

**SCOTTISHPOWER  
RENEWABLES**

# **East Anglia ONE North and East Anglia TWO Offshore Windfarms**

## **Written Summary of Oral Case**

**Issue Specific Hearing 15 on 19<sup>th</sup> March 2021:  
the draft Development Consent Orders (dDCOs)**

Applicants: East Anglia TWO Limited and East Anglia ONE North Limited

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**Applicable to East Anglia ONE North and East Anglia TWO**



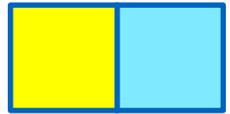
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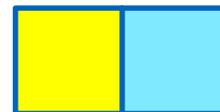
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## Glossary of Acronyms

|      |   |
|------|---|
| DCO  | Development Consent Order                     |
| ESC  | East Suffolk Council                          |
| ExA  | Examining Authority                           |
| ISH  | Issue Specific Hearing                        |
| NE   | Natural England                               |
| NSIP | Nationally Significant Infrastructure Project |
| SCC  | Suffolk County Council                        |
| SoCG | Statement of Common Ground                    |



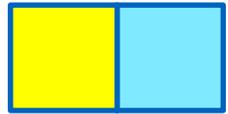
## Glossary of Terminology

|                               |  |
|-------------------------------|--|
| Applicants                    | East Anglia ONE North Limited and East Anglia TWO Limited  |
| East Anglia ONE North project | The proposed project consisting of up to 67 wind turbines, up to four offshore electrical platforms, up to one construction, operation and maintenance platform, inter-array cables, platform link cables, up to one operational meteorological mast, up to two offshore export cables, fibre optic cables, landfall infrastructure, onshore cables and ducts, onshore substation, and National Grid infrastructure. |
| East Anglia TWO project       | The proposed project consisting of up to 75 wind turbines, up to four offshore electrical platforms, up to one construction, operation and maintenance platform, inter-array cables, platform link cables, up to one operational meteorological mast, up to two offshore export cables, fibre optic cables, landfall infrastructure, onshore cables and ducts, onshore substation, and National Grid infrastructure. |
| National Grid infrastructure  | A National Grid substation, cable sealing end compounds, cable sealing end (with circuit breaker) compound, underground cabling and National Grid overhead line realignment works to facilitate connection to the national electricity grid, all of which will be consented as part of the proposed East Anglia TWO project Development Consent Order but will be National Grid owned assets.                        |
| National Grid substation      | The substation (including all of the electrical equipment within it) necessary to connect the electricity generated by the proposed East Anglia TWO / East Anglia ONE North project to the national electricity grid which will be owned by National Grid but is being consented as part of the proposed East Anglia TWO project Development Consent Order.  |
| Projects                      | The East Anglia ONE North project and the East Anglia TWO project.   |



# 1 Introduction

1. This document is applicable to both the East Anglia ONE North and East Anglia TWO Development Consent Order (DCO) applications (the Applications), and therefore is endorsed with the yellow and blue icon used to identify materially identical documentation in accordance with the Examining Authority's (ExA) procedural decisions on document management of 23 December 2019. Whilst for completeness of the record this document has been submitted to both Examinations, if it is read for one project submission there is no need to read it again.
2. The Issue Specific Hearing 15 for the Applications were run jointly and took place virtually on 19<sup>th</sup> March 2021 at 10:00am (Hearings).
3. The Hearings ran through the items listed in the agendas published by the ExA on 9<sup>th</sup> March 2021. The Applicants gave substantive oral submissions at the Hearings and these submissions are set out within this note.
4. Speaking on behalf of the Applicants were:
  - [REDACTED], partner at Shepherd and Wedderburn LLP; and
  - [REDACTED], senior associate at Shepherd and Wedderburn LLP.

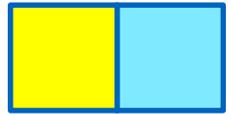


## 2 Agenda Item 1a: Negotiations with Affected Persons

5. SEAS submitted a letter dated 14 February 2021 (AS-074). This was phrased as a complaint. It related the terms of a draft option agreement which had been forwarded to ██████████ by solicitors acting on his behalf as power of attorney. The Applicants responded at ISH9 and provided information which disclosed that the information presented by SEAS lacked candour and did not accurately or fully represent the position of the parties at that time (**Applicants' Written Summary of Oral Case ISH9** (REP6-054)). This was followed up by the Applicants full response at Deadline 7 (REP 7-061).
6. At the Hearings ██████████, a retired solicitor, made a series of further statements. Claims were made about further unspecified affected persons. At the outset claims were made about a document described as 'Heads of Terms'. These are non-binding terms and form the basis of the subsequent negotiation of a formal contract. The heads of terms have on the front "Without prejudice Confidential subject to Planning & contract". At the back above the signature section the following is stated:

*"None of the contents of this document are intended to form any part of any contract that is binding on any Scottish Power group Company*

*The above Heads of Terms represent the main terms for the Option/Deeds of Grant of Easement, but are not supposed to be fully inclusive and are subject to additions to or amendments by the Grantor, the Grantee and their respective solicitors"*
7. It is clear that the Heads of terms are not a binding contract and all affected persons have had the benefit of professional advice from solicitors. ██████████ claimed to have a copy of a heads of terms but failed to acknowledge their non-binding status, which the Applicants consider to be somewhat misleading.
8. The Applicants have not pursued an aggressive campaign to sign up affected persons. They have recognised the challenges that many parties have had in obtaining and acting on professional advice during the COVID-19 pandemic. Whilst the majority of landowners have agreed heads of terms, no formal option agreements have been signed by any affected person. The Applicants will respond to any material lodged on the matter by SEAS at Deadline 8.



## 3 Agenda Item 2: Progress Position Statement

### 3.1 Changes to the draft DCO submitted at Deadline 7

9. The Applicants walked through the amendments that were made to the **draft DCO** at Deadline 7 (REP7-006) providing an explanation of the key changes. The changes made to the draft DCO at Deadline 7 are clearly shown in the **Draft Development Consent Order (Tracked)** (REP7-007) and reasons for the changes are set out clearly in the **Schedule of Changes to the Draft Development Consent Order** (REP7-008).

### 3.2 Changes to the draft DCO in progress

10. The Applicants provided an overview of the changes to the draft DCO in progress which have been reflected in the draft DCO submitted at Deadline 8 (document reference 3.1). The changes made to the draft DCO at Deadline 8 are clearly shown in the **Draft Development Consent Order (Tracked)** and the reasons for the changes are set out clearly in the **Schedule of Changes to the Draft Development Consent Order** (document reference 3.1.1). The Applicants have set out below the key amendments which were discussed at the Hearings with the updated position where matters have progressed since ISH15.

#### 3.2.1 Benefit of the Order (Article 5)

11. At the Hearings, the MMO requested that the Applicants amend article 5 of the draft DCO to reflect the equivalent provision of the Norfolk Vanguard and Hornsea Three DCOs. The Applicants have engaged with the MMO on this point and have agreed to incorporate new text to reflect paragraphs (14), (15) and (16) of the Norfolk Vanguard Order to provide more certainty around the notification process and this is reflected in the draft DCO submitted at Deadline 8.

#### 3.2.2 Arbitration (Article 37)

12. ESC requested that text be included in Article 37 of the draft DCO to specifically exclude the relevant planning authority from Article 37 on the basis that the MMO have been excluded on a “for the avoidance of doubt” basis and so the same approach should be taken to ESC.
13. The Applicants disagree. Article 37(1) states that “any dispute or difference arising out of or in connection with any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration” and since Article 38 and Schedule 16 apply in respect of the discharge of requirements, it is clear that another mechanism has been provided for and therefore the arbitration provision will not apply.



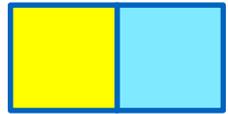
14. There is no equivalent appeals process in respect of the discharge of Deemed Marine Licence (DML) conditions, and therefore paragraph (2) of Article 37 is necessary to make it clear that arbitration does not apply to any matter for which the consent or approval of the Marine Management Organisation is required under the DMLs. This is therefore not a “for the avoidance of doubt” provision and the Applicants do not consider that it should be expanded to refer to ESC who will be the relevant discharging authority in respect of a number of requirements.

### 3.2.3 Crown rights (Article 41)

15. The Crown Estate has requested the deletion of paragraph (2) of Article 41 on the basis that the Applicants are not seeking compulsory acquisition of any interest in Crown land and therefore the provision is not required and the Applicants have agreed to make this change.

### 3.2.4 Compensation provisions (Article 44 and Schedule 18)

16. At the Hearing, the ExA suggested that it may be sensible to clarify the context in which the word “compensation” is used in Article 44 and Schedule 18 and so the Applicants have updated the text accordingly to refer to “offshore ornithology compensation measures”.
17. The Applicants have updated Schedule 18 at Deadline 8 to address a number of points that were raised at ISH14, including:
- In each part, a new provision has been included requiring that prior to commencement, the undertaker must provide details of the cost of delivery of the relevant compensation measure and must demonstrate how this has been secured, which must be to the reasonable satisfaction of the Secretary of State;
  - In Part 3, paragraph 3(d) the text “and/or adaptive management measures” has been inserted which was omitted in error;
  - In Parts 3, 4 and 6 which provide compensation for species that may be displaced, the timing of implementation of the compensation measures has been revised to refer to the installation of the towers comprised within the wind turbine generators rather than the operation of the turbines given that the displacement is predicted to occur as a result of the presence of the turbines rather than necessarily the operation of the turbines.
  - In Part 4, paragraphs 3, 5 and 6 have been updated to refer to an eradication programme in places rather than a general reference to compensation measures in order to reflect the equivalent text in Part 3 relating to Guillemot.



- In Parts 2, 3, 4 and 5 the text has been updated to include the potential for ornithological by-catch measures to be considered and taken forward as a compensation measure for the relevant species.

18. At the Hearings the MMO requested that a consultation period be specified within paragraph 3 of each part of the Schedule. The Applicants do not consider this level of detail to be appropriate for inclusion in the Schedule. The drafting seeks to provide a clear process and mechanism for the delivery of compensation measures and specific details in relation to timescales for consultation etc. are not considered to be appropriate for inclusion in the Schedule. Such details will be determined by the Secretary of State at the relevant time.

### 3.2.5 Onshore design parameters (Requirement 12)

19. Following ISH12, the Applicant has agreed to submit an Operational Noise Design Report] for approval prior to the commencement of Work No. 30. This is secured within requirement 12 and the wording has been agreed with ESC.
20. At the Hearings SASES requested that the maximum height of the gantries and other electrical equipment comprised within the cable sealing end compounds be listed separately in requirement 12 and so the Applicants have updated requirement 12 to specify separate maximum heights for the gantries and the other electrical equipment comprised within the cables sealing end compounds.
21. SASES also highlighted that the maximum heights for the cable sealing end compounds are not reflected in the Substations Design Principles Statement. The Applicants have taken on board this comment and the Substations Design Principles Statement has been updated at Deadline 8 to include details of the cable sealing end compounds.

### 3.2.6 Landfall construction method statement (Requirement 13)

22. At the Hearings the MMO requested to be named as a consultee in requirement 13 in respect of the landfall construction method statement and the Applicants have amended the requirement accordingly. The relevant statutory nature conservation body (i.e. Natural England) has also been named as a consultee and the amended wording has been agreed with the MMO, NE and ESC.

### 3.2.7 Implementation and maintenance of landscaping (Requirement 15)

23. Following requests from ESC to extend the 10 year replacement planting period to woodland planting forming part of Work No. 29, the Applicants can confirm that Requirement 15 has been updated to extend the 10 year period to trees or shrubs planted as part of Work No. 29.

### 3.2.8 Construction hours (Requirements 23 and 24)

24. ESC have requested that Requirements 23 and 24 are amended so that in addition to seeking approval from ESC in relation to the duration and timing of



works outwith the specified construction hours, agreement must also be sought on whether works that do not fall within paragraphs (2)(a) to (2)(e) of the requirements are essential.

25. The Applicants have discussed this with ESC and have agreed some revised text which is included in paragraph (3) of Requirements 23 and 24 to address this comment.
26. Whilst not technically a change to the draft DCO, following ISH12 on noise, the Applicants have agreed that where activities are carried out in the instance of an emergency outside the standard construction hours in accordance with paragraph (2)(e) of Requirements 23 or 24, an explanation will be provided to ESC within 5 working days following the event, which will include details on the nature of the emergency and the hours and duration in respect of which the emergency works were undertaken. This is secured through a new commitment within the **Outline Code of Construction Practice** (document reference 3.1).

### 3.2.9 Control of noise during operational phase (Requirement 27)

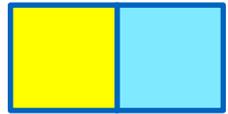
27. Following ISH12, the Applicants have continued to engage with ESC regarding some of the concerns raised, including the use of the term “standard operation” within the requirement and in relation to the potential for a noise report to be submitted prior to commencement.
28. In order to address the matters raised, the Applicants have included a definition of “standard operation” within requirement 27 and have also included a new paragraph in requirement 12 to require the submission and approval of details of the specification of plant comprised within Work No. 30 and any noise mitigation proposed, together with updated modelling prior to the commencement of Work No. 30. Both amendments to the draft DCO have been agreed with ESC.

### 3.2.10 Public rights of way (Requirement 32)

29. At the Hearing, SCC queried whether onshore preparation works that affect a public right of way would fall within the scope of requirement 32. The Applicants explained that the intention was for such works to be caught by the requirement however in order to clarify the position the Applicants have updated the text of requirement 32 to specifically refer to onshore preparation works to make it clear that where onshore preparation works affect a public right of way, they will fall within the scope of the requirement. This amendment has been agreed with SCC.

### 3.2.11 Procedure for discharge of requirements (Schedule 16)

30. The Applicants welcome ESC’s confirmation at the Hearings that they are willing to accept the amended timescales and so it is understood that there are no matters outstanding in respect of the timescales specified within Scheduled 16.



31. ESC however advised that they do not agree with the inclusion of the deemed approval provision. Whilst the Applicants consider the deemed approval mechanism to be appropriate and justified for the reasons set out in section 3.1.7 of the **Applicants' Written Summary of Oral Case ISH9** (REP6-054), in order to reach agreement with ESC on the text of Schedule 16, the Applicants have removed the deemed approval mechanism from paragraph 1(4). This is reflected in the draft DCO submitted at Deadline 8.

### 3.3 Changes to the DMLs in progress

#### 3.3.1 UXO Clearance Close Out Report (Condition 16/12)

32. The MMO requested two minor changes to the UXO clearance condition in respect of the new text that was added at Deadline 7 in respect of the close out report.

33. These changes are:

- to include a time period for submission of the close out report in paragraph (5); and
- to amend the word “may” to “will” in paragraph (6).

34. The Applicants agreed to include a requirement to submit the close out report within three months and have also amended the text in paragraph (6) from “may” to “will” and this has been reflected in the **draft DCO** at Deadline 8.

#### 3.3.2 Construction Monitoring (Condition 21/17)

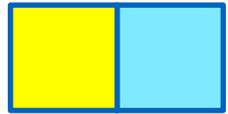
35. At Deadline 7, the Applicants updated paragraph (3) of the construction monitoring condition as requested by the MMO to clarify that the reference to “significant” means “statistically significant”. This reflects updates made to the In Principle Monitoring Plan submitted at Deadline 6.

36. However, at Deadline 7 Natural England advised that the word “statistically” should be removed (**Appendix F9 – All Other Matters Update** (REP7-074)).

37. The MMO confirmed in the Hearings that they would be comfortable reverting back to the previous text in order to remove reference to the word ‘statistically’ from Condition 21(3) of the Generation DML and Condition 17(3) of the Transmission DML.

#### 3.3.3 Herring Spawning (Condition 28/24)

38. Following the inclusion of a new herring spawning condition in the DMLs at Deadline 7 the MMO requested that the herring spawning report include a methodology for the analysis undertaken and also requested that paragraph (3) make provision for a different timescale to be agreed for submission of the report. The Applicants have updated the condition to address these comments.



39. At the Hearings, the MMO advised that they do not agree with the reference to “approximately 14 days” being included within the condition in case the period ends up being slightly shorter or longer than 14 days. The Applicants explained that the reference to “approximately 14 days” was intentional to provide certainty as to likely extent of the piling restriction whilst not being overly prescriptive and allowing for some flexibility where a slightly longer or short period is considered appropriate. The Applicants emphasised that the herring spawning period is ultimately to be determined by the MMO and so there are sufficient controls in place.
40. The Applicants strongly disagree with the suggestion that reference to “approximately 14 days” should be removed. This text provides the Applicants with a degree of certainty as to the approximate duration of the restriction. Without this text, the MMO could seek to impose a much longer restriction within the period 1 November and 31 January and this is wholly unacceptable to the Applicants.
41. The Applicants would reiterate that they do not consider a herring spawning restriction to be necessary (see REP4-019) but agreed to include the restriction at the request of the MMO and so any potential widening of the restriction is considered to be disproportionate and is unacceptable to the Applicants.

#### 3.3.4 Sediment Sampling (Condition 29/25)

42. At Deadline 7, the MMO requested that a new condition be included in the DMLs in relation to sediment sampling (**Deadline 7 Submission** (REP7-068)). The Applicants have agreed the text of a condition with the MMO and this has been included in the DMLs at Deadline 8.

#### 3.3.5 Completion of Construction (Condition 30/26)

43. The MMO also requested at Deadline 7 (**Deadline 7 Submission** (REP7-068)) the inclusion of a new condition requiring a Completion of Construction Close out Report in order to seek to address some of the industry issues around releasing headroom.
44. The Applicants have therefore included a condition in the DMLs to address this matter, the wording of which has been agreed with the MMO and Natural England.

### 3.4 Operational Land

45. Operational land is defined by section 263 of the Town and Country Planning Act 1990. It comprises land being used for “*carrying on their undertaking*”. It also applies to land held for that purpose. Sub section (2) confirms that it does not include land which because of its nature or situation is comparable with land in general rather than being used or held for carrying on of statutory undertakings.



Furthermore section 264 requires specific planning permission for its development.

46. The interpretation of these provisions is relatively straightforward. SASES have sought to imply that it has a very broad interpretation and could apply to almost all the land in the order limits. It would not. It would apply to the compounds containing the substations and the sealing end compounds. These would be delineated by approved fence lines in terms of requirement 17(4). Other land would not be being held or used for carrying on the undertaking. This being the transmission of electricity. For example land on which a pylon is situated is not operational land because the land on which it sits is general in nature and will be being used for another purpose. The argument that the landscaping or drainage would be operational land fails because it is not carrying on the undertaking. Furthermore landscaping is not development.
47. The Applicants do not see any reason why any of the PD rights should be removed. The Applicants are not aware of any examples of their removal in respect of electricity undertakings. Parliament has granted these rights. The limitations and conditions have been carefully crafted. Furthermore, any change that resulted in a new significant environmental effect would not be permitted. There are therefore adequate safeguards in place.

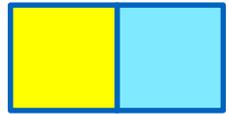
## 4 Agenda Item 3: Protective Provisions: Progress

### 4.1 Sizewell B

48. Protective provisions are included for the protection of EDF Energy Nuclear Generation Limited in Part 7 of the **draft DCO**.
49. The protective provisions contained within the draft DCO submitted at Deadline 8 are agreed subject to the conclusion of a side agreement which is in an agreed form and is in the process of being signed. .
50. The Applicants expect to be able to conclude the side agreement before the close of the Examination.

### 4.2 Sizewell C

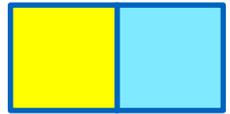
51. Protective provisions have been included for the protection of NNB Generation Company (SZC) Limited in Part 8 of the **draft DCO**.
52. The protective provisions are in an agreed form but are subject to the conclusion of a side agreement which is currently being negotiated.



53. The Applicants expect to be able to conclude the side agreement before the close of the Examination.

#### 4.3 Suffolk County Council as Local Highways Authority

54. Suffolk County Council (SCC) have previously advised that they require certainty that their costs will be covered in respect of activities prompted by the Applicants road works. The Applicants updated the **Outline Construction Traffic Management Plan** and **Outline Access Management Plan** at Deadline 6 (REP6-009 and REP6-011) to undertake to enter into agreements with SCC at the relevant time to address the issues they had flagged. In its Deadline 7 response SCC proposed some amendments to the wording of the plans and also reserved their position in respect of the possible need for protective provisions (**Comments of Suffolk County Council as Local Highways Authority** (REP7-076)). The Applicants have undertaken the amendments requested by SCC and consider that the undertakings within the management plans (which will have to be approved by SCC in due course in terms of Requirements 28 and 16 of the **draft DCO**) provide sufficient protection to SCC without the need for any protective provisions. Protective provisions in these circumstances are not the norm. We understand that SCC are considering whether the plans afford them the protection they would like.



## 5 Agenda Item 4: Security for Technical Processes: Progress

55. The ExA queried whether areas that are subject to compensation measures should be treated as though they are a European site. A similar point was raised at ISH1 and in Action Point 5 of ISH1 and the Applicants provided a response to this in the ***Applicants Responses to Hearing Action Points (ISH1, CAH1, ISH2)*** (REP3-083).



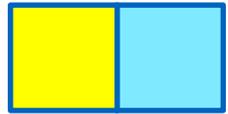
## 6 Agenda Item 5: Agreements and Obligations: Progress

### 6.1 Section 111 Agreements

56. The Applicants have agreed an agreement with East Suffolk Council for each Project under Section 111 of the Local Government Act 1972. Copies of signed versions of the agreements have been submitted at Deadline 8 (ExA.AS-38.D8.V1).
57. The Applicants generally do not consider that the provisions set out in the Agreements for the Projects meet the tests set out in paragraph 4.1.8 of the Overarching National Policy Statement for Energy (EN-1) or the National Planning Policy Framework. In particular, it is not considered that the provisions are necessary to make the development acceptable in planning terms. The Section 111 Agreements provide for a series of funds, which do not directly relate to the proposed development. Rather, the Agreements will provide the Council with funding which can implement projects which have the potential to enhance the area impacted by construction and the wider integration in and around the substations at Friston. The approach is more in line with material being produced by the National Infrastructure Commission and supported by the National Infrastructure Strategy
58. The £465,000 sum payable under the East Anglia TWO Agreement in relation to AONB measures would support the delivery of the general statutory purposes and aspects of the Management Plan (currently 2018-2023). This element of the fund may meet the tests.
59. The sums payable under the Section 111 Agreements and their purpose were arrived at following clear direction from ESC. The sums will allow for a flexible approach to be taken and allow for consultation by ESC with local bodies in relation to how they are spent.

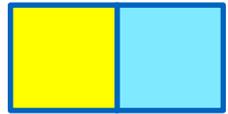
### 6.2 Memorandum of Understanding on Environmental Exemplar Projects

60. The Applicants do not consider that the provisions set out in the Memorandum of Understanding on Environmental Exemplar Projects for the Projects meets the tests set out in the Overarching National Policy Statement for Energy (EN-1) or the National Planning Policy Framework. This Memorandum of Understanding will provide for sums to be paid to ESC to fund environmental exemplar projects in the area.



### **6.3 Tourism Fund**

61. The Tourism Fund is a sum of £150,000 to be paid to Suffolk Community Foundation, regardless of whether one project or two is consented. This demonstrates that the Applicants are considerate developers and that they have listened to the comments of the Suffolk Coast Destination Management Organisation, who inputted into this proposal. This sum is intended to address any potential perception issues around tourism impacts associated with the Projects and will fund a tourism marketing campaign.



## 7 Agenda Item 6: Consents of Parties: Progress

### 7.1 Crown Estate

62. Section 135 of the Planning Act 2008 states:

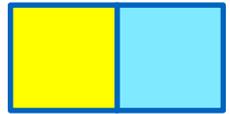
*(1) An order granting development consent may include provision authorising the compulsory acquisition of an interest in Crown land only if—*

*(a) it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and*

*(b) the appropriate Crown authority consents to the acquisition.*

*(2) 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 to the inclusion of the provision.*

63. The Applicants have sought to include in the **draft DCO** a provision authorising the compulsory acquisition of an interest in land only in respect of land that is onshore and as is shown on the **Land Plans**. As a result it is the view of the Applicants that if the Crown has no interest in the land within the onshore Order limits section 135 does not apply.
64. The Crown Estate agreed with the Applicants in their **Correspondence Letter dated 17 March 2021** (AS-101).
65. Subsequently the Applicants have discussed with the Crown Estate a means of addressing the action point raised by the ExA in respect of this agenda item and anticipate that a further submission will be made by the Crown Estate at Deadline 9.



## 8 Agenda Item 7: Other Consents: Progress

66. The Applicants note that no points were discussed under this agenda item at the Hearings.