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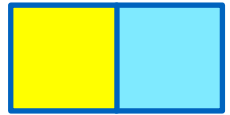
East Anglia ONE North and East Anglia TWO Offshore Windfarms

Applicants' Comments on the ExA's Commentary on the dDCO

Applicants: East Anglia ONE North Limited and East Anglia TWO Limited
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Applicable to **East Anglia ONE North** and **East Anglia TWO**



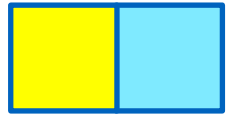
Revision Summary				
Rev	Date	Prepared by	Checked by	Approved by
001	07/06/2021	Shepherd and WedderburnLLP	Lesley Jamieson / Ian Mackay	Rich Morris

Description of Revisions			
Rev	Page	Section	Description
001	n/a	n/a	Final for Deadline 11



Glossary of Acronyms

ABP	Associated British Ports
AEoI	Adverse Effect on Integrity
APP	Application Document
BEIS	Department of Business Energy and Industrial Strategy
Cefas	Centre for Environment, Fisheries and Aquaculture Science
CfD	Contract for Differences
DCO	Development Consent Order
DML	Deemed Marine Licence
EM	Explanatory Memorandum
ExA	Examination Authority
HDD	Horizontal Directional Drilling
HRA	Habitats Regulations Assessment
IP	Interested Party
ISH	Issue Specific Hearing
LEEF	Lowestoft Eastern Energy Facility
MMO	Marine Management Organisation
MoU	Memorandum of Understanding
NDA	Nuclear Decommissioning Authority
NE	Natural England
NPS	National Policy Statement
NSIP	National Significant Infrastructure Project
O&M	Operations & Maintenance
OCoCP	Outline Code of Construction Practice
OFTO	Offshore Transmission Owner
OLEMS	Outline Landscape and Ecological Management Strategy
PD	Procedural Decision
SNCB	Statutory Nature Conservation Body
SoS	Secretary of State
SPA	Special Protection Area
SPR	ScottishPower Renewables (UK) Limited
SSSI	Site of Special Scientific Interest

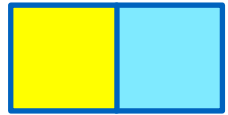


Glossary of Terminology

Applicants	East Anglia TWO Limited / East Anglia ONE North Limited
Cable sealing end compound	A compound which allows the safe transition of cables between the overhead lines and underground cables which connect to the National Grid substation.
Cable sealing end (with circuit breaker) compound	A compound (which includes a circuit breaker) which allows the safe transition of cables between the overhead lines and underground cables which connect to the National Grid substation.
The Councils	East Suffolk Council and Suffolk County Council
Development area	The area comprising the onshore development area and the offshore development area (described as the 'order limits' within the Development Consent Order).
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.
East Anglia TWO windfarm site	The offshore area within which wind turbines and offshore platforms will be located.
European site	Sites designated for nature conservation under the Habitats Directive and Birds Directive, as defined in regulation 8 of the Conservation of Habitats and Species Regulations 2017 and regulation 18 of the Conservation of Offshore Marine Habitats and Species Regulations 2017. These include candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation and Special Protection Areas.
Horizontal directional drilling (HDD)	A method of cable installation where the cable is drilled beneath a feature without the need for trenching.
HDD temporary working area	Temporary compounds which will contain laydown, storage and work areas for HDD drilling works.
Landfall	The area (from Mean Low Water Springs) where the offshore export cables would make contact with land, and connect to the onshore cables.
National electricity grid	The high voltage electricity transmission network in England and Wales owned and maintained by National Grid Electricity Transmission
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 / East Anglia ONE North 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 / East Anglia ONE North project Development Consent Order.
National Grid substation location	The proposed location of the National Grid substation.
Natura 2000 site	A site forming part of the network of sites made up of Special Areas of Conservation and Special Protection Areas designated respectively under the Habitats Directive and Birds Directive.
Onshore substation	The East Anglia TWO / East Anglia ONE North substation and all of the electrical equipment within the onshore substation and connecting to the National Grid infrastructure.
Onshore substation location	The proposed location of the onshore substation for the proposed East Anglia TWO / East Anglia ONE North project.
Safety zones	A marine area declared for the purposes of safety around a renewable energy installation or works / construction area under the Energy Act 2004.



1 Introduction

1. Following the issue of the Examining Authority's (ExA) commentary on the East Anglia ONE North and East Anglia TWO projects ('the Projects') draft Development Consent Orders (DCO) (PD-048) on 20th May 2021 to East Anglia ONE North Limited and East Anglia TWO Limited ('the Applicants') and other Interested Parties, the Applicants have responded to each of their relevant comments.
2. This document, is applicable to both the East Anglia ONE North and East Anglia TWO DCO applications, and therefore is endorsed with the yellow and blue icon used to identify materially identical documentation in accordance with the Examining Authority's procedural decisions on document management of 23rd December 2019 (PD-004). Whilst this document has been submitted to both Examinations, if it is read for one project submission there is no need to read it for the other project submission.
3. Where an individual comment relates to one project only it is clearly marked in column 4 of the table below A yellow icon with a 1 indicates the question is applicable to the East Anglia ONE North project, a blue icon with a 2 indicates it is applicable to the East Anglia TWO project, and both a yellow and a blue icon with a 1 and 2 indicate the comment is applicable to both Projects.



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
General Observations				
01	Matter raised in previous commentaries [PD-031] Both dDCOs	The Applicants	<p>Adaptation Provisions</p> <p>In its February 2021 Commentaries [PD-031] the ExAs noted the potential relationship between the non-array elements of the proposed developments and policy change in relation to onshore transmission system connections, as indicated in Energy White Paper and subject to potential change in the BEIS Offshore Transmission Review. The Applicants have responded to this point making clear that they do not consider that changes to the dDCOs to address issues and risks around possible policy change are warranted. This point has been extensively ventilated. The Applicants and Interested Parties (IPs) are aware of it and have had an adequate opportunity to put their positions to the ExAs.</p> <p>The ExAs note that it remains possible that further detail of relevant changes in policy direction might be signalled before the closure of these Examinations. Should that occur, the ExAs will endeavour to place that material before the parties and seek comments.</p>	Noted.
02	Both Explanatory Memoranda	The Applicants	<p>Revised Final Explanatory Memoranda</p> <p>A thorough justification should be provided in Deadline 12 Explanatory Memoranda (EM) for</p>	Noted.



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
			<p>every Article and Requirement in each dDCO, explaining why the inclusion of the power is appropriate in the specific case. The extent of justification should be proportionate to the degree of novelty and/ or controversy in relation to the inclusion of that particular power. Relevant reference should be made to equivalent provisions in made DCOs, recognising that the Infrastructure Planning (Model Provisions) Order (the MPO) is not a binding source and that the model provisions set out there are now old – practice has evolved.</p>	
03	<p>Matter raised in previous commentaries [PD-031] Both dDCOs</p>	<p>The Applicants, bodies discharging consents (MMO, SCC, ESC)</p>	<p>Deemed consent provisions</p> <p>There is precedent for the inclusion of deemed consents in DCOs in circumstances where approvals are required under Articles or Requirements but are not forthcoming in a defined time period. The justification for such an approach rests on the desirability of providing a unified consent under a made DCO and on specific risks to the timely and economic delivery of a nationally significant infrastructure project (NSIP) that it is in the public interest to maintain. It follows that deemed consent provisions are not universally appropriate in all circumstances where a consent is sought. Equally, in assessing the reasonableness of a duration after which a deemed consent comes into force, regard must be had to the technical and institutional complexity of the matters to be decided</p>	<p>The Applicants note that this question has been addressed to the Marine Management Organisation (MMO) and East Suffolk Council (ESC) but would highlight that none of the deemed approval provisions relate to matters that the MMO or ESC are responsible for approving. Notwithstanding this, at ISH17 ESC confirmed that there were no outstanding matters in respect of the deemed consent provisions within the draft DCO.</p> <p>With respect to the deemed approval mechanism applying to decisions of Suffolk County Council (SCC), the Applicants note that this is a matter that has been discussed with SCC and at Deadline 7 SCC stated at paragraph 2.58 of Comments of Suffolk</p>



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
			<p>and whether a decision could reasonably be made in the time-period allowed, prior to the operation of the deemed consent.</p> <p>The reasonableness of deemed consent provisions and the time-period for the grant of deemed consent under a number of provisions remain unagreed between the Applicants, ESC and SCC. Discussions are ongoing. Please provide a latest statement of position ensuring that agreed positions are documented and unagreed positions are clear and enabling the ExAs to adjudicate unagreed positions. Refer specifically to:</p> <ul style="list-style-type: none"> a) Street authority consent under Arts 12; b) Highway authority consent under Arts 13 and 15; c) Water discharge approval under Arts 16; and d) Authority to survey and investigate the land onshore under Arts 17. 	<p>County Council as Local Highways Authority (REP7-076):</p> <p><i>“Provided the Applicant accepts that sufficient notice needs to be given to the LHA to undertake certain legal actions associated with street works and this is reflected in a planning performance agreement the Authority would withdraw its request to increase the 28 day period for deemed approval in articles 12, 13 and 15.”</i></p> <p>The Applicants accept that sufficient notice must be provided and this will be reflected in a planning performance agreement between SCC and the Applicants. At ISH17 SCC confirmed that its concerns in relation to the deemed consent provisions have been addressed.</p>
Contents				
04	Pages 1 - 3	The Applicants	<p>Further Review</p> <p>To the extent that changes in drafting have been made since Deadline 7, the Applicants are requested to review any additions to the structure of both dDCOs ensuring that the numbering and</p>	<p>Noted. The Applicants update the Table of Contents each time a new version of the draft DCO is submitted and will ensure the numbering and titling of provisions is consistent.</p>



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
			titling of all provisions remains consistent and is reflected in the Table of Consents for each, with a submission at Deadline 12.	
Preamble				
05	Pages 3 – 4		No remaining matters.	Noted.
Articles				
06	Arts 2	The Applicants	<p>Interpretation</p> <p><i>Art 2(1) definitions: authorised development</i></p> <p>The definition of 'authorised development' includes "any other development authorised by this Order...."</p> <p>The "authorised project" definition includes 'ancillary works' in addition to the 'authorised development'.</p> <p>The effects of this drafting can be argued to require an amendment to Schs 1 Pt 2 (see below) to provide that those provisions do not authorise works that constitute development for the purposes of s32 of the 2008 Act. Please respond.</p>	<p>The Applicants do not consider it necessary to update the drafting of Schedule 1 Part 2 as the definition of ancillary works makes it clear that such works are not development within the meaning of section 32 of the 2008 Act. For ease of reference, the definition of ancillary works is as follows (emphasis added):</p> <p><i>““ancillary works” means—</i></p> <p><i>(a) the ancillary works described in Part 2 of Schedule 1 (ancillary works); and</i></p> <p><i>(b) any other works authorised by this Order,</i></p> <p><u>to the extent that such works are not development within the meaning of section 32 of the 2008 Act.”</u></p> <p>Article 3 grants consent for the ancillary works and one must refer to the definition of ancillary works to see that this is the works</p>



ID	dDCO Commentaries	Question addressed to		ExA. Comment	Applicants' Response
					<p>specified in paragraph (a) and (b) of the definition <u>to the extent that such works are not development within the meaning of section 32 of the 2008 Act</u>. There is therefore no need to clarify this within Part 2 of Schedule 1 and indeed this would be superfluous.</p>
07	Arts 2	The Applicants East Suffolk Council Suffolk County Council The Marine Management Organisation		<p><i>Art 2(1) definitions: grid connection works and transmission works</i></p> <p>Definitions of “grid connection works” and “transmission works” include ‘any related associated development’.</p> <p>a) Are Schs 1 Pt 1 sufficiently clear about what the related associated development is?</p> <p>b) The latest version of the Norfolk Boreas dDCO submitted at D18 in that Examination refines this drafting as follows to say: ‘and any related further associated development in connection with those works’. This appears to add useful precision. Comments on the adoption of this drafting are sought.</p>	<p>a) Associated development in respect of the transmission works is set out in paragraph 1 of Part 1 of Schedule 1 and associated development in respect of the grid connection works is set out in paragraph 2 of Part 1 of Schedule 1. The Applicants therefore consider that it is clear what the related associated development is.</p> <p>b) The definitions of these terms in the draft DCO are as follows (emphasis added):</p> <p><i>“grid connection works” means Work Nos. 34 and 38 to 43 and any related associated development;”</i></p> <p><i>“transmission works” means Work Nos. 6 to 37 and any related associated development;”</i></p> <p>The Applicants do not consider there to be any requirement to adopt the Boreas wording as this is superfluous. The word “related” in the current definitions makes it clear that the</p>



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
				reference is to associated development related to the specified works. Should the Secretary of State consider that such text is necessary then the Applicants would accept the inclusion of such text however the Applicants' position is that such text is unnecessary.
08	Arts 2	All Interested Parties	<p><i>Art 2(1) definitions: maintain</i></p> <p>This definition is wide, a matter raised at ISHs6, but is expressly limited 'to the extent assessed in the [ESs]'. Parties' concerns in relation to this matter are noted.</p>	No further comment.
09	Arts 2	All Interested Parties	<p><i>Art 2(1) definitions: relevant to onshore substation design</i></p> <p>Reference to the "substations design principles statement" certified document are noted, and the operation of the substations design process will be discussed further at ISHs16 and 17.</p>	Noted. This was discussed at ISH16 and ISH17.
10	Arts 2	The Applicants Any Statutory Undertaker IPs, NDA	<p><i>Art 2(1) definitions: statutory undertaker</i></p> <p>In this definition, "<i>statutory undertaker</i>" 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...'. a) Does this definition entrain the Nuclear Decommissioning Authority (NDA) and or</p>	The provisions within the draft DCO in relation to statutory undertakers are intended to deal with the interaction between the undertakers and statutory undertakers with rights or apparatus within the Order limits. Neither the Nuclear Decommissioning Authority (NDA) or Magnox own or have rights over, or apparatus in, land comprised



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
		and/ or Magnox Ltd.	<p>Magnox Ltd. in relation to the decommissioning of Sizewell A Nuclear Power Station?</p> <p>b) If not, is there any need for it (or another definition) to do so, or for further protections to be provided for NDA and/ or Magnox Ltd.</p> <p>See also Arts 28.</p>	<p>within the Order limits and therefore it is not necessary for the definition to capture these organisations.</p> <p>Notwithstanding this, the NDA appears to hold an electricity generation licence (this was previously held by Magnox and was transferred to the NDA in 2007) with standard licence condition 14 activated. This means that the NDA fall within the definition of "statutory undertaker" within the draft DCO.</p> <p>With respect to Article 28, this relates to:</p> <p>1) the acquisition of land or rights in land or the imposition of restrictive covenants over land belonging to statutory undertakers shown on the land plans within the Order land and described in the book of reference; and</p> <p>2) where the undertaker requires to extinguish the rights of, remove, or reposition apparatus belonging to statutory undertakers over or within the Order land.</p> <p>NDA and Magnox do not own or have any rights over the Order land nor do they have any apparatus in or over the Order land and therefore the provisions of Article 28 will not apply to them.</p>



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
				In any event, the Applicants have entered into a Statement of Common Ground with the NDA and Magnox (REP8-130) in which all matters are agreed. There is no requirement for further provisions to be included within the draft DCO to protect Magnox or the NDA and it is the Applicants' understanding that this is also the position of Magnox and the NDA (who have indicated to the Applicants that they will confirm this separately at Deadline 11).
11	Arts 12	The Applicants ESC, SCC (Street Authorities)	<p>Temporary stopping up of streets</p> <p>A general question about the appropriateness and timescale for a deemed consent provision has been raised above and should be addressed in relation to this provision.</p>	See response to ID3 above.
12	Arts 13	The Applicants SCC (Highway Authority)	<p>Access to works</p> <p>A general question about the appropriateness and timescale for a deemed consent provision has been raised above and should be addressed in relation to this provision.</p>	See response to ID3 above.
13	Arts 15	The Applicants SCC	<p>Highway Alterations</p> <p>A general question about the appropriateness and timescale for a deemed consent provision has</p>	See response to ID3 above.



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
		(Highway Authority)	been raised above and should be addressed in relation to this provision.	
14	Arts 16	The Applicants The Environment Agency Suffolk County Council	<p>Discharge of water</p> <p>Suffolk County Council (SCC) as lead local flood authority was not content with these provisions as drafted. It sought the inclusion of a provision equivalent to Art 16(7) providing that land drainage consent under the Land Drainage Act 1991 for works to ordinary watercourses is not overridden. The Applicants have not adopted this proposed amendment.</p> <p>Art 16 in its current form uses well-established drafting (see for example the made Hornsea 2 DCO Art 15). It is an underlying principle of DCO drafting that as close to a unified consenting mechanism as possible should be provided. If consent under the Land Drainage Act 1991 is to be excepted from the general granting of consent under these provisions, then the consent provided by Art 16(1) to 'use any watercourse ... for the drainage of water in connection with ... the authorised project' is potentially circumscribed by the need for multiple individual consents and potentially becomes of quite limited application.</p> <p>a) SCC is asked to describe the specific concerns about works to ordinary</p>	<p>See response to ID3 above.</p> <p>With respect to SCC's request to include a provision equivalent to Article 16(7) providing that land drainage consent under the Land Drainage Act 1991 for works to ordinary watercourses is not overridden, the Applicants explained why such provision was not necessary at ID3 within section 2.3 of the Applicants' Comments on Suffolk County Council's Deadline 5 Submissions (REP6-027) submitted at Deadline 6. This response provided written confirmation that the DCO does not remove the need for Land Drainage Consent to be obtained and also provided clarification as to why a different approach is adopted in relation to the Environmental Permitting Regulations. Since requesting written clarification of the position in REP6-091, which the Applicants provided, SCC has not raised this matter again and at ISH17 SCC confirmed that it is content that the land drainage consents sit outside the DCO process and that no amendments are required to the DCO in this regard.</p>



ID	dDCO Commentaries	Question addressed to		ExA. Comment					
				<p>watercourses that underlie its request to retain this consenting power?</p> <p>b) Are there any mechanisms other than the determination of individual applications under the Land Drainage Act 1991 for each instance of such works that could be used to ensure that the works are delivered appropriately?</p> <p>c) A general question about the appropriateness and timescale for a deemed consent provision has been raised above and should be addressed in relation to this provision.</p>	<p>For the avoidance of doubt, the requirement to obtain consent under the Land Drainage Act 1991 is not disapplied within the DCOs and such consent will require to be obtained outside the DCO. This is stated in the Consents and Licences Required Under Other Legislation (REP8-013) and in ID3 of section 2.3 of REP6-027 referred to above.</p> <p>It is also worth noting in the Statement of Common Ground with ESC and SCC (REP8-114) at LA-05.24 it is agreed that “<i>Land Drainage Consent(s) from the Lead Local Flood Authority will be required for both the construction phase (temporary works) and for the operation phase (permanent works) at the onshore substation site</i>” and that “<i>any potential Land Drainage Consent applications will be discussed with the Lead Local Flood Authority prior to submission</i>”.</p>				
15	Arts 17	The Applicants East Suffolk Council Suffolk County Council		<p>Authority to survey and investigate the land onshore</p> <p>A general question about the appropriateness and timescale for a deemed consent provision has been raised above and should be addressed in relation to this provision.</p>	See response to ID3 above.				



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
16	Arts 28	The Applicants Any Statutory Undertakers and specifically NDA and/ or Magnox Ltd.	<p>Statutory undertakers</p> <p>See Arts 2(1) (definitions of “statutory undertaker”).</p> <ul style="list-style-type: none"> a) Are NDA and/ or Magnox Ltd. considered to be statutory undertakers? b) If not, given the NDA’s conclusion of a SoCG and response to R17QD suggesting that there are no outstanding matters, is there any need for them to be or for any alternative (protective) provisions be included? 	See response to ID10 above.
Schedule 1 – Authorised Project				
17	Pt 3 R12	The Applicants Suffolk County Council East Suffolk Council	<p>R12: Detailed design parameters onshore: ‘overall design and layout plans’</p> <p>The ExAs R17QE has requested the production of ‘overall design and layout plans’ for the main development scenarios and asked whether and if so, how such plans might be secured and whether it would be appropriate that development should be required to be in general accordance with a submitted plan. Please comment on the following possible means of providing for and securing the production of the plans and ensuring that development is in general accordance with a submitted plan.</p>	The design and layout plans appended to the Applicants’ Response to Rule 17 Questions of 13 May – Design and Layout of the Substations (AS-122) will be incorporated into the next version of the Outline Landscape and Ecological Management Strategy (OLEMS) (document reference 8.7). The final landscape management plan must be submitted to and approved by the relevant planning authority prior to commencement and the final plan must accord with the OLEMS. This is secured within requirements 14 and 15 of the draft DCO.



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
			<p>a) The 'overall design and layout plans' are submitted before the close of the Examinations and form part of the substations' design principles statement and/ or the 'outline landscape and ecological management strategy'. In this case, is anything then necessary to be done to amend the dDCOs to secure the drawings? Can R12 as currently drafted can be argued to be sufficient?</p> <p>b) The 'overall design and layout plans' are submitted to the relevant local planning authority. In that case, does R12 require amendment to ensure that the relevant drawing is submitted and approved and then forms part of the 'substations design principles statement', or the 'outline landscape and ecological management strategy', or is a free-standing document required (a new paragraph to R12 would be required to achieve this); and</p> <p>c) A provision that no stage of the relevant works (indicatively Works Nos. 30, 33, 38, 41 – [and any other Works?]) may commence until an overall design and layout plan has been submitted to and approved by the relevant planning authority.</p>	<p>It should however be noted that the design and layout plans are indicative at this stage and are subject to detailed design.</p> <p>The Applicants do not consider any amendments to be necessary to requirement 12 as this requirement already requires the layout, scale and external appearance of the onshore substations, national grid substation and cable sealing end compounds to be submitted to and approved by the relevant planning authority prior to commencement of those works and such details must be in accordance with the Substations Design Principles Statement (document reference ExA.AS-6.D11.V3). In addition, and as noted above, the final landscape management plan must also be submitted to and approved by the relevant planning authority prior to commencement. Any further requirements would result in duplication.</p> <p>The Applicants therefore do not consider there to be any gaps in the requirements. However, the Substations Design Principles Statement (document reference ExA.AS-6.D11.V3) has been updated to include an additional design principle requiring the Applicants to maintain a masterplan of the substation area for</p>



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
				<p>information purposes. The masterplans will be made available for information at Stage 1, Stage 2 and Stage 3 of stakeholder consultations and will be provided for information to the relevant planning authority and Suffolk County Council in parallel with documents submitted for approval during the discharge process of relevant requirements.</p> <p>The Applicants have also agreed to update the draft DCO at Deadline 12 to include SCC as a consultee in relation to the approvals required under paragraphs (1) to (4) of requirement 12.</p> <p>ESC and SCC are in agreement with the above approach.</p>
18	Pt 3 R 12	The Applicants East Suffolk Council NGET SASES	<p>R12: Defining onshore operational land for purposes of the 1990 Act</p> <p>Concerns have been expressed about the extent of operational land that would benefit from substation permitted development rights under the Town and Country Planning (General Permitted Development) Order 2015, Schedule 2, Part 15, Class B (a), (d) or (f). ESC has submitted that the potential adverse effects of permitted development could be such that removal of those rights would be justified. The Applicants in turn have submitted that removal of operationally normal permitted</p>	<p>a) The Applicants consider that the position articulated by the ExA represents the Applicants' view of the residual extent of the "operational land" which would arise from the implementation of the Projects. The area would also be reflected by the fenced areas approved by the relevant planning authority and delivered in terms of requirement 17(4). The Applicants are satisfied that that land encompasses the land over which the "operational land" permitted development rights apply.</p>



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			<p>development rights for a substation would unduly burden the proposed substation facilities once operational and would not be justified. In this context, a possible alternative mechanism is to provide that the extent of onshore operational land benefiting from substation permitted development rights is reduced to the minimum necessary and clearly defined. An 'onshore operational land plan' is a potential mechanism whereby that could be achieved.</p> <p>The Applicants responded to the February 2021 Commentaries [PD031] highlighting their view that it was not possible to submit an onshore operational land plan during the Examinations but set out its view that the operational land could be limited in extent and identifying that R12 could be amended to ensure that such a plan could be provided after the relevant operational areas had been commissioned.</p> <p>On that basis, the ExAs have proposed amendments to R12 to secure the production of an onshore operational land plan after commissioning and a new R44 providing that permitted development rights can only be exercised within the land defined as operational land on the plan.</p> <p>a) Does the proposed amendment set out below and at R44 add sufficient certainty about the extent of onshore operational</p>	<p>Operational land is defined by law and the Applicants do not consider it to be appropriate to define operational land for the purposes of the DCO. However, if the ExA consider that it is appropriate to define "operational land" for the purposes of the Orders then additional wording should be added to Article 33. It is suggested that wording should identify that the "operational land" as created by the Order is restricted to land identified within the plans approved in terms of requirement 12(22) where such a requirement has been included. The Applicants maintain their position that this would be unnecessary.</p> <p>The Applicants have significant concerns regarding the lawfulness of proposed requirement 44. The concerns are set out in ID20 below.</p> <p>b) The correct works are identified.</p> <p>c) No response required given response to b)</p>



ID	dDCO Commentaries	Question addressed to		ExA. Comment		Applicants' Response
				<p>land and clarify that the exercise of permitted development rights on that land would be appropriate?</p> <p>b) Are the correct Works within scope?</p> <p>c) If not, what alternative measures should be provided for?</p> <p>Add the following paragraphs to R12 after current paragraph (21)</p> <p>(22) The undertaker must submit a plan for approval by the relevant planning authority showing the extent of the completed works that comprises operational land onshore for the purposes of the 1990 Act ('the onshore operational land plan') no later than three months from the completion and commissioning of {Work No. 30, Work No. 38 or Work No. 41}.</p> <p>(23) The extent of the operational land shown on the onshore operational land plan provided by the undertaker pursuant to paragraph (22) must accord with the substations design principles statement and be within the Order limits.</p> <p>It should be noted that the timescale for approval and circumstances where the relevant planning authority did not approve a submitted onshore operational land plan would be matters addressed or capable of being resolved under Schs 16.</p> <p>See also R44 (proposed).</p>		



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
19	Pt 3 R16	The Applicants Suffolk County Council	<p>R16: Highway accesses</p> <p>Please comment on how SZB might be consulted on highway access written details submissions relating to Works Nos. 10, 11 and 15.</p>	<p>The Applicants have committed to consult EDF Energy Nuclear Generation Limited (the owner and operator of the Sizewell B nuclear power station) <u>during the preparation</u> of the access management plan, to the extent that it relates to Work Nos. 10, 11 or 15 <u>prior</u> to the submission of the plan to the relevant highway authority for approval in accordance with requirement 16.</p> <p>The Applicants and EDF Energy Nuclear Generation Limited have engaged regularly and effectively during the pre-application and examination stages of the Projects and will continue to do so during the implementation stage. Highway access arrangements and timing of construction works will be discussed with EDF Energy Nuclear Generation Limited during preparation of the access management plans to receive their views, and draft access management plans will be shared with EDF Energy Nuclear Generation Limited for comment in advance of submission to the relevant planning authority for approval.</p>
20	Pt 3 None – additional requirement R44	The Applicants	<p>Additional Requirement (R44) – Onshore Operational Land Plan</p> <p>See R12 above.</p>	<p>The proposed requirement does not meet the tests for a requirement. It is not necessary; it is not precise, and it is not reasonable.</p>



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
		East Suffolk Council	<p>The Commentary on R12 above proposes the preparation of and provides security for an onshore operational land plan. One of the purposes of that plan is to clarify where substation permitted development rights might be enjoyed. Please comment on the ExAs' proposed drafting below:</p> <p>44. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order), no development shall be carried out under Schedule 2, Part 15, Class B (a), (d) or (f) other than on land shown as onshore operational land on the onshore operational land plan.</p>	<p>Permitted development rights should only be removed in exceptional circumstances. In the planning regime a direction removing permitted development rights must state "an area specified". The removal of the rights should therefore apply to a geographic area. Any attempt to withdraw the rights for a particular party would be unlawful. In addition, there are publicity requirements for the removal of such rights. This ensures that parties potentially affected can make representations about the implications of the proposal</p> <p>Proposed requirement 44 states that no development shall be carried out other than on land shown on the operational land plan. It is not clear what the geographical extent of this restriction is nor to what development it relates. It is also not clear whether this would limit others from exercising permitted development rights within the Order limits.</p> <p>Class B (a) provides rights relating to the installation or replacement of electric lines both over and under land. Such rights are critical to both Transmission and Distribution licence holders. The existing/realigned 400kV lines which serve Sizewell are critical national infrastructure and it is likely that a number of</p>



ID	dDCO Commentaries	Question addressed to		ExA. Comment	Applicants' Response
					<p>licenced entities would have grave concerns regarding the attempted removal of this permitted development right. In addition, the distribution network which extends to serving individual properties is very reliant on permitted development rights to conduct their activities. If the drafting is an attempt to remove these rights over the order limits, then a number of distribution assets would potentially be impacted on. No party before the examination has provided rational justification for such a provision.</p> <p>Classes (d) and (f) only apply in respect of operational land. It is therefore irrational to identify operational land and then seek to exclude the right on land that is beyond that area.</p> <p>The Applicants maintain the position set out in all of their previous submissions that permitted development rights should not be restricted and to do so is unjustified. The suggested exclusion of the permitted development rights lacks precision and is likely to be unlawful.</p>
21	Pt 3	The Applicants Natural		Missing Requirement – Ecosystem Services for Sandlings SPA	The Applicants welcome the ExA's observation that <i>"the matters to be fairly included in any requirement should sensibly</i>



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
	None – missing requirement	England, East Suffolk Council	<p>The February 2021 Commentaries identified that Natural England had sought a requirement to ensure that proposed SPA mitigation measures in the form of planting must be in functioning condition/ providing ecosystem services as nesting habitat, before works can commence within the boundary of the SPA.</p> <p>The Applicants responded saying that they <i>'do not consider it to be necessary or appropriate for a requirement to be added which prevents construction of the Projects until the proposed SPA mitigation measures (Work No. 12A) must be in functioning condition. The functionality of the habitat is outside the Applicants control as in reality, the habitat could be prepared to an optimum standard, but avian species simply chose not to use the area prior to construction.'</i></p> <p>The ExAs observe that the matters to be fairly included in any requirement should sensibly relate to the management and condition of habitat in broadly floristic terms. It should not require the presence of mobile/ avian species which may choose not to use the land for reasons beyond the Applicants' control. However, it remains our understanding drafting on this point is needed to ensure the avoidance of an adverse effect on integrity (AEol) as asserted by NE in D5</p>	<p><i>relate to the management and condition of habitat in broadly floristic terms. It should not require the presence of mobile/ avian species which may choose not to use the land for reasons beyond the Applicants' control."</i></p> <p>However, the Applicants disagree that any requirement is necessary in order to ensure the avoidance of an adverse effect on integrity (AEol).</p> <p>The Habitats Regulations Assessment (HRA) (APP-043) provided by the Applicants concludes that no Adverse Effect on Integrity (AEol) of the Sandlings Special Protection Area (SPA) will result from the construction or operation effects of the Projects.</p> <p>The Outline SPA Crossing Method Statement (REP6-036) sets out the mitigation measures proposed for the Sandlings SPA crossing works, together with corresponding timeframes for their implementation. Requirement 21 of the draft DCO (document reference 3.1) stipulates that a final SPA Crossing Method Statement (which accords with the Outline SPA Crossing Method Statement (REP6-036)) must be submitted to and approved by the relevant planning authority in consultation with the relevant statutory nature</p>



ID	dDCO Commentaries	Question addressed to		ExA. Comment	Applicants' Response
				<p>Drafting changes should be submitted by both parties together with reasons for any outstanding differences.</p>	<p>the mitigation measures have already been secured and there is no need for such a requirement as it would not be necessary.</p> <p>The Applicants also have concerns that such a requirement could result in delays to the Projects at a critical time. The Applicants have committed to establish the mitigation and the detail and specification of the mitigation will be set out within the final approved plan which the Applicants must comply with. Including an additional stage of "approval" which is not necessary or justified increases the potential for delays to the construction of the Projects. Such delays at this critical stage in the process could have major implications for the delivery of the Projects and therefore the Applicants do not support the inclusion of this requirement and consider the current wording of the draft DCO and outline plans to be sufficient to secure the required mitigation measures without the need for this additional requirement.</p> <p>In terms of the proposed drafting, should the Secretary of State disagree with the Applicants' position and consider that such a requirement is necessary, the requirement would need to be limited to the situation where the SPA is to be crossed using an</p>



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
				<p>open trench and not where Horizontal Directional Drilling (HDD) is to be utilised and it should be limited to Work No. 12 only, for example:</p> <p><i>“In the event that open cut trenching is to be used to cross the Sandlings SPA, Work No. 12 must not commence until the pre-construction ecological mitigation works comprised within Work No. 12A have been established in accordance with the ecological management plan and this has been confirmed in writing by the relevant planning authority in consultation with the relevant statutory nature conservation body.”</i></p> <p>The Applicants are providing this drafting purely on a without prejudice basis and fundamentally disagree with the need for such a requirement for the reasons set out above.</p>
Schedules 13 & 14 – Deemed Licences under the 2009 Act – generation assets and offshore transmission assets (the DMLs)				
22		The Marine Management Organisation	<p>General</p> <p>The MMO’s Deadline 10 submission [REP10-049] at section 4 indicates broad satisfaction with the state of drafting. The ExA understands that the MMO is not seeking further drafting changes to the DMLs. Is this understanding correct?</p>	



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
23		The Marine Management Organisation	<p>UXO Conditions (Schs 13 Conditions 16 and Schs 14 Conditions 12)</p> <p>The MMO [REP10-049] indicates at paragraph 4.1 that it is 'largely content with the wording' of these conditions, which implies that there may be some final matters remaining to be resolved. If there are any remaining drafting issues that are not resolved, these should be explained in ISHs17 or at Deadline 11.</p>	
24		The Applicants, The Marine Management Organisation	<p>Fish Spawning Conditions (Schs 13 Conditions 29 and Schs 14 Conditions 25)</p> <p>ExQ3.2.26 refers. There is apparent outstanding disagreement between the Applicants and the MMO in relation to the precision and enforceability of the current provisions. These define the herring spawning period as follows:</p> <p>(2) The "herring spawning period" means a period of approximately 14 days between 1 November and 31 January to be confirmed in writing by the MMO following submission of a herring spawning report by the undertaker which analyses the International Herring Larval Survey data for the periods 1-15 January and 16-31 January for the preceding ten years in order to determine when the highest larval densities occur and which includes a methodology for the analysis.</p>	<p>The Applicants maintain their position on this matter as set out in section 2.2.6 of the Written Summary of Oral Case (ISH17) (document reference ExA.SN2.D11.V1).</p> <p>With respect to the wording consulted on by the Secretary of State in respect of the Thanet Extension Offshore Windfarm, the Applicants strongly oppose such wording as it would result in a three month piling restriction which is not justified in light of the potential impacts of the development (see REP4-019). Furthermore, the only way to agree an alternative period would be by way of a marine licence variation which the Applicants do not consider to be an appropriate or pragmatic approach.</p> <p>The Applicants and the MMO are continuing to engage on this matter and during a</p>



ID	dDCO Commentaries	Question addressed to		ExA. Comment		Applicants' Response
				<p>It should be noted that the MMO position remains that this drafting breaches the guidance on drafting of conditions found in NPPF paragraph 55. They have proposed</p> <p>(2) The "herring spawning period" means the period between 1 November and 31 January to be confirmed in writing by the MMO following submission of a herring spawning report by the undertaker which analyses the International Herring Larval Survey data for the periods 1-15 January and 16-31 January for the preceding ten years in order to determine when the highest larval densities occur.</p> <p>The Applicants do not accept this proposal and seek to retain their current drafting.</p> <p>Attention is drawn to a consultation of parties by the SoS on the Thanet Extension Offshore Windfarm dated 21 November 2019. That consultation was conducted in circumstances in which there was an outstanding disagreement between parties on the drafting of a herring spawning condition. Paragraph 10 of that document seeks views on a draft condition which nominates specific and certain dates for the herring spawning period. The parties are referred to the approach proposed there by the SoS and are asked to note that it is most undesirable that this matter remains outstanding beyond the end of these Examinations.</p>		<p>meeting on 26th May 2021 both parties agreed to explore the possibility of substituting 'approximately 14 days' with 'up to [a specified period]'.</p> <p>At ISH17 on the 28th May 2021, the MMO advised that it has sought advice from its scientific advisors, Cefas, on the appropriateness of this wording however, as of 7th June 2021, the MMO has not yet received a response from Cefas and the Applicants understand that the MMO will update the ExA on its position at Deadline 12 (28th June 2021). The Applicants will continue to liaise with the MMO in the interim with the aim of agreeing an appropriate amendment to the conditions for inclusion in the updated draft DCO at Deadline 12.</p>



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
			<p>The Applicants and the MMO should note the ExAs' position that any condition should be enforceable, precise and reasonable in all other respects and that in principle the Applicants' current preferred drafting does not meet those tests. They are requested to respond to ExQ3.2.27 submitting either an agreed position or preferred drafts with reasons for differences, enabling the ExAs to adjudicate and recommend final drafting on this point.</p>	
Schedule 15 – Arbitration Rules				
25	From Pages 160	The Applicants Interested Parties / Affected Persons potentially engaged by Arbitration	<p>Level of detail</p> <p>The ExAs have considered responses to matters raised in the February Commentaries. The Applicants have justified the highly specified and detailed approach to arbitration taken in the dDCOs as being preceded in the Hornsea 3 made Order at Sch 13. Reviewing the drafting of that made Order, there are similarities between it and these dDCOs. However, that Order does not contain all of the elements proposed to be provided for in the arbitration system in these dDCOs.</p> <p>a) Do the arbitration provisions of the made Hornsea 3 Order address the concerns about the lack of definition in arbitration processes in earlier made Orders? If not, what are the outstanding matters that the</p>	<p>The arbitration rules are based on, but not identical to, the arbitration provisions within the made Hornsea Three Offshore Wind Farm Order 2020. This is because the Hornsea Three DCO was one of the first DCOs to include such provisions and whilst the Applicants agree that specific arbitration rules are necessary and appropriate for inclusion within the Projects' DCOs, the Applicants carefully reviewed those provisions to ensure that they were relevant and appropriate for the Projects' DCOs. Where the Applicants considered that improvements could be made to the drafting (for example to reflect standard provisions contained within the leading arbitral</p>



ID	dDCO Commentaries	Question addressed to		ExA. Comment	Applicants' Response
				<p>made Hornsea 3 Order has not addressed?</p> <p>b) Is there any reason why these dDCOs cannot be re-framed to follow the form and content of the arbitration provisions in that made Order?</p> <p>c) If so, what 'mischief and defect' do these new provisions address that is not already adequately managed by established law and practice in existing made DCOs, including the Hornsea 3 Order?</p>	<p>institutional rules such as the International Chamber of Commerce) this was reflected in the draft DCOs.</p> <p>The inclusion of a detailed arbitration rules schedule within DCOs is a relatively recent change in DCO practice and the practice and precedent is still evolving. The Applicants do not consider it appropriate to simply copy the provisions within other recently made DCOs where it is considered that amended wording would be more appropriate in the circumstances.</p> <p>Whilst the arbitration rules within the Hornsea Three DCO go some way towards addressing the concerns about lack of definition in arbitration processes in earlier made Orders, the Applicants consider that improvements can be made to the drafting and those improvements are reflected within the drafting of Schedule 15 (for example in relation to the costs provisions (see ID26 below) and the inclusion of emergency arbitrator and interim measures provisions (see ID27 below). There are also some minor differences between the timescales specified in Schedule 15 and those in the equivalent Hornsea Three DCO provisions (see ID28 below).</p>



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
26	Para 6	The Applicants Interested Parties / Affected Persons potentially engaged by Arbitration	<p>Costs</p> <p>The ExAs have considered responses to matters raised in the February Commentaries. The Hornsea 3 DCO is argued by the Applicants as providing precedent for the form of the arbitration provisions in the dDCOs. Paragraph 6 (Costs) to Schedule 13 (Arbitration) of the made Hornsea 3 DCO applies the planning principle to an award of costs, which is that absent unreasonable behaviour, costs lie where they fall. In that DCO the recoverable costs of the Arbitrator are met by the parties <i>'on the general principle that each party should bear its own costs'</i>. However, the Applicants' drafting in these dDCOs remains different from the approach in Hornsea 3, on the basis that <i>'in arbitration, costs and expenses usually follow success and that is the rationale for this drafting.'</i></p> <p>a) The ExAs ask again for the justification for what is still understood to be a novel approach in a provision for a planning arbitration, where costs are proposed to run with the event?</p> <p>b) Given the reliance placed on Hornsea 3 to justify the arbitration provisions more broadly, is there not an argument that the drafting in these dDCOs should follow the</p>	<p>The Applicants' drafting in paragraph 6(3) on costs is the same as the drafting in the following DCOs:</p> <ul style="list-style-type: none"> • Paragraph 27 of Schedule 13 to the Millbrook Gas Fired Generating Station Order 2019; and • Paragraph 6(4) of Schedule 14 to the Norfolk Vanguard Offshore Wind Farm Order 2020. <p>The Applicants therefore do not consider that the Applicants position on costs is at all novel as it has been included in two DCOs granted by the Secretary of State.</p> <p>The Applicants stand by their justification that this approach to costs is entirely appropriate given that it is standard in arbitration proceedings for costs and expenses to follow success and indeed the Hornsea Three DCO is perhaps a more novel approach (albeit also accepted by the Secretary of State).</p>



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
			<p>rationale in that Order, which is based on the generally applicable principle in planning proceedings that each party should bear its own costs?</p>	
27	Para 9	The Applicants Interested Parties / Affected Persons potentially engaged by Arbitration	<p>Emergency Arbitrator</p> <p>The ExAs have considered responses to matters raised in the February Commentaries. This is still understood to be a novel provision. The Hornsea 3 provisions referred to by the Applicants do not contain an equivalent provision and the Applicants have not referred to any other planning precedent or mounted a clear case justifying a change from recent planning practice.</p> <p>a) In responding to the question as to whether any specific mischief or harm occurred to an existing or proposed Offshore Wind Farm development attributable to the absence of such a provision, the Applicants have referred to the presence of such provisions 'in many of the leading arbitral institutional rules including the International Chamber of Commerce, the London Court of International Arbitration and the International Centre for Dispute Resolution'. However, no specific instance of the use of or prospective need for such</p>	<p>As noted in the Applicants' previous submissions on this point, provisions for the appointment of emergency arbitrators are found in many of the leading arbitral institutional rules including the International Chamber of Commerce, the London Court of International Arbitration and the International Centre for Dispute Resolution. The Applicants therefore consider that such provisions are entirely justified and are likely to apply in respect of arbitration proceedings arising in relation to the many DCOs where only a generic arbitration clause has been included.</p> <p>Given the nature of the bodies likely to be subject to arbitration under the DCO (e.g. undertakers specified in the protective provisions, many of which deliver and operate critical infrastructure) the Applicants consider such provisions (which would ordinarily be available to such undertakers in arbitration proceedings) to be entirely reasonable and justified.</p>



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
			<p>provisions in an Offshore Wind Farm or other equivalent made DCO has been referred to. Are there any such instances?</p> <p>b) The Applicants are again asked to clarify the basis and any precedent for the proposal to include this provision.</p>	<p>The Applicants therefore consider such provisions to be necessary in case circumstances arise where injunctive relief is required.</p> <p>The Applicants also note that no Interested Parties that may be subject to the arbitration provisions have commented on or raised any concerns in relation to the inclusion of the emergency arbitrator provisions.</p>
28	Generally	The Applicants	<p>Arbitration Procedures affecting the Secretary of State</p> <p>The ExAs note that the Secretary of State did not agree to undertake the procedures identified within the timescales provided in the dDCOs in the equivalent provisions in the Hornsea 3 made Order. Is there any reason why the provisions of these dDCOs bearing on the Secretary of State should be different from the equivalent provisions in that made Order?</p>	<p>Whilst there are some minor differences between the timescales set out in Schedule 15 and the timescales set out in the equivalent Hornsea Three DCO provisions, the Applicants note that the timescales set out within Schedule 15 are identical to those within the following DCOs:</p> <ul style="list-style-type: none"> • The Millbrook Gas Fired Generating Station Order 2019; • The Cleve Hill Solar Park Order 2020; and • The Norfolk Vanguard Offshore Wind Farm Order 2020. <p>The Applicants therefore consider the timescales set out within the Arbitration Rules</p>



ID	dDCO Commentaries	Question addressed to		ExA. Comment	Applicants' Response
					in Schedule 15 to be entirely reasonable and precedented.
Schedule 16 – Procedure for Discharge of Requirements					
29	Paras 1	All Interested Parties Discharging authorities (see Arts 38)		<p>Final Positions on Procedure for Discharge of Requirements</p> <p>Are there any remaining issues about the form and structure of this Schedule or the adequacy of the processes provided by it?</p>	The Applicants understand that the wording of this schedule is agreed with SCC and ESC.
Schedule 17 – Documents to be Certified					
30	Generally	The Applicants		<p>Table Format and Presentation</p> <p>The formats of the table to Schs 17 Part 1 and parts of the table to Part 2 are such that the titles of documents in column 3 run together as continuous vertical text, making the documents hard to distinguish and the table hard to read. Other equivalent tables (for example to Schs11 Part 1) use horizontal ruled lines as a graphic device to separate individual items in a table and overcome this issue. The Applicants are requested to identify a similar solution for these tables, ensuring that any solution proposed meets the format requirements of the Statutory Instrument template and template checker process.</p> <p>The tables list (amongst other documents) the outline and in-principle plans and strategies</p>	<p>The Applicants will endeavour to update the formatting of the tables in Schedule 17 at Deadline 12 so that they are easier to read whilst still according with the Statutory Instrument template.</p> <p>The Applicants note that wherever abbreviations or acronyms are used to refer to an outline or in-principle plan or strategy within the application documents this abbreviation will be defined the first time it is used and it will also be listed in the 'Glossary of Acronyms' table at the start of the document. The Applicants do not consider it to be good drafting practice to include or refer to abbreviated terms within the draft DCO and given that all application documents</p>



ID	dDCO Commentaries	Question addressed to		ExA. Comment					
				<p>secured by Requirements. These are widely referred to in the Applications documents sets and submissions with abbreviated names. For example, the Outline Code of Construction Practice is referred to as the OCoCP. Where such usages exist, the Applicants are requested to follow the full name of the relevant document in the tables with a bracketed reference to the abbreviation in use. Again, for example, reference to the Outline Code of Construction Practice would be to the Outline Code of Construction Practice (OCoCP).</p>	<p>define any abbreviated terms, the Applicants are of the view that it is sufficiently clear what the meaning of any abbreviated terms used within the application documents is.</p>				
31	Generally	The Applicants and all Interested Parties		<p>Certified documents audit</p> <p>The ExAs welcome the introduction of Schs 17. The content and effect of documents recorded in the schedule will be raised in ISHs17. The Applicants will be requested to undertake an audit of all certified documents to ensure that version control and citations are correct. This work is to be submitted at Deadline 11. Interested Parties may comment on it at Deadline 12, enabling the Applicants to provide any final correcting revisions at Deadline 13.</p>	<p>For each updated version of the draft DCO, Schedule 17 is checked and updated so that it is accurate at the point in time at which that version of the draft DCO is submitted. The Applicants will however undertake an audit of all certified documents to ensure that the versions and dates of documents as well as the document reference numbers stated in Schedule 17 of the draft DCO are all correct.</p> <p>At ISH17, the Applicants noted that this audit is requested for Deadline 11 however the next version of the draft DCO is to be submitted at Deadline 12 and so the Applicants advised that they intend to undertake the audit for Deadline 12 rather</p>				



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
				than Deadline 11 so that it reflects the most up-to-date position.
32	Part 2	The Applicants and all Interested Parties	<p>Certified documents audit: approval and consultation processes</p> <p>The certified documents include outline and in-principle plans and strategies secured by Requirements and to which the relevant decision maker (normally the relevant local planning authority or the MMO) must refer when discharging Requirements. As part of the audit of certified documents, and with reference to the preferred draft DCOs, the Applicants are requested to prepare a table that identifies the following elements:</p> <ul style="list-style-type: none"> • The name of each outline or in-principle plan and strategy; • The name of any body consulted during its preparation; • Whether and if so which provisions in the dDCOs are relied upon to secure a final or detailed version of the document; • The identity of the body approving any final or detailed version of the document; and 	The Applicants will prepare a table setting out the information requested and will submit this at Deadline 12 alongside the updated version of the draft DCO.



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
			<ul style="list-style-type: none"> The identity of any consultees engaged in the preparation or approval of the final or detailed version of the document. 	
33		The Applicants, East Suffolk Council and Natural England	<p>Certified documents: approval and consultation processes</p> <p>Natural England has made the following requests in relation to outline and in-principle plans and strategies. The Applicant's response and the comments of East Suffolk Council are sought.</p> <ul style="list-style-type: none"> a) That NE be secured as a consultee on the final Code of Construction Practice (CoCP) (R22); and b) That the HDD Verification Clarification Note [REP6-024] should be updated once pre-construction surveys are complete and then become a certified document to be considered in the discharge of R13. <p>In relation to item a), in R22 the means of security could be:</p> <p>'... has been submitted to and approved by the relevant planning authority and the relevant statutory nature conservation body.'</p> <p>In relation to item b), in R13 the means of security could be:</p>	<p>a) The Applicants submitted an updated Outline Code of Construction Practice (OCoCP) at Deadline 10 (REP10-004) which clarified the elements of the CoCP that NE will be consulted on and confirmed that the draft DCO (document reference 3.1) will be updated to make provision for consultation with the relevant Statutory Nature Conservation Body (SNCB) during the approval of the plans specified in paragraph 11 of the Outline CoCP (document reference 8.7). The Applicants intend to make this change in the next version of the draft DCO (document reference 3.1) which is to be submitted at Deadline 12 and the Applicants anticipate that this will address Natural England's (NE's) outstanding representation on this matter.</p> <p>The Applicants do not agree with the text proposed as it suggests that the relevant SNCB is approving the plans as opposed to being consulted on them and it doesn't specify the plans in respect of which NE are to be consulted. The Applicants will include their preferred drafting in the draft DCO</p>



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
			<p>(a) a detailed horizontal directional drilling verification note (which accords with the horizontal directional drilling verification clarification note);</p> <p>(b) a landfall construction method statement for the construction of that part of Work No. 6 or Work No. 8 (which accords with the outline landfall construction method statement); and</p> <p>(c) a landfall monitoring plan (which accords with the outline landfall monitoring plan contained within appendix 2 of the outline landfall construction method statement).</p> <p>Please provide comments on the means of drafting.</p>	<p>(document reference 3.1) submitted at Deadline 12.</p> <p>b) The Applicants do not agree that the Horizontal Directional Drilling Verification Clarification Note (REP6-024) should be updated once pre-construction surveys are complete and then become a certified document as this is a 'point in time document' and the results from the pre-construction surveys will inform the final design (including tolerances) which will be included within the final Landfall Construction Method Statement, the approval of which is secured by requirement 13. Requiring an update to the Horizontal Directional Drilling Verification Clarification Note (REP6-024) would result in unnecessary duplication of effort as the relevant information will be captured within the final Landfall Construction Method Statement. The Applicants understand that ESC is comfortable that the Landfall Construction Method Statement will include the required details and that there is no need for the Horizontal Directional Drilling Verification Clarification Note (REP6-024) to be updated or submitted for approval post consent.</p>



ID	dDCO Commentaries	Question addressed to	ExA. Comment	Applicants' Response
Schedule 18 – Offshore Ornithology Compensation Measures				
34	Generally	The Applicants	<p>Content Matters in ExQ3</p> <p>The ExAs have raised questions on the content of the Schedule in ExQs3 at 3.2.10 – 3.2.12.</p>	<p>Noted. The Applicants have provided a response to these questions in Applicant's Responses to WQ3 Volume 4 1.2 Biodiversity Ecology and Natural Environment (document reference ExA.WQ-3.D11.V1_04).</p>
35		The Applicants, The Marine Management Organisation	<p>Consultation on Schs 18 Measures</p> <p>In [REP10-049], the MMO maintains the view that a consultation period of six weeks should be specified within Schedule 18 for reasons set out in [REP8-156]. The Applicants' positions remain [REP10-014] that this level of detail is inappropriate and that such details will be determined by the SoS at the relevant time post-consent. The ExAs consider that there is benefit in drafting a specific and certain provision (see NPPF para 55).</p> <ol style="list-style-type: none"> Do the Applicants continue to object to a six-week consultation period? If so, please propose an alternative period. If this matter remains unagreed, the MMO is requested to set out its final position at D12. 	<p>It is not standard practice to specify consultation periods within DCOs and therefore the Applicants disagree that this level of detail is required. The Applicants would also note that no consultation period is specified in the equivalent provisions of the Hornsea Three DCO compensation measures schedule.</p> <p>As noted previously, the drafting of Schedule 18 seeks to provide a clear process and mechanism for the delivery of compensation measures with clear trigger points for delivery of that compensation 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.</p>



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36		Natural England and other Interested Parties	<p>Form and Structure of the Schedule and Adequacy of Security</p> <p>Are there any other remaining issues about the form and structure of this Schedule or the adequacy of the security provided by it?</p>	No further comment.
Agreements and Obligations				
37	MoU [REP10-028]	The Applicants, East Suffolk Council	<p>Memoranda of Understanding (MoUs)</p> <p>The signed Memoranda of Understanding (MoUs) [REP10-028] are between ScottishPower Renewables (UK) Limited and East Suffolk Council. ScottishPower Renewables (UK) Limited is not the Applicant in either instance. What locus does this company have in this process and what weight can the ExAs ascribe to the MoUs in these circumstances? To the extent that the MoUs manage matters to be delivered by the Applicants (East Anglia ONE North Limited and East Anglia TWO Limited), would it not be more appropriate for them to be signed by and binding on the Applicants?</p>	<p>The Applicants have provided responses below in relation to both the Skills and Environmental MoUs</p> <p>Skills MOU</p> <p>Before going on to discuss the skills MOU, it is important to place it in context. National Policy Statement (NPS) EN-1 places significant weight on both the energy and economic contribution that National Significant Infrastructure Project (NSIP) energy projects (such as EA2 and EA1N) deliver. This is set out in paragraph 4.1.2 and the balancing exercise in 4.1.3. At that national and regional level, it is delivery of the scale of projects that drives level of economic effects. The Projects would deliver those benefits. These are benefits which the Government within the White Paper have deliberately sought:</p>



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					<p><i>“Our actions are a strong signal to project developers in the wider invested community about the Government’s commitment to delivering clean energy.”</i></p> <p>This builds upon the Sector Deal which the UK Government sponsored and also the development of the supply chain plans through the Contract for Differences (CfD) process. The Government consulted on enhancing the status of the supply chain plans and formally responded to this in May 2021.¹ The Government has decided to implement amendments to regulations to include the power to assess and approve a generator’s implementation of their supply chain commitments. This builds upon the previous arrangements and through this process it will play a full part in driving economic growth. The amendments to the regulations were laid before Parliament last month. Through these means the Government will ensure the wider economic benefits are secured.</p> <p>There is also direct evidence that the Government’s policy announcements made at the end of last year are already stimulating</p>

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/983934/scps-cfd-contract-govt-response.pdf.



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					<p>the investment that they wish to see. In January this year the Applicants indicated that they had reached a framework arrangement with Siemens Gamesa. Last month Siemens Gamesa indicated that it is going to extend its manufacturing facility in Hull.² The port of Lowestoft has announced plans to expand facilities.³ Further details are set out below. The Applicants have committed funds to undertaking further site investigations which would facilitate the early delivery of the projects. These are all direct examples of how the structure and framework created at a national level is driving further investment in the offshore sector and delivering investment to communities in the east of England. It is against that background that the skills MOU has to be considered.</p> <p>ScottishPower Renewables (UK) Limited's (SPR) commitment to the local region is to work collaboratively with ESC and SCC to ensure socio-economic benefits for the communities associated with the East Anglia projects namely East Anglia ONE, East Anglia THREE, EAST Anglia ONE North and</p>

² <https://www.hulldailymail.co.uk/news/hull-east-yorkshire-news/200-new-jobs-hull-chancellor-5417290>.

³ <https://eeeegr.4coffshore.com/abp-unveils-lowestoft-offshore-energy-plans-nid21226>



Applicants' Responses to ExA's Comments on Draft DCO
7th June 2021

ID	dDCO Commentaries	Question addressed to		ExA. Comment	Applicants' Response
					<p>East Anglia TWO. East Anglia ONE North Limited and East Anglia TWO Limited (the Applicants of the East Anglia ONE North and East Anglia TWO projects respectively) are referenced within the MoU and both are subsidiaries of SPR, the signatory to the MoU.</p> <p>This MoU establishes a commitment for all parties to develop a close working relationship and intention to work in partnership to maximise the education, skills and economic benefits of the SPR East Anglia Offshore Wind Projects. This reinforces the commitments that SPR has made as a member of the Offshore Wind Industry Council and as a signatory of the Offshore Wind Industry Charter.</p> <p>The Applicants note that there are real and tangible examples of the sector deal delivering in East Anglia. Associated British Ports (ABP) has ambitious plans for the Port of Lowestoft, aiming to create a competitive edge for companies across the wider East Anglia region.</p> <p>Over the next five years, ABP will develop the Lowestoft Eastern Energy Facility (LEEF). This is expected to bring upgrades to the facilities at Lowestoft's outer harbour.</p>



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					<p>ABP have stated that the project will deliver port infrastructure to meet the offshore energy industry's current and future demands, ensuring the port can accommodate the next generation of offshore support vessels. The facility will provide a site that is suitable for Operations & Maintenance (O&M) activities in addition to quayside suitable for construction support activities.</p> <p>All parties agree that the flexible nature of the MoU is the most appropriate way to maximise education, skills and economic benefits.</p> <p>Environmental MoU</p> <p>The Environmental MoU is an agreement between SPR and ESC and represents a commitment to support the delivery of the Net Zero transition and delivery of improvements to biodiversity as deemed appropriate by ESC. The MoU relates to East Anglia ONE North, East Anglia TWO and East Anglia Three.</p> <p>The value in the agreement extends beyond financial, with SPR committing to sharing expert staff knowledge on energy transition matters for example. SPR also endeavours to provide access to staff who have</p>



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					<p>knowledge which can support the MoU. The duration of the MoU will surpass the construction period and any Offshore Transmission Owner (OFTO) divestment period. It was felt that to guarantee sufficient access to the staff expertise that the agreement should be between ESC and SPR. Furthermore, given that the MoU relates to East Anglia Three in addition to the Projects, SPR was considered to be the appropriate signatory.</p> <p>The Applicants consider that whilst the 'Environmental' MoU cannot be given weight in the decision making process, it is an appropriate mechanism to deliver wider placemaking and to support the local response to climate change. The National Infrastructure Commission Design Group in their Design Principles for National Infrastructure supports the concept of finding opportunities beyond the site boundary and to consider the wider benefits the project can bring. The strict Policy restrictions on obligations makes it difficult for such matters to be taken into account in the formal decision making process. Agreements such as these will support positive social and environmental outcomes and seek to improve</p>



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					<p>the quality of life of current and future residents.</p> <p>Summary</p> <p>The Applicants do not wish the ExA to ascribe weight to either Memorandum of Understanding and consider their current format is the most appropriate to deliver economic and environmental benefits, as agreed by all parties involved in the MoUs. As identified above the Government is putting in place formal requirements relating to the supply chain plans. This will secure the key economic outcomes that should form part of the decision making in terms of EN-1. The Skills MOU will ultimately assist in the Applicants' delivery of the project specific supply chain plans. It will help ensure that local people have the opportunity to gain the requisite skills to be employed in the sector.</p>