would individually or collectively lead to a different recommendation to that below;
- (6) the Proposed Development would have no adverse effects that would outweigh its benefits; and
- (7) there is nothing to indicate that the application should be decided other than in accordance with the relevant NPSs.

10.1.2 In relation to the application for compulsory acquisition (CA) and temporary possession powers within the recommended DCO, the ExA in summary concludes, as set out below, that:

- (1) the Proposed Development for which the land and rights are sought would be in accordance with national policy, as set out in the NPSs;
- (2) the NPSs identify a national need for renewable electricity generating capacity;
- (3) the need to secure the land and rights required, and to construct the Proposed Development within a reasonable commercial timeframe, represent a significant public benefit;
- (4) the private loss to those affected is mitigated through the cable route selection, choice of the application land, the undergrounding of cables and the extent of the rights and interests proposed to be acquired;
- (5) the Applicant has explored all reasonable alternatives to the CA of land, rights and interests sought and there are no alternatives that ought to be preferred;

- (6) adequate and secure funding would be available to enable CA within the statutory period following the Order being made; and
- (7) the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate degree.

10.1.3 Considering all the above factors together, there is a compelling case in the public interest for the CA powers sought in respect of the CA land shown on the Land Plans (as amended). The ExA therefore concludes that the Proposed Development would comply with s122(2) and s122(3) of PA2008.

10.2 RECOMMENDATION

10.2.1 For all of the above reasons, and in the light of its findings and conclusions on important and relevant matters set out in the report, the ExA, under the Planning Act 2008 (as amended), recommends that the Secretary of State for Business, Energy and Industrial Strategy makes the East Anglia Three Offshore Wind Farm Order in the form recommended at Appendix D.

Appendix A: Events in the Examination

Appendix A: Events in the Examination

The Table below lists the main 'events' occurring during the Examination and the main procedural decisions taken by the Examining Authority (ExA).

Examination Event	Date
Preliminary Meeting	Tuesday 28 June 2016
Issue Specific Hearing (ISH) relating to the definition of the project and draft Development Consent Order (DCO) matters	Wednesday 29 June 2016
Issue by Examining Authority (ExA) of: <ul style="list-style-type: none"> • Examination timetable • ExA first written questions 	Wednesday 6 July 2016
Deadline 1 <ul style="list-style-type: none"> • Post-hearing documents including any written summary of an oral case put at the DCO ISH and any documents/amendments requested by the ExA • Applicant's revised draft DCO 	Wednesday 13 July 2016
Deadline 2 Deadline for receipt of: <ul style="list-style-type: none"> • Comments on relevant representations (RRs) • Summaries of all RR's exceeding 1,500 words • Written representations (WRs) by all interested parties • Summaries of all WRs exceeding 1,500 words • Comments on any additional representations and submissions received 	Wednesday 27 July 2016

<ul style="list-style-type: none"> • Responses to Applicant’s revised draft DCO • Local Impact Reports (LIRs) from any local authorities • Statements of Common Ground (SoCG) requested by the ExA • Responses to the ExA’s first written questions • Notification of wish to speak at a Compulsory Acquisition Hearing (CAH) • Notification of wish to make oral representations at any further ISHs • Notification of wish to speak at an Open Floor Hearing (OFH) • Notification of wish to attend an Accompanied Site Inspection (ASI) • Representations relating to locations to view at the site or in the surrounding area which are considered to be relevant for the ExA during unaccompanied site inspections • Representations relating to locations to view at the site or in the surrounding area which are considered to be relevant for the ExA during an accompanied site inspection to better understand representations made or to see land and interests where there is no opportunity to gain public access • Notification from statutory parties, or local authorities without direct responsibility in the proposed development area, of a wish to be considered as an interested party • Any other information requested by the ExA under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (the EPR) 	
<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • Notification of the date, time and place for further ISHs, an OFH (if required) and CAHs (if required) 	<p>Wednesday 3 August 2016</p>
<p>Deadline 3</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on WRs and responses to comments on RRs • Comments on LIRs • Comments on responses to the ExA’s first 	<p>Wednesday 10 August 2016</p>

<p>written questions</p> <ul style="list-style-type: none"> • Comments on responses to the Applicant's revised draft DCO • Responses to comments on any additional representations and submissions received • Information to inform the HRA for the Southern North Sea pSAC report to be submitted by Applicant • Statements of Common Ground (SoCG) requested by the ExA 	
Accompanied site inspection	Tuesday 6 September 2016
Issue of Rule 17 Letter – Request for further information	Wednesday 7 September 2016
ISH on environmental or other matters	Wednesday 7 September 2016
ISH on the draft DCO	Thursday 8 September 2016
<p>Deadline 4</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Post-hearing documents including any written summary of an oral case put at any hearing and any documents/amendments requested by the ExA • Applicant's revised draft DCO • Any other information requested by the ExA under Rule 17 of the EPR 	Thursday 15 September 2016
<p>Notification of Hearings and publication by the ExA of:</p> <ul style="list-style-type: none"> • Second written questions 	Thursday 22 September 2016
<p>Deadline 5</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Responses to the ExA's second written questions • Comments on the Applicant's revised draft DCO • Any other information requested by the ExA under Rule 17 of the Examination Procedure Rules 2010 (EPR) 	Thursday 6 October 2016

ISH on Environmental Matters	Tuesday 25 October 2016 (Morning)
Compulsory Acquisition Hearing	Tuesday 25 October 2016 (Afternoon)
ISH on the Development Consent Order	Wednesday 26 October 2016
Issue of Rule 17 Letter – Request for further information	Friday 28 October 2016
<p>Deadline 6</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Post-hearing documents including any written summary of an oral case put at any hearing and any documents/ amendments requested by the ExA • Applicant’s revised draft DCO • Comments on responses to the ExA’s second written questions • Any other information requested by the ExA under Rule 17 of the EPR 	Tuesday 8 November 2016
<p>Issue of Rule 17 Letter – Request for further information and publication by the ExA of:</p> <ul style="list-style-type: none"> • The ExA’s draft DCO • Report on the Implications for European Sites (RIES) 	Thursday 17 November 2016
<p>Deadline 7</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Comments on the RIES • Comments on the ExA’s draft DCO • Any other information requested by the ExA under Rule 17 of the EPR 	Thursday 8 December 2016
<p>Deadline 8</p> <p>Deadline for receipt of:</p> <ul style="list-style-type: none"> • Responses to comments on the ExA’s draft DCO • Responses to comments on the RIES • Any other information requested by the ExA under Rule 17 of the EPR 	Thursday 15 December 2016

Close of Examination

**Wednesday 28
December 2016**

Appendix B: Examination Library

East Anglia Three Examination Library

This Examination Library relates to the East Anglia Three Offshore Wind Farm application. The library lists each document that has been submitted to the examination by any party and documents that have been issued by the Planning Inspectorate. All documents listed have been published to the National Infrastructure's Planning website and a hyperlink is provided for each document. A unique reference is given to each document; these references will be used within the Report on the Implications for European Sites and will be used in the Examining Authority's Recommendation Report. The documents within the library are categorised either by document type or by the deadline to which they are submitted.

Please note the following:

- Advice under Section 51 of the Planning Act 2008 that has been issued by the Inspectorate, is published to the National Infrastructure Website but is not included within the Examination Library as such advice is not an examination document.
- This document contains references to documents from the point the application was submitted.
- The order of documents within each sub-section is either chronological, numerical, or alphabetical and confers no priority or higher status on those that have been listed first.

EN010056 – East Anglia Three**Examination Library - Index**

Category	Reference
<u>Application Documents</u> As submitted and amended version received before the PM. Any amended version received during the Examination stage to be saved under the Deadline received	APP-xxx
<u>Adequacy of Consultation responses</u>	AoC-xxx
<u>Relevant Representations</u>	RR-xxx
<u>Procedural Decisions and Notifications from the Examining Authority</u> Includes Examining Authority’s questions, s55, and post acceptance s51	PD-xxx
<u>Additional Submissions</u> Includes anything accepted at the Preliminary Meeting and correspondence that is either relevant to a procedural decision or contains factual information pertaining to the examination	AS-xxx
<u>Events and Hearings</u> Includes agendas for hearings and site inspections, audio recordings, responses to notifications, applicant’s hearing notices, and responses to Rule 6 and Rule 8 letters	EV-xxx
<u>Representations – by Deadline</u>	
<u>Deadline 1 – 13 July 2016:</u> <ul style="list-style-type: none"> • Post-hearing documents including any written summary of an oral case put at the DCO ISH and any documents/amendments requested by the ExA • Applicant’s revised draft DCO 	REP1-xxx
<u>Deadline 2 – 27 July 2016:</u> <ul style="list-style-type: none"> • Comments on relevant representations (RRs) • Summaries of all RRs exceeding 1,500 words • Written representations (WRs) by all interested parties 	REP2-xxx

<ul style="list-style-type: none"> • Summaries of all WRs exceeding 1,500 words • Comments on any additional representations and submissions received as outlined in Annex D • Responses to Applicant’s revised draft DCO • Local Impact Reports (LIRs) from any local authorities • Statements of Common Ground (SoCG) requested by the ExA • Responses to the ExA’s first written questions • Notification of wish to speak at a Compulsory Acquisition Hearing (CAH) • Notification of wish to make oral representations at any further ISHs • Notification of wish to speak at an Open Floor Hearing (OFH) • Notification of wish to attend an Accompanied Site Inspection (ASI) • Representations relating to locations to view at the site or in the surrounding area which are considered to be relevant for the ExA during unaccompanied site inspections • Representations relating to locations to view at the site or in the surrounding area which are considered to be relevant for the ExA during an accompanied site inspection to better understand representations made or to see land and interests where there is no opportunity to gain public access • Notification from statutory parties, or local authorities without direct responsibility in the proposed development area, of a wish to be considered as an interested party • Any other information requested by the ExA under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 (the EPR) 	
<p><u>Deadline 3 – 10 August 2016:</u></p> <ul style="list-style-type: none"> • Comments on WRs and responses to comments on RRs • Comments on LIRs • Comments on responses to the ExA’s first written questions • Comments on responses to the Applicant’s revised draft DCO 	REP3-xxx

<ul style="list-style-type: none"> • Responses to comments on any additional representations and submissions received • Information to inform the HRA for the Southern North Sea pSAC report to be submitted by Applicant • Statements of Common Ground (SoCG) requested by the ExA 	
<p><u>Deadline 4 – 15 September 2016:</u></p> <ul style="list-style-type: none"> • Post-hearing documents including any written summary of an oral case put at any hearing and any documents/amendments requested by the ExA • Applicant’s revised draft DCO • Any other information requested by the ExA under Rule 17 of the EPR 	REP4-xxx
<p><u>Deadline 5 – 6 October 2016:</u></p> <ul style="list-style-type: none"> • Responses to the ExA’s second written questions • Comments on the Applicant’s revised draft DCO • Any other information requested by the ExA under Rule 17 of the EPR 	REP5-xxx
<p><u>Deadline 6 – 8 November 2016:</u></p> <ul style="list-style-type: none"> • Post-hearing documents including any written summary of an oral case put at any hearing and any documents/amendments requested by the ExA • Applicant’s revised draft DCO • Comments on responses to the ExA’s second written questions • Any other information requested by the ExA under Rule 17 of the EPR 	REP6-xxx
<p><u>Deadline 7 – 8 December 2016:</u></p> <ul style="list-style-type: none"> • Comments on the RIES • Comments on the ExA’s draft DCO • Any other information requested by the ExA under Rule 17 of the EPR 	REP7-xxx

<p><u>Deadline 8 – 15 December 2016:</u></p> <ul style="list-style-type: none"> • Responses to comments on the ExA’s draft DCO • Responses to comments on the RIES • Any other information requested by the ExA under Rule 17 of the EPR 	<p>REP8-xxx</p>
<p><u>Other Documents</u></p> <p>Includes s127/131/138 information, s56, s58 and s59 certificates, and transboundary documents</p>	<p>OD-xxx</p>

EN010056 – East Anglia Three**Examination Library****Application Documents**

APP-001	<u>1.1 Covering Letter</u>
APP-002	<u>1.2 Application Form</u>
APP-003	<u>1.3 Copies of Newspaper Notices</u>
APP-004	<u>2.1 (a) Location Plan Offshore</u>
APP-005	<u>2.1 (b) Location Plan Onshore</u>
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APP-010	<u>2.4 (a) Works Plan Offshore</u>
APP-011	<u>2.4 (b) Works Plan Onshore (Key Plan 1-24)</u>
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APP-018	<u>2.8 (a) Plan of Statutory or Non-Statutory Historic or Scheduled Monument Sites Offshore</u>
APP-019	<u>2.8 (b) Plans of Statutory or Non-Statutory Historic or Scheduled Monument Sites Onshore (Key Plan 1-12)</u>
APP-020	<u>2.9 (a) Plan Showing any Crown Land Offshore</u>
APP-021	<u>2.9 (b) Plans Showing any Crown Land Onshore (Key Plan 1-3)</u>
APP-022	<u>2.10 Important Hedgerow Plan (Key Plan 1-12)</u>
APP-023	<u>2.11 Radar Line of Sight Coverage Plan</u>
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APP-028	<u>4.2 Funding Statement</u>
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RR-002	Whale and Dolphin Conservation
RR-003	Natural England
RR-004	Royal Yachting Association
RR-005	Norfolk County Council
RR-006	Civil Aviation Authority
RR-007	Little Bealings Parish Council
RR-008	Trinity House
RR-009	CRPMEM Nord Pas de Calais Picardie
RR-010	Rederscentrale

RR-011	<u>Daniel Parry-Jones on behalf of Royal Mail Group Limited</u>
RR-012	<u>Suffolk Preservation Society</u>
RR-013	<u>National Grid Plc</u>
RR-014	<u>National Federation of Fishermen</u>
RR-015	<u>Forewind Ltd</u>
RR-016	<u>Rijkswaterstaat</u>
RR-017	<u>Anglian Water Services</u>
RR-018	<u>Maritime and Coastguard Agency</u>
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RR-020	<u>Defence Infrastructure Organisation</u>
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RR-023	<u>Suffolk Coastal District Council and Waveney District Council</u>
RR-024	<u>Suffolk County Council</u>
RR-025	<u>VisNed</u>
RR-026	<u>Daniel Marston on behalf of Network Rail Infrastructure Ltd</u>
RR-027	<u>Vattenfall Wind Power Limited</u>
RR-028	<u>SMart Wind Limited on behalf of (a) SMart Wind Limited and (b) Optimus Wind Limited and Breesea Limited</u>
RR-029	<u>Babergh and Mid Suffolk District Councils</u>
RR-030	<u>Dong Energy</u>
RR-031	<u>Marine Management Organisation</u>
RR-032	<u>Galloper Wind Farm Ltd</u>
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Procedural Decisions and Notifications from the Examining Authority	
PD-001	Notification of Decision to Accept Application
PD-002	Section 55 Acceptance of Applications Checklist
PD-003	Section 51 advice to applicant 15 December 2015
PD-025	Section 61 Appointment of Examining Authority
PD-004	Notification to Wightman Fishing Co Ltd Notification of other person status
PD-005	Rule 6 Letter
PD-020	Schedule of issues arising from the Draft Development Consent Order Forming part of Annex F of the Rule 6
PD-006	Letter sent to Natural Resources Wales Letter regarding other party status
PD-007	Letter sent to Scottish Natural Heritage Letter regarding other party status
PD-008	Letter sent to EEA State of France Letter regarding other party status
PD-009	Letter sent to EEA State of Belgium Letter regarding other party status
PD-010	Letter sent to Swedish Agency for Marine and Water Letter regarding other party status
PD-011	Rule 8 Letter
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PD-013	Section 60 Letter to Local Authorities
PD-014	Section 102A and 89 Letter to Paul Lines Response to request for interested party status
PD-015	Rule 13 and Rule 8(3) Letter notifying of hearings in September 2016
PD-016	Rule 17 letter - 7 September 2016
PD-017	Rule 13 and Rule 8(3) Letter notifying of hearings in October 2016
PD-018	Examining Authority Second Written Questions
PD-019	Rule 17 Letter – 28 October 2016

PD-021	Report on the Implications for European Sites (RIES) Issued by the Examining Authority on 17 November 2016
PD-022	Examining Authority's Consultation draft Development Consent Order
PD-023	Rule 17 Letter- 17 November 2016
PD-024	Notification of Completion of ExA Examination
Additional Submissions	
AS-001	East Anglia THREE Limited Correspondence and Book of Reference updates dated 19 May 2016
AS-002	East Anglia THREE Limited Certificates and Response to s51 advice in relation to the Book of Reference, Land Plans and schedule of Plot Numbers for Land Plans dated 27 April 2016
AS-003	East Anglia THREE Limited 5.4.1 Information for the Habitats Regulations Assessment - Volume 5 Erratum: Correction to Kittiwake in-combination collision mortality
AS-004	Trinity House Pre examination submission. Accepted by the ExA
AS-005	Ipswich Borough Council Pre examination submission. Accepted by the ExA
AS-006	East Anglia THREE Limited Response to Rule 6 Letter. Published on 7 July 2016
AS-007	East Anglia THREE Limited 6.2.29.1. Chapter 29 Landscape, Seascape and Visual Amenity. Volume 2 Figures Erratum: Correction to Figure 29.24
AS-008	East Anglia THREE Limited 5.4.1 Information for the Habitats Regulations Assessment - Volume 5 Erratum: Correction to Kittiwake in-combination collision mortality
AS-009	East Anglia THREE Limited ERR/001/Marine Mammals. Marine Mammals. Cumulative Impact Assessment Erratum
AS-010	East Anglia THREE Limited Consolidated East Anglia ONE Offshore Windfarm Order 2014 as amended by the East Anglia ONE (Corrections and Amendments) Order 2016
AS-011	East Anglia THREE Limited 6.2.29.1. Chapter 29 Landscape, Seascape and Visual Amenity. Volume 2 Figures Erratum: Correction to Figure 29.24. Appendix 1 Page 1 of 4
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AS-013	<u>East Anglia THREE Limited</u> 6.2.29.1. Chapter 29 Landscape, Seascape and Visual Amenity. Volume 2 Figures Erratum: Correction to Figure 29.24. Appendix 1 Page 3 of 4
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AS-018	<u>Paul Lines</u> Additional Submissions accepted at the discretion of the Examining Authority. Published on 1 August 2016
AS-040	<u>Mid Suffolk District Council</u> Additional Submission accepted at the discretion of the Examining Authority. Published on 17 October 2016
AS-041	<u>Eni UK</u> Additional Submission accepted at the discretion of the Examining Authority. Published on 20 October 2016
AS-042	<u>RSPB</u> Additional Submission accepted at the discretion of the Examining Authority. Published on 20 October 2016
AS-043	<u>Natural England</u> Additional Submission in advance of the second Issue Specific Hearing on Environmental Issues accepted at the discretion of the Examining Authority. Published on 21 October 2016
AS-044	<u>Network Rail</u> Additional Submission accepted at the discretion of the Examining Authority. Published on 27 October 2016
AS-045	<u>Galloper Wind Farm Ltd</u> Additional Submission accepted at the discretion of the Examining Authority. Published on 28 October 2016
AS-046	<u>Royal Mail</u> Additional Submission accepted at the discretion of the Examining Authority. Published on 1 November 2016
AS-047	<u>East Anglia Three Limited</u>

	Additional Submission accepted at the discretion of the Examining Authority. Published on 22 November 2016
AS-048	<u>Royal Mail</u> Additional Submission accepted at the discretion of the Examining Authority. Published on 16 December 2016
AS-049	<u>Babergh and Mid Suffolk District Councils</u> Additional Submission accepted at the discretion of the Examining Authority. Published on 16 December 2016
AS-050	<u>Babergh and Mid Suffolk District Councils</u> Additional Submission accepted at the discretion of the Examining Authority. Published on 19 December 2016
AS-051	<u>Crown Estate</u> 135 Consent Letter. Published on 23 December 2016
Other Environmental Information submitted on 31 August and 6 September 2016	
AS-019	<u>East Anglia THREE Limited</u> Other Environmental Information Submission Letter
AS-020	<u>East Anglia THREE Limited</u> Other Environmental Information Submission Covering Document
AS-021	<u>East Anglia THREE Limited</u> Other Environmental Information Volume 1 - Introduction
AS-022	<u>East Anglia THREE Limited</u> Other Environmental Information Volume 2 - Orford Inshore rMCZ Assessment
AS-023	<u>East Anglia THREE Limited</u> Other Environmental Information Volume 3 - Henley Road Assessment
AS-024	<u>East Anglia THREE Limited</u> Other Environmental Information Volume 4 - Revised LVIA assessment
AS-025	<u>East Anglia THREE Limited</u> Other Environmental Information Visualisations Page 1-26
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AS-028	<u>East Anglia THREE Limited</u> Other Environmental Information Appendix 3 - Comments on Responses to OEI
AS-029	<u>East Anglia THREE Limited</u> Other Environmental Information Appendix 4 - Responses to OEI

AS-030	East Anglia THREE Limited Other Environmental Information Template Notice
AS-031	East Anglia THREE Limited Template Other Environmental Information Letter to Landowner Consultees
AS-032	East Anglia THREE Limited Press Notice - The Gazette
AS-033	East Anglia THREE Limited Press Notices - Ipswich Star
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AS-035	East Anglia THREE Limited Press Notices - Fishing News
AS-036	East Anglia THREE Limited Press Notices - The Times and Lloyds List
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AS-038	East Anglia THREE Limited Additional LPA Response and Comments on the Response
AS-039	East Anglia THREE Limited Other Environmental Information - Parties notified list
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Preliminary Meeting 28 June 2016	
EV-001	Audio Recording of the Preliminary Meeting on 28 June 2016
EV-002	Note of the Preliminary Meeting
EV-007	East Anglia THREE Limited Applicant's notice of Preliminary meeting and first DCO Hearing
Unaccompanied Site Visit 28 June 2016	
EV-008	Examining Authority's Note of Unaccompanied Inspection of Sites Undertaken on 28 June 2016
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EV-003	Audio Recording of the Issue Specific Hearing on the Draft DCO on 29 June 2016 - Session 1
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	2016 - Session 3
EV-006	Audio Recording of the Issue Specific Hearing on the Draft DCO on 29 June 2016 - Session 4
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EV-009	Accompanied Site Inspection 6 September Itinerary
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EV-010	Agenda for the Environmental and DCO Hearings on 7 and 8 September 2016
EV-011	Marine Management Organisation Revised DML Navigational Conditions as agreed between the Marine Management Organisation (MMO), Trinity House and the Maritime and Coastguard Agency
EV-012	Action Points from Environmental Issue Specific Hearing on 7 September 2016
EV-013	Action Points from DCO Issue Specific Hearing on 8 September 2016
EV-014	Audio Recording of the Issue Specific Hearing on Environmental Matters on 7 September 2016 - Session 1
EV-015	Audio Recording of the Issue Specific Hearing on Environmental Matters on 7 September 2016 - Session 2
EV-016	Audio Recording of the Issue Specific Hearing on the Draft DCO on 8 September 2016 - Session 1
EV-017	Audio Recording of the Issue Specific Hearing on the Draft DCO on 8 September 2016 - Session 2
Issue Specific Hearings on Environmental Matters and the draft Development Consent Order and Compulsory Acquisition Hearing on 25 and 26 October 2016	
EV-018	Agenda for Hearings on 25 and 26 October 2016
EV-019	Audio Recording of the Issue Specific Hearing on Environmental Matters on 25 October 2016 - Session 1
EV-020	Audio Recording of the Issue Specific Hearing on Environmental Matters on 25 October 2016 - Session 2
EV-021	Audio Recording of the Compulsory Acquisition Hearing on 25 October 2016
EV-022	Audio Recording of the Development Consent Order Issue Specific Hearing on 26 October 2016 - Session 1
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EV-024	Audio Recording of the Development Consent Order Issue Specific Hearing on 26 October 2016 - Session 3
EV-025	Action Points from the Issue Specific Hearing on Environmental Matters on 25 October 2016
EV-026	Action Points from the Compulsory Acquisition Hearing on 25 October 2016
EV-027	Action Points from the Development Consent Order Issue Specific Hearing on 26 October 2016
Representations	
Deadline 1 – 13 July 2016	
REP1-001	East Anglia THREE Limited Response to Deadline 1
REP1-002	East Anglia THREE Limited Network Rail comments on Protective Provisions
REP1-003	East Anglia THREE Limited Presentation of Richard Britton on EAONE/EATHREE interactions given at DCO Issue Specific Hearing
REP1-004	East Anglia THREE Limited Draft Development Consent Order (DCO) (version 2)
REP1-005	East Anglia THREE Limited Track Changed version of draft Development Consent Order (DCO) (version 1 - version 2)
REP1-006	East Anglia THREE Limited Schedule of Changes to the draft Development Consent Order (DCO)
REP1-007	East Anglia THREE Limited Schedule of Offshore Development Consent Order drafting. Please note - you will need to use the zoom function to view the text on this document
REP1-008	East Anglia THREE Limited Section 135 Consent from The Crown Estate
REP1-009	East Anglia THREE Limited EAONE Skills Strategy
REP1-010	East Anglia THREE Limited Hedgerow Plans (Key Plan and sheets 1-12)
REP1-011	East Anglia THREE Limited Applicant's response to the ExA's Schedule of Issues
REP1-012	East Anglia THREE Limited Applicant's response to the Planning Inspectorate's Advice Notes 13 and 15
REP1-013	Marine Management Organisation

	Written summary of the oral representations made at the Issue Specific Hearing held on 29 June 2016
REP1-014	<u>Natural England</u> Deadline 1 submission
REP1-015	<u>Natural England</u> Response to Oral questions at the Issue Specific Hearing on the 29 June 2016
REP1-016	<u>Suffolk County Council</u> Written summary of oral case made at the Issue Specific Hearing 29 June 2016
Deadline 2 – 27 July 2016	
REP2-001	<u>Suffolk County Council, Mid Suffolk District Council and Suffolk Coastal District Council</u> Local Impact Report
REP2-002	<u>Suffolk County Council, Mid Suffolk District Council and Suffolk Coastal District Council</u> Response to ExA's first written questions
REP2-003	<u>Bawdsey Parish Council</u> Written Representation
REP2-004	<u>EEA State Belgium</u> Written Representation
REP2-005	<u>Environment Agency</u> Written Representation
REP2-006	<u>Environment Agency</u> Response to ExA's first written questions
REP2-007	<u>The Wildlife Trusts</u> Written Representation and Response to ExA's first written questions
REP2-008	<u>Whale and Dolphin Conservation</u> Written Representation
REP2-009	<u>Historic England</u> Written Representation
REP2-010	<u>Historic England</u> Response to ExA's first written questions
REP2-011	<u>Suffolk Preservation Society</u> Written Representation
REP2-012	<u>National Grid</u> Written Representation
REP2-013	<u>National Federation of Fishermen's Organisations (NFFO)</u> Written Representation

REP2-014	Anglian Water Written Representation
REP2-015	Marine Management Organisation Response to ExA's first written questions
REP2-016	Natural England Summary of Written Representation
REP2-017	Natural England Written Representation
REP2-018	Natural England Response to ExA's first written questions
REP2-019	Natural England Summary of Relevant Representation
REP2-020	Crown Estate Response to ExA's first written questions
REP2-021	Network Rail Written Representation
REP2-022	Eni UK Limited Written Representation
REP2-023	RSPB Summary of Written Representation
REP2-024	RSPB Written Representation
REP2-025	RSPB Response to ExA's first written questions
REP2-026	Rijkswaterstaat Draft Statement of Common Ground
REP2-027	East Anglia THREE Limited Written Response to Deadline 2
REP2-028	East Anglia THREE Limited Response to ExA's first written questions
REP2-029	East Anglia THREE Limited Comments on Relevant Representations
REP2-030	East Anglia THREE Limited Book of Reference version 2
REP2-031	East Anglia THREE Limited Book of Reference version 2 (track changes)
REP2-032	East Anglia THREE Limited List of 'Not Used' Plot Numbers in the Book of Reference

REP2-033	East Anglia THREE Limited Statement of Reasons version 2
REP2-034	East Anglia THREE Limited Statement of Reasons (Compare)
REP2-035	East Anglia THREE Limited Funding Statement
REP2-036	East Anglia THREE Limited Statement of Common Ground with Mid-Suffolk District Council, Suffolk Coastal District Council and Suffolk County Council
REP2-037	East Anglia THREE Limited Statement of Common Ground with East Anglia ONE Limited
REP2-038	East Anglia THREE Limited Statement of Common Ground with Civil Aviation Authority
REP2-039	East Anglia THREE Limited Statement of Common Ground with Eastern Inshore Fisheries and Conservation Authority (EIFCA)
REP2-040	East Anglia THREE Limited Statement of Common Ground with Chamber of Shipping
REP2-041	East Anglia THREE Limited Statement of Common Ground with Environment Agency
REP2-042	East Anglia THREE Limited Draft Statement of Common Ground with The Historic Buildings and Monuments Commission for England (HBMCE)
REP2-043	East Anglia THREE Limited Draft Statement of Common Ground with UK Commercial Fisheries Working Group (CFWG)
REP2-044	East Anglia THREE Limited Draft Statement of Common Ground with Comité Régional des Pêches Maritimes (Nord Pas-de-Calais Picardie)
REP2-045	East Anglia THREE Limited Statement of Common Ground with Ministry of Defence
REP2-046	East Anglia THREE Limited Statement of Common Ground with Rederscentrale
REP2-047	East Anglia THREE Limited Statement of Common Ground with Rijkswaterstaat
REP2-048	East Anglia THREE Limited Statement of Common Ground with Royal Yachting Association
REP2-049	East Anglia THREE Limited Statement of Common Ground with Royal Society for the Protection of Birds

	(RSPB)
REP2-050	East Anglia THREE Limited Draft Statement of Common Ground with Trinity House
REP2-051	East Anglia THREE Limited Draft Statement of Common Ground with Suffolk Preservation Society
REP2-052	East Anglia THREE Limited Statement of Common Ground with Suffolk Wildlife Trust
REP2-053	East Anglia THREE Limited Statement of Common Ground with Natural England
REP2-054	East Anglia THREE Limited Statement of Common Ground with Maritime and Coastguard Agency
REP2-055	East Anglia THREE Limited Statement of Common Ground with Marine Management Organisation
REP2-056	East Anglia THREE Limited Statement of Common Ground with Whale and Dolphin Conservation
REP2-057	East Anglia THREE Limited Statement of Common Ground with The Wildlife Trusts
REP2-058	East Anglia THREE Limited Statement of Common Ground with VisNed and National Federation of Fishermen's Organisations (NFFO)
REP2-059	East Anglia THREE Limited Land Plans (version 1) (part 1 of 4)
REP2-060	East Anglia THREE Limited Land Plans (version 1) (part 2 of 4)
REP2-061	East Anglia THREE Limited Land Plans (version 1) (part 3 of 4)
REP2-062	East Anglia THREE Limited Land Plans (version 1) (part 4 of 4)
REP2-063	East Anglia THREE Limited PROW Plans (version B) (part 1 of 6)
REP2-064	East Anglia THREE Limited PROW Plans (version B) (part 2 of 6)
REP2-065	East Anglia THREE Limited PROW Plans (version B) (part 3 of 6)
REP2-066	East Anglia THREE Limited PROW Plans (version B) (part 4 of 6)
REP2-067	East Anglia THREE Limited PROW Plans (version B) (part 5 of 6)

REP2-068	East Anglia THREE Limited PROW Plans (version B) (part 6 of 6)
REP2-069	East Anglia THREE Limited East Anglia ONE Landscape Masterplan (part 1 of 4)
REP2-070	East Anglia THREE Limited East Anglia ONE Landscape Masterplan (part 2 of 4)
REP2-071	East Anglia THREE Limited East Anglia ONE Landscape Masterplan (part 3 of 4)
REP2-072	East Anglia THREE Limited East Anglia ONE Landscape Masterplan (part 4 of 4)
REP2-073	East Anglia THREE Limited Letter from Christopher Mann
REP2-074	East Anglia THREE Limited Node Plan for Grid Coordinates
REP2-075	East Anglia THREE Limited International Commission on Non-Ionizing Radiation Protection (ICNIRP) Guidelines on EMF
REP2-076	East Anglia THREE Limited Reversing Alarms
REP2-077	East Anglia THREE Limited Bat Conservation Trust 'Artificial lighting and wildlife Interim Guidance Recommendations to help minimise the impact artificial lighting'
REP2-078	East Anglia THREE Limited East Anglia ONE Noise and Vibrations Appendices (East Anglia ONE ES Volume 3, Appendix 26.1-26.4)
REP2-079	East Anglia THREE Limited Academic research to support answers to ECMM6 (part 1 of 4)
REP2-080	East Anglia THREE Limited Academic research to support answers to ECMM6 (part 2 of 4)
REP2-081	East Anglia THREE Limited Academic research to support answers to ECMM6 (part 3 of 4)
REP2-082	East Anglia THREE Limited Academic research to support answers to ECMM6 (part 4 of 4)
REP2-083	East Anglia THREE Limited Marine Management Organisation letter dated 8 July 2016 regarding EPS Licence
REP2-084	East Anglia THREE Limited MARPOL signatories

REP2-085	East Anglia THREE Limited Joint Nature Conservation Committee (JNCC) Website - Alde-Ore
REP2-086	East Anglia THREE Limited Statutory nature conservation agency, Joint Nature Conservation Committee (JNCC), et al. (2010). Protocol for minimising the risk of injury to marine mammals from piling noise
REP2-087	East Anglia THREE Limited Natural England's written submission for deadline 6 of the Hornsea Project 2 examination
REP2-088	East Anglia THREE Limited Revised Integrity Matrices (HRA7, HRA8, HRA9)
REP2-089	East Anglia THREE Limited Information to Inform HRA 9 5.4 (1)
REP2-090	East Anglia THREE Limited East Anglia ONE S111/106 Agreement
REP2-091	East Anglia THREE Limited East Anglia ONE Draft Primary Construction Consolidation Site Paper Mill Lane Plan
REP2-092	East Anglia THREE Limited Coversheet - East Anglia ONE draft WSI
REP2-093	East Anglia THREE Limited East Anglia ONE draft WSI, as submitted to the LPAs (part 1 of 15)
REP2-094	East Anglia THREE Limited East Anglia ONE draft WSI, as submitted to the LPAs (part 2 of 15)
REP2-095	East Anglia THREE Limited East Anglia ONE draft WSI, as submitted to the LPAs (part 3 of 15)
REP2-096	East Anglia THREE Limited East Anglia ONE draft WSI, as submitted to the LPAs (part 4 of 15)
REP2-097	East Anglia THREE Limited East Anglia ONE draft WSI, as submitted to the LPAs (part 5 of 15)
REP2-098	East Anglia THREE Limited East Anglia ONE draft WSI, as submitted to the LPAs (part 6 of 15)
REP2-099	East Anglia THREE Limited East Anglia ONE draft WSI, as submitted to the LPAs (part 7 of 15)
REP2-100	East Anglia THREE Limited East Anglia ONE draft WSI, as submitted to the LPAs (part 8 of 15)
REP2-101	East Anglia THREE Limited East Anglia ONE draft WSI, as submitted to the LPAs (part 9 of 15)
REP2-102	East Anglia THREE Limited

	East Anglia ONE draft WSI, as submitted to the LPAs (part 10 of 15)
REP2-103	<u>East Anglia THREE Limited</u> East Anglia ONE draft WSI, as submitted to the LPAs (part 11 of 15)
REP2-104	<u>East Anglia THREE Limited</u> East Anglia ONE draft WSI, as submitted to the LPAs (part 12 of 15)
REP2-105	<u>East Anglia THREE Limited</u> East Anglia ONE draft WSI, as submitted to the LPAs (part 13 of 15)
REP2-106	<u>East Anglia THREE Limited</u> East Anglia ONE draft WSI, as submitted to the LPAs (part 14 of 15)
REP2-107	<u>East Anglia THREE Limited</u> East Anglia ONE draft WSI, as submitted to the LPAs (part 15 of 15)
REP2-108	<u>East Anglia THREE Limited</u> CITB publication, Skills and Training in the Construction Industry 2014 (part 1 of 2)
REP2-109	<u>East Anglia THREE Limited</u> CITB publication, Skills and Training in the Construction Industry 2014 (part 2 of 2)
REP2-110	<u>East Anglia THREE Limited</u> DECC publication, East Anglia ONE Supply Chain Plan 2014
REP2-111	<u>East Anglia THREE Limited</u> Oil and Gas UK, June 2016
REP2-112	<u>East Anglia THREE Limited</u> Nautilus Associates 2016
REP2-113	<u>East Anglia THREE Limited</u> ECITB Engineering Construction Industry Labour Market Intelligence Report, September 2015
REP2-114	<u>East Anglia THREE Limited</u> Royal Institution of Chartered Surveyors (RICS) UK Construction Survey (November 2015)
REP2-115	<u>Scottish Natural Heritage</u> Written Representation
REP2-116	<u>Braintree District Council</u> Late submission for Deadline 2 accepted at the discretion of the Examining Authority
Deadline 3 – 10 August 2016	
REP3-001	<u>Marine Management Organisation</u> Response in respect of the ExA's request for agreement of navigational conditions between the MMO, Trinity House and the Maritime and Coastguard Agency

REP3-002	RSPB Comments on responses to ExA's first written questions
REP3-003	The Wildlife Trusts Comments on responses to ExA's first written questions
REP3-004	East Anglia THREE Limited Response to Deadline 3
REP3-005	East Anglia THREE Limited Comments on Written Representations
REP3-006	East Anglia THREE Limited The Department of Transport Traffic Signs Manual Chapter 8
REP3-007	East Anglia THREE Limited DECC Guidance of June 2014
REP3-008	East Anglia THREE Limited Report of the ICES Working Group (2013)
REP3-009	East Anglia THREE Limited Conservation Objectives and advice provided by JNCC and Natural England 2016
REP3-010	East Anglia THREE Limited Comments on Local Impact Report
REP3-011	East Anglia THREE Limited Comments on the Responses of Other Parties to First Written Questions
REP3-012	East Anglia THREE Limited Information to Inform the HRA for the Southern North Sea pSAC Report
REP3-013	East Anglia THREE Limited Statement of Common Ground with Comite Régional des Pêches Maritimes (Nord Pas-de-Calais Picardie)
REP3-014	East Anglia THREE Limited Statement of Common Ground with Suffolk Preservation Society
REP3-015	East Anglia THREE Limited Statement of Common Ground with Historic Buildings and Monuments Commission for England
REP3-016	Royal Mail Correspondence with applicant submitted for Deadline 3
Deadline 4 – 15 September 2016	
REP4-001	Network Rail Submission for Deadline 4
REP4-002	East Anglia THREE Limited Written Response to Deadline 4

REP4-003	East Anglia THREE Limited Draft Development Consent Order (version 3)
REP4-004	East Anglia THREE Limited Track changed version of draft DCO (version 2 - version 3)
REP4-005	East Anglia THREE Limited Schedule of Changes to the draft DCO
REP4-006	East Anglia THREE Limited Written Summary of Oral Submissions at the Environmental Issue Specific Hearing on 7 September 2016
REP4-007	East Anglia THREE Limited Written Summary of Oral Submissions at the DCO Issue Specific Hearing on 8 September 2016
REP4-008	East Anglia THREE Limited Statement of Common Ground with Trinity House
REP4-009	East Anglia THREE Limited Statement of Common Ground with UK Commercial Fisheries Working Group (CFWG)
REP4-010	East Anglia THREE Limited Works Plan (Offshore) Revision B
REP4-011	East Anglia THREE Limited Updated CRM for birds following the EA1 reduction & Great Black Backed Gull
REP4-012	East Anglia THREE Limited List of 'Not Used' Plot Numbers in the Book of Reference (Update)
REP4-013	East Anglia THREE Limited Site Integrity Plan
REP4-014	East Anglia THREE Limited Schedule of Offshore DCO Drafting (Hornsea & Triton Update)
REP4-015	East Anglia THREE Limited EA ONE Architectural Plan
REP4-016	East Anglia THREE Limited Report to Inform pSAC HRA
REP4-017	East Anglia THREE Limited Report to Inform pSAC HRA (track change)
REP4-018	East Anglia THREE Limited Site Visit Documents (6 September) (part 1 of 8)
REP4-019	East Anglia THREE Limited Site Visit Documents (6 September) (part 2 of 8)
REP4-020	East Anglia THREE Limited Site Visit Documents (6 September) (part 3 of 8)

REP4-021	<u>East Anglia THREE Limited</u> Site Visit Documents (6 September) (part 4 of 8)
REP4-022	<u>East Anglia THREE Limited</u> Site Visit Documents (6 September) (part 5 of 8)
REP4-023	<u>East Anglia THREE Limited</u> Site Visit Documents (6 September) (part 6 of 8)
REP4-024	<u>East Anglia THREE Limited</u> Site Visit Documents (6 September) (part 7 of 8)
REP4-025	<u>East Anglia THREE Limited</u> Site Visit Documents (6 September) (part 8 of 8)
REP4-026	<u>Anglian Water</u> Response to Rule 17 Letter
REP4-027	<u>Babergh and Mid Suffolk District Councils</u> Post Hearing Submission
REP4-028	<u>Babergh and Mid Suffolk District Councils</u> East Anglia One Offshore Wind Farm Substation Detailed Design (Work No.39)
REP4-029	<u>Natural England</u> Post Hearing Submission
REP4-030	<u>Suffolk Preservation Society</u> Post Hearing Submission
REP4-031	<u>Eversheds on behalf of Eni UK Limited</u> Post Hearing Submission
REP4-032	<u>Marine Management Organisation</u> Post Hearing Submission
REP4-033	<u>Marine Management Organisation</u> Late Submission for Deadline 4 accepted at the discretion of the Examining Authority
Deadline 5 – 6 October 2016	
REP5-001	<u>Mid Suffolk and Babergh District Councils, Suffolk Coastal and Waveney District councils and Suffolk County Council</u> Response to ExA's second written questions and other comments
REP5-002	<u>Crown Estate</u> Response to ExA's second written questions
REP5-003	<u>Anglian Water Services Limited</u> Response to ExA's second written questions
REP5-004	<u>Whale and Dolphin Conservation</u> Response to ExA's second written questions

REP5-005	RSPB Response to ExA's second written questions
REP5-006	Suffolk Preservation Society Response to ExA's second written questions
REP5-007	The Wildlife Trusts Response to ExA's second written questions
REP5-008	Marine Management Organisation Response to ExA's second written questions
REP5-009	Natural England Response to ExA's second written questions
REP5-010	Natural England Comments on Collision Risk Model
REP5-011	East Anglia THREE Limited Response to Deadline 5
REP5-012	East Anglia THREE Limited Response to ExA's second written questions
REP5-013	East Anglia THREE Limited Updated Statement of Reasons
REP5-014	East Anglia THREE Limited Updated Statement of Reasons (Compare)
REP5-015	East Anglia THREE Limited Action Points and Plan of Plans
REP5-016	East Anglia THREE Limited Land Plan and Works Overlay Plans Part 1
REP5-017	East Anglia THREE Limited Land Plan and Works Overlay Plans Part 2
REP5-018	East Anglia THREE Limited In Principle Monitoring Plan V2
REP5-019	East Anglia THREE Limited In Principle Monitoring Plan V2 (Track changes)
REP5-020	East Anglia THREE Limited Position Statement between EATL and ENI
REP5-021	East Anglia THREE Limited Revised Design and Access Statement
REP5-022	East Anglia THREE Limited Revised Design and Access Statement (Track Changed)
REP5-023	East Anglia THREE Limited Revised Design and Access Statement (Schedule of Changes)

REP5-024	East Anglia THREE Limited Plot by Plot Analysis
REP5-025	East Anglia THREE Limited Letter from EAONE to Secretary of State
REP5-026	East Anglia THREE Limited Revised CRM
REP5-027	East Anglia THREE Limited JNCC and NE suggested tiers for CIA
REP5-028	East Anglia THREE Limited NE Advice and Meeting Note
REP5-029	East Anglia THREE Limited Revised Integrity Matrices
REP5-030	East Anglia THREE Limited Compulsory Acquisition Advice
REP5-031	East Anglia THREE Limited Skylark Mitigation Agreement
REP5-032	East Anglia THREE Limited Shark By Watch Report
REP5-033	East Anglia THREE Limited Schedule of changes made to the IPMP
REP5-034	East Anglia THREE Limited OEI 29 Track Changed
REP5-035	East Anglia THREE Limited OEI 29.1 Track Changed
REP5-036	East Anglia THREE Limited OEI 29.2 Track Changed
REP5-037	East Anglia THREE Limited OEI 29.3 Track Changed
REP5-038	East Anglia THREE Limited OEI 29.4 Track Changed
REP5-039	East Anglia THREE Limited OEI 29.5 Track Changed
Deadline 6 – 8 November 2016	
REP6-001	Maritime and Coastguard Agency Response to Rule 17
REP6-002	RSPB Response to Rule 17

REP6-003	<u>The Wildlife Trusts</u> Response to Rule 17
REP6-004	<u>Natural England</u> Response to Rule 17
REP6-005	<u>Suffolk County Council and Suffolk Local Authorities</u> Response to Rule 17, Response to action points from Hearings and position statement with Applicant
REP6-006	<u>Anglian Water</u> Submission for Deadline 6
REP6-007	<u>Eni UK Limited</u> Submission for Deadline 6
REP6-008	<u>Ipswich Borough Council</u> Submission for Deadline 6
REP6-009	<u>Marine Management Organisation</u> Written summary of oral submission at the Issue Specific Hearing on 26 October 2016
REP6-010	<u>Babergh and Mid Suffolk District Councils</u> EA One requirement discharge documents - Part 1
REP6-011	<u>Babergh and Mid Suffolk District Councils</u> EA One requirement discharge documents - Part 2
REP6-012	<u>Babergh and Mid Suffolk District Councils</u> EA One requirement discharge documents - Part 3
REP6-013	<u>Babergh and Mid Suffolk District Councils</u> Comments on the Draft DCO
REP6-014	<u>East Anglia Three Limited</u> Response to Deadline 6
REP6-015	<u>East Anglia Three Limited</u> Written Summary of Oral Submissions at DCO Issue Specific Hearing
REP6-016	<u>East Anglia Three Limited</u> Written Summary of Oral Submission at Compulsory Acquisition Hearing
REP6-017	<u>East Anglia Three Limited</u> Written Summary of Oral Submission at Environmental Issue Specific Hearing
REP6-018	<u>East Anglia Three Limited</u> East Anglia ONE Limited Skills Strategy (Updated)
REP6-019	<u>East Anglia Three Limited</u> Note of DML Referencing
REP6-020	<u>East Anglia Three Limited</u> Response to Action Points and Rule 17 Letter

REP6-021	East Anglia Three Limited Information required for Habitats Regulations Assessment (Revision B)
REP6-022	East Anglia Three Limited Screening and Integrity Matrices
REP6-023	East Anglia Three Limited Comments on Responses of Other Parties to Second Written Questions
REP6-024	East Anglia Three Limited Draft Development Consent Order (version 4)
REP6-025	East Anglia Three Limited Track Changes of draft DCO (version 3 - version 4)
REP6-026	East Anglia Three Limited Schedule of Changes to the draft DCO
REP6-027	East Anglia Three Limited Skylark Mitigation Agreement update
REP6-028	East Anglia Three Limited SPR and SCC position statement on skills
REP6-029	East Anglia Three Limited Landowner Agreements Update
REP6-030	East Anglia Three Limited Updated Statement of Reasons
REP6-031	East Anglia Three Limited Updated Statement of Reasons (Compare)
REP6-032	East Anglia Three Limited Action Plans and Plan of Plans (Version 2)
REP6-033	East Anglia Three Limited Action Plans and Plan of Plans (Version 2) (Tracked changes)
REP6-034	East Anglia Three Limited Outline Access Management Plan
REP6-035	East Anglia Three Limited Outline Access Management Plan Schedule of Changes
REP6-036	East Anglia Three Limited Outline Access Management Plan 1
REP6-037	East Anglia Three Limited Outline Access Management Plan 2
REP6-038	East Anglia Three Limited Outline Access Management Plan 3
REP6-039	East Anglia Three Limited

	Outline Access Management Plan 4
REP6-040	East Anglia Three Limited Outline Access Management Plan 5
REP6-041	East Anglia Three Limited Access and Egress Plan for PCCS x2
REP6-042	East Anglia Three Limited Updated Plot by Plot Analysis
REP6-043	East Anglia Three Limited Updated Plot by Plot Analysis (Track Changed)
REP6-044	East Anglia Three Limited Note on 150 Turbines
REP6-045	East Anglia Three Limited Position Statement on Protective Provisions for Eni UK Limited
REP6-046	East Anglia Three Limited Outline Landscape and Ecological Management Strategy
REP6-047	East Anglia Three Limited Outline Landscape and Ecological Management Strategy (Track Changed)
REP6-048	East Anglia Three Limited Outline Landscape and Ecological Management Strategy (Schedule of Changes)
REP6-049	East Anglia Three Limited Outline Written Scheme of Investigation (Onshore)
REP6-050	East Anglia Three Limited Outline Written Scheme of Investigation (Onshore) (Schedule of Changes)
REP6-051	East Anglia Three Limited Outline Written Scheme of Investigation (Offshore)
REP6-052	East Anglia Three Limited Outline Written Scheme of Investigation (Offshore) (Schedule of Changes)
REP6-053	East Anglia Three Limited Schedule of Mitigation (Onshore)
REP6-054	East Anglia Three Limited Schedule of Changes for Schedule of Mitigation (Onshore)
REP6-055	East Anglia Three Limited Schedule of Mitigation (Offshore)
REP6-056	East Anglia Three Limited Schedule of Changes for Schedule of Mitigation (Offshore)
REP6-057	East Anglia Three Limited Outline Code of Construction Practice

REP6-058	East Anglia Three Limited Outline Code of Construction Practice (Track Changed)
REP6-059	East Anglia Three Limited Outline Code of Construction Practice (Schedule of Changes)
REP6-060	East Anglia Three Limited Outline Code of Construction Practice Appendix 1 of 6
REP6-061	East Anglia Three Limited Outline Code of Construction Practice Appendix 2 of 6
REP6-062	East Anglia Three Limited Outline Code of Construction Practice Appendix 3 of 6
REP6-063	East Anglia Three Limited Outline Code of Construction Practice Appendix 4 of 6
REP6-064	East Anglia Three Limited Outline Code of Construction Practice Appendix 5 of 6
REP6-065	East Anglia Three Limited Outline Code of Construction Practice Appendix 6 of 6
REP6-066	Babergh and Mid Suffolk District Councils Further clarification regarding comments on the Draft DCO. Late Submission for Deadline 6 accepted at the discretion of the Examining Authority
Deadline 7 – 8 December 2016	
REP7-001	Anglian Water Services Limited Comments on the ExA's draft DCO and Response to Rule 17
REP7-002	The Crown Estate Response to Rule 17
REP7-003	Marine Management Organisation Response to Rule 17
REP7-004	Ipswich Borough Council Response to Rule 17
REP7-005	Suffolk County Council, Suffolk Coastal District Council and Mid Suffolk and Babergh District Councils Response to Rule 17
REP7-006	Babergh and Mid Suffolk District Councils Requirement 29 Discharge letter
REP7-007	Whale and Dolphin Conservation Response to Rule 17
REP7-008	Historic England Response to Rule 17

REP7-009	Highways England Submission for Deadline 7
REP7-010	Natural England Submission for Deadline 7
REP7-011	Natural England Report of the Habitats and Wild Birds Directives Implementation Review (2012)
REP7-012	The Wildlife Trusts Submission for Deadline 7
REP7-013	Eni UK Limited Submission for Deadline 7
REP7-014	National Grid Submission for Deadline 7
REP7-015	East Anglia Three Limited Response to Deadline 7
REP7-016	East Anglia Three Limited Comments on the ExA's draft DCO
REP7-017	East Anglia Three Limited Comments on the Report on the Implications for European Sites (RIES)
REP7-018	East Anglia Three Limited Response to the ExA's Rule 17 Letter
REP7-019	East Anglia Three Limited Statement of Common Ground with The Wildlife Trusts - Revision A
REP7-020	East Anglia Three Limited Statement of Common Ground with The Wildlife Trusts - Revision A (Tracked changes)
REP7-021	East Anglia Three Limited Statement of Common Ground with The Marine Management Organisation - Revision A
REP7-022	East Anglia Three Limited Statement of Common Ground with The Marine Management Organisation - Revision A (Tracked changes)
REP7-023	East Anglia Three Limited Statement of Common Ground with Natural England - Revision D
REP7-024	East Anglia Three Limited Statement of Common Ground with Natural England - Revision D (Tracked changes)
REP7-025	East Anglia Three Limited Statement of Common Ground with Whale and Dolphin Conservation - Revision A

REP7-026	East Anglia Three Limited Statement of Common Ground with Whale and Dolphin Conservation - Revision A (Tracked changes)
REP7-027	East Anglia Three Limited Statement of Common Ground with Royal Society for the Protection of Birds (RSPB) - Revision A
REP7-028	East Anglia Three Limited Statement of Common Ground with Royal Society for the Protection of Birds (RSPB) - Revision A (Tracked changes)
REP7-029	East Anglia Three Limited Updated Site Integrity Plan - Revision B
REP7-030	East Anglia Three Limited Updated Site Integrity Plan - Revision B (Tracked changes)
REP7-031	East Anglia Three Limited Protective Provisions Plan
REP7-032	East Anglia Three Limited Response to Eni UK Limited's Position Statement
REP7-033	East Anglia Three Limited Response to Consultation Questions
Deadline 8 – 15 December 2016	
REP8-001	East Anglia Three Limited Response to Deadline 8
REP8-002	East Anglia Three Limited Comments on Responses to Deadline 7
REP8-003	East Anglia Three Limited Draft Development Consent Order (version 5)
REP8-004	East Anglia Three Limited Development Consent Order (Compare Version 4 to Version 5)
REP8-005	East Anglia Three Limited Development Consent Order (Compare Version 1 to Version 5)
REP8-006	East Anglia Three Limited Draft DCO Schedule of Changes
REP8-007	East Anglia Three Limited Explanatory Memorandum
REP8-008	East Anglia Three Limited Explanatory Memorandum (Compare Version 1 to 2)
REP8-009	East Anglia Three Limited Updated Statement of Reasons

REP8-010	East Anglia Three Limited Updated Statement of Reasons (Compare)
REP8-011	East Anglia Three Limited Book of Reference version 3
REP8-012	East Anglia Three Limited Book of Reference version 3 (track changes)
REP8-013	East Anglia Three Limited Landowner Negotiations Update
REP8-014	East Anglia Three Limited Plot by Plot Update
REP8-015	East Anglia Three Limited Plot by Plot Update (track changes)
REP8-016	East Anglia Three Limited Plan of Plans (Version 3)
REP8-017	East Anglia Three Limited Plan of Plans Update (Compare Version 2 to 3)
REP8-018	Environment Agency Comments submitted for Deadline 8
REP8-019	National Grid Gas and National Grid Electricity Comments submitted for Deadline 8
REP8-020	Eni UK Limited Accepted by the Examining Authority as a Late Submission for Deadline 8
REP8-021	East Anglia Three Limited Late submission for Deadline 8 - Covering Email. Published on 23 December 2016
REP8-022	East Anglia Three Limited Development Consent Order (version 6). Late submission for Deadline 8. Published on 23 December 2016
REP8-023	East Anglia Three Limited Development Consent Order (Compare Version 5 to Version 6). Late submission for Deadline 8. Published on 23 December 2016
REP8-024	East Anglia Three Limited Validation Report. Late submission for Deadline 8. Published on 23 December 2016
REP8-025	East Anglia Three Limited Crown Estate S135 Letter. Late submission for Deadline 8. Published on 23 December 2016
Other Documents	

OD-001	<u>Transboundary Screening Matrix</u>
OD-002	<u>East Anglia THREE Ltd S56 Notice</u>
OD-003	<u>East Anglia THREE Ltd S56 Consultee Letter (Generic)</u>
OD-004	<u>130123 Copy of notice in London Gazette - Transboundary EA3</u>
OD-005	<u>130211 Confirmation from Netherlands wish to participate in EA3 and 4</u>
OD-006	<u>160316 London Gazette Notice Post DCO Application</u>
OD-007	<u>160404 Regulation 24 Notification Response from Belgium -Vandenborre</u>
OD-008	<u>160406 Regulation 24 Notification Response from Belgium - DeCock</u>
OD-009	<u>160406 Regulation 24 Notification Response from Sweden</u>
OD-010	<u>160421 Regulation 24 Response from Denmark 1</u>
OD-011	<u>160422 Regulation 24 Notification Response from Norway</u>
OD-012	<u>160422 Regulation 24 Notification Response from France - Catot</u>
OD-013	<u>160425 Regulation 24 Notification Response from France - Fouraison</u>
OD-014	<u>160428 Regulation 24 Response from Denmark</u>
OD-015	<u>160609 Regulation 24 Response from France Region Nord Pas de Calais Picardie</u>
OD-016	<u>160914 Regulation 24 Response from France</u>
OD-017	<u>161102 Response from France regarding consultation timeframes</u>

Appendix C: List of Abbreviations

Appendix C: List of Abbreviations

Abbreviation or usage	Reference
AA	Appropriate Assessment
AEOI	Adverse Effect on Integrity
AEZ	Archaeological Exclusion Zone
ALARP	As low as reasonably practicable
ALC	Agricultural Land Classification
AONB	Area of Outstanding Natural Beauty
APFP	Applications: Prescribed Forms and Procedures
AP	Affected Person
APPX	Appendix
AQMA	Air Quality Management Areas
AR	Avoidance Rate
ASI	Accompanied Site Inspection
BDC	Babergh District Council
BDMPS	Biologically Defined Minimum Population Scales
BoR	Book of Reference
BPS	Bawdsey Parish Council
CA	Compulsory Acquisition
CAA	Civil Aviation Authority
CAH	Compulsory Acquisition Hearing
CDM	Construction Design and Management
Cefas	Centre for Environmental, Fisheries and Aquaculture Science
CFG	Commercial Fisheries Working Group
CIA	Cumulative Impact Assessment
CoCP	Code of Construction Practice
CRA	Collision Risk Assessment
CRoW	Countryside and Rights of Way Act
CRM	Collision Risk Modelling
CRPMEM	Comite Regional des Peches Maritime (Nord Pas de Calais Picardie)
D	Deadline
dB	Decibels
DC	District Council
DCLG compulsory acquisition guidance	'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land', Department of Communities and Local Government, September 2013
DCO	Development consent order (made or proposed to be made under the Planning Act 2008 (as amended))
DD	Density Dependent
dDCO	Draft DCO
DECC	Department of Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs

DEPONS	Disturbance Effects on Harbour Porpoise in the North Sea
DI	Density Independent
DIO	Ministry of Defence – Defence Infrastructure Organisation
DML	Deemed marine licence
dSAC	Designated Special Area of Conservation
dSIP	Draft Site Integrity Plan
DWR	Deep Water Routes
EnvA	Environment Agency
EA1	East Anglia ONE Offshore Wind Farm
EA3	East Anglia THREE Offshore Wind Farm
EEA	European Economic Area
EIA	Environmental Impact Assessment
EIEOMP	East Inshore and East Offshore Marine Plans
EM	Explanatory Memorandum
EMF	Electro Magnetic Field
EPR	Examination Procedure Rules
EPS	European Protected Species
ERCOP	Emergency Response Co-operation Plan
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
FFC	Flamborough and Filey Coast
FHBC	Flamborough Head and Bempton Cliffs
FRA	Flood Risk Assessment
FS	Funding Statement
FTE	Full Time Equivalent
FWQ	First Round of Written Questions
GBBG	Greater Black-backed Gull
GEART	Guidelines for the Environmental Assessment of Road Traffic 1993
GWFL	Galloper Wind Farm Ltd
ha	Hectares
HDD	Horizontal Directional Drilling
HE	Highways England
HFA	Harwich Fishermen’s Association
HGV	Heavy Goods Vehicle
HistE	Historic England
HRA	Habitat Regulations Assessment
HVAC	High Voltage Alternating Current
HVDC	High Voltage Direct Current
IAQM	Institute of Air Quality Management
IMO	International Maritime Organisation
IP/s	Interested Party/Parties
IPMP	In Principle Monitoring Plan
ISH	Issue Specific Hearing
IWSI	Interim Written Scheme of Investigation
JNCC	Joint Nature Conservation Committee
km	Kilometres

kv	Kilovolt
LA	Local Authority
LAeq	Equivalent Continuous Level
LAQM	Local Air Quality Management
LAT	Lowest Astronomical Tide
LBBG	Lesser Black-backed Gull
LBPC	Little Bealings Parish Council
LEP	Local Economic Partnership
LFAC	Low Frequency Alternating Current
LiDAR	Light Detection and Ranging
LIR	Local Impact Report
LNR	Local Nature Reserve
LPA	Local Planning Authority
LSE	Likely Significant Effects
LVIA	Landscape and Visual Impact Assessment
m	Metres
MCAA	Marine and Coastal Access Act 2009
MCA	Maritime and Coastguard Agency
MCZ	Marine Conservation Zone
MHWS	Mean High Water Springs
MLWS	Mean Low Water Springs
mm	Millimetres
MMMP	Marine Mammal Mitigation Protocol
MMO	Marine Management Organisation
MNR	Marine Noise Registry
MoD	Ministry of Defence
MPA	Marine Protected Area
MPS	Marine Policy Statement
MSDC	Mid Suffolk District Council
MSFD	Marine Strategy Framework Directive
MSL	Mean Sea Level
MU	Management Unit
MW	Megawatt
NE	Natural England
NERC	The Natural Environment and Rural Communities Act
NFFO	National Federation of Fishermen's Organisations
nm	Nautical Miles
NNR	National Nature Reserve
NO2	Nitrogen Dioxide
NPPF	National Planning Policy Framework
NPS/s	National Policy Statement/s
NRA	Navigational Risk Assessment
NSIP	Nationally Significant Infrastructure Project (under PA2008)
OAMP	Outline Access Management Plan
OCoCP	Outline Code of Construction Practice
OEI	Other Environmental Information
OFTO	Offshore Transmission Operator
OLEMS	Outline Landscape and Ecological Management Strategy

ORPAD	Offshore Renewals Protocol for Archaeological Discoveries
OTMP	Outline Traffic Management Plan
OTP	Outline Traffic Plan
PA2008	Planning Act 2008 (as amended)
PBR	Potential Biological Removal
PCCS	Primary Construction Consolidation Sites
PCoD	Population Consequences of Disturbance
PEMP	Project Environmental Management Plan
PEXA	Practice and Exercise Area
PINS	Planning Inspectorate
PM	Preliminary Meeting
PRoW	Public Right of Way
pSAC	Possible Special Area of Conservation
pSPA	Possible Special Protected Area
PTS	Permanent Threshold Shift
PVA	Population Viability Analysis
Ramsar	The Ramsar Convention on Wetlands
rMCZ	Recommended Marine Coastal Zone
RIES	Report on the Implications for European Sites
RR	Relevant Representations
RSPB	Royal Society for the Protection of Birds
RWS	Rijkswaterstaat
RYA	Royal Yachting Association
SAC	Special Area of Conservation
SCC	Suffolk County Council
SCCAS	Suffolk County Council Archaeological Services
SCCS	Secondary Construction Consolidation Sites
SCDC	Suffolk Coastal District Council
SLVIA	Seascape Landscape and Visual Impact Assessment
SNCBs	Statutory nature conservation bodies – a collective reference
SNH	Scottish Natural Heritage
SNS	Southern North Sea
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State for Business, Energy and Industrial Strategy
SoSCLG	Secretary of State for Communities and Local Government
SPA	Special Protection Area
SPR	Scottish Power Renewables
SPS	Suffolk Preservation Society
SPUK	Scottish Power UK Plc
SSSI	Site of Special Scientific Interest
SU	Statutory Undertaker
SuDS	Sustainable Drainage System
SWQ	Second Round of Written Questions
TCE	The Crown Estate
TH	Trinity House

TWT	The Wildlife Trusts
USI	Unaccompanied Site Inspection
UK	United Kingdom
UKPPL	United Kingdom Petroleum Production Licence
UXO	Unexploded Ordnance
WDC	Whale and Dolphin Conservation
WFD	Water Framework Directive
WR	Written Representation or Written Representations depending on context
WSI	Written Scheme of Investigation
WSIO	Written Scheme of Investigation: Archaeology and Cultural Heritage (Offshore)
WTGs	Wind Turbine Generators or Wind Turbine Generator depending on context
ZTV	Zone of theoretical visibility

Appendix D: Recommended DCO

2016 No.

INFRASTRUCTURE PLANNING

The East Anglia Three Offshore Wind Farm Order 201X

<i>Made</i> - - - -	201*
<i>Laid before Parliament</i>	201*
<i>Coming into force</i> - -	20**

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009^(a) for an Order under sections 37, 114, 115, 120 and 149A of the Planning Act 2008 (“the 2008 Act”)^(b);

And whereas the application was examined by a Panel appointed as an examining authority by the Secretary of State pursuant to Chapter 4 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010^(c);

The examining authority, having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74 of the 2008 Act made a report and recommendation to the Secretary of State;

The Secretary of State, having considered the report and recommendation of the Panel, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in its opinion do not make any substantial change to the proposals;

The Secretary of State, having considered the report and recommendation of the Panel, is satisfied that open space comprised within the Order land, when burdened with the new rights authorised for compulsory acquisition under the terms of this Order, will be no less advantageous than it was before such acquisition, to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public and that, accordingly, section 132(3) of the 2008 Act applies;

The Secretary of State in exercise of the powers conferred by sections 114, 115, 120, and 149A of the 2008 Act the Secretary of State makes the following Order—

(a) S.I. 2009/2264 as amended by the Localism Act (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 (S.I. 2013/522)

(b) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20)

(c) S.I. 2010/103, amended by S.I. 2012/635

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the East Anglia THREE Offshore Wind Farm Order and comes into force on [●] 201[●].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(a);

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1980 Act” means the Highways Act 1980(c);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(d);

“the 1990 Act” means the Town and Country Planning Act 1990(e);

“the 1991 Act” means the New Roads and Street Works Act 1991(f);

“the 2003 Act” means the Communications Act 2003(g);

“the 2004 Act” means the Energy Act 2004(h);

“the 2008 Act” means the Planning Act 2008(i);

“the 2009 Act” means the Marine and Coastal Access Act 2009(j);

“access to works plan” means the plan certified as the access to works plan by the Secretary of State for the purposes of this Order;

“ancillary works” means the ancillary works described in Part 2 of **Schedule 1** (Ancillary Works) and any other works authorised by this Order and which are not development within the meaning of section 32 of the 2008 Act;

“authorised development” means the development and associated development described in Part 1 of **Schedule 1** (Authorised Development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“authorised project” means the authorised development and the ancillary works authorised by this Order;

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“buoy” means any floating device used for navigational purposes or measurement purposes, including LIDAR buoys, wave buoys and guard buoys;

(a) 1961 c.33

(b) 1965 c.56

(c) 1980 c.66

(d) 1981 c.66

(e) 1990 c.8

(f) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18)

(g) 2003 (c.21)

(h) 2004 c.20. Section 105 was amended by section 69 of the Energy Act 2008 (c.32)

(i) 2008 c.29. The relevant provisions of the Planning Act 2008 are amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27). Section 149A was inserted by paragraph 4 in Part 1 of Schedule 8 to the Marine and Coastal Access Act 2009 (c.23)

(j) 2009 c.23

“cable” in respect of any onshore cable includes direct lay cables and/or cables pulled through cable ducts and in respect of any cable whether onshore or offshore means any Alternating Current (AC) or Direct Current (DC) cables and includes fibre optic cables either within the cable or laid alongside;

“cable crossings” means the crossing of existing sub-sea cables or pipelines or other existing infrastructure by the inter-array, interconnecting and/or export cables authorised by this Order together with physical protection measures including concrete mattresses, rock placement or other protection methods;

“cable ducts” means conduits for the installation of cables;

“carriageway” has the same meaning as in the 1980 Act;

“circuit” means up to three cables;

“commence” means, (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for pre-construction surveys and monitoring and, (b) in respect of any other works comprised in the authorised project, the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements and the words “commencement” and “commenced” are construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“connection works” means Work Nos. 5B to 69 and any related further associated development in connection with those works;

“construction consolidation site” means a construction site associated with the connection works including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“deemed generation assets marine licences” means the licences set out in **Schedule 10** (deemed licence under the 2009 Act – generation assets (licence 1 – phase 1)) and **Schedule 11** (deemed licence under the 2009 Act – generation assets (licence 2 – phase 2)) and deemed by **article 28** (deemed marine licences under the 2009 Act) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“deemed interconnection marine licences” means the licences set out in **Schedule 14** (deemed licence under the 2009 Act – interconnection (licence 1 – phase 1)) and **Schedule 15** (deemed licence under the 2009 Act – interconnection (licence 2 – phase 2)) and deemed by **article 28** (deemed marine licences under the 2009 Act) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“deemed marine licences” means the deemed interconnection marine licences, the deemed generation assets marine licences and the deemed transmission assets marine licences;

“deemed transmission assets marine licences” means the licences set out in **Schedule 12** (deemed licence under the 2009 Act – transmission assets (licence 1 – phase 1)) and **Schedule 13** (deemed licence under the 2009 Act – transmission assets (licence 2 – phase 2)) and deemed by **article 28** (deemed marine licences under the 2009 Act) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“design and access statement” means the document certified as the design and access statement by the Secretary of State for the purposes of this Order;

“draught height” means the distance between the lowest point of the rotating blade of the wind turbine generator and MHWS;

“East Anglia ONE” means the offshore wind farm authorised under the East Anglia ONE Order;

“East Anglia ONE Order” means the East Anglia ONE Offshore Wind Farm Order 2014(a) as amended by the East Anglia ONE Offshore Wind Farm (Corrections and Amendments) Order 2016(b);

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“gravity base foundation” means a structure principally of steel, concrete, or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or additional skirts and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“highway” and “highway authority” have the same meaning as in the 1980 Act(c);

“in principle monitoring plan” means the document certified as the in principle monitoring plan by the Secretary of State for the purposes of this Order;

“jacket foundation” means a steel jacket/ lattice-type structure constructed of steel which is fixed to the seabed at two or more points with steel pin piles or steel suction caissons and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment, and “discrete jacket foundation types” includes pre-piled or post-piled jackets, three-legged or four legged jackets, or straight or battered leg jackets;

“jointing bay” means an excavation formed to enable the jointing of high voltage power cables;

“jointing works” means a process by which two or more cables are connected to each other by means of cable joints within a jointing bay;

“land plan” means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

“LAT” means lowest astronomical tide;

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of **Schedule 1** (Ancillary Works) and any component part of any wind turbine generator, offshore electrical station, accommodation platform or meteorological mast described in Part 1 of **Schedule 1** (Authorised Development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” is construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“mean low water springs” or “MLWS” means the average height of all low waters above Chart Datum;

“meteorological mast” means a mast housing equipment to measure wind speed and other wind characteristics, including a topside housing electrical, communication and associated equipment and marking and lighting;

“MMO” means the Marine Management Organisation;

“monopile foundation” means a steel pile, typically cylindrical, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“offshore electrical station” means a platform attached to the seabed by means of a foundation, with one or more decks, whether open or fully clad, accommodating electrical power

(a) 2014/1599

(b) 2016/447

(c) “Highway” is defined in section 328(1) for “highway authority”, see section 1

transformers, instrumentation, protection and control systems, neutral earthing resistors, reactive compensation, standby electrical generation equipment, fuelling facilities, auxiliary and uninterruptible power supply systems and transformers, accommodation and/or emergency shelter, craneage, metering stations, meteorological equipment, helicopter landing facilities, messing facilities, potable water storage, black water separation equipment, control hub, drainage facilities, access equipment, J-tubes, marking and lighting and other associated equipment and facilities to enable the transmission of electronic communications and for electricity to be collected at, and exported from, the platform and, depending on the type of electrical station, low, medium and/or high voltage switch gear, and/or AC filters and/or AC/DC converter with switching devices and/or DC equipment including DC capacitors and DC filters;

“offshore platform” means any offshore electrical station and any offshore accommodation platform;

“offshore works” means Work Nos. 1 to 5A and any ancillary works in connection with those works;

“onshore cable corridor” means the onshore area in which the cables will be located within the Order limits;

“onshore substation” means a compound containing electrical equipment including power transformers, switchgear, electrical protection equipment devices (disconnectors, circuit breakers), reactive compensation equipment, harmonic filters, cables, lightning protection masts, control buildings, communications masts, back-up generators, access, fencing and other associated equipment, structures or buildings and, depending on the type of substation, specific equipment such as one or more converter halls, and/or medium or high voltage switchgears;

“Order land” means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;

“Order limits” means the limits shown on the works plan within which the authorised project may be carried out, whose grid coordinates seaward of MHWS are set out in paragraph 2 of Part 1 of **Schedule 1** (Authorised Development) of this Order;

“outline access management plan” means the document certified as the outline access management plan by the Secretary of State for the purposes of this Order;

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State for the purposes of this Order;

“outline landscape and ecological management strategy” means the document certified as the outline landscape and ecological management strategy by the Secretary of State for the purposes of this Order;

“outline navigation monitoring strategy” means the document certified as the outline navigation monitoring strategy by the Secretary of State for the purposes of this Order;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of the Order;

“outline traffic management plan” means the document certified as the outline traffic management plan by the Secretary of State for the purposes of this Order;

“outline written scheme of investigation (offshore)” means the document certified as the outline written scheme of investigation (offshore) by the Secretary of State for the purposes of this Order;

“outline travel plan” means the document certified as the outline travel plan by the Secretary of State for the purposes of this Order;

“outline written scheme of investigation (onshore)” means the document certified as the outline written scheme of investigation (onshore) by the Secretary of State for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“pin piles” means steel cylindrical piles driven and/or drilled into the seabed to secure steel jacket foundations;

“platform exclusion zone” means the area shown as such on the offshore works plan

“primary construction consolidation site” means a construction consolidation site whose footprint does not exceed the dimensions specified in **requirement 12** (detailed design parameters onshore);

“radar line of sight coverage plan” means the plan certified as the radar line of sight coverage plan by the Secretary of State for the purposes of this Order;

“relevant planning authority” means the district planning authority for the area in which the land to which the relevant provision of this Order applies is situated;

“requirements” means those matters set out in Part 3 of **Schedule 1** (requirements) to this Order;

“secondary construction consolidation site” means a construction consolidation site whose footprint does not exceed the dimensions specified in **requirement 12** (detailed design parameters onshore);

“single onshore phase” means carrying out Work No. 67 as a single construction operation;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and a public communications provider as defined in section 151 of the 2003 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act(b);

“suction caisson” means large diameter steel cylindrical shells which penetrate the seabed assisted by a hydrostatic pressure differential for fixity of steel jacket foundations;

“suction caisson foundation” means a tubular steel structure which penetrates the seabed assisted by a hydrostatic pressure differential and associated equipment, including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“temporary stopping up of public rights of way plan” means the plan certified as the temporary stopping up of public rights of way plan by the Secretary of State for the purposes of this Order;

“transition bay” means an underground pit where the offshore export cables comprised in Work No. 5A are jointed to the connection works;

“tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“two offshore phases” means carrying out the offshore works as two separate construction operations pursuant to the deemed marine licences set out in Schedules 10, 12, and 14 (Licence 1 – Phase 1) and Schedules 11, 13 and 15 (Licence 2 – Phase 2) respectively;

“two onshore phases” means carrying out Work No. 67 as two separate construction operations linked to two offshore phases;

“undertaker” means East Anglia THREE Limited;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or

(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

(b) “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act (c.7)

adapted for movement through, in, on or over water and which is at the time in, on or over water;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation; and

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order.

(2) References in this Order to rights over land include references to rights to do or restrain or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over the land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or which is an interest otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate, save in respect of the parameters referred to Requirements 2 to 9 and 12 in Part 3, Schedule 1 (requirements) and Conditions 1 to 6 in Part 2 of the deemed marine licences.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(5) Unless otherwise stated, references in this Order to points identified by letters are to be construed as references to the points so lettered on the works plan.

(6) The expression “includes” may be construed without limitation.

PART 2 PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Subject to the requirements and conditions in the deemed marine licences, Work Nos. 1 to 5A must be constructed anywhere within the Order limits seaward of MHWS and Work Nos. 5B to 69 must be constructed anywhere within the Order limits landward of MLWS.

Power to construct and maintain authorised project

4.—(1) The undertaker may at any time construct and maintain the authorised project, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under Part 4 of the 2009 Act (marine licensing).

Benefit of the Order

5.—(1) Subject to paragraphs (2) and (3), the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (2) below) and such related statutory rights as may be agreed between the undertaker and the transferee;
 - (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (2) below) and such related statutory rights as may be so agreed.
- (2) Subject to paragraph (3), the undertaker may with the written consent of the Secretary of State—
- (a) where an agreement has been made in accordance with paragraph (1)(a), transfer to the transferee the whole of the deemed generation assets marine licences and/or the whole of the deemed transmission assets marine licences and/or the whole of the deemed interconnector marine licences and such related statutory rights as may be agreed between the undertaker and the transferee; or
 - (b) where an agreement has been made in accordance with paragraph (1)(b), grant to the lessee, for the duration of the period mentioned in paragraph (1)(b), the whole of the deemed generation assets marine licences and/or the whole of the deemed transmission assets marine licences and/or the whole of the deemed interconnector marine licences and such related statutory rights as may be so agreed.
- (3) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the whole of the benefit of the provisions of the deemed marine licences.
- (4) Where paragraph (8) applies no consent of the Secretary of State is required.
- (5) Where an agreement has been made in accordance with paragraph (1) or (2) references in this Order to the undertaker, except in paragraph (6) or (9), include references to the transferee or lessee.
- (6) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) or (2) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.
- (7) Where an agreement has been made in accordance with paragraph (1) or (2)—
- (a) the benefit (“the transferred benefit”) includes any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates;
 - (b) the transferred benefit resides exclusively with the transferee or, as the case may be, the lessee and the transferred benefit is not enforceable against the undertaker save in the case of a deemed marine licence transferred or granted in respect of any breach of an obligation by the undertaker which occurs prior to such transfer or grant or which occurs as a result of any activity carried out by the undertaker on behalf of the transferee.
- (8) This paragraph applies where—
- (a) the transferee or lessee is a person who holds a licence under the Electricity Act 1989; or
 - (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made,
 - (ii) any such claim has been made and has been compromised or withdrawn,
 - (iii) compensation has been paid in final settlement of any such claim,
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.
- (9) The provisions of **article 8** (street works), **article 10** (temporary stopping up of streets), **article 15** (compulsory acquisition of land), **article 17** (compulsory acquisition of rights), **article 23** (temporary use of land for carrying out the authorised project) and **article 24** (temporary use of

land for maintaining the authorised project) have effect only for the benefit of the named undertaker and a person who is a transferee or lessee and is also—

- (a) in respect of Works Nos. 5B to 66 a person who holds a licence under the Electricity Act 1989; or
- (b) in respect of functions under **article 8** (street works) relating to a street, a street authority.

(10) Where paragraph (8) applies, the undertaker must provide written notification to the Secretary of State, the MMO, and the relevant planning authority at least 14 days prior to transferring and/or granting any benefit under paragraph (1) or (2).

Application and modification of legislative provisions

6.—(1) Regulation 6 of the Hedgerows Regulations 1997(a) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“(k) or for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”

Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(b) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(c); or
 - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in compliance with **requirement 26** (control of noise during operational phase); or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised project.

(a) SI 1997/1160

(b) 1990 c.43. There are amendments to this Act which are not relevant to the Order.

(c) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to the Order.

PART 3 STREETS

Street works

8.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in **Schedule 2** (streets subject to street works) as is within the Order limits and may—

- (a) place apparatus under the street;
- (b) maintain apparatus under the street or change its position; and
- (c) execute any works required for or incidental to any works referred to in sub-paragraphs (a) and (b).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Temporary stopping up of public rights of way

9.—(1) The undertaker may, in connection with the carrying out of the authorised project, temporarily stop up each of the public rights of way specified in columns (2) of **Schedule 3** (public rights of way to be temporarily stopped up) to the extent specified in column (3), by reference to the letters shown on the public rights of way to be temporarily stopped up plan.

Temporary stopping up of streets

10.—(1) Subject to paragraph (3), the undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street within the Order limits and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) The undertaker must not temporarily stop up, alter or divert any street without the consent of the street authority which may attach reasonable conditions to any consent.

(4) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (3) that street authority is deemed to have granted consent.

Access to works

11.—(1) The undertaker may, for the purposes of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of **Schedule 4** (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority in accordance with **requirement 16** (highway access and improvements), form and lay out such other means of access or improve existing means of access, at such

locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

(2) If the relevant planning authority fails to notify the undertaker of its decision within 28 days of receiving an application for approval under paragraph (1)(b) that relevant planning authority is deemed to have granted approval.

Agreements with street authorities

- 12.**—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) any temporary stopping up, alteration or diversion of a street authorised by this Order; or
 - (b) the carrying out in the street of any of the works referred to in **article 8(1)** (street works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

13.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain subject to the obtaining of consent and approval respectively pursuant to sub-paragraphs (3) and (4) below.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not carry out any works to any public sewer or drain pursuant to article 13(1) except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of, or construct any works in, under, over or within 8 metres of, any watercourse forming part of a main river, or within 16 metres of a tidally influenced main river without the prior written consent of the Environment Agency.

(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37), and Section 35(8)(a) of the Competition and Services (Utilities) Act 1992 (c.43) and amended by sections 32 and 42 of, and paragraph 16(2) of Schedule 3 to, the Flood and Water Management Act 2010 (date in force to be appointed see section 49(3)(h)(i)). There are other amendments to this section which are not relevant to this Order.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991, as amended by the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in that Act.

(9) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

Authority to survey and investigate the land onshore

14.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

- (a) in land forming a railway without the consent of Network Rail Infrastructure Limited; or
- (b) in land held by or in right of the Crown without the consent of the Crown.

(5) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(a) S.I. 2010/675, as amended by the Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (SI 2011/2043), the Environmental Permitting (England and Wales) (Amendment No. 2) Regulations 2011 (SI 2011/2933), the Environmental Permitting (England and Wales) (Amendment) Regulations 2012 (SI 2012/630), the Controlled Waste (England and Wales) Regulations 2012 (S.I. 2012/811).

(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (5)(a) in the case of a highway authority; or
- (b) under paragraph (5)(b) in the case of a street authority;

that authority is deemed to have granted consent.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

15.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project or to facilitate, or is incidental, to it.

(2) This article is subject to paragraph (2) of **article 17** (compulsory acquisition of rights) and **article 23** (temporary use of land for carrying out the authorised project).

Time limit for exercise of authority to acquire land compulsorily

16.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by **article 19** (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).

(2) The authority conferred by **article 23** (temporary use of land for carrying out the authorised project) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

17.—(1) The undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under **article 15** (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this article, **article 18** (private rights) and **article 25** (statutory undertakers), in the case of the Order land specified in column (1) of **Schedule 5** (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act, as substituted by paragraph 5 of **Schedule 6** (modification of compensation and compulsory purchase enactments for creation of new rights),

(a) 1981 c.66. Sections 2, 6 and 11 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

where the undertaker acquires an existing right over land or restrictive covenant under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) **Schedule 6** (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

Private rights

18.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under article 15 (compulsory acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 15 (compulsory acquisition of land)—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 17 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or **article 25** (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of the land,

- (iii) the undertaker's entry onto the land, or
 - (iv) the undertaker's taking temporary possession of the land,
- that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.
- (7) If an agreement referred to in paragraph (6)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
 - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

the agreement is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

19.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated”

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” is omitted.

(8) References to the 1965 Act in the 1981 Act is construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

20.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of **article 15** (compulsory acquisition of land) or **article 17** (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent **article 21** (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

21.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

(a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and

(b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner is required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

(a) without material detriment to the remainder of the land subject to the counter-notice; or

(b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the notice to treat is deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

(a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but

(b) the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and

- (b) the material detriment is not confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

22.—(1) The undertaker may enter on and appropriate so much of the subsoil of or air-space over any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised project.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised project

23.—(1) The undertaker may, in connection with the carrying out of the authorised project—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of **Schedule 7** (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act apart from land specified in plots 449A, 450, 453, 454, 454A, 454B, 454C, 457, 458, 459, 460, 461, 462 and 463 of the book of reference which are identified for freehold acquisition;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;

- (d) use the land for the purposes of a working site with access to the working site in connection with the authorised project; and
- (e) construct any works, or use the land, as specified in relation to that land in column 3 of **Schedule 7** (land of which temporary possession may be taken), or any mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of **Schedule 7** (land of which temporary possession may be taken), unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building removed under this article.

(5) The undertaker must pay compensation to the owners and occupiers of land which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under **article 17** (compulsory acquisition of rights) to the extent that such land is listed in column (1) of Schedule 5; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under **article 20** (acquisition of subsoil only).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised project

24.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article "the maintenance period", in relation to any part of the authorised project, means the period of 5 years beginning with the date on which the authorised project first exports electricity to the national electricity transmission network.

Statutory undertakers

25. Subject to the provisions of **Schedule 8** (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plan within the limits to the land to be acquired and described in the book of reference; and
- (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Recovery of costs of new connections

26.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under **article 25** (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under **article 25** (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or

sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6 OPERATIONS

Operation of generating station

27.—(1) The undertaker is hereby authorised to operate the generating station comprised in the authorised project.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

Deemed marine licences under the 2009 Act

28.—(1) Under Part 4 Chapter 1 of the 2009 Act (marine licensing), the undertaker is granted the deemed marine licences contained in **Schedules 10 to 15** to carry out the works and make the deposits specified in Part 1 of the deemed marine licences, subject to the conditions set out in Part 2 of the deemed marine licences—

- (a) Generation Assets (Licence 1 – Phase 1) (set out in **Schedule 10**)
- (b) Generation Assets (Licence 2 – Phase 2) (set out in **Schedule 11**)
- (c) Transmission Assets (Licence 1 – Phase 1) (set out in **Schedule 12**)
- (d) Transmission Assets (Licence 2 – Phase 2) (set out in **Schedule 13**)
- (e) Interconnection (Licence 1 – Phase 1) (set out in **Schedule 14**)
- (f) Interconnection (Licence 2 – Phase 2) (set out in **Schedule 15**)

PART 7 MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

29.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants may prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease).

Operational land for purposes of the 1990 Act

30. Development consent granted by this Order is treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Felling or lopping of trees and removal of hedgerows

31.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised project—

- (a) subject to paragraph (2) above, remove any hedgerows within the Order limits and specified in **Schedule 9, Part 1** (removal of hedgerows) that may be required for the purposes of carrying out the authorised project; and
- (b) remove the important hedgerows as are within the Order limits and specified in **Schedule 9, Part 2** (removal of important hedgerows).

(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997(a).

Certification of plans etc

32.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the land plan (document reference 2.2 – version 1);
- (b) the works plan (document reference 2.4 – revision A onshore and revision B offshore);
- (c) the access to works plan (document reference 2.5);
- (d) the temporary stopping up of public rights of way plan (document reference 2.6 – revision B);
- (e) the important hedgerows plan (document reference 2.10 – revision 4);
- (f) the radar line of sight coverage plan (document reference 2.11);
- (g) the book of reference (December 2016 – version 3);

(a) S.I. 1997/1160

- (h) the outline code of construction practice (November 2016 – revision B) (document reference 8.1);
- (i) the design and access statement (October 2016) (document reference 8.3);
- (j) the outline written scheme of investigation (onshore) (November 2016 – version 2) (document reference 8.4);
- (k) the outline written scheme of investigation (offshore) (November 2016 – version 2) (document reference 8.5);
- (l) the outline landscape and ecological management strategy (November 2016 – version 2) (document reference 8.6);
- (m) the outline traffic management plan (November 2015 – version 1) (document reference 8.7);
- (n) the outline travel plan (November 2015 – version 1) (document reference 8.8);
- (o) the outline access management plan (November 2016 – revision B) (document reference 8.9);
- (p) the outline offshore operations and maintenance plan (November 2015 – version 1) (document reference 8.10);
- (q) the outline navigation monitoring strategy (November 2015 – version 1) (document reference 8.11);
- (r) the in principle monitoring plan (October 2016 – version 2) (document reference 8.12);
- (s) the draft marine mammal mitigation protocol (November 2015 – version 1) (document reference 8.15);
- (t) the In principle East Anglia Three Project Southern North Sea pSAC Site Integrity Plan (December 2016); and
- (u) the Environmental Statement (document references 6.1 – 6.4).

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies that provision by a number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made

the reference in the plan or document concerned is construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

Arbitration

33. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Requirements, appeals, etc

34.—(1) The provisions of section 72 of the 1990 Act applies so that the requirements numbered 11 to 31 and 36 are deemed to be imposed as and as if they were conditions imposed upon the grant of planning permission pursuant to section 72 of the 1990 Act and the development consent granted by this Order was a planning permission granted under the 1990 Act.

(2) Sub-section (1) of section 78 of the 1990 Act applies to the development consent granted by this Order and to the requirements specified in paragraph (1) except that it is modified so as to

read for the purposes of this Order only as if there were inserted after subsection (b) the following—

“(bb) refuse an application for any consent, agreement or approval of that authority required by a requirement imposed on a grant of development consent or contained in a development consent order, or grant it subject to conditions; or”

(3) Sections 78 and 79 of the 1990 Act has effect in relation to any appeal under the terms of this article except that the Secretary of State in question is the Secretary of State who would be responsible for determining an application for development consent with the subject matter of this Order if section 103(1) of the 2008 Act applied.

(4) The terms of any development order, and other rules and regulations which apply to applications pursuant to conditions or the subject matter of section 78 of the 1990 Act applies, insofar as not inconsistent with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and any other orders, rules or regulations made under the 2008 Act, to any application or appeal made under the requirements specified in paragraph (1).

Abatement of works abandoned or decayed

35. Where Work No. 1(a) to (d) or Work No. 2 or any part of those works is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, issue a written notice requiring the undertaker at its own expense to repair and restore or remove Work No. 1(a) to (d) or Work No. 2 or any relevant part of those works, without prejudice to any notice served under section 105(2) of the 2004 Act. The notice may also require the restoration of the site of the relevant part(s) of Work No. 1(a) to (d) or Work No. 2 to a safe and proper condition within an area and to such an extent as may be specified in the notice.

Saving provisions for Trinity House

36. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown rights

37.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Protective provisions

38. **Schedule 8** (protective provisions) has effect.

Signatory text

Address
Date

Name
Parliamentary Under Secretary of State
Department for Business, Energy and Industrial Strategy

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED PROJECT

PART 1

Authorised Development

1. A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act which is located in the North Sea approximately 69km from the Suffolk coast, comprising—

Work No. 1

- (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 1,200 MW comprising up to 172 wind turbine generators each fixed to the seabed by one of four foundation types (namely, monopile, jacket, suction caisson or gravity base), fitted with rotating blades and situated within the area shown on the works plan and further comprising (b) to (e) below;
- (b) up to one accommodation platform fixed to the seabed within the area shown on the works plan by one of two foundation types (namely jacket or gravity base);
- (c) up to two meteorological masts fixed to the seabed within the area shown on the works plan by one of four foundation types (namely monopile, jacket, suction caisson or gravity base);
- (d) up to 12 buoys fixed to the seabed within the area shown on the works plan;
- (e) a network of subsea inter-array cables within the area shown on the works plan between the wind turbine generators and between the wind turbine generators and Work No.2 including one or more cable crossings;

and associated development within the meaning of section 115(2) of the 2008 Act comprising—

Work No. 2 – up to six offshore electrical stations fixed to the seabed within the area shown on the works plan by one of two foundation types (namely jacket or gravity base);

Work No. 3 – a network of subsea cables within the area shown on the works plan between the offshore electrical stations comprising Work No. 2 and for the transmission of electricity and electronic communications including one or more cable crossings;

Work No. 4 – up to four cables to connect Work No. 2 with the East Anglia ONE Offshore Wind Farm;

Work No. 5A – Up to four cables between Work No. 2 and Work No. 5B consisting of subsea cables along routes within the Order limits seaward of MHWS including one or more cable crossings;

In the county of Suffolk, district of Suffolk Coastal

Work No. 5B – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from mean low water springs at Bawdsey Cliffs to Work No. 7 together with a temporary transition bay compound;

Work No. 6 – A new temporary vehicular access track running in an easterly direction from the eastern side of Ferry Road to Work No. 7 and Work No. 5B, together with modifications to the

junction of the new vehicular access track and Ferry Road and a new temporary vehicular access ramp to the beach at Bawdsey Cliffs;

Work No. 7 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 5B to Work No. 8, together with up to four transition bays and a temporary transition bay compound, and a new temporary vehicular access track from Ferry Road;

Work No. 8 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 7 to Work No. 12 crossing under Ferry Road and running in a westerly then north-westerly direction;

Work No. 9 – Temporary widening and upgrade of an existing access track running in a north-westerly direction from the western side of Ferry Road to Work No. 8;

Work No. 10 – Temporary widening and upgrade of an existing access track running in a north-westerly then westerly direction from Work No. 8 and a new temporary vehicular access track running from the existing access track in a south-westerly direction to Work No. 8;

Work No. 11 – Temporary widening and upgrade of an existing access track running in a south-easterly direction from the southern side of Dock Road to Duke’s Lane, then temporary widening and upgrade of Duke’s Lane running in a south-westerly then south-easterly direction to Work No. 8 and a new temporary vehicular access track from Duke’s Lane to Work No. 8, together with modifications to the junction of the new temporary vehicular access track and Duke’s Lane;

Work No. 12 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 8 to Work No. 13 running in a south-westerly direction and passing under the River Deben;

Work No. 13 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 12 to Work No. 17 running in a westerly direction then north-westerly direction;

Work No. 14 – A new temporary vehicular access track running in a north-westerly direction from Work No. 13 and temporary widening and upgrade of an existing access track running in a south-westerly direction to Work No. 13;

Work No. 15 – Temporary widening and upgrade of an existing access track running in a northerly direction from the northern side of Lower Falkenham Road and with two upper branches, one running in a north-westerly direction and the other in a north-easterly direction, to Work No. 13;

Work No. 16 – Temporary widening and upgrade of two existing access tracks, the first running in a south-easterly direction from the southern side of Park Lane to Work No. 13, and the second running in a north-westerly direction from the northern side of Park Lane with two upper branches, the first running in a westerly direction to Work No. 19, and the second continuing in an easterly then northerly direction past Sluice Farm and then in north westerly direction to the east side of The Thicket, together with a new temporary vehicular access track running from the existing access track on the east side of The Thicket in a westerly direction to Work No. 20;

Work No. 17 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 13 to Work No. 19 running in a north-westerly direction;

Work No. 18 – A new temporary secondary construction consolidation site;

Work No. 19 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 17 to Work No. 20 crossing under Park Lane and running in a northerly direction;

Work No. 20 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 19 to Work No. 21 running in a northerly direction;

Work No. 21 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 20 to Work No. 25 running in a northerly direction and crossing under The Street and Ipswich Road;

Work No. 22 – A new temporary secondary construction consolidation site;

Work No. 23 – Temporary widening and upgrade of an existing access track running in an easterly direction from the eastern side of Woodbridge Road to Work No. 22;

Work No. 24 – A new temporary access track running in an easterly direction from the eastern side of Newbourne Road to Work No. 21;

Work No. 25 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 21 to Work No. 28 crossing under Woodbridge Road and running in an easterly then north-westerly direction and crossing under Waldringfield Road, then running in a north-easterly direction and crossing under Waldringfield Road;

Work No. 26 – Temporary widening and upgrade of an existing access track running in an easterly direction from the eastern side of Waldringfield Road to Work No. 25;

Work No. 27 – Temporary widening and upgrade of an existing access track running in a northerly then easterly direction from the northern side of Waldringfield Road to Work No. 25;

Work No. 28 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 25 to Work No. 29 running in a northerly direction and crossing under Martlesham Creek and the East Suffolk Railway line;

Work No. 29 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 28 to Work No. 30 running in a westerly direction and crossing under Sandy Lane;

Work No. 30 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 29 to Work No. 32 crossing under Top Street and running in a westerly direction;

Work No. 31 – A new temporary primary construction consolidation site;

Work No. 32 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 30 to Work No. 34 and running in a westerly direction;

Work No. 33 – Temporary widening and upgrade of an existing access track known as Brock Lane running in a westerly direction from the western side of Top Street to Work No. 31 and continuing to Work No. 34;

Work No. 34 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 32 to Work No. 35 running in a north-westerly direction and crossing under the A12 highway;

Work No. 35 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 34 to Work No. 38 running in a north-easterly then westerly direction;

Work No. 36 – Temporary widening and upgrade of an existing access track running in a southerly direction to Work No. 35;

Work No. 37 – A new temporary access track from the southern side of Lodge Road to Work No. 35;

Work No. 38 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 35 to Work No. 39 running in a westerly direction and crossing under Lodge Road;

Work No. 39 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 38 to Work No. 41 running in a north-westerly direction and crossing under Holly Lane then running in a westerly direction and crossing under Church Road;

Work No. 40 – A new temporary secondary construction consolidation site;

Work No. 41 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 39 to Work No. 45 crossing under Butts Road then running in a westerly direction then a north-westerly direction and crossing under Grundisburgh Road and Clopton Road then running in a south-westerly direction;

Work No. 42 – A new temporary vehicular access track running in a southerly direction from the southern side of the existing access road to Work No. 41;

Work No. 43 – Temporary widening and upgrade of an existing access track running in a southerly direction from the southern side of Grundisburgh Road to Work No. 41;

Work No. 44 – Temporary widening and upgrade of an existing access track running in a northerly then westerly direction from the northern side of Grundisburgh Road to Work No. 41;

Work No. 45 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 41 to Work No. 47 crossing under Witnesham Road and running in a north-westerly direction;

Work No. 46 – A new temporary secondary construction consolidation site;

Work No. 47 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 45 to Work No. 48 crossing under Cockfield Hall Lane then running in a north-westerly then south-westerly direction;

In the county of Suffolk, district of Mid Suffolk

Work No. 48 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 47 to Work No. 49 running in a westerly direction and crossing under Henley Road and an unnamed road;

Work No. 49 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 48 to Work No. 50 running in a south-westerly direction and crossing under Old Ipswich Road and the A14 highway;

Work No. 50 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 49 to Work No. 52 running in a westerly direction and crossing under Paper Mill Lane;

Work No. 51 – A new temporary primary construction consolidation site;

Work No. 52 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 50 to Work No. 55 running in a westerly and crossing under the River Gipping, the Great Eastern Mainline Railway and Bramford Road;

Work No. 53 – A new temporary vehicular access track running in a westerly direction from the western side of Paper Mill Lane to Work No. 52;

Work No. 54 – A new temporary vehicular access track running in an easterly direction from the eastern side of Bramford Road to Work No. 52;

Work No. 55 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 52 to Work No. 58 running in a south-westerly direction and crossing under Pound Lane, Somersham Road and Tye Lane;

Work No. 56 – Temporary widening and upgrade of an existing access track running in an easterly direction from the eastern side of Somersham Road to Work No. 55;

Work No. 57 – Temporary widening and upgrade of an existing access track running in a southerly then westerly direction from and to Work No. 55;

Work No. 58 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 55 to Work No. 62 running in a south westerly direction and passing under Miller’s Wood;

Work No. 59 – A new temporary vehicular access track running in a south-westerly then south-easterly direction from and to Work No. 58;

Work No. 60 – A new temporary vehicular access track running in a northerly direction from Work No. 61A to Work No. 58, together with modifications to the junction of the new temporary access track and Bullen Lane;

Work No. 61 – A new temporary secondary construction consolidation site;

Work No. 61A – Temporary widening and upgrade of Bullen Lane;

Work No. 62 – Onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from Work No. 58 to Work No. 63 and/or Work. No 64;

Work No. 63 – Onshore connection works consisting of up to four circuits pulled through existing ducts or laid directly underground from Work No. 62 and/or Work No. 64 to Work No. 67, and continuing from Work No. 67 to Work No. 66;

Work No. 64 – Onshore connection works consisting of up to four circuits pulled through existing ducts or laid directly underground from Work No. 62 to Work No. 63, and landscaping works including bunding and planting;

Work No. 65 – A new temporary lay down area and landscaping works including planting;

Work No. 66 – Onshore connection works consisting of up to four circuits pulled through existing ducts or laid directly underground from Work No. 63 running in a southerly direction to a connection point at the existing National Grid Bramford substation;

Work No. 67 – Works comprising onshore substations;

Work No. 68 – Landscaping works including bunding and planting;

Work No. 69 – Landscaping works including bunding and planting;

and in connection with Work Nos. 1 to 5A and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the work assessed by the environmental statement and the deemed marine licences;

and in connection with such Work Nos. 5B to 69 and to the extent that they do not otherwise form part of any such work—

- (a) haul roads, ramps, and other vehicular and/or pedestrian means of access, including creation of new tracks and footpaths, and/or widening, upgrades and improvements of existing tracks and footpaths;
- (b) bunds, embankments, swales, landscaping and boundary treatments;
- (c) spoil storage;
- (d) jointing bays, manholes, kiosks, marker posts and other works associated with laying cables and/or pulling cables through cable ducts;
- (e) water supply works, foul drainage provision, surface water management systems, temporary drainage during installations of cables and culverting;
- (f) works of restoration;
- (g) fencing or other means of enclosure; and

(h) such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project;

which fall within the scope of the works assessed by the environmental statement.

2. The grid coordinates for that part of the authorised project which is seaward of MHWS are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	52° 46' 18.078" N	3° 2' 15.841" E	99	52° 2' 56.210" N	1° 36' 30.422" E
2	52° 30' 20.026" N	2° 48' 33.266" E	100	52° 2' 55.965" N	1° 36' 29.813" E
3	52° 21' 27.702" N	2° 46' 4.457" E	101	52° 2' 55.703" N	1° 36' 29.224" E
4	52° 21' 25.414" N	2° 46' 4.374" E	102	52° 2' 55.425" N	1° 36' 28.655" E
5	52° 21' 23.834" N	2° 46' 4.110" E	103	52° 3' 53.611" N	1° 35' 40.499" E
6	52° 21' 22.268" N	2° 46' 3.678" E	104	52° 2' 14.707" N	1° 35' 9.305" E
7	52° 21' 20.724" N	2° 46' 3.080" E	105	52° 2' 14.565" N	1° 35' 9.040" E
8	52° 21' 19.206" N	2° 46' 2.318" E	106	52° 0' 43.447" N	1° 33' 4.952" E
9	52° 21' 17.722" N	2° 46' 1.395" E	107	52° 0' 43.076" N	1° 33' 4.472" E
10	52° 21' 16.278" N	2° 46' 0.316" E	108	52° 0' 42.691" N	1° 33' 4.023" E
11	52° 21' 14.881" N	2° 45' 59.085" E	109	52° 0' 42.293" N	1° 33' 3.605" E
12	52° 21' 13.535" N	2° 45' 57.708" E	110	52° 0' 41.883" N	1° 33' 3.218" E
13	52° 21' 12.248" N	2° 45' 56.189" E	111	52° 0' 41.461" N	1° 33' 2.865" E
14	52° 21' 11.884" N	2° 45' 55.697" E	112	52° 0' 41.030" N	1° 33' 2.545" E
15	52° 26' 58.467" N	2° 45' 50.653" E	113	52° 0' 40.589" N	1° 33' 2.260" E
16	52° 45' 10.569" N	2° 45' 33.773" E	114	52° 0' 40.140" N	1° 33' 2.011" E
17	52° 45' 6.907" N	2° 44' 40.427" E	115	52° 0' 39.685" N	1° 33' 1.797" E
18	52° 30' 36.607" N	2° 44' 41.630" E	116	51° 58' 47.510" N	1° 32' 13.971" E
19	52° 31' 32.110" N	2° 44' 38.806" E	117	51° 57' 36.634" N	1° 29' 50.826" E
20	52° 31' 32.077" N	2° 44' 38.805" E	118	52° 0' 41.137" N	1° 27' 15.227" E
21	52° 27' 48.317" N	2° 44' 29.313" E	119	51° 57' 51.572" N	1° 26' 41.476" E
22	52° 20'	2° 35'	120	51° 57'	1° 26'

23	39.779" N 52° 19' 21.003" N	43.596" E 2° 35' 42.287" E	121	51.622" N 51° 57' 51.647" N	40.671" E 1° 26' 39.863" E
24	52° 19' 19.701" N	2° 35' 42.202" E	122	51° 57' 51.646" N	1° 26' 39.054" E
25	52° 19' 18.121" N	2° 35' 41.945" E	123	51° 57' 51.619" N	1° 26' 38.246" E
26	52° 19' 16.555" N	2° 35' 41.519" E	124	51° 57' 51.567" N	1° 26' 37.441" E
27	52° 19' 15.009" N	2° 35' 40.927" E	125	51° 57' 51.489" N	1° 26' 36.642" E
28	52° 19' 13.490" N	2° 35' 40.172" E	126	51° 57' 51.385" N	1° 26' 35.850" E
29	52° 19' 12.005" N	2° 35' 39.255" E	127	51° 57' 51.257" N	1° 26' 35.068" E
30	52° 19' 10.559" N	2° 35' 38.183" E	128	51° 57' 51.181" N	1° 26' 34.683" E
31	52° 19' 9.160" N	2° 35' 36.958" E	129	51° 57' 51.104" N	1° 26' 34.298" E
32	52° 19' 7.813" N	2° 35' 35.587" E	130	51° 57' 51.080" N	1° 26' 34.194" E
33	52° 19' 6.523" N	2° 35' 34.075" E	131	52° 0' 2.565" N	1° 25' 32.077" E
34	52° 19' 5.297" N	2° 35' 32.429" E	132	52° 0' 1.828" N	1° 25' 30.107" E
35	52° 19' 4.140" N	2° 35' 30.655" E	133	52° 0' 0.831" N	1° 25' 27.444" E
36	52° 19' 3.800" N	2° 35' 30.087" E	134	52° 0' 0.799" N	1° 25' 27.357" E
37	52° 18' 18.898" N	2° 34' 13.648" E	135	52° 0' 0.748" N	1° 25' 27.271" E
38	52° 18' 15.833" N	2° 34' 13.645" E	136	52° 0' 0.655" N	1° 25' 27.123" E
39	52° 27' 57.918" N	2° 34' 5.046" E	137	52° 0' 0.633" N	1° 25' 27.079" E
40	52° 27' 52.453" N	2° 33' 59.829" E	138	52° 0' 0.615" N	1° 25' 27.030" E
41	52° 14' 17.007" N	2° 33' 46.245" E	139	52° 0' 0.542" N	1° 25' 26.883" E
42	52° 14' 16.167" N	2° 33' 38.948" E	140	52° 0' 0.465" N	1° 25' 26.741" E
43	52° 24' 0.479" N	2° 29' 6.650" E	141	52° 0' 0.263" N	1° 25' 26.337" E
44	52° 23' 14.798" N	2° 26' 39.878" E	142	51° 59' 59.939" N	1° 25' 25.678" E
45	52° 14' 1.882" N	2° 26' 45.354" E	143	51° 59' 59.627" N	1° 25' 25.040" E
46	52° 13' 55.527" N	2° 26' 44.591" E	144	51° 59' 59.306" N	1° 25' 24.402" E
47	52° 9' 28.063" N	2° 25' 36.366" E	145	51° 59' 59.030" N	1° 25' 23.861" E
48	52° 9'	2° 25'	146	51° 59'	1° 25'

49	31.781" N 52° 20' 54.386" N	35.028" E 2° 21' 15.039" E	147	59.015" N 51° 59' 59.009" N	23.828" E 1° 25' 23.816" E
50	47.385" N 52° 20'	E 2° 21' 9.270"	148	58.926" N 51° 59'	23.634" E 1° 25'
51	39.649" N 52° 13'	18.125" E 2° 17'	149	58.853" N 51° 59'	23.473" E 1° 25'
52	35.674" N 52° 13'	59.368" E 2° 15'	150	58.772" N 51° 59'	23.293" E 1° 25'
53	33.795" N 52° 13'	22.225" E 2° 15'	151	57.690" N 51° 59'	21.148" E 1° 25'
54	17.487" N 52° 11'	34.133" E 2° 11'	152	57.689" N 51° 59'	21.146" E 1° 25'
55	17.575" N 52° 11'	33.361" E 2° 11'	153	57.555" N 51° 59'	20.881" E 1° 25'
56	17.638" N 52° 11'	32.583" E 2° 11'	154	57.555" N 51° 59'	20.880" E 1° 25'
57	17.678" N 52° 11'	31.800" E 2° 11'	155	57.516" N 51° 59'	20.807" E 1° 25'
58	17.694" N 52° 11'	31.015" E 2° 11'	156	57.517" N 51° 59'	20.807" E 1° 25'
59	17.686" N 52° 11'	30.230" E 2° 11'	157	57.517" N 52° 25'	20.806" E 2° 34' 8.342"
60	17.654" N 52° 11'	29.447" E 2° 11'	0	56.467" N 52° 21'	E 2° 34'
61	17.598" N 52° 11'	28.667" E 2° 11'	1	53.636" N 52° 21'	13.872" E 2° 34'
62	17.518" N 52° 11'	27.893" E 2° 11'	2	25.053" N 52° 25'	13.842" E 2° 34' 8.916"
63	17.415" N 52° 11'	27.126" E 2° 11'	3	31.270" N 52° 21'	E 2° 31'
64	22.845" N 52° 12'	E 2° 11' 9.965"	4	19.547" N 52° 21'	49.797" E 2° 31' 2.229"
65	27.654" N 52° 12'	E 2° 10' 3.953"	5	19.145" N 52° 21'	E 2° 30'
66	22.645" N 52° 10'	E 2° 5' 24.993"	6	19.716" N 52° 23'	12.848" E 2° 30' 2.994"
67	22.513" N 52° 10'	E 2° 5' 24.211"	7	26.292" N 52° 23'	E 2° 30' 1.705"
68	22.357" N 52° 10'	E 2° 5' 23.442"	8	25.515" N 52° 23'	E 2° 30' 0.388"
69	22.176" N 52° 10'	E 2° 5' 22.686"	9	24.756" N 52° 23'	E 2° 29'
70	6.526" N 52° 11'	E 2° 2' 15.690"	10	24.016" N 52° 23'	59.042" E 2° 29'
71	32.963" N 52° 9'	E 2° 2' 11.440"	11	23.294" N 52° 23'	57.670" E 2° 29'
72	46.527" N 52° 8'	45.569" E 1° 57'	12	22.592" N 52° 23'	56.270" E 2° 29'
73	46.517" N 52° 8'	45.508" E 1° 57'	13	19.237" N 52° 21'	57.051" E 2° 29'
74	52° 9'	1° 57' 7.198"	14	52° 23'	2° 29'

	40.842" N	E		21.910" N	54.846" E
75	52° 8'	1° 54'	15	52° 23'	2° 29'
	11.619" N	29.428" E		21.248" N	53.395" E
76	52° 9'	1° 53' 5.293"	16	52° 23'	2° 29'
	37.650" N	E		20.606" N	51.921" E
77	52° 8'	1° 52'	17	52° 23'	2° 29'
	11.641" N	54.353" E		19.985" N	50.423" E
78	52° 8'	1° 52'	18	52° 23'	2° 29'
	11.629" N	53.580" E		19.385" N	48.903" E
79	52° 8'	1° 52'	19	52° 23'	2° 29'
	11.594" N	52.809" E		18.807" N	47.360" E
80	52° 8'	1° 52'	20	52° 23'	2° 29'
	11.536" N	52.041" E		18.250" N	45.797" E
81	52° 8'	1° 52'	21	52° 23'	2° 29'
	11.455" N	51.279" E		17.715" N	44.213" E
82	52° 8'	1° 52'	22	52° 23'	2° 29'
	11.351" N	50.524" E		17.202" N	42.609" E
83	52° 8'	1° 52'	23	52° 21'	2° 29'
	11.224" N	49.779" E		17.285" N	40.473" E
84	52° 8'	1° 52'	24	52° 21'	2° 29'
	11.075" N	49.044" E		17.055" N	38.731" E
85	52° 8'	1° 52'	25	52° 19'	2° 27'
	10.904" N	48.323" E		10.175" N	36.407" E
86	52° 8'	1° 52'	26	52° 22'	2° 27'
	10.711" N	47.616" E		33.114" N	20.941" E
87	52° 8'	1° 52'	27	52° 18'	2° 26' 0.710"
	10.498" N	46.925" E		50.889" N	E
88	52° 8'	1° 52'	28	52° 13'	2° 25'
	10.264" N	46.251" E		59.087" N	25.766" E
89	52° 8'	1° 52'	29	52° 13'	2° 23'
	10.009" N	45.598" E		58.494" N	27.683" E
90	52° 8'	1° 49'	30	52° 13'	2° 23' 2.476"
	33.339" N	15.275" E		56.853" N	E
91	52° 8'	1° 48'	31	52° 20'	2° 22'
	25.361" N	48.294" E		22.815" N	19.439" E
92	52° 7'	1° 46'	32	52° 18'	2° 21'
	42.887" N	40.770" E		12.421" N	12.115" E
93	52° 4'	1° 44'	33	52° 18'	2° 21'
	57.710" N	58.279" E		15.739" N	10.581" E
94	52° 5'	1° 40'	34	52° 13'	2° 19'
	44.773" N	57.350" E		46.402" N	32.631" E
95	52° 2'	1° 36'	0	52° 21'	2° 44'
	57.010" N	33.019" E		49.261" N	44.274" E
96	52° 2'	1° 36'	1	52° 26'	2° 44'
	56.838" N	32.348" E		58.439" N	31.396" E
97	52° 2'	1° 36'	2	52° 27'	2° 35'
	56.647" N	31.690" E		8.502" N	52.305" E
98	52° 2'	1° 36'	3	52° 21'	2° 35'
	56.438" N	31.048" E		19.758" N	44.827" E

PART 2

Ancillary Works

1. Works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/ or maintenance of the authorised development;
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works; and
- (c) temporary works for the benefit or protection of land or structures affected by the authorised development.

PART 3

Requirements

Time limits

1. The authorised project must commence no later than the expiration of five years beginning with the date this Order comes into force.

Detailed offshore design parameters

2.—(1) Subject to paragraph (3), wind turbine generators forming part of the authorised project must not—

- (a) exceed a height of 247 metres when measured from LAT to the tip of the vertical blade;
- (b) exceed a height of 150.6 metres to the height of the centreline of the generator shaft forming part of the hub when measured from LAT;
- (c) exceed a rotor diameter of 220 metres;
- (d) be less than 675 metres from the nearest wind turbine generator in either direction perpendicular to the approximate prevailing wind direction (crosswind) or be less than 900 metres from the nearest wind turbine generator in either direction which is in line with the approximate prevailing wind direction (downwind);
- (e) have a draught height of less than 22 metres from MHWS.

(2) The number of turbines with a draught height of less than 24m from MHWS comprised in the authorised project must not exceed 52 turbines

(3) References to the location of a wind turbine generator in paragraph (1) and (2) above are references to the centre point of that turbine.

3.—(1) The total number of offshore electrical stations forming part of the authorised project must not exceed six, the total number of accommodation platforms must not exceed one and the total number of meteorological masts must not exceed two.

(2) The dimensions of any offshore electrical stations forming part of the authorised project (excluding towers, helipads, masts and cranes) must not exceed 70 metres in height when measured from LAT, 80 metres in length and 120 metres in width.

(3) The dimensions of any accommodation platform forming part of the authorised project must not exceed 60 metres in height when measured from LAT, 70 metres in length and 70 metres in width.

(4) Each meteorological mast must not exceed a height of 160 metres above LAT.

(5) Each meteorological mast must not have more than one supporting foundation.

(6) The dimensions of any buoy forming part of the authorised project must not exceed 6 metres in height (excluding any apparatus or equipment fixed to the buoy), 4 metres in length and 4 metres in width and the anchor footprint must not exceed 4m².

(7) Offshore platforms forming part of the authorised project must not be erected within the platform exclusion zone, whose co-ordinates are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	52° 30' 20.0268"N	2° 48' 33.264"E	3	52° 32' 10.4568"N	2° 45' 31.9572"E
2	52° 31' 32.0664"N	2° 45' 31.8672"E	4	52° 30' 48.7369"N	2° 48' 57.7512"E

(8) In the case of two offshore phases, each phase must comprise (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 600 MW comprising up to 86 wind turbine generators; (b) up to one accommodation platform (which may be constructed under one or other phase, but not under both phases); (c) up to two meteorological masts (one or both of which may be constructed under either phase, but not two under both phases) ; (d) up to 12 buoys fixed to the sea bed (some or all of which may be constructed under either phase but not all under both phases); (e) a network of subsea inter-array cables; and (f) up to 3 offshore electrical stations.

4.—(1) The total length of the cables and the volume of their cable protection must not exceed the following—

<i>Work</i>	<i>Length</i>	<i>Cable protection</i>
Work No. 1(e) (inter-array)	550 kilometres	49,500 m ³
Work No. 3 (platform link)	240 kilometres	28,480 m ³
Work No. 4 (interconnection)	380 kilometres	47,960 m ³
Work No. 5A (export cable)	664 kilometres	81,260 m ³

5.—(1) In relation to a wind turbine generator, each gravity base foundation must not have—

- (a) a diameter at the level of the seabed which is more than 60 metres;
- (b) a base height, where there is a flat base and a cylindrical shaft, which is more than 12 metres above the level of the seabed;
- (c) a base height, where there is a conical base, which is more than 2 metres above the level of the seabed;
- (d) a column diameter, where there is a flat or conical base, which is more than 9 metres at LAT.

(2) In relation to a wind turbine generator, each suction caisson foundation must not have—

- (a) a diameter at the level of the seabed which is more than 30 metres;
- (b) a base height where there is a flat base, which is more than 5 metres above the level of the seabed;
- (c) a column diameter which is more than 9 metres at LAT.

(3) In relation to a wind turbine generator, each jacket foundation must not have—

- (a) a width spacing between its legs at the level of the seabed which is more than 43.5 metres;
- (b) a pile diameter which is more than 4 metres in the case of pin piles or a suction caisson diameter which is more than 10 metres;
- (c) more than one pile per leg or more than one suction caisson per leg;
- (d) more than four legs.

(4) In relation to a wind turbine generator, each monopile foundation forming part of the authorised development must not have a diameter which is more than 12 metres.

6.—(1) In relation to a meteorological mast, each gravity base foundation must not have a diameter at the level of the seabed which is more than 20 metres.

(2) In relation to a meteorological mast, each suction caisson foundation must not have a diameter at the level of the seabed which is more than 15 metres.

(3) In relation to a meteorological mast, each jacket foundation must not have a footprint at the seabed which is more than 625 m².

(4) In relation to a meteorological mast, each monopile foundation forming part of the authorised development must not have a diameter which is more than 8 metres.

7.—(1) In relation to an offshore electrical station, each gravity base foundation must not have a footprint at the seabed which is more than 8,011 m².

(2) In relation to an offshore electrical station, each jacket foundation must not have—

(a) a footprint at the seabed which is more than 15,855 m²;

(b) more than one pile per leg or more than one suction caisson per leg.

8.—(1) In relation to any accommodation platform, each gravity base foundation must not have a footprint of more than 15,855 m².

(2) In relation to any accommodation platform, each jacket foundation must not have—

(a) a footprint at the seabed which is more than 15,855 m²;

(b) more than one pile per leg or more than one suction caisson per leg.

9. The total amount of scour protection for the wind turbine generators, accommodation platform, meteorological masts and offshore electrical stations forming part of the authorised project must not exceed 2,673,260 m².

Offshore decommissioning

10. No offshore works may commence until a written decommissioning programme in compliance with [any notice served upon the undertaker by the Secretary of State/the notice dated [•] pursuant to section 105(2) of the 2004 Act] has been submitted to the Secretary of State for approval.

Stages and phasing of authorised development onshore

11.—(1) The connection works may not be commenced until a written scheme setting out the stages of the connection works has been submitted to, and approved by, the relevant planning authority

(2) Work No. 67 may not be commenced until a written scheme setting out whether it is to be carried out in a single onshore phase or in two onshore phases has been submitted to, and approved by, the relevant planning authority.

(3) In the event that Work No. 67 is to be carried out in two onshore phases, at least 14 days' prior notice of commencement of the second onshore phase must be given to the relevant planning authority.

(4) The written schemes specified in paragraphs (1) and (2) must be implemented as approved by the relevant planning authority.

Detailed design parameters onshore

12.—(1) The total number of buildings housing the principal electrical equipment for an onshore substation comprised in Work No.67 must not exceed two.

(2) Construction works for the buildings referred to in paragraph (1) above must not commence until details of the layout, scale and external appearance of the same have been submitted to and approved by the relevant planning authority. The onshore substations must be carried out in accordance with the approved details.

(3) Any details provided by the undertaker pursuant to paragraph (2) must accord with the design and access statement and be within the Order limits.

(4) Buildings comprised in Work No. 67 must not exceed a height of 25 metres above existing ground level and external electrical equipment comprised in Work No. 67 must not exceed a height of 15 metres above existing ground level.

(5) For the purposes of this requirement 'existing ground level' means 54 metres above ordnance datum.

(6) The total footprint of the buildings housing the principal electrical equipment for an onshore substation comprised in Work No. 67 must not exceed 116 metres in length and 85 metres in width.

(7) The fenced compound area (excluding its accesses) for the onshore substations comprised in Work No. 67 must not exceed 3.04ha.

(8) In relation to the kiosks to be located within the onshore cable corridor—

(a) No stage of the connection works may commence until for that stage details of the scale and appearance of the kiosks have been submitted to and approved in writing by the relevant planning authority;

(b) the footprint of each kiosk must not exceed 1 metre in width, 0.75 metres in length and 1 metre in height; and

(c) the kiosks must be constructed in accordance with the approved details.

(9) The footprint of the construction consolidation sites must not exceed the following—

(a) 3,600 m² in the case of a primary construction consolidation site; or

(b) 1,200 m² in the case of a secondary construction consolidation site.

(10) In the event that Work No. 67 is to be carried out in two onshore phases neither phase must comprise more than one onshore substation.

(11) The footprint of each jointing bay compound must not exceed 3,740 m².

(12) The total length of the haul road must not exceed 18.05km.

Landfall method statement

13.—(1) No part of Work No. 5B, Work No. 6 or Work No. 7 may commence until a method statement for the construction of Work No. 5B, Work No. 6 or Work No. 7 has been submitted to and approved by the relevant planning authority in consultation with Natural England.

(2) The method statement referred to in paragraph (1) must include measures to minimise the impact of the works on cliff stability and coastal erosion as well as proposals for ongoing inspection and maintenance of those works during the operation of the authorised project.

(3) The method statement must be implemented as approved.

Provision of landscaping

14.—(1) No stage of the connection works may commence until for that stage a written landscaping management scheme and associated work programme (which accords with the outline landscape and ecological management strategy) has been submitted to and approved by the relevant planning authority in consultation with Natural England.

(2) The landscaping management scheme must include details of all proposed hard and soft landscaping works, including—

(a) location, number, species, size and planting density of any proposed planting, including any trees;

- (b) cultivation, importing of materials and other operations to ensure plant establishment;
 - (c) proposed finished ground levels;
 - (d) hard surfacing materials;
 - (e) vehicular and pedestrian access, parking and circulation areas;
 - (f) minor structures, such as furniture, refuse or other storage units, signs and lighting;
 - (g) proposed and existing functional services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports;
 - (h) details of existing trees to be retained with measures for their protection during the construction period;
 - (i) retained historic landscape features and proposals for restoration, where relevant;
 - (j) implementation timetables for all landscaping works;
 - (k) proposed finished heights, form and gradient of earthworks in relation to Work No. 64, Work No. 68 and/or Work No 69;
 - (l) maintenance of the landscaping, including irrigation arrangements in relation to Work No. 64, Work No. 65, Work No. 68 and/or Work No. 69; and
 - (m) soil retention, handling and protection.
- (3) The landscaping management scheme must be implemented as approved.

Implementation and maintenance of landscaping

15.—(1) All landscaping works must be carried out in accordance with the landscaping management schemes approved under **requirement 14** (provision of landscaping), and in accordance with the relevant recommendations of appropriate British Standards.

(2) Any tree or shrub planted as part of an approved landscaping management scheme that, within a period of five years (save in relation to Work Nos. 64, 65, 68 and 69, for which the relevant period is ten years) after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

Highway accesses and improvements

16.—(1) No stage of the connection works may commence until for that stage written details (which accord with the outline access management plan) of the siting, design, layout and any access management measures for any new, permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, has, after consultation with the highway authority, been submitted to and approved by the relevant planning authority.

(2) The highway accesses for that stage must be constructed or altered and the works described in paragraph (1) above in relation to access management measures must be carried out, as the case may be, in accordance with the approved details before they are brought into use for the purposes of the authorised project.

(3) No stage of the connection works may commence until for that stage, a scheme of traffic management measures (in accordance with table 2 of the outline traffic management plan) has been submitted to, and approved by the relevant planning authority in consultation with the relevant highway authority. The scheme must describe whether the proposed measures are to be temporary or permanent.

(4) The traffic management measures must be carried out in accordance with the approved details.

Fencing and other means of enclosure

17.—(1) No stage of the connection works may commence until for that stage written details of all proposed permanent and temporary fences, walls or other means of enclosure of the connection works have been submitted to and approved by the relevant planning authority.

(2) All construction consolidation sites must remain securely fenced in accordance with the approved details at all times during construction of the relevant stage of the connection works.

(3) Any temporary fencing must be removed on completion of the relevant stage of the connection works.

(4) Any approved permanent fencing in relation to an onshore substation must be completed before that onshore substation is brought into use and maintained for the operational lifetime of the onshore substation.

Surface and foul water drainage

18.—(1) No stage of the connection works may commence until for that stage written details of the surface and (if any) foul water drainage system (including means of pollution control) have, after consultation with the relevant drainage authorities, Suffolk County Council and the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The details agreed in paragraph (1) must accord with the proposals for a surface water and drainage management plan contained in the outline code of construction practice and include a surface water drainage scheme for Work No. 67, which is based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development.

(3) The surface and foul water drainage system for the relevant stage must be constructed in accordance with the approved details.

Contaminated land and ground water

19.—(1) Work No. 41 must not commence until a written scheme applicable to that work, to mitigate the potential for release of contaminants within the Order limits has, after consultation with the Environment Agency, been submitted to and approved by the relevant planning authority.

(2) The written scheme referred to in paragraph (1) must be implemented as approved.

Archaeology

20.—(1) No stage of the connection works may commence until for that stage a written scheme of archaeological investigation (which accords with the outline written scheme of investigation (onshore)) has, after consultation with Historic England and Suffolk County Council, been submitted to and approved by the relevant planning authority.

(2) In the event that site investigation is required, the scheme must include details of the following—

- (a) an assessment of significance and research questions; and
- (b) the programme and methodology of site investigation and recording;
- (c) the programme for post investigation assessment;
- (d) provision to be made for analysis of the site investigation and recording;
- (e) provision to be made for publication and dissemination of the analysis and records of the site investigation;
- (f) provision to be made for archive deposition of the analysis and records of the site investigation; and
- (g) nomination of a competent person or persons/organisation to undertake the works set out within the written scheme of investigation.

(3) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

(4) In the event that site investigation is required, the site investigation and post investigation assessment must be completed for that stage in accordance with the programme set out in the written scheme of archaeological investigation and provision made for analysis, publication and dissemination of results and archive deposition secured for that stage.

Ecological management plan

21.—(1) No stage of the connection works may commence until for that stage a written ecological management plan (which accords with the outline landscape and ecological management strategy) reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement has been submitted to and approved by the relevant planning authority in consultation with Natural England.

(2) The ecological management plan must include an implementation timetable and must be carried out as approved.

(3) Construction works between Ferry Road and the River Deben must be carried out in accordance with the embedded mitigation relating to onshore ornithology contained in Table 2 of the outline landscape and ecological management strategy, which must be incorporated into the ecological management plan.

Code of construction practice

22.—(1) No stage of the connection works may commence until for that stage a code of construction practice (which must accord with the outline code of construction practice) has been submitted to and approved by the relevant local planning authority, in consultation with the relevant highway authority.

(2) The code of construction practice must include—

- (a) a surface water and drainage management plan;
- (b) watercourse crossing method statements;
- (c) a flood plan;
- (d) a written scheme for noise and vibration management during construction;
- (e) an air quality monitoring plan;
- (f) artificial light emissions plan;
- (g) a site waste management plan;
- (h) a pollution prevention and emergency incident response plan;
- (i) a project community and public relations procedure;
- (j) a public rights of way management plan; and
- (k) a project environmental management plan.

(3) The code of construction practice approved in relation to the relevant stage of the connection works must be followed in relation to that stage of the connection works.

External lighting and control of artificial light emissions

23.—(1) No stage of the connection works may commence until written details of any external lighting to be installed in connection with that stage (which includes any relevant measures identified in the artificial light emissions plan contained in the outline code of construction practice), including measures to prevent light spillage, have, after consultation with the highway authority, been submitted to and approved by the relevant planning authority; and any approved means of lighting must be installed in accordance with the approved details and retained for the duration of the construction period for that stage.

(2) Any means of construction lighting approved under paragraph (1) above must be removed on completion of the relevant stage of the connection works.

(3) Work No. 67 must not be commenced until a written scheme for the management and mitigation of artificial light emissions during the operation of Work No. 67, including measures to minimise lighting pollution and the hours of lighting, has been submitted to and approved by the relevant planning authority.

(4) The approved scheme for the management and mitigation of artificial light emissions must be implemented before and maintained during the operation of Work No. 67.

Control of noise during construction

24.—(1) No stage of the connection works may commence until a noise and vibration management scheme for construction of that stage (which must accord with the written scheme for noise and vibration management contained in the outline code of construction practice) has been submitted to and approved by the relevant planning authority. The scheme for noise and vibration management must form part of the code of construction practice.

(2) The scheme must set out the particulars of—

- (a) the construction works, and the method by which they are to be carried out;
- (b) the noise attenuation measures to be taken to minimise noise resulting from the construction works, including any noise limits; and
- (c) a scheme for monitoring the noise during the construction works to ensure compliance with the noise limits and effectiveness of the attenuation measures.

(3) The approved noise and vibration management scheme must be implemented before and maintained during construction of the relevant stage of the connection works.

(4) The construction works must be undertaken in accordance with the approved noise and vibration management scheme.

Construction hours

25.—(1) Construction work for the connection works must only take place between 0700 hours and 1900 hours Monday to Saturday, with no activity on Sundays or bank holidays, except as specified in paragraph (2).

(2) Outside the hours specified in paragraph (1), construction work may be undertaken for essential and non-intrusive activities including but not limited to:

- (a) continuous periods of operation that are required as assessed in the environmental statement, such as concrete pouring;
- (b) fitting out works associated with the onshore substation(s) comprised within Work No. 67;
- (c) delivery to the connection works of abnormal loads that may cause congestion on the local road network;
- (d) connection works carried out on the foreshore;
- (e) daily start up or shut down;
- (f) electrical installation; and
- (g) non-destructive testing.

(3) All construction work undertaken in accordance with paragraph (2)(a) to (d) must be agreed with the relevant planning authority in writing in advance, and must be carried out within the agreed time.

Control of noise during operational phase

26.—(1) No part of Work No. 67 may commence until written details that provide for the insulation of that part against the transmission of noise and vibration have been submitted to and approved by the relevant planning authority. Work No. 67 must thereafter be implemented in accordance with the approved details.

(2) The rating level of operational noise immissions (including any relevant penalties for tonal or impulsive noise in accordance with BS4142:2014) from Work No. 67 alone (including transformers, air handling units and cooling fans) must not exceed 5dB above the background ($L_{A90,1hr}$) level during the daytime (07:00 – 23:00) and 35 dB $L_{Aeq,15 min}$ during the night time (23:00 – 07:00) at Bullenhall Farm (610287, 246601) Hill Farm (609088, 245652) and Woodlands Farm (609597, 246806).

(3) Sub-paragraph (2) does not apply to any emergency event, maintenance and repairs or to any commissioning or testing event previously notified to the relevant planning authority.

(4) Within three months of the completion of commissioning of any part of Work No. 67, the undertaker must submit measurements to the relevant planning authority taken in the vicinity of the relevant property or properties specified at sub-paragraph (2) to confirm the rating level of operational noise immissions do not exceed the levels specified in sub-paragraph (2), including details of any remedial works and a programme of implementation should the immissions exceed the stated levels.

(5) Measurements must be undertaken in accordance with the equipment specifications, measurement procedures and monitoring equipment positioning guidelines outlined in BS 4142:2014.

(6) For the purposes of this requirement, “completion of commissioning” means the date when the circuits have been fully tested and verified that they are able to transmit their rated power capacity to the grid connection point and National Grid has issued an FON (final operation notification) to the generator.

Traffic

27.—(1) No stage of the connection works may commence until for that stage the following have been submitted to and approved by the relevant local planning authority in consultation with the relevant highway authority—

- (a) a traffic management plan which must be in accordance with the outline traffic management plan;
- (b) a travel plan which must be in accordance with the outline travel plan; and
- (c) an access management plan which must be in accordance with the outline access management plan.

(2) The plans approved under paragraph (1) must be implemented upon commencement of the relevant stage of the connection works.

Port travel plan

28.—(1) Work Nos. 1, 2, 3, 4 or 5A must not be commenced until a travel plan for the onshore port-related traffic to and from the selected base port or ports and relating to the authorised project, has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority. The travel plan must be implemented as approved at all times specified within the travel plan during the construction and/or operation of the authorised project.

(2) For the purposes of this requirement—

“relevant planning authority” and “relevant highway authority” mean the planning or highway authority or authorities in whose area the relevant port is located;

“selected base port” or “ports” means a port or ports situated in England and/or Wales; and

“base port” means the port used by management personnel for construction of the authorised project and for the ongoing operational management of the authorised project.

European protected species onshore

29.—(1) No stage of the connection works may commence until final pre-construction survey work has been carried out to establish whether a European protected species is present on any of

the land affected, or likely to be affected, by that stage of the connection works or in any of the trees to be lopped or felled as part of that stage of the connection works.

(2) Where a European protected species is shown to be present, the relevant part(s) of the connection works must not begin until, after consultation with Natural England and the relevant planning authority, a scheme of protection and mitigation measures has been submitted to and approved by the relevant planning authority. The connection works must be carried out in accordance with the approved scheme.

(3) “European protected species” has the same meaning as in regulations 40 and 44 of the Conservation (Natural Habitats, &c.) Regulations 2010(a).

Restoration of land used temporarily for construction

30. Any land landward of mean low water within the Order limits which is used temporarily for construction of the connection works and not ultimately incorporated in permanent works or approved landscaping, must be reinstated in accordance with such details the relevant planning authority in consultation with the relevant highway authority may approve, as soon as reasonably practicable and in any event within twelve months of completion of the relevant stage of the connection works, save that if approved by the relevant local planning authority Work No. 65 may be retained between any phases of construction works for Work No.67.

Onshore decommissioning

31.—(1) Within three months of the cessation of commercial operation of the connection works an onshore decommissioning plan must be submitted to and approved by the relevant planning authority.

(2) The decommissioning plan must be implemented as approved.

Aviation Safety

32.—(1) The undertaker must exhibit such lights, with such shape, colour and character as are required in writing by Air Navigation Order 2009(b) and determined necessary for aviation safety in consultation with the Defence Infrastructure Organisation Safeguarding and as directed by the CAA.

(2) The undertaker must notify the Defence Infrastructure Organisation, at least 14 days prior to the commencement of the authorised development, in writing of the following information—

- (a) the date of the commencement of construction of the authorised development;
- (b) the date any wind turbine generators are brought into use;
- (c) the maximum height of any construction equipment to be used;
- (d) the maximum heights of any wind turbine generator, mast and platform to be constructed;
- (e) the latitude and longitude of each wind turbine generator, mast and platform to be constructed,

and the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph and of the completion of the construction of the authorised development.

Ministry of Defence surveillance operations

33.—(1) No construction of any radar line of sight wind turbine generator (RLSWTG) forming part of the authorised development and within radar line of sight of the air defence radar at Remote Radar Head (RRH) Trimingham may commence until the Secretary of State having

(a) S.I. 2010/490
(b) S.I. 2009/3015

consulted with the Ministry of Defence confirms satisfaction in writing that appropriate mitigation will be implemented and maintained for the life of the authorised development and that arrangements have been put in place with the Ministry of Defence to ensure that such appropriate mitigation is implemented.

(2) For the purposes of this requirement—

- (a) “appropriate mitigation” means measures to prevent or remove any adverse effects which the operation of the authorised development will have on the air defence radar at Remote Radar Head (RRH) Trimmingham and the Ministry of Defence’s air surveillance and control operations;
- (b) “approved mitigation” means the appropriate mitigation measures agreed with the Ministry of Defence at the time the Secretary of State confirms satisfaction in writing in accordance with sub-paragraph (1);
- (c) “Ministry of Defence” means the Ministry of Defence as represented by Defence Infrastructure Organisation – Safeguarding, Kington Road, Sutton Coldfield, B75 7RL or any successor body;
- (d) “RLSWG” means a wind turbine generator which exceeds the following heights when measured above Mean Sea Level (Newlyn) to the tip of the vertical blade—
 - (i) 193 metres in area A;
 - (ii) 207 metres in area B;
 - (iii) 223 metres in area C;
- (e) “areas A, B and C” means the areas defined by radar line of sight radii shown on the radar line of sight coverage plan.

(3) The undertaker must thereafter comply with all other obligations contained within the approved mitigation for the life of the authorised development.

Requirement for written approval

34. Where under any of the above requirements the approval or agreement of the Secretary of State, the relevant planning authority or another person is required, that approval or agreement must be given in writing.

Amendments to approved details

35.—(1) With respect to any requirement which requires the authorised project to be carried out in accordance with the details approved by the relevant planning authority or another person, the approved details must be carried out as approved unless an amendment or variation is previously agreed in writing by the relevant planning authority or that other person in accordance with paragraph (2).

(2) Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority or that other person that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority or that other person.

Reuse of temporary works

36.—(1) In the event that any temporary works which have been constructed pursuant to the East Anglia ONE Order are proposed to be reused by the undertaker in connection with the authorised project, such reuse may not commence until a scheme which accords with paragraph (2) has been submitted to and approved by the relevant planning authority.

- (2) The scheme to be submitted for approval under paragraph (1) must include:
- (a) details of the temporary works to be reused which must accord with the parameters for temporary works contained at requirement 12;
 - (b) a timetable and details for the removal of such part of the temporary works which do not accord with the parameters for temporary works contained at requirement 12;
 - (c) details of any transferee to whom the temporary works have been transferred pursuant to Article 5 of the East Anglia ONE Order as well as the date of such transfer; and
 - (d) proposals to notify the relevant planning authority of any subsequent transfers pursuant to Article 5 of the East Anglia ONE Order pending reinstatement of the reused temporary works in accordance with requirement 28 of the East Anglia ONE Order.
- (3) The scheme must be implemented as approved.

Notification of site clearance and archaeological investigations

37. Notwithstanding the definition of “commence” in Article 2(1), site clearance works landward of MHWS and archaeological investigations within Work Number 67 may only be carried out by the undertaker before commencement, in circumstances where the undertaker has provided notice in writing to the relevant planning authority of its intention to carry out such works and investigations and:

- (i) the relevant planning authority has provided a written determination that the notified works and investigations can take place; or
- (ii) no response has been received by the undertaker within 15 working days of the date of notification of such works and investigations.

SCHEDULE 2

Article 8

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
Suffolk Coastal District	Ferry Road at reference point A – B on the works plan
Suffolk Coastal District	Track at reference point S1 – S2 on the works plan
Suffolk Coastal District	Track at reference point S3 – S4 on the works plan
Suffolk Coastal District	Track at reference point S5 – S6 on the works plan
Suffolk Coastal District	Track at reference point S7 – S8 on the works plan
Suffolk Coastal District	Track at reference point S9 – S10 on the works plan
Suffolk Coastal District	Track at reference point S11 – S12 on the works plan
Suffolk Coastal District	Park Lane at reference point C – D on the works plan
Suffolk Coastal District	Track at reference point S13 – S14 on the works plan
Suffolk Coastal District	Track at reference point S15 – S16 on the works plan
Suffolk Coastal District	The Street at reference point E – F on the works plan

Suffolk Coastal District	Track at reference point S17 – S18 on the works plan
Suffolk Coastal District	Track at reference point S19 – S20 on the works plan
Suffolk Coastal District	Ipswich Road at reference point G – H on the works plan
Suffolk Coastal District	Woodbridge Road at reference point I – J on the works plan
Suffolk Coastal District	Track at reference point S21 – S22 on the works plan
Suffolk Coastal District	Track at reference point S23 – S24 on the works plan
Suffolk Coastal District	Track at reference point S25 – S26 on the works plan
Suffolk Coastal District	Track at reference point S27 - S28 on the works plan
Suffolk Coastal District	Waldringfield Road at reference point K – L on the works plan
Suffolk Coastal District	Waldringfield Road at reference point M – N on the works plan
Suffolk Coastal District	Track at reference point S29 – S30 on the works plan
Suffolk Coastal District	Track at reference point S31 – S32 on the works plans
Suffolk Coastal District	Track at reference point S33 – S34 on the works plan
Suffolk Coastal District	Track at reference point S35 – S36 on the works plan
Suffolk Coastal District	Sandy Lane at reference point O – P on the works plan
Suffolk Coastal District	Track at reference point S37 – S38 on the works plan
Suffolk Coastal District	Top Street at reference point Q – R on the works plan
Suffolk Coastal District	Track at reference point S39 – S40 on the works plan
Suffolk Coastal District	A12 at reference point S – T on the works plan
Suffolk Coastal District	Track at reference point S41 – S42 on the works plan
Suffolk Coastal District	Track at reference point S43 – S44 on the works plan
Suffolk Coastal District	Track at reference point S45 – S46 on the works plan
Suffolk Coastal District	Track at reference point S47 – S48 on the works plan
Suffolk Coastal District	Lodge Road at reference point U – V on the works plan
Suffolk Coastal District	Holly Lane at reference point W – X on the works plan
Suffolk Coastal District	Church Road at reference point Y – Z on the works plan
Suffolk Coastal District	Butts Road at reference point AA – BB on the works plan
Suffolk Coastal District	Track at reference point S49 – S50 on the

	works plan
Suffolk Coastal District	Grundisburgh Road at reference point CC – DD on the works plan
Suffolk Coastal District	Clopton Road at reference point EE – FF on the works plan
Suffolk Coastal District	Witnesham Road (B1077) at reference point GG – HH on the works plan
Suffolk Coastal District	Cockfield Hall Lane at reference point II – JJ on the works plan
Mid Suffolk District	Henley Road at reference point KK – LL on the works plan
Mid Suffolk District	Track at reference point S51 – S52 on the works plan
Mid Suffolk District	Unnamed road at reference point MM – NN on the works plan
Mid Suffolk District	Track at reference point S53 to S54 on the works plan
Mid Suffolk District	Old Ipswich Road at reference point OO – PP on the works plan
Mid Suffolk District	A14 at reference point QQ – RR on the works plan
Mid Suffolk District	Papermill Lane at reference point SS – TT on the works plan
Mid Suffolk District	Bramford Road (B1113) at reference point UU – VV on the works plan
Mid Suffolk District	Pound Lane at reference point WW – XX on the works plan
Mid Suffolk District	Track at reference point S55 to S66 on the works plan
Mid Suffolk District	Somersham Road at reference point YY – ZZ on the works plan
Mid Suffolk District	Track at reference point S57 to S58 on the works plan
Mid Suffolk District	Track at reference point S59 – S60 on the works plan
Mid Suffolk District	Tye Lane at reference point AAA – BBB on the works plan
Mid Suffolk District	Track at reference point S61 – S62 on the works plan
Mid Suffolk District	Track at reference point S63 – 64 on the works plan

SCHEDULE 3

Article 9

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

<i>(1) Area</i>	<i>(2) Public rights of way to be temporarily stopped up</i>	<i>(3) Extent of temporary stopping up</i>
Suffolk Coastal District	Footpath reference E-242/005/0	Approximately 478 metres of footpath reference E-242/005/0 shown in orange between points marked A to B on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-242/015/0	Approximately 355 metres of footpath reference E-242/015/0 shown in orange between points marked B to C on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-242/003/0	Approximately 161 metres of footpath reference E-242/003/0 shown in orange between points marked B to D on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Bridleway reference E-352/034/0	Approximately 185 metres of bridleway reference E-352/034/0 shown in green between points marked E to F on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Bridleway reference E-352/053/0	Approximately 423 metres of bridleway reference E-352/053/0 shown in green between points marked F to G on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-352/025/0	Approximately 213 metres of footpath reference E-352/025/0 shown in orange between points marked H to I on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-352/024/0	Approximately 36 metres of footpath reference E-352/024/0 shown in orange between points marked I to J on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-352/014/0	Approximately 17 metres of footpath reference E-352/014/0 shown in orange between points marked K to L on the public rights of way to

		be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-352/013/X	Approximately 71 metres of footpath reference E-352/013/X shown in orange between points marked L to M on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Bridleway reference E-352/013/0	Approximately 5.5 metres of bridleway reference E-352/013/0 at some point between points N and O shown in green on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-410/008/0	Approximately 5.5 metres of footpath reference E-410/008/0 at some point between points P and Q shown in orange on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-537/031/0	Approximately 412 metres of footpath reference E-537/031/0 shown in orange between points marked R to S on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Bridleway reference E-410/006/0	Approximately 91 metres of bridleway reference E-410/006/0 shown in green between points marked S to T on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Bridleway reference E-537/024/0	Approximately 5.5 metres of bridleway reference E-537/024/0 at some point between points U and V shown in green on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-388/044/0	Approximately 164 metres of footpath reference E-388/044/0 shown in orange between points marked X to Y on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-388/046/0	Approximately 151 metres of footpath reference E-388/046/0 shown in orange between points marked Y to Z on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-388/045/0	Approximately 5.5 metres of footpath reference E-388/045/0 at some point between points AA and BB

		shown in orange on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-388/016/0	Approximately 5.5 metres of footpath reference E-388/016/0 at some point between points CC and DD shown in orange on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-388/009/A	Approximately 190 metres of footpath reference E-388/009/A shown in orange between points marked EE to FF on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-272/010/0	Approximately 120 metres of footpath reference E-272/010/0 shown in orange between points marked FF to GG on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-272/010/0	Approximately 5.5 metres of footpath reference E-272/010/0 at some point between points HH and II shown in orange on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-272/008/0	Approximately 173 metres of footpath reference E-272/008/0 shown in orange between points marked JJ to KK on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Footpath reference E-272/011/0	Approximately 5.5 metres of footpath reference E-272/011/0 at some point between points LL and MM shown in orange on the public rights of way to be temporarily stopped up plan
Suffolk Coastal District	Restricted byway reference E-547/005/0	Approximately 5.5 metres of restricted byway reference E-547/005/0 at some point between points NN and OO shown in purple on the public rights of way to be temporarily stopped up plan
Mid Suffolk District	Bridleway reference E-547/010/0	Approximately 5.5 metres of bridleway reference E-547/010/0 at some point between points PP and QQ

		shown in green on the public rights of way to be temporarily stopped up plan
Mid Suffolk District	Bridleway reference E-102/002/0	Approximately 5.5 metres of bridleway reference E-102/002/0 at some point between points RR and SS shown in green on the public rights of way to be temporarily stopped up plan
Mid Suffolk District	Footpath reference E-194/021/0	Approximately 5.5 metres of footpath reference E-194/021/0 at some point between points TT and UU shown in orange on the public rights of way to be temporarily stopped up plan
Mid Suffolk District	Footpath reference W-155/010/0	Approximately 300 metres of footpath reference W-155/010/0 shown in orange between points marked VV to WW on the public rights of way to be temporarily stopped up plan
Mid Suffolk District	Footpath reference W-155/008/0	Approximately 415 metres of footpath reference W-155/008/0 shown in orange between points marked WW to XX on the public rights of way to be temporarily stopped up plan
Mid Suffolk District	Footpath reference W-155/002/0	Approximately 5.5 metres of footpath reference W-155/002/0 at some point between points YY and ZZ shown in orange on the public rights of way to be temporarily stopped up plan
Mid Suffolk District	Bridleway reference W-155/001/0	Approximately 1320 metres of bridleway reference W-155/001/0 shown in green between points marked AAA to BBB on the public rights of way to be temporarily stopped up plan

SCHEDULE 4 ACCESS TO WORKS

Article 11

<i>(1)</i> Area	<i>(2)</i> Description of access
Suffolk Coastal District	Vehicular access from Ferry Road to the east marked at point A on the access to works plan

Suffolk Coastal District	Vehicular access from Ferry Road to the west marked at point B on the access to works plan
Suffolk Coastal District	Vehicular access from the B1083 to the south marked at point C on the access to works plan
Suffolk Coastal District	Vehicular access from Lower Falkenham Road to the north marked at point D on the access to works plan
Suffolk Coastal District	Vehicular access from Park Lane to the south marked at point E on the access to works plan
Suffolk Coastal District	Vehicular access from Park Lane to the east marked at point F on the access to works plan
Suffolk Coastal District	Vehicular access from unnamed track to the west and east marked at point G on the access to works plan
Suffolk Coastal District	Vehicular access from The Street to the south marked at point CR1 on the access to works plan
Suffolk Coastal District	Vehicular access from The Street to the north marked at point CR2 on the access to works plan
Suffolk Coastal District	Vehicular access from Woodbridge Road to the east marked at point H on the access to works plan
Suffolk Coastal District	Vehicular access from Newbourne Road to the east marked at point I on the access to works plan
Suffolk Coastal District	Vehicular access from Ipswich Road to the north marked at point K on the access to works plan
Suffolk Coastal District	Vehicular access from Woodbridge Road to the east marked at point L on the access to works plan
Suffolk Coastal District	Vehicular access from Waldringfield Road to the north-east marked at point M on the access to works plan
Suffolk Coastal District	Vehicular access from Waldringfield Road to the east marked at point N on the access to works plan
Suffolk Coastal District	Vehicular access from Waldringfield Road to the east marked at point CR3 on the access to works plan
Suffolk Coastal District	Vehicular access from Waldringfield Road to the west marked at point CR4 on the access to works plan
Suffolk Coastal District	Vehicular access from Waldringfield Road to the north marked at point CR5 on the access to works plan
Suffolk Coastal District	Vehicular access from Waldringfield Road to the south marked at point O on the access to works plan
Suffolk Coastal District	Vehicular access from Waldringfield Road to the north marked at point P on the access to works plan
Suffolk Coastal District	Vehicular access from Sandy Lane to the south marked at point Q on the access to works plan

Suffolk Coastal District	Vehicular access from Sandy Lane to the west marked at point R on the access to works plan
Suffolk Coastal District	Vehicular access from Top Street to the north marked at point S on the access to works plan
Suffolk Coastal District	Vehicular access from Top Street to the west marked at point T on the access to works plan
Suffolk Coastal District	Vehicular access from Seckford Hall Road to the south marked at point U on the access to works plan
Suffolk Coastal District	Vehicular access from Lodge Road to the south marked at point V on the access to works plan
Suffolk Coastal District	Vehicular access from Holly Lane to the east and west marked at point W on the access to works plan
Suffolk Coastal District	Vehicular access from Grundisburgh Road to the south marked at point X on the access to works plan
Suffolk Coastal District	Vehicular access from Grundisburgh Road to the south marked at point Y on the access to works plan
Suffolk Coastal District	Vehicular access from Grundisburgh Road to the south marked at point Z on the access to works plan
Suffolk Coastal District	Vehicular access from Grundisburgh Road to the north marked at point AA on the access to works plan
Suffolk Coastal District	Vehicular access from Clopton Road to the west marked at point AB on the access to works plan
Suffolk Coastal District	Vehicular access from Witnesham Road to the east and west marked at point AC on the access to works plan
Mid Suffolk District	Vehicular access from Henley Road to the east and west marked at point AD on the access to works plan
Mid Suffolk District	Vehicular access from Old Ipswich Road to the east marked at point AE on the access to works plan
Mid Suffolk District	Vehicular access from Paper Mill Lane to the east marked at point AF on the access to works plan
Mid Suffolk District	Vehicular access from Paper Mill Lane to the west marked at point AG on the access to works plan
Mid Suffolk District	Vehicular access from Bramford Road to the east marked at point AH on the access to works plan
Mid Suffolk District	Vehicular access from Bramford Road to the west marked at point AI on the access to works plan
Mid Suffolk District	Vehicular access from Pound Lane to the north marked at point CR6 on the access to works plan
Mid Suffolk District	Vehicular access from Pound Lane to the south marked at point CR7 on the access to works plan

	plan
Mid Suffolk District	Vehicular access from Somersham Road to the east marked at point AK on the access to works plan
Mid Suffolk District	Vehicular access from Somersham Road to the south marked at point AJ on the access to works plan
Mid Suffolk District	Vehicular access from Bullen Lane to the north marked at point AL on the access to works plan

SCHEDULE 5

Article 17

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

<i>(1) Number of land shown on land plan</i>	<i>(2) Purpose for which rights may be acquire</i>
1-9	<p>1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to –</p> <p>construct, lay and install by way of pull-through within the cable ducts and jointing works, repair, renew, upgrade, inspect, remove and replace underground electrical cables and ducts, including pulling underground electrical cables and other apparatus through existing ducts, together with such telemetry and fibre optic lines, structures, jointing bays, ducting and other apparatus, protection and safety measures and equipment which is ancillary to the purposes of transmitting electricity along such electrical cables (which collectively for the purposes of this schedule are referred to as the “cables”);</p> <p>effect access to offshore apparatus and carry out works for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project that communicate between the onshore and offshore elements of the authorised project;</p> <p>install, retain, and connect apparatus to connect onshore transmission apparatus to offshore transmission apparatus;</p> <p>enter and be upon the land and remain with or without plant, vehicles, vessels, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity along the cables, or use of the cable ducts and jointing bays;</p> <p>retain and use the cables, cable ducts and jointing bays for the purpose of the transmission of telecommunications and electricity;</p> <p>pass and repass with or without vehicles, plant,</p>

	equipment, materials and machinery for the purposes of constructing, laying down, installing, adjusting, altering, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing bays;
	pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;
	place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables, cable ducts and jointing bays;
	retain and maintain existing hardstandings and lay down new, use, repair, alter and remove all hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
	retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable); install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduit or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers); and alter, lop, uproot and replant trees, shrubs and hedges for the purposes of enabling the right to pass and repass.
10 – 11	1. The right to enter onto and remain on the land for the purposes of construction,
13	installation, operation, maintenance and decommissioning of the authorised project and to –
15	pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering,
10A	constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;
20A – 20F	retain and maintain existing hardstandings and lay down new, use, repair, alter and remove all hardstandings for the purposes of access to adjoining land and highway;
38A	retain, maintain and use existing temporary supporting or protective structures and erect temporary supporting or protective structures
44 – 51	
80A	
82A	
91A	
99 – 102	
100A – 100C	
107	
117	
117A - 117B	
133	
156A	
175A	
181A – 181B	

185	(including the bridging over of or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;
231 – 232	
235 – 237	
237A	
257 – 258	alter, lop, uproot and replant trees, shrubs and hedges for the purposes of enabling the right to pass and repass to adjoining land;
269A	
304A	retain and maintain existing temporary
311A	permissive paths and lay out temporary
315A	permissive paths for public use (if applicable);
391	effect access to the highway;
398	
401	retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
401A – 401B	
423A – 423G	
429A	remove fences, hedges or other barriers during any period during which construction, upgrading, improvement, renewal or removal are being carried out and/or for the exercise of the power to access the cables (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or re-instatement of the fences, hedges or other barriers following the exercise of the rights); and
436 – 437	retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.
439	“adjoining land” for the purposes of this paragraph 1 means such other parts of the land within the Order limits required for the authorised project.
441	
447 – 448	1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to –
465	construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of pull-through within the cable ducts and jointing works;
	retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
	pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
222 – 223	
227 – 228	
230	
238	
335	
383 – 384	
387	
440	
442	
444 – 446	

retain and maintain existing hardstandings and lay down new, use, repair, alter and remove all hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;

enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity and telecommunications along the cables, or use of the cable ducts and jointing works;

retain and use the cables for the purposes of the transmission of telecommunications and electricity;

place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables, cable ducts and jointing works;

install and maintain cable marker posts to identify the location of the cables, cable ducts and jointing works as required for routine integrity testing;

remove, store and stockpile materials (including excavated material) within the Order land;

remove fences, hedges, or other barriers within the land during any period during when construction, maintenance, repair or renewal are being carried out (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement of the original fences, hedges or other barriers following the exercise of the rights);

install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);

carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;

retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);

remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables, cable ducts and jointing works;

carry out environmental mitigation, remediation and/or enhancement works;

install, construct, use and remove temporary welfare facilities during any periods of maintenance, repair, replacement, renewal,

during any periods of maintenance, repair, replacement, renewal, upgrade and removal of the cables, cable ducts and jointing works; when the cables are temporarily unusable, to lay down install use maintain and inspect on the surface of the land electric lines telecommunications and ancillary equipment associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.

2. The right to enter and remain on the land for the purposes of the construction, installation, operation, maintenance and decommissioning of the authorised project, and to – enter upon the land and to create temporary secure areas;

place equipment on the land, including portakabins and welfare equipment; store plant and/or materials and/or equipment; create car parking sites, site offices, site areas for temporary security and welfare facilities; effect access to the highway; create fuel storage and bunded facilities for the storage of materials ancillary to the implementation of the authorised project; and access the underground electrical cables, cable ducts and jointing works and any other land used or to be used in connection with the installation and use of the underground electrical cables, cable ducts and jointing works, over the compound area within the land, for purposes in connection with the installation and use of the underground electrical cables.

3. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to –

pass and repass with or without vehicles, plant, equipment, materials and machinery to access adjoining land and highway for the purposes of laying, installing, adjusting, altering, constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;

retain and maintain existing hardstandings and lay down new, use, repair, alter and remove all hardstandings for the purposes of access to adjoining land and highway;

erect temporary supporting or protective structures (including the bridging over of or protection of the apparatus of the statutory

undertakers) for the purposes of access to adjoining land and highway;
alter, lop, uproot and replant trees, shrubs and hedges for the purposes of enabling the right to pass and repass to adjoining land;
retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);
effect access to the highway;
retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;
remove fences, hedges or other barriers during any period during which construction, upgrading, improvement, renewal or removal are being carried out and/or for the exercise of the power to access the cables, cable ducts and jointing works (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or reinstatement of the fences, hedges or other barriers following the exercise of the rights);
and
retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.
“adjoining land” for the purposes of this paragraph 3 means such other parts of the land within the Order limits required for the authorised project.

4. A restrictive covenant over the land for the benefit of the remainder of the Order land to prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto);
prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);
prevent anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the Undertaker save as are reasonably required

	for agricultural activities or are required to be carried out by National Grid in order to exercise their rights in relation to their apparatus within the Order land; and prevent the planting or growing within the Order land of any trees, shrubs or underwood without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project).
17	1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to –
18A	
19 – 20	
22	
24	
26 – 43	construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of pull-through within the cable ducts and jointing works;
52 – 63	
67 – 69	
76 – 93	
96	retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;
98	
103 – 106	
110 – 116	
118 – 132	
134 – 142	pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
144 – 150	
154 – 159	
161	
163 – 164	
166 – 176	
178	
180 – 184	retain and maintain existing hardstandings and lay down new, use, repair, alter and remove all hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;
187 – 189	
191 – 196	
198 – 204	
206 – 209	
211	
213	enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity and telecommunications along the cables, or use of the cable ducts and jointing works;
216 – 218	
216A	
218A	
220A	
233 – 234	
239	retain and use the cables for the purposes of the transmission of telecommunications and electricity;
241	
243 – 245	
249 – 256	place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables, cable ducts and jointing works;
260 – 267	
269 - 272	
274 – 281	

283 – 293	install and maintain cable marker posts to
295 – 297	identify the location of the cables, cable ducts
299	and jointing works as required for routine
303 – 313	integrity testing;
315 – 317	remove store and stockpile materials (including
319 – 332	excavated material) within the Order land;
334	remove fences, hedges, or other barriers within
338 – 340	the land during any period during when
343 - 349	construction, maintenance, repair or renewal
351 – 360	are being carried out (subject to the prior
362 – 371	erection of any temporary stock proof fencing
377	as is reasonably required and the replacement
382	of the original fences, hedges or other barriers
390	following the exercise of the rights);
392 – 394	install, alter, re-lay, maintain, protect, adjust or
396 – 397	remove pipes, cables, conduits or apparatus
399 – 400	(including the pipes, cables, conduits or
402 – 403	apparatus of statutory undertakers);
408 – 414	carry out works to lop, fell, cut or coppice trees
415A – 415B	or remove roots of trees or hedges or shrubs;
416 – 418	retain and maintain existing temporary
422 – 426	permissive paths or lay out temporary
428 – 432	permissive paths for public use (if applicable);
434 – 435	remove archaeological artefacts where they
438	would prevent or cause it to be materially more
445A	difficult or expensive to construct, lay, install,
449	adjust, alter, use, maintain, repair, replace,
	renew, upgrade, inspect or remove the cables,
	cable ducts and jointing works;
	carry out environmental mitigation, remediation
	and/or enhancement works;
	install, construct, use and remove temporary
	welfare facilities during any periods of
	maintenance, repair, replacement, renewal,
	during any periods of maintenance, repair,
	replacement, renewal, upgrade and removal of
	the cables, cable ducts and jointing works;
	when the cables are temporarily unusable, to
	lay down install use maintain and inspect on the
	surface of the land electric lines
	telecommunications and ancillary equipment
	associated works and other conducting media
	together with conduits or pipes for containing
	the same in and under the land; and
	place temporarily and use plant, machinery and
	structures on the land in connection with the
	lighting of the land and the authorised project.
	2. The right to enter onto and remain on the
	land for the purposes of construction,
	installation, operation, maintenance and
	decommissioning of the authorised project and
	to –
	pass and repass with or without vehicles, plant,
	equipment, materials and machinery to access
	adjoining land and highway for the purposes of
	laying, installing, adjusting, altering,

constructing, using, maintaining, repairing, renewing, upgrading, inspecting, removing and replacing the cables, cable ducts and jointing works;

retain and maintain existing hardstandings and lay down new, use, repair, alter and remove all hardstandings for the purposes of access to adjoining land and highway;

erect temporary supporting or protective structures (including the bridging over of or protection of the apparatus of the statutory undertakers) for the purposes of access to adjoining land and highway;

alter, lop, uproot and replant trees, shrubs and hedges for the purposes of enabling the right to pass and repass to adjoining land;

retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable); effect access to the highway;

retain, maintain, straighten, widen, repair, alter, upgrade and use existing access routes for the purposes of accessing adjoining land and highway;

remove fences, hedges or other barriers during any period during which construction, upgrading, improvement, renewal or removal are being carried out and/or for the exercise of the power to access the cables, cable ducts and jointing works (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement or reinstatement of the fences, hedges or other barriers following the exercise of the rights); and

retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, replace, extend, test, cleanse and remove temporary or permanent drainage and manage waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 2 means such other parts of the land within the Order limits required for the authorised project.

3. A restrictive covenant over the land for the benefit of the remainder of the Order land to prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto);

prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the Undertaker (such consent not to be

	unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);
	prevent anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the Undertaker save as are reasonably required for agricultural activities or are required to be carried out by National Grid in order to exercise their rights in relation to their apparatus within the Order land; and
	prevent the planting or growing within the Order land of any trees, shrubs or underwood without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project).
18	1. The right to enter onto and remain on the
97	land for the purposes of construction,
143	installation, operation, maintenance and
160	decommissioning of the authorised project and
165	to –
177	construct, lay and install, adjust, alter, use,
179	maintain, repair, replace, renew, upgrade,
215	inspect and remove the cables by way of pull-
219 – 220	through within the cable ducts;
273	retain, maintain, install, use, inspect, modify,
294	improve, maintain, adjust, repair, extend, test,
298	cleanse, and remove temporary or permanent
300	drainage and manage waterflows in any drains,
302	watercourse and culverts;
314	pass and repass, with or without vehicles, plant,
318	equipment, materials and machinery for the
333	purposes of constructing, laying, installing,
337	adjusting, altering, using, maintaining,
350	repairing, replacing, renewing, upgrading,
389	inspecting and removing the cables and cable
404 – 407	ducts;
415	retain and maintain existing hardstandings and
427	lay down new, use, repair, alter and remove all
433	hardstandings for the purposes of constructing,
	laying, installing, adjusting, altering, using
	maintaining, repairing, replacing, renewing,
	upgrading, inspecting and removing the cables
	and cable ducts;
	enter and be upon the land and remain with or
	without plant, vehicles, machinery, apparatus
	and equipment which is ancillary to the
	purposes of transmitting electricity and

telecommunications along the cables and cable ducts;

retain and use the cables for the purposes of the transmission of telecommunications and electricity;

place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables and cable ducts;

install and maintain cable marker posts to identify the location of the cables and cable ducts as required for routine integrity testing;

remove store and stockpile materials (including excavated material) within the Order land;

remove fences, hedges, or other barriers within the land during any period during when construction, maintenance, repair or renewal are being carried out (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement of the original fences, hedges or other barriers following the exercise of the rights);

install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);

carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;

retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);

remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables and cable ducts;

carry out environmental mitigation, remediation and/or enhancement works;

install, construct, use and remove temporary welfare facilities during any periods of maintenance, repair, replacement, renewal, during any periods of maintenance, repair, replacement, renewal, upgrade and removal of the cables and cable ducts;

when the cables are temporarily unusable, to lay down install use maintain and inspect on the surface of the land electric lines telecommunications and ancillary equipment associated works and other conducting media together with conduits or pipes for containing the same in and under the land; and

place temporarily and use plant, machinery and structures on the land in connection with the lighting of the land and the authorised project.

64 – 66
190
197
246 – 248
372 – 376
378 – 379
378A
395

464
466 – 471
471A – 471B

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to –

construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of pull-through within the cable ducts;

retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;

enter the land with or without machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity and telecommunications along the cables and cable ducts;

retain and use the cables for the purposes of the transmission of electricity and telecommunications; and

install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers).

1. The right to enter onto and remain on the land for the purposes of construction, installation, operation, maintenance and decommissioning of the authorised project and to –

construct, lay and install by way of drilling and/or trenching, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables;

construct, lay and install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect and remove the cables by way of pull-through within the cable ducts and jointing works;

retain, maintain, install, use, inspect, modify, improve, maintain, adjust, repair, extend, test, cleanse, and remove temporary or permanent drainage and manage waterflows in any drains, watercourse and culverts;

pass and repass, with or without vehicles, plant, equipment, materials and machinery for the purposes of constructing, laying, installing, adjusting, altering, using, maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;

retain and maintain existing hardstandings and lay down new, use, repair, alter and remove all hardstandings for the purposes of constructing, laying, installing, adjusting, altering, using

maintaining, repairing, replacing, renewing, upgrading, inspecting and removing the cables, cable ducts and jointing works;

enter and be upon the land and remain with or without plant, vehicles, machinery, apparatus and equipment which is ancillary to the purposes of transmitting electricity and telecommunications along the cables, or use of the cable ducts and jointing works;

retain and use the cables for the purposes of the transmission of telecommunications and electricity;

place and use plant, machinery and temporary structures within the land for the installation, construction, maintenance, repairing, renewing, upgrading, inspecting, removal and replacing of the cables, cable ducts and jointing works;

install and maintain cable marker posts to identify the location of the cables, cable ducts and jointing works as required for routine integrity testing;

remove store and stockpile materials (including excavated material) within the Order land;

remove fences, hedges, or other barriers within the land during any period during when construction, maintenance, repair or renewal are being carried out (subject to the prior erection of any temporary stock proof fencing as is reasonably required and the replacement of the original fences, hedges or other barriers following the exercise of the rights);

install, alter, re-lay, maintain, protect, adjust or remove pipes, cables, conduits or apparatus (including the pipes, cables, conduits or apparatus of statutory undertakers);

carry out works to lop, fell, cut or coppice trees or remove roots of trees or hedges or shrubs;

retain and maintain existing temporary permissive paths or lay out temporary permissive paths for public use (if applicable);

remove archaeological artefacts where they would prevent or cause it to be materially more difficult or expensive to construct, lay, install, adjust, alter, use, maintain, repair, replace, renew, upgrade, inspect or remove the cables, cable ducts and jointing works;

carry out environmental mitigation, remediation and/or enhancement works;

install, construct, use and remove temporary welfare facilities during any periods of maintenance, repair, replacement, renewal, during any periods of maintenance, repair, replacement, renewal, upgrade and removal of the cables, cable ducts and jointing works;

when the cables are temporarily unusable, to lay down install use maintain and inspect on the

surface of the land electric lines
telecommunications and ancillary equipment
associated works and other conducting media
together with conduits or pipes for containing
the same in and under the land; and
place temporarily and use plant, machinery and
structures on the land in connection with the
lighting of the land and the authorised project.

2. The right to enter onto and remain on the
land for the purposes of construction,
installation, operation, maintenance and
decommissioning of the authorised project and
to –

pass and repass with or without vehicles, plant,
equipment, materials and machinery to access
adjoining land and highway for the purposes of
laying, installing, adjusting, altering,
constructing, using, maintaining, repairing,
renewing, upgrading, inspecting, removing and
replacing the cables, cable ducts and jointing
works;

retain and maintain existing hardstandings and
lay down new, use, repair, alter and remove all
hardstandings for the purposes of access to
adjoining land and highway;

erect temporary supporting or protective
structures (including the bridging over of or
protection of the apparatus of the statutory
undertakers) for the purposes of access to
adjoining land and highway;

alter, lop, uproot and replant trees, shrubs and
hedges for the purposes of enabling the right to
pass and repass to adjoining land;

retain and maintain existing temporary
permissive paths or lay out temporary
permissive paths for public use (if applicable);
effect access to the highway;

retain, maintain, straighten, widen, repair, alter,
upgrade and use existing access routes for the
purposes of accessing adjoining land and
highway;

remove fences, hedges or other barriers during
any period during which construction,
upgrading, improvement, renewal or removal
are being carried out and/or for the exercise of
the power to access the cables, cable ducts and
jointing works (subject to the prior erection of
any temporary stock proof fencing as is
reasonably required and the replacement or re-
instatement of the fences, hedges or other
barriers following the exercise of the rights);
and

retain and maintain, install, use, inspect,
modify, improve, maintain, adjust, repair,
replace, extend, test, cleanse and remove
temporary or permanent drainage and manage

waterflows in any drains, watercourses and culverts.

“adjoining land” for the purposes of this paragraph 2 means such other parts of the land within the Order limits required for the authorised project.

3. A restrictive covenant over the land for the benefit of the remainder of the Order land to prevent anything to be done in or upon the Order land or any part thereof for the purpose of the erection of any buildings or construction erection or works of any kind (including the foundations or footings thereto);

prevent anything to be done by way of hard surfacing of the Order land with concrete of any kind or with any other material or surface whatsoever without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed if the proposed surfacing would not cause damage to relevant part of the authorised project nor make it materially more difficult or expensive to maintain the authorised project);

prevent anything to be done by way of excavation of any kind in the Order land nor any activities which increase or decrease ground cover or soil levels in any manner whatsoever without the consent in writing of the Undertaker save as are reasonably required for agricultural activities or are required to be carried out by National Grid in order to exercise their rights in relation to their apparatus within the Order land; and

prevent the planting or growing within the Order land of any trees, shrubs or underwood without the consent in writing of the Undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, shrubs or underwood would not cause damage to the relevant part of the authorised project nor make it materially more difficult or expensive to access the relevant part of the authorised project).

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there is substituted the words “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for the words “acquired or taken from him” there is substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there is substituted the words “a right over or restrictive covenant affecting land consisting”;
- (b) for the word “severance” there is substituted the words “right or restrictive covenant over or affecting the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there is substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there is substituted the words “right or restrictive covenant is”.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

(a) 1973 c.26.

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (provisions as to divided land) there is substituted the following section—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right or the imposition of the restrictive covenant would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased or the restrictive covenant imposed without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs, the East Anglia THREE Offshore Wind Farm Order 201[](a) (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

is so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right it has power,

exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act is modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 7

Article 23

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1) Area</i>	<i>(2) Number of land shown on land plan</i>	<i>(3) Purpose for which temporary possession may be taken</i>
County of Suffolk District of Suffolk Coastal	1 – 9 17 – 20 18A 22 24 26 – 38 39 – 43 52 – 69 76 – 80 81 – 82 83 – 91 92 – 93 96 – 98 103 – 106 110 – 116 118 – 132 134 - 150 154 – 156 157 - 161 163 – 175 176 – 181 182 – 184 187 – 204 206 – 209 211 213 215 – 220 216A	Construction and carrying out of the authorised project; worksites for construction and the carrying out of the authorised project; access for carrying out the authorised project.

	218A	
	220A	
	222 – 223	
	227 – 230	
	233 – 234	
	238 – 241	
	243 - 256	
	260 – 267	
	269	
	270 – 281	
	283 - 300	
	302 – 304	
	305 – 311	
	312 – 315	
	316 – 340	
	343 – 344	
	347	
County of Suffolk District of Suffolk Coastal	8	Construction compound; access for carrying out the authorised project.
	17	
	57 – 59	
	94 – 95	
	151 – 153	
	151A	
	221	
	224	
	226	
	229	
	231 – 232	
	240	
	301	
	336	
County of Suffolk District of Suffolk Coastal	9 – 11	
	10A	
	13	
	15	
	20A - 20F	
	38A	
	44 – 51	
	80A	
	82A	
	91A	
	99 – 102	
	100A - 100C	
	107	
	110	
	117	
	117A - 117B	
	133	
	156A	
	175A	
	181A - 181B	
	185	
	201-204	

	205A 231 – 232 235-237 237A 247 257 – 258 269A 304A 311A 315A	
County of Suffolk District of Mid- Suffolk	345, 346 348 – 360 362 – 377 378A, 378, 379 382 – 384 387 389, 390 392 – 397 399, 400 402 – 415 415A, 415B 416 – 418 422, 423 424 – 429 430 – 435 438, 440, 443, 442 444, 445, 445A 446, 449, 464 466 – 471 471A, 471B	Construction and carrying out of the authorised project; worksites for construction and the carrying out of the authorised project; access for carrying out the authorised project.
County of Suffolk District of Mid- Suffolk	391 398,401 401A, 401B 423A, 423B 423C, 423D 423E, 423F 423G, 429A 436, 437 439, 441 447, 448, 465	Laying of hardstandings and improvements to tracks; access for carrying out the authorised project.
County of Suffolk District of Mid- Suffolk	385, 386, 388 443, 454A	Construction compound; access for carrying out the authorised project.

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the affected undertakers referred to in this part of this Schedule the following provisions must, unless otherwise agreed in writing between the undertaker and the affected undertaking concerned, have effect.

2. In this part of this Schedule—

“affected undertaker” means

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989(a);
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(b);
- (c) a water undertaker within the meaning of the Water Industry Act 1991(c); and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development but, for the avoidance of doubt, does not include the undertakers specified in Part 4, Part 5 and Part 6 of this Schedule, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

“alternative apparatus” means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (e) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989), belonging to or maintained by that affected undertaker;
- (f) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (g) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that affected undertaker for the purposes of water supply; and
- (h) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the affected undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

(a) 1989 c. 29. Section 64 sub-paragraph (1) was amended by section 108 and paragraphs 24, 38(1), (3) of Part II of Schedule 6 of the Utilities Act 2000.

(b) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

(c) 1991 c. 56.

“functions” includes powers and duties; and

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land.

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of any provision in this Order or anything shown on the land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of an affected undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the affected undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the affected undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use all reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with **article 33** (arbitration).

(5) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with **article 33** (arbitration), and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the affected undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those

facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with **article 33** (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the affected undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the affected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the affected undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an affected undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an affected undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the affected undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with **article 33** (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an affected undertaker, its officers, servants, contractors or agents.

(3) An affected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

10. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

11.—(1) For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker and the operator, have effect.

(2) In this part of this Schedule—

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system is construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(a);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

12. The exercise of the powers of **article 25** (statutory undertakers) are subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(b).

13.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—
 - (i) make reasonable compensation to an operator for loss sustained by it; and
 - (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand may be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under **article 33** (arbitration).

14. This part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(a) See section 106.

(b) 1984 c.12.

15. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

16. The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 30, any other person on whom rights or obligations are conferred by that paragraph.

17. In this part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as amended from time to time, granted to Network Rail by the Secretary of State in exercise of powers under section 8 of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at Kings Place, 90 York Way, London, N1 9AG and any associated company of Network Rail which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(b)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

18.—(1) Where under this part of this Schedule Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(a) 1993 c.43.

(b) 2006 c.46.

- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

19.—(1) The undertaker must not exercise the powers conferred by **article 14** (authority to survey and investigate the land onshore) or the powers conferred by section 11(3) of the 1965 Act (powers of entry) in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers and electronic code communications operators: preliminary notices), or **article 25** (statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers conferred by this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent or agreement pursuant to this paragraph, such consent or agreement must not be unreasonably withheld but may be given subject to reasonable conditions.

20.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work may not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under **article 33** (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case with all reasonable dispatch and the undertaker may not

commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

21.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 20(4) must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 20;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the undertaker must, regardless of any approval described in paragraph 21(1)(a), make good such damage and pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

22. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

23. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

24.—(1) If any permanent or temporary alterations or additions to railway property, or to any protective works under paragraph 20(4), are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail or the services of operators using the same, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 20(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 25(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

25. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 20(3) or in constructing any protective works under the provisions of paragraph 20(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

26.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 20(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 20(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 20(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of commercial operation of the authorised development and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 21.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 25(a) any modifications to Network Rail's apparatus under this paragraph is deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in **article 33** (arbitration) to an arbitrator to be agreed is to be read as a reference to an arbitrator being a member of the Institution of Electrical Engineers.

27. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

28. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and

any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

29. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, are to be repaid by the undertaker to Network Rail.

30.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision will not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker, such consent not to be unreasonably withheld.

(3) The sums payable by the undertaker under sub-paragraph (1) include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

31. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 30) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

32. In the assessment of any sums payable to Network Rail under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

33. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

34. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

35. The undertaker must give written notice to Network Rail where any application is proposed to be made by the undertaker for the Secretary of State's consent under **article 5** (benefit of the Order) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

36. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with **article 32** (certification of plans etc.), provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

PART 4

FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED

37. For the protection of Anglian Water, the following provisions of this Schedule, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

38. In this part of this schedule—

“Anglian Water” means Anglian Water Services Limited;

“Apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage; and

- (a) any drain or works vested in Anglian Water under The Water Industry Act 1991,
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102 (4) of The Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus.

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“functions” includes powers and duties

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“plan” includes sections, drawings, specifications and method statements.

39. The undertaker must not interfere with, build over or near to any Apparatus within the Order land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling, the following distances to either side of the medial line of any Apparatus—

2.25 metres where the diameter of the pipe is less than 150 millimetres

3 metres where the diameter of the pipe is between 150 and 450 millimetres

4.5 metres where the diameter of the pipe is between 450 and 750 millimetres

6 metres where the diameter of the pipe exceeds 750 millimetres;

unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

40. The alteration, extension, removal or re-location of any Apparatus may not be implemented until

(a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2010 or other legislations and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals or agreement from Anglian Water not to be unreasonably withheld or delayed; and

(b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and description of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water without delay for the alteration or otherwise for the protection of the Apparatus, or for securing access to it.

41. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which Apparatus is placed and such Apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension may take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the Apparatus. Anglian Water must use reasonable endeavours to establish contingency arrangements in a timely manner.

42. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any Apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its Apparatus in the Order land, the undertaker must, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the Apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under **article 33** (arbitration).

43. If in consequence of the exercise of the powers conferred by the Order the access to any Apparatus is materially obstructed the undertaker must provide such alternative means of access to such Apparatus as enables Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

44. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other Apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to Anglian Water and afforded the same protection as other Anglian Water assets.

45. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 4 to 6 and 8 above any damage is caused to any Apparatus (other than Apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of

those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must,

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs properly and reasonably incurred by Anglian Water

by reason or in consequence of any such damage or interruption.

46. Nothing in paragraph (9) above imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Anglian Water, its officer, servants, contractors or agents

47. Any difference or dispute arising between the undertaker and Anglian Water under this Schedule must, unless otherwise agreed in writing between the undertaker and Anglian Water, be determined by arbitration in accordance with **article 33** (arbitration).

PART 5

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER AND NATIONAL GRID GAS DISTRIBUTION LIMITED AS GAS UNDERTAKER

Application

48. For the protection of the statutory undertaker referred to in this Part of this Schedule the following provisions must, unless otherwise agreed in writing between the undertaker and the statutory undertaker, have effect.

Interpretation

49. –(1) In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the statutory undertaker to enable the statutory undertaker to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the statutory undertaker for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or must be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2 of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” has the same meaning as in article 2 of this Order and commencement must be construed to have the same meaning;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreement, enactments and other such interests so as to secure land rights and

interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by the statutory undertaker (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsistence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, must require the undertaker to submit for the statutory undertaker’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” includes the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the statutory undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which must have been approved by the statutory undertaker acting reasonably;

“undertaker” means the undertaker as defined in article 2 of this Order;

“statutory undertaker” means, as appropriate—

- (a) an electricity undertaker being a licence holder within the meaning of Part 1 of the Electricity Act 1989; and
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986.

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which :

- (a) will or may be situated over or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 52 (2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 52 (2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (the statutory undertaker’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”);

(2) Except for paragraphs 50 (apparatus of statutory undertakers in stopped up streets), 54 (Retained apparatus protection: Gas Undertakers), 55 (Retained apparatus protection: Electricity Undertakers), 56 (expenses) and 57 (Indemnity) of this Schedule which must apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of the undertaker, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of statutory undertakers in stopped up streets

50.—(1) Without prejudice to the generality of any other protection afforded to the statutory undertaker elsewhere in the Order, where any street is stopped up under article 10 (*temporary*

stopping up of streets), if the statutory undertaker has any apparatus in the street or accessed via that street the statutory undertaker must be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the statutory undertaker, or must procure the granting to the statutory undertaker of, legal easements reasonably satisfactory to the specified statutory undertaker in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 10 (*temporary stopping up of streets and rights of way*), a statutory undertaker will be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

Acquisition of land

51.—(1) Regardless of any provision in this Order or anything shown on the land plan or contained in the book of reference to the Order, the undertaker must not acquire any land interest or apparatus or override any easement and/or other interest of the statutory undertaker otherwise than by agreement.

(2) As a condition of agreement between the parties in paragraph 51(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between the statutory undertaker and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of the statutory undertaker and/or affects the provisions of any enactment or agreement regulating the relations between the statutory undertaker and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as the statutory undertaker reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between the statutory undertaker and the undertaker acting reasonably and which must be no less favourable on the whole to the statutory undertaker unless otherwise agreed by the statutory undertaker, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and the statutory undertaker agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by the statutory undertaker and/or other enactments relied upon by the statutory undertaker as of right or other use in relation to the apparatus, then the provisions in this Schedule must prevail.

(4) Any agreement or consent granted by the statutory undertaker under paragraphs 54 and 55 or any other paragraph of this Part of this Schedule, must not be taken to constitute agreement under sub-paragraph 51(1).

Removal of apparatus

52.—(1) If, in the exercise of the agreement reached in accordance with paragraphs 54 and 55 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of a statutory undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the statutory undertaker in question in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the

exercise of any of the powers conferred by this Order the statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker to its satisfaction (taking into account paragraph 53(1) below) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the statutory undertaker must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation does not extend to the requirement for the statutory undertaker to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker and the undertaker.

(5) The statutory undertaker must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

53.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for the statutory undertaker facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker and must be no less favourable on the whole to the statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by the statutory undertaker.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the statutory undertaker under paragraph 53(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter must be referred to arbitration in accordance with paragraph 61 (*Arbitration*) of this Part of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus protection: Gas Undertakers

54.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to the statutory undertaker a plan and, if reasonably required by the statutory undertaker, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to the statutory undertaker under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;

- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until the statutory undertaker has given written approval of the plan so submitted.

(4) Any approval of the statutory undertaker required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) and (7); and
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, the statutory undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (4), as approved or as amended from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5) or (7) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker must be entitled to watch and inspect the execution of those works.

(7) Where the statutory undertaker requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the statutory undertakers' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the statutory undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If the statutory undertaker in accordance with sub-paragraphs (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 48 to 50 and 51 to 53 apply as if the removal of the apparatus had been required by the undertaker under paragraph 52(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker must not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the statutory undertaker notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with the statutory undertaker's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(-G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable under any ground subsidence event attributable to the authorised development the undertaker must implement an appropriate ground mitigation scheme save that the statutory undertaker retains the right to carry out any further necessary protective

works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 56.

Retained apparatus protection: Electricity Undertakers

55.—(1) Not less than 56 days before the commencement of any authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 52(2) or otherwise, the undertaker must submit to the statutory undertaker a plan of the works to be executed and seek from the statutory undertaker details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to the statutory undertaker under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing; -

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations must not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by the statutory undertaker's engineers.
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic

(4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until the statutory undertaker has given written approval of the plan so submitted.

(5) Any approval of the statutory undertaker required under sub-paragraphs (2) or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
- (b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraphs (2) or (3) apply, the statutory undertaker may require such modifications to be made to the plans as may be reasonably necessary for the

purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(8) Where the statutory undertaker requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to the statutory undertakers' satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required and the statutory undertaker must give 56 days' notice of such works from the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If the statutory undertaker in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 48 to 50 and 51 to 53 apply as if the removal of the apparatus had been required by the under paragraph 52(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph must apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the statutory undertaker notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with the statutory undertaker's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

56.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to the statutory undertaker on demand all charges, costs and expenses reasonably anticipated or incurred by the statutory undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by the statutory undertaker in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by the statutory undertaker as a consequence of the undertaker;
 - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 52(3); and/or
 - (ii) exercising any compulsory acquisition powers in the Order transferred to or benefitting the statutory undertaker
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement, is not determined by arbitration in accordance with article 33 (*arbitration*) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs must be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

57. (1) Subject to sub-paragraphs (2), (3) and (4), if by reason or in consequence of the construction of any such works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, or the statutory undertaker becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) indemnify that statutory undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the statutory undertaker, by reason or in consequence of any such damage or interruption or the statutory undertaker becoming liable to any third party in accordance with the provisions of this part.

(2) The fact that any act or thing may have been done by a statutory undertaker on behalf of the undertaker or in accordance with a plan approved by a statutory undertaker or in accordance with any requirement of a statutory undertaker or under its supervision does not (subject to sub-paragraph (3)), excuse the undertaker from liability under the provisions of this sub-paragraph (1)).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of a statutory undertaker, its officers, servants, contractors or agents.

(4) A statutory undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without first consulting the undertaker and considering their representations (such representations not to be unreasonably withheld or delayed).

Enactments and agreements

58. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the statutory undertaker and the undertaker, nothing in this Part of this Schedule must affect the provisions of any enactment or agreement regulating the relations between the undertaker and the statutory undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

59.—(1) Where in consequence of the proposed construction of any of the authorised works, the undertaker or a statutory undertaker requires the removal of apparatus under paragraph 52(2) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraphs 54 and 55, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the statutory undertaker's undertaking and each statutory undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever the statutory undertaker's consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

60. If in consequence of the agreement reached in accordance with paragraph 51(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

61. Save for differences or disputes arising under paragraph 52(2), 52(4), 53(1), 54, 55 and 57(5) any difference or dispute arising between the undertaker and the statutory undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the statutory undertaker, be determined by arbitration in accordance with **article 33** (*arbitration*).

PART 6

FOR THE PROTECTION OF EAST ANGLIA ONE LIMITED

Application

62. For the protection of the statutory undertaker the following provisions, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned, have effect.

Interpretation

63. In this Part of this Schedule—

“1991 Act” means the New Roads and Street Works Act 1991;

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of the statutory undertaker to enable the statutory undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means, electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by that undertaker;

“authorised development” means the development authorised by this Order;

“commence” has the same meaning as article 2 of this Order;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the statutory undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“undertaker” means the undertaker who owns and/or operates the transmission assets under this Order

“statutory undertaker” means, for the area of the authorised development, and in relation to any apparatus, the statutory undertaker who owns and/or operates the transmission assets under the East Anglia ONE Offshore Wind Farm Order 2014 (as amended).

Apparatus of undertakers in stopped up streets

64. Notwithstanding the temporary stopping up or diversion of any highway under the powers of **article 10** (temporary stopping up of streets), a statutory undertaker may be at liberty at all times to take all necessary access across any such stopped up highway and/or to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway subject always to the undertaking of works by the undertaker authorised by the Order.

Acquisition of land

65. Regardless of any provision in the Order or anything shown on the land plan or contained in the book of reference to the Order, the undertaker must not acquire any interest in land or any apparatus or override any easement or other interest of the statutory undertaker otherwise than by agreement, such agreement not to be unreasonably withheld or delayed.

Removal of apparatus

66.—(1) If, in the exercise of the agreement reached in accordance with paragraph 65 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed and any right of a statutory undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the statutory undertaker in question in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under the Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory undertaker 56 days' advance written notice of that requirement (or such lesser period of notice agreed by the statutory undertaker, acting reasonably), together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by the Order a statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker to their reasonable satisfaction (taking into account 67(1) below) the necessary facilities and rights —

- (a) For the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the statutory undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed except that this obligation does not extend to the requirement for the statutory undertaker to use its compulsory purchase powers to this end unless it elects to so do

(4) Any alternative apparatus to be constructed in land of the undertaker must be constructed in such manner and in such line or situation as may be reasonably agreed between the statutory undertaker and the undertaker.

(5) The statutory undertaker must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions hereof.

Facilities and rights for alternative apparatus

67.—(1) Where, in accordance with the provisions hereof, the undertaker affords to a statutory undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be reasonably agreed between the undertaker and the statutory undertaker and must be no less favourable on the whole to the statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by the statutory undertaker (acting reasonably).

(2) If the facilities and rights to be afforded by the undertaker and agreed with the statutory undertaker under 67(1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the statutory undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection: electricity undertakers

68.—(1) Not less than 56 days (or such lesser period agreed by the statutory undertaker, acting reasonably) before commencing the execution of any works authorised by the Order that are near to, or will or may affect any apparatus the removal of which has not been required by the undertaker under paragraph 66(2) or otherwise, the undertaker must submit to the statutory undertaker a plan.

(2) In relation to works which will or may be situated on, over, under or within five metres measured in any direction of any apparatus, or involve embankment works within 5 metres of any apparatus, the plan to be submitted to the statutory undertaker under sub-paragraph (1) must be detailed including a material statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation and positioning of plant;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus.

(3) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (1) or (2) applies until the statutory undertaker has given written approval of the plan so submitted.

(4) Any approval of the statutory undertaker required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
- (b) must not be unreasonably withheld or delayed.

(5) In relation to a work to which sub-paragraph (1) or (2) applies, the statutory undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus provided that such modifications are made within a period of 56 days beginning with the date on which the plan under sub-paragraph (1) is submitted to it (or such lesser period agreed by the statutory undertaker, acting reasonably). For the avoidance of doubt, provided that any further iterations of the plan submitted to the statutory undertaker for approval as a result of modifications required under this paragraph are not materially different to the modifications previously made by the statutory undertaker, any further required modifications will be made by the statutory undertaker as soon as reasonably practicable thereafter and in any event within 21 days of receipt of any further plans.

(6) Works executed under the Order must be executed only in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub paragraph (2), as amended from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(7) Where statutory undertakers require any protective works to be carried out either themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the statutory undertaker's satisfaction prior to the carrying out of any works authorised by the Order or any relevant part thereof (unless otherwise agreed by the statutory undertaker, acting reasonably) and the statutory undertaker must give notice of such works as soon as reasonably practicable and in any event within 56 days from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If a statutory undertaker in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives

written notice to the undertaker of that requirement, paragraphs 62 to 64 and 67 to 68 apply as if the removal of the apparatus had been required by the undertaker under paragraph 66(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works (unless otherwise agreed by the statutory undertaker, acting reasonably), a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(10) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to the statutory undertaker notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances.

Expenses

69.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker on demand all charges, costs and expenses reasonably and properly incurred by that statutory undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to herein including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that the statutory undertaker elects to use powers of compulsory acquisition to acquire any necessary rights under 66(3) all costs incurred as a result of such action;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to herein.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions hereof and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions hereof —

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or in default of agreement settled by arbitration in accordance with **article 33** (arbitration) of the Order to be necessary, then, if such placing involves cost in the construction of works under the provisions hereof exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the

existing type of operations, capacity, dimensions or place at the existing depth in which case full costs must be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)-

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to the statutory undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Compensation

70.—(1) Subject to sub-paragraphs (2), (3) and (4), if by reason or in consequence of the construction of any such works authorised herein or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under the provisions herein or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of the statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the statutory undertaker, or the statutory undertaker becomes liable to pay any amount to any third party, the undertaker must

- (a) bear and pay on demand the cost reasonably incurred by the statutory undertaker in making good such damage or restoring the supply; and
- (b) compensate the statutory undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the statutory undertaker, by reason or in consequence of any such damage or interruption or the statutory undertaker becoming liable to any third party in accordance with the provisions of this part.

(2) The fact that any act or thing may have been done by the statutory undertaker on behalf of the undertaker or in accordance with a plan approved by the statutory undertaker or in accordance with any requirement of the statutory undertaker or under its supervision does not (subject to sub-paragraph (3)), excuse the undertaker from liability under the provisions of this paragraph.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of the statutory undertaker, its officers, servants, contractors or agents.

(4) The statutory undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without first consulting the undertaker and considering their representations (such representations not to be unreasonably withheld or delayed).

Enactments and agreements

71. Nothing herein affects the provisions of any enactment or agreement regulating the relations between the undertaker and the statutory undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.

Co-operation

72. Where in consequence of the proposed construction of any of the authorised development, the undertaker or the statutory undertaker requires the removal of apparatus under paragraph 66(2) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 68 the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the statutory undertaker's undertaking and the statutory undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

Access

73. If in consequence of the agreement reached in accordance with paragraph 65 or the powers granted under the Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as enables the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

74. Save for differences or disputes arising under paragraph 66(2), 66(4), 67(1) and 68, any difference or dispute arising between the undertaker and the statutory undertaker must, unless otherwise agreed in writing between the undertaker and the statutory undertaker, be determined by arbitration in accordance with **article 33** (arbitration) of the Order.

PART 7

FOR THE PROTECTION OF OIL AND GAS LICENSEES

Application

75. For the Protection of the Licensees from time to time of United Kingdom Petroleum Production Licence P1965, unless otherwise agreed in writing between the Undertaker and the Licensees the provisions of this part of this Schedule shall have effect.

Interpretation

76. In this Part of this Schedule—

“Applicable Laws” means applicable laws, rules, orders, guidelines and regulations, including without limitation, those relating to health, safety and the environment and logistics activities such as helicopter and vessel operations;

“Good Offshore Wind Farm Construction Practice” means the application of those methods and practices customarily used in construction of wind farms in the United Kingdom Continental Shelf with that degree of diligence and prudence reasonably and ordinarily exercised by experienced operators and contractors engaged in the United Kingdom Continental Shelf in a similar activity under similar circumstances and conditions;

“Good Oilfield Practice” means the application of those methods and practices customarily used in good and prudent oil and gas field practice in the United Kingdom Continental Shelf with that degree of diligence and prudence reasonably and ordinarily exercised by experienced operators engaged in the United Kingdom Continental Shelf in a similar activity under similar circumstances and conditions;

“Guidance” means the ‘Oil and gas clause in Crown Estate leases, Guidance on procedures for independent valuation where necessary’ published by the then Department of Energy and Climate Change in June 2014, or any similar supplementary or replacement policy;

“Licence” means United Kingdom Petroleum Production Licence P.1965;

“Licensees” means the licensees from time to time of the Licence;

“Licensees’ Works” means any infrastructure to be installed owned and occupied or maintained by or on behalf of the Licensees or exploration, appraisal, development and decommissioning activities (and associated logistics activities), by the Licensees in connection with the Licence within the Protected area;

“Ministerial Statement” means the written statement given by the then Secretary of State for Energy and Climate Change to the UK Parliament regarding Crown Estate Leases for Offshore Renewables Projects on 12 July 2011, or any similar supplementary or replacement policy;

“Plan of the Licensees’ Works” means an exploration and development programme and details and location of Licensees’ Works and minimum requirements known at that time such as exclusive zones in accordance with Good Oilfield Practice and Applicable Laws to enable the Licensees to, as applicable, explore, appraise, develop and/or decommission hydrocarbon resources within the Protected area;

“Plan of the Undertakers’ Works” means a construction programme and details of location of the Undertakers’ Works and minimum requirements known at that time such as safety and exclusion zones in accordance with Good Offshore Wind Farm Construction Practice and Applicable Laws to enable the Undertaker to construct and operate the Undertakers’ Works within the Protected area;

“the Protected area” means the area coloured green on the Protective Provisions Plan (that area coloured green being delineated by a line drawn between the points in the Table of Co-ordinates);

“the Protective Provisions Plan” means the plan entitled Protective Provisions Plan and certified as the Protective Provisions Plan for the purposes of this Part of this Schedule;

“Proximity Agreement” means an agreement between the Undertaker and the Licensees to reconcile and protect the interests of the parties as are known at the time to secure the implementation of the Undertakers’ Works and the Licensees’ Works, taking account of the matters in paragraph 84;

“the Table of Co-ordinates” means the following table—

<i>Area</i>	<i>Label Point</i>	<i>Latitude X (European Datum 1950 UTM Zone 31N)</i>	<i>Longitude Y (European Datum 1950 UTM Zone 31N)</i>
1	A	483,799.57	5,834,052.15
	B	494,193.52	5,830,959.70
	C	490,468.86	5,823,847.11
	D	483,750.96	5,823,832.51
2	E	500,000.00	5,846,795.24
	F	502,637.55	5,847,084.40
	G	500,000.00	5,842,047.75

“Undertakers’ Works” means the works permitted in this Order within the Protected area.

Proximity Agreement

77. Save as provided in paragraphs 83 and 85 no part of the Undertakers’ Works shall commence until either—

- (i) a Proximity Agreement has been concluded between the Undertaker and the Licensees in respect of that part of the Undertakers’ Works; or
- (ii) the Undertaker and the Licensees shall have agreed in writing that no Proximity Agreement is required in respect of that part of the Undertakers’ Works

78. Preparation of a Proximity Agreement must commence when the Undertaker serves Notice on the Licensees of the Undertaker’s intention to commence any part of the Undertaker’s Works

79. Any such notice must be served within no less than 12 months of the intended commencement date of that part of the Undertakers' Works and within no less than 12 months of the grant of the Order and shall include a Plan of that part of the Undertakers' Works and a request to the Licensees to produce a Plan of the Licensees' Works

80. In response to the notice the Licensee shall produce a Plan of the Licensees' Works within 28 days of service of the notice.

81. Preparation of a Proximity Agreement must be concluded within 3 months of the date for production of the Plan of the Licensees' Works under paragraph 80 above

82. If the Undertaker considers that the Plan of the Licensees' Works produced pursuant to paragraph 80 above provides insufficient detail of—

- (i) the existence of a realistic oil and gas prospect within the Protected area and/or
- (ii) the nature and location of the Licensees' Works in order to enable the Undertaker to define or mitigate the effects of the Undertakers' Works on the Licensees' Works and/or
- (iii) any area of sea required for the Licensees' Works having been minimised in light of (i) above

to enable a Proximity Agreement to be concluded which contains ongoing limitations on the programming siting design construction or operation of the Undertakers' Works or the Order works the Undertaker must notify the Licensees of the additional detail required whereupon the Licensees must provide all such additional detail within 28 days of such notification by the Undertaker.

83. Paragraph 77 shall not apply if the plan of the Licensees' Works or additional detail provided pursuant to paragraph 82 above provides insufficient detail for the purposes set out in paragraph 82 above.

84. The Proximity Agreement must be based on the Plan of the Licensees' Works and the Plan of the Undertakers' Works and must take account of—

- (i) the nature and location of the Licensees' Works on any Plan of the Licensees' Works as known at that time
- (ii) the location and extent of sea required for the Licensees' Works (including all applicable exclusive zones) on any Plan of the Licensees' Works as known at that time
- (iii) all such evidence as is available at the time to support the existence of an oil and gas prospect within the Protected area
- (iv) the ability of the Licensees to reduce or remove its sea area requirement under (ii) above in light of evidence at (iii) above, whether with immediate effect or at a specified later date
- (v) the date by which the Licensees will seek to commence exploitation, or at which works of exploration, will cease as known at that time
- (vi) the siting and design of the Undertakers' Works on any Plan of the Undertakers' Works as known at that time
- (vii) the minimum feasible exclusive zones, buffer zones or safety zones required for safe construction and operation between the Undertakers' Works and the Licensees' Works
- (viii) protocols protective of navigation communication and use of the sea by third parties
- (ix) possible future transfer of the benefit of the Order or of the Licence
- (x) the desirability of co-existence and the ongoing commercial viability of the authorised development permitted under the Order together with exploration for and commercial exploitation of oil and gas within the Protected area

Arbitration

85. If no Proximity Agreement is concluded or the parties shall not have agreed whether paragraph 83 applies within the period specified in paragraph 81 the outstanding matters in dispute must be referred to an arbitrator and the Undertakers' Works must not commence until the determination of the arbitrator has been made and must only be implemented in accordance with the arbitrator's determination which is final and binding on the parties (save for manifest or legal error)—

- (i) the arbitration shall be decided by a sole arbitrator whose appointment shall be agreed by the parties
- (ii) the arbitrator shall be a person (including one who has retired) with not less than ten years' experience of offshore oil and gas development or offshore wind farm development or as a lawyer or other professional advisor serving those industries
- (iii) where the parties fail to agree to appoint an arbitrator within 28 days of the delivery of a notice of arbitration, then upon application the Secretary of State will appoint an arbitrator within 28 days. At any time prior to the appointment by the Secretary of State the parties may make an appointment
- (iv) the intention of the parties is that, so far as is practical, the arbitrator should make a determination within 3 months of appointment
- (v) the seat of arbitration shall be London

Provision of information

86. Without prejudice to any other rights or obligations under this Part of the Schedule the Licensees and the Undertaker shall from time to time keep each other informed of relevant activities such that the Licensees and the Undertaker may seek to agree solutions to allow the Undertakers' works and the Licensees' works to successfully co-exist as far as reasonably practicable or if later until completion of activities required under any statutory decommissioning plan required under the Petroleum Act 1998 in relation to the Licence and taking place within the Protected area

Compensation

87. Nothing in this Part of the Schedule shall affect any rights or obligations or assessment of compensation in accordance with the Ministerial Statement and the DECC Guidance (as applicable)

SCHEDULE 9

Article 31

HEDGEROWS

PART 1

REMOVAL OF HEDGEROWS

<i>(1) Area</i>	<i>(2) Reference of hedgerow</i>
Suffolk Coastal District	The hedgerow marked 3 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 7 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 8 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 9 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 10 on the hedgerows plan

Suffolk Coastal District	The hedgerow marked 11 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 18 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 20 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 26 on the hedgerows plan
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Suffolk Coastal District	The hedgerow marked 43 on the hedgerows plan
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Suffolk Coastal District	The hedgerow marked 52 on the hedgerows plan
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Suffolk Coastal District	The hedgerow marked 56 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 59 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 60 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 71 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 81 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 85 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 93 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 96 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 105 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 111 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 122 on the hedgerows plan

Suffolk Coastal District	The hedgerow marked 126 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 127 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 132 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 141 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 147 on the hedgerows plan
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Suffolk Coastal District	The hedgerow marked 153 on the hedgerows plan
Suffolk Coastal District	The hedgerow marked 163 on the hedgerows plan
Mid Suffolk District	The hedgerow marked 180 on the hedgerows plan
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Mid Suffolk District	The hedgerow marked 184 on the hedgerows plan
Mid Suffolk District	The hedgerow marked 185 on the hedgerows plan
Mid Suffolk District	The hedgerow marked 196 on the hedgerows plan
Mid Suffolk District	The hedgerow marked 197 on the hedgerows plan
Mid Suffolk District	The hedgerow marked 198 on the hedgerows plan
Mid Suffolk District	The hedgerow marked 199 on the hedgerows plan
Mid Suffolk District	The hedgerow marked 200 on the hedgerows plan
Mid Suffolk District	The hedgerow marked 201 on the hedgerows plan
Mid Suffolk District	The hedgerow marked 202 on the hedgerows plan
Mid Suffolk District	The hedgerow marked 205 on the hedgerows plan
Mid Suffolk District	The hedgerow marked 206 on the hedgerows plan
Mid Suffolk District	The hedgerow marked 216 on the hedgerows plan
Mid Suffolk District	The hedgerow marked 229 on the hedgerows plan
Mid Suffolk District	The hedgerow marked 230 on the hedgerows plan

PART 2
REMOVAL OF IMPORTANT HEDGEROWS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Reference of hedgerow</i>
Suffolk Coastal District	The important hedgerow marked 1 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 2 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 4 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 5 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 6 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 12 on the hedgerows plan
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Suffolk Coastal District	The important hedgerow marked 24 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 25 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 27 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 31 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 32 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 33 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 34 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 36 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 38 on the hedgerows plan

Suffolk Coastal District	The important hedgerow marked 77 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 78 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 79 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 80 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 82 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 83 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 84 on the hedgerows plan
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Suffolk Coastal District	The important hedgerow marked 87 on the hedgerows plan
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Suffolk Coastal District	The important hedgerow marked 94 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 95 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 97 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 98 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 99 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 100 on the hedgerows plan
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Suffolk Coastal District	The important hedgerow marked 103 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 104 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 106 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 107 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 108 on the hedgerows plan

Suffolk Coastal District	The important hedgerow marked 142 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 143 on the hedgerows plan
Suffolk Coastal District	The important hedgerow marked 144 on the hedgerows plan
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SCHEDULE 10

Article 28

DEEMED LICENCE UNDER THE 2009 ACT – GENERATION ASSETS (LICENCE 1 – PHASE 1)

PART 1

Licensed Marine Activities

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“2007 Regulations” means the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“authorised deposits” means the substances and articles specified in paragraph 2(3) of this licence;

“authorised scheme” means Work No. 1 described in paragraph 3 of this licence or any part of that work;

“buoy” means any floating device used for navigational purposes or measurement purposes, including LIDAR buoys, wave buoys and guard buoys;

“cable protection” means measures for cable crossings and where cable burial is not possible due to ground conditions, to protect cables and prevent loss of seabed sediment by use of grout bags, protective aprons, mattresses, flow energy dissipation (frond) devices or rock and gravel dumping;

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

“commence” means the first carrying out of any part of the licensed activities save for pre-construction surveys and monitoring and “commenced” and “commencement” must be construed accordingly;

“condition” means a condition in Part 2 of this licence;

“deemed transmission assets marine licences” means the licences set out in **Schedule 12** (deemed licence under the 2009 Act – transmission assets (licence 1 – phase 1)) and **Schedule 13** (deemed licence under the 2009 Act – transmission assets (licence 2 – phase 2)) and deemed by **article 28** (deemed marine licences under the 2009 Act) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands B75 7RL and any successor body to its functions;

“draught height” means the distance between the lowest point of the rotating blade of the wind turbine generator and MHWS;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“European offshore marine site” has the meaning given in regulation 15 of the 2007 Regulations;

“European site” has the meaning given in regulation 24 of the 2007 Regulations;

“gravity base foundation” means a structure principally of steel, concrete, or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or additional skirts and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“in principle monitoring plan” means the document certified as the in principle monitoring plan by the Secretary of State for the purposes of this Order;

“jacket foundation” means a steel jacket/ lattice-type structure constructed of steel which is fixed to the seabed at two or more points with steel pin piles or steel suction caissons and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment, and “discrete jacket foundation types” includes pre-piled or post-piled jackets, three-legged or four legged jackets, or straight or battered leg jackets;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this licence;

“LAT” means lowest astronomical tide;

“licence 2 (generation)” means the licence set out in **Schedule 11** (deemed licence under the 2009 Act – generation assets (licence 2 – phase 2));

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of **Schedule 1** (ancillary works)

and any component part of any wind turbine generator, offshore electrical station, accommodation platform or meteorological mast described in Part 1 of **Schedule 1** (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” is construed accordingly;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“meteorological mast” means a mast housing equipment to measure wind speed and other wind characteristics, including a topside housing electrical, communication and associated equipment and marking and lighting;

“monopile foundation” means a steel pile, typically cylindrical, driven and/ or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“notice to mariners” means a notice issued by the undertaker to mariners to inform them of issues that affect the safety of navigation;

“offshore cables” means any Alternating Current (AC) or Direct Current (DC) cables offshore and includes fibre optic cables either within the cable or laid alongside;

“offshore Order limits” means the limits shown on the works plan within which the authorised scheme may be carried out, whose grid coordinates are set out in paragraph 3 of this licence;

“offshore platform” means any offshore electrical station and any offshore accommodation platform;

“the Order” means the East Anglia THREE Offshore Wind Farm Order 201X;

“outline navigation monitoring strategy” means the document certified as the outline navigation monitoring strategy by the Secretary of State for the purposes of this Order;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of the Order;

“outline written scheme of investigation (offshore)” means the document certified as the outline written scheme of investigation (offshore) by the Secretary of State for the purposes of this Order;

“relevant site” means a European offshore marine site and a European site;

“single offshore phase” means carrying out all offshore works as a single construction operation;

“Southern North Sea possible Special Area of Conservation” means the Southern North Sea possible Special Area of Conservation as set out in the JNCC 2016 Harbour Porpoise Possible Special Area of Conservation Consultation dated January 2016;

“statutory historic body” means Historic England or its successor in function;

“suction caissons” means large diameter steel cylindrical shells which penetrate the seabed assisted by hydrostatic pressure differential for fixity of steel jacket foundations;

“suction caisson foundation” means a tubular steel structure which penetrates the seabed assisted by a hydrostatic pressure differential and associated equipment, including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“two offshore phases” means carrying out the offshore works as two separate construction operations pursuant to the deemed marine licences set out in schedules 10, 12 and 14 (Licence 1 – Phase 1) of the Order and schedules 11, 13 and 15 (Licence 2 – Phase 2) of the Order respectively;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“undertaker” means East Anglia THREE Limited;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation;

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order.

(2) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

(a) Marine Management Organisation

Offshore Marine Licensing
Lancaster House
Hampshire Court
Newcastle Business Park
Newcastle upon Tyne
NE4 7YH
Tel: 0300 123 1032;

(b) Marine Management Organisation (local office)

Marine Environment Team
Pakefield Road
Lowestoft
Suffolk
NR33 0HT;

(c) Trinity House

Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;

(d) The United Kingdom Hydrographic Office

Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;

- (e) Maritime and Coastguard Agency
Navigation Safety Branch
Bay 2/20, Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 020 3817 2433;
- (f) Centre for Environment, Fisheries and Aquaculture Science
Pakefield Road
Lowestoft
Suffolk
NR33 0HT
Tel: 01502 562 244;
- (g) Natural England
Area 1C, Nobel House
17 Smith Square
London
SW1P 2AL
Tel: 0300 060 4911;
- (h) Historic England
Eastgate Court
195-205 High Street
Guildford
GU1 3EH
Tel: 01483 252 059.

Details of licensed marine activities

2. Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act—

- (a) the deposit at sea of the substances and articles specified in sub-paragraph (3) below;
- (b) the construction of works in or over the sea and/or on or under the sea bed;
- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation; and
- (d) the disposal of up to 1,646,317 m³ of inert material of natural origin within the offshore Order limits produced during construction drilling or seabed preparation for foundation

works and cable sandwave preparation works at disposal site reference HU212 within the extent of the Order limits seaward of MHWS, comprising—

- (i) 47,342 m³ for cable installation;
- (ii) 1,505,000 m³ for the wind turbine generators;
- (iii) 73,225 m³ for the accommodation platform (which may alternatively be disposed under licence 2 (generation)); and
- (iv) 20,750 m³ for the meteorological masts (10,375 m³ or all of which may alternatively be disposed under licence 2 (generation)).

3. Such activities are authorised in relation to the construction, maintenance and operation of—

(1) Work No. 1 (phase 1)—

- (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 600 MW comprising up to 86 wind turbine generators each fixed to the seabed by one of four foundation types (namely, monopile, jacket, suction caisson or gravity base), fitted with rotating blades and situated within the area shown on the works plan and further comprising (b) to (e) below;
- (b) up to one accommodation platform fixed to the seabed within the area shown on the works plan by one of two foundation types (namely jacket or gravity base) (which may alternatively be constructed under licence 2 (generation));
- (c) up to two meteorological masts fixed to the seabed within the area shown on the works plan by one of four foundation types (namely monopile, jacket, suction caisson or gravity base) (one or both of which may alternatively be constructed under licence 2 (generation));
- (d) up to 12 buoys fixed to the seabed within the area shown on the works plan (some or all of which may alternatively be constructed under licence 2 (generation));
- (e) a network of subsea inter-array cables within the area shown on the works plan between the wind turbine generators and between the wind turbine generators and Work No.2 including one or more cable crossings.

(2) In connection with such Work No. 1 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised scheme and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence.

(3) In connection with such Work No. 1, ancillary works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/ or maintenance of the authorised scheme; and
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works.

4. The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling or seabed preparation for foundation works and cable sandwave preparation works; and
- (g) marine coatings, other chemicals and timber.

5. The grid coordinates for the authorised scheme are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	52° 30' 20.026"N	2° 48' 33.266"E	3	52° 45' 10.569"N	2° 45' 33.773" E
2	52° 31' 32.067"N	2° 45' 31.868"E	4	52° 46' 18.078"N	3° 02' 15.841" E

6. This licence remains in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of section 72 of the 2009 Act apply to this licence except that the provisions of section 72(7) relating to the transfer of the licence only apply to a transfer not falling within **article 5** (benefit of the Order).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

9. Any amendments to or variations from the approved plans, protocols or statements must be minor or immaterial where it has been demonstrated that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

PART 2

Conditions

Design parameters

1.—(1) Subject to paragraph (3), wind turbine generators forming part of the authorised scheme must not—

- (a) exceed a height of 247 metres when measured from LAT to the tip of the vertical blade;
- (b) exceed a height of 150.6 metres to the height of the centreline of the generator shaft forming part of the hub when measured from LAT;
- (c) exceed a rotor diameter of 220 metres;
- (d) be less than 675 metres from the nearest wind turbine generator in either direction perpendicular to the approximate prevailing wind direction (crosswind) or be less than 900 metres from the nearest wind turbine generator in either direction which is in line with the approximate prevailing wind direction (downwind);
- (e) have a draught height of less than 22 metres from MHWS.

(2) The number of wind turbine generators with a draught height of less than 24m from MHWS comprised in the authorised scheme and the authorised scheme in licence 2 (generation) taken together must not exceed 52 turbines

(3) In condition 1(1) and 1(2) above, references to the location of a wind turbine generator are references to the centre point of that turbine.

2.—(1) The total number of accommodation platforms forming part of the authorised scheme and the authorised scheme in licence 2 (generation) taken together must not exceed one (whether constructed under this licence and/or licence 2 (generation)).

(2) The dimensions of any accommodation platform forming part of the authorised scheme must not exceed 60 metres in height when measured from LAT, 70 metres in length and 70 metres in width.

(3) The total number of meteorological masts forming part of the authorised scheme and the authorised scheme in licence 2 (generation) taken together must not exceed two (whether constructed under this licence and/or licence 2 (generation)).

(4) Each meteorological mast must not exceed a height of 160 metres above LAT.

(5) Each meteorological mast must not have more than one supporting foundation.

(6) The dimensions of any buoy forming part of the authorised scheme must not exceed 6 metres in height (excluding any apparatus or equipment fixed to the buoy), 4 metres in length and 4 metres in width and the anchor footprint must not exceed 4m².

(7) The total number of buoys forming part of the authorised scheme and the authorised scheme in licence 2 (generation) taken together must not exceed twelve (whether constructed under this licence and/or licence 2 (generation)).

(8) Offshore platforms forming part of the authorised scheme must not be erected within the platform exclusion zone, whose co-ordinates are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	52° 30' 20.0268" N	2° 48' 33.264" E	3	52° 32' 10.4568" N	2° 45' 31.9572" E
2	52° 31' 32.0664" N	2° 45' 31.8672" E	4	52° 30' 48.7369" N	2° 48' 57.7512" E

(9) In the event that driven or part-driven pile foundations are proposed to be used, the hammer energy used to drive or part-drive the pile foundations must not exceed 3,500kJ.

3.—(1) The total length of the cables and the volume of their cable protection must not exceed the following—

<i>Work</i>	<i>Length</i>	<i>Cable protection</i>
Work No. 1(e) (inter-array)	275 kilometres	24,750 m ³

4.—(1) In relation to a wind turbine generator, each gravity base foundation must not have—

- (a) a diameter at the level of the seabed which is more than 60 metres;
- (b) a base height, where there is a flat base and a cylindrical shaft, which is more than 12 metres above the level of the seabed;
- (c) a base height, where there is a conical base, which is more than 2 metres above the level of the seabed;
- (d) a column diameter, where there is a flat or conical base, which is more than 9 metres at LAT.

(2) In relation to a wind turbine generator, each suction caisson foundation must not have—

- (a) a diameter at the level of the seabed which is more than 30 metres;
- (b) a base height where there is a flat base, which is more than 5 metres above the level of the seabed;
- (c) a column diameter which is more than 9 metres at LAT.

(3) In relation to a wind turbine generator, each jacket foundation must not have:

- (a) a width spacing between its legs at the level of the seabed which is more than 43.5 metres;
- (b) a pile diameter which is more than 4 metres in the case of pin piles or a suction caisson diameter which is more than 10 metres;

- (c) more than one pile per leg or more than one suction caisson per leg;
- (d) more than four legs.

(4) In relation to a wind turbine generator, each monopile foundation forming part of the authorised scheme must not have a diameter which is more than 12 metres.

5.—(1) In relation to a meteorological mast, each gravity base foundation must not have a diameter at the level of the seabed which is more than 20 metres.

(2) In relation to a meteorological mast, each suction caisson foundation must not have a diameter at the level of the seabed which is more than 15 metres.

(3) In relation to a meteorological mast, each jacket foundation must not have a footprint at the seabed which is more than 625 m².

(4) In relation to a meteorological mast, each monopile foundation forming part of the authorised development must not have a diameter which is more than 8 metres.

(5) In relation to an accommodation platform, each gravity base foundation must not have a footprint of more than 15,855 m².

(6) In relation to an accommodation platform, each jacket foundation must not have—

- (a) a footprint at the seabed which is more than 15,855 m²;
- (b) more than one pile per leg or more than one suction caisson per leg.

6. The total amount of scour protection for the wind turbine generators, accommodation platform and meteorological masts forming part of the authorised scheme must not exceed 1,297,460m² and taken together with the authorised scheme in licence 2 (generation) must not exceed 2,572,460m² (whether installed under this licence and/or licence 2 (generation)).

Notifications and inspections

7.—(1) The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with **condition 15**; and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with **condition 15**;
- (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with **condition 15** are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

- (a) the undertaker's registered address;
- (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities.

(7) The undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part—

- (a) at least ten days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and
- (b) on completion of construction of all offshore activities.

Confirmation of notification must be provided to the MMO within five days.

(8) A notice to mariners must be issued at least ten days prior to the commencement of the licensed activities or any part of them advising of the start date of Work No. 1 (wind turbine generators or other offshore construction activities including array cables) and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO and UKHO within five days.

(9) The notices to mariners must be updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under **condition 13(b)**. Copies of all notices must be provided to the MMO and UKHO within five days.

(10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO.

(11) In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify MMO, MCA, Trinity House and the UK Hydrographic Office.

Aids to navigation

8.—(1) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) The undertaker must during the period from the start of construction of the authorised scheme to completion of decommissioning seaward of MHWS keep Trinity House and the MMO informed of progress of the authorised scheme seaward of MHWS including the following—

- (a) notice of commencement of construction of the authorised scheme within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within five days of completion of construction of the authorised scheme.

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan agreed pursuant to **condition 13(k)** using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS notify Trinity House and the MMO of any failure of the aids to navigation and the timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the undertaker becoming aware of any such failure.

(5) In the event that the provisions of **condition 7(11)** are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

9.—(1) The undertaker must colour all structures yellow (colour code RAL 1023) from at least highest astronomical tide to a height directed by Trinity House, or must colour the structure as directed by Trinity House from time to time.

(2) Subject to sub-paragraph (1) above, unless the MMO otherwise directs, the undertaker must ensure that the wind turbine generators are painted light grey (colour code RAL 7035).

Aviation safety

10.—(1) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, at least 14 days prior to the commencement of the authorised scheme, in writing of the following information—

- (a) the date of the commencement of construction of the authorised scheme;
- (b) the date any wind turbine generators are brought into use;
- (c) the maximum height of any construction equipment to be used;
- (d) the maximum heights of any wind turbine generator, mast and platform to be constructed;
- (e) the latitude and longitude of each wind turbine generator, mast and platform to be constructed,

and the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph and of the completion of the construction of the authorised scheme. Copies of notifications must be provided to the MMO.

Chemicals, drilling and debris

11.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised scheme, including any chemical agents placed within any monopile void, must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(5) The undertaker must ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations, and drilling mud is disposed of within site disposal reference HU212 within the extent of the Order limits seaward of MHWS. Any other materials must be screened out before disposal at this site.

(6) The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(7) In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker must report the loss to the District Marine Office within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it.

(8) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(9) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under **condition 13(d)(i)**.

(10) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if reasonable to do so.

Force majeure

12.—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life and/or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

13.—(1) The licensed activities or any part of those activities must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO—

- (a) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, to be agreed in writing with the MMO in consultation with Trinity House and the MCA which shows—
 - (i) the proposed location and choice of foundation of all wind turbine generators, accommodation platforms and meteorological masts;
 - (ii) the height to the tip of the vertical blade; height to the centreline of the generator shaft forming part of the hub;
 - (iii) rotor diameter and spacing of all wind turbine generators;
 - (iv) the height of all lattice towers forming part of the meteorological mast;
 - (v) the length and arrangement of all cables comprising Work No. 1(e);
 - (vi) the dimensions of all gravity base foundations;
 - (vii) the dimensions of all jacket foundations;
 - (viii) the dimensions of all suction caisson foundations;
 - (ix) the dimensions of all monopile foundations;
 - (x) the proposed layout of all wind turbine generators (in accordance with the recommendations for layout contained in MGN543), accommodation platforms and meteorological masts including any exclusion zones identified under sub-paragraph 13(1)(h)(iv);
 - (xi) a plan showing the indicative layout of all wind turbine generators, accommodation platforms and meteorological masts including all exclusion zones (insofar as not shown in (x) above) and showing the indicative programming of particular works as set out in the indicative programme to be provided under sub-paragraph 13(1)(b)(iv); and
 - (xii) any exclusion zones/micrositing requirements identified in any mitigation scheme pursuant to sub-paragraph 13(1)(i);

to ensure conformity with the description of Work No. 1 and compliance with **conditions 1 to 6** above.

- (b) A construction programme and monitoring plan (which accords with the in principle monitoring plan) to include details of—
- (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant delivery of materials and installation works and whether such works are to be carried out as a single offshore phase or as two offshore phases;
 - (iii) proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with sub-paragraph 13(1)(h) and **conditions 17, 18 and 19**; and
 - (iv) an indicative written construction programme for all wind turbine generators accommodation platforms, meteorological masts, buoys and cable comprised in the works at paragraph 3(1) of Part 1 (licenced marine activities) of this Schedule (insofar as not shown in paragraph (ii) above);

with details pursuant to paragraph (iii) above to be submitted to the MMO in accordance with the following—

- (aa) at least four months prior to the first survey, detail of the pre-construction surveys and an outline of all proposed monitoring;
- (bb) at least four months prior to construction, detail on construction monitoring;
- (cc) at least four months prior to commissioning, detail of post-construction (and operational) monitoring;

unless otherwise agreed in writing with the MMO.

- (c) A construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—
- (i) foundation installation methodology, including drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation works and having regard to any mitigation scheme pursuant to sub-paragraph 13(1)(i);
 - (ii) soft start procedures with specified duration periods;
 - (iii) cable installation;
 - (iv) contractors;
 - (v) vessels and vessels transit corridors, which minimises disturbance to red-throated diver; and
 - (vi) associated and ancillary works.
- (d) A project environmental management plan covering the period of construction and operation to include details of—
- (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised scheme in relation to all activities carried out;
 - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) waste management and disposal arrangements;
 - (iv) the appointment and responsibilities of a fisheries liaison officer;
 - (v) a fisheries liaison and coexistence plan to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to **condition 7** and to address the interaction of the licensed activities with fishing activities; and
 - (vi) procedures to be adopted within vessels transit corridors to minimise disturbance to red-throated diver.

- (e) A scour protection management and cable protection plan providing details of the need, type, sources, quantity and installation methods for scour protection and cable protection, which plan must be updated and resubmitted for approval if changes to it are proposed following cable laying operations.
- (f) In the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol in accordance with the draft marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, following current best practice as advised by the relevant statutory nature conservation bodies.
- (g) A cable specification, installation and monitoring plan, to include—
 - (i) technical specification of offshore cables below MHWS, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
 - (ii) a detailed cable laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques, including cable protection; and
 - (iii) proposals for monitoring offshore cables including 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.
- (h) A written scheme of archaeological investigation in relation to the offshore Order limits seaward of mean low water, which must be submitted at least 6 months prior to commencement of the licensed activities and must accord with the outline written scheme of investigation (offshore) and industry good practice, in consultation with the statutory historic body to include—
 - (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
 - (ii) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
 - (iii) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within four months of any survey being completed;
 - (iv) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones;
 - (v) monitoring of archaeological exclusion zones during and post construction;
 - (vi) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS (Online AccesS to the Index of archaeological investigationS’) form with a digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;
 - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme; and
 - (viii) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the offshore Order Limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities.
- (i) A mitigation scheme for any habitats of principal importance identified by the survey referred to in **condition 17(2)(a)** and in accordance with the in principle monitoring plan.
- (j) An offshore operations and maintenance plan, in accordance with the outline offshore operations and maintenance plan, to be submitted to the MMO at least four months prior to commencement of operation of the licensed activities and to provide for review and resubmission every three years during the operational phase.

- (k) An aids to navigation management plan to be agreed in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of **condition 8** for the lifetime of the authorised scheme.

(2) In the event that driven or part-driven pile foundations are proposed to be used, the licenced activities, or any phase of those activities must not commence until an East Anglia THREE Project Southern North Sea pSAC Site Integrity Plan which accords with the principles set out in the In Principle East Anglia THREE Project Southern North Sea pSAC Site Integrity Plan has been submitted to the MMO and the MMO is satisfied that the plan, provides such mitigation as is necessary to avoid adversely affecting the integrity (within the meaning of the 2007 Regulations) of a relevant site, to the extent that harbour porpoise are a protected feature of that site.

(3) For the purpose of paragraph (2) –

- (a) the Southern North Sea possible Special Area of Conservation must be treated as a European offshore marine site until:
 - (i) that Area (or any part of it) becomes a European offshore marine site or a European site; or
 - (ii) it is decided that no part of that Area should be a European offshore marine site or a European site; and
- (b) harbour porpoise must be treated as a protected feature of the Southern North Sea possible Special Area of Conservation.

(4) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a specific written scheme of investigation which is itself in accordance with the details set out in the outline offshore written scheme of investigation, and which has been submitted to and approved by the MMO.

14.—(1) Any archaeological reports produced in accordance with **condition 13(h)(iii)** are to be agreed with the statutory historic body.

(2) Each programme, statement, plan, protocol or scheme required to be approved under **condition 13** must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(3) No licensed activity may commence until for that licensed activity the MMO has approved in writing any relevant programme, statement, plan, protocol or scheme required to be approved under **condition 13**.

(4) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under **condition 13**, unless otherwise agreed in writing by the MMO.

(5) No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has given written approval of an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme in accordance with the MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues”, and has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations contained within MGN543 and its annexes.

Reporting of engaged agents, contractors and vessels

15.—(1) The undertaker must provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; and
- (b) each week during the construction of the authorised scheme a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the licensed activities.

(2) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Foundation restrictions

16. No gravity base foundations may be installed in any area of the seabed with mobile sand waves of 5 metres or more, as identified by the swath-bathymetry survey carried out under condition 17(2)(b), unless otherwise agreed in writing by the MMO.

Pre-construction monitoring and surveys

17.—(1) The undertaker must, in discharging **condition 13(b)**, submit details (which accord with the in principle monitoring plan) for written approval by the MMO in consultation with the relevant statutory bodies of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report; and

- (a) the survey proposals must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post-construction comparison is intended and the justification for this being required.

(2) The pre-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake—

- (a) appropriate surveys to determine the location and extent of any benthic communities/benthos constituting habitats of principal importance in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works;
- (b) a full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a, and side scan sonar, of the area(s) within the Order limits in which it is proposed to carry out construction works including a 500 metre buffer area around the site of each work, inclusive of seabed anomalies or sites of historic or archaeological interest that lie within that 500 metre buffer;
- (c) appropriate surveys of existing ornithological activity inside the area(s) within the Order limits in which it is proposed to carry out construction works, and any wider area(s) where appropriate, which is required to test predictions in the environmental statement concerning key ornithological interests of relevance to the authorised scheme; and
- (d) appropriate surveys of existing marine mammal activity inside the area(s) within the Order limits in which it is proposed to carry out construction works and any wider area(s) where appropriate which is required to test predictions in the environmental statement concerning key marine mammal interests of relevance to the authorised scheme.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation bodies.

Construction monitoring

18.—(1) The undertaker must, in discharging **condition 13(b)**, submit details (which accord with the in principle monitoring plan) for approval by the MMO in consultation with the relevant statutory nature conservation bodies of any proposed monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The survey proposals must specify each survey's objectives. In any event, such monitoring must include measurements

of noise generated by the installation of the first four piled foundations of each piled foundation type to be installed.

(2) The undertaker must carry out the surveys approved under sub-paragraph (1), including any further noise monitoring required in writing by the MMO, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation bodies.

(3) 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.

(4) Construction monitoring must include traffic monitoring in accordance with the outline navigation monitoring strategy, including the provision of reports on the results of that monitoring periodically as requested by the MMO in consultation with the MCA.

Post construction

19.—(1) The undertaker must, in discharging **condition 13(b)**, submit details (which accord with the in principle monitoring plan) for approval by the MMO in consultation with relevant statutory bodies of proposed post-construction surveys, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) The post-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake—

- (a) appropriate surveys of any benthic communities/benthos constituting habitats of principal importance in whole or in part inside the area(s) within the Order limits in which construction works were carried out;
- (b) within twelve months of completion of the licensed activities, one full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a across the area(s) within the Order limits in which construction works were carried out to assess any changes in bedform topography and such further monitoring or assessment as may be agreed to ensure that cables have been buried or protected;
- (c) appropriate ornithological surveys covering the area(s) within the Order limits in which construction works were carried out, and any wider area(s) where appropriate, as required to test predictions in the environmental statement concerning key ornithological interests of relevance to the authorised scheme;
- (d) appropriate marine mammal surveys covering the area(s) within the Order limits in which construction works were carried out and any wider area(s) where appropriate, as required to test predictions in the environmental statement concerning key marine mammal interests of relevance to the authorised scheme; and
- (e) post-construction traffic monitoring in accordance with the outline navigation monitoring strategy, including the provision of reports on the results of that monitoring periodically as requested by the MMO in consultation with the MCA.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) for up to 3 years post-construction, which could be non-consecutive years, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation bodies.

(4) 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.

Reporting of impact pile driving/detonation of explosives

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—

- (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;
- (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;
- (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

(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.

(3) For the purpose of this condition—

- (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;
- (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.

SCHEDULE 11

Article 28

DEEMED LICENCE UNDER THE 2009 ACT – GENERATION ASSETS (LICENCE 2 – PHASE 2)

PART 1

Licensed Marine Activities

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“2007 Regulations” means the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“authorised deposits” means the substances and articles specified in paragraph 2(3) of this licence;

“authorised scheme” means Work No. 1 described in paragraph 3 of this licence or any part of that work;

“buoy” means any floating device used for navigational purposes or measurement purposes, including LIDAR buoys, wave buoys and guard buoys;

“cable protection” means measures for cable crossings and where cable burial is not possible due to ground conditions, to protect cables and prevent loss of seabed sediment by use of grout bags, protective aprons, mattresses, flow energy dissipation (frond) devices or rock and gravel dumping;

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

“commence” means the first carrying out of any part of the licensed activities save for pre-construction surveys and monitoring and “commenced” and “commencement” must be construed accordingly;

“condition” means a condition in Part 2 of this licence;

“deemed transmission assets marine licences” means the licences set out in **Schedule 12** (deemed licence under the 2009 Act – transmission assets (licence 1 – phase 1)) and **Schedule 13** (deemed licence under the 2009 Act – transmission assets (licence 2 – phase 2)) and deemed by **article 28** (deemed marine licences under the 2009 Act) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands B75 7RL and any successor body to its functions;

“draught height” means the distance between the lowest point of the rotating blade of the wind turbine generator and MHWS;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“European offshore marine site” has the meaning given in regulation 15 of the 2007 Regulations;

“European site” has the meaning given in regulation 24 of the 2007 Regulations;

“gravity base foundation” means a structure principally of steel, concrete, or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or additional skirts and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“in principle monitoring plan” means the document certified as the in principle monitoring plan by the Secretary of State for the purposes of this Order;

“jacket foundation” means a steel jacket/ lattice-type structure constructed of steel which is fixed to the seabed at two or more points with steel pin piles or steel suction caissons and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment, and “discrete jacket foundation types” includes pre-piled or post-piled jackets, three-legged or four legged jackets, or straight or battered leg jackets;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this licence;

“LAT” means lowest astronomical tide;

“licence 1 (generation)” means the licence set out in **Schedule 10** (deemed licence under the 2009 Act – generation assets (licence 1 – phase 1));

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of **Schedule 1** (ancillary works) and any component part of any wind turbine generator, offshore electrical station, accommodation platform or meteorological mast described in Part 1 of **Schedule 1** (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” is construed accordingly;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“meteorological mast” means a mast housing equipment to measure wind speed and other wind characteristics, including a topside housing electrical, communication and associated equipment and marking and lighting;

“monopile foundation” means a steel pile, typically cylindrical, driven and/ or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“notice to mariners” means a notice issued by the undertaker to mariners to inform them of issues that affect the safety of navigation;

“offshore cables” means any Alternating Current (AC) or Direct Current (DC) cables offshore and includes fibre optic cables either within the cable or laid alongside;

“offshore Order limits” means the limits shown on the works plan within which the authorised scheme may be carried out, whose grid coordinates are set out in paragraph 3 of this licence;

“offshore platform” means any offshore electrical station and any offshore accommodation platform;

“the Order” means the East Anglia THREE Offshore Wind Farm Order 201X;

“outline navigation monitoring strategy” means the document certified as the outline navigation monitoring strategy by the Secretary of State for the purposes of this Order;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of the Order;

“outline written scheme of investigation (offshore)” means the document certified as the outline written scheme of investigation (offshore) by the Secretary of State for the purposes of this Order;

“relevant site” means a European offshore marine site and a European site;

“single offshore phase” means carrying out all offshore works as a single construction operation;

“Southern North Sea possible Special Area of Conservation” means the Southern North Sea possible Special Area of Conservation as set out in the JNCC 2016 Harbour Porpoise Possible Special Area of Conservation Consultation dated January 2016;

“statutory historic body” means Historic England or its successor in function;

“suction caissons” means large diameter steel cylindrical shells which penetrate the seabed assisted by hydrostatic pressure differential for fixity of steel jacket foundations;

“suction caisson foundation” means a tubular steel structure which penetrates the seabed assisted by a hydrostatic pressure differential and associated equipment, including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“two offshore phases” means carrying out the offshore works as two separate construction operations pursuant to the deemed marine licences set out in schedules 10, 12 and 14 (Licence 1 – Phase 1) of the Order and schedules 11, 13 and 15 (Licence 2 –Phase 2) of the Order respectively;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“undertaker” means East Anglia THREE Limited;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation;

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order.

(2) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

(a) Marine Management Organisation

Offshore Marine Licensing
Lancaster House
Hampshire Court
Newcastle Business Park
Newcastle upon Tyne
NE4 7YH
Tel: 0300 123 1032;

(b) Marine Management Organisation (local office)

Marine Environment Team
Pakefield Road
Lowestoft
Suffolk
NR33 0HT;

(c) Trinity House

Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;

(d) The United Kingdom Hydrographic Office

Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;

(e) Maritime and Coastguard Agency

Navigation Safety Branch
Bay 2/20, Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 020 38172433;

(f) Centre for Environment, Fisheries and Aquaculture Science
Pakefield Road
Lowestoft
Suffolk
NR33 0HT
Tel: 01502 562 244;

(g) Natural England
Area 1C, Nobel House
17 Smith Square
London
SW1P 2AL
Tel: 0300 060 4911;

(h) Historic England
Eastgate Court
195-205 High Street
Guildford
GU1 3EH
Tel: 01483 252 059.

Details of licensed marine activities

2. Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act—

- (a) the deposit at sea of the substances and articles specified in sub-paragraph (3) below;
- (b) the construction of works in or over the sea and/or on or under the sea bed;
- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation; and
- (d) the disposal of up to 1,646,317 m³ of inert material of natural origin within the offshore Order limits produced during construction drilling or seabed preparation for foundation works and cable sandwave preparation works at disposal site reference HU212 within the extent of the Order limits seaward of MHWS, comprising—
 - (i) 47,342 m³ for cable installation;
 - (ii) 1,505,000 m³ for the wind turbine generators;
 - (iii) 73,225 m³ for the accommodation platform (which may alternatively be disposed under licence 1); and
 - (iv) 20,750 m³ for the meteorological masts (10,375 m³ or all of which may alternatively be disposed under licence 1 (generation)).

3. Such activities are authorised in relation to the construction, maintenance and operation of—

(1) Work No. 1 (phase 2)—

- (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 600 MW comprising up to 86 wind turbine generators each fixed to the seabed by one of four foundation types (namely, monopile, jacket, suction caisson or gravity base), fitted with rotating blades and situated within the area shown on the works plan and further comprising (b) to (e) below;
- (b) up to one accommodation platform fixed to the seabed within the area shown on the works plan by one of two foundation types (namely jacket or gravity base) (which may alternatively be constructed under licence 1 (generation));
- (c) up to two meteorological masts fixed to the seabed within the area shown on the works plan by one of four foundation types (namely monopile, jacket, suction caisson or gravity base) (one or both of which may alternatively be constructed under licence 1 (generation));
- (d) up to 12 buoys fixed to the seabed within the area shown on the works plan (some or all of which may alternatively be constructed under licence 1 (generation));
- (e) a network of subsea inter-array cables within the area shown on the works plan between the wind turbine generators and between the wind turbine generators and Work No.2 including one or more cable crossings.

(2) In connection with such Work No. 1 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised scheme and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence.

(3) In connection with such Work No. 1, ancillary works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/ or maintenance of the authorised scheme; and
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works.

4. The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling or seabed preparation for foundation works and cable sandwave preparation works; and
- (g) marine coatings, other chemicals and timber.

5. The grid coordinates for the authorised scheme are specified below—

Table 1

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	52° 30' 20.026"N	2° 48' 33.266"E	3	52° 45' 10.569" N	2° 45' 33.773" E
2	52° 31' 32.067"N	2° 45' 31.868" E	4	52° 46' 18.078" N	3° 02' 15.841" E

6. This licence remains in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of section 72 of the 2009 Act apply to this licence except that the provisions of section 72(7) relating to the transfer of the licence only apply to a transfer not falling within **article 5** (benefit of the Order).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

9. Any amendments to or variations from the approved plans, protocols or statements must be minor or immaterial where it has been demonstrated that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

PART 2

Conditions

Design parameters

1.—(1) Subject to paragraph (3), wind turbine generators forming part of the authorised scheme must not—

- (a) exceed a height of 247 metres when measured from LAT to the tip of the vertical blade;
- (b) exceed a height of 150.6 metres to the height of the centreline of the generator shaft forming part of the hub when measured from LAT;
- (c) exceed a rotor diameter of 220 metres;
- (d) be less than 675 metres from the nearest wind turbine generator in either direction perpendicular to the approximate prevailing wind direction (crosswind) or be less than 900 metres from the nearest wind turbine generator in either direction which is in line with the approximate prevailing wind direction (downwind);
- (e) have a draught height of less than 22 metres from MHWS.

(2) The number of wind turbine generators with a draught height of less than 24m from MHWS comprised in the authorised scheme and the authorised scheme in licence 1 (generation) taken together must not exceed 52 turbines.

(3) In condition 1(1) and 1(2) above, references to the location of a wind turbine generator are references to the centre point of that turbine.

2.—(1) The total number of accommodation platforms forming part of the authorised scheme and the authorised scheme in licence 1 (generation) taken together must not exceed one (whether constructed under this licence and/or licence 1 (generation)).

(2) The dimensions of any accommodation platform forming part of the authorised scheme must not exceed 60 metres in height when measured from LAT, 70 metres in length and 70 metres in width.

(3) The total number of meteorological masts forming part of the authorised scheme and the authorised scheme in licence 1 (generation) taken together must not exceed two (whether constructed under this licence and/or licence 1 (generation)).

(4) Each meteorological mast must not exceed a height of 160 metres above LAT.

(5) Each meteorological mast must not have more than one supporting foundation.

(6) The dimensions of any buoy forming part of the authorised scheme must not exceed 6 metres in height (excluding any apparatus or equipment fixed to the buoy), 4 metres in length and 4 metres in width and the anchor footprint must not exceed 4m².

(7) The total number of buoys forming part of the authorised scheme and the authorised scheme in licence 1 (generation) taken together must not exceed twelve (whether constructed under this licence and/or licence 1 (generation)).

(8) Offshore platforms forming part of the authorised scheme must not be erected within the platform exclusion zone, whose co-ordinates are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	52° 30' 20.0268" N	2° 48' 33.264" E	3	52° 32' 10.4568" N	2° 45' 31.9572" E
2	52° 31' 32.0664" N	2° 45' 31.8672" E	4	52° 30' 48.7369" N	2° 48' 57.7512" E

(9) In the event that driven or part-driven pile foundations are proposed to be used, the hammer energy used to drive or part-drive the pile foundations must not exceed 3,500kJ.

3.—(1) The total length of the cables and the volume of their cable protection must not exceed the following—

<i>Work</i>	<i>Length</i>	<i>Cable protection</i>
Work No. 1(e) (inter-array)	275 kilometres	24,750 m ³

4.—(1) In relation to a wind turbine generator, each gravity base foundation must not have—

- (a) a diameter at the level of the seabed which is more than 60 metres;
- (b) a base height, where there is a flat base and a cylindrical shaft, which is more than 12 metres above the level of the seabed;
- (c) a base height, where there is a conical base, which is more than 2 metres above the level of the seabed;
- (d) a column diameter, where there is a flat or conical base, which is more than 9 metres at LAT.

(2) In relation to a wind turbine generator, each suction caisson foundation must not have—

- (a) a diameter at the level of the seabed which is more than 30 metres;
- (b) a base height where there is a flat base, which is more than 5 metres above the level of the seabed;
- (c) a column diameter which is more than 9 metres at LAT.

(3) In relation to a wind turbine generator, each jacket foundation must not have—

- (a) a width spacing between its legs at the level of the seabed which is more than 43.5 metres;
- (b) a pile diameter which is more than 4 metres in the case of pin piles or a suction caisson diameter which is more than 10 metres;
- (c) more than one pile per leg or more than one suction caisson per leg;
- (d) more than four legs.

(4) In relation to a wind turbine generator, each monopile foundation forming part of the authorised scheme must not have a diameter which is more than 12 metres.

5.—(1) In relation to a meteorological mast, each gravity base foundation must not have a diameter at the level of the seabed which is more than 20 metres.

(2) In relation to a meteorological mast, each suction caisson foundation must not have a diameter at the level of the seabed which is more than 15 metres.

(3) In relation to a meteorological mast, each jacket foundation must not have a footprint at the seabed which is more than 625 m².

(4) In relation to a meteorological mast, each monopile foundation forming part of the authorised development must not have a diameter which is more than 8 metres.

(5) In relation to an accommodation platform, each gravity base foundation must not have a footprint of more than 15,855 m².

(6) In relation to an accommodation platform, each jacket foundation must not have—

- (a) a footprint at the seabed which is more than 15,855 m²;
- (b) more than one pile per leg or more than one suction caisson per leg

6. The total amount of scour protection for the wind turbine generators, accommodation platform and meteorological masts forming part of the authorised scheme must not exceed 1,297,460m² and taken together with the authorised scheme in licence 1 (generation) must not exceed 2,572,460m² (whether installed under this licence and/or licence 1 (generation)).

Notifications and inspections

7.—(1) The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with **condition 15**; and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with **condition 15**;
- (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with **condition 15** are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

- (a) the undertaker's registered address;
- (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities.

(7) The undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part—

- (a) at least ten days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and

(b) on completion of construction of all offshore activities.

Confirmation of notification must be provided to the MMO within five days.

(8) A notice to mariners must be issued at least ten days prior to the commencement of the licensed activities or any part of them advising of the start date of Work No. 1 (wind turbine generators or other offshore construction activities including array cables) and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO and UKHO within five days.

(9) The notices to mariners must be updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under **condition 13(b)**. Copies of all notices must be provided to the MMO and UKHO within five days.

(10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO.

(11) In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify MMO, MCA, Trinity House and the UK Hydrographic Office.

Aids to navigation

8.—(1) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) The undertaker must during the period from the start of construction of the authorised scheme to completion of decommissioning seaward of MHWS keep Trinity House and the MMO informed of progress of the authorised scheme seaward of MHWS including the following—

- (a) notice of commencement of construction of the authorised scheme within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within five days of completion of construction of the authorised scheme.

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan agreed pursuant to **condition 13(k)** using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS notify Trinity House and the MMO of any failure of the aids to navigation and the timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the undertaker becoming aware of any such failure.

(5) In the event that the provisions of **condition 7(11)** are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

9.—(1) The undertaker must colour all structures yellow (colour code RAL 1023) from at least highest astronomical tide to a height directed by Trinity House, or must colour the structure as directed by Trinity House from time to time.

(2) Subject to sub-paragraph (1) above, unless the MMO otherwise directs, the undertaker must ensure that the wind turbine generators are painted light grey (colour code RAL 7035).

Aviation safety

10.—(1) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, at least 14 days prior to the commencement of the authorised scheme, in writing of the following information—

- (a) the date of the commencement of construction of the authorised scheme;
- (b) the date any wind turbine generators are brought into use;
- (c) the maximum height of any construction equipment to be used;
- (d) the maximum heights of any wind turbine generator, mast and platform to be constructed;
- (e) the latitude and longitude of each wind turbine generator, mast and platform to be constructed,

and the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph and of the completion of the construction of the authorised scheme. Copies of notifications must be provided to the MMO.

Chemicals, drilling and debris

11.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised scheme, including any chemical agents placed within any monopile void, must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(5) The undertaker must ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations, and drilling mud is disposed of within site disposal reference HU212 within the extent of the Order limits seaward of MHWS. Any other materials must be screened out before disposal at this site.

(6) The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(7) In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker must report the loss to the District Marine Office within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it.

(8) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(9) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under **condition 13(d)(i)**.

(10) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if

reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if reasonable to do so.

Force majeure

12.—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life and/or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

13.—(1) The licensed activities or any part of those activities must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO—

- (a) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, to be agreed in writing with the MMO in consultation with Trinity House and the MCA which shows—
 - (i) the proposed location and choice of foundation of all wind turbine generators, accommodation platforms and meteorological masts;
 - (ii) the height to the tip of the vertical blade; height to the centreline of the generator shaft forming part of the hub;
 - (iii) rotor diameter and spacing of all wind turbine generators;
 - (iv) the height of all lattice towers forming part of the meteorological mast;
 - (v) the length and arrangement of all cables comprising Work No. 1(e);
 - (vi) the dimensions of all gravity base foundations;
 - (vii) the dimensions of all jacket foundations;
 - (viii) the dimensions of all suction caisson foundations;
 - (ix) the dimensions of all monopile foundations;
 - (x) the proposed layout of all wind turbine generators (in accordance with the recommendations for layout contained in MGN543), accommodation platforms and meteorological masts including any exclusion zones identified under sub-paragraph 13(1)(h)(iv);
 - (xi) a plan showing the indicative layout of all wind turbine generators, accommodation platforms and meteorological masts including all exclusion zones (insofar as not shown in (x) above) and showing the indicative programming of particular works as set out in the indicative programme to be provided under sub-paragraph 13(1)(b)(iv); and
 - (xii) any exclusion zones/micrositing requirements identified in any mitigation scheme pursuant to sub-paragraph 13(1)(i);to ensure conformity with the description of Work No. 1 and compliance with **conditions 1 to 6** above.
- (b) A construction programme and monitoring plan (which accords with the in principle monitoring plan) to include details of—
 - (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant delivery of materials and installation works and whether such works are to be carried out as a single offshore phase or as two offshore phases;

- (iii) proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with sub-paragraph 13(1)(h) and **conditions 17, 18 and 19**; and
- (iv) an indicative written construction programme for all wind turbine generators, accommodation platforms, meteorological masts, buoys and cables comprised in the works at paragraph 3(1) of Part 1 (licensed marine activities) of this Schedule (insofar as not shown in paragraph (ii) above);

with details pursuant to paragraph (iii) above to be submitted to the MMO in accordance with the following—

- (aa) at least four months prior to the first survey, detail of the pre-construction surveys and an outline of all proposed monitoring;
- (bb) at least four months prior to construction, detail on construction monitoring;
- (cc) at least four months prior to commissioning, detail of post-construction (and operational) monitoring;

unless otherwise agreed in writing with the MMO.

- (c) A construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—
 - (i) foundation installation methodology, including drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation works and having regard to any mitigation scheme pursuant to sub-paragraph 13(1)(i);
 - (ii) soft start procedures with specified duration periods;
 - (iii) cable installation;
 - (iv) contractors;
 - (v) vessels and vessels transit corridors, which minimises disturbance to red-throated diver; and
 - (vi) associated and ancillary works.
- (d) A project environmental management plan covering the period of construction and operation to include details of—
 - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised scheme in relation to all activities carried out;
 - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) waste management and disposal arrangements;
 - (iv) the appointment and responsibilities of a fisheries liaison officer;
 - (v) a fisheries liaison and coexistence plan to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to **condition 7** and to address the interaction of the licensed activities with fishing activities; and
 - (vi) procedures to be adopted within vessels transit corridors to minimise disturbance to red-throated diver.
- (e) A scour protection management and cable protection plan providing details of the need, type, sources, quantity and installation methods for scour protection and cable protection, which plan must be updated and resubmitted for approval if changes to it are proposed following cable laying operations.
- (f) In the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol in accordance with the draft marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, following current best practice as advised by the relevant statutory nature conservation bodies.
- (g) A cable specification, installation and monitoring plan, to include—

- (i) technical specification of offshore cables below MHWS, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
 - (ii) a detailed cable laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques, including cable protection; and
 - (iii) proposals for monitoring offshore cables including 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.
- (h) A written scheme of archaeological investigation in relation to the offshore Order limits seaward of mean low water, which must be submitted at least 6 months prior to commencement of the licensed activities and must accord with the outline written scheme of investigation (offshore) and industry good practice, in consultation with the statutory historic body to include—
- (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
 - (ii) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
 - (iii) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within four months of any survey being completed;
 - (iv) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones;
 - (v) monitoring of archaeological exclusion zones during and post construction;
 - (vi) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS (Online AccesS to the Index of archaeological investigationS’) form with a digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;
 - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme; and
 - (viii) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the offshore Order Limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities.
- (i) A mitigation scheme for any habitats of principal importance identified by the survey referred to in **condition 17(2)(a)** and in accordance with the in principle monitoring plan.
- (j) An offshore operations and maintenance plan, in accordance with the outline offshore operations and maintenance plan, to be submitted to the MMO at least four months prior to commencement of operation of the licensed activities and to provide for review and resubmission every three years during the operational phase.
- (k) An aids to navigation management plan to be agreed in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of **condition 8** for the lifetime of the authorised scheme.

(2) In the event that driven or part-driven pile foundations are proposed to be used, the licenced activities, or any phase of those activities must not commence until an East Anglia THREE Project Southern North Sea pSAC Site Integrity Plan which accords with the principles set out in the In Principle East Anglia THREE Project Southern North Sea pSAC Site Integrity Plan has been submitted to the MMO and the MMO is satisfied that the plan, provides such mitigation as is necessary to avoid adversely affecting the integrity (within the meaning of the 2007 Regulations) of a relevant site, to the extent that harbour porpoise are a protected feature of that site.

- (3) For the purpose of paragraph (2) –
- (a) the Southern North Sea possible Special Area of Conservation must be treated as a European offshore marine site until:
 - (i) that Area (or any part of it) becomes a European offshore marine site or a European site; or
 - (ii) it is decided that no part of that Area should be a European offshore marine site or a European site; and
 - (b) harbour porpoise must be treated as a protected feature of the Southern North Sea possible Special Area of Conservation.

(4) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a specific written scheme of investigation which is itself in accordance with the details set out in the outline offshore written scheme of investigation, and which has been submitted to and approved by the MMO.

14.—(1) Any archaeological reports produced in accordance with **condition 13(1)(h)(iii)** are to be agreed with the statutory historic body.

(2) Each programme, statement, plan, protocol or scheme required to be approved under **condition 13** must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(3) No licensed activity may commence until for that licensed activity the MMO has approved in writing any relevant programme, statement, plan, protocol or scheme required to be approved under **condition 13**.

(4) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under **condition 13**, unless otherwise agreed in writing by the MMO.

(5) No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has given written approval of an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency, response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme in accordance with the MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues”, and has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations contained within MGN543 and its annexes.

Reporting of engaged agents, contractors and vessels

15.—(1) The undertaker must provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; and
- (b) each week during the construction of the authorised scheme a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the licensed activities.

(2) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Foundation restrictions

16. No gravity base foundations may be installed in any area of the seabed with mobile sand waves of five metres or more, as identified by the swath-bathymetry survey carried out under condition 17(2)(b), unless otherwise agreed in writing by the MMO.

Pre-construction monitoring and surveys

17.—(1) The undertaker must, in discharging **condition 13(1)(b)**, submit details (which accord with the in principle monitoring plan) for written approval by the MMO in consultation with relevant statutory bodies of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report; and

- (a) the survey proposals must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post-construction comparison is intended and the justification for this being required.

(2) The pre-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake—

- (a) appropriate surveys to determine the location and extent of any benthic communities/benthos constituting habitats of principal importance in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works;
- (b) a full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a, and side scan sonar, of the area(s) within the Order limits in which it is proposed to carry out construction works including a 500 metre buffer area around the site of each work, inclusive of seabed anomalies or sites of historic or archaeological interest that lie within that 500 metre buffer;
- (c) appropriate surveys of existing ornithological activity inside the area(s) within the Order limits in which it is proposed to carry out construction works, and any wider area(s) where appropriate, which is required to test predictions in the environmental statement concerning key ornithological interests of relevance to the authorised scheme; and
- (d) appropriate surveys of existing marine mammal activity inside the area(s) within the Order limits in which it is proposed to carry out construction works and any wider area(s) where appropriate which is required to test predictions in the environmental statement concerning key marine mammal interests of relevance to the authorised scheme.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation bodies.

Construction monitoring

18.—(1) The undertaker must, in discharging **condition 13(1)(b)**, submit details (which accord with the in principle monitoring plan) for approval by the MMO in consultation with the relevant statutory bodies of any proposed monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The survey proposals must specify each survey's objectives. In any event, such monitoring must include measurements of noise generated by the installation of the first four piled foundations of each piled foundation type to be installed.

(2) The undertaker must carry out the surveys approved under sub-paragraph (1), including any further noise monitoring required in writing by the MMO, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation bodies.

(3) 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.

(4) Construction monitoring must include traffic monitoring in accordance with the outline navigation monitoring strategy, including the provision of reports on the results of that monitoring periodically as requested by the MMO in consultation with the MCA.

Post construction

19.—(1) The undertaker must, in discharging **condition 13(1)(b)**, submit details (which accord with the in principle monitoring plan) for approval by the MMO in consultation with relevant statutory bodies of proposed post-construction surveys, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) The post-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake—

- (a) appropriate surveys of any benthic communities/benthos constituting habitats of principal importance in whole or in part inside the area(s) within the Order limits in which construction works were carried out;
- (b) within twelve months of completion of the licensed activities, one full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a across the area(s) within the Order limits in which construction works were carried out to assess any changes in bedform topography and such further monitoring or assessment as may be agreed to ensure that cables have been buried or protected;
- (c) appropriate ornithological surveys covering the area(s) within the Order limits in which construction works were carried out, and any wider area(s) where appropriate, as required to test predictions in the environmental statement concerning key ornithological interests of relevance to the authorised scheme;
- (d) appropriate marine mammal surveys covering the area(s) within the Order limits in which construction works were carried out and any wider area(s) where appropriate, as required to test predictions in the environmental statement concerning key marine mammal interests of relevance to the authorised scheme; and
- (e) post-construction traffic monitoring in accordance with the outline navigation monitoring strategy, including the provision of reports on the results of that monitoring periodically as requested by the MMO in consultation with the MCA.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) for up to 3 years post-construction, which could be non-consecutive years, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation bodies.

(4) 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.

Reporting of impact pile driving/detonation of explosives

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—

- (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;
- (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;

- (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
- (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.
- (3) For the purpose of this condition—
 - (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;
 - (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.

SCHEDULE 12

Article 28

DEEMED LICENCE UNDER THE 2009 ACT – TRANSMISSION ASSETS (LICENCE 1 – PHASE 1)

PART 1

Licensed Marine Activities

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“2007 Regulations” means the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“authorised deposits” means the substances and articles specified in paragraph 2(3) of this licence;

“authorised scheme” means Work Nos. 2, 3 and 5A described in paragraph 3 of this licence or any part of that work;

“cable protection” means measures for cable crossings and where cable burial is not possible due to ground conditions, to protect cables and prevent loss of seabed sediment by use of grout bags, protective aprons, mattresses, flow energy dissipation (frond) devices or rock and gravel dumping;

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

“commence” means the first carrying out of any part of the licensed activities save for pre-construction surveys and monitoring and “commenced” and “commencement” must be construed accordingly;

“condition” means a condition in Part 2 of this licence;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands B75 7RL and any successor body to its functions;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“European offshore marine site” has the meaning given in regulation 15 of the 2007 Regulations;

“European site” has the meaning given in regulation 24 of the 2007 Regulations;

“gravity base foundation” means a structure principally of steel, concrete, or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or additional skirts and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“in principle monitoring plan” means the document certified as the in principle monitoring plan by the Secretary of State for the purposes of this Order;

“jacket foundation” means a steel jacket/ lattice-type structure constructed of steel which is fixed to the seabed at two or more points with steel pin piles or steel suction caissons and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment, and “discrete jacket foundation types” includes pre-piled or post-piled jackets, three-legged or four legged jackets, or straight or battered leg jackets;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this licence;

“LAT” means lowest astronomical tide;

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (ancillary works) and any component part of any wind turbine generator, offshore electrical station, accommodation platform or meteorological mast described in Part 1 of Schedule 1 (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” is construed accordingly;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“notice to mariners” means a notice issued by the undertaker to mariners to inform them of issues that affect the safety of navigation;

“offshore cables” means any Alternating Current (AC) or Direct Current (DC) cables offshore and includes fibre optic cables either within the cable or laid alongside;

“offshore electrical station” means a platform attached to the seabed by means of a foundation, with one or more decks, whether open or fully clad, accommodating electrical power transformers, instrumentation, protection and control systems, neutral earthing resistors, reactive compensation, standby electrical generation equipment, fuelling facilities, auxiliary and uninterruptible power supply systems and transformers, accommodation and/or emergency shelter, craneage, metering stations, meteorological equipment, helicopter landing facilities, messing facilities, potable water storage, black water separation equipment, control hub, drainage facilities, access equipment, J-tubes, marking and lighting and other associated equipment and facilities to enable the transmission of electronic communications and for electricity to be collected at, and exported from, the platform and, depending on the type of electrical station, low, medium and/or high voltage switch gear, and/or AC filters and/or AC/DC converter with switching devices and/or DC equipment including DC capacitors and DC filters;

“offshore Order limits” means the limits shown on the works plan within which the authorised scheme may be carried out, whose grid coordinates are set out in paragraph 3 of this licence;

“the Order” means the East Anglia THREE Offshore Wind Farm Order 201X;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of the Order;

“outline written scheme of investigation (offshore)” means the document certified as the outline written scheme of investigation (offshore) by the Secretary of State for the purposes of this Order;

“platform exclusion zone” means the area shown as such on the offshore works plan;

“relevant site” means a European offshore marine site and a European site;

“restricted area” means the area hatched black on the works plan being 250 metres from site 30;

“sediment sample survey” means a survey to be carried out in the event that works are proposed in the restricted area which:

- (i) samples sediment for arsenic contamination in the area of those works; and
- (ii) must be carried out in accordance with details which have first been approved by the MMO;

“single offshore phase” means carrying out all offshore works as a single construction operation;

“site 30” means site 30 shown on the works plan (offshore) which has the following grid coordinates:

<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
52° 27' 32.889" N	02° 36' 9.019" E

“Southern North Sea possible Special Area of Conservation” means the Southern North Sea possible Special Area of Conservation as set out in the JNCC 2016 Harbour Porpoise Possible Special Area of Conservation Consultation dated January 2016;

“statutory historic body” means Historic England or its successor in function;

“suction caissons” means large diameter steel cylindrical shells which penetrate the seabed assisted by hydrostatic pressure differential for fixity of steel jacket foundations;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“two offshore phases” means carrying out the offshore works as two separate construction operations pursuant to the deemed marine licences set out in schedules 10, 12 and 14 (Licence 1 – Phase 1) of the Order and schedules 11, 13 and 15 (Licence 2 – Phase 2) of the Order respectively;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“undertaker” means East Anglia THREE Limited;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation;

“Work No.1” means the offshore generating stations comprising wind turbine generators, accommodation platforms, meteorological masts and subsea cables;

“Work No.5B” means onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from mean low water at Bawdsey Cliffs;

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order.

(2) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

(a) Marine Management Organisation

Offshore Marine Licensing
Lancaster House
Hampshire Court
Newcastle Business Park
Newcastle upon Tyne
NE4 7YH
Tel: 0300 123 1032;

(b) Marine Management Organisation (local office)

Marine Environment Team
Pakefield Road
Lowestoft
Suffolk
NR33 0HT;

(c) Trinity House

Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;

(d) The United Kingdom Hydrographic Office

Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;

(e) Maritime and Coastguard Agency

Navigation Safety Branch
Bay 2/20, Spring Place
105 Commercial Road

Southampton
SO15 1EG
Tel: 020 3817 2433;

- (f) Centre for Environment, Fisheries and Aquaculture Science
Pakefield Road
Lowestoft
Suffolk
NR33 0HT
Tel: 01502 562 244;

- (g) Natural England
Area 1C, Nobel House
17 Smith Square
London
SW1P 2AL
Tel: 0300 060 4911;

- (h) Historic England
Eastgate Court
195-205 High Street
Guildford
GU1 3EH
Tel: 01483 252 059.

Details of licensed marine activities

2. Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act—

- (a) the deposit at sea of the substances and articles specified in sub-paragraph (3) below;
- (b) the construction of works in or over the sea and/or on or under the sea bed;
- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation; and
- (d) the disposal of up to 394,828 m³ of inert material of natural origin within the offshore Order limits produced during construction drilling or seabed preparation for foundation works and cable sandwave preparation works at disposal site reference HU212 within the extent of the Order limits seaward of MHWS, comprising—
 - (i) 12,911 m³ for cable installation;
 - (ii) 219,675 m³ for the offshore electrical substations;
 - (iii) 162,242 m³ for the export cables.

3. Such activities are authorised in relation to the construction, maintenance and operation of—

(1) *Work No. 2 (phase 1)* – up to three offshore electrical stations fixed to the seabed within the area shown on the works plan by one of two foundation types (namely jacket or gravity base).

(2) *Work No. 3 (phase 1)* – a network of subsea cables within the area shown on the works plan between the offshore electrical stations comprising Work No. 2 and for the transmission of electricity and electronic communications including one or more cable crossings.

(3) *Work No. 5A (phase 1)* – up to two export cables between Work No. 2 and Work No. 5B consisting of subsea cables along routes within the Order limits seaward of MHWS including one or more cable crossings.

(4) In connection with such Works No. 2, 3 and 5A and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised scheme and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence.

(5) In connection with such Works No. 2, 3 and 5A, ancillary works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/ or maintenance of the authorised scheme; and
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works.

4. The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and
- (g) marine coatings, other chemicals and timber.

5. The grid coordinates for the authorised scheme are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	52° 46' 18.078" N	3° 2' 15.841" E	109	52° 8' 10.903" N	1° 52' 48.323" E
2	52° 30' 20.027" N	2° 48' 33.266" E	110	52° 8' 10.712" N	1° 52' 47.616" E
3	52° 26' 58.466" N	2° 45' 50.653" E	111	52° 8' 10.496" N	1° 52' 46.925" E
4	52° 45' 10.57" N	2° 45' 33.773" E	112	52° 8' 10.262" N	1° 52' 46.251" E
5	52° 45' 6.908" N	2° 44' 40.427" E	113	52° 8' 10.01" N	1° 52' 45.598" E
6	52° 30' 36.608" N	2° 44' 41.63" E	114	52° 8' 33.338" N	1° 49' 15.275" E
7	52° 31' 32.11" N	2° 44' 38.806" E	115	52° 8' 25.361" N	1° 48' 48.294" E
8	52° 31' 32.077" N	2° 44' 38.805" E	116	52° 7' 42.888" N	1° 46' 40.77" E
9	52° 26' 58.438" N	2° 44' 31.396" E	117	52° 4' 57.709" N	1° 44' 58.279" E
10	52° 27' 48.319" N	2° 44' 29.313" E	118	52° 5' 44.772" N	1° 40' 57.35" E
11	52° 27'	2° 35'	119	52° 2'	1° 36'

	8.503" N	52.305" E		57.008" N	33.019" E
12	52° 21'	2° 35'	120	52° 2'	1° 36'
	19.757" N	44.827" E		56.839" N	32.348" E
13	52° 20'	2° 35'	121	52° 2'	1° 36' 31.69"
	53.714" N	44.025" E		56.648" N	E
14	52° 20'	2° 35'	122	52° 2' 56.44"	1° 36'
	41.665" N	43.654" E		N	31.048" E
15	52° 20'	2° 35'	123	52° 2'	1° 36'
	40.009" N	43.603" E		56.209" N	30.422" E
16	52° 20'	2° 35'	124	52° 2'	1° 36'
	39.779" N	43.596" E		55.964" N	29.813" E
17	52° 20'	2° 35'	125	52° 2'	1° 36'
	39.235" N	33.246" E		55.705" N	29.224" E
18	52° 20'	2° 34'	126	52° 2'	1° 36'
	37.378" N	46.042" E		55.424" N	28.655" E
19	52° 27'	2° 34' 5.046"	127	52° 3'	1° 35'
	57.917" N	E		53.611" N	40.499" E
20	52° 27'	2° 33'	128	52° 2'	1° 35' 9.305"
	52.452" N	59.829" E		14.708" N	E
21	52° 20'	2° 33'	129	52° 2'	1° 35' 9.04" E
	35.254" N	47.765" E		14.564" N	
22	52° 20'	2° 33'	130	52° 0'	1° 33' 4.952"
	34.372" N	23.612" E		43.448" N	E
23	52° 20'	2° 32'	131	52° 0'	1° 33' 4.472"
	33.112" N	49.135" E		43.078" N	E
24	52° 20'	2° 32'	132	52° 0'	1° 33' 4.023"
	31.704" N	10.856" E		42.692" N	E
25	52° 20'	2° 32' 6.378"	133	52° 0'	1° 33' 3.605"
	31.542" N	E		42.293" N	E
26	52° 20'	2° 31'	134	52° 0'	1° 33' 3.218"
	31.013" N	52.055" E		41.882" N	E
27	52° 20'	2° 31'	135	52° 0'	1° 33' 2.865"
	30.264" N	31.698" E		41.461" N	E
28	52° 20'	2° 31' 2.961"	136	52° 0'	1° 33' 2.545"
	30.599" N	E		41.029" N	E
29	52° 20'	2° 31' 2.924"	137	52° 0' 40.59"	1° 33' 2.26" E
	30.599" N	E		N	
30	52° 20'	2° 31' 2.171"	138	52° 0' 40.14"	1° 33' 2.011"
	30.61" N	E		N	E
31	52° 20'	2° 31' 1.825"	139	52° 0'	1° 33' 1.797"
	30.613" N	E		39.683" N	E
32	52° 20'	2° 31' 1.82" E	140	51° 58'	1° 32'
	30.613" N			47.51" N	13.971" E
33	52° 20'	2° 31' 0.752"	141	51° 57'	1° 29'
	30.624" N	E		36.634" N	50.826" E
34	52° 20'	2° 31' 0.746"	142	52° 0'	1° 27'
	30.624" N	E		41.137" N	15.227" E
35	52° 20'	2° 30'	143	51° 57'	1° 26'
	30.653" N	58.371" E		51.574" N	41.476" E
36	52° 20'	2° 30'	144	51° 57'	1° 26'
	30.653" N	58.359" E		51.624" N	40.671" E

37	52° 20' 30.678" N	2° 30' 56.069" E	145	51° 57' 51.646" N	1° 26' 39.863" E
38	52° 20' 30.678" N	2° 30' 56.033" E	146	51° 57' 51.646" N	1° 26' 39.054" E
39	52° 20' 30.732" N	2° 30' 51.529" E	147	51° 57' 51.62" N	1° 26' 38.246" E
40	52° 20' 30.757" N	2° 30' 49.345" E	148	51° 57' 51.566" N	1° 26' 37.441" E
41	52° 20' 30.757" N	2° 30' 49.312" E	149	51° 57' 51.487" N	1° 26' 36.642" E
42	52° 20' 30.826" N	2° 30' 43.347" E	150	51° 57' 51.386" N	1° 26' 35.85" E
43	52° 20' 30.826" N	2° 30' 43.304" E	151	51° 57' 51.257" N	1° 26' 35.068" E
44	52° 20' 30.894" N	2° 30' 37.395" E	152	51° 57' 51.181" N	1° 26' 34.683" E
45	52° 20' 30.898" N	2° 30' 37.169" E	153	51° 57' 51.106" N	1° 26' 34.298" E
46	52° 20' 30.93" N	2° 30' 34.529" E	154	51° 57' 51.08" N	1° 26' 34.194" E
47	52° 20' 30.923" N	2° 30' 33.771" E	155	52° 0' 2.563" N	1° 25' 32.077" E
48	52° 20' 30.912" N	2° 30' 32.605" E	156	52° 0' 1.829" N	1° 25' 30.107" E
49	52° 20' 30.862" N	2° 30' 26.199" E	157	52° 0' 0.832" N	1° 25' 27.444" E
50	52° 20' 25.289" N	2° 30' 20.762" E	158	52° 0' 0.799" N	1° 25' 27.357" E
51	52° 19' 17.209" N	2° 29' 15.157" E	159	52° 0' 0.749" N	1° 25' 27.271" E
52	52° 24' 0.479" N	2° 29' 6.65" E	160	52° 0' 0.655" N	1° 25' 27.123" E
53	52° 18' 42.739" N	2° 28' 41.724" E	161	52° 0' 0.634" N	1° 25' 27.079" E
54	52° 18' 37.606" N	2° 28' 35.103" E	162	52° 0' 0.616" N	1° 25' 27.03" E
55	52° 18' 29.308" N	2° 28' 26.972" E	163	52° 0' 0.544" N	1° 25' 26.883" E
56	52° 18' 29.308" N	2° 28' 26.972" E	164	52° 0' 0.464" N	1° 25' 26.741" E
57	52° 17' 17.336" N	2° 27' 16.442" E	165	52° 0' 0.263" N	1° 25' 26.337" E
58	52° 17' 12.127" N	2° 27' 11.34" E	166	51° 59' 59.939" N	1° 25' 25.678" E
59	52° 17' 8.43" N	2° 27' 7.719" E	167	51° 59' 59.629" N	1° 25' 25.04" E
60	52° 17' 5.629" N	2° 27' 4.976" E	168	51° 59' 59.305" N	1° 25' 24.402" E
61	52° 17' 5.402" N	2° 27' 4.756" E	169	51° 59' 59.032" N	1° 25' 23.861" E
62	52° 17'	2° 27' 3.899"	170	51° 59'	1° 25'

	4.528" N	E		59.014" N	23.828" E
63	52° 16'	2° 27' 3.996"	171	51° 59'	1° 25'
	51.182" N	E		59.01" N	23.816" E
64	52° 16'	2° 27' 4.04" E	172	51° 59'	1° 25'
	45.023" N			58.927" N	23.634" E
65	52° 16'	2° 27' 4.089"	173	51° 59'	1° 25'
	38.262" N	E		58.855" N	23.473" E
66	52° 16'	2° 27' 4.093"	174	51° 59'	1° 25'
	37.834" N	E		58.772" N	23.293" E
67	52° 16'	2° 27' 3.924"	175	51° 59'	1° 25'
	36.43" N	E		57.689" N	21.148" E
68	52° 23'	2° 26'	176	51° 59'	1° 25'
	14.798" N	39.878" E		57.689" N	21.146" E
69	52° 14'	2° 26'	177	51° 59'	1° 25'
	1.882" N	45.354" E		57.556" N	20.881" E
70	52° 13'	2° 26'	178	51° 59'	1° 25' 20.88"
	55.528" N	44.591" E		57.556" N	E
71	52° 9'	2° 25'	179	51° 59'	1° 25'
	28.062" N	36.366" E		57.516" N	20.807" E
72	52° 9'	2° 25'	180	51° 59'	1° 25'
	31.781" N	35.028" E		57.516" N	20.807" E
73	52° 20'	2° 21'	181	51° 59'	1° 25'
	54.388" N	15.039" E		57.516" N	20.806" E
74	52° 20'	2° 21' 9.27" E	0	52° 21'	2° 34'
	47.386" N			53.636" N	13.872" E
75	52° 13'	2° 17'	1	52° 21'	2° 34'
	39.648" N	18.125" E		25.052" N	13.842" E
76	52° 13'	2° 15'	2	52° 25'	2° 34' 8.342"
	35.674" N	59.368" E		56.467" N	E
77	52° 13'	2° 15'	3	52° 21'	2° 31'
	33.794" N	22.225" E		19.548" N	49.797" E
78	52° 11'	2° 11'	4	52° 21'	2° 31' 2.229"
	17.488" N	34.133" E		19.145" N	E
79	52° 11'	2° 11'	5	52° 21'	2° 30'
	17.574" N	33.361" E		19.717" N	12.848" E
80	52° 11'	2° 11'	6	52° 23'	2° 30' 2.994"
	17.639" N	32.583" E		26.293" N	E
81	52° 11'	2° 11' 31.8" E	7	52° 23'	2° 30' 1.705"
	17.678" N			25.516" N	E
82	52° 11'	2° 11'	8	52° 23'	2° 30' 0.388"
	17.693" N	31.015" E		24.756" N	E
83	52° 11'	2° 11' 30.23"	9	52° 23'	2° 29'
	17.686" N	E		24.014" N	59.042" E
84	52° 11'	2° 11'	10	52° 23'	2° 29' 57.67"
	17.653" N	29.447" E		23.294" N	E
85	52° 11'	2° 11'	11	52° 23'	2° 29' 56.27"
	17.599" N	28.667" E		22.592" N	E
86	52° 11'	2° 11'	12	52° 21'	2° 29'
	17.52" N	27.893" E		19.235" N	57.051" E
87	52° 11'	2° 11'	13	52° 23'	2° 29'
	17.416" N	27.126" E		21.912" N	54.846" E

88	52° 12' 22.846" N	2° 11' 9.965" E	14	52° 23' 21.25" N	2° 29' 53.395" E
89	52° 12' 27.655" N	2° 10' 3.953" E	15	52° 23' 20.605" N	2° 29' 51.921" E
90	52° 10' 22.645" N	2° 5' 24.993" E	16	52° 23' 19.986" N	2° 29' 50.423" E
91	52° 10' 22.512" N	2° 5' 24.211" E	17	52° 23' 19.385" N	2° 29' 48.903" E
92	52° 10' 22.357" N	2° 5' 23.442" E	18	52° 23' 18.805" N	2° 29' 47.36" E
93	52° 10' 22.177" N	2° 5' 22.686" E	19	52° 23' 18.251" N	2° 29' 45.797" E
94	52° 11' 6.526" N	2° 2' 15.69" E	20	52° 23' 17.714" N	2° 29' 44.213" E
95	52° 9' 32.962" N	2° 2' 11.44" E	21	52° 23' 17.203" N	2° 29' 42.609" E
96	52° 8' 46.529" N	1° 57' 45.569" E	22	52° 21' 17.284" N	2° 29' 40.473" E
97	52° 8' 46.518" N	1° 57' 45.508" E	23	52° 21' 17.057" N	2° 29' 38.731" E
98	52° 9' 40.842" N	1° 57' 7.198" E	24	52° 19' 10.175" N	2° 27' 36.407" E
99	52° 8' 11.62" N	1° 54' 29.428" E	25	52° 22' 33.114" N	2° 27' 20.941" E
100	52° 9' 37.649" N	1° 53' 5.293" E	26	52° 18' 50.89" N	2° 26' 0.71" E
101	52° 8' 11.641" N	1° 52' 54.353" E	27	52° 13' 59.088" N	2° 25' 25.766" E
102	52° 8' 11.63" N	1° 52' 53.58" E	28	52° 13' 58.494" N	2° 23' 27.683" E
103	52° 8' 11.594" N	1° 52' 52.809" E	29	52° 13' 56.852" N	2° 23' 2.476" E
104	52° 8' 11.537" N	1° 52' 52.041" E	30	52° 20' 22.816" N	2° 22' 19.439" E
105	52° 8' 11.454" N	1° 52' 51.279" E	31	52° 18' 12.42" N	2° 21' 12.115" E
106	52° 8' 11.35" N	1° 52' 50.524" E	32	52° 18' 15.739" N	2° 21' 10.581" E
107	52° 8' 11.224" N	1° 52' 49.779" E	33	52° 13' 46.402" N	2° 19' 32.631" E
108	52° 8' 11.076" N	1° 52' 49.044" E			

6. This licence remains in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of section 72 of the 2009 Act apply to this licence except that the provisions of section 72(7) relating to the transfer of the licence only apply to a transfer not falling within **article 5** (benefit of the Order).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

9. Any amendments to or variations from the approved plans, protocols or statements must be minor or immaterial where it has been demonstrated that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

PART 2

Conditions

Design parameters

1. Licensed activities must not take place within the restricted area until the MMO has confirmed in writing that it is satisfied with the results of a sediment sample survey or that sufficient mitigation has been secured in the approved method statement required to be submitted under condition 13(1)(g), to prevent impacts from contaminated sediment.

2. Offshore platforms forming part of the authorised scheme must not be erected within the platform exclusion zone, whose co-ordinates are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	52° 30' 20.0268" N	2° 48' 33.264" E	3	52° 32' 10.4568" N	2° 45' 31.9572" E
2	52° 31' 32.0664" N	2° 45' 31.8672" E	4	52° 30' 48.7369" N	2° 48' 57.7512" E

3. In the event that driven or part-driven pile foundations are proposed to be used, the hammer energy used to drive or part-drive the pile foundations must not exceed 3,500kJ.

4.—(1) The total number of offshore electrical stations forming part of the authorised scheme must not exceed three.

(2) The dimensions of any offshore electrical station forming part of the authorised scheme (excluding towers, helipads, masts and cranes) must not exceed 70 metres in height when measured from LAT, 80 metres in length and 120 metres in width.

(3) In relation to an offshore electrical station, each gravity base foundation must not have a footprint at the seabed which is more than 8,011 m².

(4) In relation to an offshore electrical station, each jacket foundation must not have—

(a) a footprint at the seabed which is more than 15,855 m²;

(b) more than one pile per leg or more than one suction caisson per leg.

5.—(1) The total length of the cables and the volume of their cable protection must not exceed the following—

<i>Work</i>	<i>Length</i>	<i>Cable protection</i>
Work No. 3 (platform link)	75 kilometres	8,900 m ³
Work No. 5A (export cable)	332 kilometres	40,630 m ³

6. The total amount of scour protection for the offshore electrical stations forming part of the authorised scheme must not exceed 50,400 m².

Notifications and inspections

7.—(1) The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with **condition 15**; and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with **condition 15**;
- (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with **condition 15** are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

- (a) the undertaker's registered address;
- (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities.

(7) The undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part—

- (a) at least ten days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and
- (b) on completion of construction of all offshore activities.

Confirmation of notification must be provided to the MMO within five days.

(8) A notice to mariners must be issued at least ten days prior to the commencement of the licensed activities or any part of them advising of the start date of Work No. 2 and the expected vessel routes from the construction ports to the relevant location. A second notice to mariners must be issued advising of the start date of Work Nos. 3 and 5A and the route of the sub-sea cables. Copies of all notices must be provided to the MMO and UKHO within five days.

(9) The notices to mariners must be updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under **condition 13(b)**. Copies of all notices must be provided to the MMO and UKHO within five days.

(10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO.

(11) In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify MMO, MCA, Trinity House and the UK Hydrographic Office.

Aids to navigation

8.—(1) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and to take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) The undertaker must during the period from the start of construction of the authorised scheme to completion of decommissioning seaward of MHWS keep Trinity House and the MMO informed of progress of the authorised scheme seaward of MHWS including the following—

- (a) notice of commencement of construction of the authorised scheme within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within five days of completion of construction of the authorised scheme.

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan agreed pursuant to **condition 13(k)** using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS notify Trinity House and the MMO of any failure of the aids to navigation and the timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the undertaker becoming aware of any such failure.

(5) In the event that the provisions of **condition 7(11)** are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

9. The undertaker must colour all structures yellow (colour code RAL 1023) from at least highest astronomical tide to a height directed by Trinity House, or must colour the structure as directed by Trinity House from time to time.

Aviation safety

10.—(1) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, at least 14 days prior to the commencement of the authorised scheme, in writing of the following information—

- (a) the date of the commencement of construction of the authorised scheme;
- (b) the date any wind turbine generators are brought into use;
- (c) the maximum height of any construction equipment to be used;
- (d) the maximum heights of any wind turbine generator, mast and platform to be constructed;
- (e) the latitude and longitude of each wind turbine generator, mast and platform to be constructed,

and the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph and of the completion of the construction of the authorised scheme. Copies of notifications must be provided to the MMO.

Chemicals, drilling and debris

11.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised scheme must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(5) The undertaker must ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations, and drilling mud is disposed of within site disposal reference HU212 within the extent of the Order limits seaward of MHWS. Any other materials must be screened out before disposal at this site.

(6) The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(7) In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker must report the loss to the District Marine Office within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it.

(8) The undertaker must undertake the survey agreed under **condition 13(h)(iii)** following the swath-bathymetry survey referred to in **condition 19(2)(b)**. Should any such obstructions resulting from burial of Work No. 5A (export cables) be identified which, in the reasonable opinion of the MMO, may be considered to interfere with fishing, the undertaker must take such steps to remove them as the MMO in its reasonable opinion may require.

(9) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(10) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under **condition 13(d)(i)**.

(11) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if reasonable to do so.

Force majeure

12.—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life and/or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

13.—(1) The licensed activities or any part of those activities must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO—

- (a) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, to be agreed in writing with the MMO in consultation with Trinity House and the MCA which shows—
 - (i) the proposed location and choice of foundation of all offshore electrical stations;
 - (ii) the height, length and width of all offshore electrical stations;
 - (iii) the length and arrangement of all cables comprising Work Nos. 3 and 5A;
 - (iv) the dimensions of all gravity base foundations;
 - (v) the dimensions of all jacket foundations;
 - (vi) the proposed layout of all offshore electrical stations including any exclusion zones identified under sub-paragraph 13(1)(h)(iv);
 - (vii) a plan showing the indicative layout of all offshore electrical stations including all exclusion zones (insofar as not shown in (vi) above) and showing the indicative programming of particular works as set out in the indicative programme to be provided under sub-paragraph 13(1)(b)(iv); and
 - (viii) any exclusion zones/micrositing requirements identified in any mitigation scheme pursuant to sub-paragraph 13(1)(j);

to ensure conformity with the description of Works No. 2, 3 and 5A and compliance with **conditions 1 to 6** above.

- (b) A construction programme and monitoring plan (which accords with the in principle monitoring plan) to include details of—
 - (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant delivery of materials and installation works and whether such works are to be carried out as a single offshore phase or as two offshore phases;
 - (iii) proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with sub-paragraph 13(1)(h) and **conditions 17, 18 and 19**; and
 - (iv) an indicative written construction programme for all offshore electrical stations and cables comprised in the works at paragraph 3(1) to (3) of Part 1 (licensed marine activities) of this Schedule (insofar as not shown in paragraph (ii) above);

with details pursuant to paragraph (iii) above to be submitted to the MMO in accordance with the following—

- (aa) at least four months prior to the first survey, detail of the pre-construction surveys and an outline of all proposed monitoring;
- (bb) at least four months prior to construction, detail on construction monitoring;
- (cc) at least four months prior to commissioning, detail of post-construction (and operational) monitoring;

unless otherwise agreed in writing with the MMO.

- (c) A construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—
 - (i) foundation installation methodology, including drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation works and having regard to any mitigation scheme pursuant to sub-paragraph 13(1)(i);
 - (ii) soft start procedures with specified duration periods;
 - (iii) offshore electrical station location and installation, including scour protection;

- (iv) cable installation, including cable landfall and cable protection;
 - (v) contractors;
 - (vi) vessels and vessels transit corridors, which minimises disturbance to red-throated diver; and
 - (vii) associated and ancillary works.
- (d) A project environmental management plan covering the period of construction and operation to include details of—
- (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised scheme in relation to all activities carried out;
 - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) waste management and disposal arrangements;
 - (iv) the appointment and responsibilities of a fisheries liaison officer;
 - (v) a fisheries liaison and coexistence plan to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to **condition 7** and to address the interaction of the licensed activities with fishing activities; and
 - (vi) procedures to be adopted within vessels transit corridors to minimise disturbance to red-throated diver.
- (e) A scour protection management and cable protection plan providing details of the need, type, sources, quantity and installation methods for scour protection and cable protection, which plan must be updated and resubmitted for approval if changes to it are proposed following cable laying operations.
- (f) In the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol in accordance with the draft marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, following current best practice as advised by the relevant statutory nature conservation bodies.
- (g) A cable specification, installation and monitoring plan, to include—
- (i) technical specification of offshore cables below MHWS, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
 - (ii) a detailed cable laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques, including cable protection;
 - (iii) proposals for monitoring offshore cables including 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; and
 - (iv) appropriate methods such as a trawl or drift net to be deployed along Work No. 5 (export cables), following the survey referred to in **condition 19(2)(b)** to assess any seabed obstructions resulting from burial of the export cables.
- (h) A written scheme of archaeological investigation in relation to the offshore Order limits seaward of mean low water, which must be submitted at least 6 months prior to commencement of the licensed activities and must accord with the outline written scheme of investigation (offshore) and industry good practice, in consultation with the statutory historic body (and, if relevant, Suffolk Coastal District Council) to include—
- (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
 - (ii) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;

- (iii) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within four months of any survey being completed;
 - (iv) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones;
 - (v) monitoring of archaeological exclusion zones during and post construction;
 - (vi) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS (Online AccesS to the Index of archaeological investigationS') form with a digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO (and Suffolk Coastal District Council where the report relates to the intertidal area) that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;
 - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme; and
 - (viii) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the offshore Order Limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities.
- (i) A mitigation scheme for any habitats of principal importance identified by the survey referred to in **condition 17(2)(a)** and in accordance with the in principle monitoring plan.
 - (j) An offshore operations and maintenance plan, in accordance with the outline offshore operations and maintenance plan, to be submitted to the MMO at least four months prior to commencement of operation of the licensed activities and to provide for review and resubmission every three years during the operational phase.
 - (k) An aids to navigation management plan to be agreed in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of **condition 8** for the lifetime of the authorised scheme.

(2) In the event that driven or part-driven pile foundations are proposed to be used, the licenced activities, or any phase of those activities must not commence until an East Anglia THREE Project Southern North Sea pSAC Site Integrity Plan which accords with the principles set out in the In Principle East Anglia THREE Project Southern North Sea pSAC Site Integrity Plan has been submitted to the MMO and the MMO is satisfied that the plan, provides such mitigation as is necessary to avoid adversely affecting the integrity (within the meaning of the 2007 Regulations) of a relevant site, to the extent that harbour porpoise are a protected feature of that site.

(3) For the purpose of paragraph (2) –

- (a) the Southern North Sea possible Special Area of Conservation must be treated as a European offshore marine site until:
 - (i) that Area (or any part of it) becomes a European offshore marine site or a European site; or
 - (ii) it is decided that no part of that Area should be a European offshore marine site or a European site; and
- (b) harbour porpoise must be treated as a protected feature of the Southern North Sea possible Special Area of Conservation.

(4) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a specific written scheme of investigation which is itself in accordance with the details set out in the outline offshore written scheme of investigation, and which has been submitted to and approved by the MMO.

14.—(1) Any archaeological reports produced in accordance with **condition 13(1)(h)(iii)** are to be agreed with the statutory historic body (and, if relevant, Suffolk Coastal District Council).

(2) Each programme, statement, plan, protocol or scheme required to be approved under **condition 13** must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(3) No licensed activity may commence until for that licensed activity the MMO has approved in writing any relevant programme, statement, plan, protocol or scheme required to be approved under **condition 13**.

(4) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under **condition 13**, unless otherwise agreed in writing by the MMO.

(5) No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has given written approval of an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency, response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme in accordance with the MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues”, and has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations contained within MGN543 and its annexes.

Reporting of engaged agents, contractors and vessels

15.—(1) The undertaker must provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; and
- (b) each week during the construction of the authorised scheme a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the licensed activities.

(2) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Foundation restrictions

16. No gravity base foundations may be installed in any area of the seabed with mobile sand waves of five metres or more, as identified by the swath-bathymetry survey carried out under condition 17(2)(b), unless otherwise agreed in writing by the MMO.

Pre-construction monitoring and surveys

17.—(1) The undertaker must, in discharging **condition 13(1)(b)**, submit details (which accord with the in principle monitoring plan) for written approval by the MMO in consultation with relevant statutory bodies of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report; and

- (a) the survey proposals must specify each survey’s objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post-construction comparison is intended and the justification for this being required.

(2) The pre-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake—

- (a) appropriate surveys to determine the location and extent of any benthic communities/benthos constituting habitats of principal importance in whole or in part

inside the area(s) within the Order limits in which it is proposed to carry out construction works; and

- (b) a full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a, and side scan sonar, of the area(s) within the Order limits in which it is proposed to carry out construction works including a 500 metre buffer area around the site of each work, inclusive of seabed anomalies or sites of historic or archaeological interest that lie within that 500 metre buffer.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation bodies.

Construction monitoring

18.—(1) The undertaker must, in discharging **condition 13(1)(b)**, submit details (which accord with the in principle monitoring plan) for approval by the MMO in consultation with the relevant statutory nature conservation bodies of any proposed monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The survey proposals must specify each survey's objectives.

(2) The undertaker must carry out the surveys approved under sub-paragraph (1) and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation bodies.

Post construction

19.—(1) The undertaker must, in discharging **condition 13(1)(b)**, submit details (which accord with the in principle monitoring plan) for approval by the MMO in consultation with relevant statutory bodies of proposed post-construction surveys, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) The post-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake —

- (a) appropriate surveys of any benthic communities/benthos constituting habitats of principal importance in whole or in part inside the area(s) within the Order limits in which construction works were carried out;
- (b) within twelve months of completion of the licensed activities, one full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a across the area(s) within the Order limits in which construction works were carried out to assess any changes in bedform topography and such further monitoring or assessment as may be agreed to ensure that cables have been buried or protected.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) for up to 3 years post-construction, which could be non-consecutive years, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation bodies.

(4) 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.

Reporting of impact pile driving/detonation of explosives

20.—(1) (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—

- (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;
- (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;
- (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

(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.

(3) For the purpose of this condition—

- (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;
- (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.

SCHEDULE 13

Article 28

DEEMED LICENCE UNDER THE 2009 ACT – TRANSMISSION ASSETS (LICENCE 2 – PHASE 2)

PART 1

Licensed Marine Activities

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“2007 Regulations” means the Offshore Marine Conservation (Natural Habitats, &c.) Regulation 2007;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“authorised deposits” means the substances and articles specified in paragraph 2(3) of this licence;

“authorised scheme” means Work Nos. 2, 3 and 5A described in paragraph 3 of this licence or any part of that work;

“cable protection” means measures for cable crossings and where cable burial is not possible due to ground conditions, to protect cables and prevent loss of seabed sediment by use of grout bags, protective aprons, mattresses, flow energy dissipation (frond) devices or rock and gravel dumping;

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

“commence” means the first carrying out of any part of the licensed activities save for pre-construction surveys and monitoring and “commenced” and “commencement” must be construed accordingly;

“condition” means a condition in Part 2 of this licence;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands B75 7RL and any successor body to its functions; “enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“European offshore marine site” has the meaning given in regulation 15 of the 2007 Regulations;

“European site” has the meaning given in regulation 24 of the 2007 Regulations;

“gravity base foundation” means a structure principally of steel, concrete, or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or additional skirts and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“in principle monitoring plan” means the document certified as the in principle monitoring plan by the Secretary of State for the purposes of this Order;

“jacket foundation” means a steel jacket/ lattice-type structure constructed of steel which is fixed to the seabed at two or more points with steel pin piles or steel suction caissons and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment, and “discrete jacket foundation types” includes pre-piled or post-piled jackets, three-legged or four legged jackets, or straight or battered leg jackets;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this licence;

“LAT” means lowest astronomical tide;

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of **Schedule 1** (ancillary works) and any component part of any wind turbine generator, offshore electrical station, accommodation platform or meteorological mast described in Part 1 of **Schedule 1** (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” is construed accordingly;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“notice to mariners” means a notice issued by the undertaker to mariners to inform them of issues that affect the safety of navigation;

“offshore cables” means any Alternating Current (AC) or Direct Current (DC) cables offshore and includes fibre optic cables either within the cable or laid alongside;

“offshore electrical station” means a platform attached to the seabed by means of a foundation, with one or more decks, whether open or fully clad, accommodating electrical power transformers, instrumentation, protection and control systems, neutral earthing resistors, reactive compensation, standby electrical generation equipment, fuelling facilities, auxiliary and uninterruptible power supply systems and transformers, accommodation and/or emergency shelter, craneage, metering stations, meteorological equipment, helicopter landing facilities, messing facilities, potable water storage, black water separation equipment, control

hub, drainage facilities, access equipment, J-tubes, marking and lighting and other associated equipment and facilities to enable the transmission of electronic communications and for electricity to be collected at, and exported from, the platform and, depending on the type of electrical station, low, medium and/or high voltage switch gear, and/or AC filters and/or AC/DC converter with switching devices and/or DC equipment including DC capacitors and DC filters;

“offshore Order limits” means the limits shown on the works plan within which the authorised scheme may be carried out, whose grid coordinates are set out in paragraph 3 of this licence;

“the Order” means the East Anglia THREE Offshore Wind Farm Order 201X;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of the Order;

“outline written scheme of investigation (offshore)” means the document certified as the outline written scheme of investigation (offshore) by the Secretary of State for the purposes of this Order;

“platform exclusion zone” means the area shown as such on the offshore works plan;

“relevant site” means a European offshore marine site and a European site;

“restricted area” means the area hatched black on the works plan being 250 metres from site 30;

“sediment sample survey” means a survey to be carried out in the event that works are proposed in the restricted area which:

- (i) samples sediment for arsenic contamination in the area of those works; and
- (ii) must be carried out in accordance with details which have first been approved by the MMO;

“single offshore phase” means carrying out all offshore works as a single construction operation;

“site 30” means site 30 shown on the works plan (offshore) which has the following grid coordinates:

<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
52° 27' 32.889" N	02° 36' 9.019" E

“Southern North Sea possible Special Area of Conservation” means the Southern North Sea possible Special Area of Conservation as set out in the JNCC 2016 Harbour Porpoise Special Area of Conservation Consultation dated January 2016;

“statutory historic body” means Historic England or its successor in function;

“suction caissons” means large diameter steel cylindrical shells which penetrate the seabed assisted by hydrostatic pressure differential for fixity of steel jacket foundations;

“two offshore phases” means carrying out the offshore works as two separate construction operations pursuant to the deemed marine licences set out in schedules 10, 12 and 14 (Licence 1 – Phase 1) of the Order and schedules 11, 13 and 15 (Licence 2 – Phase 2) of the Order respectively;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“undertaker” means East Anglia THREE Limited;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or

adapted for movement through, in, on or over water and which is at the time in, on or over water;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation;

“Work No. 1” means the offshore generating stations comprising wind turbine generators, accommodation platforms, meteorological masts and subsea cables;

“Work No. 5B” means onshore connection works consisting of up to four circuits pulled through existing ducts laid underground from mean low water at Bawdsey Cliffs;

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order.

(2) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

(a) Marine Management Organisation

Offshore Marine Licensing

Lancaster House

Hampshire Court

Newcastle Business Park

Newcastle upon Tyne

NE4 7YH

Tel: 0300 123 1032;

(b) Marine Management Organisation (local office)

Marine Environment Team

Pakefield Road

Lowestoft

Suffolk

NR33 0HT;

(c) Trinity House

Tower Hill

London

EC3N 4DH

Tel: 020 7481 6900;

(d) The United Kingdom Hydrographic Office

Admiralty Way

Taunton

Somerset
TA1 2DN
Tel: 01823 337 900;

(e) Maritime and Coastguard Agency

Navigation Safety Branch
Bay 2/20, Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 020 3817 2433;

(f) Centre for Environment, Fisheries and Aquaculture Science

Pakefield Road
Lowestoft
Suffolk
NR33 0HT
Tel: 01502 562 244;

(g) Natural England

Area 1C, Nobel House
17 Smith Square
London
SW1P 2AL
Tel: 0300 060 4911;

(h) Historic England

Eastgate Court
195-205 High Street
Guildford
GU1 3EH
Tel: 01483 252 059.

Details of licensed marine activities

2. Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act—

- (a) the deposit at sea of the substances and articles specified in sub-paragraph (3) below;
- (b) the construction of works in or over the sea and/or on or under the sea bed;
- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation; and
- (d) the disposal of up to 410,322 m³ of inert material of natural origin within the offshore Order limits produced during construction drilling or seabed preparation for foundation works and cable sandwave preparation works at disposal site reference HU212 within the extent of the Order limits seaward of MHWS, comprising
 - (i) 28,405 m³ for cable installation;

- (ii) 219,675 m³ for the offshore electrical substations;
- (iii) 162,242 m³ for the export cables.

3. Such activities are authorised in relation to the construction, maintenance and operation of—

(1) *Work No. 2 (phase 2)* – up to three offshore electrical stations fixed to the seabed within the area shown on the works plan by one of two foundation types (namely jacket or gravity base).

(2) *Work No. 3 (phase 2)* – a network of subsea cables within the area shown on the works plan between the offshore electrical stations comprising Work No. 2 and for the transmission of electricity and electronic communications including one or more cable crossings.

(3) *Work No. 5A (phase 2)* – up to two export cables between Work No. 2 and Work No. 5B consisting of subsea cables along routes within the Order limits seaward of MHWS including one or more cable crossings.

(4) In connection with such Works No. 2, 3 and 5A and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised scheme and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence.

(5) In connection with such Works No. 2, 3 and 5A, ancillary works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/ or maintenance of the authorised scheme; and
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works.

4. The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and
- (g) marine coatings, other chemicals and timber.

5. The grid coordinates for the authorised scheme are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	52° 46' 18.078" N	3° 2' 15.841" E	109	52° 8' 10.903" N	1° 52' 48.323" E
2	52° 30' 20.027" N	2° 48' 33.266" E	110	52° 8' 10.712" N	1° 52' 47.616" E
3	52° 26' 58.466" N	2° 45' 50.653" E	111	52° 8' 10.496" N	1° 52' 46.925" E
4	52° 45' 10.57" N	2° 45' 33.773" E	112	52° 8' 10.262" N	1° 52' 46.251" E
5	52° 45' 6.908" N	2° 44' 40.427" E	113	52° 8' 10.01" N	1° 52' 45.598" E
6	52° 30' 36.608" N	2° 44' 41.63" E	114	52° 8' 33.338" N	1° 49' 15.275" E

7	52° 31' 32.11" N	2° 44' 38.806" E	115	52° 8' 25.361" N	1° 48' 48.294" E
8	52° 31' 32.077" N	2° 44' 38.805" E	116	52° 7' 42.888" N	1° 46' 40.77" E
9	52° 26' 58.438" N	2° 44' 31.396" E	117	52° 4' 57.709" N	1° 44' 58.279" E
10	52° 27' 48.319" N	2° 44' 29.313" E	118	52° 5' 44.772" N	1° 40' 57.35" E
11	52° 27' 8.503" N	2° 35' 52.305" E	119	52° 2' 57.008" N	1° 36' 33.019" E
12	52° 21' 19.757" N	2° 35' 44.827" E	120	52° 2' 56.839" N	1° 36' 32.348" E
13	52° 20' 53.714" N	2° 35' 44.025" E	121	52° 2' 56.648" N	1° 36' 31.69" E
14	52° 20' 41.665" N	2° 35' 43.654" E	122	52° 2' 56.44" N	1° 36' 31.048" E
15	52° 20' 40.009" N	2° 35' 43.603" E	123	52° 2' 56.209" N	1° 36' 30.422" E
16	52° 20' 39.779" N	2° 35' 43.596" E	124	52° 2' 55.964" N	1° 36' 29.813" E
17	52° 20' 39.235" N	2° 35' 33.246" E	125	52° 2' 55.705" N	1° 36' 29.224" E
18	52° 20' 37.378" N	2° 34' 46.042" E	126	52° 2' 55.424" N	1° 36' 28.655" E
19	52° 27' 57.917" N	2° 34' 5.046" E	127	52° 3' 53.611" N	1° 35' 40.499" E
20	52° 27' 52.452" N	2° 33' 59.829" E	128	52° 2' 14.708" N	1° 35' 9.305" E
21	52° 20' 35.254" N	2° 33' 47.765" E	129	52° 2' 14.564" N	1° 35' 9.04" E
22	52° 20' 34.372" N	2° 33' 23.612" E	130	52° 0' 43.448" N	1° 33' 4.952" E
23	52° 20' 33.112" N	2° 32' 49.135" E	131	52° 0' 43.078" N	1° 33' 4.472" E
24	52° 20' 31.704" N	2° 32' 10.856" E	132	52° 0' 42.692" N	1° 33' 4.023" E
25	52° 20' 31.542" N	2° 32' 6.378" E	133	52° 0' 42.293" N	1° 33' 3.605" E
26	52° 20' 31.013" N	2° 31' 52.055" E	134	52° 0' 41.882" N	1° 33' 3.218" E
27	52° 20' 30.264" N	2° 31' 31.698" E	135	52° 0' 41.461" N	1° 33' 2.865" E
28	52° 20' 30.599" N	2° 31' 2.961" E	136	52° 0' 41.029" N	1° 33' 2.545" E
29	52° 20' 30.599" N	2° 31' 2.924" E	137	52° 0' 40.59" N	1° 33' 2.26" E
30	52° 20' 30.61" N	2° 31' 2.171" E	138	52° 0' 40.14" N	1° 33' 2.011" E
31	52° 20' 30.613" N	2° 31' 1.825" E	139	52° 0' 39.683" N	1° 33' 1.797" E
32	52° 20'	2° 31' 1.82" E	140	51° 58'	1° 32'

	30.613" N			47.51" N	13.971" E
33	52° 20' 30.624" N	2° 31' 0.752" E	141	51° 57' 36.634" N	1° 29' 50.826" E
34	52° 20' 30.624" N	2° 31' 0.746" E	142	52° 0' 41.137" N	1° 27' 15.227" E
35	52° 20' 30.653" N	2° 30' 58.371" E	143	51° 57' 51.574" N	1° 26' 41.476" E
36	52° 20' 30.653" N	2° 30' 58.359" E	144	51° 57' 51.624" N	1° 26' 40.671" E
37	52° 20' 30.678" N	2° 30' 56.069" E	145	51° 57' 51.646" N	1° 26' 39.863" E
38	52° 20' 30.678" N	2° 30' 56.033" E	146	51° 57' 51.646" N	1° 26' 39.054" E
39	52° 20' 30.732" N	2° 30' 51.529" E	147	51° 57' 51.62" N	1° 26' 38.246" E
40	52° 20' 30.757" N	2° 30' 49.345" E	148	51° 57' 51.566" N	1° 26' 37.441" E
41	52° 20' 30.757" N	2° 30' 49.312" E	149	51° 57' 51.487" N	1° 26' 36.642" E
42	52° 20' 30.826" N	2° 30' 43.347" E	150	51° 57' 51.386" N	1° 26' 35.85" E
43	52° 20' 30.826" N	2° 30' 43.304" E	151	51° 57' 51.257" N	1° 26' 35.068" E
44	52° 20' 30.894" N	2° 30' 37.395" E	152	51° 57' 51.181" N	1° 26' 34.683" E
45	52° 20' 30.898" N	2° 30' 37.169" E	153	51° 57' 51.106" N	1° 26' 34.298" E
46	52° 20' 30.93" N	2° 30' 34.529" E	154	51° 57' 51.08" N	1° 26' 34.194" E
47	52° 20' 30.923" N	2° 30' 33.771" E	155	52° 0' 2.563" N	1° 25' 32.077" E
48	52° 20' 30.912" N	2° 30' 32.605" E	156	52° 0' 1.829" N	1° 25' 30.107" E
49	52° 20' 30.862" N	2° 30' 26.199" E	157	52° 0' 0.832" N	1° 25' 27.444" E
50	52° 20' 25.289" N	2° 30' 20.762" E	158	52° 0' 0.799" N	1° 25' 27.357" E
51	52° 19' 17.209" N	2° 29' 15.157" E	159	52° 0' 0.749" N	1° 25' 27.271" E
52	52° 24' 0.479" N	2° 29' 6.65" E	160	52° 0' 0.655" N	1° 25' 27.123" E
53	52° 18' 42.739" N	2° 28' 41.724" E	161	52° 0' 0.634" N	1° 25' 27.079" E
54	52° 18' 37.606" N	2° 28' 35.103" E	162	52° 0' 0.616" N	1° 25' 27.03" E
55	52° 18' 29.308" N	2° 28' 26.972" E	163	52° 0' 0.544" N	1° 25' 26.883" E
56	52° 18' 29.308" N	2° 28' 26.972" E	164	52° 0' 0.464" N	1° 25' 26.741" E
57	52° 17' 17.336" N	2° 27' 16.442" E	165	52° 0' 0.263" N	1° 25' 26.337" E

58	52° 17' 12.127" N	2° 27' 11.34" E	166	51° 59' 59.939" N	1° 25' 25.678" E
59	52° 17' 8.43" N	2° 27' 7.719" E	167	51° 59' 59.629" N	1° 25' 25.04" E
60	52° 17' 5.629" N	2° 27' 4.976" E	168	51° 59' 59.305" N	1° 25' 24.402" E
61	52° 17' 5.402" N	2° 27' 4.756" E	169	51° 59' 59.032" N	1° 25' 23.861" E
62	52° 17' 4.528" N	2° 27' 3.899" E	170	51° 59' 59.014" N	1° 25' 23.828" E
63	52° 16' 51.182" N	2° 27' 3.996" E	171	51° 59' 59.01" N	1° 25' 23.816" E
64	52° 16' 45.023" N	2° 27' 4.04" E	172	51° 59' 58.927" N	1° 25' 23.634" E
65	52° 16' 38.262" N	2° 27' 4.089" E	173	51° 59' 58.855" N	1° 25' 23.473" E
66	52° 16' 37.834" N	2° 27' 4.093" E	174	51° 59' 58.772" N	1° 25' 23.293" E
67	52° 16' 36.43" N	2° 27' 3.924" E	175	51° 59' 57.689" N	1° 25' 21.148" E
68	52° 23' 14.798" N	2° 26' 39.878" E	176	51° 59' 57.689" N	1° 25' 21.146" E
69	52° 14' 1.882" N	2° 26' 45.354" E	177	51° 59' 57.556" N	1° 25' 20.881" E
70	52° 13' 55.528" N	2° 26' 44.591" E	178	51° 59' 57.556" N	1° 25' 20.88" E
71	52° 9' 28.062" N	2° 25' 36.366" E	179	51° 59' 57.516" N	1° 25' 20.807" E
72	52° 9' 31.781" N	2° 25' 35.028" E	180	51° 59' 57.516" N	1° 25' 20.807" E
73	52° 20' 54.388" N	2° 21' 15.039" E	181	51° 59' 57.516" N	1° 25' 20.806" E
74	52° 20' 47.386" N	2° 21' 9.27" E	0	52° 21' 53.636" N	2° 34' 13.872" E
75	52° 13' 39.648" N	2° 17' 18.125" E	1	52° 21' 25.052" N	2° 34' 13.842" E
76	52° 13' 35.674" N	2° 15' 59.368" E	2	52° 25' 56.467" N	2° 34' 8.342" E
77	52° 13' 33.794" N	2° 15' 22.225" E	3	52° 21' 19.548" N	2° 31' 49.797" E
78	52° 11' 17.488" N	2° 11' 34.133" E	4	52° 21' 19.145" N	2° 31' 2.229" E
79	52° 11' 17.574" N	2° 11' 33.361" E	5	52° 21' 19.717" N	2° 30' 12.848" E
80	52° 11' 17.639" N	2° 11' 32.583" E	6	52° 23' 26.293" N	2° 30' 2.994" E
81	52° 11' 17.678" N	2° 11' 31.8" E	7	52° 23' 25.516" N	2° 30' 1.705" E
82	52° 11' 17.693" N	2° 11' 31.015" E	8	52° 23' 24.756" N	2° 30' 0.388" E
83	52° 11'	2° 11' 30.23"	9	52° 23'	2° 29'

	17.686" N	E		24.014" N	59.042" E
84	52° 11'	2° 11'	10	52° 23'	2° 29' 57.67"
	17.653" N	29.447" E		23.294" N	E
85	52° 11'	2° 11'	11	52° 23'	2° 29' 56.27"
	17.599" N	28.667" E		22.592" N	E
86	52° 11'	2° 11'	12	52° 21'	2° 29'
	17.52" N	27.893" E		19.235" N	57.051" E
87	52° 11'	2° 11'	13	52° 23'	2° 29'
	17.416" N	27.126" E		21.912" N	54.846" E
88	52° 12'	2° 11' 9.965"	14	52° 23'	2° 29'
	22.846" N	E		21.25" N	53.395" E
89	52° 12'	2° 10' 3.953"	15	52° 23'	2° 29'
	27.655" N	E		20.605" N	51.921" E
90	52° 10'	2° 5' 24.993"	16	52° 23'	2° 29'
	22.645" N	E		19.986" N	50.423" E
91	52° 10'	2° 5' 24.211"	17	52° 23'	2° 29'
	22.512" N	E		19.385" N	48.903" E
92	52° 10'	2° 5' 23.442"	18	52° 23'	2° 29' 47.36"
	22.357" N	E		18.805" N	E
93	52° 10'	2° 5' 22.686"	19	52° 23'	2° 29'
	22.177" N	E		18.251" N	45.797" E
94	52° 11'	2° 2' 15.69" E	20	52° 23'	2° 29'
	6.526" N			17.714" N	44.213" E
95	52° 9'	2° 2' 11.44" E	21	52° 23'	2° 29'
	32.962" N			17.203" N	42.609" E
96	52° 8'	1° 57'	22	52° 21'	2° 29'
	46.529" N	45.569" E		17.284" N	40.473" E
97	52° 8'	1° 57'	23	52° 21'	2° 29'
	46.518" N	45.508" E		17.057" N	38.731" E
98	52° 9'	1° 57' 7.198"	24	52° 19'	2° 27'
	40.842" N	E		10.175" N	36.407" E
99	52° 8' 11.62"	1° 54'	25	52° 22'	2° 27'
	N	29.428" E		33.114" N	20.941" E
100	52° 9'	1° 53' 5.293"	26	52° 18'	2° 26' 0.71" E
	37.649" N	E		50.89" N	
101	52° 8'	1° 52'	27	52° 13'	2° 25'
	11.641" N	54.353" E		59.088" N	25.766" E
102	52° 8' 11.63"	1° 52' 53.58"	28	52° 13'	2° 23'
	N	E		58.494" N	27.683" E
103	52° 8'	1° 52'	29	52° 13'	2° 23' 2.476"
	11.594" N	52.809" E		56.852" N	E
104	52° 8'	1° 52'	30	52° 20'	2° 22'
	11.537" N	52.041" E		22.816" N	19.439" E
105	52° 8'	1° 52'	31	52° 18'	2° 21'
	11.454" N	51.279" E		12.42" N	12.115" E
106	52° 8' 11.35"	1° 52'	32	52° 18'	2° 21'
	N	50.524" E		15.739" N	10.581" E
107	52° 8'	1° 52'	33	52° 13'	2° 19'
	11.224" N	49.779" E		46.402" N	32.631" E
108	52° 8'	1° 52'			
	11.076" N	49.044" E			

6. This licence remains in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of section 72 of the 2009 Act apply to this licence except that the provisions of section 72(7) relating to the transfer of the licence only apply to a transfer not falling within **article 5** (benefit of the Order).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

9. Any amendments to or variations from the approved plans, protocols or statements must be minor or immaterial where it has been demonstrated that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

PART 2

Conditions

Design parameters

1. Licensed activities must not take place within the restricted area until the MMO has confirmed in writing that it is satisfied with the results of a sediment sample survey or that sufficient mitigation has been secured in the approved method statement required to be submitted under condition 13(1)(g), to prevent impacts from contaminated sediment.

2. Offshore platforms forming part of the authorised scheme must not be erected within the platform exclusion zone, whose co-ordinates are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	52° 30' 20.0268" N	2° 48' 33.264" E	3	52° 32' 10.4568" N	2° 45' 31.9572" E
2	52° 31' 32.0664" N	2° 45' 31.8672" E	4	52° 30' 48.7369" N	2° 48' 57.7512" E

3. In the event that driven or part-driven pile foundations are proposed to be used, the hammer energy used to drive or part-drive the pile foundations must not exceed 3,500kJ.

4.—(1) The total number of offshore electrical stations forming part of the authorised scheme must not exceed three.

(2) The dimensions of any offshore electrical station forming part of the authorised scheme (excluding towers, helipads, masts and cranes) must not exceed 70 metres in height when measured from LAT, 80 metres in length and 120 metres in width.

(3) In relation to an offshore electrical station, each gravity base foundation must not have a footprint at the seabed which is more than 8,011 m².

(4) In relation to an offshore electrical station, each jacket foundation must not have—

(a) a footprint at the seabed which is more than 15,855 m²;

(b) more than one pile per leg or more than one suction caisson per leg.

5.—(1) The total length of the cables and the volume of their cable protection must not exceed the following—

<i>Work</i>	<i>Length</i>	<i>Cable protection</i>
Work No. 3 (platform link)	165 kilometres	19,580 m ³
Work No. 5A (export cable)	332 kilometres	40,630 m ³

6. The total amount of scour protection for the offshore electrical stations forming part of the authorised scheme must not exceed 50,400 m².

Notifications and inspections

7.—(1) The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with **condition 15**; and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with **condition 15**;
- (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with **condition 15** are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

- (a) the undertaker's registered address;
- (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities.

(7) The undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part—

- (a) at least ten days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and
- (b) on completion of construction of all offshore activities.

Confirmation of notification must be provided to the MMO within five days.

(8) A notice to mariners must be issued at least ten days prior to the commencement of licensed activities or any part of them advising of the start date of Work No. 2 and the expected vessel routes from the construction ports to the relevant location. A second notice to mariners must be issued advising of the start date of Work Nos. 3 and 5A and the route of the sub-sea cables. Copies of all notices must be provided to the MMO and UKHO within five days.

(9) The notices to mariners must be updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under **condition 13(1)(b)**. Copies of all notices must be provided to the MMO and the UKHO within five days.

(10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO.

(11) In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify MMO, MCA, Trinity House and the UK Hydrographic Office.

Aids to navigation

8.—(1) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and to take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) The undertaker must during the period from the start of construction of the authorised scheme to completion of decommissioning seaward of MHWS keep Trinity House and the MMO informed of progress of the authorised scheme seaward of MHWS including the following—

- (a) notice of commencement of construction of the authorised scheme within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within five days of completion of construction of the authorised scheme.

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan agreed pursuant to **condition 13(k)** using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS notify Trinity House and the MMO of any failure of the aids to navigation and the timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the undertaker becoming aware of any such failure.

(5) In the event that the provisions of **condition 7(11)** are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

9. The undertaker must colour all structures yellow (colour code RAL 1023) from at least highest astronomical tide to a height directed by Trinity House, or must colour the structure as directed by Trinity House from time to time.

Aviation safety

10.—(1) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, at least 14 days prior to the commencement of the authorised scheme, in writing of the following information—

- (a) the date of the commencement of construction of the authorised scheme;
- (b) the date any wind turbine generators are brought into use;
- (c) the maximum height of any construction equipment to be used;
- (d) the maximum heights of any wind turbine generator, mast and platform to be constructed;

- (e) the latitude and longitude of each wind turbine generator, mast and platform to be constructed,

and the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph and of the completion of the construction of the authorised scheme. Copies of notifications must be provided to the MMO.

Chemicals, drilling and debris

11.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised scheme must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(5) The undertaker must ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations, and drilling mud is disposed of within site disposal reference HU212 within the extent of the Order limits seaward of MHWS. Any other materials must be screened out before disposal at this site.

(6) The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(7) In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker must report the loss to the District Marine Office within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it.

(8) The undertaker must undertake the survey agreed under **condition 13(1)(h)(iii)** following the swath-bathymetry survey referred to in **condition 19(2)(b)**. Should any such obstructions resulting from burial of Work No. 5A (export cables) be identified which, in the reasonable opinion of the MMO, may be considered to interfere with fishing, the undertaker must take such steps to remove them as the MMO in its reasonable opinion may require.

(9) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(10) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under **condition 13(1)(d)(i)**.

(11) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if reasonable to do so.

Force majeure

12.—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the

safety of human life and/or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

13.—(1) The licensed activities or any part of those activities must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO—

- (a) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, to be agreed in writing with the MMO in consultation with Trinity House and the MCA which shows—
 - (i) the proposed location and choice of foundation of all offshore electrical stations;
 - (ii) the height, length and width of all offshore electrical stations;
 - (iii) the length and arrangement of all cables comprising Work Nos. 3 and 5A;
 - (iv) the dimensions of all gravity base foundations;
 - (v) the dimensions of all jacket foundations;
 - (vi) the proposed layout of all offshore electrical stations including any exclusion zones identified under sub-paragraph 13(1)(h)(iv);
 - (vii) a plan showing the indicative layout of all offshore electrical stations including all exclusion zones (insofar as not shown in (vi) above) and showing the indicative programming of particular works as set out in the indicative programme to be provided under sub-paragraph 13(1)(b)(iv); and
 - (viii) any exclusion zones/micrositing requirements identified in any mitigation scheme pursuant to sub-paragraph 13(1)(j);

to ensure conformity with the description of Works No. 2, 3 and 5A and compliance with **conditions 1 to 6** above.

- (b) A construction programme and monitoring plan (which accords with the in principle monitoring plan) to include details of—
 - (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant delivery of materials and installation works and whether such works are to be carried out as a single offshore phase or as two offshore phases;
 - (iii) proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with sub-paragraph 13(1)(h) and **conditions 17, 18 and 19**; and
 - (iv) an indicative written construction programme for all offshore electrical stations and cables comprised in the works at paragraph 3(1) to (3) of Part 1 (licensed marine activities) of this Schedule (insofar as not shown in paragraph (ii) above);

with details pursuant to paragraph (iii) above to be submitted to the MMO in accordance with the following—

- (aa) at least four months prior to the first survey, detail of the pre-construction surveys and an outline of all proposed monitoring;
- (bb) at least four months prior to construction, detail on construction monitoring;
- (cc) at least four months prior to commissioning, detail of post-construction (and operational) monitoring;

unless otherwise agreed in writing with the MMO.

- (c) A construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—

- (i) foundation installation methodology, including drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation works and having regard to any mitigation scheme pursuant to sub-paragraph 13(1)(i);
 - (ii) soft start procedures with specified duration periods;
 - (iii) offshore electrical station location and installation, including scour protection;
 - (iv) cable installation, including cable landfall and cable protection;
 - (v) contractors;
 - (vi) vessels and vessels transit corridors, which minimises disturbance to red-throated diver; and
 - (vii) associated and ancillary works.
- (d) A project environmental management plan covering the period of construction and operation to include details of—
- (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised scheme in relation to all activities carried out;
 - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) waste management and disposal arrangements;
 - (iv) the appointment and responsibilities of a fisheries liaison officer;
 - (v) a fisheries liaison and coexistence plan to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to **condition 7** and to address the interaction of the licensed activities with fishing activities; and
 - (vi) procedures to be adopted within vessels transit corridors to minimise disturbance to red-throated diver.
- (e) A scour protection management and cable protection plan providing details of the need, type, sources, quantity and installation methods for scour protection and cable protection, which plan must be updated and resubmitted for approval if changes to it are proposed following cable laying operations.
- (f) In the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol in accordance with the draft marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, following current best practice as advised by the relevant statutory nature conservation bodies.
- (g) A cable specification, installation and monitoring plan, to include—
- (i) technical specification of offshore cables below MHWS, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
 - (ii) a detailed cable laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques, including cable protection;
 - (iii) proposals for monitoring offshore cables including 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; and
 - (iv) appropriate methods such as a trawl or drift net to be deployed along Work No. 5 (export cables), following the survey referred to in **condition 19(2)(b)** to assess any seabed obstructions resulting from burial of the export cables.
- (h) A written scheme of archaeological investigation in relation to the offshore Order limits seaward of mean low water, which must be submitted at least 6 months prior to commencement of the licensed activities and must accord with the outline written scheme

of investigation (offshore) and industry good practice, in consultation with the statutory historic body (and, if relevant, Suffolk Coastal District Council) to include—

- (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
 - (ii) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
 - (iii) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within four months of any survey being completed;
 - (iv) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones;
 - (v) monitoring of archaeological exclusion zones during and post construction;
 - (vi) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS (Online AccesS to the Index of archaeological investigationS') form with a digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO (and Suffolk Coastal District Council where the report relates to the intertidal area) that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;
 - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme; and
 - (viii) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the offshore Order Limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities.
- (i) A mitigation scheme for any habitats of principal importance identified by the survey referred to in **condition 17(2)(a)** and in accordance with the in principle monitoring plan.
 - (j) An offshore operations and maintenance plan, in accordance with the outline offshore operations and maintenance plan, to be submitted to the MMO at least four months prior to commencement of operation of the licensed activities and to provide for review and resubmission every three years during the operational phase.
 - (k) An aids to navigation management plan to be agreed in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of **condition 8** for the lifetime of the authorised scheme.

(2) In the event that driven or part-driven pile foundations are proposed to be used, the licenced activities, or any phase of those activities must not commence until an East Anglia THREE Project Southern North Sea pSAC Site Integrity Plan which accords with the principles set out in the In Principle East Anglia THREE Project Southern North Sea pSAC Site Integrity Plan has been submitted to the MMO and the MMO is satisfied that the plan, provides such mitigation as is necessary to avoid adversely affecting the integrity (within the meaning of the 2007 Regulations) of a relevant site, to the extent that harbour porpoise are a protected feature of that site.

(3) For the purpose of paragraph (2) –

- (a) the Southern North Sea possible Special Area of Conservation must be treated as a European offshore marine site until:
 - (i) that Area (or any part of it) becomes a European offshore marine site or a European site; or
 - (ii) it is decided that no part of that Area should be a European offshore marine site or a European site; and
- (b) harbour porpoise must be treated as a protected feature of the Southern North Sea possible Special Area of Conservation.

(4) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a specific written scheme of investigation which is itself in accordance with the details set out in the outline offshore written scheme of investigation, and which has been submitted to and approved by the MMO.

14.—(1) Any archaeological reports produced in accordance with **condition 13(1)(h)(iii)** are to be agreed with the statutory historic body (and, if relevant, Suffolk Coastal District Council).

(2) Each programme, statement, plan, protocol or scheme required to be approved under **condition 13** must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(3) No licensed activity may commence until for that licensed activity the MMO has approved in writing any relevant programme, statement, plan, protocol or scheme required to be approved under **condition 13**.

(4) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under **condition 13**, unless otherwise agreed in writing by the MMO.

(5) No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has given written approval of an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency, response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme in accordance with the MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues”, and has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations contained within MGN543 and its annexes.

Reporting of engaged agents, contractors and vessels

15.—(1) The undertaker must provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; and
- (b) each week during the construction of the authorised scheme a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the licensed activities.

(2) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Foundation restrictions

16. No gravity base foundations may be installed in any area of the seabed with mobile sand waves of five metres or more, as identified by the swath-bathymetry survey carried out under condition 17(2)(b), unless otherwise agreed in writing by the MMO.

Pre-construction monitoring and surveys

17.—(1) The undertaker must, in discharging **condition 13(1)(b)**, submit details (which accord with the in principle monitoring plan) for written approval by the MMO in consultation with relevant statutory bodies of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report; and

- (a) the survey proposals must specify each survey’s objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-

construction position, with any limitations, and must make clear what post-construction comparison is intended and the justification for this being required.

(2) The pre-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake—

- (a) appropriate surveys to determine the location and extent of any benthic communities/benthos constituting habitats of principal importance in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works;
- (b) a full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a, and side scan sonar, of the area(s) within the Order limits in which it is proposed to carry out construction works including a 500 metre buffer area around the site of each work, inclusive of seabed anomalies or sites of historic or archaeological interest that lie within that 500 metre buffer.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation bodies.

Construction monitoring

18.—(1) The undertaker must, in discharging **condition 13(1)(b)**, submit details (which accord with the in principle monitoring plan) for approval by the MMO in consultation with the relevant statutory nature conservation bodies of any proposed monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The survey proposals must specify each survey's objectives.

(2) The undertaker must carry out the surveys approved under sub-paragraph (1) and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation bodies.

Post construction

19.—(1) The undertaker must, in discharging **condition 13(1)(b)**, submit details (which accord with the in principle monitoring plan) for approval by the MMO in consultation with relevant statutory bodies of proposed post-construction surveys, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) The post-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake —

- (a) appropriate surveys of any benthic communities/benthos constituting habitats of principal importance in whole or in part inside the area(s) within the Order limits in which construction works were carried out;
- (b) within twelve months of completion of the licensed activities, one full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a across the area(s) within the Order limits in which construction works were carried out to assess any changes in bedform topography and such further monitoring or assessment as may be agreed to ensure that cables have been buried or protected.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) for up to 3 years post-construction, which could be non-consecutive years, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation bodies.

(4) 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.

Reporting of impact pile driving/detonation of explosives

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—

- (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;
- (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;
- (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

(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.

(3) For the purpose of this condition—

- (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;
- (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.

SCHEDULE 14

Article 28

DEEMED LICENCE UNDER THE 2009 ACT – INTERCONNECTION (LICENCE 1 – PHASE 1)

PART 1

Licensed Marine Activities

1.—(1) (1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“authorised deposits” means the substances and articles specified in paragraph 2(3) of this licence;

“authorised scheme” means Work No. 4 described in paragraph 3 of this licence or any part of that work;

“cable protection” means measures for cable crossings and where cable burial is not possible due to ground conditions, to protect cables and prevent loss of seabed sediment by use of grout bags, protective aprons, mattresses, flow energy dissipation (frond) devices or rock and gravel dumping;

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

“commence” means the first carrying out of any part of the licensed activities save for pre-construction surveys and monitoring and “commenced” and “commencement” must be construed accordingly;

“condition” means a condition in Part 2 of this licence;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands B75 7RL and any successor body to its functions;

“East Anglia ONE Offshore Wind Farm” means the East Anglia ONE offshore wind farm authorised by the East Anglia ONE Order;

“East Anglia ONE Order” means the East Anglia ONE Offshore Wind Farm Order 2014(a) as amended by the East Anglia ONE Offshore Wind Farm (Corrections and Amendments) Order 2016(b);

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“in principle monitoring plan” means the document certified as the in principle monitoring plan by the Secretary of State for the purposes of this Order;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this licence;

“LAT” means lowest astronomical tide;

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of **Schedule 1** (ancillary works) and any component part of any wind turbine generator, offshore electrical station, accommodation platform or meteorological mast described in Part 1 of **Schedule 1** (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” is construed accordingly;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“notice to mariners” means a notice issued by the undertaker to mariners to inform them of issues that affect the safety of navigation;

“offshore cables” means any Alternating Current (AC) or Direct Current (DC) cables offshore and includes fibre optic cables either within the cable or laid alongside;

“offshore Order limits” means the limits shown on the works plan within which the authorised scheme may be carried out, whose grid coordinates are set out in paragraph 3 of this licence;

“the Order” means the East Anglia THREE Offshore Wind Farm Order 201X;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of the Order;

(a) No. 1599

(b) No. 447

“outline written scheme of investigation (offshore)” means the document certified as the outline written scheme of investigation (offshore) by the Secretary of State for the purposes of this Order;

“single offshore phase” means carrying out all offshore works as a single construction operation;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“two offshore phases” means carrying out the offshore works as two separate construction operations pursuant to the deemed marine licences set out in schedules 10, 12 and 14 (Licence 1 – Phase 1) of the Order and schedules 11, 13 and 15 (Licence 2 – Phase 2) of the Order respectively;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“undertaker” means East Anglia THREE Limited;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“Work No. 2” means the offshore electrical stations;

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order.

(2) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

(a) Marine Management Organisation

Offshore Marine Licensing

Lancaster House

Hampshire Court

Newcastle Business Park

Newcastle upon Tyne

NE4 7YH

Tel: 0300 123 1032;

(b) Marine Management Organisation (local office)

Marine Environment Team

Pakefield Road

Lowestoft

Suffolk

NR33 0HT;

(c) Trinity House

Tower Hill

London
EC3N 4DH
Tel: 020 7481 6900;

(d) The United Kingdom Hydrographic Office

Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;

(e) Maritime and Coastguard Agency

Navigation Safety Branch
Bay 2/20, Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 020 3817 2433;

(f) Centre for Environment, Fisheries and Aquaculture Science

Pakefield Road
Lowestoft
Suffolk
NR33 0HT
Tel: 01502 562 244;

(g) Natural England

Area 1C, Nobel House
17 Smith Square
London
SW1P 2AL
Tel: 0300 060 4911;

(h) Historic England

Eastgate Court
195-205 High Street
Guildford
GU1 3EH
Tel: 01483 252 059.

Details of licensed marine activities

2. Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act—

- (a) the deposit at sea of the substances and articles specified in sub-paragraph (3) below;

- (b) the construction of works in or over the sea and/or on or under the sea bed;
- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation; and
- (d) the disposal of up to 73,746.5 m³ of inert material of natural origin within the offshore Order limits produced during construction drilling or seabed preparation for foundation works and cable sandwave preparation works at disposal site reference HU212 within the extent of the Order limits seaward of MHWS.

3. Such activities are authorised in relation to the construction, maintenance and operation of—

(1) *Work No. 4 (phase 1)* – up to two cables to connect Work No. 2 with the East Anglia ONE Offshore Wind Farm.

(2) In connection with such Work No. 4 and to the extent that it does not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised scheme and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence.

(3) In connection with such Work No. 4, ancillary works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/ or maintenance of the authorised scheme; and
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works.

4. The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and
- (g) marine coatings, other chemicals and timber.

5. The grid coordinates for the authorised scheme are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	52° 14' 1.882" N	2° 26' 45.354" E	30	52° 21' 19.206" N	2° 46' 2.318" E
2	52° 13' 59.088" N	2° 25' 25.766" E	31	52° 21' 17.723" N	2° 46' 1.395" E
3	52° 18' 50.89" N	2° 26' 0.71" E	32	52° 21' 16.279" N	2° 46' 0.316" E
4	52° 19' 10.175" N	2° 27' 36.407" E	33	52° 21' 14.879" N	2° 45' 59.085" E
5	52° 21' 17.057" N	2° 29' 38.731" E	34	52° 21'13.536" N	2° 45' 57.708" E
6	52° 21' 17.284" N	2° 29' 40.473" E	35	52° 21' 12.247" N	2° 45' 56.189" E
7	52° 21' 19.235" N	2° 29' 57.051" E	36	52° 21' 11.884" N	2° 45' 55.697" E

8	52° 21' 19.717" N	2° 30' 12.848" E	37	52° 20' 39.779" N	2° 35' 43.596" E
9	52° 21' 19.145" N	2° 31' 2.229" E	38	52° 19' 21.004" N	2° 35' 42.287" E
10	52° 21' 19.548" N	2° 31' 49.797" E	39	52° 19' 19.7" N	2° 35' 42.202" E
11	52° 21' 25.052" N	2° 34' 13.842" E	40	52° 19' 18.12" N	2° 35' 41.945" E
12	52° 21' 53.636" N	2° 34' 13.872" E	41	52° 19' 16.554" N	2° 35' 41.519" E
13	52° 25' 31.271" N	2° 34' 8.916" E	42	52° 19' 15.01" N	2° 35° 40.927" E
14	52° 25' 56.467" N	2° 34' 8.342" E	43	52° 19' 13.49" N	2° 35' 40.172" E
15	52° 27' 57.917" N	2° 34' 5.046" E	44	52° 19' 12.004" N	2° 35' 39.255" E
16	52° 27' 48.319" N	2° 44' 29.313" E	45	52° 19' 10.56" N	2° 35' 38.183" E
17	52° 30' 36.608" N	2° 44' 41.63" E	46	52° 19' 9.16" N	2° 35' 36.958" E
18	52° 31' 32.077" N	2° 44' 38.805" E	47	52° 19' 7.813" N	2° 35' 35.587" E
19	52° 31' 32.11" N	2° 44' 38.806" E	48	52° 19' 6.524" N	2° 35' 34.075" E
20	52° 45' 6.908" N	2° 44' 40.427" E	49	52° 19' 5.297" N	2° 35' 32.429" E
21	52° 45' 10.57" N	2° 45' 33.773" E	50	52° 19' 4.141" N	2° 35' 30.655' E
22	52° 46' 18.078" N	3° 2' 15.841" E	51	52° 19' 3.799" N	2° 35' 30.087" E
23	52° 30' 20.027" N	2° 48' 33.266" E	52	52° 18' 18.9" N	2° 34' 13.648" E
24	52° 26' 58.466" N	2° 45' 50.653" E	53	52' 18' 15.833" N	2° 34' 13.645" E
25	52° 21' 27.702" N	2° 46' 4.456" E	54	52° 14' 17.009" N	2° 33' 46.245" E
26	52° 21' 25.412" N	2° 46' 4.374" E	55	52° 14' 16.166" N	2° 33' 38.948" E
27	52° 21' 23.836" N	2° 46' 4.11" E	0	52° 21' 49.262" N	2° 44' 44.274" E
28	52° 21' 22.27" N	2° 46' 3.678" E	1	52° 26' 58.438" N	2° 44' 31.396" E
29	52° 21' 20.725" N	2° 46' 3.08" E	2	52° 27' 8.503" N	2° 35' 52.305" E
			3	52° 21' 19.757" N	2° 35' 44.827" E

6. This licence remains in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of section 72 of the 2009 Act apply to this licence except that the provisions of section 72(7) relating to the transfer of the licence only apply to a transfer not falling within **article 5** (benefit of the Order).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

9. Any amendments to or variations from the approved plans, protocols or statements must be minor or immaterial where it has been demonstrated that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

PART 2

Conditions

Design parameters

1. The total length of the cables and the volume of their cable protection must not exceed the following—

<i>Work</i>	<i>Length</i>	<i>Cable protection</i>
Work No. 4 (interconnection)	190 kilometres	23,980 m ³

Notifications and inspections

2.—(1) The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with **condition 8**; and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with **condition 8**;
- (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with **condition 8** are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

- (a) the undertaker's registered address;
- (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities.

(7) The undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part—

- (a) at least ten days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and
- (b) on completion of construction of all offshore activities.

Confirmation of notification must be provided to the MMO within five days.

(8) A local notice to mariners must be issued at least ten days prior to the commencement of the licensed activities or any part of them advising of the start date of Work No. 4 and the expected vessel routes from the construction ports to the relevant location and the route of the subsea cables. Copies of all notices must be provided to the MMO and UKHO within five days.

(9) The notices to mariners must be updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under **condition 6(b)**. Copies of all notices must be provided to the MMO and UKHO within five days.

(10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO.

(11) In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify MMO, MCA, Trinity House and the UK Hydrographic Office.

Aids to navigation

3.—(1) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and to take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) The undertaker must during the period from the start of construction of the authorised scheme to completion of decommissioning seaward of MHWS keep Trinity House and the MMO informed of progress of the authorised scheme seaward of MHWS including the following—

- (a) notice of commencement of construction of the authorised scheme within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within five days of completion of construction of the authorised scheme.

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan agreed pursuant to **condition 6(k)** using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS notify Trinity House and the MMO of any failure of the aids to navigation and the timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the undertaker becoming aware of any such failure.

(5) In the event that the provisions of **condition 2(11)** are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House. Chemicals, drilling and debris

4.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised scheme must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(5) The undertaker must ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations, and drilling mud is disposed of within site disposal reference HU212 within the extent of the Order limits seaward of MHWS. Any other materials must be screened out before disposal at this site.

(6) The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(7) In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker must report the loss to the District Marine Office within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it.

(8) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(9) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under **condition 6(d)(i)**.

(10) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if reasonable to do so.

Force majeure

5.—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life and/or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

6. The licensed activities or any part of those activities must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO—

- (a) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, to be agreed in writing with the MMO in consultation with Trinity House and the MCA which shows—

- (i) the length and arrangement of all cables comprising Work No. 4;
 - (ii) a plan showing the indicative programming of particular works as set out in the indicative programme to be provided under sub-paragraph 6 (b)(iv); and
 - (iii) any exclusion zones/micrositing requirements identified in any mitigation scheme pursuant to sub-paragraph 6(h);
- to ensure conformity with the description of Work No. 4 and compliance with **condition 1** above.
- (b) A construction programme and monitoring plan (which accords with the in principle monitoring plan) to include details of—
 - (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant delivery of materials and installation works and whether such works are to be carried out as a single offshore phase or as two offshore phases;
 - (iii) proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with sub-paragraph 6(g) and **conditions 9, 10 and 11**; and
 - (iv) an indicative written construction programme for all cables comprised in the works at paragraph 3(1) of Part 1 (licensed marine activities) of this Schedule (insofar as not shown in paragraph (ii) above);

with details pursuant to paragraph (iii) above to be submitted to the MMO in accordance with the following—

 - (aa) at least four months prior to the first survey, detail of the pre-construction surveys and an outline of all proposed monitoring;
 - (bb) at least four months prior to construction, detail on construction monitoring;
 - (cc) at least four months prior to commissioning, detail of post-construction (and operational) monitoring;

unless otherwise agreed in writing with the MMO.
 - (c) A construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—
 - (i) cable installation, including cable landfall and cable protection;
 - (ii) contractors;
 - (iii) vessels and vessels transit corridors, which minimises disturbance to red-throated diver; and
 - (iv) associated and ancillary works.
 - (d) A project environmental management plan covering the period of construction and operation to include details of—
 - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised scheme in relation to all activities carried out;
 - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) waste management and disposal arrangements;
 - (iv) the appointment and responsibilities of a fisheries liaison officer;
 - (v) a fisheries liaison and coexistence plan to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to **condition 2** and to address the interaction of the licensed activities with fishing activities; and
 - (vi) procedures to be adopted within vessels transit corridors to minimise disturbance to red-throated diver.

- (e) A scour protection management and cable protection plan providing details of the need, type, sources, quantity and installation methods for scour protection and cable protection, which plan must be updated and resubmitted for approval if changes to it are proposed following cable laying operations.
 - (f) A cable specification, installation and monitoring plan, to include—
 - (i) technical specification of offshore cables below MHWS, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
 - (ii) a detailed cable laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques, including cable protection; and
 - (iii) proposals for monitoring offshore cables including 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.
 - (g) A written scheme of archaeological investigation in relation to the offshore Order limits seaward of mean low water, which must be submitted at least 6 months prior to commencement of the licensed activities and must accord with the outline written scheme of investigation (offshore) and industry good practice, in consultation with the statutory historic body to include—
 - (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
 - (ii) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
 - (iii) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within four months of any survey being completed;
 - (iv) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones;
 - (v) monitoring of archaeological exclusion zones during and post construction;
 - (vi) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS (Online Access to the Index of archaeological investigations) form with a digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;
 - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme; and
 - (viii) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the offshore Order Limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities.
 - (h) A mitigation scheme for any habitats of principal importance identified by the survey referred to in **condition 9(2)(a)** and in accordance with the in principle monitoring plan.
 - (i) An offshore operations and maintenance plan, in accordance with the outline offshore operations and maintenance plan, to be submitted to the MMO at least four months prior to commencement of operation of the licensed activities and to provide for review and resubmission every three years during the operational phase.
 - (j) An aids to navigation management plan to be agreed in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of **condition 3** for the lifetime of the authorised scheme.
- (2) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a specific written

scheme of investigation which is itself in accordance with the details set out in the outline offshore written scheme of investigation, and which has been submitted to and approved by the MMO.

7.—(1) Any archaeological reports produced in accordance with **condition 6(h)(iii)** are to be agreed with the statutory historic body.

(2) Each programme, statement, plan, protocol or scheme required to be approved under **condition 6** must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(3) No licensed activity may commence until for that licensed activity the MMO has approved in writing any relevant programme, statement, plan, protocol or scheme required to be approved under **condition 6**.

(4) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under **condition 6**, unless otherwise agreed in writing by the MMO.

(5) No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has given written approval of an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency, response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme in accordance with the MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues”, and has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations contained within MGN543 and its annexes.

Reporting of engaged agents, contractors and vessels

8.—(1) The undertaker must provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; and
- (b) each week during the construction of the authorised scheme a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the licensed activities.

(2) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Pre-construction monitoring and surveys

9.—(1) The undertaker must, in discharging **condition 13(b)**, submit details (which accord with the in principle monitoring plan) for written approval by the MMO in consultation with relevant statutory bodies of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report; and

- (a) the survey proposals must specify each survey’s objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post-construction comparison is intended and the justification for this being required.

(2) The pre-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake—

- (a) appropriate surveys to determine the location and extent of any benthic communities/benthos constituting habitats of principal importance in whole or in part

inside the area(s) within the Order limits in which it is proposed to carry out construction works; and

- (b) a full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a, and side scan sonar, of the area(s) within the Order limits in which it is proposed to carry out construction works including a 500 metre buffer area around the site of each work, inclusive of seabed anomalies or sites of historic or archaeological interest that lie within that 500 metre buffer.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation bodies.

Construction monitoring

10.—(1) The undertaker must, in discharging **condition 6(b)**, submit details (which accord with the in principle monitoring plan) for approval by the MMO in consultation with the relevant statutory nature conservation bodies of any proposed monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The survey proposals must specify each survey's objectives.

(2) The undertaker must carry out the surveys approved under sub-paragraph (1) and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation bodies.

Post construction

11.—(1) The undertaker must, in discharging **condition 6(b)**, submit details (which accord with the in principle monitoring plan) for approval by the MMO in consultation with relevant statutory nature conservation bodies of proposed post-construction surveys, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) The post-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake —

- (a) appropriate surveys of any benthic communities/benthos constituting habitats of principal importance in whole or in part inside the area(s) within the Order limits in which construction works were carried out;
- (b) within twelve months of completion of the licensed activities, one full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a across the area(s) within the Order limits in which construction works were carried out to assess any changes in bedform topography and such further monitoring or assessment as may be agreed to ensure that cables have been buried or protected.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) for up to 3 years post-construction, which could be non-consecutive years, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation bodies.

(4) Following installation of cables, the cable monitoring plan required under condition 6(f)(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.

Coordination with East Anglia ONE

12.—(1) Prior to submission of each of the pre-construction plans and documentation required to be submitted under **condition 6(a) to (j)** above the undertaker must provide a copy of the relevant plans and documentation to the undertaker of the offshore element of East Anglia ONE to enable that undertaker to provide any comments on the plans and documentation

(2) The undertaker must participate in liaison meetings with the undertaker of the offshore element of East Anglia ONE as requested from time to time by the MMO in writing in advance, which meeting will be chaired by the MMO and may consider such matters as are determined by the MMO relating to the efficient operation of the offshore element of the authorised project and the offshore element of East Anglia ONE.

SCHEDULE 15

Article 28

DEEMED LICENCE UNDER THE 2009 ACT – INTERCONNECTION (LICENCE 2 – PHASE 2)

PART 1

Licensed Marine Activities

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“authorised deposits” means the substances and articles specified in paragraph 2(3) of this licence;

“authorised scheme” means Work No. 4 described in paragraph 3 of this licence or any part of that work;

“cable protection” means measures for cable crossings and where cable burial is not possible due to ground conditions, to protect cables and prevent loss of seabed sediment by use of grout bags, protective aprons, mattresses, flow energy dissipation (frond) devices or rock and gravel dumping;

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

“commence” means the first carrying out of any part of the licensed activities save for pre-construction surveys and monitoring and “commenced” and “commencement” be construed accordingly;

“condition” means a condition in Part 2 of this licence;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands B75 7RL and any successor body to its functions;

“East Anglia ONE Offshore Wind Farm” means the East Anglia ONE offshore wind farm authorised by the East Anglia ONE Order;

“East Anglia ONE Order” means the East Anglia ONE Offshore Wind Farm Order 2014(a) as amended by the East Anglia ONE Offshore Wind Farm (Corrections and Amendments) Order 2016(b);

(a) No. 1599

(b) No. 447

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“in principle monitoring plan” means the document certified as the in principle monitoring plan by the Secretary of State for the purposes of this Order;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this licence;

“LAT” means lowest astronomical tide;

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of **Schedule 1** (ancillary works) and any component part of any wind turbine generator, offshore electrical station, accommodation platform or meteorological mast described in Part 1 of **Schedule 1** (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” is construed accordingly;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“notice to mariners” means a notice issued by the undertaker to mariners to inform them of issues that affect the safety of navigation;

“offshore cables” means any Alternating Current (AC) or Direct Current (DC) cables offshore and includes fibre optic cables either within the cable or laid alongside;

“offshore Order limits” means the limits shown on the works plan within which the authorised scheme may be carried out, whose grid coordinates are set out in paragraph 3 of this licence;

“the Order” means the East Anglia THREE Offshore Wind Farm Order 201X;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of the Order;

“outline written scheme of investigation (offshore)” means the document certified as the outline written scheme of investigation (offshore) by the Secretary of State for the purposes of this Order;

“single offshore phase” means carrying out all offshore works as a single construction operation;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“two offshore phases” means carrying out the offshore works as two separate construction operations pursuant to the deemed marine licences set out in schedules 10, 12 and 14 (Licence 1 – Phase 1) of the Order and schedules 11, 13 and 15 (Licence 2 – Phase 2) of the Order respectively;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“undertaker” means East Anglia THREE Limited;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“Work No. 2” means the offshore electrical stations;

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order.

(2) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

(a) all times are taken to be Greenwich Mean Time (GMT);

(b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

(a) Marine Management Organisation

Offshore Marine Licensing

Lancaster House

Hampshire Court

Newcastle Business Park

Newcastle upon Tyne

NE4 7YH

Tel: 0300 123 1032;

(b) Marine Management Organisation (local office)

Marine Environment Team

Pakefield Road

Lowestoft

Suffolk

NR33 0HT;

(c) Trinity House

Tower Hill

London

EC3N 4DH

Tel: 020 7481 6900;

(d) The United Kingdom Hydrographic Office

Admiralty Way

Taunton

Somerset

TA1 2DN

Tel: 01823 337 900;

(e) Maritime and Coastguard Agency

Navigation Safety Branch

Bay 2/20, Spring Place

105 Commercial Road

Southampton
SO15 1EG
Tel: 020 3817 2433;

- (f) Centre for Environment, Fisheries and Aquaculture Science
Pakefield Road
Lowestoft
Suffolk
NR33 0HT
Tel: 01502 562 244;

- (g) Natural England
Area 1C, Nobel House
17 Smith Square
London
SW1P 2AL
Tel: 0300 060 4911;

- (h) Historic England
Eastgate Court
195-205 High Street
Guildford
GU1 3EH
Tel: 01483 252 059.

Details of licensed marine activities

2. Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act—

- (a) the deposit at sea of the substances and articles specified in sub-paragraph (3) below;
- (b) the construction of works in or over the sea and/or on or under the sea bed;
- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation; and
- (d) the disposal of up to 73,746.5 m³ of inert material of natural origin within the offshore Order limits produced during construction drilling or seabed preparation for foundation works and cable sandwave preparation works at disposal site reference HU212 within the extent of the Order limits seaward of MHWS.

3. Such activities are authorised in relation to the construction, maintenance and operation of—

(1) *Work No. 4 (phase 2)* – up to two cables to connect Work No. 2 with the East Anglia ONE Offshore Wind Farm.

(2) In connection with such Work No. 4 and to the extent that it does not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised scheme and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence.

(3) In connection with such Work No. 4, ancillary works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/ or maintenance of the authorised scheme; and
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works.

4. The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and
- (g) marine coatings, other chemicals and timber.

5. The grid coordinates for the authorised scheme are specified below—

<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	52° 14' 1.882" N	2° 26' 45.354" E	30	52° 21' 19.206" N	2° 46' 2.318" E
2	52° 13' 59.088" N	2° 25' 25.766" E	31	52° 21' 17.723" N	2° 46' 1.395" E
3	52° 18' 50.89" N	2° 26' 0.71" E	32	52° 21' 16.279" N	2° 46' 0.316" E
4	52° 19' 10.175" N	2° 27' 36.407" E	33	52° 21' 14.879" N	2° 45' 59.085" E
5	52° 21' 17.057" N	2° 29' 38.731" E	34	52° 21'13.536" N	2° 45' 57.708" E
6	52° 21' 17.284" N	2° 29' 40.473" E	35	52° 21' 12.247" N	2° 45' 56.189" E
7	52° 21' 19.235" N	2° 29' 57.051" E	36	52° 21' 11.884" N	2° 45' 55.697" E
8	52° 21' 19.717" N	2° 30' 12.848" E	37	52° 20' 39.779" N	2° 35' 43.596" E
9	52° 21' 19.145" N	2° 31' 2.229" E	38	52° 19' 21.004" N	2° 35' 42.287" E
10	52° 21' 19.548" N	2° 31' 49.797" E	39	52° 19' 19.7" N	2° 35' 42.202" E
11	52° 21' 25.052" N	2° 34' 13.842" E	40	52° 19' 18.12" N	2° 35' 41.945" E
12	52° 21' 53.636" N	2° 34' 13.872" E	41	52° 19' 16.554" N	2° 35' 41.519" E
13	52° 25' 31.271" N	2° 34' 8.916" E	42	52° 19' 15.01" N	2° 35° 40.927" E
14	52° 25' 56.467" N	2° 34' 8.342" E	43	52° 19' 13.49" N	2° 35' 40.172" E
15	52° 27'	2° 34' 5.046"	44	52° 19'	2° 35'

	57.917" N	E		12.004" N	39.255" E
16	52° 27'	2° 44'	45	52° 19'	2° 35'
	48.319" N	29.313" E		10.56" N	38.183" E
17	52° 30'	2° 44' 41.63"	46	52° 19' 9.16"	2° 35'
	36.608" N	E		N	36.958" E
18	52° 31'	2° 44'	47	52° 19'	2° 35'
	32.077" N	38.805" E		7.813" N	35.587" E
19	52° 31'	2° 44'	48	52° 19'	2° 35'
	32.11" N	38.806" E		6.524" N	34.075" E
20	52° 45'	2° 44'	49	52° 19'	2° 35'
	6.908" N	40.427" E		5.297" N	32.429" E
21	52° 45'	2° 45'	50	52° 19'	2° 35' 30.655'
	10.57" N	33.773" E		4.141" N	E
22	52° 46'	3° 2' 15.841"	51	52° 19'	2° 35'
	18.078" N	E		3.799" N	30.087" E
23	52° 30'	2° 48'	52	52° 18' 18.9"	2° 34'
	20.027" N	33.266" E		N	13.648" E
24	52° 26'	2° 45'	53	52' 18'	2° 34'
	58.466" N	50.653" E		15.833" N	13.645" E
25	52° 21'	2° 46' 4.456"	54	52° 14'	2° 33'
	27.702" N	E		17.009" N	46.245" E
26	52° 21'	2° 46' 4.374"	55	52° 14'	2° 33'
	25.412" N	E		16.166" N	38.948" E
27	52° 21'	2° 46' 4.11" E	0	52° 21'	2° 44'
	23.836" N			49.262" N	44.274" E
28	52° 21'	2° 46' 3.678"	1	52° 26'	2° 44'
	22.27" N	E		58.438" N	31.396" E
29	52° 21'	2° 46' 3.08" E	2	52° 27'	2° 35'
	20.725" N			8.503" N	52.305" E
			3	52° 21'	2° 35'
				19.757" N	44.827" E

6. This licence remains in force until the authorised scheme has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of section 72 of the 2009 Act apply to this licence except that the provisions of section 72(7) relating to the transfer of the licence only apply to a transfer not falling within **article 5** (benefit of the Order).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

9. Any amendments to or variations from the approved plans, protocols or statements must be minor or immaterial where it has been demonstrated that the subject matter of the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

PART 2

Conditions

Design parameters

1. The total length of the cables and the volume of their cable protection must not exceed the following—

<i>Work</i>	<i>Length</i>	<i>Cable protection</i>
Work No. 4 (interconnection)	190 kilometres	23,980 m ³

Notifications and inspections

2.—(1) The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with **condition 8**; and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with **condition 8**;
- (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with **condition 8** are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

- (a) the undertaker's registered address;
- (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities.

(7) The undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant part—

- (a) at least ten days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and
- (b) on completion of construction of all offshore activities.

Confirmation of notification must be provided to the MMO within five days.

(8) A local notice to mariners must be issued at least ten days prior to the commencement of the licensed activities or any part of them advising of the start date of Work No. 4, the expected vessel

routes from the construction ports to the relevant location and the route of the subsea cables. Copies of all notices must be provided to the MMO and the UKHO within five days.

(9) The notices to mariners must be updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under **condition 6(b)**. Copies of all notices must be provided to the MMO and the UKHO within five days.

(10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO.

(11) In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify MMO, MCA, Trinity House and the UK Hydrographic Office.

Aids to navigation

3.—(1) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and to take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct.

(2) The undertaker must during the period from the start of construction of the authorised scheme to completion of decommissioning seaward of MHWS keep Trinity House and the MMO informed of progress of the authorised scheme seaward of MHWS including the following—

- (a) notice of commencement of construction of the authorised scheme within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within five days of completion of construction of the authorised scheme.

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan agreed pursuant to **condition 13(k)** using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning seaward of MHWS notify Trinity House and the MMO of any failure of the aids to navigation and the timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the undertaker becoming aware of any such failure.

(5) In the event that the provisions of **condition 7(11)** are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

Chemicals, drilling and debris

4.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised scheme must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(5) The undertaker must ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations, and drilling mud is disposed of within site disposal reference HU212 within the extent of the Order limits seaward of MHWS. Any other materials must be screened out before disposal at this site.

(6) The undertaker must ensure that any rock material used in the construction of the authorised scheme is from a recognised source, free from contaminants and containing minimal fines.

(7) In the event that any rock material used in the construction of the authorised scheme is misplaced or lost below MHWS, the undertaker must report the loss to the District Marine Office within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it.

(8) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(9) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under **condition 13(d)(i)**.

(10) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if reasonable to do so.

Force majeure

5.—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life and/or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

6. The licensed activities or any part of those activities must not commence until the following (as relevant to that part) have been submitted to and approved in writing by the MMO—

(a) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, to be agreed in writing with the MMO in consultation with Trinity House and the MCA which shows—

(i) the length and arrangement of all cables comprising Work No. 4;

(ii) a plan showing the indicative programming of particular works as set out in the indicative programme to be provided under sub-paragraph 6(b)(iv); and

(iii) any exclusion zones/micrositing requirements identified in any mitigation scheme pursuant to sub-paragraph 6(h);

to ensure conformity with the description of Work No. 4 and compliance with **condition 1** above.

(b) A construction programme and monitoring plan (which accords with the in principle monitoring plan) to include details of—

- (i) the proposed construction start date;
- (ii) proposed timings for mobilisation of plant delivery of materials and installation works and whether such works are to be carried out as a single offshore phase or as two offshore phases;
- (iii) proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with sub-paragraph 6(g) and **conditions 9, 10 and 11**; and
- (iv) an indicative written construction programme for all cables comprised in the works at paragraph 3(1) of Part 1 (licensed marine activities) of this Schedule (insofar as not shown in paragraph (ii) above);

with details pursuant to paragraph (iii) above to be submitted to the MMO in accordance with the following—

- (aa) at least four months prior to the first survey, detail of the pre-construction surveys and an outline of all proposed monitoring;
- (bb) at least four months prior to construction, detail on construction monitoring;
- (cc) at least four months prior to commissioning, detail of post-construction (and operational) monitoring;

unless otherwise agreed in writing with the MMO.

- (c) A construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—
 - (i) cable installation, including cable landfall and cable protection;
 - (ii) contractors;
 - (iii) vessels and vessels transit corridors, which minimises disturbance to red-throated diver; and
 - (iv) associated and ancillary works.
- (d) A project environmental management plan covering the period of construction and operation to include details of—
 - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised scheme in relation to all activities carried out;
 - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) waste management and disposal arrangements;
 - (iv) the appointment and responsibilities of a fisheries liaison officer;
 - (v) a fisheries liaison and coexistence plan to ensure relevant fishing fleets are notified of commencement of licensed activities pursuant to **condition 2** and to address the interaction of the licensed activities with fishing activities; and
 - (vi) procedures to be adopted within vessels transit corridors to minimise disturbance to red-throated diver.
- (e) A scour protection management and cable protection plan providing details of the need, type, sources, quantity and installation methods for scour protection and cable protection, which plan must be updated and resubmitted for approval if changes to it are proposed following cable laying operations.
- (f) A cable specification, installation and monitoring plan, to include—
 - (i) technical specification of offshore cables below MHWS, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;

- (ii) a detailed cable laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques, including cable protection; and
 - (iii) proposals for monitoring offshore cables including 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.
- (g) A written scheme of archaeological investigation in relation to the offshore Order limits seaward of mean low water, which must be submitted at least 6 months prior to commencement of the licensed activities and must accord with the outline written scheme of investigation (offshore) and industry good practice, in consultation with the statutory historic body to include—
- (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
 - (ii) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
 - (iii) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within four months of any survey being completed;
 - (iv) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones;
 - (v) monitoring of archaeological exclusion zones during and post construction;
 - (vi) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS (Online Access to the Index of archaeological investigations) form with a digital copy of the report within six months of completion of construction of the authorised scheme, and to notify the MMO that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;
 - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme; and
 - (viii) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the offshore Order Limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities.
- (h) A mitigation scheme for any habitats of principal importance identified by the survey referred to in **condition 9(2)(a)** and in accordance with the in principle monitoring plan.
- (i) An offshore operations and maintenance plan, in accordance with the outline offshore operations and maintenance plan, to be submitted to the MMO at least four months prior to commencement of operation of the licensed activities and to provide for review and resubmission every three years during the operational phase.
- (j) An aids to navigation management plan to be agreed in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of **condition 3** for the lifetime of the authorised scheme.

(2) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a specific written scheme of investigation which is itself in accordance with the details set out in the outline offshore written scheme of investigation, and which has been submitted to and approved by the MMO.

7.—(1) Any archaeological reports produced in accordance with **condition 6(g)(iii)** are to be agreed with the statutory historic body.

(2) Each programme, statement, plan, protocol or scheme required to be approved under **condition 6** must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(3) No licensed activity may commence until for that licensed activity the MMO has approved in writing any relevant programme, statement, plan, protocol or scheme required to be approved under **condition 6**.

(4) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under **condition 6**, unless otherwise agreed in writing by the MMO.

(5) No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has given written approval of an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency, response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme in accordance with the MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues”, and has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations contained within MGN543 and its annexes.

Reporting of engaged agents, contractors and vessels

8.—(1) The undertaker must provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; and
- (b) each week during the construction of the authorised scheme a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the licensed activities.

(2) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Pre-construction monitoring and surveys

9.—(1) The undertaker must, in discharging **condition 6(b)**, submit details (which accord with the in principle monitoring plan) for written approval by the MMO in consultation with relevant statutory bodies of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report; and

- (a) the survey proposals must specify each survey’s objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement; and
- (b) the baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post-construction comparison is intended and the justification for this being required.

(2) The pre-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake—

- (a) appropriate surveys to determine the location and extent of any benthic communities/benthos constituting habitats of principal importance in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works;
- (b) a full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a, and side scan sonar, of the area(s) within the Order limits in which it is proposed to carry out construction works including a 500 metre buffer area around the site of each work, inclusive of seabed anomalies or sites of historic or archaeological interest that lie within that 500 metre buffer.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) and provide the baseline report to the MMO in the agreed format in accordance with the agreed timetable, unless

otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation bodies.

Construction monitoring

10.—(1) The undertaker must, in discharging **condition 6(b)**, submit details (which accord with the in principle monitoring plan) for approval by the MMO in consultation with the relevant statutory nature conservation bodies of any proposed monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The survey proposals must specify each survey's objectives.

(2) The undertaker must carry out the surveys approved under sub-paragraph (1) and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation bodies.

Post construction

11.—(1) The undertaker must, in discharging **condition 6(b)**, submit details (which accord with the in principle monitoring plan) for approval by the MMO in consultation with relevant statutory bodies of proposed post-construction surveys, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) The post-construction surveys referred to in sub-paragraph (1) must, unless otherwise agreed with the MMO, have due regard to, but not be limited to, the need to undertake —

- (a) appropriate surveys of any benthic communities/benthos constituting habitats of principal importance in whole or in part inside the area(s) within the Order limits in which construction works were carried out;
- (b) within twelve months of completion of the licensed activities, one full sea floor coverage swath-bathymetry survey that meets the requirements of IHO S44ed5 Order 1a across the area(s) within the Order limits in which construction works were carried out to assess any changes in bedform topography and such further monitoring or assessment as may be agreed to ensure that cables have been buried or protected.

(3) The undertaker must carry out the surveys agreed under sub-paragraph (1) for up to 3 years post-construction, which could be non-consecutive years, and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation bodies.

(4) Following installation of cables, the cable monitoring plan required under condition 6(f)(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.

Coordination with East Anglia ONE

12.—(1) Prior to submission of each of the pre-construction plans and documentation required to be submitted under **condition 6(a) to (j)** above the undertaker must provide a copy of the relevant plans and documentation to the undertaker of the offshore element of East Anglia ONE to enable that undertaker to provide any comments on the plans and documentation.

(2) The undertaker must participate in liaison meetings with the undertaker of the offshore element of East Anglia ONE as requested from time to time by the MMO in writing in advance, which meeting will be chaired by the MMO and may consider such matters as are determined by the MMO relating to the efficient operation of the offshore element of the authorised project and the offshore element of East Anglia ONE.

EXPLANATORY NOTES

(This note is not part of the Order)

This Order grants development consent for, and authorises East Anglia THREE Limited to construct, operate and maintain a generating station located in the North Sea approximately 69km from the coast at Lowestoft, together with all necessary and associated development. For the purposes of the development that it authorises East Anglia THREE Limited is authorised by the Order compulsorily or by agreement to purchase land and rights in land to use land, as well as to override easements and other rights. The Order also provides a defence in proceedings in respect of statutory nuisance and to discharge water. The Order imposes requirements in connection with the development for which it grants development consent.

The Order also grants deemed marine licences for the marine licensable activities, being the deposit of substances and articles and the carrying out of works, involved in the construction of the generating station and associated development. The deemed marine licences impose conditions in connection with the deposits and works for which they grant consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with **article 32** (certification of plans, etc) of this Order may be inspected free of charge at the offices of Suffolk Coastal District Council at Melton Hill, Woodbridge, Suffolk, IP12 1AU and Mid Suffolk District Council at 131 High Street, Needham Market, Ipswich, Suffolk, IP6 8DL.