



**SCOTTISHPOWER
RENEWABLES**

East Anglia ONE North and East Anglia TWO Offshore Windfarms

Applicants' Responses to Examining Authority's Written Questions

Volume 7 – 1.5 Draft Development Consent Order

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
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Description of Revisions			
Rev	Page	Section	Description
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This document is supported by the following appendices:

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Glossary of Acronyms

AA	Appropriate Assessment
AADT	Annual Average Daily Traffic
ADD	Acoustic Deterrent Devices
AEOI	Adverse Effect on Integrity
AIL	Abnormal Indivisible Load
AIS	Air Insulated Switchgear
ALC	Agricultural Land Classification
ALO	Agricultural Liaison Officer
ANO	Air and Navigation Order
AONB	Area of Outstanding Natural Beauty
APP	Application Document
AST	Assured Shorthold Tenancies
ATC	Automatic Traffic Counts
BCT	Bat Conservation Trust
BEIS	Department of Business Energy and Industrial Strategy
BMV	Best and Most Versatile
BoR	Book of Reference
BT	British Telecom
CA	Compulsory Acquisition
CCS	Construction Consolidation Sites
Cd	Candela
CfD	Contract for Difference
CIA	Cumulative Impact Assessment
CIEEM	Chartered Institute of Ecology and Environmental Management
CION	Connection and Infrastructure Options Note
COCP	Code of Construction Practice
dB	Decibels
DCO	Development Consent Order
DML	Deemed Marine Licence
DMO	Destination Management Organisation
DMRB	Design Manual for Roads and Bridges
EA	Environment Agency
EIA	Environmental Impact Assessment
EM	Explanatory Memorandum
EMP	Ecological Management Plan
ES	Environmental Statement
ESC	East Suffolk Council
ESCA	European Subsea Cables Association
ESDAL	Electronic Service Delivery for Abnormal Loads
ETG	Expert Topic Group
ExA	Examining Authority
ExQs	Examining Authorities First Written Questions
FID	Final Investment Decision
FRA	Flood Risk Assessment
GEART	Guidelines for the Environmental Assessment of Road Traffic
GIS	Gas Insulated Switchgear
GLVIA	Guidelines for Landscape and Visual Impact Assessment
Ha	Hectares
HDD	Horizontal Directional Drilling
HE	Historic England
HGV	Heavy Goods Vehicle



HRA	Habitats Regulations Assessment
ICPC	International Cable Protection Committee
IPSIP	In Principle Site Integrity Plan
Km	Kilometres
kV	Kilovolt
LAT	Lowest Astronomical Tide
LCA	Landscape Character Assessment
LCT	Landscape Character Type
LiDAR	Light Detection and Ranging
LIQ	Land Interest Questionnaire
LLFA	Lead Local Flood Authority
LMP	Landscape Management Plan
LPA	Local Planning Authority
LSE	Likely Significant Effects
LVIA	Landscape and Visual Impact Assessment
M	Metres
MCA	Marine Coastguard Agency
MCTC	Manual Classified Turning Counts
MHWS	Mean High Water Springs
MMMP	Marine Mammal Mitigation Protocol
MMO	Marine Management Organisation
MoD	Ministry of Defence
MoU	Memorandum of Understanding
MW	Megawatt
MWh	Megawatt Hours
NALEP	The New Anglia Local Enterprise Partnership
NATS	National Air Traffic Service
NCTA	National Coastal Tourism Academy
NE	Natural England
NGET	National Grid Electricity Transmission
Nm	Nautical Miles
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
OAMP	Outline Access Management Plan
OCTMP	Outline Construction Traffic Management Plan
OFTO	Offshore Transmission Owner
OLEMS	Outline Landscape and Ecological Management Strategy
OMLP	Outline Management and Landscape Plan
ORJIP	Offshore Renewables Joint Industry Programme
OTP	Outline Travel Plan
PD	Procedural Decision
PEIR	Preliminary Environmental Impact Report
PEMP	Project Environmental Management Plan
PIL	Persons with an interest in Land
PPG	Planning Practice Guidance
PRoW	Public Right of Way
PS	Policy Statements
PTP	Port Travel plan
PVA	Population Viability Analysis
RAG	Red Amber Green
RLoS	Radar Line of Sight
RR	Relevant Representation



RSPB	Royal Society for the Protection of Birds
RTD	Red Throated Diver
RWS	Rijkswaterstaat
SAC	Special Area of Conservation
SCC	Suffolk County Council
SCCAS	Suffolk County Council Archaeology Service
SCHAONB	Suffolk Coats and Heaths Area of Outstanding Natural Beauty
SLVIA	Seascape, Landscape and Visual Impact Assessment
SMP	Shoreline Management Plan
SNS	Southern North Sea
SoCG	Statement of Common Ground
SoS	Secretary of State
SPA	Special protected Area
SPR	ScottishPower Renewables
SSSI	Site of Special Scientific Interest
STEM	Science, Technology and Engineering and Mathematics
SuDS	Sustainable Urban Drainage System
SZC	Sizewell C
TCE	The Crown Estate
TH	Trinity House
TMZ	Transponder Mandatory Zone
TP	Temporary Purchase
TPO	Tree Purchase Order
TWT	The Wildlife Trust
UK	United Kingdom
UKCP	United Kingdom Climate Projections
UXO	Unexploded Ordinance
VP	Viewpoint
WQ	Written Question
WR	Written Representation
WSI	Written Scheme of Investigation
ZTV	Zone of Theoretical Visibility



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.
Construction consolidation sites	Compounds associated with the onshore works which may include elements such as hard standings, lay down and storage areas for construction materials and equipment, areas for vehicular parking, welfare facilities, wheel washing facilities, workshop facilities and temporary fencing or other means of enclosure.
Construction operation and maintenance platform	A fixed offshore structure required for construction, operation, and maintenance personnel and activities.
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.
Generation Deemed Marine Licence (DML)	The deemed marine licence in respect of the generation assets set out within Schedule 13 of the draft DCO.
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.



Inter-array cables	Offshore cables which link the wind turbines to each other and the offshore electrical platforms, these cables will include fibre optic cables.
Jointing bay	Underground structures constructed at intervals along the onshore cable route to join sections of cable and facilitate installation of the cables into the buried ducts.
Landfall	The area (from Mean Low Water Springs) where the offshore export cables would make contact with land, and connect to the onshore cables.
Link boxes	Underground chambers within the onshore cable route housing electrical earthing links.
Meteorological mast	An offshore structure which contains metrological instruments used for wind data acquisition.
Mitigation areas	Areas captured within the onshore development area specifically for mitigating expected or anticipated impacts.
Marking buoys	Buoys to delineate spatial features / restrictions within the offshore development area.
Monitoring buoys	Buoys to monitor <i>in situ</i> condition within the windfarm, for example wave and metocean conditions.
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 overhead line realignment works	Works required to upgrade the existing electricity pylons and overhead lines (including cable sealing end compounds and cable sealing end (with circuit breaker) compound) to transport electricity from the National Grid substation to the national electricity grid.
National Grid overhead line realignment works area	The proposed area for National Grid overhead line realignment works.
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.
Offshore cable corridor	This is the area which will contain the offshore export cables between offshore electrical platforms and landfall.
Offshore development area	The East Anglia TWO / East Anglia ONE North windfarm site and offshore cable corridor (up to Mean High Water Springs).



Offshore electrical infrastructure	The transmission assets required to export generated electricity to shore. This includes inter-array cables from the wind turbines to the offshore electrical platforms, offshore electrical platforms, platform link cables and export cables from the offshore electrical platforms to the landfall.
Offshore electrical platform	A fixed structure located within the windfarm area, containing electrical equipment to aggregate the power from the wind turbines and convert it into a more suitable form for export to shore.
Offshore export cables	The cables which would bring electricity from the offshore electrical platforms to the landfall. These cables will include fibre optic cables.
Offshore infrastructure	All of the offshore infrastructure including wind turbines, platforms, and cables.
Offshore platform	A collective term for the construction, operation and maintenance platform and the offshore electrical platforms.
Onshore cable corridor	The corridor within which the onshore cable route will be located.
Onshore cable route	This is the construction swathe within the onshore cable corridor which would contain onshore cables as well as temporary ground required for construction which includes cable trenches, haul road and spoil storage areas.
Onshore cables	The cables which would bring electricity from landfall to the onshore substation. The onshore cable is comprised of up to six power cables (which may be laid directly within a trench, or laid in cable ducts or protective covers), up to two fibre optic cables and up to two distributed temperature sensing cables.
Onshore development area	The area in which the landfall, onshore cable corridor, onshore substation, landscaping and ecological mitigation areas, temporary construction facilities (such as access roads and construction consolidation sites), and the National Grid Infrastructure will be located.
Onshore infrastructure	The combined name for all of the onshore infrastructure associated with the proposed East Anglia TWO / East Anglia ONE North project from landfall to the connection to the national electricity grid.
Onshore preparation works	Activities to be undertaken prior to formal commencement of onshore construction such as pre-planting of landscaping works, archaeological investigations, environmental and engineering surveys, diversion and laying of services, and highway alterations.
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.
Platform link cable	Electrical cable which links one or more offshore platforms. These cables will include fibre optic cables.
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.
Scour protection	Protective materials to avoid sediment being eroded away from the base of the foundations as a result of the flow of water.
Transition bay	Underground structures at the landfall that house the joints between the offshore export cables and the onshore cables.
Transmission DML	The deemed marine licence in respect of the transmission assets set out within Schedule 14 of the draft DCO.



ExA. Question Ref.	Question addressed to	ExA. Question		Applicants' Response	
1.5 Draft Development Consent Order (dDCO)					
Articles (Art(s))					
1.5.1	The Applicant	1	2	<p>There does not appear to be a definition of Order land in Article (Art) 2</p> <ul style="list-style-type: none">Why is this?	<p>“Order land” is defined in Article 2 of the draft DCO as follows:</p> <p><i>“Order land” means the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference.</i></p>
1.5.2	The Applicant	1	2	<p>Please confirm that the heading in the EM [APP-025] immediately preceding Art 3 should read “Principal Powers”.</p>	<p>The Applicants confirm that the heading in the EM immediately preceding Art 3 should read “Principal Powers”.</p>
1.5.3	The Applicant	1	2	<p>Art 6 would disapply provisions of the Neighbourhood Planning Act 2017 (the NPA) relating to the TP of land. There are elements of the the NPA regime that are fixed by the statute itself, for example a notice period before possession is taken and a requirement for notices to identify the period of TP.</p> <p>We note from paragraph 4.11 of the EM [APP-025] that the relevant regulations had not been made at the time of the application.</p> <p>Please</p> <ul style="list-style-type: none">a) explain why such elements are not relevant to this application; andb) give an update on the current position in	<p>The relevant provisions of the Neighbourhood Planning Act 2017 are not yet in force and regulations required to provide more detail on the operation of the regime have not yet been made and there is no known date for implementation. There is therefore no certainty as to the requirements of the new temporary possession regime whereas the wording of the temporary possession provisions within the draft DCO is well established.</p> <p>As noted in response to Q1.3.14, there is a lot of recent precedent in which the provisions of the Neighbourhood Planning Act 2017 have been disapplied, including in the recent Norfolk Vanguard Offshore Wind Farm Order 2020, the A19 Downhill Lane Junction Development Consent Order 2020, the Cleve Hill Solar Park Order 2020, the M42 Junction 6 Development Consent Order 2020 and the Lake Lothing (Lowestoft) Third Crossing Order 2020 as well as the Orders referred to in paragraph 4.11 of the Explanatory Memorandum (APP-025).</p>



ExA. Question Ref.	Question addressed to	ExA. Question		Applicants' Response
			respect of the making of the relevant regulations.	
1.5.4	The Applicant	1	2 Art 11 provides for the temporary stopping up of public rights of way. a) Is it envisaged that public rights of way would be reopened if there were to be a significant gap in construction of the two projects? b) Does the drafting of this article adequately reflect the potential for the implementation of each project to a separate timescale?	a) Estimated durations for the temporary stopping up of public rights of way are set out in Appendix 8.4 Outline Public Rights of Way Strategy of the ES (APP-581). <i>Diversions will be agreed with the relevant local authority in advance and set out in a final Public Rights of Way Strategy. Typically, the temporary stopping up of public rights of way will be for short periods of time only (a number of weeks depending on the length of the right of way to be closed). A small number of temporary closures would be of longer durations. Temporary closures are necessary to allow for safe construction of the onshore infrastructure (including haul road construction and removal).</i> Notwithstanding the above, all temporary stopping up of PRoW will be reopened should there be a gap in the construction of both Projects b) Yes, each Project is the subject of a separate draft DCO and Article 11 will apply in relation to each Project in the context of the timescales in which that Project is brought forward. Interference with PRoW will be managed through the PRoW Strategy which is secured by Requirement 32 of the draft DCO and which must be approved by the relevant planning authority.
1.5.5.	SCC, ESC	1	2 Art 12 would enable the undertaker to seek approval for accesses to the highway, other than those listed in Schedule 5. Approval would be deemed to have been given if no decision were to be notified within 28 days. • Are you satisfied that 28 days is sufficient	No response



ExA. Question Ref.	Question addressed to	ExA. Question		Applicants' Response
				time for you to consider such requests fully and properly?
1.5.6	The Applicant	1	2	<p>Art 19 provides for the time limit for the exercise of CA powers to be 7 years. The EM [APP-025] states that this period is necessary due to the scale and complexity of the project and uncertainties associated with the Contracts for Difference process and contractor and supply chain availability.</p> <ul style="list-style-type: none"> Please provide further detailed justification for the proposed 7 year time limit. <p>Requirement 1 of the draft Development Consent Order (APP-023) states:</p> <p><i>"The authorised project must commence no later than the expiration of seven years beginning with the date this Order comes into force".</i></p> <p>The seven-year time limit for the consent is requested in order to maximise the window for the Projects to commence construction, particularly in light of the uncertainties associated with the current Contracts for Difference support mechanism regime the industry operates in, which is outwith the control of the Applicants.</p> <p>Taking into account project funding, Final Investment Decisions and contracting (all post CfD activities), a seven-year consent time limit is appropriate in order to ensure sufficient time for the Projects to participate in further CfD allocation rounds.</p> <p>Article 19 of the draft DCO therefore seeks a seven-year time limit in order to be consistent with the time limit in Requirement 1.</p>
1.5.7	Statutory Undertakers	1	2	<p>In respect of powers being sought in order for the applicant to be able construct, operate and maintain the authorised project, are you content with the provision in Art 20 paragraph (5) authorising the applicant to transfer the power to acquire new rights or impose restrictions?</p> <p><i>No response</i></p>
1.5.8	Statutory Undertakers	1	2	<p>Paragraph (5) of Art 21 disapplies Art 21 in respect of statutory undertakers and cites section 138 of the 2008 Act and Art 28 of the</p> <p><i>No response</i></p>



ExA. Question Ref.	Question addressed to	ExA. Question		Applicants' Response
				dDCO. Art 28 in turn cites Schedule 10 (protective provisions). <ul style="list-style-type: none"> Are you satisfied that your interests are adequately protected?
1.5.9	The Applicant	1	2	Art 21 deals with private rights. Based on information currently available, are you satisfied that your interests, in particular where one of the authorised projects would or might interfere with the other authorised project, are adequately protected? Yes, this is dealt with through protective provisions contained in Schedule 10, Part 5 of the draft DCO.
1.5.10	The Applicant	1	2	Art 26 provides for temporary use of land (TP). The two East Anglia projects may be constructed concurrently or sequentially, with or without a time gap in between. This may have implications for landowners in terms of the duration of any TP. The drafting of Art 26(3) does not appear to address the potential for the construction of the other East Anglia project with a gap in construction works. <ul style="list-style-type: none"> a) When would a decision on the approach to construction of the two projects be made? b) How would this be communicated to landowners and others with an interest? <ul style="list-style-type: none"> a) A decision on the approach to construction of the Projects would be made after the grant of the Development Consent Order and once the Final Investment Decision (FID) has been reached. b) The Applicants would keep landowners and others with an interest in land abreast of the project developments. In addition, where a land agreement is obtained by the Applicants there will be provisions on timings and notices and where temporary possession powers or other compulsory acquisition powers are to be exercised, the requisite notice will be given. c) If the gap in construction was such that it was less impactful and would cause less disturbance for the Applicant to remain in possession of land then this is something that would be considered and explored with the relevant landowner.



ExA. Question Ref.	Question addressed to	ExA. Question		Applicants' Response
			<div><div>c)</div><div>Is it envisaged that the undertaker would remain in possession of land used under Art 26 during any gap in construction?</div></div> <div><div>d)</div><div>How does this article as drafted limit the impacts on landowners and others with an interest in the event that the projects are constructed sequentially?</div></div> <div><div>e)</div><div>Insofar as this flexibility has impacts on the use and enjoyment of land, how would those impacts be minimised and/or mitigated?</div></div>	<div><div>d)</div><div>Article 26(3) provides that the undertaker is not permitted to remain in possession for longer than is reasonably necessary, and must not remain in possession for more than a year following completion of the relevant part of the works (unless otherwise agreed with the landowner) which is included to help limit the impacts in the circumstances outlined in the question. There is therefore a mechanism for flexibility but only with agreement of the relevant landowner.</div></div> <div><div>e)</div><div>If the flexibility has impacts on the enjoyment of land then this will be dealt with as a matter of compensation.</div></div>
Schedule 1 Part 3 - Requirements				
1.5.11	The Applicant	1	2	<div><div>Requirement (R)1 provides for the time limit for commencing the authorised development to be 7 years. The EM [APP-025] is silent on the reasons for this.</div><div><div></div><div>Please explain why you propose a 7-year time limit.</div></div></div> <div><div>A 7-year time limit is required due to the scale and complexity of the Projects, uncertainty around the timing and outcome of future rounds for Contracts for Difference as well as unknown contractor and supply chain availability. We would refer to the response to question 1.5.6 above for further details explaining the proposed 7-year timescale. The explanation for proposing a 7-year time limit at Requirement 1 is the same explanation for Article 19 providing for a 7-year time limit.</div></div>
1.5.12	The Applicant	1	2	<div><div>R16 provides for details of accesses (including access management measures) to be approved.</div><div><div></div><div>Is approval also required where there is no construction or modification of an existing access, for instance in relation to highway safety where temporary</div></div></div> <div><div>All of the highway accesses require some form of construction or alteration and therefore written details of all accesses to the works will require to be approved prior to the construction or alteration of the access and such details must accord with the Outline Access Management Plan.</div></div>



ExA. Question Ref.	Question addressed to	ExA. Question		Applicants' Response
				traffic management measures are needed because construction traffic would be using an existing access with restricted visibility splays?
1.5.13	The Applicant	1	2	<p>R28 provides for a construction traffic management plan to be approved for stages of the connection works by the relevant planning authority.</p> <ul style="list-style-type: none"> Should the requirement include a clause to the effect that the works are to be carried out in accordance with the approved construction traffic management plans?
1.5.14	The Applicant	1	2	<p>R29 relates to restoration of land used temporarily for construction. The drafting assumes that the details will be approved.</p> <ul style="list-style-type: none"> How would restoration be secured if the details were not approved? <p>Requirement 29 provides as follows:</p> <p><i>“Any land landward of mean low water within the Order limits which is used temporarily for construction of the onshore works and not ultimately incorporated in permanent works or approved landscaping must be reinstated, in accordance with such details as the relevant planning authority in consultation with the relevant highway authority may approve, within twelve months of completion of the relevant stage of the onshore works or such other period as the relevant planning authority may approve.”</i></p> <p>This draft Requirement is worded such that the basic obligation is to reinstate within twelve months of completion of the relevant stage of the works. The manner in which that must be done is that details for</p>



ExA. Question Ref.	Question addressed to	ExA. Question	Applicants' Response
			<p>how reinstatement is carried out are to be approved, but the basic obligation to reinstate remains.</p> <p>In addition, in relation to temporary use of land for carrying out the Projects, Article 26(4) of the draft DCO provides that before giving up possession of land of which temporary possession is taken, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the landowners.</p> <p>Further, in relation to reinstatement and restoration following construction, the outline code of construction practice submitted with the Applications sets out the position on reinstatement at paragraph 53 as follows:</p> <p><i>“Any land used temporarily for construction is to be reinstated to its former condition, or such condition as the Local Planning Authority may approve. Reinstatement associated with roads will be undertaken in consultation with the local highway authority where relevant. All reinstatement will be undertaken as soon as reasonably practical and within twelve months of completion of the relevant stage of the onshore works or such other period as agreed with the Local Planning Authority.”</i></p> <p>Requirement 22 in the draft DCO provides that no stage of the onshore works may commence until for that stage a code of construction practice has been submitted to and approved by the relevant planning authority. That code of construction practice must accord with the outline code of construction practice, which states the position on reinstatement set out above. The undertaker cannot commence any stage of the onshore works without having an</p>



ExA. Question Ref.	Question addressed to	ExA. Question		Applicants' Response
				approved code of construction practice in place that accords with the outline code of construction practice. Requirement 22(3) provides that the approved code of construction practice must be followed.
1.5.15	The Applicant	1	2	<p>R30 refers to onshore decommissioning. The drafting assumes that an onshore decommissioning plan will be submitted to and approved by the relevant planning authority within six months of the cessation of commercial operation.</p> <p>a) How would this condition be enforced if no scheme were submitted? b) What would happen if the scheme were not approved? and c) what precedents are there for alternative mechanisms to secure proper decommissioning of comparable onshore infrastructure?</p> <p>a) Requirement 30, along with the other requirements in the draft DCO, would be subject to the provisions of Part 8 of the Planning Act 2008, which govern enforcement of provisions in DCOs. Section 161(1)(b) of the Planning Act 2008 states that it is a criminal offence to, without reasonable excuse, fail to comply with the terms of a DCO.</p> <p>In relation to Requirement 30, if the undertaker were to commence decommissioning without having had a plan approved, it would be committing a criminal offence. Further, the full range of enforcement powers available to the planning authority under Part 8 of the Planning Act 2008 would be engaged.</p> <p>b) Requirement 30 provides that onshore decommissioning plans in respect of the transmission and connection works are submitted to <i>and approved by</i> the relevant planning authority within six months following the permanent cessation of the commercial operation of the works. The onus is on the undertakers to ensure compliance with this Requirement and the undertakers would therefore need to work with the relevant planning authority to secure approval of the plans within the six month timescale. In the event that this Requirement was not complied with, this would constitute a breach of the DCO, and again enforcement action could be taken under Part 8 of the 2008 Act.</p>



ExA. Question Ref.	Question addressed to	ExA. Question		Applicants' Response
				<p>c) The Applicants have considered precedents relating to the decommissioning of comparable onshore infrastructure, and are unaware of any alternative mechanisms used other than a Requirement similar to Requirement 30 in the draft DCO. Examples of DCOs granted for offshore wind farms with a requirement similar to draft Requirement 30 include:</p> <ul style="list-style-type: none"> • The Norfolk Vanguard Offshore Wind Farm Order 2020 • The East Anglia THREE Offshore Wind Farm Order 2017 • The Hornsea Two Offshore Wind Farm Order 2016 • The East Anglia ONE Offshore Wind farm Order 2014 • The Rampion Offshore Wind Farm Order 2014 <p>The Applicants therefore consider that Requirement 30 as proposed is the most appropriate mechanism to secure decommissioning of the onshore works and that this approach follows extensive precedent.</p>
Schedule 13 – DML (generation assets)				
1.5.16	The Applicant	1	2	<p>Condition 17(1)(f) (Preconstruction plans and documentation) states that <i>"In the event that driven or part-driven pile foundations are proposed ... a marine mammal mitigation protocol ..."</i> is to be submitted to and approved in writing by the MMO.</p> <p>a) Should this condition include restricting maximum hammer energy? And</p> <p>b) if so, should any such restriction</p>



ExA. Question Ref.	Question addressed to	ExA. Question		Applicants' Response
				vary according to the foundation type being used?
1.5.17	The Applicant	1	2	<p>Does Condition 17(1)(c) include requiring pre and post-construction surveys and monitoring for benthic communities and geophysical features?</p> <ul style="list-style-type: none"> If not, why not?
1.5.18	The Applicant	1	2	<p>Art 37 and Schedule 15 – Arbitration</p> <p>Made DCOs for offshore wind farms have tended to have relatively simple arbitration provisions, in which the SoS appoints the arbitrator and the remit of arbitration is limited. Sch 15 in these dDCOs provide more substantial and complex provisions for arbitration than have been typical, including processes that provide for the appointment of an arbitrator other than by the SoS and, amongst other outcomes, that could refer the decisions of the SoS and the MMO to arbitration.</p> <p>The ExA for the Norfolk Vanguard Offshore Wind Farm examined what commenced as a similar set of arbitration provisions to the ones included here. Their Recommendation Report⁴</p>



ExA. Question Ref.	Question addressed to	ExA. Question	Applicants' Response
		<p>at Chapter 9.4 records a process of simplification during that examination, including the removal of provisions subjecting the SoS and the MMO to arbitration. In taking this approach, the ExA there observed that it had not been provided with evidence of the specific harms that had been occasioned by MMO decision-making and that justified the imposition of an arbitration mechanism that was not available for the beneficiaries of other equivalent DMLs. The SoS accepted the ExA's approach, but additionally formed the view that an arbitrator should not be appointed by a person other than the SoS. The decision letter⁵ identifies changes to the made Order as a consequence.</p> <p>The same issues (complex arbitration provisions without a clear justification) were analysed by the ExA in the Thanet Extension Offshore Wind Farm Recommendation Report⁶, from paragraph 11.4.4. In that case, because the SoS decided not to make the DCO, the decision letter does not directly consider the ExA's recommended approach to arbitration. However, the Applicant is referred to the reasoning there and asked to respond to it in the following terms:</p> <p>a) In the light of the decision in Norfolk Vanguard and the ExA reasoning in Thanet Extension, is</p>	



ExA. Question Ref.	Question addressed to	ExA. Question		Applicants' Response
				there an evidence base that supports arbitration provisions that subject decisions by relevant statutory authorities (specifically the MMO and or the SoS) to arbitration? b) Is there an evidence base that supports the appointment of an arbitrator by a person other than the SoS?
1.5.19	The Applicant	1	2	Schedule 15 – Arbitration Paragraph 6(3) provides for costs to follow the event and Paragraph 7 provides for confidentiality. a) What is the justification for imposing costs on regulatory bodies who may be acting reasonably in relation to their statutory functions? b) What is the justification for seeking confidentiality where matters of public interest and environmental protection are involved, and can it lawfully be delivered in circumstances where transparency is provided for (eg as a consequence of the UK's signature to the Aarhus Convention)?
1.5.20	The Applicant	1	2	Explanatory Note Please confirm that the reference to Art 37 (certification of plans etc) should be to Art 36.



ExA. Question Ref.	Question addressed to	ExA. Question		Applicants' Response
				which will be submitted at Deadline 3 pursuant to the Examination timetables.
1.5.21	The Applicant	1	2	<p>Matters not Addressed and Unsecured: Monitoring Schedules</p> <p>The Application documents sets do not include a Schedule of Monitoring. The ExA considers that a Monitoring Schedule is a valuable document: such schedules record all monitoring commitments entered into by the Applicant and, if proposed to be certified under Arts 36, ensures that relevant monitoring commitments are secured and are easily located during construction, operation or decommissioning as necessary.</p> <ul style="list-style-type: none"> The Applicant is requested to submit a Schedule of Monitoring for both Applications drafted as a document for certification and to amend draft Art 36 accordingly.
1.5.21	The Applicant			<p>Matters Unsecured: Mitigation Schedules</p> <p>The ExA consider that Mitigation Schedules should be certified under Art 36, ensuring that relevant commitments are secured and are easily located during construction, operation or decommissioning as necessary.</p> <ul style="list-style-type: none"> The Applicant is requested to amend draft Art 36 accordingly. <p>The Schedules of Mitigation are signposting documents which set out the mitigation measures proposed within the ES and how such measures are secured, they do not secure any mitigation measures.</p> <p>All mitigation is captured within the DCO requirements, DML conditions or in the plans and documents secured within the draft DCO.</p>



ExA. Question Ref.	Question addressed to	ExA. Question		Applicants' Response
				It is therefore not considered to be necessary or appropriate for the Schedules of Mitigation to be listed as certified documents within Article 36 of the draft DCO.