

Vattenfall Wind Power Ltd

Thanet Extension Offshore Wind Farm

Explanatory Memorandum

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THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (APPLICATIONS: PRESCRIBED FORMS AND PROCEDURE) REGULATIONS 2009 REGULATION 5(2)(c)

THE PROPOSED THANET EXTENSION OFFSHORE WIND FARM ORDER

EXPLANATORY MEMORANDUM

1 Introduction

- 1.1 This memorandum accompanies an application for development consent (the **Application**) by Vattenfall Wind Power Ltd (the **Applicant**) to construct and operate the Thanet Extension Offshore Wind Farm (the **Project**). The memorandum explains the purpose and effect of each Article of, and Schedule to, the draft Thanet Extension Offshore Wind Farm Order (the **Order**), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
- 1.2 It also highlights and explains the purpose and effect of any departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (**model provisions**). The draft Order is based on the model provisions but occasionally departs from those clauses and where appropriate draws from the drafting used in Orders for similar development made under the Planning Act 2008 (the **2008 Act**), the Transport and Works Act 1992 and other Acts authorising development. A table has been included at **Schedule 1** to summarise the basis of the drafting used in the case of each Article of the draft DCO. We note that PINS Advice 13 states it would be helpful to provide a tracked changed draft of the DCO showing any departures from the model provisions. This advice was produced some time ago and, since then, DCOs have now materially departed from the model provisions, particularly in relation to requirements. The Applicant considers that providing a tracked change version of the entire DCO would not assist PINS and it is far more helpful to provide the aforementioned table and appropriate justification for drafting, as set out in this Explanatory Memorandum. The Applicant has however provided a tracked changed comparison of the Articles within the Order, which are more closely akin to those contained within the model provisions. This is contained within **Schedule 4** of this document.
- 1.3 A detailed explanation of the authorised development is set out in the Environmental Statement (Document 6) which accompanies the Application.
- 1.4 As the Order seeks to apply and modify statutory provisions concerning the compulsory acquisition of land and the treatment of certain requirements as planning conditions, in accordance with sections 117(4) and 120(5) of the Planning Act 2008 (**2008 Act**) it has been drafted as a statutory instrument.

2 The purpose of the Order

- 2.1 In overview, the purpose of the Order is to grant the Applicant development consent for a Nationally Significant Infrastructure Project (**NSIP**), namely:
- 2.1.1 An extension to the existing Thanet offshore wind farm off the coast of Thanet, Kent of up to 340 MW, to be located approximately 8km offshore (at the closest point);
 - 2.1.2 Up to one meteorological mast;
 - 2.1.3 Up to one offshore substation;
 - 2.1.4 Up to one Floating Lidar Device (FLD) and up to one wave buoy; and
 - 2.1.5 A network of subsea cables.

- 2.2 The Order also includes associated development linked to the NSIP, namely:
- 2.2.1 A subsea electrical connection between the offshore substation, and from that substation to a landfall at Pegwell Bay in the district of Thanet;
 - 2.2.2 Up to four transition joint bays at the landfall at Pegwell Bay Country Park;
 - 2.2.3 An underground electrical connection comprising up to four cables;
 - 2.2.4 A new onshore substation housing the principal electrical equipment located at Richborough Port, including a new vehicular access track; and
 - 2.2.5 Onshore underground connection works, consisting of up to two cable circuits and communications cables, to the National Grid 400kV substation at Richborough Energy Park.
- 2.3 The Order also contains two deemed marine licences under section 66(1) of the Marine and Coastal Access Act 2009 (the **2009 Act**). In addition, the Order contains powers to acquire land, or rights, compulsorily for the construction and operation of the Project.

3 Nationally Significant Infrastructure Project – offshore generating station

- 3.1 Pursuant to sections 14(1)(a) and 15(3) of the 2008 Act, an offshore generating station in England or Wales having a capacity of more than 100 MW is an NSIP.
- 3.2 Section 31 of the 2008 Act provides that development consent is required under that Act to the extent that a development is or forms part of an NSIP. As the proposed generating station is proposed to have a capacity of up to 340 MW it qualifies as an NSIP in its own right.
- 3.3 The detailed elements which comprise the generating station, and its associated development, are considered separately below.

4 The need for flexibility in the Order

Phasing

- 4.1 Flexibility is sought and required in relation to phasing for the construction of the Project. Onshore construction works will be undertaken in one continuous construction period but will be phased to allow for the laying of ducts separately to the pull through of cables and the construction of the onshore project substation. A single phase of duct installation works is proposed.
- 4.2 It is important to note that the Environmental Statement has assessed the worst case parameters from the phasing of construction on a case-by-case basis. The Order has therefore been drafted to reflect this approach, particularly with regard to maximum parameters. The entirety of the onshore construction works, which anticipates any delay or "stop/start" in the construction programme, will be undertaken over a maximum period of 30 months.
- 4.3 Requirement 8 (*Stages of authorised development onshore*) has been included in relation to phasing and this is explained further below.

Structure of deemed marine licences

- 4.4 The Applicant's proposed approach to allow for a transfer of a marine licence for the export cable assets to an Offshore Transmission Owner (**OFTO**) under The Electricity (Competitive Tenders for Offshore Transmission Licences) Regulations 2010 (SI 2010/1903) or to a distribution network operator (**DNO**) under (such a licence as granted under section 6(1)(c) of the Electricity Act 1989) is to create separate deemed marine licences in the Order for the generation assets and export cable assets.
- 4.5 This approach has been adopted on a number of offshore wind farms consented under the 2008 Act, including the East Anglia THREE offshore wind farm.
- 4.6 In addition, the Applicant does not know, at this stage, whether the deemed marine licence will be held by a DNO or OFTO for the purpose of operating the export cables. The Order has been drafted as such to afford the Applicant the necessary flexibility to decide whether to obtain and transfer the deemed marine licence for either (but not both).

- 4.7 Whilst Schedule 1 of the Order specifies the maximum capacity of the wind farm as being 340MW (with up to 34 turbines), the Environmental Statement has assessed the Project as being constructed in one phase.

Offshore flexibility

- 4.8 The Order defines the generating station in paragraph 1 of Schedule 1, Part 1 (*Authorised development*). It is limited by the 340 MW generating capacity, which is expressed to be a maximum i.e. “up to 340 MW”.
- 4.9 The constituent elements of the generating station are specified in Work No. 1, together with offshore associated development in Work Nos. 2 and 3 which are expressly limited to the Order limits seaward of Mean High Water Springs (**MHWS**). Work No. 3 has been split into three separate works (Work Nos. 3, 3A and 3B). Work No. 3 allows for four offshore subsea export cables to export electricity and transmit electronic communications to the shore; however Work Nos. 3A and 3B relate solely to the intertidal area. This enables the separation of works within the MMO and Thanet District Council's jurisdiction. At the intertidal area, both the MMO and Thanet District Council have jurisdiction. Works No. 4 to 16 specify the onshore associated development linked to the NSIP within the Order limits landward of Mean Low Water Springs (**MLWS**) and Part 2 of Schedule 1 specifies the ancillary works.
- 4.10 Within the Order, flexibility has been provided in relation to the generating station and linked associated development, and in the view of the Applicant this flexibility, which has hitherto been critical to the development of offshore wind farms in the UK, is fundamental to whether the Order is fit for purpose.
- 4.11 The reason for this principally relates to the need to manage and drive down the cost of offshore wind developments to justify equity investment and access debt funding in a competitive international market. This includes the need to maintain competitive tension in the procurement process driving down costs; the need to take advantage of new developments and emerging products in the market for offshore wind turbine generators and other equipment; and the need to drive down the cost of energy for the purposes of tendering for Contracts for Difference.
- 4.12 The final design of a wind farm depends on a number of factors which include the size, height and capacity of the chosen turbine type; electrical design; length of cables; areas where development is constrained; the outcomes of site investigations, and ongoing wind monitoring results. All these are considered post-consent at the stage of detailed design and optimisation when the final number and type of turbines and their location will be decided as a function of site constraints and viable layout. This final design will be approved under the provisions of the deemed marine licences.

Onshore flexibility

- 4.13 Similar flexibility is required for the onshore elements of the development. With regard to the onshore substation, the optimal design will be determined through the contracting process. Each tenderer will offer different technologies, designs and layouts for the onshore substation within the parameters of any consent obtained, which enables the optimal design solution to be chosen. Final detailed design of the onshore substation will not be settled until after the appointment of a contractor.
- 4.14 As a result, flexibility within the Order, both onshore and offshore, is needed to optimise the Project in the light of variable costs and supply chain availability; to accommodate technology development in turbines and other equipment; and to allow for optimal detailed design and procurement within the parameters of consents.
- 4.15 Furthermore, at the landfall site within the intertidal area (Work Nos. 3A and 3B) and at Pegwell Bay Country Park, it cannot be assumed that any disturbance to the potentially contaminated land is possible until site investigation works are completed post grant of consent of the DCO. Therefore, both the option of laying cables within an artificial berm and the option of burying the cables are being taken forward to the Application and have both been assessed within the Environmental Statement.
- 4.16 These three options within Work No. 3B are as follows:
- 4.16.1 **Option 1:** Locate the TJBs below ground within the Country Park and cross the sea wall by Horizontal Directional Drilling (HDD). This Option requires a larger onshore temporary works area to house the HDD rig and associated equipment

but does not require excavation and reinstatement of the sea wall. Under this Option HDD would be undertaken from land to sea, with an initial bore undertaken prior to a wider drill profile and installation of ducts to house the cables. The HDD ducts would be installed from the TJB location, out to a punch-out location at least 100 m seaward of the sea wall. As a result of the uncertainty associated with the contents of the landfill there may be a need to control the HDD works in order to prevent the introduction of a pathway for the contaminants present. Whilst the detailed design will be subject to the outcomes of the SI works, and any additional SI works that may be required post-consent, there are a number of methods that could be applied to control the release of contaminants from the landfill. This may include excavating down through the landfill and lining it with plastic or other material (depending on depth), or installation of casing through the first section of the HDD bore (within the initial landfill area) to seal it (disposing of the excavated material appropriately) before continuing the bore out to the punch out/receptor pit in clean ground.

- 4.16.2 **Option 2:** Locate the TJBs above ground within the Country Park. This requires installation of a temporary cofferdam within the upper intertidal/saltmarsh area before extending the existing sea wall. The cables would be trenched through the upper intertidal area to the seawall extension. The seawall extension is required to allow for the vertical transition from buried offshore cables to the above ground TJBs and onward surface laid onshore cables. This would ensure that the works do not expose any of the landfill. For the purposes of assessment it is assumed that the temporary cofferdam will be installed using percussive piling and will take duration of 16 days, assuming active piling for 70% of the 12 hour working day (noting construction works between 0700 and 1900 6 days per week). After construction of the seawall extension and installation of the cables the cofferdam would be removed, and the seawall extension reinstated.
- 4.16.3 **Option 3:** Locate the TJBs below ground within the Country Park before trenching the remainder of the route. As with Option 2 this requires installation of a temporary cofferdam before excavating through from the upper intertidal, through the existing sea wall. For this Option the cofferdam is required to ensure no release of contaminants from the landfill into the marine environment. The offshore cables would be trenched from the intertidal area through this cofferdam and seawall area onshore into the TJB area. The cofferdam would be removed, and the seawall reinstated.
- 4.17 Within Richborough Energy Park, three different potential routes for the cable are sought in order to connect the cables to the existing National Grid substation in Plot 02/130. Richborough Energy Park and the National Grid 400 kV substation are currently under construction, and as such the final configuration of this site is sufficiently uncertain as to require three route options to be retained.
- 4.18 Critically, National Grid has not yet confirmed the location of the connection point within its substation compound that the Thanet Extension cables will connect into. The Applicant accordingly requires flexibility to allow a connection to the east or the west of the National Grid compound.
- 4.19 Following detailed design work and further consultation with the landowner, National Grid, and other infrastructure owners, the Applicant will identify a single cable route. All route options would enter Richborough Energy Park using HDD under the A256 from the onshore substation. The location of the HDD entry or exit pits within Richborough Energy Park will be determined by the final cable route, local constraints, and discussions with the landowner and other utilities including National Grid, Nemo Link and UKPN.
- 4.20 Option 1 comprises a route south of the existing UKPN 132 kV substation compound, going north along the road along the western boundary of the site to a connection point in the west of the NGET compound. There is a proposal for National Grid to install 132 kV cables within this road, connecting to the UKPN substation. This would significantly constrain this route option, particularly at the point between the south western corner of the UKPN compound and the retaining wall on the western boundary of REP.

- 4.21 Option 2 passes through the corridor between the Thanet Offshore Wind Farm (TOWF) substation and the Nemo Link converter station, before following the same alignment as option 1 along the road on the western boundary of the Richborough Energy Park site within Plots 02/120, 02/125, 02/135 and 02/140. This would require a connection point in the west of the NGET compound. This option avoids the pinch point identified for option 1, but will only be confirmed as a viable option following further investigation of the final HDD location, the buried infrastructure in this area and the final layout of any access road along this corridor.
- 4.22 Option 3 facilitates a connection point in the east of the NGET substation compound. The route runs to east of the Nemo converter station with cables either in the road or within the verge. There are other below-surface utilities on this route but these do not present significant constraints.
- 4.23 All plots within Richborough Energy Park that are, at this stage, optional and may not feature in the final made Order. They have been clearly indicated as contingent in the Land Plans and Book of Reference.
- 4.24 This is considered a proportionate approach, and will provide the Project with no greater powers than it requires to facilitate the Project.

Policy support for flexibility

- 4.25 The use of flexibility in project details within an Order is expressly endorsed by National Policy Statements EN-1 (at paragraphs 4.2.7 to 4.2.10) and EN-3 (at paragraphs 2.6.42 to 2.6.45), provided the resulting variables are fully assessed in terms of worst case effects. Paragraph 4.2.9 of EN-1 explains that where flexibility is sought, it will be necessary to include appropriate requirements within the Order to ensure that the Project "envelope" is limited to that which has been assessed in the Environmental Statement.
- 4.26 This approach, known as the "Rochdale Envelope", has been followed numerous times in relation to large scale offshore wind farms consented under section 36 of the Electricity Act 1989 and the 2008 Act, and it is an approach which is well known and adopted by statutory consultees. Relevant statutory consultees have all been made aware of the parameters used in the Environmental Impact Assessment (EIA) and the Order.
- 4.27 PINS has issued an Advice Note (Advice Note 9) which suggests (page 10) that a practical way forward in the use of the Rochdale Envelope would be for the Order application to "set out specified maximum and minimum" parameters, and gives possible examples, for offshore wind farms, of maximum/minimum turbine numbers; hub height and blade tip heights; minimum clearance above mean sea level; and separation distances between turbines. While these examples are not intended to be exhaustive for use by promoters, many of the fundamental parameters which define the majority of likely significant effects are included in the Advice Note, and each is considered further below, with reasoning provided for including, or not including, each parameter within the Order, or including parameters which are not included in the Advice Note.

Parameters in the Order

- 4.28 The overall result of the wording in Part 1 of Schedule 1 (i.e. paragraph 1 and Work Nos. 1 to 3B) and Requirement 2 (*Detailed offshore design parameters*) in Part 3 is to allow similar flexibility. In particular, the undertaker will have freedom, within the specified parameters, as to the number of wind turbines installed, the size of turbines, the resulting capacity of the generating station up to 340 MW, the extent to which the area within the Order limits is used, the precise layout of turbines, meteorological mast, offshore substation, and the arrangement of cabling between the turbines, meteorological mast and offshore substation. It will also allow for different electrical solutions to be adopted.
- 4.29 Similarly, Work No.13 and Requirement 9 (*Detailed design parameters onshore*) dictate the site of the onshore substation and its maximum height and footprint. Requirement 9 also requires detailed approval of the layout, scale and external appearance of the onshore substation and requires the final details to be approved in accordance with the principles of the design and access statement.
- 4.30 The parameters included in the Order are set out in **Schedule 3** to this Explanatory Memorandum for ease of reference.

Maximum MW capacity and maximum number of turbines

- 4.31 The maximum capacity of the Project of 340 MW therefore comprises the over-arching project description, and the other parameters are defined by that description. The total MW controls the maximum number of turbines that can be installed at any given turbine capacity, with an absolute maximum number of turbines for the Project set at 34.

Minimum number of turbines

- 4.32 Advice Note 9 suggests a minimum number of turbines should be specified. It is not considered that this would be a workable or appropriate parameter for the Applicant.
- 4.33 It is not necessary to impose a minimum to ensure that the Project exceeds the NSIP threshold of 100 MW as that threshold turns on what the capacity of the scheme is expected to be at the point of application and consent. This is not in doubt – the expected capacity is 340 MW. While a lower figure may in fact be constructed once the turbine size or capacity has been decided and the scheme design optimised after the grant of consent, there is no reasonable basis to expect that the capacity constructed would be less than 100 MW.
- 4.34 Whether setting a minimum number of turbines as a parameter would either be reasonable or enforceable must be open to doubt. An offshore wind farm consent is a valuable asset, and if a developer chooses only to utilise part of it, there will invariably be very good commercial and technical reasons for this. The flexibility sought in a modern large scale development consent for a large offshore wind farm is fundamental to whether or not the project will be constructed at all, and goes to the heart of whether the consent is fit for purpose to permit a buildable, economically viable project. This may not be the case for other types of, development, particularly onshore developments, but it is the case for offshore wind farms.
- 4.35 There can be no EIA justification for seeking to impose a minimum turbine requirement, since the fewer the number of turbines, the lesser the impact.
- 4.36 To seek to impose a minimum number of turbines would also cut across a long standing principle of consents for development; namely, that it is lawful for less than the full extent of the consent to be constructed, as long as what is constructed is in accordance with the requirements of the consent.
- 4.37 The other issue which arises is whether a minimum number of turbines is needed to address the point in the Advice Note that the project parameters should not be "*so wide ranging as to represent effectively different schemes*". The project is fundamentally defined by the Order limits, the nature of the development (an offshore wind farm) and the maximum 340 MW capacity. It is inherent in this type of project that there will be variations in turbine numbers and scheme layout, as already explained, and it cannot properly be regarded as giving rise to "*effectively different schemes*" to the extent that an Order in these terms cannot lawfully be granted. Numerous large scale consents on an equivalent basis have already been granted under the Electricity Act 1989 for offshore wind farms without a minimum number of turbines being specified.

Maximum and minimum hub height

- 4.38 It is accepted by the Applicant that maximum hub height is a parameter which is appropriate for inclusion in the Order. The maximum hub height is 250m. The maximum height serves to fix the Environmental Statement assessments and confirms the maximum height at which static (rather than rotating) elements of each turbine would be seen. However a minimum hub height is not necessary as this is inherently defined by the minimum blade clearance distance to MHWS.

Maximum and minimum blade tip height and clearance to mean sea level

- 4.39 The maximum blade tip height is a fundamental parameter and has been fixed at 250 metres above Highest Astronomical Tide (**HAT**). The minimum blade clearance to MHWS is set at 22 metres to reflect the long standing position of the Royal Yachting Association and the inclusion of this parameter in previous offshore wind farm consents.
- 4.40 A minimum blade tip height (i.e. the lowest level at which the highest blade could pass) is not referred to in any of the assessments and is inherently fixed by the minimum blade clearance. It is not therefore included as a proposed parameter.

Minimum separation distances between turbines

- 4.41 A minimum separation distance of 480m in each row and 716m between rows has been adopted. The separation in both axes is to allow time for the energy in the wind to recover, although the greater distance is afforded to the axis of the prevailing wind direction. This

approach of applying minimum separation distances has been commonly used for Electricity Act 1989 and 2008 Act consents. The minimum separation distances identified for Thanet Extension are the same as the existing TOWF. Whilst the proposed turbines for Thanet Extension are taller than those currently installed, the narrower spacing allows the siting of any two turbines in alignment with the grid arrangement of TOWF in order to meet navigational safety requirements. However the strong likelihood is that they will be spaced much further apart and, given the irregular site boundaries of Thanet Extension, it would be highly unlikely for all turbines to be placed in a regular grid layout akin to TOWF.

- 4.42 The number of variables affecting the final optimised layout, including the extent to which the area within the Order limits is used or not used, mean that a condition governing scheme layout which goes beyond the specified minimum separation distances is not appropriate. Whilst in practice most offshore wind farms have been built on a broad grid arrangement, there needs to be flexibility on this issue in the Order, to allow for detailed design and optimisation.

Maximum rotor diameters

- 4.43 The maximum rotor diameter is limited to 220 metres by the wording of Requirement 2 (*Detailed offshore design parameters*). Whilst not mentioned as a parameter in the Advice Note, the Applicant considers that a parameter on maximum rotor diameter is necessary to ensure a robust EIA. The total blade swept area of the turbines is a key factor in different assessments.

Foundation parameters

- 4.44 It is fundamental to the Project that there should be flexibility to use different foundation types. Three different foundation types are provided for: monopile, three legged jacket (piled or suction caisson), four legged jacket (piled or suction caisson). The choice of foundations will be influenced by a variety of factors, including anticipated changes in available technology and pending greater understanding of ground conditions following detailed pre-construction site investigations, as explained in Volume 2, Chapter 1 of the Environmental Statement. In terms of the Order, the Applicant has considered which design parameters for each type of foundation are important to ensure a complete and robust EIA, and these have been included in the Order.

Offshore substations, meteorological masts and buoys

- 4.45 The number of meteorological masts and offshore substations will not exceed one. The number of Floating Lidar Devices (FLD) and wave buoys fixed to the seabed will not exceed one of each. The type of meteorological mast or offshore substation will be determined as part of the post consent detailed design and optimisation process, and will depend on the final layout and electrical design considerations. For the reasons given above, the precise design of the meteorological mast and offshore substation cannot be fixed at this time. Accordingly, parameters limiting their dimensions and foundation arrangements (where relevant) are included in the Order. Their final location within the Order limits will depend on post consent detailed design and optimisation.

Inter-array and export cables

- 4.46 The precise number, layout and total length of the inter-array and export cables cannot be fixed until post consent design optimisation. The key factor for assessment purposes is the total cable length, based on the maximum number of turbines and a worst case layout for cabling, and the maximum length has been included as a parameter in the Order.

Offshore Order Limits and offshore plans

- 4.47 The final parameter is the Order limits. The nature of the flexibility sought necessarily means that the offshore Works Plan is simplistic. It is not possible to provide a more detailed plan, for the reasons given above.
- 4.48 It is important to bear in mind that under the deemed marine licences contained in Schedules 11 and 12 of the Order, the undertaker must submit final construction details for approval by the MMO before construction. The MMO must ensure that final construction details conform with the description of Works Nos. 1 to 3B and comply with the design parameters in Part 4, Condition 1 in the deemed marine licences for the generation and export cable system assets. Those submitted details will specify the number, dimensions and layout of the WTGs, meteorological mast, offshore substation and the network of cables. Hence, there will be a further stage of regulatory control of the final form of the development prior to construction.

5 Associated development

DCLG Guidance on associated development

- 5.1 Pursuant to section 115 of the 2008 Act, development consent can be granted for the NSIP and associated development. The Secretary of State for Communities and Local Government has issued guidance on associated development¹ (the Guidance) which sets out its defining characteristics and illustrates the types of development that may qualify. Associated development must not be an aim in itself. In most cases, it is of a type normally brought forward with the primary development² and must be subordinate to and necessary for the effective operation of the NSIP, and may include measures necessary to mitigate the effects of the primary development. It should be of a proportionate scale to the primary development. Examples given in the Guidance include grid connections (underground or overhead lines)³.
- 5.2 Part 1 of Schedule 1 of the Order includes associated development for which consent is sought as part of the generating station NSIP. These works comprise the offshore substation (Work No. 2), subsea cables (Work No.1) and onshore underground cables from the offshore substation to the onshore substation, via jointing bays (where the offshore cables connect to the onshore cables) and associated accesses and the onshore substation and associated landscaping and grid connection (Work Nos. 3 to 16) together with various miscellaneous matters.
- 5.3 All these elements clearly fit within the definition of associated development in that they are not an aim in themselves but are required to receive and export the electricity generated by the generating station, with suitable electrical transformation at both the offshore substations and the onshore substation. This is reinforced by the fact that these elements will, after construction, be transferred to an OFTO or DNO. After such transfer the works will be owned and operated completely separately from the generating station under a transmission licence issued under section 6 of the Electricity Act 1989 or a distribution licence.
- 5.4 The works are required to be within the Order limits but the detailed design of the associated development will be a matter for the Applicant. The number of meteorological masts is not fixed at this stage, but is limited to a maximum of one by the wording of Work No. 1 and by Requirement 2 (*Detailed offshore design parameters*). There number of offshore substations is not fixed at this stage, but it limited to a maximum of one by the wording of Work No. 2 and by Requirement 2 (*Detailed offshore design parameters*).
- 5.5 Similarly, in terms of the onshore associated development, Work Nos. 3A to 16 (inclusive) and Requirement 9 (*Detailed design parameters onshore*) control the parameters for the onshore substation infrastructure. Work No. 13 dictates the site of the onshore project substation. The precise nature and layout of the equipment in the compound will depend on the turbine(s) selected, the electrical design and other matters. Requirement 9 requires detailed approval of the landscaping in relation to onshore project substation, which are to be in accordance with the principles of the design and access statement, and limits the maximum height of the onshore project substation. It also limits the extent of the fenced compound area for the onshore project substation. Detailed approval for the onshore project substation must be sought under Requirement 12 (*Provision of landscaping*).
- 5.6 There are a number of Requirements relating to various plans and strategies that properly control the development throughout the construction and operation of the Project. This includes, an access management strategy (Requirement 11), implementation and maintenance of landscaping (Requirement 13), highways access (Requirement 14), Construction and Environment Management Plan (Requirement 15), Code of Construction Practice (Requirement 16), surface water and drainage management plan (Requirement 18), contaminated land and groundwater plan (Requirement 19), construction noise and vibration management plan (Requirement 20), construction traffic management plan (Requirement 21), archaeological written scheme of investigation (Requirement 22) and Landscape and Ecological Mitigation plan (Requirement 23).

6 Preliminary Provisions

¹ Planning Act 2008: associated development applications for major infrastructure projects (Published by Department for Communities and Local Government, April 2013)

² Guidance para. 5

³ Guidance Annex B

Articles 1 and 2 of the Order contain preliminary provisions in Part 1.

Article 1 (*Citation and commencement*) provides for the commencement and citation of the Order. It includes the date on which the Order comes into force, which may or may not be the date on which the Order is made.

Article 2 (*Interpretation*) provides for the interpretation of the Order. Amongst other things, the definition of Order limits includes cross reference to the works plan and to the grid coordinates for the offshore Order limits contained in Schedule 1 of the Order. The Article also defines the offshore substation and foundations and other structures such as wind turbine generators and the meteorological mast. Some of the key definitions in the interpretation section to note are explained below:

Commencement and Pre-Commencement: A specific definition of commencement has been included for activities seaward of MHWS and all other works taking place onshore. This is:

(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 pre-construction surveys, including archaeological investigations, seabed preparation and clearance and monitoring approved under the deemed marine licences; or

(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 operations consisting of site clearance, demolition work, 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, temporary structures or hard standing, and the temporary display of site notices or advertisements.

This list has been carefully compiled upon both a review of previous offshore wind farm DCOs (such as The East Anglia THREE Offshore Wind Farm Order 2017) and through the implementation experience of our consultant team. It is compiled on the basis that these are specific works that must be undertaken prior to any commencement date in order to facilitate a safe working environment, ensure practicable construction, and with regards surveys and clearance works of relevance to ecological receptors are often required well in advance of construction to ensure that sensitive receptors are not present within the construction area.

There are certain pre-commencement works that are necessary for the purposes of efficiently implementing the Project, which are controlled by Requirements. Specifically, for this particular development, archaeological investigations (Requirement 23), remedial work in respect of contamination (Requirement 20) and the erection of any fencing or temporary means of enclosure (Requirement 18) all must be undertaken prior to commencement of development. It is therefore necessary to allow for drafting within the Order to ensure that these works can be undertaken but are still necessarily controlled, and approved, by the relevant planning authority. In order to effect this "pre-commencement works" have been defined separately to include these three necessary works. The requirements then "carve out" those pre-commencement works and they are subject to a separate plan to be submitted to the relevant planning authority for approval prior to those works commencing. This ensures that any works considered necessary to be controlled by requirement do not fall out with the scope of such control.

The deemed marine licences have been defined as "deemed export cable system marine licence". Consequently, "export" has then been defined in the interpretation section as "the flow of electricity from a wind turbine

generator or offshore substation into a distribution network or transmission system for Great Britain, and "export" also includes the conveying of, or importing of, electricity between the distribution network or transmission system for Great Britain and a wind turbine generator or offshore substation." This drafting has been undertaken for two important reasons. The first is that it is possible that the deemed marine licence relating to the cabling of the Project (i.e. not the generation licence) could be transferred to an OFTO, or a DNO. As a result, naming the licence a "transmission" licence would be factually incorrect.

Secondly, all wind farms do not only "export" electricity. Whilst for many years the drafting has been such in a DCO that it simply states "export", the Applicant considered that it would be more accurately described as including the "conveying" and "importing" of electricity. The cables will of course be importing electricity at short intervals periodically, in order to power the wind turbine generators and equipment when wind speeds ebb.

7 Operative Provisions

Articles 3 to 41 of the Order contain provisions for and relating to the authorised project, and miscellaneous and general provisions.

Part 2, Principal Powers

Article 3 (*Development consent etc. granted by the Order*) would grant development consent for the authorised development within the Order limits, thereby authorising the construction of the main development, associated development and ancillary works. The authorised development means the development described in Part 1 of Schedule 1 (*Authorised development*). This includes further 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.

Part 2 describes the ancillary works. These are defined together as the authorised project. In identifying the development authorised by this Order, Article 3 also makes provision for the offshore and onshore works authorised by the Order to be constructed within the Order limits. All the authorised development must be carried out in accordance with the requirements set out in Part 3 of Schedule 1 (*Requirements*). Article 3 is based on the Model Provisions and follows the approach taken for The East Anglia THREE Offshore Wind Farm Order 2017.

Article 4 (*Power to construct and maintain authorised project*) provides for the construction, operation, use and maintenance of the authorised project. It broadly follows the model provisions, bar the addition of "operation" and "use". It was considered prudent, and more robust, to allow the undertaker to operate and utilise the project for its constructed purpose, as "maintenance" carries with it a separately defined meaning with the Order.

Article 5 (*Benefit of the Order*) provides for the transfer of the whole of the benefit of the Order with the consent of the Secretary of State (**SoS**), subject to certain exceptions. It also provides for the transfer of any of the deemed marine licences with the consent of the SoS. The wording of this Article is based on the East Anglia THREE Offshore Wind Farm Order 2017. The requirement to obtain the SoS consent is unnecessary in the circumstances referred to in sub paragraph 8 of the Article. These circumstances include where the transferee or lessee is a holder of the Electricity Act 1989 and where the time limits

for claims of compensation in respect of the acquisition of land or effects upon land as a consequence of the Order has elapsed.

Article 5 includes a procedure to be adopted when making an application to the SoS for consent. The essential elements of this procedure are as follows:

- a) before any application is made to the SoS the Undertaker must consult with the SoS and the SoS will provide a response within four weeks of receipt of the notice;
- b) the SoS may not provide consent before consulting the MMO;
- c) the SoS must determine an application for consent under this article within 8 weeks commencing on the date the application is received. This period can be extended where agreed in writing with the Undertaker;
- d) where the SoS is minded to refuse any application or fails to determine an application within 8 weeks of receipt then the Undertaker may refer the matter for determination under article 36 (*arbitration*); and
- e) prior to any transfer or grant taking effect the Undertaker is required to notify in writing the SoS and so far as relevant the MMO and the relevant planning authorities. Sub paragraphs 14 to 16 of the Article stipulate the notification requirements that apply. In particular the notice must be received by the recipient a minimum of five days prior to the transfer taking effect.

The wording of Article 5 is based on a number of offshore wind development consent orders including the most recent East Anglia THREE Offshore Wind Farm Order 2017. However, in relation to the procedure for the SoS consent, the drafting follows the approach taken for the draft Hornsea Three Offshore Wind Farm Order. In the absence of any other statutory procedure, the Applicant considers it is necessary to provide certainty on the procedure for the SoS's consent.

Article 6

(*Application and modification of legislative provisions*) provides for the modification of Regulation 6(1)(j) of the Hedgerows Regulations 1997 to provide that removal of any hedgerow to which the Regulations apply is permitted for carrying out or maintenance of development which has been authorised by a development consent order made pursuant to the 2008 Act. This approach was taken on The East Anglia THREE Offshore Wind Farm Order 2017 in relation to the carrying out of development. However, Article 6(1) has been further amended to clarify that removal of hedgerows is also permitted for maintenance activities.

Article 6(3) dis-applies provisions of the Neighbourhood Planning Act 2017 (NPA 2017). This disapplication makes it clear that the temporary possession provisions in that enactment would not take effect at the expense of the temporary possession provisions contained in the Order. The Applicant notes that the provisions relating to temporary possession in the NPA 2017 have not yet come into force and that regulations required to provide more detail on the operation of the regime have not yet been made. Because of the uncertainty in relation to the detail around that regime, the Applicant has consulted on the long-standing process available under the Planning Act 2008. The Applicant additionally considers that if Parliament wished to apply NPA 2017 temporary possession regime to DCO projects it could have done so by effecting amendments to Part VII of the Planning Act 2008. It has not done so, and in the

absence of the clarity this would provide, the Applicant proposes to proceed under the existing Planning Act 2008 procedure.

Article 7 (*Defence to proceedings in respect of statutory nuisance*) reflects model provision 7 and provides that no-one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise, if the noise is created in the course of carrying out or maintenance of the authorised project and for which notice has been given under section 60 or consent obtained under section 61 or 65 of the Control of Pollution Act 1974 or if the noise is unavoidable. As stated in the Statement of Engagement submitted with the Application (Document 5.3), it is not considered that any properties will be affected beyond statutory nuisance thresholds, as mitigation measures will be used to control noise emissions. However, the Applicant considers that this Article should be included in the event that proceedings are brought under Section 82 of the Environmental Protection Act 1990. This approach follows the Model Provisions and has been accepted in a number of offshore wind farm development consent orders including, most recently, The East Anglia THREE Offshore Wind Farm Order 2017. The Project comprises nationally significant infrastructure and as a result it is appropriate that the Project is protected.

Part 3, Streets

Article 8 (*Street works*) confers authority on the undertaker to place and maintain works under the streets specified in Schedule 2 (*Streets subject to street works*) within the Order limits and for the purposes of the authorised project. The authority given by this right is a statutory right for the purposes of sections 48(3) (streets, streets works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991. The powers conferred by this Article also extend beyond the land within the Order limits, subject to approval of the relevant street authority. The undertaker needs the power to remove or use earth and materials in or under the streets in order to lay the cables for authorised project under the streets. This approach follows the Model Provisions and a similar approach has been taken on a number of offshore wind farm development consent orders, including The East Anglia ONE Offshore Wind Farm Order 2014. The Article closely follows the drafting of the more recent National Grid (Richborough Connection Project) Development Consent Order 2017.

Article 9 (*Temporary stopping up of public rights of way*) allows the temporary stopping up of public rights of way during the construction of the onshore part of the authorised development. It refers to Schedule 3 (*Public rights of way to be temporarily stopped up*) which lists those rights of way which may be stopped up temporarily. This is not based on the Model Provisions but does follow the approach taken in a number of offshore wind farm development consent orders, most recently in The East Anglia THREE Offshore Wind Farm Order 2017.

Article 10 (*Temporary stopping up of streets*) provides for the temporary stopping up, diversion or alteration of streets, subject to the consent of the local highway authority concerned which may attach reasonable conditions to any such consent.

In addition, Article 10 allows for the stopping up, alteration or diversion of any other street for the purposes of carrying out the authorised project, subject to the consent of the street authority which may attach reasonable conditions to any such consent. This Article broadly follows the approach taken in the Model Provisions, but more

closely follows the approach taken in The East Anglia THREE Offshore Wind Farm Order 2017 and the Hornsea Two Offshore Wind Farm Order 2016.

Article 11 (*Access to works*) authorises accesses to and from public highways to be created at locations specified in Schedule 4 (*Access to works*) and for any other access, with the approval of the planning authority after consulting the highway authority. The approval of the highway authority is required for the form and laying out of the means of access. It therefore streamlines matters for the undertaker to require only one approval from the relevant authority. This Article broadly follows the approach taken in the Model Provisions, but more closely follows the approach taken in The East Anglia THREE Offshore Wind Farm Order 2017 and the Hornsea Two Offshore Wind Farm Order 2016.

Article 12 (*Agreements with street authorities*) authorises street authorities and the undertaker to enter into agreements relating to any temporary stopping up, alteration or diversion of a street authorised by the Order, or the carrying out of works in the streets referred to in Article 8 (*Street works*). This Article broadly follows the approach taken in the Model Provisions, but more closely follows the approach taken in The East Anglia THREE Offshore Wind Farm Order 2017 and the Hornsea Two Offshore Wind Farm Order 2016.

Article 13 (*Application of the 1991 Act*) provides that some provisions of the New Roads and Street Works Act 1991 apply to the carrying out of street works under Article 9 (*street works*) and the temporary stopping up, diversion or alteration of a street under Article 11 (*temporary stopping up of streets*). The relevant provisions are listed in sub-paragraph 2 of the article. Although this is not a Model Provision, comparable provisions are commonly included in Transport and Works Act Orders and have also been consented in the Hornsea Two Offshore Wind Farm Order 2016 and the Hornsea One Offshore Wind Farm Order 2014.

Part Four, Supplemental Powers

Article 14 (*Discharge of water and works to watercourses*) enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised project with the approval and superintendence (if provided) of the authority to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to other conditions. This element of the Article follows the Model Provisions and The East Anglia THREE Offshore Wind Farm Order 2017.

The Article has been further modified to make it clear that the undertaker will have powers to alter watercourses, with the consent of the Environment Agency or the Internal Drainage Board or Kent County Council as appropriate.

Article 15 (*Authority to survey and investigate the land onshore*) confers upon the undertaker a power to survey and investigate land, including the ability to make trial holes, to use and leave apparatus on the land in question and to enter onto land. The Article also makes provision in relation to the payment of compensation and the notice period that must be given to owners and occupiers of land ahead of any surveys. In addition, the purpose for which a survey or investigation might be

carried out has been clarified to include purposes required by the assessment carried out in the Environmental Statement for the authorised project.

The Article follows the Model Provisions but with modifications which follow the approach taken in the East Anglia THREE Offshore Wind Farm Order 2017.

Article 16

(Public rights of navigation) enables the suspending the public rights of navigation where any of the permanent structures (wind turbine generators, meteorological mast or offshore substation) are located, As there will be a physical obstruction in the marine environment there will no practical ability to navigate through these specific locations and the approach to extinguish public rights of navigation formalises this situation. The final locations of structures including WTG foundations, the offshore substation and meteorological mast (where required) will be submitted for approval under the condition 12 of the Deemed Marine Licence (DML).

Implementation of the extinguishment to public rights of navigation fourteen days after giving notice to the SoS, Trinity House, the MMO and the MCA is appropriate to allow construction to commence as soon as reasonable following consultation and approval of the locations of structures under condition 12 of the DML. The MMO, the MCA and Trinity House as the key marine stakeholders for public rights of navigation will have been involved in the process of finalising the design of wind farm in accordance with condition 12 and will therefore already be aware of the locations of these structures. In addition, this notice period is greater than that required for formal notices to mariners and the period required by the UKHO to make all necessary amendments to nautical charts as set out in dML condition 6 (*Notifications and inspections*). This period has been accepted on other DCOs including Kentish Flats Extension Offshore Wind Farm Order 2013 and Walney Extension Offshore Wind Farm Order 2014.

Article 17

(Compulsory acquisition of land) confers on the undertaker powers of compulsory acquisition of so much of the Order land as is required for the authorised project or to facilitate it, or is incidental to it. The article provides broad powers. It is considered necessary to make it clear, in the main, operative provision that the whole of the Order land is potentially subject to powers of compulsory acquisition. In practice, however, pursuant to the other Articles, the powers of compulsory acquisition are limited, and for the great majority of the Order land, will be restricted to some combination of the acquisition of specified new rights (Article 19), and specified powers of temporary possession. The Article broadly follows the Model Provisions and follows the approach taken in the more recent East Anglia THREE Offshore Wind Farm Order 2017.

Article 18

(Time limit for exercise of authority to acquire land compulsorily) imposes a time limit of five years from the coming into force of the Order for the exercise of powers of compulsory acquisition of land. This follows the Model Provisions.

Article 19

(Compulsory acquisition of rights) enables the undertaker to acquire rights over land, including new rights and existing rights if applicable. It also provides for the extinguishment or overriding of existing rights in land subject to the provisions of the Article. The Article is drafted so as to allow the undertaker flexibility to acquire new rights in the Order Land if appropriate rather than outright acquisition under Article 17 (*Compulsory acquisition of land*). This flexibility allows the undertaker, if it is possible so to do, to reduce the areas required for freehold

acquisition and rely on new, permanent rights instead if this is appropriate. This flexibility is appropriate to allow for continued negotiations with owners of Order Lands. It broadly follows the Model Provisions and is a provision that is usual in Transport and Works Act Orders and hybrid bills. An example can be found in Article 19 of the Network Rail (Nuneaton North Chord Order) 2010 and Part 3 of Schedule 6 to the Crossrail Act 2008. It was also accepted in the East Anglia THREE Offshore Wind Farm Order 2017.

The Article is subject to Schedule 5 (*Land in which only new rights etc. may be acquired*), and states that in the case of land scheduled in Column 1 of that Schedule, the new rights that may be acquired are limited to the new rights (and restrictive covenants where relevant) set out in Column 2 of the Schedule. The great majority of the plots in the Order are restricted in this way.

Reference is also made to Schedule 6 (*Modification of compensation and compulsory purchase enactments for creation of new rights*) in the modifications of compulsory purchase legislation to apply appropriate provisions regarding material detriment etc. to the acquisition of new rights.

Further, it is to be noted that the undertaker is seeking to impose new restrictive covenants as scheduled in Schedule 5 to the Order for the protection of the onshore cables, jointing bays and any ducts that will be installed as part of the authorised development. Such protection has been given in Transport and Works Orders (notably relating to Docklands Light Railway) to protect the structure of subterranean development such as tunnels. It was also included in the East Anglia THREE Offshore Wind Farm Order 2017. It is considered that the nature of the authorised development is appropriate for such restrictive covenants and the predominantly agricultural nature of the Order lands would not be unduly burdened by the imposition of restrictive covenants, particularly on the basis that where restrictive covenants are being sought, a right of access for maintenance purposes over the same area is also being sought.

Article 20

(*Private rights*) applies to all private rights over land subject to compulsory acquisition under Article 17 (*Compulsory acquisition of land*) and Article 19 (*Compulsory acquisition of rights*). It provides that where land is compulsorily acquired, such private rights or restrictive covenants are suspended and unenforceable or (where the beneficiaries are notified by the undertaker), extinguished as 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.

Reference to section 152 of the 2008 Act is included in paragraph (4) to confirm that compensation payable under this Article is in accordance with the principles for the payment of compensation for injurious affection to land that would ordinarily apply to schemes where statutory authority is relied upon and a claim under section 10 of the Compulsory Purchase Act 1965 arises. Such claims instead arise under section 152 of the 2008 Act rather than section 10 of the Compulsory Purchase Act 1965 as a result of the contents of section 152 of the 2008 Act. Paragraphs 6 and 7 allow the undertaker to provide notice to the contrary to the provisions of the Article, allowing the undertaker to confirm to the relevant owner of a dominant tenement that the rights that would by operation of this Article be suspended and unenforceable are not so suspended or unenforceable. The Article follows the Model Provisions and was included in the East Anglia THREE Offshore Wind Farm Order 2017.

Article 21 (*Application of the Compulsory Purchase (Vesting Declarations) Act 1981*) provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981 and provides for that Act to have effect subject to certain modifications. It gives the undertaker the option to acquire land by this method rather than through the notice to treat procedure. This Article is based on the Model Provisions and has been updated to reflect the changes brought about by the Housing and Planning Act 2016. It follows the approach taken on the East Anglia THREE Offshore Wind Farm Order 2017. In addition the Article also reflects recent amendments to the Compulsory Purchase (Vesting Declarations) Act 1981, and provides that where the making of the Order is subject to a statutory challenge, the deadline for the exercise of compulsory acquisition powers under the Compulsory Purchase (Vesting Declarations) Act 1981 is increased by a period equivalent to the period beginning with the day the application is made, and ending on the day it is withdrawn or finally determined (or if shorter, one year).

Article 22 (*Application of Part 1 of the Compulsory Purchase Act 1965*) applies Part 1 of the Compulsory Purchase Act 1965 to the Order with certain modifications in relation to section 125 of the 2008 Act. This provision reflects recent changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so that they are consistent with the terms of the Order and paragraph (4) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 25 or 26 of the Order. Whilst this is not a Model Provision, there are precedents for this in, for example, the High Speed Rail (London – West Midlands) Act 2017. This approach is also followed in The Wrexham Gas Fired Generating Station Order 2017. In addition, the Article also reflects recent amendments to the Compulsory Purchase Act 1965 providing that where the making of the Order is subject to a statutory challenge, the deadline for the exercise of compulsory acquisition powers under the Compulsory Purchase Act 1965 is increased by a period equivalent to the period beginning with the day the application is made, and ending on the day it is withdrawn or finally determined (or if shorter, one year).

This Article also clarifies, by applying an amendment for the purposes of the Order to Schedule 2A of the Compulsory Purchase Act 1965, that the counter-notice provisions in that schedule that are available to landowners where part only of land is acquired compulsorily do not apply where the land has only been taken possession of under the temporary possession powers set out in Article 25 or Article 26.

Article 23 (*Acquisition of subsoil only*) authorises the undertaker to acquire the subsoil in any Order land without acquiring the whole of that land. In certain cases it may be necessary only to acquire a stratum of land below the surface and in the absence of this article the undertaker would be obliged to acquire the whole interest in the land. This is a Model Provision and there are precedents for this in, for example, the Glasgow Airport Rail Link Act 2007.

Article 24 (*Rights under or over streets*) reflects model provision 27 and provides that the undertaker may use a street within the Order limits for the authorised project without being required to acquire any part of the street or any easement or right in the street. Provision is made for the payment of compensation to an owner or occupier of land where their interest in land is not acquired and who suffers loss as a result.

The Article follows the Model Provisions and the approach taken in the East Anglia THREE Offshore Wind Farm Order 2017.

Article 25

(Temporary use of land for carrying out the authorised project) will allow the undertaker to take temporary possession of the land included in Schedule 7 (*Land of which temporary possession may be taken*).

Additionally to the model provisions, the Article also provides for other Order land in respect of which notice of entry has not yet been served under Section 11 of the Compulsory Purchase Act 1965 and no vesting declaration has been made under the Compulsory Purchase (Vesting Declarations) Act 1981 to be taken possession of and used, temporarily, for certain specified purposes, save for plots identified for freehold compulsory acquisition. It also allows for new rights in land to be acquired compulsorily after temporary possession has been taken; and for permanent works to be constructed whilst temporary possession notices are in place but before permanent rights have been acquired. This broadly follows the Model Provisions but has been modified in line with a number of recent Development Consent Orders, including the East Anglia THREE Offshore Wind Farm Order 2017, and allows greater flexibility in the event that, following further design work, it is either decided by the undertaker or agreed with the relevant landowner that temporary occupation rather than permanent acquisition is appropriate. A benefit of structuring the Order powers in this way is also to limit the amount of land that need be ultimately acquired, or over which new rights are acquired, from landowners. As works may be constructed prior to permanent acquisition of land, permanent land interests for can be acquired for the scheme "as built", with no need to account for uncertainties in as-built construction in terms of land acquired.

Article 25 provides that powers to take possession of land temporarily, if land is specified in Schedule 7 (*Land of which temporary possession may be taken*), may be used only for the specific purposes set out in column 3 of Schedule 7. These temporary powers are "overlaid" onto many of the plots that are also scheduled for the acquisition of permanent new rights.

For plots that are scheduled for temporary possession, Article 25(9)(a) excludes freehold compulsory acquisition, but still permits the acquisition of permanent rights under Article 19 (as set out in Schedule 5). In this way, the power in Article 17 is further limited.

Article 25(9)(b) permits the acquisition of subsoil rights in any of the land subject to Article 17 or Article 19. This provision could potentially allow the undertaker to acquire additional rights to those set out in Schedule 5, in case a need for a subsoil right becomes apparent that is currently unforeseen. As the great majority of the land to be acquired under the Order comprises new rights for an underground cable and related works, this provision is unlikely to be used, but could be relied on in rare circumstances to assist the delivery of the nationally significant infrastructure project. The Article is based on the Model Provisions but has been modified. This provision was accepted in the East Anglia THREE Offshore Wind Farm Order 2017, and is commonly used on Transport and Works Orders. A similar provision was included in the Network Rail (Ordsall Chord) Order 2015.

The power to temporarily possess "any other Order land" (in respect of which notice of entry has not yet been served under Section 11 of the Compulsory Purchase Act 1965 and no vesting declaration has been made under the Compulsory Purchase (Vesting Declarations) Act 1981), in addition to the land specified in Schedule 7, is unlikely

to be exercised for the Project, as all of the Order land, save for the freehold plots (Plots 02/05, 01/06, 01/10, 01/11, 02/55, 02/60, 02/61, 02/65, 02/70, 02/75 and 02/85) is included in Schedule 7 for some purpose (either for access, use for temporary construction compounds, or for purposes of construction of the authorised project). The Article clarifies that unless permanent interests have been acquired in any land that the undertaker has taken temporary possession of, the undertaker must remove any temporary works and restore the land to the reasonable satisfaction of the owners of the land, but is not required to remove certain works such as drainage works or road surfacing.

In all cases where powers of temporary possession are exercised, compensation must be paid to the landowner and any occupiers for loss or damage arising from their exercise where claimed.

- Article 26* (*Temporary use of land for maintaining authorised project*) provides that the undertaker may take temporary possession of land within the Order limits required for the purpose of maintaining the authorised project, and to construct such temporary works as may be reasonably necessary for that purpose for a period of five years from the date on which that part of the authorised development is first used. Provision is made for notice and compensation. This power does not apply with respect to houses, gardens or any other buildings for the time being occupied. Provision is also made for taking temporary possession without notice, or at a shorter notice than is usually permitted in an emergency. This is based on, but modifies, the Model Provisions but does follow the approach taken on The East Anglia THREE Offshore Wind Farm Order 2017.
- Article 27* (*Statutory undertakers*) authorises the undertaker to acquire land and new rights in land belonging to statutory undertakers as shown on the land plans within the limits of the land to be acquired or used and described in the book of reference. This is a Model Provision which has been modified in accordance with the approach taken on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.
- Article 28* (*Recovery of costs of new connections*) provides for compensation to owners or occupiers of property where apparatus is removed in accordance with Article 27 (Statutory undertakers). This is a Model Provision and has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.
- Article 29* (*Operation of generating station*) authorises specifically the undertaker to operate the authorised project in accordance with the provisions of this Order or an agreement made under this Order. This aspect is included pursuant to section 140 of the 2008 Act. Although not a Model Provision, this Article has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.
- Article 30* (*Deemed licences under the Marine and Coastal Access Act 2009*) adopts the form of model provision 37 but adapted to the provisions of the 2009 Act. It provides for two deemed licences, the terms of which are set out in Part 1 of Schedules 11 and 12, required for the deposit at sea within the Order limits of the specified substances and articles and the construction of works in or over the sea or on or under the seabed. As explained above the approach of splitting the Deemed Marine Licences into two separate licences is to provide for

a situation where generation or export cable system assets will be held by different companies (including OFTOs) post-construction. Although not a Model Provision, this Article has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.

- Article 31* (*Application of landlord and tenant law*) overrides the application of landlord and tenant law in so far as it may prejudice the operation of any agreement for leasing the whole or part of the authorised development or the right to operate the same and any agreement for the construction, maintenance, use or operation of the authorised development or any part of it entered into by the undertaker. This is a Model Provision and has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.
- Article 32* (*Operational land for the purposes of the 1990 Act*) has the effect of ensuring that the land on which the Authorised Project is constructed will be "operational land" under section 263 of the 1990 Act. This article provides that for the purposes of section 264(3) of the Town and Country Planning Act 1990 the development consent granted by the Order will be treated as a specific planning permission. This is a Model Provision and has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.
- Article 33* (*Felling or lopping of trees and removal of hedgerows*) enables the undertaker to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised project and danger to the authorised project. Provision is included for the payment of compensation for loss and damage. There are currently no important hedgerows within the Order limits; however, this power has been retained as the undertaker may need to remove hedgerows planted between now and construction at a later date. The Article broadly follows the Model Provisions but more closely follows the approach in The East Anglia THREE Offshore Wind Farm Order 2017.
- Article 34* (*Trees subject to tree preservation orders*) enables the undertaker to fell or lop the roots of any tree which is subject to a tree preservation order to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised project. Compensation is payable if loss or damage is caused.
- The Article is a Model Provision save that it applies generally to any tree subject to a tree preservation order made before and after the date of the Order coming into effect and either within or overhanging the Order limits. The approach follows that taken on the Hornsea Two Offshore Wind Farm Order 2016.
- Article 35* (*Certification of plans etc.*) requires the undertaker to submit copies of the documents, plans and sections referred to in the Order to the decision maker, for certification as true copies following the making of the Order. This is a Model Provision and has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.
- Article 36* (*Arbitration*) The draft Hornsea Three Offshore Wind Farm Order has included an arbitration article, which provides for an arbitration process. The Applicant agrees that this approach will provide greater certainty to all parties involved in the process and is preferential to

the approach adopted in the model provisions.

The article provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. The arbitrator will be appointed by the parties within 14 days of receipt of a notice of arbitration or failing agreement within this time period then by the SoS following application by one of the parties. If the SoS fails to make an appointment within 14 days of referral the referring party may refer to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

Where the referral to arbitration relates to a difference with the SoS and the parties cannot agree an arbitrator then either party may refer the matters to the Centre for Effective Dispute Resolution for appointment of an arbitrator.

It applies Schedule 9 of the Order which sets out further detail of the arbitration process. The details of Schedule 9 are set out within this Explanatory Memorandum, below.

Article 37 (*Procedure in relation to certain approvals etc.*) provides a mechanism for securing any consent or approval from a consenting body required by the provisions of the Order. It applies Schedule 10 (*Procedure for discharge of Requirements*), which sets out the procedure for the discharge of requirements contained in Part 2 of Schedule 1. This is not a Model Provision but a similar approach was followed on the Hinkley Point C (Nuclear Generating Station) Order 2013.

Article 37(1) further contains within it a deemed approval mechanism. It is the Applicant's view that it is of paramount importance that a nationally significant infrastructure project is appropriately secured through the Order but is ultimately deliverable in a timely manner and is not subject to undue delay via subsidiary approval mechanisms post consent. There are many instances and provisions whereby deemed approval exists in all DCOs consented by the SoS. In addition, the Government are supportive of introducing "deemed discharge" of conditions in relation to projects consented pursuant to the Town and Country Planning Act 1990 regime, particularly in response to its latest consultation on the draft National Planning Policy Framework and previous introductions of the concept of "deemed discharge" from April 2015.

Article 38 (*Abatement of works abandoned or decayed*) authorises the SoS to issue a written notice to the undertaker requiring the repair, restoration or removal of Work No. 1(a) to (d) or Work No. 2 where they have been abandoned or allowed to fall into decay. This power is stated to be without prejudice to any notice served under section 105(2) of the Energy Act 2004 requiring the submission of a decommissioning scheme. Although not a Model Provision it has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.

Article 39 (*Saving provisions for Trinity House*) is a standard provision taken from the harbour model clauses and was also included in Transport and Works Orders for offshore wind farms, including that for Scarweather Sands. It is intended to provide protection to Trinity House; it is in the Model Provisions for Harbours and has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order

2017.

Article 40 (*Crown rights*) protects the Crown's position in relation to its own estates, rights, powers, privileges, authorities and exemptions. The Crown's written consent is required where any land, hereditaments or rights of the Crown are to be taken, used, entered or interfered with as a result of granting of the Order, although there is no conditionality in respect of third party interests in Crown land. This article reflects recent Orders and has been agreed with The Crown Estate. Although not a Model Provision, the approach taken follows the approach for The East Anglia THREE Offshore Wind Farm Order 2017.

Article 41 (*Protective provisions*) gives effect to the protective provisions in Schedule 8 (*Protective provisions*).

8 Schedules

Schedule 1 (*Authorised project*) Part 1 of Schedule 1 specifies the authorised development comprising the scheduled works. The ancillary works are set out in Part 2.

The Explanatory Memorandum has already explained Works No. 3A and 3B relating to the intertidal area, in addition to the options relating to cable routeing contained within Work No. 16.

In addition, it is important to note the following:

The works plan relating to Work No. 3 contains within it an exclusion area, which is clearly demarcated on that plan. This makes clear that no cable works may take place within this area. Only anchoring and other preparation works may take place there.

Whilst Work No. 4A is onshore, the cables will remain as offshore subsea cables until they interact with the transition joint bays (above or below ground).

A Work No. 9, a temporary works area is required to provide storage and laydown south of Stonelees nature reserve. There is no access to the temporary construction compound in Work No. 14, therefore to reduce vehicle tracking through Stonelees nature reserve and ensure that works through this environmentally sensitive area are undertaken in an efficient and timely manner.

At Work No. 11, a temporary works area is required to facilitate the demolition of the existing football pitch and associated structures for the onshore cable works and access from the Bay Point Club.

Work No. 14 is required to facilitate the construction and operation of the onshore substation.

Part 2 – Ancillary Works

Part 2 describes the ancillary works. These are defined together as the authorised project. In identifying the development authorised by this Order, Article 3 also makes provision for the offshore and onshore works authorised by the Order to be constructed within the Order limits. All the authorised development must be carried out in accordance with the requirements set out in Part 3 of Schedule 1 (*Requirements*).

Part 3 - Requirements

Part 3 sets out certain requirements that the undertaker must meet in relation to the construction and operation of the authorised project. These requirements take a similar form to planning conditions.

With regard to the structure of the onshore requirements, it should be noted that the principles informing the onshore mitigation are largely set out in a number of outline documents submitted with the Application.

Requirement 1 (Time limits) specifies the time limit for commencing the authorised development as 5 years from the date of the Order, as provided for in Regulation 3 of the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010.

Requirements 2 to 5 (Detailed offshore design parameters) set out the detailed design parameters within which the authorised development must be constructed. Requirement 2 deals with the dimensions and other characteristics of WTGs. Requirement 3 limits the dimensions of the offshore substation and meteorological mast. Requirement 4 limits the total length of export and inter-array cables. Requirement 5 specifies the maximum amount of scour protection. The purpose of these various restrictions is to ensure that the authorised development is restricted to that which has been assessed in the Environmental Statement.

Requirement 6 (Aviation safety) provides that lighting must be used as determined necessary for aviation safety. It also requires that the lighting, shape, colour, and character are in accordance with the Air Navigation Order 2016 and as are necessary for safety as directed by the relevant air safety bodies.

Requirement 7 (Offshore decommissioning) requires a decommissioning programme to be agreed with the SoS prior to the commencement of the offshore works and replicates the wording used on consents for offshore wind farms granted under the Electricity Act 1989 (and now the 2008 Act) following the relevant provisions of the Energy Act 2004 coming into force.

Requirement 8 (Stages of authorised development onshore) requires a written scheme setting out all the stages of the onshore connection works to be submitted to the relevant planning authority before commencement of any onshore works. It is not considered necessary to require the relevant planning authority to approve such a plan, particularly given that the phasing of the development is a matter governed by the technical and commercial drivers of the Applicant.

Controls as to how the construction works are carried out are set out in the Code of Construction Practice and outline Landscape and Ecological Management Plan and will be set out in detail to the relevant planning authorities through the various management plans, including a Construction Environmental Management Plan, to be submitted for approval pre-construction. The way that the various plans, requirements and conditions interact with one another in relation to the Project has been included at Schedule 5 to this Memorandum, in the form of several docugrams, in order to assist the Examining Authority and Secretary of State.

Requirement 9 (Detailed onshore design parameters) requires approval of details of the proposed works at the onshore substation by the relevant planning authority. It specifies parameters in terms of the maximum size of the equipment and buildings for the onshore substation. Taken together these restrictions ensure that the impact of the onshore works is minimised in line with the assessment and commitments contained in the Application. Those buildings as constructed within Work No. 13 must accord with the Design and Access Statement.

In addition, the requirement controls the parameters of the height of the artificial berm, if constructed.

Requirement 10 (Landfall Works Notification) provides that the Applicant, prior to construction of the relevant work, must notify the relevant planning authority as to which option it will choose to implement in respect of the

Works described in Work No. 3B, as well as providing details of the timings of the works taking place.

Requirement 11 (*Access Management Strategy*) requires approval by the relevant planning authority of an access management strategy, which must be in accordance with the outline access management strategy (which is a certified document provided as required by Article 35). This document will explain how the Project will be constructed and operated onshore when interacting with public rights of way access (and its associated diversions).

Requirement 12 (*Onshore Substation Landscaping*) requires that permanent above ground structures must not be constructed until a substation landscaping management scheme (which accords with the outline landscape and ecological management plan) has been submitted and approved by the relevant planning authority. The scheme must be implemented as approved. No details relating to landscaping are required for any other part of the Project. There is no requirement to provide any details for the landscaping of the substation prior to above ground structures be constructed because those specific details necessary for the production of that plan scheme may be known prior to the commencement of the initial construction works. Ensuring that the scheme is controlled, however at a later date when it is actually necessary and reasonable to provide it, saves the need to amend a scheme at a later date.

Requirement 13 (*Implementation and maintenance of landscaping*) requires the undertaker to implement the approved landscaping management scheme and to replace trees or shrubs which die along the cable route within five years of planting.

Requirement 14 (*Highway accesses*) requires approval of details (which accord with the outline access management plan) for a stage of connection works of any permanent or temporary means of access to a highway, or any alteration to an existing means of access, by the relevant planning authority in consultation with the relevant highway authority.

Requirement 15 (*Construction Environmental Management Plan*) provides that the relevant stage of the connection works must not commence until a construction environmental management plan for that stage (which accords with the code of construction practice) has been submitted and approved by the relevant planning authority. The plan includes details on matters such as relevant health and safety compliance, local community liaison, site security, biosecurity measures, lighting, soil management, dust control measures, flood risk and waste management. The plan must be implemented as approved.

Requirement 16 (*Code of Construction Practice*) A full code of construction practice has been produced for the DCO application. This document must be complied with in relation to any stage of the connection works. There is the ability to amend the document with the approval of the relevant planning authority.

Requirement 17 (*Temporary Fencing and other means of enclosure*) provides that temporary fencing and other means of enclosure must be approved before that stage of the onshore connection works is commenced, that construction consolidation sites will be securely fenced and that such temporary fencing removed after completion of the works.

As stated above, the DCO provides that for any pre-commencement works relating to that temporary fencing, that will be in accordance with details submitted to and approved by the relevant planning authority.

Requirement 18 (*Onshore substation surface water and drainage management plan*) that construction of any part of Work No. 13 must not commence until a service water and drainage management plan (which

accords with the code of construction practice) has been submitted to and approved by the relevant planning authority, following consultation with the relevant drainage authority. Construction works must be undertaken in accordance with the approved scheme.

Requirement 19 (*Contaminated land and groundwater plan*) requires that the relevant stage of the connection works must not commence until a contaminated land and groundwater plan for that stage (which accords with the code of construction practice) has been submitted to and approved by the relevant planning authority, following consultation with the Environment Agency. The scheme must be implemented as approved.

Requirement 20 (*Construction noise and vibration management plan*) requires that the relevant stage of the connection works must not commence until a scheme for noise and vibration management for that stage (which accords with the code of construction practice) has been submitted to and approved by the relevant planning authority. Construction works must be undertaken in accordance with the approved scheme.

Requirement 21 (*Construction traffic management plan*) requires that the relevant stage of the connection works must not commence until a construction traffic management plan (which accords with the code of construction practice) for that stage have been submitted to and approved by the relevant highway authority. The plans must be implemented on commencement of the relevant stage of connection works.

Requirement 22 (*Archaeological written scheme of investigation*) requires that the relevant stage of the connection works must not commence until a written scheme of archaeological investigation for that stage has been submitted to and approved by the relevant planning authority, following consultation with Historic England and Kent County Council. Construction works must be undertaken in accordance with the approved scheme.

As stated above, the DCO provides that for any pre-commencement works relating to archaeological investigations, that will be in accordance with details submitted to and approved by the relevant planning authority.

Requirement 23 (*Landscape and Ecological management plan*) requires that the relevant stage of the connection works must not commence until a landscape and ecological management plan for that stage (which accords with the outline landscape and ecological management plan) has been approved by the relevant planning authority, following consultation with Natural England. Construction works must be undertaken in accordance with the approved scheme.

Requirement 24 (*Construction hours*) provides for construction hours for the connection works on specified days, with none on Sundays or bank holidays, for the relevant works, with exceptions for certain continuous operations, construction works at the landfall and requiring trenchless installation techniques, fit out works at the onshore project substation, delivery of abnormal loads, daily start up and shut down, electrical installation, works requiring temporary road closures, emergency works and other cases agreed with the relevant planning authority.

Requirement 25 (*Control of noise during operational phase*) requires that operation must not commence for Work No. 13 until an operational noise management plan has been submitted to and approved by the relevant planning authority.

Requirement 26 (*Onshore decommissioning*) provides that upon the cessation of commercial operation of the connection works, an onshore decommissioning plan must be submitted to and approved by the relevant planning authority. The plan must then be implemented as approved.

Requirement 27 (*Requirement for written approval*) provides that where

any requirement requires the approval of the SoS or the relevant planning authority such approval must be in writing.

Requirement 28 (Amendments to approved details) provides that any details approved pursuant to any requirement will be taken to include any amended details which are subsequently approved, provided that any amendments to or deviations from the approved details do not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement. This principle of including such wording has been accepted in a number of DCOs at Examination, including the recent (and still draft) Millbrook Power (Gas Fired Power Station) Order.

- Schedule 2 (Streets subject to street works)* sets out those streets that are to be the subject of street works.
- Schedule 3 (Public rights of way to be temporarily stopped up)* sets out those public rights of way that are to be temporarily stopped up.
- Schedule 4 (Access to works)* sets out details of access points to the Works.
- Schedule 5 (Land in which only new rights etc. may be acquired)* sets out details of such land. It sets out the purposes for acquisition of new rights over specified plots. In accordance with the September 2013 guidance issued by the Secretary of State⁴, it clearly identifies rights that apply to the relevant plots set out in the Book of Reference, and also details, where relevant, the restrictive covenants that apply to the relevant plots to protect the installed cables.
- Schedule 6 (Modification of compensation and compulsory purchase enactments for creation of new rights)* sets out changes to the operation of the legislation relating to compulsory purchase, principally the material detriment provisions contained in Section A of the Compulsory Purchase Act 1965.
- Schedule 7 (Land of which temporary possession may be taken)* sets out details of such land that may be occupied under temporary powers.
- Schedule 8 (Protective provisions)* sets out protective provisions for statutory undertakers affected by the authorised development. The protective provisions are for the benefit of general gas, electricity, water and sewerage undertakers affected by the authorised development (Part 1), National Grid (Part 2) and Operators of Electronic Communications Code Networks (Part 3).
- Schedule 9 (Arbitration rules)* As explained in relation to article 36 the Applicant has included an arbitration procedure, secured through the DCO.
- Schedule 10 (Procedure for discharge of requirements)* sets out the process to be followed in relation to applications made to a discharging authority for any agreement or approval required by a requirement in the Order.
- Schedule 11 (Deemed licence under Marine and Coastal Access Act 2009 – generation assets)* sets out the deemed licence for the generation assets within the authorised project.

Standard provisions and structure for deemed marine licences have been developed and included within Orders granted under the 2008 Act. The draft deemed licences comprise one generation licence and one export cable system licence within this Order and have been developed by the

⁴ Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land (Published by Department for Communities and Local Government, September 2013)

Applicant in discussion with the MMO.

The licences are deliberately drafted to be standalone documents. This reflects the fact that they will have a wide distribution to contractors and agents, being an audience that may be confused by cross references to the main Order. Also, they are documents which, based on past experience, are likely to be varied from time to time. Such variations will be much easier to follow if the licences have been prepared on a standalone basis. As a result, there is intentional repetition from the main Order of various definitions and the description of the authorised works. Where definitions from the main Order are not included, this is because such definitions only relate to the onshore transmission works and are therefore not relevant for the licences.

Unless otherwise stated, the provisions below relate to all of the deemed marine licences, although condition numbering varies between the deemed marine licences for the generation assets and export cable system assets. A table which compares the numbering across the generation and transmission licences is included at Schedule 2 for ease of reference.

Part 1 – Licensed marine activities - Interpretation

Paragraphs 1-4 (*Interpretation*) provide interpretation of certain words and phrases used in the licence and contact details for key organisations relevant to the content of the licence. Many of the definitions (including the different types of foundations and other structures such as wind turbine generators and the meteorological mast) are identical to those used in the main Order.

It is important to note here that, as with the onshore activities outlined within the DCO in Article 1, at the definition of "pre-commencement", there are certain works that will occur offshore pre-commencement, namely seabed preparation and archaeological investigations (offshore).

Part 2 – Licensed Marine Activities – General

Paragraph 1 confirms that the deemed marine licence will remain in force until the scheme has been decommissioned.

Paragraph 2 confirms that section 72(7) (*Variation, suspension, revocation and transfer*) of the 2009 Act is dis-applied in relation to transfer of the deemed marine licences. Section 72(7) permits the licensing authority to transfer a marine licence to another person. Section 72(8) provides that "*a licence may not be transferred except in accordance with subsection 7*". Article 5 (*Benefit of the Order*) however provides for the transfer to take place in a different way to section 72(7). Since Article 5 is different from the precise wording of section 72(7) of the 2009 Act it is necessary to dis-apply section 72(7) in those limited circumstances to enable Article 5 to operate. Without such a disapplication, Article 5 might be claimed to be inoperative because of adopting a different wording from section 72(7).

Paragraph 3 confirms that where any condition requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under the licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved by the MMO.

Paragraph 4 notes that any amendments to approved details must fall within what has been assessed in the Environmental Statement.

Paragraph 5 sets out the substances or articles authorised for deposit at sea.

Paragraph 6 sets out the grid coordinates for those works within the deemed marine licence.

Part 3 – Details of Licensed Marine Activities

Paragraphs 1-3 (*Details of licensed marine activities*) specify the licensable marine activities that are authorised by the licence in connection with the construction and operation of the generating station (generation assets licences) and offshore associated development export cable system asset licence. The section deliberately repeats in full the description of the relevant works from Part 1 of Schedule 1. Reference is also included to disposal of material as a result of preparation works for construction of the generating station and associated development (as appropriate).

Part 4 – Conditions

Conditions 1 to 4 (*Design parameters*) repeat the design parameters from requirements 2 of Part 3 of Schedule 1 up to the offshore substation. This has the effect of putting beyond doubt the fact that when considering approvals under the licence, the details of proposed works must comply with these constraints under the deemed marine licence as well as under the Order.

Condition 5 (*Maintenance of the authorised development*) confirms that the Undertaker may maintain the Authorised Development except where the terms of the licence provides otherwise. All maintenance works must have been assessed in the Environmental Statement.

Condition 6 (*Notifications and inspections*) provides for a system of supplying copies of the licence to agents and contractors, restricting the use of contractors and vessels to those notified to the MMO and publicising commencement and progress of the licensed activities.

Conditions 7 and 8 (*Aids to navigation*) provide for various matters to aid navigation in the vicinity of the authorised scheme, including the provision of various navigation aids and notices to mariners, the ongoing availability of the aids to navigation and notification of the progress of works to Trinity House and the MMO. Condition 8 specifies how the Undertaker must colour all of the structures. These are all standard provisions from previous Transport and Works Act Orders and Electricity Act consents for offshore wind farms and have been incorporated into recently granted Orders under the 2008 Act.

Condition 9 (*Aviation Safety*) provides for the notification to the Defence Infrastructure Organisation Safeguarding, specific details relating to the authorised scheme, including date of commencement of construction, the maximum height of various infrastructure and the grid coordinates for each wind turbine generator.

Condition 10 (*Chemicals, drilling and debris*) restricts the use of chemicals and other substances and provides for the disposal of certain drilling arising and the monitoring of construction materials so as to identify those which may accidentally fall into the sea, which will then be investigated and, where identified, recovered.

Condition 11 (*Force majeure*) provides for the notification of deposits made in an emergency.

Condition 12 (*Pre-construction plans and documentation*) provides for the submission for approval, before the commencement of licensed activities, of a plan showing the proposed location, dimensions and choice of foundation of all elements of the authorised scheme to ensure that the licensed activities conform with the description of Work No. 1 and the design parameters in conditions 1-3. It also provides for submission for approval of a construction programme and monitoring plan, a construction method statement, a project environmental management plan, a scour and cable protection plan, a marine mammal mitigation protocol (where driven or part driven foundations are proposed), a cable specification,

installation and monitoring plan, an offshore draft written scheme of archaeological investigation, a scheme for habitats of principal importance, an offshore operations and maintenance plan and an aids to navigation management plan.

The scour and cable protection plan replaces the need for a separate 'scour protection management plan' and 'cable protection plan', as it is standard practice to combine these two plans post grant of consent of the DCO.

Condition 13 requires any archaeological investigations and material operations involving seabed works taking place prior to commencement, must take place in accordance with a scheme of investigation submitted to and approved by the MMO. For archaeological investigations, that must also be agreed with Historic England.

Condition 14 requires the undertaker to provide to the MMO details of each programme, statement, plan or scheme required under conditions 12 and 13 at least four months prior to commencement, unless otherwise agreed with the MMO.

Condition 15 (*Pre-construction monitoring and surveys*) specifies the manner in which the undertaker must discharge its obligation to put forward proposals for pre-construction surveys and monitoring, and provides a list of the required pre-construction surveys.

The applicant proposes to undertake surveys pre-construction for *Sabellaria spinulosa* (or other biogenic reef features) and saltmarsh as these are the two sensitive habitats of principal importance that require mitigation or potential reinstatement. Other benthic habitats present within the development boundary do not represent sensitive habitats of principal importance or receptors for which there is either uncertainty or a need for mitigation. Pre-construction monitoring in the form of generic or broad scale monitoring is not therefore considered necessary. The proposed pre-construction surveys are therefore required to inform the mitigation which is micrositing, and the reinstatement and recovery (as required) of saltmarsh respectively. The post-construction surveys are proposed to validate the results of the micrositing in the case of the biogenic reefs, and monitor recovery in the case of the saltmarsh habitats.

Condition 16 (*Construction monitoring*) specifies the manner in which the undertaker must discharge its obligation under Condition 12 to put forward proposals for construction surveys and monitoring for noise. It provides for the MMO to require further noise monitoring depending on the results.

Condition 17 (*Post construction*) specifies the manner in which the undertaker must discharge its obligation under Condition 12(b) to put forward proposals for post-construction surveys and monitoring, and provides a list of the required post-construction surveys.

Condition 18 (*Reporting of impact pile driving*) provides that the undertaker must provide information of the expected location, start and end dates of impact pile driving to the MMO.

Condition 19 (*Fisheries liaison and coexistence plan*) specifies that the undertaker must comply with the fisheries liaison and coexistence plan to ensure the relevant fishing fleets are notified of the commencement of licensed activities.

Schedule 12

(Deemed licence under Marine and Coastal Access Act 2009 – export cable system assets)

This deemed marine licence relates to the export cable and associated assets only and its provisions largely duplicate the generation assets deemed marine licence at Schedule 11 of the Order, save for the following differences, as summarised below. In addition, a table has been produced

at Schedule 2 summarising where the key provisions differ.

Condition 15(c): At the intertidal area Work No. 3B, as also contained within the DCO at Requirement 10, the Applicant will notify the MMO of the engineering option that will be constructed and built out in relation to the Project.

Condition 9(1) (b): requires that a contamination prevention plan must be submitted to the MMO, which provides a methodology and process confirming that the Works being undertaken within Work No. 3B and near to a disused landfill do not release any contaminants into the marine environment.

Thanet Extension Offshore Wind Farm

Schedule 1: Comparison Between Model Provisions and draft Order Articles

Article in DCO	Identical to Model Provision?	Precedence in other DCOs	Differences from model provisions	Cross reference to rationale in main EM
1 Citation and commencement	Yes			
2 Interpretation	Yes			The DCO includes all of the model provision definitions, plus those relevant to the Authorised Project
3 Development consent etc. granted by the Order	No	Yes – the Hornsea Three Offshore Wind Farm draft Order		Article 3 also makes provision for the offshore and onshore works authorised by the Order to be constructed within the Order limits.
4 Power to construct and maintain authorised project	No	No	In addition to the model provisions, the words "use" and "operate" have been included.	It was considered prudent, and more robust, to allow the undertaker to operate and utilise the project for its constructed purpose, as "maintenance" carries with it a separately defined meaning with the Order.
5 Benefit of the Order	No	Yes – the East Anglia THREE Offshore Wind Farm Order 2017 and the Hornsea Three Offshore Wind Farm draft Order	This article is drafted partially based on the model provision and partially based on the East Anglia THREE Offshore Wind Farm Order 2017.	The wording of this Article is based on the East Anglia THREE Offshore Wind Farm Order 2017, and in part follows the Benefit of the Order provision set out in the Hornsea Three Offshore Wind Farm draft Development Consent Order.
6 Application and modification of legislative provisions	No	Yes – East Anglia THREE Offshore Wind Farm Order 2017	This article is drafted based on the East Anglia THREE Offshore Wind Farm Order 2017.	This approach was taken on The East Anglia THREE Offshore Wind Farm Order 2017 in relation to the carrying out of development. However, Article 6(1) has been further amended to clarify that

Article in DCO	Identical to Model Provision?	Precedence in other DCOs	Differences from model provisions	Cross reference to rationale in main EM
				removal of hedgerows is also permitted for maintenance activities.
7 Defence to proceedings in respect of statutory nuisance	No	Yes – East Anglia 3	This approach follows the Model Provisions and has been accepted in a number of offshore wind farm development consent orders including, most recently, The East Anglia THREE Offshore Wind Farm Order 2017.	This approach was accepted in the East Anglia THREE Offshore Wind Farm Order 2017.
8 Street works	No	Yes – the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Order 2018	This article is drafted partially based on the model provision and partially based on the National Grid (Hinkley Point C Connection Project) Order 2016 and the National Grid (Richborough Connection Project) Order 2018.	The undertaker needs the power to remove or use earth and materials in or under the streets in order to lay the cables for authorised project under the streets
9 Temporary stopping up of public rights of way	No	Yes – the Hornsea Three Offshore Wind Farm draft Order	This article is drafted based on the Hornsea Three Offshore Wind Farm draft Order.	This approach was accepted in the East Anglia THREE Offshore Wind Farm Order 2017
10 Temporary stopping up of streets	No	Yes - the Hornsea Three Offshore Wind Farm draft Order	This article is drafted partially based on the model provision and partially based on the Hornsea Three Offshore Wind Farm draft Order.	This approach was accepted in the East Anglia THREE Offshore Wind Farm Order 2017 and the Hornsea Two Offshore Wind Farm Order 2016.
11 Access to works	No	Yes – the East Anglia THREE Offshore Wind Farm Order 2017	This article is drafted partially based on the model provision and partially based on the East Anglia THREE Offshore Wind Farm Order 2017	This approach was accepted in the East Anglia THREE Offshore Wind Farm Order 2017 and the Hornsea Two Offshore Wind Farm Order 2016. It streamlines matters for the undertaker to require only one approval from the relevant authority.
12 Agreements	No	Yes – the East Anglia THREE	This article is drafted partially based on the model provision and	This approach was accepted in the East Anglia THREE Offshore

Article in DCO	Identical to Model Provision?	Precedence in other DCOs	Differences from model provisions	Cross reference to rationale in main EM
with street authorities		Offshore Wind Farm Order 2017	partially based on the East Anglia THREE Offshore Wind Farm Order 2017.	Wind Farm Order 2017 and the Hornsea Two Offshore Wind Farm Order 2016
13 Application of the 1991 Act	No	Yes – the Hornsea Two Offshore Wind Farm Order 2014	This article is drafted partially based on the model provision and partially based on the Hornsea Two Offshore Wind Farm Order 2014.	Comparable provisions are commonly included in Transport and Works Act Orders and have also been consented in the Hornsea Two Offshore Wind Farm Order 2016 and the Hornsea One Offshore Wind Farm Order 2014.
14 Discharge of water and works to watercourses	No	Yes – the East Anglia THREE Offshore Wind Farm Order 2017	This article is drafted partially based on the model provision and partially based on the East Anglia THREE Offshore Wind Farm Order 2017.	The Article has been further modified to make it clear that the undertaker will have powers to alter watercourses, with the consent of the Environment Agency or the Internal Drainage Board or Kent County Council as appropriate.
15 Authority to survey and investigate the land onshore	No	Yes – the East Anglia THREE Offshore Wind Farm Order 2017	This article is drafted partially based on the model provision and partially based on the East Anglia THREE Offshore Wind Farm Order 2017.	The Article makes provision in relation to the payment of compensation and the notice period that must be given to owners and occupiers of land ahead of any surveys.
16 Public rights of navigation	No	Yes - Kentish Flats Extension Offshore Wind Farm Order 2013	This article is drafted based on the Kentish Flats Extension Offshore Wind Farm Order 2013	As there will be a physical obstruction in the marine environment there will no practical ability to navigate through these specific locations and the approach to extinguish public rights of navigation formalises this situation.
17 Compulsory acquisition of land	No	Yes – the East Anglia THREE Offshore Wind Farm Order 2017	This article is drafted based on the East Anglia THREE Offshore Wind Farm Order 2017.	The Article broadly follows the Model Provisions and follows the approach taken in the more recent East Anglia THREE Offshore Wind Farm

Article in DCO	Identical to Model Provision?	Precedence in other DCOs	Differences from model provisions	Cross reference to rationale in main EM
				Order 2017.
17 Time limit for exercise of authority to acquire land compulsorily	Yes			
19 Compulsory acquisition of rights	No	Yes – the East Anglia THREE Offshore Wind Farm Order 2017	This article is drafted based on the East Anglia THREE Offshore Wind Farm Order 2017.	This approach can be found in Article 19 of the Network Rail (Nuneaton North Chord Order) 2010 and Part 3 of Schedule 6 to the Crossrail Act 2008. It was also accepted in the East Anglia THREE Offshore Wind Farm Order 2017.
20 Private rights	No	Yes – the East Anglia THREE Offshore Wind Farm Order 2017	This article is drafted partially based on the model provision and partially based on the East Anglia THREE Offshore Wind Farm Order 2017.	Justification from EM: The model provisions are accordingly not followed in full and are adjusted so as to apply to both land and rights over land acquired pursuant to the Order. Paragraphs 6 and 7 allow the undertaker to provide notice to the contrary to the provisions of the Article, allowing the undertaker to confirm to the relevant owner of a dominant tenement that the rights that would by operation of this Article be extinguished or overridden are not so extinguished or overridden.
21 Application of the Compulsory Purchase (Vesting Declarations) Act 1981	No	Yes – the East Anglia THREE Offshore Wind Farm Order 2017	This article is drafted based on the East Anglia THREE Offshore Wind Farm Order 2017.	This Article gives the undertaker the option to acquire land by this method rather than through the notice to treat procedure. It is based on the Model Provisions and has been updated to reflect the changes brought about by the Housing and Planning Act

Article in DCO	Identical to Model Provision?	Precedence in other DCOs	Differences from model provisions	Cross reference to rationale in main EM
				2016. It follows the approach taken on the East Anglia THREE Offshore Wind Farm Order 2017
22 Application of Part 1 of the Compulsory Purchase Act 1965	No	Yes- the High Speed Rail (London – West Midlands) Act 2017 and the Wrexham Gas Fired Generating Station Order 2017.	This article is drafted partially based on the model provision and partially based on the High Speed Rail (London – West Midlands) Act 2017.	The Article reflects recent amendments to the Compulsory Purchase Act 1965 providing that where the making of the Order is subject to a statutory challenge, the deadline for the exercise of compulsory acquisition powers under the Compulsory Purchase Act 1965 is increased by a period equivalent to the period beginning with the day the application is made, and ending on the day it is withdrawn or finally determined (or if shorter, one year).
23 Acquisition of subsoil only	No	Yes – the National Grid (North London Reinforcement Project) Order 2014	This article is drafted partially based on the model provision and partially based on the National Grid (North London Reinforcement Project) Order 2014.	This approach can be found in the Glasgow Airport Rail Link Act 2007 and at Article 28 of the National Grid (North London Reinforcement Project) Order 2014.
24 Rights under or over streets	Yes			
25 Temporary use of land for carrying out the authorised project	No	Yes – the East Anglia THREE Offshore Wind Farm Order 2017	This article is drafted partially based on the model provision and partially based on the East Anglia THREE Offshore Wind Farm Order 2017.	This drafting follows a number of recent Development Consent Orders, including the East Anglia THREE Offshore Wind Farm Order 2017, and the Network Rail (Ordsall Chord) Order 2015.
26 Temporary use of land for maintaining authorised	No	Yes – the East Anglia THREE Offshore Wind Farm Order 2017	This article is drafted partially based on the model provision and partially based on the East Anglia THREE Offshore Wind Farm Order 2017.	This is based on, but modifies, the Model Provisions but does follow the approach taken on The East Anglia THREE Offshore Wind Farm Order 2017.

Article in DCO	Identical to Model Provision?	Precedence in other DCOs	Differences from model provisions	Cross reference to rationale in main EM
project				Provision is also made for taking temporary possession without notice, or at a shorter notice than is usually permitted in an emergency.
27 Statutory undertakers	No	Yes – the East Anglia THREE Offshore Wind Farm Order 2017	This article is drafted partially based on the model provision and partially based on the East Anglia THREE Offshore Wind Farm Order 2017.	This is a Model Provision which has been modified in accordance with the approach taken on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.
28 Recovery of costs of new connections	Yes			
29 Operation of generating station	No	Yes – the East Anglia THREE Offshore Wind Farm Order 2017	This article is drafted based on the East Anglia THREE Offshore Wind Farm Order 2017.	This article is included pursuant to section 140 of the 2008 Act. It authorises specifically the undertaker to operate the authorised project in accordance with the provisions of this Order or an agreement made under this Order.
30 Deemed marine licences under the 2009 Act	No	Yes – the East Anglia THREE Offshore Wind Farm Order 2017	This article is drafted based on the East Anglia THREE Offshore Wind Farm Order 2017.	This article adopts the form of model provision 37 but adapted to the provisions of the 2009 Act.
31 Application of landlord and tenant law	Yes			
32 Operational land for purposes of the 1990 Act	Yes			

Article in DCO	Identical to Model Provision?	Precedence in other DCOs	Differences from model provisions	Cross reference to rationale in main EM
33 Felling or lopping of trees and removal of hedgerows	No	Yes – the East Anglia THREE Offshore Wind Farm Order 2017	This article is drafted partially based on the model provision and partially based on the East Anglia THREE Offshore Wind Farm Order 2017.	There are currently no important hedgerows within the Order limits; however, this power has been retained as the undertaker may need to remove hedgerows planted between now and construction at a later date
34 Trees subject to tree preservation orders	No	Yes - the Hornsea Two Offshore Wind Farm Order 2016.	The Article is a Model Provision save that it applies generally to any tree subject to a tree preservation order made before and after the date of the Order coming into effect and either within or overhanging the Order limits.	This Article enables the undertaker to fell or lop the roots of any tree which is subject to a tree preservation order to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised project.
35 Certification of plans etc.	Yes			
36 Arbitration	No	Yes – the Hornsea Three Offshore Wind Farm draft Order	This article is drafted based on the Hornsea Three Offshore Wind Farm draft Order.	The draft Hornsea Three Offshore Wind Farm Order has included an arbitration article, which provides for an arbitration process. The Applicant agrees that this approach will provide greater certainty to all parties involved in the process and is preferential to the approach adopted in the model provisions.
37 Procedure in relation to certain approvals etc.	No	Yes – the Hinkley Point C Nuclear Generating Station Order 2013	This article is drafted based on the Hinkley Point C (Nuclear Generating Station) Order 2013.	Article 37 provides a mechanism for securing any consent or approval from a consenting body required by the provisions of the Order. A similar approach was followed on the Hinkley Point C (Nuclear Generating Station) Order 2013. Article 37(1) contains a deemed approval

Article in DCO	Identical to Model Provision?	Precedence in other DCOs	Differences from model provisions	Cross reference to rationale in main EM
				<p>mechanism, in order to avoid undue delay via subsidiary approval mechanisms post consent.</p> <p>The Government are supportive of introducing "deemed discharge" of conditions in relation to projects consented pursuant to the Town and Country Planning Act 1990 regime, particularly in response to its latest consultation on the draft National Planning Policy Framework and previous introductions of the concept of "deemed discharge" from April 2015.</p>
38 Abatement of works abandoned or decayed	No	Yes – the East Anglia THREE Offshore Wind Farm Order 2017	This article is drafted based on the East Anglia THREE Offshore Wind Farm Order 2017.	Although not a Model Provision it has been included on a number of offshore wind farm development consent orders including The East Anglia THREE Offshore Wind Farm Order 2017.
39 Saving provisions for Trinity House	No	Yes - Scarweather Sands Offshore Wind Farm Order 2004	This article is drafted based on the Scarweather Sands Offshore Wind Farm Order 2004 and the Model Provisions for Harbours.	This Article is intended to provide protection to Trinity House.
40 Crown rights	No	Yes – the National Grid (Hinkley Point C Connection Project) Order 2016	This article is drafted based on the National Grid (Hinkley Point C Connection Project) Order 2016	This Article reflects recent Orders and has been agreed with The Crown Estate.
41 Protective provisions	No	Yes – the East Anglia THREE Offshore Wind Farm Order 2017	This article is drafted based on the East Anglia THREE Offshore Wind Farm Order 2017.	This Article gives effect to the protective provisions in Schedule 8 (Protective provisions).

Thanet Extension Offshore Wind Farm: Schedule 2
Comparison Table of DML Conditions

	Generation Assets DML Schedule 11, Part 4	Export Cable Assets DML Schedule 12, Part 4
Design parameters	1(1)-(2) (wind turbine generator)	1(1)-(3) (offshore substation)
	2(2) (offshore substation) 2(3)-(4) (meteorological mast)	-
	3(1) (cables)	2 (cables)
	3(2)-(3) (wind turbine generator foundations)	3 (scour protection)
	3(2) (meteorological mast foundations)	-
	3(2)-(3) (offshore substation foundations)	-
Maintenance of the authorised scheme	5(1)-(6)	4(1)-(6)
Notifications and inspections	6(1)-(12) (in respect of Work No. 1)	5(1)-(12) (in respect of Work No. 2, a second notice is also required advising of the start date for Work Nos. 3, 3A and 3B and route of the sub-sea cables and fibre optic cables)
Aids to navigation	7(1)-(5)	6(1)-(5)
	8(1)-(2)	7
Aviation safety	9	-
Chemicals, drilling and debris	10(1)-(10) (Condition 10(1) also includes chemical agents placed within any monopile void)	8(1)-(11) (Additional condition 8(8) relates to obstructions resulting from Work No. 3)
Force majeure	11(1)-(2)	9(1)-(2)
Pre-construction plans and documents	12(1)(a)-(j) (Condition 12(1)(c)(iii) requires the construction method statement to include details of the cable installation)	10(1)(a)-(k)
	13(1)-(2)	11(1)-(2)
	14(1)-(4)	12(1)-(3)
Pre-construction	15(1)-(3)	13(1)-(3)

monitoring and surveys		
Construction monitoring	16(1)-(3) (Additional condition 16(3) relates to noise monitoring)	14(1)-(3)
Post construction	17(1)-(3)	15(1)-(4)
Reporting of impact pile driving	18(1)-(3)	16(1)-(3)
Notification of Work 3B	-	17
Fisheries liaison and coexistence plan	19(1)	18(1)

Thanet Extension Offshore Wind Farm: Schedule 2

Schedule 3: List of Order parameters

Component	Specifications	Parameters
Wind turbine generators (WTG)	Maximum total installed capacity	340 MW
	Maximum number of WTGs	34
	Maximum blade tip height from MHWS	22 metres
	Maximum hub height from MHWS	250 metres
	Maximum rotor diameter	220 metres
	Minimum spacing crosswind	480 metres
	Minimum spacing downwind	716 metres
	Foundation types	Piled monopile foundations; Piled quadropod or tripod jacket foundations; and Suction caisson quadropod or tripod jacket foundations.
Maximum scour protection	219,912 m ²	
Offshore Substation	Maximum number	1
	Maximum height from MHWS	50 metres
	Maximum length	70 metres
	Maximum width	50 metres
	Foundation types	Piled monopile foundations; Piled quadropod or tripod jacket foundations; and Suction caisson quadropod or tripod jacket foundations.
	Maximum scour protection	7,854 m ²
Meteorological Mast	Maximum number	1
	Maximum height from HAT	Maximum hub height of WTGs
	Foundation types	Piled monopile foundations; Piled quadropod or tripod

Component	Specifications	Parameters
		jacket foundations; and Suction caisson quadropod or tripod jacket foundations.
Inter-Array Cables	Maximum length	64 km
	Maximum cable protection	80,000 m2
Export Cables	Maximum length	120 km
	Maximum cable protection	210, 000 m2
	Maximum number	4
Monopile Foundation		
<i>Piled</i>	Maximum diameter	10 metres
Jacket Foundation	Maximum width spacing between each leg at seabed level	40 metres
	Maximum number of legs	4
<i>Piled</i>	Maximum pile diameter	4 metres
	Maximum number of piles per leg	1
<i>Suction Caisson</i>	Maximum leg diameter	3.5 metres
	Maximum height above HAT	20 metres
	Maximum suction caissons per leg	4
Licensed Marine Activities	Maximum inert material disposed (generation assets)	278, 000 m3
	Maximum inert material disposed (export cable system assets)	1,449,600 m3
Onshore Substation	Maximum building height	14 metres
	Maximum equipment height	12.5 metres

Thanet Extension Offshore Wind Farm

Schedule 4

A tracked changed comparison of the Articles within the draft Order compared with model provisions

INFRASTRUCTURE PLANNING

The ~~Infrastructure Planning (Model Provisions) (England and Wales) Order 2009~~ Thanet Extension Offshore Wind Farm Order 201X

Made - - - - ~~1st September 2009~~2019
Laid before Parliament ~~8th September 2009~~2019
Coming into force - - ~~1st October 2009~~2019

~~The Secretary of State, in exercise of the powers conferred by section 38 of the Planning Act 2008(a), makes the following Order:~~

~~*Citation and commencement*~~

~~1. *This Order may be cited as the *Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 and shall come into force on 1st October 2009.~~

~~Model provisions~~

~~2. The provisions set out in the Schedules to this Order, of which those contained in Schedules 1 and 4 are of general application and those contained in Schedules 2 and 3 are of application to development relating to railways and harbours, respectively, are prescribed as model provisions for the purposes of section 38 of the Planning Act 2008.~~

~~*Signed by authority of the Secretary of State for *Communities and Local Government~~

Bill McKenzie

Parliamentary Under Secretary of State

~~1st September 2009~~ Department for Communities and Local Government

~~SCHEDULE 1~~ Article 2

General model provisions

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(a) for an Order under sections 37, 114, 115, 120 and 149A of the Planning Act 2008 (“the 2008 Act”)(b);

And whereas the application was examined by a Panel appointed as an examining authority by the Secretary of State pursuant to Chapter 4 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c);

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, having considered the report and recommendation of the Panel, and decided the application, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in its opinion do not make any substantial change to the proposals;

The Secretary of State, having considered the report and recommendation of the Panel, is satisfied that open space comprised within the Order land, when burdened with the 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 in 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, 115, 120, and 149A of the 2008 Act the Secretary of State makes the following Order—

- (a) S.I. 2009/2264 as amended by the Localism Act (Infrastructure Planning) (Consequential Amendments) Regulations 2012 (S.I. 2012/635) and the Infrastructure Planning (Prescribed Consultees and Interested Parties etc) (Amendment) Regulations 2013 (S.I. 2013/522)
- (b) 2008 c.29, Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c.20)
- (c) S.I. 2010/103, amended by S.I. 2012/635

PART 1

PRELIMINARY

Citation and commencement

1. *This Order may be cited as the *Thanet Extension Offshore Wind Farm Order and comes into force on [●] 201[●].

Interpretation

2. ~~1.~~ (1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(~~a~~d);

~~(a) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.~~

“the 1965 Act” means the Compulsory Purchase Act 1965(~~a~~e);

“the 1980 Act” means the Highways Act 1980(~~b~~f);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(g);

“the 1989 Act” means the Electricity Act 1989(h)

“the 1990 Act” means the Town and Country Planning Act 1990(~~e~~i);

“the 1991 Act” means the New Roads and Street Works Act 1991(~~d~~j);

“the 2003 Act” means the Communications Act 2003(k);

“the 2004 Act” means the Energy Act 2004(l);

“the 2008 Act” means the Planning Act 2008(~~e~~m);

“the 2009 Act” means the Marine and Coastal Access Act 2009(n);

“the 2016 Regulations” means the Environmental Permitting (England and Wales) Regulations 2016(o);

“access to works plan” means the plan certified as the access to works plan by the Secretary of State for the purposes of this Order;

(d) 1961 c.33

(e) 1965 c.56

(f) 1980 c.66

(g) 1981 c.66

(h) 1989 c.29

(i) 1990 c.8

(j) 1991 c.22. Section 48(3A) 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)

(k) 2003 (c.21)

(l) 2004 c.20. Section 105 was amended by section 69 of the Energy Act 2008 (c.32)

(m) 2008 c.29. The relevant provisions of the Planning Act 2008 are amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27). Section 149A was inserted by paragraph 4 in Part 1 of Schedule 8 to the Marine and Coastal Access Act 2009 (c.23)

(n) 2009 c.23

(o) S.I. 2016/1154

“ancillary works” means the ancillary works described in Part 2 of ~~Schedule A (authorised project)~~ 1 (ancillary works) and any other works authorised by ~~the~~ is Order ~~†~~ and which are not development within the meaning of section 32 of the 2008 Act;

“Arbitration Rules” means the rules of procedure that govern a particular arbitration that takes place;

“authorised development” means the development and associated development described in Part 1 of ~~Schedule A~~ 1 (authorised project development) ~~†~~ and any other development to the extent that this has been assessed in the Environmental Statement, authorised by this Order ~~†~~, which is development within the meaning of section 32 of the 2008 Act;

~~“the authorised project” means the authorised development and the ancillary works authorised by this Order;~~

~~“the book of reference” means the book of reference certified by the decision-maker as the book of reference for the purposes of this Order;~~ biogenic reef mitigation plan” means the document certified as the biogenic reef mitigation plan by the Secretary of State for the purposes of this Order;

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“buoy” means any floating device used for navigational purposes or measurement purposes, including LIDAR buoys, wave buoys and guard buoys;

“cable” in respect of any onshore cable includes direct lay cables or cables pulled through cable ducts and in respect of any cable whether onshore or offshore means any Alternating Current (AC) cables and includes fibre optic cables either within the cable or laid alongside, and “cable” means any part of the onshore or offshore elements of the Order limits;

“cable crossings” means the crossing of existing sub-sea cables or pipelines or other existing infrastructure by the inter-array, interconnecting or export cables authorised by this Order together with physical protection measures including concrete mattresses, rock placement or other protection methods;

“cable ducts” means conduits for the installation of cables;

“carriageway” has the same meaning as in the 1980 Act;

“code of construction practice” means the document certified as the code of construction practice by the Secretary of State for the purposes of this Order;

“commence” (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 archaeological investigations, pre-construction surveys and monitoring, seabed preparation and clearance, (b) in respect of any other works comprised in the authorised project, any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, environmental surveys, investigations for the purpose of assessing ground conditions, diversion and laying of services, temporary structures or hard standing, the temporary display of site notices or advertisements and the words “commencement” and “commenced” will be construed accordingly;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

~~“the decision-maker” has the same meaning as in section 103 of the 2008 Act; “highway” and “highway authority” have the same meaning as in the 1980 Act;~~ connection works” means Work Nos. 3A to 16 and any related further associated development in connection with those works;

“construction compound” means a construction site associated with the connection works including hard standings, lay down and storage areas for construction materials

and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“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;

“deemed generation assets marine licence” means the licence set out in Schedule 11 (deemed licence under the 2009 Act – generation assets) and deemed by article 28 (deemed marine licences under the 2009 Act) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“deemed export cable system marine licence” means the licence set out in Schedule 12 (deemed licence under the 2009 Act export cable system) and deemed by article 30 (deemed marine licences under the 2009 Act) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“deemed marine licences” means the deemed generation assets marine licence and deemed export cable system marine licence;

“design and access statement” means the document certified as the design and access statement by the Secretary of State for the purposes of this Order;

“draught height” means the distance between the lowest point of the rotating blade of the wind turbine generation and MHWS;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

“export” means the flow of electricity from a wind turbine generator or offshore substation into a distribution network or transmission system for Great Britain, and “export” also includes the conveying of, or importing of, electricity between the distribution network or transmission system for Great Britain and a wind turbine generator or offshore substation;

“HAT” means highest astronomical tide;

“highway” and “highway authority” have the same meaning as in the 1980 Act(p);

~~“the land plan” means the plan certified as the land plan by the decision-maker for the purposes of this Order;~~jacket foundation” means a steel jacket lattice-type structure constructed of steel which is fixed to the seabed at two or more points with pin piles or suction caissons and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment, and “discrete jacket foundation types” includes pre-piled or post-piled jackets, three-legged or four legged jackets, or straight or battered leg jackets;

“joint pit” means an excavation, structure, or working area, below ground (or below and above ground within Works No. 4, 7 and 13) formed to enable the jointing of high voltage power cables and fibre optic cables;

“jointing works” means a process by which two or more cables or fibre optic cables are connected to each other by means of cable joints within a joint bay or a transition joint bay;

“land plan” means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

“LAT” means lowest astronomical tide;

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (ancillary works) and any cable or any component part of any wind turbine generator, offshore substation, onshore substation or meteorological mast described in Part 1 of

(D) “Highway” is defined in section 328(1) for “highway authority”, see section 1

Schedule 1 (authorised development) (but not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” is construed accordingly;

“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;

“mean low water springs” or “MLWS” means the average height of all low waters above Chart Datum;

“meteorological mast” means a mast housing equipment to measure wind speed and other wind characteristics, including a topside housing electrical, communication and associated equipment and marking and lighting;

“MMO” means the Marine Management Organisation;

“monopile foundation” means a steel pile, typically cylindrical, driven or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“offshore archaeological draft written scheme of investigation means the document certified as the offshore archaeological draft written scheme of investigation by the Secretary of State for the purposes of this Order;

“offshore substation” means a platform attached to the seabed by means of a foundation, with one or more decks, whether open or fully clad, accommodating electrical power transformers, instrumentation, protection and control systems, neutral earthing resistors, reactive compensation, standby electrical generation equipment, fuelling facilities, auxiliary and uninterruptible power supply systems and transformers, accommodation or emergency shelter, craneage, metering stations, meteorological equipment, helicopter landing facilities, messing facilities, potable water storage, black water separation equipment, control hub, drainage facilities, access equipment, J-tubes, marking and lighting and other associated equipment and facilities to enable the transmission of electronic communications and for electricity to be collected at, and exported from, the platform and, depending on the type of substation, low, medium or high voltage switch gear, and AC filters and AC converter with switching devices;

“offshore platform” means any offshore substation;

“offshore works” means Work Nos. 1 to 3B and any ancillary works in connection with those works;

“onshore cable corridor” means the onshore area in which the cables and fibre optic cables will be located within the Order limits;

“onshore substation” means a compound containing electrical equipment including (but not limited to) power transformers, switchgear, electrical protection equipment devices (disconnectors, circuit breakers), reactive compensation equipment, harmonic filters, cables, lightning protection masts, control buildings, welfare facilities, communications masts, back-up generators, access, fencing, other associated equipment, structures or buildings and, depending on the type of substation, equipment including high voltage switchgears;

“Order land” means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;

~~(a) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991~~

(e.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (e.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (e.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.

(b) 1980 c.66. Section 1(1) was amended by section 21(2) of ~~the New Roads and Street Works Act 1991~~* (e.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (e.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (e.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (e.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (e.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (e.11), by section 64(1) (2) and (3) of the Transport and Works Act (e.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (e.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (e.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (e.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (e.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (e.15). There are other amendments to the 1980 Act which are not relevant to this Order.

(e) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (e.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.

(d) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (e.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (e.18).

(e) 2008 c.29.

~~“the Order limits” means the limits shown on the works plan within which the authorised project may be carried out~~ “Order limits” means the limits shown on the works plan within which the authorised project may be carried out, whose grid coordinates seaward of MHWS are set out in paragraph 2 of Part 1 of Schedule 1 (authorised development) of this Order;

“outline landscape and ecological management plan” means the document certified as the outline landscape and ecological management plan by the Secretary of State for the purposes of this Order;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981 (aq);

“pin piles” means steel cylindrical piles driven or drilled into the seabed to secure jacket foundations;

“pre-commencement works” means archaeological investigations, remedial work in respect of any contamination or other adverse ground conditions and the erection of any temporary fencing or temporary means of enclosure;

“relevant planning authority” means—~~(i) the district planning authority for the area in which the land to which the provisions of this Order apply is situated unless the provisions relate to the construction or alteration of a hazardous waste facility, in which case it means the county planning authority;~~

~~(ii) a National Park Authority;~~

~~(iii) the Broads Authority; and (iv) the Greater London Authority if the land to which the provisions of this Order or requirements apply is situated in Greater London;~~ relevant provision of this Order applies is situated;

~~“rights plan” means the plan certified as the rights plan by the decision maker for the purposes of this Order;~~ requirements” means those matters set out in Part 3 of Schedule 1 (requirements) to this Order;

~~“the sections” means the sections shown on the plan certified as the section drawings plan by the decision maker for the purposes of this Order;~~ Saltmarsh Mitigation, Reinstatement and Monitoring Plan” means the document certified as the Saltmarsh

(q) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (e.34). There are other amendments to the 1981 Act which are not relevant to this Order.

Mitigation, Reinstatement and Monitoring Plan by the Secretary of State for the purposes of this Order;

“statutory undertaker” means any person falling within section 127(8), ~~128(5) or 129(2)~~ of the 2008 Act and* a public communications provider as defined in section 151* of the 2003 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, 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; ~~“tree preservation order” has the meaning given in section 198 of the 1990 Act;~~ (r);

“suction caisson” means large diameter steel cylindrical shells which penetrate the seabed assisted by a hydrostatic pressure differential for fixity of the structure it supports;

“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;

“temporary works area” means a work site associated with the connection works including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, bunded storage areas, areas for welfare facilities including washroom facilities, and temporary fencing or other means of enclosure;

“transition joint bay” means an excavation, structure, or working area above or below ground where the offshore export cables and fibre optic cables comprised in Work No. 4A are jointed to the connection works;

~~“the tribunal”~~ means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means ~~the person who has the benefit of this Order in accordance with section 156 of the 2008 Act;~~ Vattenfall Wind Power Ltd;

“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;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; ~~and~~

~~“the works plan” means the plan certified as the works plan by the decision-maker for the purposes of this Order;~~ 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; and

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order.

(1) (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.

(2) (3)All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised project shall be taken to be

(r) “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act (c.7)

measured along that work, save in respect of the parameters referred to requirements 2 to 6 in Part 3, Schedule 1 (requirements) and condition 1 to 4 in Part 2 of the deemed marine licences.

(3) 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.

[NOTE: In the case of off-shore development, which is outside the area of any planning authority, it will be necessary to identify another appropriate body as the relevant planning authority.]

(4) 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.

(5) The expression “includes” may be construed without limitation.

PART 2

Principal Powers

Development consent etc. granted by the Order

~~3. 2.—(1)~~ Subject to the provisions of this Order and to the requirements ~~in the Schedule (requirements) attached to this Order~~ 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) (a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.~~ Subject to the requirements and conditions in the deemed marine licences, Work Nos. 1 to 3B must be constructed anywhere within the Order limits seaward of MHWS and Work Nos. 4 to 16 must be constructed anywhere within the Order limits landward of MLWS.

~~Maintenance of~~ Power to construct and maintain authorised project

~~4. 3.—(1)~~ The undertaker may at any time construct, operate, use and maintain the authorised project, except to the extent that this Order or an agreement made under this Order~~;~~ provides otherwise.

(2) The power to operate, use and maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain a 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 paragraphs (2) and (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 (excluding the deemed marine licences referred to in paragraph (2) below) and such related statutory rights as may be agreed between the undertaker and the transferee;
- (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 this Order (excluding the deemed marine licences referred to in paragraph (2) below) and such related statutory rights as may be so agreed.

(2) Subject to paragraph (3), the undertaker may with the written consent of the Secretary of State—

(a) where an agreement has been made in accordance with paragraph (1)(a), transfer to the transferee the whole of the deemed generation assets marine licence or the deemed export cable system marine licence, or both, and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) where an agreement has been made in accordance with paragraph (1)(b), grant to the lessee, for the duration of the period mentioned in paragraph (1)(b), the whole of the deemed generation assets marine licence, or the whole of the deemed export cable system marine licence and such related statutory rights as may be so agreed.

(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 must provide a response within four weeks of receipt of the notice.

(4) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person the whole of the benefit of the provisions of the deemed marine licences.

(5) 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.

~~(6) 4. Subject to article 5 (consent to transfer benefit of Order), the provisions of articles ~~11~~ and ~~12~~ [specify relevant articles] shall have effect solely for the benefit of [specify person, body or class of person]. [NOTE: This article is required where provisions of the Order are specific to a named undertaker or class of undertaker (see section 156(2) of the 2008 Act).]~~

~~Consent to transfer benefit of Order 5.—(1) The undertaker may, with the consent of the [specify person or body]—~~

~~(a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or (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 this Order and such related statutory rights as may be so agreed. 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 36 (arbitration).~~

(7) Where paragraph (11) applies no consent of the Secretary of State is required under paragraph (1) or paragraph (2).

(8) ~~(2)~~ Where an agreement has been made in accordance with paragraph (1) or ~~(2)~~ references in this Order to the undertaker, except in paragraph ~~(39)~~, ~~shall~~ ~~(10)~~, or ~~(12)~~, include references to the transferee or ~~the~~ lessee.

(9) ~~(3)~~ The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) ~~shall be~~ ~~(2) are~~ subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(10) Where an agreement has been made in accordance with paragraph (1) or (2)—

(a) the benefit (“the transferred benefit”) includes 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 resides exclusively with the transferee or, as the case may be, the lessee and the transferred benefit is not enforceable against the undertaker save in the case of a deemed marine licence transferred or granted in respect of any breach of an obligation by the undertaker which occurs prior to such transfer or

grant or which occurs as a result of any activity carried out by the undertaker on behalf of the transferee.

(11) This paragraph applies where—

- (a) the transferee or lessee is a person who holds a licence under the Electricity Act 1989; 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 is payable.

(12) The provisions of article 8 (street works), article 10 (temporary stopping up of streets), article 17 (compulsory acquisition of land), article 19 (compulsory acquisition of rights), article 25 (temporary use of land for carrying out the authorised project) and article 26 (temporary use of land for maintaining the authorised project) have effect only for the benefit of the named undertaker and a person who is a transferee or lessee and is also—

- (a) in respect of Works Nos. 3A to 16 a person who holds a licence under the Electricity Act 1989; or
- (b) in respect of functions under article 8 (street works) relating to a street, a street authority.

(13) 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.

(14) The notice required under paragraphs (3) and (13) 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 (15), 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 (9), will apply to the person exercising the powers transferred or granted; and
 - (v) where paragraph (11) 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.

The date specified under paragraph (14)(a)(ii) must not be earlier than the expiry of five days from the date of the receipt of the notice

(15) The notice given under paragraph (14) 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

Application and modification of legislative provisions

~~6. 6.—(1) Subject to the modifications set out in paragraph (2) the following provisions of the *[insert short title of the relevant Act]* shall be incorporated in this Order—~~ (1) Regulation 6 of the Hedgerows Regulations 1997(s) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“(k) or for carrying out or the maintenance of development which has been authorised by an order granting development consent pursuant to the Planning Act 2008”.

(2) Section 72(7) of the 2009 Act is modified so as to read for the purposes of this Order only as follows—

“(7) On an application made by a licensee, the licensing authority which granted the licence—

(a) may transfer the licence from the licensee to another person, and

(b) if it does so, must vary the licence accordingly.”

(3) The provisions of the Neighbourhood Planning Act 2017(a) insofar as they relate to temporary possession of land under article 25 (temporary use of land for carrying out the authorised project) and article 26 (temporary use of land for maintaining the authorised project) of this Order do not apply to this Order in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project.

~~(a) section[s] X *[specify relevant section(s)]*.~~

~~(2) The modifications are: *[insert relevant modifications]*.~~

~~(3) In construing the *[insert short title of the relevant Act]* as incorporated the following expressions shall have the following meanings: *[insert relevant expressions and definitions]*~~

Defence to proceedings in respect of statutory nuisance

7. 7.—(1)(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990~~(a)~~ (summary proceedings by 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 ~~shall~~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 or maintenance 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

(s) SI 1997/1160

(t) 1990 c.43. There are amendments to this Act which are not relevant to the Order.

~~(a)1990 c.43. There are amendments to this Act which are not relevant to this Order.~~ under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974~~(au)~~; or

- (ii) is a consequence of the construction or maintenance 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 which is being used in ~~accordance with a scheme of monitoring and attenuation of noise agreed with the Commission as described in compliance with~~ requirement 25 (control of noise during 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), ~~shall~~do not apply where the consent relates to the use of premises by the undertaker for ~~the~~ purposes of or in connection with the construction or maintenance of the authorised project.

PART 3

Streets

Street works

8. 8.—~~(1)~~(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in **Schedule B2** (streets subject to street works) as is within the Order limits and may—

- (a) break up or open up the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus ~~in~~under the street;
- (d) maintain apparatus ~~in~~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), ~~(b)~~, ~~(c)~~ and ~~(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) Without limiting the scope of the powers conferred by paragraph (1) but subject to the consent of the street authority, which consent will not be unreasonably withheld, the undertaker may, for the purposes of the authorised project, enter on so much of any other street whether or not within the Order limits, for the purposes of carrying out the authorised development and article 39 (miscellaneous provisions relating to the 1990 Act) will apply.

(4) (3)The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(11) 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.

~~(5)~~(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

~~[NOTE: This article should not be used for the purposes of authorising street works that affect a trunk road (as defined in the 1980 Act); no trunk roads should be specified in Schedule B (streets subject to street works). For any street works affecting a trunk road the undertaker should make an application for a licence under section 50 of the 1991 Act.]~~

Stopping up of streets Temporary stopping up of public rights of way

~~9. 9.—(1) Subject to the provisions of this article, the The undertaker may, in connection with the carrying out of the authorised project, temporarily stop up each of the streets public rights of way specified in columns ~~(1) and (2) of Parts 1 and 2~~ of Schedule C (~~streets~~ public rights of way to be temporarily stopped up) to the extent specified in column (3), by reference to the letters ~~and numbers~~ shown on the works plan, in column (3) of those Parts of that Schedule public rights of way to be temporarily stopped up plan.~~

~~(a) 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 this Order.~~

~~(2) No street specified in columns (1) and (2) of Part 1 of Schedule C (being a street to be stopped up for which a substitute is to be provided) shall be wholly or partly stopped up under this article unless—~~

~~(a) the new street to be substituted for it, which is specified in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or~~

~~(b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).~~

~~(3) No street specified in columns (1) and (2) of Part 2 of Schedule C (being a street to be stopped up for which no substitute is to be provided) shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.~~

~~(4) The condition referred to in paragraph (3) is that—~~

~~(a) the undertaker is in possession of the land; or~~

~~(b) there is no right of access to the land from the street concerned; or~~

~~(c) there is reasonably convenient access to the land otherwise than from the street concerned; or~~

~~(d) the owners and occupiers of the land have agreed to the stopping up.~~

~~(5) Where a street has been stopped up under this article—~~

~~(a) all rights of way over or along the street so stopped up shall be extinguished; and~~

~~(b) the undertaker may appropriate and use for the purposes of the authorised project so much of the site of the street as is bounded on both sides by land owned by the undertaker.~~

~~(6) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.~~

~~(7) This article is subject to article 32 (apparatus etc. of statutory undertakers).~~

Public rights of way

~~10.—(1) With effect from the [date of publication of this Order] [the date of certification by the local highway authority that the agreed alternative right of way has been created to the standard defined in the implementation plan], [the section of] the~~

~~public right of way (being a *insert one of: footpath/bridleway/byway open to all traffic/restricted byway*) shown marked in [red] between the points [A] and [B] on the rights plan is extinguished.~~

~~(2) With effect from [that same date] *insert later date* an alternative section of *insert description of right of way of that same type* as marked in [green] between the points [C] and [D] on the rights plan is created.~~

~~(3) In this article—~~

~~“implementation plan” means the written plan agreed between the undertaker and the local highway authority for creation of the agreed alternative right of way to the defined standard; and~~

~~“local highway authority” has the same meaning as in section 329(1) of the 1980 Act.~~

Temporary stopping up of streets

~~10.11.—(1) The~~ (1) Subject to paragraph (4), the undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street within the Order limits and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker ~~shall~~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.

~~(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule D (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plan, in column (3) of that Schedule.~~

~~(4) The undertaker shall not temporarily stop up, alter or divert—~~

~~(a) any street specified as mentioned in paragraph (3) *without first consulting* the street authority; and (b) any other~~ limiting the scope of the powers conferred by paragraph (1) but subject to the consent of the street authority, which consent will not be unreasonably withheld, the undertaker may, for the purposes of the authorised project, enter on so much of any other street whether or not within the Order limits, for the purposes of carrying out the authorised development and article 51(2) (miscellaneous provisions relating to the 1990 Act) will apply.

~~(4) The undertaker must not temporarily stop up, alter or divert any~~ street without the consent of the street authority which may attach reasonable conditions to any consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article ~~shall be~~is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

~~(6) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (3) that street authority is deemed to have granted consent.~~

Access to works

~~11.12.—(1) The~~ undertaker may, for the purposes of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of ~~Schedule E~~4 (access to works); and
- (b) with the approval of the ~~relevant planning~~highway authority ~~after consultation in accordance with the requirement 14~~ (highway ~~authority~~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 highway 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

12.13.—(1)(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) ~~the construction of any new street including any structure carrying the street over or under a *insert description of development* authorised by this Order;~~
~~(b) the maintenance of the structure of any bridge or tunnel carrying a street over or under a *insert description of development*;~~~~(c) any stopping up, alteration or diversion of a street authorised by this Order; or 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 an 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.

Application of the 1991 Act

13.—(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 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 subparagraphs (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.

PART 4

Supplemental Powers

Discharge of water and works to watercourses

~~14.14. (1)~~(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 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 sub-paragraphs (3) and (4) below.

~~(2)~~(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) ~~shall be~~is determined as if it were a dispute under section 106 of the Water Industry Act 1991~~(a)~~(v) (right to communicate with public sewers).

~~(3)~~(3) The undertaker ~~shall~~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 ~~shall~~must not be unreasonably withheld.

~~(4)~~(4) The undertaker ~~shall~~must not ~~make~~carry out any ~~opening into~~works to any public sewer or drain pursuant to article 13(1) except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval ~~shall~~must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

~~(5)~~(5) The undertaker ~~shall~~must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of, or construct any works in, under, over or within 8 metres of, any watercourse forming part of a main river, or within 16 metres of a tidally influenced main river without the prior written consent of the Environment Agency.

~~(6)~~(6) The undertaker ~~shall~~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 section 85(1), (2) or (3) of the Water Resources Act 1991(b) (offences of polluting water). Subject to sub-paragraph (8) below and Requirement 9, the undertaker may in connection with the carrying out or maintenance of the authorised project, alter the bed or banks of, and construct works in, under, over or within any watercourse and may divert, alter, interrupt or obstruct the flow of any watercourse within the Order limits.~~

(8) The undertaker must not:

- (a) undertake any works within 8 metres of, any watercourse forming part of a main river, or within 16 metres of a tidally influenced main river without the consent of the Environment Agency, which must not be unreasonably withheld but may be subject to reasonable conditions; and
- (b) undertake any works to any ordinary watercourse without the consent of the relevant Internal Drainage Board or Kent County Council as the case may be, which must not be unreasonably withheld but may be subject to reasonable conditions.

(v) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37), and Section 35(8)(a) of the Competition and Services (Utilities) Act 1992 (c.43) and amended by sections 32 and 42 of, and paragraph 16(2) of Schedule 3 to, the Flood and Water Management Act 2010 (date in force to be appointed see section 49(3)(h)(i)). There are other amendments to this section which are not relevant to this Order.

(9) In this article—

~~(a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency sewerage undertaker, the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964 (e) (interpretation), an internal drainage board, a joint planning board, or a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and~~

~~(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.~~

~~(10) Protective work to buildings 15.—(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 5 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 functions 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~~

~~(a) 1991 c.56. Section 106 was amended by 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) 1991 c.57. 1991 c.57. Section 85(1) was amended by paragraphs 21(1) and (2) of Part 1 of Schedule 21 to S.I. 2007/3538.~~

~~(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 (c.42), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.~~

~~(b) where the works cannot be carried out reasonably conveniently without entering land which 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 right under paragraph (1) to carry out protective works to a building; (b) a right under paragraph (3) to enter a building and land within its curtilage;~~

~~(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or~~

~~(d) a right under paragraph (4)(b) to enter land,~~

~~the undertaker shall, 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 that right 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 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 42 (arbitration). (7) The undertaker shall compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights. 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 paragraph (8) or approval under~~

paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

~~(8)Where—~~

~~(a)protective works are carried out under this article to a building; and~~

~~(b)within the period of 5 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 shall compensate the owners and occupiers of the building for any loss or damage sustained by them.~~

~~(9)Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).~~

~~(10)Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).~~

~~(11)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 which 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 which 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

15.16.—~~(1)~~(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 or which may be required as set out in the assessment in the Environmental Statement for 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; 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.

(2) Any person entering land under this article on behalf of the undertaker—

- (a) ~~shall~~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.

(3) No trial holes ~~shall be made under this article—~~may be made under this article—

(a) in land held by or in right of the Crown without the consent of the Crown.

(4) No trial holes may be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent ~~shall~~must not be unreasonably withheld.

~~(5)~~ (5) The undertaker ~~shall~~**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.

Removal of human remains

~~17.—(1) In this article “the specified land” means *insert description of the land*.~~

~~(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it shall remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.~~

~~(3) Before any such remains are removed from the specified land the undertaker shall give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—~~

~~(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area ^{*}of the authorised project^{*}; and~~

~~(b) displaying a notice in a conspicuous place on or near to the specified land.~~

~~(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker shall send a copy of the notice to *insert relevant local authority*.~~

~~(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.~~

~~(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—~~

~~(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or~~

~~(b) removed to, and cremated in, any crematorium;~~

~~and that person shall, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).~~

~~(6) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question shall be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who shall remove the remains and as to the payment of the costs of the application, 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) under paragraph (5)(a) in the case of a highway authority; or~~

~~(b) under paragraph (5)(b) 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.~~

Public rights of navigation

~~16.—(1) Subject to paragraph (2), the rights of navigation over the places in the sea where any of the permanent structures (wind turbine generators, meteorological mast or offshore~~

substations, including their foundations) are located within territorial waters will be extinguished.

~~(2) (8) The undertaker shall pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.~~ extinguishment of the rights of navigation over the places identified in paragraph (1) will take effect 14 days after the undertaker has submitted a plan to the Secretary of State, Trinity House, the MCA and the MMO showing the precise locations of the foundations of each of any relevant wind turbine generators, meteorological mast, and offshore substations to be constructed as part* of the authorised project* within territorial waters.

~~(9) If—~~

~~(3) (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or~~

~~(b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or~~

~~(c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or~~

~~(d) it is determined that the remains to which any such notice relates cannot be identified;~~

~~subject to paragraph (10) the undertaker shall remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves shall be re-interred in individual containers which shall be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.~~

~~(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker shall comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.~~

~~(11) On the re-interment or cremation of any remains under this article—~~

~~(a) a certificate of re-interment or cremation shall be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) shall be sent by the undertaker to *[insert relevant local authority]* mentioned in paragraph (4).~~ In respect of the location of any individual wind turbine generator, meteorological mast or offshore substation, paragraph (1) will cease to have effect as soon as that wind turbine generator, meteorological mast or offshore substation has been decommissioned and permanently removed, and the relevant rights of navigation will resume.

~~(4) (12) The removal of the remains of any deceased person under this article shall be carried out in accordance with any directions which may be given by the Secretary of State.~~ plan submitted in accordance with paragraph (2) will be published by the undertaker as required by the Secretary of State.

~~(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.~~

~~(14) Section 25 of the Burial Act 1857 (a) (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) shall not apply to a removal carried out in accordance with this article.~~

PART 5

Powers of Acquisition

Compulsory acquisition of land

~~17.18.—(1)(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~~~~or is required as replacement land~~.^{*,*}

~~(2)*~~~~(2)As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(3)Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act~~.^{*,*}~~(4)*This article is subject to~~ article 25 (acquisition of land limited to subsoil lying more than 9 metres beneath surface) and article 28 (temporary use of land for carrying out the authorised project).^{*,*}~~This article is subject to~~ paragraph (2) of article 19 (compulsory acquisition of rights) and article 25 (temporary use of land for carrying out the authorised project).

~~(a) 1857 c.81. There are amendments to this Act which are not relevant to this Order.~~

~~Compulsory acquisition of land—incorporation of the mineral code~~

~~19.[Part(s)] 2 [and 3] of Schedule 2 to the Acquisition of Land Act 1981(a)(minerals) [is/are] incorporated in this Order subject to the modifications that—~~

- ~~(a) paragraph 8(3) is not incorporated;~~
- ~~(b) for “the acquiring authority” substitute “the undertaker”;~~
- ~~(c) [insert additional modifications].~~

Time limit for exercise of authority to acquire land compulsorily

~~18.20.—(1)(1)~~ After the end of the period of ~~5 years~~ beginning on the day on which this Order is made—

- (a) no notice to treat ~~shall~~may be served under Part 1 of the 1965 Act; and
- (b) no declaration ~~shall~~may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 2321 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)~~(b)~~y.

(2) The authority conferred by article 2825 (temporary use of land for carrying out the authorised project) ~~shall cease~~ceases at the end of the period referred to in paragraph (1), ~~save except~~ that nothing in this paragraph ~~shall prevent~~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

~~19.21.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the~~

(W) 1981 c.66. Sections 2, 6 and 11 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

~~insert name/ plan.~~(2) ~~As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.~~—(1) 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 17 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this article, article 20 (private rights) and article 27 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 5 (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)~~ (3) Subject to section 8 of the 1965 Act, as substituted by ~~article 26 (acquisition of part of certain properties)~~ paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires an existing right over land or restrictive covenant under paragraph (1), the undertaker ~~shall~~ is not ~~be~~ required to acquire a greater interest in that land.

(4) Schedule 6 (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) Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.~~ In any case where the acquisition of new rights under paragraph (1) 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 ~~of way~~

~~20.22.—(1)~~ (1) Subject to the provisions of this article, all private rights ~~of way or restrictive covenants~~ over land subject to compulsory acquisition under ~~this Order shall be extinguished~~ article 17 (compulsory acquisition of land) are suspended and unenforceable or, where so notified by the undertaker to the person with the benefit of such private rights or restrictive covenant, extinguished in so far as in either case their continuance would be inconsistent with the acquisition—

- (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 earlier ~~rst~~.

~~(a) 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.~~

~~(b) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.~~

~~(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.~~ 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 17 (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—

(c) 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

(d) 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.

(2) Subject to the provisions of this article, all private rights ~~of way or restrictive covenants~~ over land of which the undertaker takes temporary possession under this Order ~~shall be~~ 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.

(3) Any person who suffers loss by the extinguishment or suspension of any private right ~~of way or restrictive covenant~~ under this article ~~shall be~~ 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.

(4) This article does not apply in relation to any right ~~of way~~ to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or ~~article 3127~~ (statutory undertakers) applies.

(5) Paragraphs (1) to (3) ~~shall~~ 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 ~~it~~ the land,

(iii) the undertaker's entry onto ~~it~~ the land, or

(iv) the undertaker's taking temporary possession of ~~it~~ the land

that any or all of those paragraphs ~~shall do~~ not apply to any right ~~of way~~ specified in the notice; ~~and/or~~

(b) any agreement made at any time between the undertaker and the person in or to whom the right ~~of way~~ in question is vested or belongs.

(6) If ~~any such an~~ agreement ~~as is~~ referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right ~~of way~~ is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person;

~~it shall be~~ 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.

(7) 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

~~21.23. (1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) shall apply~~(1) The 1981 Act applies as if this Order were a compulsory purchase order.

~~(2)(2)~~The ~~Compulsory Purchase (Vesting Declarations) Act 1981,~~1981 Act, as so applied, ~~shall have~~has effect with the following modifications.

~~(3)(3)~~In section ~~3 (preliminary notices), for subsection (1) there shall be substituted—“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—~~

- ~~(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and~~(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

~~(b) published in a local newspaper circulating in the area in which the land is situated.”.~~

~~(4)~~In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

~~(5)~~In that section, for subsections (5) and (6) there shall be substituted—

~~“(5) For the purposes of this section, a person has a relevant interest in land if—~~

- ~~(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or~~
- ~~(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.~~

~~(6)~~In section 5 (earliest date for execution of declaration)—

~~(a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and (b) subsection (2) shall be omitted.~~5B (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent); and

(b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the Thanet Extension Offshore Wind Farm Order 201[X]”.

~~(4)(7)~~In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” ~~shall be~~are omitted.

~~(5)~~In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

~~(6)(8)~~ReferencesAll references to the 1965 Act in the ~~*Compulsory Purchase*(Vesting Declarations) Act 1981 shall~~1981 Act will be construed as references to ~~that~~the 1965 Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

Application of Part 1 of the ~~*Compulsory Purchase~~ *Act 1965

22.—(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)” 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 five year period mentioned in article 17 (time limit for exercise of authority to acquire land compulsorily) of the Thanet Extension Offshore Wind Farm Order 201[X].”

(3) 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 17 (time limit for exercise of authority to acquire land compulsorily) of the Thanet Extension Offshore Wind Farm Order 201[X].”

(4) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) omit paragraphs 1(2) and 14(2); 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 25 (temporary use of land for carrying out the authorised development) or article 26 (temporary use of land for maintaining the authorised development) of the Thanet Extension Wind Farm Order 201[X].”

Acquisition of subsoil only

~~23.24.—(1)(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~~17 (compulsory acquisition of land) ~~or article 19 (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)(2)~~ Where the undertaker acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertaker ~~shall~~is not ~~be~~ required to acquire an interest in any other part of the land.

~~(3) Paragraph (2) shall not prevent article 26 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.~~

~~Acquisition of land limited to subsoil lying more than 9 metres beneath surface~~

~~25.—(1) This article applies to the land specified in Schedule F (land of which only subsoil more than 9 metres beneath surface may be acquired).~~

~~(2) In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 18 (compulsory acquisition of land) so much of, or such rights in, the subsoil of the land as may be required for the purposes of the authorised project.~~

~~(3) Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this article applies, the undertaker shall not be required to acquire a greater interest in the land or an interest in any other part of it.~~

~~(4)References in this article to the subsoil of land are references to the subsoil lying more than 9 metres beneath the level of the surface of the land; and for this purpose “level of the surface of the land” means—~~

- ~~(a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building;~~
- ~~(b) in the case of a watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level; or~~
- ~~(c) in any other case, ground surface level.~~

~~Acquisition of part of certain properties~~

~~26.—(1)This article shall apply instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—~~

~~(a)a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and~~

~~(b)a copy of this article is served on the owner with the notice to treat.~~

~~(2)In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).~~

~~(3)If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.~~

~~(4)If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.~~

~~(5)If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—~~

~~(a)without material detriment to the remainder of the land subject to the counter-notice; or~~

~~(b)where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,~~

~~the owner shall be required to sell the land subject to the notice to treat.~~

~~(6)If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—~~

~~(a)without material detriment to the remainder of the land subject to the counter-notice; or~~

~~(b)where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,~~

~~the notice to treat shall be deemed to be a notice to treat for that part.~~

~~(7)If on such a reference the tribunal determines that—~~

~~(a)the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but~~

~~(b)the material detriment is confined to a part of the land subject to the counter-notice,~~

~~the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.~~

~~(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—~~

~~(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and~~

~~(b) the material detriment is not confined to a part of the land subject to the counter-notice,~~

~~the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.~~

~~(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any loss or expense occasioned to the owner* by the giving and withdrawal of the notice*, to be determined in case of dispute by the tribunal.~~

~~(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.~~

Rights under or over streets

24.27.— ~~(1)~~(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) ~~(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) ~~(3)~~ Paragraph (2) ~~shall~~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) ~~(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, ~~shall be~~is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) ~~(5)~~ Compensation ~~shall be~~is not ~~be~~ 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

25.28.— ~~(1)~~(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 G7** (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule-

~~relating to the part of the authorised project specified in column (4) 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 and vegetation from that land; ~~and~~
- (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; and
- (e) construct any works, or use the land, as specified in relation to that land of Schedule 7 (land of which temporary possession may be taken), or any mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker ~~shall~~must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker ~~may~~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 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 7 (land of which temporary possession may be 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) ~~(4) of Schedule G~~ 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).

(5) ~~(4)~~ Before giving up possession of land of which temporary possession has been taken under this article, the undertaker ~~shall~~must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker ~~shall~~is not ~~be~~ required to replace a building removed under this article.

(5) The undertaker ~~shall~~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 any power conferred by this article.

(6) ~~(6)~~ Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, ~~shall~~must be determined under Part 1 of the 1961 Act.

(7) ~~(7)~~ Nothing in this article ~~shall affect~~affects any liability to pay compensation under section 10(2)152 of the 19652008 Act (~~further provisions as to compensation for injurious affection 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) ~~(8)~~ The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker ~~shall~~is not ~~be~~ precluded from—

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 2419 (compulsory acquisition of rights) to the extent that such land is listed in column (1) of Schedule 5; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 2423 (acquisition of subsoil only) ~~or in accordance with article 25 (acquisition of land limited to subsoil lying more than 9 metres beneath surface).~~

~~(9)~~ (9) Where the undertaker takes possession of land under this article, the undertaker ~~shall~~ is not ~~be~~ required to acquire the land or any interest in it.

~~(10)~~ (10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) ~~shall~~ apply 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 the authorised project

~~26.29.~~ ~~(1)~~ (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 limits 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) ~~shall~~ 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 ~~shall~~ must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker is not required to comply with Paragraph (3) in a case of emergency and if an emergency exists they must—

- (a) give to the owners and occupiers of the land in question notice of its intended entry or (as the case may be) of its having entered onto the land as soon as is reasonably practicable; and
- (b) comply with Paragraph (1) so far as is reasonably possible in the circumstances.

~~(5)~~ (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.

~~(6)~~ (5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker ~~shall~~ must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

~~(7)~~ (6) The undertaker ~~shall~~ 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.

~~(8)~~ (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, ~~shall~~ must be determined under Part 1 of the 1961 Act.

~~(8)~~ Nothing in this article ~~shall~~ affect affects any liability to pay compensation under section ~~10(2)~~ 152 of the ~~1965~~ 2008 Act ~~(further provisions as to compensation for injurious affection 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)~~ (9) Where the undertaker takes possession of land under this article, the undertaker ~~shall~~ is not ~~be~~ required to acquire the land or any interest in it.

~~(10)~~ (10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) ~~shall apply~~ 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)~~ (11) In this article “the maintenance period”, in relation to any part of the authorised project, means the period of 5 years beginning with the date on which ~~that part of~~ the authorised project ~~is first opened for use~~ first exports electricity to the national electricity transmission network.

Special category land

~~30.—(1) The special category land shall not vest in the undertaker until the undertaker has acquired the replacement land and [insert name of relevant body] has certified that a scheme for the provision of the replacement land as [common/open space/fuel or field garden allotment] has been implemented to its satisfaction.~~

~~(2) On the requirements of paragraph (1) being satisfied, the replacement land shall vest in [insert name of relevant body] subject to the same rights, trusts and incidents as attached to the special category land; and the special category land shall be discharged from all rights, trusts and incidents to which it was previously subject.~~

~~(3) In this article—~~

~~“the special category land” means the land identified as forming part of a common, open space, or fuel or field garden allotment in the book of reference and on the plan entitled “Special Category Land Plan” attached to the land plan, which may be acquired compulsorily under this Order and for which replacement land is to be provided; and~~

~~“the replacement land” means the land identified in the book of reference and on the plan entitled “Replacement Land Plan” attached to the land plan.~~

Statutory undertakers

~~27.31. The undertaker may—~~ Subject to the provisions of Schedule 8 (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 limits ~~of~~ to the land to be acquired and described in the book of reference; and
- (b) extinguish the rights of, remove ~~or reposition the apparatus belonging to statutory undertakers shown on the [insert name] plan and described in the book of reference;~~ and (c) ~~acquire compulsorily the new rights over land belonging to statutory undertakers shown on the [insert name] plan and described in the book of reference.~~ relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Apparatus and rights of statutory undertakers in stopped-up streets

~~32.—(1) Where a street is stopped up under article 9 (stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.~~

~~(2) Where a street is stopped up under article 9, any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker shall—~~

- ~~(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or~~
- ~~(b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).~~
- ~~(3) Subject to the following provisions of this article, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—~~
- ~~(a) the execution of the relocation works required in consequence of the stopping up of the street; and~~
- ~~(b) the doing of any other work or thing rendered necessary by the execution of the relocation works.~~
- ~~(4) If in the course of the execution of relocation works under paragraph (2)—~~
- ~~(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus*^{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 to be necessary, then, if it involves cost in the execution of the relocation works 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 paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall be reduced by the amount of that excess.~~
- ~~(5) For the purposes of paragraph (4)*—*~~
- ~~(a) *an extension of apparatus to a length greater than the length of existing apparatus shall 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 cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.*~~
- ~~(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) shall, 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 utility 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.~~
- ~~(7) Paragraphs (3) to (6) shall not apply where the authorised project constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—~~
- ~~(a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and~~
- ~~(b) the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.~~
- ~~(8) In this article—~~
- ~~“apparatus” has the same meaning as in Part 3 of the 1991 Act;~~
- ~~“relocation works” means work executed, or apparatus provided, under paragraph (2); and~~
- ~~“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or*
a public communications provider as defined in section 151*(1) of the Communications Act 2003(a).~~

~~(a) 2003 c.21. There are amendments to this Act which are not relevant to this Order.~~

Recovery of costs of new connections

~~28.33.—(1)(1)~~ Where any apparatus of a public utility undertaker or of a public communications provider is removed under **article 31,27** (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus ~~shall be~~ 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)(2)~~ Paragraph (1) ~~shall~~ does not apply in the case of the removal of a public sewer but where such a sewer is removed under **article 31,27 (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;

~~shall be~~ 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)(3)~~ This article ~~shall~~ does not have effect in relation to apparatus to which ~~article 32 (apparatus and rights of statutory undertakers in stopped-up streets) or~~ Part 3 of the 1991 Act applies.

~~(4)(4)~~ In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

~~Railway and navigation undertakings~~

PART 6

Operations

Operation of generating station

~~29.34.—(1) Subject to the following provisions of this article, the undertaker may not under article 8 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act) —~~

~~(a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person, except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs. —(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

~~30.(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.~~

~~(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour. The marine licences set out in Schedules 11 and 12 are deemed to have been granted under Part 4 of the 2009 Act (marine licensing) for the licensed marine activities set out in Part 1, and subject to the conditions set out in Part 4 of each licence.~~

PART 7

Miscellaneous and General

Application of landlord and tenant law ~~35.~~

~~31.~~ ~~(1)~~ (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 shall~~ may prejudice the operation of any agreement to which this article applies.

(2) Accordingly, no such enactment or rule of law ~~shall apply~~ 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

~~32.~~ ~~36.~~ Development consent granted by this Order ~~shall be~~ 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).

~~Deemed consent under section 34 of the Coast Protection Act 1949~~

~~37. The undertaker is granted deemed consent under section 34 of the Coast Protection Act 1949(a) to carry out the works described in Schedule H, subject to the requirements set out in that Schedule.~~

~~Deemed licence under Part 2 of the Food and Environment Protection Act 1985~~

~~38. The undertaker is granted a deemed licence under Part 2 of the Food and Environment Protection Act 1985(b) to carry out the works described in Schedule I, subject to the requirements set out in that Schedule.~~

Felling or lopping of trees and removal of hedgerows

~~33.39.—(1)(1)~~ The undertaker may fell or lop any 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 ~~—(a)~~ from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; ~~or (b) from constituting a danger to passengers or other persons using the authorised project.~~

~~(2)(2)~~ In carrying out any activity authorised by paragraph (1), the undertaker ~~shall~~must do no unnecessary damage to any tree or shrub and ~~shall~~must pay compensation to any person for any loss or damage arising from such activity.

~~(3)(3)~~ Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, ~~shall~~must be determined under Part 1 of the 1961 Act.

~~(a) 1949 c.74. Section 34 has been amended by section 36 of the Merchant Shipping Act 1988 (c.12). There are other amendments to the 1949 Act which are not relevant to this Order.~~

(4) The undertaker may, for the purposes of the authorised project remove any hedgerows within the Order limits and remove the important hedgerows as are within the Order limits.

~~(5)(b) 1985 c.48. Sections 5 and 6 in Part 2 have been amended by sections 146(2) and 162 of, and Part 8 of Schedule 16 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1985 Act which are not relevant to this Order.~~ In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997(x).

Trees subject to tree preservation orders

~~34.40.—(1)(1)~~ The undertaker may fell or lop any tree ~~described in Schedule J [and identified on the ~~insert name/~~ plan,~~ within or overhanging land within the Order limits subject to a tree preservation order which was made after July 2017 or cut back its roots, if it reasonably believes it to be necessary ~~in order~~ to do so in order to prevent the tree ~~or shrub~~ ~~—(a)~~ from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; ~~or (b) from constituting a danger to passengers or other persons using the authorised project.~~

~~(2)(2)~~ In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker ~~shall do~~must cause no unnecessary damage to any tree ~~or shrub~~ and ~~shall~~must 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 do~~ not apply.

~~(3)(3)~~ The authority given by paragraph (1) ~~shall~~will constitute a deemed consent under the relevant tree preservation order.

~~(4)(4)~~ Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, ~~shall~~must be determined under Part 1 of the 1961 Act.

(x) S.I. 1997/1160

Certification of plans etc

~~35.41. (1) The undertaker shall, as soon as practicable after the making of this Order, submit to the decision-maker copies of—~~

- ~~(a) the book of reference;~~
- ~~(b) the land plan;~~
- ~~(c) the rights plan;~~
- ~~(d) the works plan;~~
- ~~(e) the sections; and~~
- ~~(f) any other plans or documents referred to in this Order, for certification that they are true copies of the documents referred to in this Order—~~(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the following for certification that they are true copies of the documents referred to in this Order—

- (a) land plans (offshore) (document reference 2.2);
- (b) land plans (onshore) (document reference 2.3);
- (c) special category land plan (document reference 2.4);
- (d) works plan (offshore) (document reference 2.5);
- (e) works plan (onshore) (document reference 2.6);
- (f) access plan (document reference 2.7);
- (g) temporary stopping up of public rights of way plan (document reference 2.8);
- (h) book of reference (document reference 4.3);
- (i) code of construction practice (document reference 8.1).
- (j) outline access management strategy (document reference 8.4);
- (k) offshore archaeological written scheme of investigation (document reference 8.6);
- (l) outline landscape and ecological management plan (document reference 8.7);
- (m) fishing liaison and coexistence plan (document reference 8.8);
- (n) offshore operations and maintenance plan (document reference 8.10);
- (o) draft marine mammal mitigation protocol (document reference 8.11);
- (p) saltmarsh mitigation, reinstatement and monitoring plan (document reference 8.13);
- (q) biogenic reef mitigation plan (document reference 8.15);
- (r) design and access statement (document reference 8.16);

(2) A plan or document so certified ~~shall be~~ 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 a 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 is construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

Arbitration

~~36.42. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or,~~

~~failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the *insert appropriate body*.~~—(1) Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at Schedule 9 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.

Procedure in relation to certain approvals etc.

37.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any agreement or approval required or contemplated by any of the provisions of the Order, such agreement or approval must, if given, be given in writing and not be unreasonably withheld and if no response is received in writing within 28 days, or 8 weeks in if accordance with Schedule 10 of this Order, of the application or request being made, then any such approval is deemed to have been given.

(2) Schedule 10 (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements 7, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25 and 26 in Part 2 of Schedule 1 (requirements).

Abatement of works abandoned or decayed

38. Where Work No. 1(a) to (d) or any part of those works is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, issue a written notice requiring the undertaker at its own expense to repair and restore or remove Work No. 1(a) to (d) or any relevant part of those works, without prejudice to any notice served under section 105(2) of the 2004 Act. The notice may also require the restoration of the site of the relevant part(s) of Work No. 1(a) to (d) to a safe and proper condition within an area and to such an extent as may be specified in the notice.

Saving provisions for Trinity House

39. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Crown rights

40.—(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 –

(2) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary) –

(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;

- (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;
 - (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; or
 - (d) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).
- (3) Consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and will be deemed to have been given in writing where it is sent electronically.

Protective provisions

41. Schedule A

AUTHORISED PROJECT

Part 1

**AUTHORISED-
DEVELOPMENT/NOTE:-**
~~This Part should describe as fully as possible the elements of the proposed project (including any associated development), which are development for the purposes of section 32 of the 2008 Act, for which development consent is sought. It should not include any elements of development which would be authorised by specific provisions in the Order.~~

Part 2

~~ANCILLARY WORKS/NOTE: This Part should describe as fully as possible the ancillary works for which consent is sought and which are not Schedule 8 (protective provisions) has effect.~~

*Signed by authority of the Secretary of State for *Business, Energy & Industrial Strategy

	<i>Name</i>
<u>Address</u>	<u>Head of [Unit]</u>
<u>Date</u>	<u>Department for Business, Energy & Industrial Strategy</u>

Thanet Extension Offshore Wind Farm
Schedule 5
Docugram Draft of Plans and Pre-Commencement Conditions Structure

Offshore Pre-Commencement Requirements/ Conditions

Draft DCO June 2018

Draft DCO Schedule 1, Part 3

DML Schedule 11
Part 2 & Schedule 12
Part 4

Detailed design parameters offshore
Requirement 2 - 5

Aviation safety
Requirement 6

Pre-construction Plans and documentation

Schedule 11, Condition 12 & 14
Schedule 12, Condition 10 & 12

Design Plan

Schedule 11, Condition 12(1)(a)
Schedule 12, Condition 10(1)(b)

Construction programme & Monitoring Plan

Schedule 11, Condition 12(1)(b)
Schedule 12, Condition 10(1)(c)

Construction Method Statement

Schedule 11, Condition 12(1)(c)
Schedule 12, Condition 10(d)

Project Environmental Management Plan (PEMP)

Schedule 11, Condition 12(1)(d)
Schedule 12, Condition 10(1)(e)

Marine Pollution Contingency Plan

Scour & Cable Protection Plan
Schedule 11, Condition 12(1)(e)
Schedule 12, Condition 10(1)(f)

Draft Marine Mammal Mitigation Protocol

Schedule 11, Condition 12(1)(f)
Schedule 12, Condition 10(1)(g)

Draft Marine Mammal Mitigation Protocol (UXO)

Licence not sought at this time

Cable Specification, Installation & Monitoring Plan

Schedule 11, Condition 12(g)
Schedule 12, Condition 10(1)(h)

Written Scheme of Archaeological Investigation

Schedule 11, Condition 12(1)(h)
Schedule 12, Condition 10(1)(i)

Offshore Operations & Maintenance Plan

Schedule 11, Condition 12(1)(i)
Schedule 12, Condition 10(1)(j)

Aids to Navigation Management Plan

Schedule 11, Condition 12(1)(j)
Schedule 12, Condition 10(1)(k)

Emergency Response Co-operation Plan (ERCoP)

Schedule 11, Condition 14(4)
Schedule 12, Condition 12(3)

Contamination Prevention Plan

Schedule 12, Condition 10(1)(a)

Notifications & Inspections

Schedule 11, Condition 6
Schedule 12, Condition 5

Notification to the MMO

Schedule 11, Condition 6(6)
Schedule 12, Condition 5(6)

Kingfisher Information Service Notification

Schedule 11, Condition 6(7)
Schedule 12, Condition 5(7)

Notice to Mariners

Schedule 11, Condition 6(8 & 9)
Schedule 12, Condition 5(8 & 9)

Notification to UK Hydrographic Office

Schedule 11, Condition 6(10 & 11)
Schedule 12, Condition 5(10 & 11)

Aids to Navigation

Schedule 11, Condition 7 & 8
Schedule 12, Condition 6 & 7

Aviation Safety

Schedule 11, Condition 9

Fisheries Liaison and Co-existence Plan

Schedule 11, Condition 19
Schedule 12, Condition 18

Pre-construction Monitoring & Surveys

Schedule 11, Condition 15
Schedule 12, Condition 13

Biogenic Reef Monitoring Plan

Schedule 11, Condition 15(2)(a)
Schedule 12, Condition 13(2)(a)

Swath-bathymetry Survey & Side Scan Sonar Plan

Schedule 11, Condition 15(2)(b)
Schedule 12, Condition 13(2)(c)

Saltmarsh Mitigation, Reinstatement & Monitoring Plan

Schedule 12, Condition 13(2)(b)

Construction Monitoring

Schedule 11, Condition 16
Schedule 12, Condition 14

Construction Noise Monitoring Plan

Schedule 11, Condition 16(1)
Schedule 12, Condition 14(1)

Reporting of Impact Pile Driving

Schedule 11, Condition 18
Schedule 12, Condition 16

Chemicals, drilling and debris

Schedule 11, Condition 10
Schedule 12, Condition 8

Outline documents submitted with the application

Document submitted with the application

Post-consent requirement

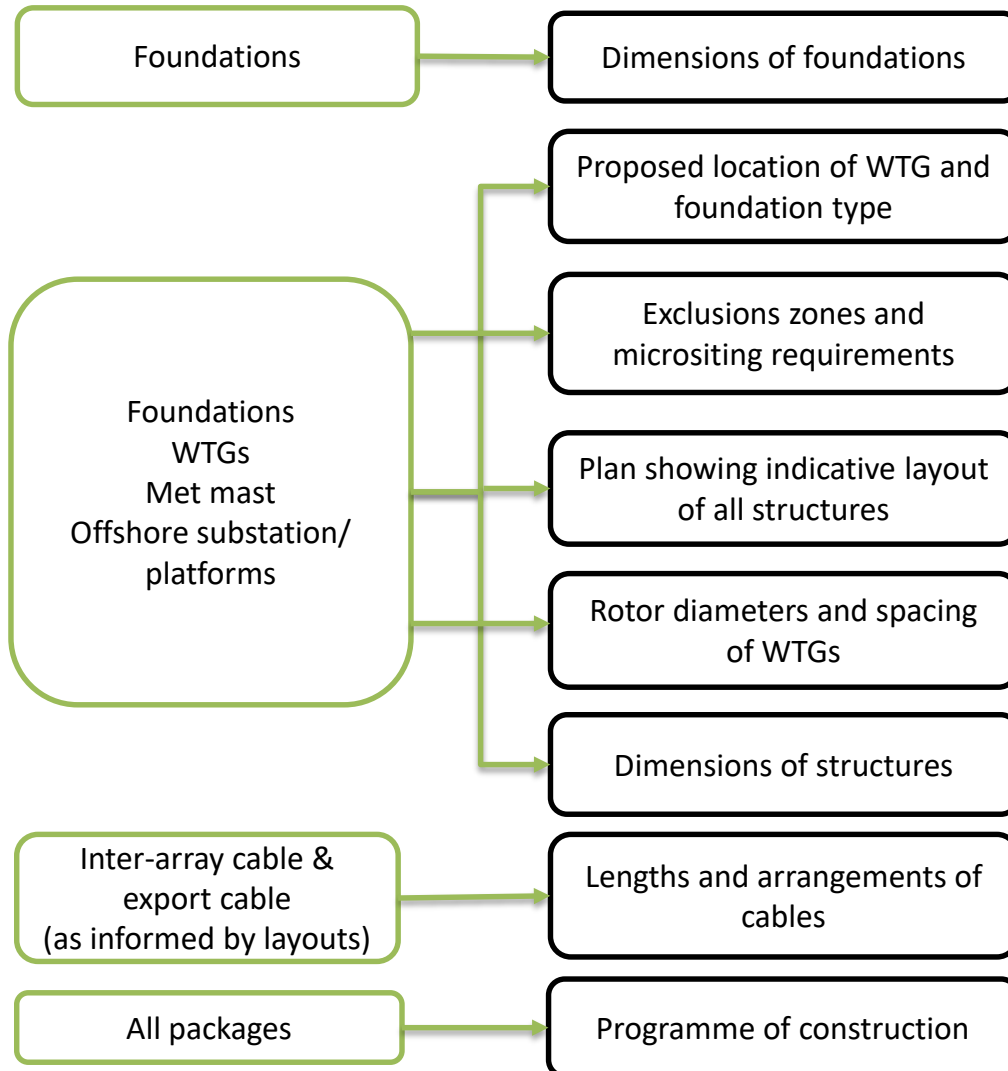
Post-consent document

Design Plan

S.11, C.12(1)(a) / S.12, C.10(1)(b)

Individual plans required for the Generation and Transmission Marine Licences

Information Required



Detail

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.

Proposed layout of WTG in accordance with the recommendations contained in MGN543.

Links to:

Schedule 1, Part 3, Requirement 2-5: Detailed Design Parameters

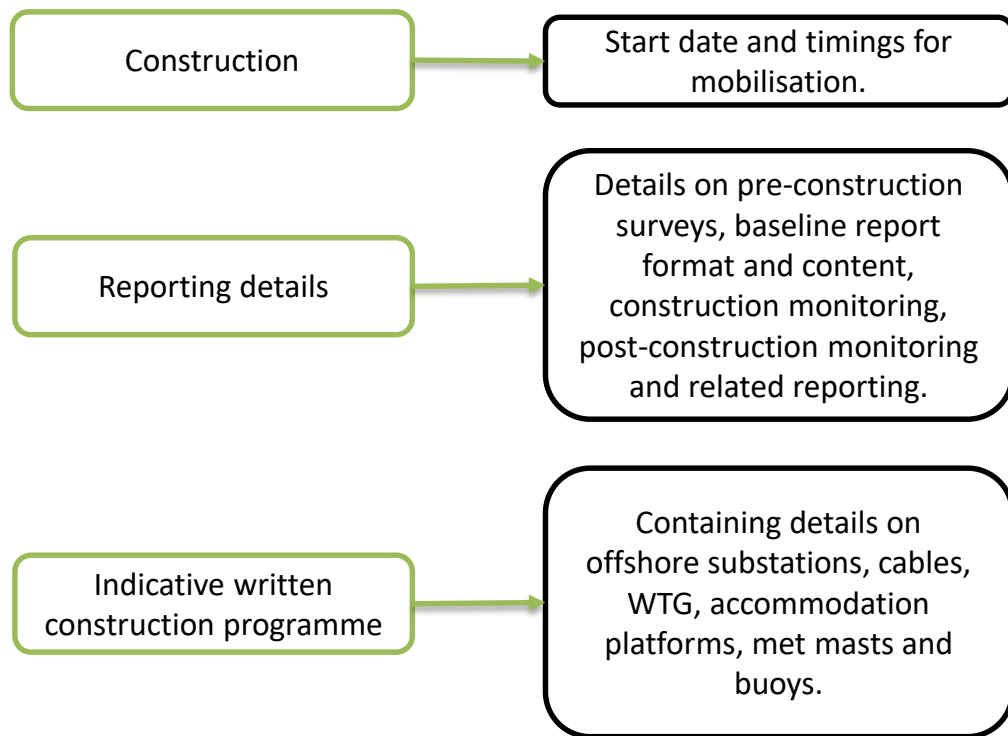
Approval Requirements

Discharging Authority	Others
MMO	In consultation with Trinity House and the MCA

Construction programme & Monitoring Plan

S.11, C.12(1)(b) / S.12, C.10(1)(c)

Information Required



Detail

Details to be submitted to the MMO in accordance with the following:

- At least four months prior to the first survey, detail of the pre-construction surveys and an outline of all proposed monitoring;
- At least four months prior to construction, detail on construction monitoring;
- At least four months prior to commissioning, detail of post-construction (and operational) monitoring.

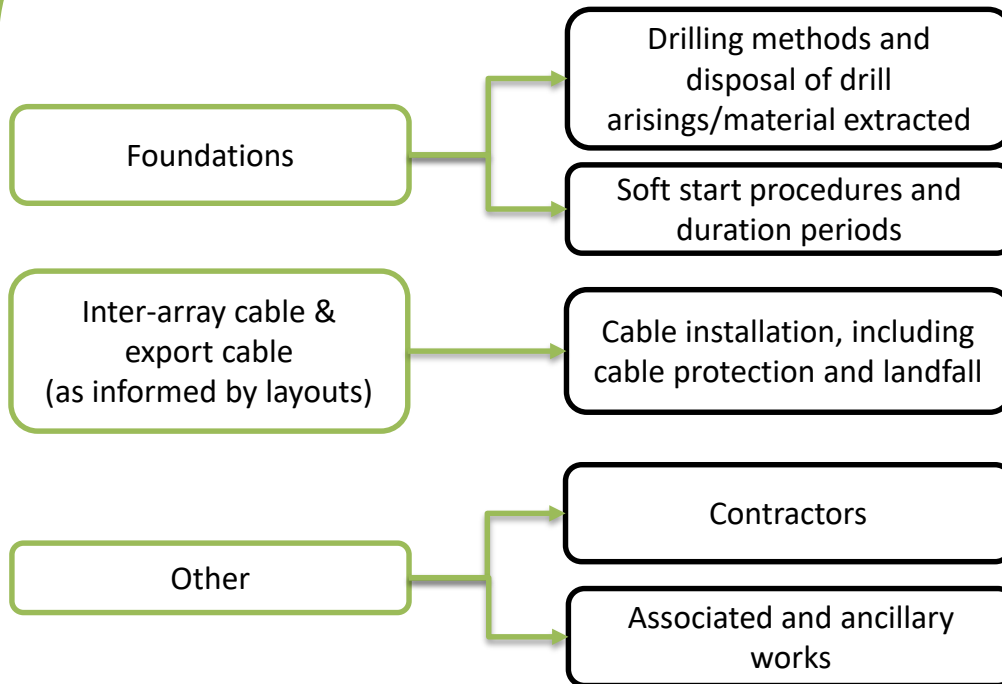
Approval Requirements

Discharging Authority	Others
MMO	

Construction Method Statement

S.11, C.12(1)(c) / S.12, C.10(1)(d)

Information Required



Detail

- foundation installation methodology, including drilling methods and disposal of drill arisings and having regard to the Biogenic Reef Mitigation Plan;
- soft start procedures with specified duration periods;
- cable installation;
- contractors;
- associated and ancillary works.

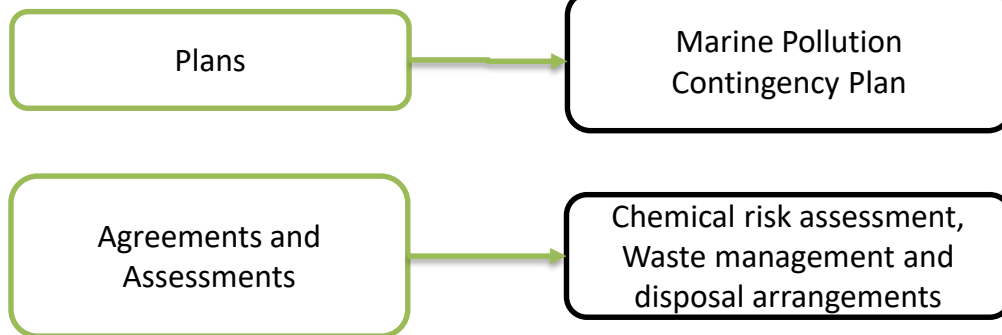
Approval Requirements

Discharging Authority	Others
MMO	

Environmental Monitoring Plan

S.11, C.12(1)(d) / S.12, C.10(1)(e)

Information Required



Detail

Marine pollution contingency plan addresses:

- Risks; and
- Methods and procedures for spills and collision incidents.

Chemical risk assessment details:

- How and when chemicals are to be used, stored and transported; and
- How accordance with recognised best practice guidance is met.

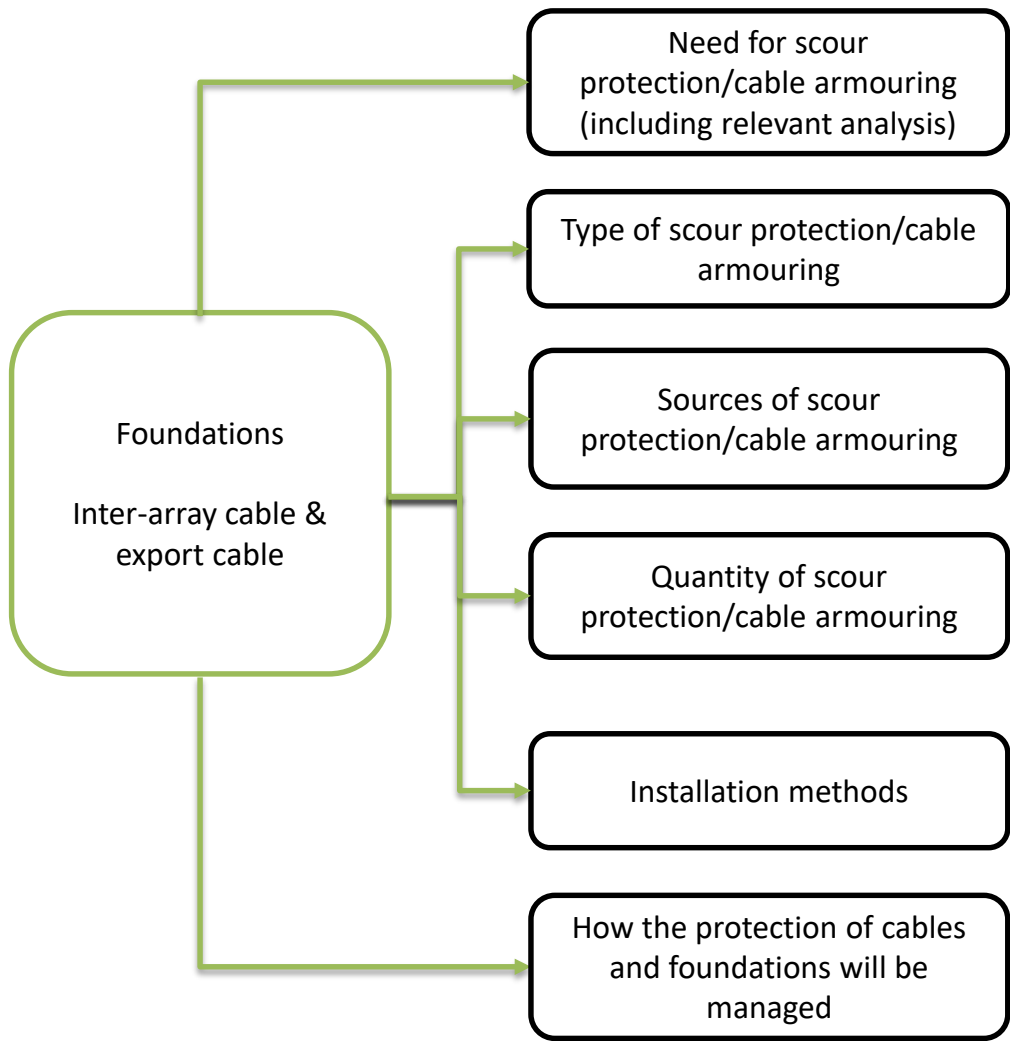
Approval Requirements

Discharging Authority	Others
MMO	

Scour & Cable Protection Plan

S.11, C.12(1)(e) / S.12, C.10(1)(f)

Information Required



Detail

Details:

- Type;
- Sources;
- Quantity; and
- Installation methods

Must be updated for and resubmitted for approval if changes to it are proposed following cable laying operations.

Approval Requirements

Discharging Authority

Others

MMO

Discharging Authority	Others
MMO	

Draft Marine Mammal Mitigation Protocol

S.11, C.12(1)(f) / S.12, C.10(1)(g)

Information Required

Only required if

Driven or part driven pile foundations are proposed to be used

Detail

Details:

- Follows current best practice as advised by the relevant statutory nature conservation bodies.

Approval Requirements

Discharging Authority

Others

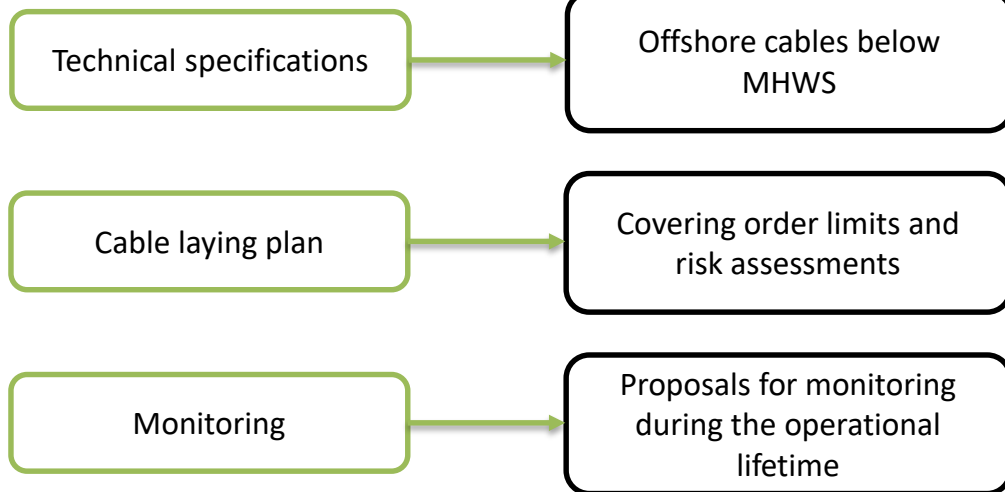
MMO

Discharging Authority	Others
MMO	

Cable Specification, Installation & Monitoring Plan

S.11, C.12(g) / S.12, C.10(1)(h)

Information Required



Detail

Technical specification includes:

- Desked based assessment of attenuation of electro-magnetic fields strengths, shielding and cable burial depth following industry good practice.

Cable laying plan risk assessments of:

- Burial to ascertain suitable burial depths and cable laying techniques, including protection.

Monitoring:

- Includes a risk based approach to the management of unburied or shallow cables.

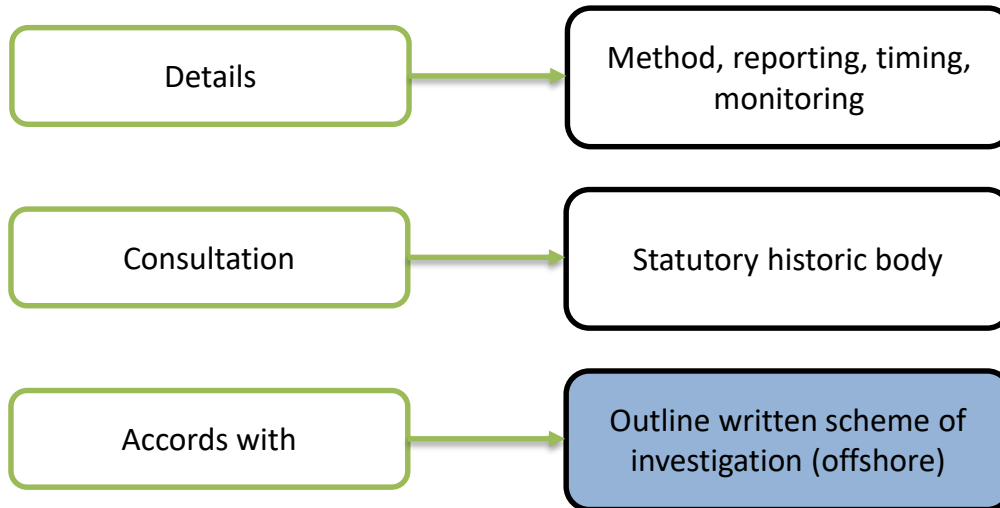
Approval Requirements

Discharging Authority	Others
MMO	

Written Scheme of Archaeological Investigation

S.11, C.12(1)(h) / S.12, C.10(1)(i)

Information Required



Detail

Scheme includes:

- Details of undertaker, archaeological consultant and contractor responsibilities;
- Methodology including geophysical, geotechnical and diver or ROV;
- Analysis of survey data and timetable for reporting – submitted within four months of survey completion;
- Mitigation including exclusion zones;
- Monitoring of exclusion zones during and post-construction;
- Copy of any agreed report is submitted to the National Record of the Historic Environment;
- Reporting and recording protocol during construction, operation and decommissioning; and
- Timetable of all further site investigations.

Links to

- S.11, C13(1) and S.12, C10(2) pre-construction/ pre-commencement intrusive seabed works must accord with specific written scheme and be approved by MMO.
- S.11, C14 and S.12 C11 which includes the ERCoP and follows recommendations within MGN543.

Approval Requirements

Discharging Authority	Others
MMO	

Offshore Operations & Maintenance Plan

S.11, C.12(1)(i) / S.12, C.10(1)(j)

Information Required

Submission deadline

At least four months prior to commencement

Accords with

Outline offshore operations and maintenance plan

Detail

- submitted to the MMO at least six months prior to commencement of operation of the licensed activities; and
- Review of plan to be resubmitted every three years during the operational phase.

Approval Requirements

Discharging Authority

Others

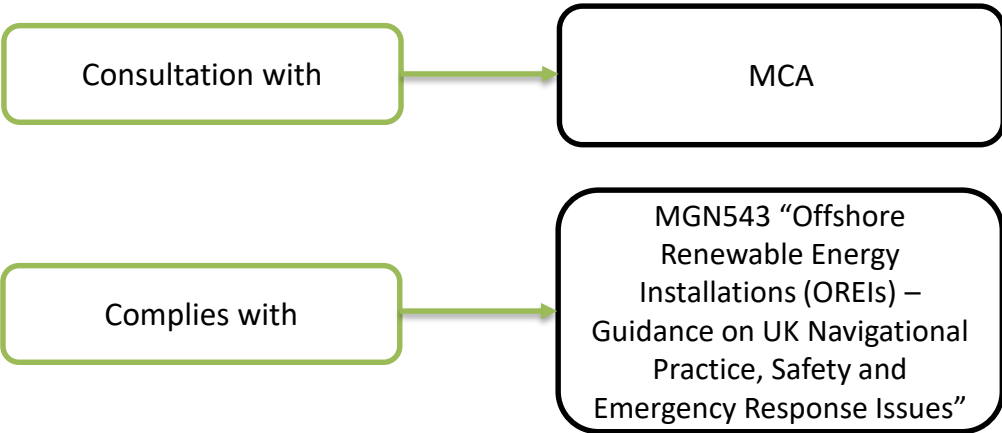
MMO

Discharging Authority	Others
MMO	

Emergency Response Co-operation Plan (ERCoP)

S.11, C.11(4) / S.12, C.12(1)(3)

Information Required



Detail

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.

Approval Requirements

Discharging Authority	Others
MMO	MCA

Aids to Navigation Management Plan

S.11, C.12(1)(j) / S.12, C.10(1)(k)

Information Required

Consultation with

Trinity House

Complies with

[S.11, C8 and S.12, C7 Aids to Navigation](#)

Detail

Complies with relevant conditions for the lifetime of the authorised scheme.

Links to S.1, P3, Req 6.

Approval Requirements

Discharging Authority	Others
MMO	

Contamination Prevention Plan

S.12, C.10(1)(a)

Information Required

Work No.

3B

Detail

A contamination prevention plan which must contain details of necessary measures in order to ensure that construction works undertaken within Work No. 3B do not release any contaminants into the marine environment.

Approval Requirements

Discharging Authority

Others

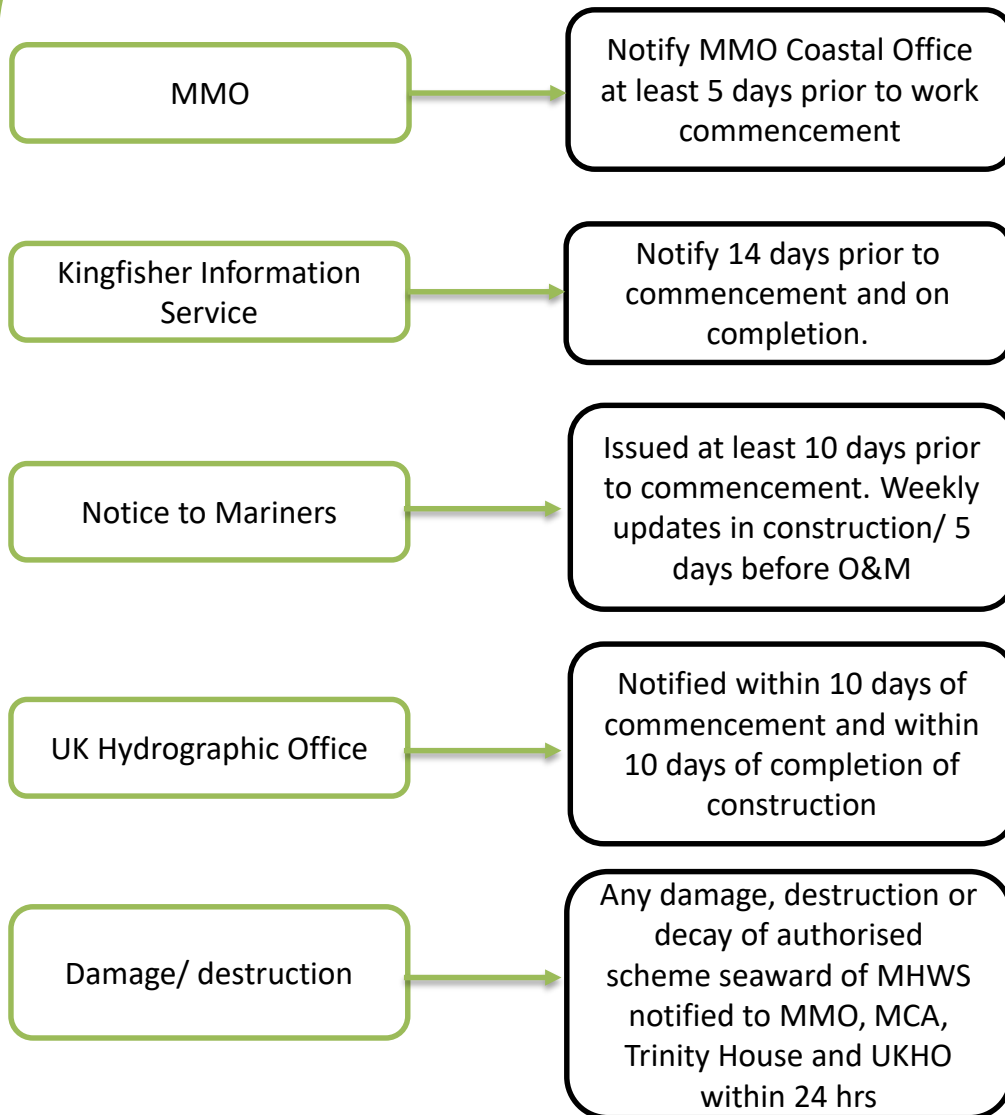
MMO

Discharging Authority	Others
MMO	

Notifications & Inspections

S.11, C.6 / S.12, C.5

Information Required



Detail

All agents and contractors notified to the MMO. Only persons and vessels notified to the MMO are permitted to carry out the licensed activities.

Confirmation of Kingfisher notifications must be provided to the MMO within five days.

Copies of all Notice to Mariners provided to MMO and UKHO within 5 days

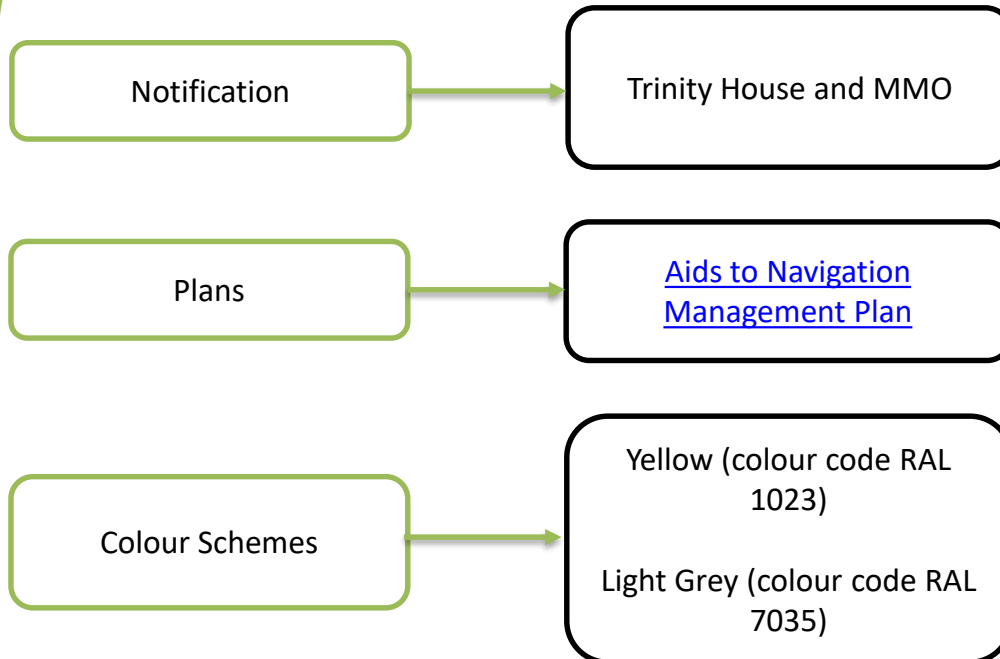
Approval Requirements

Discharging Authority	Others
MMO	Kingfisher Information Services/ UKHO/ MCA

Aids to Navigation

S.11, C.7 & 8 / S.12, C.6 & 7

Information Required



Detail

Notifications:

Within 24 hrs of commencement of construction occurring;
 Within 24 hours of any aids to navigation being established;
 Within five days of completion of construction;
 Within 24 hrs notify of any failure of the aids to navigation during the whole life cycle of the project.

Plans:

Reports on availability of aids to navigation in accordance with the frequency set out in the Aids to Navigation Management Plan.

In the event of a failure to aids of navigation the undertaker must lay down buoys, exhibit lights and take other steps to prevent danger to navigation as directed by Trinity House.

Approval Requirements

Discharging Authority	Others
Trinity House and MMO	

Aviation Safety

S.11, C.9

Information Required

Notification

Notify Defence Infrastructure Organisation Safeguarding 14 days prior

Reporting

Date of commencement and commissioning of any wind turbine

Max height of any construction equipment and infrastructure installed

Latitude and longitude of all infrastructure installed

MMO

MMO require a copy of any notifications

Detail

Defence Infrastructure Organisation Safeguarding are to be notified of any changes and on completion of works.

Approval Requirements

Discharging Authority

Others

Defence Infrastructure Organisation Safeguarding

Fisheries Liaison and Co-Existence Plan

S.11, C.19 / S.12, C.18

Information Required

Consultation with

Thanet Fishermen's Association

Complies with

Condition 6

Detail

N/A

Approval Requirements

Discharging Authority

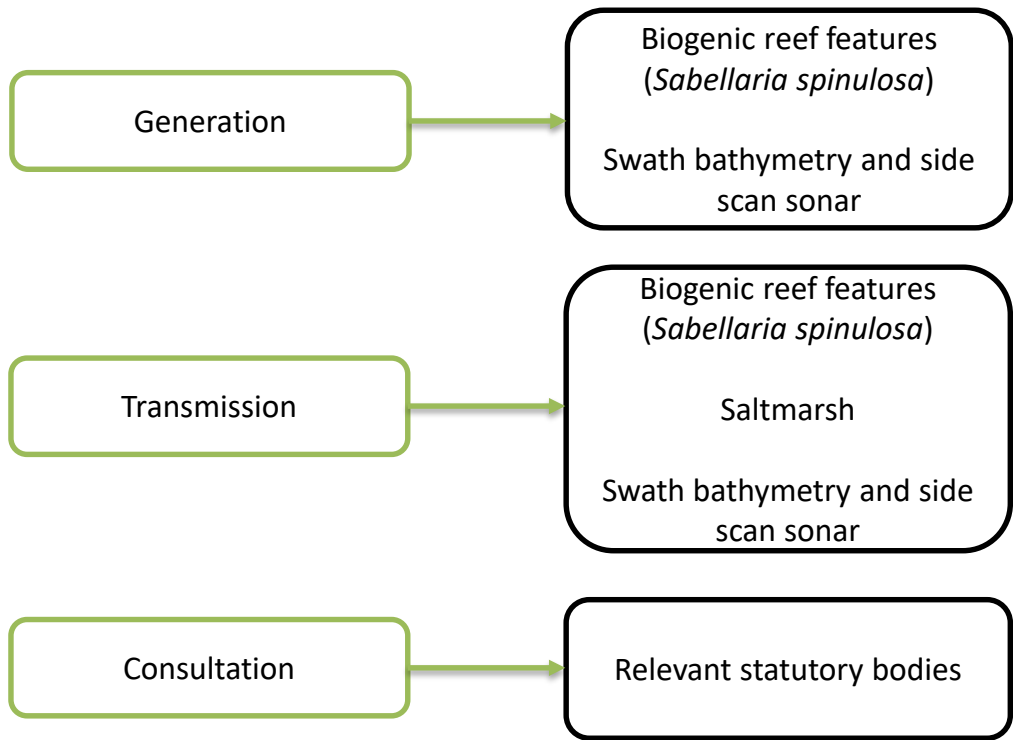
Others

MMO

Pre-construction Monitoring & Surveys

S.11, C.15 / S.12, C.13

Information Required



Detail

Survey proposals must detail:

- Objectives;
- Explain how comparisons to post-construction will be drawn.

Baseline Survey reports must detail:

- Valid statement of pre-construction position;
- Clearly define post-construction comparison that is intended.

Survey proposals/ details:

- Biogenic Reef Mitigation Plan
- Saltmarsh Mitigation, Reinstatement and Monitoring Plan.
- Swath bathymetric and Side Scan Sonar surveys must provide full coverage within the order limits including 500 m buffer.

Timings of reporting to be agreed with the MMO.

Approval Requirements

Discharging Authority	Others
MMO	

Construction Monitoring

S.11, C.16 / S.12, C.14

Information Required

Monitoring Plans

Piling noise monitoring

Consultation

Relevant statutory bodies

Detail

Must be submitted in discharging condition 12(b) (Sch 11) and condition 10(d) (Sch 12).

Monitoring of noise generated by the installation of the first four piled foundations. Results to be provided to the MMO within six weeks of the installation of the first four piled foundations.

Approval Requirements

Discharging Authority	Others
MMO	

Reporting of Impact Pile Driving

S.11, C.18 / S.12, C.16

Information Required

Prior to commencement

Location, start and end dates.

Requirements

Marine Noise Registry's Forward Look requirements

Submissions

Prior to commencement
Six month intervals
Post completion

Detail

Only when driven or part driven pile foundations are proposed.

UK Marine Noise Registry to be provided with:

- Prior to commencement expected locations and start/ end dates;
- Six month Interval locations and dates of impact pile driving; and
- Locations and dates of impact piling within 12 weeks of completion.

MMO to be notified of successful submission to UK Marine Noise Registry within 7 days of submission.

Approval Requirements

Discharging Authority

Others

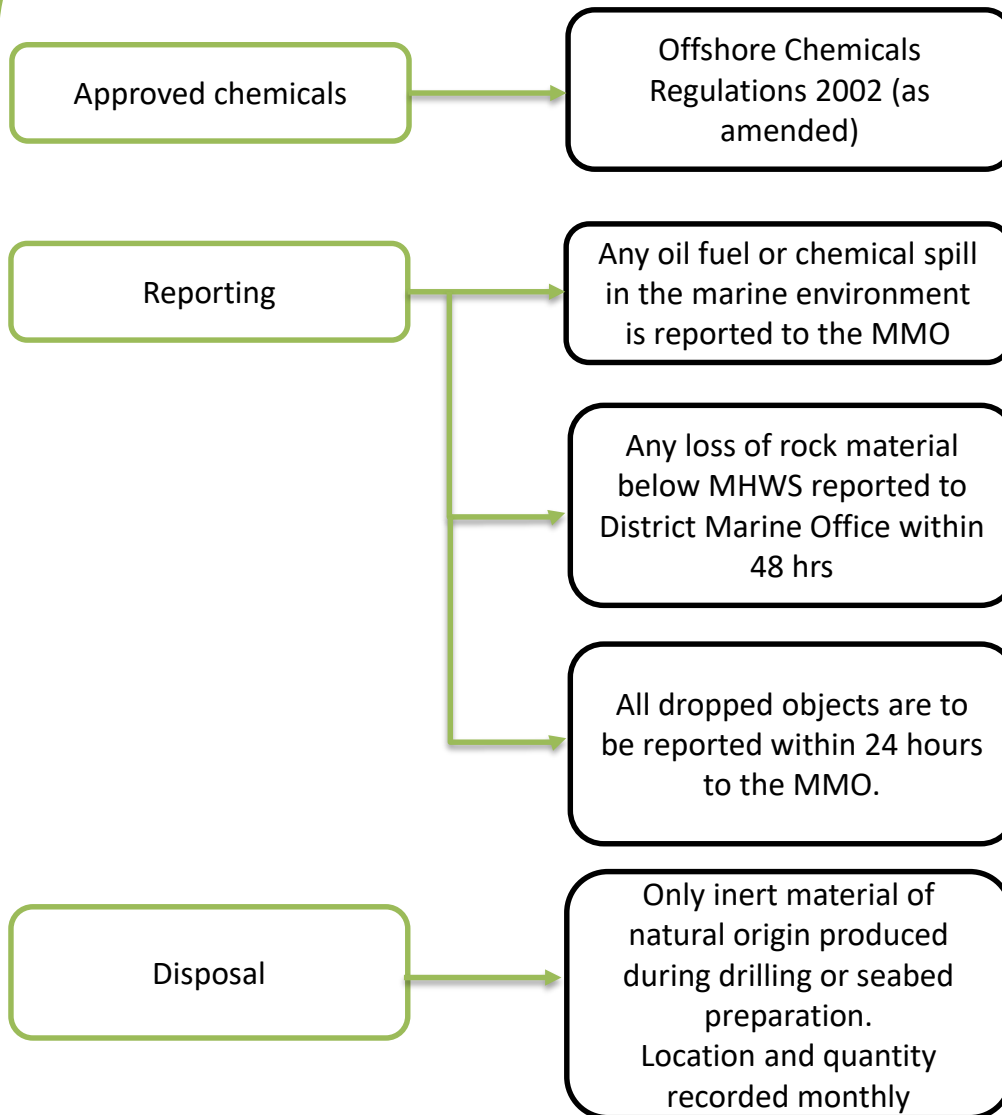
MMO

UK Marine Noise Registry

Chemicals, drilling and debris

S.11, C.10 / S.12, C.8

Information Required



Detail

Coatings and treatments are suitable for the marine environment and used in accordance with HSE and EA Pollution Prevention Control Guidelines.

Storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent release into the marine environment; including bunding of 110% of the total volume of all reservoirs and containers.

Undertaken must ensure that any rock material used in construction is from a recognised source; free from contaminants and contains minimal fines.

The undertaker must inform the MMO of the location and quantities of material disposed of each month by submission of a disposal return.

Approval Requirements

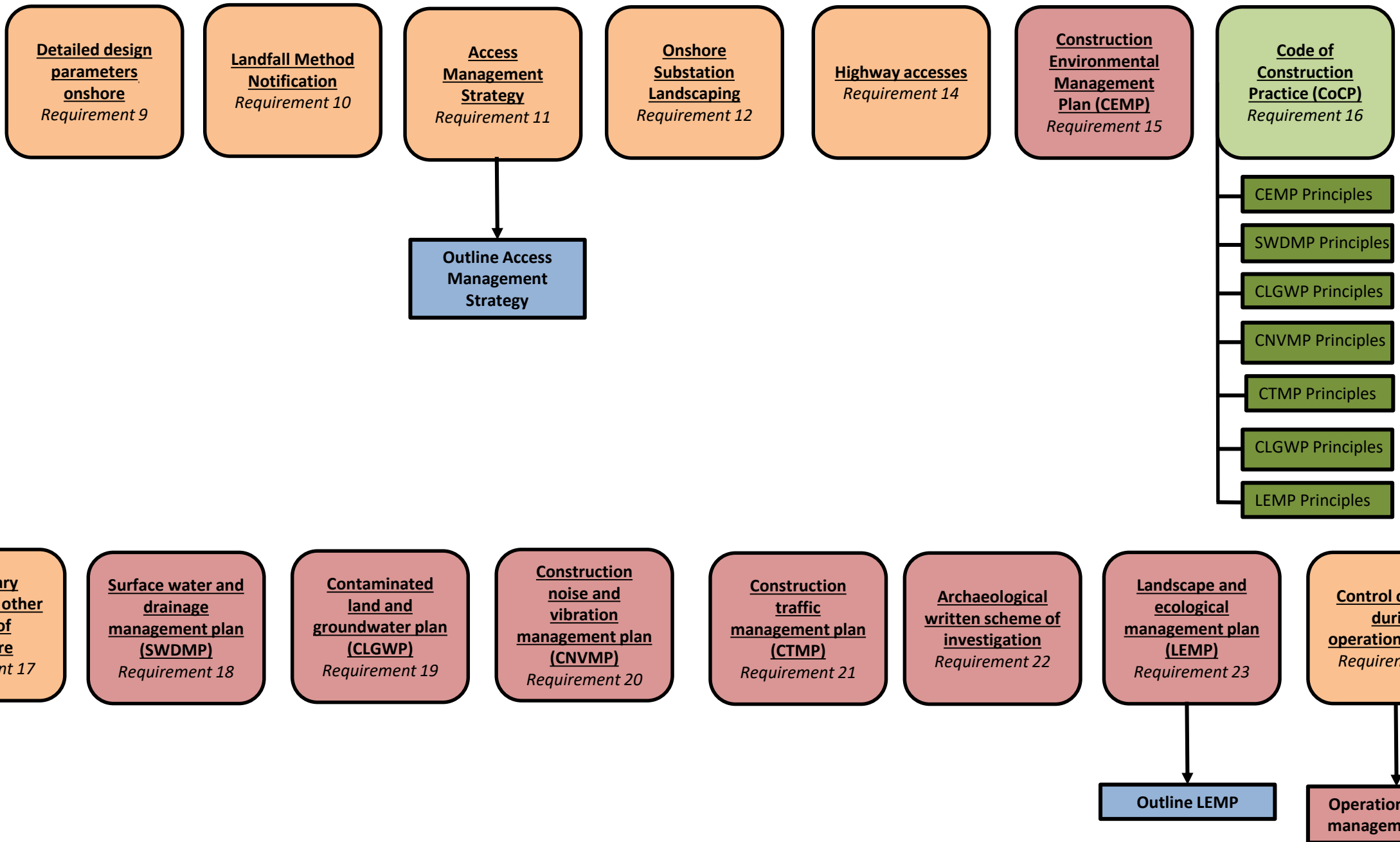
Discharging Authority	Others
MMO	



Onshore Pre-Commencement Requirements



Draft DCO June 2018

Draft DCO
Schedule 1, Part 3

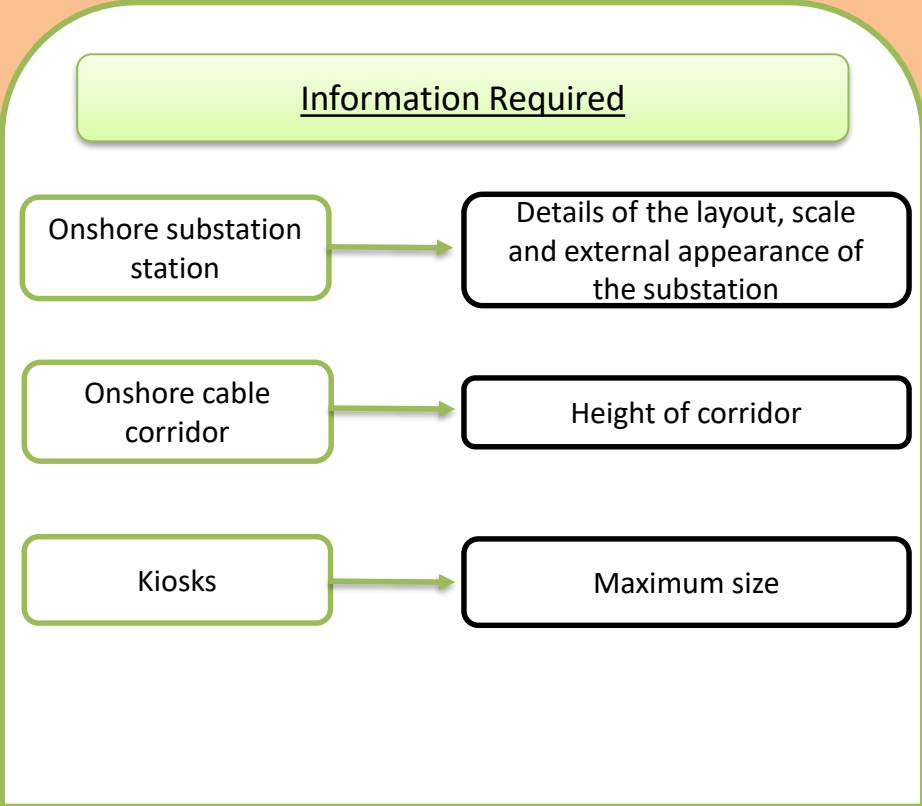
Ctrl + Click to go to slide



 Outline documents submitted with the application
 Documents submitted with the application

 Post-consent requirements
 Post-consent documents

Detailed Design Parameters Onshore (Req 9)



Detail

The total number of buildings housing principle electrical equipment for the onshore substation must not exceed 1.

Buildings must not exceed a height of 14 m above existing ground level.

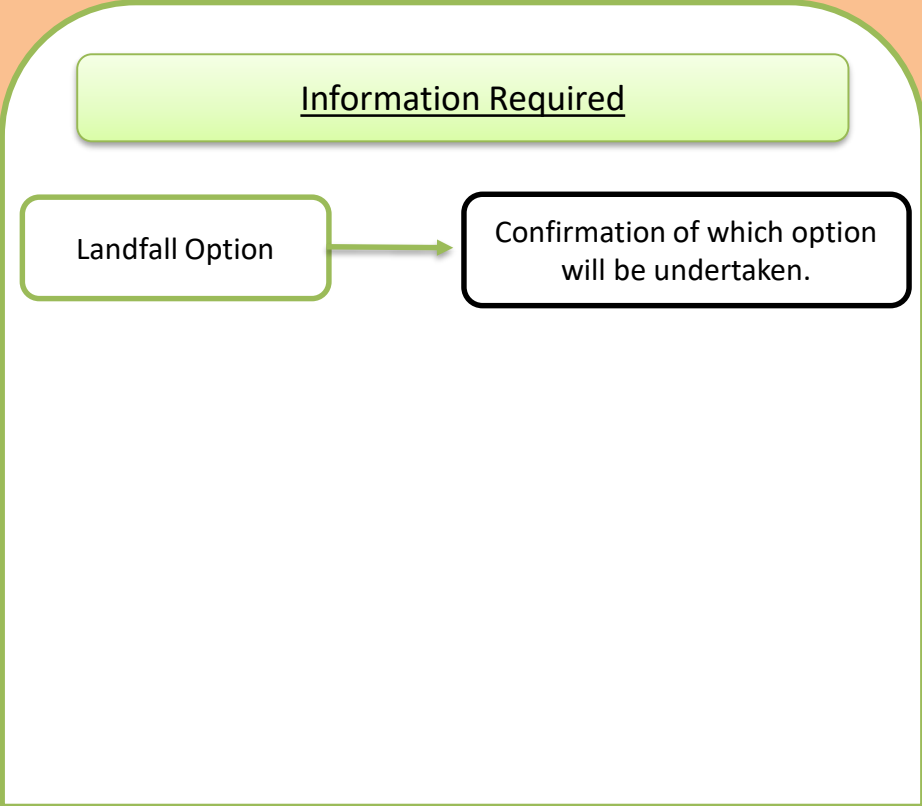
External electrical equipment must not exceed a height of 12.5 m above existing ground level.

The artificial berm associated with Pegwell Bay must not exceed a height of 1.3 m above existing ground level for the cables and a height of 2.3 m for the TJBs.

Approval Requirements

Discharging Authority	Others
Relevant Planning Authority	NA

Landfall Method Notification (Req 10)



Detail

No part of Work No. 3B may commence until written notification is provided to the relevant planning authority confirming which one option of Work No. 3B(a), 3B(b) or 3B(c) will be constructed. The method statement must include:

- The anticipated timing of the proposed works being undertaken; and
- Where applicable, measures for long horizontal directional drilling below the coastal shore platform and cliff base at the landfall.

Approval Requirements

Discharging Authority	Others
Relevant Planning Authority	NA

Access Management Strategy (Req 11)

Information Required

Accords with

Outline Access Management Strategy.

Detail

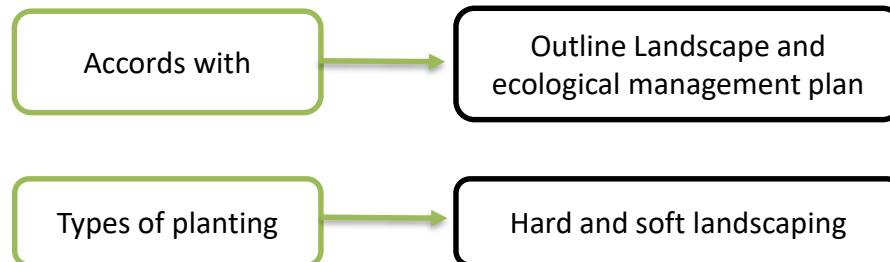
No stage of the connection works may commence until for that stage an access management strategy (which must accord with the outline access management strategy) has been submitted to and approved by the relevant planning authority.

Approval Requirements

Discharging Authority	Others
Relevant Planning Authority	NA

Onshore Substation Landscaping (Req 12)

Information Required



Detail

Written landscaping management scheme and associated work programme must accord with the outline landscape and ecological management plan (LEMP).

Details of hard and soft landscaping includes:

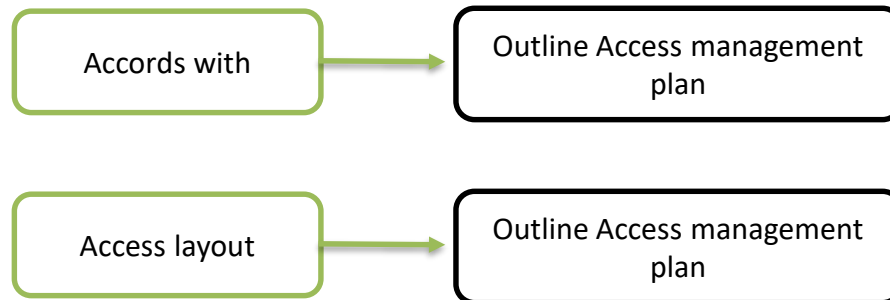
- Location, number, species, size and planting density of any proposed planting, including any trees;
- Cultivation, importing of materials and other operations to ensure plant establishment;
- Proposed finished ground levels;
- Hard surfacing materials;
- Vehicular and pedestrian access, parking and circulation areas;
- Minor structures, such as furniture, refuse or other storage units, signs and lighting;
- Proposed and existing functional services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports;
- Details of existing trees to be retained with measures for their protection during the construction period;
- Retained historic landscape features and proposals for restoration, where relevant;
- Implementation timetables for all landscaping works;
- Maintenance of the landscaping, including irrigation arrangements; and
- Soil retention, handling and protection.

Approval Requirements

Discharging Authority	Others
Relevant Planning Authority	

Highways Accesses (Req 14)

Information Required



Detail

Written details (in accordance with the Outline Access Management Plan) of:

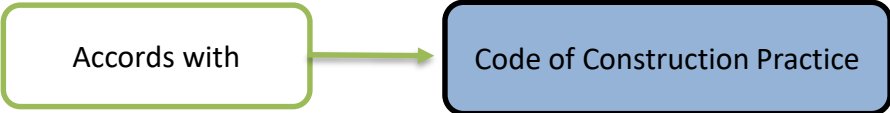
- Siting, design, layout and any access management measures for any new, permanent or temporary means of access used by vehicular traffic; or
- Any alteration to an existing means of access to a highway used by vehicular traffic.

Approval Requirements

Discharging Authority	Others
Relevant Highway Authority	NA

Construction Environmental Management Plan (CEMP) (Req 15)

Information Required



Detail

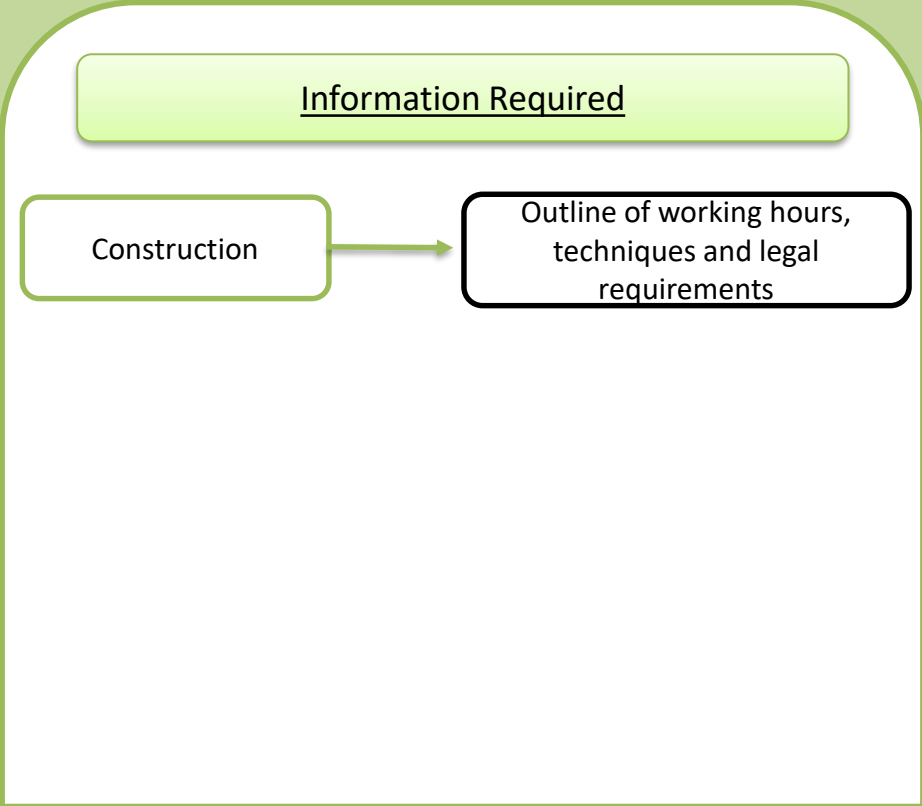
The CEMP must contain details of:

- relevant health, safety and environmental legislation and compliance;
- local community liaison responsibilities;
- site security;
- biosecurity measures;
- lighting;
- soil management;
- dust control measures;
- flood risk management; and
- waste management.

Approval Requirements

Discharging Authority	Others
Relevant Local Planning Authority	

Code of Construction Practice (CoCP) (Req 16)



Detail

Outlines the construction hours (set out in *Requirement 26*).

Provides details on construction methods and processes, including emergency contacts.

Contains the outline plans/ principles :

- Construction Environmental Management Plan (CEMP) Principles
- Surface Water and Drainage Management Plan (SWDMP) Principles
- Contaminated Land and Ground Water Plan (CLGWP) Principles
- Construction Noise and Vibration Management Plan (CNVMP) Principles
- Construction Traffic Management Plan (CTMP) Principles
- Landscape and Ecological Management Plan (LEMP) Principles

Approval Requirements

Discharging Authority	Others
NA	NA

Temporary fencing and other means of enclosure (Req 17)

Information Required

Fencing

Details on proposed temporary fences

Enclosure

Details on all temporary enclosures

Detail

All construction sites must remain securely fenced at all times during construction.

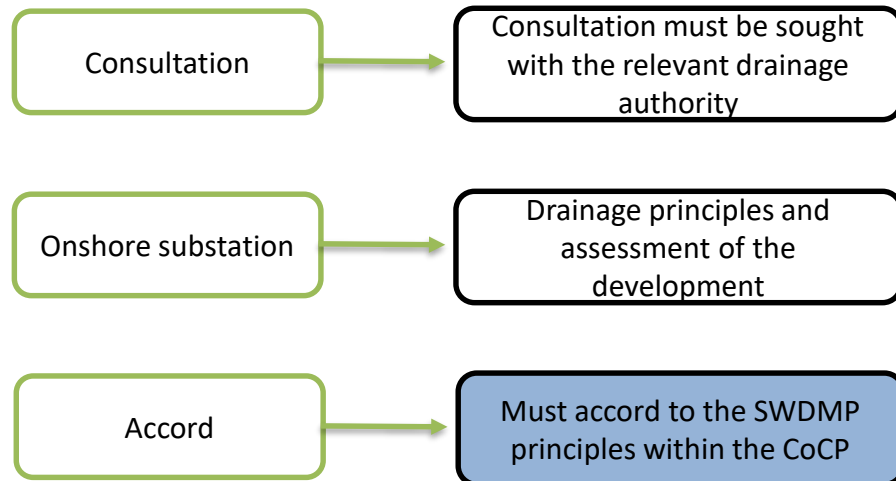
Any temporary fencing must be removed on completion of the relevant works.

Approval Requirements

Discharging Authority	Others
Relevant Planning Authority	NA

Surface Water and Drainage Management Plan (SWDMP) (Req 18)

Information Required



Detail

Must include:

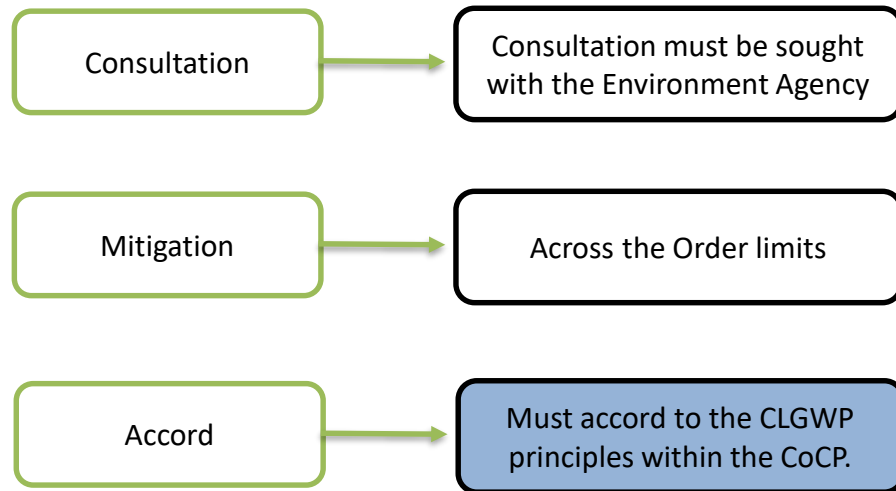
- Sustainable drainage principles; and
- Assessment of the hydrological and hydrogeological context of the development.

Approval Requirements

Discharging Authority	Others
Relevant Planning Authority	NA

Contaminated Land and Groundwater Plan (CLGWP) (Req 19)

Information Required



Detail

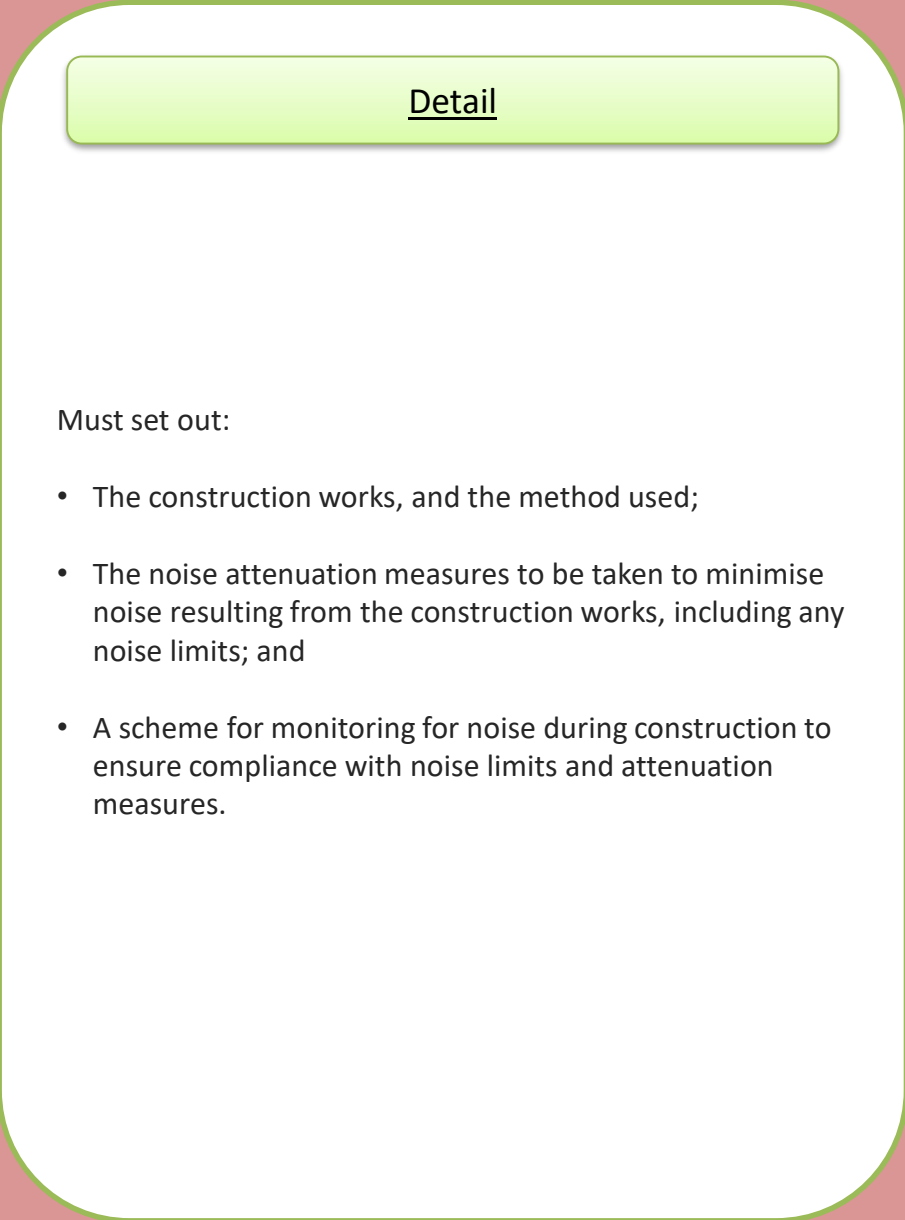
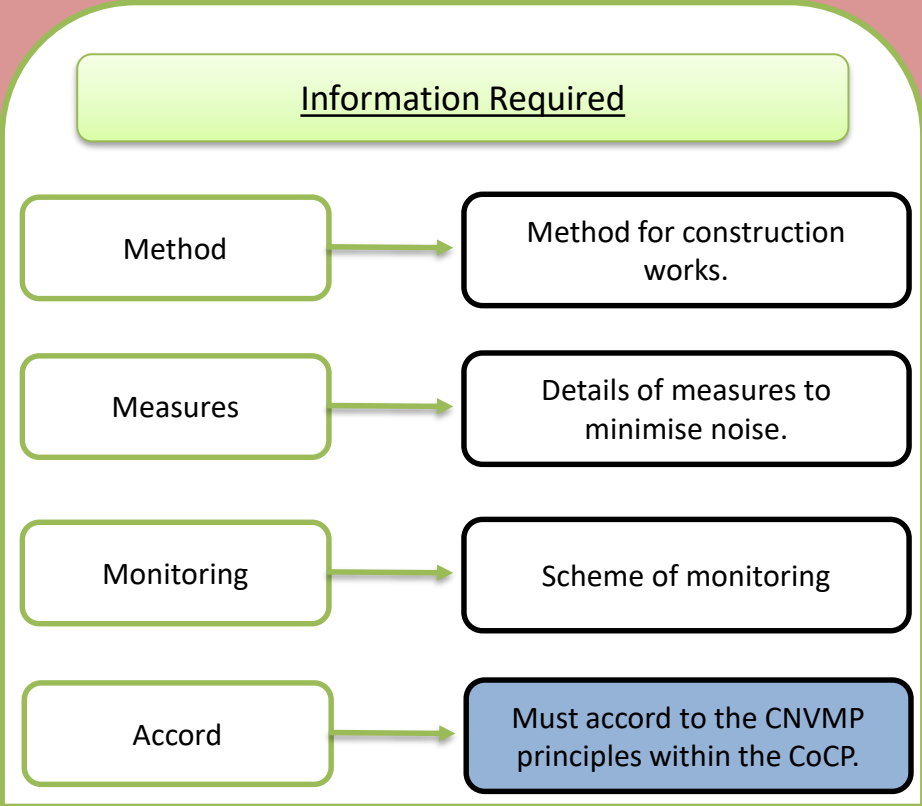
Must include:

- Mitigation measures against the potential release of contaminants within the Order limits.

Approval Requirements

Discharging Authority	Others
Relevant Planning Authority	NA

Construction Noise and Vibration Management Plan (CNVMP) (Req 20)

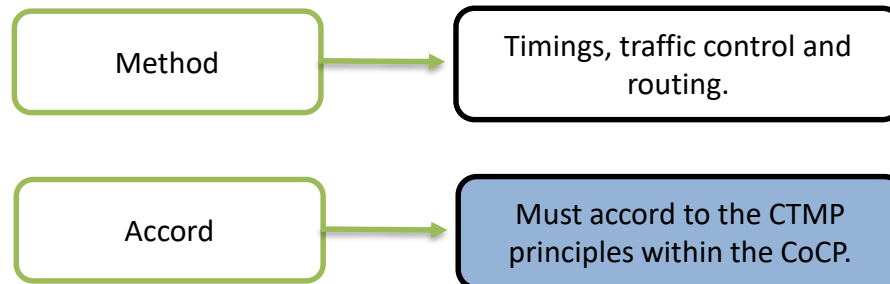


Approval Requirements

Discharging Authority	Others
Relevant Planning Authority	NA

Construction Traffic Management Plan (CTMP) (Req 21)

Information Required



Detail

Must set out:

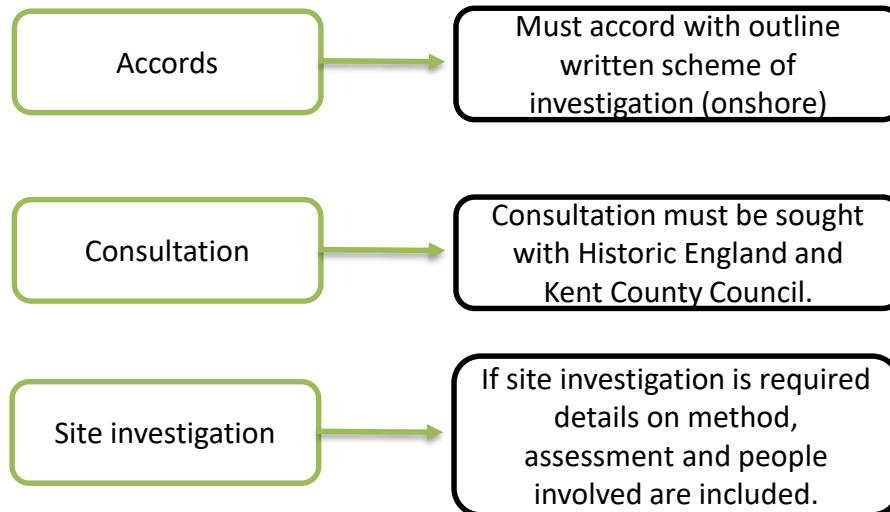
- Scheduling and timing of movements, in particular abnormal load movements;
- Temporary warning signs and traffic control; and
- Construction vehicle routing.

Approval Requirements

Discharging Authority	Others
Relevant Highway Authority	NA

Archaeological Written Scheme of Investigation (Req 22)

Information Required



Approval Requirements

Discharging Authority	Others
Relevant Planning Authority	NA

Detail

If a site investigation is required the scheme must include details on:

- Research questions;
- Methodology of investigation and recording;
- Post investigation assessment;
- Analysis and recording provisions;
- Publication and dissemination provisions of the analysis and records;
- Archive deposition provisions for analysis and records; and
- Nomination of a competent person or persons/organisation to undertake the works.

Site investigations must complete investigation and post investigation assessments.

Landscape and Ecological Management Plan (LEMP) (Req 23)

Information Required

Accord

Must accord to the Outline LEMP.

Survey results

Must reflect any relevant survey results.

Mitigation

Must reflect any mitigation and enhancement measures included in the ES.

Detail

Surveys include any habitat and species specific surveys e.g. badgers, newts, birds, bats, etc...

Approval Requirements

Discharging Authority

Others

Relevant Planning Authority

In consultation with Natural England

Control of Noise during Operational Phase (Req 25)

Information Required

Operational Noise Management Plan



Methods of noise monitoring

Detail

Includes:

- Monitoring, attenuation and any applicable noise limits with reference to the onshore substation

Approval Requirements

Discharging Authority	Others
Relevant Planning Authority	NA