



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Hornsea Project Three Offshore Wind Farm
(EN010080)

Correspondence received after the
close of the Examination at 23:59 on
2 April 2019

No.	From	Organisation	Date Received
1	Rt Hon Keith Simpson MP		3 April 2019
2	Tony Barnett		16 April 2019
3	Tony Barnett		15 May 2019
4	Helen & Chris Monk		16 May 2019
5	Geoff Lyon	North Norfolk District Council	31 May 2019
6	Gareth Leigh	Department for Business, Energy & Industrial Strategy	10 July 2019
7	MOD Legal Advisers	Ministry of Defence	25 July 2019
8	Rosie Sutherland	The Royal Society for the Protection of Birds	6 September 2019
9	Womble Bond Dickinson (UK) LLP	Norfolk Vanguard Limited	13 September 2019
10	Andrew Guyton	Ørsted Hornsea Project Three (UK) Ltd	23 September 2019
11	Chris McMullon	Natural England	25 September 2019
12	Addleshaw Goddard LLP	Network Rail Infrastructure Limited	25 September 2019
13	Andrew Guyton	Ørsted Hornsea Project Three (UK) Ltd	26 September 2019
14	Lord Tebbit		26 September 2019
15	Chris Monk	Cawston Parish Council	29 April 2020
16	Addleshaw Goddard LLP	Network Rail Infrastructure Limited	18 May 2020
17	Pinsent Masons LLP	Ørsted Hornsea Project Three (UK) Ltd	18 May 2020

From: SIMPSON, Keith <keith.simpson.mp@parliament.uk>
Sent: 03 April 2019 18:03
To: enquiries@pins.gsi.gov.uk
Subject: FW: Windfarm Traffic Corridor

I have received the email below from a constituent Polly Brockis about the Orstead traffic plan.

I would be most grateful for your comments on the matter raised please.

Keith

Rt Hon Keith Simpson MP

Data protection and privacy policies can be found here <https://www.keithsimpson.com/privacy>

-----Original Message-----

From: BT <[REDACTED]>
Sent: 29 March 2019 20:15
To: SIMPSON, Keith <keith.simpson.mp@parliament.uk>
Subject: Windfarm Traffic Corridor

Mr Simpson,

I write as a resident of Cawston, a village that will be blighted if the proposed Orstead traffic plan is allowed. All construction traffic for the cable corridor will run through the heart of our village - in effect dissecting it in two. 127 daily HGV two way traffic movements and up to another 277 extra two way vehicle movements! The B1145 is a council designated HGV route, and the bridge leading out of the village towards Reephams was at some time rated to carry 44 tonnes. Orstead continue returning to those facts, but anyone who lives on or drives through this route knows the road and bridges are patched up and worn, they struggle to take the current traffic. The road is narrow and windy, with hair pin bends and large areas without pavements, a car and standard lorry struggle to pass one another on this road. The school buses have to cross into the opposite side to make the corners. Orstead's glossy paperwork focused on the cable corridor; the route and impact of the construction corridor took many people by surprise, not least because it seemed an improbable and impossible route to take. We feel we were not fully informed or consulted, information and advertisements have been difficult to access.

The Cawston Parish Council and village residents have suggested The Northern Survey Road could be utilised for this Traffic, or the Orstead and Vanguard haul road. I urge you to look through the swathe of documents that are now coming out fast and furiously, before the 2nd April deadline.

Personally we will be hugely affected, our home sits right on the corner of the road, our gardens run alongside. One of the TP mitigation plans is to widen a pavement opposite us, reportedly for safety of pedestrians on that side, however it assists in the Orstead plan for one way at a time traffic by narrowing the road. It also pushes the HGVs ever closer to us. There is no pavement on our side. The noise monitoring on our home stated the db increase would be an unallowable 3.5 db so there will be some mitigation for this - road surfacing or some such, we can only guess at this as it has not yet been specified. Vibration monitoring data was "not considered significant" but in a listed building constructed in 1680, with questionable foundations and a large cellar current traffic movements can be felt in the house - a HGV passing every 6 minutes will have an effect.

I have two sons who will be affected by noise, vibrations and particulate omissions - their lives will be irrevocably changed, I would be no mother if I allowed any child to cycle out into that corridor of traffic. Use of our gardens will be negated because of the noise and dust from lorries hauling ballast and road construction materials - these are not "clean" loads. To get to friends houses, or the park, or the allotments we will all have to run the gauntlet of this traffic jam - we can only envisage this as a solid wall of traffic. Orstead's plan is for 30 working months, on the back of this proposal Vattenfall and Boreas come with even larger traffic fleets and as yet undefined timescales.

Please do not let this mad plan slide through and destroy our village and those that surround us, object to the planning inspectorate before 2nd April.

Thank you

Yours sincerely

Polly Brockis

Sent from my iPad

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From: [REDACTED]
To: "Emily Woolfenden"
Cc: "Steffan Aquarone, NNGY Liberal Democrats"; [REDACTED]; [REDACTED] [Hornsea Project Three](#)
Subject: RE: Hornsea Project Three - Response to Matters Raised at the Open Floor Hearing 25/03
Date: 16 April 2019 09:26:36
Attachments: [image001.png](#)

Dear Ms Woolfenden,

I note that I have not yet received a response from you to the further questions that I raised. I would very much appreciate the courtesy of a reply to these questions as they would assist us in understanding your position.

So, to clarify:

1. Did PHE provide earlier comments which would explain to the reader why they use the phrase "no additional comments" – addition to what?
2. Can you tell me whether your organisation received any other comments or evidence from PHE?

These are quite straightforward questions and your lawyer spoke as though she had excellent knowledge. Presumably there is a clear paper trail within your organisation and her own on which her comment would have been based and I would be most grateful for clarification concerning the points I have raised.

I do not understand your delay in providing answers to what are straightforward questions.

Yours sincerely,

Tony Barnett

From: [REDACTED]
Sent: 12 April 2019 12:37
To: Emily Woolfenden <emwoo@orsted.co.uk>
Cc: 'Steffan Aquarone, NNGY Liberal Democrats' <info@norfolklibdems.org>; [REDACTED]
[REDACTED] hornseaprojectthree@planninginspectorate.gov.uk
Subject: Re: Hornsea Project Three - Response to Matters Raised at the Open Floor Hearing 25/03

When they say they had no additional comments, were there earlier comments and if so may you see them please?

Or can you assure me that is the only comment or evidence you received from PHE?

Tony Barnett

On Fri, Apr 12, 2019 at 12:16 PM +0100, "Emily Woolfenden" <EMWOO@orsted.co.uk> wrote:

Dear Professor Barnett,

Please accept my apologies for the delay in getting back to you. I had hoped to be able to respond to you yesterday but was tied up in meetings.

Public Health England (PHE) was consulted and responded to both the Scoping Report and Preliminary Environmental Information Report (PEIR) and their advice was considered and incorporated into the application documents.

In response to the Section 56 Notice, which informed consultees that the application had been submitted and accepted by the Planning Inspectorate for examination, PHE confirmed that they had no outstanding issues and did not wish to register as an Interested Party for the purpose of the Hornsea Project Three Examination. A copy of their relevant representation is publicly available on the Planning Inspectorate's website here - <https://infrastructure.planninginspectorate.gov.uk/projects/eastern/hornsea-project-three-offshore-wind-farm/?ipcsection=relreps&relrep=25706>

The public information line that we used during the consultation period closed when the application entered the examination phase. However I can be reached directly on my mobile (details below).

Kind regards,

Emily

Best regards,
Emily Woolfenden
Policy Advisor
Public Affairs
Ørsted UK

Ørsted
[REDACTED]

From: Tony Barnett [REDACTED]
Sent: 11 April 2019 18:26
To: Emily Woolfenden <EMWOO@orsted.co.uk>

Cc: 'Steffan Aquarone, NNGY Liberal Democrats' <info@norfolklibdems.org>; [REDACTED]

[REDACTED] HornseaProjectThree@planninginspectorate.gov.uk

Subject: RE: Hornsea Project Three - Response to Matters Raised at the Open Floor Hearing 25/03

Dear Ms Woolfenden

I understood from K-J Johannsen that you were going to respond to my enquiry this afternoon. I note that you have not done so. I also note that the telephone number you once gave me is now non-functioning.

I do hope you will be able to respond tomorrow with the information I have requested.

Yours sincerely,

Tony Barnett

From: Tony Barnett [REDACTED]

Sent: 11 April 2019 13:16

To: 'Emily Woolfenden' <EMWOO@orsted.co.uk>

Cc: 'Steffan Aquarone, NNGY Liberal Democrats' <info@norfolklibdems.org>; [REDACTED]

Subject: RE: Hornsea Project Three - Response to Matters Raised at the Open Floor Hearing 25/03

Dear Ms Woolfenden,

At the Open Floor Hearing held in Norwich on 29 March 2019, the solicitor acting for yourselves, Ms Claire Brodrick from Pinsent Masons LLP, stated that PHE had commented on your proposal. I have searched the National Infrastructure Planning website for that evidence from PHE but have been unable to find it. I would be most grateful for your assistance in finding it.

Yours sincerely,

Professor Tony Barnett

From: Emily Woolfenden <EMWOO@orsted.co.uk>

Sent: 29 March 2019 19:37

To: [REDACTED]

Cc: [REDACTED]

Subject: Hornsea Project Three - Response to Matters Raised at the Open Floor Hearing 25/03

Dear Mrs Waterson & Mr Barnett,

Ahead of Deadline 10 (1 April 2019), we have prepared a document which sets out the key issues raised at the Open Floor Hearing on Monday and identifies relevant documents where information or a response is provided (utilising the Hornsea Three Examination Library Titles and Reference Numbers), or where the information can be succinctly summarised, provides an excerpt of the relevant information.

We will submit this document to the Planning Inspectorate at Deadline 10 to be uploaded to their website, however we wanted to share this with you in advance.

Kind regards,

Emily

Best regards,
Emily Woolfenden
Policy Advisor
Public Affairs
Ørsted UK



[Learn more at orsted.co.uk](http://www.orsted.co.uk)

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From: [REDACTED]
To: [Hornsea Project Three](#)
Cc: [REDACTED]
Subject: RE: HORNSEA PROJECT THREE OFFSHORE WIND FARM (EN010080)
Date: 13 May 2019 12:29:19

Dear Ms Sully,

Thank you for your kind response.

I am not concerned to assist the applicants by drawing their attention to their error, that is not at all my aim. I am however concerned to draw the misinformation provided by the Applicants to the Examiners to the attention of the latter as otherwise they will have not only incomplete information but wrong information. I was submitted my email to you on 3 April at 1353 hrs which was, I believe, within the deadline for submission.

I would politely suggest that you do ensure that this important information reaches the Examiners and that you draw my correspondence to K-J Johannsen before disposing of this important piece of information from a critically affected local interest group. This would be in the spirit of proper consultation with local interests rather than merely formal consultation. I should further tell you that I had to await a response from PHE which took rather a long time to arrive.

I trust you will feel able to take this forward as I suggest. Such action would be much appreciated by this set of local communities.

Your sincerely

Professor Tony Barnett

From: Hornsea Project Three <HornseaProjectThree@planninginspectorate.gov.uk>
Sent: 13 May 2019 12:12
To: Tony Barnett [REDACTED]; Hornsea Project Three <HornseaProjectThree@planninginspectorate.gov.uk>
Subject: RE: HORNSEA PROJECT THREE OFFSHORE WIND FARM (EN010080)

Dear Mr Barnett

Further to you email below in relation to Public Health England (PHE), from what I can see on the documents tab, the only submission from PHE during the examination was submitted a deadline 8: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010080/EN010080-001921-Public%20Health%20England%20-%20Response%20to%20Consultation.pdf> and further refers to their responses during pre-application at the scoping stage and Applicant's consultation phase.

Please note the examination into this application has now closed. Any submissions received after the close of examination will not be forwarded to the Examining Authority. I would encourage you to contact the Applicant directly in relation to what they said at the hearing. Should you

have any further queries, please do not hesitate to contact me.

Kind regards
Kay Sully
Case Manager

From: Tony Barnett [REDACTED]
Sent: 03 April 2019 13:53
To: Hornsea Project Three <HornseaProjectThree@planninginspectorate.gov.uk>
Subject: RE: HORNSEA PROJECT THREE OFFSHORE WIND FARM (EN010080)

In response to my intervention on 26 March at the Mercure Hotel in Norwich, the solicitor acting for Orsted claimed that PHE had already responded to the issues I had raised concerning public health issues related to the proposal. I cannot see any evidence of this when I search Documents tab at:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/hornsea-project-three-offshore-wind-farm/?ipcsection=relreps&relrep=25707>

I see three references to PHE but none contains any substance.

The lawyer in question was Claire Brodrick from Pinsent Masons LLP

Professor Tony Barnett

From: Hornsea Project Three <HornseaProjectThree@planninginspectorate.gov.uk>
Sent: 03 April 2019 13:49
To: Tony Barnett [REDACTED] Hornsea Project Three
<HornseaProjectThree@planninginspectorate.gov.uk>
Cc: Chris Monk [REDACTED]
Subject: RE: HORNSEA PROJECT THREE OFFSHORE WIND FARM (EN010080)

Dear Mr Barnett

Please find a link to your submission which was published yesterday:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010080/EN010080-002053-Tony%20Barnett-%20Post%20Hearing%20Submission.pdf>

It is not clear which document you are referring to where the Applicant refers to Public Health England. Please note all documentation concerning the Examination should be listed within the Examination library which can be found here (an updated version will be published today):

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010080/EN010080-000748-06%20-%20Hornsea%203%20Examination%20Library%20Published%20Version.pdf>

Kind regards

Kay Sully
Case Manager

From: Tony Barnett [REDACTED]
Sent: 03 April 2019 13:21
To: Hornsea Project Three <HornseaProjectThree@planninginspectorate.gov.uk>
Cc: Chris Monk [REDACTED] >
Subject: RE: HORNSEA PROJECT THREE OFFSHORE WIND FARM (EN010080)

I am puzzled that my post hearing submission does not appear on the website I wonder if you could explain why it does not. I submitted it and it has been acknowledged.

I would also be most grateful if you can direct me to the part of the website where I might find information detailing the claim by Orsted that their proposal has been seen and commented on by Public Health England.

My thanks for your assistance.

Tony Barnett

From: Hornsea Project Three <HornseaProjectThree@planninginspectorate.gov.uk>
Sent: 03 April 2019 10:53
To: [REDACTED]
Subject: HORNSEA PROJECT THREE OFFSHORE WIND FARM (EN010080)

Dear Sir/Madam

PROJECT NAME (REFERENCE): HORNSEA PROJECT THREE OFFSHORE WIND FARM (EN010080)

Your reference: H3WF-SP007

Please find below a link to the letter, giving notification of completion of the Examining Authority's examination. The letter can be found on the documents tab on the Hornsea Project Three Offshore Windfarm project page:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/hornsea-project-three-offshore-wind-farm/?ipcsection=overview>

If this link does not open automatically, please cut and paste it into your browser.

Yours faithfully

The Hornsea Project Three Offshore Wind Farm Team
National Infrastructure Planning
Temple Quay House

2 The Square
Bristol
BS1 6PN

Email: HornseaProjectThree@pins.gsi.gov.uk

Helpline: 0303 444 5000

Web: <https://infrastructure.planninginspectorate.gov.uk> (National Infrastructure Planning)

Web: www.gov.uk/government/organisations/planning-inspectorate (Casework and appeals)

Twitter: [@PINSgov](https://twitter.com/PINSgov)

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From: [REDACTED]
To: [Planning Inspectorate Hornsea](#)
Subject: Traffic in Cawston
Date: 16 May 2019 14:24:23

Hello

We realise that the Hornsea Examination is now closed, but we thought the Inspectors should be made aware, if possible, of the events in Cawston High Street yesterday (15/5).

Around 1130 an unannounced abnormal load tried to get through, on its way to Salle Farms. It got stuck, blocked the road for about half an hour, causing gridlock, and when trying to move off it damaged the wall at number 25 High St.

See photos attached. The driver didn't want us to take them and got quite abusive. Police were called but the driver refused to wait as requested, and when they arrived they had to catch up with him at Salle.

The drivers claimed that this was a planned route, not needing a dedicated police escort.

This was not wind farm traffic, but Orsted do have abnormal loads in their plan and in any event we would suggest that it does illustrate what can happen when a large vehicle tries to negotiate this restricted and inappropriate space.

This took place in broad daylight at a quiet period in the day.

Thank you

Helen & Chris Monk





Sent from my iPad

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From: [Geoff Lyon](#)
To: [Hornsea Project Three](#); [Hornsea Project Three](#)
Cc: [Sarah Drljaca](#); [Andrew Guyton](#)
Subject: HORNSEA PROJECT 3 DCO TOURISM MITIGATION – CONSISTENCY WITH NORFOLK VANGUARD DCO
Date: 31 May 2019 16:47:04
Attachments: [NNDP Post Examination Submission 31 May 2019 Final.pdf](#)

Dear Secretary of State and Examining Authority

**HORNSEA PROJECT 3 DCO TOURISM MITIGATION – CONSISTENCY WITH NORFOLK VANGUARD DCO
INTERESTED PARTY REF: 20010749**

The purpose of this email and attached letter is to bring to your attention events that have occurred during the Examination of the Norfolk Vanguard Offshore Wind Farm which are relevant to the determination of an important issue for the Hornsea Project 3 Offshore Wind Farm: mitigation of its potential impact on tourism within the area of North Norfolk District Council. NNDP is the local authority within whose area both Hornsea 3 and Norfolk Vanguard make landfall and through which the cables for the two infrastructure projects pass.

Please find attached a copy of North Norfolk District Council's submission in respect of a matter which this Examining Authority should be able to take into account, as should the Secretary of State when deciding the Hornsea 3 application under section 103 of the 2008 Act.

A copy of this email has been sent to the Applicant.

I would be grateful if you could please acknowledge receipt of this email

Kind Regards

Geoff Lyon (MTCP, MRTPI)
Major Projects Manager

Geoff Lyon
Major Projects Manager
+441263 516226

.....
North Norfolk District Council

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31st May 2019

Secretary of State and Examining Authority
Hornsea Project Three
Via email

Dear Secretary of State and Examining Authority

HORNSEA PROJECT 3 DCO TOURISM MITIGATION – CONSISTENCY WITH NORFOLK VANGUARD DCO
INTERESTED PARTY REF: 20010749

The purpose of this letter is to bring to your attention events that have occurred during the Examination of the Norfolk Vanguard Offshore Wind Farm (“**Norfolk Vanguard**”), which are relevant to the determination of an important issue for the Hornsea Project 3 Offshore Wind Farm (“**Hornsea 3**”): mitigation of its potential impact on tourism within the area of North Norfolk District Council (“**NNDC**”). NNDC is the local authority within whose area both Hornsea 3 and Norfolk Vanguard make landfall and through which the cables for the two infrastructure projects pass.

Introduction

1. The Examination for Hornsea 3 closed on 02 April 2019. The Council understands that the Examining Authority’s obligation under rule 19(1) of the Infrastructure Planning (Examination Procedure) Rules 2010 (“**the Rules**”) is to make a written report to the Secretary of State by 2 July 2019. Rule 19(3) envisages the Secretary of State having the power to take into consideration new evidence after the completion of the Examining Authority’s examination. As there is nothing in the Rules or in the Planning Act 2008 (“**the 2008 Act**”) preventing the Examining Authority from taking into account new evidence, this letter is addressed both to the Examining Authority and the Secretary of State.

Hornsea 3 and Norfolk Vanguard

2. There are significant similarities between the Hornsea 3 Project and the Norfolk Vanguard Project. Within the Examining Authority's Further Written Questions and Requests for Information issued on 19 Dec 2018 (Q2.1.2), the Examining Authority commented that "*Norfolk Vanguard is being promoted at the same time, in a broadly similar location and is of comparable scale*". The similarity is such that a number of documents submitted to the Norfolk Vanguard Examination have also been provided to the Hornsea 3 Examination (for example: Norfolk Vanguard Offshore Ornithology Chapter; Norfolk Vanguard projection assumptions for traffic impact on Oulton Street; Norfolk Vanguard Draft DCO on Requirement 8 Landscape). The cumulative impact of the projects has also been considered by both Examining Authorities.
3. The Examining Authority considering the Norfolk Vanguard project has also recognised the similarities between the projects and has been asked to be provided with documents from the Hornsea 3 examination, including the draft DCO and the draft outline Code of Construction Practice.
4. It is plainly desirable that similar approaches be taken to the two projects where they are dealing with comparable matters.

Tourism/Socio Economic Impacts of Hornsea 3 and the Need for Appropriate Mitigation

5. During the examination process for Hornsea 3, NNDC made submissions concerning the potential for the project (particularly during the construction phase) to result in tourism or socio economic impacts requiring mitigation. Submissions were made by NNDC at:
 - **Deadline 1** (Local Impact Report – Section 12 pages 22-24);
 - **Deadline 2** (Statement of Common Ground (version 4) – Socio-economics section pages 58-63);
 - **Deadline 3** (Representations Following Issue Specific Hearings on 4-7 December 2018 – para 3.7 and Appendix 2 - Report by Destination Research entitled *Economic Impacts of Tourism 2017 Results*); and
 - **Deadline 7** (Representations Following Issue Specific Hearing on 08 March 2019 For Deadline 7 – Section 4 "Tourism/Socio Economic Impacts and the need for a Community Benefit Scheme within the DCO" paras 4.1 to 4.9.)

6. Within its Deadline 7 submission at para 4.9, NNDC invited the Examining Authority 'to consider the possibility of securing the necessary mitigation strategy to help tourism and related businesses likely to be affected during the construction phase through a further DCO requirement'. NNDC suggested that one way in which this might be achieved would be via a Community Benefit Fund, secured within the DCO.

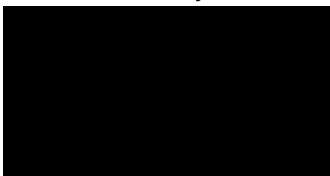
Tourism/Socio Economic Impacts of Norfolk Vanguard and the Need for Appropriate Mitigation

7. Mitigation of potential tourism/socio economic impacts is also an issue ventilated at the Norfolk Vanguard Examination. NNDC provided the report by Destination Research entitled *Economic Impacts of Tourism 2017 Results* to the Norfolk Vanguard Examining Authority and made a number of submissions, which culminated in discussion at Issue Specific Hearing 5 on the draft DCO concerning a potential requirement dealing with tourism/socio economic impacts (28 March 2019). At Deadline 6 (5 April 2019), NNDC proposed the wording for a requirement, which was further refined at Issue Specific Hearing 7 (25 April) and at Deadline 7 (2 May 2019).
8. As a result, the Examining Authority for Norfolk Vanguard included a new requirement when it published its "Examining Authority's draft DCO schedule of changes" on 9 May 2019. A copy is attached in full at **Appendix A**. New Requirement 34, set out on pages 5-6 of that document, brings forward the concept of a '*tourism and associated business impact mitigation strategy*' as a way to address the concerns expressed by NNDC. The draft requirement envisages that scheme including the payment of a contribution to improve and support tourism services like information centres or such as Visit North Norfolk and payment of a contribution to develop and run a targeted marketing campaign - both well-trodden ways of mitigating negative impacts of development on tourism.
9. The inclusion of this proposed amendment suggests the Examining Authority considers such a mitigation strategy to be necessary, reasonable and enforceable, in order to overcome the impact on tourism / the socio economic impacts of the proposed development. The Applicant, Norfolk Vanguard, has indicated it is likely to contest the inclusion of the requirement; NNDC will support its inclusion and will submit it meets the tests in paragraph 55 of the NPPF and paragraph 3 of the Conditions PPG.

Conclusion

10. The approach of the Norfolk Vanguard Examining Authority to mitigation of tourism impact – an issue which raises very similar considerations to those in play in Hornsea 3 – is in NNDC's submission a matter which this Examining Authority should be able to take into account, as should the Secretary of State when deciding the Hornsea 3 application under section 103 of the 2008 Act.
11. NNDC is therefore providing this information to the Examining Authority and the Secretary of State, and invites them to consider, in making the DCO for Hornsea 3, including a requirement similar to that proposed for Norfolk Vanguard. This is, in NNDC's submission, a preferable approach to that advocated in its Deadline 7 submissions (i.e. simply securing a Community Benefit Fund).
12. This approach would ensure similar schemes with similar impacts affecting similar locations are treated consistently and fairly by the Examining Authority and the Secretary of State, so that the proposed DCO schemes can deliver much needed renewable energy but in a way that ensures identified adverse impacts are appropriately mitigated.
13. A copy of this letter has been sent to the Applicant.

Yours sincerely



Geoff Lyon (MTCP, MRTPI)
Major Projects Manager
Tel: 01263 516226
Email: geoff.lyon@north-norfolk.gov.uk

**Appendix A – Norfolk Vanguard Examining Authority’s draft DCO
schedule of changes’ - 09 May 2019 (Requirement 34)**

Application by Norfolk Vanguard Limited for an Order granting Development Consent for the Norfolk Vanguard Offshore Wind Farm

The Examining Authority's schedule of changes to the draft Development Consent Order

Issued on 9 May 2019

Ref	ExA's suggested changes	ExA's comments
Contents		
Schedules	SCHEDULE 9 PART 5 — Procedure for Appeals SCHEDULE 10 PART 5 — Procedure for Appeals SCHEDULE 11 PART 5 — Procedure for Appeals SCHEDULE 12 PART 5 — Procedure for Appeals	Amendment consequential to Part 5 in each of Schedules 9, 10, 11 and 12
Articles		
2	—(1) In this Order... “the 2009 Act” means the Marine and Coastal Access Act 2009(n); “the 2011 Regulations” means the Marine Licensing (Licence Application Appeals) Regulations 2011(a); <hr/> (a) S.I. 2011/934	Amendment consequential to Part 5 in each of Schedules 9, 10, 11 and 12



Ref	ExA's suggested changes	ExA's comments
Articles		
2	<p>—(1) In this Order...</p> <p>“temporary stopping up of public rights of way plan” means the plan certified as the temporary stopping up of public rights of way plan by the Secretary of State for the purposes of this Order;</p> <p>“the tourism and associated business impact mitigation strategy” means the document certified as the tourism and associated business impact mitigation strategy by the Secretary of State for the purposes of this Order;</p>	To reflect suggested amendment by NNDC
5(3) to 5(6)	<p>(3) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application and the Secretary of State shall provide a response within four weeks of receipt of the notice.</p> <p>(4) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the whole or part of the benefit of the provisions of the deemed marine licences.</p> <p>(5) The Secretary of State must consult National Grid before giving consent to the transfer or grant to a person of any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (2) above)</p> <p>(6) The Secretary of State must determine an application for consent made under this article within a period of eight weeks commencing on the date the application is received by the Secretary of State, unless otherwise agreed in writing with the undertaker.</p> <p><i>Subsequent sub-paragraphs renumbered accordingly</i></p>	The issue of whether it would be appropriate for a decision of the Secretary of State relating to the transfer of the benefit of the Order to be subject to arbitration has been explored in the examination. The ExA has sought evidence in relation to the justification for the approach suggested by the Applicant.
37(1)	<p>(z) the outline skills and employment strategy (8.22); and</p> <p>(aa) the Development Principles (8.23); and</p> <p>(bb) the tourism and associated business impact mitigation strategy (8.24).</p>	To reflect suggested amendment by NNDC



Ref	ExA's suggested changes	ExA's comments
Requirements		
2	<p>2.- (1) ... (e) subject to sub-paragraph (2) have a draught height of less than 22 metres from MHWS;.</p> <p>(2) (a) the number of wind turbine generators [in Norfolk Vanguard East] with a draught height of less than []m from MHWS comprised in the authorised project must not exceed [].</p> <p>(b) the number of wind turbine generators [in Norfolk Vanguard West] with a draught height of less than []m from MHWS comprised in the authorised project must not exceed [].</p> <p><i>Subsequent sub-paragraphs renumbered accordingly</i></p>	<p>To reflect suggestions made by NE and RSPB if required following application of further collision risk model(s)</p>
2	<p>(3) The total number of wind turbine generators must be apportioned between Norfolk Vanguard East and Norfolk Vanguard West (rounded to the nearest whole number) in accordance with the following formula—</p> <p>(a) two thirds of the total number of wind turbine generators in Norfolk Vanguard West and one third of the total number of wind turbine generators in Norfolk Vanguard East; or</p> <p>(b) half of the total number of wind turbine generators in Norfolk Vanguard West and half of the total number of wind turbine generators in Norfolk Vanguard East.</p> <p>3.—(1) The total number of wind turbine generators forming part of the authorised project must not exceed 180 and shall be configured such that at any time:</p> <p>(a) No more than two-thirds of the total number of wind turbine generators (rounded to the nearest whole number) must be located in Norfolk Vanguard West; and</p> <p>(b) No more than one half of the total number of wind turbine generators (rounded to the nearest whole number) must be located in Norfolk Vanguard East.</p>	<p>To allow for flexibility between the minimum and maximum parameters</p>



Ref	ExA's suggested changes	ExA's comments
Requirements		
17(1)	(1) No stage of the onshore transmission works may commence until for that stage a code of construction practice has been submitted to and approved by the relevant planning authority, in consultation with Norfolk County Council, the relevant statutory nature conservation body and the Environment Agency.	To ensure that nature conservation interests are fully considered in the CoCPs.
18	(2) The landscaping management scheme must include details of proposed hard and soft landscaping works appropriate for the relevant stage, including— ... (d) details of existing trees to be removed (d-e) details of existing trees and hedgerows to be retained with measures for their protection during the construction period; (e f) retained historic landscape features and proposals for restoration, where relevant; (f g) implementation timetables for all landscaping works; (g h) proposed finished heights, form and gradient of earthworks; and (h i) maintenance of the landscaping;	To ensure better understanding of tree removal proposed and consequent replanting considered necessary under this Requirement
19(2)	(2) Any tree or shrub planted as part of an approved landscaping management scheme that within a period of five ten years after planting, is removed, 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 a different species is otherwise agreed in writing with the relevant planning authority.	To reflect likely timescales for planting to become established in this locality.
20(2)	(2) The code of construction practice must accord with the outline code of construction practice and include details, as appropriate to the relevant stage, on— ... (d) construction noise and vibration (including the use of low noise reversing warnings on vehicles and temporary acoustic barriers);	To reflect concerns of NNDC



Ref	ExA's suggested changes	ExA's comments
Requirements		
26	<p>(2) Outside the hours specified in paragraph (1), construction work may be undertaken for essential activities including but not limited to—</p> <p>(a) continuous periods of operation that are required as assessed in the environmental statement, such as concrete pouring, drilling, and pulling cables (including fibre optic cables) through ducts;</p> <p>(b) delivery to the onshore transmission works of abnormal loads that may otherwise cause congestion on the local road network;</p> <p>(c) works required that may necessitate the temporary closure of roads;</p> <p>(d) onshore transmission works requiring trenchless installation techniques;</p> <p>(e) onshore transmission works at the landfall;</p> <p>(f) commissioning or outage works associated with the extension to the Necton National Grid substation comprised within Work No. 10A;</p> <p>(g) commissioning or outage works associated with the overhead line modification works comprised within Work No. 11 and Work No. 11A;</p> <p>(h) electrical installation; and</p> <p>(i) emergency works.</p> <p><i>[re-number sub-paragraphs accordingly]</i></p> <p>(5) No crushing or screening works must take place at any time on any of the mobilisation areas, without the prior written consent of the relevant local authority.</p>	<p>The ES does not consider continuous periods of operation as referred to in sub-paragraph (a) other than at landfall, nor does it consider the impact of onshore transmission works requiring trenchless installation outside of the normal working hours.</p>
34	<p>(1) No part of Works No. 4C or Work No. 5 within the District of North Norfolk may commence until such time as a tourism and associated business impact mitigation strategy has been submitted to and approved in writing by North Norfolk District Council.</p> <p>(2) The tourism and associated business impact mitigation strategy referred to in sub-paragraph (1) must include:</p> <p>(a) Details of a contribution to be paid by the undertaker to Tourism Information Centres, Visit North Norfolk, Visit Norfolk and any other relevant organisations supporting and promoting tourism in North Norfolk;</p> <p>(b) Details of a method by which the contribution by the undertaker in (a) will be apportioned to the above organisations;</p> <p>(c) Details of who will administer the strategy;</p> <p>(d) Details of how the strategy will be funded including the cost of administration;</p>	<p>Amendment reflects suggestion made by NNDC</p>



	<p>(e) Details of how any monies unspent are to be returned to the undertaker;</p> <p>(f) Details of marketing campaigns (including funding) to be run in order to market North Norfolk in advance of, during and after construction works have been completed for Norfolk Vanguard for the purpose of generating tourist footfall and spend.</p> <p>(3) The tourism and associated business impact mitigation strategy must be implemented as approved.</p> <p><i>Subsequent Requirement number(s) renumbered accordingly</i></p>	
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Ref	ExA's suggested changes	ExA's comments
Deemed Marine Licences		
	<i>The following paragraph and condition numbers refer to Schedule 9. Where there are equivalent provisions in Schedules 10, 11 and 12 the same amendments would apply.</i>	
Part 1	“the appeal parties” means the MMO, the relevant consultee and the undertaker; “business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971;	Amendment reflects changes proposed to appeal procedure in Part 5
Part 4 Condition 9(11)	(11) In case of damage to, or destruction or decay of, the authorised project seaward of MHWS or any part thereof including the exposure of cables the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify MMO, MCA, Trinity House, the Kingfisher Information Service of Seafish and the UK Hydrographic Office.	Amendment seeks to mitigate safety risks to fishing operations.
Condition 9(12)	(12) In case of exposure of cables on or above the seabed, the undertaker must within five three days following the receipt by the undertaker of the final survey report from the periodic burial survey, notify mariners by issuing a notice to mariners, the MMO and by informing Kingfisher Information Service of the location and extent of exposure.	Amendment reflects suggestion made by MCA
Condition 14 (1)	(n) a lighting and marking plan (o) an operation and maintenance programme	Amendment reflects suggestion made by MCA
Condition 14(1)(e)	(ee) For the avoidance of doubt “distribution” in sub-paragraph (e) of this paragraph must include quantities in respect of each structure comprised in the offshore works and intended to be subject to scour and cable protection [Condition 9 in each of Schedules 11 and 12 to be amended accordingly]	To provide for certainty in the Scour Protection and Cable Protection Plan
Condition 15(1)	—(1) Any archaeological reports produced in accordance with condition 14(h)(iii) are to must be agreed with the statutory historic body.	Amendment reflects drafting protocol
Condition 15(5)	(5) Unless otherwise agreed in writing with the undertaker, the MMO must use reasonable endeavours to determine an application for approval made under condition 14 as soon as practicable and in any event within a period of six four months commencing on the date the application is received by the MMO. or if the MMO reasonably requests further information to	To reflect concerns of TH and provide certainty and consistency whilst preserving the possibility of



	determine the application for approval, within a period of four months commencing on the date that the further information is received by the MMO. For the purposes of this paragraph (5), the MMO may only request further information from the undertaker within a period of two months from receipt of the application for approval.	extension of time by agreement
Condition 15(8)	<p>(8) No part of the authorised scheme may commence until the MMO, in consultation with (8) the MCA, has given written approval of an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency, response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme in accordance with the MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes. The ERCoP and associated guidance and requirements must be implemented as approved, unless otherwise agreed in writing by the MMO in consultation with the MCA. The document must be reviewed at least annually or whenever changes are identified, whichever is sooner, and any proposed changes must be submitted to the MMO in writing for approval, in consultation with MCA.</p> <p>(8) No part of the authorised project may commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that stage of the project, adequately addressed all MCA recommendations as appropriate to the authorised project contained within MGN543 "Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues" and its annexes.</p>	Amendment reflects suggestion made by MCA
Condition 18	(2)(b) “a high-resolution full sea floor coverage swath-bathymetry survey to include a 100% coverage that meets the requirements of IHO(b) S44ed5 Order 1a, and side scan sonar, of the area(s) within the Order limits in which it is proposed to carry out construction works and disposal activities under this licence;”	To reflect HE requirements to the extent they surpass IHO(b) S44ed5 Order 1a and provide certainty over extent of works affected
Condition 20	2(e) 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(h).	Amendment reflects suggestion by HE



Schedule 10, Part 3, paragraph 2(1)	Work No. 1 (phase 1 2)	To reflect the authorised works under the licence
Schedule 12, Part 3, paragraphs 2(1) – (4)	Work No. 2 (phase 1 2) Work No. 3 (phase 1 2) Work No. 4A (phase 1 2) Work No. 4B (phase 1 2)	To reflect the authorised works under the licence



Ref	ExA's suggested changes	ExA's comments
Schedules 9-12, Part 5 Appeal Procedure		
Part 5 Procedure for appeals	<p>23. The undertaker must submit to the Secretary of State, a copy of the application submitted to the MMO and any supporting documentation which the undertaker may wish to provide (“the appeal documentation”).</p> <p>24. The undertaker must on the same day provide copies of the appeal documentation to the MMO and any relevant consultee.</p> <p>25. As soon as is practicable after receiving the appeal documentation, but in any event within 20 business days of receiving the appeal documentation, the Secretary of State must appoint a person and forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for that person’s attention should be sent.</p> <p>26. The MMO and any relevant consultee must submit written representations to the appointed person in respect of the appeal within 20 business days of the date on which the appeal parties are notified of the appointment of a person under paragraph 25 and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person.</p> <p>27. The appeal parties must make any counter submissions to the appointed person within 20 business days of receipt of written representations pursuant to paragraph 26 above.</p> <p>28. The appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable. If the appointed person considers that further information is necessary to enable him to consider the appeal he must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.</p> <p>29. Any further information required pursuant to paragraph 28 must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person. Any written representations concerning matters contained in the further information must be submitted to the appointed person, and made available to all appeal parties within 20 business days of that date.</p> <p>30. On an appeal the appointed person may— (a) allow or dismiss the appeal; or (b) reverse or vary any part of the decision of the MMO (whether the appeal relates to(2) that part of it or not);</p>	To provide for an appeal procedure broadly consistent with existing statutory processes and consistent with similar DCO’s



and may deal with the application as if it had been made to the appointed person in the first instance.

31. The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the time limits prescribed, or set by the appointed person, under this paragraph.

32. The appointed person may proceed to a decision even though no written representations have been made within those time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

33. The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

34. If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Part 4 of Schedule 9 as if it had been given by the MMO. The MMO may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) may not be taken to affect or invalidate the effect of the appointed person's determination.

35. Save where a direction is given pursuant to paragraph 36 requiring the costs of the appointed person to be paid by the MMO, the reasonable costs of the appointed person must be met by the undertaker.

36. On application by the MMO or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance on the award of costs or any guidance which may from time to time replace it.

- (1) Where the MMO refuses an application for approval under condition 14 [condition 9 in Schedules 11 and 12] and notifies the undertaker accordingly, or fails to determine the application for approval in accordance with condition 15 [condition 10 in Schedules 11 and 12] 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 paragraph (2)
- (2) The 2011 Regulations are modified so as to read for the purposes of this Order only as follows—
 - (a) In regulation 6(1) (time limit for the notice of appeal) for the words “6 months” there is substituted the words “4 months”.



- (b) For regulation 4(1) (appeal against marine licensing decisions) substitute—
“A person who has applied for approval under condition 15 of Part 4 of Schedule 9; condition 15 of Part 4 of Schedule 10; condition 10 of Part 4 of Schedule 11; or condition 10 of Part 4 of Schedule 12 to the Norfolk Vanguard Offshore Wind Farm Order 201[] may by notice appeal against a decision to refuse such an application or a failure to determine such an application.”
- (c) 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 ”
- (d) 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”.
- (e) 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”
- (f) 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”.
- (g) 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”.
- (h) For regulation 18(4) substitute— “Subject to paragraphs (1) and (3), each party should bear its own costs of a hearing or inquiry held under these Regulations.”
- (i) For regulation 22(1)(b) and (c) (determining the appeal—general) substitute—
“(b) allow the appeal and, if applicable, quash the decision in whole or in part;
(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 15 of Part 4 of Schedule 9; condition 15 of Part 4 of Schedule 10; condition 10 of Part 4 of Schedule 11; or condition 10 of Part 4 of Schedule 12 to the Norfolk Vanguard Offshore Wind Farm Order 201[].”
- (j) 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”

End of schedule



Department for
Business, Energy
& Industrial Strategy

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London
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Telephone: 020 7215 5677
Email: beiseip@beis.gov.uk
Web: www.gov.uk/beis

To:
By email only:

Your Ref:

Ministry of Defence

Our Ref:

Date: 10 July 2019

cc:
Orsted Hornsea Project Three (UK) Limited

Dear Sir or Madam,

Planning Act 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010

Application by Orsted Hornsea Project Three (UK) Limited (“the Applicant”) for an Order granting Development Consent for the proposed Hornsea Project Three Offshore Wind Farm and associated offshore and onshore infrastructure

REQUEST FOR COMMENTS FROM THE SECRETARY OF STATE FOR DEFENCE

Dear Sir or Madam,

Following the completion of the examination on 2 April 2019, the Examining Authority submitted a Report and Recommendation in respect of its findings and conclusions on the above application to the Secretary of State on 2 July 2019. In accordance with section 107 of the Planning Act 2008, the Secretary of State [for Business, Energy and Industrial Strategy] has three months to determine the application.

Crown land

There is an issue relating to the compulsory acquisition of Crown land sought by the Applicant on which the Secretary of State would be grateful if the Ministry of Defence could provide further clarification.

It is understood that there was no evidence before the Examining Authority at the close of its examination that consent to the compulsory acquisition of an interest in land held otherwise than by or on behalf of the Crown has been granted for the purposes of section 135(1) of the

Planning Act 2008 in respect of Crown land at Weybourne Military Camp (plots 1-005 to 1-017, 1-017, 1-018) and land west of Cantley Lane (plots 30-029 and 30-030) in Norfolk.

The Secretary of State would be grateful for confirmation from **the Secretary of State for Defence** as to whether consent to acquisition for the purposes of section 135(1) of the Planning Act 2008 has been granted.

A response is requested by Thursday 25 July 2019.

The response should be submitted by email to:

HornseaProjectThree@planninginspectorate.gov.uk

Please also send any hard copy response to the Hornsea Project Three Offshore Wind Farm Team, Secretary of State for Business, Energy and Industrial Strategy, c/o the Planning Inspectorate, 3D Eagle Wing, Temple Quay House, Temple Quay, Bristol, BS1 6PN. If you will have difficulty in submitting a response by the consultation deadline, please inform the Project Team as soon as possible.

The response will be published on the Hornsea Project Three Offshore Wind Farm project page of the National Infrastructure Planning website:

<https://infrastructure.planninginspectorate.gov.uk/projects/eastern/hornsea-project-three-offshore-wind-farm/> as soon as possible after 25 July 2019.

This letter is without prejudice to the Secretary of State's decision whether or not to grant development consent for the Hornsea Project Three Offshore Wind Farm project, and nothing in this letter is to be taken to imply what that decision might be.

Yours faithfully

Gareth Leigh
Head of Energy Infrastructure Planning



Ministry
of Defence

MOD Legal Advisers
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25 July 2019

Hornsea Project Three Offshore
Wind Farm Team
Secretary of State for Business, Energy
and Industrial Strategy
c/o the Planning Inspectorate
3D Eagle Wing
Temple Quay House
Temple Quay
Bristol
BS1 6PN

Dear Sirs

**HORNSEA PROJECT THREE OFFSHORE WIND FARM - APPLICATION FOR A
DEVELOPMENT CONSENT ORDER PURSUANT TO THE PLANNING ACT 2008**

CONSENT PURSUANT TO SECTION 135 OF THE PLANNING ACT 2008

We understand that Orsted Hornsea Project Three (UK) Limited has submitted an application pursuant to the Planning Act 2008 (the "**Act**") for development consent to construct, operate and maintain Hornsea Project Three offshore wind farm ("**Hornsea Three**").

The land required for the purposes of constructing Hornsea Three includes land which is owned by the Crown, or over which the Crown has an interest, and which therefore constitutes "Crown land" for the purposes of the Planning Act 2008.

The Crown land in question is identified in the table below and shown on the Crown land onshore and offshore plans, which form part of the DCO application documentation.

Plot Number on Land Plans	Extent of acquisition or use	Description of Land
1-005	Temporary use of land	779 square metres Track (Weybourne Military Camp) (excluding all interests of the Crown) (North Norfolk District Council)

Plot Number on Land Plans	Extent of acquisition or use	Description of Land
1-006	New Connection Works Rights Classes (a), (b), (c), (d), (e) and (f)	72251 square metres Field, agricultural land, public footpath (Weybourne FP7), tracks, drain and pond (Weybourne Military Camp) (excluding all interests of the Crown) (North Norfolk District Council)
1-007	New Connection Works Rights Classes (a), (b), (c), (d), (e) and (f), and New Construction and Operation Access Rights Classes (a), (b), (c), (d) and (e)	2782 square metres Track (Weybourne Military Camp) (excluding all interests of the Crown) (North Norfolk District Council)
1-008	New Connection Works Rights Classes (a), (b), (c), (d), (e) and (f)	20797 square metres Grassland and track (Weybourne Military Camp) (excluding all interests of the Crown) (North Norfolk District Council)
1-009	Temporary use of land	425 square metres Track (Weybourne Military Camp) (excluding all interests of the Crown) (North Norfolk District Council)
1-010	Temporary use of land	146 square metres Tracks and verges (Weybourne Military Camp) (excluding all interests of the Crown) (North Norfolk District Council)
1-011	Temporary use of land	124 square metres Track and verge (Weybourne Military Camp) (excluding all interests of the Crown) (North Norfolk District Council)
1-012	Temporary use of land	2600 square metres Access track (Weybourne Military Camp) (excluding all interests of the Crown) (North Norfolk District Council)
1-013	Temporary use of land	2075 square metres Track and verge (Weybourne Military Camp) (excluding all interests of the Crown) (North Norfolk District Council)
1-014	New Construction and Operation Access Rights Classes (a), (b), (c), (d) and (e)	4342 square metres Access track (Weybourne Military Camp) (excluding all interests of the Crown) (North Norfolk District Council)

Plot Number on Land Plans	Extent of acquisition or use	Description of Land
1-017	New Connection Works Rights Classes (a), (b), (c), (d), (e) and (f)	13114 square metres Grassland, airstrip and track (Weybourne Military Camp) (excluding all interests of the Crown) (North Norfolk District Council)
1-018	New Connection Works Rights Classes (a), (b), (c), (d), (e) and (f)	493 square metres Grassland (Weybourne Military Camp) (excluding all interests of the Crown) (North Norfolk District Council)
30-029	New Connection Works Rights Classes (a), (b), (c), (d), (e) and (f)	36236 square metres Field, agricultural land and overhead electricity lines (west of Cantley Lane) (excluding all interests of the Crown) (South Norfolk District Council)
30-030	Temporary use of land	2326 square metres Field and agricultural land (west of Cantley Lane) (excluding all interests of the Crown) (South Norfolk District Council)

Orsted Hornsea Project Three (UK) Limited has sought the consent of the appropriate Crown authority to the inclusion of powers that will apply to this Crown land in the DCO for Hornsea Three.

I confirm that the appropriate Crown authority to give consent in respect of the Crown land referred to in the table above is the Secretary of State for Defence and that the Ministry of Defence is empowered to give such consent on behalf of the Secretary of State.

Accordingly, I confirm that the Ministry of Defence hereby consents, pursuant to section 135(1) and section 135(2) of the Planning Act 2008, to:

1. The inclusion of the Crown land in the DCO for Hornsea Three;
2. The inclusion of provisions within the DCO for Hornsea Three which would apply to the Crown land;
3. Orsted Hornsea Project Three (UK) Limited's application for powers of compulsory acquisition of new rights and the imposition of restrictions over the Crown land, other than the acquisition of the interest held by the Crown; and
4. The drafting of Article 41 of the DCO.

Yours faithfully

Property Law Team

MOD Legal Advisers

Mr Rob Pridham
Hornsea Three Case Manager
Energy Infrastructure Planning
Department for Business, Energy and Industrial
Strategy
Level 3, Orchard 2
1 Victoria Street
London SW1H 0ET

6th September 2019

Dear Mr Pridham,

The Hornsea Three Development Consent Order application and the implications of Natural England's recent advice at the Norfolk Vanguard Development Consent Order examination

The RSPB is writing to draw your attention to what we consider to be significant new advice from Natural England in respect of its position on the in combination impacts on seabird populations in the North Sea arising from the construction and operation of offshore wind farms and are copying this letter to the Applicants as well as Natural England and the Planning Inspectorate. We consider it is relevant to your determination of the Hornsea Three Development Consent Order (the Hornsea Three Order).

The new advice from Natural England arose during the course of the examination of the Norfolk Vanguard Development Consent Order (DCO) application which closed on 10 June 2019 and whose Panel will report to you by 10 September 2019, in advance of the deadline for your determination of the Order. We considered it prudent to write, particularly as there is only a limited time (from 10 September to 2 October) when both applications will be with your Department for determination.

Implications for Hornsea Three of Natural England's advice in respect of Norfolk Vanguard

Natural England's advice on Norfolk Vanguard

At Deadline 8 of the Norfolk Vanguard DCO examination, Natural England submitted its *Comments on Norfolk Vanguard Ltd. Deadline 7 and Deadline 7.5 submissions in relation to Offshore Ornithology Related Matters (30 May 2019)*. Table 1 summarised Natural England's position that there would be in-combination adverse effects on integrity on:

- the breeding gannet population at the Flamborough and Filey Coast SPA (in-combination with Hornsea Three);
- the breeding kittiwake population at the same SPA (including or excluding Hornsea Three); and
- the breeding lesser black-backed gull population of the Alde-Ore Estuary SPA.

In addition to its relevance to the Norfolk Vanguard Order, the RSPB considers the first two parts of NE's advice, relating to in-combination adverse effects on the integrity of the Flamborough and Filey Coast SPA, to be directly relevant and of great importance to your determination of the Hornsea Three Order.

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The RSPB is part of BirdLife International, a partnership of conservation organisations working to give nature a home around the world.

Implications of Natural England's Norfolk Vanguard advice for determination of Hornsea Three

The RSPB considers the new advice is material to your determination of the Hornsea Three Order as Natural England sets out the interaction between the Norfolk Vanguard and Hornsea Three schemes and concludes there will be an in-combination adverse effects on integrity on the Flamborough and Filey Coast SPA in respect of breeding gannets and kittiwakes, arising out of both applications.

Given Natural England's unequivocal advice, we consider it both prudent and appropriate for the Secretary of State to take this new advice into account in determining the Hornsea Three Order in respect of the tests set out in the Conservation of Habitats and Species Regulations 2017 (as amended) ("the Habitats Regulations") and the equivalent tests contained in the Conservation of Offshore Marine Habitats and Species Regulations 2017. The new advice bears directly on the adverse effect on integrity test under Regulation 63 and, if the Secretary of State agrees with Natural England's advice, the need to address the subsequent derogation tests under Regulation 64 (alternative solutions and imperative reasons of overriding public interest) and Regulation 68 (compensatory measures).

To date, matters under Regulations 64 and 68 have not been fully tested in respect of offshore wind farm schemes in the UK. In this context, we consider it would be important for the Secretary of State to invite further submissions from all interested parties upon these matters. Such matters, especially compensatory measures, were not fully explored at the Hornsea Three examination.

If the Secretary of State agrees with Natural England's advice, in order to consent the Hornsea Three Order the Secretary of State will need to have clear evidence supplied by the Applicant demonstrating that there are no alternative solutions that would deliver the electricity generation offered by this scheme, that there are imperative reasons of overriding public interest that justify the consenting of this particular scheme, and, critically, evidence of the Applicant's ability to put in place effective measures to compensate for the impacts of the scheme. The RSPB's detailed submissions on this to the Hornsea Three Examination are attached.

Therefore, the RSPB recommends that the Secretary of State urgently considers the need to extend the period available to determine the Hornsea Three Order to enable effective consultation to be undertaken. As stated in our submissions to the Hornsea Three Examination, the RSPB is willing to work with the Applicant to explore these issues. However, these are complex issues and we consider it essential that all parties have sufficient time to explore them in order properly to inform your decision.

As the Secretary of State's decision on the Hornsea Three Order is due by 2nd October we would be grateful for a prompt response.

Yours sincerely,



Rosie Sutherland
Head of Environmental Law

cc Ørsted: Andrew Guyton (Hornsea Three Consents Manager)
Vattenfall: Rebecca Sherwood (Norfolk Vanguard Consents Manager)
Natural England: Emma Brown (Marine Senior Adviser)
The Planning Inspectorate: Hornsea Three Case Team

**The consideration of absence of alternatives, imperative reasons of
overriding public interest and compensation**

The Royal Society for the Protection of Birds

1 April 2019

Planning Act 2008 (as amended)

In the matter of:

**Application by Ørsted Hornsea Project Three (UK) Ltd for an Order Granting Development
Consent for the**

Hornsea Project Three Offshore Wind Farm

**Planning Inspectorate Ref: EN010080
Registration Identification Ref: 20010702**



The consideration of absence of alternatives, imperative reasons of overriding public interest and compensation

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Executive summary

The RSPB has a number of concerns with the responses provided to the Examining Authority by the Applicant in its answers to the Second Written Questions on the topic of alternative solutions, imperative reasons of overriding public interest (IROPI), and compensation. At the outset, the RSPB accepts that there is a clear public interest in producing renewable energy to reduce carbon emissions to meet the UK's climate change obligations. For this reason, the RSPB is a strong supporter of increasing renewable energy production and doing so in harmony with nature. Our concern here is ensuring this is done in a way that does not cause unnecessary harm to biodiversity, which is why the Article 6(4) tests are so important. In this context, they are critical in ensuring offshore wind farm schemes predicted to cause damage to Natura 2000 sites are only consented in the exceptional circumstances when all of those tests are met.

The concerns can be summarised as follows:

- i. Alternative solutions, IROPI, and compensation are legal tests which are applied when it is not possible to exclude the risk of an adverse effect on the integrity of one or more Natura 2000 sites designated under the Birds or Habitats Directives.
- ii. These legal tests are required to be applied in a specific sequence ordained by the Habitats Directive: first the consideration of alternative solutions, then IROPI, and finally the consideration of compensation. In its answers the Applicant has applied the tests in the wrong order.
- iii. **Approach to defining the public interest:** to frame the analysis on alternative solutions and IROPI required under Article 6(4), it is vital that the public interest(s) served by the plan or project are clearly and precisely described and the contribution of the plan or project to those public interests also described as precisely as possible. In setting out a broad description of the public interest(s) that Hornsea Three is claimed to serve, the Applicant has failed to set out the role and contribution of the project in meeting the claimed public interest(s).
- iv. **Alternative solutions:** the RSPB considers that the legal test of alternative solutions must be given a wide interpretation, and should be focused on the **ends** that the plan or project seeks to achieve (in this case low carbon electricity) and not, as the Applicant contends, the means by which that end is achieved. The RSPB consider that a key role for the competent authority is to identify the alternative solutions that can meet the public interest(s) which the plan or project serves and whether there are other, less damaging means available. To do this will require a clear view of what the relevant public interest objectives are, the contribution of the project to each of those public interests, and whether there are other ways the public need can be delivered without damaging Natura 2000 sites. We do not consider the Applicant has provided the necessary information to carry out such an analysis.
- v. **IROPI:** if the Secretary of State considers there are no alternative solutions to meet the public interest objectives, they can only approve the project if the IROPI outweighs its impact on the conservation objective. It is for the Applicant to demonstrate that the contribution Hornsea Three makes to its claimed public interests outweigh the public interest of conserving the relevant features of, for example, the Flamborough and Filey Coast SPA. The RSPB considers the Applicant has not made this case out. The Applicant's case emphasises "human health, public safety and beneficial consequences of primary importance are central planks of the case for Hornsea Three", with particular reference to combating climate change, energy security and the economic benefits deriving from those. However, at no point in its submission does the

Applicant make anything more than general statements regarding how the Hornsea Three project itself contributes to each of these public interests. Therefore, the RSPB considers this case is not made out.

- vi. **Compensatory measures:** The Applicant states clearly that it has not identified any relevant compensation. The RSPB notes that securing such measures is the responsibility of the Applicant. If the Examining Authority and/or Secretary of State conclude that an adverse effect on the integrity of one or more of the sites highlighted cannot be excluded the Applicant's failure to secure such measures would jeopardise the ability of the Secretary of State to consent the scheme as the SoS would not have any confidence the compensatory measures required under Article 6(4) had been secured. Therefore, in line with *Managing Natura 2000*, consent could not be granted. In addition to this overarching problem, the RSPB is concerned about the approach that the Applicant has adopted in terms of the selection of compensation, its quantum, the evidence base required to demonstrate its likelihood of success, its location, timing and the role of Natural England in selection of compensation.
- vii. Based on the Applicant's submission, the RSPB considers that the Examining Authority and Secretary of State have not been provided with the necessary information to consent the Hornsea Three project on the basis of no alternative solutions, IROPI and securing of necessary compensatory measures. Therefore, based on the information presented to the Examination, the RSPB considers consent cannot be granted.

Introduction

1. This document represents the RSPB's response to points raised by the Applicant in its answers to the Examining Authority's Questions 2.2.7 and 2.2.44 set out in Appendix 63 at Deadline 4 and *Applicant's Comments on Interested Parties' Responses to the ExA's Second Written Questions submitted at Deadline 4* for Deadline 5. Due to the importance of these issues we have produced this document to publicly set out where our views on these issues differ from those of the Applicant.
2. In approaching the Applicant's responses the RSPB notes paragraph 3.1 the Answers to the ExA's questions states: "The Applicant's primary case is that Article 6(4) is not engaged in relation to the FFC SPA, the NNSR SAC or the WNNC SAC as a result of Hornsea Three (either alone or in combination)." The RSPB has not made representations about either the North Norfolk Sandbanks and Saturn Reef SAC or the Wash and North Norfolk Coast SAC, and will not repeat our representations about our concerns with the Flamborough and Filey Coast SPA (FFC SPA) here. The focus of this document is solely upon the steps which will need to be taken if the Examining Authority and/or the Secretary of State are unable to conclude that Hornsea Project Three will avoid an adverse effect on the integrity of one or more Natura 2000 sites.
3. The RSPB expressed concerns about the potential impacts of offshore wind farms upon the Flamborough Head and Bempton Cliffs SPA and FFC SPA (which now subsumes the former designation) (the FFC SPA) throughout the Hornsea One and Hornsea Two examinations. Both schemes are significantly closer to the FFC SPA than Hornsea Three and are likely *individually*, to be significantly more harmful to the FFC SPA than Hornsea Three. We argued at the Hornsea Two Examination that other schemes should be consented in preference to Hornsea Two¹. However, both schemes were consented and are now under construction. If it is not possible to exclude the risk of an adverse effect on the integrity of the Flamborough and Filey Coast SPA it will be because of the impacts of Hornsea Three in combination with Hornsea One and Hornsea Two. If this is the case it is regrettable that the potentially least damaging of the four Hornsea schemes, due to it being the furthest from the FFC SPA, is the one which has reached this threshold.
4. The RSPB consider that the invocation of the approach set out in Article 6(4) of the Habitats Directive (92/43/EEC)² should not be approached lightly. The very limited number of cases where it has been deemed appropriate to use this approach gives a clear indication of the high thresholds that have to be passed in order to do so.

Identification of adverse effect on integrity

5. The RSPB note the statement in paragraph 3.7 of the Applicant's Answers, that "NE's conclusion appears to be based on founded principally on uncertainty (which the Applicant does not accept)", coupled with the request for NE to set out its reasoning "and evidence regarding the extent of harm it identifies in respect of the integrity". This approach has the requirements of

¹ Initially in our Written Representations (15 July 2015) and then in our *Final submission on alternative solutions under the Habitats Regulations* (10 December 2015).

² This provision is transposed into domestic legislation via regulation 64 of The Conservation of Habitats and Species Regulations 2017 (SI 1012) and regulation 29 of The Conservation of Offshore Marine Habitats and Species Regulations 2017 (SI 1013). For ease of reference in this document we refer to Article 6(4), but that should be understood to include reference to these provisions where appropriate.

the test backwards - it is for the Applicant to satisfy the Examining Authority that an adverse effect on integrity upon Natura 2000 sites can be **excluded**.

6. The RSPB note the Applicant's statement:

There are two potential categories of adverse effect conclusion as a result of the *Waddenzee*³ case:

- (a) A positive conclusion of adverse effect, typically as a result of construction works within the Natura 2000 site as a result of e.g. a port, which is known in advance and can be the subject of advance consideration in terms of appropriate compensation inside and outside (e.g. by way of replacement habitat) the affected site and detailed discussion with the relevant SNCB to agree a deliverable and funded set of proposals; and
- (b) A conclusion based on uncertainty of effect due to an absence of evidence or issues of interpretation of the available evidence, such that, in applying the precautionary principle as required by *Waddenzee* an adverse effect cannot be ruled out.⁴

7. The Applicant then continued:

The present case would seem to fall into the second category. It is submitted that, in various respects, a conclusion based on uncertainty and precaution must necessarily be approached differently to one based on clear, positive evidence of a demonstrable adverse effect on integrity.⁵

8. The RSPB disagrees with this assertion. The Habitats Directive is focused on conservation and sets out one requirement, which is to ensure on the basis of robust science that the integrity of Natura 2000 sites is maintained. To this end it makes no difference whether a scheme is required to proceed to consideration of alternative solutions, imperative reasons of overriding public interest and compensation because it is definitely causing harm or because there is insufficient certainty that harm will not be caused. – the key issue is to ensure that if the scheme goes ahead that there will be no long-term harm to the integrity of the wider Natura 2000 network.

9. *Managing Natura 2000* addresses this point:

According to the Court **the appropriate assessment should contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt** as to the effects of the works proposed on the site concerned (C-304/05 paragraph 69).⁶

Managing Natura 2000 further states:

Where doubt remains as to the absence of adverse effect on the integrity of the site linked to the plan or project being considered, the competent authority will have to refuse authorisation (C-127/02 paragraph 57).⁷

³ C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbbeheer en Visserij*.

⁴ Ørsted's Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 7.7.2.

⁵ Ørsted's Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 7.7.3.

⁶ *Managing Natura 2000 sites – The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC (21/11/18)* C(2018) 7621 final, section 3.6.1.

⁷ *Managing Natura 2000*, section 3.7.3.

Evaluating alternative solutions, imperative reasons of overriding public interest, and compensation

10. The RSPB considers that it is essential that renewable energy, like all other development, is delivered through the least environmentally damaging schemes. The purpose of the alternative solutions and IROPI tests is to decide where the balance lies between the public interest in conserving our biodiversity and the public interest(s) which may be provided by the scheme.
11. Article 6(4) takes as its starting point that it has not been possible to avoid an adverse effect on the public interest of conserving the biodiversity protected by the impacted Natura 2000 sites, which in turn defines the loss to the public interests protected by the EU Birds and Habitats Directives. In order to carry out the critical exercise set out in Article 6(4) it is vital that:
 - i) The public interest(s) served by the plan or project are clearly and precisely described; and
 - ii) The contribution of the plan or project to those public interests is described as precisely as possible.

These are critical preliminary steps to tackling the Article 6(4) tests as they enable the decision-maker to determine:

- a) Whether there are less damaging, feasible alternative solutions by which the plan or project's contribution to the defined public interest(s) could be met; and if not
- b) Whether the plan or project's contribution to the public interest(s) outweighs the damage it will cause to the public interests served by the impacted Natura 2000 sites.

It is not enough to couch Article 6(4) arguments in generalities of meeting broadly described public interests: the role of the specific plan or project in meeting the claimed public interest(s) must be precisely described. At this stage we simply note that the Applicant's statement lacks the necessary precision with regard to the contribution of its project to the claimed public interest(s). Therefore, it will be incumbent on the Examining Authority and Secretary of State to carry out this analysis.

12. At the outset, the RSPB accepts that there is a clear public interest in producing renewable energy to reduce carbon emissions to meet the UK's climate change obligations. For this reason, the RSPB is a strong supporter of increasing renewable energy production and doing so in harmony with nature. Our concern here is ensuring this is done in a way that does not cause unnecessary harm to biodiversity, which is why the Article 6(4) tests are so important. As we go on to argue, we do not consider the Applicant has set out a robust case justifying the Hornsea Three project itself in this context.
13. Without going in to detail at this stage, it is worth summarising the key planks of the Applicant's public interest objective arguments.⁸ They draw on the contribution of offshore wind in general to the Government's legal and policy objectives (primarily at a UK level) to:
 - a) Increase renewable energy to reduce carbon emissions to combat climate change;
 - b) Increase security of energy supply; and

⁸ Ørsted's Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 5.6.1

c) Economic benefits deriving from (a) and (b).

14. The Applicant then seeks to categorise these primarily under the Article 6(4) heading of public interest tests, primarily the headings of:

- Human health
- Public safety
- Beneficial consequences of primary importance to the environment.

15. However, it is important to note that at no point in its submission does the Applicant make anything more than general statements regarding how the Hornsea Three project itself contributes to each of these public interests i.e. taking each of the claimed benefits (increased renewable energy, improved energy security, economic benefits):

- i) How do each of these elements contribute to human health, public safety and beneficial consequences of primary importance to the environment and precisely which aspects of these broad categories will benefit?
- ii) What part of the UK population/economy will benefit from these public interests; and in turn
- iii) What contribution will the project itself make to each public interest claimed?

This is essential analysis to provide the framework necessary to carry out the alternative solutions and IROPI tests. At present, this case is not made out.

Adverse effects on site integrity

16. The RSPB note the statement in the Applicant's Answers (at paragraph 3.8) that the consideration of alternative solutions, IROPI and compensatory measures "can only be done if the precise nature and quantified extent of any contended adverse effect on integrity is identified". The RSPB respectfully contends that the potential levels of harm can be derived from the modelled outputs of the likely impacts, with the Population Viability Analysis model giving a strong indication of the likely scale of the impact over the lifetime of the offshore wind farm, and using that to quantify the level of harm, and thus compensation, that may be required. It is the RSPB's view that the outputs of this analysis are sufficient to demonstrate reasonable scientific doubt as to the absence of adverse effects on the integrity of the FFC SPA. As per the Applicant's request the RSPB is willing to have further discussions to consider the position further. We make this offer without prejudice to the Applicant's position that Article 6(4) of the Habitats Directive is not engaged.

17. The Applicant notes that "Hornsea Three is not in or near to the FFC SPA, which is some 149 km (approximately) from Hornsea Three".⁹ This is not relevant to considerations of impacts of the offshore array area on the FFC SPA – it is the effect that the scheme might have upon the FFC SPA which is the sole consideration.

18. Throughout its response the Applicant places significant emphasis on DEFRA's document *Habitats and Wild Birds Directives: guidance on the application of article 6(4) – Alternative solutions, imperative reasons of overriding public interest (IROPI) and compensatory measures*. The RSPB note that this is a statement of the UK Government's policy interpretation of the law,

⁹ Ørsted's Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 2.2.

and therefore cannot be considered to be legally definitive. The RSPB highlights the Explanatory note at the start of the guidance that: “This guidance is issued as a stand-alone document on an interim basis.” (contents page). We also note that the document is now more than six years old and that there has been a significant body of recent European Court of Justice decisions which may impact upon it. These judgments have been reflected in the European Commission’s revised version of the *Managing Natura 2000* sites guidance.¹⁰ We make reference to this revised guidance in our response. To the extent that there is disagreement between the 2012 DEFRA guidance and the 2018 European Commission guidance we consider that the latter must be preferred.

19. It is important to note that the tests set out in paragraph 4.5 of the Applicant’s Answers are presented in the wrong order, with imperative reasons of overriding public interest (IROPI) being considered before the absence of alternative solutions. The three elements are sequential legal tests and consequently they must be approached in the correct sequence. *Managing Natura 2000* is clear:

The **absence of alternatives must be demonstrated**, before proceeding with the examination of whether the plan or project is necessary for imperative reasons of public interest (Court ruling in Castro Verde case C-239/04, paragraphs 36 – 39).¹¹

20. Similarly, IROPI must be established before the issue of compensation can be considered. All three tests must be satisfied in order for a scheme to be consented under this regime.
21. However, we note that in terms of discussion between parties during the examination process, it is appropriate to discuss such matters in parallel in order to inform the Examination fully. However, there has been no serious discussion of compensatory measures to date.

Alternative solutions

22. Given the statement from *Managing Natura 2000* in paragraph 19 above it is clear that the absence of alternative solutions is the most important question to address. *Managing Natura 2000* is clear:

The decision to go ahead with a plan or project must meet the conditions and requirements of Article 6(4). In particular, it must be documented that:

1. the alternative put forward for approval is the least damaging for habitats, for species and for the integrity of the Natura 2000 site(s), regardless of economic considerations, and that **no other feasible alternative exists** that would not adversely affect the integrity of the site(s);¹² (our emphasis)

It is within the context of feasibility that the question of alternative solutions must be considered.

¹⁰ *Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC (21/11/18)* C(2018) 7621 final.

¹¹ *Managing Natura 2000* (section 3.7.4, page 57).

¹² *Managing Natura 2000*, section 5.2, page 56.

Is “need” unconstrained?

23. Before considering feasibility, the RSPB notes the contention made by the Applicant that “UK renewable energy targets are therefore essentially unconstrained. This is highly relevant to the consideration of alternatives to Hornsea Three and other offshore wind farms.”¹³

24. Similar arguments were advanced by SMartWind (now owned by Ørsted) at the Hornsea Two examination. In Appendix J to its Deadline II response it stated:

The Applicant would make a very general point, however, that it considers the question of alternatives to be a false premise in the context of the Project.

The concept of alternatives must be seen and gauged against the purpose and nature of the individual project subject to the assessment. In the case of the Project, as noted in Section 8 of the Statement of Reasons, the Project is principally designed to deliver renewable energy generating capacity for the UK to address the need for such in accordance with the UK’s legal obligations.

Regulation 3 of The Promotion of the Use of Energy from Renewable Sources Regulations 2011 (2011/243) places a duty on the Secretary of State to ensure that at least 15% of energy consumption in the UK is from renewable sources by 2020. Crucially, this key target is unconstrained. It is not a fixed percentage or a cap and, accordingly, the Applicant would submit that there can be no ruling out of projects meeting an unconstrained need on the basis of alternative solutions.

The central objective of the current UK Government energy policy is to ensure the security of energy supply whilst responding to the challenge of climate change by reducing carbon emissions. To meet these objectives, it is recognised that more energy infrastructure is needed with an increased emphasis on energy generation from renewable and low carbon sources. The need for this infrastructure is fully recognised in many areas of Government policy and the need to reduce carbon emissions is further enshrined in European law and international obligations, which has been transposed into a range of UK legislation. The Project will accord with these policies and help compliance with the relevant legislation and so will assist the Government in meeting its energy policy obligations.

25. The RSPB rejected this assertion at the Hornsea Two Examination¹⁴ and rejects it now. The Government’s decision on 11th September 2015 to refuse consent for the Navitus Bay offshore wind farm demonstrated its willingness to reject a nationally significant offshore wind farm scheme due to its environmental impacts. If, as the Applicant contends, the demand for offshore wind was unconstrained, the Secretary of State would have been obliged to consent the scheme despite its perceived harm. Further, the constraints that the Government has put on Contract for Difference bidding rounds¹⁵ indicates a further restriction on delivery of which the Government is clearly aware. This is also described in the Applicant’s statement.¹⁶

¹³ Ørsted’s *Detailed response to the ExA Q2.2.7 and Q2.2.44*, paragraph 5.6.16.

¹⁴ See Final submission on alternative solutions under the Habitats Regulations for The Royal Society for the Protection of Birds, paragraphs 54 to 70.

¹⁵ The *Contracts for Difference (CfD): Draft Budget Notice for the third allocation round* indicates that the Government will release £60m for the third CfD round, with an overall capacity cap of 6GW (Department for Business, Energy and Industrial Strategy, 20 November 2018).

¹⁶ Ørsted’s *Detailed response to the ExA Q2.2.7 and Q2.2.44*, paragraph 5.6.26.

26. The decision letter rejecting the Navitus Bay Development Consent Order addressed the interplay between the NPS policy statements and the potential impacts for an application:

... The Secretary of State accepts that the need for the development of the kind represented by the Application Development and the TAMO is in accordance with the policy set out in the relevant NPSs (EN-1 and EN-3) but she considered that, in this case, the potential impacts of the Application Development and the TAMO are of such a scale that they outweigh the policy imperatives set out in those Statements....¹⁷

27. The Navitus Bay decision makes it clear that policy-driven consideration of need does not trump considerations of impact, and that consequently rejection of applications is justifiable if the decision-maker concludes that the impacts of the scheme are considered sufficiently serious.

28. In terms of the nature of the impact, the RSPB stated at Hornsea Two:

63. It is worth noting that the visual impacts on the WHS [World Heritage Site] were considered to be essentially temporary – capable of being addressed as soon as the turbines are removed. This needs to be contrasted with the likely ecological impacts of the Hornsea Project 2 scheme where the impacts upon the various populations of birds will require a number of years to recover, if indeed they can. The Hornsea Project Two impacts are not readily reversible.

64. The RSPB submits that if transient aesthetic impacts justify the refusal of an NSIP renewable energy scheme then ecological impacts upon the designated species of a European site clearly justify refusal of the Hornsea Project 2 scheme. The RSPB contends that the fact that the Secretary of State could justify refusal on the basis of visual, green belt and National Park impacts clearly demonstrates that it is acceptable to reject a scheme on Natura 2000 grounds.

29. The Secretary of State subsequently rejected the Myndd Y Gwynt onshore wind farm NSIP application. The Secretary of State's consideration of national energy policy was extremely limited:

The Secretary of State has had regard to the Energy National Policy Statements ("NPS") EN-1 (Overarching National Policy Statement for Energy) and EN-3 (NPS for Renewable Energy Infrastructure).¹⁸

Beyond this there was no consideration of energy issues such as need by the Secretary of State. Again, this counters the argument that need is unconstrained and that potentially damaging schemes should be consented.

30. In relation to Hornsea Project Three, it is worth noting that the Myndd Y Gwynt scheme was refused because the Applicant had failed to provide sufficient ecological information in the HRA, such that:

38. The Secretary of State cannot grant development consent ***because she is not able to conclude that there is no adverse effect on the integrity*** of the red kite feature of the Elenydd – Mallaen SPA. She is therefore refusing the Application in accordance with

¹⁷ Secretary of State's Decision Letter, 11 September 2015, paragraph 52. The "TAMO" was a reduced 630 MW "Turbine Area Mitigation Option" scheme introduced by the Applicant in an attempt to address concerns about the original 970 MW scheme's likely impacts.

¹⁸ Decision Letter, paragraph 9.

regulation 61(5) of The Conservation of Habitats and Species Regulations 2010. (our emphasis)

31. There was no requirement for Natural Resources Wales to prove that the scheme would have an effect – instead the onus was on the Applicant to demonstrate that there was no adverse effect on the integrity of the SPA. This is the approach required by the Habitats Regulations and Habitats Directive. Consequently we contend that the situation there relates closely to the present situation.

32. At Hornsea Two the RSPB noted:

69. Two key points can be taken from these Government decisions:

- The impacts of a scheme must be taken into account and may justify its refusal, even in the context of a clear national need for renewable energy generating infrastructure; and
- Applicants must fully comply with the requirements of the Habitats Regulations. A failure to support sufficient information to enable a proper conclusion at any stage of the assessment process is sufficient to justify the refusal of the application.

We stand by those points in relation to Hornsea Project Three.

What alternative solutions should be considered?

33. For ease of reference we have drawn together several key points made by the Applicant in relation to alternative solutions that rely upon the DEFRA guidance. We respond to them below.

Paragraphs 13 and 14 of the DEFRA guidance confirm that the competent authority must use its judgement to ensure that the framing of alternatives is reasonable by reference to the identified objectives, as they provide the context and set the scope for consideration of alternative solutions.¹⁹

34. We return to the issue of reasonableness at paragraph 37 below.

35. The Applicant sets out points from the DEFRA guidance:

DEFRA's guidance states that what must be considered are (our [Ørsted's] emphasis): "other feasible ways to deliver the overall objective of the plan or project". The word 'feasible' is important and is also used in the MN 2000 guidance. DEFRA explain that this means (our [Ørsted's] emphasis):

*"The consideration of alternatives should be limited to options which are financially, legally and technically feasible. An alternative should not be ruled out simply because it would cause greater inconvenience or cost to the applicant. However, there would come a point where an alternative is so very expensive or technically or legally difficult that it would be unreasonable to consider it a feasible alternative."*²⁰²¹

While the DEFRA guidance advises that the "do-nothing" options should be considered, it acknowledges this would rarely be a true alternative:

¹⁹ Ørsted's Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 6.3.3.

²⁰ DEFRA guidance, paragraph 18.

²¹ Ørsted's Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 6.4.1.

“Normally this would not be an acceptable alternative solution because it would not deliver the objective of the proposal. However it can help form a baseline from which to gauge other alternatives. It can also help in understanding the need for the proposal to proceed, which will be relevant to any later consideration of the IROPI test...”²²²³

36. The RSPB agree that the need to tackle pressing climate change is such that a “do nothing” approach is inappropriate. However, we are clear that the need to tackle climate change must be carefully considered through the legal tests and that the consenting of a potentially damaging scheme must have been clearly demonstrated by satisfying all of the tests.

37. The RSPB consider that a key role for the competent authority is to identify the alternative solutions that can meet the public interest(s) which the plan or project serves. To do this will require a clear view of what the relevant public interest objectives are, the contribution of the project to each of those public interests, and whether there are other ways the public need can be delivered without damaging Natura 2000 sites. The RSPB consider that the alternative solutions to be considered should not be limited by the Applicant’s view or definition of the need: the competent authority should ensure that all alternative solutions to the plan or project have been considered. We note the Applicant’s position:

DEFRA explain in their guidance²⁴ that the competent authority must use its judgement to ensure that the framing of alternatives is reasonable. With regard to the specific example of an offshore wind farm they state (second bullet, our [Ørsted’s] emphasis added):

“In considering alternative solutions to an offshore wind renewable energy development the competent authority would normally only need consider alternative offshore wind renewable energy developments. Alternative forms of generation (e.g. building a nuclear power station instead) are not alternative solutions to the project as they are beyond the scope of its objective.”²⁵

38. The Applicant expands upon this argument:

... Other forms of renewable energy generation are not alternatives to offshore wind because the UK Government has determined that it is necessary for the energy mix to include a substantial component of offshore wind (irrespective of other forms of renewable energy generation that may be developed). This is evident from NPS EN-1 and EN-3, the latter stating that offshore wind is expected to provide a “*significant proportion of the UK’s renewable energy generating capacity up to 2020 and towards 2050*”²⁶. Developing solar or onshore wind farms does not deliver that objective. Moreover, the UK Government has set its mind against future onshore wind development at this time, and neither onshore wind nor solar can be developed at the same scale as offshore wind and do not provide the same level of economic benefit.²⁷

It is important to note that the constraints on onshore wind development mentioned relate only to England. Although energy policy is reserved to the UK government, planning policy in relation

²² DEFRA guidance, at paragraph 17.

²³ Ørsted’s Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 6.5.1.

²⁴ DEFRA guidance, at paragraph 13.

²⁵ Ørsted’s Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 6.6.1.

²⁶ NPS EN-3, at paragraph 2.6.1.

²⁷ Ørsted’s Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 6.6.2.

to the construction of onshore wind farms is a matter for the devolved governments. Scottish, Welsh and Northern Ireland government planning policy is far more supportive of onshore wind development. Given that the search for alternative solutions should be at a UK level (in line with the public interests served), it is the RSPB's view these are relevant to the consideration of alternative solutions to meet the public interests described by the Applicant.²⁸

39. Therefore, the RSPB disagrees with the Applicant. As highlighted above, the refusal to countenance onshore wind is a domestic policy constraint that only applies in England. Further, we consider that if it is possible to deliver the desired level of renewable energy generating capacity within the required time frame that it does not matter whether this comes from one or two large schemes or a number of smaller schemes. We note that the Applicant also raises the issue of economic benefit: We consider that this may be an entirely inappropriate consideration in the context of alternative solutions. In addition, it is not clear to whom the economic benefit is supposed to accrue, or indeed what the economic benefits are, which makes it particularly difficult for other parties to make representations about them or for decision-makers to take them into account.
40. The RSPB fundamentally disagrees with the approach recommended by DEFRA quoted in paragraph 37 above as we consider that its consideration of alternatives is unduly narrow. We contend that the DEFRA guidance has to be read in a manner which accords with the revised *Managing Natura 2000*. This states:

All feasible alternatives that meet the plan or project **aims**, in particular, **their relative performance with regard to the site's conservation objectives, integrity and contribution to the overall coherence of the Natura 2000 network** have to be analysed, taking also into account their proportionality in terms of cost. They might involve alternative locations or routes, different scales or degrees of development, or **alternative processes**.²⁹ (our emphasis)

41. *Managing Natura 2000* clearly frames the consideration of alternative solutions around the **designated site** and not the individual scheme which is being proposed. It also clearly envisages alternative **means** to achieve the **aims** of the project - in this case the provision of renewable energy.
42. For the avoidance of doubt the RSPB disagrees with elements of the statement in the DEFRA guidance that:

In considering alternative solutions to an offshore wind renewable energy development the competent authority would normally only need consider alternative offshore wind renewable energy developments. Alternative forms of energy generation (e.g. building a nuclear power station instead) are not alternative solutions to this project as they are beyond the scope of its objective.³⁰

43. This approach appears to be contradicted by *Managing Natura 2000* cited at paragraph 40 above. The RSPB considers that a nuclear power station may not be an appropriate alternative³¹, but we consider that measures such as energy efficiency and/or alternative forms of renewable

²⁸ Ørsted's Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 6.3.2.

²⁹ *Managing Natura 2000*, section 3.7.4, page 57.

³⁰ DEFRA guidance, at paragraph 13, second bullet point.

³¹ This view is set in terms of the types of energy generation, rather than in the context of the recent withdrawal of the Moorside and Wylfa schemes.

energy generation would be appropriate alternatives and within the scope of its objective, which is to help combat climate change (the same could be argued in terms of energy security and economic growth). Energy efficiency would help reduce the need for the scheme, whereas the alternative renewables (e.g. solar) would contribute towards the Government's renewable energy targets. Ultimately the question is the *aim* that the scheme seeks to achieve – which is to reduce greenhouse gas emissions whilst ensuring that “the lights stay on” by ensuring that the nation's electricity demand is matched by a sufficient supply of renewable energy. In considering the implications of adopting an alternative solution, it is important to note that to the end user it is not possible to discern the way in which the electricity that is being consumed was generated. We contend that this has a significant bearing on the range of potential alternative solutions. Consequently, the restriction to offshore wind is an unjustified restriction of the scope of the consideration of alternatives, as other renewable energy schemes as well as energy efficiency measures that seek to reduce demand would also serve the overall end as we have set it out in this paragraph. This also accords with the DEFRA guidance:

In some cases wide ranging alternatives may deliver the same overall objective, in which case they should be considered.³²

44. The DEFRA guidance also notes

The consideration of alternatives should be limited to options which are financially, legally and technically feasible. An alternative should not be ruled out simply because it would cause greater inconvenience or cost to the applicant.³³

In the event that the Examining Authority and/or the Secretary of State are minded to disagree with the RSPB's position on alternative solutions, we draw attention to the fact that there are already a number of consented offshore wind farms which have yet to be funded which would be capable of providing energy outputs to match that of Hornsea Three. Consequently these offer valid alternatives to the Hornsea Three scheme that meet the narrow test set out by the Applicant and would comply with the extract from DEFRA's guidance at paragraph 37 above.

No feasible locations outside the Hornsea Zone

45. The Applicants have sought to restrict consideration of alternative solutions to the former Hornsea Zone. The RSPB notes the statements made by the Applicant in relation to the Strategic Environmental Assessment work which supported the Round 3 leasing process:

In the UK context, this application is found on, initially, an extensive and rigorous UK wide zone selection process undertaken over many years originally by the Government and TCE and, subsequently, by an equally extensive and rigorous project specific site selection process within the former Hornsea Zone.³⁴

And further:

In parallel, DECC concluded a Strategic Environmental Assessment (“SEA”) in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004 (the SEA Regulations). As set out in NPS EN-3, through this Offshore Energy SEA (“OESEA”)(DECC, 2009), the Government assessed “*the environmental implications and spatial interactions of a plan/programme for some 25GW of new offshore wind capacity, on top of existing plans*”

³² DEFRA guidance, at paragraph 13.

³³ DEFRA guidance, paragraph 18.

³⁴ Ørsted's Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 6.7.2.

for 8GW of offshore wind". The OESEA included consideration of alternatives to the draft plan/programme for all elements covered by the SEA, including future offshore wind leasing. The Government concluded there were no overriding environmental considerations to prevent the achievement of the plan/programme.³⁵

46. The RSPB does not wish to engage in a detailed discussion over an assessment and consultation exercise that was conducted nearly 10 years ago. However, we do wish to highlight for the record the concerns that the RSPB and the Statutory Nature Conservation Bodies set out about the "extensive and rigorous" process that was undertaken at the time.
47. The RSPB made detailed comments on the Offshore Energy Strategic Environmental Assessment (June 2009). We highlight some key points that we made at the time which are pertinent for this case in terms of alternatives and cumulative effects (text in bold italics are our emphasis now):

However, this SEA fails to consider a wide range of alternatives for each activity (section 5.16), ***nor has it undertaken a satisfactory assessment of likely cumulative effects*** (sections 5.5.4 & 5.14), particularly for birds.³⁶

In our view, the above conclusion does not adequately reflect the likely significance of the Draft Plan's effects on birds a population level. While significant displacement, barrier and collision effects ***might be unlikely, significant effects cannot be ruled out in the absence of a strategic-level Cumulative Impact Assessment (CIA) of the offshore wind element*** of the Draft Plan.³⁷

Most of the RSPB's objections to OWF proposals ***have related to cumulative effects of multiple wind farms and impacts on the relevant SPA populations*** (e.g. Sheringham Shoal), rather than implying biogeographical population level impacts.³⁸

The SEA identification and evaluation of the potential cumulative effects of multiple offshore licences is unsatisfactory, particularly with respect to birds. The claim made in section 5.5.4 that there are unlikely to be cumulative effects on biogeographical populations is not supported by a robust assessment. This effect cannot be ruled out for specific species depending on the scale of multiple wind farms and other developments affecting species across occupied sea areas, including transboundary effects.³⁹

We ***recommend that a strategic level Cumulative Impact Assessment (CIA) is undertaken***, ideally led by DECC, as project level CIA is unlikely to adequately predict cumulative effects. This CIA could underpin the assessment of cumulative and in-combination effects for the Appropriate Assessment of the Draft Plan.⁴⁰

³⁵ Ørsted's Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 6.7.9.

³⁶ UK Offshore Energy Plan – SEA for Offshore Oil and Gas Licensing and Wind Leasing – Environmental Report Consultation, Response by The Royal Society for the Protection of Birds, page 8.

³⁷ UK Offshore Energy Plan – SEA for Offshore Oil and Gas Licensing and Wind Leasing – Environmental Report Consultation, Response by The Royal Society for the Protection of Birds, page 11.

³⁸ UK Offshore Energy Plan – SEA for Offshore Oil and Gas Licensing and Wind Leasing – Environmental Report Consultation, Response by The Royal Society for the Protection of Birds, page 14.

³⁹ UK Offshore Energy Plan – SEA for Offshore Oil and Gas Licensing and Wind Leasing – Environmental Report Consultation, Response by The Royal Society for the Protection of Birds, page 16.

⁴⁰ UK Offshore Energy Plan – SEA for Offshore Gas and Oil Licensing and Wind Leasing – Environmental Report Consultation, Response by The Royal Society for the Protection of Birds, page 17.

The assessment of Alternative 3, the preferred alternative, concludes that there are potential negative effects due to barrier effects and changes in food availability, and potential minor negative impacts upon birds due to collision and behavioural changes (p.109). However, the overall conclusion is that these effects are not significant at a strategic level. As mentioned above, our view is that the criteria for determining significance are unclear and the data to make such an assessment are not robust. We therefore believe that some of these potential negative/minor negative effects are as likely to be significant at the biogeographical scale as they are likely to be insignificant and as such, we cannot make a definitive determination either way. Therefore, the most we can say is that there is no evidence that there is a significant effect, but equally, there is no evidence to show that there is not a significant effect.⁴¹

48. A paper written by the RSPB, *Assessing Marine Cumulative Effects in SEAs: An Overview of Basic Principles (August 2008)* which was appended to the RSPB's response to the Offshore Energy Strategic Environmental Assessment concluded:

The scale of the Round 3 programme implies potential for significant cumulative effects both within and between the development zones proposed by the Crown Estate. (page 4) (our emphasis)

49. The Joint Nature Conservation Committee's (JNCC) response to the Offshore Energy Strategic Environmental Assessment Research Programme, representing the collected views of the Countryside Council for Wales, Natural England and Scottish Natural Heritage, noted:

We also agree, subject to important caveats, that the environmental data presented in the SEA provides no conclusive evidence that overriding environmental considerations will prevent the achievement of the plan/programme. However we do have concerns with respect to the evidence base and with some of the interpretation. In our view ***there are significant environmental risks that need to be effectively managed to ensure the plan/programme can be delivered.*** We are not convinced that the recommendations as currently represented are sufficiently robust to ensure that environmental risks will be adequately addressed.⁴² (our emphasis)

50. The JNCC continued:

In our view there is significant uncertainty with respect to the likely impacts of implementing the plan/programme on birds. For example, locations of marine SPAs have yet to be finalised. We believe ***the evidence base for likely cumulative impacts at the strategic/population level needs to be improved*** and that the recommendations could more clearly reflect this need.⁴³ (our emphasis)

Our principal concern with the SEA conclusion that there is unlikely to be a significant effect on birds, is the ***lack of available evidence in the form of synthesised post-construction monitoring reports*** from the UK. ***Available evidence is not appropriate for assessment of***

⁴¹ UK Offshore Energy Plan – SEA for Offshore Gas and Oil Licensing and Wind Leasing – Environmental Report Consultation, Response by The Royal Society for the Protection of Birds, page 19.

⁴² JNCC response, page 2.

⁴³ JNCC response, page 2.

the impacts of the draft plan, due primarily to differences in scale and site characteristics.⁴⁴ (our emphasis)

51. Natural England's response to the Offshore Energy Strategic Environmental Assessment noted:

We are surprised that there are no specific recommendations to gather more data or initiate research into specific topics such as modelling displacement or barrier effects and ways in which cumulative effects on birds might be assessed and mitigated.

Whilst we support in general the conclusion that there are more numerous and potentially greater sensitivities in coastal waters, the SEA does acknowledge that there are data gaps further offshore, especially for up to date bird distributions, therefore ***we are concerned that there could be areas beyond territorial waters which may be more sensitive to windfarm development than areas within where we can have greater confidence in the data available.***⁴⁵ (our emphasis)

52. Drawn together these concerns highlight the lack of available data, coupled with the lack of an assessment of cumulative impacts which prevent firm conclusions being drawn on the likely cumulative effects arising from offshore wind farms in Round 3. This criticism would not be expected of a rigorous evaluation of potential areas for development. However, as stated in paragraph 46 above, the RSPB highlights these historic concerns not to be drawn into further debate but rather to draw attention to the importance of good strategic level assessment and to highlight that any problems arising now are a legacy of potential historic deficiencies. The question for all parties now is how to proceed in dealing with the current application if the Examining Authority and the Secretary of State are unable to exclude the risk of an adverse effect on the integrity of one or more Natura 2000 sites.

53. The Applicant offers the following conclusions with regard to site selection:

- (a) Developers can only bid for the right to develop sites or zones made available by TCE. Sites not within areas identified to date by the TCE are not legally available.
- (b) The location/boundaries of the former Hornsea Zone were outside the control of the Applicant and locations outside the former Hornsea Zone are not legally available to the Applicant (i.e. not feasible). Furthermore, the coordinates within the Agreement for Lease awarded by TCE mean Ørsted has to focus development projects within identified areas of the former Hornsea Zone.
- (c) But in any event, the identification of the former Hornsea Zone was the output of a robust Government and TCE process involving SEA on the environmental implications of developing 25GW of offshore wind (which encompassed the Round 3 proposals) to identify indicate relative levels of constraint and opportunity, and an AA by TCE of its plan to award the 9 ZDAs. The former Hornsea Zone, within which Hornsea Three is located, was identified through this process.
- (d) There is no good published evidence that identifies other less constrained sites which could host a comparable large-scale offshore wind proposal and avoid or

⁴⁴ JNCC response, page 8.

⁴⁵ Natural England response, section 3, Birds.

have less impact on Natura 2000 interests. No one has identified an alternative location that could replace the current proposal wholesale.

- (e) The notion that as yet unidentified and unconstrained areas exist to deliver the scale of development required, without the same or similar effects on the same or other Natura 2000 interests is speculative, as is the proposition that it is possible that a number of smaller schemes, developed incrementally across a wider geographical area, could come forward and deliver the same benefits, without similarly giving rise to impacts on Natura 2000 interests (cumulatively if not individually). Neither can reasonably be viewed as an alternative to Hornsea Three.⁴⁶

54. The RSPB offers the following comments in relation to the points in paragraph 53 above, repeating the lettering used by the Applicant:

- (a) The restrictions on bidding locations are a constraint introduced by a domestic procedure. However, there are other schemes (in all phases of the consenting process) within other licensed zones that are legally available and could act as alternative solutions within the offshore wind sector.
- (b) As with (a) above, this is a domestic procedural constraint and is not a relevant consideration here. The alternative solutions that should be considered include ones which are not open to the Applicant.
- (c) The RSPB has highlighted a number of concerns that were raised at the time that the assessments were undertaken. It would be inappropriate to disregard them when considering issues now that were raised then.
- (d) At paragraph 44 above the RSPB has highlighted that other potentially less constrained sites have already been consented and are merely waiting for appropriate funding to enable them to proceed.
- (e) The RSPB observes that The Crown Estate has publicly announced ongoing Round 3 Extensions and Round 4 leasing rounds which seek to identify other areas of future offshore wind development. In addition, subject to appropriate assessment, other schemes could be delivered across a wider geographical area to deliver the same benefits: in the absence of an exercise to evaluate these possible alternatives it is not appropriate to rule them out of consideration.

Imperative reasons of overriding public interest

55. The DEFRA guidance is clear on IROPI:

In practice, plans and projects which enact or are consistent with national strategic plans or policies (e.g. covered by or consistent with a National Policy Statement or identified within the National Infrastructure Plan) are **more likely** to show a high level of public interest. **However consideration would still need to be given to whether, in a specific case, that interest outweighs the harm to the affected site(s)** and therefore whether IROPI can be demonstrated.⁴⁷ (our emphasis)

⁴⁶ Ørsted's Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 6.7.10.

⁴⁷ DEFRA guidance, paragraph 26.

56. The RSPB respectfully submit that this statement, coupled with the points flagged above in relation to alternative solutions and the refusal by the government of two renewable energy NSIPs provide a clear steer that damaging proposals are highly unlikely to satisfy the tests.

57. The Applicant states:

The DEFRA guidance advises⁴⁸ that NPS and other documents setting out Government policy (e.g. the UK Renewable Energy Roadmap) provide a context for competent authorities in considering Article 6(4) and that projects which enact or are consistent with national strategic plans or policies (e.g. such as those provided for in NPS EN-1 and EN-3) are more likely to show a high level of public interest.⁴⁹

58. The RSPB consider that it is helpful to separate this précis out into its constituent text (paragraphs 18 and 26):

National Policy Statements and other documents setting out Government policy (e.g. the UK Renewable Energy Roadmap) provide a context for competent authorities considering the scope of alternative solutions they will assess.⁵⁰

The other element of the text (paragraph 26) has been set out at paragraph 55 above.

59. Although these documents do provide a context for considering Article 6(4) they are by no means determinative. The RSPB considered this issue during the course of the Hornsea Two Examination⁵¹. We attach copies of the relevant documents.

60. The Applicant states:

As noted above, the DEFRA guidance explains⁵² that a project which enacts or is consistent with national strategic plans or policies such as one (or more) NPS, is likely to show a high level of public interest. Offshore wind projects such as Hornsea Three are covered by and strongly supported in principle by:

- (a) EN-1 Overarching National Policy Statement for Energy (July 2011); and
- (b) EN-3 National Policy Statement for Renewable Energy Infrastructure (July 2011).⁵³

61. The Applicant also states:

Hornsea Three enacts and is consistent with national strategic policy in NPS EN-1 and EN-3 and therefore demonstrates a high level of public interest^{54, 55}.

62. In relation to these points raised by the Applicant it is important to note paragraph 1.7.13 of EN-1, which states:

Habitats Regulation Assessments (HRA) have been carried out and published for the non-locationally specific NPSs EN-1 to EN-5 and for EN-6 which does specify sites suitable for development. As EN-1 to EN-5 do not specify locations for energy infrastructure, the HRA is a

⁴⁸ See paragraphs 14 and 26.

⁴⁹ Ørsted's *Detailed response to the ExA Q2.2.7 and Q2.2.44*, paragraph 5.6.2.

⁵⁰ DEFRA guidance, paragraph 14.

⁵¹ Set out in paragraphs 25, 26, 27, 28 and 32 above.

⁵² DEFRA guidance, at paragraph 26.

⁵³ Ørsted's *Detailed response to the ExA Q2.2.7 and Q2.2.44*, paragraph 5.6.30.

⁵⁴ DEFRA guidance, paragraph 26.

⁵⁵ Ørsted's *Detailed response to the ExA Q2.2.7 and Q2.2.44*, paragraph 5.11.1

high-level strategic overview. Although the lack of spatial information within the EN-1 to EN-5 made it impossible to reach certainty on the effect of the plan on the integrity of any European Site, the potential for proposed energy infrastructure projects of the kind contemplated by EN-1 to EN-5 to have adverse effects on the integrity of such sites cannot be ruled out. The HRA explains why the Government considers that EN-1 to EN-5 are, nevertheless, justified by imperative reasons of overriding public interest, while noting that ***its conclusions are only applicable at the NPS level and are without prejudice to any project-level HRA, which may result in the refusal of consent for a particular application.*** Section 1.7 of EN-6 sets out details of the nuclear HRA. (our emphasis)

63. This sentence in EN-1 is particularly important. In the context of the national overarching policy on energy it makes it clear that it is necessary for individual projects to be assessed on their own merits under Article 6(4) and that it is perfectly feasible for applications to be refused as a result of its project-level HRA.

64. Critically, *Managing Natura 2000* states:

It is for the competent authorities to weigh up the imperative reasons of overriding public interest of the plan or project against the objective of conserving natural habitats and wild fauna and flora. ***They can only approve the plan or project if the imperative reasons for the plan or project outweigh its impact on the conservation objective.***⁵⁶ (our emphasis)

It will be up to the Applicant to demonstrate, in relation to the FFC SPA species which will be affected, that this requirement is being met. As *Managing Natura 2000* sets out, they will need to demonstrate that the contribution Hornsea Three makes to its claimed public interests outweigh the public interest of conserving the relevant features of the FFC SPA.

Considerations of health and safety public interest arguments

65. The Applicant has made a number of statements about health and safety and their importance in the consideration of IROPI. For ease of reference the RSPB includes the key excerpts here.

While the full range of IROPI can apply for Hornsea Three, it is important to recognise that considerations relating to human health, public safety and beneficial consequences of primary importance are central planks of the case for Hornsea Three.⁵⁷

... the most important reasons which may arise in the context of IROPI, and the considerations which must carry most weight, are those arising under the heads (i) 'human health', (ii) 'public safety' and (iii) 'primary beneficial consequences for the environment.'⁵⁸

The RSPB consider that the Applicant's arguments on these points merit careful consideration, focusing especially upon the circumstances within which, in the RSPB's view, health and safety issues can be properly considered.

66. The Applicant relied on the DEFRA guidance and section 5 of *Managing Natura 2000*:

The ambit of IROPI is not precisely defined but the EC and DEFRA guidance articulates some broad principles:

⁵⁶ *Managing Natura 2000*, box, page 59.

⁵⁷ Ørsted's Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 5.4.1.

⁵⁸ Ørsted's Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 5.4.2.

- (a) **Urgency and importance:** There would usually be urgency to the objective(s) and it must be considered “indispensable” or “essential” (i.e. imperative). In practical terms, this can be evidenced where the objective falls within a framework for one or more of the fundamental values for citizens’ life (health, safety, environment);⁵⁹

67. The Applicant then continues to expand on this by referring to combatting climate change and the threats it poses to human well being:

Combating climate change and contributing to the provision of affordable and sustainable energy for future generations are objectives of fundamental social and environmental as well as economic importance which fall into the categories ‘human health’, ‘public safety’ and ‘primary beneficial consequences for the environment; as these are the most important forms of IROPI, the case for Hornsea Three carries substantial weight.⁶⁰

The Applicant has also mentioned the role of increased energy security in relation to human health and public safety⁶¹.

68. The Applicant has contended that

The relevant public interests relating to Hornsea Three must be set against the weight of the interests protected by the Birds and Habitats Directives, having regard to the nature and extent of the harm identified to the relevant Natura 2000 interests. The overriding nature of the public interests engaged in this case should be evident from the suite of legislation and policy documentation summarised above and need not be repeated. In this case, in terms of the approach to the balancing exercise, two key points should be borne in mind:

...

- (b) Second, related to the above, not all IROPI weigh equally in the balance. Hornsea Three would deliver benefits relating to human health, public safety and beneficial consequence of primary importance for the environment. These considerations carry greatest weight because these reasons are capable of automatically overriding the competing public interest of preserving priority habitats and species.⁶²

69. We have several comments on the approach described by the Applicant. First, we fundamentally disagree with the assertion that the considerations of human health, public safety and beneficial consequence of primary importance for the environment can “automatically” override competing public interests. By definition, they are public interests to be weighed in the balance following careful analysis. There is nothing “automatic” about it: Article 6(4) demands a deliberative and careful approach in determining where the balance of public interest lies in any specific case. Therefore, praying them in aid of an IROPI argument does not negate the need for that balancing exercise to be carried out.

70. Second, the Applicant does not go on to set out how the provision of renewable energy through this specific project directly contributes to human health, public safety and beneficial

⁵⁹ Ørsted’s Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 5.5.1.

⁶⁰ Ørsted’s Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 5.11.5. Similar statements are made at 5.6.1(a), 5.7.1 and 6.5.4.

⁶¹ Ørsted’s Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 5.6.1(b).

⁶² Ørsted’s Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 5.9.2.

consequences of primary importance for the environment. The RSPB argues that it is not enough to make the case in only the most general of terms, given that IROPI is predicated on a careful balancing exercise between the competing public interests of the need to avoid the residual adverse effects on Natura 2000 sites and the contribution of the project to the claimed public interests. The Applicant has failed to make out its IROPI case in terms that establish precisely the contribution of its project to the claimed public interests. The RSPB considers this makes it difficult for the Secretary of State to undertake the IROPI assessment necessary under Article 6(4).

Compensation

71. The RSPB notes the Applicant's statement:

the Applicant has not identified any relevant compensation at this stage. This is reasonable, particularly since a real and fundamental doubt exists as to whether an adverse effect will actually arise in practice and if so what the extent of that impact may be.⁶³

We consider that the decision not to identify compensation is a matter for the Applicant, but note that if the Examining Authority and/or Secretary of State conclude that an adverse effect on the integrity of one or more of the sites highlighted cannot be excluded that this would jeopardise the ability of the Secretary of State to consent the scheme as the SoS would not have any confidence the compensatory measures required under Article 6(4) had been secured. Therefore, in line with *Managing Natura 2000*, consent could not be granted.

72. The RSPB notes the Applicant's statement:

The Applicant is open to discuss this matter in principle on a without prejudice basis with NE to understand its views on compensatory measures, in the event that the Applicant's primary case that Article 6(4) need not be invoked at all is not accepted and the Secretary of State is considering this question. In this context it is noted that DEFRA advise that competent authorities and SNCBs should help applicants identify suitable compensatory measures^{64, 65}.

We are willing to enter into such discussions. However, the onus remains on the Applicant to identify and secure any necessary compensation measures.

73. The Applicant sets out its position in relation to compensation, based on the DEFRA guidance:

DEFRA's guidance recognises that in designing compensation requirements, competent authorities and SNCBs should ensure the requirements are "*flexible to ensure adequate compensation without going further than necessary*"⁶⁶. DEFRA has in contemplation a case where the anticipated harm to a site proves to be less than anticipated, such that compensatory measures could be scaled-back. The issue is more acute where the adverse effect may not arise at all, such that compensation was never "necessary". In this context it may be noted:

⁶³ Ørsted's Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 7.3.

⁶⁴ DEFRA guidance, at paragraph 30.

⁶⁵ Ørsted's Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 7.4.

⁶⁶ DEFRA guidance, at paragraph 33.

- (a) research projects continue (e.g. the Offshore Renewables Joint Industry Programme – ORJIP) with government and industry funding intended to provide a firmer evidence base;
- (b) there are key disputes between the Applicant and NE, particularly over the adequacy of the baseline characterisation and the correct approach to risk assessment (notably Collision Risk Modelling). However, on some of the points NE has previously provided different advice, their advice now differs from that being provided by other SNCBs (eg SNH). Furthermore, projects have recently been consented in Scotland (Near na Gaoithe) that have a similar, if not greater, proportional effect on the same species which form the qualifying interest features of other SPAs. The implication is that if the current application were being decided in Scotland, under the same Habitats regime, no issue of adverse impact on the SPA might arise.
- (c) other approved plans or projects may not proceed, or where they do proceed, may not fully-build out to the size and extent consented or assessed in the corresponding EIA, such that the conclusion of adverse effect on integrity is likely to have been predicated on a false cumulative baseline (on a precautionary basis). This is addressed further in Appendix 4 of the Applicant’s Deadline 1 submission (Analysis of precaution in cumulative and in-combination assessments – as-built scenarios)[REP1-148].⁶⁷

74. The Applicant developed this point:

This principle is reflected in DEFRA’s guidance at paragraph 32, which states bluntly: *“Competent authorities should not require more compensation than is needed to ensure the integrity of the network of European sites is maintained”*. This further underlines the importance of DEFRA’s advice that SNCBs should provide their view on *“the extent of any AEol and the compensatory measures required”*⁶⁸ (our [Applicant’s] emphasis).⁶⁹

75. The RSPB notes the Applicant’s position. However, *Managing Natura 2000* is clear that compensatory measures “are intended to offset the residual negative effects of the plan or project so that the overall ecological coherence of the Natura 2000 network is maintained.”⁷⁰ Consequently, the fundamental requirement for compensatory measures is that there should be certainty that they will address the adverse effect on integrity caused by the particular scheme. This has to be approached on a precautionary basis, and as a result of this, and the requirement that compensation is normally in place before the adverse effect is experienced, it is likely that compensation measures will be required to err on the cautious side.

76. Further, the Applicant poses the question:

(c) If compensatory measures are identified as necessary and become available, how would they be calibrated and allocated between offshore projects which collectively have given rise to the conclusion of adverse effect on integrity?⁷¹

77. The RSPB consider that this question is fundamentally misplaced. The position is clear: if a scheme cannot exclude the risk of an adverse effect on the integrity of a Natura 2000 site (whether the impact arises from the scheme alone or in combination with other plans or

⁶⁷ Ørsted’s Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 7.7.4.

⁶⁸ DEFRA guidance, at paragraph 9.”

⁶⁹ Ørsted’s Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 7.9.3.

⁷⁰ *Managing Natura 2000*, bullet point 2, section 3.7.6, page 60.

⁷¹ Ørsted’s Detailed response to the ExA Q2.2.7 and Q2.2.44, paragraph 7.7.5(c).

projects) it is for that scheme to demonstrate why there are no alternative solutions, that imperative reasons of overriding public interest exist, and, crucially, it is then up to that scheme to secure the compensation necessary to address the impacts that the scheme may have if it is consented. Whether this arises from the scheme on its own or in combination with other plans or projects is immaterial: it is for this scheme to compensate as it is this scheme which has, so to speak, “broken the camel’s back”.

Evidence for the compensation measures

78. The RSPB notes the Applicant’s statement:

The Applicant would agree that measures for which there is no reasonable prospect of success should not in general be considered and that evidence would need to be provided as to the technical feasibility. However, it is not the case that there must be empirical evidence as suggested. It is recognised that compensatory measures by their nature be novel.⁷²

We note *Managing Natura 2000*’s position in relation to this:

Compensatory measures must be feasible and operational in reinstating the ecological conditions needed to ensure the overall coherence of the Natura 2000 network. The estimated timescale and any maintenance action required to enhance performance should be known and/or foreseen right from the start before the measures are rolled out. This must be **based on the best scientific knowledge available**, together with specific investigations of the precise location where the compensatory measures will be implemented. **Measures for which there is no reasonable guarantee of success should not be considered** under Article 6(4), and the likely success of the compensation scheme should influence the final approval of the plan or project in line with the prevention principle. In addition, when it comes to deciding between different possibilities for compensation, the most effective options, with the greatest chances of success, must be chosen.⁷³ (our emphasis)

The RSPB contend that the stipulations cited above place very clear limitations upon the Applicant’s contention that there does not need to be empirical evidence. *Managing Natura 2000* makes it clear that there must, at a minimum, be a reasonable guarantee of success. Reliance on “technical feasibility” alone without any empirical evidence would not provide that reasonable guarantee. Therefore, we fundamentally disagree with the Applicant’s argument on this key point. The compensatory measures must therefore be both credible and feasible, rather than simply technically feasible.

79. The RSPB also notes the overall statement about compensatory measures provided by DEFRA which reflects the guidance in *Managing Natura 2000*:

The competent authority, liaising with the SNCB and others as necessary (and, before consent is granted, consulting the appropriate authority) must have confidence that the compensatory measure will be sufficient to offset the harm. This can be a complex judgement and requires consideration of factors including:

⁷² Applicant’s Comments on Interested Parties’ Responses to the ExA’s Second Written Questions submitted at Deadline 4: response to Natural England’s answer to Q2.2.8.

⁷³ *Managing Natura 2000*, section 3.7.11.

- The technical feasibility of the compensatory measures as assessed based on robust scientific evidence. Measures for which there is no reasonable expectation of success should not be considered
- Whether there is a clear plan for undertaking the compensation, with the necessary provision of management and objectives for the duration over which compensation will be needed
- Distance from the affected site. In general compensation close to the original site will be preferable, but there may be instances where a site further away will be better suited, in which case it should be selected. This judgement must be based solely on the contribution of the compensatory measures to the coherence of the network of European sites
- Time to establish the compensatory measures to the required quality
- Whether the creation, re-creation, or restoration methodology is technically proven or considered reasonable.⁷⁴

Based on this, DEFRA is stating that the technical feasibility of such measures must be based on robust scientific evidence. Logically this will need to be empirical in nature. This will need to be expanded upon with a clear evaluation of the types of measures that are required to compensate for the predicted impacts of the scheme. This will need to consider whether different types of compensatory measures are required for the different species that are likely to be affected. A final consideration will need to be given to selecting a suitable location to ensure that the measures that will be brought forward will not be affected by the same scheme that they are being introduced to compensate for. We return to this final point at paragraph 81 below.

80. The DEFRA guidance continues: “Competent authorities should require no more compensation than is needed to ensure the integrity of the network of European sites is maintained.”⁷⁵ The DEFRA guidance continues:

In designing compensation requirements competent authorities and SNCBs should ensure the requirements are flexible enough to **ensure adequate compensation** without going further than necessary. This recognises that **in some cases compensation requirements will need to cater for uncertainty over the harm that might be caused** by a proposal or the effectiveness of compensation measures, or to account for any time lag before compensatory habitat becomes established. For example:

- **If there is uncertainty** about the success of the proposed measures, **the compensation area might need to be larger than the area damaged**
- Potential actions may be required as a condition of consent in case compensation proves to be less successful than anticipated
- It may be that anticipated harm to a site proves to be less than anticipated, or compensation measures are more successful than expected. Where feasible, compensation requirements should be sufficiently flexible to scale back the

⁷⁴ DEFRA guidance, paragraph 31.

⁷⁵ DEFRA guidance, paragraph 32.

compensation required in such cases. Habitats legislation should not be used to force applicants to over-compensate.⁷⁶ (our emphasis)

This guidance clearly envisages that due to uncertainty the provision of sufficient compensation has to err on the side of caution. This is distinct from “over-provision” and relates to the ability of human interventions to replicate precisely the ecological functions provided by habitats and any other functions relied upon by the impacted species. The RSPB would not argue for over-provision of compensatory measures, but given the precautionary nature of the Directive any argument that what is being required represents over-provision would need to be clearly evidenced.

Location of compensation

81. The RSPB notes the Applicant’s statement:

It is not the case that compensation in all cases must be in the same biogeographical region. MN 2000 notes (pages 62/63) that the Birds Directive does not provide for biogeographical regions, or selection at EU level. However, by analogy, it gives an example that *the overall coherence of the network* may be ensured if compensation fulfils the same purposes and function along the same migration path; and compensation areas are accessibly with certainty by the birds usually occurring on the site affected by the project.⁷⁷

82. From the page numbers given above it is clear that the statement above is a reference to the revised version of *Managing Natura 2000*. We consider that the reference to biogeographical regions does not necessarily accurately reflect the position, and consequently we set out the full text below.

In order to ensure the overall coherence of Natura 2000, the compensatory measures proposed for a project should therefore: a) address, in comparable proportions, the habitats and species negatively affected; and (b) provide functions comparable to those which justified the selection criteria for the original site, particularly regarding the adequate geographical distribution. Thus, ***it would not be enough for the compensatory measures to concern the same biogeographic region*** in the same Member State.

The distance between the original site and the place of the compensatory measures is not necessarily an obstacle ***as long as it does not affect the functionality of the site, its role in the geographic distribution*** and the reasons for its initial selection.⁷⁸ (our emphasis)

83. Further, *Managing Natura 2000* states that in relation to SPAs it

could be considered that *the overall coherence of the network* is ensured if:

- compensation fulfils the same purposes that motivated the site’s classification under Article 4(1) and (2) of the Birds Directive;
- compensation fulfils the same function along the same migration path; and
- the compensation areas are accessible ***with certainty by the birds usually occurring on the site affected by the project.*** (our emphasis)⁷⁹

⁷⁶ DEFRA guidance, paragraph 33.

⁷⁷ Applicant’s Comments on Interested Parties’ Responses to the ExA’s Second Written Questions submitted at Deadline 4: response to Natural England’s answer to Q2.2.8.

⁷⁸ *Managing Natura 2000*, box, page 63.

⁷⁹ *Managing Natura 2000*, section 3.7.7, pages 62-63.

84. *Managing Natura 2000* is clear:

The compensatory measures have to ensure that a site **continues** contributing to the conservation at a favourable status of natural habitats types and habitats of species ‘within the biogeographical region concerned’, in short, ensure the maintenance of the overall coherence of the Natura 2000 network. (our emphasis)⁸⁰

85. The RSPB interprets the cumulative implications of these statements in *Managing Natura 2000* to indicate a strong preference for compensatory measures to be located in the same biogeographical region **and** to show a strong connection with the existing site. However, the RSPB recognises that there is an inherent challenge in this context: the bird populations provided for by the compensatory measures must not be subject to the same adverse effects giving rise to the need for those very compensatory measures. This is likely to have significant implications for the identification of a suitable location for compensatory measures, especially in and around the North Sea where we would, by definition, be reaching a critical threshold of cumulative adverse effects on site integrity. As referred to at paragraph 79 above, the RSPB consider that these requirements will present significant challenges to the Applicant to be able to demonstrate that the necessary compensatory measures are both sufficiently connected to the Flamborough and Filey Coast SPA to compensate for the impacts from the offshore array whilst sufficiently removed to be confident that birds using the compensatory measures will not be harmed by the array area.

Timing of compensation

86. The RSPB has already considered the issue of the technical feasibility of the compensatory measures at paragraphs 78 to 80 above. Expanding upon those points, if the Applicant proposes to rely upon measures that are considered to be “technically feasible” but which have never been tested, then logically these measures should be provided many years in advance of the predicted damage in order to test the effectiveness of the measures empirically and allow time to make any adjustments to the compensatory measures before any damage has occurred. Otherwise there will be a high risk of a negative effect that the compensation is supposed to address. This underlines the inherent uncertainty in proceeding in the absence of scientific evidence that the compensation measures will succeed and strongly suggests that consent could not be given in such circumstances.

87. The RSPB notes the Applicant’s statement:

It is not the case that any compensatory measures must always be completed before any work on the plan or project may proceed. In some cases damage to European sites may necessarily occur before the compensatory measures are fully functioning. The DEFRA guidance also recognises that there may also be circumstances where the compensatory measures will take a long time to become fully-functioning. This is set out in paragraph 36 of the DEFRA guidance.⁸¹

88. For ease of reference the RSPB sets out paragraph 36 of the DEFRA guidance in full here:

Where possible, compensation measures should be complete before the adverse effect on the European site occurs. However, in some case damage to European sites may necessarily

⁸⁰ *Managing Natura 2000*, section 3.7.8, page 63.

⁸¹ *Applicant’s Comments on Interested Parties’ Responses to the ExA’s Second Written Questions submitted at Deadline 4*: response to Natural England’s answer to Q2.2.8.

occur before the compensatory measures are fully functioning. **There may also be circumstances where the compensatory measures will take a long time to become fully-functioning (e.g. re-creation of woodland).** In such circumstances it may be acceptable to put in place measures which do not provide a complete functioning habitat before losses occur – provided undertakings have been made that the measures will in time provide such a habitat, and additional compensation is provided to account for this. Such cases require careful consideration by the competent authority in liaison with SNCBs. (our emphasis)

89. *Managing Natura 2000* states:

as a general principle, a site should not be irreversibly affected by a project before the compensation is in place. However, there may be situations where it will not be possible to meet this condition. For example, the recreation of a forest habitat would take many years to ensure the same functions as the original habitat negatively affected by a project. Therefore **best efforts should be made to ensure that compensation is in place beforehand, and, in the case this is not fully achievable, the competent authorities should consider extra compensation for the interim losses that would occur in the meantime;**⁸² (our emphasis)

90. *Managing Natura 2000* also makes it clear that:

Time lags **must not be permitted**, for example, **if they lead to population losses** for any species protected on the site under Annex II to the Habitats Directive or Annex I to the Birds Directive;⁸³ (our emphasis)

91. The RSPB considers that it will be for the Applicant to clearly demonstrate why it is not possible for necessary compensation measures to be put in place before the offshore wind array is constructed, and that this would need to be justified solely on the basis of the length of time required to properly establish the ecological functions that the compensation is seeking to provide. In addition, the Applicant would need to demonstrate that delays would not lead to any population losses and what additional compensatory measures it proposed to put in place to cover any period whilst the main compensation measures were still being delivered.

92. Given the considerations above, the RSPB considers that the requirements for compensation will be difficult to identify and secure. In particular it will be essential for the Applicant to be able to clearly demonstrate that any measures proposed are truly compensation (as required under Article 6(4) of the Habitats Directive) rather than necessary for site management (under Article 6(2) of the Habitats Directive). Measures that should be delivered to address current problems with the condition of the site will not be acceptable as they arise from a separate obligation.

The role of Natural England in identifying compensatory measures

93. In paragraph 3.6 of Appendix 63 the Applicant states:

The DEFRA guidance sets out the Government's expectation that applicants and statutory nature conservation bodies ("**SNCBs**") will engage constructively, and that SNCBs will provide their view on "**the extent of any AEoI and the compensatory measures required**"⁸⁴

⁸² *Managing Natura 2000*, section 3.7.8, bullet point 1, page 63.

⁸³ *Managing Natura 2000*, section 3.7.15, bullet point 4, page 69.

⁸⁴ DEFRA guidance, at paragraph 9.

(our emphasis). DEFRA add that where Article 6(4) is engaged, they expect SNCB to play a role in helping to identify compensatory measures.

94. The RSPB notes that the expectation is that the SNCB will “have a role in helping”, but ultimately the requirement to provide adequate compensatory measures (if required) is a matter for the Applicant. If the Applicant wishes the scheme to go ahead and it is unable to demonstrate to the required standards that an adverse effect on integrity of one or more Natura 2000 sites cannot be avoided then the onus is clearly upon it to demonstrate to the Secretary of State that it has identified and legally secured the necessary compensation, with appropriate advice from Natural England. We consider that the role of the SNCB is limited to helping evaluate the quantum of compensation required and offering advice on the suitability of measures proposed. The RSPB would strongly resist any other interpretation of this point in the guidance.
95. The RSPB wishes to be involved in any future discussions about the design and implementation of compensatory measures if these are deemed necessary by the Examining Authority and/or the Secretary of State.

Concluding remarks

96. The RSPB has produced this document to set out its views on the appropriate way to approach the legal tests that will need to be considered in the event that the Examining Authority and/or the Secretary of State are unable to conclude that the risk of an adverse effect on the integrity of one or more Natura 2000 sites can be excluded on the basis of the best available scientific information. The RSPB’s view is that, based on the evidence that has been presented to the Examination, that it is not possible to exclude the risk of an adverse effect on the integrity on the Flamborough and Filey Coast SPA.
97. Based on the Applicant’s submission, the RSPB considers that the Examining Authority and Secretary of State have not been provided with the necessary information to consent the Hornsea Three project on the basis of no alternative solutions, IROPI and securing of necessary compensatory measures. Therefore, based on the information presented to the Examination, the RSPB considers consent cannot be granted.
98. The RSPB reserves the right to amend or make further submissions on this issue, in particular if the issue falls to be considered further after the close of the Examination.

Appendices

- A. Offshore Energy Strategic Environmental Assessment – Consultation Feedback (DECC, June 2009)
- B. *Managing Natura 2000 sites – The provisions of Article 6 of the ‘Habitats’ Directive 92/43/EEC (21/11/18) C(2018) 7621 final*
- C. *Contracts for Difference (CfD): Draft Budget Notice for the third allocation round* (Department for Business, Energy and Industrial Strategy, 20 November 2018)

Hornsea Two Examination Documents

- D. Written Representations from the RSPB
- E. The Applicant’s Response to RSPB’s Written Representations, Appendix J to the Response submitted for Deadline II
- F. Final submission on alternative solutions under the Habitats Regulations for the Royal Society for the Protection of Birds (10 December 2015)

13 September 2019

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Our ref:
VJR2/VJR2/47583.46
Your ref:

Dear Sirs

**The Hornsea Three Development Consent Order application
Implications of Natural England's recent advice at the Norfolk Vanguard Development Consent
Order examination**

We refer to the letter sent to you from the RSPB, dated 6 September 2019, in connection with an application for development consent for the Hornsea Project Three Offshore Wind Farm, which is currently before the Secretary of State for determination. The RSPB's letter was copied to our client, Vattenfall Wind Power Ltd, because it concerns matters considered at the examination into an application for development consent for the Norfolk Vanguard Offshore Wind Farm (**Norfolk Vanguard**), which is being promoted by Norfolk Vanguard Limited, a subsidiary of Vattenfall Wind Power Ltd. As we understand from the Planning Inspectorate, the Examining Authority's report into the Norfolk Vanguard examination was sent to the Secretary of State on 10 September 2019.

The RSPB's letter seeks to draw attention to Natural England's position, as presented at the Norfolk Vanguard examination, on in-combination impacts on seabird populations in the North Sea arising from the construction and operation of offshore wind farms. In particular, the RSPB states that Table 1 of Natural England's comments on Norfolk Vanguard's Deadline 7 and Deadline 7.5 submissions, summarises Natural England's position that there would be in-combination adverse effects on integrity on breeding populations of gannet and kittiwake at the Flamborough and Filey Coast Special Protection Area (**SPA**) and lesser black-backed gull at the Alde-Ore Estuary SPA such that, to the extent that the Secretary of State agrees with Natural England's advice, it is then necessary for the Secretary of State to consider the derogation tests contained in the Conservation of Habitats and Species Regulations 2017 and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (**Habitats Regulations**).

The document referred to by the RSPB also sets out Natural England's advice that offshore wind farm projects located in the North Sea should consider raising turbine draught height as mitigation to minimise contributions to in-combination collision totals as far as possible. In this respect, the Secretary of State should be aware that following the advice received from Natural England at Deadline 7.5, Norfolk Vanguard put forward an increase in draught height which significantly reduced in-combination impacts. This mitigation was proposed in addition to mitigation previously introduced by Norfolk Vanguard during the course of the examination relating to turbine sizes and turbine layout design which also reduced in-combination impacts.

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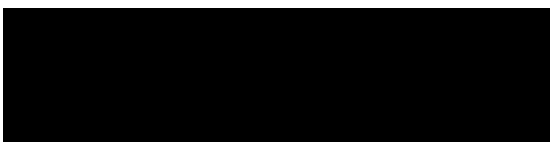
Importantly, the position set out in RSPB's letter was not Natural England's position at the close of the Norfolk Vanguard examination. Natural England did not positively state that there would be an adverse effect on integrity, but rather that Natural England was not able to rule out adverse effect on integrity for those in-combination impacts. For ease of reference we attach a copy of the final Statement of Common Ground between Norfolk Vanguard and Natural England, submitted at Deadline 9, which confirms this (see pages 47 and 48).

This is a highly relevant distinction given that Norfolk Vanguard's clear and firm position was that there would be no in-combination adverse effects. This differed from the view of Natural England due to Natural England's approach to assessment which, in Norfolk Vanguard's strong view, greatly over-estimates impacts and produces predictions which are not only highly precautionary but also highly improbable. Norfolk Vanguard presented evidence to this effect at the Norfolk Vanguard examination.

Ultimately, it is a matter for the Secretary of State to determine whether an incombination adverse effect will occur. Indeed this was the approach on the East Anglia THREE Offshore Wind Farm, where the Secretary of State was able to conclude that there would be no adverse effect on integrity despite Natural England's position that an adverse effect on integrity on the kittiwake population at the Flamborough and Filey Coast SPA as a result of incombination impacts, could not be ruled out. Where the Secretary of State determines that there is no adverse effect on integrity, it will not then be necessary to address the derogation tests under the Habitats Regulations.

We trust this clarifies the position.

Yours faithfully



Womble Bond Dickinson (UK) LLP

Copy to

1. Orsted: Andrew Guyton (Hornsea Three Consents Manager)
2. Natural England: Emma Brown (Marine Senior Adviser)
3. The Planning Inspectorate: Hornsea Three Case Team
4. RSPB: James Dawkins

Norfolk Vanguard Offshore Wind Farm

Statement of Common Ground

Natural England



Applicant: Norfolk Vanguard Limited
Document Reference: Rep3 - SOCG - 13.1
Revision: 3

Date: June 2019
Author: Royal HaskoningDHV

Photo: Kentish Flats Offshore Wind Farm

Date	Issue No.	Remarks / Reason for Issue	Author	Checked	Approved
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Glossary

AEol	Adverse Effect on Integrity
ALC	Agricultural Land Classification
BDMPS	Biologically Defined Minimum Population Size
BMV	Best and Most Versatile
CIA	Cumulative Impact Assessment
Cefas	Centre for Environment, Fisheries and Aquaculture Science
CoCP	Code of Construction Practise
CRM	Collision Risk Model
DCO	Development Consent Order
DML	Deemed Marine Licence
EIA	Environmental Impact Assessment
ES	Environmental Statement
ESS	Entry Level Stewardship Scheme
ETG	Expert Topic Group
ExA	Examining Authority
HDD	Horizontal Directional Drilling
HRA	Habitats Regulations Assessment
HVAC	High Voltage Alternating Current
HVDC	High Voltage Direct Current
LiDAR	Light Detection and Ranging
LSE	Likely Significant Effect
MarESA	Marine Evidence based Sensitivity Assessments
MarLIN	Marine Life Information Network
MCZ	Marine Conservation Zone
MMMP	Marine Mammal Mitigation Protocol
MMMZ	Marine Mammal Mitigation Zone
MMO	Marine Management Organisation
NV East	Norfolk Vanguard East
NV West	Norfolk Vanguard West
OCoCP	Outline Code of Construction Practice
OLEMS	Outline Landscape and Environmental Management Strategy
O&M	Operation and Maintenance
OWF	Offshore Wind Farm
PBR	Potential Biological Removal
PEI	Preliminary Environmental Information
PEIR	Preliminary Environmental Information Report
PVA	Population Viability Analysis
pSPA	potential Special Protection Area
RoC	Review of Consents
SAC	Special Area of Conservation
SCI	Site of Community Importance
SMP	Soil Management Plan
SNCB	Statutory Nature Conservation Bodies
SPA	Special Protection Area

SSSI	Site of Special Scientific Interest
SoCG	Statement of Common Ground
UXO	Unexploded Ordnance
WCS	Worst Case Scenario

Terminology

Array cables	Cables which link the wind turbines and the offshore electrical platform.
Landfall	Where the offshore cables come ashore at Happisburgh South.
Mobilisation area	Areas approx. 100 x 100 m used as access points to the running track for duct installation. Required to store equipment and provide welfare facilities. Located adjacent to the onshore cable route, accessible from local highways network suitable for the delivery of heavy and oversized materials and equipment.
National Grid overhead line modifications	The works to be undertaken to complete the necessary modification to the existing 400 kV overhead lines.
Necton National Grid substation	The existing 400 kV substation at Necton, which will be the grid connection location for Norfolk Vanguard.
Offshore accommodation platform	A fixed structure (if required) providing accommodation for offshore personnel. An accommodation vessel may be used instead.
Offshore cable corridor	The area where the offshore export cables would be located.
Offshore electrical platform	A fixed structure located within the wind farm area, containing electrical equipment to aggregate the power from the wind turbines and convert it into a more suitable form for export to shore.
Offshore export cables	The cables which bring electricity from the offshore electrical platform to the landfall.
Onshore cable route	The 45 m easement which will contain the buried export cables as well as the temporary running track, topsoil storage and excavated material during construction.
Onshore project substation	A compound containing electrical equipment to enable connection to the National Grid. The substation will convert the exported power from high voltage direct current (HVDC) to high voltage alternating current (HVAC), to 400 kV (grid voltage). This also contains equipment to help maintain stable grid voltage.
The OWF sites	The two distinct offshore wind farm areas, Norfolk Vanguard East and Norfolk Vanguard West.
Trenchless crossing zone	Temporary areas required for trenchless crossing works (e.g. HDD).

1 INTRODUCTION

1. This Statement of Common Ground (SoCG) has been prepared between Natural England and Norfolk Vanguard Limited (hereafter ‘the Applicant’) to set out the areas of agreement and disagreement in relation to the Development Consent Order (DCO) application for the Norfolk Vanguard Offshore Wind Farm (hereafter ‘the project’).
2. This SoCG comprises an agreement log which has been structured to reflect topics of interest to Natural England on the Norfolk Vanguard DCO application (hereafter ‘the Application’). Topic specific matters agreed and not agreed between Natural England and the Applicant are included.

1.1 The Development

3. The Application is for the development of the Norfolk Vanguard Offshore Wind Farm (OWF) and associated infrastructure. The OWF comprises two distinct areas, Norfolk Vanguard (NV) East and NV West (‘the OWF sites’), which are located in the southern North Sea, approximately 70 km and 47 km from the nearest point of the Norfolk coast respectively. The location of the OWF sites is shown in Chapter 5 Project Description Figure 5.1 of the Application. The OWF would be connected to the shore by offshore export cables installed within the offshore cable corridor from the OWF sites to a landfall point at Happisburgh South, Norfolk. From there, onshore cables would transport power over approximately 60 km to the onshore project substation and grid connection point near Necton, Norfolk.
4. Once built, Norfolk Vanguard would have an export capacity of up to 1800 MW, with the offshore components comprising:
 - Wind turbines;
 - Offshore electrical platforms;
 - Accommodation platforms;
 - Met masts;
 - Measuring equipment (Light Detection and Ranging (LiDAR) and wave buoys);
 - Array cables;
 - Interconnector cables; and
 - Export cables.
5. The key onshore components of the project are as follows:
 - Landfall;
 - Onshore cable route, accesses, trenchless crossing technique (e.g. Horizontal Directional Drilling (HDD)) zones and mobilisation areas;

- Onshore project substation; and
- Extension to the existing Necton National Grid substation and overhead line modifications.

1.2 Consultation with Natural England

6. This section briefly summarises the consultation that the Applicant has had with Natural England. For further information on the consultation process please see the Consultation Report (document reference 5.1 of the Application).

1.2.1 Pre-Application

7. The Applicant has engaged with Natural England on the project during the pre-Application process, both in terms of informal non-statutory engagement and formal consultation carried out pursuant to Section 42 of the Planning Act 2008.
8. During formal (Section 42) consultation, Natural England provided comments on the Preliminary Environmental Information Report (PEIR) by way of a letter dated 11th December 2017.
9. Further to the statutory Section 42 consultation, several meetings were held with Natural England through the Evidence Plan Process.
10. Table 1 to Table 11 provide an overview of meetings and correspondence undertaken with Natural England. Minutes of the meetings are provided in Appendices 9.15 to 9.26 (pre-Section 42) and Appendices 25.1 to 25.9 (post-Section 42) of the Consultation Report (document reference 5.1 of the Application).

1.2.2 Post-Application

11. As part of the pre-examination process, Natural England submitted a Relevant Representation to the Planning Inspectorate on the 31st August 2018. Natural England has also engaged throughout the Examination deadlines. A series of meetings have been held between the Applicant and Natural England since the Application was submitted.

2 STATEMENT OF COMMON GROUND

12. Within the sections and tables below, the different topics and areas of agreement and disagreement between Natural England and the Applicant are set out.

2.1 Marine Geology, Oceanography and Physical Processes

13. The project has the potential to impact upon Marine Geology, Oceanography and Physical Processes. Chapter 8 of the Norfolk Vanguard Environmental Statement (ES) (document reference 6.1 of the Application) provides an assessment of the significance of these impacts.
14. Table 1 provides an overview of meetings and correspondence undertaken with Natural England regarding Marine Geology, Oceanography and Physical Processes.
15. Table 2 provides areas of agreement (common ground) and disagreement regarding Marine Geology, Oceanography and Physical Processes.
16. Minutes of Evidence Plan meetings can be found in Appendix 9.16 and Appendix 25.6 of the Consultation Report (document reference 5.1 of the Application).

Table 1 Summary of Consultation with Natural England in relation to Marine Geology, Oceanography and Physical Processes

Date	Contact Type	Topic
Pre-Application		
21 st March 2016	Benthic and Geophysical Survey Scope Meeting	Discussion on the required scope of the geophysical surveys to inform the approach to the offshore surveys conducted in Summer/Autumn 2016 (see Appendix 9.16 of the Consultation Report).
2 nd February 2017	Email from the Applicant	Provision of the Marine Physical Processes Method Statement (see Appendix 9.2 of the Consultation Report).
16 th February 2017	Benthic and Intertidal Ecology, Fish Ecology, Marine Physical Processes and Marine Water and Sediment Quality Scoping Expert Topic Group Meeting	Discussion of Scoping responses and approach to Environmental Impact Assessment (EIA) and Habitats Regulations Assessment (HRA) (see Appendix 9.16 of the Consultation Report).
22 nd June 2017	Email from the Applicant	Offshore HRA Screening (Appendix 5.1 of the Information to Support HRA Report (document 5.3)) provided for consultation.
22 nd June 2017	Email from the Applicant	Provision of draft PEIR documents (Chapter 8 and Appendix 10.1 of the ES (Fugro survey report) to inform discussions at the Norfolk Vanguard Benthic Ecology and Marine Physical Processes Expert Topic Group meeting.

Date	Contact Type	Topic
5 th July 2017	Benthic and Intertidal Ecology and Marine Physical Processes PEI Expert Topic Group (ETG) Meeting	Discussion of HRA Screening (see Appendix 9.16 of the Consultation Report).
16 th January 2018	Email from the Applicant	Provision of the following draft technical reports to support the Information to Support HRA report: <ul style="list-style-type: none"> • Appendix 7.1 ABPmer Sandwave study; and • Appendix 7.2 Envision Sabellaria data review
31 st January 2018	Marine Physical Processes and Benthic Ecology HRA ETG meeting	PEIR feedback and comments on approach to HRA (see Appendix 25.6 of the Consultation Report).
22 nd February 2018	Email from the Applicant	Provision of draft Norfolk Vanguard Information to Support HRA (document 5.3).
22 nd February 2018	Letter from Natural England	Natural England advice regarding potential impacts from the offshore cable installation to Annex I habitat within the Haisborough, Hammond and Winterton (HHW) Special Area of Conservation (SAC).
15 th March 2018	Email from Natural England	Natural England advice on <i>Sabellaria spinulosa</i> reef in HHW SAC.
23 rd March 2018	Letter from Natural England	Feedback on the draft Information to Support HRA report.
Post-Application		
31 st August 2018	Relevant Representation	Natural England's initial feedback on the DCO application.
17 th October 2018	Email from the Applicant	First draft SOCG provided by the Applicant
18 th October 2018	SoCG Meeting	Discussion regarding the drafting of the SoCG
21 st November 2018	Email from the Applicant	Second draft SOCG provided by the Applicant
30 th November 2018	Email from the Applicant	Clarification notes (Appendices 1-3 of the SoCG) provided by the Applicant
23 rd January 2019	SoCG Meeting	Ongoing discussions regarding the HHW SAC
8 th March 2019	SoCG Meeting	Ongoing discussions regarding the HHW SAC
28 th March 2019	SoCG Meeting	Discussion regarding the HHW SAC Site Integrity Plan (SIP)
21 st May 2019	SoCG Meeting	Discussion regarding the HHW SAC SIP

Table 2 Statement of Common Ground - Marine Geology, Oceanography and Physical Processes

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
Site Selection and Project Design			
Landfall	Landfall at Happisburgh South is the most appropriate of the options available, avoiding the Cromer Shoal Chalk Beds Marine Conservation Zone (MCZ).	Agreed	It is agreed by both parties that landfall at Happisburgh South is a viable option.
Landfall	The design of the landfall works will adopt a highly conservative approach to ensure cables do not become exposed as a result of erosion. A construction method statement, including cable landfall, must be agreed with the MMO prior to construction, as required under the Deemed Marine Licence (DML) Schedules 11 and 12 Part 4 Condition 9(c)(iv).	Agreed, following receipt of further information on 29/11/2018 Natural England is satisfied that the specific issues raised in the Relevant Representation relating to the assessment of coastal erosion at Happisburgh have been resolved.	It is agreed by both parties that the design of the landfall works will adopt a suitably conservative approach to ensure cables do not become exposed as a result of erosion
Environmental Impact Assessment			
Existing Environment	Survey data collected for Norfolk Vanguard for the characterisation of Marine Geology, Oceanography and Physical Processes are suitable for the assessment and as agreed in during the survey scope meeting March 2016.	Agreed	It is agreed by both parties that sufficient survey data has been collected to undertake the assessment.
	The ES adequately characterises the baseline environment in terms of Marine Geology, Oceanography and Physical Processes	Agreed	It is agreed by both parties that the existing environment of Marine Geology, Oceanography and Physical Processes has been characterised appropriately for the assessment.
Assessment methodology	Appropriate legislation, planning policy and guidance relevant to Marine Geology, Oceanography and Physical Processes has been used.	Agreed	It is agreed by both parties that appropriate legislation has been considered.
	The list of potential impacts assessed for Marine Geology, Oceanography and Physical Processes is appropriate	Agreed	It is agreed by both parties that appropriate impacts on Marine Geology, Oceanography and Physical Processes have been assessed.
	The impact assessment methodologies used provide an appropriate approach to assessing potential impacts of the proposed project. This includes: <ul style="list-style-type: none"> The assessment uses expert judgement based upon knowledge of the sites and available contextual information (Zonal and 	Agreed	It is agreed by both parties that the impact assessment methodologies used in the EIA are appropriate.

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>East Anglia ONE studies and modelling); therefore no new modelling (e.g. sediment plumes or deposition) was undertaken for the assessment</p> <ul style="list-style-type: none"> The definitions used of sensitivity and magnitude in the impact assessment are appropriate. <p>These are in line with the Method Statement provided in February 2017 (see Appendix 9.2 of the Consultation Report (Application document 5.1) and as discussed during expert topic group meetings.</p>		
	<p>The worst case scenario used in the assessment for Marine Geology, Oceanography and Physical Processes is appropriate.</p> <p>This includes a conservative assessment for cable installation based on pre-sweeping as well as potential reburial requirements.</p>	<p>Agreed, although it is noted by Natural England that there is currently no evidence that sandwave levelling ensures cables remain buried and therefore there is no future need for reburial or cable protection.</p>	<p>It is agreed by both parties that the worst case scenario used in the assessment for Marine Geology, Oceanography and Physical Processes is appropriate.</p>
	<p>As discussed in the Change Report (document reference Pre-ExA;Change Report;9.3), the increase in the maximum number of piles per offshore electrical platform from six to 18 (36 in total for two platforms) does not affect the conclusions of ES Chapter 8 Marine Geology, Oceanography and Physical Processes.</p>	<p>Agreed</p>	<p>It is agreed by both parties that the proposed increase in the maximum number of piles per offshore electrical platform from six to 18 (36 in total for two platforms) does not affect the conclusions of ES Chapter 8 Marine Geology, Oceanography and Physical Processes.</p>
	<p>Regardless of whether the project is installed in a single or two-phased scenario, export cable installation will be undertaken for one cable pair at a time and therefore the main difference between the scenarios would potentially be the duration between the installation of one HVDC cable pair and the next.</p> <p>The export cable corridor is in a dynamic environment and therefore sandwave bedforms are continually being formed, modified, converging and bifurcating as</p>	<p>The HHW SAC SIP combined with the Grampian condition at DML 9 (1)(m) restricts the commencement of construction until such time that mitigation measures and/or alternative options can be adopted to rule out AEol. NE also acknowledge that the SIP commits the Applicant to providing a robust evidence base and mitigation measures for which they can be held to account.</p>	<p>It is agreed by both parties that the HHW SAC SIP and associated Transmission DML Condition 9(1)(m) provides the framework to agree cable installation methods post-consent and restricts the commencement of construction until such time that mitigation measures can be adopted to rule out AEol.</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>they migrate through the cable corridor area. The scale of the sand movement through the cable corridor is of such large magnitude that the impact of the bed levelling operations during installation will be of comparatively minimal impact to the form and function of the sandwaves and sand bank feature regardless of the phasing scenario.</p> <p>The HHW SAC SIP allows the method for cable installation to be reviewed prior to construction, based on latest evidence and survey findings, and this must be agreed with the MMO in consultation with Natural England.</p>		
	<p>Cable protection will only be required at cable crossing locations and in the unlikely event that hard substrate (i.e. areas that are not Annex 1 Sandbank) is found along the cable route that cannot be avoided.</p> <p>The HHW SAC SIP ensures that the deployment of cable protection must be agreed with the MMO in consultation with Natural England prior to construction. Diagram 5.2 in the Outline HHW SAC SIP outlines the process regarding minimising cable protection for potential unburied cable and seeking agreement from the MMO in consultation with Natural England.</p> <p>For cables outside the HHW SAC, the Scour Protection and Cable Protection Plan (required under DCO Schedules 9 and 10 Part 4 Condition 14(1)(e) and Schedules 11 and 12 Part 4 Condition 9(1)(e)) provides the mechanism for the volume, extent and location of cable protection to be agreed with the MMO in</p>	<p>Agreed that cable protection should only be used at essential locations. Natural England notes that past experience has shown that additional cable protection has often been required beyond that which is expected.</p>	<p>It is agreed by both parties that the HHW SAC SIP and associated Transmission DML Condition 9(1)(m) provides the framework to agree cable protection deployment post-consent and restricts the commencement of construction until such time that mitigation measures can be adopted to rule out AEol.</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>consultation with Natural England prior to construction.</p> <p>The Applicant commissioned an Interim Cable Burial Study following consultation with Natural England which has allowed the Applicant to commit to reducing the cable protection contingency from 10% to 5%. The HHW SAC SIP ensures that the deployment of cable protection must be agreed with the MMO in consultation with Natural England prior to construction. Diagram 5.2 in the Outline HHW SAC SIP outlines the process regarding minimising cable protection for potential unburied cable and seeking agreement from the MMO in consultation with Natural England.</p>	<p>Due to ongoing concerns with cable protection within the SAC, even with the 5% reduction in cable protection, these commitments may still be considered insufficient to agree no AEOI at the pre-construction stage.</p>	<p>It is agreed by both parties that cable protection must be agreed through the HHW SAC SIP in accordance with Transmission DML Condition 9(1)(m).</p> <p>If a solution cannot be agreed, the Applicant would need to consider a Marine Licence application or a variation to the Transmission DML Condition 9(1)(m) to allow a finding of AEOI should the project satisfy the HRA Assessment of Alternatives, Imperative Reasons of Overriding Public Interest (IROPI) and Compensatory Measures tests.</p>
	<p>Cable protection is assessed as permanent habitat loss in Chapter 10 Benthic Ecology, section 10.7.5 due to the likelihood of leaving cable protection <i>in situ</i> following decommissioning.</p>	<p>Agreed</p>	<p>It is agreed by both parties that habitat loss from cable protection should be considered a permanent impact</p>
Assessment findings	<p>Norfolk Vanguard Limited acknowledges that the scale of suspended sediment should be classified as high. This results in a medium magnitude of effect taking into account the duration, frequency and reversibility which are classified as negligible. This has no change to the resulting negligible impact significance on Marine Geology, Oceanography and Physical Processes receptors.</p>	<p>Agreed</p> <p>Natural England states that near field effects of suspended sediment in the offshore cable corridor should be of greater scale than the 'low' classification identified in the ES due to the large volume of proposed dredging and material released.</p>	<p>It is agreed by both parties that near field effects of suspended sediment in the offshore cable corridor should be of greater scale than the 'high' classification.</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	Norfolk Vanguard Limited acknowledges that the scale of seabed level changes should be classified as medium as stated by Natural England in their relevant representation. This has no change to the overall magnitude classification which remains low taking into account the duration, frequency and reversibility which are classified as negligible and therefore no change to the impact significance presented in the ES. Appendix 7.1 of the Information to Support HRA report shows that Sandwaves are expected to recover within approximately 1 year.	Not agreed. Natural England does not agree that the magnitude of seabed level changes is low given the large volumes dredged.	Not agreed.
Cumulative Impact Assessment (CIA)	The plans and projects considered within the CIA are appropriate and as agreed during the expert topic group meeting in July 2017.	Agreed	It is agreed by both parties that the plans and projects included in the CIA are appropriate.
	The CIA methodology is appropriate. Chapter 8 Marine Geology, Oceanography and Physical Processes of the ES states that theoretical bed level changes of up to 2mm are estimated as a result of cumulative impacts of Norfolk Vanguard cable installation and dredging at nearby aggregate sites. This level of effect has no potential to affect the Marine Geology, Oceanography and Physical Processes of the Haisborough Hammond and Winterton SAC as stated in the Information to Support HRA report (document 5.3).	Agreed, with the exception that combined suspended sediment increases associated with aggregates and Norfolk Vanguard cable installation should be considered for Haisborough Hammond and Winterton SAC.	The CIA methodology is agreed by both parties with the exception of the inclusion of suspended sediment as a result of aggregates in the in-combination assessment for the Haisborough, Hammond and Winterton SAC.
	The cumulative impacts between Norfolk Vanguard and Norfolk Boreas in the HHW SAC will be considered further based on latest evidence and pre-construction survey findings in the development of the HHW SAC SIP.	It is agreed that cumulative impacts with Norfolk Boreas must be considered when developing the Norfolk Vanguard HHW SAC SIP.	It is agreed by both parties that cumulative impacts with Norfolk Boreas must be considered when developing the Norfolk Vanguard HHW SAC SIP post consent.

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
Habitats Regulations Assessment (HRA)			
Screening of Likely Significant Effect (LSE)	The approach to HRA Screening is appropriate. The following site is screened in for further assessment as agreed during the expert topic group meeting in July 2017: Haisborough, Hammond and Winterton SAC	Agreed	It is agreed by both parties that the designated sites and potential effects screened in for further assessment are appropriate.
Assessment of Adverse Effect on Integrity	The approach to the assessment of AEoI is appropriate.	Agreed	It is agreed by both parties that the approach to the assessment of potential adverse effects on site integrity presented in the Information to Support HRA report (document 5.3) are appropriate
	The physical processes of Annex 1 Sandbanks in the Haisborough, Hammond and Winterton SAC has the potential to recover from construction activities, within the range of natural variation. See comments on phasing in the Assessment Methodology section above.	Agreed, noting that there is limited empirical evidence and sandbank recovery should be monitored (see monitoring below). It is also not clear how single build vs phased build and either option in combination with Norfolk Boreas has been assessed.	It is agreed by both parties that the physical processes of Annex 1 Sandbanks in the Haisborough, Hammond and Winterton SAC has the potential to recover from construction activities, within the range of natural variation.
	The small scale of cable protection assessed will not interfere with the physical processes (e.g. bed level, morphology, sediment transport) associated with the Annex 1 Sandbanks. Due to the patterns of erosion, accretion and movement of sand waves naturally occurring within the offshore cable corridor (discussed in Appendix 7.1 of the Information to Support HRA report) it is expected that the cable protection may undergo some periodic burial and uncovering and therefore	Not agreed. Natural England does not agree there will be negligible impact on the sandbank feature and relevant attributes (volume, extent, morphology etc. described in the supplementary advice on conservations objectives ¹).	Not agreed

1

<https://designatedsites.naturalengland.org.uk/Marine/SupAdvice.aspx?SiteCode=UK0030369&SiteName=hais&SiteNameDisplay=Haisborough%2c+Hammond+and+Winterton+SAC&countyCode=&responsiblePerson=&SeaArea=&IFCAArea=>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>there would be no adverse effect on the form and function of the Sandbanks.</p> <p>The HHW SAC SIP combined with the Transmission DML Condition 9(1)(m) allows a conclusion of no AEOL to be made at the consent determination stage on the basis that it restricts the commencement of construction until such time that mitigation measures can be adopted to rule out an AEOL.</p>	<p>Agreed. Noting that the commitments presented in the HHW SAC SIP may still be considered insufficient to agree no AEOL at the pre-construction stage. If a solution cannot be agreed, the Applicant would need to consider a DCO variation or a Marine Licence application.</p>	<p>It is agreed by both parties that the HHW SAC SIP combined with the Transmission DML Condition 9(1)(m) allows a conclusion of no AEOL to be made at the consent determination stage on the basis that it restricts the commencement of construction until such time that mitigation measures can be adopted to rule out an AEOL.</p>
Management Measures – Mitigation and Monitoring			
Monitoring	<p>The In Principle Monitoring Plan (document 8.12), provides an appropriate framework to agree monitoring with the MMO in consultation with Natural England</p> <p>As stated in the In Principle Monitoring Plan (document 8.12), swath-bathymetric survey would be undertaken pre- and post-construction in order to monitor changes in seabed topography, including any changes as a result of sand wave levelling.</p> <p>It is acknowledged that the purpose of the post-construction monitoring is to address evidence gaps in this area as well as for engineering purposes.</p>	<p>Agreed</p>	<p>It is agreed by both parties that the In Principle Monitoring Plan (document 8.12), provides an appropriate framework to agree monitoring with the MMO in consultation with Natural England.</p>
Mitigation and Management	<p>As stated in the Site Characterisation Report (document 8.15) all seabed material arising from the Haisborough, Hammond and Winterton SAC during cable installation would be placed back into the SAC using an approach, to be agreed with the Marine Management Organisation (MMO) in consultation with Natural England.</p> <p>The Haisborough, Hammond and Winterton SAC is not a closed system and it presently has sediment both entering and leaving it around the boundaries.</p>	<p>Only agreed if material remains in the site after deposition, modelling will need to demonstrate this.</p>	<p>It is agreed by both parties that seabed material arising from the Haisborough, Hammond and Winterton SAC during cable installation would be placed back into the SAC using an approach, to be agreed with the MMO in consultation with Natural England.</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>The proposed works are some distance from the boundaries (at over 6 km from the southern boundary) and are unlikely to bring about any disruption to the transport regime. Therefore, the movement in and out of the Haisborough SAC as occurs at present will continue, irrespective of the proposed dredging or disposal activities as discussed in Information to Support HRA report Appendix 7.1 ABPmer Sandwave Study.</p> <p>The methods for sediment disposal would be agreed through the Cable Specification, Installation and Monitoring Plan, required under the draft DCO Schedules 9 and 10 Part 4 Condition 14(1)(g) and Schedules 11 and 12 Part 4 Condition 9(1)(g) and would be based on latest evidence, engineering knowledge and pre-construction surveys.</p>		

2.2 Benthic and Intertidal Ecology

17. The project has the potential to impact upon Benthic and Intertidal Ecology. Chapter 10 of the Norfolk Vanguard ES (document reference 6.1 of the Application) provides an assessment of the significance of these impacts.
18. Table 3 provides an overview of meetings and correspondence undertaken with Natural England regarding Benthic and Intertidal Ecology.
19. Table 4 provides areas of agreement (common ground) and disagreement regarding Benthic and Intertidal Ecology.
20. Minutes of Evidence Plan meetings can be found in Appendix 9.16 and Appendix 25.6 of the Consultation Report (document reference 5.1 of the Application).

Table 3 Summary of Consultation with Natural England in relation to Benthic and Intertidal Ecology

Date	Contact Type	Topic
Pre-Application		
21 st March 2016	Benthic and Geophysical Survey Scope Meeting	Discussion on the required scope of the benthic surveys to inform the approach to the offshore surveys conducted in Summer/Autumn 2016 (see Appendix 9.16 of the Consultation Report).
21 st March 2016	Letter from Natural England	Feedback on benthic survey methodology.
20 th April 2016	Letter from Natural England	Review of the Geophysical and Grab Sampling Impact Assessment.
2 nd February 2017	Email from the Applicant	Provision of the Benthic Ecology Method Statement (see Appendix 9.2 of the Consultation Report).
16 th February 2017	Benthic and Intertidal Ecology, Fish Ecology, Marine Physical Processes and Marine Water and Sediment Quality Scoping Expert Topic Group Meeting	Discussion of Scoping responses and approach to EIA/HRA (see Appendix 9.16 of the Consultation Report).
27 th February 2017	Email from Natural England	Natural England's position on Haisborough, Hammond and Winterton SAC.
8 th March 2017	Email from Natural England	Natural England's advice on Cromer Shoal MCZ
22 nd June 2017	Email from the Applicant	Offshore HRA Screening (Appendix 5.1 of the Information to Support HRA report) provided for consultation.

Date	Contact Type	Topic
22 nd June 2017	Email from the Applicant	Provision of draft documents (Chapter 8 of the PEIR and Appendix 10.1 of the ES (Fugro survey report)) to inform discussions at the Norfolk Vanguard Benthic Ecology and Marine Physical Processes Expert Topic Group meeting.
5 th July 2017	Benthic and Intertidal Ecology and Marine Physical Processes PEI ETG Meeting	Discussion of HRA Screening. (see Appendix 9.16 of the Consultation Report).
16 th January 2018	Email from the Applicant	Provision of the following draft technical reports to support the Information to Support HRA report: <ul style="list-style-type: none"> • Appendix 7.1 ABPmer Sandwave study; and • Appendix 7.2 Envision Sabellaria data review
31 st January 2018	Marine Physical Processes and Benthic Ecology HRA ETG meeting	PEIR feedback and comments on approach to HRA (see Appendix 25.6 of the Consultation Report).
13 th February 2018	Email from Natural England	Confirmation from Natural England that the standard best practice advice to the aggregates industry is a 50m buffer around <i>Sabellaria spinulosa</i> reef.
19 th February 2018	Email from Natural England	Provision of example Site of Community Importance (SCI) Position Statement in relation to sandbanks from the Dogger Bank Teesside OWF.
22 nd February 2018	Email from the Applicant	Provision of draft Norfolk Vanguard Information to Support Habitats Regulations Assessment (HRA) (document 5.3).
22 nd February 2018	Letter from Natural England	Natural England advice regarding potential impacts from the offshore cable installation to Annex I habitat within the Haisborough Hammond and Winterton SAC.
15 th March 2018	Email from Natural England	Natural England advice on <i>Sabellaria spinulosa</i> reef in Haisborough, Hammond and Winterton SAC.
23 rd March 2018	Letter from Natural England	Feedback on the draft Information to Support HRA report
Post-Application		
31 st August 2018	Relevant Representation	Natural England's initial feedback on the DCO application.
17 th October 2018	Email from the Applicant	First draft SOCG provided by the Applicant
18 th October 2018	SoCG Meeting	Discussion regarding the drafting of the SoCG
21 st November 2018	Email from the Applicant	Second draft SOCG provided by the Applicant
23 rd January 2019	SoCG Meeting	Ongoing discussions regarding the Haisborough Hammond and Winterton SAC

Date	Contact Type	Topic
8 th March 2019	SoCG Meeting	Ongoing discussions regarding the Haisborough Hammond and Winterton SAC
28 th March 2019	SoCG Meeting	Discussion regarding the Haisborough Hammond and Winterton SAC Site Integrity Plan (SIP)
21 st May 2019	SoCG Meeting	Discussion regarding the Haisborough Hammond and Winterton SAC SIP
3 rd June 2019	Email from the Applicant	Draft of final SOCG provided by the Applicant

Table 4 Statement of Common Ground - Benthic and intertidal ecology

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
Site Selection and Project Design			
Landfall	Landfall at Happisburgh avoids impacts on the Cromer Shoal Chalk Beds MCZ	Agreed	It is agreed by both parties that landfall at Happisburgh avoids impacts on the Cromer Shoal Chalk Beds MCZ
Environmental Impact Assessment			
Existing Environment	Survey data collected for Norfolk Vanguard for the characterisation of Benthic and Intertidal Ecology are suitable for the assessment and as agreed in the survey planning meeting in March 2016 and the expert topic group meeting in February 2017.	Agreed	It is agreed by both parties that sufficient survey data has been collected to undertake the assessment.
	<p>The ES adequately characterises the baseline environment in terms of Benthic and Intertidal Ecology.</p> <p>For the purposes of the EIA, the site characterisation has identified the potential extent and location of <i>S. spinulosa</i> reef as far as reasonably practicable. This has allowed the EIA to assess potential impacts on <i>Sabellaria</i> reef.</p> <p>The assessment does not discount “low reef”. Figure 7.2 of the Information to Support HRA report presents a map of potential <i>Sabellaria</i> reef extent based on medium to high confidence of reef presence (N.B. this includes reef of any reefiness characteristic, including low). <i>Sabellaria</i> reef identified during the Norfolk Vanguard benthic surveys in 2016 was found to be of low or medium reefiness and this is included in the assessment.</p>	Agreed, although noting the uncertainty associated with <i>S. spinulosa</i> reef mapping due to the ephemeral nature of the reef, the use of a range of datasets, and the fact that the applicant has only assessed medium/high quality reef as reef	It is agreed by both parties that the ES adequately characterises the baseline environment in terms of Benthic and Intertidal Ecology, although noting the uncertainty associated with <i>S. spinulosa</i> reef mapping due to the ephemeral nature of the reef and the use of a range of datasets.
	<p>The approach to <i>S. spinulosa</i> reef mapping is appropriate to inform the EIA based on the data available.</p> <p>The assessment does not discount “low reef”. It should be noted however that by definition, “low reef” is</p>	Not agreed. Natural England has uncertainty associated with <i>S. spinulosa</i> reef mapping due to the ephemeral nature of the reef the use of a range of datasets, and the	It is agreed by both parties that there is uncertainty associated with <i>S. spinulosa</i> reef mapping due to the ephemeral nature of the reef. The HHW SAC SIP provides a framework for further consideration of the

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>inherently patchy (with only 10-20% coverage, Gubbay (2007)²) and therefore increases the potential for micrositing. Medium reef also has high potential for micrositing, being classified by 20-30% coverage.</p> <p>The Applicant agrees there is uncertainty associated with <i>S. spinulosa</i> reef mapping due to the ephemeral nature of the reef. The HHW SAC SIP provides a framework for further consideration of the effects on <i>Sabellaria</i> reef in the HHW SAC to be made prior to construction, based on the results of the pre-construction surveys. The surveys and the SIP will be developed in consultation with Natural England.</p>	<p>fact that the applicant has only assessed medium/high quality reef as reef.</p>	<p>effects on <i>Sabellaria</i> reef in the HHW SAC based on the results of the pre-construction surveys.</p>
	<p>The mapping of potential <i>S. spinulosa</i> reef by Envision on behalf of Norfolk Vanguard Limited identifies potential reef areas which are largely consistent with areas Natural England has identified (as shown on Figure 2.1 below).</p>	<p>Agreed</p>	<p>It is agreed by both parties that the mapping of potential <i>S. spinulosa</i> reef by Envision on behalf of Norfolk Vanguard Limited identifies potential reef areas which are largely consistent with areas Natural England has identified.</p>
	<p><i>S. spinulosa</i> is an ephemeral, rapidly growing opportunistic species; pre-construction surveys targeted at establishing the presence, location and extent of <i>S. spinulosa</i> reef habitats are therefore required to enable effective micrositing where possible.</p> <p>The assessment provides consideration of the impacts if micrositing is possible and if it is not possible (see Assessment Findings sections below).</p> <p>The HHW SAC SIP ensures that the cable routes, including micrositing must be agreed with the MMO in consultation with Natural England prior to construction. Diagram 5.1 in the Outline HHW SAC SIP outlines the</p>	<p>Parameters/clear commitments are required in the DCO rather than the simple statement “where possible”.</p> <p>Natural England would want to see that all Annex I <i>S. spinulosa</i> will be avoided.</p> <p>The impact on <i>Sabellaria spinulosa</i> reef needs to be fully assessed if micro-siting is not possible and cable installation is still permitted.</p>	<p>It is agreed by both parties that the HHW SAC SIP ensures that the cable routes, including micrositing must be agreed with the MMO in consultation with Natural England prior to construction.</p> <p>The HHW SAC SIP must also provide further consideration of the effects on <i>Sabellaria spinulosa</i> reef if micro-siting is not possible and construction can only be permitted to commence if the MMO, in consultation with Natural England, agrees that there will be no AEol.</p>

² Gubbay (2007) Defining and managing *Sabellaria spinulosa* reefs: Report of an inter-agency workshop 1-2 May, 2007

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>process regarding seeking agreement for micro-siting from the MMO in consultation with Natural England. This provides clear commitments with regards to defining what is meant by micro-siting “where possible”.</p> <p>The effects on <i>Sabellaria spinulosa</i> reef if micro-siting is not possible will be further considered in the HHW SAC SIP based on available evidence and pre-construction surveys. Construction will only be permitted to commence if the MMO, in consultation with Natural England, agrees that there will be no AEol.</p>		
Assessment methodology	Appropriate legislation, planning policy and guidance relevant to Benthic and Intertidal Ecology has been used.	Agreed	It is agreed by both parties that appropriate legislation has been considered.
	The list of potential impacts on Benthic and Intertidal Ecology assessed is appropriate.	Agreed, subject to consideration of cleaning activities (see below).	It is agreed by both parties that the list of potential impacts on Benthic and Intertidal Ecology assessed is appropriate, with the exception of clean activities (see below)
	Operational cleaning of offshore infrastructure would consist of jet washing with seawater and therefore, only natural materials would enter the marine environment i.e. marine growth, bird guano and seawater. Whilst it is not possible to quantify the exact volume of the materials to be deposited, due to the small scale of the deposit that will be mixed with seawater, it is considered that such a deposit will quickly dissipate and is not capable of being deposited in sufficient volume to be capable of affecting water quality. No chemicals would be used in this process. The number of estimated operational visits are included as part of the operation and maintenance (O&M) activities described in Chapter 5, section 5.4.18.	Not agreed, details are still required of the volumes of material being deposited in the marine environment.	Not agreed
	The impact assessment methodology is appropriate, and is in line with the Method Statement provided in February 2017 (see Appendix 9.2 of the Consultation	Agreed	It is agreed by both parties that the impact assessment methodologies used in the EIA are appropriate.

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	Report (Application document 5.1) and agreed during the topic group meeting in February 2017.		
	The worst case scenario used in the assessment for Benthic and Intertidal Ecology is appropriate.	Agreed	It is agreed by both parties that the worst case scenario used in the assessment is appropriate
	As discussed in the Change Report (document reference Pre-ExA;Change Report;9.3), the increase in the maximum number of piles per offshore electrical platform from six to 18 (36 in total for two platforms) does not affect the conclusions of ES Chapter 10 Benthic Ecology.	Agreed	It is agreed by both parties that the proposed increase in the maximum number of piles per offshore electrical platform from six to 18 (36 in total for two platforms) does not affect the conclusions of ES Chapter 10 Benthic Ecology.
	Should cable protection be required during maintenance this would be subject to additional licencing.	Agreed	It is agreed by both parties that should cable protection be required during maintenance this would be subject to additional licencing.
	<p>It is the Applicant's preference to cut and remove redundant cables where possible. This requires agreement from the owners of the redundant cable, and therefore until this can be agreed post consent, an assumption that nine existing cables will be crossed has been assessed in order to provide a conservative assessment.</p> <p>In the HHW SAC, the cable installation method and deployment of cable protection must be agreed with the MMO in consultation with Natural England through the HHW SAC SIP.</p> <p>Outside the HHW SAC, the cable installation methodology will be agreed with the MMO through the Construction Method Statement. The Scour Protection and Cable Protection Plan will be updated as the final design of the project develops and must be agreed with the MMO prior to construction. This will include justification of the location, type and volume/area of</p>	<p>Agreed</p> <p>Natural England advises that where there are out of service cables, in the Haisborough Hammond and Winterton SAC, it would be better to reduce impacts by cutting cables rather than introducing unnecessary hard substrate to cross redundant cables. In addition, where strictly necessary the type of cable protection should be selected on the basis on least environmental impact at each particular location.</p>	<p>It is agreed by both parties that it is preferable to cut and remove redundant cables where possible subject to agreement from the cable owner(s).</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	essential cable protection based on crossing agreements and preconstruction surveys.		
Assessment findings	<p>The characterisation of receptor sensitivity is appropriate.</p> <p>Chapter 10, Table 10.15 (mentioned in the Natural England relevant representation) refers to the sensitivity of receptors identified in NV East where <i>S. spinulosa</i> individuals were recorded. Individuals are less sensitive than reef and therefore have been classified as low sensitivity. Tables 10.14 and 10.16 refer to the sensitivity of receptors identified in NV West and the offshore cable corridor, respectively, where <i>S. spinulosa</i> reef has been identified. <i>S. spinulosa</i> in these areas has been identified as having medium sensitivity to heavy smothering in accordance with the Marine Life Information Network (MarLIN) Marine Evidence based Sensitivity Assessments (MarESA). However, the Information to Support HRA report states that as embedded mitigation requires that sediment would not be disposed of within at least 50m of <i>S. spinulosa</i> reef (in accordance with advice from Natural England), there would be no heavy smothering. <i>S. spinulosa</i> is not sensitive to light smothering or increased suspended sediment.</p> <p>Gibb <i>et al.</i> (2014)³ reports that <i>Sabellaria spinulosa</i> reef has medium sensitivity to habitat change where the change represents an increase in fine sediments which is not applicable to Norfolk Vanguard. Gibb <i>et al.</i> (2014) also states that <i>Sabellaria spinulosa</i> reef is considered to be 'Not Sensitive' to a change which results in increased coarseness.</p>	<p>Mostly agreed, however all references in the document should note that <i>S. spinulosa</i> reef has medium sensitivity to heavy smothering and habitat change and high sensitivity to habitat loss.</p> <p>In addition, Natural England disagrees with some of the sensitivity assessments in table 10.7.2, for example coarse sediment has high sensitivity to habitat change as does subtidal sand. We advise that 10.7.5.2.2 and Table 10.21 is changed to reflect this.</p>	Not agreed

³ Gibb, N., Tillin, H., Pearce, B. & Tyler-Walters, H. (2014). Assessing the sensitivity of Sabellaria spinulosa reef biotopes to pressures associated with marine activities. Available at: http://jncc.defra.gov.uk/PDF/JNCC_Report_504_web.pdf

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	The magnitude of effect is correctly identified.	Agreed, noting the change in the scale of suspended sediment and seabed level changes in relation to the offshore cable corridor discussed in Section 2.1.	It is agreed by both parties that the magnitude of effect on benthic ecology is correctly identified.
	There would be no permanent loss of <i>S. spinulosa</i> reef as this is an ephemeral species which is likely to recolonise, as agreed during the Expert Topic Group meeting on the 31 st January 2018 (Appendix 25.6 of the Consultation Report).	Not agreed. Evidence presented to date is in relation to recover of individuals and not Annex I reef. And particularly disagree due potential for cable protection.	Not agreed
	There would be no temporary habitat loss of <i>S. spinulosa</i> reef if micro-siting is possible. The magnitude would be low if micrositing is not possible through a small proportion of reef	Not agreed	Not agreed
	The impact significance conclusions of negligible or minor adverse for Norfolk Vanguard alone are appropriate.	Not agreed	Not agreed
CIA	The plans and projects considered within the CIA are appropriate as agreed during the expert topic group meeting in July 2017.	Agreed	It is agreed by both parties that the plans and projects included in the CIA are appropriate.
	The cumulative impacts between Norfolk Vanguard and Norfolk Boreas in the HHW SAC will be considered further in the development of the HHW SAC SIP.	It is agreed that cumulative impacts with Norfolk Boreas must be considered when developing the Norfolk Vanguard HHW SAC SIP.	It is agreed by both parties that cumulative impacts with Norfolk Boreas must be considered when developing the Norfolk Vanguard HHW SAC SIP post consent.
Habitats Regulations Assessment (HRA)			
Screening of LSE	The approach to HRA Screening is appropriate. The following site is screened in for further assessment as agreed during the expert topic group meeting in July 2017: <ul style="list-style-type: none"> Haisborough, Hammond and Winterton SAC. 	Agreed	It is agreed by both parties that the designated sites and potential effects screened in for further assessment are appropriate.
Assessment of Adverse Effect on Integrity	The effects on the HHW SAC will be considered further through the HHW SAC SIP based on pre-construction	Agreed	It is agreed by both parties that the effects on the HHW SAC must be considered further through the HHW SAC SIP based on

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	survey findings, available evidence and latest guidance prior to construction.		pre-construction survey findings, available evidence and latest guidance prior to construction.
	The communities of Annex 1 Sandbanks in the Haisborough, Hammond and Winterton SAC will recover as the physical processes of the Sandbanks recover within the range of natural variation as the communities are habituated to highly mobile sediments.	Not agreed, Natural England acknowledges that the mobile nature of this particular sandbank system would make it more likely to recover from changes in structure than less mobile ones. But, there are no empirical data that relate to interventions of similar spatial and temporal scale to the proposals and for this particular sandbank system to support the modelling. Therefore, Natural England continues to have residual concerns in relation to the overall impacts to the form and function of the Annex I sandbank sandwave fields and their potential recoverability.	It is acknowledged by both parties that effects on the HHW SAC will be considered further through the HHW SAC SIP based on pre-construction survey findings, available evidence and latest guidance prior to construction.
	Based on available data, micrositing around <i>S. spinulosa</i> reef is likely to be possible. However, it is acknowledged that <i>S. spinulosa</i> reef extent may change prior to construction of Norfolk Vanguard and therefore pre-construction surveys are required to determine the extent of <i>S. spinulosa</i> reef at that time. A cable specification, installation and monitoring plan, must be agreed with the MMO in consultation with Natural England as discussed under 'Mitigation and Management' below. This will provide the mechanism to agree cable routing/micrositing.	Agreed on the basis of survey data collected to date there should be room to microsite around reef in the nearshore section of the cable corridor. But it is more uncertain beyond 12nm as shown in Figure 4.1 of the SIP. It should be noted and taken into consideration by the decision-maker now that this may not be the case pre-construction and therefore there is an outstanding risk to the project	It is agreed by both parties that, on the basis of survey data collected to date, there should be room to microsite around reef in the nearshore section of the cable corridor but there is more uncertainty beyond 12nm. There is also uncertainty associated with what the extent of reef will be at the pre-construction stage and therefore this presents a risk to agreeing the HHW SAC SIP prior to construction.
	In the unlikely event that micrositing around <i>S. spinulosa</i> reef is not possible, a small proportion of reef may be	Not agreed, there is currently a restore objective for reef features of	Not agreed. It is acknowledged by both parties that effects on the HHW SAC will be

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>temporarily disturbed. <i>S. spinulosa</i> in its individual and reef forms, is known to be ephemeral and opportunistic and can be expected to recover/recolonise within the range of natural variation. Therefore, a small proportion of temporary disturbance to <i>S. spinulosa</i> reef would not cause an adverse effect on the restoration objective of the Haisborough, Hammond and Winterton SAC.</p> <p>The following references provide examples of evidence that <i>S. spinulosa</i> reef can be expected to recover/recolonise Tillin and Marshall, 2015; OSPAR Commission, 2010; Holt, 1998; Cooper <i>et al.</i>, 2007; Pearce <i>et al.</i>, 2007).</p> <p>As stated in Natural England’s position, there is a high likelihood that <i>Sabellaria spinulosa</i> reef will recover/develop following cessation of disturbance from fisheries. This would also apply following cable installation.</p>	<p>HHW SAC. Site management measures are being developed for other operations likely to damage the interest features of the site and will be implemented in the future. In the absence of those pressures there is a high likelihood that <i>Sabellaria spinulosa</i> reef will recover/develop. One such management measure that is being considered is the use of fisheries byelaws to protect areas where <i>Sabellaria spinulosa</i> reef have been shown to be regularly present. Therefore it is hoped that more extensive <i>Sabellaria spinulosa</i> reefs will be restored in these areas, and that existing encrusting and low quality reef will develop into higher quality reef habitat. Natural England would therefore advise that cable installation activities are avoided in these areas.</p> <p>In addition, the evidence presented in the HRA to support conclusions on recoverability relates only to individuals/abundance, but not to reef. Thus we have limited confidence in the ability of reef to recover from cable installation activities. Therefore, we further advocate that the standard mitigation measure of avoidance is adhered to.</p>	<p>considered further through the HHW SAC SIP based on pre-construction survey findings, available evidence and latest guidance prior to construction.</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>Cable protection would not affect the potential of <i>S. spinulosa</i> reef to recover within the Haisborough, Hammond and Winterton SAC as <i>S. spinulosa</i> reef can be expected to colonise cable protection as an artificial substrate, in accordance with the UK Biodiversity Action Plan Priority Habitat Description for <i>S. spinulosa</i> Reefs (JNCC, 2016⁴):</p> <p><i>“S. spinulosa requires only a few key environmental factors for survival in UK waters. Most important seems to be a good supply of sand grains for tube building, put into suspension by strong water movement....The worms need some form of hard substratum to which their tubes will initially be attached, whether bedrock, boulders, artificial substrata, pebbles or shell fragments.”</i></p> <p>The HHW SAC SIP ensures that the deployment of cable protection must be agreed with the MMO in consultation with Natural England prior to construction. Diagram 5.2 in the Outline HHW SAC SIP outlines the process regarding minimising cable protection for potential unburied cable and seeking agreement from the MMO in consultation with Natural England.</p>	<p>Not agreed, Natural England does not consider the colonisation of artificial sub-sea structures as beneficial as it is not natural change. The cable protection will result in permanent loss of habitat.</p>	<p>Not agreed.</p>
	<p>The HHW SAC SIP combined with the Transmission DML Condition 9(1)(m) allows a conclusion of no AEOL to be made at the consent determination stage on the basis that it restricts the commencement of construction until such time that mitigation measures can be adopted to rule out an AEOL.</p>	<p>Agreed. Noting that the commitments presented in the HHW SAC SIP may still be considered insufficient to agree no AEOL at the pre-construction stage. If a solution cannot be agreed, the Applicant would need to consider a Marine Licence application or a variation to</p>	<p>It is agreed by both parties that the HHW SAC SIP combined with the Transmission DML Condition 9(1)(m) allows a conclusion of no AEOL to be made at the consent determination stage on the basis that it restricts the commencement of construction until such time that mitigation measures can be adopted to rule out an</p>

⁴ <http://jncc.defra.gov.uk/page-5706>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
		the Transmission DML Condition 9(1)(m) to allow a finding of AEol should the project satisfy the HRA Assessment of Alternatives, IROPI and Compensatory Measures tests.	AEol. Noting that the commitments presented in the HHW SAC SIP may still be considered insufficient to agree no AEol at the pre-construction stage
Management Measures – Mitigation and Monitoring			
Mitigation and Management	<p>A 50m buffer from <i>S. spinulosa</i> reef is proposed for disposal of sediment in accordance with advice provided by Natural England by email on 13th February 2018.</p> <p>The Outline HHW SAC SIP stated that the location(s) of sediment disposal must include a minimum buffer of 50m from <i>S. spinulosa</i> reef and will therefore be informed by the pre-construction surveys. The methodology and location for sediment disposal must be agreed with the MMO in consultation with Natural England through the HHW SAC SIP.</p>	Agreed, but please also see Point 17 of Appendix 2 of Natural England's Rel. Rep.	It is agreed by both parties that sediment disposal must include a minimum buffer of 50m from <i>S. spinulosa</i> reef and will therefore be informed by the pre-construction surveys. The methodology and location for sediment disposal must be agreed with the MMO in consultation with Natural England through the HHW SAC SIP.
	The Conditions of the DMLs (Schedules 9, 10, 11 and 12; Part 4) state that a cable specification, installation and monitoring plan, must be agreed with the MMO. This includes a detailed cable laying plan, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques. This gives the MMO and their advisors the opportunity to input to the cable laying plan including the cable route and potential for micrositing.	Agreed, noting that on the basis of current survey data micrositing around reef in cable corridor should be possible but due to its ephemeral nature, this may not be the case pre-construction.	It is agreed by both parties that the cable specification, installation and monitoring plan gives the MMO and their advisors the opportunity to input to the cable laying plan including the cable route and potential for micrositing.
	The HHW SAC SIP ensures that the deployment of cable protection must be agreed with the MMO in consultation with Natural England prior to construction. Diagram 5.2 in the Outline HHW SAC SIP outlines the process regarding minimising cable protection for potential	Natural England supports the consideration and assessment of the impacts of a realistic worst case scenario (WCS) as this enables the examining authority to understand the full implications of an	It is agreed by both parties that the HHW SAC SIP ensures that the deployment of cable protection must be agreed with the MMO in consultation with Natural England prior to construction. Diagram 5.2 in the Outline HHW SAC SIP outlines the process

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	unburied cable and seeking agreement from the MMO in consultation with Natural England.	application prior to granting consent. However, it should not necessarily follow that this WCS is permitted.	regarding minimising cable protection for potential unburied cable and seeking agreement from the MMO in consultation with Natural England.
Monitoring	The In Principle Monitoring Plan (document 8.12), provides an appropriate framework to agree monitoring with the MMO in consultation with Natural England	Agreed	It is agreed by both parties that the In Principle Monitoring Plan (document 8.12), provides an appropriate framework to agree monitoring with the MMO in consultation with Natural England.

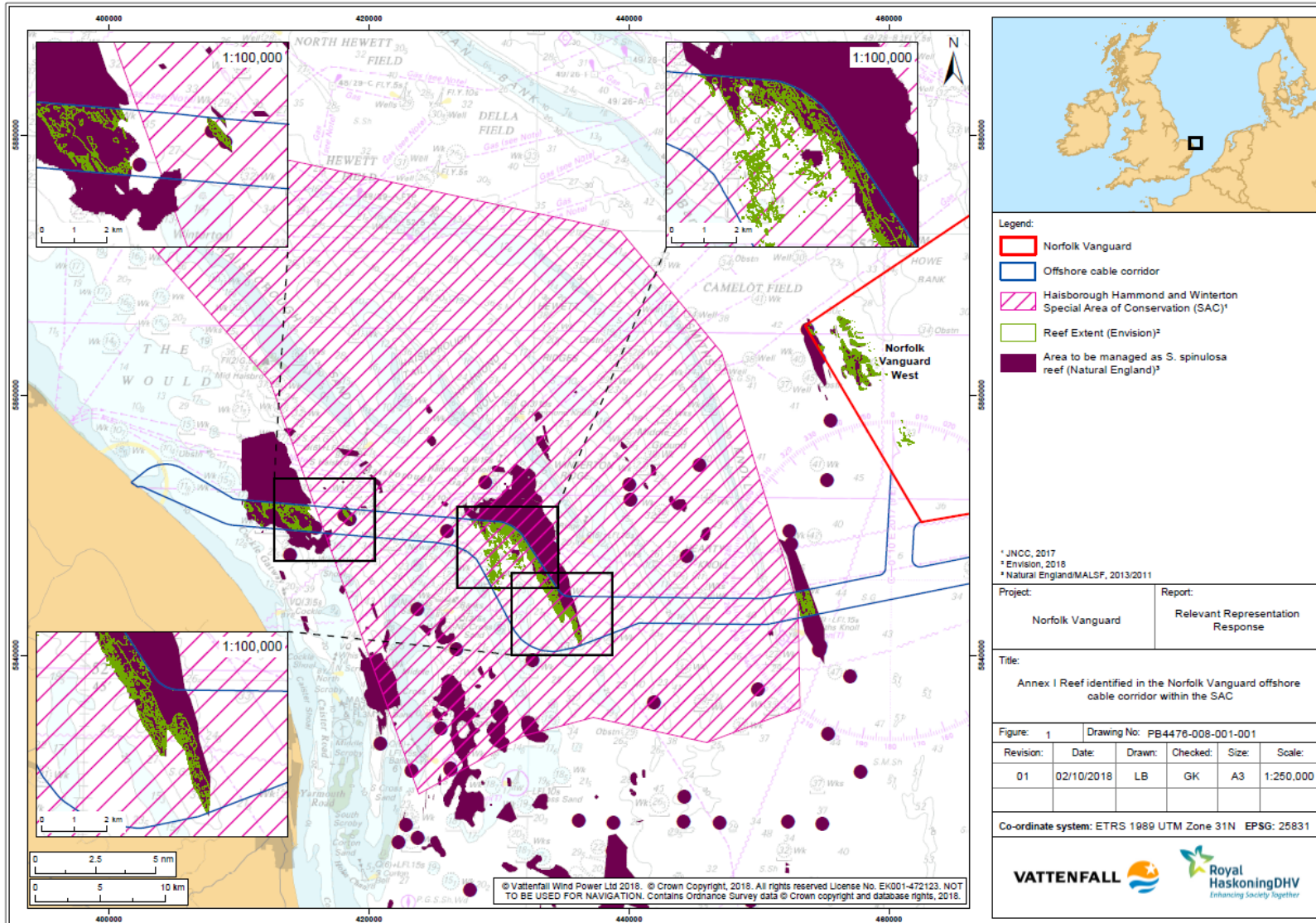


Figure 2.1 *Sabellaria spinulosa* reef mapping by the Applicant and Natural England

2.3 Fish and Shellfish Ecology

21. The project has the potential to impact upon Fish and Shellfish Ecology. Chapter 11 of the Norfolk Vanguard ES (document reference 6.1 of the Application) provides an assessment of the significance of these impacts.
22. Table 5 provides an overview of meetings and correspondence undertaken with Natural England regarding Fish and Shellfish Ecology.
23. Table 6 provides areas of agreement (common ground) and disagreement regarding Fish and Shellfish Ecology.
24. Minutes of Evidence Plan meetings can be found in Appendix 9.16 of the Consultation Report (document reference 5.1 of the Application).

Table 5 Summary of Consultation with Natural England in relation to Fish and Shellfish Ecology

Date	Contact Type	Topic
Pre-Application		
21 st March 2016	Benthic and Geophysical Survey Scope Meeting	Agreement that no further fish surveys were required to inform the EIA.
2 nd February 2017	Email from the Applicant	Provision of the Fish Ecology Method Statement (see Appendix 9.2 of the Consultation Report).
16 th February 2017	Benthic and Intertidal Ecology, Fish Ecology, Marine Physical Processes and Marine Water and Sediment Quality Scoping Expert Topic Group Meeting	Discussion of Scoping responses and approach to EIA/HRA (minutes provided in Appendix 9.16 of the Consultation Report).
Post-Application		
31 st August 2018	Relevant Representation	Natural England's initial feedback on the DCO application.
17 th October 2018	Email from the Applicant	First draft SOCG provided by the Applicant
18 th October 2018	SoCG Meeting	Discussion regarding the drafting of the SoCG
21 st November 2018	Email from the Applicant	Second draft SOCG provided by the Applicant

Table 6 Statement of Common Ground - Fish and shellfish

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
Environmental Impact Assessment			
Existing Environment	The ES adequately characterises the baseline environment in terms of Fish and Shellfish Ecology. No site specific survey data is required for the characterisation of Fish and Shellfish Ecology as agreed by email on 13 th April 2016.	Agreed	It is agreed by both parties that the existing environment for fish and shellfish has been characterised appropriately for the assessment.
Assessment methodology	Appropriate legislation, planning policy and guidance relevant to Fish and Shellfish Ecology has been used.	Agreed	It is agreed by both parties that appropriate legislation has been considered.
	The list of potential impacts on Fish and Shellfish Ecology assessed is appropriate	Agreed	It is agreed by both parties that appropriate impacts on fish and shellfish have been assessed.
	The impact assessment methodology is appropriate, and is in line with the Method Statement provided in February 2017 (see Appendix 9.2 of the Consultation Report (Application document 5.1) and agreed during the topic group meeting in February 2017.	Agreed	It is agreed by both parties that the impact assessment methodologies used in the EIA are appropriate.
	The worst case scenario used in the assessment for Fish and Shellfish Ecology is appropriate.	Agreed	It is agreed by both parties that the worst case scenario used in the assessment is appropriate
	As discussed in the Change Report (document reference Pre-ExA;Change Report;9.3), the increase in the maximum number of piles per offshore electrical platform from six to 18 per platform (36 in total for two platforms) does not affect the conclusions of ES Chapter 11 Fish and Shellfish Ecology.	Agreed	It is agreed by both parties that the proposed increase in the maximum number of piles per offshore electrical platform from six to 18 (36 in total for two platforms) does not affect the conclusions of ES Chapter 11 Fish and Shellfish Ecology.
Assessment findings	The characterisation of receptor sensitivity is appropriate.	Agreed	It is agreed by both parties that fish and shellfish sensitivity is appropriately characterised.
	The magnitude of effect is correctly identified.	Agreed	It is agreed by both parties that the magnitude of effects on fish and

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
			shellfish are appropriately characterised.
	The impact significance conclusions of negligible or minor adverse for Norfolk Vanguard alone are appropriate.	Agreed	It is agreed by both parties that the impact significance for fish and shellfish is appropriately characterised for Norfolk Vanguard alone.
Cumulative Impact Assessment (CIA)	The plans and projects considered within the CIA are appropriate.	Agreed	It is agreed by both parties that the plans and projects included in the CIA are appropriate.
	The CIA methodology is appropriate.	Agreed	It is agreed by both parties that the CIA methodology is appropriate.
	The cumulative impact conclusions of negligible or minor significance are appropriate.	Agreed	It is agreed by both parties that the impact significance for fish and shellfish is appropriate for cumulative impacts.
Management Measures – Mitigation and Monitoring			
Mitigation and Management	Given the impacts of the project, the embedded mitigation outlined in Section 11.7.1 of Chapter 11 is adequate.	Agreed	It is agreed by both parties that the embedded mitigation proposed is appropriate.
Monitoring	<p>Given the minor impacts of the project, no monitoring is proposed for fish and shellfish ecology.</p> <p>The In Principle Monitoring Plan provides framework to agree monitoring post consent.</p>	<p>Agreed as Natural England acknowledges the applicant will seek to address these concerns post consent. Natural England is concerned that no further monitoring or independent surveys are proposed regarding Fish and Shellfish ecology within the In Principle Monitoring Plan. Sandeel and herring habitat is of particular interest as these are important prey species including for harbour porpoise of the Southern North Sea SAC and the Greater Wash SPA.. However Natural England would defer to Cefas on this issue.</p>	It is agreed by both parties that the In Principle Monitoring Plan (document 8.12), provides an appropriate framework to agree monitoring with the MMO in consultation with Natural England.

2.4 Marine Mammals

25. The project has the potential to impact upon Marine Mammals. Chapter 12 of the Norfolk Vanguard ES (document reference 6.1 of the Application) provides an assessment of the significance of these impacts.
26. Table 7 provides an overview of meetings and correspondence undertaken with Natural England regarding Marine Mammals.
27. Table 8 provides areas of agreement (common ground) and disagreement regarding Marine Mammals.
28. Minutes of Evidence Plan meetings can be found in Appendix 9.24 and Appendix 25.9 of the Consultation Report (document reference 5.1 of the Application).

Table 7 Summary of Consultation with Natural England in relation to Marine Mammals

Date	Contact Type	Topic
Pre-Application		
21 st March 2016	Meeting	Discussion on the required aerial survey methodology (see Appendix 9.17 of the Consultation Report).
2 nd February 2017	Email from the Applicant	Provision of the Marine Mammals Method Statement (Appendix 9.13 of the Consultation Report).
15 th February 2017	Marine Mammals Scoping Expert Topic Group Meeting	Discussion of the scoping responses and approach to EIA/HRA (minutes provided in Appendix 9.24 of the Consultation Report).
22 nd June 2017	Email from the Applicant	Provision of HRA Method Statement (Appendix 9.13 of the Consultation Report) to inform discussions at the Marine Mammals Topic Group meeting.
6 th July 2017	Marine Mammals pre-PEI ETG Meeting	Marine mammal HRA Screening agreed and approach to HRA discussed (minutes provided in Appendix 9.24 of the Consultation Report).
25 th October 2017	Email from the Applicant	Provision of the Marine Mammals PEIR Chapter.
8 th December 2017	Marine mammal ETG Conference call	Marine mammal PEIR comments and approach to HRA.
3 rd January 2018	Email from Natural England	Written advice on approach to the marine mammal HRA and clarifying PEIR feedback following meeting on the 8 th December 2017.
23 rd March 2018	Letter from Natural England	Feedback on the draft Information to Support HRA report.
26 th March 2018	Marine Mammal ETG Conference Call	Discussion of feedback on the draft Information to Support HRA for Marine Mammals (minutes provided in Appendix 25.9 of the Consultation Report).

Date	Contact Type	Topic
13 th April 2018	Email from the Applicant	Provision of draft In Principle Southern North Sea cSAC Site Integrity Plan (document 8.17) for review.
Post-Application		
31 st August 2018	Relevant Representation	Natural England's initial feedback on the DCO application.
17 th October 2018	Email from the Applicant	First draft SOCG provided by the Applicant
18 th October 2018	SoCG Meeting	Discussion regarding the drafting of the SoCG
21 st November 2018	Email from the Applicant	Second draft SOCG provided by the Applicant
3 rd June 2019	Email from the Applicant	Draft of final SOCG provided by the Applicant

Table 8 Statement of Common Ground - Marine mammals

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
Environmental Impact Assessment			
Existing Environment	Survey data collected for Norfolk Vanguard for the characterisation of marine mammals are suitable for the assessment.	Agreed	It is agreed by both parties that sufficient survey data has been collected to undertake the assessment.
	The ES adequately characterises the baseline environment in terms of marine mammals.	Agreed In addition to project specific surveys, sufficient background characterisation data from previous strategic surveys have been included. Species assessed are harbour porpoise, grey seal and harbour seal.	It is agreed by both parties that the existing environment for marine mammals has been characterised appropriately for the assessment.
Assessment methodology	Appropriate legislation, planning policy and guidance relevant to marine mammals has been used.	Agreed	It is agreed by both parties that appropriate legislation has been considered.
	The list of potential impacts on marine mammals assessed is appropriate.	Agreed	It is agreed by both parties that appropriate impacts on marine mammals have been assessed.
	Harbour porpoise, grey seal and harbour seal are the only species of marine mammal required to be considered in the impact assessment.	Agreed Other marine mammal species are at such low density that it is not necessary to assess further.	It is agreed by both parties that appropriate species of marine mammal have been assessed.
	The reference populations as defined in the ES are appropriate.	Agreed	It is agreed by both parties that appropriate reference populations have been used in the assessment.
	The approach to underwater noise modelling and assessment of impacts from pile driving noise for marine mammals follows current best practice and is therefore appropriate for this assessment as agreed during the expert topic group meeting in February 2017.	Agreed	It is agreed by both parties that the approach to underwater noise impact assessment is appropriate
	The impact assessment methodology is appropriate.	Agreed	It is agreed by both parties that the impact assessment methodology is appropriate

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	The worst case scenario for Norfolk Vanguard alone used in the assessment for marine mammals is appropriate.	Agreed.	It is agreed by both parties that the worst case scenario used in the assessment is appropriate
	As discussed in the Change Report (document reference Pre-ExA;Change Report;9.3), the increase in the maximum number of piles per offshore electrical platform from six to 18 (36 in total for two platforms) does not affect the conclusions of ES Chapter 12 Marine Mammals.	Agreed	It is agreed by both parties that the proposed increase in the maximum number of piles per offshore electrical platform from six to 18 (36 in total for two platforms) does not affect the conclusions of ES Chapter 12 Marine Mammals.
	Unexploded Ordnance (UXO) clearance is considered in the EIA to provide a conservative assessment but would be subject to additional licencing once the nature and extent of UXO present is known following pre-construction surveys. This licencing would be supported by a UXO Marine Mammal Mitigation Protocol (MMMP)	Agreed	It is agreed by both parties that UXO clearance will be licenced separately
Assessment findings	The characterisation of receptor sensitivity is appropriate.	Agreed	It is agreed by both parties that marine mammal sensitivity is appropriately characterised for each species and impact.
	The magnitude of effect is correctly identified.	Agreed	It is agreed by both parties that the magnitude of effects on marine mammals are appropriately characterised.
	The impact significance conclusions of negligible or minor for Norfolk Vanguard alone are appropriate.	Agreed	It is agreed by both parties that the impact significance for marine mammals is appropriately characterised for Norfolk Vanguard alone.
Cumulative Impact Assessment (CIA)	The plans and projects considered within the CIA are appropriate.	Agreed	It is agreed by both parties that the plans and projects included in the CIA are appropriate.

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>The CIA methodology is appropriate.</p> <p>The cumulative impact conclusions of negligible or minor significance are appropriate.</p> <p>The Southern North Sea SIP (DCO Schedules 9 and 10 Part 4 Condition 14(1)(m) and Schedules 11 and 12 Part 4 Condition 9(1)(l)) provides the framework to agree appropriate mitigation measures based on the latest guidance and provides the mechanism for the MMO to ensure that disturbance can be limited to an acceptable level, as piling cannot commence until the MMO is satisfied that there would be no adverse effect on integrity.</p> <p>As outlined in the In Principle Site Integrity Plan (Table 2.1 of document 5.3), it is proposed that the Site Integrity Plan would be updated to capture all relevant assessments and mitigation measures. This will include updating the in-combination assessment, taking into account the conclusions of the RoC process.</p> <p>The Applicant agrees that a strategic mechanism is required from the Regulator to ensure that disturbance can be limited to an acceptable level. In accordance with the Marine Management Organisation's Deadline 6 submission, the Applicant considers that the current requirement for a SIP is sufficient to allow any mechanism to be fully incorporated without need for variation.</p>	<p>Agreed</p> <p>It is the view of Natural England that the assessment of any future plan or project, such as Norfolk Vanguard, is unable to fully complete any in-combination assessment and Habitat Regulation Assessments until: -</p> <p>The RoC consent process has concluded and the predicted level of disturbance to the Southern North Sea SAC from the consented projects is agreed; and</p> <p>b) A mechanism is in place to ensure that disturbance can be limited to an acceptable level.</p>	<p>It is agreed by both parties that the CIA methodology is appropriate.</p> <p>It is agreed by both parties that a strategic mechanism is required from the Regulator to ensure that disturbance can be limited to an acceptable level. The current requirement for a SIP is sufficient to allow any mechanism to be fully incorporated without need for variation.</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
Habitats Regulations Assessment (HRA)			
Screening of LSE	The Approach to HRA Screening is appropriate. The following sites are screened in for further assessment: <ul style="list-style-type: none"> Southern North Sea SAC Humber Estuary SAC The Wash and North Norfolk Coast SAC 	Agreed	It is agreed by both parties that the designated sites and potential effects screened in for further assessment are appropriate.
Assessment of Adverse Effect on Integrity	The approach to the assessment of AEoI is appropriate.	Agreed in part, however, as a result of the in-combination effect of underwater noise during the construction period at the project (from piling and UXO clearance), the Information to Support the HRA indicates that there is potential for LSE. Natural England advises that without the Site Integrity Plan and a mechanism to control subsea noise from multiple sources, there could be the potential for an adverse effect on the integrity of the Southern North Sea SAC because of potential impacts on harbour porpoise. This is not an issue unique to the project and work will need to be undertaken to reduce the noise levels of multiple wind farms potentially constructing at the same time. This has been reflected in the Environmental Statement.	It is agreed by both parties that the approach to the assessment of potential adverse effects on site integrity presented in the Information to Support HRA report (document 5.3) are appropriate
	The reference populations as defined in the Information to Support HRA report are appropriate.	Agreed	It is agreed by both parties that appropriate reference populations have been used in the Information to Support HRA report.
	The conclusions of the Information to Support HRA report are appropriate for Norfolk Vanguard alone.	Agreed	It is agreed by both parties that there would be no AEoI as a result of Norfolk Vanguard alone
	The conclusions of the In-combination Assessment provided in the Information to Support HRA report are appropriate.	Effectively the Worst Case Scenario (WCS) presented in the HRA will be that all consented projects and those in the planning	It is agreed by both parties that a strategic mechanism is required from the Regulator to ensure that

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>The Site Integrity Plan (DCO Schedules 9 and 10 Part 4 Condition 14(1)(m) and Schedules 11 and 12 Part 4 Condition 9(1)(l)) provides the framework to agree appropriate mitigation measures based on the latest guidance and provides the mechanism for the MMO to ensure that disturbance can be limited to an acceptable level, as piling cannot commence until the MMO is satisfied that there would be no adverse effect on integrity.</p> <p>As outlined in the In Principle Site Integrity Plan (Table 2.1 of document 5.3), it is proposed that the Site Integrity Plan would be updated to capture all relevant assessments and mitigation measures. This will include updating the in-combination assessment, taking into account the conclusions of the RoC process.</p> <p>The Applicant agrees that a strategic mechanism is required from the Regulator to ensure that disturbance can be limited to an acceptable level. In accordance with the Marine Management Organisation's Deadline 6 submission, the Applicant considers that the current requirement for a SIP is sufficient to allow any mechanism to be fully incorporated without need for variation.</p>	<p>system will undertake 'noisy' pre-construction site preparation and construction activities at the same time which will almost certainly result in an Adverse Effect on Integrity (AEoI). We recognise that this is an unrealistic WCS because for no other reason it is not technically feasible. However, it does remain probable that two, or more, projects will wish to undertake noisy activities at the same time and depending on the combination of projects there remains a high risk of an AEoI.</p> <p>It is also the view of NE that the assessment of any future plan or project, such as Norfolk Vanguard, is unable to fully complete any in-combination assessment and Habitat Regulation Assessments until: -</p> <p>The RoC consent process has concluded and the predicted level of disturbance to the Southern North Sea SAC from the consented projects is agreed; and</p> <p>b) A wider mechanism is in place to ensure that disturbance can be limited to an acceptable level.</p>	<p>disturbance can be limited to an acceptable level. The current requirement for a SIP is sufficient to allow any mechanism to be fully incorporated without need for variation.</p>
Mitigation and Management			
Mitigation and Management	<p>The Site Integrity Plan, in accordance with the In Principle Site Integrity Plan (application document 8.17) provides an appropriate framework to agree mitigation measures for effects on the Southern North Sea SAC with Statutory Nature Conservation Bodies (SNCB)s and the MMO prior to construction.</p>	<p>Agreed, however Natural England would like to see the applicant commit to a final detailed SIP being produced at least 4 months (preferably 6) prior to commencement of pile driving. And would support this being a condition in the DCO</p>	<p>It is agreed by both parties that the Site Integrity Plan provides an appropriate framework to agree mitigation measures for effects on the Southern North Sea SAC with SNCBs and the MMO prior to construction.</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>The MMMP, in accordance with the draft MMMP (application document 8.13), provides an appropriate framework for securing marine mammal mitigation measures in agreement with and the MMO prior to construction.</p> <p>A final MMMP will be submitted at Deadline 9 and will include reference to Condition 19(3)</p>	<p>Largely agreed. Natural England would suggest that the outline MMMP should be updated to reflect the changes we have proposed to DML Condition 19 (3) i.e. the during construction noise monitoring condition.</p> <p>Details are required regarding establishment of Marine Mammal Mitigation Zone (MMMZ) in the revised MMMP post consent.</p> <p>Natural England expects to be further consulted on the development of the MMMP for piling and UXOs prior to construction.</p>	<p>It is agreed by both parties that the MMMP provides the framework for securing marine mammal mitigation measures prior to construction.</p>

2.5 Offshore Ornithology

29. The project has the potential to impact upon Offshore Ornithology. Chapter 13 of the Norfolk Vanguard ES (document reference 6.1 of the Application) provides an assessment of the significance of these impacts.
30. Table 9 provides an overview of meetings and correspondence undertaken with Natural England regarding Offshore Ornithology.
31. Table 10 provides areas of agreement (common ground) and disagreement regarding Offshore Ornithology.
32. Minutes of Evidence Plan meetings can be found in Appendix 9.17 and Appendix 25.8 of the Consultation Report (document reference 5.1 of the Application).

Table 9 Summary of Consultation with Natural England in relation to Offshore Ornithology

Date	Contact Type	Topic
Pre-Application		
21 st March 2016	Meeting	Discussion on the required aerial survey methodology (see Appendix 9.17 of the Consultation Report).
21 st March 2016	Letter from Natural England	Natural England's review of the ornithological survey strategy.
15 th February 2017	ETG meeting	Discussion on the draft Offshore Ornithology PEIR Chapter (minutes provided in Appendix 9.17).
14 th March 2017	Email from Natural England	Natural England feedback on Offshore Ornithology Method Statement.
8 th May 2017	Email from Natural England	Natural England advice on population modelling methods for assessing impacts of the Vanguard OWF.
22 nd June 2017	Email from the Applicant	Offshore HRA Screening (Appendix 5.1 of the HRA (document 5.3)) provided for consultation.
7 th September 2017	Email from the Applicant	Provision of draft offshore ornithology PEIR Chapter 13.
6 th October 2017	ETG meeting	Discussion of comments on the draft PEIR chapter (minutes provided in Appendix 9.20).
11 th December 2017	PEIR response	Comments on the PEIR chapter
22 nd February 2018	Email from the Applicant	Provision of draft Norfolk Vanguard Information to Support Habitats Regulations Assessment (HRA) (document 5.3).
23 rd March 2018	Letter from Natural England	Feedback on the draft Information to Support HRA report
26 th March 2018	Offshore Ornithology HRA Conference Call	Project update and comments on HRA for Offshore Ornithology (minutes provided in Appendix 25.8).

Date	Contact Type	Topic
Post-Application		
31 st August 2018	Relevant Representation	Natural England's initial feedback on the DCO application.
17 th October 2018	Email from the Applicant	First draft SOCG provided by the Applicant
18 th October 2018	SoCG Meeting	Discussion regarding the drafting of the SoCG
21 st November 2018	Email from the Applicant	Second draft SOCG provided by the Applicant
23 rd January 2019	SoCG Meeting	Discussion of offshore ornithology assessment status and next steps
8 th March 2019	SoCG Meeting	Discussion of offshore ornithology assessment status and next steps and updating the SoCG
20 th March 2019	Email from Natural England	Proposed red-throated diver mitigation for operation and maintenance vessel movement.
27 th March 2019	Meeting prior to Issue Specific Hearing 4	Discussion of offshore ornithology assessment status and next steps in run up to submissions at Deadline 6.
17 th April 2019	Receipt of Natural England's interim review of Deadline 6 submissions.	Clarification of responses to updated assessments and identification of outstanding aspects.
23 rd April 2019	Conference Call	Discussions of areas of agreement and disagreement in advance of Issue Specific Hearing 6.
2 nd May 2019	Receipt of Natural England's Deadline 7 submission (Final review of the Applicant's Deadline 6 and Deadline 6.5 submissions).	Clarification of responses to updated assessments and identification of outstanding aspects.
9 th May 2019	Conference Call	Discussions regarding timetable leading up to Deadline 8.
14 th May 2019	Updated assessment	Revised project alone and in-combination collision risk assessment following increase in turbine draught height from 22m to 27m above Mean High Water Springs (MHWS).
20 th May 2019	Conference Call	Discussion of collision revisions following turbine draught height increase.
31 st May 2019	Receipt of Natural England's Deadline 8 submissions	Natural England's position on the Applicant's updated submissions up to Deadline 7 and including the Deadline 7.5 CRM submission.
3 rd June 2019	Conference Call	Discussion of final positions and submissions
4 th June 2019	Updated SoCG	Submitted to Natural England for review

Table 10 Statement of Common Ground - Offshore ornithology

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
Environmental Impact Assessment			
Existing Environment	Survey data collected for Norfolk Vanguard (and East Anglia FOUR, now NV East) for the characterisation of offshore ornithology are suitable for the assessment.	Agreed.	Agreed.
	The methods and techniques used to analyse offshore ornithological data are appropriate for characterising bird distributions and estimating populations.	Agreed.	Agreed.
	The method used to determine flight heights is appropriate.	Agreed.	Agreed that generic flight height data (Johnston et al. 2014) will be used due to data reliability concerns raised by aerial surveyor.
	The method used to assign unidentified birds to species is appropriate.	Agreed.	Agreed.
	The methods used to define the relevant months for seabird breeding seasons for use in assessments, presenting both the full breeding seasons as advised by Natural England, and the Applicant's preferred migration-free breeding months, are appropriate.	Agreed	Agreed
Assessment methodology			
General	Appropriate legislation, planning policy and guidance relevant to offshore ornithology has been used.	Agreed.	Agreed.
	The list of potential impacts on offshore ornithology assessed is appropriate.	Agreed.	Agreed.
	The methods for determining impact significance on offshore ornithological receptors is appropriate.	Agreed	Agreed.
	The worst case scenario used in the assessment for offshore ornithology is appropriate.	Agreed	Agreed.
	Differences between single and two phased approaches to construction are trivial in terms of ornithology impacts.	Agreed	Agreed.
	The characterisation of receptor sensitivity is appropriate	Agreed	Agreed.

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
Construction impact methods	The lists of potential construction impacts and ornithology receptors assessed are appropriate.	Agreed.	Agreed.
	The methods used to estimate impacts during construction, including cable laying operations, based on mean density estimates and presenting both Natural England's preferred rates and the Applicant's evidence based rates (for displacement and mortality) are appropriate.	Agreed	Agreed
Operation impact methods	The sources of operational impact assessed are appropriate	Agreed	Agreed
	The lists of ornithology receptors assessed for each impact are appropriate. Species included were those with impacts above minimal thresholds (e.g. >10 collisions per year).	Agreed	Agreed
	Methods used to assess operational displacement presented in the ES and subsequent revisions submitted at Deadline 1 (WQApp3.1; 10.D1.3), Norfolk Vanguard Offshore Wind Farm Offshore Ornithology: Operational Auk Displacement: update and clarification (ExA; WQApp3.3; 10.D1.3)), Deadline 6 (ExA;AS;10.D6.17) and Deadline 8 (ExA;AS;10.D8.10) are appropriate. Note that Natural England requires presentation and assessment using their preferred displacement and mortality rates.	Agreed	Agreed
	Method for assessing seabird collision risk is appropriate: using Band option 2, presenting results for mean seabird density (and 95% c.i.), Natural England advised species specific avoidance rates (+/- 2 SD), BTO flight height estimates (and 95% c.i.) and Natural England advised nocturnal activity rates.	Agreed	Agreed

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	Non-seabird migrant collision assessment submitted at Deadline 3 and updated at Deadline 6, as per Natural England's request (Norfolk Vanguard Offshore Wind Farm Migrant non-seabird Collision Risk Modelling ExA; AS; 10.D6.18_Migrant Non-Seabird Collision Risk Modelling Revision of Rep-038) is appropriate.	Agreed	Agreed
	Methods for assessing barrier effects are appropriate.	Agreed	Agreed
	Methods for assessing indirect effects are appropriate.	Agreed	Agreed
Impact assessment findings – project alone (EIA)			
Construction impacts	The magnitude of effects and conclusions on significance resulting from impacts during construction are correctly identified and predicted. No impacts of greater than minor adverse significance are predicted.	Agreed when using Natural England's preferred rates and methods (as presented in the Applicant's Deadline 1 submissions).	Agreed
Operation impacts	The magnitude of effects and conclusions on significance resulting from displacement impacts during operation are correctly identified and predicted. No impacts of greater than minor adverse significance are predicted.	<p>Agreed, for gannet, razorbill, guillemot and puffin subject to the following caveat: extended breeding season for gannet (although it is agreed that this does not alter the conclusions). No impacts predicted to be greater than minor adverse for these species.</p> <p>Agreed for red-throated diver, using Natural England's preferred rates and methods for Norfolk Vanguard East.</p> <p>Not agreed for red-throated diver, using Natural England's preferred rates and methods for Norfolk Vanguard West and Norfolk Vanguard East and West combined (moderate adverse effect).</p>	Agreed for all species using Natural England's preferred rates except red-throated diver at Norfolk Vanguard West and Norfolk Vanguard East and West combined (moderate adverse effect).

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	Using the Band collision model, with Natural England's preferred input parameters and model methods, the magnitude of effects and conclusions on significance resulting from collision impacts for seabirds and non-seabird migrants during operation are correctly identified and predicted. No impacts of greater than minor adverse significance are predicted for all species.	Agreed. It should be noted that this agreement has only been reached following discussions between Natural England and the Applicant and agreement to focus the assessment on the deterministic Band model.	Agreed
	Following design revisions to the Project, with removal of the 9MW turbine from the design envelope, revised layout across Norfolk Vanguard East and West (no more than two-thirds of the turbines in NV West or half the turbines in NV East) and a 5m increase in draught height (from 22m to 27m above Mean High Water Springs), the Project has reduced the average collision predictions by 65% and therefore makes a significantly smaller contribution to cumulative and in-combination collision totals for all species.	Agreed	Agreed
	The magnitude of effects and conclusions on significance resulting from barrier effects during operation are correctly identified and predicted. No impacts of greater than minor adverse significance are predicted.	Agreed	Agreed
	The magnitude of effects and conclusions on significance resulting from indirect effects during operation are correctly identified and predicted. No impacts of greater than minor adverse significance are predicted.	Agreed	Agreed
Decommissioning impacts	The magnitude of effects and conclusions on significance resulting from impacts during decommissioning are correctly identified and predicted. No impacts of greater than minor significance are predicted.	Agreed that decommissioning impacts are likely to be no worse than those during construction. However, Natural England notes that further consultation will be required (at the time decommissioning is being planned) to ensure potential impacts are minimised.	Agreed

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
Cumulative impact assessment (EIA)			
Cumulative construction assessment	The plans and projects considered within the CIA are appropriate	Agreed	Agreed
	The magnitude of effects and conclusions on significance resulting from cumulative impacts during construction are correctly identified and predicted. No impacts of greater than minor adverse significance are predicted.	Agreed.	Agreed.
Cumulative operation assessment	The plans and projects considered within the CIA are appropriate.	Agreed. Although it should be noted that there remains uncertainty about the magnitude of effects to be assigned to other projects currently in Examination or not yet determined. Natural England has raised concerns about the validity of the assessment for the Hornsea THREE application, and advises that the associated values are unlikely to reflect the impacts of this development should it be consented.	Agreed
	The magnitude of effects and conclusions on significance resulting from cumulative displacement impacts during operation are correctly identified and predicted and no impacts of greater than minor adverse significance are predicted for red-throated diver.	Not agreed. Natural England considers that cumulative displacement of red-throated diver will result in a moderate adverse impact, although Natural England acknowledges the relatively small contribution of Norfolk Vanguard to this impact.	Not agreed

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>The magnitude of effects and conclusions on significance resulting from cumulative displacement impacts during operation are correctly identified and predicted and no impacts of greater than minor adverse significance are predicted for guillemot, razorbill, puffin and gannet.</p>	<p>Agreed for puffin</p> <p>Not agreed for guillemot and razorbill, for which Natural England is unable to rule out a significant (moderate adverse) cumulative impact).</p> <p>For gannet, NE has considered displacement effects in addition to collision mortality, and conclude a moderate adverse effect on gannet at the EIA cumulative scale. Please see the row below. We have not considered displacement effects separately.</p>	<p>Agreed for puffin</p> <p>Not agreed for guillemot and razorbill.</p>
	<p>Using the Band collision model option 2, with Natural England's preferred input parameters (see above) and methods, combined with like for like figures for other projects (as far as possible given the information available), the magnitude of effects and conclusions on significance resulting from cumulative collision impacts for seabirds during operation are correctly identified and predicted.</p> <p>It should be noted that this conclusion includes the cumulative assessment for little gull, for which Natural England has suggested other wind farms should be included (Deadline 9 submission; Dudgeon, East Anglia ONE, East Anglia THREE). However, no collision estimates are available for these projects therefore a conclusion of no significant impact is appropriate for this species, based on the best available evidence.</p>	<p>Agreed for herring gull, lesser black-backed gull and little gull, though given the lack of information regarding potentially relevant projects, NE's conclusions regarding the latter species are made with lower confidence.</p> <p>Not agreed for gannet, kittiwake and great black-backed gull (for which Natural England is currently unable to rule out a significant moderate adverse cumulative impact).</p>	<p>Agreed for herring gull, lesser black-backed gull and little gull.</p> <p>Not Agreed for gannet, kittiwake and great black-backed gull</p>
Habitats Regulations Assessment (HRA)			
Screening of LSE	The Approach to HRA Screening is appropriate.	Agreed	Agreed
	<p>The following sites and species should be screened in for further assessment:</p> <ul style="list-style-type: none"> Alde-Ore Estuary Special Protection Area (SPA) (lesser black-backed gull); 	Agreed (note that with respect to the Greater Wash SPA Natural England considers that an LSE cannot be ruled for common scoter, however there is no AEOI for the project alone or in-combination).	Agreed

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<ul style="list-style-type: none"> Flamborough and Filey Coast potential Special Protection Area (SPA) (gannet, kittiwake, guillemot, razorbill and puffin, the latter as a named component of the seabird assemblage); Greater Wash SPA (red-throated diver and little gull) Outer Thames Estuary SPA (red-throated diver). 		
Assessment	The approach to the determination of AEoI is appropriate.	Agreed	Agreed
	Conclusion of no AEoI alone for lesser black-backed gull population at Alde-Ore Estuary is appropriate, on the basis of predicted collisions for the Project (following reductions due to removal of 9MW turbine, revised layout and increase in turbine draught height).	Agreed	Agreed
	Conclusion of no AEoI for lesser black-backed gull population at Alde-Ore Estuary is appropriate, on the basis of in-combination collisions.	Not Agreed. Natural England advises that an Adverse Effect on Integrity cannot be ruled out due to the levels of in-combination collision mortality predicted.	Not Agreed
	Conclusion of no AEoI alone for gannet population at Flamborough and Filey Coast SPA is appropriate on the basis of the predicted collisions for the Project (following reductions due to removal of 9MW turbine, revised layout and increase in draught height), displacement and combination of both collisions and displacement and the predicted consequences from PVA.	Agreed	Agreed
	Conclusion of no AEoI for gannet population at Flamborough and Filey Coast SPA is appropriate on the basis of in-combination collisions, displacement and combination of both and the predicted consequences from PVA.	Agreed for assessment excluding Hornsea Project Three. But Natural England advises that it cannot rule out AEoI with inclusion of Hornsea Project Three (due to the significant levels of uncertainty with that project's assessment).	Agreed with exclusion of Hornsea Project Three. Not Agreed with inclusion of Hornsea Project Three.

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	Conclusion of no AEol alone for kittiwake population at Flamborough and Filey Coast SPA is appropriate on the basis of the predicted collisions for the Project (following reductions due to removal of 9MW turbine, revised layout and increase in draught height) and the predicted consequences estimated from PVA.	Agreed	Agreed
	Conclusion of no AEol for kittiwake population at Flamborough and Filey Coast SPA is appropriate on the basis of in-combination collisions and the predicted consequences estimated from PVA.	Not agreed: Natural England advises that an Adverse Effect on Integrity cannot be ruled out due to the levels of in-combination collision mortality predicted.	Not Agreed
	Conclusion of no AEol for razorbill population at Flamborough and Filey Coast SPA is appropriate on the basis of alone and in-combination displacement and the predicted consequences estimated from PVA.	Agreed for assessment excluding Hornsea Project Three. But Natural England advises that it cannot rule out AEol with inclusion of Hornsea Project Three (due to the significant levels of uncertainty with that project's assessment).	Agreed with exclusion of Hornsea Project Three. Not Agreed with inclusion of Hornsea Project Three.
	Conclusion of no AEol for guillemot population at Flamborough and Filey Coast SPA is appropriate on the basis of alone and in-combination displacement and the predicted consequences estimated from PVA.	Agreed for assessment excluding Hornsea Project Three. But Natural England advises that it cannot rule out AEol with inclusion of Hornsea Project Three (due to the significant levels of uncertainty with that project's assessment).	Agreed with exclusion of Hornsea Project Three. Not Agreed with inclusion of Hornsea Project Three.
	Conclusion of no AEol for puffin population at Flamborough and Filey Coast SPA is appropriate on the basis of alone and in-combination displacement and the predicted consequences estimated from PVA.	Agreed with regard to the puffin component of the seabird assemblage feature of the FFC SPA. Not agreed regarding the assemblage feature more generally where Natural England advises that it cannot rule out AEol due to impacts predicted to the kittiwake feature (component of the assemblage) in-combination, and to the gannet, razorbill and guillemot features (also components of the assemblage) with the inclusion of Hornsea Project Three.	Agreed with regard to the puffin component of the assemblage Not agreed regarding the assemblage feature more generally due to impacts predicted to individual qualifying features, which are also components of the assemblage.

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>Conclusion of no AEol for the red-throated diver population at the Greater Wash SPA is appropriate on the basis of project alone construction displacement. This includes a commitment to restrict the number of main cable laying vessels within the SPA between January and March to one (previously up to two were assessed), and to avoid construction in the SPA during these months if possible.</p>	<p>Agreed. Regarding cable installation/reburial works from other windfarms, Natural England has reviewed the predicted cable installation timetables for consented projects due to undertake cable installation or remedial works and considers that these are highly unlikely to overlap temporally with cable installation from Norfolk Vanguard.</p> <p>Regarding in-combination impacts from operational arrays, given the reduction of impact now proposed by the Applicant in the most sensitive period for red-throated divers, Natural England has concluded that the limited temporal and spatial contribution of the project to such in-combination affects does not, on balance, warrant such an assessment.</p> <p>However, we do have residual concerns with the levels of windfarm-associated activity consented proposed within the Greater Wash SPA, and anticipate that this issue will need more detailed exploration for future projects.</p>	<p>Agreed</p>
	<p>Conclusion of no AEol for the red-throated diver population at the Greater Wash SPA is appropriate on the basis of in-combination construction displacement. This includes a commitment to restrict the number of main cable laying vessels for Norfolk Vanguard within the SPA between January and March to one (previously up to two were assessed), and to avoid construction in the SPA during these months if possible.</p>	<p>Agreed, on the basis of the restriction to one vessel. As the avoidance of this period is not secured, being only 'if possible', Natural England's agreement places no weight on this aspect of the Applicant's position.</p>	<p>Agreed</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	Conclusion of no AEoI for the red-throated diver population at the Greater Wash SPA and Outer Thames Estuary SPA is appropriate on the basis of project alone and in-combination operation displacement.	Agreed, following agreement to adopt best practice vessel operation measures whilst traversing the SPA (as secured in the draft DCO Requirement 14(d)(vi)) and as set out in the Outline Project Environmental Management Plan (PEMP) (as submitted at Deadline 7).	Agreed
	Conclusion of no AEoI for the little gull population at the Greater Wash SPA is appropriate on basis of project alone collisions.	Agreed	Agreed
	Conclusion of no AEoI for the little gull population at the Greater Wash SPA is appropriate on basis of in-combination collisions, based on the best available evidence.	Agreed on basis that in-combination assessment includes all appropriate and publicly available collision estimates for other wind farms (although Natural England notes that confidence in this conclusion is reduced as a consequence).	Agreed
Management Measures – Mitigation and Monitoring			
Mitigation	The Applicant has taken significant steps to reduce Norfolk Vanguard's predicted impacts and to minimise the contribution to cumulative and in-combination impacts through the removal of the 9MW turbine, revised layout and 5m increase in turbine draught height from 22 to 27m above MHWS.	Agreed	Agreed
Monitoring	<p>The proposed monitoring, which will be developed through the Ornithological Monitoring Plan in accordance with the In Principle Monitoring Plan (IPMP), (document 8.12), is adequate.</p> <p>For information the IPMP states:</p> <ul style="list-style-type: none"> • The aims of monitoring should be to reduce uncertainty for future impact assessment and address knowledge gaps. To this end, Norfolk Vanguard Limited will engage with stakeholders and the methodology would be developed through the Ornithological Monitoring Plan (required under Condition 14(1)(I) of the Generation DMLs (Schedule 9 and 10 of the DCO)). 	Agreed	Agreed

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>As for marine mammals (section 4.5), there may be little purpose or advantage in any site specific monitoring for offshore ornithology and therefore a strategic approach may be more appropriate in providing answers to specific questions where significant environmental impacts have been identified at a cumulative/in-combination level.</p> <ul style="list-style-type: none"> • As well as validation of key predictions within the ES regarding impact levels, aspects for consideration will include collision risks (e.g. improvements to modelling, options for mitigation and reduction), displacement (e.g. understanding the consequences of displacement) and improving reference population estimates and understanding of colony connectivity. 		

2.6 Onshore Ecology and Ornithology

33. The project has the potential to impact upon Onshore Ecology and Ornithology. Chapters 22 (Onshore Ecology) and 23 (Onshore Ornithology) of the Norfolk Vanguard ES (document reference 6.1 of the Application) provides an assessment of the significance of these impacts.
34. Table 11 provides an overview of meetings and correspondence undertaken with Natural England regarding Onshore Ecology and Ornithology.
35. Table 12 provides areas of agreement (common ground) and disagreement regarding Onshore Ecology and Ornithology.
36. Minutes of Evidence Plan meetings can be found in Appendix 9.19 and Appendix 25.1 of the Consultation Report (document reference 5.1 of the Application).

Table 11 Summary of Consultation with Natural England in relation to onshore ornithology

Date	Contact Type	Topic
Pre-Application		
8 th August 2016	Email	Draft Onshore Winter/Passage Bird Survey Scoping Report provided (Appendix 23.1 of the ES).
15 th September 2016	Email	Comments on draft survey specification for wintering/autumn and spring passage bird survey.
18 th November 2016	Email	Provision of the amended Onshore Winter/Passage Bird Survey Scoping Report following comments on the survey specification (provided in Appendix 23.1 of the ES).
14 th January 2017	Email	Provision of the Onshore Ecology and Ornithology Method Statement (provided in Appendix 9.3).
24 th January 2017	Meeting	Introduction to the project, approach to ecological surveys, discussion on the method statement.
13 th March 2017	Email	Comments on onshore wintering bird survey methodology
3 rd April 2017	Email	Agreement on Phase 2 survey methodologies.
18 th July 2017	Meeting	Discussion on interim survey results, project update, initial findings of assessment and approach to mitigation.
11 th December 2017	Email	Feedback on the PEIR from Natural England.

Date	Contact Type	Topic
22 nd January 2018	Meeting	Discussion on PEIR feedback, survey results and updates to the project.
5 th February 2018	Email	Provision of advice from Natural England regarding great crested newt mitigation alternatives.
6 th February 2018	Email	Review of Onshore Ecology and Ornithology baseline reports.
9 th February 2018	Email	Provision of the Norfolk Vanguard Bat Activity Survey Report (Appendix 22.4 of the ES (document 6.2).
19 th February 2018	Meeting	Discussion on the baseline report from the onshore ornithological surveys.
22 nd February 2018	Email	Provision of draft Norfolk Vanguard Information to Support Habitats Regulations Assessment (HRA) (document 5.3).
6 th March 2018	Email	Natural England comments on bat activity survey report.
12 th March 2018	Meeting	Discussion on the outcomes from the assessment and the approach to great crested newt mitigation (minutes provided in Appendix 25.1).
23 rd March 2018	Email and PDF	Clarifications following HRA meeting 22 nd February 2018 sent to Natural England.
23 rd April 2018	Great Crested Newt – Draft Licence Meeting	Discussion on the draft great crested newt mitigation licence (minutes provided in Appendix 25.1).
23 rd April 2018	Onshore Habitats Regulations Assessment Meeting	Discussion of Natural England comments on the onshore ecology section of the HRA Report (minutes provided in Appendix 25.1).
Post-Application		
31 st August 2018	Relevant Representation	Natural England's initial feedback on the DCO application.
17 th October 2018	Email from the Applicant	First draft SOCG provided by the Applicant
18 th October 2018	SoCG Meeting	Discussion regarding the drafting of the SoCG
21 st November 2018	Email from the Applicant	Second draft SOCG provided by the Applicant
30 th November 2018	Email from the Applicant	Clarification notes (Appendices 1-3 of the SOCG) provided by the Applicant
21 st January 2019	SoCG Meeting	

Date	Contact Type	Topic
27 th February 2019	SoCG Meeting	Ongoing discussions regarding onshore ecology assessment and clarification notes – SoCG to be updated following the Issue Specific Hearing on 27 th March 2019
18 th March 2019	Email from Natural England	Natural England response to clarification notes submitted by the Applicant.
15 th April 2019	Email from Applicant	Further Clarification Note on 'Outstanding unresolved issues identified by NE' issued by the Applicant
30 th April 2019	Email from Natural England	Natural England response to clarification note submitted by the Applicant (dated 15 April 2019).
21 st May 2019	Call	Discussion on approach to mitigating for qualifying species associated with Broadland SPA / Ramsar.
23 rd May 2019	Email from Applicant	Applicant's proposed approach to mitigating for qualifying species associated with Broadland SPA / Ramsar.
29 th May 2019	Email from Natural England	Natural England response to proposed approach to mitigating for qualifying species associated with Broadland SPA / Ramsar.
3 rd June 2019	Call	Further discussion on approach to mitigating for qualifying species associated with Broadland SPA / Ramsar.

Table 12 Statement of Common Ground - Onshore ecology and ornithology

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
Environmental Impact Assessment			
Survey methodology	<p>Survey methodologies for Phase 1 Habitat Surveys are appropriate and sufficient, and were agreed during the Expert Topic Group meeting held in January 2017.</p> <p>Phase 1 habitat surveys were undertaken in February 2017. Whilst the Applicant acknowledges that the optimum period for Phase 1 Habitat Survey is between March and September the findings of the Phase 1 survey are considered appropriate to characterise the habitats present within the study area.</p> <p>The Applicant has committed to undertaking any post-consent surveys at the optimum time of year, which is captured in the updated Outline Landscape and Environmental Management Strategy (OLEMS) that was submitted at Deadline 7 and secured through Requirement 24.</p>	<p>Survey data was only collected for 50% of onshore cable route where access was available and in a suboptimum period. Any future surveys should aim for better coverage and be completed within the appropriate survey season.</p>	<p>Not agreed for surveys completed in the past, Survey data was only collected for 50% of onshore cable route where access was available and in a suboptimum period.</p> <p>Agreed, for future surveys. Natural England notes the commitment within the OLEMS to undertake post consent surveys at the optimum time of year and refer the applicant to Natural England's standing advice.</p>
	<p>Survey methodologies for Phase 2 Surveys are appropriate and sufficient, and were discussed during the Expert Topic Group meeting held in January 2017 and agreed via email on 3rd April 2017.</p>	<p>Agreed</p>	<p>Both parties agree that Phase 2 survey scopes are appropriate.</p>
Existing Environment	<p>Survey data collected for Norfolk Vanguard for the characterisation of onshore ecology and ornithology are suitable for the assessment.</p>	<p>Not agreed for phase 1 habitat surveys completed in the past. Survey data was only collected for 50% of onshore cable route where access was available and in a suboptimum period.</p>	<p>Agreed</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
		Agreed, for future surveys. Natural England notes the commitment within the OLEMS to undertake post consent surveys at the optimum time of year and refer the applicant to Natural England's standing advice.	
	The ES adequately characterises the baseline environment in terms of onshore ecology and ornithology.	Natural England is satisfied that the ES and subsequent Clarification Notes adequately characterise the baseline environment.	Agreed
Assessment methodology	Appropriate legislation, planning policy and guidance relevant to ecology and ornithology has been considered for the project (listed in section 22.2 and 23.2 in Chapter 22 Onshore Ecology and Chapter 23 Onshore Ornithology respectively).	Natural England is satisfied that future surveys will adhere to guidance on completion during optimum survey period.	Agreed
	The list of potential impacts on onshore ecology and ornithology assessed is appropriate, based on feedback at Section 42 consultation.	Since section 42 consultation the Applicant has provided a number of Clarification Notes and potential impacts assessed are appropriate.	Agreed
	The impact assessment methodologies used for the EIA provide an appropriate approach to assessing potential impacts of the project. This was discussed and agreed during the Expert Topic Group meetings in January and September 2017.	Agreed	It is agreed by both parties that the impact assessment methodologies used in the EIA are appropriate.
	The worst case scenario presented in the ES, is appropriate for the project.	Agreed	It is agreed by both parties that the worst case scenario

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			presented in the ES, is appropriate for the project.
Assessment findings	<p>Dereham Rush Meadow Site of Special Scientific Interest (SSSI), Holly Farm Meadow SSSI, Whitwell Common SSSI and Booton Common SSSI, whilst predominantly surface water fed are also partly groundwater fed – from the underlying chalk aquifer (based on WETMECS data).</p> <p>The onshore duct installation works comprise open cut trenching (to 1.5m) and trenchless crossings to bury cable ducts (down to typically 6-8m below ground level). There is no direct pathway between the construction works and the underlying chalk aquifer, and detailed groundwater assessment is not deemed necessary.</p> <p>In terms of surface water flows, Dereham Rush Meadow SSSI and Holly Farm Meadow SSSI are upstream of the works and would not be affected by surface water quality effects associated with the construction works. Booton Common SSSI is considered in detail within the HRA Report at Section 9.3.3.2, which concludes no AEol. Whitwell Common SSSI is fed by Booton Common SSSI and the findings for Booton Common SSSI would be equally applicable to Whitwell Common SSSI.</p> <p>The Applicant provided clarification regarding the water supply mechanisms to these water dependent designated sites to Natural England on 27th February 2019. Natural England's concerns were withdrawn in a response on 18th March 2019.</p> <p>In addition, the Applicant has committed to develop a scheme and programme for each watercourse crossing, diversion and reinstatement which will include site specific details of the</p>	<p>Natural England is satisfied with the Water Dependant Designated sites Clarification Note provided.</p> <p>Natural England agrees with the conclusion of no Likely Significant Effect to Booton Common SSSI and the Norfolk Valley Fens SAC from open cut trenching and dewatering or directional drilling based on the conceptual model and the mitigation measures, which have enabled a conclusion of low or negligible risk. Therefore we agree with the conclusions of no adverse effect on integrity.</p>	Agreed

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>sediment management measures and pollution prevention. This scheme will be submitted to and, approved by the relevant planning authority in consultation with Natural England. This is secured through Requirement 25 of the draft DCO.</p> <p>With these commitments in place there will be sufficient control measures to safeguard designated sites in relation to sediment control, pollution prevention and reinstatement of all work areas at watercourse crossings.</p>		
	<p>Groundwater The potential for the construction works to affect groundwater supply to nearby designated sites was undertaken and provided to Natural England. This considered:</p> <ul style="list-style-type: none"> • Dereham Rush Meadow SSSI (0.4km away); • Holly Farm Meadow, Wendling SSSI (0.9km away); • Whitwell Common SSSI (1.2 km away); • Booton Common SSSI (0.6km away). <p>The Applicant provided clarification regarding the water supply mechanisms to these water dependent designated sites to Natural England on 27th February 2019. Natural England's concerns were withdrawn in a response on 18th March 2019.</p> <p>The findings are equally applicable to other groundwater sites located further from the construction footprint, i.e.:</p> <ul style="list-style-type: none"> • Bradley Moor SSSI (3.8km away) • Buxton Heath SSSI (4km away) • Southrepps Common SSSI (3.5km away); • Potter & Scarning Fens, East Dereham SSSI (3.2km away); <p>On this basis detailed groundwater assessment is not deemed necessary.</p>	<p>Natural England is satisfied with the Water Dependant Designated sites Clarification Note provided.</p> <p>Natural England agrees with the conclusion of no Likely Significant Effect to Booton Common SSSI and the Norfolk Valley Fens SAC from open cut trenching and dewatering or directional drilling based on the conceptual model and the mitigation measures, which have enabled a conclusion of low or negligible risk. Therefore we agree with the conclusions of no adverse effect on integrity.</p>	<p>Agreed,</p>

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	<p>The landfall area is underlain by sandy clay and sand to a depth of approximately 18m below ground level – refer to Chapter 19 Ground Conditions and Contamination, section 19.6.1.1. Horizontal Directional Drilling (HDD) through this loose material would generate limited vibration effects; in addition, the loose material itself is a poor propagator of vibration effects. Vibration is best propagated through hard surfaces and the looser the material the more any potential vibration effect becomes dampened.</p> <p>As such there is no propagation pathway for vibration effects between the works (either 130m away or up to 20m below) and known sand martin nesting sites.</p> <p>The Applicant provided further clarification regarding the potential for noise and vibration effects on sand martins to Natural England on 27th February 2019. Natural England’s concerns were withdrawn in a response on 18th March 2019.</p>	<p>Following receipt of further information on 27 February 2019 Natural England is satisfied that the specific issues we have raised in previous correspondence relating to the assessment of impacts to sand martins at Happisburgh Cliffs have been resolved.</p>	<p>Agreed</p>
	<p>Ancient Woodland and trees Trenchless crossing techniques are proposed to be used at any location where mixed lowland deciduous woodland is present and which cannot be avoided, and no works will take place within 15m of any woodland. A pre-construction survey will be undertaken by an appropriately experienced arboriculturalist which will inform site-specific measures to protect trees adjacent to the works.</p> <p>With reference to the two options east of the substation. The Applicant has committed to the southern part of these two options, which avoid the 0.15ha of woodland referred to. This is presented in the Change Report submitted to the Examination in December 2018 (Pre-ExA; Change Report; 9.3).</p>	<p>Agreed. We agree with a 15m buffer between the project area and ancient woodland and trees.</p> <p>We note that trenchless crossing techniques (e.g. HDD) are proposed to be used at any location where mixed lowland deciduous woodland is present and which cannot be avoided, and no works will take place within 15m of any woodland.</p>	<p>It is agreed by both parties that the measures proposed will protect trees and ancient woodland during the works.</p>

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	<p>Measures to protect trees are captured within the OLEMS and secured through Requirement 24 Ecological Management Plan, which will require consultation with Natural England prior to discharge.</p>	<p>We note that the area east of the substation will avoid the 0.15ha of woodland as presented in the Change Report 9.</p> <p>We support the engagement of an appropriately experienced arboriculturalist.</p>	
	<p>Badgers The procedure outlined within the OLEMS for badger main setts within the project area which require to be closed and destroyed will include other types of setts which may be found within (previously un-surveyed) areas of the project area. This will be captured within the Ecological Management Plan, secured through DCO Requirement 24, which will require consultation with Natural England prior to discharge.</p>	<p>Agreed on the basis that this captured within the final EMP allowing sufficient controls to be put in place.</p> <p>We advise that the procedure outlined for badger main setts within the project area which require to be closed and destroyed (para 408) should include other types of setts which may be found within (previously un-surveyed) areas of the project area.</p>	<p>Both parties agree that the measures for main sett closure (and applied to other setts) are appropriate.</p>
	<p>Wintering and breeding birds To account for potential noise disturbance a buffer of 300m from designated sites (where birds are qualifying features) was identified and potential noise impacts considered. This was agreed with Natural England in January 2017 (Onshore Wintering Bird Surveys Survey Methodology Approach Update). Beyond this no additional requirement was identified to assess potential disturbance effects.</p> <p>In addition, further measures to deal with the risk of damaging or destroying ground nesting birds' nests (i.e. skylarks) during</p>	<p>Natural England is satisfied that further measures to reduce risk of damaging or destroying ground nesting birds' nests (i.e. skylarks) during construction have been incorporated within the OLEMS.</p>	<p>Agreed</p>

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	<p>construction have been included in the OLEMS submitted at Deadline 7.</p> <p>On this basis the assessment of impacts for construction, operation and decommissioning presented are consistent with the agreed assessment methodologies.</p>		
	<p>Air Quality Potential air quality impacts have been assessed for designated sites within 200m of the road transport network that will be required during construction. This is presented in Chapter 26 Air Quality, section 26.7.5.2.2. Felbrigg Wood SSSI was identified as a designated site with the potential for air quality impacts due to its proximity to the nearest road network (A148 between King’s Lynn and Cromer). A transect was walked through the designated site, at 50m intervals set back from the road up to 200m. Air quality measurements were taken and included within an air quality model. The results of this are presented in Table 26.31 of Chapter 26. This shows that there will be a short-term 2% increase in critical nitrogen load within 50m of the A148, reducing to 1% at 100m from the A148 and 0% beyond that. This has been assessed as to be an impact of negligible significance.</p> <p>The Applicant has committed to producing an Air Quality Management Plan (AQMP), as part of the final CoCP, for each stage of the works (secured under Requirement 20(l)) which will deliver mitigation that has been identified within Chapter 26 Air Quality. The final CoCP must be submitted and approved by the relevant planning authority in consultation with Natural England.</p> <p>The traffic related air quality impact assessment was based on the worst case construction traffic on identified transport</p>	<p>The report has identified possible air quality effects from increased road traffic on Felbrigg Wood SSSI which is designated for lichens along with its invertebrate assemblage and beech woodland community. We advise that further information is required on woodland species within 200m of the road that will be affected and on the timings, number of vehicles and how polluting the vehicles are likely to be etc. If there is likely to be an effect on a designated feature, the OLEMS should include mitigation measures to reduce changes in air quality, e.g. using efficient vehicles, reducing number of vehicles/time on the road, timing of construction to support biodiversity, possible use of barriers etc.</p> <p>Natural England welcomes that an Air Quality Management Plan is being developed and agreed prior to construction. We advise that this</p>	<p>Not agreed</p>

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	<p>routes, and also cumulatively with Hornsea Project Three, based on their reported construction traffic. No traffic related air quality impacts were identified for ecological receptors for Norfolk Vanguard alone or cumulatively with other projects, and no air quality mitigation has been identified that would be captured within any AQMP to be developed post-consent.</p> <p>Norfolk Vanguard will confirm the Project's actual traffic numbers within the final Traffic Management Plans to be produced post-consent. Provided traffic numbers remain wholly within the worst case scenario that was assessed there would be no requirement to update the air quality impact assessment. The Applicant does not believe that is appropriate for Norfolk Vanguard to commit to undertaking a subsequent cumulative air quality impact assessment, post-consent, to account for future projects that may be progressed by Highways England or to account for changes to Hornsea Project Three. It is for future projects to undertake their own cumulative impact assessment to take Norfolk Vanguard into account and to ensure any mitigation required for their identified cumulative impacts is secured in their own consent. Similarly if Hornsea Project Three discovers that their actual traffic numbers fall outside of their worst case scenario then it will fall to them to revisit their own CIA.</p>	<p>plan incorporates a commitment to consider air quality in combination, in light of the final construction vehicle routes, vehicles and vehicle numbers in combination with other plans and projects including Hornsea 3 and Highways England, as these may have changed in the interim between EIA and construction.</p> <p>We therefore do not feel it is appropriate for AQMP or TMP to look just at construction areas. We advise it consider the final transport network and vehicle numbers for the proposed development. Natural England welcomes the commitment to consult Natural England on the Final AQMP and TMP, prior to construction. We advise the applicant that their application should be in line with recent case law and refer the applicant to the Wealden Judicial Review and the Dutch Judgement.</p>	
	<p>Land Use/Soils The onshore cable duct installation strategy will be conducted in a sectionalised approach in order to minimise impacts. Construction teams would work on a short length (approximately 150m section) with topsoil stored adjacent to</p>	<p>Natural England welcomes the information supplied within the clarification note and can confirm that our concerns with regard to Agricultural Land Classification</p>	<p>Agreed</p>

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	<p>the excavated trench. Once the cable ducts have been installed, the section would be back filled and the top soil replaced before moving onto the next section. This would minimise the amount of land being worked on at any one time and would also minimise the duration of works on any given section of the route. This embedded mitigation is specified through the ES and secured through the Outline Code of Construction Practise (OCoCP) (section 2.5.1). . Topsoil should be reinstated where it originated.</p> <p>The Natural England dataset over this part of Norfolk is no longer broken down into Agricultural Land Classification (ALC) Grades 3a and 3b soils. Norfolk Vanguard has calculated the total extent of land that will be permanently lost within Chapter 21 Land use and Agriculture - 7.5ha for the onshore project substation and 3ha for the National Grid extension works. As a worst-case this is assumed to be best and most versatile (BMV) land.</p> <p>Mitigation measures identified for soil management are captured within the OCoCP. A Soil Management Plan (SMP) will be developed and approved prior to commencing each stage of the works. The scope of the SMP is detailed in Appendix A of the OCoCP. The SMP will form part of the final approved Code of Construction Practise (CoCP) for each stage of the works and is secured through Requirement 20.</p> <p>The Applicant provided further clarification regarding ALC breakdown across the works areas and the reinstatement of soils to Natural England on 27th February 2019. Natural England’s concerns were withdrawn in a response on 18th March 2019.</p>	<p>needing to be split further to allow for an assessment of impact to Best and Most Versatile (BMV) to be undertaken are withdrawn.</p> <p>Natural England welcomes the commitment made in the clarification note to update Section 8 (soil management) of the Outline Code of Construction Practice (OCoCP) to confirm that topsoil will be stored adjacent to the excavated trench and will be reinstated where it originated. Natural England, therefore, withdraw our concerns in this regard.</p>	

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	<p>Land Use/ Agri environment Within the study area there are Entry Level Stewardship Schemes (ESS) with Higher Level components. A commitment will be made within the private agreements between Norfolk Vanguard Limited and the landowner/occupier to compensate for losses incurred due to potential impacts on ESS during the construction phase of the project.</p> <p>In addition, the applicant will discuss any Countryside Stewardship agreements with landowners and the Rural Payments Agency post-consent. These will form part of the private agreements described above.</p>	<p>There are both Higher Level Stewardship and Higher Tier Countryside Stewardship agreements along the cable route. Due consideration will need to be given to ensure the delivery of these schemes will not be hindered or compromised.</p> <p>We note that during the construction period there would be the potential for impacts on agri-environment schemes within the onshore project area which will be specific to individual landowners / occupiers.</p> <p>We note that the onshore cable route crosses Entry Level (34.13ha, 6.4% of onshore project area) and Entry Level plus Higher Level (117.8ha, 22.2% of onshore project area) Stewardship Scheme agreements.</p> <p>The applicant will need to discuss any Countryside Stewardship agreements with the landowners and the Rural Payments Agency (this is no longer administered by Natural England) at the earliest possible opportunity.</p>	<p>Agreed</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>The assessment of cumulative impacts is consistent with the agreed methodologies.</p> <p>The Applicant confirms that the assessment of in-combination impacts is in line with the Waddenzee judgement.</p>	<p>Natural England is satisfied from the information provided that the cable route will not have a cumulative impact with Hornsea 3 on Booton common SSSI and Norfolk Valley Fens SAC.</p>	<p>Agreed.</p>
Mitigation and Management			
Approach to mitigation	<p>All mitigation measures required are outlined in the Outline Code of Construction Practice and OLEMS.</p> <p>As stated earlier the Applicant does not believe that is appropriate for Norfolk Vanguard to commit to undertaking a subsequent cumulative air quality impact assessment, post-consent, to account for future projects that may be progressed by Highways England or to account for changes to Hornsea Project Three. It is for future projects to undertake their own cumulative impact assessment to take Norfolk Vanguard into account and to ensure any mitigation required for their identified cumulative impacts is secured in their own consent. Similarly if Hornsea Project Three discovers that their actual traffic numbers fall outside of their worst case scenario then it will fall to them to revisit their own CIA.</p>	<p>We would like to see further commitments with regards traffic management and air quality to designated sites, as discussed above.</p> <p>We are satisfied that other mitigation measures stated in EIA and consultation are outlined in OCoCP and OLEMS.</p>	<p>Not agreed for cumulative air quality impacts</p> <p>Agreed for all other mitigation above.</p>
	<p>River Wensum SAC</p> <p>Further detail on the approach to sediment management within the River Wensum catchment was provided to Natural England on 27th February 2019. Natural England responded on 18th March 2019 and withdrew most concerns. Further clarification was provided on 15th April. Natural England withdrew their remaining concerns in a response on 30th April. The commitments outlined within these clarification notes have</p>	<p>Natural England is satisfied with the information as provided within the OCoCP and look forward to being consulted on the site specific water crossing plans.</p>	<p>Agreed</p>

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	<p>been captured in an update to the OCoCP submitted to the examination at Deadline 7.</p> <p>In addition, the sediment management measures to mitigate potential water quality impacts during construction are presented within the Information to Support HRA Report (document 5.3) at paragraph 1166 and have also been included in the updated OCoCP.</p> <p>The Applicant has committed to develop a detailed scheme and programme for each watercourse crossing, diversion and reinstatement, which will include site specific details regarding sediment management and pollution prevention measures. This scheme will be submitted to and, approved by the relevant planning authority in consultation with Natural England. This commitment is secured through Requirement 25 (Watercourse Crossings) of the draft DCO.</p> <p>With these commitments in place there will be sufficient control measures to safeguard designated sites in relation to sediment control, pollution prevention and reinstatement of all work areas at watercourse crossings.</p> <p>Targeted surveys of the Desmoulin’s whorl snail were undertaken in the floodplain of the River Wensum (southern bank) within the habitat and species study area, however this species was not recorded during any survey. A pre-construction survey of the floodplain habitat on the northern bank of the River Wensum will be undertaken, to understand the distribution of Desmoulin’s whorl snail in the areas adjacent to the onshore project. This survey has in fact been completed (as part of the Norfolk Boreas ecological surveys) and no Desmoulin’s whorl snails were found during these surveys</p>		

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	<p>either. There are no plans for further invertebrate surveys to be undertaken along the River Wensum.</p> <p>The only other invertebrate species associated with the SAC are white-clawed crayfish. The commitment to a trenchless crossing will avoid direct interaction with the habitats that support white-clawed crayfish.</p>		
	<p>Wintering and breeding birds in wider countryside Mitigation measures for wintering and breeding birds are set out in the OLEMS, paragraphs 227 to 230. This includes measures to minimise effects on ground nesting birds such as, no winter works undertaken in consecutive years, keep winter crop stubble low during breeding bird season and set aside ground nesting areas beyond 50m of the cable route prior to works.</p> <p>Further measures to deal with the risk of damaging or destroying ground nesting birds' nests (i.e. skylarks) during construction have been included in the OLEMS submitted at Deadline 7.</p> <p>If any protected species are unexpectedly found (all bird species are protected) then works will cease immediately. This is specified at paragraph 236 of the OLEMS.</p>	<p>Natural England notes the inclusion of further measures to reduce risk to ground nesting birds within the OLEMS.</p>	<p>Agreed</p>
	<p>Soil Mitigation measures identified for soil management and reinstatement are captured within the OCoCP. A SMP will be developed and approved prior to commencing each stage of the works which will specify the site specific methods that will be employed. The detailed scope of the SMP is included in Appendix A of the OCoCP. The SMP will form part of the final</p>	<p>Agreed, Natural England is satisfied that OCoCP and SMP will contain sufficient detail with regards soil management and mitigation.</p>	<p>Agreed</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>approved CoCP for each stage of the works and is secured through Requirement 20.</p> <p>Further information regarding sediment control and reinstatement of all works areas has been captured in an update to the OCoCP submitted at Deadline 7.</p> <p>The Applicant has committed to delivering a detailed SMP as part of the final CoCP to be produced post-consent. This will contain site specific detail with regards soil management and mitigation.</p>		
	<p>Semi natural habitats Any topsoil strip of semi-natural grassland habitats , within 10m of any watercourses within the River Wensum catchment will be undertaken using a deep turf strip to increase the effectiveness of subsequent reinstatement . This has been captured within an update to the OLEMS submitted at Deadline 7.</p> <p>The Applicant has committed to develop a scheme and programme for each watercourse crossing, diversion and reinstatement, which will include site specific details regarding the reinstatement of semi-natural habitats in proximity to watercourses. This scheme will be submitted to and approved by the relevant planning authority in consultation with Natural England. This commitment is secured through Requirement 25 (Watercourse Crossings) of the draft DCO.</p>	<p>Reseeding may not be appropriate in semi-natural habitats or land with permanent vegetative cover, where deep turf stripping and reinstatement may be more appropriate. Reseeding will only be effective when carried out in suitable growing conditions, otherwise it risks extended periods of bare ground, liable to erosion.</p> <p>Agreed, Natural England has provided advice and is satisfied this is reflected in the OLEMS, we look forward to being consulted on the site specific crossing plans.</p>	Agreed
	The use of trenchless crossing techniques at County Wildlife Sites is acceptable subject to detailed design.	Agreed	It is agreed by both parties that the use of trenchless crossings

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	This was discussed and agreed (in principle) during the Expert Topic Group meeting in January 2018.		at CWS are acceptable, subject to detailed design.
	The provision of an Ecological Management Plan (based on the OLEMS submitted with the DCO application, document reference 8.7) is considered suitable to ensure potential impacts identified in the Ecological Impact Assessment are appropriately minimised.	Natural England looks forward to being consulted on the EMP.	Agreed
	The mitigation proposed for great crested newts is appropriate and proportionate (as outlined in the draft great crested newt mitigation licence, circulated and discussed at April 2018 meeting).	Agreed, Natural England is satisfied that the great crested newt plans reflect our advice given earlier in the year. The report identifies where licences may be required for bats and water voles.	Agreed
HRA			
Screening of LSE	<p>The methodology and sites screened in for the HRA as presented in Appendix 5.2 of the Information to Support HRA report (Application document 5.3) are considered appropriate, considering sites within 5km of onshore infrastructure. This was agreed during the Expert Topic Group meeting in July 2017.</p> <p>Further consideration of non-seabird migrants (including those associated with Broadland and Breydon SPA) was submitted to the Examination at Deadline 3 (ExA; AS; 10.D3.6). This assessment concluded no LSE non-seabird migrants associated with Broadland and Breydon SPA.</p>	Agreed, Natural England is satisfied that the conditions as laid out within the OLEMS in relation to Broadland SPA/Ramsar swan and geese species and ex situ habitats, reflect our advice and that with additional mitigation there will be no Adverse Effect on Integrity for the features of the site.	Agreed

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>The approach to HRA screening is appropriate. The following sites were screened in for further assessment:</p> <ul style="list-style-type: none"> • River Wensum; • Paston Great Barn; and • Norfolk Valley Fens. <p>This was agreed during the Expert Topic Group meeting in July 2017.</p> <p>The Applicant provided clarification regarding the water supply mechanisms for water dependent designated sites (including Dilham Component SSSI -part of The Broads SAC) to Natural England on 27th February 2019. Natural England’s concerns were withdrawn in a response on 18th March 2019.</p>	<p>Agreed, Natural England is satisfied that the site specific management plans for water crossings as secured through conditions will lead to no Adverse Effect on Integrity to the Broads SAC.</p>	<p>Agreed</p>
	<p>Broadland SPA/Ramsar</p> <p>Wintering/passage bird surveys were undertaken for the full survey period, October – March, was collected for the following habitats:</p> <ul style="list-style-type: none"> • Agricultural land within 5km of the Broadland SPA and Ramsar site, and also within – or within a precautionary 1km disturbance buffer of – the onshore infrastructure; • Coastal habitats within 5km of the Broadland SPA and Ramsar site, and also within – or within a precautionary 1km disturbance buffer of – the onshore infrastructure; and • Lowland fen, rivers and lakes and lowland heathland habitats of the Hundred Stream within 5km of the Broadland SPA and Ramsar site, and also within – or within a precautionary 1km disturbance buffer of – the onshore infrastructure 	<p>Agreed, Natural England is satisfied that the conditions as laid out within the OLEMS received from the applicant 03.06.19 in relation to Broadland SPA/Ramsar swan and geese species and ex situ habitats, reflect our advice and that there will be no Adverse Effect on Integrity for the features of the site.</p>	<p>Agreed</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>The results of these surveys demonstrated low levels of wintering birds and the site was screened out for further consideration within the HRA report.</p> <p>Further discussions have been held between the Applicant and Natural England in June 2019. Commitments have been included within the updated OLEMS submitted at Deadline 9 to:</p> <ul style="list-style-type: none"> • Potentially undertake a second year of wintering bird surveys and undertake an assessment of predicted crop patterns to assess the potential use of the affected areas by foraging goose and swan species (see bullet point three below). • If required provide suitable alternative habitat (by introducing feed) for potentially displaced qualifying species associated with Broadland SPA / Ramsar site elsewhere within the Order limits or (subject to separate landowner agreements) within nearby fields. • The Applicant may progress directly to delivering the above mitigation without undertaking the second year of survey, subject to agreement with Natural England. 		
Information to support HRA	<p>River Wensum SAC</p> <p>Further detail on the approach to sediment management within the River Wensum catchment was provided to Natural England on 27th February 2019. Natural England responded on 18th March 2019 and withdrew most concerns. Further clarification was provided on 15th April. Natural England withdrew their concerns in a response on 30th April. The commitments outlined within these clarification notes has been captured in an update to the OCoCP submitted to the examination at Deadline 7. This includes details of the approach to construction drainage and maintaining interceptor drains / sediment traps.</p>	<p>River Wensum SAC</p> <p>Agreed, Natural England is satisfied that our advice has been taken into consideration.</p> <p>The Applicant has committed to develop a scheme and programme for each watercourse crossing, diversion and reinstatement, which will include site specific details</p>	Agreed

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>Cable trench arrangement The cable trench arrangement is described within Chapter 5 of the ES Project Description. Plate 5.16 shows the trench arrangement and the extent of stabilised backfill (cement bound sand). The cement bound sand will represent a stabilised layer within which the cable ducts are secured. There will be approximately 10cm of cement bound sand above and below the cable ducts. Above the cement bound sand will be approximately 1m of subsoil and topsoil. The cement bound sand will represent an impermeable barrier. A detailed assessment of potential changes to subsurface flows is presented in Chapter 20 Water Resources and Flood Risk at section 20.7.6.1.1. As a result of the limited spatial extent of permanent impermeable development along the cable route, the effect is considered to be of negligible magnitude.</p> <p>Drainage A Surface Water and Drainage Plan (Requirement 20 (2)(i)) will be developed, agreed with the relevant regulators and implemented to minimise water within the cable trench and other working areas and ensure ongoing drainage of surrounding land. This typically includes interceptor drainage ditches being temporarily installed parallel to the trenches and soil storage areas to provide interception of surface water runoff and the use of pumps to remove water from the trenches during cable installation. Drainage would remain in place for the duration of the construction period.</p> <p>The Applicant has committed to develop a scheme and programme for each watercourse crossing, diversion and reinstatement, which will include site specific details regarding sediment management and pollution prevention measures. This</p>	<p>regarding sediment management and pollution prevention measures. This scheme will be submitted to and approved by the relevant planning authority in consultation with Natural England. This commitment is secured through Requirement 25 (Watercourse Crossings) of the draft DCO. This should be captured within the CoCP.</p>	

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	scheme will be submitted to and approved by the relevant planning authority in consultation with Natural England. This commitment is secured through Requirement 25 (Watercourse Crossings) of the draft DCO.		
Assessment of Adverse Effect on Integrity	The approach to undertaking the assessment is appropriate	Natural England is satisfied with the assessment of adverse effect on integrity, with the COCP and OLEMS.	It is agreed by both parties that the approach to the HRA is appropriate.
	<p>Booton Common SSSI (part of Norfolk Valley Fens SAC), is located 0.6km from the onshore cable route.</p> <p>Broad Fen, Dilham component SSSI (part of The Broads SAC) is located 3.6km from the onshore cable route.</p> <p>The Applicant provided clarification regarding the water supply mechanisms to these water dependent designated sites to Natural England on 27th February 2019. Natural England's concerns were withdrawn in a response on 18th March 2019.</p> <p>These sites, whilst predominantly surface water fed are also partly groundwater fed – from the underlying chalk aquifer (based on WETMECS data).</p> <p>There is no direct pathway between the works and the underlying chalk aquifer that these sites are dependent upon, and detailed groundwater assessment is not deemed necessary.</p> <p>The conclusions of no adverse effect on site integrity in the Information to Support HRA report (document 5.3) for these two sites are appropriate.</p> <p>With reference to the two HDD crossings near to Blackwater Drain – this is in fact a single HDD crossing with individual</p>	<p>Agreed, Natural England is satisfied that our advice has been taken into consideration. Natural England is satisfied with the information as supplied in subsequent Clarification Notes throughout the examination process. The design of all watercourse crossing will be submitted to and approved by the relevant planning authority in consultation with Natural England, prior to the commencement of each stage of the onshore transmission works. This is secured through Requirement 25 of the draft DCO. With this mitigation Natural England is content that there is sufficient evidence to conclude no adverse effect on integrity on Norfolk Valley Fens SAC.</p>	<p>Agreed</p> <p>The Applicant has committed to develop a scheme and programme for each watercourse crossing, diversion and reinstatement, which will include site specific details regarding sediment management and pollution prevention measures. This scheme will be submitted to and approved by the relevant planning authority in consultation with Natural England. This commitment is secured through Requirement 25 (Watercourse Crossings) of the draft DCO.</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>compounds depicted at each end of the crossing, for entry and exit of the HDD. This trenchless crossing is needed for crossing the proposed Hornsea Project Three cables for technical requirements. Impacts at watercourse crossings are predominantly related to the introduction of temporary culverts to provide access either side of the watercourse. Whether the crossing technique is trenched or trenchless, a temporary culvert will be required for access either side of the Blackwater Drain. However, each crossing (whether trenched or trenchless) is not considered to result in a significant effect when assessed individually. Impacts resulting from the use of temporary culverts would be reversible once the structures have been removed and the area reinstated. The natural hydrology would recover immediately upon structure removal, and geomorphology and associated physical habitats are also expected to recover rapidly. The use of these techniques is therefore not considered to result in significant adverse effects.</p> <p>The design of all watercourse crossing will be submitted to and approved by the relevant planning authority in consultation with Natural England, prior to the commencement of each stage of the onshore transmission works. This is secured through Requirement 25 of the draft DCO.</p>		
	<p>Sediment management and water quality measures have been identified and are described in Section 11.1 of the outline CoCP; Requirement 20 of the draft DCO sets out that no stage of the onshore transmission works may commence until for that stage a final CoCP has been submitted to and approved by the relevant local planning authority. This would provide site</p>	<p>Works to facilitate the trenchless crossing of the River Wensum may take place within the River Wensum floodplain north of Penny Spot Beck, which we advise should be avoided as it is part of a</p>	<p>Agreed</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>specific details for sediment management informed by the detailed design and appointment of the Principal Contractor.</p> <p>Further detail on the approach to sediment management within the River Wensum catchment was provided to Natural England on 27th February 2019. Natural England responded on 18th March 2019 and withdrew most concerns. Further clarification was provided on 15th April. Natural England withdrew their concerns in a response on 30th April. The commitments outlined within these clarification notes has been captured in an update to the OCoCP submitted to the examination at Deadline 7. This includes details of the approach to managing bentonite breakout.</p> <p>In addition, the Applicant will develop a scheme and programme for each watercourse crossing, diversion and reinstatement which will include site specific details of the sediment management measures including their use and removal. This scheme will be submitted to and, approved by the relevant planning authority in consultation with Natural England. This is secured through Requirement 25 of the draft DCO.</p> <p>Both the final CoCP and watercourse specific crossing schemes will also include site specific details of management and monitoring procedures in case of bentonite breakout at trenchless crossings.</p> <p>With these commitments in place there will be sufficient control measures to safeguard designated sites in relation to sediment control, pollution prevention and reinstatement of all work areas at watercourse crossings.</p>	<p>Countryside Stewardship agreement to improve the site integrity of the River Wensum SAC. Agreed, Natural England is satisfied that our advice has been incorporated.</p> <p>Please see our response to the OCoCP at Deadline 8.</p> <p>Natural England is satisfied that with these commitments in place there will be sufficient control measures to safeguard designated sites in relation to sediment control, pollution prevention and reinstatement of all work areas at watercourse crossings.</p>	

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>All hedgerows within 5km of Paston Great Barn SAC that will be temporarily removed during construction (130m) were identified. 82m of these hedgerows have been confirmed as supporting foraging Barbastelle bats (based on bat activity surveys undertaken by the Applicant) and are accordingly classified as important hedgerows for foraging Barbastelle bats. On this basis, the 82m of hedgerows are all considered to be important Barbastelle features and the assessment has been undertaken on this basis.</p> <p>Further clarification on these matters was provided to Natural England on 27th February. Natural England responded on 20th March withdrawing their concerns, subject to the development of a hedgerow mitigation plan, post-consent, in consultation with Natural England. The plan should include for the improvement of the hedgerows either side of the section to be removed, development of scrub/rough grassland margins and consideration of planting more mature hedge plants to reduce recovery time. In addition, monitoring should be in place for 7 years or until the original hedgerow has recovered fully. These measures have been included in the update OLEMS submitted at Deadline 9.</p> <p>Paragraph 1185 of the Information to Support HRA Report (document 5.3) provides details of the anticipated hedgerow recovery for the affected 82m of hedgerow (3-7 years) – recovery meaning to “mature up to a standard whereby the hedgerow is providing value for commuting and foraging barbastelle bats”. All hedgerows temporarily removed will be replaced in their original locations, i.e. replacement hedgerows will be planted above the buried cables.</p>	<p>Natural England is satisfied our advice has been taken into consideration regarding Paston Great Barn SAC and hedgerow removal. With the conditions within the OLEMS and the Hedgerow Mitigation Plan we are satisfied that there will be no Adverse Effect on Integrity of the Barbastelle population of Paston Great Barn SAC.</p>	<p>Agreed</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>Details of hedgerow mitigation are provided at Paragraph 1186 of the Information to Support HRA Report which includes a commitment for hedges to become overgrown either side of the section to be removed prior to construction. All bat and hedgerow mitigation measures are also captured within the OLEMS and secured through Requirement 24 of the draft DCO (Ecological Management Plan), which will require consultation with Natural England prior to discharge.</p> <p>On this basis, the approach to determining the value of hedgerows for Barbastelle bats and the approach to mitigation, is appropriate and sufficient.</p>		
	<p>A mosaic of approximately 11ha of broadleaved woodland, rank grassland, hedgerows and drainage ditches around Witton is used by foraging Barbastelle bats associated with the Paston Great Barn colony. Accordingly, this 11ha has been classified as an important feature for foraging Barbastelle bats and the assessment has been undertaken on this basis (impacts relate to the temporary severance of a hedgerow linking Paston Great Barn to this area).</p> <p>Further clarification on these matters was provided to Natural England on 27th February. Natural England responded on 20th March withdrawing their concerns, subject to the development of a hedgerow mitigation plan, post-consent, in consultation with Natural England. The plan should include for the improvement of the hedgerows either side of the section to be removed including and should be in place for 7 years or until the original hedgerow has recovered fully. These measures have been included in the update OLEMS submitted at Deadline 7</p> <p>Details of hedgerow mitigation / restoration are provided at Paragraph 1186 of the HRA Report which includes a</p>	<p>Natural England is satisfied our advice has been taken into consideration regarding Paston Great Barn SAC and hedgerow removal. We are satisfied that with the conditions within the OLEMS regarding hedgerows there will be no Adverse Effect on Integrity of the Barbastelle population of Paston Great Barn SAC.</p>	<p>Agreed</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
	<p>commitment for hedges to become overgrown either side of the section to be removed prior to construction. All bat and hedgerow mitigation measures are also captured within the OLEMS and secured through Requirement 24 Ecological Management Plan, which will require consultation with Natural England prior to discharge</p> <p>On this basis, the approach to determining the value of features for Barbastelle bats is appropriate and sufficient to inform the assessment.</p>		
	<p>A 300m buffer zone for potential noise impacts to birds which are features of designated sites was agreed with Natural England in January 2017 (Onshore Wintering Bird Surveys Survey Methodology Approach Update). The assessment provided within the application has been undertaken on the basis of that formal agreement of the methodology. The 300m buffer was based on an average of the disturbance buffers detailed in Ruddock and Whitfield (2007) and is an appropriate distance for the basis of the assessment.</p> <p>Further evidence of the agreement of the 300m buffer was provided to Natural England on 27th February 2019. Natural England responded on 18th March 2019 withdrawing their concerns on this matter.</p>	<p>Natural England is satisfied with the agreement on the 300m buffer.</p>	<p>Agreed</p>
	<p>The conclusions of no adverse effect on site integrity for all onshore sites presented in the Information to Support HRA report (document 5.3) are appropriate</p>	<p>Agreed, Natural England is satisfied with the further information provided in clarification notes, OCoCP and OLEMS that there will be no adverse effect on integrity from the proposed development on onshore</p>	<p>Agreed</p> <p>The Applicant has committed to producing a Hedgerow Mitigation Plan (part of the final EMP, secured through requirement 24), site specific</p>

Topic	Norfolk Vanguard Limited position	Natural England position	Final position
		<p>European sites with the mitigation in place, with the Hedgerow Mitigation Plan, site specific water crossing plans COCP and OLEMS to be drawn up and agreed post consent.</p>	<p>water crossing plans (secured through Requirement 25) and final COCP (secured through Requirement 20) to ensure that there will be no adverse effect on integrity from the proposed development on onshore European sites.</p>

2.7 Development Consent Order

37. Natural England was provided with a draft of the Development Consent Order for review prior to submission. Comments were addressed where possible.
38. Natural England's relevant representation, submitted to the Planning Inspectorate on the 31st August 2018 includes comments on the draft DCO which Norfolk Vanguard Limited has addressed where possible. Comments from Natural England regarding the draft DCO have been responded to at each relevant Examination Deadline.
39. The draft DCO has been amended and submitted at Deadline 8.

2.8 References

Cooper, K., Boyd, S., Eggleton, J., Limpenny, D., Rees, H. & Vanstaen, K. (2007) Recovery of the seabed following marine aggregate dredging on the Hastings Shingle Bank off the southeast coast of England. *Estuarine, Coastal and Shelf Science* 75:547-558.

Holt, T.J., Rees, E.I., Hawkins, S.J., & Reed, R. (1998) Biogenic reefs: An overview of dynamic and sensitivity characteristics for conservation management of marine SACs. Scottish Association of Marine Sciences (UK Marine SACs Project), Oban.

Ospar Commission (2010) Quality Status Report 2010: Case Reports for the OSPAR List of threatened and/or declining species and habitats – Update. *Sabellaria spinulosa* reefs.

Pearce, B., Hill, J.M., Wilson, C., Griffin, R., Earnshaw, S. & Pitts, J. (2011a) *Sabellaria spinulosa* Reef Ecology and Ecosystem Services. The Crown Estate 120 pages ISBN 978-1-906410-27-8. First Published 2013. This report is available on The Crown Estate website at www.thecrownestate.co.uk

Tillin, H.M. & Marshall, C.M. (2015) *Sabellaria spinulosa* on stable circalittoral mixed sediment. In Tyler-Walters H. and Hiscock K. (eds) Marine Life Information Network: Biology and Sensitivity Key Information Reviews, [online]. Plymouth: Marine Biological Association of the United Kingdom. Available from: <http://www.marlin.ac.uk/habitats/detail/377>

The undersigned agree to the provisions within this SOCG

Signed	K. Louise Burton
Printed Name	K. Louise Burton
Position	Senior Adviser Southern North Sea
On behalf of	Natural England
Date	06 June 2019

Signed	R Sherwood
Printed Name	Rebecca Sherwood
Position	Norfolk Vanguard Consents Manager
On behalf of	Norfolk Vanguard Ltd (the Applicant)
Date	06 June 2019

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31 July 2019

Hornsea Project Three Offshore Wind Farm (EN010080) - Ornithological Comparison Data

Our ref. HOW03_CON_20190731

Dear Mr Leigh,

Following the completion of the Hornsea Project Three Offshore Wind Farm ('Hornsea Three') Development Consent Order (DCO) Examination (EN010080) and the Examining Authority issuing their Recommendation Report to the Secretary of State (SoS) for Business, Energy and Industrial Strategy (BEIS) on 2 July 2019, Hornsea Project Three Ltd. ('the Applicant') would like to draw the SoS's attention to the collection of supplementary ornithological baseline comparison data by the Applicant.

During the Hornsea Three Examination, submissions by Natural England were made regarding aspects of the Applicant's approach, evidence and assessment conclusions in respect of offshore ornithology. These submissions focused on the characterisation of the ornithological baseline derived from digital aerial surveys collected for Hornsea Three and the adequacy of digital aerial surveys covering the winter period.

The Applicant's position on ornithological baseline characterisation is documented in the Hornsea Three DCO application and submissions made through the Examination¹. Without prejudice to the Applicant's position, the Applicant commissioned an additional four digital aerial ornithological surveys during the winter period of 2018/2019.

The purpose of collecting the data was:-

- to respond to and address concerns raised by Interested Parties within their relevant representations;
- in recognition that Natural England felt unable to advance discussion through the Examination on ornithology impacts given their position that 24 months of survey data should be collected;
- in recognition that the collection of supplementary data further increases the accuracy of the Applicant's ornithological collision risk models and therefore adds to confidence in their outputs; and
- to test whether such supplementary data accords with the evidence provided in the Environmental Statement as submitted into the Examination.

¹ REP1-131 'Applicant's Comments on Relevant Representations', Annex 7 – Full response to Natural England (RR-097), the Applicant's response to part 5.2 (page 293), REP1-141 'Baseline Characterisation Sensitivity Testing', REP3-004 'Written summary of Applicant's oral case put at Issue Specific Hearing 2', section 4.1 'Baseline characterisation' and REP10-038 'Offshore Ecology Matters Closing Legal Submission on behalf of the Applicant', paragraph 5.2 Ornithology Baseline Issues.

It was recognised by the Applicant that due to the long lead-in time required to undertake, evaluate and report on the findings, the data would not be available prior to the close of the Examination, and therefore could not be relied upon in Examination. The Applicant is now making the findings from these surveys available to SoS at the earliest opportunity. The results of these surveys are presented in the attached report 'Hornsea Project Three Offshore Wind Farm Ornithology Baseline Data Comparison', prepared by NIRAS Consulting Ltd. (NIRAS) on the request of the Applicant.

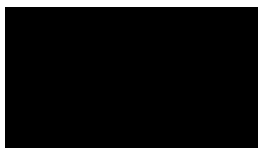
The attached report demonstrates that the supplementary comparison data falls within the confidence limits of the 2016/17 surveys. As such this report corroborates the Applicant's evidence presented in the Hornsea Three Environmental Impact Assessment (EIA) and during Examination, and does not change any predicted impacts. The Applicant believes this information will assist the SoS.

The Applicant's position remains that the data available during the Examination is sufficient to reach conclusions in respect of EIA and Habitats Regulations Assessment (HRA); analysis of the supplementary data is shown to corroborate those assessments carried out to date. It thus increases the accuracy of the Hornsea Three ornithological models. As there has been no meaningful change in the collision risk estimates for any species, the conclusions remain unchanged but with increased confidence.

The Applicant advised Natural England on 19 July 2019 of the comparison data just prior to the report being finalised, with the aspiration that the two parties could discuss the report in advance of submission to the SoS. Natural England responded stating that, if the SoS was so minded to accept the report and undertake consultation, Natural England along with other Interested Parties², would review the report and respond in line with SoS process. In keeping with this preference, the Applicant has sent a copy of the report to Natural England who will await further instruction from the SoS.

The Applicant is cognisant of the Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010, which provides an opportunity for the SoS to request comments on the Hornsea Three DCO application to address any outstanding issues which the SoS may have. Notwithstanding any further requests for comments by the SoS, in accordance with Section 107 of the Planning Act 2008, the Applicant awaits the determination of the Hornsea Three DCO application, anticipated on 2 October 2019.

Yours Sincerely,



Andrew Guyton

Hornsea Project Three Consents Manager

Tel 

cc. Stuart Livesey, Hornsea Project Three Project Manager

² Project Interested Parties:- Natural England (and Joint Nature Conservation Committee as advisors to Natural England on ornithological matters), Royal Society for the Protection of Birds, The Crown Estate, The Wildlife Trusts, Marine Management Organisation and Marine Scotland (as the authority responsible for the integrated management of Scotland's seas.)



Hornsea Project Three Offshore Wind Farm Ornithology Baseline Data Comparison

July 2019

Document Details

NIRAS Project Number	UKN0387
NIRAS Contact Name	Matthew Hazleton
Document Title	Hornsea Project Three – baseline data comparison
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1. Executive Summary

- 1.1.1. There was considerable discussion during the Hornsea Three examination in relation to the baseline characterisation of Hornsea Three area. The Applicant characterised the baseline using data obtained from twenty aerial surveys alongside a meta-analysis of an extensive historical boat-based dataset collected to characterise the former Hornsea Zone and to inform the applications for previous projects within that zone. It was the Applicant's position that there was sufficient and representative baseline data for the purposes of impact assessment and that the species present, their distribution and abundance and any variability in those was understood sufficiently for this purpose. Evidence submitted throughout the examination supporting this position illustrated that there was no indication that the Hornsea Three area was of particular importance to key species during the period December to March, nor that the conclusions of EIA or HRA were particularly sensitive to assumptions about the densities that were likely to be observed. It was considered that the approach taken to quantify risk to key species during all seasons in the Hornsea Three location allowed for consideration of the appropriate level of precaution and that the assessment conclusions reached on the basis of these risk assessments were robust.
- 1.1.2. Hornsea Three now has data from four aerial surveys which were conducted at Hornsea Three between January and March 2019. The opportunity has been taken to investigate these data to see whether they indicate variability in the density of key species that is significantly different to that assumed in the application and examination of Hornsea Three. This report presents these data comparing the population estimates derived against those calculated from aerial surveys conducted in 2016-2018. To illustrate what implications any differences have for impact assessment, collision risk modelling and displacement, analyses have been conducted and the resulting collision risk estimates and displacement mortalities compared to those calculated during the Hornsea Three examination.
- 1.1.3. The data collected from the additional aerial surveys provide useful confirmation that the baseline for the Hornsea Three application captured the variability present in seabird populations present at Hornsea Three. The population estimates calculated from the additional surveys for Hornsea Three plus a 4 km buffer are very similar to those collected during the original survey programme and, in all cases, within the variability that was assumed for that time of year as part of the original baseline characterisation of Hornsea Three. This variability in the abundance of birds during this period of the annual cycle is limited, as stated by the Applicant in its application and examination submissions.
- 1.1.4. Collision risk modelling and displacement analyses indicate that any changes to impact magnitudes are negligible and immaterial in assessment terms for both EIA and HRA assessments. The further analysis provided through the examination and set out in this report therefore confirms the findings and conclusions of the EIA and RIAA and the position of the Applicant throughout the application and examination.
- 1.1.5. In summary, although the data available during the examination was sufficient to reach conclusions in respect of EIA and HRA assessments, analysis of the additional data is shown to corroborate the assessments carried out to date. It thus increases the accuracy of the Hornsea Three ornithological models, which in turn lowers the chance of statistical error. As there has been no meaningful change in the collision risk estimates for any species, the conclusions remain unchanged but with increased confidence.

2. Introduction

- 2.1.1. Baseline characterisation of Hornsea Project Three (Hornsea Three) was achieved using data from twenty aerial surveys undertaken between April 2016 and November 2018. There was therefore only one year of data available for December to March from the aerial survey programme. In addition to the data from aerial surveys and as discussed throughout the Evidence Plan process (see Consultation Report Annex 1 – Evidence Plan (APP-035) of the Environmental Statement), the Applicant used data from the wider Hornsea zone comprising an extensive historical boat-based dataset providing three years of data between March 2010 and February 2013, to understand the likely density and variability of key species during the period December – March.
- 2.1.2. The use of a dataset comprising twenty months of aerial survey data was the source of considerable discussion during the examination of Hornsea Three with Natural England refusing to provide conclusions based on what they perceived to be an incomplete baseline dataset.
- 2.1.3. Throughout the application and Examination the Applicant maintained that there is no indication that the Hornsea Three area is of particular importance to key species during this period (December to March), nor that the conclusions of EIA or HRA are sensitive to assumptions about the densities that are likely to be observed. It is considered that the approach taken to quantify risk to key species during all seasons in the Hornsea Three assessments allows for consideration of the appropriate level of precaution and that the assessment conclusions reached on the basis of these risk assessments is robust.
- 2.1.4. Hornsea Three now has data from four aerial surveys which were conducted between January and March 2019. One survey was undertaken in January 2019, two in February 2019 and one in March 2019.
- 2.1.5. This report presents a comparison between the baseline population estimates and densities for fulmar, gannet, kittiwake, lesser black-backed gull, herring gull, great black-backed gull, guillemot, razorbill and puffin, at Hornsea Three for those months for which only one year of data was collected to inform the Hornsea Three application (December to March). The aim is to determine whether the additional data indicate the abundance of these species during this period vary significantly from those assumed in the application, or whether they reinforce the assumptions made in the assessment that accompanied the Hornsea Three application. Consideration is given to the implications this has for collision risk modelling and displacement analyses and the resultant effect on Environmental Impact Assessment (EIA) and Habitat Regulations Assessment (HRA) conclusions as presented for Hornsea Three.

3. Data comparison

3.1 Overview

3.1.1. The population estimates and densities obtained from the additional four aerial surveys have been compared to the corresponding population estimates and densities used for kittiwake and other species of interest in the Hornsea Three application in this section. Population estimates for Hornsea Three plus a 4 km buffer are used for comparison, as this is consistent with the data that were used to identify Valued Ornithological Receptors in the impact assessment that accompanied the application. To identify any differences between the data incorporated into assessments in the Hornsea Three EIA and RIAA and the data collected as part of the additional aerial surveys, densities from Hornsea Three alone are used, consistent with the density data used for collision risk modelling (CRM) in the Hornsea Three application. Discussion is then provided considering whether any differences would result in any significant changes (increases or decreases) to the collision risk estimates calculated as part of the Hornsea Three application.

3.2 Additional aerial surveys

Four aerial surveys have been undertaken by Hi-def Aerial Surveying Ltd. between January 2019 and March 2019. One survey was conducted in January and March with two conducted in February. It was not possible to complete a December survey due to timing of commissioning of the survey and limited suitable weather windows. The surveys covered the Hornsea Three array area plus a 4 km buffer and followed an identical methodology to that used for the original aerial surveys undertaken to support the Hornsea Three application. Following the completion of the aerial surveys the data collected have been processed and analysed to provide population estimates and densities for all species observed for three different areas, Hornsea Three alone, Hornsea Three plus a 2 km buffer and Hornsea Three plus a 4 km buffer. For guillemot, razorbill and puffin availability bias (correction of estimates to account for diving individuals) has been taken into account in the resulting population estimates and densities. For each of three areas population estimates, densities and associated confidence metrics have been provided for birds in flight, birds sitting on the water and all birds (flying and sitting birds combined).

3.3 Baseline data

Overview

3.3.1. The following species-specific sections present population estimates for Hornsea Three plus a 4 km buffer for the key species as considered in the assessments for Hornsea Three EIA and HRA. Population estimates are presented from the aerial surveys undertaken to support the application (blue and orange data points) and from the additional aerial surveys (green data points). This allows for a comparison within months (January, February and March), the trend in abundance within a year and the variability between population estimates.

Fulmar

3.3.2. Figure 3.1 presents population estimates of fulmar for Hornsea Three plus a 4 km buffer.

3.3.3. The population estimates calculated from the additional aerial surveys in January and February 2019 are higher than those calculated from the aerial surveys undertaken in the same months in 2017. The estimate in March 2019 is slightly lower than that predicted in 2017. There is no clear trend in the estimates calculated for fulmar with estimates varying between years. When examining the individual months, the additional estimate in March 2019 is very similar to that predicted in March 2017. In February 2019, the two estimates obtained are very similar and only slightly higher than that predicted in February 2017. In January 2019, a higher estimate was recorded than in January 2017. The estimate is also higher than any other estimate recorded during the non-breeding season suggesting that this estimate is slightly anomalous and may have been influenced by other factors (e.g. unusual weather events preceding the survey). The effect this has on the magnitude of impacts for which fulmar was considered in the RIAA is provided in Section 3.5.

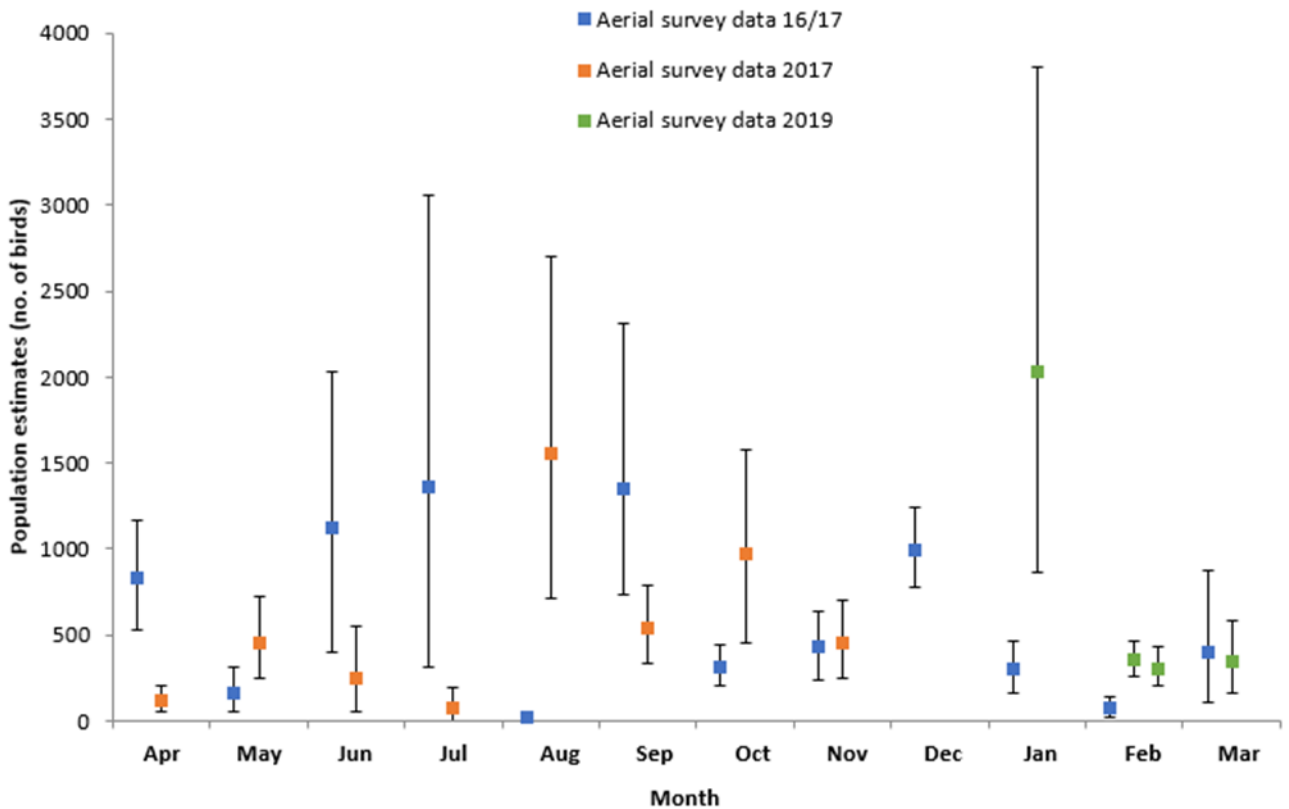


Figure 3.1: Population estimates (plus 95% confidence intervals) of fulmar obtained from aerial surveys undertaken across Hornsea Three plus a 4 km buffer

Gannet

3.3.4. Figure 2.2 presents population estimates of gannet for Hornsea Three plus a 4 km buffer.

3.3.5. The population estimates calculated from the additional aerial surveys (Jan, Feb and Mar 2019) are lower than those calculated from the aerial surveys undertaken in the same months in 2017, with the exception of January for which the population estimate in 2019 is slightly higher. The estimates do however, fall within the range of estimates calculated for other months and follow the trend expected in the seasonal abundance of gannet, being low in winter months and beginning to increase into March (Furness, 2015). When examining the individual months, the additional estimates in February and March fall within the confidence intervals associated with the original estimates. However, the additional estimate calculated for January is very similar indicating that the variability in this month is limited, especially when compared to estimates obtained in breeding season months.

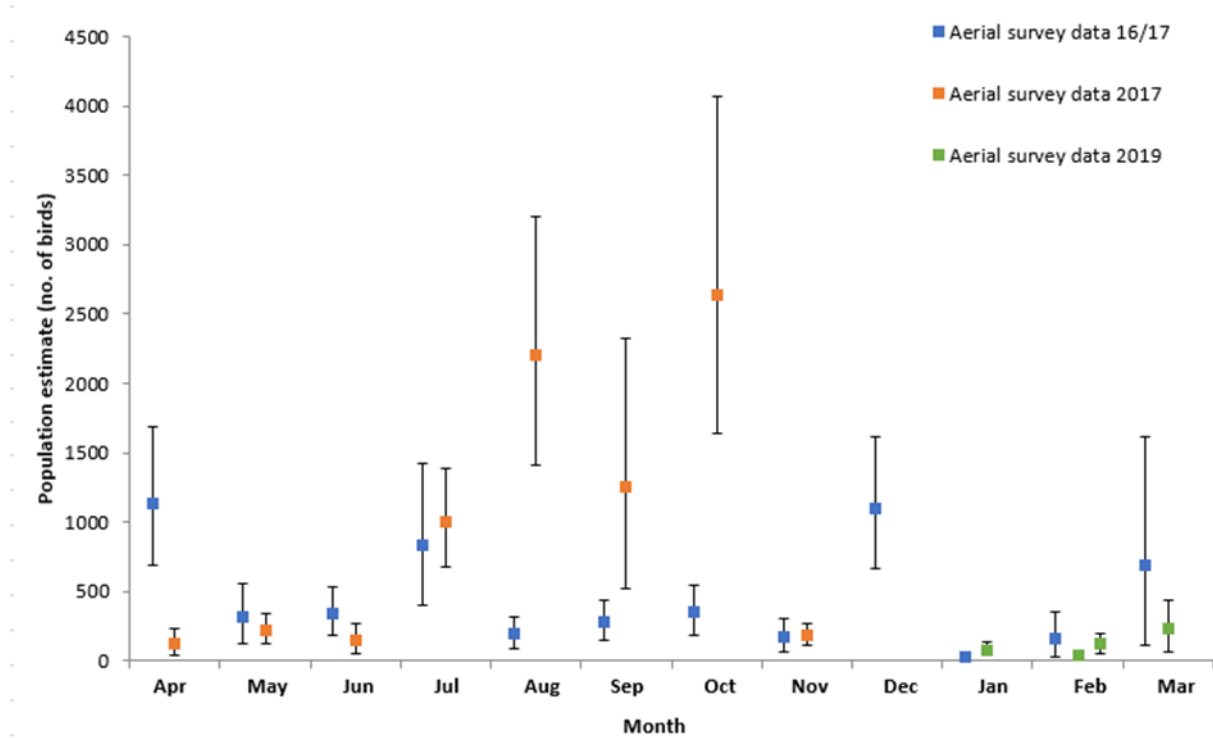


Figure 3.2: Population estimates (plus 95% confidence intervals) of gannet obtained from aerial surveys undertaken across Hornsea Three plus a 4 km buffer

Kittiwake

3.3.6. Figure 3.3 presents population estimates of kittiwake for Hornsea Three plus a 4 km buffer.

3.3.7. The population estimates calculated from the additional aerial surveys (Jan, Feb and Mar 2019) are slightly higher than those calculated from the aerial surveys undertaken in the same months in 2017. The estimates do however, fall within the range of estimates calculated for other months and follow the trend expected in the seasonal abundance of kittiwake being low in winter months and beginning to increase into March. When examining the individual months, the additional estimates fall within the confidence intervals associated with the original estimates with the exception of February. However, the two additional estimates calculated for February are very similar indicating that the variability in this month is limited, especially when compared to estimates obtained in breeding season months. The increase in abundance between the two datasets in March is potentially due to the timing of surveys. The survey in 2017 was undertaken on the 10th March whilst the survey in 2019 was undertaken on the 18th March. The abundance of kittiwake in UK waters is likely to increase as March progresses (Furness, 2015) and, if the timing of migration was similar in both years, this is likely to have affected the number of birds recorded in the two respective surveys. As a result, the increase in March is not unexpected and still within the variability expected at this time of year.

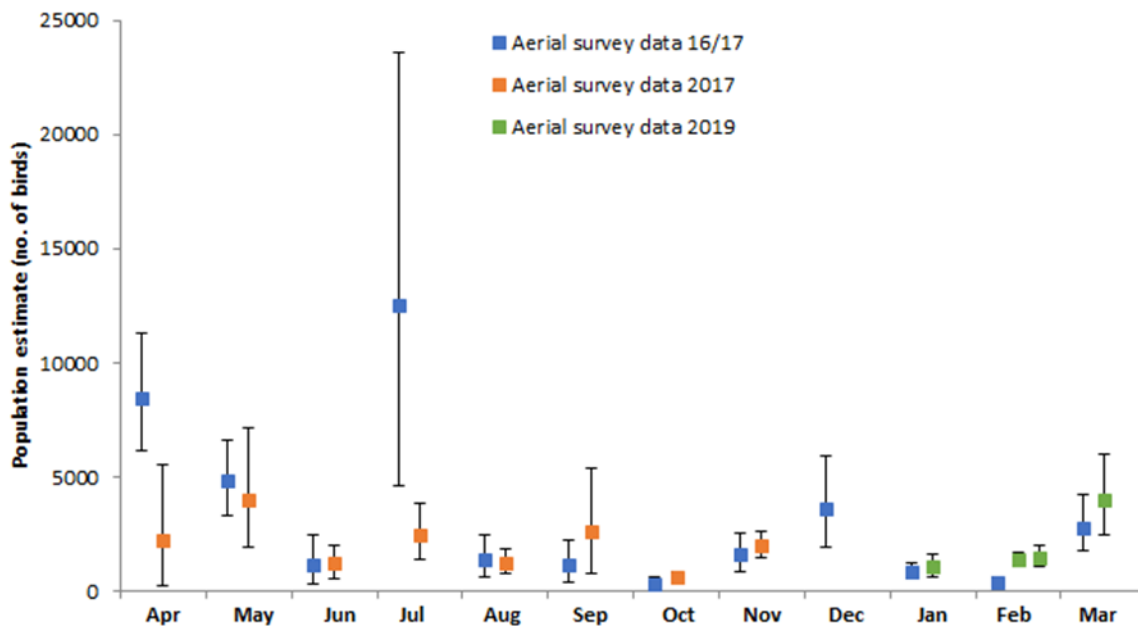


Figure 3.3: Population estimates (plus 95% confidence intervals) of kittiwake obtained from aerial surveys undertaken across Hornsea Three plus a 4 km buffer

Lesser black-backed gull

3.3.8. Figure 3.4 presents population estimates of lesser black-backed gull for Hornsea Three plus a 4 km buffer.

3.3.9. No lesser black-backed gulls were recorded in the aerial surveys conducted between January and March 2017. The species was also not recorded during two of the surveys undertaken in 2019. The population estimates calculated for the remaining two surveys were 11 (February 2019) and 33 (January 2019) birds. The estimates from the additional surveys fall within the range of estimates calculated for other months and follow the trend expected in the seasonal abundance of lesser black-backed gull with the species only occurring in notable numbers during the breeding season.

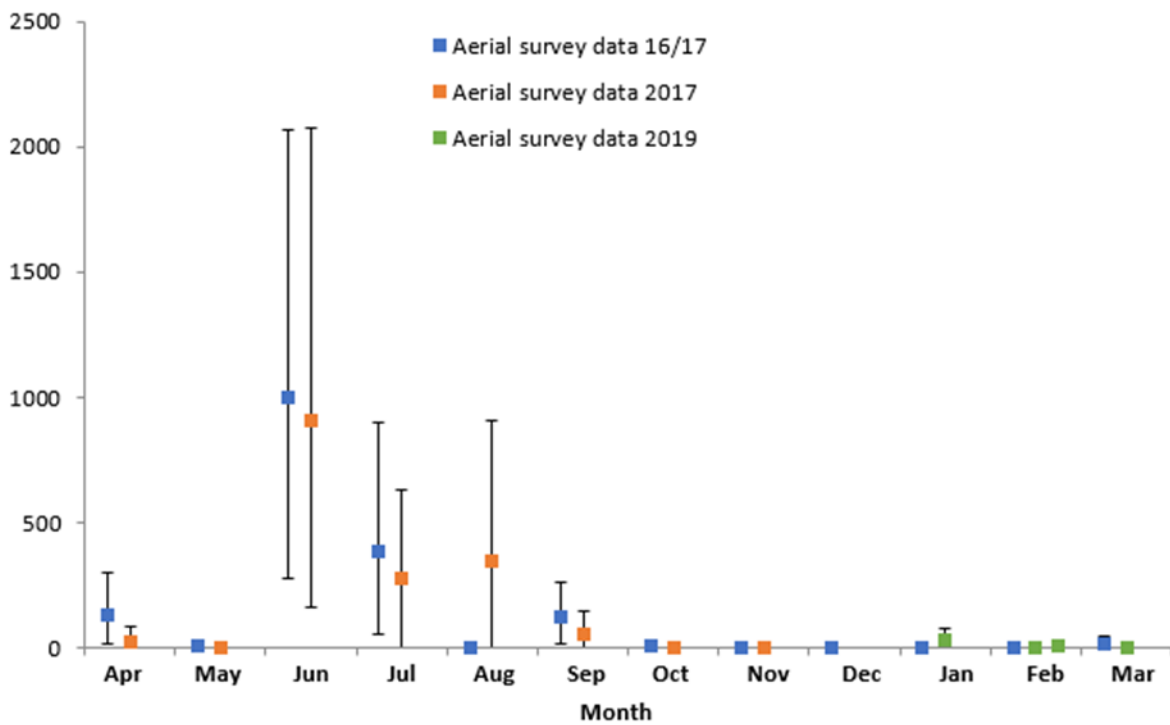


Figure 3.4: Population estimates (plus 95% confidence intervals) of lesser black-backed gull obtained from aerial surveys undertaken across Hornsea Three plus a 4 km buffer

Herring gull

3.3.10. Figure 3.5 presents population estimates of herring gull for Hornsea Three plus a 4 km buffer.

3.3.11. Population estimates of herring gull recorded between January and March 2017 were relatively low in all surveys with the species absent in January 2017. The abundance of herring gull was also low during the surveys undertaken in 2019 with the species again absent in January and also in March. In the two surveys conducted in February 2019, the population estimates were similar or lower than the estimate recorded in February 2017. There is no obvious trend in the abundance of herring gull at Hornsea Three plus a 4 km buffer with the population estimates calculated in 2019 further continuing this pattern.

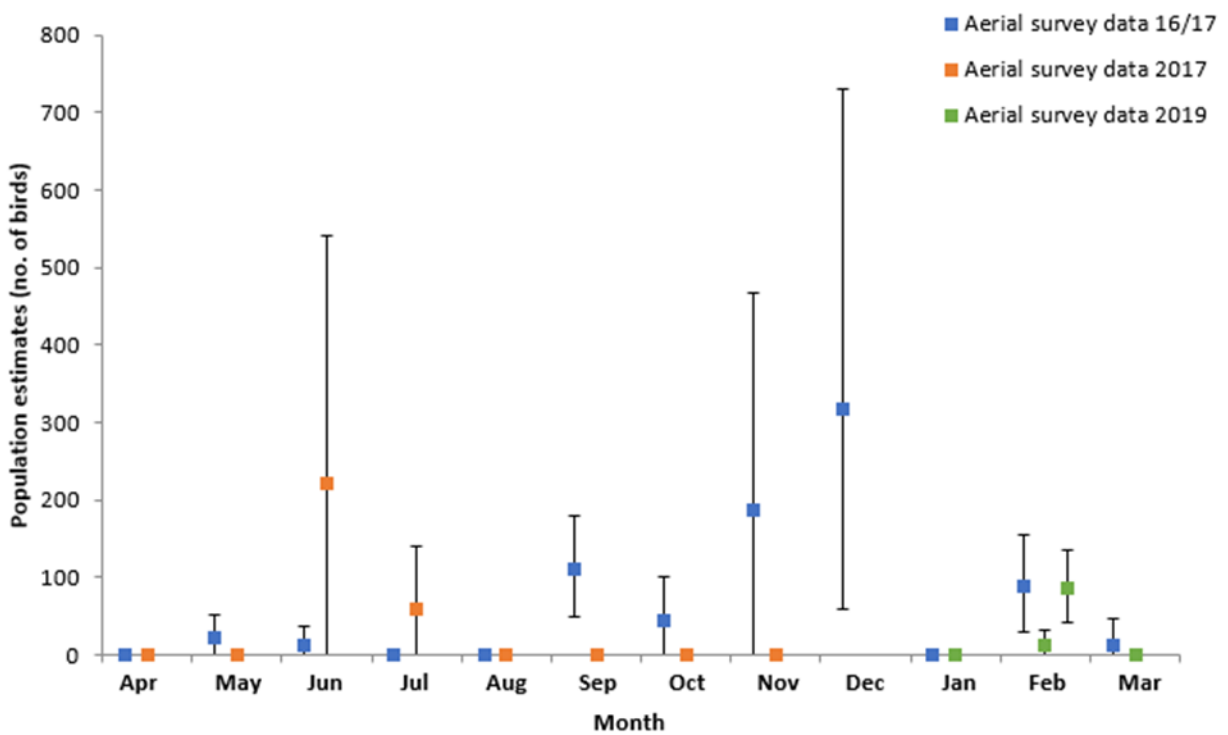


Figure 3.5: Population estimates (plus 95% confidence intervals) of herring gull obtained from aerial surveys undertaken across Hornsea Three plus a 4 km buffer

Great black-backed gull

3.3.12. Figure 3.6 presents population estimates of great black-backed gull for Hornsea Three plus a 4 km buffer.

3.3.13. The population estimates calculated for great black-backed gull from the additional surveys undertaken in 2019 are lower than commensurate surveys undertaken in 2017. The estimates fall within the range of estimates calculated for other months and appear to follow the same trend as recorded in 2017 albeit of a lower magnitude in terms of the abundance of great black-backed gull.

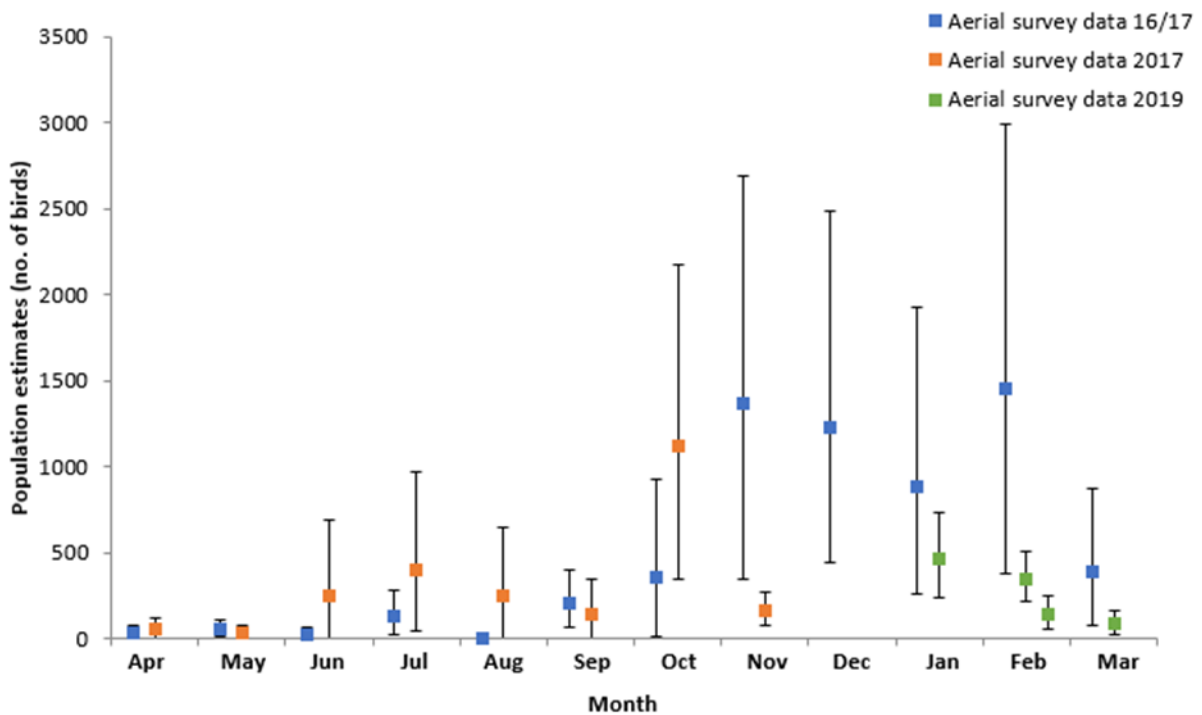


Figure 3.6: Population estimates (plus 95% confidence intervals) of great black-backed gull obtained from aerial surveys undertaken across Hornsea Three plus a 4 km buffer

Guillemot

3.3.14. Figure 3.7 presents population estimates of guillemot for Hornsea Three plus a 4 km buffer.

3.3.15. The population estimates of guillemot recorded in the 2019 aerial surveys are higher than those recorded in 2017 in all months except March. The estimates do however, fall within the range of estimates calculated for other months and follow the trend expected in the seasonal abundance of guillemot being low in winter months and beginning to increase throughout the spring (Furness, 2015). The estimates calculated in 2019 show limited variability, when compared to the estimates calculated in 2016, remaining around 5,000 individuals in all four surveys. Further to this, the two surveys undertaken in February 2019 show even less variability.

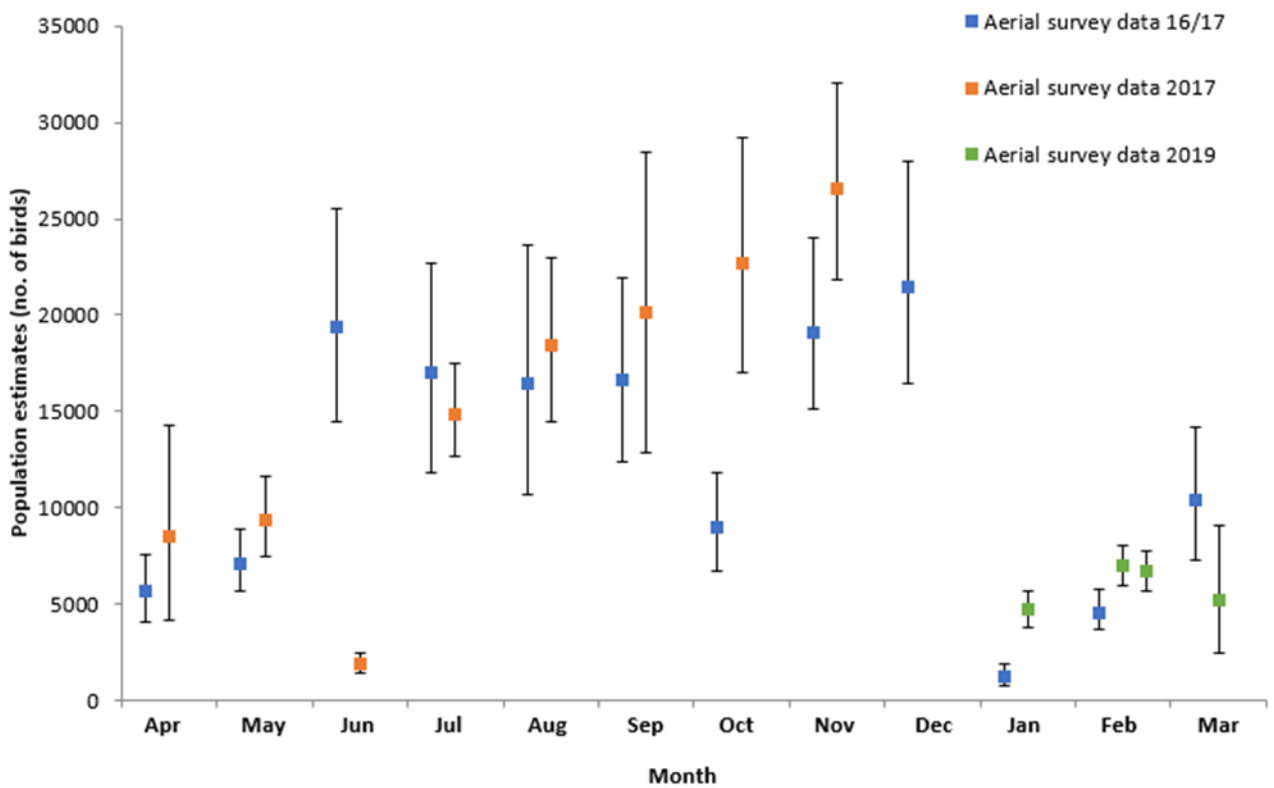


Figure 3.7: Population estimates (plus 95% confidence intervals) of guillemot obtained from aerial surveys undertaken across Hornsea Three plus a 4 km buffer

Razorbill

3.3.16. Figure 3.8 presents population estimates of razorbill for Hornsea Three plus a 4 km buffer.

3.3.17. The population estimates of razorbill recorded in the 2019 aerial surveys are higher than those recorded in 2017 in all months except March. However, the estimates fall within the range of estimates calculated for other months. The population estimates calculated in 2019 are only notably different in February, with the estimates calculated for January both relatively low (i.e. below 1000 birds) when compared to other months and the estimates for March similar. The estimates calculated in February in 2019 across two surveys are very similar but are higher than the estimate recorded in February 2017.

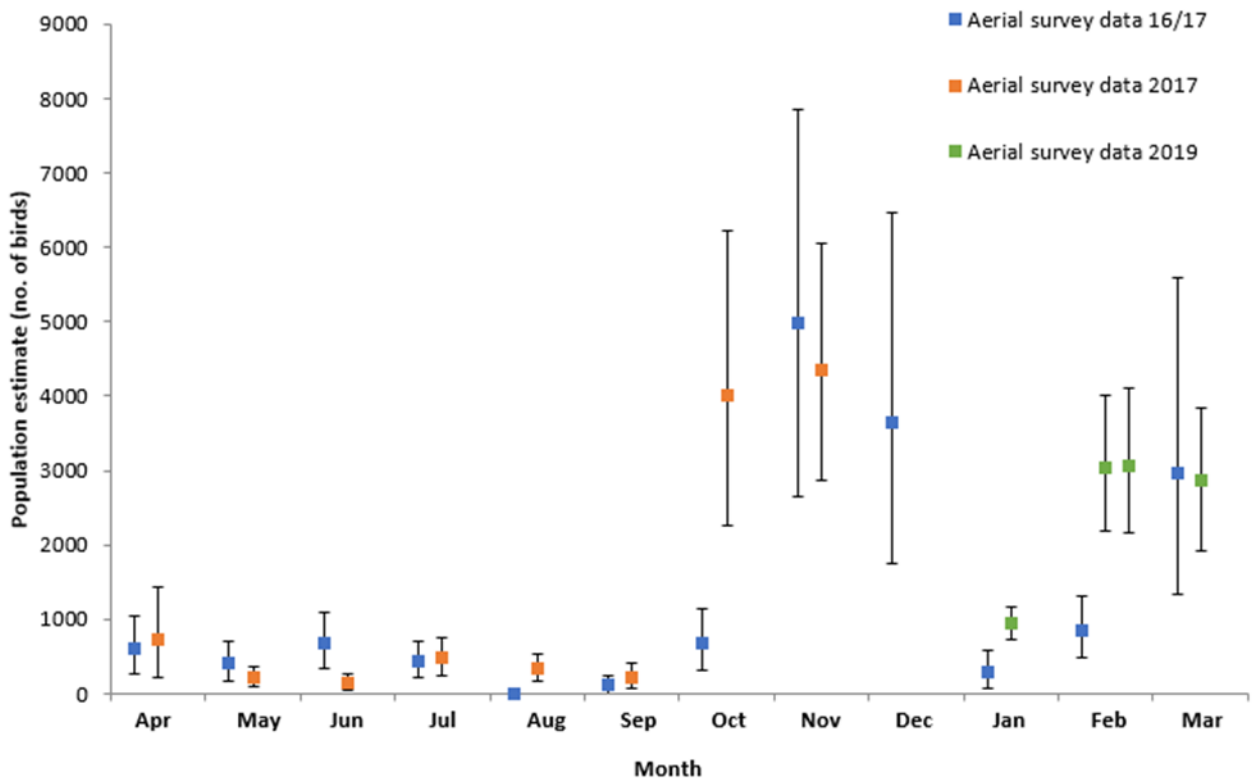


Figure 3.8: Population estimates (plus 95% confidence intervals) of razorbill obtained from aerial surveys undertaken across Hornsea Three plus a 4 km buffer

Puffin

3.3.18. Figure 3.9 presents population estimates of puffin for Hornsea Three plus a 4 km buffer.

3.3.19. The population estimates of puffin recorded in 2019 are higher in February but slightly lower in March when compared to the population estimates recorded in 2017. No puffins were recorded at Hornsea Three plus a 4 km buffer in January in both 2017 and 2019. The estimates fall within the range of estimates calculated for other months and follow the trend expected in the seasonal abundance of puffin at Hornsea Three being low throughout the year except in April and May. In March, there is little difference between the population estimates calculated in 2017 and 2019. In February, no puffins were recorded at Hornsea Three during 2017 whereas up to 73 birds were estimated from the surveys undertaken in February 2019. The populations estimated however, are still relatively low when compared to other times of the year (e.g. April and May).

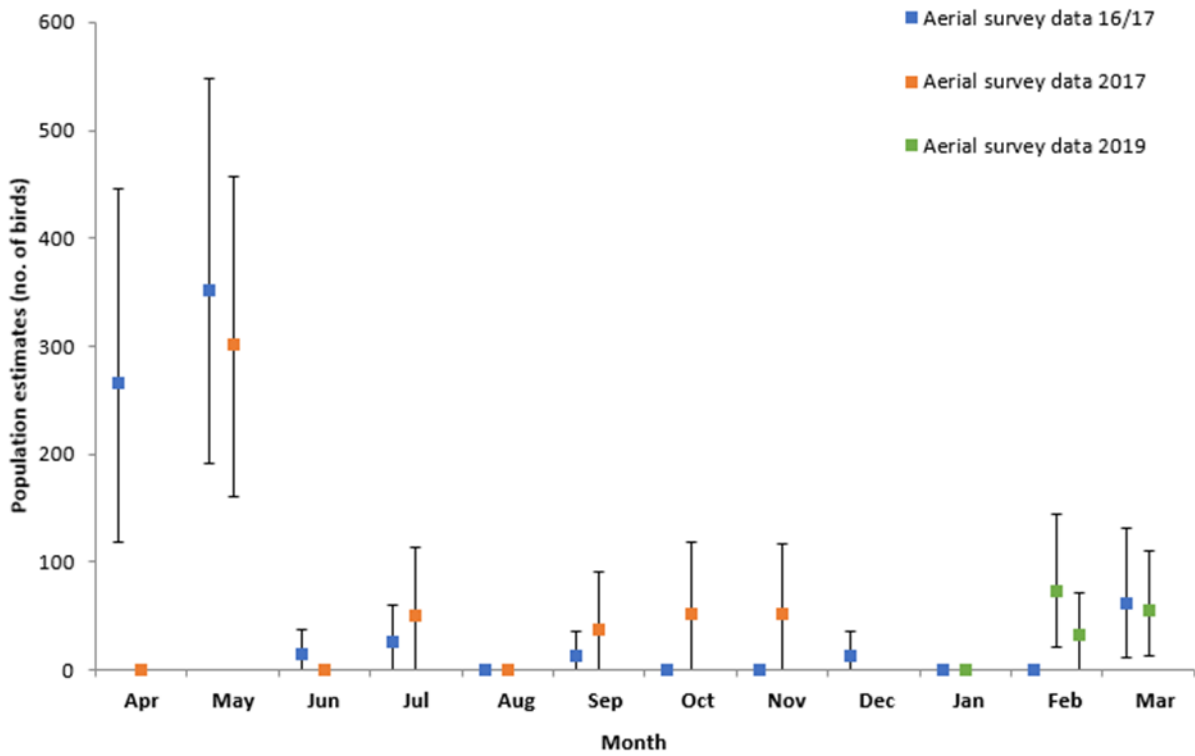


Figure 3.9: Population estimates (plus 95% confidence intervals) of puffin obtained from aerial surveys undertaken across Hornsea Three plus a 4 km buffer

3.4 Collision risk modelling

3.4.1. In the Hornsea Three application collision risk modelling (CRM) was conducted utilizing monthly densities for birds in flight from Hornsea Three alone. Where multiple densities were obtained for a month during aerial surveys (April to November) these were averaged to provide a single density value. Densities for December to March were calculated using the original aerial survey data alongside a meta-analysis of data collected as part of the boat-based survey programme for Hornsea project One and Two. For the purposes of collision risk modelling in this report, the recent survey data replaces the densities derived from the meta-analysis for January, February and March in this section with these densities averaged alongside the densities obtained from the original aerial surveys for these months.

3.4.2. Table 3.1 presents the densities for January to March used in CRM as part of the application and those calculated using the additional data for all species included in CRM. The densities used in the Hornsea Three application were calculated using the meta-analysis whereas for the additional data, the densities from the recent surveys have been averaged alongside the densities from the aerial surveys undertaken as part of the original baseline survey programme. The recent surveys did not cover December and therefore in the collision risk modelling conducted in this report, the density from the aerial survey in December 2016 is used. This approach is consistent with that applied in the collision risk modelling conducted to support the submission of REP6-042, REP-043 and REP-047 during the Hornsea Three examination.

Table 3.1: Comparison between densities (birds/km²) used for collision risk modelling as part of the Hornsea Three application and as calculated when incorporating additional data

Species	Dataset	Jan	Feb	Mar
Gannet	Original	0.02	0.14	0.08
	Additional	0.03	0.01	0.10
Kittiwake	Original	0.47	0.18	1.34
	Additional	0.46	0.34	1.44
Lesser black-backed gull	Original	0.00	0.00	0.00
	Additional	0.02	0.00	0.00
Herring gull	Original	0.00	0.04	0.00
	Additional	0.00	0.04	0.00
Great black-backed gull	Original	0.13	0.04	0.03
	Additional	0.16	0.04	0.03

- 3.4.3. For three of the species (kittiwake, lesser black-backed gull and great black-backed gull) included in the CRM undertaken for the Hornsea Three assessments, the updated density values suggest that collision risk estimates may increase, although quantifying this change requires further CRM. For gannet, there are increases and decreases in the updated density values and, therefore, without further CRM it is not clear how collision risk estimates may change. For herring gull there is no change in the monthly density values and therefore this species is not considered further.
- 3.4.4. To further investigate the potential changes CRM has been conducted for gannet, kittiwake, lesser black-backed gull and great black-backed gull. The modelling has used three turbine scenarios with different lower rotor tip heights (i.e. the base case (33.17 m), 37.5 m and 40 m) as incorporated into the Applicant's submissions from Deadline 7 onwards. The modelling has also incorporated the parameter scenarios defined in REP6-042¹ reflecting the Applicant's position, in REP6-043² reflecting the Applicant's interpretation of Natural England's position and the altering scenarios in between. The parameter scenario requested by the Examining Authority in REP9-047³ has also been included. The parameters used for each parameter scenario are presented in Appendix 1.

Gannet

- 3.4.5. Collision risk estimates for gannet using all parameter scenarios and the original and additional datasets are presented in Table 3.2, Table 3.3 and Table 3.4 for the three turbine scenarios, respectively. For the majority of scenarios there is no change in the number of collisions predicted but in a few cases, there is an increase of one collision/annum. It is considered that an increase of this magnitude is immaterial in assessment terms.
- 3.4.6. The results obtained when using the additional aerial survey data would not alter the conclusions reached in the EIA or Report to Information Appropriate Assessment (RIAA) for the relevant Biologically Defined Minimum Population Scales (BDMPS) populations or Flamborough and Filey Coast Special Protection Area (FFC SPA) population of gannet, respectively when using any of the parameter scenarios and turbine scenarios.

¹ Hornsea Project Three (2019) Appendix 28 to Deadline 6 submission - Position of the Applicant in relation to collision risk modelling issued by the Planning Inspectorate into the Hornsea Project Three Examination.

² Hornsea Project Three (2019) Appendix 29 to Deadline 6 submission -Applicant's interpretation of Natural England's position in relation to collision risk modelling issued by the Planning Inspectorate into the Hornsea Project Three Examination

³ Hornsea Project Three (2019) Appendix 19 to Deadline 9 submission – Response to ExA FQ3.1 Rule 17 – Collision Risk Modelling issued by the Planning Inspectorate into the Hornsea Project Three Examination.

Table 3.2: Collision risk estimates for gannet using a turbine lower rotor tip height of 33.17 m

Collision risk estimates	Parameter scenario							
	Natural England	1	2	3	4	5	6 (Applicant)	Examining Authority
EIA scale								
Original	49	45	21	9			8	8-10
Updated	49	46	21	10			8	8-10
HRA scale								
Original	18	16	7	3	2	2	2	3-4
Updated	18	17	8	3	2	2	2	3-4

Table 3.3: Collision risk estimates for gannet using a turbine lower rotor tip height of 37.5 m

Collision risk estimates	Parameter scenario							
	Natural England	1	2	3	4	5	6 (Applicant)	Examining Authority
EIA scale								
Original	31	29	13	9			8	8-10
Updated	31	29	13	10			8	8-10
HRA scale								
Original	11	10	5	3	2	2	2	3-4
Updated	11	11	5	3	2	2	2	3-4

Table 3.4: Collision risk estimates for gannet using a turbine lower rotor tip height of 40 m

Collision risk estimates	Parameter scenario							
	Natural England	1	2	3	4	5	6 (Applicant)	Examining Authority
EIA scale								
Original	24	22	10	9			8	8-10
Updated	24	22	10	10			8	8-10
HRA scale								
Original	9	8	4	3	2	2	2	3-4
Updated	9	8	4	3	2	2	2	3-4

Kittiwake

3.4.7. Collision risk estimates for kittiwake using all parameter scenarios and the original and additional datasets are presented in Table 3.5, Table 3.6 and Table 3.7 for the three turbine scenarios, respectively. Collision risk estimates increase when using some of the more precautionary parameter scenarios using all three turbine scenarios. However, even when using the worst-case scenario for all parameters this increase represents only six collisions/annum or approximately a 2% increase, which remains insignificant in assessment terms. When using the parameters advocated by the Applicant or provided by the Examining Authority, there is no difference in the number of collisions predicted for all three turbine scenarios.

3.4.8. The results obtained when using the additional aerial survey data would not alter the conclusions reached in the EIA or RIAA for the relevant BDMPS populations or FFC SPA population of kittiwake, respectively when using any of the parameter scenarios and turbine scenarios.

Table 3.5: Collision risk estimates for kittiwake using turbine lower rotor tip height of 33.17 m

Collision risk estimates	Parameter scenario							
	Natural England	1	2	3	4	5	6 (Applicant)	Examining Authority
EIA scale								
Original	297	218	198	38			30	43-51
Updated	303	222	202	38			31	44-52
HRA scale								
Original	181	132	120	23	11	8	7	13-15
Updated	183	134	122	23	11	8	7	13-15

Table 3.6: Collision risk estimates for kittiwake using a turbine lower rotor tip height of 37.5 m

Collision risk estimates	Parameter scenario							
	Natural England	1	2	3	4	5	6 (Applicant)	Examining Authority
EIA scale								
Original	196	144	131	28			23	33-39
Updated	200	146	133	29			23	33-39
HRA scale								
Original	119	87	79	17	8	6	5	10-11
Updated	121	89	81	17	8	6	5	10-11

Table 3.7: Collision risk estimates for kittiwake using a turbine lower rotor tip height of 40 m

Collision risk estimates	Parameter scenario							
	Natural England	1	2	3	4	5	6 (Applicant)	Examining Authority
EIA scale								
Original	154	113	102	28			23	33-39
Updated	157	115	105	29			23	33-39
HRA scale								
Original	94	69	62	17	8	6	5	10-11
Updated	95	70	63	17	8	6	5	10-11

Lesser black-backed gull

3.4.9. Collision risk estimates for lesser black-backed gull using all parameter scenarios and the original and additional datasets are presented in Table 3.8 for the three turbine scenarios, respectively. For the majority of scenarios there is no change in the number of collisions predicted but in a few cases, there is an increase of one collision/annum, which is considered insignificant in assessment terms.

3.4.10. The results obtained when using the additional aerial survey data would not alter the conclusions reached in the EIA for the North Sea population of lesser black-backed gull, when using any of the parameter or turbine scenarios.

Table 3.8: Collision risk estimates for lesser black-backed gull using three turbine lower rotor tip heights

Collision risk estimates	Parameter scenario				
	Natural England	1	3	6 (Applicant)	Examining Authority
33.17 m lower rotor tip height					
Original	17	14	12	12	7
Updated	18	15	12	12	8
37.5 m lower rotor tip height					
Original	13	11	12	12	6
Updated	13	11	12	12	6
40 m lower rotor tip height					
Original	11	9	12	12	5
Updated	11	9	12	12	5

Great black-backed gull

3.4.11. Collision risk estimates for great black-backed gull using all parameter scenarios and the original and additional datasets are presented in Table 3.9 for the three turbine scenarios, respectively. For the majority of scenarios there is no change in the number of collisions predicted but in a few cases, there is an increase of one collision/annum, which is considered insignificant in assessment terms.

3.4.12. The results obtained when using the additional aerial survey data would not alter the conclusions reached in the EIA for the North Sea population of great black-backed gull when using any of the parameter or turbine scenarios.

Table 3.9: Collision risk estimates for great black-backed gull using three turbine lower rotor tip heights

Collision risk estimates	Parameter scenario				
	Natural England	1	3	6 (Applicant)	Examining Authority
33.17 m lower rotor tip height					
Original	66	53	26	26	33
Updated	67	54	26	26	34
37.5 m lower rotor tip height					
Original	52	42	20	20	26
Updated	53	42	20	20	27
40 m lower rotor tip height					
Original	45	36	20	20	23
Updated	46	37	20	20	23

3.5 Displacement analysis

3.5.1. Table 3.10 presents the seasonal mean-peak population estimates used for all species included in displacement analysis. Only those seasonal population estimates that are affected by those months for which additional data have been collected are considered. The seasonal mean-peak populations used in the Hornsea Three application were calculated using the meta-analysis, which incorporated survey data from historical boat-based surveys that covered Hornsea Three, to calculate population estimates for the four months. The recent survey data were incorporated into the calculation by assuming they represented the second year of aerial survey data, replacing the populations calculated using the meta-analysis.

Table 3.10: Comparison of seasonal mean-peak population estimates as used in the Hornsea Three application and calculated incorporating additional data

Species	Season	Original estimate	Updated estimate
Fulmar	Pre-breeding	525	1,049
Gannet	Pre-breeding	406	527
Guillemot	Breeding	13,374	13,374
	Non-breeding	17,772	17,772
Razorbill	Pre-breeding	1,236	2,062
Puffin	Non-breeding	127	137

3.5.2. For all species except guillemot the introduction of additional data increases the respective seasonal mean-peak populations. This would lead to a commensurate increase in the predicted displacement mortality which would be directly proportional to the magnitude of increase. The consequences of these increases, however, are likely to be immaterial in assessment terms, when put in an EIA context where the Hornsea Three displacement mortality numbers are a fraction of the baseline mortality of such large populations. For RIAA purposes, resulting impacts are apportioned to relevant SPA populations with the apportioning values used in non-breeding seasons derived by calculating the contribution of the focal population (e.g. the population present at a given breeding colony) to a much larger BDMPS population. This leads to a small proportion of any predicted impact being apportioned back to the focal SPA population.

3.5.3. To determine the magnitude of increase and therefore the potential implications for EIA and RIAA conclusions, displacement analysis has been conducted for all species for which there has been an increase in seasonal mean-peak populations.

Fulmar

3.5.4. Displacement analysis for fulmar using the displacement and mortality rates advocated by the Applicant and Natural England is presented in Table 3.11. The increases in baseline mortality are negligible when applying either set of assumptions (i.e., the Applicant’s or Natural England’s) and for both the North Sea and the FFC SPA populations of fulmar.

3.5.5. The results obtained when using the additional aerial survey data would not alter the conclusions reached in the EIA or RIAA for either the North Sea population or FFC SPA population of fulmar when using the assumptions advocated by either the Applicant or Natural England.

Table 3.11: Displacement analysis for fulmar assessed at EIA and HRA scales

Dataset	Displacement/mortality rate (%)		Displacement mortality		Increase in baseline mortality (%)	
	Applicant	Natural England	Applicant	Natural England	Applicant	Natural England
North Sea population (EIA) (Pre-breeding BDMPS = 957,502 individuals⁴)						
Original	10-30 / 1	10 / 1-10	1-2	1-5	<0.01	<0.01-0.01
Additional			1-3	1-10	<0.01-0.01	<0.01-0.02
FFC SPA (HRA) (FFC SPA population = 2,894 individuals)						
Original	10-30 / 1	10 / 1-10	0	0	<0.01	<0.01-0.01
Additional			0	0	<0.01	<0.01-0.01

⁴ All BDMPS populations presented in this report have been taken from Furness (2015) with baseline mortality rates sourced from Horswill and Robinson (2015)

3.5.6. The following species-specific sections present displacement analysis for all species for which displacement impacts were assessed in the Hornsea Three application. Natural England provided no advice in relation to their advocated displacement and mortality rates and therefore Natural England’s advice to other projects has been followed where available for each species. Where this advice is not available the advice in JNCC *et al.* (2017) has been followed.

Gannet

3.5.7. Displacement analysis for gannet using the displacement and mortality rates advocated by the Applicant and Natural England is presented in Table 3.12. There is a negligible increase in the displacement mortality predicted in EIA terms when applying the displacement and mortality rates advocated by the Applicant and the lower end of the range of displacement and mortality rates advocated by Natural England. When applying the upper end of the rate range advocated by Natural England, the increase is slightly greater (11 birds), although in the context of the impact on gannet of no significance, as illustrated by the negligible change in the increase in baseline mortality of the North Sea population of gannet. For the FFC SPA population the increases in baseline mortality are immaterial in assessment terms.

3.5.8. The results obtained when using the additional aerial survey data would not alter the conclusions reached in the EIA or RIAA for the North Sea population or FFC SPA population of gannet, respectively when using the assumptions advocated by either the Applicant or Natural England.

Table 3.12: Displacement analysis for gannet assessed at EIA and HRA scales

Dataset	Displacement/mortality rate (%)		Displacement mortality		Increase in baseline mortality (%)	
	Applicant	Natural England	Applicant	Natural England	Applicant	Natural England
North Sea population (EIA) (Pre-breeding BDMPS = 248,385 individuals)						
Original	30-70 / 1	30-70 / 1-10	1-3	1-28	0.01	0.01-0.14
Additional			2-4	2-37	0.01-0.02	0.01-0.18
FFC SPA (HRA) (FFC SPA population = 16,938 individuals)						
Original	30-70 / 1	30-70 / 1-10	0	0-2	0.01	0.01-0.13
Additional			0	0-2	0.01-0.02	0.01-0.17

Razorbill

3.5.9. Displacement analysis for razorbill using the displacement and mortality rates advocated by the Applicant and Natural England is presented in Table 3.13. In assessment terms, there is a negligible increase in the displacement mortality predicted when applying the displacement and mortality rates advocated by the Applicant and the lower end of the range of displacement and mortality rates advocated by Natural England. This is also true when applying the upper end of the rate range advocated by Natural England with this illustrated by the increase in baseline mortality of the North Sea population of razorbill. The original displacement mortality (87 birds) represents a 0.14% increase in baseline mortality with the displacement mortality calculated using the additional dataset representing a 0.23% increase in baseline mortality. For the FFC SPA population the increases in baseline mortality are also immaterial in assessment terms.

3.5.10. The results obtained when using the additional aerial survey data would not alter the conclusions reached in the EIA or RIAA for the North Sea population or FFC SPA population of razorbill, respectively when using the assumptions advocated by either the Applicant or Natural England.

Table 3.13: Displacement analysis for razorbill assessed at EIA and HRA scales

Dataset	Displacement/mortality rate (%)		Displacement mortality (EIA)		Displacement mortality(RIAA) (%)	
	Applicant	Natural England	Applicant	Natural England	Applicant	Natural England
North Sea population (EIA) (Pre-breeding BDMPS = 591,874 individuals)						
Original	40 / 2	30-70 / 1-10	10	4-87	0.02	0.01-0.14
Additional			16	6-144	0.03	0.01-0.23
FFC SPA (HRA) (FFC SPA population = 21,140 individuals)						
Original	40 / 2	30-70 / 1-10	0	0-3	0.02	0.01-0.13
Additional			1	0-5	0.03	0.01-0.22

Puffin

3.5.11. Displacement analysis for puffin using the displacement and mortality rates advocated by the Applicant and Natural England is presented in Table 3.14. The increases in baseline mortality are negligible when applying either set of assumptions (Applicant or Natural England) and for both the North Sea population of puffin and the FFC SPA population of puffin.

3.5.12. The results obtained when using the additional aerial survey data would not alter the conclusions reached in the EIA or RIAA for the North Sea population or FFC SPA population of puffin, respectively when using the assumptions advocated by either the Applicant or Natural England.

Table 3.14: Displacement analysis for puffin assessed at EIA and HRA scales

Dataset	Displacement/mortality rate (%)		Displacement mortality (EIA)		Displacement mortality (RIAA) (%)	
	Applicant	Natural England	Applicant	Natural England	Applicant	Natural England
North Sea population (EIA) (Non-breeding BDMPS = 231,957 individuals)						
Original	50 / 1	30-70 / 1-10	1	0-9	<0.01	<0.01-0.04
Additional			1	0-10	<0.01	<0.01-0.04
FFC SPA (HRA) (FFC SPA population = 1,960 individuals)						
Original	50 / 1	30-70 / 1-10	0	0	<0.01	<0.01-0.02
Additional			0	0	<0.01	<0.01-0.02

4. Conclusions

- 4.1.1. The data collected from the additional aerial surveys provide confirmation that the baseline dataset used as part of the Hornsea Three application captured the variability present in seabird populations present at Hornsea Three. The population estimates calculated from the additional surveys for Hornsea Three plus a 4 km buffer are very similar to those collected during the original survey programme and, in all cases, within the variability that was assumed for that time of year. This variability in the abundance of birds during this period of the annual cycle is limited, as stated by the Applicant in its application and examination submissions.
- 4.1.2. The additional overall population estimates indicate limited variability in the abundance of birds at Hornsea Three between December and March. CRM and displacement analyses have been conducted incorporating the additional data to identify the implications of using the additional data for the assessments presented in the application and examination submissions.
- 4.1.3. Comparisons between collision risk estimates presented as part of examination submissions and calculated incorporating the additional aerial survey data show changes of negligible magnitude for all species. When applying the modelling parameters provided by the Examining Authority the majority of collision risk estimates are identical and for those that do change the increase is negligible (one collision/annum). The use of the additional data would therefore not alter the conclusions reached in either the EIA or RIAA for Hornsea Three. The findings in this report also support the Applicant's case during the application and examination, including the sensitivity testing submitted to the examination at Deadline 1 (REP1-141). The impact magnitudes calculated in this report fall within the variability expected during the period December to March and within the confidence intervals considered as part of the assessments presented throughout the application and examination.
- 4.1.4. Similar comparisons for displacement mortality also show that the use of the additional aerial survey data has no effect on the conclusions reached in the EIA and RIAA. The comparisons presented use the increase in baseline mortality to determine the magnitude of change with the increases in this metric considered immaterial in assessment terms for all species.
- 4.1.5. For all species, the data confirm the conclusions drawn in the EIA and RIAA in relation to limited variability in the abundance of each species and relative lower importance of these months when compared to the abundance recorded in breeding months, for example. Whilst the densities obtained for some species are slightly higher, they do not make a material difference to the overall collision rates or the displacement mortality predicted. As a result, the conclusions of the EIA/RIAA are unaffected.

5. References

Furness, R.W. (2015). Non-breeding season populations of seabirds in UK waters. Population sizes for Biologically Defined Minimum Population Scales (BDMPS). Natural England Commissioned Report NECR164.

Horswill, C. & Robinson R. A. (2015). Review of seabird demographic rates and density dependence. JNCC Report No. 552. Joint Nature Conservation Committee, Peterborough.

JNCC, Natural Resources Wales, Department of Agriculture, Environment and Rural Affairs/Northern Ireland Environment Agency, Natural England and Scottish Natural Heritage, (2017). Joint SNCB Interim Displacement Advice Note. [Online]. Available at: http://jncc.defra.gov.uk/pdf/Joint_SNCB_Interim_Displacement_AdviceNote_2017.pdf (Accessed May 2017).

Appendix 1 - Parameter scenarios for collision risk modelling

Parameter	Species	Natural England (REP6-043)		Applicant (REP6-042)		Examining Authority (REP9-047)	
1. Flight speed	Gannet	14.9	Pennycaick (1987)	13.33	Skov <i>et al.</i> (2018)	14.9	Pennycaick (1987)
	Kittiwake	13.1	Alerstam <i>et al.</i> (2007)	8.71		13.1	Alerstam <i>et al.</i> (2007)
	Lesser black-backed gull	13.1		9.8		13.1	
	Great black-backed gull	13.7		9.8		13.7	
2. Avoidance rate (%)	Gannet	98.9	JNCC <i>et al.</i> (2014)	99.5	Bowgen and Cook (2018)	99.5	Bowgen and Cook (2018)
	Kittiwake	98.9		99.0		99.0	
	Large gulls	99.5		99.5		99.3	
3. Band Model Option	Gannet	2		1/3		1	
	Kittiwake					1	
	Large gulls					3	
4. Breeding season apportioning (%)	Gannet	Unknown	REP1-211	40.4	APP-054	63.3	
	Kittiwake	- range applied		41.7		41.7	
	Large gulls	N/A					
5. Seasonality	Gannet	REP1-211		APP-054		REP1-211	
	Kittiwake	REP1-211		APP-054		REP1-211	
	Large gulls	Furness (2015)					
6. Nocturnal activity factors	Gannet	1-2	REP1-211	Breeding = 8% Non-breeding = 3%	Furness <i>et al.</i> (2018)	1-2	
	Kittiwake	2-3		Breeding = 20% Non-breeding = 17%	MacArthur Green (2018)/Furness (unpub)	2-3	
	Large gulls	2-3		3	Garthe and Hüppop (2004)	3	

Date: 25 September 2019
Our ref: [Click here to enter text.](#)
Your ref: n/a



Mr Rob Pridham
Hornsea Three Case Manager
Energy Infrastructure Planning
Department for Business, Energy and Industrial Strategy
Level 3, Orchard 2
1 Victoria Street
London SW1H 0ET

Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

T 0300 060 3900

BY EMAIL ONLY

Dear Mr Pridham,

The Hornsea Three Development Consent Order application and the implications of Natural England's recent advice at the Norfolk Vanguard Development Consent Order examination

I am writing with respect to the recent letter you have received from the RSPB dated 6th September 2019. We thought it would be helpful to follow this up with some clarification.

Natural England's advice throughout the Hornsea 3 Examination regarding offshore ornithology issues was that insufficient baseline survey data had been collected in order to allow Natural England to make conclusions regarding the impacts of the proposal on a number of qualifying features of seabird Special Protection Areas. Without the ability to advise on – and therefore rule out – adverse effects on integrity from the project alone, it inevitably follows that we would also be unable to advise on, or rule out, Adverse Effects on Site Integrity, when considered in-combination with other plans and projects. This is consistent with current case law.

The Norfolk Vanguard Examination ran approximately two months behind the Hornsea 3 examination. In contrast with the situation at Hornsea 3, sufficient offshore ornithology baseline survey information had been collected by the Norfolk Vanguard applicant to allow us to draw conclusions regarding the impacts of the project alone on the relevant SPAs. It was therefore also possible to properly consider the extent of in-combination impacts with other plans or projects.

This proved problematic when trying to incorporate the impacts of Hornsea 3 into this assessment, given the significant lack of confidence in the baseline data collected. We therefore advised Norfolk Vanguard to present in-combination assessments that both included and excluded Hornsea 3. The latter used mortality values presented by Natural England during the Hornsea 3 examination as an illustrative analysis of the appropriate methods of analysing baseline data (there being significant methodological concerns with how Hornsea 3 analysed the data, as well as the above concerns regarding the adequacy of the baseline data itself). These figures, whilst not representing Natural England's opinion regarding the impacts of the Hornsea 3 development, represented the most appropriate evidence to use, albeit with significant short-comings.

Norfolk Vanguard followed our advice and produced such an in-combination assessment, which clarified that for some SPA qualifying features, it was possible to rule out an in-combination AEOI when Hornsea 3 was excluded from the assessment, but not when Hornsea 3 was included in the assessment, due to the high level of uncertainty regarding the impacts of the Hornsea 3 proposal.

We therefore do not consider our advice during the Norfolk Vanguard to be “new advice” as stated in the RSPB letter, rather as the logical and inevitable extension of our advice on Hornsea 3 in the light of the in-combination assessment of a subsequent Examination.

We hope that you find this clarification helpful.

Yours sincerely



Chris McMullon
Principal Adviser
Natural England

cc Ørsted: Andrew Guyton (Hornsea Three Consents
 Manager)
 Vattenfall: Rebecca Sherwood (Norfolk Vanguard
 Consents Manager)
 RSPB: James Dawkins, Casework Manager
 The Planning Inspectorate: Hornsea Three Case Team

Annex 1: Summary of Natural England’s Final Position on Offshore Ornithology In-Combination Issues at Close of Norfolk Vanguard OWF Examination

EIA species	Cumulative impacts position
Gannet (displacement + collision combined)	Significant (moderate adverse)
Red-throated diver (displacement)	Significant (moderate adverse)
Kittiwake (collision)	Significant (moderate adverse)
Lesser black-backed gull (collision)	Not significant (minor adverse)
Herring gull (collision)	Not significant (minor adverse) – though impacts close to a level which we would consider significant (moderate adverse)
Great black-backed gull (collision)	Significant (moderate adverse)
Little gull (collision)	Not significant (minor adverse) ¹
Guillemot (displacement)	Significant (moderate adverse)
Razorbill (displacement)	Significant (moderate adverse)
Puffin (displacement)	Not significant (minor adverse)

HRA site/feature	In-combination impacts position
A-OE SPA LBBG (collision)	Cannot ascertain no AEOI
FFC SPA Gannet (displacement + collision combined)	No AEOI excluding Hornsea 3; cannot ascertain no AEOI when Hornsea 3 included.
FFC SPA Kittiwake (collision)	AEOI
FFC SPA Guillemot (displacement)	No AEOI excluding Hornsea 3; cannot ascertain no AEOI when Hornsea 3 included.
FFC SPA Razorbill (displacement)	No AEOI excluding Hornsea 3; cannot ascertain no AEOI when Hornsea 3 included.
FFC SPA Assemblage (displacement & collision)	Cannot ascertain no AEOI due to impacts on qualifying features; no AEOI through impacts on puffin ² .
GW SPA Red-throated diver (displacement)	No AEOI
GW SPA Little gull (collision)	No AEOI ³

¹ Conclusion based on best publically available evidence, but information not publically available on some relevant in-combination projects e.g. Dudgeon

² Nb. this position relates to the displacement impacts on the puffin population of the SPA from Norfolk Vanguard being far closer to zero (less than 0.1 bird per annum) than 1 bird per annum, and therefore there is no contribution to an in-combination effect.

³ Conclusion based on best publically available evidence, but information not publically available on some relevant in-combination projects e.g. Dudgeon

From: [Johnson, Melissa](#)
To: [Hornsea Project Three](#)
Cc: [BRODRICK Claire](#)
Subject: Application by Orsted Project Three (UK) Limited (the applicant) for a DCO (the Order) for the Hornsea Project Three Offshore Wind Farm: PINS Reference H 3WF-SP054 [ADDGDD-Live.FID2981243]
Date: 25 September 2019 16:14:15

Dear Madam or Sir

We act for Network Rail Infrastructure Limited (**Network Rail**) and write to update the Examining Authority and the Secretary of State further to Network Rail's final representations at Deadline 10 **[REP10-016]**.

Network Rail is working with the applicant to seek to agree the property documents that are required to deliver the scheme by private agreement.

Network Rail hopes to be in a position to agree these documents, withdraw its representations to the Examining Authority and submit an agreed set of protective provisions for the benefit of Network Rail (to be included in Part 5 of Schedule 9 to the Order) within the next few days.

We will update you and the Secretary of State as soon as possible and before Tuesday 1 October.

Please can you forward this email to the Secretary of State for Business, Energy and Industrial Strategy? Thank you.

Yours faithfully

Addleshaw Goddard LLP

Melissa Johnson

Consultant

for Addleshaw Goddard LLP

DDI: +44 (0)161 934 6272

Fax: +44 (0)20 7606 4390

Office Locations: <http://www.addleshawgoddard.com/contactus>

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For further information please consult our website, www.addleshawgoddard.com.

Gareth Leigh
Head of Energy Infrastructure Planning
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
SW1H 0ET

Email: beiseip@beis.gov.uk

5 September 2019

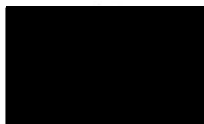
**Application for the Hornsea Three Offshore Wind Farm
Order (EN010080) – Joint Statement between Hornsea
Three and Spirit Energy**


Our ref. [HOW03_CON_05092019]

Dear Mr Leigh,

Following the completion of the Hornsea Project Three Offshore Wind Farm ('Hornsea Three') Development Consent Order (DCO) Examination (EN010080) and the Examining Authority issuing their Recommendation Report to the Secretary of State (SoS) for Business, Energy and Industrial Strategy (BEIS) on 2 July 2019, Hornsea Project Three Ltd. ('the Applicant') would like to draw the SoS's attention to the following joint statement made by the Applicant and Spirit Energy.

Yours Sincerely,



Andrew Guyton
Hornsea Project Three Consents Manager
Tel 

cc. Oliver Palasmith, Hornsea Project Three Commercial Manager
Stuart Livesy, Hornsea Three Project Manager
Max Rowe, Senior Commercial Advisor for Spirit Energy

Planning Act 2008

Application for the Hornsea Three Offshore Wind Farm Order (EN010080)

Joint statement made by the Applicant and Spirit Energy

Subject to contract

1. This joint statement is made by, Orsted Hornsea Project Three (UK) Limited (the "Applicant"), and Spirit Energy North Sea Limited, Spirit Energy Resources Limited and Spirit Energy Nederland B.V. (together "Spirit Energy") and their Co-Venturers.
2. On 1 April 2019 the Applicant and Spirit Energy submitted a joint statement to the Examining Authority for Deadline 10 [REP10-025]. That explained inter alia that progress had been made in discussions between the parties, particular items had been agreed but that further time was required to negotiate outstanding points (the "April 2019 update").
3. The April 2019 update explained that agreement between the parties was unlikely to be reached before the end of the Examination and the parties intended to provide an update to the Secretary of State after the end of the Examination, during the 3 month determination period. The purpose of this statement is to provide that update.
4. The Applicant and Spirit Energy have continued discussions on the aviation and marine topics raised during the Examination and are very close to reaching agreement, such that a draft Cooperation and Coexistence Agreement (the "Agreement") has been circulated for comment. Both parties expect the Agreement to be capable of execution before the determination of this DCO application due on 2 October 2019.
5. Assuming the Agreement is entered into, it is expected that the Applicant and Spirit Energy, on behalf of itself and its Co-Venturers', will be able to jointly confirm to the Secretary of State that they are each satisfied that their interests are protected and, on that basis, the protective provisions proposed by the parties to address Spirit Energy and its Co-Venturers' concerns would not be required.
6. Subject to receipt of the joint notification described in paragraph 5 above, which the parties will endeavour to provide prior to Monday 16th September 2019, the parties would request at that time that the Secretary of State remove any relevant protective provisions which may be included in the DCO.

Signed by: 

Name: 

for and on behalf of: Spirit Energy North Sea Limited, Spirit Energy Resources Limited and Spirit Energy Nederland B.V. and their Co-Venturers

Signed by:

 Name: Andrew Guyton

for and on behalf of Orsted Hornsea Project Three (UK) Limited

Dated: 5 September 2019

Right Honourable LORD TEBBIT CH

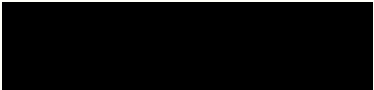


House of Lords
LONDON SW1A 0PW

28 AUG 2019
Kk-Response

22 August 2019

Rt Hon Andrea Leadsom MP
Secretary of State for Business, Energy
and Industrial Energy
House of Commons
London
SW1A 0AA



I enclose a copy of a letter recently written to you by Sir John White of Salle Park, Reepham, Norfolk.

I agree in every respect with Sir John's concern at the proposed vandalism by those carrying out the construction of the onshore cable routes in connection with the Vattenfall and Orsted offshore wind turbine projects.

Were Sir John to destroy a section of one of the mature hedges on his Estate for the convenience of access for large modern agricultural machinery he would be liable to prosecution.

As he says in his letter to you, there is no need for such vandalism. The contractors could tunnel under the hedgerow as they tunnel under roads. The proposed vandalism of the hedge is a purely cost cutting exercise.

I would add that Sir John understates his work to "modernise" the Estate which he inherited from his father. The Estate was in an appalling state of neglect with the house in danger of collapse as a consequence of his father's fatal illness and it is now a model of its kind.



c.c. Sir John White

Email: tebbitn@parliament.uk

The Rt. Hon. Andrea Leadsom MP
The Secretary of State for Business, Energy
and Industrial Strategy
House of Commons
London
SW1A 0AA

Dear Secretary of State,

Vattenfall & Orsted Offshore Wind Turbine Projects – Onshore Cable Routes

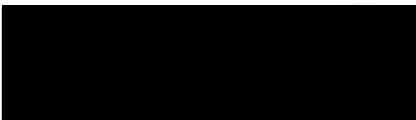
On Monday 25th February 1971, on the sudden death of my father, I inherited the Salle Estate in central Norfolk. I was only just 24 years old, I was full of energy, and I desperately wanted to modernise the Estate but also to be a responsible custodian. This entailed making the fields larger for modern day farming practices, however I formulated a programme whereby new woods and hedges were planted. The last thing I wanted was to get a reputation for vandalising the countryside. Once the newly planted woods and hedges had matured, my actions I believe were appreciated by the local community.

I have now reached the age of 72 and I am mortified that purely on grounds of cost, two mature hedges that I had planted now well over 40 years old, will be bulldozed instead of thrust bored under them. I feel that this is an act of wanton vandalism, especially when the contractors are prepared to thrust bore under all roadways, thus saving the roadside hedges of which there are several as shown by the enclosed map.

I understand that both of these cable projects are now with you for consideration, and I would hope that you would consider insisting that the two contractors thrust bore under these particular hedges, which are in prominent positions.

I enclose recent photographs of this hedges and I hope you will agree with me that they are worth preserving. Furthermore, the idea to replant with new hedge quicks disappoints me, as it is unlikely that I would see them return to their current maturity in my lifetime.

Yours sincerely,

A large black rectangular redaction box covering the signature of the sender.

Sir John W. White Bt

CC. Lord Tebbit

Greg Peck, Norfolk County Councillor and District Councillor



Hedge Line A

"A"
A

GREG PECK

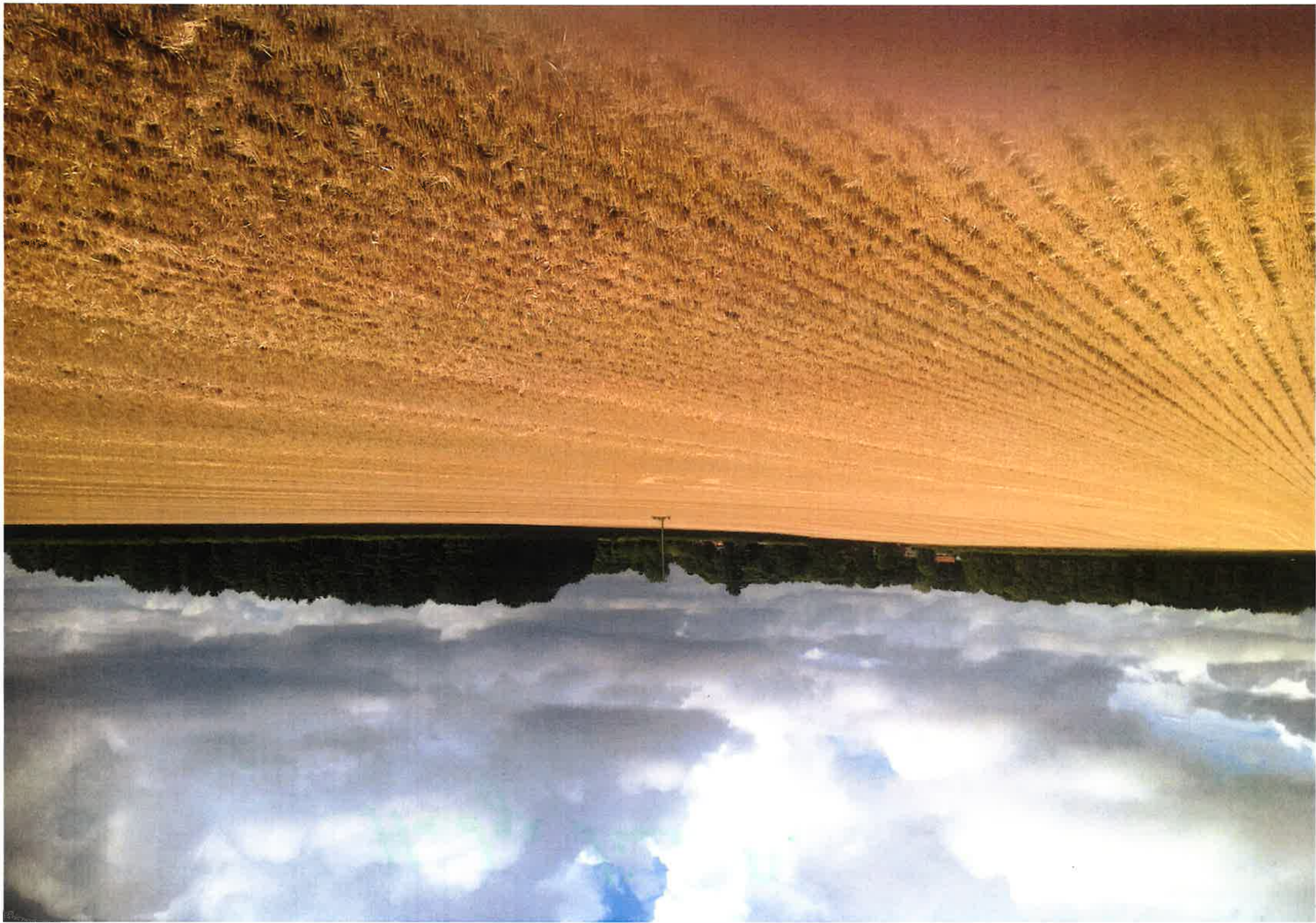
COUNTY

COUNCILLOR.

6' 1" in height



Hedge Line A



Hedge Line A.



Hedge Line A.



HEDGE

B

Councillor Greg Peck
6' 1" TALL.





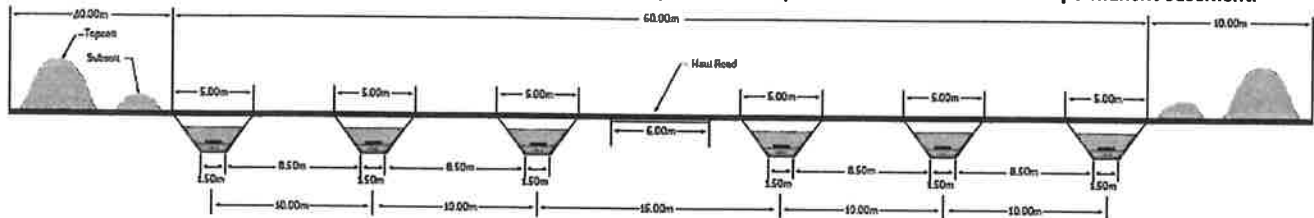
Hedge Line
B.

Section 1 – General Project Questions

Why do you require 80 metres for the onshore cable corridor?

Up to six trenches will be required to accommodate up to six circuits, each containing individual cables and fibre optics to enable communication between the wind farm and the control system. Each trench could be up to 5 metres wide at the surface reducing to 1.5 metres at the bottom. The circuits must be spaced out to minimise the mutual heating effect. This spacing enables the cables to effectively carry the large power volumes required without overheating and damaging the cable. The final width and location of each specific trench will be determined closer to the construction phase (Figure 3).

Figure 3: Diagram showing an indicative example of how a typical HVAC layout could be positioned within the 60-metre permanent easement.



What is HVAC technology, and what is HVDC technology?

HVAC stands for high voltage alternating current, whereas HVDC stands for high voltage direct current.

HVAC technology is the principle means of power transmission in all modern power systems. The vast majority of all electrical power is generated, transported and consumed as alternating current, where the voltage and current values oscillate over time at a specific frequency (50Hz in the UK, or 50 cycles per second). Transforming alternating current to higher voltages is relatively simple and enables power transmission over longer distances with reduced losses and fewer power lines than low voltage transmission.

HVDC technology is an alternative to HVAC for point-point power transmission and may be appropriate in some circumstances for bulk power transfer over long distances or between different grids. Because most electricity, including that in an offshore wind farm, is generated as alternating current it is necessary to 'convert' the alternating current to direct current (with constant voltage and current values) and 'invert' the direct current back to alternating current for onward transmission in the national grid at large converter stations using power electronics devices.

Will the cable corridor diameter be reduced with HVDC technology?

HVDC cable circuits are typically able to transport more power than HVAC cable circuits therefore if using HVDC it is possible we may be able to use a reduced number of circuits (currently the maximum is six circuits) which could result in a narrower corridor being required. We will conduct our assessments based on a realistic worst-case scenario, which could be either HVDC or HVDC technology depending on the receptor.

It should be noted that although it may be possible to reduce the number of cable circuits with HVDC technology (if this becomes a feasible and viable option for the Project), that a HVDC onshore substation solution is anticipated to lead to utilisation of the larger height of the proposed new onshore substation that would need to be built.

Why can't you commit to using DC technology?

At present, all UK offshore wind farms use HVAC technology and the technology, its capabilities and limitations are well understood. To date, HVDC has more commonly been used to transmit electricity from one grid to another in the form of an interconnector and has yet to be applied to any UK offshore wind farms. Although there is some experience in Germany, the structure of this market is quite different to the UK (in that offshore transmission connections are centrally planned and delivered by the onshore utility) and the use of DC technology for the offshore wind farms is still maturing. For an interconnector from one country to another, there is no marine infrastructure other than the cabling itself and therefore interfaces with other systems/marine platforms etc is absent (both ends of the interconnector are on dry land). However, use of DC for wind farms add additional complexity in terms of greater infrastructure interfaces offshore and in some instances technical issues, cost overruns and delays have been experienced. Furthermore, due to the increased complexity of offshore HVDC systems and limited experience, transmission reliability is lower meaning that over time, less offshore wind energy can be transmitted to the grid.

Aside from the technology maturity, there are very few suppliers in the world with the capability of producing and supplying HVDC transmission technology (for the cables and converter stations) that would be needed for a wind farm of this size, and delivery lead times can be considerably longer than for equivalent HVAC systems. In light of the above, there are risks associated with only taking the DC option forward at this time and as the developer, we are responsible for ensuring the proposed development is feasible and can be realised within a reasonable timeframe.

There is a certain level of confidence in the UK wind industry that HVDC technology will become more mature before Hornsea Project Three will connect, but there is currently no certainty. Therefore, committing to solely HVDC now could restrict or even prevent the development of the project in the future if we do not see the necessary developments in the market. We may well eventually choose to opt for HVDC transmission technology; however, it is considered that to only seek a consent (planning permission) for such a technology (and excluding HVAC) at this time could make the eventual Project unbuildable and/or unprofitable.

Due to current uncertainty, a decision on which transmission system to adopt will not be made until post consent after extensive engagement with potential systems suppliers has taken place.

Is cost the only reason you are not committing to HVDC?

No, cost is not the main reason for not committing to HVDC technology, as it is not clear which technology will represent the lowest cost until quotations are received from potential suppliers. As mentioned previously, system reliability, market availability and lead times are also major considerations when selecting a final transmission technology.

What legislation covers these works?

As a Nationally Significant Infrastructure Project (NSIP), the project will be applying for a Development Consent Order (DCO). This process is governed by the Planning Act 2008 and governs the necessary planning and compulsory purchase powers for the project.

Section 2 – Construction Works

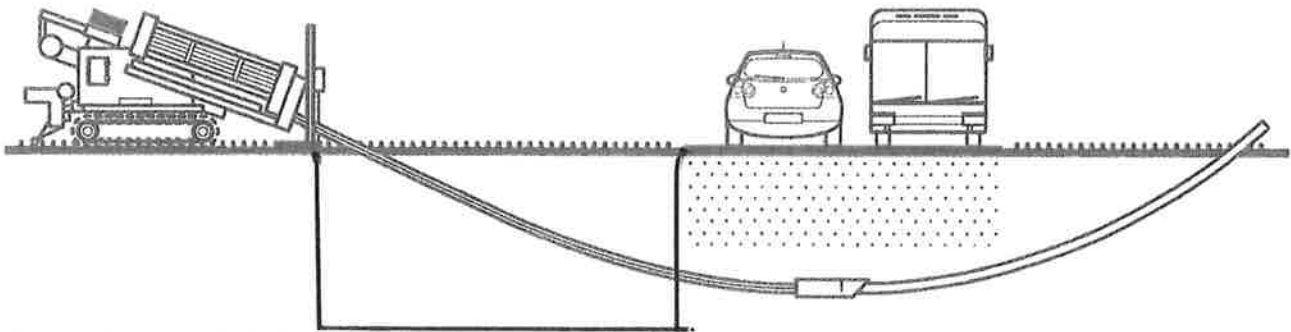
How will you install the cables?

Typically, the onshore cables will be installed using an open cut method. The trenches will be excavated using a mechanical excavator, and the export cables will be installed into the open trench from a cable drum delivered to the site via Heavy Goods Vehicles (HGVs). The cables are buried in a layer of stabilised backfill material that ensure a consistent structural and thermal environment for the cables. The remainder of the trench is then backfilled with the excavated material. Hard protective tiles, and marker tape are also installed in the cable trenches to ensure the cable is not damaged by any third party. Once the trenches are installed and the trenches backfilled, the stored subsoil and topsoil will be replaced and the land reinstated back to its previous use.

We are also considering several different trenchless methods for installing the cables at certain points along the cable route. This could include rivers, woods and major roads. Horizontal Directional Drilling (HDD) is a steerable trenchless method of installing underground cables that enables you to install cables underground over short distances with minimal impact on the surface infrastructure and surrounding area (Figure 6). We have identified over 70 points along the onshore cable route where we are proposing to HDD.



Figure 6: Diagram showing a cable being install using HDD underneath a road.



HDD is generally accomplished in three stages:

1. Directionally drilling a small diameter pilot hole along a designed directional path.
2. Enlarge the pilot hole to a diameter suitable for installing the cable.
3. Pull the cable through the enlarged hole¹.

How deep will you bury the cables?

Individual cables will be buried on land at a minimum depth of 1.2 m depending on ground conditions. Where necessary, due to there being rock, concrete or other obstacles close to the surface, the cables may need to be laid at a shallower depth of no less than 0.7 m. We have increased the minimum burial depth following feedback from farmers who had concerns about the potential interaction with land drains and any deep soil cultivations that they undertake.

How will you preserve the soil structure?

During construction of the cable trenches, the topsoil and subsoil will be stripped and stored on site within the temporary working corridor as construction of each linear section of the cable route advances. The topsoil and subsoil will be stored in separate stockpiles to allow this to preserve soil structure, and to prevent weed build-up and texture damage. We will also have plans for Soil Management, Weed Management and Bio-security.

Will the land be reinstated once the cables have been installed?

Prior to construction commencing a Schedule of Condition of the land will be taken and we have an obligation to return the land in the same state. Once the cables are installed, we will reinstate the land and to ensure it is in no worse a condition than prior to construction. We understand the importance of assessing soil structure before, during and after construction to ensure that the field drainage is maintained and will appoint a Drainage Consultant who will assess and design the mitigation scheme. Further studies into drainage and soil types are required to ensure that this is done correctly and we welcome any input from landowners as we recognise they know their land best. For example, we would be very keen to see copies of drainage plans.

¹ In some cases, ducts may be installed as a result of HDD activities that will then allow for the cables to be pulled through,

We have already spoken with and consulted with many landowners, and farmers' concerns have already fed into the cable route design. We continue to engage with landowners and will appoint an Agricultural Liaison Officer during the construction period to advise and to deal with post-construction concerns to ensure the process is managed properly.

How will you access the onshore cable corridor?

We have identified locations along the cable route where we will access the cable corridor or construction compounds during construction from the public road network. These access points will be set-up in advance of the cable laying. The route and design of these access roads will be agreed with the relevant landowners in advance of construction and where possible we have sought to use existing roads and tracks.

During construction, temporary haul roads will be installed within the 80-metre-wide corridor to facilitate the movement of construction vehicles to the site and to allow trench excavation to take place. The haul road will also help minimise interactions with the local road networks. The topsoil will be stripped and stored before any required temporary roadways are created.

The access points will have different functionalities. Some will be required to access the proposed temporary haul road itself, whereas others will be required to enable access to HDD points so that the drill can be monitored as the works are undertaken. For the latter, it would be a 4x4 or people on foot rather than construction vehicles. Further information on proposed vehicles routes and how this will be managed will be provided in the Environmental Statement that we submit alongside our DCO application.

Can anything go on top of the cable route once it's completed?

It would not be possible to place any type of construction (i.e. buildings) above the cables in case we needed to perform maintenance in the future. It would also not be possible to plant trees above the cables without prior consent to avoid damage from the roots. Hedgerows can remain/be restored and fencing/walls etc. It will be possible to continue farming crops or grazing animals above the cables once construction has completed.

What are the temporary construction compounds used for and where could they be?

Construction compounds of various sizes will be required along the onshore export cable corridor for laydown and storage of materials, plants and staff, as well as space for small temporary offices, welfare facilities, security and parking. This includes crossings of other infrastructure, joint bay and link box construction. The construction compounds will be established pre-construction and remain in place throughout the construction phase, although they may not remain in continual active use. The compounds will be removed and sites restored to their original condition when construction has been completed, unless it is considered necessary to retain some compounds during the commissioning stages of Hornsea Project Three.

We have confirmed the location for the main compound site as Oulton Airfield site in Broadland. This site operate as a central base for the onshore construction works. Up to five secondary compounds (smaller in scale) will also be required along the cable route to facilitate construction works in those areas. These compounds will be used to store equipment and welfare facilities.

What movement/type of vehicles can we expect between these compounds and the route?

Access routes will be required from the nearby road network at various places along the onshore export cable route to access the construction works as well as the various compounds along the route that may be set-up in advance of the cable laying. Vehicle movements will vary depending on their purpose but will include heavy goods vehicles as well as abnormal indivisible loads.

Measures will be implemented to minimise dust, mud and debris associated with the movement of construction vehicles between the compounds and the route, the details of which will be provided in an outline Code of Construction Practice (CoCP) which accompanies the application. Furthermore, prior to the commencement of traffic generating works, a Construction Traffic Management Plan(s) will be agreed with the relevant Local Highway Authority in consultation with the Highways Agency.

Where the cable route crosses woodland, how will this be managed?

Where we cross large sections of woodland, we will install the cable using Horizontal Direction Drilling (HDD) wherever technically possible to do so. This will involve installing the cable using a drill which runs underneath the woodland, so that we can avoid having to remove or clear trees on the surface. We have identified over 70 points along the onshore cable route where we are proposing to HDD. Locations where we are proposing to HDD are marked on the latest plans – view our Interactive Map.

Where the cable route crosses trees or hedgerows, how will this be managed?

The cable route has been designed to avoid hedgerows and trees where possible or drill underneath them using HDD. However, the Project will need to remove some trees permanently and temporarily remove some hedgerows along the cable route to allow for cable laying and to enable installation of temporary access tracks. We recognise that protection and sensitive restoration of hedgerows is important to minimise any negative impact on biodiversity or landscape resulting from loss or reduction in hedgerows and in the few instances where a small section of the hedgerow needs to be temporarily removed, it will of course be handled sensitively.

The replacement of hedgerows at the end of the construction phase to be undertaken will ensure there is no net loss of hedgerow habitat as a result of Hornsea Project Three. Furthermore, restoration of hedgerows, currently in poor condition, provides an opportunity to achieve long term benefits for the biodiversity associated with this habitat type.

How long will it take to install the cables?

The export cables will be installed in sections of between 750 and 2,500 metres at a time, with each section of cable delivered on a cable drum from which it is spooled out as it is installed. The installation of the cable is expected to take up to 30 months in total; however, work is expected to progress along the route with a typical works duration of three months at any one location. Construction may be carried out by multiple teams at more than one location along the cable route at the same time.

Will it all be built at once?

In our Preliminary Environmental Information Report (PEIR), which was published in July 2017 (available on our website www.hornseaproject3.co.uk in the Documents Library), we explained that due to the scale of the proposed development and existing regulatory framework, it could be necessary for Hornsea Project Three to be built out in up to three phases. We received a considerable amount of feedback on this aspect as part of our statutory consultation and through detailed discussions with our technical and commercial teams, we are pleased to confirm that we have been able to **reduce this to up to two phases**.

There are various possible reasons for phasing including constraints in the supply chain or requirements of the government's Contract for Difference subsidy regime which offshore wind farms currently rely on to secure a price for the electricity produced by a project.

Where built in phases, these may overlap or have a gap between the completion of construction of one phase and the start of construction of another. The total durations for each component would not exceed those assessed.

Indicative construction programmes showing how the project could be built out in both a single and two-phased approach will be included in the Environmental Statement that we submit alongside our application. Reducing the maximum number of phases has also enabled us to **reduce the maximum duration over which the onshore construction works could take place**, from eleven (previously presented) to eight years.

Can you avoid constructing during the Summer?

At this early stage in the development process, we do not know the exact timings of works, however wherever possible to do so we would endeavour to avoid the most sensitive times of year within the construction programme.

What are the working hours?

We do not know this until we get into detailed discussions with the relevant local planning authority (LPA), however, there will likely be prescribed acceptable start and end times of construction which are agreed with the LPA both during the working day and in relation to the allowance for weekend working. In certain cases, such as HDD crossings, the project may need to seek to acquire temporary abilities for 24-hour construction. However, this would need to be discussed with the relevant LPA in advance to secure permission, and consider the proximity of residential properties etc.

Will I receive any compensation for having the cables through my land?

Yes, we will compensate landowners who are directly affected by the cable through their land. Compensation is paid for the freehold depreciation of the land affected by the easement and for all reasonable and substantiated losses arising from construction of the project.

Will you pay for my Land Agent and Solicitor fees?

When we discuss the terms of any agreements we will compensate you for any reasonable land agent fees incurred. Where a solicitor's involvement is required to complete any legal agreements, we will also compensate you for their reasonable fees.

What surveys are needed on my land between now and DCO submission?

The majority of onshore survey work that is required prior to the submission of the DCO application is now complete. There are a small number of surveys which are still being conducted in relation to the ecology of the proposed onshore cable route.

I don't want to agree any terms with you, so what will you do then?

We would like to work with landowners as much as possible to resolve any concerns that you may have and reach an agreement by negotiation. However, where we cannot reach an agreement, we will be seeking compulsory acquisition powers within our DCO application so that we can acquire any necessary land rights for the project to be developed.

How will you mitigate damage to environmental schemes?

We are currently undertaking environmental surveys to identify sensitive habitats so that we can avoid these areas where it is reasonably possible to do so and identify appropriate mitigation measures. The impact on these schemes/areas will be reduced and mitigated where possible, however it would be the landowner's responsibility to arrange for the relevant area of land that would be impacted by our installation work to be either removed or temporarily taken out of any relevant scheme.

What are your proposals for dealing with loss of Basic Payment Scheme (BPS) or similar entitlements?

Ørsted will reimburse farmers for any proven loss as a direct result of our work, loss of BPS entitlements will fall under this category.

Who should I be speaking to from Ørsted about my land and any questions that I have?

For any **landowner specific questions**, please contact our Land Agents, Dalcour Maclaren:

Email: HornseaProjectThree@dalcourmaclaren.com

Land Agent dedicated project phone line: 0333 2413 455



SALLE FARMS Co.

Manor Farm, Salle, Norwich, Norfolk NR10 4SF



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Web www.sallefarms.com

Tel +44 (0) 1603 870499
Fax +44 (0) 1603 872614

UK Company Reg. No. 1129012



Hedge line B

Hedge line A

CAWSTON PARISH COUNCIL ADDITIONAL SUBMISSION TO THE HORNSEA THREE AND
NORFOLK VANGUARD EXAMINATIONS.

Cawston Parish Council would like to make this additional submission to both the Hornsea Three and Norfolk Vanguard examinations.

This submission has been copied this email to our MP, Jerome Mayhew, and County and District Councillor, Greg Peck, for their information.

The appended document is a letter from Norfolk County Council to the Norfolk Boreas examination. It is dated 27th April and was published on the PINS website yesterday (28th).

It gives the current NCC view of the proposed Highway Intervention Scheme for Cawston. There are still significant issues with the HIS, even before Broadland District Council can make an informed assessment of environmental matters.

The letter also notes that the Applicant continues to make misleading and selective statements to try to justify its position.

NCC refers to the five alternatives which were listed by Vattenfall at a meeting in February. These are

1. The latest HIS
2. "Bypass". Pre construct a separate haulage road from B1149.
3. "Bypass light". Pre construct a running track from B1149. Some HGV traffic would still use the B1145.
4. Moving the mobilisation area from the B1145 at Salle to the B1149.
5. Setting up a one way circulation where west bound traffic passes through the centre of Cawston while east bound traffic uses minor roads to get to the B1149.

Other solutions such as revisions to the cable route might also have been considered but were not discussed at that meeting.

NCC states that "(Option 1] ... is no longer our preferred solution. In Highway terms the Applicant's Option 2 is preferred as it has the potential to remove all construction traffic from Cawston. Failing that, NCC would also support Options 4; 3; and then Option 1 (listed in order of preference due to traffic impact). NCC does not support Option 5"

This Cawston HIS is intended to be adopted by all three schemes, H3, NV and NB, therefore we ask that any decisions taken on H3 and NV should recognise that the situation regarding traffic in Cawston is not resolved, and should secure appropriate, comprehensive, safeguards for Cawston residents.

Cawston Parish Council
29th April 2020

The Planning Inspectorate
Room 3/13
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Your Ref: EN010087
Date: 27 April 2020

My Ref: 18/01/0091
Tel No.: 01603 223231
Email: john.r.shaw@norfolk.gov.uk

Dear Sir/ Madam

**Application by Norfolk Boreas Limited for the Norfolk Boreas Offshore Windfarm.
Response to the Examining Authority's third round of written questions and
requests for information (ExQ3) Issued on 23 March 2020, together with comments
upon submissions at Deadlines 7 and 8.**

Due to the current COVID-19 crisis and changes to the examination timetable, the Local Highway Authority were unable to provide responses to all documents as submitted at previous deadlines. Responses to your third round questions and our comments on documents submitted at deadlines 7 and 8 are now provided below. We would like to thank the ExA for their understanding in the delay in providing these responses.

We will continue to work with the Applicant towards resolution of outstanding issues and to the provision of a finalised SOCG for Deadline 9 and (if required) a closing statement at Deadline 10.

Rather than provide separate submissions to the ExA's questions; the Applicants responses; and additional submissions at Deadlines 7 & 8, I have attempted to provide a combined response as follows:-

Q3.5.3.8 - Requirement 16 (13): Trenchless installation techniques

1. NCC note the applicant now accepts it would be possible to provide a trenchless crossing design capable of being accommodated within the existing order limits [Applicants response to ExA's third round question Q3.3.0.19].

NCC accept the point that accommodating an HDD at this location would constrain the project design prior to detailed design, however we argue that when balanced against the concerns raised by both NCC and Broadland District Council, the Applicants reason is not sound or justifiable.

It is NCC's position that trenchless crossing is the most appropriate method to minimise the overall impacts. NCC also direct the ExA's attention to the fact that subsequent to our Deadline 5 submission, Broadland District Council have also raised concerns with open cut trenching due to impact upon hedgerow.

2. Whilst NCC disagrees with the Applicants overall assessment in relation to trenchless crossings, nevertheless we do agree that should the SoS be minded to accept trenchless crossing of the B1149, then this location will need to be included as an addition at Requirement 16(13), with reciprocal changes in Schedule 6 and Schedule 8 of the dDCO.

Q3.12.0.2 B1149 Crossing

NCC maintains its view that an open cut method of duct installation at this specific point on the B1149 is not appropriate.

NCC note the Applicant now accepts traffic signals would be required 24 hours a day, reducing the carriageway to one-way flows. With this in mind, we note the Applicants reference to paragraph D5.1.6 of Chapter 8: -

“...On roads where flows are very high, overload of the controlled area is possible and exceptional delays may result. This can occur with two-way flows as low as 1300 vehicles per hour (for sites about 50m long)”

However, the Applicants have only quoted part of the text which goes on to say: -

“...and with a one-way flow of 900 vehicles per hour (for longer sites with balanced flows) with signal control.

The B1149 peak hourly traffic flows (Norfolk Boreas; combined with Hornsea3; plus baseline traffic) are forecast to be in the order of 900 movements and signal control is required for in excess of 50m, thereby reducing the road to single flows. Accordingly exceptional delays may result.

Chapter 8 goes on to say – “...If this is likely to occur, the designer will have to consider the implications and possible alternative options, for example, diversions or restrictions on the hours of working”. Neither of these are possible given (i) the route needs to be kept open for the abnormal loads associated with Hornsea 3 and (ii) traffic signals are required 24 hours per day preventing restrictions on the hours of working.

Whilst NCC have not raised an objection relating to driver delay, nevertheless we wish to point out that such an impact lies on the cusp of acceptability and it is not as clear cut as the Applicants indicate.

NCC recognises that Norse laboratory has provided a construction specification, however the issue of long-term maintenance liability remains a significant concern, particularly given the potential for other future large-scale projects and their associated HGV load movements. Rural road structure can vary greatly, and with an increasing volume of base level traffic (notwithstanding the additional loading from these HGV movements) any weakening of the surface construction derived from breaking open the bound and subgrade layers will greatly increase the risk of carriageway failure for years to come.

NCC notes no detailed project timeframe has been provided and whilst the Applicant states a full and detailed construction method statement could be included within the final CoCP, as secured by Requirement 20(2)(g) of the dDCO, that would be too late to make the appropriate assessment. NCC have not seen a breakdown to show how the figure of **up to** 72 daily additional HGV movements along the B1149 and The Street at Oulton has been derived - for example is that just for one day? We are not clear what “up to” actually means and are not convinced it would be every day for 8 weeks which seems to be implied.

Whilst the Applicants indicate active construction works would not be required outside of construction hours, that does not address the point we make. NCC’s point is that disruption would take place 24 hours per day as a direct result of the traffic signals, including noise associated with traffic stopping and starting at the signals during night-time hours.

NCC note the Applicant’s contractor will be expected to use their best endeavours to programme the works to avoid the cumulative AIL scenario and this is welcomed. It would need to be captured in the final CTMP, if the ExA agrees with the Applicants that open cut trenching is appropriate.

NCC note the Applicants comment that: -

“...NCC’s current position can be interpreted as contradictory; effectively advocating an access with associated traffic management and environmental impact in the same location that the lesser impacts of an open cut trench are objected to.

However, the Applicants are not comparing like with like. NCC’s assessment is that whilst not ideal, trenchless crossing for this location is preferable to open cut trenching. Similarly, whilst an access for a haul road at this location is also far from ideal, nevertheless it is preferable to the alternative of taking the construction traffic through Cawston village.

In conclusion, NCC can see nothing to change the view we have previously expressed and still wish to see a trenchless crossing method employed. NCC believe this to be reasonable, especially given the Applicants acknowledge it is within their ability to provide.

Q3.12.0.4 - B1149 Crossing

In direct response to the ExA’s questions raised during ISH3, the Applicants indicated their sole reasoning for conducting open cut trenching was on environmental grounds. The point NCC makes is the additional loss of hedgerow has only very recently come to light due to amendments to the Applicants traffic management measures. Accordingly it needs to be considered as part of the overall environmental impact.

Q3.12.0.6 Church Road, Colby (open cut trench/ trenchless crossing)

NCC note the Applicants concerns in relation to visibility splay lengths and the duration of the works but remain satisfied that during construction, safety at the temporary accesses could be controlled and managed via appropriate traffic management measures. The exact details can be confirmed within the CTMP post consent. Accordingly, NCC reaffirm that we have no objection to the amendments proposed by NNDC.

Q3.14.0.1 Outline Traffic Management Plan

There remains a possible driver compliance issue with the highway intervention scheme for link 34 at Cawston. Whilst the Applicants have incorporated possible solutions within the Outline CTMP, NCC would like to see the list of solutions expanded with a commitment to reduce the volume of traffic downwards from 239 HGV movements per day until a point is reached where (via on site monitoring) there is no longer a compliance issue - where this proves necessary.

The CTMP still needs to be updated to include the following: -

- Explanation of how condition surveys will be undertaken and monitored.
- A method for undertaking the technical vetting for the detailed design of all off-site highway works.
- Acceptance of responsibility for any part 1 claims under the Land Compensation Act that are directly attributable to the Applicants off-site highway works.

Q3.14.1.2 Highway Intervention Scheme for Link 34 (B1145 through Cawston)

Whilst we have no objection to the Applicants highway intervention scheme (Option 1), nevertheless we have identified a driver compliance issue. This was also identified within the Applicants Road Safety Audit which recommended a review of "...the compliance of drivers following the introduction of the reduced speed limits and introduce further measures if necessary"

If parking occurs outside the designated parking areas; traffic fails to yield at the correct points; or if traffic speeds are much higher than 20mph, the proposed intervention scheme could fail.

Whilst the RSA did not indicate what "further measures" can be introduced, it is NCC's position that the options are limited in the main to: -

- (i) Reducing the volume of traffic passing through Cawston from 239 HGV movements per day until a point is reached where there is no longer a compliance issue. However, we fully understand this would lengthen the duration of the project and impact upon the contractor.

Or

- (ii) Introduce a one-way system with the HGV traffic entering the village but exiting via Option 5. We do not support this option as it has several significant safety problems – see our response to Q3.14.1.8 below.

In response to our concern, the Applicant has agreed to intensify the monitoring regime to facilitate early warning of issues. Whilst this is welcome and would help identify the exact nature of the problem, it does not in itself provide the solution.

The Applicants solution is: -

- Rectify any breach of requirements. We fully accept this may be necessary if the problem is limited to a breach of the requirements, but that is not the issue we have identified.

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- Introduce warning hazard signs. However, we have already identified the points at which poor compliance is likely to occur and there is no realistic prospect of introducing additional signs at those points.
- Introduce mandatory give-way. This does not form part of the current scheme as it could make matters worse.
- Increased parking enforcement. We agree this may be beneficial and necessary but offers only a partial solution.
- A reduction in the cumulative HGV cap (239 HGV movements) by ensuring Norfolk Boreas and Hornsea3 traffic demand does not overlap. We agree this may go some way to addressing the problem but NCC would like to see a commitment to reducing the volume of traffic downwards from 239 HGV movements per day until a point is reached where (via on site monitoring) there is no longer a compliance issue - which is slightly different to the Applicants proposal.

Q3.14.1.4 Highway Intervention Scheme – additional information

NCC have no additional issues to raise

Q3.14.1.5 Road Safety Audit

- (i) NCC agree with the Applicants proposed cutting specification for visibility splays, namely five cuts during the growing season (May to September) applied to the overhanging vegetation.
- (ii) The objective of the road safety audit is to identify aspects of engineering interventions that could give rise to road safety problems and to suggest modifications that could improve road safety. It is important to note that road safety audit is not intended to be a technical check of compliance with design requirements. Whilst the scheme passed the RSA, nevertheless NCC have raised a potential concern regarding driver compliance, namely that drivers may fail to yield at pinch points. See also our response at Q3.14.1.4.

Q3.14.1.7 Cumulative traffic effects in Cawston

NCC have no comments to add.

Q3.14.1.8 Alternative traffic movement through Cawston

At the end of the Vanguard examination, no agreement was reached regarding the acceptability of the Cawston highway intervention scheme. As we indicated within our response to the ExA's first round of written questions for the Boreas hearing (Q1.2.3) submitted on 3 December 2019: -

“The applicants have not submitted any further details to us since the closure of the Norfolk Vanguard hearings. At ISH6 to the Vanguard hearing the County Council indicated the following documents were due to be received from Orstead by 3 May 2019: -

- Topographical Survey
- New ATC speed survey
- Update of the design through Cawston based on the safety audit and NCC comments
- Vehicle traffic through Cawston based on the topographical survey
- Update of the safety audit
- Update of the Caswton report.

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The above was not received prior to the opening of the Boreas examination and the Applicants instead sought to progress the Cawston intervention scheme **during** the examination itself. The ExA will be aware we have only recently received the essential RSA.

It is inevitable views on all sides may change due to receipt of additional information not previously made available and it would be inappropriate to dig our heels in and defend a previous position come what may. Having now received the relevant information, whilst we have no objection to the Applicants highway intervention scheme, which involves directing traffic along Cawston High Street (Option 1), that is no longer our preferred solution.

In highway terms the Applicants Option 2 is preferred as it has the potential to remove all construction traffic from Cawston. Failing that, NCC would also support Options 4; 3; and then Option 1 (listed in order of preference due to traffic impact).

NCC does not support Option 5 as the highway network is not suitable to cater for the traffic proposed due to poor junction alignment; forward visibility issues and unsuitable narrow rural lanes. In addition, the fabric of the road is insufficient to support the volume of HGV use proposed.

The Applicant provided updated drawings for Option 5 during a meeting on the 16th March 2020, however apart from providing 4 additional passing places the updated drawings do not address the concerns we have raised. In addition, it is now evident the Applicants proposal would involve filling in a drainage ditch which (apart from the obvious drainage implications) does not form part of the public highway and lies outside the Applicants order limits.

Whilst not objecting to the Applicants highway intervention scheme (Option 1), nevertheless we have identified a driver compliance issue and we have advised the Applicants they need to look at solutions in advance. We believe there are two possible options – either

- (i) reduce the volume of HGV traffic passing through Cawston down from the capped 239 HGV movements per day (which would lengthen the duration of the project).

Or

- (ii) Introduce a one-way system with HGV's entering the village but exiting via Option 5. As indicated above, we do not support this as it has several significant safety problems and also the fabric of the road is not sufficient to cater for that volume of traffic.

Whilst the Applicants indicate that "...Ultimately, Option 5 is not required to mitigate the impacts on Cawston", nevertheless there is still a driver compliance issue and we do not wish to see the Applicant seek to revert to Option 5 as a means of trying to rectify that issue.

NCC fully accept that traffic management measures potentially lasting 24 months are of a different magnitude to the measures required during a trenched crossing, however our concern related to whether safe traffic management could be provided at all, rather than the duration of the works.

14.2 Cable Logistics Area (CLA) along Link 68 in Oulton - Cycle Routes

Whilst the location has no national, regional or local designation as a cycle route/walking route, nevertheless NCC recognise there will inevitably be some use by NMU's. The only difference being in the level of demand is less.

We note the ExA's observations at USI on 20 January 2020 [EV2-003], and Oulton PC's submission [REP6- 044] but our view remains - the Highway Mitigation Scheme for Link 68 [REP5-026] [REP5- 045] is adequate. The Highway Mitigation Scheme was assessed as part of the RSA conducted by Hornsea3 which included an assessment of suitability for NMU's. The RSA covered the cumulative scenario for all three wind farms.

Q3.14.4.9 Outline Access Management Plan and Access to Works plan

NCC have no issues to raise.

Your faithfully



Senior Engineer - Highways Development Manager
for Executive Director for Community and Environmental Services



Your reference EN010080/H 3WF-SP054

Our reference ELSEM/JOHNMD/43283-2706

18 May 2020

BY EMAIL TO

The Department for Business, Energy and Industrial
Strategy and
The Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Sir or Madam

**Application by Orsted Project Three (UK) Limited (Applicant) for an Order Granting
Development Consent for the Hornsea Project Three Offshore Wind Farm (Order)
Withdrawal of representation by Network Rail Infrastructure Limited (Network Rail) (PINS
Reference No. H 3WF-SP054)**

We act for Network Rail in relation to this matter.

Network Rail has concluded its negotiations with the Applicant regarding the protective provisions to be included in the Order and other property related matters and, as a result, we write to withdraw Network Rail's representation regarding the application for the Order.

Claire Brodrick, solicitor for the Applicant, will shortly be sending to you the agreed version of protective provisions, which we request be included in the final Order, if confirmed, at Part 5 of Schedule 9 to the Order.

Yours faithfully



Addleshaw Goddard LLP

Direct line 0161 934 6272

Email melissa.johnson@addleshawgoddard.com

Copy (by email) Claire Brodrick, Pinsent Masons LLP

LETTER - HORNSEA 3 (ORSTED) DCO - WITHDRAWAL OF NR REPRESENTATION 18_05_20.DOCX [10-38576908-1\43283-2706]

Addleshaw Goddard LLP, Milton Gate, 60 Chiswell Street, London EC1Y 4AG

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From: [BRODRICK Claire](#)
To: [Johnson, Melissa](#); beiseip@beis.gov.uk; [Hornsea Project Three](#)
Cc: [Elsenaar, Marnix](#); [Richard Grist](#); [PHILLIPS Gareth](#); KALEY@orsted.co.uk; [COLE Peter](#); [René Agusti Agut Frydshou](#)
Subject: RE: Orsted Hornsea Project Three (UK) Ltd application for a DCO: Protective Provisions for the benefit of Network Rail and withdrawal of Network Rail's representation [ADDGDD-Live.FID2981243] [PM-AC.FID3180380]
Date: 18 May 2020 17:43:06
Attachments: [Schedule 1 PP NR - agreed PPs for submission to SoS 12_02_20.docx](#)
[The Hornsea Three Offshore Wind Farm Order NR PPs Submitted to SoS.DOC](#)

Dear Sir or Madam

I act for Orsted Hornsea Project Three (UK) Limited

Further to the email below from Network Rail's solicitors, please find attached the agreed form of protective provision. The Applicant and Network Rail request that the agreed wording is included in Part 5 of Schedule 9 to the made Order should the Secretary of State decide to grant the DCO.

I have also attached a SI version of the draft DCO containing the agreed protective provisions in case it is of assistance.

I should be grateful if you would acknowledge receipt of this email.

Yours faithfully

Claire Brodrick
Senior Associate
for Pinsent Masons LLP

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From: Johnson, Melissa [mailto:Melissa.Johnson@addleshawgoddard.com]
Sent: 18 May 2020 16:46
To: BEISEIP@BEIS.GOV.UK; HornseaProjectThree@pins.gsi.gov.uk
Cc: [Elsenaar, Marnix](#); [BRODRICK Claire](#)
Subject: [EXTERNAL] Orsted Hornsea Project Three (UK) Ltd application for a DCO: Protective Provisions for the benefit of Network Rail and withdrawal of Network Rail's representation [ADDGDD-Live.FID2981243]

For the attention of Gareth Leigh, Head of Energy Infrastructure Planning

Dear Sir

We act for Network Rail Infrastructure Limited.

Please find attached our letter regarding the above, which we send on Network Rail's behalf.

Yours faithfully

Addleshaw Goddard LLP

Melissa Johnson

Consultant

for Addleshaw Goddard LLP

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PART 5

PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

1. The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15 any other person on whom rights or obligations are conferred by that paragraph.

2. In this part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as amended from time to time, granted to Network Rail by the Secretary of State in exercise of powers under section 8 of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at 1 Eversholt Street, London, 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(b)) 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; “plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised project as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and for the avoidance of doubt includes the exercise of the powers conferred by article 4 (*powers to maintain authorised project*), article 12 (*access to works*), article 15 (*discharge of water*), article 17 (*authority to survey and investigate the land onshore*); article 34 (*felling or lopping of trees and removal of hedgerows*) and article 35 (*trees subject to tree preservation orders*) in respect of any railway property.

3.—(1) Where under this Part Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised project pursuant to this Order.

4.—(1) The undertaker must not exercise the powers conferred by article 18 (compulsory acquisition of land), article 20 (compulsory acquisition of rights), article 21 (private rights), article 23 (acquisition of subsoil only), article 26 (temporary use of land for carrying out the authorised project), article 27 (temporary use for land for maintaining the authorised project) 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.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act or article 28 (statutory undertakers), 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.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(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 must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 37 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the

further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(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 without 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.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the opinion of the engineer should 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 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 work must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the undertaker must, regardless of any approval described in paragraph 6(1)(a), make good such damage and pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) 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 24 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 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.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker must pay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, 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;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, need to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified work, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

“EMF” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the authorised 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 project) 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.

(2) This paragraph applies to EMI only to the extent that the EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised project giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised project 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;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can reasonably be prevented only by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but Network Rail may, in its reasonable discretion select the means of prevention and the method of their execution, and in relation to such modifications paragraph 5(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of the commercial operation of the authorised project and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised 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 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 subparagraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of the EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of the EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or the EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to subparagraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those subparagraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(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(7), 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.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph is deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 37(1) (Arbitration) to the Secretary of State shall be read as a reference to the Institution of Engineering and Technology for appointment of an arbitrator.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work, provided that at least 56 days' prior notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, are to be paid by the undertaker to Network Rail.

15.—(1) The undertaker must—

(a) pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part (but subject to the provisions of this paragraph) which may be occasioned to or reasonably incurred by Network Rail by reason of—

- (i) the construction or maintenance of a specified work or the failure of such a work; or
- (ii) any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

(b) indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission.

(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 shall 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.

(4) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the 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.

(6) The obligation under sub-paragraph (4) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (5).

(7) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by a train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. 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 (including the amount of the relevant costs mentioned in paragraph 15) 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 (including any claim relating to those relevant costs).

17. 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.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works plans and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

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 28 days before any such application is made and must describe or give (as appropriate)—

- (a) whether the application is for consent pursuant to article 5(a) or 5(b);
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made

21. In relation to any dispute arising under this Part (except for those disputes referred to in paragraph 11(11)) the reference in article 37(1) (Arbitration) to the Secretary of State shall be read as a reference to the President of the Institution of Civil Engineers for appointment of an arbitrator.

22. In relation to any dispute arising under this Part that is referred to arbitration in accordance with article 37 (Arbitration) of the Order, the parties agree that the timetable referred to in paragraph 3 of Schedule 13 (Arbitration Rules) will be amended 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.

23. 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 36 (certification of plans and documents etc) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format reasonably specified by Network Rail.

202* No. 0000

INFRASTRUCTURE PLANNING

The Hornsea Three Offshore Wind Farm Order

Made - - - - []

Coming into force - - []

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An application has been made to the Secretary of State for an order under the Planning Act 2008 (“the 2008 Act”)(a).

The application was examined by the Examining Authority, which has made a report to the Secretary of State under section 74(2) of the 2008 Act.

(a) 2008 c.29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20).

The Examining Authority, having considered the application together with the documents that accompanied it, and the representations made and not withdrawn, has, in accordance with section 74 of the 2008 Act made a report and recommendation to the Secretary of State.

The Secretary of State has considered the report and recommendation of the Examining Authority, has taken into account the environmental information in accordance with regulation 3 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009(a) and has had regard to the documents and matters referred to in section 104(2) of the 2008 Act.

The Secretary of State, having decided the application, has determined to make an Order giving effect to the to the proposals comprised in the application on the terms in the opinion of the Secretary of State are not materially different from those proposed in the application.

The Secretary of State is satisfied that open space within the Order land, when burdened with any new rights authorised for compulsory acquisition under the terms of this Order, will be no less advantageous than it was before such acquisition, to the persons whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public, and that, accordingly, section 132(3) of the 2008 Act applies.

The Secretary of State, in exercise of the powers conferred by sections 114 and 120 of the 2008 Act, makes the following Order—

PART 1 PRELIMINARY

Citation and commencement

1. This Order may be cited as the Hornsea Three Offshore Wind Farm Order and comes into force on [] 202[].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(b);

“the 1965 Act” means the Compulsory Purchase Act 1965(c);

“the 1980 Act” means the Highways Act 1980(d);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(e);

“the 1989 Act” means the Electricity Act 1989(f);

“the 1990 Act” means the Town and Country Planning Act 1990(g);

“the 1991 Act” means the New Roads and Street Works Act 1991(h);

(a) S.I. 2009/2263. Regulation 3 was amended by S.I. 2012/635 and S.I. 2012/787. S.I. 2009/2263 was revoked by S.I. 2017/572, but continues to apply to this application for development consent by virtue of transitional provisions contained in Regulation 37(2) of that instrument.

(b) 1961 c.33

(c) 1965 c.56

(d) 1980 c.66

(e) 1981 c.66

(f) 1989 c.29

(g) 1990 c.8

(h) 1991 c.22. Section 48(sA) was inserted by section 124 of the Local Transport Act 2008 (C.26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18)

“the 2004 Act” means the Energy Act 2004(a);

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009(b);

[“the 2011 Regulations” means the Marine Licensing (Licence Application Appeals) Regulations 2011(c);]

“access to works plan” means the plan or plans certified as the access to works plan or plans by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“ancillary works” means the ancillary works described in Part 2 of Schedule 1 (ancillary works) and any other works authorised by this Order and which are not development within the meaning of section 32 of the 2008 Act;

“authorised development” means the development and associated development described in Part 1 of Schedule 1;

“authorised project” means the authorised development and the ancillary works authorised by this Order;

“the book of reference” means the document certified by the Secretary of State as the book of reference for the purposes of the Order under article 36 (certification of plans and documents etc);

“box-type gravity base foundation” means a structure principally of steel, concrete, or steel and concrete with a square base which rests on the seabed 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;

“buoy” means any floating device used for navigational purposes or measurement purposes;

“cables” means up to 600kV cables for the transmission of electricity, including one or more cable crossings;

“cable circuits” means a number of electrical conductors necessary to transmit electricity between two points within the authorised development; this comprises, in the case of HVAC transmission, three conductors which may be bundled as one cable or take the form of three separate cables, and, in the case of HVDC transmission two conductors, which may be attached together or take the form of single cables, and in either case the circuit may include one or more auxiliary cables (normally fibre optic cables) for the purpose of control, monitoring, protection or general communications;

“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;

“cable protection” means physical measures for the protection of cables including but not limited to concrete mattresses, with or without frond devices, and/or rock placement (but not material used for cable crossings);

“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 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 onshore site preparation works and the words “commencement” and “commenced” must be construed accordingly;

(a) 2004 c.20
(b) 2009 c.23
(c) S.I. 2011/934

“connection works” means Work Nos. 6 to 15 and any related further associated development in connection with those works;

“construction compound” means a construction site associated with the connection works including central offices, welfare facilities, and storage for construction of the authorised project;

“deemed marine licences” means the marine licences set out in Schedules 11 and 12;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“frond devices” means flow energy dissipation devices, which reduce current velocity and turbulence and encourage settlement of sediment;

“gravity base foundation” means a structure principally of steel, concrete, or steel and concrete with a base which tapers as it rises which rests on the seabed 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;

“highway” and “highway authority” have the same meaning as in the 1980 Act^(a)

“horizontal directional drilling” refers to a boring technique involving drilling in an arc between two points;

“horizontal directional drilling compound” means a construction site associated with the connection works where horizontal directional drilling or other trenchless construction technique is proposed including hard standing, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas comprising water and bentonite tanks, pumps and pipes, areas for welfare facilities including offices and canteen and washroom facilities, wheel washing facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“HVAC” means high voltage alternating current;

“HVDC” means high voltage direct current;

“in-principle Hornsea Three Southern North Sea Special Area of Conservation Site Integrity Plan” means the document certified as the in-principle Hornsea Three Southern North Sea Special Area of Conservation Site Integrity Plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“in-principle MEEB plan” means the document certified as the in-principle MEEB plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“intrusive activities” means activities including anchoring of vessels, jacking up of vessels, depositing soil and seabed clearance;

“jacket foundation” means a lattice type structure constructed of steel, which may include scour protection and additional equipment such as, J-tubes, corrosion protection systems and access platforms;

“joint bay” means 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;

“kittiwake compensation strategy” means the document certified as the kittiwake compensation strategy by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“land plan” means the plan or plans certified as the land plan or plans by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

(a) “highway” is defined in section 328(1) for “highway authority” see section 1

“LAT” means lowest astronomical tide;

“lead local flood authority” has the meaning in section 6(7) of the Flood and Water Management Act 2010(a);

“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;

“location plan” means the plan or plans certified as the location plan or plans by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace, to the extent assessed in the environmental statement; and “maintenance” must be construed accordingly;

“the Markham’s Triangle exclusion zone plan” means the plan certified by the Secretary of State as the Markham’s Triangle exclusion zone plan for the purposes of the Order under article 36 (certification of plans and documents etc);

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“mean low water springs” or “MLWS” means the lowest level which spring tides reach on average over a period of time;

“MMO” means the Marine Management Organisation;

“monopile foundation” means a steel pile, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“offshore accommodation platform” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing housing accommodation, storage, workshop, auxiliary equipment, and facilities for operating, maintaining and controlling the wind turbine generators;

“offshore electrical installations” means the offshore type 1 substations, the offshore type 2 substations, the offshore subsea HVAC booster stations and the offshore HVAC booster stations forming part of the authorised development;

“offshore HVAC booster station” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing—

- (a) electrical equipment required to provide reactive power compensation; and
- (b) housing accommodation, storage, workshop, auxiliary equipment, and facilities for operating, maintaining and controlling the substation;

“offshore subsea HVAC booster station” means a sealed steel or concrete structure located under the surface of the sea, attached to the seabed by means of a foundation, containing electrical equipment required to provide reactive power compensation;

“offshore substation” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing—

- (a) electrical equipment required to switch, transform, convert electricity generated at the wind turbine generators to a higher voltage and provide reactive power compensation; and
- (b) housing accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or wind turbine generators;

“offshore type 1 substation” means the smaller version of the offshore substations assessed in the environment statement;

(a) 2010 c.29

“offshore type 2 substation” means the larger version of the offshore substations assessed in the environment statement;

“offshore works” means Work Nos. 1, 2, 3, 4 and 5 and any related further associated development in connection with those works;

“onshore construction works” means—

- (a) temporary haul roads;
- (b) vehicular accesses; and
- (c) construction compound(s), or if horizontal directional drilling is to be used, horizontal directional drilling compound(s).

“onshore HVAC booster station” means a compound, containing electrical equipment required to provide reactive power compensation, and auxiliary equipment and facilities for operating, maintaining and controlling the substation, with external landscaping and means of access;

“onshore HVDC/HVAC substation” means a compound, comprising the onshore HVDC converter station or the onshore HVAC substation, containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation, with external landscaping and means of access;

“onshore site preparation works” means operations consisting of site clearance, 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;

“the Order land” means the land shown on the land plans which is within the limits of land to be acquired or used and described in the book of reference;

“the offshore Order limits and grid coordinates plan” means the plan or plans certified by the Secretary of State as the offshore Order limits and grid coordinates plan for the purposes of the Order under article 36 (certification of plans and documents etc);

“the onshore Order limits plan” means the plans certified by the Secretary of State as the onshore Order limits plan for the purposes of the Order under article 36 (certification of plans and documents etc);

“the Order limits” means the limits shown on the offshore Order limits and grid coordinates plan and the onshore Order limits plan within which the authorised project may be carried out, whose grid coordinates seaward of MHWS are set out in paragraph 1 of Part 1 of Schedule 1 to this Order;

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“outline construction traffic management plan” means the document certified as the outline construction traffic management plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“outline ecological management plan” means the document certified as the outline ecological management plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“outline landscape plan” means the document certified as the outline landscape plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“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);

“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 36 (certification of plans and documents etc);

“pin piles” means steel cylindrical piles driven and/or drilled into the seabed to secure jacket foundations;

“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 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;

“pontoon gravity base 2 foundation” means a structure principally of steel, concrete, or steel and concrete with a base made up of a pontoon arranged in a rectangle around an open centre which rests on the seabed 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;

“public rights of way plan” means the plan or plans certified as the temporary stopping up of public rights of way plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“relevant planning authority” means the district planning authority for the area in which the land to which the relevant provision of this Order applies is situated;

“requirements” means those matters set out in Part 3 of Schedule 1 (requirements) to this Order;

“sandbanks compensation strategy” means the document certified as the sandbanks compensation strategy by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“scour protection” means measures to prevent loss of seabed sediment around any structure placed in or on the seabed by use of protective aprons, mattresses with or without frond devices, or rock and gravel placement;

“SNCB” means an organisation charged by government with advising on nature conservation matters;

“street” means a street within the meaning of section 48 of the 1991 Act^(a), together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act^(b);

“streets plan” means the plan or plans certified as the streets plan or plans by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“suction bucket” means a steel cylindrical structure attached to the legs of a jacket foundation which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

“mono suction bucket foundation” means a steel cylindrical structure which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential, and may include scour protection and additional equipment such as J-tubes;

“transition joint bay” means the underground concrete bays in Work No. 7 where the offshore export cable circuits comprised in Work No. 6 are jointed to the onshore export cable circuits;

“transition piece” means the metal structure attached to the top of the foundation where the base of the wind turbine generator is connected and may include additional equipment such as J-tubes, corrosion protection systems, boat access systems, access platforms, craneage, electrical transmission equipment and associated equipment;

(a) Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c.26).

(b) “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act (c.7)

“tree preservation order and hedgerow plan” means the plan or plans certified as the tree preservation order and hedgerow plan or plans by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“undertaker” means Orsted Hornsea Project Three (UK) Limited (company number 08584210);

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation or transition piece; and

“works plan” means the plan or plans certified as the works plan by the Secretary of State for the purposes of the Order under article 36 (certification of plans and documents etc).

(2) References in this Order to rights over land include references to rights to do or restrain or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over the land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or which is an interest otherwise comprised in the Order land.

(3) All distances, directions, capacities and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development shall be taken to be measured along that work.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(5) Unless otherwise stated, references in this Order to points identified by letters are to be construed as references to the points so lettered on the works plan.

(6) The expression “includes” is to be construed without limitation unless the contrary intention appears.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Subject to the requirements, Work Nos. 1 to 5 must be constructed within the Order limits seaward of MHWS and Work Nos. 6 to 15 must be constructed within the Order limits landward of MHWS.

Power to maintain authorised project

4.—(1) The undertaker may at any time maintain the authorised project, except to the extent that this Order or an agreement made under this Order provides otherwise.

(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain any further licence under Part 4 of the 2009 Act (marine licensing) for offshore works not covered by the deemed marine licences.

Benefit of the Order

5.—(1) Subject to paragraph (3), the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including the deemed marine licences, in whole or in part) and such related statutory rights as may be agreed between the undertaker and the transferee; and
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of the Order (including the deemed marine licences, in whole or in part) and such related statutory rights as may be so agreed.

except where paragraph (8) applies, in which case no consent of the Secretary of State is required.

(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.

(3) The undertaker shall consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application and the Secretary of State shall provide a response within four weeks of receipt of the notice.

(4) The Secretary of State shall consult the MMO before giving consent to the transfer or grant to another person of the whole or part of the benefit of the provisions of the deemed marine licences.

(5) The Secretary of State shall determine an application for consent made under this article within a period of eight weeks commencing on the date the application is received by the Secretary of State, unless otherwise agreed in writing with the undertaker.

(6) Where the Secretary of State is minded to refuse an application for consent made under this article 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 (5), the undertaker may refer the matter for determination in accordance with article 37 (arbitration).

(7) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit, under paragraph (1)—

- (a) the benefit transferred or granted (“the transferred benefit”) shall include any rights that are conferred, and any obligations that are imposed, by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit shall reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit shall not be enforceable against the undertaker; and
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(8) This paragraph applies to any provisions of this Order and its related statutory rights where—

- (a) the transferee or lessee is the holder of a licence under section 6 of the 1989 Act; or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made,
 - (ii) any such claim has been made and has been compromised or withdrawn,
 - (iii) compensation has been paid in final settlement of any such claim,

- (iv) payment of compensation into court has taken place in lieu of settlement of any such claim, or
- (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation shall be payable.

(9) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State, and if such transfer or grant relates to the exercise of powers in their area, to the MMO and the relevant planning authority.

(10) The notice required under paragraphs (3) and (9) must—

- (a) state—
 - (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
 - (ii) subject to paragraph (11), the date on which the transfer will take effect;
 - (iii) the provisions to be transferred or granted; and
 - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (7)(c), will apply to the person exercising the powers transferred or granted; and
 - (v) where paragraph (8) does not apply, confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land.
- (b) be accompanied by—
 - (i) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
 - (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

(11) The date specified under paragraph (10)(a)(ii) in respect of a notice served in respect of paragraph (9) must not be earlier than the expiry of five days from the date of the receipt of the notice.

(12) The notice given under paragraph (9) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

(13) Sections 72(7) and (8) of the 2009 Act do not apply to a transfer or grant of the whole or part of the benefit of the provisions of the deemed marine licences to another person by the undertaker pursuant to an agreement under paragraph (1).

(14) The provisions of articles 8 (street works), 10 (temporary stopping up of streets), 18 (compulsory acquisition of land), 20 (compulsory acquisition of rights), 26 (temporary use of land for carrying out the authorised project) and 27 (temporary use of land for maintaining the authorised project) shall have effect only for the benefit of the named undertaker and a person who is a transferee or lessee who is also—

- (a) in respect of Work Nos. 6 to 15 a person who holds a licence under the 1989 Act, or
- (b) in respect of functions under article 8 (street works) relating to street, a street authority.

Application and modification of legislative provisions

6. The following provisions do not apply in relation to the construction or works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project—

- (a) Regulation 6 of the Hedgerows Regulations 1997^(a) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—
 - “or (k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”.

(a) SI 1997/1160

- (b) the provisions of the Neighbourhood Planning Act 2017^(a) insofar as they relate to temporary possession of land under articles 26 (temporary use of land for carrying out the authorised project) and 27 (temporary use of land for maintaining the authorised project) of this Order.

Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990^(b) (summary proceedings by a person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction, maintenance or decommissioning of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), or the Control of Pollution Act 1974^(c); or
 - (ii) is a consequence of the construction, maintenance or decommissioning of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
 - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project with is being used in compliance with requirement 21 (control of noise during the operational phase); or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction, maintenance or decommissioning of the authorised project.

PART 3

STREETS

Street works

8.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule 2 (Streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus under the street;

(a) 2017 c.20

(b) 1990 c.43 There are amends to this Act which are not relevant to the Order.

(c) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to the Order.

- (d) maintain apparatus under the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Application of the 1991 Act

9.—(1) The provisions of the 1991 Act mentioned in paragraph (2) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

- (a) the carrying out of works under article 8 (street works); and
- (b) the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under article 10 (temporary stopping up of streets),

whether or not the carrying out of the works or the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act^(a) are—

- (a) subject to paragraph (3), section 55 (notice of starting date of works);
- (b) section 57 (notice of emergency works);
- (c) section 60 (general duty of undertakers to co-operate);
- (d) section 68 (facilities to be afforded to street authority);
- (e) section 69 (works likely to affect other apparatus in the street);
- (f) section 76 (liability for cost of temporary traffic regulation);
- (g) section 77 (liability for cost of use of alternative route); and
- (h) all provisions of that Act that apply for the purposes of the provisions referred to in sub-paragraphs (a) to (g).

(3) Section 55 of the 1991 Act as applied by paragraph (2) has effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

Temporary stopping up of streets

10.—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limiting paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limiting paragraph (1), the undertaker may temporarily stop up, alter or divert the streets set out in column (2) of Schedule 3 (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.

(a) Sections 55, 57, 60, 68 and 69 were amended by the Traffic Management Act 2004 (c.18)

(5) The undertaker must not temporarily stop up, alter, divert or use as a temporary working site—

- (a) any street referred to in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority, which may attach reasonable conditions to the consent.

(6) Any person who suffers loss by the suspension of any public right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b) that street authority is deemed to have granted consent.

Temporary stopping up of public rights of way

11. The undertaker may, in connection with the carrying out of the authorised project, temporarily stop up each of the public rights of way specified in column (2) of Schedule 4 (public rights of way to be temporarily stopped up) to the extent specified in column (3), by reference to the letters shown on the temporary stopping up of rights of way plan.

Access to works

12.—(1) The undertaker may, for the purposes of the authorised project—

- (a) form, lay out and maintain a means of access, or improve or maintain an existing means of access, in the locations specified in columns (1) and (2) of Schedule 5 (access to works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority in accordance with requirement 11 (highway accesses), form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

(2) If the relevant planning authority fails to notify the undertaker of its decision within 28 days of receiving an application for approval under paragraph (1)(b) that relevant planning authority is deemed to have granted approval.

Agreements with street authorities

13.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) any temporary stopping up, alteration or diversion of a street authorised by this Order; or
- (b) the carrying out in the street of any of the works referred to in article 8(1) (street works).

(2) Such agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

Power to alter layout etc. of streets

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—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;

(b) make and maintain passing place(s).

(2) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

(3) The powers conferred by paragraph (1) must not be exercised without the consent of the street authority.

(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.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

15.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may inspect, lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain subject to the obtaining of consent and approval respectively pursuant to paragraphs (3) and (4) below.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not carry out any works to any public sewer or drain pursuant to article 15(1) except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and

(b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 have the same meaning as in those Regulations.

(a) 1991 c.56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c.43) and sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(b) S.I. 2016/1154

(9) If a person who receives an application for consent or approval fails to notify the undertaker of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

Protective work to buildings

16.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised project; or
- (b) after the completion of that part of the authorised project in the vicinity of the building at any time up to the end of the period of five years beginning with the day on which that part of the authorised project is first opened for use.

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building, the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land that is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works to a building;
- (b) a power under paragraph (3) to enter a building and land within its curtilage;
- (c) a power under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a power under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise the power and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 37 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of the powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the day on which the part of the authorised project carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised project,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article “protective works”, in relation to a building, means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused to the building by the carrying out, maintenance or use of the authorised project; and
- (b) any works the purpose of which is to remedy any damage that has been caused to the building by the carrying out, maintenance or use of the authorised project.

Authority to survey and investigate the land onshore

17.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including the digging of trenches; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes may be made under this article—

- (a) in land forming a railway without the consent of Network Rail^(a);
- (b) in land held by or in right of the Crown without the consent of the Crown;
- (c) in land located within the highway boundary without the consent of the highway authority; or
- (d) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld or delayed.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

(a) As defined in Part 5 of Schedule 9 (Protection for Network Rail Infrastructure Limited).

- (a) under paragraph (4)(c) in the case of a highway authority; or
- (b) under paragraph (4)(d) in the case of a street authority;

that authority is deemed to have granted consent.

(7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

18.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project or to facilitate, or is incidental, to it.

(2) This article is subject to paragraph (2) of article 20 (compulsory acquisition of rights) and article 26 (temporary use of land for carrying out the authorised project).

Time limit for exercise of authority to acquire land compulsorily

19.—(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 is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 19 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 26 (temporary use of land for carrying out the authorised project) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

20.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 21 (private rights) and article 28 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 6 (land in which only new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act, and Schedule 2A (counter-notice requiring purchase of land) (as substituted by paragraph 10 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 an existing right over land or restrictive covenant under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

Private Rights

21.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 18 (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 18 (compulsory acquisition of land)—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 20 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(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.

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 28 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of the land,
 - (iii) the undertaker's entry onto the land, or
 - (iv) the undertaker's taking temporary possession of the land,that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If an agreement referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

the agreement is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(8) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

22.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(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.”

(4) In Section 5(2) (earliest date for execution of declaration) omit the words from “and this subsection” to the end.

(5) Section 5A (time limit for general vesting declaration) is omitted(a).

(6) In section 5B (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent) the seven year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the Hornsea Three Offshore Wind Farm Order 202[]”.

(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”.

(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)”.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 23(1) (acquisition of subsoil only) of the Hornsea Three Offshore Wind Farm Order 202[], which excludes the acquisition of subsoil only from this Schedule.”

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 24 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

23.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) or article 20 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil only—

(a) Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c.22).

- (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 acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Modification of Part 1 of the Compulsory Purchase Act 1965

24.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(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 19 (time limit for exercise of authority to acquire land compulsorily) of the Hornsea Three Offshore Wind Farm Order 202[]”.

(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”.

(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 19 (time limit for exercise of authority to acquire land compulsorily) of the Hornsea Three Offshore Wind Farm Order 202[]”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

- (a) for paragraphs 1(2) and 14(2) substitute—
 - “(2) But see article 23(3) (acquisition of subsoil only) of the Hornsea Three Offshore Wind Farm Order 202[], which excludes the acquisition of subsoil only from this Schedule”; and
- (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 article 16 (protective work to buildings), article 26 (temporary use of land for carrying out the authorised development) or article 27 (temporary use of land for maintaining the authorised development) of the Hornsea Three Wind Farm Order 202[].”

Rights under or over streets

25.—(1) The undertaker may enter on and appropriate so much of the subsoil of or air-space over any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised project.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised project

26.—(1) The undertaker may, in connection with the carrying out of the authorised project—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a working site with access to the working site in connection with the authorised project;
- (e) construct any works, or use the land, as specified in relation to that land in column 3 of Schedule 8 (land of which temporary possession may be taken), or any mitigation works;
- (f) construct such works on that land as are mentioned in Part 1 of Schedule 1 (authorised development); and
- (g) carry out mitigation works required pursuant to the requirements in Schedule 1.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article

- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule 8 (land of which temporary possession may be taken); or
- (b) in the case of land specified in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the part of the authorised project for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace any building, structure, drain or electric line removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 2 (streets subject to street works); or
- (d) restore the land on which any works have been carried out under paragraph (1)(g) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 1.

(5) The undertaker must pay compensation to the owners and occupiers of land which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 20 (compulsory acquisition of rights) to the extent that such land is listed in column (1) of Schedule 6; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 23 (acquisition of subsoil only).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised project

27.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised project; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article "the maintenance period", in relation to any phase of the authorised project as approved under requirement 6, means the period of 5 years beginning with the date on which a phase of the authorised project first exports electricity to the national electricity transmission network [except where the authorised development consists of the maintenance of any tree or shrub pursuant to requirement 9 where "the maintenance period" means a period of 10 years beginning with the date on which that tree or shrub is first planted].

Statutory undertakers

28. Subject to the provisions of Schedule 9 (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plan within the Order land; and
- (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Recovery of costs of new connections

29.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 28 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 28 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the 2003 Act; and

“public utility undertaker” has the same meaning as in the 1980 Act.

PART 6 OPERATIONS

Operation of generating station

30.—(1) The undertaker is hereby authorised to operate the generating station comprised in the authorised project.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

Deemed marine licences under the 2009 Act

31. The deemed marine licences set out in Schedules 11 (deemed generator assets marine licence under the 2009 Act) and 12 (deemed transmission assets marine licence under the 2009 Act) respectively, are deemed to be granted to the undertaker under Part 4 of the 2009 Act for the licensed marine activities set out in Part 1, and subject to the conditions set out in Part 2 of each of those Schedules.

PART 7 MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

32.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants may prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

33. Development consent granted by this Order is treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

Felling or lopping of trees and removal of hedgerows

34.—(1) 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.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not do any unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purpose of the authorised project—

- (a) subject to paragraph (2) above, remove any hedgerows within the Order limits and specified in Schedule 10, Part 1 (removal of hedgerows) that may be required for the purposes of carrying out the authorised project; and
- (b) remove the important hedgerows as are within the Order limits and specified in Schedule 10, Part 2 (removal of important hedgerows).

(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997.

Trees subject to tree preservation orders

35.—(1) 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 14 May 2018 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 onshore site preparation works the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker shall do no unnecessary damage to any tree and shall pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

Certification of plans and documents, etc.

36.—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—

- (a) the access to works plan;

- (b) the book of reference;
- (c) the crown land plans – onshore and offshore;
- (d) the design objectives and principles;
- (e) the Development Principles;
- (f) the environmental statement;
- (g) the in-principle Hornsea Three Southern North Sea Special Area of Conservation Site Integrity Plan;
- (h) the in-principle MEEB plan;
- (i) the in-principle monitoring plan;
- (j) the kittiwake compensation strategy;
- (k) the land plans;
- (l) the location plans;
- (m) the Markham’s Triangle exclusion zone plan;
- (n) the offshore Order limits and grid coordinates plan;
- (o) the onshore limits of deviation plan;
- (p) the onshore Order limits plan;
- (q) the outline construction management plan;
- (r) the outline construction traffic management plan;
- (s) the outline code of construction practice;
- (t) the outline ecological management plan;
- (u) the outline fisheries coexistence and liaison plan;
- (v) the outline landscape plan;
- (w) the outline offshore written scheme of investigation;
- (x) the outline onshore written scheme of investigation;
- (y) the public rights of way plan;
- (z) the sandbanks compensation strategy;
- (aa) the streets plan;
- (bb) the tree preservation order and hedgerow plan; and
- (cc) the works plans.

(2) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies that provision by number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made;

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

Arbitration

37.—(1) Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 13 of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Where the referral to arbitration under paragraph (1) relates to a difference with the Secretary of State, in the event that the parties cannot agree upon a single arbitrator within the specified time period stipulated in paragraph (1), either party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

(3) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

Requirements, appeals, etc.

38.—(1) Sub-section (1) of section 78 of the 1990 Act applies to the development consent granted by this Order and to the requirements except that it is modified so as to read for the purposes of this Order only as follows—

(a) after “local planning authority” insert “or Secretary of State”

(b) after subsection (b) insert the following—

“refuse or fails to determine an application for any consent, agreement or approval of that authority required by a requirement imposed on a grant of development consent or contained in a development consent order, or grant it subject to conditions; or”

(c) after Sub-section (1), insert the following—

“(1A) Where the appeal under sub-section (1) relates to a decision by the Secretary of State, the appeal shall be decided by a Secretary of State who would not be responsible for determining an application for development consent with the subject matter of the Hornsea Three Offshore Wind Farm Order 202[] if section 103(1) of the 2008 Act applied.”

(2) Sections 78 and 79 of the 1990 Act have effect in relation to any appeal under the terms of this article except that the Secretary of State in question is the Secretary of State who would be responsible for determining an application for development consent with the subject matter of this Order if section 103(1) of the 2008 Act applied.

(3) The terms of any development order, and other rules and regulations which apply to applications pursuant to conditions or the subject matter of section 78 of the 1990 Act apply, insofar as they are not inconsistent with the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and any other orders, rules or regulations made under the 2008 Act, to any application or appeal made under the requirements specified in paragraph (1).

(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 paragraph (5).

(5) The 2011 Regulations are modified so as to read for the purposes of this Order only as follows—

(a) In regulation 6(1) (time limit for the notice of appeal) for the words “6 months” there is substituted the words “4 months”.

(b) 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 202[] may by notice appeal against a decision to refuse such an application or a failure to determine such an application.”

(c) 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
”

- (d) 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”.
- (e) 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”
- (f) 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”.
- (g) 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”.
- (h) For regulation 18(4) substitute—
“Subject to paragraphs (1) and (3), each party should bear its own costs of a hearing or inquiry held under these Regulations.”
- (i) For regulation 22(1)(b) and (c) (determining the appeal—general) substitute—
“(b) allow the appeal and, if applicable, quash the decision in whole or in part;
(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 202[].”
- (j) 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”.]

Abatement of works abandoned or decayed

39. Where Work Nos 1, 2 or 3 or all of them or any part of them, is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, by notice in writing require the undertaker at its own expense either to repair, make safe and restore one or both of those Works, or any relevant part of them, or to remove them and, without prejudice to any notice served under section 105(2) of the 2004 Act(a) restore the site to a safe and proper condition, to such an extent and within such limits as may be specified in the notice.

Saving provisions for Trinity House

40. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown rights

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 possession of, 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)—

- (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;

(a) Section 105(2) was substituted by section 69(3) of the Energy Act 2008 (c.32).

- (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
- (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.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(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.

Protective provisions

42. Schedule 9 (protective provisions) has effect.

Funding

43.—(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 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.

(2) The provisions are—

- (a) article 18 (compulsory acquisition of land);
- (b) article 20 (compulsory acquisition of rights);
- (c) article 21 (private rights);
- (d) article 23 (acquisition of subsoil only);
- (e) article 25 (rights under or over streets);
- (f) article 26 (temporary use of land for carrying out the authorised project);
- (g) article 27 (temporary use of land for maintaining the authorised project); and
- (h) article 28 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Compensation and MEEB measures

44. Schedule 14 (Compensation and MEEB Measures) has effect.

Signed by Authority of the Secretary of State for Business, Energy and Industrial Strategy

Address
Date

Name
Head of []
Department of Business, Energy and Industrial Strategy

SCHEDULE 1

AUTHORISED PROJECT

PART 1

AUTHORISED DEVELOPMENT

1. A nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act which is located in the North Sea approximately 121 kilometres to the northeast of the north Norfolk coast and approximately 10 kilometres west of the median line between UK and Netherlands waters, comprising—

Work No. 1—

- (a) an offshore wind turbine generating station with a gross electrical output of over 100 megawatts comprising up to 231 wind turbine generators each fixed to the seabed by either monopile foundation, mono suction bucket foundation, jacket foundation or gravity base foundation;
- (b) up to three offshore accommodation platforms fixed to the seabed within the area shown on the works plan by monopile foundation, mono suction bucket foundation, jacket foundation, or gravity base foundation and which may be connected to each other or one of the offshore substations within Work No. 2 by an unsupported bridge; and
- (c) a network of cables between the wind turbine generators and between the wind turbine generators and Work No. 2 including one or more cable crossings;

and associated development within the meaning of section 115(2) of the 2008 Act comprising—

Work No. 2—

- (a) up to 12 offshore type 1 substations each fixed to the seabed by either monopile foundation, mono suction bucket foundation, jacket foundation, gravity base foundation or box-type gravity base foundations and which may be connected to each other or one of the offshore accommodation platforms within Work No.1(b) by an unsupported bridge;
- (b) up to four offshore type 2 substations each fixed to the seabed by either monopile foundations, mono suction bucket foundations, jacket foundations, gravity base foundations, jacket foundations, box-type gravity base foundations, pontoon gravity base 1 foundations, or pontoon gravity base 2 foundations and which may be connected to each other or one of the offshore accommodation platforms within Work No.1(b) by an unsupported bridge;
- (c) a network of cables;
- (d) up to six cable circuits between Work No. 2 and Work No. 3, and between Work No. 3 and Work No.5 consisting of offshore export cables along routes within the Order limits seaward of MLWS including one or more cable crossings; and
- (e) up to eight temporary horizontal directional drilling exit pits;

Work No. 3—

- (a) in the event that the mode of transmission is HVAC, up to four offshore HVAC booster stations fixed to the seabed within the area shown on the works plan by either monopile foundation, mono suction bucket foundation, jacket foundation, gravity base foundation, or box-type gravity base foundations;
- (b) in the event that the mode of transmission is HVAC, up to six offshore subsea HVAC booster stations fixed to the seabed by either monopile foundation, mono suction bucket foundation, jacket foundation, gravity base foundation, or box-type gravity base foundations;

- (c) in the event that the mode of transmission is HVAC, a network of cables between HVAC booster stations or offshore subsea HVAC booster stations; and
- (d) in the event that the mode of transmission is HVAC, up to six cable circuits between Work No. 2 and Work No. 3, and between Work No. 3 and Work No.5 consisting of offshore export cables along routes within the Order limits seaward of MHWS including one or more cable crossings;

Work No. 4— a temporary work area associated with Work No.2 and Work No.3 for vessels to carry out intrusive activities alongside Work No.2 or Work No.3;

Work No. 5— landfall connection works comprising up to six cable circuits and ducts and onshore construction works within the Order limits seaward of MHWS and landward of MLWS;

In the county of Norfolk, districts of North Norfolk, Broadland and South Norfolk

Work No. 6— onshore connection works consisting of up to six cable circuits, ducts and between Work No. 5 and Work No. 7 landward of MHWS and onshore construction works;

Work No.7— onshore connection works consisting of—

- (a) up to six cable circuits and associated electrical circuit ducts between Work No. 6 to Work No. 8;
- (b) onshore construction works;
- (c) up to six transition joint bays; and
- (d) horizontal directional drilling launch pits;

Work No. 8— onshore connection works consisting of—

- (a) up to six cable circuits and associated electrical circuit ducts to Work No. 11;
- (b) onshore construction works;
- (c) up to 440 link boxes; and
- (d) up to 440 joint bays;

Work No. 9— onshore connection works consisting of construction of an onshore HVAC booster station, together with onshore construction works;

Work No. 10— onshore connection works consisting of an onshore HVDC/HVAC substation, including up to six cable circuits and electrical circuit ducts, and onshore construction works;

Work No. 11— onshore connection works consisting of up to six cable circuits and electrical circuit ducts between Work No. 10 and Work No. 12 and onshore construction works;

Work No. 12— onshore connection works consisting of up to six cable circuits and electrical circuit ducts between Work No. 11 and the Norwich Main National Grid substation, including a connection above ground and electrical engineering works within or around the National Grid substation buildings and compound, and onshore construction works;

Work No. 13— a construction compound to support the construction of Work Nos. 8, 9, 10, 11, 12, 14 and 15;

Work No. 14— temporary vehicular access tracks to serve Work Nos. 7, 8, 9, 10, 11, 12, 13 and 15; and

Work No. 15— temporary storage areas to assist with the onshore connection works.

In connection with such Work Nos. 1 to 5 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection measures such as the placement of rock and/or concrete mattresses, with or without frond devices;

- (c) the removal of material from the seabed required for the construction of Work Nos. 1 to 5 and the disposal of up to 3,563,133 cubic metres of inert material of natural origin within the Order limits produced during construction drilling, seabed preparation for foundation works, cable installation preparation such as sandwave clearance, boulder clearance and pre-trenching and excavation of horizontal directional drilling exit pits; and
- (d) removal of static fishing equipment;

and in connection with such Work Nos. 6 to 15 and to the extent that they do not otherwise form part of any such work, further associated development comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement, including—

- (a) ramps, means of access and footpaths;
- (b) bunds, embankments, swales, landscaping, fencing and boundary treatments;
- (c) habitat creation;
- (d) jointing bays, link boxes, cable ducts, cable protection, joint protection, manholes, marker posts, underground cable marker, tiles and tape, and lighting and other works associated with cable laying;
- (e) works for the provision of apparatus including cabling, water and electricity supply works, foul drainage provision, surface water management systems and culverting;
- (f) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (g) works to alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses;
- (h) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised project;
- (i) works for the benefit or protection of land affected by the authorised project;
- (j) working sites in connection with the construction of the authorised project, construction lay down areas and compounds, storage compounds and their restoration.

2. The grid coordinates for that part of the authorised project which is seaward of MHWS are specified below—

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	52° 57' 23.299" N	1° 5' 48.611" E	64	53° 45' 27.296" N	2° 34' 19.781" E
2	52° 58' 22.516" N	1° 4' 22.810" E	65	53° 45' 17.155" N	2° 33' 57.193" E
3	52° 59' 43.107" N	1° 3' 16.300" E	66	53° 44' 25.151" N	2° 28' 22.483" E
4	53° 0' 12.806" N	1° 3' 4.176" E	67	53° 43' 43.437" N	2° 23' 42.266" E
5	53° 0' 41.322" N	1° 3' 5.626" E	68	53° 43' 38.549" N	2° 23' 1.918" E
6	53° 2' 15.365" N	1° 3' 25.796" E	69	53° 40' 30.736" N	2° 17' 49.303" E
7	53° 4' 22.383" N	1° 5' 4.618" E	70	53° 37' 10.969" N	2° 7' 19.167" E
8	53° 4' 48.739" N	1° 5' 38.118" E	71	53° 37' 2.480" N	2° 6' 39.277" E
9	53° 5' 0.912" N	1° 6' 53.813" E	72	53° 36' 20.389" N	2° 5' 9.581" E
10	53° 4' 56.963" N	1° 8' 49.809" E	73	53° 35' 18.067" N	2° 5' 0.546" E
11	53° 4' 47.089" N	1° 10' 20.278" E	74	53° 34' 58.529" N	2° 4' 49.759" E
12	53° 4' 50.116" N	1° 12' 8.936" E	75	53° 34' 37.908" N	2° 4' 16.626" E
13	53° 5' 1.606" N	1° 14' 7.325" E	76	53° 32' 54.718" N	2° 4' 40.220" E
14	53° 5' 2.192" N	1° 14' 30.074" E	77	53° 32' 31.275" N	2° 4' 37.727" E
15	53° 4' 58.764" N	1° 14' 55.483" E	78	53° 31' 59.257" N	2° 4' 11.934" E
16	53° 4' 32.854" N	1° 16' 47.381" E	79	53° 31' 13.675" N	2° 3' 20.449" E
17	53° 4' 32.226" N	1° 19' 19.524" E	80	53° 30' 18.703" N	2° 2' 26.715" E

18	53° 4' 54.358" N	1° 22' 30.281" E	81	53° 30' 0.496" N	2° 1' 55.943" E
19	53° 5' 6.119" N	1° 25' 0.302" E	82	53° 29' 53.014" N	2° 1' 22.871" E
20	53° 5' 7.887" N	1° 26' 23.233" E	83	53° 29' 52.335" N	2° 0' 47.588" E
21	53° 5' 4.100" N	1° 27' 30.916" E	84	53° 28' 18.157" N	1° 53' 52.525" E
22	53° 5' 52.998" N	1° 28' 30.016" E	85	53° 27' 38.035" N	1° 51' 19.593" E
23	53° 14' 11.509" N	1° 41' 28.704" E	86	53° 27' 25.643" N	1° 50' 32.418" E
24	53° 14' 27.431" N	1° 42' 14.962" E	87	53° 27' 18.150" N	1° 50' 31.601" E
25	53° 15' 49.705" N	1° 44' 10.074" E	88	53° 26' 16.707" N	1° 50' 4.603" E
26	53° 16' 25.597" N	1° 44' 37.874" E	89	53° 25' 53.921" N	1° 50' 10.016" E
27	53° 19' 1.814" N	1° 45' 50.556" E	90	53° 25' 34.502" N	1° 50' 4.308" E
28	53° 22' 33.955" N	1° 46' 57.914" E	91	53° 24' 21.903" N	1° 49' 42.825" E
29	53° 22' 55.872" N	1° 46' 55.918" E	92	53° 24' 2.505" N	1° 49' 42.663" E
30	53° 23' 22.176" N	1° 47' 7.319" E	93	53° 23' 34.480" N	1° 49' 32.287" E
31	53° 23' 41.762" N	1° 47' 5.727" E	94	53° 23' 14.095" N	1° 49' 34.013" E
32	53° 24' 11.270" N	1° 47' 16.705" E	95	53° 22' 47.157" N	1° 49' 22.581" E
33	53° 24' 33.225" N	1° 47' 17.703" E	96	53° 22' 23.714" N	1° 49' 23.370" E
34	53° 25' 56.028" N	1° 47' 42.459" E	97	53° 18' 42.217" N	1° 48' 12.788" E
35	53° 26' 20.933" N	1° 47' 36.143" E	98	53° 15' 55.220" N	1° 46' 54.772" E
36	53° 26' 43.765" N	1° 47' 45.420" E	99	53° 15' 3.154" N	1° 46' 14.109" E
37	53° 27' 30.131" N	1° 48' 5.945" E	100	53° 13' 23.395" N	1° 43' 55.484" E
38	53° 27' 46.677" N	1° 48' 5.619" E	101	53° 13' 5.062" N	1° 43' 4.402" E
39	53° 28' 17.076" N	1° 48' 21.428" E	102	53° 4' 59.121" N	1° 30' 24.338" E
40	53° 28' 37.302" N	1° 49' 1.846" E	103	53° 4' 20.493" N	1° 29' 37.106" E
41	53° 29' 38.707" N	1° 52' 55.786" E	104	53° 4' 9.988" N	1° 29' 29.310" E
42	53° 31' 13.071" N	1° 59' 48.933" E	105	53° 3' 47.663" N	1° 28' 59.880" E
43	53° 31' 19.720" N	2° 0' 36.709" E	106	53° 3' 36.602" N	1° 28' 9.237" E
44	53° 32' 1.260" N	2° 1' 17.462" E	107	53° 3' 36.599" N	1° 27' 27.833" E
45	53° 32' 51.864" N	2° 2' 12.822" E	108	53° 3' 40.623" N	1° 26' 14.722" E
46	53° 34' 50.465" N	2° 1' 45.585" E	109	53° 3' 39.011" N	1° 25' 12.221" E
47	53° 35' 23.664" N	2° 1' 56.535" E	110	53° 3' 28.120" N	1° 22' 53.680" E
48	53° 35' 46.884" N	2° 2' 37.417" E	111	53° 3' 4.980" N	1° 19' 32.112" E
49	53° 36' 32.251" N	2° 2' 43.845" E	112	53° 3' 6.278" N	1° 16' 22.646" E
50	53° 37' 0.888" N	2° 2' 53.784" E	113	53° 3' 34.066" N	1° 14' 17.070" E
51	53° 37' 20.916" N	2° 3' 21.412" E	114	53° 3' 23.126" N	1° 12' 23.483" E
52	53° 38' 20.262" N	2° 5' 30.569" E	115	53° 3' 19.662" N	1° 10' 8.762" E
53	53° 38' 31.038" N	2° 6' 19.862" E	116	53° 3' 30.020" N	1° 8' 33.828" E
54	53° 41' 39.572" N	2° 16' 17.662" E	117	53° 3' 32.792" N	1° 7' 6.899" E
55	53° 44' 4.728" N	2° 20' 18.541" E	118	53° 1' 51.145" N	1° 5' 45.682" E
56	53° 51' 54.307" N	2° 19' 24.004" E	119	53° 0' 17.303" N	1° 5' 29.793" E
57	53° 52' 12.798" N	2° 19' 38.938" E	120	52° 59' 10.951" N	1° 6' 24.006" E
58	53° 59' 22.420" N	2° 11' 50.694" E	121	52° 58' 23.000" N	1° 7' 34.209" E
59	53° 59' 19.280" N	2° 13' 34.691" E	122	52° 57' 44.291" N	1° 7' 45.470" E
60	53° 58' 42.514" N	2° 32' 43.904" E	123	52° 57' 19.850" N	1° 7' 56.688" E
61	54° 0' 4.028" N	2° 40' 52.651" E	124	52° 56' 59.623" N	1° 8' 4.381" E
62	53° 48' 57.136" N	2° 44' 53.902" E	125	52° 57' 2.633" N	1° 7' 44.016" E
63	53° 41' 22.175" N	2° 47' 35.927" E	126	52° 57' 4.058" N	1° 7' 42.464" E

PART 2

ANCILLARY WORKS

1. Works within the Order limits which have been subject to an environmental impact assessment recorded in the environmental statement comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development;
- (b) marking buoys, beacons, fenders and other navigational warning or ship impact protection works; and
- (c) temporary works for the benefit or protection of land or structures affected by the authorised development.

PART 3

REQUIREMENTS

Time limits

1. The authorised project must commence no later than the expiration of seven years beginning with the date this Order comes into force.

Detailed offshore design parameters

2.—(1) The total number of wind turbine generators comprised in the authorised project must not exceed 231 and a total rotor swept area of 8.8 square kilometres.

(2) Subject to sub-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 41.8 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.

(4) Wind turbine generator foundation structures forming part of the authorised scheme must be one of the following foundation options: monopile foundation, mono suction bucket foundation, jacket foundation or gravity base foundation.

(5) No wind turbine generator—

- (a) jacket foundations employing pin piles forming part of the authorised project shall have a pin pile diameter of greater than four meters; and
- (b) monopile foundation forming part of the authorised project shall have a diameter greater than 15 metres.

(6) The total seabed footprint area for wind turbine generator foundations must not exceed—

- (a) 435,660 square metres excluding scour protection; and
- (b) 1,623,182 square metres including scour protection.

3.—(1) The total number of offshore electrical installations and offshore accommodation platforms shall not exceed 21, and shall consist of no more than—

- (a) 12 offshore type 1 substations;
- (b) four offshore type 2 substations;
- (c) four offshore HVAC booster stations;

- (d) six offshore subsea HVAC booster stations; and
 - (e) three offshore accommodation platforms.
- (2) The dimensions of any offshore type 1 substations forming part of the authorised project must not exceed—
- (a) 90 metres in height when measured from LAT;
 - (b) 100 metres in length; and
 - (c) 100 metres in width.
- (3) The dimensions of any offshore type 2 substation forming part of the authorised project must not exceed—
- (a) 110 metres in height when measured from LAT;
 - (b) 180 metres in length; and
 - (c) 90 metres in width.
- (4) The dimensions of any offshore HVAC booster station forming part of the authorised project must not exceed—
- (a) 90 metres in height when measured from LAT;
 - (b) 100 metres in length; and
 - (c) 100 metres in width.
- (5) The dimensions of any offshore subsea HVAC booster station forming part of the authorised project must not exceed—
- (a) 15 metres in height when measured from the seabed;
 - (b) 50 metres in length; and
 - (c) 50 metres in width.
- (6) The dimensions of any offshore accommodation platform forming part of the authorised project must not exceed—
- (a) 64 metres in height when measured from LAT;
 - (b) 60 metres in length; and
 - (c) 60 metres in width.
- (7) Any bridge located between any offshore substation or accommodation platform shall be no longer than 100 metres.
- (8) Offshore accommodation platform foundation structures forming part of the authorised project must be one of the following foundation options: monopile foundations, mono suction bucket foundations, jacket foundations, or gravity base foundations.
- (9) Offshore installation foundation structures forming part of the authorised scheme must be one of the following foundation options—
- (a) for offshore type 1 substations, offshore HVAC booster stations and offshore subsea HVAC booster stations either monopile foundations, mono suction bucket foundations, jacket foundations, gravity base foundations, jacket foundations or box-type gravity base foundations; and
 - (b) for offshore type 2 substations, either monopile foundations, mono suction bucket foundations, jacket foundations, gravity base foundations, jacket foundations, box-type gravity base foundations, pontoon gravity base 1 foundations, or pontoon gravity base 2 foundations.
- (10) No offshore installation or offshore accommodation platform—
- (a) jacket foundation employing pin piles forming part of the authorised project shall have a pin pile diameter of greater than 4 metres; and
 - (b) monopile foundation forming part of the authorised project shall have a diameter greater than 15 metres.

(11) The total seabed footprint area for offshore accommodation platform foundations must not exceed—

- (a) 8,836 square metres excluding scour protection; and
- (b) 28,628 square metres including scour protection.

(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.

4. The total volume of scour protection for wind turbine generators, offshore accommodation platforms and offshore electrical installations shall not exceed 2,709,673 cubic metres.

5.—(1) The number of cable circuits shall not exceed six.

(2) The total length of the cables comprising Work No. 1(c) shall not exceed 830 kilometres.

(3) The total length of the cables comprising Work Nos. 2(c), 2(d) and 3(d) shall not exceed 1,371 kilometres.

(4) The total volume of cable protection (excluding cable crossings) shall not exceed 2,201,000 cubic metres with a maximum footprint of 1,540,700 square metres.

(5) The total volume of cable protection associated with cable crossings shall not exceed 784,875 cubic metres with a maximum footprint of 747,500 square metres.

(6) The total number of the cable crossings must not exceed 44 unless otherwise agreed with the MMO.

Phases of authorised development

6.—(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 relevant planning authority, in relation to the connection works, or the MMO, in relation to works seaward of MHWS.

(2) The phases of construction referred to in sub-paragraph (1) shall not exceed two, save that each phase may be undertaken in any number of stages as prescribed in the written scheme.

(3) The scheme must be implemented as approved.

Detailed design approval onshore

7.—(1) Construction of the connection works in either Work No.9 or Work No. 10 shall not commence until details of—

- (a) the layout;
- (b) scale;
- (c) proposed finished ground levels;
- (d) external appearance and materials;
- (e) hard surfacing materials;
- (f) vehicular and pedestrian access, parking and circulation areas;
- (g) minor structures, such as furniture, refuse or other storage units, signs and lighting; and
- (h) proposed and existing functional services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports;

relating to that work of the authorised project have been submitted to and approved in writing by the relevant planning authority.

(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.

(3) The connection works in Works No.9 and 10 must be carried out in accordance with the approved details.

(4) The connection works in either Work No.9 or Work No. 10 shall not commence until explanation of the choice of HVDC or HVAC for that phase has been provided in writing to the relevant planning authority, either before, or at the same time as, the details referred to in paragraph (1).

Provision of landscaping

8.—(1) No phase of the connection works may commence until for that phase a written landscape plan and associated work programme (which accords with the outline landscape 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.

(2) The term “commence” as used in requirement 8(1) shall include any onshore site preparation works.

(3) The landscape plan must include details of—

- (a) surveys, assessments and method statements as guided by BS 5837 and the Hedgerows Regulations 1997; and
- (b) location, number, species, size and planting density of any proposed planting;
- (c) cultivation, importing of materials and other operations to ensure plant establishment;
- (d) existing trees and hedges to be retained with measures for their protection during the construction period; and
- (e) implementation timetables for all landscaping works.

(4) The landscape plan must be carried out as approved.

Implementation and maintenance of landscaping

9.—(1) All landscape works must be carried out in accordance with the landscape 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 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 by the relevant planning authority.

Ecological management plan

10.—(1) 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 and the relevant recommendations of appropriate British Standards) 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 (where works have potential to impact wetland habitats) the Environment Agency.

(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

(3) The ecological management plan must include an implementation timetable and must be carried out as approved.

Highway accesses

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 local highway authority.

(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.

(3) The highway authority must be consulted on the access plan before it is submitted for approval.

(4) The highway accesses (including visibility splays) must be constructed and maintained in accordance with the approved details.

Fencing and other means of enclosure

12.—(1) No phase of the connection works may commence until for that phase written details of all proposed permanent fences, walls or other means of enclosure of the connection works have been submitted to and approved by the relevant planning authority.

(2) Any temporary fences, walls or other means of enclosure must be provided in accordance with the outline code of construction practice.

(3) All construction sites must remain securely fenced in accordance with the code of construction practice at all times during construction of the relevant phase of the connection works.

(4) Any temporary fencing must be removed on completion of the relevant phase of the connection works.

(5) Any approved permanent fencing in relation to an onshore HVDC/HVAC substation or onshore HVAC booster station must be completed before that onshore HVDC/HVAC substation or onshore HVAC booster station is brought into use and maintained for the operational lifetime of the onshore HVDC/HVAC substation or onshore HVAC booster station.

Surface and foul water drainage

13.—(1) 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 lead local flood authority.

(2) The surface and foul water drainage system for each phase must be constructed and maintained in accordance with the approved details.

Contaminated land and groundwater scheme

14.—(1) No phase of the authorised development within the area of a relevant planning authority may be commenced until a scheme to deal with the contamination of any land (including groundwater) within the Order limits that is likely to cause significant harm to persons or pollution of controlled waters or the environment has been submitted to, and approved by, the relevant planning authority in consultation with the Environment Agency and, to the extent that the plan relates to the intertidal area, the MMO.

(2) The scheme must include an investigation and assessment report, prepared by a specialist consultant approved by the relevant planning authority, to identify the extent of any contamination and the remedial measures to be taken for that stage to render the land fit for its intended purpose,

together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site.

(3) Such remediation as may be identified in the approved scheme must be carried out in accordance with the approved scheme.

Surface water

15.—(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 prepared in consultation with the Environment Agency and Norfolk County Council and submitted to and approved in writing by Norfolk County Council.

(2) The detailed surface water schemes must accord with the outline code of construction practice and—

- (a) be based on sustainable drainage principles;
- (b) an assessment of the hydrological and hydrogeological context of the onshore HVDC/HVAC substation or onshore HVAC booster station, as applicable; and
- (c) include detailed designs of a surface water drainage scheme.

(3) Construction of the onshore HVDC/HVAC substation or HVAC booster station as applicable must be carried out in accordance with the approved scheme.

Onshore Archaeology

16.—(1) 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 and the Historic Buildings and Monuments Commission for England.

(2) The term “commence” as used in requirement 16(1) shall include any onshore site preparation works.

(3) Any archaeological investigations must be carried out in accordance with the approved scheme.

(4) The archaeological 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.

Code of construction practice

17.—(1) No phase of 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 the Environment Agency, the relevant SNCBs, the relevant highway authority and, if applicable, the MMO.

(2) The term “commence” as used in requirement 17(1) shall include any onshore site preparation works.

(3) All construction works for each phase must be undertaken in accordance with the relevant approved code of construction practice.

Construction traffic management plan

18.—(1) No phase of the connection works may commence until written details of a construction traffic management plan (which accords with the outline construction traffic management plan) for that phase has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authority.

(2) The term “commence” as used in requirement 18(1) shall include any onshore site preparation works.

(3) The construction traffic management plan for each phase must be implemented as approved for that phase.

European protected species onshore

19.—(1) No phase of the connection works may commence until final pre-construction survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by that phase of the connection works or in any of the trees to be lopped or felled as part of that phase of the connection works.

(2) Where a European protected species is shown to be present, the relevant part(s) of the connection works must not begin until, after consultation with the relevant SNCBs and the relevant planning authority, a scheme of protection and mitigation measures has been submitted to and approved by the relevant planning authority or a European protected species licence granted by Natural England.

(3) The connection works must be carried out in accordance with the approved scheme.

(4) In this Requirement, “European protected species” has the same meaning as in regulations 42 and 46 of the Conservation of Habitats and Species Regulations 2017(a).

Restoration of land used temporarily for construction

20. Any land landward of MLWS within the Order limits which is used temporarily for construction of the connection works and not ultimately incorporated in permanent works or approved landscaping, must be reinstated in accordance with such details as the relevant planning authority in consultation with, where appropriate, the MMO, and the relevant highway authority, may approve, as soon as reasonably practicable and in any event within twelve months of completion of the relevant phase of the connection works.

Control of noise during operational phase

21.—(1) 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.

(2) The NMP must set out the particulars of—

- (a) the noise attenuation and mitigation measures to be taken to minimise noise resulting from Work Nos. 9 and 10, including any noise limits; and
- (b) a scheme for monitoring attenuation and mitigation measures provided under subparagraph (a) which must include—
 - (i) the circumstances under which noise will be monitored;
 - (ii) the locations at which noise will be monitored;
 - (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
 - (iv) a complaints procedure.

(3) The NMP must be implemented as approved.

(a) S.I. 2010/490

Local skills and employment

22.—(1) No phase of the connection works may commence until for that phase a skills and employment plan (which accords with the outline skills and employment plan) in relation to the authorised development—

- (a) within the boundaries of Norfolk County Council has been submitted to and approved by Norfolk County Council; and
- (b) within the boundaries of North East Lincolnshire Council has been submitted to and approved by North East Lincolnshire Council.

(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.

(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.

(4) Each skills and employment plan shall identify opportunities for individuals and businesses based in the regions of East Anglia or the Humber to access employment opportunities associated with the construction, operation and maintenance of the authorised development.

(5) The skills and employment plans shall be implemented as approved.

Onshore decommissioning

23.—(1) Within three months of the 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) The relevant planning authority must provide its decision on the onshore decommissioning plan required under requirement 23(1) within three months of submission of such plan unless otherwise agreed in writing by the relevant planning authority and the undertaker.

(3) The decommissioning plan must be implemented as approved unless otherwise agreed in writing by the relevant planning authority.

Notification of generation of power

24. The undertaker shall notify the relevant planning authority and the MMO upon first generation of power from each phase of the authorised project not less than seven days after the occurrence of this event.

Requirement for written approval

25. Where the approval, agreement or confirmation of the Secretary of State, relevant planning authority or another person is required under a Requirement, that approval, agreement or confirmation must be given in writing.

Amendments to approved details

26.—(1) With respect to any requirement which requires the authorised project to be carried out in accordance with the details approved by the relevant planning authority or another person, the approved details must be carried out as approved unless an amendment or variation is previously agreed in writing by the relevant planning authority or that other person in accordance with subparagraph (2).

(2) 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 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.

(3) The approved details must be taken to include any amendments that may subsequently be approved in writing by the relevant planning authority or that other person.

SCHEDULE 2

STREETS SUBJECT TO STREET WORKS

<i>(1) Area</i>	<i>(2) Street subject to street works</i>
North Norfolk District	Private access tracks associated with Muckleberry Collection to the north of The Street
North Norfolk District	Private access track to the north of the A149 and east of Meadow Lane
North Norfolk District	Private access track running parallel to the west end of the A149
North Norfolk District	A149
North Norfolk District	Private access track to the west of Croft Hill
North Norfolk District	Private access track to the west of Croft Hill and north of Spion Kop
North Norfolk District	Private access tracks to the north of Broomhill Plantation and west of Spion Kop
North Norfolk District	Private access track to the east of Broomhill Plantation and west of Spion Kop
North Norfolk District	Private access track running parallel to part of Holgate Hill
North Norfolk District	Holgate Hill
North Norfolk District	Private access track running south east from Holgate Hill
North Norfolk District	Private access track to the east of the North Norfolk Railway
North Norfolk District	Private access track to the north of Warren Farm
North Norfolk District	Private access track to the east of Warren Farm
North Norfolk District	Bridge Road
North Norfolk District	Local street
North Norfolk District	Warren Road
North Norfolk District	Private access track to the north of Cromer Road
North Norfolk District	Cromer Road (A148)
North Norfolk District	Kelling Road
North Norfolk District	Church Road
North Norfolk District	Private access track to the south of Church Road
North Norfolk District	Private access track running to the east of Becketts Farm towards Hall Lane
North Norfolk District	Hempstead Road
North Norfolk District	School Lane
North Norfolk District	Hole Farm Road
North Norfolk District	Plumbstead Road
North Norfolk District	Sweetbriar Lane
North Norfolk District	Private access track to the south west of Barningham Green Plantation
North Norfolk District	Private access track to the south west of Barningham Green Plantation

North Norfolk District	Holt Road
North Norfolk District	Holt Road (B1149)
North Norfolk District	Private access track running north east from Holt Road B1149
North Norfolk District	Briston Road (B1354)
North Norfolk District	Croft Lane
North Norfolk District	Town Close Lane
North Norfolk District	Wood Dalling Road
Broadland District	Blackwater Lane
Broadland District	Heydon Lane
Broadland District	Heydon Road
Broadland District	Reepham Road
Broadland District	Merrison's Lane
Broadland District	Wood Dalling Road
Broadland District	Cawston Road (B1145)
Broadland District	Private access track running south east from Cawston Road
Broadland District	Private access track to the north of Moor Farm
Broadland District	Private access tracks to the north of Moor Farm
Broadland District	Private access track to the east of Moor Farm
Broadland District	Private access track to the north of Church Road
Broadland District	The Grove
Broadland District	Reepham Road
Broadland District	Church Road
Broadland District	Church Farm Lane
Broadland District	Hall Road
Broadland District	Private access track to the south of Hall Road
Broadland District	Ropham Road
Broadland District	Station Road
Broadland District	Private access track to the west of Station Road
Broadland District	Private access track running south west from Station Road
Broadland District	Private access track to the west of Station Road
Broadland District	The Street
Broadland District	Fakenham Road (A1067)
Broadland District	Marl Hill Road
Broadland District	Ringland Lane to Church Street
Broadland District	Ringland Lane
Broadland District	Private access track running south west from Ringland Lane
Broadland District	Blackbreck Lane
Broadland District	Weston Road
Broadland District	Hornington Lane
Broadland District	Private access track known as Sandy Lane, running to the north of Weston Road
South Norfolk	Private access track running south from Weston Road
South Norfolk	Private access track running east from the track mentioned above towards Ringland Road
South Norfolk	Church Lane
South Norfolk	A47

South Norfolk	Church Lane
South Norfolk	Private access track known as Broom Lane
South Norfolk	Easton Road
South Norfolk	Private access tracks to the north of Bawburgh Road
South Norfolk	Bawburgh Road
South Norfolk	Private access track running north to south to the west of Algarsthorpe
South Norfolk	Private access track running west from Bawburgh Road
South Norfolk	Private access track running west from Bawburgh Road
South Norfolk	Walton Road (B1108)
South Norfolk	Market Lane
South Norfolk	Private access track running north east in parallel to part of Market Lane
South Norfolk	Private access track running west of Market Lane
South Norfolk	Great Melton Road
South Norfolk	Private access track running south from Great Melton Road
South Norfolk	Little Melton Road
South Norfolk	Burnthouse Lane
South Norfolk	Private access track running north east from Burnthouse Lane
South Norfolk	Colney Lane
South Norfolk	Norwich Road
South Norfolk	Station Lane
South Norfolk	Private access track running east then north from Station Lane
South Norfolk	A11
South Norfolk	Cantley Lane
South Norfolk	Private access track running east from Cantley Lane
South Norfolk	Private access track running east from Cantley Lane
South Norfolk	Intwood Lane
South Norfolk	Swardeston Lane
South Norfolk	Main Road
South Norfolk	Mangreen Lane
South Norfolk	Private access track running south from Mangreen Lane
South Norfolk	Private access tracks south of Mangreen Cr
South Norfolk	Private access tracks running west from the A140
South Norfolk	Private access tracks south of Mangreen Cr
South Norfolk	Private access track running north west from Oulton Street

SCHEDULE 3
STREETS TO BE TEMPORARILY STOPPED UP

<i>(1) Area</i>	<i>(2) Public rights of way to be temporarily stopped up</i>	<i>(3) Extent of temporary stopping up</i>
North Norfolk District	Private access track associated with Muckleberry Collection	Between points 1a, 1i, 1j, 1k, 1m, 1n and 1p as shown shaded brown on sheet 1 of the streets plan
North Norfolk District	Private access track associated with Muckleberry Collection	Between points 1c and 1d as shown shaded brown on sheet 1 of the streets plan
North Norfolk District	Private access track associated with Muckleberry Collection	Between points 1e and 1f as shown shaded brown on sheet 1 of the streets plan
North Norfolk District	Private access track associated with Muckleberry Collection	Between points 1h and 1g as shown shaded brown on sheet 1 of the streets plan
North Norfolk District	Private access track associated with Muckleberry Collection	Between points 2a and 2b as shown shaded brown on sheet 1 of the streets plan
North Norfolk District	Private access track associated with Muckleberry Collection	Between points 3a and 3b as shown shaded brown on sheet 1 of the streets plan
North Norfolk District	Private access track associated with Muckleberry Collection	Between points 4a and 4b as shown shaded brown on sheet 1 of the streets plan
North Norfolk District	Private access track associated with Muckleberry Collection	Between points 5a and 5b as shown shaded brown on sheet 1 of the streets plan
North Norfolk District	A149	Between points 6a and 6b and between 6c and 6d as shown shaded green on sheet 1 of the streets plan
North Norfolk District	Private access track	Between points 7a and 7b as shown shaded brown on sheet 2 of the streets plan
North Norfolk District	Private access track	Between points 8a and 8b as shown shaded brown on sheet 2 of the streets plan
North Norfolk District	Private access track	Between points 9a, 9b, 9c, 9d and 9e as shown shaded brown on sheet 2 of the streets plan
North Norfolk District	Private access track	Between points 10a and 10b as shown shaded brown on sheet 2 of the streets plan
North Norfolk District	Private access track	Between points 11a and 11b as shown shaded brown on sheets 2 and 3 of the streets plan
North Norfolk District	Holgate Hill	Between points 12a and 12b as shown shaded green on sheets 2 and 3 of the streets plan

North Norfolk District	Private access track	Between points 13a, 13b and 13c as shown shaded brown on sheet 3 of the streets plan
North Norfolk District	Private access track	Between points 14a and 14b as shown shaded brown on sheet 3 of the streets plan
North Norfolk District	Private access track	Between points 15a and 15b as shown shaded brown on sheet 3 of the streets plan
North Norfolk District	Private access track	Between points 16a and 16b as shown shaded brown on sheets 3 and 4 of the streets plan
North Norfolk District	Bridge Road	Between points 17a and 17b as shown shaded green on sheet 3 of the streets plan
North Norfolk District	Local street	Between points 17c and 17d as shown shaded green on sheets 3 and 4 of the streets plan
North Norfolk District	Warren Road	Between points 17d and 17e as shown shaded green on sheets 3 and 4 of the streets plan
North Norfolk District	Private access track	Between points 18a and 18b as shown shaded brown on sheet 4 of the streets plan
North Norfolk District	Cromer Road (A148)	Between points 19a and 19b as shown shaded green on sheet 4 of the streets plan
North Norfolk District	Kelling Road	Between points 20a and 20b as shown shaded green on sheet 4 of the streets plan
North Norfolk District	Church Road	Between points 21a and 21b as shown shaded green on sheet 5 of the streets plan
North Norfolk District	Private access track	Between points 22a and 22b as shown shaded brown on sheet 5 of the streets plan
North Norfolk District	Private access track	Between points 23a and 23b as shown shaded brown on sheet 6 of the streets plan
North Norfolk District	Hempstead Road	Between points 24a and 24b as shown shaded green on sheet 6 of the streets plan
North Norfolk District	School Lane	Between points 25a and 25b and between 25c and 25d as shown shaded green on sheet 7 of the streets plan
North Norfolk District	Hole Farm Road	Between points 26a and 26b as shown shaded green on sheet 7 of the streets plan
North Norfolk District	Plumbstead Road	Between points 27a and 27b as shown shaded green on sheet 8 of the streets plan
North Norfolk District	Sweetbriar Lane	Between points 28a and 28b as shown shaded green on sheet 9 of the streets plan

North Norfolk District	Private access track	Between points 29a and 29b as shown shaded brown on sheet 9 of the streets plan
North Norfolk District	Private access track	Between points 29c and 29d as shown shaded brown on sheet 9 of the streets plan
North Norfolk District	Private access track	Between points 31c and 31d as shown shaded brown on sheets 9 and 10 of the streets plan
North Norfolk District	Holt Road	Between points 30a and 30b as shown shaded green on sheet 10 of the streets plan
North Norfolk District	Holt Road (B1149)	Between points 31a and 31b as shown shaded green on sheet 10 of the streets plan
North Norfolk District	Briston Road (B1354)	Between points 32a and 32b as shown shaded green on sheet 10 of the streets plan
North Norfolk District	Croft Lane	Between points 33a and 33b as shown shaded green on sheet 11 of the streets plan
North Norfolk District	Town Close Lane	Between points 34a and 34b and between 34b and 34c as shown shaded green on sheet 11 of the streets plan
North Norfolk District	Wood Dalling Road	Between points 35a and 35b as shown shaded green on sheet 11 of the streets plan
Broadland District	Blackwater Lane	Between points 36a and 36b as shown shaded green on sheet 12 of the streets plan
Broadland District	Heydon Lane	Between points 37a and 37b as shown shaded green on sheet 13 of the streets plan
Broadland District	Heydon Road	Between points 38a and 38b as shown shaded green on sheet 13 of the streets plan
Broadland District	Reepham Road	Between points 39a and 39b as shown shaded green on sheet 14 of the streets plan
Broadland District	Reepham Road	Between points 40a and 40b as shown shaded green on sheet 14 of the streets plan
Broadland District	Merrison's Lane	Between points 41a, 41b, 41c and 41d as shown shaded green on sheet 15 of the streets plan
Broadland District	Wood Dalling Road	Between points 42a and 42b as shown shaded green on sheet 15 of the streets plan
Broadland District	Cawston Road (B1145)	Between points 43a and 43b as shown shaded green on sheet 15 of the streets plan
Broadland District	Cawston Road (B1145)	Between points 44a and 44b as shown shaded green on sheet

		16 of the streets plan
Broadland District	Private access track	Between points 44c and 44d as shown shaded brown on sheet 16 of the streets plan
Broadland District	Private access track	Between points 45a and 45b as shown shaded brown on sheet 16 of the streets plan
Broadland District	Private access track	Between points 45c, 44d and 45e as shown shaded brown on sheet 16 of the streets plan
Broadland District	Private access track	Between points 46a and 46b as shown shaded brown on sheet 16 of the streets plan
Broadland District	Private access track	Between points 47a and 47b as shown shaded brown on sheets 16 and 17 of the streets plan
Broadland District	Church Road	Between points 48a and 48b as shown shaded green on sheet 17 of the streets plan
Broadland District	The Grove	Between points 49a and 49b as shown shaded green on sheet 17 of the streets plan
Broadland District	Reepham Road	Between points 50a and 50b as shown shaded green on sheet 18 of the streets plan
Broadland District	Church Road	Between points 51a and 51b as shown shaded green on sheet 19 of the streets plan
Broadland District	Church Farm Lane	Between points 52a and 51b and between 52c and 52d as shown shaded green on sheet 19 of the streets plan
Broadland District	Hall Road	Between points 53a and 53b as shown shaded green on sheet 19 of the streets plan
Broadland District	Hall Road	Between points 55a and 55b as shown shaded green on sheet 19 of the streets plan
Broadland District	Private access track	Between points 54a and 54b as shown shaded brown on sheet 20 of the streets plan
Broadland District	Ropham Road	Between points 56a and 56b as shown shaded green on sheet 20 of the streets plan
Broadland District	Station Road	Between points 57a and 57b as shown shaded green on sheet 20 of the streets plan
Broadland District	Private access track	Between points 58a and 58b as shown shaded brown on sheet 20 of the streets plan
Broadland District	Station Road	Between points 59a and 59b as shown shaded green on sheet 20 of the streets plan
Broadland District	Private access track	Between points 59c and 59d as shown shaded brown on sheet

		20 of the streets plan
Broadland District	Private access track	Between points 60a and 60b as shown shaded brown on sheet 20 of the streets plan
Broadland District	The Street	Between points 61a and 61b as shown shaded green on sheet 21 of the streets plan
Broadland District	Fakenham Road (A1067)	Between points 62a and 62b as shown shaded green on sheet 21 of the streets plan
Broadland District	Marl Hill Road	Between points 63a and 63b as shown shaded green on sheet 21 of the streets plan
Broadland District	Ringland Lane	Between points 64a and 64b as shown shaded green on sheet 21 of the streets plan
Broadland District	Ringland Lane to Church Street	Between points 65a and 65b as shown shaded green on sheet 21 of the streets plan
Broadland District	Ringland Lane	Between points 66a and 66b as shown shaded green on sheet 22 of the streets plan
Broadland District	Private access track	Between points 67a and 67b as shown shaded brown on sheet 22 of the streets plan
Broadland District	Blackbreck Lane	Between points 68a and 68b as shown shaded green on sheet 23 of the streets plan
Broadland District	Weston Road	Between points 69a and 69b and between 69c and 69d as shown shaded green on sheet 23 of the streets plan
Broadland District	Hornington Lane	Between points 70a and 70b and between 70c and 70d as shown shaded green on sheet 23 of the streets plan
Broadland District	Private access track	Between points 71a and 71b as shown shaded brown on sheet 24 of the streets plan
South Norfolk	Weston Road	Between points 72a and 72b and between 72c and 72d as shown shaded green on sheet 24 of the streets plan
South Norfolk	Private access track	Between points 73a and 73b as shown shaded brown on sheet 24 of the streets plan
South Norfolk	Private access track	Between points 74a and 74b as shown shaded brown on sheet 24 of the streets plan
South Norfolk	Church Lane	Between points 75a and 75b as shown shaded green on sheet 25 of the streets plan
South Norfolk	A47	Between points 76a and 76b as shown shaded green on sheet 25 of the streets plan

South Norfolk	Church Lane	Between points 77a and 77b as shown shaded green on sheet 25 of the streets plan
South Norfolk	Private access track	Between points 78a and 78b as shown shaded brown on sheet 25 of the streets plan
South Norfolk	Easton Road	Between points 79a and 79b as shown shaded green on sheet 26 of the streets plan
South Norfolk	Private access track	Between points 80a, 8-b, 80c, 80d, and 80e as shown shaded brown on sheet 26 of the streets plan
South Norfolk	Bawburgh Road	Between points 81a and 81b as shown shaded green on sheet 26 of the streets plan
South Norfolk	Bawburgh Road	Between points 81c and 81d as shown shaded green on sheets 26 and 27 of the streets plan
South Norfolk	Private access track	Between points 82a and 82b as shown shaded brown on sheet 27 of the streets plan
South Norfolk	Private access track	Between points 83a and 83b as shown shaded brown on sheet 27 of the streets plan
South Norfolk	Private access track	Between points 84a and 84b as shown shaded brown on sheet 27 of the streets plan
South Norfolk	Bawburgh Road	Between points 85a and 85b as shown shaded green on sheet 27 of the streets plan
South Norfolk	Walton Road (B1108)	Between points 86a and 86b as shown shaded green on sheets 27 and 28 of the streets plan
South Norfolk	Market Lane	Between points 87a and 87b as shown shaded green on sheet 28 of the streets plan
South Norfolk	Market Lane	Between points 87c and 87d as shown shaded green on sheet 28 of the streets plan
South Norfolk	Private access track	Between points 88a and 88b as shown shaded brown on sheet 28 of the streets plan
South Norfolk	Private access track	Between points 89a and 89b as shown shaded brown on sheet 28 of the streets plan
South Norfolk	Great Melton Road	Between points 90a and 90b as shown shaded green on sheet 28 of the streets plan
South Norfolk	Great Melton Road	Between points 91a and 91b as shown shaded green on sheets 28 and 29 of the streets plan
South Norfolk	Private access track	Between points 91c and 91d as shown shaded brown on sheets 28 and 29 of the streets plan

South Norfolk	Little Melton Road	Between points 92a and 92b as shown shaded green on sheets 28 and 29 of the streets plan
South Norfolk	Burnthouse Lane	Between points 93a and 93b as shown shaded green on sheet 29 of the streets plan
South Norfolk	Burnthouse Lane	Between points 93c and 93d as shown shaded green on sheet 29 of the streets plan
South Norfolk	Burnthouse Lane	Between points 93e and 93f as shown shaded green on sheet 29 of the streets plan
South Norfolk	Private access track	Between points 94a and 94b as shown shaded brown on sheet 29 of the streets plan
South Norfolk	Colney Lane	Between points 95a and 95b as shown shaded green on sheet 29 of the streets plan
South Norfolk	Norwich Road	Between points 96a and 96b as shown shaded green on sheet 30 of the streets plan
South Norfolk	Norwich Road	Between points 96c and 96d as shown shaded green on sheet 30 of the streets plan
South Norfolk	Norwich Road	Between points 96e and 96f as shown shaded green on sheet 30 of the streets plan
South Norfolk	Station Lane	Between points 97a and 97b as shown shaded green on sheet 30 of the streets plan
South Norfolk	Station Lane	Between points 97c and 97d as shown shaded green on sheet 30 of the streets plan
South Norfolk	Private access track	Between points 98c and 98d as shown shaded brown on sheet 30 of the streets plan
South Norfolk	A11	Between points 99a and 99b as shown shaded green on sheet 30 of the streets plan
South Norfolk	Cantley Lane	Between points 100a and 100b as shown shaded green on sheet 31 of the streets plan
South Norfolk	Private access track	Between points 101a and 101b as shown shaded brown on sheet 31 of the streets plan
South Norfolk	Private access track	Between points 102a and 102b as shown shaded brown on sheet 31 of the streets plan
South Norfolk	Intwood Lane	Between points 103a and 103b as shown shaded green on sheet 32 of the streets plan
South Norfolk	Swardeston Lane	Between points 104a and 104b as shown shaded green on sheet 32 of the streets plan
South Norfolk	Main Road	Between points 105a and 105b

		as shown shaded green on sheet 33 of the streets plan
South Norfolk	Mulbarton Road	Between points 105c and 105d as shown shaded green on sheet 33 of the streets plan
South Norfolk	Mangreen Lane	Between points 106a and 106b as shown shaded green on sheets 33 and 34 of the streets plan
South Norfolk	Private access track	Between points 107a and 107b as shown shaded brown on sheets 33 and 34 of the streets plan
South Norfolk	Private access track	Between points 108a, 108b, 108c, 108d and 108e as shown shaded brown on sheet 34 of the streets plan
South Norfolk	Private access track	Between points 109a and 109b as shown shaded brown on sheet 34 of the streets plan
South Norfolk	Private access track	Between points 110a, 110b, 110c and 110d as shown shaded brown on sheet 34 of the streets plan
South Norfolk	Private access track	Between points 111a and 111b as shown shaded brown on sheet 35 of the streets plan

SCHEDULE 4

PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

<i>(1) Area</i>	<i>(2) Public right of way to be temporarily stopped up</i>	<i>(3) Extent of temporary stopping up</i>
North Norfolk District	Footpath Weybourne FP7	Between points 1a and 1b as shown hatched on sheet 1 of the public rights of way plan
North Norfolk District	Restricted Byway Kelling RB4	Between points 2a and 2b as shown hatched on sheet 1 of the public rights of way plan
North Norfolk District	Footpath Kelling FP6	Between points 3a and 3b as shown hatched on sheet 3 of the public rights of way plan
North Norfolk District	Footpath Kelling FP9	Between points 4a and 4b as shown hatched on sheets 3 and 4 of the public rights of way plan
North Norfolk District	Footpath Kelling FP6	Between points 5a and 5b as shown hatched on sheets 3 and 4 of the public rights of way plan
North Norfolk District	Footpath Baconsthorpe FP15	Between points 6a and 6b as shown hatched on sheet 6 of the public rights of way plan
North Norfolk District	Bridleway Hempsted BR15	Between points 7a and 7b as shown hatched on sheet 6 of the public rights of way plan
North Norfolk District	Footpath Hempsted FP10	Between points 8a and 8b as shown hatched on sheet 6 of the public rights of way plan
North Norfolk District	Bridleway Plumstead BR6	Between points 9a and 9b as shown hatched on sheet 8 of the public rights of way plan
North Norfolk District	Restricted Byway RB21	Between points 10a and 10b as shown hatched on sheet 10 of the public rights of way plan
North Norfolk District	Restricted Byway RB21	Between points 11a and 11b as shown hatched on sheet 10 of the public rights of way plan
North Norfolk District	Footpath Corpusty FP20	Between points 12a and 12b as shown hatched on sheet 10 of the public rights of way plan
North Norfolk District	Footpath Corpusty FP19	Between points 13a and 13b as shown hatched on sheet 10 of the public rights of way plan
North Norfolk District	Footpath Corpusty FP2	Between points 14a and 14b as shown hatched on sheet 11 of the public rights of way plan
North Norfolk District	Footpath Corpusty FP2	Between points 15a and 15b as shown hatched on sheet 11 of the public rights of way plan

Broadland District	Footpath Wood Dalling FP3	Between points 16a and 16b as shown hatched on sheet 12 of the public rights of way plan
Broadland District	Bridleway Salle BR4	Between points 17a and 17b as shown hatched on sheet 15 of the public rights of way plan
Broadland District	Footpath Salle FP8	Between points 18a and 18b as shown hatched on sheet 15 of the public rights of way plan
Broadland District	Footpath Salle FP13	Between points 19a and 19b as shown hatched on sheet 15 of the public rights of way plan
Broadland District	Footpath Reepham FP18	Between points 20a and 20b as shown hatched on sheet 16 of the public rights of way plan
Broadland District	Footpath Reepham FP34	Between points 21a and 21b as shown hatched on sheet 16 of the public rights of way plan
Broadland District	Footpath Reepham FP18	Between points 22a and 22b as shown hatched on sheet 16 of the public rights of way plan
Broadland District	Footpath Booton FP1	Between points 23a and 23b as shown hatched on sheet 16 of the public rights of way plan
Broadland District	Footpath Booton FP1	Between points 23c and 23d as shown hatched on sheet 16 of the public rights of way plan
Broadland District	Footpath Booton FP2	Between points 24a and 24b as shown hatched on sheet 17 of the public rights of way plan
Broadland District	Footpath Little Witchingham FP6	Between points 25a and 25b as shown hatched on sheet 18 of the public rights of way plan
Broadland District	Footpath Little Witchingham FP2	Between points 26a and 26b as shown hatched on sheet 19 of the public rights of way plan
South Norfolk	Footpath Little Melton FP2	Between points 27a and 27b as shown hatched on sheet 28 of the public rights of way plan
South Norfolk	Footpath Hethersett FP6	Between points 28a and 28b as shown hatched on sheet 30 of the public rights of way plan
South Norfolk	Bridleway Ketteringham BR2	Between points 29a and 29b as shown hatched on sheet 31 of the public rights of way plan
South Norfolk	Bridleway Ketteringham BR3	Between points 30a and 30b as shown hatched on sheets 31 and 32 of the public rights of way plan
South Norfolk	Footpath East Carleton FP1	Between points 31a and 31b as shown hatched on sheet 32 of the public rights of way plan
South Norfolk	Bridleway Swardeston BR9	Between points 32a and 32b as shown hatched on sheets 33 and 34 of the public rights of

		way plan
South Norfolk	Bridleway Swardeston BR12	Between points 33a and 33b as shown hatched on sheet 34 of the public rights of way plan
South Norfolk	Bridleway Holy Cross BR3	Between points 34a and 34b as shown hatched on sheet 34 of the public rights of way plan

SCHEDULE 5

ACCESS TO WORKS

<i>(1) Area</i>	<i>(2) Description of access</i>
North Norfolk District	Vehicular access from A149 to the north towards Roundhill Plantation as shown on sheet 1 of the access to works plan
North Norfolk District	Vehicular access from A149 to the south as shown on sheet 1 of the access to works plan
North Norfolk District	Vehicular access from Holgate Hill to the north as shown on sheets 2 and 3 of the access to works plan
North Norfolk District	Vehicular access from Bridge Road to the east as shown on sheet 3 of the access to works plan
North Norfolk District	Vehicular access from Cromer Road A148 to the north as shown on sheet 4 of the access to works plan
North Norfolk District	Vehicular access from Cromer Road A148 to the south as shown on sheet 4 of the access to works plan
North Norfolk District	Vehicular access from Kelling Road to the north as shown on sheet 4 of the access to works plan
North Norfolk District	Vehicular access from Kelling Road to the south as shown on sheet 4 of the access to works plan
North Norfolk District	Vehicular access from Church Road to the north as shown on sheet 5 of the access to works plan
North Norfolk District	Vehicular access from Church Road to the south as shown on sheet 5 of the access to works plan
North Norfolk District	Vehicular access to the north of Hempstead Road as shown on sheet 6 of the access to works plan
North Norfolk District	Vehicular access to the south of Hempstead Road as shown on sheet 6 of the access to works plan
North Norfolk District	Vehicular access to the north of School Lane as shown on sheet 7 of the access to works plan
North Norfolk District	Vehicular access from Hole Farm Road to the north as shown on sheet 7 of the access to works plan
North Norfolk District	Vehicular access from Hole Farm Road to the south as shown on sheet 7 of the access to works plan
North Norfolk District	Vehicular access from Plumstead Road to the north as shown on sheet 8 of the access to works plan
North Norfolk District	Vehicular access from Plumstead Road to the south as shown on sheet 8 of the access to

	works plan
North Norfolk District	Vehicular access to the north of Little Barningham Lane as shown on sheet 9 of the access to works plan
North Norfolk District	Vehicular access to the south of Little Barningham Lane as shown on sheet 9 of the access to works plan
North Norfolk District	Vehicular access to the north of the B1149 as shown on sheet 10 of the access to works plan
North Norfolk District	Vehicular access to the south of the B1149 as shown on sheet 10 of the access to works plan
North Norfolk District	Vehicular access to the east of the B1149 as shown on sheet 10 of the access to works plan
North Norfolk District	Vehicular access to the north of Briston Road B1354 as shown on sheet 10 of the access to works plan
North Norfolk District	Vehicular access to the south of Briston Road B1354 as shown on sheet 10 of the access to works plan
North Norfolk District	Vehicular access to the west of Croft Lane near Great Farm as shown on sheet 11 of the access to works plan
North Norfolk District	Vehicular access to the north of Town Close Lane as shown on sheet 11 of the access to works plan
North Norfolk District	Vehicular access to the south of Town Close Lane as shown on sheet 11 of the access to works plan
North Norfolk District	Vehicular access to the north of Wood Dalling Road as shown on sheet 11 of the access to works plan
North Norfolk District	Vehicular access to the south of Wood Dalling Road as shown on sheet 11 of the access to works plan
Broadland District	Vehicular access to the north of Blackwater Lane as shown on sheet 12 of the access to works plan
Broadland District	Vehicular access to the south of Blackwater Lane as shown on sheet 12 of the access to works plan
Broadland District	Vehicular access to the north of Heydon Lane as shown on sheet 13 of the access to works plan
Broadland District	Vehicular access to the south of Heydon Lane as shown on sheet 13 of the access to works plan
Broadland District	Vehicular access to the north of Heydon Road as shown on sheet 13 of the access to works plan
Broadland District	Vehicular access to the south of Heydon Road as shown on sheet 13 of the access to works plan
Broadland District	Vehicular access to the north of Reepham Road as shown on sheet 14 of the access to works plan

Broadland District	Vehicular access to the south of Reepham Road as shown on sheet 14 of the access to works plan
Broadland District	Vehicular access to the south west of Reepham Road as shown on sheet 14 of the access to works plan
Broadland District	Vehicular access to the west of Reepham Road on to Merrison's Lane as shown on sheet 15 of the access to works plan
Broadland District	Vehicular access to the north west of Reepham Road as shown on sheet 15 of the access to works plan
Broadland District	Vehicular access to the south east of Reepham Road as shown on sheet 15 of the access to works plan
Broadland District	Vehicular access to the west of Cawston Road as shown on sheet 15 of the access to works plan
Broadland District	Vehicular access to the east of Cawston Road as shown on sheet 15 of the access to works plan
Broadland District	Vehicular access to the north of Marriott's Way as shown on sheet 16 of the access to works plan
Broadland District	Vehicular access to the north of Church Road as shown on sheet 17 of the access to works plan
Broadland District	Vehicular access to the south of Church Road as shown on sheet 17 of the access to works plan
Broadland District	Vehicular access to the north east of Reepham Road as shown on sheet 18 of the access to works plan
Broadland District	Vehicular access to the south west of Reepham Road as shown on sheet 18 of the access to works plan
Broadland District	Vehicular access to the north of Church Farm Lane as shown on sheet 19 of the access to works plan
Broadland District	Vehicular access to the south of Church Church Farm Lane as shown on sheet 19 of the access to works plan
Broadland District	Vehicular access to the north of Hall Road as shown on sheet 19 of the access to works plan
Broadland District	Vehicular access to the south of Hall Road as shown on sheet 19 of the access to works plan
Broadland District	Vehicular access to the south of Hall Road near Alderford as shown on sheet 19 of the access to works plan
Broadland District	Vehicular access to the south of Reepham Road as shown on sheet 20 of the access to works plan
Broadland District	Vehicular access to the west of Station Road to the north of Marriott's Way as shown on sheet 20 of the access to works plan

Broadland District	Vehicular access to the west of Station Road to the south of Marriott's Way as shown on sheet 20 of the access to works plan
Broadland District	Vehicular access to the north east of the Street as shown on sheet 21 of the access to works plan
Broadland District	Vehicular access to the south west of the Street as shown on sheet 21 of the access to works plan
Broadland District	Vehicular access to the east of Marl Hill Road as shown on sheet 21 of the access to works plan
Broadland District	Vehicular access to the north east of the Ringland Lane as shown on sheet 21 of the access to works plan
Broadland District	Vehicular access to the south west of Ringland Lane as shown on sheet 21 of the access to works plan
Broadland District	Vehicular access to the north of Ringland Lane as shown on sheet 21 of the access to works plan
Broadland District	Vehicular access to the south of Ringland Lane as shown on sheet 21 of the access to works plan
Broadland District	Vehicular access to the west of Ringland Lane opposite Oak Grove as shown on sheet 22 of the access to works plan
Broadland District	Vehicular access to the south west of Ringland Lane as shown on sheet 22 of the access to works plan
Broadland District	Vehicular access to the north of Weston Road opposite Breck Barn Cottages as shown on sheet 23 of the access to works plan
Broadland District	Vehicular access to the north of Weston Road as shown on sheet 23 of the access to works plan
Broadland District	Vehicular access to the south of Weston Road as shown on sheet 23 of the access to works plan
Broadland District	Vehicular access to the north west of Honingham Lane as shown on sheet 23 of the access to works plan
Broadland District	Vehicular access to the south east of Honingham Lane as shown on sheet 23 of the access to works plan
Broadland District	Vehicular access to the north of Weston Road as shown on sheet 24 of the access to works plan
Broadland District	Vehicular access to the south of Weston Road as shown on sheet 24 of the access to works plan
South Norfolk	Vehicular access to the north of Church Lane north of the A47 as shown on sheet 25 of the access to works plan
South Norfolk	Vehicular access to the north of Church south

	of the A47 as shown on sheet 25 of the access to works plan
South Norfolk	Vehicular access to the south of Church south of the A47 as shown on sheet 25 of the access to works plan
South Norfolk	Vehicular access to the north of Broom Lane as shown on sheet 26 of the access to works plan
South Norfolk	Vehicular access to the south of Broom Lane as shown on sheet 26 of the access to works plan
South Norfolk	Vehicular access to west of Easton Road as shown on sheet 26 of the access to works plan
South Norfolk	Vehicular access to east of Easton Road as shown on sheet 26 of the access to works plan
South Norfolk	Vehicular access to the south of Bawburgh Road, on to Bawburgh Road as shown on sheet 26 of the access to works plan
South Norfolk	Vehicular access to the north of Bawburgh Road as shown on sheet 26 of the access to works plan
South Norfolk	Vehicular access to the north of Bawburgh Road as shown on sheet 27 of the access to works plan
South Norfolk	Vehicular access to the south of Bawburgh Road as shown on sheet 27 of the access to works plan
South Norfolk	Vehicular access to the north of Watton Road as shown on sheets 27 and 28 of the access to works plan
South Norfolk	Vehicular access to the south of Watton Road as shown on sheets 27 and 28 of the access to works plan
South Norfolk	Vehicular access to the north of Market Lane as shown on sheet 28 of the access to works plan
South Norfolk	Vehicular access to the east of Market Lane as shown on sheet 28 of the access to works plan
South Norfolk	Vehicular access to the south of Great Melton Road as shown on sheet 28 of the access to works plan
South Norfolk	Vehicular access to the south of Great Melton Road opposite Freshfields as shown on sheets 28 and 29 of the access to works plan
South Norfolk	Vehicular access to the north west of Little Melton Road as shown on sheets 28 and 29 of the access to works plan
South Norfolk	Vehicular access to the south east of Little Melton Road as shown on sheets 28 and 29 of the access to works plan
South Norfolk	Vehicular access to the north west of Burnthouse Lane as shown on sheet 29 of the access to works plan
South Norfolk	Vehicular access to the south east of Burnthouse Lane as shown on sheet 29 of the access to works plan
South Norfolk	Vehicular access to the east of Burnthouse Lane as shown on sheet 29 of the access to works plan

	plan
South Norfolk	Vehicular access to the east of Burnthouse Lane, to the south of the access referenced above, as shown on sheet 29 of the access to works plan
South Norfolk	Vehicular access to the north of Colney Lane as shown on sheet 29 of the access to works plan
South Norfolk	Vehicular access to the north of Norwich Road as shown on sheet 30 of the access to works plan
South Norfolk	Vehicular access to the north of Norwich Road opposite the access for Wynchwood House as shown on sheet 30 of the access to works plan
South Norfolk	Vehicular access to the south of Norwich Road as shown on sheet 30 of the access to works plan
South Norfolk	Vehicular access to the east of Station Lane as shown on sheet 30 of the access to works plan
South Norfolk	Vehicular access to the east of Station Lane, to the south of the access referenced above as shown on sheet 30 of the access to works plan
South Norfolk	Vehicular access to the east of Station Cottages Service Road as shown on sheet 30 of the access to works plan
South Norfolk	Vehicular access to the west of Intwood Road as shown on sheet 32 of the access to works plan
South Norfolk	Vehicular access to the east of Intwood Road as shown on sheet 32 of the access to works plan
South Norfolk	Vehicular access to the east of Swardeston Lane as shown on sheet 32 of the access to works plan
South Norfolk	Vehicular access to the west of Swardeston Lane to the east of the access referenced above as shown on sheet 32 of the access to works plan
South Norfolk	Vehicular access to the north of Main Road as shown on sheet 33 of the access to works plan
South Norfolk	Vehicular access to south of Main Road as shown on sheet 33 of the access to works plan
South Norfolk	Vehicular access to the north of Mangreen Lane as shown on sheets 33 and 34 of the access to works plan
South Norfolk	Vehicular access to the south of Mangreen Lane as shown on sheets 33 and 34 of the access to works plan
South Norfolk	Vehicular access to the south of Mangreen Hall Lane on to a private access track as shown on sheet 34 of the access to works plan
Broadland District	Vehicular access to the west of Oulton Street as shown on sheet 35 of the access to works plan

SCHEDULE 6

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

<i>(1) Number of land shown on land plans</i>	<i>(2) Purpose for which rights may be acquired</i>
1-001, 1-002, 1-003, 1-004, 1-006, 1-008, 1-017, 1-018, 1-019, 1-022, 1-026, 2-004, 3-001, 3-002, 3-003, 3-004, 3-005, 3-006, 3-011, 3-012, 3-016, 3-017, 3-018, 3-019, 3-022, 3-023, 3-030, 3-031, 4-002, 4-003, 4-004, 4-006, 4-007, 4-009, 4-010, 5-001, 5-002, 5-003, 5-004, 5-006, 5-007, 6-001, 6-002, 6-004, 6-005, 6-006, 7-001A, 7-003, 7-004, 7-005, 7-006, 7-007, 7-009, 8-001, 8-003, 8-005, 8-006, 9-001, 9-005, 9-006, 9-013, 9-016, 9-019, 9-022, 9-026, 10-002, 10-003, 10-005, 10-006, 10-008, 10-009, 11-004, 11-005, 11-006, 11-009, 11-011, 11-013, 11-014, 12-001, 12-004, 12-005, 12-006, 13-001, 13-002, 13-004, 13-006, 14-002, 14-005, 14-006, 14-007, 15-002, 15-006, 15-007, 15-008, 15-009, 15-011, 16-001, 16-002, 16-003, 16-004, 16-005, 16-006, 16-007, 16-012, 16-020, 16-021, 16-025, 16-026, 16-027, 16-028, 16-029, 16-030, 17-002, 17-003, 17-004, 17-006, 17-007, 18-001, 18-002, 18-003, 18-004, 18-005, 18-006, 18-007, 19-001, 19-005, 19-006, 19-007, 19-009, 19-011, 19-012, 19-014, 20-005, 20-008, 20-009, 21-001, 21-002, 21-003, 21-005, 21-006, 21-007, 21-008, 21-010, 21-011, 21-014, 21-015, 21-017, 21-018, 23-001, 23-003, 23-004, 23-009, 23-010, 23-011, 23-012, 23-016, 23-017, 24-003, 24-004, 24-011, 24-012, 25-006, 25-007, 25-008, 25-009, 25-010, 25-011, 25-012, 25-013, 25-015, 25-016, 26-001, 26-005, 26-007, 26-010, 26-011, 26-012, 26-013, 26-014, 26-015, 27-001, 27-002, 27-003, 27-004, 27-008, 27-009, 27-011, 27-012, 28-001, 28-002, 28-003, 28-006, 28-007, 28-009, 28-011, 28-013, 29-003, 29-004, 29-005, 29-006, 29-009, 29-012, 29-013, 29-015, 29-016, 29-017, 30-009, 30-010, 30-011, 30-012, 30-013, 30-014, 30-017, 30-018, 30-023, 30-024, 30-027, 30-028, 30-029, 31-001, 31-002, 31-004, 32-002, 32-003, 32-004, 32-006, 32-007, 32-008, 32-009, 32-010, 33-005, 33-006, 33-016, 33-023, 33-024, 34-001, 34-002, 34-003, 34-004, 34-005, 34-006, 34-007, 34-008, 34-010	New Connection Rights(a) (shown edged red and shaded blue on the Land Plans) required for the construction, operation and maintenance of Work Nos. 6, 7, 8 and 11
1-007, 9-015, 33-007, 33-008, 33-009, 33-010	New Connection Rights and New Construction and Operation Access Rights (shown edged red, shaded blue and hatched brown on the Land

(a) Term as defined in the book of reference.

	Plans) required for the construction, operation and maintenance of Work Nos. 6, 7, 8 and 11 and access to Work Nos.6, 7, 8, 9 and 10
34-011	New Connection Rights and New Construction and Maintenance Access Rights (shown edged red, shaded blue and hatched brown on the Land Plans) required for the construction, operation and maintenance of and access to Work Nos. 11 and 12
9-003, 9-007, 9-008, 9-009, 9-010, 9-014, 9-021, 33-011, 33-015, 33-018, 33-019, 33-021	New Connection Rights and New Landscaping Rights (shown edged red, shaded blue and hatched green on the Land Plans) required for the construction, operation and maintenance of Work No. 8 and for landscaping works relating to Work Nos. 9 and 10
1-014, 1-016, 9-017, 9-024, 9-025,10-004, 33-004	New Construction and Operation Access Rights (edged red and shaded brown on the Land Plans) required for access to Work Nos. 6, 7, 9 and 10
3-024, 3-025, 3-026, 3-027, 3-028, 20-006, 20-007, 20,010, 20-011, 21-012, 21-013, 25-003, 25-004, 25-005, 26-002, 26-003, 26-004, 26-016, 26-017, 28-004, 28-005, 30-003, 30-004, 30-005, 30-015, 30-016, 30-021, 30-022, 30-025, 30-026, 34-009, 34-012	New Construction and Maintenance Access Rights (shown edged red and shaded brown on the Land Plans) required for access to Work Nos. 8, 11 and 12
9-002, 9-004, 9-011, 9-020, 9-023, 33-012, 33-013, 33-020, 33-022	New Landscaping Rights (shown edged red and shaded green on the Land Plans) required for landscaping works relating to Work Nos. 9 and 10

SCHEDULE 7

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right or the imposition of a restrictive covenant as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973^(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (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
- (b) for the words “acquired or taken from him” there is substituted the words “over which the right is exercisable or the restrictive covenant enforceable”.

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) 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 202[]; and
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 10 of Schedule 7 to the Hornsea Three Wind Farm Order 202[]) 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”

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 sub-paragraph (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,

(a) 1973 c.26.

in relation to the imposition of a restriction, with the modifications specified in the following provisions of this Schedule.

5. For section 7 of the 1965 Act (measure of compensation in the case of severance) there is substituted the following section—

“**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is so 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 the 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 warrant in the event of obstruction) of the 1965 Act is modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will, etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

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 27(3) is so 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.

10. For Schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(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 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Hornsea Three Offshore Wind Farm Order 202[] in respect of the land to which the notice to treat relates.

(2) But see article 23(3) (acquisition of subsoil only) of the Hornsea Three Offshore Wind Farm Order 202[] which excludes the acquisition of subsoil only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by the Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right or the imposition of the covenant,
- (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
- (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 8

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1) Area</i>	<i>(2) Number of land shown on land plan</i>	<i>(3) Purpose for which temporary possession may be taken</i>
North Norfolk District	1-005	Temporary use for the passing and re-passing of users of public footpaths to facilitate construction for Work Nos. 5, 6 and 7
North Norfolk District	1-009	Temporary use for access and for the passing and re-passing of users of public footpaths to facilitate construction for Work Nos. 5, 6, 7 and 8
North Norfolk District	1-010	Temporary use for the passing and re-passing of users of public footpaths to facilitate construction for Work Nos. 5, 6 and 7
North Norfolk District	1-011	Temporary use for the passing and re-passing of users of public footpaths to facilitate construction for Work Nos. 5, 6 and 7
North Norfolk District	1-012	Temporary use for access to facilitate construction for Work Nos. 5, 6, 7 and 8
North Norfolk District	1-013	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	1-015	Temporary use (including for access and vehicle holding area) to facilitate construction for Work Nos. 5, 6, 7 and 8
North Norfolk District	1-020	Temporary use (including for access and storage) to facilitate construction for Work No. 8
North Norfolk District	1-021	Temporary use (including for access and storage) to facilitate construction for Work No. 8
North Norfolk District	1-023	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	1-024	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	1-025	Temporary use (including for access and storage) to facilitate construction for Work No. 8
North Norfolk District	2-001	Temporary use (including for storage) to facilitate

		construction for Work No. 8
North Norfolk District	2-002	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	2-003	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	2-005	Temporary use (including for storage) to facilitate construction for Work No. 8
North Norfolk District	3-007	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	3-008	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	3-009	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	3-010	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	3-013	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	3-014	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	3-015	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	3-020	Temporary use (including for storage) to facilitate construction for Work No. 8
North Norfolk District	3-021	Temporary use (including for storage) to facilitate construction for Work No. 8
North Norfolk District	3-029	Temporary use (including for storage) to facilitate construction for Work No. 8
North Norfolk District	4-001	Temporary use (including for storage) to facilitate construction for Work No. 8
North Norfolk District	4-005	Temporary use (including for storage) to facilitate construction for Work No. 8
North Norfolk District	4-008	Temporary use (including for storage) to facilitate construction for Work No. 8
North Norfolk District	5-005	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	6-003	Temporary use (including for storage) to facilitate construction for Work No. 8

North Norfolk District	7-001	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	7-002	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	7-008	Temporary use (including for storage) to facilitate construction for Work No. 8
North Norfolk District	8-002	Temporary use (including for storage) to facilitate construction for Work No. 8
North Norfolk District	8-004	Temporary use (including for storage) to facilitate construction for Work No. 8
North Norfolk District	9-018	Temporary use (including for storage and access) to facilitate construction for Work Nos. 8 and 9
North Norfolk District	10-001	Temporary use (including for storage) to facilitate construction for Work No. 8
North Norfolk District	10-007	Temporary use (including for storage) to facilitate construction for Work No. 8
North Norfolk District	10-010	Temporary use (including for storage) to facilitate construction for Work No. 8
North Norfolk District	11-001	Temporary use (including for storage) to facilitate construction for Work No. 8
North Norfolk District	11-002	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	11-003	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	11-007	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	11-008	Temporary use for access to facilitate construction for Work No. 8
North Norfolk District	11-010	Temporary use (including for storage) to facilitate construction for Work No. 8
North Norfolk District	11-012	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	12-002	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	12-003	Temporary use (including for storage) to facilitate construction for Work No. 8

Broadland District	13-003	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	13-005	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	14-001	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	14-003	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	14-004	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	14-008	Temporary use for access to facilitate construction for Work No. 8
Broadland District	14-009	Temporary use for access to facilitate construction for Work No. 8
Broadland District	15-001	Temporary use (including for access and storage) to facilitate construction for Work No. 8
Broadland District	15-003	Temporary use for access to facilitate construction for Work No. 8
Broadland District	15-004	Temporary use for access to facilitate construction for Work No. 8
Broadland District	15-005	Temporary use for access to facilitate construction for Work No. 8
Broadland District	15-010	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	16-008	Temporary use for access to facilitate construction for Work No. 8
Broadland District	16-009	Temporary use for access to facilitate construction for Work No. 8
Broadland District	16-010	Temporary use for access to facilitate construction for Work No. 8
Broadland District	16-011	Temporary use for access to facilitate construction for Work No. 8
Broadland District	16-013	Temporary use for access to facilitate construction for Work No. 8
Broadland District	16-014	Temporary use for access to facilitate construction for Work No. 8
Broadland District	16-015	Temporary use for access to

		facilitate construction for Work No. 8
Broadland District	16-016	Temporary use for access to facilitate construction for Work No. 8
Broadland District	16-017	Temporary use for access to facilitate construction for Work No. 8
Broadland District	16-018	Temporary use for access to facilitate construction for Work No. 8
Broadland District	16-019	Temporary use for access to facilitate construction for Work No. 8
Broadland District	16-022	Temporary use for access to facilitate construction for Work No. 8
Broadland District	16-023	Temporary use for access to facilitate construction for Work No. 8
Broadland District	16-024	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	17-001	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	17-005	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	19-002	Temporary use for access to facilitate construction for Work No. 8
Broadland District	19-003	Temporary use for access to facilitate construction for Work No. 8
Broadland District	19-004	Temporary use for access to facilitate construction for Work No. 8
Broadland District	19-008	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	19-010	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	19-013	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	19-015	Temporary use for access to facilitate construction for Work No. 8
Broadland District	19-016	Temporary use for access to facilitate construction for Work No. 8
Broadland District	20-001	Temporary use (including for storage) to facilitate

		construction for Work No. 8
Broadland District	20-002	Temporary use for access to facilitate construction for Work No. 8
Broadland District	20-003	Temporary use for access to facilitate construction for Work No. 8
Broadland District	20-004	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	21-004	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	21-009	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	21-016	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	21-019	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	22-001	Temporary use for access to facilitate construction for Work No. 8
Broadland District	22-002	Temporary use for access to facilitate construction for Work No. 8
Broadland District	22-003	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	23-002	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	23-005	Temporary use for access to facilitate construction for Work No. 8
Broadland District	23-006	Temporary use for access to facilitate construction for Work No. 8
Broadland District	23-007	Temporary use for access to facilitate construction for Work No. 8
Broadland District	23-008	Temporary use (including for storage) to facilitate construction for Work No. 8
Broadland District	23-013	Temporary use for access to facilitate construction for Work No. 8
Broadland District	23-014	Temporary use for access to facilitate construction for Work No. 8
Broadland District	23-015	Temporary use for access to facilitate construction for Work No. 8

Broadland District	24-001	Temporary use for access to facilitate construction for Work No. 8
Broadland District	24-002	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	24-005	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	24-006	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	24-007	Temporary use for access to facilitate construction for Work No. 8
Broadland District	24-008	Temporary use for access to facilitate construction for Work No. 8
Broadland District	24-009	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	24-010	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	24-013	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	25-001	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	25-002	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	25-014	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	26-006	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	26-008	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	26-009	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	27-005	Temporary use (including for access and storage) to facilitate construction for Work No. 8
South Norfolk	27-006	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	27-007	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	27-010A	Temporary use (including for

		storage) to facilitate construction for Work No. 8
South Norfolk	27-013	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	28-008	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	28-010	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	28-012	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	28-014	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	29-001	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	29-002	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	29-007	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	29-008	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	29-010	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	29-011	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	29-014	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	30-006	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	30-007	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	30-008	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	30-019	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	30-020	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	30-030	Temporary use (including for storage) to facilitate

		construction for Work No. 8
South Norfolk	31-003	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	32-001	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	32-005	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	32-011	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	33-001	Temporary use (including for access and storage) to facilitate construction for Work No. 8
South Norfolk	33-002	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	33-003	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	33-017	Temporary use (including for storage) to facilitate construction for Work No. 10
Broadland District	35-001	Temporary use (including for storage) to facilitate construction for Work Nos. 8, 9 10, 11, and 12
Broadland District	35-002	Temporary use for access to facilitate construction for Work Nos. 8, 9 10, 11, and 12
Broadland District	35-003	Temporary use (including for storage, access and vehicle holding area) to facilitate construction for Work Nos. 8, 9 10, 11, and 12
Broadland District	35-004	Temporary use for access to facilitate construction for Work Nos. 8, 9 10, 11, and 12
South Norfolk	29-002	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	29-007	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	29-008	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	29-010	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	29-011	Temporary use for access to facilitate construction for Work No. 8

South Norfolk	29-014	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	30-006	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	30-007	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	30-008	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	30-019	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	30-020	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	30-030	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	31-003	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	32-001	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	32-005	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	32-011	Temporary use (including for storage) to facilitate construction for Work No. 8
South Norfolk	33-001	Temporary use (including for access and storage) to facilitate construction for Work No. 8
South Norfolk	33-002	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	33-003	Temporary use for access to facilitate construction for Work No. 8
South Norfolk	33-017	Temporary use (including for storage) to facilitate construction for Work No. 10
Broadland District	35-001	Temporary use (including for storage) to facilitate construction for Work Nos. 6, 7, 8, 9 10, 11, and 12
Broadland District	35-002	Temporary use for access to facilitate construction for Work No. 6, 7, 8, 9 10, 11, and 12
Broadland District	35-003	Temporary use (including for storage, access and vehicle

		holding area) to facilitate construction for Work Nos. 6, 7, 8, 9 10, 11, and 12
Broadland District	35-004	Temporary use for access to facilitate construction for Work Nos. 6, 7, 8, 9 10, 11, and 12

SCHEDULE 9

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application

1. For the protection of the affected undertakers referred to in this part of this Schedule (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) the following provisions must, unless otherwise agreed in writing between the undertaker and the affected undertaking concerned, have effect.

2. In this part of this Schedule—

“affected undertaker” means

- (a) any licence holder within the meaning of Part 1 of the 1989 Act;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(a);
- (c) a water undertaker within the meaning of the Water Industry Act 1991(b);
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991(c),

for the area of the authorised development but, for the avoidance of doubt, does not include the undertakers specified in Part 2, Part 3, and Part 6 (National Grid, Cadent Gas Limited and Anglian Water Services Limited) of this Schedule, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;

“alternative apparatus” means alternative apparatus adequate to enable the affected undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the 1989 Act), belonging to or maintained by that affected undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
 - (i) mains, pipes or other apparatus belonging to or maintained by that affected undertaker for the purposes of water supply; and
 - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991;
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the affected undertaker under the Water Industry Act 1991; and

(a) 1986 c.44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 (c.27).

(b) 1991 c.56.

(c) 1991 c.56.

- (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties; and

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land.

Precedence of the 1991 Act in respect of apparatus in the streets

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the affected undertaker are regulated by the provisions of Part 3 of the 1991 Act.

No acquisition etc. except by agreement

4. Regardless of any provision in this Order or anything shown on the land plan, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this part of this Schedule and any right of an affected undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the affected undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the affected undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an affected undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the affected undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the affected undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the affected undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(5) The affected undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 37 (arbitration) and after the grant to the affected undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the affected undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the affected undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the affected undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

6.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to an affected undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the affected undertaker in question or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the affected undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that affected undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5 that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5, the undertaker must submit to the affected undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the affected undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the affected undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an affected undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an affected undertaker in accordance with sub-paragraph (2) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the affected undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable

subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an affected undertaker the reasonable expenses incurred by that affected undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 37 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the affected undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (2)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an affected undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the affected undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Expenses and costs

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an affected undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any affected undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that affected undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that affected undertaker for any other expenses, loss, damages, penalty or costs incurred by the affected undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an affected undertaker, its officers, servants, contractors or agents.

(3) An affected undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

10. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an affected undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF NATIONAL GRID AS ELECTRICITY AND GAS UNDERTAKER

Application

1. For the protection of National Grid referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the undertaker and National Grid, have effect.

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the National Grid to enable the National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by National Grid; and
- (b) any mains, pipes or other apparatus belonging to or maintained by National Grid for the purposes of gas supply, 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;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order (unless otherwise specified) for the purposes of this Part of this Schedule shall include the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“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, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means either—

- (a) National Grid Electricity Transmission PLC (Company No. 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH; or
- (b) National Grid Gas PLC (Company No. 200600) whose registered office is at 1-3 Strand, London, WC2N 5EH,

or their successor company(ies);

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

“specified works” means any of the authorised development or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

3. Except for paragraphs 4 (apparatus of National Grid in streets subject to temporary stopping up), 9 (retained apparatus: protection of National Grid as gas undertaker), 10 (retained apparatus: protection of National Grid as electricity undertaker), 11 (expenses) and 12 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of National Grid in streets subject to temporary stopping up

4.—(1) Without prejudice to the generality of any other protection afforded to National Grid elsewhere in the Order, where any street is stopped up under article 10 (temporary stopping up of streets), if National Grid has any apparatus in the street or accessed via that street National Grid will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to National Grid, or will procure the granting to the National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up under the powers of article 10 (temporary stopping up of streets), National Grid will be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 16 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid which will not unreasonably be withheld and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid or any interruption in the supply of electricity and/or gas, as the case may be, the undertaker must bear and pay on demand the cost reasonably incurred

by National Grid in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to National Grid for any loss sustained by it; and
- (b) indemnify National Grid against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by National Grid, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid or its contractors or workmen; and National Grid will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by National Grid, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not acquire any land interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(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).

Removal of apparatus

7.—(1) If, in the exercise of the agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any Order land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to

that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures National Grid facilities and rights in land for the construction, use, maintenance and protection in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration under paragraph 16 (arbitration) and the arbitrator shall make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2) article 37 (arbitration) of the Order shall apply.

Retained apparatus: protection of National Grid as Gas Undertaker

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan and, if reasonably required by National Grid, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) intended maintenance regimes;

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) applies until National Grid has given written approval of the plan so submitted.

(4) Any approval of National Grid required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and,

(b) must not be unreasonably withheld.

(5) In relation to a work to which sub-paragraphs (1) and (2) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraphs (1) and (2) or as relevant sub-paragraph (5), as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (7) and/or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid shall be entitled to watch and inspect the execution of those works.

(7) Where National Grid requires protective works to be carried out either by themselves or by the undertaker by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If National Grid in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (1) to (3) and (6) to (7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works comprising the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

(a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and

(b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with National Grid's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and the Health and Safety Executive's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Grid retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

Retained apparatus: Protection of National Grid as Electricity Undertaker

10.—(1) Not less than 56 days before the commencement of any authorised development that is near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise and to which paragraph 7(2)(a) or 7(2)(b) applies, the undertaker must submit to National Grid a plan and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within—

(a) 15 metres measured in any direction of any apparatus, or

(b) involve embankment works within 15 metres of any apparatus,

the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must in addition to the matters set out in sub-paragraph (2) include a method statement describing-

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (f) written details of the operations and maintenance regime for the cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by the National Grid's engineers.
- (h) evidence that trench bearing capacity is to be designed to 26 tonnes to take the weight of overhead line construction traffic

(4) The undertaker must not commence any works to which sub-paragraph (1), (2), or (3) applies until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (1), (2), or (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and
- (b) must not be unreasonably withheld.

(6) In relation to a work to which sub-paragraph (1), (2), or (3) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (2), (3) or (6) as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (6), (8) and/or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid require any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to National Grid's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and National Grid must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraphs (1),(2), (3)or (6) (except in an emergency).

(9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (1) to (3) and (6) to (7) shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(10) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any work, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (12) at all times.

(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 TA 43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

11.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 7(3);
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement settled by arbitration in accordance with article 37 (arbitration) of the Order to be

necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

12.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purpose of those works) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (2) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, servants, contractors or agents; and
- (b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the 2008 Act or article 5(b) (benefit of the Order) of the Order subject to the proviso that once such works

become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-paragraph 12(3)(b) will be subject to the full terms of this Part of this Schedule including this paragraph 12 in respect of such new apparatus.

(4) National Grid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

Enactments and agreements

13. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between the undertaker and National Grid, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

14.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 7(2) or an National Grid makes requirements for the protection or alteration of apparatus under paragraphs 9 and/or 10, National Grid shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Grid’s undertaking and National Grid shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by National Grid, it must not be unreasonably withheld or delayed.

Access

15. If in consequence of the agreement reached in accordance with paragraph 6 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

16. Save for differences or disputes arising under paragraphs 7(2), 7(4), 8(1), 9 and 10 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 37 (arbitration).

Notices

17. The plans submitted to National Grid by the undertaker pursuant to paragraphs 9(1) and 10(1) must be sent to National Grid Plant Protection at **plantprotection@nationalgrid.com** or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 3

FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS UNDERTAKER

Application

1. For the protection of Cadent Gas Limited referred to in this Part of this Schedule the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent Gas Limited, have effect.

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of Cadent Gas Limited to enable Cadent Gas Limited to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by Cadent Gas Limited for the purposes of gas supply 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;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order (unless otherwise specified) for the purposes of this Part of this Schedule shall include the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

“Cadent Gas Limited” means Cadent Gas Limited, with Company Registration Number 10080864, whose registered office is at Ashbrook Court Prologis Park, Central Boulevard, Coventry, CV7 8PE;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by Cadent Gas Limited (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent Gas Limited’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“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;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

“specified works” means any of the authorised development or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (c) include any of the activities that are referred to in paragraph 8 of T/SP/SSW/22 (Cadent Gas Limited’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW/22”).

3. Except for paragraphs 4 (apparatus in stopped up streets), 9 (retained apparatus: protection), 10 (expenses) and 11 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under the Order affecting the rights and apparatus of Cadent Gas Limited, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and Cadent Gas Limited are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of Cadent Gas Limited in streets subject to temporary stopping up

4.—(1) Without prejudice to the generality of any other protection afforded to Cadent Gas Limited elsewhere in the Order, where any street is stopped up under article 4 (temporary stopping up of streets), if Cadent Gas Limited has any apparatus in the street or accessed via that street Cadent Gas Limited will be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to Cadent Gas Limited, or will procure the granting to Cadent Gas Limited of, legal easements reasonably satisfactory to Cadent Gas Limited in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

(2) Notwithstanding the temporary stopping up under the powers of article 10 (temporary stopping up of streets), Cadent Gas Limited will be at liberty at all times to take all necessary access across any such street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

5.—(1) The undertaker, in the case of the powers conferred by article 16 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent Gas Limited which will not unreasonably be withheld and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of Cadent Gas Limited or any interruption in the supply of gas, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent Gas Limited in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) pay compensation to Cadent Gas Limited for any loss sustained by it; and
- (b) indemnify Cadent Gas Limited against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent Gas Limited, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent Gas Limited or its contractors or workmen; and Cadent Gas Limited will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by Cadent Gas Limited, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not acquire any land interest or apparatus or override any easement or other interest of Cadent Gas Limited otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) The undertaker and Cadent Gas Limited 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 Cadent Gas Limited 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 Gas Limited 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).

Removal of apparatus

7.—(1) If, in the exercise of the agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any Order land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of Cadent Gas Limited to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of Cadent Gas Limited in accordance with sub-paragraphs (2) to (5) inclusive.

(2) If, for the purpose of executing any works compromised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent Gas Limited 56 days' advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent Gas Limited reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Cadent Gas Limited to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent Gas Limited must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, save that this obligation shall not extend to the requirement for Cadent Gas Limited to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent Gas Limited and the undertaker.

(5) Cadent Gas Limited must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to Cadent Gas Limited of any such facilities and rights as are referred to in sub-paragraph (2) or (3), then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent Gas Limited facilities and rights in land for the construction, use, maintenance and protection in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent Gas Limited and must be no less favourable on the whole to Cadent Gas Limited than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by Cadent Gas Limited.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent Gas Limited under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent Gas Limited than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration paragraph 15 (arbitration) and the arbitrator shall make such provision for the payment of compensation by the undertaker to Cadent Gas Limited as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case. In respect of the appointment of an arbitrator under this sub-paragraph (2) article 37 (arbitration) of the Order shall apply.

Retained apparatus: protection Cadent Gas Limited as Gas Undertaker

9.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent Gas Limited a plan and, if reasonably required by Cadent Gas Limited, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent Gas Limited under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) applies until Cadent Gas Limited has given written approval of the plan so submitted.

(4) Any approval of Cadent Gas Limited required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and
- (b) must not be unreasonably withheld.

(5) In relation to a work to which sub-paragraphs (1) and (2) apply, Cadent Gas Limited may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraphs (1) and (2) or as relevant sub-paragraph (5), as amended from time to time by agreement between the undertaker and Cadent Gas Limited and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (5), (7) and/or (8) by Cadent Gas Limited for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Cadent Gas Limited shall be entitled to watch and inspect the execution of those works.

(7) Where Cadent Gas Limited requires protective works to be carried out either by themselves or by the undertaker by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, must be carried out to Cadent Gas Limited's satisfaction prior to the commencement of any authorised development (or any relevant part thereof) to which sub-paragraph (1) applies and Cadent Gas Limited must give 56 days' notice of such works from the date of submission of a plan in line with sub-paragraph (1) or (2) (except in an emergency).

(8) If Cadent Gas Limited in accordance with sub-paragraph (5) or (7) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs (1) to (3) and (6) to (7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works comprising the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent Gas Limited notice as soon as is reasonably practicable and a plan of those works and must—

- (a) comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with Cadent Gas Limited's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and Health and Safety Executive's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that Cadent Gas Limited retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

Expenses

10.—(1) Subject to the following provisions of this paragraph, the undertaker shall pay to Cadent Gas Limited on demand all charges, costs and expenses reasonably anticipated or incurred by Cadent Gas Limited in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that Cadent Gas Limited elects to use compulsory purchase powers to acquire any necessary rights under paragraph 7(3);
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, by arbitration in accordance with article 37 (arbitration) of the Order to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent Gas Limited by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent Gas Limited in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent Gas Limited any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purpose of those works) or property of Cadent Gas Limited, or there is any interruption in any service provided, or in the supply of any goods, by Cadent Gas Limited, or Cadent Gas Limited becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably incurred by Cadent Gas Limited in making good such damage or restoring the supply; and
- (b) indemnify Cadent Gas Limited for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent Gas Limited, by reason or in consequence of any such damage or interruption or Cadent Gas Limited becoming liable to any third party as aforesaid

(2) The fact that any act or thing may have been done by Cadent Gas Limited on behalf of the undertaker or in accordance with a plan approved by Cadent Gas Limited or in accordance with any requirement of Cadent Gas Limited as a consequence of the authorised development or under

its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and Cadent Gas Limited.

- (3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—
- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent Gas Limited, its officers, servants, contractors or agents; and
 - (b) any authorised development and/or any other works authorised by this Part of this Schedule carried out by Cadent Gas Limited as an assignee, transferee or lessee of Cadent Gas Limited with the benefit of the Order pursuant to section 156 of the 2008 Act or article 5 (benefit of the Order) of the Order subject to the proviso that once such works become apparatus (“new apparatus”), any works yet to be executed and not falling within this sub-paragraph (b) will be subject to the full terms of this Part of this Schedule including this paragraph 11 in respect of such new apparatus.

(4) Cadent Gas Limited must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made unless payment is required in connection with a statutory compensation scheme, without first consulting the undertaker and considering its representations.

(5) Cadent Gas Limited 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 11 applies. If requested to do so by the undertaker, Cadent Gas Limited shall provide an explanation of how the claim has been minimised. The undertaker shall only be liable under this paragraph 11 for claims reasonably incurred by Cadent Gas Limited.

Enactments and agreements

12. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent Gas Limited and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent Gas Limited in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

13.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or Cadent Gas Limited requires the removal of apparatus under paragraph 7(2) or Cadent Gas Limited makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent Gas Limited’s undertaking and Cadent Gas Limited shall use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever Cadent Gas Limited’s consent, agreement or approval to is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by Cadent Gas Limited, it must not be unreasonably withheld or delayed.

Access

14. If in consequence of the agreement reached in accordance with paragraph 6 or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Cadent Gas Limited to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

15. Save for differences or disputes arising under paragraph 7(2), 7(4), 8(1), 9 and 11(5) any difference or dispute arising between the undertaker and Cadent Gas Limited under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent Gas Limited, be determined by arbitration in accordance with article 37 (arbitration).

Notices

16. The plans submitted to Cadent Gas Limited by the undertaker pursuant to paragraph 9(1) must be sent to Cadent Gas Limited Plant Protection at plantprotection@cadentgas.com or such other address as Cadent Gas Limited may from time to time appoint instead for that purpose and notify to the undertaker (in writing).

PART 4

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1.—(1) For the protection of any operator, the following provisions, unless otherwise agreed in writing between the undertaker and the operator, have effect.

2. In this part of this Schedule—

“the 2003 Act” means the Communications Act 2003;

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system is construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act^(a);

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

3. The exercise of the powers of article 28 (statutory undertakers) are subject to part 10 of Schedule 3A to the Communications Act 2003^(b).

4.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or

(a) See section 106.

(b) 2003 c.21.

- (b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—
 - (i) make reasonable compensation to an operator for loss sustained by it; and
 - (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand may be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 37 (arbitration).

5. This part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

6. Nothing in this part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 5

PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

1. The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15 any other person on whom rights or obligations are conferred by that paragraph.

2. In this part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as amended from time to time, granted to Network Rail by the Secretary of State in exercise of powers under section 8 of the Railways Act 1993(a);

“Network Rail” means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at 1 Eversholt Street, London, 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(b)) 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;

(a) 1993 c.43

(b) 2006 c.46.

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised project as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and for the avoidance of doubt includes the exercise of the powers conferred by article 4 (powers to maintain authorised project), article 12 (access to works), article 15 (discharge of water), article 17 (authority to survey and investigate the land onshore); article 34 (felling or lopping of trees and removal of hedgerows) and article 35 (trees subject to tree preservation orders) in respect of any railway property.

3.—(1) Where under this Part Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised project pursuant to this Order.

4.—(1) The undertaker must not exercise the powers conferred by article 18 (compulsory acquisition of land), article 20 (compulsory acquisition of rights), article 21 (private rights), article 23 (acquisition of subsoil only), article 26 (temporary use of land for carrying out the authorised project), article 27 (temporary use for land for maintaining the authorised project) 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.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act or article 28 (statutory undertakers), 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.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(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 must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 37 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(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 without 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.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the opinion of the engineer should 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 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 work must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the undertaker must, regardless of any approval described in paragraph 6(1)(a), make good such damage and pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) 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 24 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 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.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker must pay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, 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;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, need to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified work, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

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 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 project) 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.

(2) This paragraph applies to EMI only to the extent that the EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised project giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised project 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;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can reasonably be prevented only by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but Network Rail may, in its reasonable discretion select the means of prevention and the method of their execution, and in relation to such modifications paragraph 5(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of the commercial operation of the authorised project and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised 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 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.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker’s apparatus in the investigation of the EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail’s apparatus in the investigation of the EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail’s apparatus or the EMI.

(8) Where Network Rail approves modifications to Network Rail’s apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(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(7), 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.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph is deemed to be protective works referred to in that paragraph.

(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.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work, provided that at least 56 days' prior notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, are to be paid by the undertaker to Network Rail.

15.—(1) The undertaker must—

- (a) pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part (but subject to the provisions of this paragraph) which may be occasioned to or reasonably incurred by Network Rail by reason of—
 - (i) the construction or maintenance of a specified work or the failure of such a work; or
 - (ii) any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work,
- (b) indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission.

(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 shall 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.

(4) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the 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.

(6) The obligation under sub-paragraph (4) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (5).

(7) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by a train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. 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 (including the amount of the relevant costs mentioned in paragraph 15) 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 (including any claim relating to those relevant costs).

17. 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.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works plans and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.

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 28 days before any such application is made and must describe or give (as appropriate)—

- (a) whether the application is for consent pursuant to article 5(a) or 5(b);
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made

21. In relation to any dispute arising under this Part (except for those disputes referred to in paragraph 11(11)) the reference in article 37 (arbitration) to the Secretary of State shall be read as a reference to the President of the Institution of Civil Engineers for appointment of an arbitrator.

22. In relation to any dispute arising under this Part that is referred to arbitration in accordance with article 37 (arbitration) of the Order, parties agree that the timetable referred to in paragraph 3

of Schedule 13 (arbitration rules) will be amended 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.

23. 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 36 (certification of plans and documents etc) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format reasonably specified by Network Rail.

PART 6

FOR THE PROTECTION OF ANGLIAN WATER SERVICES LIMITED

1. For the protection of Anglian Water, the following provisions of this Schedule, unless otherwise agreed in writing between the undertaker and Anglian Water shall have effect.

2. In this part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“Anglian Water” means Anglian Water Services Limited;

“Apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage and—

- (a) any drain or works vested in Anglian Water under the Water Industry Act 1991;
- (b) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102 (4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain, or works (within the meaning of section 219 of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“plan” includes sections, drawings, specifications and method statements.

3. This Part of this Schedule does not apply to apparatus to the extent that the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 of the 1991 Act.

4. The undertaker must not interfere with, build over or near to any Apparatus within the Order land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling, the following distances to either side of the medial line of any Apparatus—

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres,

unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out the authorised development on behalf of the undertaker.

5. The alteration, extension, removal or re-location of any Apparatus shall not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approvals or agreement from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and description of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water without delay for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

6. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until Anglian Water has established to its reasonable satisfaction, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus or provide alternative apparatus. Anglian Water must use reasonable endeavours to establish contingency arrangements in a timely manner.

7. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker shall, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 37 (arbitration).

8. If the undertaker is unable to create the new rights referred to in paragraph 7, Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible, use its reasonable endeavours to obtain the necessary rights.

9. If in consequence of the exercise of the powers conferred by the Order the access to any Apparatus is materially obstructed the undertaker must provide such alternative means of access to such Apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

10. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to Anglian Water and afforded the same protection as other Anglian Water assets.

11. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 3 and 5 above any damage is caused to any Apparatus (other than Apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs properly and reasonably incurred by Anglian Water,

by reason or in consequence of any such damage or interruption.

12. Nothing in paragraph 11 above imposes any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the act, neglect or default of Anglian Water, its officer, servants, contractors or agents.

13. Anglian Water must give the undertaker reasonable notice of any claim or demand pursuant to paragraph 11 and must consider its representations before proceeding further in respect of the claim or demand.

14. Anglian Water must use its reasonable endeavours to mitigate in whole or in part and to minimise any claim, costs, expenses, loss, demands and penalties pursuant to paragraph 11. If requested to do so by the undertaker, Anglian Water shall provide an explanation of how the claim has been minimised

15. Any difference or dispute arising between the undertaker and Anglian Water under this part of this Schedule must, unless otherwise agreed in writing between the undertaker and Anglian Water, be determined by arbitration in accordance with article 37 (arbitration).

PART 7

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY AND DRAINAGE AUTHORITIES

1. The provisions of this Part have effect for the protection of a drainage authority unless otherwise agreed in writing between undertaker and the drainage authority.

2. In this Part—

“construction” includes execution, placing, altering, replacing, relaying and removal; and
“construct” and “constructed” must be construed accordingly;

“drainage authority” means—

- (a) in relation to an ordinary watercourse, the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991; and
- (b) in relation to a main river or any sea defence work, the Environment Agency;

“drainage work” means any watercourse includes any land that provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence, sea defence or tidal monitoring;

“ordinary watercourse” has the meaning given in the Land Drainage Act 1991(a);

“plans” includes sections, drawings, specifications and method statements; and

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity, or quality of water in any watercourse; or
- (c) affect the conservation, distribution or use of water resources.

3.—(1) Before beginning to construct any specified work, the undertaker must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority or determined under paragraph 3.

(3) Any approval of the drainage authority required under this paragraph—

(a) See section 72(1).

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or submission of further particulars if required by the drainage authority under sub-paragraph (1)) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work or, where the drainage authority is the Environment Agency, for the protection of water resources for the prevention of pollution or in the discharge of its environmental duties.
- (d) The drainage authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph 3(3)(b).

4. Without limiting paragraph 3, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

5.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 4, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and
- (b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the drainage authority—

- (a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and
- (b) notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If the drainage authority reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part, the drainage authority may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice, and any expenditure incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in

emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

6.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of any specified work maintain in good repair and condition and free from obstruction any drainage work that is situated within the limits of deviation on land held by the undertaker for the purposes of or in connection with the specified work, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any drainage work that the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works that are vested in the drainage authority or that the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part.

7. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker to the reasonable satisfaction of the drainage authority and, if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

8. The undertaker must indemnify the drainage authority in respect of all costs, charges and expenses that the drainage authority may reasonably incur, have to pay or may sustain—

- (a) in the examination or approval of plans under this Part;
- (b) in inspecting the construction of any specified work or any protective works required by the drainage authority under this Part; and
- (c) in carrying out of any surveys or tests by the drainage authority that are reasonably required in connection with the construction of the specified work.

9.—(1) Without limiting the other provisions of this Part, the undertaker must indemnify the drainage authority in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, recovered from or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses; or
- (c) any flooding or increased flooding of any such land; and

(d) where the drainage authority is the Environment Agency, inadequate water quality in any watercourse or other surface waters or in any groundwater, that is caused by the construction of any specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged on the work.

(2) The drainage authority must give to the undertaker reasonable notice of any such claim or demand, and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

10. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part.

11. Any dispute between the undertaker and the drainage authority under this Part, if the parties agree, must be determined by arbitration under article 37 (arbitration), but otherwise must be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Business, Energy and Industrial Strategy acting jointly on a reference to them by the undertaker or the drainage authority, after notice in writing by one to the other.

PART 8

FOR THE PROTECTION OF NORFOLK VANGUARD

1. The provisions of this Part apply for the protection of Vanguard unless otherwise agreed in writing between the undertaker and Vanguard.

2. In this Part—

“apparatus” means the cables, structures or other infrastructure owned, occupied or maintained by Vanguard or its successor in title within the Norfolk Vanguard Order Land;

“construction” includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and “construct” and “constructed” must be construed accordingly;

“Crossing Area” means the land within land parcels 16-001, 16-002, 16-003 and 16-004 shown on the land plans and described in the book of reference;

“Norfolk Vanguard Order” means the Norfolk Vanguard Offshore Wind Farm Order as granted by the Secretary of State;

“Norfolk Vanguard Order land” means Order land as defined in the Norfolk Vanguard Order;

“plans” includes sections, drawings, specifications, designs, design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the Norfolk Vanguard Order land;

“proposed Norfolk Vanguard Cable Corridor” means the proposed location for any electrical circuit(s) and construction compound(s) permitted by the Norfolk Vanguard Order within the Norfolk Vanguard Order land;

“specified works” means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is—

- (a) within the Crossing Area;
- (b) in, on, under, over or within 25 metres of the proposed Norfolk Vanguard Cable Corridor or any apparatus; or
- (c) may in any way adversely affect any apparatus; and

“Vanguard” means an undertaker with the benefit of all or part of the Norfolk Vanguard Order for the time being.

3. The consent of Vanguard under this Part is not required where the Norfolk Vanguard Order has expired without the authorised development having been commenced pursuant to requirement 1 of Schedule 1 to the Norfolk Vanguard Order.

4. Where conditions are included in any consent granted by Vanguard pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by Vanguard.

5. The undertaker must not under the powers of this Order—

- (a) acquire, extinguish, suspend, override or interfere with any rights that Vanguard has in respect of any apparatus or the proposed Norfolk Vanguard Cable Corridor;
- (b) acquire the Norfolk Vanguard Order land or acquire any new rights or impose restrictive covenants or exercise any powers of temporary use over or in relation to the Norfolk Vanguard Order land without the consent of Vanguard, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

6.—(1) The undertaker must not under the powers of this Order carry out any specified works without the consent of Vanguard, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if Vanguard does not respond within 30 days then consent is deemed to be given.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and before beginning to construct any specified works, the undertaker must submit plans of the specified works to Vanguard and must submit such further particulars available to it that Vanguard may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by Vanguard.

(4) Any approval of Vanguard required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus or the proposed Norfolk Vanguard Cable Corridor or for securing access to any apparatus or the proposed Norfolk Vanguard Cable Corridor;

(5) Without limiting sub-paragraph (1), it is not reasonable for Vanguard to withhold or delay any consent or approval under this Part in relation to specified works in, on, under, or over the Crossing Area solely on the basis of thermal interaction where the plans of the specified works submitted under sub-paragraph (2) demonstrate that all reasonable steps have been taken to minimise thermal interaction between the specified works and any apparatus or the proposed Norfolk Vanguard Cable Corridor.

(6) Where Vanguard requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to Vanguard's reasonable satisfaction.

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

7.—(1) The undertaker must give to Vanguard not less than 28 days' written notice of its intention to commence the construction of the specified works and, not more than 14 days after completion of their construction, must give Vanguard written notice of the completion.

(2) The undertaker is not required to comply with paragraph 6 or sub-paragraph (1) in a case of emergency, but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonable practicable subsequently and must comply with paragraph 6 in so far as is reasonably practicable in the circumstances.

8. The undertaker must at all reasonable times during construction of the specified works allow Vanguard and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

9.—(1) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Vanguard requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Crossing Area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), Vanguard may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

10. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Vanguard to maintain or use the apparatus no less effectively than was possible before the obstruction.

11. The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by Vanguard to the proposed Norfolk Vanguard Cable Corridor.

12. To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within the Crossing Area request up-to-date written confirmation from Vanguard of the location of any apparatus or the proposed Norfolk Vanguard Cable Corridor.

13. The undertaker and Vanguard must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

14. The undertaker must pay to Vanguard the reasonable expenses incurred by Vanguard in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the proposed Norfolk Vanguard Cable Corridor.

15.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by Vanguard, or Vanguard becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Vanguard in making good such damage or restoring the service or supply; and
- (b) compensate Vanguard for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Vanguard, by reason or in consequence of any such damage or interruption or Vanguard becoming liable to any third party as aforesaid.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Vanguard, its officers, servants, contractors or agents.

(3) Vanguard must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) Vanguard 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, Vanguard 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 Vanguard.

(5) The fact that any work or thing has been executed or done with the consent of Vanguard and in accordance with any conditions or restrictions prescribed by Vanguard or in accordance with any plans approved by Vanguard or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

16. Any dispute arising between the undertaker and Vanguard under this Part must be determined by arbitration under article 37 (arbitration).

PART 9

FOR THE PROTECTION OF NORFOLK BOREAS

1. The provisions of this Part apply for the protection of Boreas unless otherwise agreed in writing between the undertaker and Boreas.

2. In this Part—

“apparatus” means the cables, structures or other infrastructure owned, occupied or maintained by Boreas or its successor in title within the Norfolk Boreas Order Land;

“Boreas” means an undertaker with the benefit of all or part of the Norfolk Boreas Order for the time being;

“construction” includes execution, placing, altering, replacing, reconstruction, relaying, maintenance, extensions, enlargement and removal; and “construct” and “constructed” must be construed accordingly;

“Crossing Area” means the land within land parcels 16-001, 16-002, 16-003 and 16-004 shown on the land plans and described in the book of reference;

“Norfolk Boreas Order” means the Norfolk Boreas Offshore Wind Farm Order as granted by the Secretary of State;

“Norfolk Boreas Order land” means Order land as defined in the Norfolk Boreas Order;

“plans” includes sections, drawings, specifications, designs, design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the Hornsea Three land;

“proposed Norfolk Boreas Cable Corridor” means the proposed location for any electrical circuit(s) and construction compound(s) permitted by the Norfolk Boreas Order within the Norfolk Boreas Order land; and

“specified works” means so much of any works or operations authorised by this Order (or authorised by any planning permission intended to operate in conjunction with this Order) as is—

- (a) within the Crossing Area;
- (b) in, on, under, over or within 25 metres of the proposed Norfolk Boreas Cable Corridor or any apparatus; or
- (c) may in any way adversely affect any apparatus.

3. The consent of Boreas under this Part is not required where the Norfolk Boreas Order has expired without the authorised development having been commenced pursuant to requirement 1 of Schedule 1 to the Norfolk Boreas Order.

4. Where conditions are included in any consent granted by Boreas pursuant to this Part, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by Boreas.

5. The undertaker must not under the powers of this Order—

- (a) acquire, extinguish, suspend, override or interfere with any rights that Boreas has in respect of any apparatus or the proposed Norfolk Boreas Cable Corridor;
- (b) acquire the Norfolk Boreas Order land or acquire any new rights or impose restrictive covenants or exercise any powers of temporary use over or in relation to the Norfolk Boreas Order land without the consent of Boreas, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions.

6.—(1) The undertaker must not under the powers of this Order carry out any specified works without the consent of Boreas, which must not be unreasonably withheld or delayed but which may be made subject to reasonable conditions and if Boreas does not respond within 30 days then consent is deemed to be given.

(2) Subject to obtaining consent pursuant to sub-paragraph (1) and before beginning to construct any specified works, the undertaker must submit plans of the specified works to Boreas and must submit such further particulars available to it that Boreas may reasonably require.

(3) Any specified works must be constructed without unreasonable delay in accordance with the plans approved in writing by Boreas.

(4) Any approval of Boreas required under this paragraph may be made subject to such reasonable conditions as may be required for the protection or alteration of any apparatus or the proposed Norfolk Boreas Cable Corridor or for securing access to any apparatus or the proposed Norfolk Boreas Cable Corridor;

(5) Without limiting sub-paragraph (1), it is not reasonable for Boreas to withhold or delay any consent or approval under this Part in relation to specified works in, on, under, or over the Crossing Area solely on the basis of thermal interaction where the plans of the specified works submitted under sub-paragraph (2) demonstrate that all reasonable steps have been taken to minimise thermal interaction between the specified works and any apparatus or the proposed Norfolk Boreas Cable Corridor.

(6) Where Boreas requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to Boreas's reasonable satisfaction.

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any specified works, new plans instead of the plans previously submitted, and the provisions of this paragraph shall apply to and in respect of the new plans.

7.—(1) The undertaker must give to Boreas not less than 28 days' written notice of its intention to commence the construction of the specified works and, not more than 14 days after completion of their construction, must give Boreas written notice of the completion.

(2) The undertaker is not required to comply with paragraph 6 or sub-paragraph (1) in a case of emergency, but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonable practicable subsequently and must comply with paragraph 6 in so far as is reasonably practicable in the circumstances.

8. The undertaker must at all reasonable times during construction of the specified works allow Boreas and its servants and agents access to the specified works and all reasonable facilities for inspection of the specified works.

9.—(1) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Boreas requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Crossing Area.

(2) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (1), Boreas may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

10. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Boreas to maintain or use the apparatus no less effectively than was possible before the obstruction.

11. The undertaker must not exercise the powers conferred by this Order to prevent or interfere with the access by Boreas to the proposed Norfolk Boreas Cable Corridor.

12. To ensure its compliance with this Part, the undertaker must before carrying out any works or operations pursuant to this Order within the Crossing Area request up-to-date written confirmation from Boreas of the location of any apparatus or the proposed Norfolk Boreas Cable Corridor.

13. The undertaker and Boreas must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part.

14. The undertaker must pay to Boreas the reasonable expenses incurred by Boreas in connection with the approval of plans, inspection of any specified works or the alteration or protection of any apparatus or the proposed Norfolk Boreas Cable Corridor.

15.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works, any damage is caused to any apparatus or there is any interruption in any service provided, or in the supply of any goods, by Boreas, or Boreas becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Boreas in making good such damage or restoring the service or supply; and
- (b) compensate Boreas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Boreas, by reason or in consequence of any such damage or interruption or Boreas becoming liable to any third party as aforesaid.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of Boreas, its officers, servants, contractors or agents.

(3) Boreas must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme without first consulting the undertaker and considering its representations.

(4) Boreas 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, Boreas 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 Boreas.

(5) The fact that any work or thing has been executed or done with the consent of Boreas and in accordance with any conditions or restrictions prescribed by Boreas or in accordance with any plans approved by Boreas or to its satisfaction or in accordance with any directions or award of any arbitrator does not relieve the undertaker from any liability under this Part.

16. Any dispute arising between the undertaker and Boreas under this Part must be determined by arbitration under article 37 (arbitration).

SCHEDULE 10

PART 1

REMOVAL OF HEDGEROWS

<i>(1) Area</i>	<i>(2) Location of hedgerow</i>
North Norfolk District	The hedgerow shown between points 1a and 1b on sheet 1 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 2a and 2b on sheet 1 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 3a and 3b on sheet 1 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 4a and 4b on sheet 1 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 5a and 5b on sheet 1 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 7a and 7b on sheet 1 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 8a and 8b on sheet 1 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 9a and 9b on sheet 2 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 10a and 10b on sheet 2 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 11a and 11b on sheet 2 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 12a and 12b on sheet 2 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 13a and 13b on sheet 3 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 14a and 14b on sheet 3 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 15a and 15b on sheet 3 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 16a and 16b on sheet 3 of the tree preservation order and hedgerow plan

North Norfolk District	The hedgerow shown between points 17a and 17b on sheet 3 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 18a and 18b on sheet 3 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 19a and 19b on sheet 3 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 20a and 20b on sheet 3 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 21a and 21b on sheet 3 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 22a and 22b on sheet 3 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 22b and 22c on sheet 3 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 23a and 23b on sheet 3 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 25a and 25b on sheets 3 and 4 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 26a and 26b on sheets 3 and 4 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 27a and 27b on sheets 3 and 4 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 29a and 29b on sheet 4 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 30a and 30b on sheet 4 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 32a and 32b on sheet 4 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 33a and 33b on sheet 4 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 34a and 34b on sheet 4 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 39a and 39b on sheet 5 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 43a and 43b on sheet 7 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 44a and

	44b on sheet 7 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 45a and 45b on sheet 7 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 47a and 47b on sheet 7 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 50a and 50b on sheet 8 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 51a and 51b on sheet 8 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 52a and 52b on sheet 8 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 53a and 53b on sheet 8 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 54a and 54b on sheet 8 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 55a and 55b on sheet 8 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 56a and 56b on sheet 8 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 57a and 57b on sheets 8 and 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 58a and 58b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 59a and 59b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 60a and 60b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 61a and 61b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 62a and 62b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 63a and 63b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 64a and 64b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 65a and 65b on sheet 9 of the tree preservation order

	and hedgerow plan
North Norfolk District	The hedgerow shown between points 66a and 66b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 67a and 67b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 68a and 68b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 69a and 69b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 70a and 70b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 71a and 71b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 72a and 72b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 73a and 73b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 74a and 74b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 75a and 75b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 76a and 76b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 77a and 77b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 78a and 78b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 80a and 80b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 81a and 81b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 82a and 82b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 83a and 83b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 85a and 85b on sheet 9 of the tree preservation order and hedgerow plan

North Norfolk District	The hedgerow shown between points 85c and 85d on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 85e and 85f on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 86a and 86b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 87a and 87b on sheet 10 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 88a and 88b on sheet 10 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 89a and 89b on sheet 10 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 90a and 90b on sheet 10 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 92a and 92b on sheet 10 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 93a and 93b on sheet 10 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 94a and 94b on sheet 10 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 95a and 95b on sheet 10 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 96a and 96b on sheet 10 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 97a and 97b on sheet 10 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 98a and 98b on sheet 10 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 100a and 100b on sheet 10 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 102a and 102b on sheet 10 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 103a and 103b on sheet 11 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 104a and 104b on sheet 11 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 105a and

	105b on sheet 11 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 106a and 106b on sheet 11 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 107a and 107b on sheet 11 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 108a and 108b on sheet 11 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 109a and 109b on sheet 11 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 110a and 110b on sheet 11 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 111a and 111b on sheet 11 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 112a and 112b on sheet 12 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 115a and 115b on sheet 12 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 116a and 116b on sheet 12 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 122a and 122b on sheet 13 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 123a and 123b on sheet 13 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 124a and 124b on sheet 13 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 125a and 125b on sheet 13 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 128a and 128b on sheet 13 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 129a and 129b on sheet 13 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 131a and 131b on sheet 14 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 132a and 132b on sheet 14 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 133a and 133b on sheet 14 of the tree preservation order

	and hedgerow plan
Broadland District	The hedgerow shown between points 134a and 134b on sheet 14 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 135a and 135b on sheet 14 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 136a and 136b on sheet 14 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 137a and 137b on sheet 14 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 138a and 138b on sheet 14 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 139a and 139b on sheet 14 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 140a and 140b on sheet 14 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 141a and 141b on sheet 15 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 142a and 142b on sheet 15 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 143a and 143b on sheet 15 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 144a and 144b on sheet 15 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 145a and 145b on sheet 15 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 146a and 146b on sheet 15 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 147a and 147b on sheet 16 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 149a and 149b on sheet 16 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 150a and 150b on sheet 16 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 152a and 152b on sheet 16 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 155a and 155b on sheet 17 of the tree preservation order and hedgerow plan

Broadland District	The hedgerow shown between points 156a and 156b on sheet 17 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 157a and 157b on sheet 18 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 158a and 158b on sheet 18 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 160a and 160b on sheet 18 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 161a and 161b on sheet 18 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 162a and 162b on sheet 18 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 163a and 163b on sheet 19 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 164a and 164b on sheet 19 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 165a and 165b on sheet 19 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 167a and 167b on sheet 19 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 168a and 168b on sheet 19 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 169a and 169b on sheet 19 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 170a and 170b on sheet 20 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 171a and 171b on sheet 20 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 172a and 172b on sheet 20 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 177a and 177b on sheet 20 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 178a and 178b on sheet 20 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 179a and 179b on sheet 21 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 180a and

	180b on sheet 21 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 181a and 181b on sheet 21 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 182a and 182b on sheet 21 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 183a and 183b on sheet 21 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 184a and 184b on sheet 21 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 185a and 185b on sheet 21 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 186a and 186b on sheet 21 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 187a and 187b on sheet 21 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 188a and 188b on sheet 21 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 190a and 190b on sheet 22 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 191a and 191b on sheet 22 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 192a and 192b on sheet 22 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 193a and 193b on sheet 23 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 194a and 194b on sheet 23 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 195a and 195b on sheet 23 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 196a and 196b on sheet 23 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 197a and 197b on sheet 23 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 199a and 199b on sheet 23 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 201a and 201b on sheet 24 of the tree preservation order

	and hedgerow plan
Broadland District	The hedgerow shown between points 202a and 202b on sheet 24 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 208a and 208b on sheet 24 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 209a and 209b on sheet 25 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 210a and 210b on sheet 25 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 211a and 211b on sheet 25 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 213a and 213b on sheet 25 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 215a and 215b on sheet 26 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 216a and 216b on sheet 26 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 217a and 217b on sheet 26 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 218a and 218b on sheet 26 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 219a and 219b on sheet 26 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 220a and 220b on sheet 26 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 221a and 221b on sheet 26 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 223a and 223b on sheet 26 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 224a and 224b on sheet 26 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 225a and 225b on sheet 26 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 226a and 226b on sheet 26 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 227a and 227b on sheet 26 of the tree preservation order and hedgerow plan

South Norfolk District	The hedgerow shown between points 232a and 232b on sheet 27 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 233a and 233b on sheet 27 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 234a and 234b on sheet 27 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 235a and 235b on sheet 27 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 236a and 236b on sheet 27 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 237a and 237b on sheet 27 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 238a and 238b on sheet 27 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 239a and 239b on sheets 27 and 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 240a and 240b on sheets 27 and 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 241a and 241b on sheets 27 and 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 242a and 242b on sheet 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 243a and 243b on sheet 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 246a and 246b on sheet 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 246c and 246d on sheet 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 247a and 247b on sheet 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 248a and 248b on sheet 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 252a and 252b on sheet 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 253a and 253b on sheets 28 and 29 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 254a and

	254b on sheet 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 256a and 256b on sheet 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 258a and 258b on sheets 28 and 29 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 259a and 259b on sheets 28 and 29 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 262a and 262b on sheet 29 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 263a and 263b on sheet 29 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 264a and 264b on sheet 29 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 266a and 266b on sheet 29 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 267a and 267b on sheet 29 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 268a and 268b on sheet 29 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 269a and 269b on sheet 29 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 270a and 270b on sheet 29 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 271a and 271b on sheet 29 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 272a and 272b on sheet 29 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 275a and 275b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 276a and 276b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 278a and 278b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 281a and 281b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 282a and 282b on sheet 30 of the tree preservation order

	and hedgerow plan
South Norfolk District	The hedgerow shown between points 283a and 283b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 284a and 284b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 285a and 285b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 286a and 286b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 287a and 287b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 288a and 288b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 289a and 289b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 290a and 290b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 291a and 291b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 292a and 292b on sheet 31 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 293a and 293b on sheet 31 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 294a and 294b on sheet 31 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 296a and 296b on sheet 32 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 297a and 297b on sheet 31 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 298a and 298b on sheet 32 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 299a and 299b on sheet 31 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 300a and 300b on sheet 31 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 301a and 301b on sheet 32 of the tree preservation order and hedgerow plan

South Norfolk District	The hedgerow shown between points 303a and 303b on sheet 32 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 304a and 304b on sheet 32 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 306a and 306b on sheet 31 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 308a and 308b on sheet 32 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 310a and 310b on sheet 32 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 311a and 311b on sheet 32 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 312a and 312b on sheet 32 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 313a and 313b on sheet 32 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 314a and 314b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 315a and 315b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 317a and 317b on sheet 31 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 319a and 319b on sheet 31 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 322a and 322b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 326a and 326b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 329a and 329b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 338a and 338b on sheet 34 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 340a and 340b on sheet 34 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 341a and 341b on sheets 35 and 36 of the tree preservation order and hedgerow plan

PART 2
REMOVAL OF IMPORTANT HEDGEROWS

<i>(1) Area</i>	<i>(2) Reference of hedgerow</i>
North Norfolk District	The hedgerow shown between points 6a and 6b on sheet 1 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 24a and 24b on sheet 3 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 28a and 28b on sheet 3 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 31a and 31b on sheet 4 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 35a and 35b on sheet 5 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 36a and 36b on sheet 5 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 37a and 37b on sheet 5 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 38a and 38b on sheet 5 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 40a and 40b on sheet 6 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 42a and 42b on sheet 6 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 46a and 46b on sheet 7 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 48a and 48b on sheet 7 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 49a and 49b on sheets 7 and 8 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 79a and 79b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 84a and 84b on sheet 9 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 91a and 91b on sheet 10 of the tree preservation order and hedgerow plan
North Norfolk District	The hedgerow shown between points 99a and 99b on sheet 10 of the tree preservation order

	and hedgerow plan
North Norfolk District	The hedgerow shown between points 101a and 101b on sheet 10 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 113a and 113b on sheet 12 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 114a and 114b on sheet 12 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 117a and 117b on sheet 12 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 118a and 118b on sheet 12 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 120a and 120b on sheet 12 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 126a and 126b on sheet 13 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 127a and 127b on sheet 13 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 130a and 130b on sheet 13 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 148a and 148b on sheet 16 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 151a and 151b on sheet 16 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 151c and 151d on sheet 16 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 153a and 153b on sheet 16 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 154a and 154b on sheet 16 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 166a and 166b on sheet 19 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 173a and 173b on sheet 20 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 174a and 174b on sheet 20 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 175a and 175b on sheet 20 of the tree preservation order and hedgerow plan

Broadland District	The hedgerow shown between points 176a and 176b on sheet 20 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 189a and 189b on sheet 21 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 198a and 198b on sheet 23 of the tree preservation order and hedgerow plan
Broadland District	The hedgerow shown between points 200a and 200b on sheet 23 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 203a and 203b on sheet 24 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 204a and 204b on sheet 24 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 205a and 205b on sheet 24 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 206a and 206b on sheet 24 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 207a and 207b on sheet 24 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 212a and 212b on sheet 25 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 214a and 214b on sheet 25 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 222a and 222b on sheet 26 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 228a and 228b on sheet 26 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 229a and 229b on sheet 26 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 230a and 230b on sheet 26 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 231a and 231b on sheet 26 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 245a and 245b on sheet 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 249a and 249b on sheet 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 250a and

	250b on sheet 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 251a and 251b on sheet 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 255a and 255b on sheet 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 257a and 257b on sheet 28 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 261a and 261b on sheets 28 and 29 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 265a and 265b on sheet 29 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 273a and 273b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 274a and 274b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 277a and 277b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 279a and 279b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 280a and 280b on sheet 30 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 295a and 295b on sheet 32 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 302a and 302b on sheet 32 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 305a and 305b on sheet 32 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 307a and 307b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 309a and 309b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 316a and 316b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 318a and 318b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 320a and 320b on sheet 33 of the tree preservation order

	and hedgerow plan
South Norfolk District	The hedgerow shown between points 321a and 321b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 323a and 323b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 324a and 324b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 325a and 325b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 327a and 327b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 328a and 328b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 330a and 330b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 331a and 331b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 332a and 332b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 333a and 333b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 334a and 334b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 335a and 335b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 336a and 336b on sheet 33 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 337a and 337b on sheet 34 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 339a and 339b on sheet 34 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 342a and 342b on sheets 35 and 36 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 343a and 343b on sheets 35 and 36 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 344a and 344b on sheet 36 of the tree preservation order and hedgerow plan

South Norfolk District	The hedgerow shown between points 345a and 345b on sheets 35 and 36 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 346a and 346b on sheets 35 and 36 of the tree preservation order and hedgerow plan
South Norfolk District	The hedgerow shown between points 347a and 347b on sheet 36 of the tree preservation order and hedgerow plan

SCHEDULE 11
DEEMED MARINE LICENCE UNDER THE 2009 ACT—
GENERATION ASSETS

PART 1
LICENSED MARINE ACTIVITIES

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“2017 Regulations” means the Conservation of Offshore Marine Habitats and Species Regulations 2017;

“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;

“authorised deposits” means the substances and articles specified in paragraph 4 of Part 1 of this licence;

“authorised development” means the development and associated development described in Part 1 of Schedule 1 of the Order;

“authorised project” means Work No. 1 described in paragraph 3 of Part 1 this licence or any part of that work;

“buoy” means any floating device used for navigational purposes or measurement purposes;

“cable protection” means physical measures for the protection of cables including but not limited to concrete mattresses, with or without frond devices, and/or rock placement (but not material used for cable crossings);

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

“commence” means the first carrying out of any licensed marine activities authorised by this marine licence, save for pre-construction monitoring surveys approved under this licence and “commenced” and “commencement” must be construed accordingly;

“condition” means a condition in Part 2 of this licence;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands B75 7RL and any successor body to its functions;

“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);

“disturbance” must be construed in accordance with regulation 45(1)(b) of the 2017 Regulations;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order;

“European site” has the meaning given in regulation 27 of the 2017 Regulations;

“gravity base foundation” means a structure principally of steel, concrete, or steel and concrete which rests on the seabed 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;

“in-principle Hornsea Three Southern North Sea Special Area of Conservation Site Integrity Plan” means the document certified as the in-principle Hornsea Three Southern North Sea Special Area of Conservation Site Integrity Plan by the Secretary of State for the purposes of this Order;

“jacket foundation” means a lattice type structure constructed of steel, which may include scour protection and additional equipment such as, J-tubes, corrosion protection systems and access platforms;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this licence;

“LAT” means lowest astronomical tide;

“licensed activities” means the activities specified in Part 1 of this licence;” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace, to the extent assessed in the environmental statement; and “maintenance” must be construed accordingly;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“Markham’s Triangle MCZ” means the MCZ designated by the Secretary of State under the Markham’s Triangle Marine Conservation Zone Designation Order 2019;

“Markham’s Triangle MCZ exclusion zone” means the area comprising Markham’s Triangle MCZ as shown on the Markham’s Triangle exclusion zone plan;

“Markham’s Triangle exclusion zone plan” means the document certified as the Markham’s Triangle exclusion zone plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“MCA” means the Maritime and Coastguard Agency;

“MCZ” means a marine conservation zone designated under section 116(1) of the 2009 Act or any area which is recommended for such designation to the relevant secretary of state in accordance with the 2009 Act unless the secretary of state determines that it shall not be designated as a marine conservation zone;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“monopile foundation” means a steel pile, typically cylindrical, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“offshore accommodation platform” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing housing accommodation, storage, workshop, auxiliary equipment, and facilities for operating, maintaining and controlling the wind turbine generators;

“offshore electrical installations” means the offshore type 1 substations, the offshore type 2 substations, the offshore subsea HVAC booster stations and the offshore HVAC booster stations forming part of the authorised development;

“offshore HVAC booster station” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing—

- (a) electrical equipment required to provide reactive power compensation; and
- (b) housing accommodation, storage, workshop, auxiliary equipment, and facilities for operating, maintaining and controlling the substation;

“offshore subsea HVAC booster station” means a sealed steel or concrete structure located under the surface of the sea, attached to the seabed by means of a foundation, containing electrical equipment required to provide reactive power compensation;

“offshore substation” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing—

- (a) electrical equipment required to switch, transform, convert electricity generated at the wind turbine generators to a higher voltage and provide reactive power compensation; and
- (b) housing accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or wind turbine generators;

“offshore type 1 substation” means the smaller version of the offshore substations assessed in the environment statement;

“offshore type 2 substation” means the larger version of the offshore substations assessed in the environment statement;

“Order” means the Hornsea Project Three Offshore Wind Farm Order 202[];

“the offshore Order limits and grid coordinates plan” means the plan certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of the Order under article 36 (certification of plans and documents etc);

“outline fisheries coexistence and liaison plan” means the plan or plans certified as the outline fisheries coexistence and liaison plan or plans by the Secretary of State for the purposes of the Order under article 36 (certification of plans and documents etc);

“pin piles” means steel cylindrical piles driven and/or drilled into the seabed to secure jacket foundations;

“statutory historic body” means the Historic Buildings and Monuments Commission for England or its successor in function;

“suction bucket” means a steel cylindrical structure attached to the legs of a jacket foundation which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

“mono suction bucket foundation” means a steel cylindrical structure which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential, and may include scour protection and additional equipment such as J-tubes;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“undertaker” means Orsted Hornsea Project Three (UK) Limited;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation or transition piece;

“Work No.2” means—

- (a) up to 12 offshore type 1 substations each fixed to the seabed by either monopile foundation, mono suction bucket foundation, jacket foundation, gravity base foundation or box-type gravity base foundations and which may be connected to each other or one of the offshore accommodation platforms within Work No.1(b) by an unsupported bridge;

- (b) up to four offshore type 2 substations each fixed to the seabed by either monopile foundations, mono suction bucket foundations, jacket foundations, gravity base foundations, jacket foundations, box-type gravity base foundations, pontoon gravity base 1 foundations, or pontoon gravity base 2 foundations and which may be connected to each other or one of the offshore accommodation platforms within Work No.1(b) by an unsupported bridge;
 - (c) a network of cables;
 - (d) up to six cable circuits between Work No. 2 and Work No. 3, and between Work No. 3 and Work No.5 consisting of offshore export cables along routes within the Order limits seaward of MHWS including one or more cable crossings; and
 - (e) up to eight temporary horizontal directional drilling exit pits; and
- “works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order.

(2) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

- (a) all times are taken to be Greenwich Mean Time (GMT);
- (b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

- (a) Marine Management Organisation
Marine Licensing Team
Lancaster House Hampshire Court
Newcastle Business Park
Newcastle upon Tyne
NE4 7YH
Tel: 0300 123 1032;
- (b) Marine Management Organisation (local office)
Pakefield Road
Lowestoft
Suffolk
NR33 0HT
- (c) Trinity House
Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;
- (d) The United Kingdom Hydrographic Office
Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;
- (e) Maritime and Coastguard Agency

Navigation Safety Branch
Bay 2/20, Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 020 3817 2433;

- (f) Centre for Environment, Fisheries and Aquaculture Science

Pakefield Road
Lowestoft
Suffolk
NR33 0HT
Tel: 01502 562 244;

- (g) Natural England

4th Floor
Foss House
1-2 Peasholme Green
York
YO1 7PX
Tel: 0300 060 4911;

- (h) Historic England

Brooklands
24 Brooklands Avenue
Cambridge
CB2 8BU

Details of licensed marine activities

2. Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act—

- (a) the deposit at sea within the Order limits seaward of MHWS of the substances and articles specified in paragraph 4 below 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;
- (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; and
- (f) site preparation works.

3. Such activities are authorised in relation to the construction, maintenance and operation of—

Work No. 1—

- (a) an offshore wind turbine generating station with a gross electrical output of over 100 megawatts comprising up to 231 wind turbine generators each fixed to the seabed by either monopile foundation, mono suction bucket foundation, jacket foundation or gravity base foundation;
- (b) up to three offshore accommodation platforms fixed to the seabed within the area shown on the works plan by monopile foundation, mono suction bucket foundation, jacket foundation, or gravity base foundation and which may be connected to each other or one of the offshore substations within Work No. 2 by an unsupported bridge; and
- (c) a network of cables between the wind turbine generators and between the wind turbine generators and Work No. 2 including one or more cable crossings.

In connection with such Work No. 1 and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) of the 2008 Act comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence including—

- (a) scour protection around the foundations of the offshore structures;
- (b) cable protection measures such as the placement of rock and/or concrete mattresses, with or without frond devices; and
- (c) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development.

4. The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling or seabed preparation for foundation works and cable sandwave preparation works; and
- (g) marine coatings, other chemicals and timber.

5. The grid coordinates for that part of the authorised development comprising Work No. 1 are specified below and more particularly on the offshore Order limits and grid coordinates plan—

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
57	53° 52' 12.798" N	2° 19' 38.938" E	61	54° 0' 4.028" N	2° 40' 52.651" E
58	53° 59' 22.420" N	2° 11' 50.694" E	62	53° 48' 57.136" N	2° 44' 53.902" E
59	53° 59' 19.280" N	2° 13' 34.691" E	63	53° 41' 22.175" N	2° 47' 35.927" E
60	53° 58' 42.514" N	2° 32' 43.904" E	64	53° 45' 27.296" N	2° 34' 19.781" E

6. This licence remains in force until the authorised project has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of sections 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).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved

details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

9. 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 that it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

10.—(1) Any difference under any provision of this licence, unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 13 of the Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Where the referral to arbitration under paragraph (1) relates to a difference with the Secretary of State, in the event that the parties cannot agree upon a single arbitrator within the specified time period stipulated in paragraph (1), either party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

(3) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

PART 2 CONDITIONS

Design parameters

1.—(1) The total number of wind turbine generators comprised in the authorised project must not exceed 231 and a total rotor swept area of 8.8 square kilometres.

(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 41.8 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 1(2)(d) to the location of a wind turbine generator is a reference to the centre point of that wind turbine generator.

(4) Wind turbine generator foundation structures forming part of the authorised scheme must be one of the following foundation options: monopile foundation, mono suction bucket foundation, jacket foundation or gravity base foundation.

(5) No wind turbine generator—

- (a) jacket foundation employing pin piles forming part of the authorised project shall have a pin pile diameter of greater than four meters; and
- (b) monopile foundation forming part of the authorised project shall have a diameter greater than 15 metres.

(6) The total seabed footprint area for wind turbine generator foundations must not exceed—

- (a) 435,660 square metres excluding scour protection; and
- (b) 1,623,182 square metres including scour protection.

(7) The volume of scour protection material for wind turbine generator foundations must not exceed 2,375,044 cubic metres.

2.—(1) The total number of offshore accommodation platforms forming part of the authorised project must not exceed three.

(2) The dimensions of any offshore accommodation platform forming part of the authorised project must not exceed—

- (a) 64 metres in height when measured from LAT;
- (b) 60 metres in length; and
- (c) 60 metres in width.

(3) Any bridge located on an offshore accommodation platform shall be no longer than 100 metres.

(4) Offshore accommodation platform foundation structures forming part of the authorised project must be one of the following foundation options: monopile foundations, mono suction bucket foundations, jacket foundations, or gravity base foundations.

(5) No offshore accommodation platform—

- (a) jacket foundation employing pin piles forming part of the authorised project shall have a pin pile diameter of greater than 4 metres; and
- (b) monopile foundation forming part of the authorised project shall have a diameter greater than 15 metres.

(6) The total seabed footprint area for offshore accommodation platform foundations must not exceed—

- (a) 8,836 square metres excluding scour protection; and
- (b) 28,628 square metres including scour protection.

(7) The volume of scour protection material for offshore accommodation platform foundations must not exceed 43,429 cubic metres.

(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.

(9) No works permitted under this licence may be undertaken within the boundaries of the Markham's Triangle MCZ exclusion zone.

3.—(1) The total length of the cables in Work No.1(c) and the volume of their cable protection (excluding cable crossings) 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—

<i>Work</i>	<i>Length</i>	<i>Cable protection</i>
Work No. 1(c)	1055 kilometres	1,055,000 cubic metres

(2) No cable protection by way of concrete mattresses may be used in European Sites or MCZ.

(3) No more than 6% of the length of the cables in Work No 1(c) falling within any European Site shall be subject to cable protection, unless otherwise agreed with the MMO.

(4) No more than 7% of the length of the cables in Work No 1(c) falling within any MCZ shall be subject to cable protection, unless otherwise agreed with the MMO.

Phases of authorised development

4.—(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.

(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.

(3) The scheme must be implemented as approved.

Maintenance of the authorised development

5.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this licence or an agreement made under this licence provides otherwise.

(2) No maintenance works whose likely effects are not assessed in the environmental statement may be carried out, unless otherwise approved by the MMO.

(3) Maintenance works include but are not limited to—

- (a) major wind turbine component or offshore accommodation platform replacement;
- (b) painting wind turbine generators or offshore accommodation platforms;
- (c) bird waste removal;
- (d) cable remedial burial;
- (e) array cable repairs;
- (f) access ladder replacement;
- (g) wind turbine generator anode replacement; and
- (h) J-tube repair/replacement.

(4) Where the MMO's approval is required under paragraph (2), approval may be given only where it has been demonstrated to the satisfaction of the MMO that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(5) The undertaker shall issue to operators of vessels under its control operating within the Order limits a code of conduct to prevent collision risk or injury to marine mammals.

(6) The undertaker shall ensure appropriate co-ordination of vessels within its control operating within the Order limits so as to reduce collision risk to other vessels including advisory safe passing distances for vessels.

Extension of time periods

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.

Notifications and inspections

7.—(1) The undertaker must ensure that—

- (a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
 - (i) all agents and contractors notified to the MMO in accordance with condition 16; and
 - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 16;
- (b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 16 are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

- (a) the undertaker's registered address;
- (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and
- (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised project.

(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.

(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 fourteen 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.

(8) A notice to mariners must be issued at least ten days prior to the commencement of the licensed activities or any part of them advising of the start date of Work No. 1 and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO and UKHO within five days.

(9) The notices to mariners must be updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under condition 13(1)(b). Copies of all notices must be provided to the MMO and UKHO within five days.

(10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO.

(11) In case of damage to, or destruction or decay of, the authorised project seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify the MMO, the Kingfisher Information Service of Seafish and the UK Hydrographic Office. In case of the development of a cable exposure deemed by the undertaker to present a risk to fishing activity, the undertaker must notify the MMO and the Kingfisher Information Service within three working days following the undertaker becoming aware of it.

Aids to navigation

8.—(1) 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 may from time to time direct.

(2) The undertaker must during the period from the start of construction of the authorised project to completion of decommissioning of the authorised project seaward of MHWS keep Trinity House and the MMO informed of progress of the authorised project seaward of MHWS including the following—

(a) notice of commencement of construction of the authorised project within 24 hours of commencement having occurred;

(b) notice within 24 hours of any aids to navigation being established by the undertaker; and

(c) notice within five days of completion of construction of the authorised project.

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan agreed pursuant to condition 13(1)(j) using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning of the authorised project seaward of MHWS notify Trinity House and the MMO of any failure of the aids to navigation and the timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the undertaker becoming aware of any such failure.

(5) In the event that the provisions of condition 7(11) are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

9.—(1) The undertaker must colour all structures yellow (colour code RAL 1023) from at least highest astronomical tide to a height directed by Trinity House, or must colour the structure as directed by Trinity House from time to time.

(2) Subject to sub-paragraph (1) above, unless the MMO otherwise directs, the undertaker must ensure that the wind turbine generators are painted light grey (colour code RAL 7035).

Aviation safety

10.—(1) The undertaker must exhibit such lights, with such shape, colour and character as are required in writing by Air Navigation Order 2016(a) and determined necessary for aviation safety in consultation with the Defence Infrastructure Organisation Safeguarding and as directed by the Civil Aviation Authority

(2) The undertaker must notify the Defence Infrastructure Organisation Safeguarding, and the MMO, at least 14 days prior to the commencement of the authorised project, in writing of the following information—

- (a) the date of the commencement of construction of the authorised project;
- (b) the date any wind turbine generators are brought into use;
- (c) the maximum height of any construction equipment to be used;
- (d) the maximum heights of any wind turbine generator and offshore accommodation platform to be constructed;
- (e) the latitude and longitude of each wind turbine generator and offshore accommodation platform to be constructed,

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.

Chemicals, drilling and debris

11.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised project must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(a) S.I. 2016/765

(4) The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(5) The undertaker must ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations, and drilling mud is disposed of within the Order limits seaward of MHWS.

(6) The undertaker must ensure that any rock material used in the construction of the authorised project is from a recognised source, free from contaminants and containing minimal fines.

(7) In the event that any rock material used in the construction of the authorised project is misplaced or lost below MHWS, the undertaker must report the loss to the District Marine Office within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it.

(8) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(9) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under condition 13(1)(d)(i).

(10) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if reasonable to do so.

Force majeure

12.—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life and/or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

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, in consultation with Trinity House and the MCA—

- (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 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 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; and

- (v) any exclusion zones/micrositing requirements identified in any mitigation project pursuant to sub-paragraph 13(2)(d) or relating to any Annex I reefs identified as part of surveys undertaken in accordance with condition 17;

to ensure conformity with the description of Work No. 1 and compliance with conditions 1 to 3 above.

- (b) a construction programme to include details of—
 - (i) the proposed construction start date;
 - (ii) proposed timings for mobilisation of plant delivery of materials and installation works; and
 - (iii) an indicative written construction programme for all wind turbine generators offshore accommodation platforms and cable comprised in the works at paragraph 3(a) to 3(b) of Part 1 (licenced marine activities) of this Schedule (insofar as not shown in paragraph (ii) above);unless otherwise agreed in writing with the MMO.
- (c) a construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—
 - (i) foundation installation methodology, including drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation and cable installation works and having regard to any mitigation scheme pursuant to sub-paragraph 13(1)(f);
 - (ii) advisory safe passing distances for vessels around construction sites;
 - (iii) cable installation;
 - (iv) contractors;
 - (v) vessels and vessels transit corridors;
 - (vi) codes of conduct for vessel operators;
 - (vii) associated ancillary works;
 - (viii) guard vessels to be employed; and
 - (ix) details of means to avoid impacts on European sites.
- (d) a project management plan and monitoring plan covering the period of construction and operation to include details of—
 - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised project in relation to all activities carried out;
 - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) a biosecurity plan detailing how the risk of introduction and spread of invasive non-native species will be minimised;
 - (iv) waste management and disposal arrangements;
 - (v) a code of conduct for vessel operators;
 - (vi) the appointment and responsibilities of a fisheries liaison officer; and
 - (vii) all spatial data for archaeological exclusion zones and application of a protocol for archaeological discoveries.
- (e) a scour protection management plan providing details of the need, type, sources, quantity and installation methods for scour protection, which must be updated and resubmitted for approval if changes to it are proposed following cable laying operations.
- (f) proposed pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting in accordance with conditions 17, 18 and 19.

- (g) in the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, including details of soft start procedures with specified duration periods following current best practice as advised by the relevant statutory nature conservation bodies.
- (h) a cable specification and installation plan, to include—
 - (i) technical specification of offshore cables below MHWS, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
 - (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;
 - (iii) 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
 - (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 provision for review and update of the plan for a period of 15 years from the date of the grant of the Order;
 - (v) proposals for the volume and areas of cable protection to be used for each cable crossing; and
 - (vi) proposals for monitoring offshore cables including cable protection during the operational lifetime of the authorised project which includes a risk based approach to the management of unburied or shallow buried cables, and, where necessary, details of micrositing through any European Site.
- (i) an offshore operations and maintenance plan, to be submitted to the MMO at least four months prior to commencement of operation of the licensed activities and to provide for review and resubmission every three years during the operational phase.
- (j) an aid to navigation management plan to be agreed in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of condition 8 for the lifetime of the authorised project.
- (k) 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.
- (l) 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.

(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—

- (a) details of responsibilities of the undertaker, archaeological consultant and contractor;
- (b) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
- (c) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within six months of any survey being completed;

- (d) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones prior to construction;
- (e) monitoring of archaeological exclusion zones during and post construction, including provision of a report on such monitoring;
- (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 scheme, and to notify the MMO that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;
- (g) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme;
- (h) implementation of the Offshore Renewables Protocol for Reporting Archaeological Discoveries as set out by The Crown Estate; and
- (i) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the offshore Order Limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities.

(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.

(4) The licensed activities or any part of those activities must not commence until a fisheries coexistence and liaison plan in accordance with the outline fisheries coexistence and liaison plan has been submitted to and approved by the MMO.

(5) In the event that driven or part-driven pile foundations are proposed to be used, the licensed 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 Special Area of Conservation Site Integrity Plan has been submitted to the MMO and the MMO is satisfied that where the plan assesses 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.

(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.

14.—(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 13 (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.

(2) [Save in respect of any plan which secures mitigation to avoid adversely affecting the integrity of a European site, where the MMO fails to determine the application for approval under condition 13 within the period referred to in sub-paragraph (1), the programme, statement, plan, protocol or scheme is deemed to be approved by the MMO.]

(3) The pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting required under condition 13(1)(f) must be submitted in accordance with the following, unless otherwise agreed in writing with the MMO—

- (a) at least four months prior to the first survey, detail of any pre-construction surveys and an outline of all proposed monitoring;
- (b) at least four months prior to construction, detail on construction monitoring; and
- (c) at least four months prior to commissioning, detail of post-construction (and operational) monitoring;

(4) The design plan required by condition 13(1)(a) shall be prepared by the undertaker and determined by the MMO in accordance with the Development Principles.

(5) The MMO shall determine an application for approval made under condition 13 within a period of four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(6) 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.

(7) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 13, unless otherwise agreed in writing by the MMO.

Offshore safety management

15. No part of the authorised scheme may commence until the MMO, in consultation with the MCA, has given written approval of an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency response and co-operation for the construction, operation and decommissioning phases of that part of the authorised scheme in accordance with the MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” (or any equivalent guidance that replaces or supersedes it), and has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised scheme, adequately addressed all MCA recommendations contained within MGN543 and its annexes.

Reporting of engaged agents, contractors and vessels

16.—(1) The undertaker must provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; and
- (b) each week during the construction of the authorised scheme a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the licensed activities.

(2) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Pre-construction monitoring and surveys

17.—(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, 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—
 - (i) determine the location, extent and composition of any biogenic or geogenic reef features, as set out within the in-principle monitoring plan;
 - (ii) inform future navigation risk assessments as part of the cable specification and installation plan;
 - (iii) inform the identification of any archaeological exclusion zone and post consent monitoring of any such archaeological exclusion zone; and
 - (iv) to identify and characterise any preferred sandeel habitat.
- (b) any marine mammal monitoring required by the plan for marine mammal monitoring submitted in accordance with condition 13(1)(k); and
- (c) any ornithological monitoring required by the Ornithological Monitoring Plans submitted in accordance with condition 13(1)(l).

(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.

Construction monitoring

18.—(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.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition the construction monitoring plan must include, in outline—

- (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;
- (b) a plan for monitoring of the duration of piling activity;
- (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
- (d) vessel traffic monitoring by automatic identification system for the duration of the construction period, including annual reporting to the MMO and MCA;

(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.

(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.

Post-construction monitoring

19.—(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 pre-construction position and/or will enable the validation or otherwise of key predictions in the environmental statement.

(2) Subject to receipt of specific proposals the post-construction survey plan or plans must include, in outline—

- (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;
- (b) any marine mammal monitoring required by the plan for marine mammal monitoring submitted in accordance with condition 13(1)(k);
- (c) any ornithological monitoring required by the Ornithological Monitoring Plans submitted in accordance with condition 13(1)(l);
- (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;
- (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 to be submitted to the MMO and MCA;
- (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);
- (g) a high resolution swath bathymetric and side scan sonar survey to determine any change to the seabed morphology and composition around a representative number of WTG foundations within muddy sediments of the outer Silver Pit and Markham's Hole features, in accordance with the scour monitoring detailed within the in-principle monitoring plan; and
- (h) a high resolution swath-bathymetric and side scan sonar survey to determine any change and recovery in the composition of any preferred sandeel habitat identified in the pre-construction survey in the parts of the offshore Order limits in which sandwave clearance activity has been carried out. The survey design must be informed by the results of the pre-construction benthic survey.

(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.

Timing of monitoring report

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, unless otherwise agreed with the MMO.

Updating of cable monitoring plan

21. Following installation of cables, the cable monitoring plan required under condition 13(1)(h)(vi) 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.

Reporting of impact pile driving

22.—(1) 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—

- (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;
- (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;
- (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

(2) The undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to paragraph (1) above within 7 days of the submission.

(3) For the purpose of this condition—

- (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;
- (b) “Forward Look” and “Close Out” requirements are as set out in the UK Marine Noise Registry Information.

Reporting of cable protection

23.—(1) Not more than 4 months following completion of the constriction phase of the project, the undertaker shall provide the MMO and the relevant SNCBs 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.

Decommissioning of cable protection within marine protected areas

24.—(1) The obligations under paragraphs (2) and (3) shall only apply if and to the extent that—

- (a) cable protection is installed as part of the authorised project within an area designated as a European Site or MCZ as at the date of the grant of the Order; and
- (b) it is a requirement of the written decommissioning programme approved by the Secretary of State pursuant to sections 105 of the 2004 Act, including any modification to the programme under section 108, that such cable protection is removed as part of the decommissioning of the authorised project;

(2) Within such timeframe as specified within the decommissioning programme approved by the Secretary of State, the undertaker shall carry out an appropriate survey of cables within Work No. 1(c), that are subject to cable protection and that are situated within any European Site or MCZ to assess the integrity and condition of that cable protection and determine the appropriate extent of the feasibility of the removal of such cable protection having regard to the condition of the cable protection and feasibility of any new removal techniques at that time, and submit that along with a method statement for recovery of cable protection to the MMO.

(3) Within such timeframe as specified within the decommissioning programme approved by the Secretary of State, the MMO must confirm whether or not it is satisfied with the method statement pursuant to (2) above.

(4) If the MMO has confirmed it is satisfied pursuant to (3) above, then within such timeframe as specified within the decommissioning programme approved by the Secretary of State, the undertaker shall endeavour to recover the cable protection to the extent identified in the survey and according to the methodology set out in the method statement submitted pursuant to (2) above.

SCHEDULE 12
DEEMED MARINE LICENCE UNDER THE 2009 ACT –
TRANSMISSION ASSETS

PART 1
LICENSED MARINE ACTIVITIES

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“2017 Regulations” means the Conservation of Offshore Marine Habitats and Species Regulations 2017;

“Annex I reef” means a reef of a type listed in Annex I of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora;

“authorised deposits” means the substances and articles specified in paragraph 4 of Part 1 of this licence;

“authorised development” means the development and associated development described in Part 1 of Schedule 1 of the Order;

“authorised project” means Work Nos. 2, 3, 4 and 5 described in paragraph 3 of Part 1 of this licence or any part of that work;

“buoy” means any floating device used for navigational purposes or measurement purposes;

“cable protection” means physical measures for the protection of cables including but not limited to concrete mattresses, with or without frond devices, and/or rock placement (but not material used for cable crossings);

“Cefas” means the Centre for Environment, Fisheries and Aquaculture Science or any successor body to its function;

“commence” means the first carrying out of any licensed marine activities authorised by this marine licence, save for pre-construction monitoring surveys approved under this licence and “commenced” and “commencement” must be construed accordingly;

“condition” means a condition in Part 2 of this licence;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands B75 7RL and any successor body to its functions;

“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);

“disturbance” must be construed in accordance with regulation 45(1)(b) of the 2017 Regulations;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order;

“European site” has the meaning given in regulation 27 of the 2017 Regulations;

“gravity base foundation” means a structure principally of steel, concrete, or steel and concrete which rests on the seabed 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;

“in-principle Hornsea Three Southern North Sea Special Area of Conservation Site Integrity Plan” means the document certified as the in-principle Hornsea Three Southern North Sea Special Area of Conservation Site Integrity Plan by the Secretary of State for the purposes of this Order;

“interconnector cable” means a network of cables between the offshore substations;

“jacket foundation” means a lattice type structure constructed of steel, which may include scour protection and additional equipment such as, J-tubes, corrosion protection systems and access platforms;

“Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO for the purposes of this licence;

“LAT” means lowest astronomical tide;

“licensed activities” means the activities specified in Part 1 of this licence;

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace, to the extent assessed in the environmental statement; and “maintenance” must be construed accordingly;

“Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“Markham’s Triangle MCZ” means the MCZ designated by the Secretary of State under the Markham’s Triangle Marine Conservation Zone Designation Order 2019;

“Markham’s Triangle MCZ exclusion zone” means the area comprising Markham’s Triangle MCZ as shown on the Markham’s Triangle exclusion zone plan;

“Markham’s Triangle exclusion zone plan” means the document certified as the Markham’s Triangle exclusion zone plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“MCZ” means a marine conservation zone designated under section 116(1) of the 2009 Act or any area which is recommended for such designation to the relevant secretary of state in accordance with the 2009 Act unless the secretary of state determines that it shall not be designated as a marine conservation zone;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“monopile foundation” means a steel pile, typically cylindrical, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“offshore accommodation platform” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing housing accommodation, storage, workshop, auxiliary equipment, and facilities for operating, maintaining and controlling the wind turbine generators;

“offshore electrical installations” means the offshore type 1 substations, the offshore type 2 substations, the offshore subsea HVAC booster stations and the offshore HVAC booster stations forming part of the authorised development;

“offshore export cable” means a network of cables for as described in Work No.2(d) and Work No.3(d).

“offshore HVAC booster station” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing—

(a) electrical equipment required to provide reactive power compensation; and

(b) housing accommodation, storage, workshop, auxiliary equipment, and facilities for operating, maintaining and controlling the substation;

“offshore subsea HVAC booster station” means a sealed steel or concrete structure located under the surface of the sea, attached to the seabed by means of a foundation, containing electrical equipment required to provide reactive power compensation;

“offshore substation” means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks and a helicopter platform, containing—

(a) electrical equipment required to switch, transform, convert electricity generated at the wind turbine generators to a higher voltage and provide reactive power compensation; and

(b) housing accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or wind turbine generators;

“offshore type 1 substation” means the smaller version of the offshore substations assessed in the environment statement;

“offshore type 2 substation” means the larger version of the offshore substations assessed in the environment statement;

“the offshore Order limits and grid coordinates plan” means the plan certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of the Order under article 36 (certification of plans and documents etc);

“pin piles” means steel cylindrical piles driven and/or drilled into the seabed to secure jacket foundations;

“SAC” means an area designated as an area of special area of conservation under regulation 11 of the 2017 Regulations;

“statutory historic body” means Buildings and Monuments Commission for England, the relevant local authority or its successor in function;

“suction bucket” means a steel cylindrical structure attached to the legs of a jacket foundation which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

“Order” means the Hornsea Project Three Offshore Wind Farm Order 202[];

“mono suction bucket foundation” means a steel cylindrical structure which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential, and may include scour protection and additional equipment such as J-tubes;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“undertaker” means Orsted Energy Hornsea Project Three (UK) Limited;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation or transition piece; and

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order.

(2) A reference to any statute, order, regulation or similar instrument is construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

- (3) Unless otherwise indicated—
- (a) all times are taken to be Greenwich Mean Time (GMT);
 - (b) all co-ordinates are taken to be latitude and longitude degrees and minutes to two decimal places.
- (4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—
- (a) Marine Management Organisation
Marine Licensing Team
Lancaster House Hampshire Court
Newcastle Business Park
Newcastle upon Tyne
NE4 7YH
Tel: 0300 123 1032;
 - (b) Marine Management Organisation (local office)
Pakefield Road
Lowestoft
Suffolk
NR33 0HT;
 - (c) Trinity House
Tower Hill
London
EC3N 4DH
Tel: 020 7481 6900;
 - (d) The United Kingdom Hydrographic Office
Admiralty Way
Taunton
Somerset
TA1 2DN
Tel: 01823 337 900;
 - (e) Maritime and Coastguard Agency
Navigation Safety Branch
Bay 2/20, Spring Place
105 Commercial Road
Southampton
SO15 1EG
Tel: 020 3817 2433;
 - (f) Centre for Environment, Fisheries and Aquaculture Science
Pakefield Road
Lowestoft
Suffolk
NR33 0HT
Tel: 01502 562 244;
 - (g) Natural England
4th Floor

Foss House
1-2 Peasholme Green
York
YO1 7PX
Tel: 0300 060 4911;

- (h) Historic England
Brooklands
24 Brooklands Avenue
Cambridge
CB2 8BU.

Details of licensed marine activities

2. Subject to the licence conditions, this licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act—

- (a) the deposit at sea within the Order limits seaward of MHWS of the substances and articles specified in paragraph 4 below 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;
- (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; and
- (f) site preparation works.

3. Such activities are authorised in relation to the construction, maintenance and operation of—

Work No.2—

- (a) up to 12 offshore type 1 substations each fixed to the seabed by either monopile foundation, mono suction bucket foundation, jacket foundation, gravity base foundation or box-type gravity base foundations and which may be connected to each other or one of the offshore accommodation platforms within Work No.1(b) by an unsupported bridge;
- (b) up to four offshore type 2 substations each fixed to the seabed by either monopile foundations, mono suction bucket foundations, jacket foundations, gravity base foundations, jacket foundations, box-type gravity base foundations, pontoon gravity base 1 foundations, or pontoon gravity base 2 foundations and which may be connected to each other or one of the offshore accommodation platforms within Work No.1(b) by an unsupported bridge;
- (c) a network of cables;
- (d) up to six cable circuits between Work No. 2 and Work No. 3, and between Work No. 3 and Work No.5 consisting of offshore export cables along routes within the Order limits seaward of MHWS including one or more cable crossings; and
- (e) up to eight temporary horizontal directional drilling exit pits.

Work No.3—

- (a) in the event that the mode of transmission is HVAC, up to four HVAC booster stations fixed to the seabed within the area shown on the works plan by either monopile

foundation, mono suction bucket foundation, jacket foundation, gravity base foundation, or box-type gravity base foundations;

- (b) in the event that the mode of transmission is HVAC, up to six offshore subsea HVAC booster stations fixed to the seabed by either monopile foundation, mono suction bucket foundation, jacket foundation, gravity base foundation, or box-type gravity base foundations;
- (c) in the event that the mode of transmission is HVAC, a network of cables between HVAC booster stations or offshore subsea HVAC booster stations; and
- (d) up to six cable circuits between Work No. 2 and Work No. 3, and between Work No. 3 and Work No.5 consisting of offshore export cables along routes within the Order limits seaward of MHWS including one or more cable crossings.

Work No. 4— a temporary work area associated with Work No.2 and Work No.3 for vessels to carry out intrusive activities alongside Work No.2 or Work No.3.

Work No. 5— landfall connection works comprising up to six cable circuits and ducts and onshore construction works within the Order limits seaward of MHWS and landward of MLWS.

In connection with such Works Nos. 2, 3, 4 and 5 and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) of the 2008 Act comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised scheme and which fall within the scope of the work assessed by the environmental statement and the provisions of this license, including—

- (a) scour protection around the foundations of the offshore electrical installations;
- (b) cable protection measures such as the placement of rock and/or concrete mattresses, with or without frond devices;
- (c) the removal of material from the seabed required for the construction of Work Nos. 2, 3, 4 and 5 and the disposal of up to 2,218,816 cubic metres of inert material of natural origin within Order limits produced during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and
- (d) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development.

4. The substances or articles authorised for deposit at sea are—

- (a) iron and steel, copper and aluminium;
- (b) stone and rock;
- (c) concrete;
- (d) sand and gravel;
- (e) plastic and synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and
- (g) marine coatings, other chemicals and timber.

5. The grid coordinates for that part of the authorised development comprising Work Nos. 2, 3, 4 and 5 are specified below and more particularly on the offshore Order limits and grid coordinates plan—

<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>	<i>Point ID</i>	<i>Latitude (DMS)</i>	<i>Longitude (DMS)</i>
1	52° 57' 23.299" N	1° 5' 48.611" E	64	53° 45' 27.296" N	2° 34' 19.781" E
2	52° 58' 22.516" N	1° 4' 22.810" E	65	53° 45' 17.155" N	2° 33' 57.193" E
3	52° 59' 43.107" N	1° 3' 16.300" E	66	53° 44' 25.151" N	2° 28' 22.483" E
4	53° 0' 12.806" N	1° 3' 4.176" E	67	53° 43' 43.437" N	2° 23' 42.266" E

5	53° 0' 41.322" N	1° 3' 5.626" E	68	53° 43' 38.549" N	2° 23' 1.918" E
6	53° 2' 15.365" N	1° 3' 25.796" E	69	53° 40' 30.736" N	2° 17' 49.303" E
7	53° 4' 22.383" N	1° 5' 4.618" E	70	53° 37' 10.969" N	2° 7' 19.167" E
8	53° 4' 48.739" N	1° 5' 38.118" E	71	53° 37' 2.480" N	2° 6' 39.277" E
9	53° 5' 0.912" N	1° 6' 53.813" E	72	53° 36' 20.389" N	2° 5' 9.581" E
10	53° 4' 56.963" N	1° 8' 49.809" E	73	53° 35' 18.067" N	2° 5' 0.546" E
11	53° 4' 47.089" N	1° 10' 20.278" E	74	53° 34' 58.529" N	2° 4' 49.759" E
12	53° 4' 50.116" N	1° 12' 8.936" E	75	53° 34' 37.908" N	2° 4' 16.626" E
13	53° 5' 1.606" N	1° 14' 7.325" E	76	53° 32' 54.718" N	2° 4' 40.220" E
14	53° 5' 2.192" N	1° 14' 30.074" E	77	53° 32' 31.275" N	2° 4' 37.727" E
15	53° 4' 58.764" N	1° 14' 55.483" E	78	53° 31' 59.257" N	2° 4' 11.934" E
16	53° 4' 32.854" N	1° 16' 47.381" E	79	53° 31' 13.675" N	2° 3' 20.449" E
17	53° 4' 32.226" N	1° 19' 19.524" E	80	53° 30' 18.703" N	2° 2' 26.715" E
18	53° 4' 54.358" N	1° 22' 30.281" E	81	53° 30' 0.496" N	2° 1' 55.943" E
19	53° 5' 6.119" N	1° 25' 0.302" E	82	53° 29' 53.014" N	2° 1' 22.871" E
20	53° 5' 7.887" N	1° 26' 23.233" E	83	53° 29' 52.335" N	2° 0' 47.588" E
21	53° 5' 4.100" N	1° 27' 30.916" E	84	53° 28' 18.157" N	1° 53' 52.525" E
22	53° 5' 52.998" N	1° 28' 30.016" E	85	53° 27' 38.035" N	1° 51' 19.593" E
23	53° 14' 11.509" N	1° 41' 28.704" E	86	53° 27' 25.643" N	1° 50' 32.418" E
24	53° 14' 27.431" N	1° 42' 14.962" E	87	53° 27' 18.150" N	1° 50' 31.601" E
25	53° 15' 49.705" N	1° 44' 10.074" E	88	53° 26' 16.707" N	1° 50' 4.603" E
26	53° 16' 25.597" N	1° 44' 37.874" E	89	53° 25' 53.921" N	1° 50' 10.016" E
27	53° 19' 1.814" N	1° 45' 50.556" E	90	53° 25' 34.502" N	1° 50' 4.308" E
28	53° 22' 33.955" N	1° 46' 57.914" E	91	53° 24' 21.903" N	1° 49' 42.825" E
29	53° 22' 55.872" N	1° 46' 55.918" E	92	53° 24' 2.505" N	1° 49' 42.663" E
30	53° 23' 22.176" N	1° 47' 7.319" E	93	53° 23' 34.480" N	1° 49' 32.287" E
31	53° 23' 41.762" N	1° 47' 5.727" E	94	53° 23' 14.095" N	1° 49' 34.013" E
32	53° 24' 11.270" N	1° 47' 16.705" E	95	53° 22' 47.157" N	1° 49' 22.581" E
33	53° 24' 33.225" N	1° 47' 17.703" E	96	53° 22' 23.714" N	1° 49' 23.370" E
34	53° 25' 56.028" N	1° 47' 42.459" E	97	53° 18' 42.217" N	1° 48' 12.788" E
35	53° 26' 20.933" N	1° 47' 36.143" E	98	53° 15' 55.220" N	1° 46' 54.772" E
36	53° 26' 43.765" N	1° 47' 45.420" E	99	53° 15' 3.154" N	1° 46' 14.109" E
37	53° 27' 30.131" N	1° 48' 5.945" E	100	53° 13' 23.395" N	1° 43' 55.484" E
38	53° 27' 46.677" N	1° 48' 5.619" E	101	53° 13' 5.062" N	1° 43' 4.402" E
39	53° 28' 17.076" N	1° 48' 21.428" E	102	53° 4' 59.121" N	1° 30' 24.338" E
40	53° 28' 37.302" N	1° 49' 1.846" E	103	53° 4' 20.493" N	1° 29' 37.106" E
41	53° 29' 38.707" N	1° 52' 55.786" E	104	53° 4' 9.988" N	1° 29' 29.310" E
42	53° 31' 13.071" N	1° 59' 48.933" E	105	53° 3' 47.663" N	1° 28' 59.880" E
43	53° 31' 19.720" N	2° 0' 36.709" E	106	53° 3' 36.602" N	1° 28' 9.237" E
44	53° 32' 1.260" N	2° 1' 17.462" E	107	53° 3' 36.599" N	1° 27' 27.833" E
45	53° 32' 51.864" N	2° 2' 12.822" E	108	53° 3' 40.623" N	1° 26' 14.722" E
46	53° 34' 50.465" N	2° 1' 45.585" E	109	53° 3' 39.011" N	1° 25' 12.221" E
47	53° 35' 23.664" N	2° 1' 56.535" E	110	53° 3' 28.120" N	1° 22' 53.680" E
48	53° 35' 46.884" N	2° 2' 37.417" E	111	53° 3' 4.980" N	1° 19' 32.112" E
49	53° 36' 32.251" N	2° 2' 43.845" E	112	53° 3' 6.278" N	1° 16' 22.646" E
50	53° 37' 0.888" N	2° 2' 53.784" E	113	53° 3' 34.066" N	1° 14' 17.070" E
51	53° 37' 20.916" N	2° 3' 21.412" E	114	53° 3' 23.126" N	1° 12' 23.483" E
52	53° 38' 20.262" N	2° 5' 30.569" E	115	53° 3' 19.662" N	1° 10' 8.762" E

53	53° 38' 31.038" N	2° 6' 19.862" E	116	53° 3' 30.020" N	1° 8' 33.828" E
54	53° 41' 39.572" N	2° 16' 17.662" E	117	53° 3' 32.792" N	1° 7' 6.899" E
55	53° 44' 4.728" N	2° 20' 18.541" E	118	53° 1' 51.145" N	1° 5' 45.682" E
56	53° 51' 54.307" N	2° 19' 24.004" E	119	53° 0' 17.303" N	1° 5' 29.793" E
57	53° 52' 12.798" N	2° 19' 38.938" E	120	52° 59' 10.951" N	1° 6' 24.006" E
58	53° 59' 22.420" N	2° 11' 50.694" E	121	52° 58' 23.000" N	1° 7' 34.209" E
59	53° 59' 19.280" N	2° 13' 34.691" E	122	52° 57' 44.291" N	1° 7' 45.470" E
60	53° 58' 42.514" N	2° 32' 43.904" E	123	52° 57' 19.850" N	1° 7' 56.688" E
61	54° 0' 4.028" N	2° 40' 52.651" E	124	52° 56' 59.623" N	1° 8' 4.381" E
62	53° 48' 57.136" N	2° 44' 53.902" E	125	52° 57' 2.633" N	1° 7' 44.016" E
63	53° 41' 22.175" N	2° 47' 35.927" E	126	52° 57' 4.058" N	1° 7' 42.464" E

6. This licence remains in force until the authorised project has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 of the 2004 Act, including any modification to the programme under section 108, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. 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).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or project are taken to include any amendments that may subsequently be approved in writing by the MMO.

9. 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 that it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

10.—(1) Any difference under any provision of this licence, unless otherwise provided for, shall be referred to and settled in arbitration in accordance with the rules at Schedule 13 of the Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Where the referral to arbitration under paragraph (1) relates to a difference with the Secretary of State, in the event that the parties cannot agree upon a single arbitrator within the specified time period stipulated in paragraph (1), either party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

(3) Should the Secretary of State fail to make an appointment under paragraph (1) within 14 days of a referral, the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

PART 2 CONDITIONS

Design parameters

1.—(1) The total number of offshore electrical installations shall not exceed 18, and shall consist of no more than—

- (a) 12 offshore type 1 substations;
- (b) four offshore type 2 substations;

- (c) four offshore HVAC booster stations; and
- (d) six offshore subsea HVAC booster stations.

2.—(1) The dimensions of any offshore type 1 substations forming part of the authorised project must not exceed—

- (a) 90 metres in height when measured from LAT;
- (b) 100 metres in length; and
- (c) 100 metres in width.

(2) The dimensions of any offshore type 2 substations forming part of the authorised project must not exceed—

- (a) 110 metres in height when measured from LAT;
- (b) 180 metres in length; and
- (c) 90 metres in width.

(3) The dimensions of any offshore HVAC booster station forming part of the authorised project must not exceed—

- (a) 90 metres in height when measured from LAT;
- (b) 100 metres in length; and
- (c) 100 metres in width.

(4) The dimensions of any offshore subsea HVAC booster station forming part of the authorised project must not exceed—

- (a) 15 metres in height when measured from the seabed;
- (b) 50 metres in length; and
- (c) 50 metres in width.

(5) Any bridge located on an offshore electrical installation shall be no longer than 100 metres.

(6) Offshore electrical installation foundation structures forming part of the authorised scheme must be one of the following foundation options—

- (a) for offshore type 1 substations, offshore HVAC booster stations and offshore subsea HVAC booster stations either monopile foundations, mono suction bucket foundations, jacket foundations, gravity base foundations, jacket foundations or box-type gravity base foundations; and
- (b) for offshore type 2 substations, either monopile foundations, mono suction bucket foundations, jacket foundations, gravity base foundations, jacket foundations, box-type gravity base foundations, pontoon gravity base 1 foundations, or pontoon gravity base 2 foundations.

(7) No offshore electrical installation—

- (a) jacket foundation employing pin piles forming part of the authorised project shall have a pin pile diameter of greater than 4 metres; and
- (b) monopile foundation forming part of the authorised project shall have a diameter greater than 15 metres.

(8) 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.

(9) The volume of scour protection material for offshore electrical installation foundations must not exceed 291,200 cubic metres.

(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.

(11) No works permitted under this licence may be undertaken within the boundaries of Markham's Triangle MCZ exclusion zone.

3.—(1) The total length of the cables and the volume of their cable protection (excluding cable crossings) must not exceed the following—

<i>Work</i>	<i>Length</i>	<i>Cable protection</i>
Work Nos. 2 and 3	1,371 kilometres	1,371,000 cubic metres
Work No. 5	3 kilometres	None

(2) No cable protection by way of concrete mattresses may be used in European Sites or MCZ.

(3) No more than 6% of the length of the cables in Work Nos. 2, 3 and 5 falling within any European Site shall be subject to cable protection.

(4) No more than 7% of the length of the cables in Work Nos. 2, 3 and 5 falling within any MCZ shall be subject to cable protection.

4.—(1) The total length of the cables in Work No.2(c) and the volume of their cable protection when combined with the cable authorised under Work No.1(c) of the deemed marine licence granted under Schedule 11 of the Order must not exceed the following—

<i>Length</i>	<i>Cable protection</i>
1,055 kilometres	1,055,000 cubic metres

(2) Any cable protection authorised under this licence must be deployed within 15 years from the date of the grant of the Order unless otherwise agreed by the MMO.

Phases of authorised development

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.

(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.

(3) The scheme must be implemented as approved.

Maintenance of the authorised development

6.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this licence or an agreement made under this licence provides otherwise.

(2) No maintenance works whose likely effects are not assessed in the environmental statement may be carried out, unless otherwise approved by the MMO.

(3) Maintenance works include but are not limited to—

- (a) offshore electrical installation component replacement;
- (b) offshore electrical installation painting;
- (c) removal of organic build-up;
- (d) cable remedial burial;
- (e) cable repairs;
- (f) replacement of offshore electrical installation anodes; and
- (g) J-tube repair/replacement.

(4) Where the MMO's approval is required under paragraph (2), such approval may be given only where it has been demonstrated to the satisfaction of the MMO that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(5) The undertaker shall issue to operators of vessels under its control operating within the Order limits a code of conduct to prevent collision risk or injury to marine mammals.

(6) The undertaker shall ensure appropriate co-ordination of vessels within its control operating within the Order limits so as to reduce collision risk to other vessels including advisory safe passing distances for vessels.

Extension of time periods

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.

Notifications and inspections

8.—(1) The undertaker must ensure that—

(a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—

(i) all agents and contractors notified to the MMO in accordance with condition 17; and

(ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 17.

(b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must provide a completed confirmation form to the MMO confirming receipt of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 17 are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

(a) the undertaker's registered address;

(b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit of the authorised deposits; and

(c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits or removals are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised project.

(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.

(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 fourteen 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.

(8) A notice to mariners must be issued at least ten days prior to the commencement of the licensed activities or any part of them advising of the start date of Work Nos 2, 3, 4 and 5 and the expected vessel routes from the construction ports to the relevant location. Copies of all notices must be provided to the MMO and UKHO within five days.

(9) The notices to mariners must be updated and reissued at weekly intervals during construction activities and at least five days before any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the MCA in accordance with the construction programme approved under condition 14(1)(b). Copies of all notices must be provided to the MMO and UKHO within five days.

(10) The undertaker must notify the UK Hydrographic Office both of the commencement (within ten days), progress and completion of construction (within ten days) of the licensed activities in order that all necessary amendments to nautical charts are made and the undertaker must send a copy of such notifications to the MMO.

(11) In case of damage to, or destruction or decay of, the authorised project seaward of MHWS or any part thereof including the exposure of cables the undertaker must as soon as possible and no later than 24 hours following the undertaker becoming aware of any such damage, destruction or decay, notify the MMO, the Kingfisher Information Service of Seafish and the UK Hydrographic Office. In case of the development of a cable exposure deemed by the undertaker to present a risk to fishing activity, the undertaker must notify the MMO and the Kingfisher Information Service within three working days following the undertaker becoming aware of it.

Aids to navigation

9.—(1) 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 may from time to time direct.

(2) The undertaker must during the period from the start of construction of the authorised project to completion of decommissioning of the authorised project seaward of MHWS keep Trinity House and the MMO informed of progress of the authorised project seaward of MHWS including the following—

- (a) notice of commencement of construction of the authorised project within 24 hours of commencement having occurred;
- (b) notice within 24 hours of any aids to navigation being established by the undertaker; and
- (c) notice within five days of completion of construction of the authorised project.

(3) The undertaker must provide reports to Trinity House on the availability of aids to navigation in accordance with the frequencies set out in the aids to navigation management plan agreed pursuant to condition 14(1)(j) using the reporting system provided by Trinity House.

(4) The undertaker must during the whole period from commencement of the licensed activities to completion of decommissioning of the authorised project seaward of MHWS notify Trinity House and the MMO of any failure of the aids to navigation and the timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the undertaker becoming aware of any such failure.

(5) In the event that the provisions of condition 8(11) are invoked, the undertaker must lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House.

10. The undertaker must colour all structures yellow (colour code RAL 1023) from at least highest astronomical tide to a height directed by Trinity House, or must colour the structure as directed by Trinity House from time to time.

Aviation safety

11.—(1) The undertaker must exhibit such lights, with such shape, colour and character as are required in writing by Air Navigation Order 2016(a) and determined necessary for aviation safety

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in consultation with the Defence Infrastructure Organisation Safeguarding and as directed by the Civil Aviation Authority

(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—

- (a) the date of the commencement of construction of the authorised project;
- (b) the date any offshore electrical installations are brought into use;
- (c) the maximum height of any construction equipment to be used;
- (d) the maximum heights of any offshore electrical installations to be constructed;
- (e) the latitude and longitude of each offshore electrical installations to be constructed;

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.

Chemicals, drilling and debris

12.—(1) Unless otherwise agreed in writing by the MMO all chemicals used in the construction of the authorised project must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) The undertaker must inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(5) The undertaker must ensure that only inert material of natural origin, produced during the drilling installation of or seabed preparation for foundations, and drilling mud is disposed of within the Order limits seaward of MHWS.

(6) The undertaker must ensure that any rock material used in the construction of the authorised project is from a recognised source, free from contaminants and containing minimal fines.

(7) In the event that any rock material used in the construction of the authorised project is misplaced or lost below MHWS, the undertaker must report the loss to the District Marine Office within 48 hours and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the undertaker must endeavour to locate the material and recover it.

(8) The undertaker must ensure that no waste concrete slurry or wash water from concrete or cement works are discharged into the marine environment. Concrete and cement mixing and washing areas should be contained to prevent run off entering the water through the freeing ports.

(9) The undertaker must ensure that any oil, fuel or chemical spill within the marine environment is reported to the MMO, Marine Pollution Response Team in accordance with the marine pollution contingency plan agreed under condition 14(1)(d)(i).

(10) All dropped objects must be reported to the MMO using the Dropped Object Procedure Form as soon as reasonably practicable and in any event within 24 hours of the undertaker becoming aware of an incident. On receipt of the Dropped Object Procedure Form, the MMO may require relevant surveys to be carried out by the undertaker (such as side scan sonar) if reasonable to do so and the MMO may require obstructions to be removed from the seabed at the undertaker's expense if reasonable to do so.

Force majeure

13.—(1) If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits within or outside of the Order limits because the safety of human life and/or of the vessel is threatened, within 48 hours full details of the circumstances of the deposit must be notified to the MMO.

(2) The unauthorised deposits must be removed at the expense of the undertaker unless written approval is obtained from the MMO.

Pre-construction plans and documentation

14.—(1) The licensed activities or any phase of those activities must not commence until the following (as relevant to that phase) have been submitted to and approved in writing by the MMO in consultation with Trinity House and the MCA—

(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, to be agreed in writing with the MMO which shows, in accordance with the Development Principles—

- (i) the proposed location, including grid co-ordinates 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 and choice of foundation of all offshore electrical installations;
- (ii) the height, length and width of all offshore electrical installations;
- (iii) the length and arrangement of all cables comprised in Work Nos. 2, 3, and 5;
- (iv) the dimensions of all monopile foundations, mono suction bucket foundations, jacket foundations, gravity base foundations, box-type gravity base foundations, pontoon gravity base 1 foundations and pontoon gravity base 2 foundations;
- (v) the proposed layout of all offshore electrical installations including any exclusion zones identified under sub-paragraph 14(2)(d); and
- (vi) any exclusion zones/micrositing requirements identified in any mitigation scheme pursuant to sub-paragraph 14(2)(d) or relating to any Annex I reefs identified as part of surveys undertaken in accordance with condition 18;

to ensure conformity with the description of Work Nos. 2, 3, 4 and 5 and compliance with conditions 1 to 3 above.

(b) a construction programme to include details of—

- (i) the proposed construction start date;
- (ii) proposed timings for mobilisation of plant delivery of materials and installation works; and
- (iii) an indicative written construction programme for all offshore electrical installations and electrical circuits comprised in the works at paragraph 2(f) of Part 1 (licensed marine activities) of this Schedule (insofar as not shown in paragraph (ii) above);

unless otherwise agreed in writing with the MMO.

(c) a construction method statement in accordance with the construction methods assessed in the environmental statement and including details of—

- (i) foundation installation methodology, including drilling methods and disposal of drill arisings and material extracted during seabed preparation for foundation works and having regard to any mitigation scheme pursuant to sub-paragraph 14(1)(f);
- (ii) advisory safe passing distances for vessels around construction sites;
- (iii) cable installation;
- (iv) contractors;
- (v) vessels and vessels transit corridors;
- (vi) codes of conduct for vessel operators;

- (vii) associated ancillary works;
 - (viii) guard vessels to be employed; and
 - (ix) details of means to avoid impacts on European sites.
- (d) a project management plan and monitoring plan covering the period of construction and operation to include details of—
- (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised project in relation to all activities carried out;
 - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
 - (iii) a biosecurity plan detailing how the risk of introduction and spread of invasive non-native species will be minimised;
 - (iv) waste management and disposal arrangements;
 - (v) a code of conduct for vessel operators;
 - (vi) the appointment and responsibilities of a fisheries liaison officer; and
 - (vii) all spatial data for archaeological exclusion zones and application of a protocol for archaeological discoveries
- (e) a scour protection management plan providing details of the need, type, sources, quantity and installation methods for scour protection, which plan must be updated and resubmitted for approval if changes to it are proposed following cable laying operations.
- (f) proposed pre-construction surveys, construction monitoring, post-construction monitoring and related reporting in accordance with conditions 18, 19 and 20.
- (g) in the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, including details of soft start procedures with specified duration periods following current best practice as advised by the relevant statutory nature conservation bodies.
- (h) a cable specification and installation plan, to include—
- (i) technical specification of offshore cables below MHWS, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
 - (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;
 - (iii) 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;
 - (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 provision for review and update of the plan for a period of 15 years from the date of the grant of the Order;
 - (v) proposals for the volume and areas of cable protection to be used for each cable crossing; and
 - (vi) proposals for monitoring offshore cables including cable protection during the operational lifetime of the authorised project which includes a risk based approach to

the management of unburied or shallow buried cables, and, where necessary, details of micrositing through any European Site.

- (i) an offshore operations and maintenance plan, to be submitted to the MMO at least four months prior to commencement of operation of the licensed activities and to provide for review and resubmission every three years during the operational phase;
- (j) an aid to navigation management plan to be agreed in writing by the MMO following consultation with Trinity House, to include details of how the undertaker will comply with the provisions of condition 8 for the lifetime of the authorised project.

(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—

- (a) details of responsibilities of the undertaker, archaeological consultant and contractor;
- (b) a methodology for further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
- (c) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO within six months of any survey being completed;
- (d) delivery of any mitigation including, where necessary, identification and modification of archaeological exclusion zones prior to construction;
- (e) monitoring of archaeological exclusion zones during and post construction;
- (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 (and North Norfolk District Council where the report relates to the intertidal area) that the OASIS form has been submitted to the National Record of the Historic Environment within two weeks of submission;
- (g) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised project;
- (h) implementation of the Offshore Renewables Protocol for Reporting Archaeological Discoveries as set out by The Crown Estate; and
- (i) a timetable for all further site investigations, which must allow sufficient opportunity to establish a full understanding of the historic environment within the offshore Order limits and the approval of any necessary mitigation required as a result of the further site investigations prior to commencement of licensed activities.

(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.

(4) The licensed activities or any part of those activities must not commence until a fisheries coexistence and liaison plan in accordance with the outline fisheries coexistence and liaison plan has been submitted to and approved by the MMO.

(5) In the event that driven or part-driven pile foundations are proposed to be used, the licensed 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 Special Area of Conservation 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.

(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.

15.—(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 14 (save for that required under condition 14(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.

(2) [Save in respect of any plan which secures mitigation to avoid adversely affecting the integrity of a European site, where the MMO fails to determine the application for approval under condition 14 within the period referred to in sub-paragraph (1), the programme, statement, plan, protocol or scheme is deemed to be approved by the MMO.]

(3) The pre-construction monitoring surveys, construction monitoring, post-construction monitoring and related reporting required under condition 14(1)(f) must be submitted in accordance with the following, unless otherwise agreed in writing with the MMO—

- (a) at least four months prior to the first survey, detail of any pre-construction surveys and an outline of all proposed monitoring;
- (b) at least four months prior to construction, detail on construction monitoring; and
- (c) at least four months prior to commissioning, detail of post-construction (and operational) monitoring.

(4) The design plan required by condition 14(1)(a) shall be prepared by the undertaker and determined by the MMO in accordance with the Development Principles.

(5) The MMO shall determine an application for consent made under this article within a period of four months commencing on the date the application is received by the MMO, unless otherwise agreed in writing with the undertaker.

(6) Where the MMO is minded to refuse an application for approval made under condition 14 and notifies the undertaker accordingly, or the MMO fails to determine the application for approval under condition 14 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.

(7) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 14, unless otherwise agreed in writing by the MMO.

Offshore safety management

16. No part of the authorised project may commence until the MMO, in consultation with the MCA, has given written approval of an Emergency Response Co-operation Plan (ERCoP) which includes full details of the plan for emergency response and co-operation for the construction, operation and decommissioning phases of that part of the authorised project in accordance with the MCA recommendations contained within MGN543 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” (or any equivalent guidance that replaces or supersedes it), and has confirmed in writing that the undertaker has taken into account and, so far as is applicable to that part of the authorised project, adequately addressed all MCA recommendations contained within MGN543 and its annexes.

Reporting of engaged agents, contractors and vessels

17.—(1) The undertaker must provide the following information to the MMO—

- (a) the name and function of any agent or contractor appointed to engage in the licensed activities within seven days of appointment; and
- (b) each week during the construction of the authorised project a completed Hydrographic Note H102 listing the vessels currently and to be used in relation to the licensed activities.

(2) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

Pre-construction monitoring and surveys

18.—(1) The undertaker must submit in discharging condition 14(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 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—
 - (i) provide a baseline of the seabed environment and bathymetric conditions against which specific post construction marine process monitoring can be undertaken, as set out within the in-principle monitoring plan;
 - (ii) determine the location, extent and composition of any biogenic or geogenic reef features, as set out within the in-principle monitoring plan;
 - (iii) inform future navigation risk assessments as part of the cable specification and installation plan;
 - (iv) inform the identification of any archaeological exclusion zone and post consent monitoring of any such archaeological exclusion zone; and
 - (v) identify and characterise any preferred sandeel habitat.
- (b) a survey (in the parts of the offshore Order limits in which it is proposed to carry out construction works under this licence) to provide a baseline of the benthic environment within designated sites against which specific post construction benthic monitoring can be undertaken, as set out within the in-principle monitoring plan.

(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.

Construction monitoring

19.—(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 enable the validation or otherwise of key predictions in the environmental statement.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition 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.

(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.

Post-construction monitoring

20.—(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.

(2) Subject to receipt of specific proposals the post-construction survey plan or plans must include, in outline—

- (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;
- (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 works were carried out. The survey design must be informed by the results of the pre-construction benthic survey;
- (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;
- (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, Trinity House and the MCA no later than one year following completion of the construction phase of the authorised development;
- (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 to be submitted to the MMO and MCA;
- (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);
- (g) a high resolution swath-bathymetric and side scan sonar survey to determine any change in the composition of any preferred sandeel habitat identified in the pre-construction survey in the parts of the offshore Order limits in which sandwave clearance activity has been carried out. The survey design must be informed by the results of the pre-construction benthic survey; and
- (h) a swath bathymetric survey to IHO Order 1a of the installed export cable route and provision of the data and survey report(s) to the MMO, MCA and UKHO.

(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.

Timing of monitoring report

21. 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.

Reporting of impact pile driving

22.—(1) 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—

- (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;
- (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;
- (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.

(2) The undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to paragraph (1) above within 7 days of the submission.

(3) For the purpose of this condition—

- (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;
- (b) "Forward Look" and "Close Out" requirements are as set out in the UK Marine Noise Registry Information.

Reporting of cable protection

23.—(1) Not more than 4 months following completion of the constriction phase of the project, the undertaker shall provide the MMO and the relevant SNCBs 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.

Decommissioning of cable protection within marine protected areas

24.—(1) The obligations under paragraphs (2) and (3) shall only apply if and to the extent that—

- (a) cable protection is installed as part of the authorised project within an area designated as a European Site or MCZ as at the date of the grant of the Order; and
- (b) it is a requirement of the written decommissioning programme approved by the Secretary of State pursuant to sections 105 of the 2004 Act, including any modification to the programme under section 108, that such cable protection is removed as part of the decommissioning of the authorised project;

(2) Within such timeframe as specified within the decommissioning programme approved by the Secretary of State, the undertaker shall carry out an appropriate survey of cables within Work Nos. 2(c), 2(d), 3(c) and 3(d) that are subject to cable protection and that are situated within any European Site or MCZ to assess the integrity and condition of that cable protection and determine

the appropriate extent of the feasibility of the removal of such cable protection having regard to the condition of the cable protection and feasibility of any new removal techniques at that time, and submit that along with a method statement for recovery of cable protection to the MMO.

(3) Within such timeframe as specified within the decommissioning programme approved by the Secretary of State, the MMO must confirm whether or not it is satisfied with the method statement pursuant to (2) above.

(4) If the MMO has confirmed it is satisfied pursuant to (3) above, then within such timeframe as specified within the decommissioning programme approved by the Secretary of State, the undertaker shall endeavour to recover the cable protection to the extent identified in the survey and according to the methodology set out in the method statement submitted pursuant to (2) above.

SCHEDULE 13

ARBITRATION RULES

Primary objective

1.—(1) The primary objective of these Arbitration Rules is to achieve a fair, impartial, final and binding award on the substantive difference between the parties (save as to costs) within 4 months from the date the Arbitrator is appointed pursuant to article 37 of the Order.

(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.

(3) The Arbitration shall be deemed to have commenced when a party (“the Claimant”) serves a written notice of arbitration on the other party (“the Respondent”).

Time periods

2.—(1) All time periods in these Arbitration Rules will be measured in business days and this will exclude weekends, bank and public holidays.

(2) Time periods will be calculated from the day after the Arbitrator is appointed which shall be either—

- (a) the date the Arbitrator notifies the parties in writing of his/her acceptance of an appointment by agreement of the parties; or
- (b) the date the Arbitrator is appointed by the Secretary of State.

Timetable

3.—(1) The timetable for the arbitration will be that set out in sub-paragraphs (2) to (4) below unless amended in accordance with paragraph 5(3).

(2) Within 15 days of the Arbitrator being appointed, the Claimant shall provide both the Respondent and the Arbitrator with—

- (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, and the remedy it is seeking;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports.

(3) Within 15 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—

- (a) a written Statement of Defence responding to the Claimant’s Statement of Claim, its statement in respect of the nature of the difference, the legal and factual issues in the Claimant’s claim, its acceptance of any element(s) of the Claimant’s claim, its contentions as to those elements of the Claimant’s claim it does not accept;
- (b) all statements of evidence and copies of all documents on which it relies, including contractual documentation, correspondence (including electronic documents), legal precedents and expert witness reports;
- (c) any objections it wishes to make to the Claimant’s statements, comments on the Claimant’s expert report(s) (if submitted by the Claimant) and explanations for the objections.

(4) Within 5 days of the Respondent serving its statements sub-paragraph (3), the Claimant may make a Statement of Reply by providing both the Respondent and the Arbitrator with—

- (a) a written statement responding to the Respondent's submissions, including its reply in respect of the nature of the difference, the issues (both factual and legal) and its contentions in relation to the issues;
- (b) all statements of evidence and copies of documents in response to the Respondent's submissions;
- (c) any expert report in response to the Respondent's submissions;
- (d) any objections to the statements of evidence, expert reports or other documents submitted by the Respondent;
- (e) its written submissions in response to the legal and factual issues involved.

Procedure

4.—(1) The Arbitrator shall make an award on the substantive difference(s) based solely on the written material submitted by the parties unless the Arbitrator decides that a hearing is necessary to explain or resolve any matters.

(2) Either party may, within 2 days of delivery of the last submission, request a hearing giving specific reasons why it considers a hearing is required.

(3) Within 5 days of receiving the last submission, the Arbitrator will notify the parties whether a hearing is to be held and the length of that hearing.

(4) Within 10 days of the Arbitrator advising the parties that he will hold a hearing, the date and venue for the hearing will be fixed by agreement with the parties, save that if there is no agreement the Arbitrator shall direct a date and venue which he considers is fair and reasonable in all the circumstances. The date for the hearing shall not be less than 35 days from the date of the Arbitrator's direction confirming the date and venue of the hearing.

(5) A decision will be made by the Arbitrator on whether there is any need for expert evidence to be submitted orally at the hearing. If oral expert evidence is required by the Arbitrator, then any expert(s) attending the hearing may be asked questions by the Arbitrator.

(6) There will be no process of examination and cross-examination of experts, but the Arbitrator shall invite the parties to ask questions of the experts by way of clarification of any answers given by the expert(s) in response to the Arbitrator's questions. Prior to the hearing the procedure for the expert(s) will be that—

- (a) At least 20 days before a hearing, the Arbitrator will provide a list of issues to be addressed by the expert(s);
- (b) If more than one expert is called, they will jointly confer and produce a joint report or reports within 10 days of the issues being provided; and
- (c) The form and content of a joint report shall be as directed by the Arbitrator and must be provided at least 5 days before the hearing.

(7) Within 10 days of a Hearing or a decision by the Arbitrator that no hearing is to be held the Parties may by way of exchange provide the Arbitrator with a final submission in connection with the matters in dispute and any submissions on costs. The Arbitrator shall take these submissions into account in the Award.

(8) The Arbitrator may make other directions or rulings as considered appropriate in order to ensure that the parties comply with the timetable and procedures to achieve an award on the substantive difference within 4 months of the date on which he/she is appointed, unless both parties otherwise agree to an extension to the date for the award.

(9) If a party fails to comply with the timetable, procedure or any other direction then the Arbitrator may continue in the absence of a party or submission or document, and may make a decision on the information before him/her attaching the appropriate weight to any evidence submitted beyond any timetable or in breach of any procedure and/or direction.

(10) The Arbitrator's award shall include reasons. The parties shall accept that the extent to which reasons are given shall be proportionate to the issues in dispute and the time available to the Arbitrator to deliver the award.

Arbitrator's powers

5.—(1) The Arbitrator has all the powers of the Arbitration Act 1996, including the non-mandatory sections, save where modified by these Rules.

(2) There shall be no discovery or disclosure, except that the Arbitrator shall have the power to order the parties to produce such documents as are reasonably requested by another party no later than the Statement of Reply, or by the Arbitrator, where the documents are manifestly relevant, specifically identified and the burden of production is not excessive. Any application and orders should be made by way of a Redfern Schedule without any hearing.

(3) Any time limits fixed in accordance with this procedure or by the Arbitrator may be varied by agreement between the parties, subject to any such variation being acceptable to and approved by the Arbitrator. In the absence of agreement, the Arbitrator may vary the timescales and/or procedure—

- (a) if the Arbitrator is satisfied that a variation of any fixed time limit is reasonably necessary to avoid a breach of the rules of natural justice and then;
- (b) only for such a period that is necessary to achieve fairness between the parties.

(4) On the date the award is made, the Arbitrator will notify the parties that the award is completed, signed and dated, and that it will be issued to the parties on receipt of cleared funds for the Arbitrator's fees and expenses.

Costs

6.—(1) 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.

(2) Subject to sub-paragraph (3), the Arbitrator will award recoverable costs on the general principle that each party should bear its own costs.

(3) The Arbitrator may depart from the general principle in sub-paragraph (2) and make such other costs award as it considers reasonable where a party has behaved unreasonably as defined within the National Planning Practice Guidance or such other guidance as may replace it.

Confidentiality

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.

SCHEDULE 14

Compensation and MEEB Measures

1. In this Schedule—

“commencement of any wind turbine generator” means the first day on which installation of any wind turbine generator foundation is programmed to be undertaken;

“commencement of offshore cable installation works” means the first day on which export cable sea bed preparation is programmed to be undertaken;

“the Cromer Shoal Chalk Beds MCZ” means the Marine Conservation Zone designated by the Secretary of State under the Cromer Shoal Chalk Beds Marine Conservation Zone Designation Order 2016;

“the Flamborough and Filey Coast SPA” means the site designated as the Flamborough and Filey Coast Special Protection Area in accordance with the Conservation of Habitats and Species Regulations 2017;

“in-principle MEEB plan” means the document certified as the in-principle MEEB plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“kittiwake compensation strategy” means the document certified as the kittiwake compensation strategy by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc);

“licenced activities” means the activities licenced by the deemed marine licence granted either under Schedule 11 or Schedule 12 of this Order;

“MEEB” means measures of equivalent environmental benefit, as that term is used in section 126(7)(c) of the 2009 Act;

“the North Norfolk Sandbanks and Saturn Reef SAC” means the site designated as the North Norfolk and Saturn Reef Special Area of Conservation in accordance with the Conservation of Habitats and Species Regulations 2017;

“the SACs” means the North Norfolk Sandbanks and Saturn Reef SAC and the Wash and North Norfolk Coast SAC;

“sandbanks compensation strategy” means the document certified as the sandbanks compensation strategy by the Secretary of State for the purposes of this Order under article 36 (certification of plans and documents etc); and

“the Wash and North Norfolk Coast SAC” means the site designated as the Wash and North Norfolk Coast Special Area of Conservation in accordance with the with the Conservation of Habitats and Species Regulations 2017.

Kittiwake compensation plan

2.—(1) No later than 12 months prior to the commencement of any wind turbine generator a kittiwake compensation plan must be submitted to the Secretary of State for approval.

(2) No wind turbine generator shall be commenced until the kittiwake compensation plan has been approved in writing by the Secretary of State

(3) The kittiwake compensation plan must accord with the principles set out in the kittiwake compensation strategy relating to the authorised development’s contribution to in-combination impacts on the kittiwake feature at the Flamborough and Filey Coast SPA.

(4) Before approving the kittiwake compensation plan the Secretary of State must consult the MMO and Natural England.

(5) The kittiwake compensation plan must contain an implementation timetable and must be carried out as approved.

Sandbanks compensation plan

3.—(1) No later than 12 months prior to the commencement of offshore cable installation works in Work No. 2(c) and (d), Work No. 3(c) and (d) and Work No. 5, a sandbanks compensation plan for each of the SACs must be submitted to the Secretary of State for approval.

(2) No offshore cable installation works in Work No. 2(c) and (d), Work No. 3(c) and (d) and Work No. 5 shall be commenced until the sandbanks compensation plan has been approved in writing by the Secretary of State .

(3) The sandbanks compensation plan(s) must accord with the principles set out in the sandbanks compensation strategy relating to the protected feature “sandbanks slightly covered by water all the time”.

(4) Before approving the sandbanks compensation plan(s) the Secretary of State must consult the MMO and Natural England and, in relation to the North Norfolk Sandbanks and Saturn Reef SAC only, JNCC.

(5) The sandbanks compensation plan(s) must contain an implementation timetable and must be carried out as approved.

MEEB plan

4.—(1) No later than 12 months prior to the commencement of licenced activities, or any phase of those activities, within the Cromer Shoal Chalk Beds MCZ a MEEB plan must be submitted to the Secretary of State for approval.

(2) No licenced activities, or any phase of those activities, within The Cromer Shoal Chalk Beds MCZ shall be commenced until the MEEB Plan for that phase has been approved in writing by the Secretary of State.

(3) The MEEB plan must accord with the principles set out in the in-principle MEEB plan.

(4) If the MEEB plan confirms that MEEB is necessary to avoid significantly hindering the achievement of the conservation objectives (within the meaning of the 2009 Act) stated for the Cromer Shoal Chalk Beds MCZ, the Secretary of State must be satisfied that it provides arrangements to ensure such MEEB is undertaken, whether by the undertaker or another party.

(5) Before approving the MEEB plan the Secretary of State must consult the MMO and Natural England.

(6) The MEEB plan must contain an implementation timetable and must be carried out as approved.

Consultation

5. Prior to the submission of the kittiwake compensation plan, the sandbanks compensation plan and the MEEB plan to the Secretary of State for approval, the undertaker must carry out pre-application consultation in accordance with that set out in the kittiwake compensation strategy, sandbanks compensation strategy, and the in-principle MEEB plan respectively.

Amendments to approved details

6.—(1) The kittiwake compensation plan, the sandbanks compensation plan and the MEEB plan approved under this Schedule, include any amendments that may subsequently be approved in writing by the Secretary of State.

(2) Any amendments to or variations from the approved kittiwake compensation plan, the sandbanks compensation plan and the MEEB plan must be in accordance with the principles and assessments set out in the kittiwake compensation strategy, sandbanks compensation strategy, and the in-principle MEEB plan, (as applicable) and may only be approved in relation to immaterial changes where it has been demonstrated to the satisfaction of the Secretary of State that it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in those strategies.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation and maintenance of an offshore wind farm in the North Sea approximately 121 kilometres to the northeast of the north Norfolk coast and approximately 10 kilometres west of the median line between UK and Netherlands waters together with associated development. This Order imposes requirements in connection with the development and authorises the compulsory purchase of land (including rights in land) and the right to use land and to override easements and other rights.

This Order also grants deemed marine licences under Part 4 of the Marine and Coastal Access Act 2009 in connection with the wind farms. The marine licences impose conditions in connection with the deposits and works for which they grant consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 36 (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.