

From: Dominika Phillips [mailto:DOMPH@orsted.co.uk]
Sent: 08 February 2019 21:06
To: KJ Johansson; Kay Sully; Hornsea Project Three
Cc: Andrew Guyton; Stuart Livesey
Subject: Hornsea Project Three (UK) Ltd response to Deadline 6 (Part1)

Dear Kay, K-J

We are pleased to enclose Ørsted Hornsea Project Three (UK) Ltd (“the Applicant”) response to Deadline 6, Friday 8th Feb 2019. These documents have been prepared by the Applicant and have been produced in response to the Examining Authority’s (ExA) letter of 9 October 2018 (“the Rule 8 letter”).

These documents are being issued over a series of emails, each email containing a pdf file or files. The **last** email to be issued by the Applicant will contain a supporting file tracking sheet – to help the ExA ensure that it has received each email transmission.

Please acknowledge safe receipt of these documents.

If we can be of any assistance in that regard, please do not hesitate to contact myself or Andrew Guyton.

Best regards,
Dr Dominika Chalder PIEMA
Environment and Consent Manager



Environmental Management UK| Wind Power
5 Howick Place | London | SW1P 1WG



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Hornsea Project Three
Offshore Wind Farm



Hornsea Project Three Offshore Wind Farm

Schedule of Changes Development Consent Order and Deemed Marine Licences

Date: 8th February 2019

Hornsea 3
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Orsted

Document Control			
Document Properties			
Organisation	Ørsted Hornsea Project Three		
Author	Pinsent Masons		
Checked by	Sarah Drjaca		
Approved by	Andrew Guyton		
Title	Schedule of Changes Development Consent Order and Deemed Marine Licences		
PINS Document Number	REP4-007		
Version History			
Date	Version	Status	Description / Changes
07/11/2018	A	Final	Submitted at Deadline 1 (7 th Nov 2018) – REP1-129
15/01/2019	B	Final	Submitted at Deadline 4 (15 th Jan 2019) – REP4-007
08/02/2019	C	Final	Submitted at Deadline 6 (8 th Feb 2019)

Ørsted

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Front cover picture: Kite surfer near a UK offshore wind farm © Ørsted Hornsea Project Three (UK) Ltd., 2019.

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1. Schedule of Changes to the Draft Development Consent Order and Deemed Marine Licences Submitted at Deadline 6

Table 1.1 Schedule of Changes to the DCO and DML Submitted at Deadline 6

Article / Schedule (Application Version)	New Article/Schedule (if amended)	Stakeholder concerned	Comments from stakeholder	Amendment	Deadline submitted
<u>Draft DCO</u>					
Whole DCO		Applicant	The dDCO has been put on a new SI template and this has resulted in a number of administrative changes (such as hyphens, numbering and schedule headings).		6
<u>Preamble</u>					
		Examining Authority	The second paragraph on page 3 of the dDCO [APP-027] includes the words 'which has made a report to the Secretary of State section 74(2) of the 2008'. Please review this sentence as it may have some words missing.	The application was examined by the Examining Authority, which has made a report to the Secretary of State <i>under</i> section 74(2) of the 2008 <i>Act</i> .	1
<u>PART 1 Preliminary</u>					
Article 2 - Interpretation		Applicant	Added for clarity.	<i>"the 2008 Act" means the Planning Act 2008;</i>	4

<p>Article 2 - Interpretation</p>		<p>Applicant</p>	<p>Due to amendments to conditions - see below.</p>	<p><i>“2011 Regulations” means the Marine Licensing (Licence Application Appeals) Regulations 2011;</i></p>	<p>6</p>
<p>Article 2 - Interpretation</p>		<p>Examining Authority</p>	<p>Requested clarity on term "cable crossings"</p>	<p><i>"cable crossings" means a crossing of existing sub-sea cables or pipelines or other existing infrastructure by a cable or, where cables run together in parallel, a set of cables, authorised by this Order together with physical protection measures including rock placement or other protection measures;</i></p>	<p>6</p>

<p>Article 2 - Interpretation</p>		<p>MMO, Natural England and Examining Authority</p>	<p>MMO Comment: “The interpretation of ‘commence’ for both the DCO and DMLs excludes offshore site preparation works. The definition for ‘Offshore Site Preparation Works’ specifically includes surveys and monitoring but also sandwave levelling and boulder clearance. Such a definition also has the potential to include Unexploded Ordinance (UXO) clearance and other works. The MMO considers that offshore preparation works should be included in the interpretation of ‘commence’.”</p> <p>Natural England Comment: “Additional to the concerns on arbitration, Natural England cannot agree to the definition of ‘offshore preparation works’ as currently provided within the draft DCO and DMLs. The definition allows works such as sandwave levelling and boulder clearance to be conducted without any regulatory oversight or control of the methodology. These works form a significant part of the impact of the project, including a significant part of the impact to designated sites, and must be subject to appropriate regulatory review and sign off prior to any works commencing.”</p>	<p>“commence”, means, (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for operations consisting of offshore site preparation works, pre-construction monitoring surveys approved under the deemed marine licences, and (b) in respect of any other works comprised in the authorised project, the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than <i>onshore</i> site preparation works and the words “commencement” and “commenced” must be construed accordingly;</p> <p>...</p> <p>“offshore site preparation works” means any activities within the Order limits seaward of MHWS undertaken prior to the commencement of construction to prepare for construction, including but not limited to surveys, monitoring, boulder clearance and sandwave clearance;</p>	<p>1</p>
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			<p>Examining Authority comment:</p> <p>“The definition of ‘commence’ in Article 2 refers to ‘site preparation works’ in respect of the onshore works. Should this refer to ‘onshore site preparation works’ as this is a defined term in the dDCO?”</p>		
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<p>Article 2 - Interpretation</p>		<p>Applicant</p>	<p>Drafting error.</p>	<p>“frond mattresses devices” means flow energy dissipation devices, which reduce current velocity and turbulence and encourage settlement of sediment;</p>	<p>4</p>
<p>Article 2 - Interpretation</p>		<p>Natural England</p>	<p>The DMLs have proposed the inclusion of a mitigation condition for harbour porpoise in the Southern North Sea cSAC/SCI similar to that included in Hornsea Project Two. Natural England notes that a Marine Mammal Mitigation Protocol will be provided to remove the risk of potential death and/or injury to marine mammals. In addition, the Project should have a Site Integrity Plan – a live document, which needs to be updated prior to construction to inform the relevant authority’s Appropriate Assessment of disturbance to harbour porpoise.”“The DMLs have proposed the inclusion of a mitigation condition for harbour porpoise in the Southern North Sea cSAC/SCI similar to that included in Hornsea Project Two. Natural England notes that a Marine Mammal Mitigation Protocol will be provided to remove the risk of potential death and/or injury to marine mammals. In addition, the Project should have a Site Integrity Plan – a live document, which needs to be</p>	<p><i>“In principle Hornsea Three Southern North Sea Site of Community Importance Site Integrity plan” means the document certified as the in principle Hornsea Three Southern North Sea Site of Community Importance Integrity plan by the Secretary of State for the purposes of this Order under article 35 (certification of plans and documents etc);”</i></p>	<p>1</p>

			updated prior to construction to inform the relevant authority's Appropriate Assessment of disturbance to harbour porpoise.		
Article 2 - Interpretation		Examining Authority	As nothing else has been assessed, can words "but not limited to" be removed?	"intrusive activities" means activities including but not limited to anchoring of vessels, jacking up of vessels, depositing soil and seabed clearance;	4
Article 2 - Interpretation		Examining Authority	Concerns over ability of thirds parties to differentiate definition of "joint bay" and "link box".	"joint bay" means the an underground concrete pit where sections of cable are jointed together <i>an excavation located at regular intervals along the cable route consisting of a concrete flat base slab constructed beneath the ground to facilitate the jointing together of the cables;</i>	4

Article 2 - Interpretation		Examining Authority	Table 3.57 of the ES [APP-058] refers to 440 joint bays. These do not appear to be referred to in Part 1 of Schedule 1. Please review whether joint boxes ought to be included in Part 1	<i>“joint bay” means the an underground concrete pit where sections of cable are jointed together;</i>	1
Article 2 - Interpretation		Norfolk County Council	Amendment to add definition required for changes to Requirement 13.	<i>“lead local flood authority” has the meaning in section 6(7) of the Flood and Water Management Act 2010;</i>	4
Article 2 - Interpretation		Examining Authority	Concerns over ability of thirds parties to differentiate definition of "joint bay" and "link box".	<i>“link box” means the underground metal box placed within a plastic or concrete pit where the metal sheaths between adjacent export cable sections are connected and earthed installed within a ground level manhole or inspection chamber to allow access to the link box for regular maintenance or fault-finding purposes;</i>	4
Article 2 - Interpretation		Examining Authority	Suggested addition of word "offshore" to clarify which WSI is which.	<i>“outline offshore written scheme of investigation” means the document certified as the outline offshore written scheme of investigation by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);</i>	6

<p>Article 2 - Interpretation</p>		<p>Examining Authority</p>	<p>The definition of ‘onshore site preparation works’ in Article 2 includes site clearance, demolition and archaeological investigations. It is noted that similar drafting has been adopted in some other projects. Nevertheless, these may well be substantial works in their own right, particularly in relation to the clearance of vegetation along the cable corridor. Vegetation clearance could take place in areas which have yet to be subject to ecological surveys.</p> <p>A) What is the justification for excluding site clearance and demolition from the definition of ‘commence’ in the particular circumstances of this application?</p>	<p>“onshore site preparation works” means operations consisting of site clearance, demolition work, pre-planting of landscaping works, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, creation of site accesses and the temporary display of site notices or advertisements;</p>	<p>1</p>
<p>Article 2 - Interpretation</p>		<p>Applicant and local authorities</p>	<p>The landscape management plan is wrongly titled as it covers more than management.</p>	<p>“outline landscape management plan” means the document certified as the outline landscape management plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);</p>	<p>4</p>
<p>Article 2 - Interpretation</p>		<p>Applicant</p>	<p>Added as this document will be a certified document.</p>	<p><i>“outline onshore written scheme of investigation” means the document certified as the outline onshore written scheme of investigation by the Secretary of State for the purposes of this Order under article 35 (certification of plans and documents etc);</i></p>	<p>4</p>

Article 2 - Interpretation		Examining Authority	The definition of 'pontoon gravity base 1 foundation' in Article 2 includes the words 'and either'. These words seem unnecessary and inconsistent with the subsequent definition of 'pontoon gravity base 2 foundation'.	"pontoon gravity base 1 foundation" means a structure principally of steel, concrete, or steel and concrete with a base made up of up to three rectangular pontoons which rests on the seabed and either due to its own weight with or without added ballast or additional skirts and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;	1
Article 2 - Interpretation		Natural England	We note that the DMLs and the DCO should not include any direct reference to Natural England, rather the official text should state 'relevant SNCBs' throughout the schedules.	"SNCB" means an organisation charged by government with advising on nature conservation matters; Amendment made as requested throughout.	1
Article 2 - Interpretation		Natural England	Requirement 5 refers to 'cable systems'. Part 1 of Schedule 1 refers to 'cable circuits' which is a term defined in Article 2. Is the difference intentional and, if it is, why is different terminology used?	"transition joint bay" means the underground concrete bays in Work No. 7 where the offshore export cable systems circuits comprised in Work No. 6 are jointed to the onshore export cable systems circuits ;	1
PART 2 Principal Powers					
Article 5 - Benefit of the Order		Examining Authority	Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraphs (5), (7) and (9), shall include references to the transferee or lessee	(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraphs (5), (7) and (9), shall include references to the transferee or lessee.	1
Article 5(11)		Applicant	To correct drafting error.	(11) The date specified under paragraph (10)(a)(ii) in respect of a notice served in respect of paragraph (3) must not be earlier than the expiry of five days from the date of the receipt of the notice.	6

Article 10(4)		Examining Authority	Article 10 (temporary stopping up of streets) – whether 10(4) should refer to Schedule 3 instead of (or as well as) Schedule 4	(4) Without limiting paragraph (1), the undertaker may temporarily stop up, alter or divert the streets set out in column (2) of Schedule 43 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Schedule.	4
PART 3 Streets					
Article 12(1)(a)		Norfolk County Council	To address concerns relating to maintenance of existing highways accesses.	(a) form, and lay out <i>and maintain a</i> means of access, or improve <i>or maintain an</i> existing means of access, in the locations specified in columns (1) and (2) of Schedule 5 (access to works); and	4
N/A	Article 14 - Power to alter layout etc. of streets	Applicant	To provide powers to lay out passing places.	<i>Power to alter layout etc. of streets</i> <i>14.—(1) Subject to paragraphs (2) and (3), the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with constructing, operating and maintaining the authorised development alter the layout of any street and, without limitation on the scope of this paragraph, the undertaker may—</i> <i>(a) alter the level or increase the width of any kerb, footway, cycle track or verge;</i> <i>(b) make and maintain passing place(s).</i> <i>(2) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.</i> <i>(3) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority.</i> <i>(4) Paragraphs (2) and (3) do not apply where the undertaker is the street authority for a street in which the works are being carried out.</i>	4
PART 5 Powers of Acquisition					

<p>Article 18(1) - Time limit for exercise of authority to acquire land compulsorily</p>		<p>Applicant</p>	<p>Amendment to be in line with recent DCOs.</p>	<p>18.—(1) After the end of the period of 7 years beginning on the day on which this Order is made— (a) no notice to treat may is to be served under Part 1 of the 1965 Act; and (b) no declaration is to may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981() as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).</p>	<p>1</p>
<p>Article 19(3) - Compulsory acquisition of rights</p>		<p>Applicant</p>	<p>To correct drafting error.</p>	<p>19 ... (3) Subject to section 8 of the 1965 Act (provisions as to divided land) , as substituted by paragraph 5 of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights), and Schedule 2A (counter-notice requiring purchase of land) (as substituted by paragraph 5 9 of Schedule 7 (modification of compensation and compulsory purchase enactments for the creation of new rights) and imposition of new restrictions), where the undertaker creates or acquires a right over land or imposes a restriction under paragraph (1) or (2), the undertaker is not to be required to acquire a greater</p>	<p>1</p>
<p>Article 20(1) (Private Rights)</p>		<p>Applicant</p>	<p>To correct drafting error.</p>	<p>20.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 17 (compulsory acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 17 (compulsory acquisition of land)— ...</p>	<p>1</p>
<p>Article 20(2)</p>		<p>Applicant</p>	<p>To correct drafting error.</p>	<p>(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or restrictive covenants...</p>	<p>1</p>
<p>Article 20(3)</p>		<p>Applicant</p>	<p>To correct drafting error.</p>	<p>(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary</p>	<p>1</p>

				possession under this Order are suspended and unenforceable,...	
Article 20(4)		Applicant	To correct drafting error.	(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenants under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act.	1
Article 21(2) - Application of the Compulsory Purchase (vesting Declarations) Act 1981		Applicant	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	21... (2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied by paragraph (1) , has effect with the following modifications.	1
N/A	Article 21(3)	Applicant	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	(3) In section 1 (application of act), for subsection 2 substitute— “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.	1
Article 21(3)	Article 21(4)	Applicant	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	(3) In Section 5(2) (earliest date for execution of declaration), is omitted the words from “, and this subsection” to the end.	1
Article 21(5)	Article 21(6)	Applicant	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	(5) In section 5B (extension of time limit during challenge)— (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order) , the three year period mentioned in section 5A ” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), ”; and for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 21 (time limit for exercise of authority to acquire land compulsorily) of the Hornsea Three Offshore Wind Farm Order 201[]”.	1

N/A	Article 21(7)	Applicant	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	<i>(7) In section 6 (notices after execution of declaration), in subsection (1)(b) for "section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981" substitute "section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008".</i>	1
Article 21(6)	Article 21(8)	Applicant	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	<i>(8) In section 7 (constructive notice to treat), in subsection (1)(a), omit the words "(as modified by section 4 of the Acquisition of Land Act 1981)" are omitted.</i>	1
Article 21(7)	Article 21(9)	Applicant	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	<i>(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit for paragraph 1(2) substitute— "But see article 25(3) (acquisition of subsoil only) of the Hornsea Three Offshore Wind Farm Order 201[], which excludes the acquisition of subsoil only from this Schedule."</i>	1
Article 21(8)	Article 21(10)	Applicant	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	<i>(10) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 must be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 26 (application modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.</i>	1
Article 22(3) - Acquisition of subsoil only		Applicant	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	22 ... <i>(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act; (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and (c) section 153(4A) (blighted land: proposed</i>	1

				<i>acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.</i>	
Article 22(4)		Applicant	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	(3)(4) Paragraphs (2) and (3) does not prevent Schedule 2A to the 1965 Act (as modified by article 26 (application of part 1 of the Compulsory Purchase Act 1965) are to be disregarded from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.	1
Article 23(2) - Application of Part 1 of the Compulsory Purchase Act 1965		Applicant	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	(2) In section 4A(1) (extension of time limit during challenge)— (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order) , the three year period mentioned in section 4” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), ”; and (b) for “the three year period specified in section 4” substitute “the seven year period mentioned in article 18 (time limit for exercise of authority to acquire land compulsorily) of the Hornsea Three Offshore Wind Farm Order 201[]”.	1
Article 23(3)		Applicant	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	(3) In section 11A (powers of entry: further notice of entry)— (a) in subsection (1)(a), after “land” insert “under that provision”; (b) in subsection (2), after “land” insert “under that provision”.	1

Article 23(4)		Applicant	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 21 (time limit for exercise of authority to acquire land compulsorily) of the Hornsea Three Offshore Wind Farm Order 201[]".	1
Article 23(5)		Applicant	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	(3) (5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)— (a) omit for paragraphs 1(2) and 14(2) substitute— “(2) <i>But see article 25(3) (acquisition of subsoil only) of the Hornsea Three Offshore Wind Farm Order 201[], which excludes the acquisition of subsoil only from this Schedule; and</i> (b) at the end insert— “PART 4 INTERPRETATION 30. In this Schedule, references to entering on and taking possession of land do not include doing so under <i>article 15 (protective work to buildings)</i> , article 25 (temporary use of land for carrying out the authorised development) or article 26 (temporary use of land for maintaining the authorised development) of the Hornsea Three Wind Farm Order 201[].”	1
N/A	Article 25(1)(f) - Temporary use of land for carrying out the authorised project	Applicant	Included to make it clear that the Applicant can use the temporary use powers to carry out construction works for the authorised development.	<i>construction works on that land as are mentioned in Part 1 of Schedule 1 (authorised development)</i> and	1
Article 25(1)(f) - Temporary use of land for carrying out the authorised project	Article 26(1)(f)	Examining Authority	Whether 25(f) should start with 'construct such'	(f) construction-construct <i>such</i> works on that land as are mentioned in Part 1 of Schedule 1 (authorised development) and	4
Article 25(4)(d)		Applicant	Referencing amendment.	restore the land on which any works have been carried out under paragraph (1)(g)(4)(f) insofar ..	1

PART 7 Miscellaneous and General					
<p>Article 33 - Felling or lopping of trees and removal of hedgerows</p>		<p>Examining Authority</p>	<p>Articles 33 and 34 would permit the removal or lopping of trees and hedgerows which may be of landscape and ecological significance.</p> <p>Would it be appropriate to include a requirement to the effect that any works permitted under this article should not take place until relevant ecological surveys have been carried out and that any such works should be carried out in accordance with BS3998 2010 and BS5837 2012?</p>	<p>The undertaker may fell or lop any tree within or overhanging land within the Order limits that is not subject to a tree preservation order or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with onshore site preparation works, the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.</p>	<p>1</p>
<p>Article 33 - Felling or lopping of trees and removal of hedgerows</p>	<p>Article 34</p>	<p>Applicant</p>	<p>To correct drafting error.</p>	<p>The undertaker may fell or lop any tree within or overhanging land within the Order limits that is not subject to a tree preservation order or tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with onshore site preparation works, the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.</p>	<p>4</p>

<p>Article 34 - Trees subject to tree preservation orders</p>	<p>Article 35</p>	<p>Examining Authority</p>	<p>Articles 33 and 34 would permit the removal or lopping of trees and hedgerows which may be of landscape and ecological significance.</p> <p>Would it be appropriate to include a requirement to the effect that any works permitted under this article should not take place until relevant ecological surveys have been carried out and that any such works should be carried out in accordance with BS3998 2010 and BS5837 2012?</p>	<p>The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order which was made before and after [] or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with <i>onshore site preparation works</i>, the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.</p>	<p>1</p>
<p>Article 35. (1) - Certification of plans and documents, etc.</p>	<p>Article 36</p>	<p>Applicant</p>	<p>Addition of further documents to certification related to other DCO amendments.</p>	<p><i>(b) Design Objectives and Principles;</i> ... (s) the outline landscape management plan; <i>(t) the outline onshore written scheme of investigation;</i></p>	<p>4</p>
<p>Article 35. (1) - Certification of plans and documents, etc.</p>	<p>Article 36</p>	<p>Examining Authority</p>	<p>Suggested addition of word "offshore" to clarify which WSI is which.</p>	<p>(v) the outline <i>offshore</i> written scheme of investigation;</p>	<p>6</p>

<p>Article 35. (1) - Certification of plans and documents, etc.</p>		<p>Natural England</p>	<p>The DMLs have proposed the inclusion of a mitigation condition for harbour porpoise in the Southern North Sea cSAC/SCI similar to that included in Hornsea Project Two. Natural England notes that a Marine Mammal Mitigation Protocol will be provided to remove the risk of potential death and/or injury to marine mammals. In addition, the Project should have a Site Integrity Plan – a live document, which needs to be updated prior to construction to inform the relevant authority's Appropriate Assessment of disturbance to harbour porpoise.</p>	<p>(u) the outline written scheme of investigation; and (v) the outline fisheries coexistence and liaison plan; and <i>(w) the in principle Hornsea Three Southern North Sea Site of Community Importance Integrity plan.</i></p>	<p>1</p>
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<p>Article 38 - Requirements, appeals, etc.</p>		<p>Applicant</p>	<p>To provide an alternative to arbitration for the MMO (subject to discussion with MMO)</p>	<p><i>(4) [Where the MMO refuses an application for approval under condition 13 of Part 2 of Schedule 11 or condition 14 of Part 2 of Schedule 12 and notifies the undertaker accordingly, or the MMO fails to determine the application for approval within four months commencing on the date the application is received by the MMO, the undertaker may by notice appeal against such a refusal or non-determination and the 2011 Regulations shall apply subject to the modifications set out in sub-paragraph (5). (5) The 2011 Regulations are modified so as to read for the purposes of this Order only as follows— (a) For regulation 4(1) (appeal against marine licensing decisions) substitute— “A person who has applied for approval under condition 13 of Part 2 of Schedule 11 or condition 14 of Part 2 of Schedule 12 of the Hornsea Three Offshore Wind Farm Order 20[] may by notice appeal against a decision to refuse such an application or a failure to determine such an application.” (b) For regulation 7(2)(a) (contents of the notice of appeal) substitute— “a copy of the decision to which the appeal relates or, in the case of non-determination, the date by which the application should have been determined; and” (c) In regulation 8(1) (decision as to appeal procedure and start date) for the words “as soon as practicable after” there is substituted the words “within the period of [2] weeks beginning on the date of”. (d) In regulation 10(3) (representations and further comments) after the words “the Secretary of State must” insert the words “within the period of [1] week”</i></p>	<p>6</p>
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				<p><i>(e) In regulation 10(5) (representations and further comments) for the words “as soon as practicable after” there is substituted the words “within the period of [1] week of the end of”.</i></p> <p><i>(f) In regulation 12(1) (establishing the hearing or inquiry) after the words “(“the relevant date”)” insert the words “which must be within [14] weeks of the start date”.</i></p> <p><i>(g) For regulation 22(1)(b) and (c) (determining the appeal—general) substitute—</i> <i>“(b) allow the appeal and, if applicable, quash the decision in whole or in part;</i> <i>(c) where the appointed person quashes a decision under sub-paragraph (b) or allows the appeal in the case of non-determination, direct the Authority to approve the application for approval made under condition 13 of Part 2 of Schedule 11 or condition 14 of Part 2 of Schedule 12 of the Hornsea Three Offshore Wind Farm Order 20[].”</i></p> <p><i>(h) In regulation 22(2) (determining the appeal—general) after the words “in writing of the determination” insert the words “within the period of [12] weeks beginning on the start date where the appeal is to be determined by written representations or within the period of [12] weeks beginning on the day after the close of the hearing or inquiry where the appeal is to be determined by way of hearing or inquiry”.]</i></p>	
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<p>Article 40 - Crown rights</p>	<p>Article 41</p>	<p>Applicant</p>	<p>Amended to be consistent with drafting in other made DCOs following agreement with the Crown Estate Commissioners</p>	<p>41.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—</p> <p>(a) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;</p> <p>(b) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or</p> <p>(c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.</p> <p>(2) <i>Paragraph (1) does not apply to the exercise of any right under this Order compulsorily to acquire or the compulsory acquisition of an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).</i></p> <p>(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.</p>	
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<p>Article 42. (1) - Funding</p>		<p>Applicant</p>	<p>Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.</p>	<p>42.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either— (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or (b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State <i>in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land.</i></p>	<p>1</p>
<p>SCHEDULE 1 — Authorised project</p>					
<p>PART 1 - Authorised Development</p>					
<p>Work No.8</p>		<p>Applicant</p>	<p>To correct drafting error.</p>	<p>(c) up to 44330 link boxes; <i>and</i> <i>(d) up to 440 joint bays;</i></p>	<p>1</p>
<p>PART 3 — Requirements</p>					

<p>Requirement 2 - Detailed offshore design parameters</p>		<p>Examining Authority</p>	<p>The drafting of Requirement 2 assumes a scheme of either up to 160 wind turbine generators (WTG) or precisely 300 WTG.</p> <p>Does this drafting cover the range of possible combinations of WTG numbers, types and layouts that is contemplated in the application?</p>	<p>2.—(1) The total number of wind turbine generators comprised in the authorised project must not exceed 300 and a total rotor swept area of 9km². (2) Subject to paragraph (3), each wind turbine generator forming part of the authorised project must not— (a) exceed a height of 325 metres when measured from LAT to the tip of the vertical blade; (b) exceed a rotor diameter of 265 metres; (c) be less than 34.97 metres from LAT to the lowest point of the rotating blade; and (d) be less than one kilometre from the nearest wind turbine generator in all directions. (3)The reference in sub-paragraph (2)(d) to the location of a wind turbine generator is a reference to the centre point of that wind turbine generator</p> <p>Subject to paragraph (2), wind turbine generators forming part of the authorised project must not— (2) 2.—(1) Subject to paragraph (2), wind turbine generators forming part of the authorised project must not— (a) in the event that the total number of wind turbine generators constructed is 160 or fewer— (i) exceed a height of 325 metres when measured from LAT to the tip of the vertical blade; and (ii) exceed a rotor diameter of 265 metres. (b) in the event that the total number of wind turbine generators constructed is 300— (i) exceed a height of 250 metres when measured from LAT to the tip of the vertical blade; and (ii) exceed a rotor diameter of 195 metres. (c) be less than one kilometre from the nearest wind turbine generator in all directions; and (d) be less than 34.97 metres from LAT to the lowest point of the rotating blade. (2) References to the location of a wind turbine</p>	<p>1</p>
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				generator are reference to the centre point of that wind turbine generator.	
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<p>Requirement 3(12) - Detailed offshore design parameters</p>		<p>Applicant</p>	<p>To correct error in drafting. Requirement 3(12) (Schedule 1, Part 3) (Page 35) Requirement is replicated in Condition 2(8) of the Deemed Marine Licence – Transmission Assets (Schedule 12). As Requirement 3(12) and Condition 2(8) of the Deemed Marine Licence – Transmission Assets are imposing one and the same limitation - for consistency Requirement 3(12) could include 'electrical' before 'installation'. This addition than also then makes it clear that it doesn't include turbines and accommodation platform foundations. This potential modification to the wording of the Draft DCO can be considered as part of the examination process.</p>	<p>(12) The total seabed footprint area for offshore electrical installation foundations must not exceed— (a) 138,900 square metres excluding scour protection; and (b) 267,900 square metres including scour protection.</p>	<p>1</p>
<p>Requirement 5 - Detailed offshore design parameters</p>		<p>Examining Authority</p>	<p>Requirement 5 refers to 'cable systems'. Part 1 of Schedule 1 refers to 'cable circuits' which is a term defined in Article 2. Is the difference intentional and, if it is, why is different terminology used?</p>	<p>The number of cable systemscircuits shall not exceed six.</p>	<p>1</p>
<p>Requirement 5 - Detailed offshore design parameters</p>		<p>Natural England</p>	<p>The number of cable crossings assessed is 44, yet the description of works describes one or more, this does not limit the crossings to the maximum number assessed.</p>	<p>(6) The total number of the cable crossings must not exceed 44 unless otherwise agreed with the MMO.</p>	<p>4</p>

Requirement 6 - Phases of authorised development		Examining Authority	Whether it would be appropriate to limit the number of phases to 2 in the interests of clarity and certainty	<i>(2) The phases of construction referred to in paragraph (1) shall not exceed two, save that each phase may be undertaken in any number of stages as prescribed in the written scheme.</i>	4
Requirement 7(1) - Detailed design approval onshore		Examining Authority	Description of works describes one or more elements.	relating to that element work of the authorised project have been submitted to and approved in writing by the relevant planning authority.	1
Requirement 7(1)(d)		North Norfolk District Council	Asked that materials be included.	(d) external appearance and materials ;	4
Requirement 7(1)(i)		Applicant and local authorities	Landscaping is covered by Requirement 8.	and (i) implementation timetables for all landscaping works;	1
Requirement 7(2)		Applicant	Amendment to ensure Design Principles are binding.	2) The details submitted under sub-paragraph (1) must be in accordance with the limits of deviation set out in the onshore limits of deviation plan and substantially in accordance with the Design Objectives and Principles.	4
Requirement 8 - Provision of Landscaping		Applicant and local authorities	The landscape management plan is wrongly titled as it covers more than management. Typo corrected at Deadline 6.	No phase of the connection works may commence until for that phase a written landscape management plan and associated work programme (which accords with the outline landscape management plan and outline ecological management plan) has been submitted to and approved by the relevant planning authority in consultation with the relevant SNCBs and the Historic Buildings and Monuments Commission for England.	4 and 6

Requirement 8		Applicant and local authorities	Requested by local authorities.	<i>(2) The term commence as used in requirement 8(1) shall include any onshore site preparation works.</i> <i>(3) The landscape plan must include an implementation timetable and must be carried out as approved.</i>	4
Requirement 8		Historic England	Reference to a 'statutory historic body' should refer to the Historic Buildings and Monuments Commission for England. Typo correct at Deadline 6.	No phase of the connection works may commence until for that phase a written landscape management plan and associated work programme (which accords with the outline landscape management plan and outline ecological management plan) has been submitted to and approved by the relevant planning authority in consultation with the relevant SNCBs and Heritage England <i>the Historic Buildings and Monuments Commission for England.</i>	4 and 6
Requirement 9 - Implementation and maintenance of landscaping		Applicant and local authorities	The landscape management plan is wrongly titled as it covers more than management.	9.—(1) All landscape works must be carried out in accordance with the landscape management plans approved under requirement 8 (provision of landscaping), and in accordance with the relevant recommendations of appropriate British Standards. (2) Any tree or shrub planted as part of an approved landscape management plan that, within a period of five years after planting, is removed by the undertaker, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.	4
Requirement 9		Applicant and local authorities	Amendment need as it may not always be appropriate for the specimens to be the same species or size to be used as a replacement.	2) Any tree or shrub planted as part of an approved landscape management plan that, within a period of five years after planting, is removed by the undertaker, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted <i>unless otherwise approved in writing.</i>	4

<p>Requirement 9</p>		<p>Examining Authority</p>	<p>Requested clarification of approving body.</p>	<p>2) Any tree or shrub planted as part of an approved landscape management plan that, within a period of five years after planting, is removed by the undertaker, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise approved in writing <i>by the relevant planning authority</i>.</p>	<p>6</p>
<p>Requirement 10 - Ecological Management Plan</p>		<p>Applicant and local authorities</p>	<p>Add in that the ecological works must be carried out 'in accordance with the relevant recommendations of appropriate British Standards' as per the text in Requirement 9 for the landscaping works.</p> <p>Remove reference to Norfolk County Council.</p>	<p>No phase of the connection works may commence until for that phase a written ecological management plan (which accords with the outline ecological management plan <i>and the relevant recommendations of appropriate British Standards</i>) reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement has been submitted to and approved by the relevant planning authority in consultation with the relevant SNCBs, Norfolk County Council, and (where works have the potential to impact wetland habitats) the Environment Agency.</p>	<p>4</p>

<p>Requirement 10 - Ecological Management Plan</p>		<p>Examining Authority</p>	<p>How would relevant mitigation measures be secured, such as those in the Outline Code of Construction Practice [APP-179], given that the detailed versions of mitigation documents may not be approved until after the 'onshore site preparation works' have taken place?</p> <p>Articles 33 and 34 would permit the removal or lopping of trees and hedgerows which may be of landscape and ecological significance.</p> <p>Would it be appropriate to include a requirement to the effect that any works permitted under this article should not take place until relevant ecological surveys have been carried out and that any such works should be carried out in accordance with BS3998 2010 and BS5837 2012?</p>	<p><i>(2) The onshore site preparation works may not commence until a written ecological management plan (which accords with the outline ecological management plan) for those works reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement has been submitted to and approved by the relevant planning authority in consultation with the relevant SNCBs; and</i></p>	<p>1</p>
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<p>Requirement 10</p>		<p>Norfolk County Council</p>	<p>It is stated that the Outline EMP will be “prepared in consultation with the Local Planning Authority”. It is assumed that the reference to “the LPA” in this context actually means all three district planning authorities through which the cable route passes (North Norfolk, Broadland and South Norfolk). The County Council would also wish to be involved in any consultation on the emerging EMP.</p>	<p>No phase of the connection works may commence until for that phase a written ecological management plan (which accords with the outline ecological management plan) reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement has been submitted to and approved by the relevant planning authority in consultation with Natural England the relevant SNCBs, Norfolk County Council, and (where works have the potential to impact wetland habitats) the Environment Agency.</p>	<p>1</p>
<p>Requirement 11 - Highway accesses</p>		<p>Examining Authority</p>	<p>Requirement 11 provides for details of accesses (including access management measures) to be approved although such approval would not be needed if there were no construction or modification of an existing access. Would this drafting adequately protect highway safety, for example if temporary traffic management were needed because construction traffic would be using an existing access with restricted visibility splays?</p>	<p>(2) The requirements in sub-paragraph (1) shall not apply to any proposed means of access to a highway which do not require any construction or modification works, and which are contained within the access to works plan. (2) The highway accesses for each phase must be constructed in accordance with the approved details.</p>	<p>1</p>

<p>Requirement 11 - Highway accesses</p>		<p>Norfolk County Council</p>	<p>Requested that the draft DCO be amended so that the visibility splays of the permanent accesses be secured.</p>	<p><i>11.—(1) Construction of any new permanent or temporary means of access to a highway, or alteration, or use of an existing means of access to a highway, shall not commence until an access plan for that access has been submitted to and approved by Norfolk County Council as the the local highway authority.</i> <i>(2) The access plan must include details of the siting, design, layout, visibility splays, access management measures and a maintenance programme relevant to the access it relates to.</i> <i>(3) The highway authority must be consulted on the access plan before it is submitted for approval.</i> <i>(4) The highway accesses (including visibility splays) must be constructed and maintained in accordance with the approved details.</i> 11.(1) Construction of any access shall not commence until for that access written details of the siting, design, layout and any access management measures for any new, permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, has, after consultation with the highway authority, been submitted to and approved by the relevant planning authority. (2).The highway accesses for each phase must be constructed in accordance with the approved details.</p>	<p>4</p>
<p>Requirement 13 - Surface and foul water drainage</p>		<p>Norfolk County Council</p>	<p>Requested reference to NCC as lead local flood authority.</p>	<p>No phase of the connection works shall commence until for that phase written details of the surface and (if any) foul water drainage system (including means of pollution control) have, after consultation with the relevant sewerage and drainage authorities, and the Environment Agency, been submitted to and approved by the the <i>lead local flood authority</i> relevant planning authority.</p>	<p>4</p>

<p>Requirement 15 - Surface water</p>		<p>Norfolk County Council</p>	<p>Requested amendment to requirement.</p>	<p>15.—(1) No part of the onshore HVDC/HVAC substation or onshore HVAC booster station shall commence until, <i>in respect of that installation</i>, a detailed surface water scheme in accordance with the outline code of construction practice and based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the onshore HVDC/HVAC substation and onshore HVAC booster station has been submitted to and approved in writing by the <i>lead local flood authority relevant planning authority</i>, in consultation with the Environment Agency the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991.</p> <p><i>(2) The detailed surface water schemes must accord with the outline code of construction practice and—</i></p> <p><i>(a) be based on sustainable drainage principles;</i></p> <p><i>(b) an assessment of the hydrological and hydrogeological context of the onshore HVDC/HVAC substation or onshore HVAC booster station, as applicable; and</i></p> <p><i>(c) include detailed designs of a surface water drainage scheme.</i></p> <p><i>(3) In this requirement "relevant drainage board" has the meaning in section 23 of the Land Drainage Act 1991.</i></p> <p>(2)(4) Construction of the onshore HVDC/HVAC substation or HVAC booster station <i>as applicable</i>, must be carried out in accordance with the approved scheme.</p>	<p>4</p>
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<p>Requirement 15</p>		<p>Norfolk County Council</p>	<p>Requested amendment to requirement.</p>	<p>(1) No part of the onshore HVDC/HVAC substation or onshore HVAC booster station shall commence until, in respect of that installation, a detailed surface water scheme has been <i>prepared in consultation with the Environment Agency and Norfolk County Council and</i> submitted to and approved in writing by the lead local flood authority <i>Norfolk County Council</i>, in consultation with the Environment Agency.</p>	<p>6</p>
<p>Requirement 15</p>		<p>Examining Authority</p>	<p>Suggested amendment as wording not required.</p>	<p>(3) In this requirement "relevant drainage board" has the meaning in section 23 of the Land Drainage Act 1991; and</p>	<p>6</p>
<p>Requirement 16 - Onshore Archaeology</p>		<p>Examining Authority</p>	<p>How would Requirement 16, relating to archaeological investigations, operate if those investigations were themselves</p>	<p><i>(2) The term commence as used in requirement 16(1) only shall include any onshore site preparation works.</i></p>	<p>1</p>

			excluded from the definition of commencement?		
Requirement 16 - Onshore Archaeology		Applicant	For clarity, and to respond to request by NCC.	<p>No phase of the connection works may commence until for that phase a written scheme of archaeological investigation (<i>which must accord with the onshore written scheme of investigation</i>) for Work Nos. 6 to 15 has been submitted to and approved by the relevant planning authority <i>in consultation with Norfolk County Council's Historic Environment Advice Team and the Historic Building and Monuments Commission for England.</i></p> <p>(2) The term commence as used in requirement 16(1) only shall include any onshore site preparation works.</p> <p>(3) Any archaeological works or watching brief <i>investigations</i> must be carried out in accordance with the approved scheme.</p> <p>(4) In the event that site investigation is required, the <i>The archaeological</i> site investigations and post investigation assessment must be completed for that phase in accordance with the programme set out in the written scheme of archaeological investigation and provision made for analysis, publication and dissemination of results and archive deposition secured for that phase.</p>	4

<p>Requirement 16 - Onshore Archaeology</p>		<p>Norfolk County Council</p>	<p>To allow for name change of team in future and correct typographical error.</p>	<p>No phase of the connection works may commence until for that phase a written scheme of archaeological investigation (which must accord with the outline onshore written scheme of investigation) for Work Nos. 6 to 15 has been submitted to and approved by the relevant planning authority in consultation with Norfolk County Council's Historic Environment Advice Team and the Historic Buildings and Monuments Commission for England.</p>	<p>6</p>
<p>Requirement 16 - Onshore Archaeology</p>		<p>Examining Authority</p>	<p>Typographical error.</p>	<p>No phase of the connection works may commence until for that phase a written scheme of archaeological investigation (which must accord with the outline onshore written scheme of investigation) for Work Nos. 6 to 15 has been submitted to and approved by the relevant planning authority in consultation with Norfolk County Council's Historic Environment Advice Team and the Historic Buildings and Monuments Commission for England.</p>	<p>6</p>

<p>Requirement 17 - Code of Construction Practice</p>		<p>Environment Agency</p>	<p>Environment Agency Comment:</p> <p>2.5 However, we note that within the Draft Development Consent Order including Draft Deemed Marine Licences – PINS Document Reference: A3.1 Part 3, Schedule 1, ‘Requirements’, Code of Construction Practice paragraph 17 (page 38); that there is no requirement for the Environment Agency to be consulted or approve detailed CoCPs.</p> <p>2.7 We consider that in order to safeguard areas within our remit that it is necessary for our prior approval of the detailed CoCP and site specific Pollution Control Plans</p> <p>2.8 We request that Requirement 17 includes a requirement that for each phase a CoCP and associated pollution control plans are submitted to and approved by the Environment Agency prior to works on that phase commencing.</p>	<p>No phase of the any works landward of MLWS may commence until for that phase a code of construction practice (which must accord with the outline code of construction practice) has been submitted to and approved by the relevant planning authority, in consultation with <i>the Environment Agency</i>, the relevant highway authority and, if applicable, the MMO.</p>	<p>1</p>
<p>Requirement 17 - Code of Construction Practice</p>		<p>Examining Authority</p>	<p>Should the requirement include a clause to the effect that the works should be carried out in accordance with the approved codes of construction practice?</p>	<p>17 (1)... (2) All construction works for each phase must be undertaken in accordance with the relevant approved code of construction practice.</p>	<p>1</p>

Requirement 17		Examining Authority, South Norfolk Council, North Norfolk District Council	Requested this plan include site preparation works.	<i>(2) The term commence as used in requirement 17(1) shall include any onshore site preparation works.</i>	4
Requirement 18(2) - Construction traffic management plan		Examining Authority, South Norfolk Council, North Norfolk District Council	Requested this plan include site preparation works.	<i>(2) The term commence as used in requirement 18(1) shall include any onshore site preparation works.</i>	4
Requirement 18(2) - Construction traffic management plan		Examining Authority	B) Should the requirement include a clause to the effect that the works should be carried out in accordance with the approved construction traffic management plans? C) The list of items in 18(2) appears to be more limited in scope that the Outline Construction Traffic Management Plan [APP-176] would suggest. Given that 18(1) requires accordance with the Outline Construction Traffic Management Plan in any event, is 18(2) necessary?	The <i>construction traffic management plan for each phase must be implemented as approved for that phase.</i> construction traffic management plan must contain details of— (2) proposed vehicle routeing plans; (3) any abnormal indivisible loads that may be delivered by road, or confirmation that no abnormal indivisible loads will be required for construction of the authorised development; (4) condition surveys; (5) any highway works proposed; and (6) construction personnel travel.	1
Requirement 21 - Control of noise during operational phase		Applicant	Drafting error.	Prior to commencement of licensed activities landward of MHWS, a noise management plan (NMP) for (1)... Work No.s. <i>9 and 10</i> shall be submitted to the relevant planning authority for approval. (2) ... (a) the noise attenuation and mitigation measures to be taken to minimise noise resulting from Work No.s. <i>9 and 10</i> , including any noise limits; and	4

<p>Requirement 21</p>		<p>Applicant and local authorities</p>	<p>Amendment to avoid ambiguity.</p>	<p>Prior to commencement of licensed activities landward of MHWS, a noise management plan (NMP) for Work Nos. 9 and 10 shall be submitted to and approved by the relevant planning authority for approval.</p>	<p>4</p>
<p>Requirement 21</p>		<p>Applicant and local authorities</p>	<p>Required amendment to ensure concerns over tonal noise covered.</p>	<p>(b) a scheme for monitoring attenuation and mitigation measures provided under paragraph 21(2)(a) which must include— <i>(i) the circumstances under which noise will be monitored;</i> <i>(ii) the locations at which noise will be monitored;</i> <i>(iii) the method of noise measurement (which must be in accord with BS 4142:2014, an equivalent successor standard or other agreed noise measurement methodology appropriate to the circumstances); and</i> <i>(iv) a complaints procedure.</i> (3) The NMP shall must be implemented as approved.</p>	<p>4</p>

<p>Requirement 22 - Local skills and employment</p>		<p>Examining Authority</p>	<p>Given that the skills and employment plan would potentially relate to a wide area comprising the East Anglia and/or Humber regions, is it appropriate for it to be considered for approval by the relevant planning authority?</p> <p>Would it be more appropriate for it to be considered by NCC in consultation with the relevant planning authorities and Local Enterprise Partnerships?</p> <p>Who would be the appropriate determining authority in the Humber region?</p>	<p>22.—(1) <i>No phase of the connection works may commence until for that phase a skills and employment plan shall be prepared (which accords with the outline skills and employment plan) in relation to the authorised development—</i> <i>(a) within the boundaries of Norfolk County Council and has been submitted to and approved by the relevant planning authority Norfolk County Council for approval; and</i> <i>(b) within the boundaries of North East Lincolnshire Council . has been submitted to and approved by North East Lincolnshire Council.</i></p> <p>(2) The skills and employment plan <i>described under Requirement 22(1)(a)</i> shall be prepared in consultation with <i>North Norfolk District Council, Broadland District Council, South Norfolk Council and the New Anglia Local Enterprise Partnership and the Humber Local Enterprise Partnership</i>, or such other body as may be approved by <i>the relevant planning authority Norfolk County Council</i>.</p> <p><i>(3) The skills and employment plan described under Requirement 22(1)(b) shall be prepared in consultation with Humber Local Enterprise Partnership, or such other body as may be approved by North East Lincolnshire Council.</i></p> <p>(3)<i>(4) The Each</i> skills and employment plan shall identify opportunities for individuals and businesses based in the regions of East Anglia and-or the Humber to access employment opportunities associated with the construction, operation and maintenance of the authorised development.</p> <p>(4)<i>(5) The skills and employment plans</i> shall be implemented as approved.</p>	<p>4</p>
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<p>Requirement 22 - Local skills and employment</p>		<p>Norfolk County Council</p>	<p>Amendment to allow County Council to be consulted on plan before approval sought.</p>	<p>(2) The skills and employment plan described under requirement 22(1)(a) shall be prepared in consultation with Norfolk County Council, North Norfolk District Council, Broadland District Council, South Norfolk Council and the New Anglia Local Enterprise Partnership, or such other body as may be approved by Norfolk County Council.</p>	<p>6</p>
<p>Requirement 23 - Onshore Decommissioning</p>		<p>North Norfolk District Council</p>	<p>3 months are given for submission and approval, which may lead to difficulties.</p>	<p>Within three months of the cessation of commercial operation of the connection works an onshore decommissioning plan must be submitted to and approved by the relevant planning authority within three months of submission of such plan unless otherwise agreed in writing.</p>	<p>4</p>
<p>Requirement 23</p>		<p>Applicant and local authorities</p>	<p>To provide flexibility.</p>	<p>(2) The decommissioning plan must be implemented as approved unless otherwise agreed in writing.</p>	<p>4</p>
<p>Requirement 23</p>		<p>Examining Authority</p>	<p>To provide clarity on approving body and timing.</p>	<p>(1) Within three months of cessation of commercial operation of the connection works an onshore decommissioning plan must be submitted to the relevant planning authority for approval unless otherwise agreed in writing by the relevant planning authority. (2) and The onshore decommissioning plan required under requirement 23(1) shall be approved by the relevant planning authority</p>	<p>6</p>

				within three months of submission of such plan unless otherwise agreed in writing by <i>the relevant planning authority and the undertaker</i> . (3) The decommissioning plan must be implemented as approved unless otherwise agreed in writing by <i>the relevant planning authority</i> .	
Requirement 24 - Notification of generation of power		Natural England	1.4. Natural England proposes the inclusion of a new requirement within Schedule 1 part 3 of the DCO. The purpose of this new condition would be to require the undertaker to provide confirmation that all construction activities were completed and that the project has entered the full operational phase. It would also confirm that no further major installation work may take place.	<i>Notification of generation of power 24. The undertaker shall notify the relevant planning authority and the MMO upon first generation of power from the authorised project not less than seven days after the occurrence of this event.</i>	4
SCHEDULE 4 — Public rights of way to be temporarily stopped up					
		Applicant	To correct drafting error.	Bridleway Little Bamingham BR46	1
		Applicant	To correct drafting error.	Bridleway Little Bamingham Plumstead BR46	6
SCHEDULE 6 - Land in which only new rights etc., may be acquired					
		Applicant	Change to add plots due to land ownership change	... , 6-005, 6-006, 7-001A, 7-003, 7-004, ...	4
SCHEDULE 7 — Modification of compensation and compulsory purchase enactments for					

creation of new rights					
Paragraph 2(1)		Applicant	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	2.—(1) Without prejudice to the generality limitation on the scope of paragraph 1, the Land Compensation Act 1973() has effect subject to the modifications set out in sub-paragraph (2).	1
Paragraph 2(2)		Examining Authority	In paragraph 2(2)(a) should the phrase to be substituted be 'land is acquired or taken from'?	(a) for the words "land is acquired or taken from " there is substituted the words "a right or restrictive covenant over land is purchased from or imposed on"; and	1
Paragraph 3		Examining Authority	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	3.... (2) For section 5A (5A) (relevant valuation date) of the 1961 Act, for (a) and (b) substitute— "If- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 7 of Schedule 7 to the Hornsea Three Offshore Wind Farm Order 201[] ; and (b) the acquiring authority is subsequently required by a determination under paragraph 1 23 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 9 of Schedule 7 8 to the Hornsea Three Offshore Wind Farm Order 201[X] to acquire an interest in the land, and (c) the acquiring authority enters on and takes possession of that land, the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right."	1

N/A	Paragraph 4 - Application of Part 1 of the 1965 Act	Applicant	To make this text in line with recent DCOs granted such as the Eggborough Gas Fired Generating Station Order 2018.	<p>Application of Part 1 of the 1965 Act 4.— (1)The 1965 Act is to have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to— (a) the right acquired or to be acquired, or the restriction imposed or to be imposed; or (b) the land over which the right is or is to be exercisable, or the restriction is to be enforceable. (2) Without limitation on the scope of subparagraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right or, in relation to the imposition of a restriction, with the modifications specified in the following provisions of this Schedule.</p>	1
Paragraph 4 - Application of Part 1 of the 1965 Act	Paragraph 5 - Application of Part 1 of the 1965 Act	Applicant	Renumbering change	<p>4 5. For section 7 of the 1965 Act (measure of compensation <i>in case of severance</i>) there is substituted the following section— ...</p>	1

Paragraph 5	Paragraph 6	Examining Authority	<p>In paragraph 5 should the eighth line read 'are so modified as to secure...'? In relation to the 1965 Act, would it be appropriate to include wording to the effect that: References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to— (a)the right acquired or to be acquired, or the restriction imposed or to be imposed; or (b)the land over which the right is or is to be exercisable, or the restriction is or is to be enforceable.</p>	<p>5-6 The following provisions... are is so modified..</p>	1
Paragraph 6	Paragraph 7	Applicant	<p>Modified in relation to changes to legislation made by Housing and Planning Act 2016.</p>	<p>6-7 Section 11 of the 1965 Act (powers of entry) is modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 19), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (which is deemed for this purpose to have been created on that date of service of the notice); and sections 11A (powers of entry: further notices of entry), 11B (counter-notice requiring possession to be taken on specified date), 12 (penalty for unauthorised entry) and 13 (entry on</p>	1

				warrant in the event of obstruction) of the 1965 Act are modified correspondingly.	
Paragraph 7	Paragraph 8	Applicant	Renumbering change	7. 8 Section 20 of the 1965 Act...	1
Paragraph 8	Paragraph 9	Applicant	Modified to align with recent DCOs granted.	8. 9 Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) as modified by article 22(4) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed , subject to compliance with that section as respects compensation.	1
Paragraph 9	Paragraph 10	Applicant	Modified to align with Secretary of State's preferred wording as set out in recently made DCOs.	9. 10 For schedule 2A to the 1965 Act substitute— (1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act as applied by article 19 21 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Hornsea Three Offshore Wind Farm Order 201[] in respect of the land to which the notice to treat relates. (2) But see article 22(3) (acquisition of subsoil	1

				<i>only) of the Hornsea Three Offshore Wind Farm Order 201[] which excludes the acquisition of subsoil only from this Schedule.</i>	
SCHEDULE 8 - Land of which temporary possession may be taken					
		Applicant	Due to proposed amendment application.	27-010A	4
SCHEDULE 9 — Protective provisions					
Part 1 - Protection for electricity, gas, water and sewerage undertakers		Applicant	Confirmation added that this Part does not apply to National Grid, Cadent Gas or Anglian Water	For the protection of the affected undertakers referred to in this part of this Schedule (<i>save for National Grid which is protected by Part 2 of this Schedule, Cadent Gas Limited which is protected by Part 3 of this Schedule and Anglian Water which is protected by Part 6 of this Schedule</i>) the following provisions must, unless otherwise agreed in writing between the undertaker and the affected undertaking concerned, have effect	6
Part 1 - Protection for electricity, gas, water and sewerage undertakers		Applicant	Correct drafting error.	Retained apparatus 7.—(1) Not less than 28 days before ...	1
Part 2 - For the protection of National Grid as		Applicant	Drafting agreed with National Grid.	<i>“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct,</i>	6

electricity and gas undertaker				<i>use, repair, alter, inspect, renew or remove the apparatus;</i>	
Part 2 - For the protection of National Grid as electricity and gas undertaker		Applicant	Drafting agreed with National Grid.	<i>(6)(2) The undertaker and National Grid agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail. (3) Any agreement or consent granted by National Grid under paragraphs 9 or 10 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under subparagraph 6(1).</i>	6
Part 2 - For the protection of National Grid as electricity and gas undertaker		Applicant	Correct drafting error.	10. ... (12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines ENA TSA 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".	4
Part 2 - For the protection of National Grid as electricity and gas undertaker		Applicant	Drafting agreed with National Grid.	12(5) deleted	6

<p>Part 3 - For the protection of Cadent Gas Limited as gas undertaker</p>		<p>Cadent Gas</p>	<p>Various minor amendments agreed with Cadent</p>	<p>“apparatus” means any mains, pipes or other apparatus belonging to or maintained by Cadent Gas Limited for the purposes of gas supply <i>together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of the undertaker for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or must be lodged or which gives or will give access to apparatus;</i></p> <p>“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the undertaker including construct, use, repair, alter, inspect, renew or remove the apparatus;</p> <p>6. (1) ... (2) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail. (3) Any agreement or consent granted by Cadent under paragraph 9 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 6(1).</p>	<p>6</p>
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<p>Part 5, paragraph 1 - Protection of Network Rail Infrastructure Limited</p>		<p>Applicant</p>	<p>Changes as a result of ongoing discussions with Network Rail.</p>	<p>The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail <i>and, in the case of paragraph 15 any other person on whom rights or obligations are conferred by that paragraph.</i></p>	<p>4</p>
<p>Part 5, paragraph 2</p>		<p>Applicant</p>	<p>Changes as a result of ongoing discussions with Network Rail.</p>	<p>“the engineer” means... “Network Rail” means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at Kings Place, 90 York Way 1 Eversholt Street, London, N1 9AG NW1 2DN and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006()the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited; ... “specified work” means so much of any of the authorised development project as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.</p>	<p>4</p>

<p>Part 5, paragraph 4</p>		<p>Applicant</p>	<p>Changes as a result of ongoing discussions with Network Rail.</p>	<p>(1) [The undertaker must not exercise the powers conferred by Article 187 (compulsory acquisition of land), <i>Article 20 (compulsory acquisition of rights)</i>, <i>Article 21 (private rights)</i>, <i>Article 23 (acquisition of subsoil only)</i>, <i>Article 26 (temporary use of land for carrying out the authorised project)</i>, <i>Article 27 (temporary use for land for maintaining the authorised project)</i> or the powers conferred by section 11(3) of the 1965 Act (powers of entry) in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.</p> <p>...</p> <p>(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act <i>or Article 27 (statutory undertakers)</i>, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.</p> <p>...</p> <p>(5) Where Network Rail is asked to give its consent or agreement pursuant to this paragraph, such consent or agreement must not be unreasonably withheld but may be given subject to reasonable conditions.]</p>	<p>4</p>
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<p>Part 5, paragraph 5</p>		<p>Applicant</p>	<p>Changes as a result of ongoing discussions with Network Rail.</p>	<p>(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work maymust not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 3736 (arbitration).</p> <p>...</p> <p>(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatchwithout unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.</p> <p>(4) When signifying approval of the plans the engineer mayshould specify any protective works (whether temporary or permanent) which in the opinion of the engineer must be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using them (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of</p>	<p>4</p>
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				<p>passengers who may be affected by the specified work), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case with all reasonable dispatch without unnecessary delay and the undertaker may must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.</p>	
Part 5, paragraph 6		Applicant	Changes as a result of ongoing discussions with Network Rail.	<p>(a) with all reasonable dispatch without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;</p>	4
Part 5, paragraph 9(1)		Applicant	Changes as a result of ongoing discussions with Network Rail.	<p>If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 2412 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to</p>	4

				carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.	
Part 5, paragraph 10(c)		Applicant	Changes as a result of ongoing discussions with Network Rail.	(c) in respect of the employment or procurement of the services of any inspectors, signallers, guards watch-persons and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;	4

<p>Part 5, paragraph 11</p>		<p>Applicant</p>	<p>Changes as a result of ongoing discussions with Network Rail.</p>	<p>11.—(1) In this paragraph— “EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the authorised development project where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and “Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised developmentproject) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications. ... (3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised developmentproject take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness. (4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)— (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them; ... (6) If at any time prior to the commencement of the commercial operation of the authorised developmentproject and regardless of any measures adopted under sub-paragraph (3), the</p>	<p>4</p>
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				<p>testing or commissioning of the authorised development project causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of the EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the undertaker's apparatus causing such the EMI until all measures necessary have been taken to remedy the EMI by way of modification to the source of the EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.</p> <p>...</p> <p><i>(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies, subject to paragraphs 15(2) to 15(8), to the costs and expenses reasonably incurred or losses reasonably suffered by Network Rail through the implementation of the provisions of this paragraph (including costs reasonably incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.</i></p> <p>...</p> <p><i>(11) In relation to any dispute arising under this paragraph the reference in Article 37 (Arbitration) to the Secretary of State shall be read as a reference to the Institution of Engineering and Technology for appointment of an arbitrator.</i></p>	
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<p>Part 5, paragraph 15</p>		<p>Applicant</p>	<p>Changes as a result of ongoing discussions with Network Rail.</p>	<p>(1) ... (i) the construction or maintenance of a specified work or the failure of such a network; or ... (2) the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the supervision of the engineer doesshall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph. (3) Network Rail must give the undertaker reasonable written notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.— (a) give the undertaker written notice of any such claims or demands as soon as reasonably possible after Network Rail become aware of any such claims or demands; (b) not admit liability or make any offer to settle or compromise any such claim or demand without the prior consent of the undertaker (which, if it withholds such consent has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand); (c) take all reasonable steps to mitigate any liabilities relating to such claims or demands; and (d) keep the undertaker informed in relation to the progress of any such claims and demands and pay due regard to the undertaker's reasonable representations in relation to them ... (5) Subject to the terms of any agreement between Network Rail and a train operator regarding the</p>	<p>4</p>
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				<p>amount, timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (4) which relates to the relevant costs of that train operator.</p> <p>...</p> <p><i>(7) Network Rail must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 15 applies. If requested to do so by the undertaker, Network Rail shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 15 for claims reasonably incurred by Network Rail.</i></p>	
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<p>Part 5, paragraph 16</p>		<p>Applicant</p>	<p>Changes as a result of ongoing discussions with Network Rail.</p>	<p>Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part (<i>including the amount of the relevant costs mentioned in paragraph 15</i>) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part (<i>including any claim relating to those relevant costs</i>).</p>	<p>4</p>
<p>Part 5, paragraph 17</p>		<p>Applicant</p>	<p>Changes as a result of ongoing discussions with Network Rail.</p>	<p>In the assessment of any sums payable to Network Rail under this Part no account must be taken of any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.</p>	<p>4</p>

<p>Part 5, paragraphs 20 and 21</p>		<p>Applicant</p>	<p>Changes as a result of ongoing discussions with Network Rail.</p>	<p><i>20. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent under Article 5 (benefit of the Order) of this Order in relation to land within 15m of Network Rail's operational railway and any such notice must be given no later than 14 days before any such application is made and must describe or give (as appropriate)—</i> <i>(a) whether the application is for consent pursuant to Article 5(a) or 5(b);</i> <i>(b) the extent of the geographical area to which the application relates; and</i> <i>(c) the name and address of the person acting for the Secretary of State to whom the application is to be made</i></p> <p><i>21. In relation to any dispute arising under this Part that is referred to arbitration in accordance with Article 37 (arbitration) of the Order, the undertaker will agree to any reasonable extension of time requested by Network Rail pursuant to paragraph 5(3) of Schedule 13 where Network Rail can demonstrate that it is unable (acting reasonably) to comply with the time limit due to timing constraints that may arise for Network Rail in obtaining clearance conditions and/or any engineering regulatory or stakeholder (internal or external) consents and/or assessing any matters of concern with regards to the safe operation of the railway.</i></p>	<p>4</p>
<p>Part 5, paragraph 22</p>		<p>Applicant</p>	<p>Changes as a result of ongoing discussions with Network Rail.</p>	<p>20-22.The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 36³⁵ (certification of plans and documents etc) are certified by the Secretary of State, provide a set of those plans to Network Rail in <i>a format reasonably specified by Network</i></p>	<p>4</p>

				the form of a computer disc with read-only memory. <i>Rail</i>	
Part 6, Paragraph 3 - For the protection of Anglian Water Services Limited		Anglian Water	Amendment requested by Anglian Water.	This Part of this Schedule does not apply to apparatus in respect of which <i>to the extent that</i> the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 of the 1991 Act.	1
N/A	Part 7 - For the protection of Norfolk Vanguard and Boreas	Vattenfall/Applicant	Protective provisions in near agreed format.	See draft DCO.	1
N/A	Part 7 - For the protection of Norfolk Vanguard and Boreas	Vattenfall/Applicant	Protective provisions in near agreed format.	Plot numbers added to definition of "Crossing Area".	6
SCHEDULE 10 — Removal of Hedgerows					
Various		Applicant	Changes made to reflect updated tree preservation order and hedgerow plan	See draft DCO.	4
SCHEDULE 11 — Deemed Marine Licence under 2009 Act - Generation Assets					
PART 1 — Licensed Marine Activities					
Article 1 - Interpretation		Applicant	Due to amendments to conditions - see below.	<i>"array cable" means the network of offshore subsea cables connecting the wind turbine generators in Work No.1 and the offshore substations in Work No.2;</i>	4

<p>Article 1 - Interpretation</p>		<p>MMO and Natural England</p>	<p>MMO comment:</p> <p>“The interpretation of ‘commence’ for both the DCO and DMLs excludes offshore site preparation works. The definition for ‘Offshore Site Preparation Works’ specifically includes surveys and monitoring but also sandwave levelling and boulder clearance. Such a definition also has the potential to include Unexploded Ordinance (UXO) clearance and other works. The MMO considers that offshore preparation works should be included in the interpretation of ‘commence’.”</p> <p>Natural England comment:</p> <p>“Additional to the concerns on arbitration, Natural England cannot agree to the definition of ‘offshore preparation works’ as currently provided within the draft DCO and DMLs. The definition allows works such as sandwave levelling and boulder clearance to be conducted without any regulatory oversight or control of the methodology. These works form a significant part of the impact of the project, including a significant part of the impact to designated sites, and must be subject to appropriate regulatory review</p>	<p>“commence” means the first carrying out of any licensed marine activities authorised by this marine licence, save for operations consisting of offshore site preparation works, pre-construction monitoring surveys approved under this licence and “commenced” and “commencement” must be construed accordingly;</p> <p>...</p> <p>“offshore site preparation works” means any activities within the Order limits seaward of MHWS undertaken prior to the commencement of construction to prepare for construction, including but not limited to surveys, monitoring, boulder clearance and sandwave clearance;</p>	<p>1</p>
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			and sign off prior to any works commencing.”		
Article 1 - Interpretation		Applicant	Definition of Development Principles added.	<i>“Development Principles” means the document certified as the Development Principles by the Secretary of State for the purposes of the Order under article 36 (certification of plans and documents etc);</i>	6
Article 1 - Interpretation		Applicant	Due to amendments to conditions - see below.	“European offshore marine site” has the meaning given in regulation 18 of the 2017 Regulations;	1

Article 1 - Interpretation		Applicant	Due to amendments to conditions - see below.	<i>"in principle Hornsea Three Southern North Sea Site of Community Importance Site Integrity Plan"</i> means the document certified as the in principle Hornsea Three Southern North Sea Site of Community Importance Site Integrity Plan by the Secretary of State for the purposes of this Order;	1
Article 1 - Interpretation		Applicant	Due to amendments to conditions - see below.	<i>"Markham's Triangle pMCZ"</i> means the proposed MCZ shown on Figure 3.1 of Volume 5, Annex 2.3 of the environmental statement;	4
Article 1 - Interpretation		Natural England	Amendment as Markham's Triangle is recommended MCZ.	"Markham's Triangle p MCZ" means the proposed recommended MCZ shown on Figure 3.1 of Volume 5, Annex 2.3 of the environmental statement;	6
Article 1 - Interpretation		Historic England	The definition of "statutory historic body" as listed within Schedule 11, Part 1, Section 1, paragraph 1 and Schedule 12, Part 1, Section 1, paragraph 1 is given as 'Historic England or its successor in function'. This should be amended to the 'Historic Building and Monuments Commission for England'.	"statutory historic body" means Historic <i>Building and Monuments Commission for England</i> England or its successor in function;	4
Article 1(4)(a)		MMO	The correct contact details for the Marine Management Organisation are as follows: Marine Management Organisation, Marine Licensing Team, Lancaster House Hampshire Court, Newcastle Business Park, Newcastle upon Tyne, NE4 7YH Tel: 0300 123 1032	Offshore Marine Licensing <i>Team</i> Lancaster House Hampshire Court Newcastle Business Park Newcastle upon Tyne NE4 7YH Tel: 0300 123 1032;	1

<p>Article 2 - Details of licensed marine activities</p>		<p>Examining Authority</p>	<p>Paragraph 5.5.1.2 of the Report to Inform Appropriate Assessment [APP-051] states that material from sandwaves cleared within The Wash and North Norfolk Coast SAC would be deposited within the site boundary. How has this mitigation been secured in the dDCO and/or DMLs?</p>	<p>(a) the deposit at sea <i>within the Order limits seaward of MHWS</i> of the substances and articles specified in paragraph 4 below <i>and up to 1,344,318 cubic metres of inert material of natural origin produced during construction drilling or seabed preparation for foundation works and cable sandwave preparation works within Work No. 1;</i> (b) the construction of works in or over the sea and/or on or under the sea bed; (c) dredging for the purposes of seabed preparation for foundation works and/or electrical circuit works; the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation; (d) boulder clearance works either by displacement ploughing or subsea grab technique or any other equivalent method; (e) removal of static fishing equipment; (e) the disposal within the Order limits seaward of MHWS of up to 1,344,318 cubic metres of inert material of natural origin produced during construction drilling or seabed preparation for foundation works and cable sandwave preparation works within Work No. 1; and (g)(f) site preparation works.</p>	<p>1</p>
<p>Article 3 - Details of licenced marine activities</p>		<p>Applicant</p>	<p>To correct drafting error.</p>	<p>devices;. <i>and (c) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development.</i></p>	<p>1</p>
<p>Article 6 - Details of licenced marine activities</p>	<p>Deleted.</p>	<p>MMO and Natural England</p>	<p>As above</p>	<p>6. Any offshore site preparation works undertaken shall not be considered to have commenced the licenced activities for the purposes of any condition of this licence that requires any discharge prior to such commencement.</p>	<p>1</p>

<p>Article 8 - Details of licenced marine activities</p>	<p>Article 7</p>	<p>Applicant</p>	<p>To correct drafting error.</p>	<p>8. The provisions of section 72 of the 2009 Act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 5 (benefit of the Order).</p>	<p>1</p>
<p>Article 10 - Details of licenced marine activities</p>	<p>Article 9</p>	<p>Applicant</p>	<p>To correct drafting error.</p>	<p>Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority MMO or that other person that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.</p>	<p>1</p>
<p>Article 10 - Details of licenced marine activities</p>	<p>Article 9</p>	<p>MMO</p>	<p>Deletion requested</p>	<p>1. Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the MMO or that other person that the subject matter of the agreement sought that it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.</p>	<p>6</p>
<p>PART 2 — Conditions</p>					

<p>Condition 1 - Design parameters</p>		<p>Examining Authority</p>	<p>The drafting of Condition 1 assumes a scheme of either up to 160 WTG or precisely 300 WTG.</p> <p>Does this drafting cover the range of possible combinations of WTG numbers, types and layouts that is contemplated in the application?</p>	<p><i>1.—(1) The total number of wind turbine generators comprised in the authorised project must not exceed 300 and a total rotor swept area of 9km².</i></p> <p><i>(2) Subject to paragraph (3), each wind turbine generator forming part of the authorised project must not—</i></p> <p><i>(a) exceed a height of 325 metres when measured from LAT to the tip of the vertical blade;</i></p> <p><i>(b) exceed a rotor diameter of 265 metres;</i></p> <p><i>(c) be less than 34.97 metres from LAT to the lowest point of the rotating blade; and</i></p> <p><i>(d) be less than one kilometre from the nearest wind turbine generator in all directions.</i></p> <p><i>(3)The reference in sub-paragraph (2)(d) to the location of a wind turbine generator is a reference to the centre point of that wind turbine generator</i></p> <p>Subject to paragraph (2), wind turbine generators forming part of the authorised project must not—</p> <p>(2) 2.—(1) Subject to paragraph (2), wind turbine generators forming part of the authorised project must not—</p> <p>(a) in the event that the total number of wind turbine generators constructed is 160 or fewer—</p> <p>(i) exceed a height of 325 metres when measured from LAT to the tip of the vertical blade; and</p> <p>(ii) exceed a rotor diameter of 265 metres.</p> <p>(b) in the event that the total number of wind turbine generators constructed is 300—</p> <p>(i) exceed a height of 250 metres when measured from LAT to the tip of the vertical blade; and</p> <p>(ii) exceed a rotor diameter of 195 metres.</p> <p>(c) be less than one kilometre from the nearest wind turbine generator in all directions; and</p> <p>(d) be less than 34.97 metres from LAT to the lowest point of the rotating blade.</p> <p>(2) References to the location of a wind turbine</p>	<p>1</p>
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				generator are reference to the centre point of that wind turbine generator.	
Condition 2 - Design parameters		Natural England	The number of cable crossings assessed is 44, yet the description of works describes one or more, this does not limit the crossings to the maximum number assessed.	<i>(8) The total number of cable crossings when combined with the deemed marine licence granted under Schedule 12 of the Order must not exceed 44, unless otherwise agreed between the undertaker and the MMO.</i>	4

<p>Condition 2 - Design parameters</p>		<p>Applicant</p>	<p>To address comments from stakeholders regarding securing maximum of 10.5% of infrastructure in Markham's Triangle pMCZ.</p>	<p><i>(9) In the event that Markham's Triangle pMCZ is designated as an MCZ, no more than— (a) 32 wind turbine generators; (b) one offshore accommodation platform; (c) 263,855 cubic metres of scour protection; (d) 87.3 kilometres of array cables; (e) 87,150 cubic metres of cable protection; and (f) 126,768 square metres of scour protection may be located within the boundaries of Markham's Triangle pMCZ.</i></p>	<p>4</p>
<p>Condition 2</p>		<p>Natural England</p>	<p>Markham's Triangle is now a recommended MCZ.</p>	<p>(9) In the event that Markham's Triangle pMCZ is designated as an MCZ, no more than- ... may be located within the boundaries of Markham's Triangle pMCZ.</p>	<p>6</p>

<p>Condition 3(1) - Design Parameters</p>		<p>MMO</p>	<p>The DCO proposes 2,201,000m³ volume of cable protection excluding cable crossings. The maximum volume of protection for cable crossings proposed is 784,875m³. The total volume of cable protection in the draft DCO is 2,985,875m³. Cable protection proposed in the ES project description however states the following:</p> <ul style="list-style-type: none"> • Export cable: 1,146,000m³ (Table 3.46, page 37) • Cable crossing: 1,146,000m³ (Table 3.48, page 38) • Array cables: 830,000m³ (Table 3.33, page 29) • Interconnectors: 225,000m³ (Table 3.50, page 38). <p>The total volume of cable protection proposed in the ES project description is therefore 3,347,000m³, which is significantly higher than that stated in the DCO.</p> <p>Schedule 11 defines the volume of cable protection as 1,055,000m³ whereas Schedule 12 defines a total volume of 1,371,000m³. Added together, the DMLs propose a total volume of 2,426,000m³. Neither of the draft DMLs give any indication as to whether the total volumes include cable protection for cable crossings.</p>	<p>3—(1) The total length of the cables in Work No.1(c) and the volume of their cable protection (<i>excluding cable crossings</i>) when combined with the cable authorised under Work No.2(c) of the deemed marine licence granted under Schedule 12 of the Order must not exceed the following—</p>	<p>1</p>
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			<p>The footprint of cable protection (excluding cable crossings) proposed in the DCO identifies a maximum footprint of 1,540,700m² in addition to the maximum footprint for cable crossings of 747,500m². Calculated together the DCO proposes a maximum footprint for cable protection of 2,288,299m². The cable protection footprint proposed in the ES project description is as follows:</p> <ul style="list-style-type: none"> • Export cable: 802,200m² (Table 3.46, page 37) • Cable crossing: 802,200m² (Table 3.48, page 38) • Array cables: 581,000m² (Table 3.33, page 29) • Interconnectors: 157,500m² (Table 3.50, page 38) <p>The total volume of cable protection proposed in the ES project description therefore amounts to 2,342,900m², which is significantly higher than that proposed in the DCO. The MMO requests further clarification of the cable protection footprint and volume and for corrections to be made to the DCO, DMLs and ES accordingly.</p>		
N/A	Condition 4 - Phases of	Applicant	New conditions- added to clarify phasing requirements.	<i>4.—(1) The authorised development may not be commenced until a written scheme setting out the phases of construction of the authorised</i>	1

	authorised development			<i>project has been submitted to and approved by the MMO. (2) The scheme must be implemented as approved.</i>	
N/A	Condition 4 - Phases of authorised development	Examining Authority	Whether it would be appropriate to limit the number of phases to 2 in the interests of clarity and certainty	<i>(2) The phases of construction referred to in paragraph (1) shall not exceed two, save that each phase may be undertaken in any number of stages as prescribed in the written scheme.</i>	4
N/A	Condition 6 - Extension of time periods	MMO	Both DMLs set out the requirement for all pre-construction documentation and plans under Condition 11 or 12 to be submitted for approval 4 months prior to the commencement of any licenced activity. Considering the increased size and complexity of the Round 3 offshore wind farm projects and the increasing number of issues encountered on previous offshore wind farm projects throughout the pre-construction approval process, the MMO consider that a timeframe of 6 months would be more appropriate to address such issues through consultation prior to their approval.	<i>6. Any time period given in this licence given to either the undertaker or the MMO may be extended with the agreement of the other party.</i>	1

<p>Condition 5(6) - Notfications and Inspections</p>	<p>Condition 7</p>	<p>MMO</p>	<p>The MMO recommends that notification to the MMO Coastal Office should be included, to ensure that the MMO's local office are aware of completion of activities. Notification should take place within 5 days of the completion of the licenced activity. Please see recommended condition wording below and should also be applied to Schedule 12: The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the licensed activities or any part of them and within 5 days of the completion of the licenced activity.</p>	<p>"(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the licensed activities or any part of them <i>and within five days of the completion of the licenced activity.</i>"</p>	<p>1</p>
<p>Condition 5(7) - Notfications and Inspections</p>	<p>Condition 7</p>	<p>Applicant</p>	<p>The Applicant has been advised that this is a standard condition for Trinity House.</p>	<p>(7) The undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised project or relevant part— (a) at least ten <i>fourteen</i> days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and (b) on completion of construction of all offshore activities. Confirmation of notification must be provided to the MMO within five days.</p>	<p>1</p>

<p>Condition 6(1) - Aids to navigation</p>	<p>Condition 8(1)</p>	<p>Trinity House</p>	<p>Trinity House do not consult with DIO.</p>	<p>The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning of the authorised project seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation as Trinity House in consultation with Defence Infrastructure Organisation Safeguarding may from time to time direct.</p>	<p>4</p>
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<p>Condition 8 - Aviation Safety</p>	<p>Condition 10</p>	<p>Defence Infrastructure Organisation Safeguarding</p>	<p>I can advise that the MOD considers that the current version of condition 6(1) (Aids to navigation) does not sufficiently address the department's concern relating to the provision of aviation warning lighting to maintain the safety of military aircraft engaged in low flying training activities.</p> <p>It is noted that paragraph 6-(1) of the drafted condition does define a requirement for the undertaker to maintain lighting and other aids to navigation on the seaward element of the authorised project for the prevention of danger to navigation.</p> <p>The condition as drafted identifies that the undertaker will receive direction on the relevant requirements from Trinity House (in consultation with Defence Infrastructure Organisation Safeguarding). However, it is not made clear whether this specifically relates to aviation.</p> <p>Condition 11- (1) (j) defines a requirement for the undertaker to submit an aid to navigation management plan to fulfil the requirements of condition 6. The discharge of this condition</p>	<p>10.—(1) <i>The undertaker must exhibit such lights, with such shape, colour and character as are required in writing by Air Navigation Order 2016() and determined necessary for aviation safety in consultation with the Defence Infrastructure Organisation Safeguarding and as directed by the Civil Aviation Authority.</i></p> <p>(2) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, at least 14 days prior to the commencement of the authorised project, in writing of the following information—</p>	<p>4</p>
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			<p>is to be undertaken by the Marine Management Organisation (MMO) following consultation only with Trinity House.</p> <p>Regulation of the operation of the approved navigation aids for the duration of the approved project is implemented through conditions 6 -(3) and 6 – (4) which respectively obligate the undertaker to report on the availability of navigational aids and to provide notification of any failure of navigational aids. These conditions are discharged exclusively by the MMO and Trinity House. This, in conjunction with the assignment of a separate sub section on Aviation safety (condition 8), indicates that condition 6 is designed to only implement requirements for maritime navigation.</p> <p>To address this issue, it is recommended that an additional requirement is added to condition 8 along the following lines:</p> <p>The undertaker must, no later than 6 months prior to the commencement of the authorised project seaward of MHWS, submit an aviation lighting plan (“ALP”) for the</p>		
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			<p>written approval of the MMO, in consultation with Defence Infrastructure Safeguarding. The ALP must provide that the authorised project, seaward of MHWS, be lit in accordance with the current Ministry of Defence military low flying lighting guidance that is in place as at the date of the MMO approval of the ALP. The authorised project must, at all times, be constructed and operated in accordance with the approved ALP.</p> <p>This should serve to make it clear to the undertaker that there is a need for them to install and maintain relevant aviation warning lighting on the offshore element of the of the approved project for the duration of its operation in addition to those aids required to maintain maritime navigational safety. This also provides a dedicated mechanism for the submission and approval of aviation lighting.</p>		
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<p>Condition 10</p>		<p>MMO</p>	<p>Requested timescale for notification of commencement of authorised project.</p>	<p>(2) The undertaker must notify the Defence Infrastructure Organisation Safeguarding <i>and the MMO</i>, at least 14 days prior to the commencement of the authorised project, in writing of the following information— ... and the Defence Infrastructure Organisation Safeguarding must be notified of any changes to the information supplied under this paragraph and of the completion of the construction of the authorised project. Copies of notifications must be provided to the MMO.</p>	<p>6</p>
<p>Condition 11(1) - Pre-Construction plans and documentation</p>	<p>Condition 13(1) - Pre-Construction plans and documentation</p>	<p>Examining Authority</p>	<p>Should Trinity House and the Maritime and Coastguard Agency be added as consultees for Condition 13(1)?</p>	<p>The licensed activities or any phase of those activities must not commence until the following (insofar as relevant to that activity or phase of activity) has been submitted to and approved in writing by the MMO, <i>in consultation with Trinity House and the MCA</i>—</p>	<p>4</p>
<p>Condition 11(1)(a)(i) and (v)</p>	<p>Condition 13(1)(a)(i) and (v)</p>	<p>Examining Authority</p>	<p>Condition 11(1)(a)(v) provides for the indicative layout of the WTGs to be approved.</p> <p>A) Why would the layout only be indicative?</p> <p>B) At what stage (if any) would the MMO approve the actual layout?</p>	<p>(a) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, which shows — (i) the proposed location, including grid co-ordinates <i>of the centre point of the proposed location for each wind turbine generator and offshore accommodation platform, subject to any micro-siting required due to anthropological constraints, environmental constraints or difficult ground conditions</i> and choice of foundation types for all wind turbine generators and offshore accommodation platforms; (ii) the number, specifications and dimensions of the wind turbine generators in that phase; (iii) the length and arrangement of cable comprising Work No. 1(c); (iv) the dimensions of all monopile foundations, mono suction bucket foundations, jacket foundations or gravity base foundations;</p>	<p>1</p>

				(v) a plan showing the indicative layout of all wind turbine generators and offshore accommodation platforms including all exclusion zones; and	
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<p>Condition 11(1)(a)(vi)</p>	<p>Condition 13(1)(a)(v)</p>	<p>MMO and Natural England</p>	<p>MMO's comment:</p> <p>“The requirement for a design plan to be approved by the MMO has been removed from the DMLs since this information has been included in the ES. The MMO suggests that the design plan should be approved post-consent to allow for consideration as to whether the final project plan sits within the consented envelope. Please see paragraph 1.35 for further detail.”</p> <p>Natural England's comments:</p> <p>“Natural England does not agree with the proposed approach of removing the condition for submitting a design plan to the MMO if it 'is within the scope of the ES'. Given the number of times Natural England and the MMO have had a different opinion to that of the developer on what is within an approved project envelope, removing such a condition would be inappropriate, in our view. There is a potential risk of the envelope not being checked as no response is required, and it will mean Natural England is not even consulted on the design plan.”</p>	<p>(vi) any exclusion zones/micrositing requirements identified in any mitigation scheme pursuant to sub-paragraph 13(2)(d)11(2)(d) or relating to any Annex I reefs identified as part of surveys undertaken in accordance with condition 17;</p> <p>to ensure conformity with the description of Work No. 1 and compliance with conditions 1 to (2) above save that where the proposed layout prescribed in the design plan design provided under this condition is in accordance with the development principles set out volume 2, chapter 7, and volume 5, annex 7.1 to the environmental statement that the layout shall not require the consent of the MMO shall not be required.</p>	<p>1</p>
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			<p>“The standard approach of all offshore wind farms is to conduct a preconstruction survey to ensure there are no habitats of ecological importance and where they are present every effort should be made to avoid impacting on them. The Generation DML also has no pre-construction or post construction monitoring requirement to identify any features of ecological importance. The DMLs do not include a requirement to micro-site around habitats of ecological importance outside of European designated sites (only reference to micro siting outside the sites relates to archaeological features). It is Natural England’s view that the lack of micro-siting and monitoring requirements is not appropriate. We also question how the project intends to micro-site within a European site if no pre-construction survey to identify ecological features is proposed under the Generation DML. The lack of surveys outside of designated sites could also lead to disposal activities occurring affecting ecologically important habitats.”</p> <p>Given the detailed design principles agreed, the Applicant</p>		
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			considers a compromise to be appropriate that where the layout of the turbine array is agreed, this does not require MMO consent.		
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Condition 11(1)(a)	Condition 13(1)(a)	Applicant	To reflect agreement with MMO.	to ensure conformity with the description of Work No. 1 and compliance with conditions 1 to 3(2) above save that where the proposed layout prescribed in the design plan under this condition is in accordance with the development principles set out volume 2, chapter 7, and volume 5, annex 7.1 to the environmental statement that the layout shall not require the consent of the MMO.	4
Condition 11(1)(d)	Condition 13(1)(d)	Applicant	Drafting error	(d) a project environmental management <i>plan</i> and monitoring plan covering the period of construction and operation to include details of—	4
Condition 11(1)(d)	Condition 13(1)(d)	Historic England	We wish to see included under Schedule 11 (Generation Assets), Part 2, Article 13(1)(d) as an additional paragraph (vii) the following: “all spatial data for Archaeological Exclusion Zones and application of a Protocol for Archaeological Discoveries under Section 13. This is to ensure the adherence to the protocol and the avoidance of Archaeological Exclusion Zones (AEZs) by the applicant and their chosen contractors through the construction and operation phases of the project.”	<i>(vii) all spatial data for archaeological exclusion zones and application of a protocol for archaeological discoveries in accordance with the written scheme of investigation required under condition 13(2).</i>	4
Condition 11(1)(f)	Condition 13(1)(f)	Historic England	Schedule 11 (Generation Assets), Part 2, Article 13(1)(f) to be amended as follows: “proposed pre-construction monitoring surveys, constructing monitoring, postconstruction monitoring and related reporting in accordance with conditions 17, 18 and 19.”	(f) proposed pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting in accordance with conditions <i>17, 18 and 19.</i>	4

Condition 11(1)(h)	Condition 13(1)(h)	Natural England	Following discussions with the Applicant.	<p><i>(ii) a sandwave clearance plan for all designated sites affected, including details of the volumes of material to be dredged, timing of works, locations for disposal and monitoring proposals;</i></p> <p>...</p> <p><i>(iv) a cable protection plan for all designated sites where cable protection is required, including details of the volumes, material, locations and seabed footprints for cable protection measures, where required, consideration of alternative methods of protection and monitoring proposals; and</i></p>	4
Condition 11(1)(h)	Condition 13(1)(h)	Examining Authority	<p>The ES [APP-067] discusses the vessel to subsea structure allision risk resulting from presence of subsea high voltage alternating current (HVAC) booster stations and cable protection. Section 18.4 of the Navigational Risk Assessment [APP-112] identifies a key area of risk approximately 5nm north of the landfall location, together with specific cable/pipeline crossings which may be of concern.</p> <p>Please provide further information about the existing depths of water, the likely reductions in depth due to subsea works and the range of draughts of vessels typically navigating through these areas of risk/concern.</p> <p>The ES refers to potential further mitigation being required should subsea offshore HVAC</p>	<p><i>(ii) a detailed cable laying plan for the Order limits, incorporating a burial risk assessment encompassing the identification of any cable protection that exceeds 5% of navigable depth referenced to Chart Datum and, in the event that any area of cable protection exceeding 5% of navigable depth is identified, details of any steps (to be determined following consultation with the MCA) to be taken to ensure existing and future safe navigation is not compromised or similar such assessment to ascertain suitable burial depths and cable laying techniques, including cable protection; and</i></p>	1

			booster stations be utilised. Please give examples of what such further mitigation might be.		
Condition 11(1)(h)	Condition 13(1)(h)	MMO	In addition, the MMO recommended that the DCO should make reference of the total number of cable crossings required and the maximum volume and area of cable protection required for each crossing.	(v) <i>proposals for the volume and areas of cable protection to be used for each cable crossing;</i>	4
N/A	Conditions 13(1)(k) and 13(1)(l)	Applicant	See conditions 18-20 below.	(k) <i>a plan for marine mammal monitoring setting out the circumstances in which marine mammal monitoring will be required and the monitoring to be carried out in such circumstances.</i> (l) <i>an ornithological monitoring plan setting out the circumstances in which ornithological monitoring will be required and the monitoring to be carried out in such circumstances.</i>	1

Condition 11(2)	Condition 13(2)	Examining Authority	Condition 11(2) provides for a written scheme of archaeological investigation to be submitted. A) Does the drafting make clear that this scheme would be subject to the approval of the MMO?	The licensed activities or any part of those activities must not commence unless no later than six months prior to the commencement a written scheme of archaeological investigation has been submitted to and approved by the MMO, in accordance with the outline written scheme of investigation, and in accordance with industry good practice, in consultation with the statutory historic body to include- ... (e) monitoring of archaeological exclusion zones during and post construction, including provision of a report on such monitoring;	1
Condition 11(2)	Condition 13(2)	Applicant	To reflect experience of Applicant relating to timescales on similar projects.	(c) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within four six months of any survey being completed;	4
Condition 11(2)	Condition 13(2)	Examining Authority	Consequential amendment for request for clarity on WSIs.	(2) The licensed activities or any part of those activities must not commence unless no later than six months prior to the commencement a written scheme of archaeological investigation has been submitted to and approved by the MMO, in accordance with the outline offshore written scheme of investigation, and in accordance with industry good practice, in consultation with the statutory historic body to include	6

N/A	Condition 13(3)	MMO	<p>The MMO recommends inclusion of the following condition to ensure that no known or unknown archaeological artefacts are at risk from the proposed investigation works;</p> <p>Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a specific Written Scheme of Investigation which is itself in accordance with the details set out in the outline offshore Written Scheme of Investigation, and which has been submitted to and approved by the MMO</p>	<p><i>(3) Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a specific outline written scheme of investigation (which must accord with the details set out in the outline offshore written scheme of investigation) which has been submitted to and approved by the MMO.</i></p>	1
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<p>N/A</p>	<p>Conditions 13(5)</p>	<p>Natural England</p>	<p>The DMLs have proposed the inclusion of a mitigation condition for harbour porpoise in the Southern North Sea cSAC/SCI similar to that included in Hornsea Project Two. Natural England notes that a Marine Mammal Mitigation Protocol will be provided to remove the risk of potential death and/or injury to marine mammals. In addition, the Project should have a Site Integrity Plan – a live document, which needs to be updated prior to construction to inform the relevant authority's Appropriate Assessment of disturbance to harbour porpoise</p>	<p><i>(5) In the event that driven or part-driven pile foundations are proposed to be used, the licenced activities, or any phase of those activities must not commence until a Site Integrity Plan which accords with the principles set out in the in principle Hornsea Three Southern North Sea Site of Community Importance Site Integrity Plan has been submitted to the MMO and the MMO is satisfied that where the plan concludes that mitigation is necessary to avoid adversely affecting the integrity (within the meaning of the 2017 Regulations) of the Southern North Sea candidate Special Area of Conservation, it provides for such mitigation, to the extent that harbour porpoise are a protected feature of that site.</i></p> <p>(4) In the event that driven or part-driven pile foundations are proposed to be used, the MMO must not approve the plan referred to in paragraph (1)(a) unless the MMO is satisfied, after consulting such persons as the Secretary of State may specify (in addition to the persons with whom consultation is otherwise required under this Condition), that the plans provide such mitigation as is necessary to avoid adversely affecting the integrity (within the meaning of the 2017 Regulations) of a relevant site, to the extent that marine mammals are a protected feature of that site.</p> <p>(5) The mitigation referred to in paragraph (4) may include (without limitation) —</p> <p>(a) seasonal restrictions to piling;</p> <p>(b) scheduling of piling, having regard to previous, ongoing and future piling associated with other offshore developments, based on an updated assessment of cumulative impacts;</p> <p>(c) the use of alternative foundation</p>	<p>1</p>
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				<p>methodologies, such as jacket foundations or gravity base foundations; (d) the use of noise reduction at source technologies; and (e) the use of other relevant technologies or methodologies that may emerge in the future. (6) In paragraph (4), “relevant site” means — (a) a European offshore marine site; or (b) a European site.</p> <p>Following definition added:</p> <p><i>“In principle Hornsea Three Southern North Sea Site of Community Importance Site Integrity Plan” means the document certified as the in principle Hornsea Three Southern North Sea Site of Community Importance Site Integrity Plan by the Secretary of State for the purposes of this Order;</i></p> <p>And following definition removed:</p> <p>“European offshore marine site” has the meaning given in regulation 18 of the 2017 Regulations;</p>	
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N/A	Condition 13(6)	Examining Authority	<p>Paragraph 4.11.1.33 of the ES [APP-064] considers maximum hammer energy for piling operations. The MMO [RR-085] recommends that a condition is included to restrict the maximum hammer energy to the worst case scenario (5,000kJ), as assessed in the ES. However, that maximum relates to a WTG type which may not be used. There is an example (Dogger Bank Teesside A and B) of imposing limits relevant to the various foundation types under consideration.</p>	<p><i>(6) In the event that driven or part-driven pile foundations are proposed to be used, the hammer energy used to drive or part-drive the pile foundations must not exceed 5,000kJ.</i></p>	1
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<p>Condition 12(1) - Pre-Construction plans and documentation</p>	<p>Condition 14(1)</p>	<p>MMO and Natural England</p>	<p>MMO's comment:</p> <p>"The DML for the Generation Assets (Schedule 11) Condition 11 (2) (f) sets out the monitoring requirements for the pre-construction documentation. This condition is linked to the standard pre-construction timing requirement which states that all documentation is required to be submitted no less than 4 months prior to the commencement of the licenced activities. The MMO advises that pre-construction monitoring should have been undertaken well in advance of this date."</p> <p>Natural England's comment:</p> <p>"The generation DML Part 2 Condition 11 (2) (f) secures the monitoring requirements within pre-construction plans. However, this condition is linked to the standard pre-construction timing requirement of 4 months before commencement. Clearly this is inappropriate given monitoring will need to be conducted well in advance of this date."</p>	<p>Each programme, statement, plan, protocol or scheme required to be approved under condition 134 (save for that required under condition 13(1)(f)) must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.</p>	<p>1</p>
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<p>Condition 12(2)</p>	<p>Condition 14(2)</p>	<p>MMO and Natural England</p>	<p>“The proposed timescales conditioned in the DMLs require a response period of 8 weeks following receipt of all post-consent documentation. The MMO considers that this would not provide sufficient time for consultation and subsequent comment, based on the experience of offshore wind farm licence management in the past. The MMO recommends that a minimum period of 6 months is applied for consideration of post-consent documentation submission to allow for sufficient stakeholder consultation and comment to be provided. The MMO also recommends removal of the requirement that any failure to provide a decision in time may lead for the matter to be referred to arbitration.”</p>	<p>(2) The MMO shall determine any application for approval consent made under condition 13 this article within a period of four months eight weeks commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.</p>	<p>1</p>
<p>Condition 12(3)</p>	<p>Condition 14(3)</p>	<p>MMO and Natural England</p>	<p>Natural England made similar comments.</p> <p>The Applicant considers that a four month period is an appropriate compromise.</p>	<p>(3) Where the MMO is minded to refuse an application for approval consent made under condition 13 14 (save that required under condition 13(1)(f)) and notifies the undertaker accordingly, or the Secretary of State fails to determine the application for consent under this article within the period prescribed in paragraph (2), the undertaker may refer the matter for determination in accordance with article 36 (arbitration) of the Order.</p>	<p>1</p>

	Condition 14(2)	Applicant	Inclusion of provision to deal with a material change in circumstances that would necessitate an amendment to the Development Principles	<p><i>(2) The design plan required by condition 13(1)(a) shall be prepared by the undertaker and approved by the MMO in accordance with the Development Principles, save where a material change in circumstances requires amendment of one or more of them, in which case—</i></p> <p><i>(a) the undertaker or MMO may amend the relevant Development Principle(s) following consultation with the MCA and Trinity House; and</i></p> <p><i>(b) an application for approval of the design plan shall be determined in accordance with the amended Development Principles—</i></p> <p><i>(i) as agreed between the MMO and undertaker; or</i></p> <p><i>(ii) determined in accordance with [article 37 (arbitration) OR article 38 (requirements, appeals, etc.)] of the Order.</i></p>	6
Condition 12(3)	Condition 14(3)	Applicant	Correct drafting error.	<p>(3) Where the MMO is minded to refuse an application for approval made under condition 13 and notifies the undertaker accordingly, or the Secretary of State MMO fails to determine the application for consent approval under this article condition 13 within the period prescribed in sub-paragraph (2), the undertaker may refer the matter for determination in accordance with article 37 (arbitration) of the Order.</p>	4

<p>Condition 12(3)</p>	<p>Condition 14(4)</p>	<p>Applicant</p>	<p>Further to drafting changes relating to possible inclusion of MMO appeal mechanism.</p>	<p>(3) Where the MMO is minded to refuse an application for approval made under condition 13 and notifies the undertaker accordingly, or the MMO fails to determine the application for approval under condition 13 within the period prescribed in sub-paragraph (3), the undertaker may refer the matter for determination in accordance with [article 37 (arbitration) <i>OR article 38 (requirements, appeals, etc.)</i>] of the Order.</p>	<p>6</p>
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<p>Condition 15 - Pre-Construction Monitoring and surveys</p>	<p>Condition 17 - Pre-Construction Monitoring and surveys</p>	<p>MMO and Natural England</p>	<p>MMO Comment:</p> <p>"1.8. Neither of the DMLs include any requirement for micro-siting around features of ecological importance outside of any European Designated Site. In addition, no conditions for pre- or post-construction monitoring for features of ecological importance have been included in the Generation Assets DML (Schedule 11?). The MMO notes that it is a standard approach of all offshore wind developments to conduct pre- and post-construction surveys to ensure that there will be no impacts on features of ecological importance outside of any European Designated Site. The MMO suggests that the applicant provides details of pre- and post-construction monitoring surveys to inform micro-siting around any features of ecological importance prior to the commencement of any licenced works and to provide evidence post-construction as to the impact on any such features as a result of the development. Please see paragraph 1.47 and 1.67 for further detail."</p> <p>Natural England's comment:</p>	<p>(1) The undertaker must in discharging condition 13(1)(f) submit a monitoring plan or plans in accordance with an in-principle monitoring plan for written approval by the MMO in consultation with the relevant statutory bodies, which shall contain details of proposed surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report , and; (a) the survey proposals must be in general accordance with the principles set out in the in-principle monitoring plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement; and (b) the baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the preconstruction position, with any limitations, and must make clear what post-construction comparison is intended and the justification for this being required. (2) Subject to receipt from the undertaker of specific proposals pursuant to this Condition, so far as applicable, the pre-construction surveys must comprise, in outline— (a) a high-resolution swath bathymetric survey to include a 100% coverage and a side-scan sonar survey of the parts of the offshore Order limits within which it is proposed to carry out construction works and disposal activities under this licence, to determine the location, extent and composition of any biogenic or geogenic reef features, as set out within the in-principle monitoring plan;</p>	<p>1</p>
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			<p>"A.5. The standard approach of all offshore wind farms is to conduct a preconstruction survey to ensure there are no habitats of ecological importance and where they are present every effort should be made to avoid impacting on them. The Generation DML also has no pre-construction or post construction monitoring requirement to identify any features of ecological importance. The DMLs do not include a requirement to micro-site around habitats of ecological importance outside of European designated sites (only reference to micro siting outside the sites relates to archaeological features). It is Natural England's view that the lack of micro-siting and monitoring requirements is not appropriate. We also question how the project intends to micro-site within a European site if no pre-construction survey to identify ecological features is proposed under the Generation DML. The lack of surveys outside of designated sites could also lead to disposal activities occurring affecting ecologically important habitats."</p>	<p><i>(b) any marine mammal monitoring required by the plan for marine mammal monitoring submitted in accordance with condition 13(1)(k);</i> <i>(c) any ornithological monitoring required by the Ornithological Monitoring Plans submitted in accordance with condition 13(1)(l); and</i> <i>(d) a full sea floor coverage swath-bathymetry survey within the Order limits to inform future navigation risk assessments as part of the cable specification and installation plan.</i> <i>(3) The undertaker must carry out the surveys specified within the monitoring plan or plans in accordance with that plan or plans, unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation body.</i></p>	
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N/A	Condition 17(2)	MMO	The MMO has reviewed this wording and recommends the removal of the phrase 'so far as applicable' from the conditions. The MMO does not agree that this phrase is required in this context as the monitoring outlined in conditions 17, 18 and 19 sets out the standard practise to validate predictions made in the ES, and also requirements that have been agreed during the pre-application stage.	Subject to receipt from the undertaker of specific proposals pursuant to this Condition, so far as applicable , the pre-construction surveys must comprise, in outline—	4
N/A	Condition 17(2)(e)	Applicant	Due to update in the draft IPMP.	<i>(e) a high-resolution swath bathymetric survey to include a 100% coverage and a side-scan sonar survey of the parts of the Order limits within which it is proposed to carry out construction works and disposal activities under this licence. Survey to inform the identification of any archaeological exclusion zone and post consent monitoring of any such archaeological exclusion zone.</i>	4

<p>N/A</p>	<p>Condition 18 - Construction Monitoring</p>	<p>MMO</p>	<p>1.36. Part 2 (11) (1) (b) (page 135) - Pre-construction plans and documentation</p> <p>The MMO recommends that submission of a construction programme should also include a construction monitoring plan in line with the principal monitoring plan. Proposed timings for mobilisation should include whether such works will be carried out as a single offshore phase or as multiple phases.</p> <p>Furthermore, the MMO recommends that the construction programme should include proposed pre-construction surveys, baseline report format and content, post-construction monitoring, post-construction monitoring and related reporting in accordance with the relevant monitoring conditions in the DML(s).</p>	<p><i>(1) The undertaker must in discharging condition 13(1)(f) submit a construction monitoring plan or plans for written approval by the MMO in consultation with the relevant statutory nature conservation body, which shall include details of any proposed construction monitoring, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in general accordance with the principles set out in the in-principle monitoring plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.</i></p> <p><i>(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, so far as applicable, the construction monitoring plan must include, in outline—</i></p> <ul style="list-style-type: none"> <i>(a) where piled foundations are to be employed, unless otherwise agreed by the MMO in writing, details of proposed monitoring of the noise generated by the installation of the first four monopile foundations to be constructed under this licence;</i> <i>(b) a plan for monitoring of the duration of piling activity;</i> <i>(c) details of vessel traffic monitoring by automatic identification system for the duration of the construction period including obligations to report annually to the MMO and the MCA during the construction phase of the authorised development; and</i> <i>(d) vessel traffic monitoring by automatic identification system for the duration of the</i> 	<p>1</p>
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				<p><i>construction period, including annual reporting to the MMO and MCA;</i></p> <p><i>(3) The results of the initial noise measurements generated in accordance with condition 18(2)(a) must be provided to the MMO within 6 weeks of the completion of installation of the fourth foundation of each foundation type for the MMO to determine whether any further noise monitoring shall be required.</i></p> <p><i>(4) The undertaker must carry out the surveys specified within the construction monitoring plan or plans in accordance with that plan or plans, including any further noise monitoring required in writing by the MMO under condition 18(3), unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation body.</i></p>	
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N/A	Condition 18(2)	MMO	<p>The MMO has reviewed this wording and recommends the removal of the phrase ‘so far as applicable’ from the conditions. The MMO does not agree that this phrase is required in this context as the monitoring outlined in conditions 17, 18 and 19 sets out the standard practise to validate predictions made in the ES, and also requirements that have been agreed during the pre-application stage.</p>	<p>Subject to receipt from the undertaker of specific proposals pursuant to this Condition, so far as applicable, the construction surveys must comprise, in outline—</p>	4
N/A	Condition 18(3)	MMO	<p>The MMO recommends that the following condition is added to Schedule 11: (The applicant has added this as an alternative to its own language)</p>	<p><i>(3) The results of the initial noise measurements monitored in accordance with condition 18(2)(a) must be provided to the MMO within six weeks of the installation of the first four piled foundations of each piled foundation type. The assessment of this report by the MMO will determine whether any further noise monitoring is required. If, in the opinion of the MMO in consultation with Natural England, the assessment shows significantly different impact to those assessed in the environmental statement or failures in mitigation, all piling activity must cease until an update to the MMMP and further monitoring requirements have been agreed.</i></p>	6

<p>N/A</p>	<p>Condition 19 - Post Construction Monitoring</p>	<p>MMO</p>	<p>1.68. Part 2 (16) (2) (c) (i) (page 155) – Monitoring and surveys It is unclear from this condition whether post construction monitoring will be undertaken. The MMO requests further clarification of the terms 'representative proportion' and 'sensitive cable protection'.</p>	<p><i>(1) The undertaker must in discharging condition 13(1)(f) submit a post-construction monitoring plan or plans for written approval by the MMO in consultation with the relevant statutory nature conservation body including details of proposed post-construction surveys, including methodologies (including appropriate buffers, where relevant) and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in general accordance with the principles set out in the in-principle monitoring plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the preconstruction position and/or will enable the validation or otherwise of key predictions in the environmental statement.</i></p> <p><i>(2) Subject to receipt of specific proposals, so far as applicable, the post-construction survey plan or plans must include, in outline—</i></p> <ul style="list-style-type: none"> <i>(a) a survey to determine any change in the location, extent and composition of any biogenic or geogenic reef feature identified in the pre-construction survey in the parts of the offshore Order limits in which construction works were carried out. The survey design must be informed by the results of the pre-construction benthic survey;</i> <i>(b) any marine mammal monitoring required by the plan for marine mammal monitoring submitted in accordance with condition 13(1)(k);</i> <i>(c) any ornithological monitoring required by the Ornithological Monitoring Plans submitted in accordance with condition 13(1)(l);</i> <i>(d) details of vessel traffic monitoring by</i> 	<p>1</p>
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				<p><i>automatic identification system, for a period of 28 individual days taking account seasonal variations in traffic patterns over the course of one year to be submitted to the MMO and the MCA no later than one year following completion of the construction phase of the authorised development; and</i></p> <p><i>(e) a full sea floor coverage swath-bathymetry survey of the areas within which construction activity has taken place in order to inform of any dropped objects or residual navigational risk.</i></p> <p><i>(3) The undertaker must carry out the surveys agreed under condition 19(1) and provide the agreed reports in the agreed format in accordance with the agreed timetable, unless otherwise agreed in writing with the MMO in consultation with the relevant statutory nature conservation body.</i></p>	
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N/A	Condition 19(2)	MMO	The MMO has reviewed this wording and recommends the removal of the phrase ‘so far as applicable’ from the conditions. The MMO does not agree that this phrase is required in this context as the monitoring outlined in conditions 17, 18 and 19 sets out the standard practise to validate predictions made in the ES, and also requirements that have been agreed during the pre-application stage.	Subject to receipt from the undertaker of specific proposals, so far as applicable, the post-construction surveys must comprise, in outline—	4
N/A	19(2)(f)	Historic England	Within Schedule 11 (Generation Assets), Part 2, Article 19 and Schedule 12 (Transmission Assets), Part 2, Article 20, we further wish to see provisions for the monitoring of archaeological receptors post-construction, inclusive of AEZs, to ensure that there are no negative impacts from the construction programme in terms of jack-up footprints and scour, thus testing the predictions made within the Environmental Statement.	<i>(f) a bathymetric survey to monitor the effectiveness of archaeological exclusion zones identified to have been potentially impacted by construction works. The data shall be analysed by an accredited archaeologist as defined in the offshore written scheme of investigation required under condition 13(2).</i>	4

N/A	Condition 20 - Timing of Monitoring Report	Natural England	A.6. The generation DML Part 2 Condition 11 (2) (f) secures the monitoring requirements within pre-construction plans. However, this condition is linked to the standard pre-construction timing requirement of 4 months before commencement. Clearly this is inappropriate given monitoring will need to be conducted well in advance of this date.	<i>20. Any monitoring report compiled in accordance with the monitoring plans provided under conditions 17, 18 and 19 must be provided to the MMO no later than four months following completion of the monitoring to which it relates.</i>	1
N/A	Condition 20	Applicant	To provide flexibility on timing.	Any monitoring report compiled in accordance with the monitoring plans provided under conditions 17, 18 and 19 must be provided to the MMO no later than four months following completion of the monitoring to which it relates, <i>unless otherwise agreed with the MMO.</i>	4
N/A	Condition 21 - Updating of cable monitoring plan	MMO	1.47. ... In addition, to allow for consistency in the cable monitoring plan, inclusion of the following condition is recommended for post-construction activities; <i>Following installation of cables, the cable monitoring plan required under condition 11(1)(h)(iii) must be updated with the results of the post-installation surveys. The plan must be implemented during the operational lifetime of the project and reviewed as specified within the plan, following cable burial surveys, or as instructed by the MMO.</i>	<i>Following installation of cables, the cable monitoring plan required under condition 13(1)(h)(iii) must be updated with the results of the post-installation surveys. The plan must be implemented during the operational lifetime of the project and reviewed as specified within the plan, following cable burial surveys, or as instructed by the MMO</i>	1

<p>N/A</p>	<p>Condition 22 - Reporting of impact pile driving</p>	<p>MMO</p>	<p>Under the UK Marine Strategy, all developers are committed to record human activities in UK seas that produce loud, low to medium frequency (10Hz-10kHz) impulsive noise. The MMO therefore requests inclusion of the following conditions in the DML;</p>	<p><i>Only when driven or part-driven pile foundations or detonation of explosives are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry—</i></p> <p><i>(a) prior to the commencement of the licenced activities, information on the expected location, start and end dates of impact pile driving/detonation of explosives to satisfy the Marine Noise Registry’s Forward Look requirements;</i></p> <p><i>(b) at six month intervals following the commencement of pile driving/detonation of explosives, information on the locations and dates of impact pile driving/detonation of explosives to satisfy the Marine Noise Registry’s Close Out requirements;</i></p> <p><i>(c) within 12 weeks of completion of impact pile driving/detonation of explosives, information on the locations and dates of impact pile driving/detonation of explosives to satisfy the Marine Noise Registry’s Close Out requirements</i></p> <p><i>The undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to paragraph (c) above within 7 days of the submission.</i></p> <p><i>For the purpose of this condition—</i></p> <p><i>(a) “Marine Noise Registry” means the database developed and maintained by JNCC on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas;</i></p> <p><i>(b) “Forward Look” and “Close Out” requirements are as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) or any updated information document.</i></p>	<p>1</p>
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N/A	Condition 23 - Reporting of cable protection	NE	Natural England recommends inclusion of a new condition to allow for appropriate reporting on the location of all cable protection, including volumes of cable protection. This reporting is required to ensure the cable protection deployed is within the permitted levels and to inform the need for decommissioning of cable protection and cables in the future.	<p><i>(1) Not more than 4 months following completion of the constriction phase of the project, the undertaker shall provide the MMO and Natural England with a report setting out details of the cable protection used for the authorised scheme.</i></p> <p><i>(2) The report shall include the following information—</i></p> <p><i>(c) location of the cable protection;</i></p> <p><i>(d) volume of cable protection; and</i></p> <p><i>(e) any other information relating to the cable protection as agreed between the MMO and the undertaker.</i></p>	1
SCHEDULE 12 — Deemed Marine Licence under the 2009 Act – Transmission Assets					
PART 1 — Licensed Marine Activities					

<p>Article 1 - Interpretation</p>		<p>MMO and Natural England</p>	<p>MMO comment:</p> <p>“The interpretation of ‘commence’ for both the DCO and DMLs excludes offshore site preparation works. The definition for ‘Offshore Site Preparation Works’ specifically includes surveys and monitoring but also sandwave levelling and boulder clearance. Such a definition also has the potential to include Unexploded Ordinance (UXO) clearance and other works. The MMO considers that offshore preparation works should be included in the interpretation of ‘commence’.”</p> <p>Natural England comment:</p> <p>“Additional to the concerns on arbitration, Natural England cannot agree to the definition of ‘offshore preparation works’ as currently provided within the draft DCO and DMLs. The definition allows works such as sandwave levelling and boulder clearance to be conducted without any regulatory oversight or control of the methodology. These works form a significant part of the impact of the project, including a significant part of the impact to designated sites, and must be subject to appropriate regulatory review</p>	<p>“commence” means the first carrying out of any licensed marine activities authorised by this marine licence, save for operations consisting of offshore site preparation works, pre-construction monitoring surveys approved under this licence and “commenced” and “commencement” must be construed accordingly;</p> <p>...</p> <p>“offshore site preparation works” means any activities within the Order limits seaward of MHWS undertaken prior to the commencement of construction to prepare for construction, including but not limited to surveys, monitoring, boulder clearance and sandwave clearance;</p>	<p>1</p>
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			and sign off prior to any works commencing.”		
Article 1 - Interpretation		Applicant	Definition of Development Principles added.	<i>“Development Principles” means the document certified as the Development Principles by the Secretary of State for the purposes of the Order under article 36 (certification of plans and documents etc);</i>	
Article 1 - Interpretation		Applicant	Due to amendments to conditions - see below.	“European offshore marine site” has the meaning given in regulation 18 of the 2017 Regulations;	1

Article 1 - Interpretation		Applicant	Due to amendments to conditions - see below.	<i>"in principle Hornsea Three Southern North Sea Site of Community Importance Site Integrity Plan"</i> means the document certified as the in principle Hornsea Three Southern North Sea Site of Community Importance Site Integrity Plan by the Secretary of State for the purposes of this Order;	1
Article 1 - Interpretation		Applicant	Due to amendments to conditions - see below.	<i>"interconnector cable"</i> means a network of cables between the offshore substations;	4
Article 1 - Interpretation		Applicant	Due to amendments to conditions - see below.	<i>"Markham's Triangle pMCZ"</i> means the proposed MCZ shown on Figure 3.1 of Volume 5, Annex 2.3 of the environmental statement;	4
Article 1 - Interpretation		Natural England	Amendment as Markham's Triangle is recommended MCZ.	"Markham's Triangle p MCZ" means the proposed recommended MCZ shown on Figure 3.1 of Volume 5, Annex 2.3 of the environmental statement;	6
Article 1 - Interpretation		Applicant	Due to amendments to conditions - see below.	<i>"offshore export cable"</i> means a network of cables for as described in Work No.2(d) and Work No.3(d).	4
Article 1 - Interpretation		Historic England	The definition of "statutory historic body" as listed within Schedule 11, Part 1, Section 1, paragraph 1 and Schedule 12, Part 1, Section 1, paragraph 1 is given as 'Historic England or its successor in function'. This should be amended to the 'Historic Building and Monuments Commission for England'.	"statutory historic body" means Historic <i>Building and Monuments Commission for England</i> England or its successor in function;	4
Article 1(4)(a)		MMO	The correct contact details for the Marine Management Organisation are as follows: Marine Management Organisation, Marine Licensing Team, Lancaster House Hampshire Court, Newcastle upon Tyne	Offshore Marine Licensing <i>Team</i> Lancaster House Hampshire Court Newcastle Business Park Newcastle upon Tyne NE4 7YH Tel: 0300 123 1032;	1

			Tyne, NE4 7YH Tel: 0300 123 1032		
Article 2 - Details of licensed marine activities		Examining Authority	Paragraph 5.5.1.2 of the Report to Inform Appropriate Assessment [APP-051] states that material from sandwaves cleared within The Wash and North Norfolk Coast SAC would be deposited within the site boundary. How has this mitigation been secured in the dDCO and/or DMLs?	(a) the deposit at sea <i>within the Order limits seaward of MHWS</i> of the substances and articles specified in paragraph 4 below <i>and up to 2,218,816 cubic metres of inert material of natural origin produced during construction drilling or seabed preparation for foundation works and cable sandwave preparation works within Work Nos. 2, 3, 4 and 5;</i> (b) the construction of works in or over the sea and/or on or under the sea bed; dredging for the purposes of seabed preparation for foundation works and/or electrical circuit works; (c) boulder clearance works either by displacement ploughing or subsea grab technique or any other equivalent method; (d) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation; (e) removal of static fishing equipment; (e) the disposal within the Order limits seaward of MHWS of up to 2,218,816 cubic metres of inert material of natural origin produced during construction drilling or seabed preparation for foundation works and cable sandwave preparation works within Work Nos. 2, 3, 4 and 5; and (g) (f) site preparation works.	1
Article 3 - Details of licenced marine activities		Applicant	To correct drafting error.	devices;. <i>and (c) temporary landing places, moorings or other means of accommodating vessels in the</i>	1

				<i>construction and/or maintenance of the authorised development.</i>	
Article 6 - Details of licenced marine activities	Deleted.	MMO and Natural England	As above	6. Any offshore site preparation works undertaken shall not be considered to have commenced the licenced activities for the purposes of any condition of this licence that requires any discharge prior to such commencement.	1
Article 8 - Details of licenced marine activities	Article 7		To correct drafting error.	8. The provisions of section 72 of the 2009 Act apply to this licence except that the provisions of sections 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 5 (benefit of the Order).	1
Article 10 - Details of licenced marine activities	Article 9	Applicant	To correct drafting error.	Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the relevant planning authority MMO or that other person that the subject matter of the agreement sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.	1
Article 10 - Details of licenced marine activities	Article 9	MMO	Deletion requested	1. Any amendments to or variations from the approved details must be in accordance with the principles and assessments set out in the environmental statement. Such agreement may only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of the MMO or that other person that the subject matter of the agreement sought that it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.	6

PART 2 — Conditions					
Condition 2(9) - Design parameters		Applicant	To correct drafting error.	9) The volume of scour protection material for offshore electrical installation foundations must not exceed 534,400 291,200 cubic metres.	1
Condition 2 - Design parameters		Natural England	The number of cable crossings assessed is 44, yet the description of works describes one or more, this does not limit the crossings to the maximum number assessed.	<i>(10) The total number of cable crossings when combined with the deemed marine licence granted under Schedule 11 of the Order must not exceed 44, unless otherwise agreed between the undertaker and the MMO.</i>	4
Condition 2 - Design parameters		Applicant	To address comments from stakeholders regarding securing maximum of 10.5% of infrastructure in Markham's Triangle pMCZ.	<i>(11) In the event that Markham's Triangle pMCZ is designated as an MCZ, no more than— (a) one substation; (b) 27,200 cubic metres of scour protection; (c) 41.2 kilometres of interconnector or offshore export cables; (d) 41,200 cubic metres of cable protection; and (e) 17,370 cubic metres of cable protection associated with cable crossings; may be located within the boundaries of Markham's Triangle pMCZ.</i>	4
Condition 2		Natural England	Markham's Triangle is now a recommended MCZ.	(9) In the event that Markham's Triangle p rMCZ is designated as an MCZ, no more than- ... may be located within the boundaries of Markham's Triangle p rMCZ.	6

<p>Condition 3(1) - Design parameters</p>		<p>MMO</p>	<p>The DCO proposes 2,201,000m³ volume of cable protection excluding cable crossings. The maximum volume of protection for cable crossings proposed is 784,875m³. The total volume of cable protection in the draft DCO is 2,985,875m³. Cable protection proposed in the ES project description however states the following:</p> <ul style="list-style-type: none"> • Export cable: 1,146,000m³ (Table 3.46, page 37) • Cable crossing: 1,146,000m³ (Table 3.48, page 38) • Array cables: 830,000m³ (Table 3.33, page 29) • Interconnectors: 225,000m³ (Table 3.50, page 38). <p>The total volume of cable protection proposed in the ES project description is therefore 3,347,000m³, which is significantly higher than that stated in the DCO.</p> <p>Schedule 11 defines the volume of cable protection as 1,055,000m³ whereas Schedule 12 defines a total volume of 1,371,000m³. Added together, the DMLs propose a total volume of 2,426,000m³. Neither of the draft DMLs give any indication as to whether the total volumes include cable protection for cable crossings.</p>	<p>3—(1) The total length of the cables and the volume of their cable protection (<i>excluding cable crossings</i>) must not exceed the following—</p>	<p>1</p>
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			<p>The footprint of cable protection (excluding cable crossings) proposed in the DCO identifies a maximum footprint of 1,540,700m² in addition to the maximum footprint for cable crossings of 747,500m². Calculated together the DCO proposes a maximum footprint for cable protection of 2,288,299m². The cable protection footprint proposed in the ES project description is as follows:</p> <ul style="list-style-type: none"> • Export cable: 802,200m² (Table 3.46, page 37) • Cable crossing: 802,200m² (Table 3.48, page 38) • Array cables: 581,000m² (Table 3.33, page 29) • Interconnectors: 157,500m² (Table 3.50, page 38) <p>The total volume of cable protection proposed in the ES project description therefore amounts to 2,342,900m², which is significantly higher than that proposed in the DCO. The MMO requests further clarification of the cable protection footprint and volume and for corrections to be made to the DCO, DMLs and ES accordingly.</p>		
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N/A	Condition 5 - Phases of authorised development	Applicant	New conditions- added to clarify phasing requirements.	<p><i>5.—(1) The authorised development may not be commenced until a written scheme setting out the phases of construction of the authorised project has been submitted to and approved by the MMO.</i></p> <p><i>(2) The scheme must be implemented as approved.</i></p>	1
N/A	Condition 5 - Phases of authorised development	Examining Authority	Whether it would be appropriate to limit the number of phases to 2 in the interests of clarity and certainty	<p><i>(2) The phases of construction referred to in paragraph (1) shall not exceed two, save that each phase may be undertaken in any number of stages as prescribed in the written scheme.</i></p>	4
N/A	Condition 7 - Extension of time periods	MMO	Both DMLs set out the requirement for all pre-construction documentation and plans under Condition 11 or 12 to be submitted for approval 4 months prior to the commencement of any licenced activity. Considering the increased size and complexity of the Round 3 offshore wind farm projects and the increasing number of issues encountered on previous offshore wind farm projects throughout the pre-construction approval process, the MMO consider that a timeframe of 6 months would be more appropriate to address such issues through consultation prior to their approval.	<p><i>7. Any time period given in this licence given to either the undertaker or the MMO may be extended with the agreement of the other party.</i></p>	1

<p>Condition 6 - Notications and Inspections</p>	<p>Condition 8</p>	<p>MMO</p>	<p>The MMO recommends that notification to the MMO Coastal Office should be included, to ensure that the MMO's local office are aware of completion of activities. Notification should take place within 5 days of the completion of the licenced activity. Please see recommended condition wording below and should also be applied to Schedule 12: The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the licensed activities or any part of them and within 5 days of the completion of the licenced activity.</p>	<p>(6) The undertaker must inform the MMO Coastal Office in writing at least five days prior to the commencement of the licensed activities or any part of them and within five days of the completion of the licenced activity."</p>	<p>1</p>
<p>Condition 6</p>	<p>Condition 8(7)</p>	<p>Applicant</p>	<p>Correct drafting error.</p>	<p>(a) at least ten fourteen days prior to the commencement of offshore activities, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and</p>	<p>4</p>
<p>Condition 6(1) - Aids to navigation</p>	<p>Condition 9(1)</p>	<p>Trinity House</p>	<p>Trinity House do not consult with DIO.</p>	<p>The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning of the authorised project seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and take such other steps for the prevention of danger to navigation as Trinity House in consultation with Defence Infrastructure Organisation Safeguarding may from time to time direct.</p>	<p>4</p>

<p>Condition 8 - Aviation Safety</p>	<p>Condition 11</p>	<p>Defence Infrastructure Organisation Safeguarding</p>	<p>It is recommended that an additional requirement is added to condition 8 along the following lines:</p> <p>The undertaker must, no later than 6 months prior to the commencement of the authorised project seaward of MHWS, submit an aviation lighting plan (“ALP”) for the written approval of the MMO, in consultation with Defence Infrastructure Safeguarding. The ALP must provide that the authorised project, seaward of MHWS, be lit in accordance with the current Ministry of Defence military low flying lighting guidance that is in place as at the date of the MMO approval of the ALP. The authorised project must, at all times, be constructed and operated in accordance with the approved ALP.</p> <p>This should serve to make it clear to the undertaker that there is a need for them to install and maintain relevant aviation warning lighting on the offshore element of the of the approved project for the duration of its operation in addition to those aids required to maintain maritime navigational safety. This also provides a dedicated</p>	<p>11.—(1) <i>The undertaker must exhibit such lights, with such shape, colour and character as are required in writing by Air Navigation Order 2016() and determined necessary for aviation safety in consultation with the Defence Infrastructure Organisation Safeguarding and as directed by the Civil Aviation Authority.</i></p> <p>(2) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, at least 14 days prior to the commencement of the authorised project, in writing of the following information—</p>	<p>4</p>
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			mechanism for the submission and approval of aviation lighting.		
Condition 12(1) - Pre-Construction plans and documentation	Condition 14(1)	Examining Authority	Should Trinity House and the Maritime and Coastguard Agency be added as consultees for Condition 13(1)?	The licensed activities or any phase of those activities must not commence until the following (insofar as relevant to that activity or phase of activity) has been submitted to and approved in writing by the MMO, <i>in consultation with Trinity House and the MCA</i> —	4

<p>Condition 12(1)(a)(i)</p>	<p>Condition 14(1)(a)(i)</p>	<p>Examining Authority</p>	<p>Condition 11(1)(a)(v) provides for the indicative layout of the WTGs to be approved.</p> <p>A) Why would the layout only be indicative?</p> <p>B) At what stage (if any) would the MMO approve the actual layout?</p>	<p>(a) A design plan at a scale of between 1:25,000 and 1:50,000, including detailed representation on the most suitably scaled admiralty chart, which shows —</p> <p>(i) the proposed location, including grid co-ordinates <i>of the centre point of the proposed location for each offshore electrical installation, subject to any micro-siting required due to anthropological constraints, environmental constraints or difficult ground conditions</i> and choice of foundation types for all wind turbine generators and offshore accommodation platforms;</p>	<p>1</p>
<p>Condition 12(1)(a)(vi) - Pre-construction plans and documentation</p>	<p>Condition 14(1)(a)(vi) - Pre-construction plans and documentation</p>	<p>Natural England</p>	<p>The standard approach of all offshore wind farms is to conduct a preconstruction survey to ensure there are no habitats of ecological importance and where they are present every effort should be made to avoid impacting on them. The Generation DML also has no pre-construction or post construction monitoring requirement to identify any features of ecological importance. The DMLs do not include a requirement to micro-site around habitats of ecological importance outside of European designated sites (only reference to micro siting outside the sites relates to archaeological features). It is Natural England's view that the lack of micro-siting and monitoring requirements is not appropriate. We also question how the project intends to</p>	<p>any exclusion zones/micrositing requirements identified in any mitigation scheme pursuant to sub-paragraph 14(2)(d) 12(2)(d) <i>or relating to any Annex 1 reefs identified as part of surveys undertaken in accordance with condition 18;</i></p>	<p>1</p>

			micro-site within a European site if no pre-construction survey to identify ecological features is proposed under the Generation DML. The lack of surveys outside of designated sites could also lead to disposal activities occurring affecting ecologically important habitats.		
Condition 12(1)(a)	Condition 14(1)(a)	Applicant	To correct drafting error.	to ensure conformity with the description of Work Nos. 2, 3, 4 and 5 and compliance with conditions 1 to (2) above <i>save that where the proposed layout prescribed in the design plan under this condition is in accordance with the development principles set out volume 2, chapter 7, and volume 5, annex 7.1 to the environmental statement that the layout shall not require the consent of the MMO.</i>	1

Condition 12(1)(a)	Condition 14(1)(a)	Applicant	To reflect agreement with MMO.	to ensure conformity with the description of Work Nos. 2, 3, 4 and 5 and compliance with conditions 1 to 3(2) above save that where the proposed layout prescribed in the design plan under this condition is in accordance with the development principles set out volume 2, chapter 7, and volume 5, annex 7.1 to the environmental statement that the layout shall not require the consent of the MMO.	4
Condition 12(1)(a)	Condition 14(1)(a)	Applicant	To correct drafting error.	to ensure conformity with the description of Work No. 1 and compliance with conditions (i) 4 to (vi) (2) above ...	1
Condition 12(1)(d)	Condition 14(1)(d)	Applicant	To correct drafting error.	(d) a project environmental management <i>plan</i> and monitoring plan covering the period of construction and operation to include details of—	4
Condition 12(1)(d)	Condition 14(1)(d)	Historic England	We wish to see included under Schedule 11 (Generation Assets), Part 2, Article 13(1)(d) as an additional paragraph (vii) the following: “all spatial data for Archaeological Exclusion Zones and application of a Protocol for Archaeological Discoveries under Section 13. This is to ensure the adherence to the protocol and the avoidance of Archaeological Exclusion Zones (AEZs) by the applicant and their chosen contractors through the construction and operation phases of the project.”	<i>(vii) all spatial data for archaeological exclusion zones and application of a protocol for archaeological discoveries in accordance with the written scheme of investigation required under condition 14(2).</i>	4

Condition 12(1)(f)	Condition 14(1)(f)	Historic England	Corresponding change to one at Schedule 11 (Generation Assets), Part 2, Article 13(1)(f).	(f) proposed pre-construction surveys, construction monitoring, post-construction monitoring and related reporting in accordance with conditions 18, 19 and 20.	4
Condition 12(1)(h)	Condition 14(1)(h)	Natural England	Following discussions with the Applicant.	<p><i>(ii) a sandwave clearance plan for all designated sites affected, including details of the volumes of material to be dredged, timing of works, locations for disposal and monitoring proposals;</i></p> <p>...</p> <p><i>(iv) a cable protection plan for all designated sites where cable protection is required, including details of the volumes, material, locations and seabed footprints for cable protection measures, where required, consideration of alternative methods of protection and monitoring proposals; and</i></p>	4

Condition 12(1)(h)	Conditions 14(1)(h)	Examining Authority	<p>The ES [APP-067] discusses the vessel to subsea structure allision risk resulting from presence of subsea high voltage alternating current (HVAC) booster stations and cable protection. Section 18.4 of the Navigational Risk Assessment [APP-112] identifies a key area of risk approximately 5nm north of the landfall location, together with specific cable/pipeline crossings which may be of concern.</p> <p>Please provide further information about the existing depths of water, the likely reductions in depth due to subsea works and the range of draughts of vessels typically navigating through these areas of risk/concern.</p> <p>The ES refers to potential further mitigation being required should subsea offshore HVAC booster stations be utilised. Please give examples of what such further mitigation might be.</p>	<p>(ii) a detailed cable laying plan for the Order limits, incorporating a burial risk assessment <i>encompassing the identification of any cable protection that exceeds 5% of navigable depth referenced to Chart Datum and, in the event that any area of cable protection exceeding 5% of navigable depth is identified, details of any steps (to be determined following consultation with the MCA) to be taken to ensure existing and future safe navigation is not compromised</i> or similar such assessment to ascertain suitable burial depths and cable laying techniques, including cable protection; and</p>	1
Condition 12(1)(h)	Condition 14(1)(h)	MMO	<p>In addition, the MMO recommended that the DCO should make reference of the total number of cable crossings required and the maximum volume and area of cable protection required for each crossing.</p>	<p>(v) <i>proposals for the volume and areas of cable protection to be used for each cable crossing;</i></p>	4

Condition 12(2)	Condition 14(2)	Examining Authority	Consequential amendment for request for clarity on WSIs.	(2) The licensed activities or any part of those activities must not commence unless no later than six months prior to the commencement a written scheme of archaeological investigation has been submitted to and approved by the MMO, in accordance with the outline <i>offshore</i> written scheme of investigation, and in accordance with industry good practice, in consultation with the statutory historic body to include	6
Condition 12(2)	Condition 14(2)	Applicant	To reflect experience of Applicant relating to timescales on similar projects.	(c) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within four <i>six</i> months of any survey being completed;	4
Condition 12(2)(f)	Condition 14(2)(f)	Historic England	to include reference to relevant Local Authority if not using HDD and therefore the proposed cable installation will require foreshore excavation.	(f) a requirement for the undertaker to ensure that a copy of any agreed archaeological report is deposited with the National Record of the Historic Environment, by submitting a Historic England OASIS ('Online Access to the Index of archaeological investigations') form with a digital copy of the report within six months of completion of construction of the authorised project, and to notify the MMO (<i>and North Norfolk District Council where the report relates to the intertidal area</i>) that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;	4
Condition 12(3)	Condition 14(3)	MMO	relevant Local Authority if not using HDD and therefore the proposed cable	<i>Pre-construction archaeological investigations and pre-commencement material operations which involve intrusive seabed works must only take place in accordance with a specific Written Scheme of Investigation which is itself in accordance with the details set out in the outline offshore Written Scheme of Investigation, and which has been submitted to and approved by the MMO.</i>	1

N/A	Condition 14(5)	Natural England	installation will require foreshore excavation.	<p><i>(5) In the event that driven or part-driven pile foundations are proposed to be used, the licenced activities, or any phase of those activities must not commence until a site integrity plan which accords with the principles set out in the in principle Hornsea Three Southern North Sea Site of Community Importance Site Integrity Plan has been submitted to the MMO and the MMO is satisfied that the plan provides such mitigation as is necessary to avoid adversely affecting the integrity (within the meaning of the 2017 Regulations) of a relevant site, to the extent that harbour porpoise are a protected feature of that site.</i></p> <p>(3) In the event that driven or part-driven pile foundations are proposed to be used, the MMO must not approve the plan referred to in paragraph (1)(a) unless the MMO is satisfied, after consulting such persons as the Secretary of State may specify (in addition to the persons with whom consultation is otherwise required under this Condition), that the plans provide such mitigation as is necessary to avoid adversely affecting the integrity (within the meaning of the 2017 Regulations) of a relevant site, to the extent that marine mammals are a protected feature of that site.</p> <p>(4) The mitigation referred to in paragraph (4) may include (without limitation) —</p> <p>(a) seasonal restrictions to piling;</p> <p>(b) scheduling of piling, having regard to previous, ongoing and future piling associated with other offshore developments, based on an updated assessment of cumulative impacts;</p> <p>(c) the use of alternative foundation methodologies, such as jacket foundations or gravity base foundations;</p>	1
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				<p>(d) the use of noise reduction at source technologies; and (e) the use of other relevant technologies or methodologies that may emerge in the future. (5) In paragraph (4), “relevant site” means — (a) a European offshore marine site; or (b) a European site.</p> <p>Following definition added:</p> <p><i>“In principle Hornsea Three Southern North Sea Site of Community Importance Site Integrity Plan” means the document certified as the in principle Hornsea Three Southern North Sea Site of Community Importance Site Integrity Plan by the Secretary of State for the purposes of this Order;</i></p> <p>And following definition removed:</p> <p>“European offshore marine site” has the meaning given in regulation 18 of the 2017 Regulations;</p>	
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N/A	Condition 14(6)	Examining Authority	Paragraph 4.11.1.33 of the ES [APP-064] considers maximum hammer energy for piling operations. The MMO [RR-085] recommends that a condition is included to restrict the maximum hammer energy to the worst case scenario (5,000kJ), as assessed in the ES. However, that maximum relates to a WTG type which may not be used. There is an example (Dogger Bank Teesside A and B) of imposing limits relevant to the various foundation types under consideration.	<i>(6) In the event that driven or part-driven pile foundations are proposed to be used, the hammer energy used to drive or part-drive the pile foundations must not exceed 5,000kJ.</i>	1
Condition 13(1)	Condition 15(1)	MMO	The DML for the Generation Assets (Schedule 11) Condition 11 (2) (f) sets out the monitoring requirements for the pre-construction documentation. This condition is linked to the standard pre-construction timing requirement which states that all documentation is required to be submitted no less than 4 months prior to the commencement of the licenced activities. The MMO advises that pre-construction monitoring should have been undertaken well in advance of this date.	Each programme, statement, plan, protocol or scheme required to be approved under condition 14(2) <i>(save for that required under condition 14(1)(f))</i> must be submitted for approval at least four months prior to the intended commencement of licensed activities, except where otherwise stated or unless otherwise agreed in writing by the MMO.	1

<p>Condition 13(2)</p>	<p>Condition 15(2)</p>	<p>MMO</p>	<p>The proposed timescales conditioned in the DMLs require a response period of 8 weeks following receipt of all post-consent documentation. The MMO considers that this would not provide sufficient time for consultation and subsequent comment, based on the experience of offshore wind farm licence management in the past. The MMO recommends that a minimum period of 6 months is applied for consideration of post-consent documentation submission to allow for sufficient stakeholder consultation and comment to be provided. The MMO also recommends removal of the requirement that any failure to provide a decision in time may lead for the matter to be referred to arbitration.</p>	<p>The MMO shall determine an application for consent made under this article within a period of eight weeks four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.</p>	<p>1</p>
	<p>Condition 15(2)</p>	<p>Applicant</p>	<p>Inclusion of provision to deal with a material change in circumstances that would necessitate an amendment to the Development Principles</p>	<p><i>(2) The design plan required by condition 13(1)(a) shall be prepared by the undertaker and approved by the MMO in accordance with the Development Principles, save where a material change in circumstances requires amendment of one or more of them, in which case—</i> <i>(a) the undertaker or MMO may amend the relevant Development Principle(s) following consultation with the MCA and Trinity House; and</i> <i>(b) an application for approval of the design plan shall be determined in accordance with the amended Development Principles—</i></p>	<p>6</p>

				<p><i>(i) as agreed between the MMO and undertaker; or</i> <i>(ii) determined in accordance with [article 37 (arbitration) OR article 38 (requirements, appeals, etc.)] of the Order.</i></p>	
Condition 13(3)	Condition 15(3)	Applicant	Correct drafting error.	<p>(3) Where the MMO is minded to refuse an application for approval made under condition 14 and notifies the undertaker accordingly, or the Secretary of State MMO fails to determine the application for consent approval under this article condition 14 within the period prescribed in sub-paragraph (2), the undertaker may refer the matter for determination in accordance with article 37 (arbitration) of the Order.</p>	6
Condition 13(3)	Condition 15(4)	Applicant	Further to drafting changes relating to possible inclusion of MMO appeal mechanism.	<p>(3) Where the MMO is minded to refuse an application for approval made under condition 13 and notifies the undertaker accordingly, or the MMO fails to determine the application for approval under condition 13 within the period prescribed in sub-paragraph (3), the undertaker may refer the matter for determination in accordance with [article 37 (arbitration) OR article 38 (requirements, appeals, etc.)] of the Order.</p>	4

N/A	Condition 18(2)	MMO	The MMO has reviewed this wording and recommends the removal of the phrase 'so far as applicable' from the conditions. The MMO does not agree that this phrase is required in this context as the monitoring outlined in conditions 17, 18 and 19 sets out the standard practise to validate predictions made in the ES, and also requirements that have been agreed during the pre-application stage.	Subject to receipt from the undertaker of specific proposals pursuant to this Condition, so far as applicable , the pre-construction surveys must comprise, in outline—	4
N/A	Condition 18(2)(e)	Applicant	Due to update in the draft IPMP.	<i>(e) a high-resolution swath bathymetric survey to include a 100% coverage and a side-scan sonar survey of the parts of the Order limits within which it is proposed to carry out construction works and disposal activities under this licence. Survey to inform the identification of any archaeological exclusion zone and post consent monitoring of any such archaeological exclusion zone.</i>	1
N/A	Condition 19 - Construction monitoring	Applicant	1.36. Part 2 (11) (1) (b) (page 135) - Pre-construction plans and documentation The MMO recommends that submission of a construction programme should also include a construction monitoring plan in line with the principal monitoring plan. Proposed timings for mobilisation should include whether such works will be carried out as a single offshore phase or as multiple phases.	<i>(1) The undertaker must in discharging condition 14(1)(f) submit a construction monitoring plan or plans for written approval by the MMO in consultation with the relevant statutory nature conservation body, which shall include details of any proposed construction monitoring, including methodologies and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in general accordance with the principles set out in the in-principle monitoring plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will</i>	4

			<p>Furthermore, the MMO recommends that the construction programme should include proposed pre-construction surveys, baseline report format and content, construction monitoring, post-construction monitoring and related reporting in accordance with the relevant monitoring conditions in the DML(s).</p>	<p><i>enable the validation or otherwise of key predictions in the environmental statement.</i> <i>(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, so far as applicable, the construction monitoring plan must include in outline details of vessel traffic monitoring by automatic identification system for the duration of the construction period including obligations to report annually to the MMO and the MCA during the construction phase of the authorised development.</i> <i>(3) The undertaker must carry out the surveys specified within the construction monitoring plan or plans in accordance with that plan or plans, unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation body.</i></p>	
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<p>N/A</p>	<p>Condition 19(2)</p>	<p>MMO</p>	<p>The MMO has reviewed this wording and recommends the removal of the phrase 'so far as applicable' from the conditions. The MMO does not agree that this phrase is required in this context as the monitoring outlined in conditions 17, 18 and 19 sets out the standard practise to validate predictions made in the ES, and also requirements that have been agreed during the pre-application stage.</p>	<p>(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, so far as applicable, the construction monitoring plan must include in outline details of vessel traffic monitoring by automatic identification system for the duration of the construction period including obligations to report annually to the MMO and the MCA during the construction phase of the authorised development.</p>	<p>1</p>
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<p>N/A</p>	<p>Condition 20 - Post-construction monitoring</p>	<p>Applicant</p>	<p>1.68. Part 2 (16) (2) (c) (i) (page 155) – Monitoring and surveys It is unclear from this condition whether post construction monitoring will be undertaken. The MMO requests further clarification of the terms 'representative proportion' and 'sensitive cable protection'.</p>	<p><i>(1) The undertaker must in discharging condition 14(1)(f) submit a post-construction monitoring plan or plans for written approval by the MMO in consultation with the relevant statutory nature conservation body including details of proposed post-construction surveys, including methodologies (including appropriate buffers, where relevant) and timings, and a proposed format, content and timings for providing reports on the results. The survey proposals must be in general accordance with the principles set out in the in-principle monitoring plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the preconstruction position and/or will enable the validation or otherwise of key predictions in the environmental statement.</i></p> <p><i>(2) Subject to receipt of specific proposals, so far as applicable, the post-construction survey plan or plans must include, in outline—</i></p> <p><i>(a) details of a high-resolution swath bathymetric survey to be undertaken no sooner than 6 months following completion of construction works and disposal activities were carried out under this licence to assess recovery of sandwave features within any designated site, and any changes bathymetric profile in designated sites following application of cable protection material. The need for further surveys must be agreed in writing with the MMO following submission of the first year of survey data;</i></p> <p><i>(b) details of a survey to determine any change in the location, extent and composition of any biogenic or geogenic reef feature identified in the pre-construction survey in the parts of the offshore Order limits in which construction</i></p>	<p>4</p>
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				<p><i>works were carried out. The survey design must be informed by the results of the pre-construction benthic survey;</i></p> <p><i>(c) details of a survey to determine the recovery of any benthic features of ecological importance within designated sites, following cable burial and excavation of HDD exit pits, and to assess degree colonisation of cable protection material as detailed within the in-principle monitoring plan. The survey design must be informed by the results of the pre-construction benthic survey. The need for further surveys must be agreed in writing with the MMO following submission of the first year of survey data;</i></p> <p><i>(d) details of vessel traffic monitoring by automatic identification system, for a period of 28 individual days taking account seasonal variations in traffic patterns over the course of one year to be submitted to the MMO and the MCA no later than one year following completion of the construction phase of the authorised development; and</i></p> <p><i>(e) details of a full sea floor coverage swath-bathymetry survey of the areas within which construction activity has taken place in order to inform of any dropped objects or residual navigational risk.</i></p> <p><i>(3) The undertaker must carry out the surveys specified within the post-construction monitoring plan or plans in accordance with that plan or plans, unless otherwise agreed in writing by the MMO in consultation with the relevant statutory nature conservation body.</i></p>	
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N/A	Condition 20(2)	MMO	<p>The MMO has reviewed this wording and recommends the removal of the phrase ‘so far as applicable’ from the conditions. The MMO does not agree that this phrase is required in this context as the monitoring outlined in conditions 17, 18 and 19 sets out the standard practise to validate predictions made in the ES, and also requirements that have been agreed during the pre-application stage.</p>	<p>(2) Subject to receipt of specific proposals, so far as applicable, the post-construction survey plan or plans must include, in outline—</p>	4
N/A	Condition 20 - Post-construction monitoring	Trinity House	<p>Having regard to Trinity House’s powers and duties as a GLA, we would request that under Schedule 12 the requirement in Article 20(2)(d) for the undertaker to provide details of vessel traffic monitoring to the MMO and MCA is amended to provide for such details of vessel traffic monitoring to also be provided to Trinity House.</p>	<p>(d) details of vessel traffic monitoring by automatic identification system, for a period of 28 individual days taking account seasonal variations in traffic patterns over the course of one year to be submitted to the MMO, <i>Trinity House</i> and the MCA no later than one year following completion of the construction phase of the authorised development; and</p>	

N/A	20(2)(f)	Historic England	<p>Within Schedule 11 (Generation Assets), Part 2, Article 19 and Schedule 12 (Transmission Assets), Part 2, Article 20, we further wish to see provisions for the monitoring of archaeological receptors post-construction, inclusive of AEZs, to ensure that there are no negative impacts from the construction programme in terms of jack-up footprints and scour, thus testing the predictions made within the Environmental Statement.</p>	<p><i>(f) a bathymetric survey to monitor the effectiveness of archaeological exclusion zones identified to have been potentially impacted by construction works. The data shall be analysed by an accredited archaeologist as defined in the offshore written scheme of investigation required under condition 14(2).</i></p>	1
N/A	Condition 21 - Timing of Monitoring Report	Natural England	<p>Natural England also requests that timescales for provision of monitoring reports are defined in the DCO/DMLs. This is for the regulator and the SNCBs to be able to compare the site specific monitoring data against the worst case scenario impacts assessed in the ES. We propose that four months after completion of a survey presents a reasonable timeframe for submitting the monitoring report for review.</p>	<p><i>(3) Any monitoring report compiled in accordance with the monitoring plans provided under this condition must be provided to the MMO no later than four months following completion of the monitoring to which it relates.</i></p>	1

<p>N/A</p>	<p>Condition 22 - Reporting of impact pile driving</p>	<p>MMO</p>	<p>Under the UK Marine Strategy, all developers are committed to record human activities in UK seas that produce loud, low to medium frequency (10Hz-10kHz) impulsive noise. The MMO therefore requests inclusion of the following conditions in the DML;</p>	<p><i>Only when driven or part-driven pile foundations or detonation of explosives are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry—</i></p> <p><i>(a) prior to the commencement of the licenced activities, information on the expected location, start and end dates of impact pile driving/detonation of explosives to satisfy the Marine Noise Registry’s Forward Look requirements;</i></p> <p><i>(b) at six month intervals following the commencement of pile driving/detonation of explosives, information on the locations and dates of impact pile driving/detonation of explosives to satisfy the Marine Noise Registry’s Close Out requirements;</i></p> <p><i>(c) within 12 weeks of completion of impact pile driving/detonation of explosives, information on the locations and dates of impact pile driving/detonation of explosives to satisfy the Marine Noise Registry’s Close Out requirements</i></p> <p><i>The undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to paragraph (c) above within 7 days of the submission.</i></p> <p><i>For the purpose of this condition—</i></p> <p><i>(a) “Marine Noise Registry” means the database developed and maintained by JNCC on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas;</i></p> <p><i>(b) “Forward Look” and “Close Out” requirements are as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) or any updated information document.</i></p>	<p>1</p>
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N/A	Condition 23 - Reporting of cable protection	Natural England	Natural England recommends inclusion of a new condition to allow for appropriate reporting on the location of all cable protection, including volumes of cable protection. This reporting is required to ensure the cable protection deployed is within the permitted levels and to inform the need for decommissioning of cable protection and cables in the future.	23—(1) Not more than [4 months] following completion of the constriction phase of the project, the undertaker shall provide the MMO [and Natural England] with a report setting out details of the cable protection used for the authorised scheme (2) The report shall include the following information— (a) location of the cable protection; (b) volume of cable protection; and (c) any other information relating to the cable protection as agreed between the MMO and the undertaker.	4
N/A	Condition 21	Applicant	To provide flexibility on timing.	Any monitoring report compiled in accordance with the monitoring plans provided under conditions 18, 19 and 20 must be provided to the MMO no later than four months following completion of the monitoring to which it relates, unless otherwise agreed with the MMO.	4
SCHEDULE 13 — Arbitration Rules					

Rule 1		MMO	Arbitration should be a measure of last resort, following open discussions and debates between the regulator, developer and relevant stakeholders. The current draft DCO and DMLs imply that arbitration will be the first point of call should any difference in opinion be encountered. This implication is supported by several DML conditions, specifically highlighting the referral to arbitration in case of any difference.	<i>(2) The Parties will first use their reasonable endeavours to settle a dispute amicably through negotiations undertaken in good faith by the senior management of the Parties. Any dispute which is not resolved amicably by the senior management of the Parties within twenty (20) Business Days of the dispute arising, or such longer period as agreed in writing by the Parties, shall be subject to arbitration in accordance with the terms of this Schedule</i>	4
Rule 3(2)		Natural England	Whilst it is recognised that this process is intended to be quick, this is too little time to accomplish all the required material. 21 days would be a better compromise and might save time later in the process as best possible cases are put forward and issues narrowed as much as possible. Where there is no hearing the 4 month time limit will definitely not be compromised.	(2) Within 14 21 days of the Arbitrator being appointed, the Claimant shall provide both the Respondent and the Arbitrator with:	4
Rule 3(2)(a)		Natural England	Could the Applicant please clarify in what circumstances will the remedy be anything other than non-financial such as an approval?	(a) a written Statement of Claim which describes the nature of the difference between the parties, the legal and factual issues, the Claimant's contentions as to those issues, the amount of its claim and for the remedy it is seeking;	4

Rule 3(3)		Natural England	See time limit comment above.	(3) Within 14 21 days of receipt of the Claimant's statements under sub-paragraph (2) by the Arbitrator and Respondent, the Respondent shall provide the Claimant and the Arbitrator with:	1
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Rule 6		MMO	<p>This provision stated that the award of costs will be made by the arbitrator and would be based on the degree of success of the party as stated under provision 6 (4). It is the MMOs interpretation that, in the event that any arbitration decision goes against the opinion of the MMO, the MMO may be required to cover any cost for the arbitration process including the costs to the developer and other parties involved.</p> <p>The MMO considers that such an approach would directly contradict the ‘Polluter Pays’ principle which underlines a sustainable approach to environmental consenting. The MMO considers that any costs for arbitration should be solely borne by the applicant, unless it is deemed that a party has acted unreasonably or in bad faith. Moreover, such an approach may encourage developers to resolve issues by challenging them through arbitration early in the consideration process, since only limited discussions and expert involvement would be expected to have taken place at this stage.</p>	<p>(4) The Arbitrator will award recoverable costs on the general principle <i>that each party should bear its own</i> costs follow the event, having regard to all material circumstances, including such matters as exaggerated claims and/or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.</p>	4
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Rule 6		Natural England	Requested amendments to drafting - partially taken in.	<p>The costs of the Arbitration shall include the fees and expenses of the Arbitrator, the reasonable fees and expenses of any experts and the reasonable legal and other costs incurred by the parties for the Arbitration.</p> <p>(2) Where the difference involves connected/interrelated issues, the Arbitrator will consider the relevant costs collectively.</p> <p>(3) The final award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.</p> <p>(2) Subject to (3), the Arbitrator will award recoverable costs on the general principle that each party should bear its own costs.</p> <p>(3) The Arbitrator may depart from the general principle in (3) and make such other costs award as it considers reasonable, having regard to all material circumstances, including such matters as exaggerated claims and/or defences, the degree of success for different elements of the claims, claims that have incurred substantial costs, the conduct of the parties and the degree of success of a party.</p>	6
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Rule 6		Natural England	Requested amendment to refer to NPPG on costs.	<p>(3) The Arbitrator may depart from the general principle in (2) and make such other costs award as it considers reasonable, <i>where a party has behaved unreasonably as defined within the National Planning Practice Guidance or such other guidance as may replace it</i> having regard to all material circumstances, including the conduct of the parties.</p>	4
Rule 7		Natural England	Requested amendments to drafting - these have been taken in.	<p><i>7.—(1) Subject to sub-paragraphs (2) and (3), any arbitration hearing and documentation shall be open to and accessible by the public. (2) The Arbitrator may direct that the whole or part of a hearing is to be private and/or any documentation to be confidential where it is necessary in order to protect commercially sensitive information. (3) Nothing in this paragraph shall prevent any disclosure of a document by a party pursuant to an order of a court in England and Wales or where disclosure is required under any enactment.</i></p> <p>7. The parties agree that any hearings in this Arbitration shall take place in private. (1) The parties and Arbitrator agree that any matters, materials, documents, awards, expert reports and the like are confidential and shall not be disclosed to any third party without prior written consent of the other party, save for any application to the Courts or where disclosure is required under any legislative or regulatory requirement.</p>	1

Rule 7		MMO and Natural England	<p>MMO's comment:</p> <p>"This provision states that all matters discussed as part of the arbitration process must remain confidential. As the matters discussed will relate to environmental consenting decisions, the MMO is confident that it would not be able to refuse a request for such information under the Freedom of Information Act or the Environmental Information Regulations 2004. Confidentiality clauses for arbitration process discussions would directly contradict the requirement for transparency in decision making."</p> <p>Natural England's comment:</p> <p>"In relation to the confidentiality clause of the arbitration schedule: Natural England is subject to the requirements of the Freedom of Information Act 2000 ('FOIA') and the Environmental Information Regulations 2004 ('EIR'). Therefore Natural England may be obliged to release documents in response to an FOIA or EIR request including any file notes. In respect of any FOIA or EIR request, Natural England is responsible for determining at its absolute</p>	<p>(2) The parties and Arbitrator agree that any matters, materials, documents, awards, expert reports and the like are confidential and shall not be disclosed to any third party without prior written consent of the other party, save for any application to the Courts <i>or where disclosure is required under any legislative or regulatory requirement.</i></p>	1
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			<p>discretion whether any information it holds, whether commercially sensitive information or otherwise, is exempt from disclosure in accordance with the provisions of the FOIA or the EIR or is to be disclosed in response to a request for information. Natural England cannot therefore guarantee confidentiality or agree to be bound by such a requirement.”</p>		
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Explanatory Note					
		Examining Authority	<p>Your response to question Q1.14.14 [REP1-122] indicated that provision would be made in Article 35 of the dDCO for the approved guarantee (or alternative form of security) to be made available to persons entitled to compensation by placing it on deposit with the documents certified in accordance with Article 35. This would not appear to be reflected in the current draft of Article 35. Your response also referred to an amendment to the Explanatory Note. There do not appear to be any changes in the tracked change version of the dDCO.</p>	<p>A copy of the plans and book of reference referred to in this Order and certified in accordance with article 3635 (certification of plans and documents etc), together with a copy of any guarantee or alternative form of security approved by the Secretary of State pursuant to article 43, may be inspected free of charge at the offices of Orsted at 5 Howick Place, London SW1P 1WG.</p>	4