



**SCOTTISHPOWER
RENEWABLES**

East Anglia ONE North and East Anglia TWO Offshore Windfarms

Written Summary of Oral Case ISH9

**Issue Specific Hearing 9 on 19th February 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****



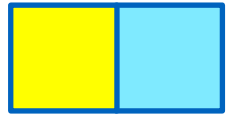
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Glossary of Acronyms

BEIS	Department for Business, Energy & Industrial Strategy
DCO	Development Consent Order
ESC	East Suffolk Council
ExA	Examining Authority
ISH	Issue Specific Hearing
MMO	Marine Management Organisation
NE	Natural England
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
OLEMS	Outline Landscape and Ecological Management Strategy
PA2008	Planning Act 2008
SASES	Substation Action Save East Suffolk
SEAS	Suffolk Energy Action Solutions
SPR	Scottish Power Renewables



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 9 (ISH9) for the Applications were run jointly and took place virtually on 19th February 2021 at 10:00am (Hearings).
3. The Hearings ran through the items listed in the agendas published by the ExA on 8th February 2021. The Applicants gave substantive oral submissions at the Hearings and these submissions are set out within this note.
4. Speaking on behalf of the Applicants were:
 - Mr Colin Innes, partner at Shepherd and Wedderburn LLP; and
 - Ms Stephanie Mill, senior associate at Shepherd and Wedderburn LLP.



2 Agenda Item 1a: Preliminary and Procedural Matters

5. The Applicants confirm the following factual material that was presented at the hearing.
6. On 14 February 2021, Suffolk Energy Action Solutions (SEAS) submitted a letter which they describe as “the complaint”. The terms of the complaint relate to the Applicants’ communications with Dr Alexander Gimson. Dr Gimson is not an individual who is an affected person or an interested party before the Examinations. He acts as a representative of his mother, Mrs E P Gimson for whom he holds Power of Attorney [REDACTED]. He has also appeared at the Examinations as a Trustee of the Wardens Trust. The complaint relates to the contact that Dr Gimson has had with the Applicants and their parent company in respect of his mother’s interest in land through which the onshore cables would potentially pass through. On page 3 of the complaint, there is a section which is headed up “The Facts”. The Applicants submit that this section of the letter has not accurately set out all matters that are relevant to the issues that have been raised. The Applicants’ submission is that material information was not disclosed to the Examining Authority.
7. The Applicants’ parent company (“Scottish Power Renewables (SPR)”) has appointed Dalcour Maclaren to act as Surveyors in negotiation with affected persons in respect of both East Anglia Two and East Anglia One North projects. Mr Harry Hyde of Dalcour Maclaren leads the team there and he has been assisted by his colleagues, Robert Lees and Francesca Leach. Dr Gimson has also appointed agents. Samuel Jennings of Strutt & Parker has acted on his behalf in relation to lengthy discussions.
8. On 17 January 2020, SPR entered into Heads of Terms with Dr Gimson as Power of Attorney relating to an option to obtain the grant of easements in respect of cables associated with both projects. These Heads of Terms were subsequently amended on behalf of Dr Gimson by his agent, Mr Jennings, on 14 February 2020. The Heads of Terms are not legally binding and provide a basis on which both parties will proceed to seek to finalise binding terms through an Option Agreement. Dr Gimson has also appointed Taylor Vinters, Solicitors to act on his behalf. The purpose of appointing solicitors is to negotiate the terms of the Option Agreement. Shepherd and Wedderburn were appointed on behalf of SPR to act in the negotiation of the Option Agreement contract.
9. Taylor Vinters act on behalf of a number of parties who have interests potentially affected by the projects. It was agreed that, given those circumstances, it would



be appropriate to have a general negotiation over a generic Option Agreement which would agree general terms. Negotiations in respect of this generic document have continued throughout 2020. A version of the Option Agreement has reached a stage where we understand it is being sent out by Taylor Vinters to various of their clients. It should be noted that throughout this process SPR has undertaken to pay appropriate professional fees which will be incurred by affected parties in such negotiations. This ensures that they have appropriate advice from suitably qualified Chartered Surveyors and also have appropriate legal advice in relation to the terms of any contract.

10. It is understood that on 26 January 2021 Mr Sam Jennings forwarded to Dr Gimson a copy of the generic Option Agreement relating to the grant of easement for cables. On 27 January 2021, Mr Sam Jennings contacted Mr Harry Hyde by telephone to discuss aspects relating specifically to Dr Gimson. This was followed up with an email by Sam Jennings to Harry Hyde on the same date which identified that Dr Gimson has made representations to the hearing and wished to continue to discuss and raise issue with the water supply in respect of [REDACTED] and [REDACTED] before the Examination. This was followed up by a further email from Dr Gimson to Mr Jennings on Friday 5 February 2021. This email was copied in to Mr Hyde of Dalcour Maclaren. In that email Dr Gimson indicated that:

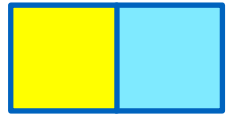
“In short I am not prepared, as written in clause 16, to withdraw my objection to the proposed development. I have spoken in public on behalf of [specified property] about my opposition and now to expect me to withdraw these comments in writing is entirely unreasonable.”.

11. On the morning of 10 February 2021 there was a further conversation between Sam Jennings of Strutt & Parker and Mr Harry Hyde of Dalcour Maclaren. This discussed the correspondence that had passed between the parties. On 10 February 2021 Mr Robert Lees (Harry Hyde’s colleague) sent an email to Mr Jennings in the following terms:

“Hi Sam,

I write further to your email below, the correspondence from Dr Gimson over the weekend (attached for reference) and your subsequent conversation with Harry this morning.

We have discussed this matter with SPR and an amendment to clause 16 of the Option Agreement has been proposed which will offer your clients absolute discretion on when and if the representations made specifically relating to the water supply and underground aquifer are to be withdrawn. There may be some tweaking required between lawyers in order to tidy it up, but as a basis on



which to proceed, the proposed clause reads as follows (additional wording is in red):

*“The Granter shall not make by a representation regarding the EA1N DCO Application nor the EA2 DCO Application (and shall forthwith withdraw any representation made prior to the date of this Agreement and forthwith provide the Grantee with a copy of its withdrawal **save as the Granter shall have absolute discretion over the withdrawal of all comments pertaining to the impact of the Project(s) on ground source water aquifers only in document refs REP1-242, REP2-098, REP5-135 and REP5-136**) nor any other Permission associated with EA1N development and EA2 development and shall take reasonable steps (Provided That any assistance is kept confidential) to assist the Grantee to obtain all permissions and consents for EA1N Works and the EA2 Works on the Option Area (the Grantee paying the reasonable and proper professional fees incurred by the Grantor in connection with the preparation and completion of such permissions and consents.”*

We would be grateful if you could discuss this proposed wording with your clients and Taylor Vinters (as required).

We look forward to hearing from you in due course.

Regards

Rob

Robert Lees”

12. The Applicants note that the ExA have requested further submission on the matter at Deadline 7.



3 Agenda Item 2: Progress Position Statement by the Applicants

3.1 Changes to the draft DCO in Progress

3.1.1 Requirement which prevents National Grid Infrastructure taking place without the Offshore Wind Farm

13. The Applicants intend to include a requirement in the draft DCO which prevents the National Grid infrastructure from going ahead without the offshore wind farm. This requirement will be included within the draft DCO at Deadline 7.

3.1.2 Approval of Onshore Preparation Works

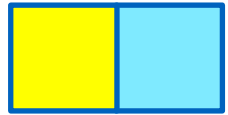
14. The Applicants intend to include a new requirement in the draft DCO at Deadline 7 which requires the approval of an onshore preparation works management plan which will ensure that relevant onshore preparation works are subject to approval. An outline of the information that will be included within the onshore preparation works management plan has been included in Appendix 1 of the updated **Outline Code of Construction Practice** submitted at Deadline 6 (8.1).
15. The Applicants are currently engaging with East Suffolk Council and Suffolk County Council in relation to the proposed approach to onshore preparation works and the general principle is understood to be agreed.

3.1.3 Restructuring of Requirement 12

16. The Applicants do not consider it to be necessary for Requirement 12 to be split into multiple requirements. This is consistent with East Suffolk Council's position on page 9 of **East Suffolk Council's Summary of Oral Case - Issue Specific Hearing 6** (REP5-047).
17. The Applicants do however intend to restructure the requirement in the draft DCO at Deadline 7 so that it is in a more logical order and is therefore easier to follow.

3.1.4 Coastal Erosion Monitoring

18. The Applicants have committed to undertake periodic monitoring and reporting at the landfall. This commitment will be secured within updated text in Requirement 13 of the draft DCO which has been agreed with East Suffolk Council. This will be reflected in the draft DCO submitted at Deadline 7.
19. The Applicants have provided details of the proposed monitoring within an Outline Landfall Monitoring Plan which will be included as an Appendix to the Outline Landfall Construction Method Statement submitted at Deadline 6.



3.1.5 Certification (Article 36 and new Schedule)

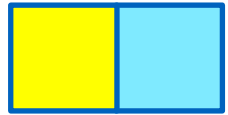
20. The Applicants will include a new Schedule in the draft DCO at Deadline 7 which will list the documents to be certified in a similar format to that set out within the Norfolk Boreas draft DCO.
21. The Applicants intend to update the list to include documents clarifying or updating matters set out within the Environmental Statement which have been submitted during the course of the Examination.

3.1.6 Arbitration (Article 37 and Schedule 15)

22. The Applicants intend to amend paragraph 7 of Schedule 15 (the confidentiality provision) in the next version of the draft DCO to provide for an open arbitration procedure that is accessible to the public, subject to certain exceptions such as where the arbitration relates to a dispute or difference under the protective provisions.

3.1.7 Appeals (Article 38 and Schedule 16)

23. The Applicants intend to make the following changes to Schedule 16:
 - The Applicants will include some additional text to clarify the information to be provided by the undertaker, as requested by East Suffolk Council (ESC).
 - The 42 day period specified in Paragraph 1(2)(a) will be amended to 56 days, as requested by ESC.
 - The 10 business day period specified in Paragraph 2(2) will be amended to 20 business days, as requested by ESC.
24. Deemed approval mechanisms are regularly found within DCOs and the Applicants consider it necessary and appropriate to include this to ensure a decision is made within the specified period and that any remaining dispute can be dealt with without undue delay. As with the decision period, there is provision for the undertaker and the discharging authority to agree something different to that set out within the text.
25. By including a deemed approval mechanism, if the discharging authority does not wish to approve the plan or document then it must refuse the application and give reasons. This would then provide the undertaker with a better understanding of where the issues lie to inform any appeal. Without a deemed approval mechanism, at the end of the period, the undertaker may have no information from the discharging authority as to what the issues are.



3.1.8 Definition of “intrusive”

26. A definition of intrusive will be included in the next version of the draft DCO and will be linked to activities which break the ground.

3.2 Changes to the DMLs in Progress

3.2.1 Site Integrity Plan Condition

27. The Applicants have agreed to include updated SIP conditions within the DMLs at Deadline 7 in order to address concerns raised by the Marine Management Organisation (MMO). The text has been agreed in principle with the MMO but the Applicants understand that the MMO may provide the Applicants with some minor comments on the proposed text.

3.2.2 UXO/Piling Condition

28. This is under discussion with the MMO and Natural England (NE).

3.2.3 UXO Clearance Close Out Report

29. The MMO has requested the inclusion of a condition requiring a UXO close out report to be submitted. Whilst the principle of this is broadly agreed, the specifics are currently in discussion between the MMO and the Applicants.

3.2.4 Temporal Piling Restriction

30. This is under discussion with the MMO and NE.

3.2.5 Co-operation Condition

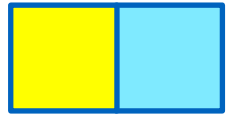
31. Following ISH7 on 17th February 2021, the Applicants considered the comments made by the ExA and intend to make some amendments to the DML co-operation condition to address the comments made. The Applicants have engaged with the MMO on the revised wording and understand that the MMO are in general agreement on the text. The amendments are:

- inclusion of a cross reference to the SIP piling condition – this was an oversight in the previous version of the condition and will be rectified; and
- inclusion of a requirement for the undertaker to submit any comments received by the undertaker under the other DCO to the MMO when submitting the relevant plan or document for approval, or alternatively a statement from the undertaker confirming that no such comments were received.

3.3 Changes to the draft DCO which the Applicants are not Intending to Make

3.3.1 Approvals under Articles 12, 13 and 15

32. The Applicants consider the time periods specified within these articles to be necessary and appropriate given that these are nationally significant



infrastructure projects (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.

33. The Applicants are also discussing a PPA with SCC to set out the process for approvals, managing orders and supervision and recovery of costs.
34. Furthermore, the Applicants are required to comply with the provisions of the New Roads and Street Works Act 1991 when undertaking street works under the DCO, including section 60 which places a duty on the undertaker to use best endeavours to co-operate with the street authority and with other undertakers in the interests of safety, to minimise the inconvenience to persons using the street, and to protect the structure of the street and the integrity of apparatus in it.
35. The following DCOs all include a 28 day deemed approval provision in respect of approvals from street/highway authorities:
 - East Anglia ONE Offshore Wind Farm Order 2014
 - East Anglia THREE Offshore Wind Farm Order 2017
 - Hornsea One Offshore Wind Farm Order 2014
 - Hornsea Two Offshore Wind Farm Order 2016
 - Hornsea Three Offshore Wind Farm Order 2020
 - Norfolk Vanguard Offshore Wind Farm Order 2020
 - Cleve Hill Solar Park Order 2020
 - Network Rail (Suffolk Level Crossing Reduction) Order 2020

3.3.2 Adaptive Management/Dynamic Aftercare

36. The Applicants do not consider it necessary to make reference to adaptive management within Requirements 14 or 15 or to amend the timescales specified. Details of the adaptive management and subsequent maintenance are set out within the **Outline Landscape and Ecological Management Strategy** (8.7) and the final Landscape Management Plan must accord with Outline Landscape and Ecological Strategy (OLEMS). The approved Landscape Management Plan must be implemented as approved and so any longer period for replacement planting or adaptive management commitments set out within the OLEMS are secured.
37. The Applicants do not consider it necessary for the ten year period to apply to Work No. 29 as the nature of mitigation in this area is yet to be established. It is likely for instance that this area will be a mix of grassland and scrub with the



incorporation of species specific ecological mitigation. It is therefore inappropriate to include this area as part of the ten year replacement period.

38. The Applicants are continuing to engage with the Councils on the approach to long term management and maintenance of landscaping.

3.3.3 Article 16 and Land Drainage Consent

39. Article 16 grants rights (from a property perspective) to discharge water into a watercourse, subject to consent from the owner of the watercourse. It does not remove the need for Land Drainage Consent to be obtained.
40. In order to remove the need for Land Drainage Consent the DCO would need to specifically remove the requirement to obtain Land Drainage Consent (for example by disapplying the relevant provisions of the Land Drainage Act 1991) and consent to disapply would need to have been obtained from the authority that would ordinarily grant the consent. The DCO does not remove the requirement to obtain Land Drainage Consent and therefore the inclusion of the text proposed is not necessary.



4 Agenda Item 3: Protective Provisions

4.1 Sizewell B and Sizewell C

41. A great deal of progress has been made since Deadline 5 with both Sizewell B and Sizewell C.
42. Protective provisions are substantially agreed with both Sizewell B and Sizewell C, subject to the conclusion of a side agreement which is currently being negotiated.
43. The intention is for a final agreed form of protective provisions to be included in the draft DCO at Deadline 7 for both Sizewell B and Sizewell C.
44. A further update will be provided to the Examination at either ISH15 or Deadline 8 regarding the status of the side agreement.

4.2 Suffolk County Council as Local Highways Authority

45. The Applicants are currently engaging with Suffolk County Council in relation to updates to the Outline Construction Traffic Management Plan and Outline Access Management Plan that provide the necessary protections and comfort to Suffolk County Council.



5 Agenda Item 4: The Changing Policy Environment

5.1 Flexible Adaptation of Transmission Connection Alignments

46. Section 104(3) of the PA 2008 confirms that the Secretary of State must decide the application in accordance with any relevant National Policy Statement. The current policy framework in relation to grid connection is clear. It is articulated in Section 4.9 of EN-1, EN-3 at paragraph 2.6.34, “Applicants for consent for offshore windfarms will have to work within the regulatory regime for offshore transmission networks established by Ofgem” and in relation to EN-5, paragraph 2.35.
47. The Energy White Paper¹ has confirmed on page 55 that the National Policy Statement (NPS) in respect of energy will be reviewed this year. It is anticipated that this will not be complete until the end of the year and that in the interim the current suite of NPS remain relevant to Government policy and have effect for the purposes of the PA 2008. The Secretary of State confirms that they will carry on making decisions, utilising this framework.
48. The Applicants’ Submission of Oral case in respect of ISH4 set out their submission in respect of the aspects of the White paper relating to the Grid Connection. It identified that even the “early response” workstream has yet to be scoped and the projects were unlikely to be suitable candidates. It is evident from reviewing the White Paper and the interim output from the Department for Business, Energy & Industrial Strategy (BEIS) review that the changes to grid are likely to require both new legislation and also a new regulatory framework. It would not be appropriate to attempt to second guess how that structure will emerge in the context of adding conditionality to a DCO. The whole purpose and intent of the 2008 Act is to give certainty to national infrastructure projects. The need for such certainty derives from the substantial lead-in time and cost in terms of delivery. The Applicants have illustrated how they are already engaging with the supply chain. Any attempt to try and introduce further conditionality and optioneering which has not been assessed would not be lawful and would undermine confidence in the whole process.
49. At the hearing Substation Action Save East Suffolk (SASES) advanced a proposition for a split decision with a refusal of the grid connection. This approach would not be consistent with the updated policy promoted in the Energy White

¹ Department for Business, Energy & Industrial Strategy (2020), Energy White Paper: Powering our net zero future, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945899/201216_BEIS_EWP_Command_Paper_Accessible.pdf



paper. It supports the acceleration of deployment (page 38) and that this should be in the near term (page 45 first column). Furthermore the Energy White Paper recognises the need to have sufficient projects coming through the planning pipeline to have effective CfD auction rounds. These are considered critical to delivering the acceleration. A project without a grid connection would not be able to participate in an auction round. A critical part of the auction rounds is achieving future delivery dates. In addition a project without a grid connection will not be able to stimulate the supply chain. This is critical to the level of deployment that would be required to deliver the offshore wind targets.

5.2 Without Prejudice Alternative View

50. During the Hearings the ExA asked the Applicants' to provide a without prejudice alternative approach as to how the draft DCO might be amended to provide flexible adaptation to face policy change around transmission system connections, should the Secretary of State form the view that this was applicable or desirable to the Projects. The Applicants have submitted their response on this at Deadline 6 at row 1.1 of the **Applicants' Responses to ExA's Commentary on Draft DCO** (ExA.dDCO.D6.V1).



6 Agenda Item 5: Security for Technical Processes

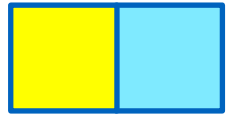
6.1 Hornsea Project Three Compensation Schedule

51. Without prejudice to the Applicants' position that there will be no adverse effect on the integrity of any designated site, the Applicants have considered the approach to securing HRA compensation which was adopted within the Hornsea Project Three DCO.
52. If, contrary to the Applicants' primary position, a decision is reached that compensation must be delivered as part of the East Anglia ONE North project and/or the East Anglia TWO project then the Applicants consider that the Hornsea Project Three approach of (i) presenting principles within a certified plan and (ii) incorporating a structure for developing and ultimately delivering the compensation within a schedule to the DCO, may be an appropriate approach.
53. The Applicants consider the approach taken in the Hornsea Three DCO whereby works can commence but turbines cannot operate until compensation measures have been implemented to be appropriate and not an uncommon concept in DCO requirements or in planning conditions (for example, in the context of radar mitigation requirements).
54. The Applicants consider it appropriate that the mitigation or compensation measures be implemented prior to the activity which has the potential to cause harm from commencing and therefore in the context of kittiwake compensation (similar to radar mitigation), this would be the operation of the turbines.
55. The Applicants would note that in the context of the Projects, the ornithological impacts are minimal, such that should compensatory measures be considered necessary, the level of compensation required would be significantly lower (e.g. in the context of kittiwakes, less than three kittiwakes per year for both Projects combined) compared to the compensation required for Hornsea Three (73 kittiwakes per year).



7 Agenda Item 6: Agreements and Obligations

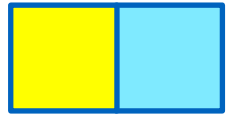
56. The Applicants provided an update at the Hearings on the current position of the commercial side agreements. This update is included in the ***Working List of Planning Agreements and Commercial Agreements*** (ExA.AS-24.D6.V1) submitted by the Applicants at Deadline 6.



8 Agenda Item 7: Consents of Parties

8.1 Crown Estate - Offshore

57. The Applicants confirm that the Crown Estate does not own or have any interests in any land within the offshore Order limits other than sea bed. The Applicants confirmed this at Deadline 1 in ***Applicants' Responses to Examining Authority's Written Questions Volume 5 – 1.3 Compulsory Acquisition, Temporary Possession and Other Land or Rights Considerations*** (REP1-108). This is also reflected in the ***Book of Reference*** (REP3-014).
58. The Applicants are seeking written correspondence from The Crown Estate to confirm the position.



9 Agenda Item 8: Other Consents

59. Alongside the Applications, the Applicants submitted **Consents and Licences required under other Legislation** (APP-048) which provided details of the consents and licences required for the Projects under other legislation.
60. The only changes in position since the Applications were submitted are as follows:
- Generation licences pursuant to section 6(1)(a) of the Electricity Act 1989 were granted to East Anglia ONE North Limited and East Anglia TWO Limited on 3 December 2020.
 - Draft great crested newt EPS licence application has been submitted to Natural England in order to obtain a 'Letter of No Impediment' from Natural England. This was submitted on 12 February 2021.
 - Draft badger mitigation licence application has been submitted to Natural England in order to obtain a 'Letter of No Impediment' from Natural England. This was submitted on 12 February 2021.
61. As requested by the ExA, the Applicants confirm they will submit an updated **Consents and Licences required under other Legislation** (APP-048) at Deadline 8 with a track changed version.