

**SCOTTISHPOWER
RENEWABLES**

East Anglia ONE North and East Anglia TWO Offshore Windfarms

Submission of Oral Case

**Issue Specific Hearing 6 on 29th January 2021:
The Draft Development Consent Orders
(dDCOs)**

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



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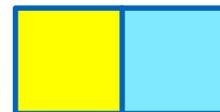
Table of contents

1	Introduction	1
2	Agenda Item 2: The Approach to the dDCO Drafting and Changes to the Draft in Progress	2
2.1	Purpose of the draft DCO	2
2.2	Approach to the dDCO Drafting	3
2.3	Deemed Marine Licences (DMLs)	6
2.4	Changes to the Draft in Progress	8
3	Agenda Item 3: Provisions for Projects Definitions and Elements	11
3.1	Part 1 - Preliminary	11
3.2	Part 2 – Principal Powers	12
3.3	Part 3 - Streets	14
3.4	Part 7 – Miscellaneous and General	15
3.5	Schedule 1 – Authorised Project	16
3.6	Schedule 10 – Protective Provisions	22
3.7	Schedule 15 – Arbitration Rules	23
3.8	Schedule 16 – Procedure for Discharge of Requirements	23
4	Agenda Item 4: The Changing Policy Environment	24
5	Agenda Item 5: Security for Technical Processes	25
6	Agenda Item 6: Agreements and Obligations	26
7	Agenda Item 7: Consents of Parties	27
8	Agenda Item 8: Other Consents	28



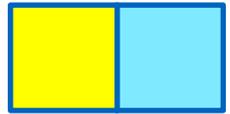
Glossary of Acronyms

CfD	Contracts for Difference
DCO	Development Consent Order
dDCO	draft Development Consent Order
DML	Deemed Marine Licence
ExA	Examining Authority
ISH	Issue Specific Hearing
MCA	Maritime and Coastguard Agency
MMO	Marine Management Organisation
NE	Natural England
NPS	National Policy Statement
OLEMS	Outline Landscape and Ecological Management Strategy
SASES	Substation Action Save East Suffolk
UXO	Unexploded Ordnance
TWT	The Wildlife Trusts



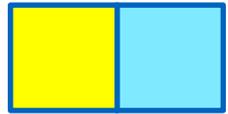
Glossary of Terminology

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



1 Introduction

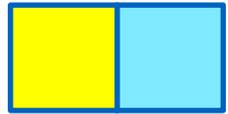
1. This document is applicable to both the East Anglia ONE North and East Anglia TWO Development Consent Order (DCO) applications (the Applications), and therefore is endorsed with the yellow and blue icon used to identify materially identical documentation in accordance with the Examining Authority's (ExA) procedural decisions on document management of 23 December 2019. Whilst for completeness of the record this document has been submitted to both Examinations, if it is read for one project submission there is no need to read it again.
2. The Issue Specific Hearing 6 for the Applications were run jointly and took place virtually on 29th January 2021 at 10:00am (Hearings).
3. The Hearings ran through the items listed in the agendas published by the ExA on 8th January 2021. The Applicants gave substantive oral submissions the Hearings and these submissions are set out within this note.
4. Speaking on behalf of the Applicants were:
 - Mr Colin Innes, partner at Shepherd and Wedderburn LLP;
 - Miss Stephanie Mill, senior associate at Shepherd and Wedderburn LLP;
and
 - Mr Gero Vella, offshore consents manager for the Projects.



2 Agenda Item 2: The Approach to the dDCO Drafting and Changes to the Draft in Progress

2.1 Purpose of the draft DCO

5. The purpose of the draft DCO is to grant the respective Applicant development consent for two linked nationally significant infrastructure projects (NSIPs), namely an offshore generating station and overhead line realignment works, together with associated development.
6. The offshore generating station NSIP in each case comprises wind turbine generators, a meteorological mast and a network of subsea inter-array cables.
7. The Orders also authorise associated development linked to the offshore generating station NSIP, including:
 - up to one offshore construction, operation and maintenance platform;
 - up to four offshore electrical platforms;
 - a network of subsea platform link cables;
 - up to two subsea export cables;
 - landfall connection works north of Thorpeness in Suffolk;
 - onshore cables from the landfall to the onshore substation;
 - an onshore substation in Grove Wood, Friston;
 - accesses, ecological mitigation, landscaping; and
 - other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project.
8. The overhead line realignment works will be located in Grove Wood, Friston and will include:
 - permanent realignment of a short section of the northern and southern overhead line circuits including the reconstruction and/or relocation of up to two pylons and construction of up to one additional pylon in order to realign the northern overhead lines and the reconstruction and/or relocation of up to one pylon in order to realign the southern overhead lines;



- temporary diversion of the northern and southern overhead line circuits; and
 - construction of up to three permanent cable sealing end compounds (one of which may include circuit breakers) and underground connections.
 - The Order also authorises associated development linked to the overhead line realignment works NSIP, including:
 - a new national grid substation;
 - accesses; and
 - other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project.
9. The Order contains two deemed marine licences under section 66(1) of the Marine and Coastal Access Act 2009; one for the generation assets (licence 1) and one for the offshore transmission assets (licence 2).
10. The Order also contains powers to acquire land, or rights, compulsorily for the construction and operation of the project.

2.2 Approach to the dDCO Drafting

11. The wording used in the draft DCOs has been derived from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 and is largely based on the Orders granting consent for the East Anglia ONE Offshore Wind Farm Order 2014 and the East Anglia THREE Offshore Wind Farm Order 2017 as well as other offshore wind DCOs and other recent DCO precedent.
12. Each project is subject to its own separate DCO. The requirements and Deemed Marine Licences (DML) conditions will require to be discharged in respect of each project under its respective DCO.
13. Paragraph 4.9.2 of EN-1 states that the Government “*envisages that wherever possible, applications for new generating stations and related infrastructure should be contained in a single application ... or in separate applications submitted in tandem which have been prepared in an integrated way*”.
14. The Applicants have brought forward the Applications together as per National Policy Statement (NPS) EN-1.
15. Whilst a level of flexibility is sought within the consents due to the scale and nature of the projects, the Applicants have worked hard to refine the parameters as much as possible at this stage in order to further reduce impacts and this is reflected in reductions in parameters at the substation site, reductions in the



maximum tip height of turbines, refinements in the order limits and the reduction in noise limits.

16. The Applicants have provided a great deal of information within outline plans and outline method statements, all of which are secured within the draft DCO in order to provide stakeholders with as much certainty as possible at this stage as to the nature of the works to be undertaken and the mitigation measures that will be employed.
17. These projects are not just concepts or large areas of the sea to be developed. They are detailed individual projects with grid connections and advanced proposals.

2.2.1 Overlapping Order Limits in Each dDCO

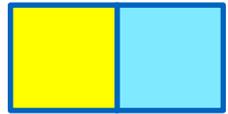
18. Both projects share the same order limits onshore which are typically 70m in width in respect of the cable corridor and within these limits the typical 32m individual project working widths would be located.
19. Each project will have its own dedicated onshore substation and cables, contained within a discrete, typically 32m, working width. The substations will be located adjacent to one another, as would the working width (subject to micro-siting within limits of deviation which may cause minor divergences of the working width within the order limits).
20. The interaction between the projects is governed by protective provisions set out within Part 5 of Schedule 10 of the draft DCO. Among other things, the protective provisions prevent one undertaker from acquiring any interest in land or any apparatus or override any easement or other interest of the other undertaker otherwise than by agreement. They also make provision for the sharing of information and for the undertaker in respect of one project to approve plans detailing works to be undertaken within the onshore order limits by the other.

2.2.2 Co-ordination/Optimisation of Projects

21. In the **Project Update Note** (REP2-007) submitted at Deadline 2, the Applicants made a commitment that where the East Anglia TWO and the East Anglia ONE North projects are constructed sequentially, when the first project goes into construction, the cable ducting for the second project will be installed along the whole of the onshore cable route in parallel with the installation of the onshore cables for the first project. This commitment is secured within Requirement 42 of the **draft DCO** (document reference 3.1).

2.2.3 Precedent for Consenting National Grid Works

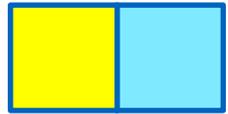
22. The Applicants are seeking consent for the National Grid works in order to secure delivery of the Projects as a whole.



23. It is not unusual for developers to consent works required to connect their projects to the national grid. Examples of this approach can be found in the Galloper Wind Farm Order 2013 and very recently in the Norfolk Vanguard Offshore Wind Farm Order 2020.
24. The Galloper DCO included 400kV overhead electric lines connecting two new sealing end compounds to the existing pylon infrastructure and associated development comprising underground grid connections, an electrical sub-station compound and the grid connection cabling between the sealing end compounds and the proposed sub-station. The overhead lines were treated as a NSIP and therefore the Galloper DCO consented two NSIPs – namely an offshore generating station NSIP and an overhead lines NSIP.

2.2.4 Inclusion of National Grid Connection Works in Both dDCOs

25. Both projects require the national grid connection works in order to connect to the grid. The national grid connection works included within the applications are of a size and scale that is necessary to enable the connection of the East Anglia TWO and East Anglia One North projects only. It is anticipated that this infrastructure will ultimately be owned and operated by National Grid however the intention is that such works are consented under both DCOs but will only be built out under one.
26. This approach is necessary as the national grid works are integral to both projects in order to allow the projects to export the electricity generated to the grid. If such works are only included within the DCO for one project and that project fails to obtain consent then the other project would not be able to connect to the grid without obtaining further consents. Similarly, if the national grid connection works are only included in one DCO and the project comprised within that DCO is unsuccessful in the Contracts for Difference (CfD) process but the other project is successful, then that will also cause issues for the project without the consented national grid works.
27. Whilst consent for the grid connection works is being sought within both DCOs, Requirement 38 prevents the grid connection works being constructed more than once.
28. Requirement 38 states that where any part of the grid connection works are being or have been constructed under another development consent order, that part of the grid connection works must not be constructed under this Order. The Applicants therefore consider that the requirement provides the necessary control to ensure that the national grid infrastructure is not constructed more than once.



29. At Deadline 3, Requirement 38 was amended to refer to the grid connection works being constructed under “*another development consent order*”. The text originally referred specifically to the DCO for the other East Anglia project. This change was made following a request from National Grid Ventures. The change makes no real practical difference to the Requirement, the intention of which is to secure that the national grid connection works will only be constructed once. It is more appropriately drafted in this way given the ownership and control of the overhead line.

2.2.5 Transfer to National Grid

30. In terms of the transfer to National Grid, Article 5 of the draft DCO provides a process whereby the undertaker may transfer any or all of the benefit of the provisions of the DCO to another person. The Applicants intend to use this as the transfer mechanism.
31. Article 5 states that the transferee will be subject to the same restrictions, liabilities and obligations as would apply under the order if the transferred benefits or rights were exercised by the undertaker. This means that the requirements of the DCO (such as Requirement 38) will apply equally to National Grid in due course.

2.3 Deemed Marine Licences DMLs

2.3.1 Inclusion of Work Nos. 2, 3 and 4 in Both DMLs

32. The DMLs have been drafted in a way that allows for flexibility as to whether certain works are constructed as generation assets or transmission assets. For example, both DMLs authorise the construction of the offshore platforms and platform link cables in order to avoid drawing an arbitrary line as to where the generation assets end and the transmission assets begin, however the DMLs restrict what can be constructed across the two DMLs to that assessed in the Environmental Statement. In addition, there are overarching controls within Schedule 1 of the DCO limiting the maximum number of offshore platforms and platform link cables to that assessed in the Environmental Statement.

2.3.2 UXO Clearance

33. The Applicants do not consider it necessary to apply for a separate marine licence for Unexploded Ordnance (UXO) clearance activities as such activities are assessed within the Environmental Statement and are controlled by the conditions of the DMLs. As such, the DMLs do not permit any UXO clearance activities to be undertaken without the requirements of condition 16 of the generation DML and condition 12 of the transmission DML first being complied with. In drafting the UXO clearance conditions, the Applicants reviewed and considered the conditions contained within other UXO marine licences to ensure that the activities are appropriately controlled. The Applicants updated the **draft**



DCO (REP3-011) at Deadline 3 to make it clear that the notification requirements within condition 10 (Notifications and inspections) of the generation DML and condition 6 of the transmission DML apply to UXO clearance activities. The Applicants are continuing to engage with the Marine Management Organisation (MMO) to ensure that appropriate and necessary conditions are included within the DMLs in order to control UXO clearance activities.

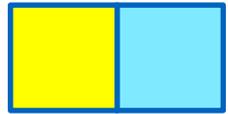
34. With regard to the period specified for the submission of plans and documents prior to commencement of UXO clearance activities, the Applicants have agreed a six month period with the MMO for all plans and documents with the exception of the plan showing the area in which clearance activities are proposed to take place and any exclusion zones/environmental micro-siting requirements, which will be issued three months prior to commencement. *The draft DCO* (document reference 3.1) submitted at Deadline 5 has been updated to include these timescales.

2.3.1 Scour Protection and Cable Protection during Operation

35. In its Deadline 2 submission (REP2-048), the MMO commented that “*any cable or scour protection which is proposed in areas where no such protection was employed during the construction phase of the wind farm is considered new cable or scour protection, and therefore cannot be properly considered to be a maintenance activity*”.
36. The Applicants have assessed the installation of cable and scour protection during the construction and operation phase but acknowledge the points raised by the MMO (and also by NE) and have therefore included a new condition in the DMLs requiring the approval of details of any new scour or cable protection to be installed during the operational period in order to provide the MMO and NE with sufficient comfort that such cable and scour protection will not be installed prior to the MMO approving the relevant details.
37. The Applicants are awaiting confirmation from the MMO (and NE) that this condition is acceptable.

2.3.2 Co-operation

38. The MMO requested that a condition be inserted into each DML requiring co-operation between the undertakers of the East Anglia TWO Project and the East Anglia ONE North Project and the Applicants have included a condition in each DML to address the MMO’s comment.
39. In its Deadline 4 submission (REP4-081), the MMO welcomed the condition.



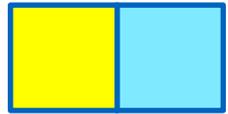
2.4 Changes to the Draft in Progress

2.4.1 Commencement Period

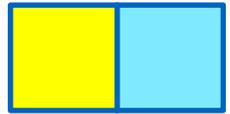
40. The Applicants have submitted at Deadline 5 an updated **draft DCO** (document reference 3.1). One of the changes the Applicants have made to the **draft DCO** (document reference 3.1) relates to the commencement period.
41. The East Anglia Hub concept means that the delivery of the Projects is being brought forward and this is reflected in the grid connection date for East Anglia TWO being brought forward to 2024.
42. As a result of this, the Applicants have reduced the commencement period specified in Requirement 1 of the **draft DCO** (document reference 3.1) from seven years to five years.
43. The Applicants would clarify however that the DCO will continue to seek a seven year period for the exercise of compulsory acquisition powers for the reasons set out at CAH1 (i.e. to enable the Projects to procure only title to or rights over land compulsorily once the construction works have taken place and so restrict the impact to the as built affected areas). If a shorter period is imposed then, as has been the case with other projects, it becomes necessary to exercise CA powers in advance of the completion of works and so in respect of a more extensive area of land than might finally have been required.

2.4.2 Other Key Changes

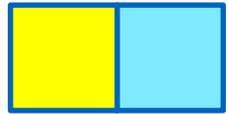
44. Other key changes that the Applicants have made to the **draft DCO** (document reference 3.1) at Deadline 5 include:
 - An update to the operational noise condition to include a new receptor and a reduction in the noise limits specified.
 - Updates to address comments made by the Maritime and Coastguard Agency (MCA) and Trinity House at Deadline 4.
 - Updates to address comments made by Historic England at Deadline 3 relating to:
 - i. Inclusion of Suffolk County Council in Condition 13(1)(g) of the Transmission DML to ensure a joined up approach on the foreshore between Historic England and Suffolk County Council; and
 - ii. A revision to Condition 17(1)(g)(vi) of the Generation DML and 13(1)(g)(vii) of the Transmission DML relating to the issuing of information to the Archaeological Data Service



- In the **Applicants' Comments on Substation Action Save East Suffolk (SASES) Deadline 1 Submissions** (REP4-023) at Deadline 4, the Applicants confirmed that the draft DCOs would be updated to address some of the comments raised by SASES on the draft DCO, for example:
 - i. Updating the description of relevant works to specify the number of cable ducts;
 - ii. Including a definition of cable sealing end compound;
 - iii. Requirement 12 to be updated to require details of the cable sealing end compounds comprised within Work No. 38 to be approved by the relevant planning authority prior to commencement and such details to be in accordance with the Substations Design Principles Statement;
 - iv. Inclusion of maximum footprints for the cable sealing end compounds comprised within Work No. 38 to be included in Requirement 12;
 - v. Requirement 17(4) (fencing) to be updated to make it clear that it is intended to apply to both the onshore substation and the national grid substation;
 - vi. Requirement 25 (control of artificial light emissions during operational phase) to be updated to include the cable sealing end compounds comprised within Work No. 38 within the scope of the requirement.
- Some of the changes being made in response to SASES' comments also address comments raised by East Suffolk Council and Suffolk County Council (for example, in relation to expanding the scope of requirements to cover the cable sealing end compounds)
- Updates are also being made to address some ESC comments, for example:
 - i. Amending requirement 15(2) so that Work No. 24 is also subject to a ten year replacement planting period; and
 - ii. Including reference to "pre-construction surveys" within requirement 21(1).
- The Applicants are currently discussing draft protective provisions for Sizewell B and Sizewell C and, should agreement be reached, the Applicants will include the agreed protective provisions within the DCO.



- i. In relation to Sizewell B, the protective provisions relate to the Applicants' use of Sizewell Gap (a public road) and the protection of public services that serve Sizewell B; measures to ensure the protection of Sizewell B's cooling water infrastructure; and measure to protect the integrity of the Coralline Crag offshore geological feature.
 - ii. In relation to Sizewell C, the protective provisions relate to the Applicants' and Sizewell C's interactions at Sizewell Gap, Snape Road and the Friday Street Junction; and measures to ensure the protection of Sizewell C's proposed cooling water infrastructure.
- The Applicants are considering the potential for a DML condition which places a restriction on multiple piling and/or UXO activities within a 24 hour period in response to comments from Natural England (NE) and The Wildlife Trusts (TWT) and are currently engaging with the MMO and NE in respect of this.



3 Agenda Item 3: Provisions for Projects Definitions and Elements

3.1 Part 1 - Preliminary

3.1.1 Definition of “Commence”

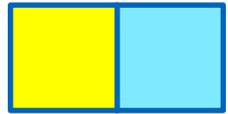
45. The definition of commence excludes offshore and onshore preparation works from triggering commencement.
46. It is usual for DCOs for NSIPs to exclude preparatory activities from the definition of commence. It is however acknowledged by the Applicants that some of the onshore preparation works may potentially have environmental effects and therefore such preparation works have already been made subject to appropriate requirements to ensure that the relevant planning authority can approve details in respect of such works before they are carried out (for example, requirement 19 requires details of intrusive onshore preparation works to be provided in a pre-commencement archaeology execution plan which must be approved by the relevant planning authority before such pre-commencement works can be undertaken and requirement 21 requires the approval of an ecological management plan prior to onshore preparation works being undertaken).
47. The definition follows existing precedent and is largely based on the East Anglia THREE Offshore Wind Farm Order 2017.
48. This approach to the definition of commence is critical to ensure that pre-commencement activities can be carried out in a timely manner prior to commencement of the works and do not hold up the construction of the project, whilst still being subject to appropriate controls and approvals.

3.1.2 Definition of “Limits of Deviation”

49. Article 3 states that each of the scheduled works (i.e. the numbered works specified in Schedule 1) must be constructed and maintained within the limits of deviation for that work. “Limits of deviation” is defined as the limits for the scheduled works as shown on the works plans. Article 3, read together with the definition of “limits of deviation”, makes it clear that a numbered work described in Schedule 1 may only be constructed and maintained within the area shown on the works plans in respect of the particular work number.

3.1.3 Definition of “Maintain”

50. The ExA questioned the inclusion of the words “alter” and “adjust” within the definition of “maintain”. The words “alter” and “adjust” are found within the definition of “maintain” in the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 and have been included in the definition of “maintain” in



a vast number of DCOs granted to date, including the recent Hornsea Three Offshore Wind Farm Order 2020 and Norfolk Vanguard Offshore Wind Farm Order 2020. Furthermore, the definition limits maintenance activities to what has been assessed in the environmental statement.

3.1.4 Definition of “Offshore Preparation Works”

51. In its Deadline 4 submission and at the Hearings the MMO queried why the reference to ‘seaward of MHWS’ has been removed from the definition. The Applicants confirmed that this was an error and the text has been reinserted in the updated **draft DCO** (document reference 3.1) at Deadline 5.

3.1.5 Definition of “Outline Written Scheme of Investigation (Onshore)”

52. The Applicants have updated the definition of Outline Written Scheme of Investigation (Onshore) as requested by Suffolk County Council and this is reflected in the updated **draft DCO** (document reference 3.1) submitted at Deadline 5.

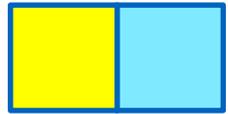
3.2 Part 2 – Principal Powers

3.2.1 Article 6(2) – Neighbourhood Planning Act 2017

53. The Applicants’ primary reason for disapplying the provisions of the Neighbourhood Planning Act 2017 (NPA) is set out in paragraph 4.11 of the **Explanatory Memorandum** (APP-025):

“Paragraph (2) disapplies provisions of the Neighbourhood Planning Act 2017. This disapplication provides that the temporary possession provisions in that enactment would not take effect at the expense of the temporary possession provisions contained in the Order. The rationale for this is that the wording of the temporary possession provisions within the Order is well established and the relevant provisions relating to temporary possession within the Neighbourhood Planning Act 2017 are currently untested and regulations required to provide more detail on the operation of the regime have not yet been made. There is precedent for this approach in the recent Millbrook Gas Fired Generating Station Order 2019, the Silvertown Tunnel Order 2018 and the A19/A184 Testo’s Junction Alteration Development Consent Order 2018.”

54. Whilst acknowledging that there is precedent for the disapplication of the NPA provisions within DCOs, the ExA suggested at the Hearings that the Applicants would have been aware of the temporary possession provisions contained within the NPA at the time of preparing the applications and drafting the DCOs whereas other DCOs disapplying the legislation may not have had such knowledge.



55. A number of DCOs disapplying the NPA provisions were granted consent in 2020¹ and therefore during the development phase would have also been aware of the provisions of the NPA. The issue is that the relevant provisions of the NPA have not yet been brought into force (and may never be) 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 or indeed if it will come into force, whereas the wording of the temporary possession provisions within the draft DCO is well established.

3.2.2 Article 7 – Defence to Proceedings in Respect of Statutory Nuisance

56. This article reflects Model Provision 7 and provides that no-one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise–

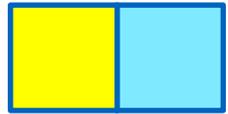
- if the noise is created in the course of constructing or maintaining the authorised project and for which a notice under section 60 or consent obtained under section 61 of the Control Pollution Act 1974;
- if the noise results from the use of the authorised project whilst being used in compliance with requirement 26 (control of noise during operational phase) and requirement 27 (control of noise during operational phase cumulatively with both onshore substations); or
- if the noise cannot be reasonably avoided as a consequence of the authorised project.

57. The purpose of the provision is to give immunity from nuisance except where it can be reasonably avoided. It embodies the concept of Statutory Authority for works and this was reflected in the model provisions.

58. This provision has precedent in the East Anglia ONE Order and the East Anglia THREE Order.

59. SASES has criticised this provision stating that 7(1)(a)(ii) and 7(1)(b) should be deleted stating that “the "reasonably be avoided" test is an unnecessary qualification since a defence of using "best practicable means" is in any event available. The statutory test should be maintained”. SASES also suggested the inclusion of a new paragraph (3) stating that the provisions of article 7(1) and (2) shall only have effect if the undertaker has and is complying with the requirements.

¹ Including 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.



60. The Applicants do not consider that the provisions specified should be deleted. Article 7 is based on the Model Provisions and has been included in many DCOs to date. The Projects are nationally significant infrastructure projects and as such, it is necessary for such a defence to be included within the DCO. The Applicants consider Article 7 to be reasonable and proportionate in the context of the Projects.
61. The inclusion of a new paragraph (3) is not consistent with the Model Provisions or with precedent and the Applicants do not consider that such an amendment is necessary or appropriate.

3.3 Part 3 - Streets

3.3.1 Timescales for decisions

62. The Applicants consider the time periods to be necessary and appropriate given that these are NSIPs. The Applicants would however highlight that in practice, the Applicants would consult with the Council in the preparation of the draft documents prior to submitting the final versions for approval and therefore it is not considered that the timescales specified are unreasonable.
63. The Applicants note that the timescales within these articles can be found in a number of other DCOs including the East Anglia THREE Offshore Wind Farm Order 2017 and the recent Norfolk Vanguard Offshore Wind Farm Order 2020 and Hornsea Three Offshore Wind Farm Order 2020.

3.3.2 Article 13 – Access to Works

64. Whilst Article 13 authorises the undertaker to form and lay out means of access, or improve existing means of access, in the locations specified in Schedule 6 (access to works), this is subject to Requirement 16 (highway accesses) which prevents construction of any access until an access management plan providing details of the siting, design, layout and any access management measures has been submitted to and approved by the relevant highway authority in consultation with the relevant planning authority.

3.3.3 Article 14 – Agreements with Street Authorities

65. This article reflects model provision 13 and provides that street authorities and the undertaker may enter into agreements with respect to any temporary stopping up, alteration or diversion of a street authorised by the Order, the construction of any new street authorised by the Order or the carrying out of works in the streets referred to in article 8 (street works). It provides authority to enter into an agreement but is not an obligation to do so.



3.4 Part 7 – Miscellaneous and General

3.4.1 Article 33 – Operational Land for Purposes of the 1990 Act

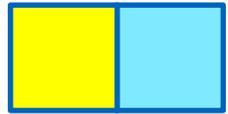
66. The purpose of the article is ensure that the undertaker’s development is considered operational land for the purposes of section 264 of the 1990 Act. This gives it a status and affirms that the land is held for the purposes of the undertaking (for example, see section 127 of the Planning Act 2008). The article states that the Order is to be treated as specific planning permission. This would only apply to aspects of the Order that constituted development.
67. The Applicants do not agree that permitted development rights should be removed. The rights under Class B are given to electricity undertakings to enable to them to discharge their obligations and functions. The rights include a range of activities which are relevant to the holders of a transmission licence.
68. These are deemed necessary to enable the operation of the transmission system. It includes elements of further works and replacement. The extent of the rights is restricted by development that is not permitted (B.1) and also by conditions (B.2). Further restrictions also potentially apply under Article 3(10) and (11) of the Town and County Planning (General Permitted Development) Order 2015. This removes the permitted development rights in circumstances that it would involve EIA development.
69. Amendments to works constructed under the DCO would be considered as an alteration to an EIA development that had already been authorised, executed or in the process of being executed and would have to be screened. The Applicants do not accept the argument advanced by East Suffolk Council that the noise for example would then be assessed as the new levels with development in place. It would have to consider the cumulative change. In addition, a number of the permitted development rights are restricted to “operational land” which is defined by reference to Section 263 of the Town and Country Planning Act 1990.
70. It is not appropriate for the permitted development rights to be removed. It would impair the ability of a statutory undertaker to maintain and operate electrical lines and associated plant and equipment.

3.4.2 Article 36 – Certification of Plans etc.

71. The Applicants have considered the comments raised at the Hearings requesting a separate Schedule listing the documents to be certified and will incorporate this into the draft DCO at Deadline 7.

3.4.3 Article 37 - Arbitration

72. It is standard practice to include an arbitration provision within DCOs and the intention was not for this to apply to decisions of the MMO and regulators. The DCO was therefore amended at Deadline 3 to make it clear that the arbitration



provisions do not apply to decisions of the Secretary of State or the MMO and has been further amended at Deadline 5 to make it clear that the arbitration provisions do not apply to decisions of Trinity House.

3.5 Schedule 1 – Authorised Project

3.5.1 Part 1 – Authorised Works

73. Part 1 of Schedule 1 describes the authorised development for which consent is sought. This consists of:
- the generating station NSIP (Work No. 1) together with associated development comprising Work Nos. 2 to 37 and such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the work assessed by the environmental statement; and
 - the overhead lines NSIP (Work Nos. 38, 39 and 40) together with associated development comprising Work No. 34 and Work Nos. 41 to 43 and such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the work assessed by the environmental statement.
74. Work No. 33 comprises landscaping works including bunding and planting together with drainage works, sustainable drainage system ponds, surface water management systems, formation of footpaths and access. The landscaping and drainage are inextricably linked and the Applicants do not consider it to be necessary or appropriate to separate the landscaping works from the drainage works.
75. Work No. 34 has been included as associated development in respect of both the generating station NSIP and the overhead lines NSIP as it is shared infrastructure but it will only be constructed once.
76. It is not necessary, or appropriate to specify the capacity of the Projects on the face of the draft DCO. All relevant parameters are specified within the draft DCO and are linked to what has been assessed within the environmental statement. Output capacity is not a relevant parameter and does not require to be specified on the face of the DCO. The approach taken in the draft DCO reflects that in the very recent Hornsea Three Offshore Wind Farm Order 2020.



3.5.2 Part 2 - Requirements

3.5.2.1 Requirement 1 – Time Limits

77. As noted above, the Applicants have reduced the commencement period specified in Requirement 1 of the **draft DCO** (document reference 3.1) from seven years to five years.

3.5.2.2 Requirement 12 – Detailed Design Parameters Onshore

3.5.2.2.1 Content and structure of Requirement 12

78. The Applicants agree that the sealing end compounds should be specified and included in the design principles process. The Applicants consider that the Design principles document should be used to bring these elements together whilst also integrating the relevant aspect of the LMP as well. Fragmented formulation and consultation is unlikely to deliver an appropriate outcome.

79. In light of comments raised at the Hearings, the Applicants are considering the extent to which Requirement 12 should be restructured or split into multiple requirements and any amendments that are considered necessary or appropriate will be reflected in the draft DCO at Deadline 7.

3.5.2.2.2 Substation Design

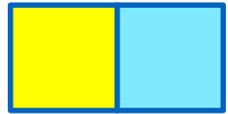
80. The relevant maximum parameters of the substations are secured within the draft DCO and details of the layout, scale and external appearance of the substations must be approved by the relevant planning authority and such details must accord with the **Substations Design Principles Statement** (REP4-029).

81. The Applicants consider that the current requirements set clear limits based on what has been assessed within the environmental statement whilst allowing effective procurement and delivery of these elements of the Projects within the required timescales and with sufficient flexibility to reduce the development envelope where practicable.

82. The Substations Design Principles Statement makes provision for independent input (by the Design Council or equivalent) in addition to substantial consultation with local stakeholders. Good design will be prioritised throughout and the process and commitments set out in the Substations Design Principles Statement (which will be secured through Requirement 12) ensures a robust and appropriate mechanism to develop, refine and finalise the design of the substations, which will always be within the approved DCO parameters.

3.5.2.3 Requirement 13 – Landfall Construction Method Statement

83. Requirement 13 (Landfall construction method statement) provides that the landfall works (i.e. Work Nos. 6 and 8) cannot commence until a method statement for the construction of the landfall works has been submitted to and approved by the relevant planning authority. The method statement must be in



- accordance with the outline landfall construction method statement and must be implemented as approved.
84. EDF Energy Nuclear Generation Limited (hereafter Sizewell B) have requested for the requirement to be updated to include them as consultees in respect of the final plan. The Applicants do not consider that this is appropriate but are continuing to engage with Sizewell B on this matter.
 85. The Applicants will be submitting an updated outline landfall construction method statement at Deadline 6 to reflect the parallel ducting commitment, to confirm that HDD is the selected installation method to be used at the landfall and to incorporate any other necessary updates.
 86. At Issue Specific Hearing 4 on 19th January 2021 (ISH4) the ExA queried whether a commitment would be included on the face of the draft DCO to secure HDD as the installation method at the landfall. The Applicants can confirm that this commitment has been secured within requirement 12 in the updated **draft DCO** (document reference 3.1) submitted at Deadline 5. The Applicants have also updated Requirement 37 to include reference to Work No. 6, as requested by East Suffolk Council in its Deadline 4 submission.
 87. Requirement 37 (Decommissioning of the relevant landfall works) requires the undertaker to submit a report to the relevant planning authority after 24 years but before 25 years following the completion of construction of the relevant landfall works (namely Work No. 8 and Work No. 6, to the extent that the works are landward of mean low water springs) detailing the extent of coastal retreat since construction, remedial works or mitigation measures required during the period since construction, the extent of likely coastal retreat during the anticipated remaining operational lifespan of the authorised project and the likely need for, and nature of, any proposed remedial works or mitigation measures to protect the relevant landfall works from coastal retreat during the remaining period. If it cannot be demonstrated that, taking into account any proposals for such remedial works or mitigation measures, the relevant landfall works will not have a significant impact on coastal processes then they must be decommissioned.
 88. The period specified is to reflect a typical operational life of an offshore windfarm. It is not designed to provide a periodic check on coastal erosion given the mitigation measures adopted by the Applicants in setting back at least 85m from the cliff top, rather to provide a 'check-point' at year 24 in order to appraise the need for any remedial works to be undertaken by the Applicants. The design of the HDD at the landfall, including the positioning of the transition bays, allows for natural coastal erosion as presented within **Chapter 4 – Site Selection and Assessment of Alternatives** (APP-052) and **Appendix 4.6 - Coastal**



Processes and Landfall Site Selection (APP-447) of the Environmental Statement.

89. Notwithstanding this, at ISH4 the question of regular monitoring was raised by East Suffolk Council and the Applicants have agreed in principle to undertake periodic monitoring at the landfall and are currently discussing the detail with East Suffolk Council. In the event that agreement is reached, the Applicants will consider the most appropriate way to secure this and will provide an update at Deadline 6.

3.5.2.4 Requirement 14 – Provision of Landscaping

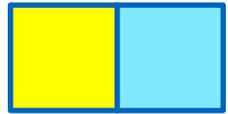
90. Requirement 14 (provision of landscaping) (based on model requirement 7) requires a landscape management plan to be approved by the relevant planning authority before the relevant stage of the onshore works may commence. The landscaping scheme must be in accordance with the **Outline Landscape and Ecological Management Strategy** (OLEMS) (REP3-030) and must include details of the ongoing maintenance and management of the landscaping works.

91. Beyond the adaptive planting maintenance period, the relevant undertakers will remain responsible for the ongoing management of the landscaping areas throughout the life of the Projects. This will include ensuring the woodland areas remain safe and the usual arboricultural practices for long term management of woodland are implemented, surface water systems are maintained, and public rights of way are maintained. This will be set out in the OLEMS in respect of which the final landscape management plan(s) must accord and Requirement 14 has been updated at Deadline 5 to require implementation of the landscape management plan(s) as approved in order to secure these commitments.

3.5.2.5 Requirement 15 - Implementation and Maintenance of Landscaping

92. Requirement 15 (implementation and maintenance of landscaping) follows model requirement 8 and requires the landscaping works to be carried out and maintained in accordance with the approved landscape management plan, and to replace trees or shrubs planted as part of the landscaping scheme which die within 5 years of planting along the cable route and trees or shrubs which die within 10 years of planting at the substation location. In the draft DCO submitted at Deadline 5, the 10 year replacement period has been extended to cover Work No. 24 as well, as requested by East Suffolk Council.

93. As stated in the OLEMS the Applicants have committed to undertaking an adaptive planting maintenance scheme (dynamic aftercare). This adaptive planting maintenance scheme is intended to achieve optimum levels of plant growth through targeted maintenance and aftercare, extending the 10 year aftercare period where necessary, and provide greater confidence that effective



screening from the tree planted areas will be achieved before the end of the adaptive planting maintenance period.

94. Adopting an adaptive planting maintenance scheme was initially suggested by the Councils within their **Joint Local Impact Report** (REP1-132) and the Applicants have developed the proposals following extensive engagement with the Councils in order to address their concerns.

3.5.2.6 Requirement 21 – Ecological Management Plan

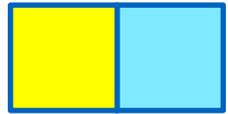
95. The Applicants have included the words “pre-construction” before “survey results” in Requirement 21(1) of the draft DCO submitted at Deadline 5 as requested by East Suffolk Council.

3.5.2.7 Requirements 23 and 24 – Construction Hours for Transmission Works and Construction Hours for the Grid Connection Works

96. The requirements specify construction hours for the onshore transmission works on specified days, with exceptions for certain activities such as continuous operations, delivery of abnormal loads, testing or commissioning activities. Where construction works are proposed to take place outside the specified construction hours, the timing and duration of the works must be approved in advance by the relevant planning authority. Such requests to the relevant planning authority will include details of the extended hours required, the nature of the works to be undertaken and details of any mitigation that is proposed in respect of the works. Only when approval is obtained will such works be undertaken.

3.5.2.8 Requirements 26 and 27 – Control of Noise during Operational Phase and Control of Noise during Operational Phase Cumulatively with East Anglia ONE North/East Anglia TWO Onshore Substation

97. Requirement 26 of the draft DCO sets limits for noise arising from the operation of the onshore substation and specifies the noise sensitive locations at which noise must be measured.
98. Requirement 27 of the draft DCO sets limits for noise arising from the operation of the East Anglia TWO onshore substation cumulatively with the operation of the East Anglia ONE North onshore substation and specifies the noise sensitive locations at which noise must be measured.
99. At Deadline 5, the Applicants have updated both of these requirements as follows:
- The maximum noise rating level at the noise sensitive locations currently specified within the requirements will be reduced from 34dB LAeq (5 min) to 32dB LAeq (5 min);



- A third noise sensitive location, SSR3, which is in the vicinity of Little Moor Farm will be included within the requirements and a maximum noise rating level at that location of 31dB LAeq (5 min) will be specified.

3.5.2.9 Requirement 29 – Restoration of Land Used Temporarily for Construction

100. 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 how reinstatement is carried out are to be approved, but the basic obligation to reinstate remains.

101. 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.

3.5.2.10 Requirement 32 – Public Rights of Way

102. Requirement 32 follows model requirement 11 and prevents any stage of the onshore works that would affect a public right of way specified in Schedule 3 or Schedule 4 from being undertaken until a public rights of way strategy in respect of that stage and in accordance with the outline public rights of way strategy, has, after consultation with the relevant highway authority, been submitted to and approved by the relevant planning authority.

103. Following discussion at the Hearings, the Applicants updated Requirement 32 to remove reference to “commence” to clarify that the requirement applies to pre-commencement works that affect public rights of way.

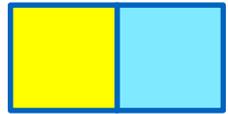
3.5.2.11 Requirement 41 – Operational Drainage Management Plan

104. In response to comments from Suffolk County Council and SASES at Deadline 4, Requirement 41 has been extended to include the permanent access road comprised within Work No. 34 and the cable sealing end compounds comprised within Work No. 38 within its scope.

105. At the Hearings, Suffolk County Council and SASES requested that maintenance of the operational drainage should also be secured. The requirement has therefore been updated to reflect these comments.

3.5.2.12 Requirement 42 – Installation of Cable Ducts

106. A new requirement was inserted into the DCO at Deadline 3 to secure the Applicants’ commitment that, where the East Anglia TWO and the East Anglia ONE North projects are constructed sequentially, when the first project goes into construction, the cable ducting for the second project will be installed along the whole of the onshore cable route in parallel with the installation of the onshore cables for the first project.



107. At Deadline 4 and at the Hearings, East Suffolk Council requested that the terminology within this requirement be clarified, and in particular queried the use of the terms “constructed” and “in parallel”. The Applicants have therefore amended the requirement in order to address the comments raised.

3.5.2.13 Whether the Memorandum of Understanding should be Secured in a Requirement

108. The Government has established the concept of the CfD supply chain plan. This ensures a project’s UK content is reviewed. The review is an ongoing one and evaluates the whole of life benefits. The Offshore Sector Deal has committed to the development of skills and the supply chain. On page 55 of the Energy White Paper the Government set out their ambition to increase the UK content and this is likely to be a requirement of future CfD rounds. The Government has also just consulted on improving the supply chain plan process for the next auction round

109. In view of the approach to supply chain plans, and in light of the effectiveness of the MoU on East Anglia ONE and East Anglia THREE and the fact that all parties involved would prefer to build upon the approach taken previously and not include a requirement within the DCO, the Applicants do not consider such a requirement to be necessary.

110. If the Secretary of State disagrees with the Applicants and the Councils in this respect, the Applicants would propose the following requirement:

“(1) No stage of the transmission works may commence until a skills strategy has been submitted to and approved in writing by the relevant planning authority, after consultation with Suffolk County Council.

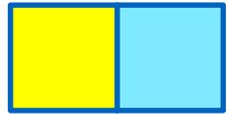
“(2) The skills strategy must be implemented as approved.”

111. However as noted above, the Applicants do not consider such a requirement to be necessary for the Projects.

3.6 Schedule 10 – Protective Provisions

112. The Applicants are currently discussing draft protective provisions for Sizewell B and Sizewell C, and should agreement be reached, the Applicants will include the agreed protective provisions within the DCO.

- In relation to Sizewell B, the protective provisions relate to the Applicants’ use of Sizewell Gap (a public road) and the protection of public services that serve Sizewell B; measures to ensure the protection of Sizewell B’s cooling water infrastructure; and measure to protect the integrity of the Coralline Crag offshore geological feature.



- In relation to Sizewell C, the protective provisions relate to the Applicants' and Sizewell C's interactions at Sizewell Gap, Snape Road and the Friday Street Junction; and measures to ensure the protection of Sizewell C's proposed cooling water infrastructure.

113. The Applicants are currently considering the request from Suffolk County Council for protective provisions and will engage with the Council on this matter.

3.7 Schedule 15 – Arbitration Rules

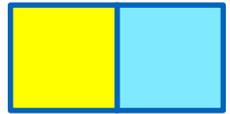
114. The Applicants will consider the comments made at the Hearings and will review the Recommendation Report in respect of the Thanet Offshore Wind Farm Extension Application as suggested by the ExA to consider whether any updates are required to the arbitration provisions contained within the draft DCO. Any changes considered to be necessary and appropriate will be reflected in the version of the draft DCO to be submitted at Deadline 7.

3.8 Schedule 16 – Procedure for Discharge of Requirements

115. At Deadline 3 a new schedule was included within the DCO to make provision for a procedure for the discharge of requirements. This is to ensure the timely discharge of requirements and to make provision for an appeals mechanism. The schedule is largely based on that contained within PINS Advice Note 15.

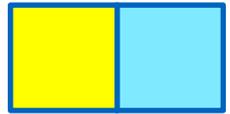
116. The Applicants consider the time periods to be necessary and appropriate given that these are NSIPs however the Applicants are currently considering comments made by the Councils in respect of the timescales specified within the schedule and should any amendments be considered necessary, they will be reflected in the draft DCO at Deadline 7.

117. The Applicants would however highlight that in practice, the Applicants would consult with the relevant discharging authority in the preparation of the draft documents prior to submitting the final versions for approval and therefore it is not considered that the timescales specified are unreasonable. Furthermore, the process makes provision for longer periods to be agreed between the parties.



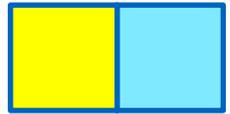
4 Agenda Item 4: The Changing Policy Environment

118. The Applicants note that this agenda item was not covered during the Hearings and the ExA will cover this topic area at Issue Specific Hearing 9 scheduled to take place on 19 February 2021 or through the ExA's second written questions (ExQ2) instead.



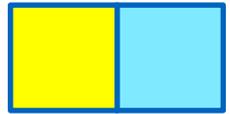
5 Agenda Item 5: Security for Technical Processes

119. The Applicants note that this agenda item was not covered during the Hearings and the ExA will cover this topic area at Issue Specific Hearing 9 scheduled to take place on 19 February 2021 or through the ExA's second written questions (ExQ2) instead.



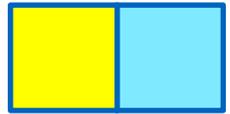
6 Agenda Item 6: Agreements and Obligations

120. The Applicants note that this agenda item was not covered during the Hearings and the ExA will cover this topic area at Issue Specific Hearing 9 scheduled to take place on 19 February 2021 or through the ExA's second written questions (ExQ2) instead.



7 Agenda Item 7: Consents of Parties

121. The Applicants note that this agenda item was not covered during the Hearings and the ExA will cover this topic area at Issue Specific Hearing 9 scheduled to take place on 19 February 2021 or through the ExA's second written questions (ExQ2) instead.



8 Agenda Item 8: Other Consents

122. The Applicants note that this agenda item was not covered during the Hearings and the ExA will cover this topic area at Issue Specific Hearing 9 scheduled to take place on 19 February 2021 or through the ExA's second written questions (ExQ2) instead.