



The Planning Inspectorate Yr Arolygiaeth Gynllunio

The Planning Act 2008 (as amended)

Dogger Bank Teesside A and B Offshore Wind Farms

Examining Authority's Report of Findings and Conclusions

and

**Recommendation to the
Secretary of State for Energy and Climate Change**

Examining Authority

Rynd Smith

Jeremy Aston

Guy Rigby

5 May 2015

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The Planning Inspectorate

ERRATA SHEET – Dogger Bank Teesside A&B Offshore Wind Farm – Ref. EN010051

Recommendation to the Secretary of State for the Department of Energy and Climate Change, dated 5 May 2015

Corrections agreed by the Examining Authority prior to a decision being made

Page No.	Paragraph	Error	Correction
99	5.1.3	"This status will remain until such time until the site"	'This status will remain until the site'.
119	5.7.28	"MMO advised the panel that no further comment could be made at during",	The 'at' should be removed.
119	5.7.29	"scientific doubt no AEoI on integrity",	no need for the 'on integrity'
120	5.7.32	Final sentence "to take whatr",	the what needs the 'r' removing
122	5.7.39	"It would be most inappropriate the Panel"	It would be most inappropriate 'for' the Panel
122	5.7.39	Second sentence, Dogger Bank C &.	The D is missing
132	5.7.85	Final sentence, "Farne islands SPA, in in"	one 'in' needs removing
137	5.7.104	Final sentence, "Fowlsheugh islands SPA, in in"	one 'in' needs removing
139	5.8.12	"It the panel's view that",	needs an 'is' at the end of the sentence
57	4.3.17	(line 5) "...freehold land.lignment through..."	This is a quote from [REP120] from which a line has been omitted and should read as follows: '[i]t was not Forewind's intention to affect Grainco. It was always envisaged ... that

			the route ... would remain on Sembcorp's freehold land. Sembcorp always expected the route of the cables to avoid Grainco demised area [sic] and, subject to agreement upon the remainder of the route alignment through Wilton International, it ... is willing to enter into legal agreements for ... a route which runs to the south of the Grainco site.'
77	4.7.28	"However, NE these concerns were resolved"	'However, these NE concerns were resolved...'
86	4.10.10	"leisure and recreation"	should be "extractive industries"
92	4.12.1	No consideration of the Historic Environment	"Consideration was given to the historic environment. No matters of importance or relevance emerged that had not been addressed appropriately in the evidence base, the ES or required to be addressed differently than as proposed in the draft DCO."
135	5.7.96	"NE"	Should be "SNH"
75	4.7.17	"73.8m"	Should be "73.8km"
96	4.13.18	"powers if acquisition"	Should be "powers of acquisition"
100	5.1.8	"not Likely Significant Effect"	"the onshore works would not have a Likely Significant Effect (LSE)"
120	5.7.32	3rd line from bottom – "whatr"	the what needs the 'r' removing
121	5.7.39	First sentence	Should read "'However, turning to the effects of this position for this decision,'"
122	5.7.39	5 th line	Insert "D" in "C &...."
141	6.1.7	"compulsory acquisition affect persons"	Should be "affected" rather than "affect"
177	6.4.165	3rd bullet point – reference to "section 6.4 below"	Should be "section 6.4 above"
187	6.10.14	again "section 6.4 below"	Should be "section 6.4 above"
189	6.11.10	5 th bullet point – "he" applicant	Should be "the" applicant
189	6.11.10	final sentence "in	Should be "in earlier sections of

		later sections of this chapter below" –	this chapter above"
189/190	6.11.11	"Section 6.4" below x 2	Delete: 'a matter that is returned to in section 6.4 below'
203	7.2.32	4 th bullet – missing apostrophe after "Parties;"	Should be "Parties'"
203	7.2.32	4 th bullet – missing apostrophe in "undertaker's" x2	There is a missing apostrophe but the reference is plural, not singular so it should be "undertakers' "
203	7.2.32	8 th bullet "is is"	Should be "it is"
205	7.2.40	omission of apostrophe from "applicants"	Should be "applicant's"
207	7.2.46	Second instance "to refer"	Remove "to refer"
29 of Appendix A	Appendix A Article 42(1) (a)-(n) of the recommended draft DCO (Page 29)	Needs document references added	Insert " document reference x dated xx xxxxxxxx 201x" etc

Kingston upon Hull and Beverley, also in East Yorkshire. It passes to the south of the North York Moors National Park area.

- 2.4.7 The Panel has considered cumulative and in-combination impacts arising from the interaction between Dogger Bank Teesside A&B and Dogger Bank Creyke Beck. Question 5.4 of the Panel's second written questions sought to ascertain whether impacts might arise if construction of the two projects occurred simultaneously [PD-036]. Conclusions on these points are reached in Chapters 4 & 5 below.
- 2.4.8 On the date the Dogger Bank Teesside A&B examination closed, the Dogger Bank Creyke Beck application had not yet been decided by the SoS. The Panel is aware that the SoS has now made a decision on the Dogger Bank Creyke Beck application. However, as the Panel had no power to reopen the examination and seek representations on the SoS's decision it has not, as a matter of procedural fairness, been taken into account by the Panel in reaching its findings and conclusions, because IPs would not have been able to make representations which took that decision into account and responded to it. Nor has regard been had to the application documentation and examination submissions relating to the Dogger Bank Creyke Beck project, save for those documents that were specifically submitted to the Dogger Bank Teesside A&B examination by the applicant.

Dogger Bank Teesside C & D

- 2.4.9 Dogger Bank Teesside C & D are the two offshore wind farms proposed by the applicant as the third stage in the development of the Dogger Bank zone. Figure 1.1 of the ES Introduction [APP-066] illustrates the location of this proposal in relation to the application proposal. Whilst this proposal is likely to be a NSIP, by the close of this examination it had not yet become the subject of an application or applications to the Planning Inspectorate, although the Panel has noted that the applicant submitted a response to Redcar and Cleveland Borough Council's draft local plan¹¹ which included an indicative plan of the Dogger Bank Teesside C&D onshore cable route [REP-472].
- 2.4.10 The Panel had considered possible cumulative and in-combination impacts, and at Question 5.5 of the ExA's 2nd written questions asked the applicant to explain the cumulative impact of a concurrent development of Dogger Bank A&B and Dogger Bank Teesside C&D [PD-036]. Conclusions on these points are reached in Chapters 4 & 5 below.

2.5 OTHER MAJOR USES AND PROPOSALS

- 2.5.1 There are four major existing or proposed uses within the vicinity of the application site on land, which interact with or have been

¹¹ This draft plan has been withdrawn and so is not progressing towards adoption (see Chapter 3 below).

considered to have the potential to interact with the application proposal.

- the Wilton Complex;
- the Teesside steel industry;
- the Cleveland Potash Boulby Mine; and
- the York Potash projects.

The Wilton Complex

2.5.2 The Wilton Complex (also referred to as Wilton International) is a large industrial / manufacturing site located between Redcar and Middlesbrough, to the south of the steel-making enclave and Teesport described above and to the north of the A174 Redcar - Middlesbrough road. Its significance to this application is that the proposed converter station compound is sited on land adjacent within the complex, necessitating the passage through it of the proposed HVDC and HVAC cable alignments.

2.5.3 Initially developed by the former Imperial Chemical Industries (ICI), the Wilton Complex commenced operation in the 1950s as a major integrated petrochemical facility, supported by internal electricity generation facilities. Following the disaggregation of ICI in around the year 2000, the complex continues to contain major petrochemical process plant including one of three operating steam crackers in the UK (the others are located at Grangemouth and Moss Moran in Fife, Scotland).

2.5.4 Its operation is now split between interested party Sembcorp Utilities UK Ltd (Sembcorp), freeholder and integrated infrastructure provider to the entire complex and a series of individual process and related industrial undertakings. Those involved or referred to in the examination are:

- SABIC UK Petrochemicals Ltd (SABIC);
- GrainCo; and
- M & G Solid Fuels Ltd.

2.5.5 The complex has diversified to include:

- petrochemical production (including SABIC);
- plastics production (eg low density polyethylene) (including SABIC);
- bioethanol and CO₂ production;
- energy and bio-industry feedstock and grain reception, storage and drying (including GrainCo);
- short rotation coppice growing;
- energy industries meeting the energy needs of the complex and other consumers (the Teesside Power Station gas generation facility is currently being decommissioned but biomass, energy from waste and onshore wind energy facilities are either operational or under development);

- solid fossil fuel reception, processing and distribution (M & G Solid Fuels Ltd.); and
 - office and production research facilities.
- 2.5.6 The existing SABIC Olefins 6 facility - the cracker - is located adjacent to proposed HVDC cable works on Land Plan plot 52A. It is required to undergo periodic maintenance work on a six year cycle for which access and laydown areas across and adjacent to this land are required. These works proceed without planning permission being required on the basis that they are operational maintenance and not development [REP-313].
- 2.5.7 A major upgrade is proposed to occur in 2016 that is considered to be development and for which SABIC intend to make an application for planning permission to Redcar and Cleveland Borough Council [REP 313]. This proposal would change the cracker feedstock from naphtha to ethane and would involve:
- 'the creation of new ethane import infrastructure comprising an import terminal and storage tank at the North Tees site [on the north bank of the River Tees / Teesport] and a new interplant pipeline between North Tees and the Olefins 6 plant. In addition, significant changes to the Olefins 6 plant are required in order to process the new feedstock. These on-plant changes will include the installation of a new distillation column and ancillaries at the south edge of the plant as well as changes to existing furnaces, compressors, heat exchangers and control systems.
- 'Discussions have been underway with Redcar and Cleveland Council. These have concluded that the 2016 scheme does require planning permission [...] A separate planning application for the works at the North Tees has already been made.' [REP-295, 313]
- 2.5.8 These proposed works entail access for additional labour and plant and the movement of large process components within the Wilton Complex, and will thus constitute a major construction and engineering project in its own right involving up to 1,000 additional workers and 30 cranes.
- 2.5.9 SABIC is concerned to ensure that its plant is able to undergo planned periodic maintenance and upgrades during the construction, operation and decommissioning periods for the application proposal. [REP-295, 313]
- 2.5.10 The Wilton Complex contains significant areas of serviced but undeveloped land on which industry with a chemicals or renewable energy focus is currently encouraged to develop as part of the Tees Valley Enterprise Zone. Sembcorp is concerned to ensure that development and operation of the application proposal does not adversely affect existing operations or the potential of those future development plots. [REP-129].

- 2.5.11 Raw materials are imported to and exported from the Wilton Complex via marine terminals in Teesport, by pipeline, by road and by rail. The Wilton Complex lies at the centre of the UK ethylene pipeline distribution system, which includes the Trans-Pennine Ethylene Pipeline (T-PEP), a facility linking Wilton to Runcorn, Holford and Stanlow in Cheshire, operations at Wilton are potentially affected by the application proposal [REP-295]. The complex also utilises and transports saturated brine and drainage water by pipelines that are potentially affected by the application process [REP-295].
- 2.5.12 The Wilton Complex contains an extensive network of internal infrastructure, providing gas, electricity, water, steam, drainage, pipe and road connectivity, moving inputs, products, by-products and wastes between different production facilities. Some of this infrastructure is prominently located above ground in gantry mounted cables, pipes and ducts. Some is in the form of buried pipes, drains and cables. There is a complex structure of legal relationships set out in property and contractual documents which underpin the provision and receipt of these complex infrastructure services and the various producers located at the Wilton Complex rely upon its continuation. Compulsory acquisition and construction works proposed by the applicant have the potential to affect these in both physical and legal terms [REP-295].
- 2.5.13 Some of the manufacturing processes and products managed, stored and transported within the Wilton Complex are potentially hazardous to the workforce, local populations and the environment. Facilities within the complex are on the register maintained by the Health and Safety Executive (HSE) under the Control of Major Accident Hazards Regulations 1999 (COMAH). Parts of the complex are also within a secure, access controlled perimeter for these reasons. Parts of the complex are also within a landscaped containment consisting of planted mounds and bunds, providing visual, acoustic and blast screening for nearby land, including residences in the village of Lazenby.
- 2.5.14 Both Semcorp and SABIC are concerned to ensure that the internal site infrastructure is not disrupted by the applicant's proposals in ways that lead to economic harm, loss of employment, additional operational safety or environmental concerns for the existing plant within the Wilton Complex.
- 2.5.15 Due to the disaggregated nature of operations in the Wilton Complex and to the commercially confidential nature of some relevant information, the Panel was not able to obtain aggregate value and employment statistics for the complex as a whole. Due to the strategic significance of facilities such as the SABIC cracker and the location and role of the complex in relation to the national ethylene distribution system (T-PEP), the Wilton Complex is an important and relevant matter which is considered in Chapters 4 and 6 below.

Felixstowe. The East Offshore area encompasses the marine area from 12 nautical miles out to the maritime borders with the Netherlands, Belgium and France.

- 3.6.12 At Paragraph 2.3.10 of the applicant's Planning and Design Statement [APP-061] it states that the Dogger Bank Teesside A and B wind farm arrays both lie within the East Offshore Plan area. The export cables lie within the East Inshore Plan area. This was not disputed by the MMO during the examination and is therefore agreed.

3.7 OTHER LEGAL AND POLICY PROVISION

The National Planning Policy Framework (NPPF) and Planning Practice Guidance (NPPG)

- 3.7.1 The National Planning Policy Framework (NPPF) sets out the Government's planning policies for England and how these are expected to be applied. The introduction to the NPPF¹⁴ makes clear that it '...does not contain specific policies for nationally significant infrastructure projects for which particular considerations apply. These are determined in accordance with the decision-making framework set out in the Planning Act 2008 and relevant national policy statements for major infrastructure, as well as any other matters that are considered both important and relevant (which may include the National Planning Policy Framework).'
- 3.7.2 The Panel has considered NPPF policy applicable to:
- industrial land;
 - employment;
 - environmental management / hazards; and
 - agricultural land.
- 3.7.3 NPS EN-1 at paragraph 4.1.7 identifies that the Infrastructure Planning Commission (IPC) (and hence the SoS) should have regard to advice in Circular 11/95 'The Use of Conditions in Planning Permissions' or any successor to it when considering the imposition of requirements in DCOs. Paragraph 5.11.11 provides the same advice in respect of requirements to secure mitigation. On 6 March 2014, a wide range of guidance in planning circulars (including the main body of Circular 11/95) was cancelled and on-going guidance was consolidated into the online Planning Practice Guidance prepared under the NPPF (referred to in this report as NPPG). It follows that the Panel has had specific regard to NPPF paragraphs 203 - 206 and to NPPG guidance on the use of planning conditions under ID:21a in order to discharge the policy arising from NPS paragraphs 4.1.7 and 5.11.11.

¹⁴ NPPF Introduction - Paragraph 3

3.7.4 As the Panel has recorded elsewhere in this report, it has provided the applicant and IPs with an opportunity to draw any issues arising from the NPPF to its attention in their answers to written questions. The Panel asked questions on the NPPF and NPPG in questions 1.9, 1.10, 1.14, and 1.16 of their first written questions [PD-023]. No such issues were specifically identified. The four areas identified above were considered as providing the context for the consideration of the LIR, local policies and matters raised within it.

Natural Environment and Rural Communities Act 2006

3.7.5 The Natural Environment and Rural Communities Act (NERCA2006) made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the conservation of biodiversity. In complying with this, regard must be given to the UNEP Convention on Biological Diversity of 1992.

3.7.6 This duty is of relevance to biodiversity, biological environment and ecology and landscape matters in the proposed development. When deciding an application for development consent the SoS must have regard to the United Nations Environmental Programme Convention on Biological Diversity of 1992 (through Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010). Its consideration has been integrated into the consideration of the issues arising from the application in Chapter 4 below and into the consideration of matters relevant to Habitat Regulations Assessment (HRA) in Chapter 5.

The Town & Country Planning Act 1990 (as amended), The Planning & Compulsory Purchase Act 2004 and Development Plans

3.7.7 The application site includes land within the Borough of Redcar and Cleveland and is within close proximity to the northern and eastern boundaries of the North York Moors National Park.

3.7.8 The Panel is conscious of paragraph 4.1.5 of NPS EN-1 which provides that NPS policy takes precedence over development plan policy in any instance of conflict. It has nevertheless had regard to the following local plans (together with relevant NPPF content) for localities subject to direct and indirect effects and within the vicinity of the application site:

- Redcar and Cleveland Borough Council Local Development Framework (LDF) 2007¹⁵; and

¹⁵ The Redcar & Cleveland Publication Local Plan was considered by Borough Council on the 31st July 2014 with a view to replacing the LDF, but was not approved. The Council is now considering its options and will set out a new timetable for preparing the Local Plan in due course.

- North York Moors National Park Authority Local Development Framework (NPLDF) 2008¹⁶.

3.7.9 The LDF contains planning policy for Redcar and Cleveland, including the Wilton Complex, but excluding land within the North York Moors National Park. It comprises the Core Strategy Development Plan Document (DPD), the Development Policies DPD and various other DPDs. The Borough Council drew attention to the policies relevant to the proposal in their LIR and the policies identified in paragraph 7.0 of the LIR have been considered by the Panel.

3.7.10 This NPLDF comprises Core Policies and Development Policies that form the Development Plan for the National Park and again policies have been considered to the extent that they are relevant.

Other policy sources

3.7.11 The Panel has also had regard to the following relevant policy sources:

- The Energy White Paper: Meeting the Challenge (May 2007) ;
- The UK Low Carbon Transition Plan, National Strategy for Climate and Energy (July 2009);
- The UK Renewable Energy Strategy (July 2009); and
- Planning Our Electric Future: a White Paper for secure, affordable and low carbon electricity (July 2011).
- The Tees Valley Unlimited (TVU) Tees Valley Strategic Economic Plan (May 2014).

¹⁶ The policies in the North York Moors Local Development Framework replace the saved policies in the North York Moors Local Plan (2003).

4 FINDINGS AND CONCLUSIONS IN RELATION TO POLICY AND FACTUAL ISSUES

4.0 INTRODUCTION

4.0.1 This chapter of the report identifies the key issues arising from the application and the action taken during the examination to address these.

4.1 INITIAL ASSESSMENT OF PRINCIPAL ISSUES

4.1.1 At the outset of the examination process, the Panel made an initial assessment of the principal issues arising from its consideration of the application documents and relevant representations. These issues are recorded below in summary form and in alphabetic order. They in turn were included in the Rule 6 letter, the Panel's initial correspondence with the applicant, IPs and invited persons [PD-005].

- Biodiversity, Ecology and Natural Environment;
- Compulsory Acquisition;
- Construction;
- Draft Development Consent Order (DCO);
- Debris, Waste and Contamination;
- Electric and Magnetic Fields (EMFs);
- Historic Environment;
- Marine and Coastal Physical Processes;
- Navigation – Air and Marine;
- Noise;
- Other Projects and Proposals;
- Socio-Economic Effects;
- Townscape, Landscape and Visual; and
- Transportation and Traffic.

4.2 ISSUES FRAMEWORK IN THIS CHAPTER

4.2.1 Of the issues described in section 4.1 above, matters relating to the Habitat Regulations Assessment (HRA) consequences of the application proposal for biodiversity, ecology and the natural environment are considered in Chapter 5, matters relating to compulsory acquisition are considered in Chapter 6 and matters relating to the draft DCO are considered in Chapter 7.

4.2.2 All other important and relevant issues that emerged during the examination are analysed within the issues framework contained in this chapter. However, the Panel has changed the order in which they are addressed from the order above, to an order more closely related to factors including their scale, their timing in the project delivery process and their significance to the recommendation as a whole. This chapter addresses these groups of issues in the following order:

- the relationship of the proposed development to land uses projects and proposals, the location in which the most significant

set of issues raised in this examination are set out, those relating to the Wilton Complex;

- the relationship of the proposed development to sea uses, the inshore and offshore fishing industries;
- the achievement of grid connections;
- whether the proposal represents good design;
- effects on biodiversity, ecology and the natural environment;
- construction, operation and decommissioning effects at sea;
- construction, operation and decommissioning effects on land;
- social and economic effects at sea;
- social and economic effects on land;
- historic environment effects; and
- seascape, landscape and visual effects.

In the light of all of these considerations, the Panel applies a planning balance at the end of this chapter and the need for and approach taken to the proposed development.

4.2.3 It should be made clear that in relation to the first two of these subject matters, the Panel had a substantial volume of submissions to consider. They also give rise to considerations of substantial weight in the minds of the Panel, although a substantial element of those considerations arose from matters that are reported here in relation to CA in chapter 6 below.

4.2.4 In relation to the remaining issues, these include legally and technically important matters such as biodiversity, ecology and the natural environment, where the Panel must seek the advice of the SNCBs and also received submissions from other natural environment interests.

4.2.5 The also include a range of subject matters where the role of the Panel has been essentially inquisitorial because few or no relevant or important matters were raised in submissions, but the Panel nevertheless needed to satisfy itself that the application proposal as a whole was sound and that NPS policy was complied with. However, where there was limited or no contention and few or no residual matters of relevance and importance, the Panel takes a briefer approach to reporting but has considered all the evidence which is covered in the Examination Library.

4.3 INDUSTRY AND AGRICULTURE

4.3.1 This part of the report considers the relationship between the application proposal and the main onshore land-uses onshore, in respect of which most representations proceeded from those most active IPs who made substantial written representations and / or requested to be heard orally.

- The petrochemical industry and the Wilton Complex.
- Agriculture.

Other concerns emerged from the steel industry and from extractive industry (potash mining). However, as is detailed in Chapter 2 which provides a description of the land use context of the application proposal, steel industry and potash industry submissions related to matters that were either negotiated to a point of settlement between the applicant and the relevant parties, or they were on balance of insufficient importance or relevance to bear on the SoS's decision.

The Wilton Complex

- 4.3.2 The buried onshore cable route passes through the Wilton International, formerly Imperial Chemical Industries (ICI) Wilton, which is also the location where the converter stations would be located.
- 4.3.3 Wilton International is a major industrial complex hosting a variety of industries:
- most of which are broadly in the related sectors of hydrocarbons, petrochemicals and energy generation;
 - many of which are physically integrated, even though they are in separate ownerships, meaning that raw materials, products and by-products pass from one to another along pipes and ducts;
 - which contains a significant research, development and office use; and
 - which is divided between large, complex and hazardous plant that is within a secured perimeter, less sensitive uses including grain and biomass storage and significant areas of open or undeveloped land.

It is described in chapter 26 of the Environmental Statement as 'an industrial area managed by Sembcorp Utilities (UK) Limited. It encompasses a large area of chemical industry related buildings and equipment. It is a privately owned site and has an internal network of roads, buried and gantry infrastructure [REP-143], which is also described in Chapter 2 above.

- 4.3.4 This landholding and integrated plant is coordinated by Sembcorp, as freeholder and specialist utility provider to the industries on the site.
- 4.3.5 The Panel describes the landholding of Sembcorp as the Wilton Land - including undeveloped land and as the Wilton Complex, where the predominant land use is for heavy industry.
- 4.3.6 Sembcorp is 'currently marketing available ... sites, earmarked for potential development, within the Wilton Complex.' and that there is 'a large number of utilities of all types identified within the site that provide services to the various industrial units ... the number crossed by the cable route is approximately 52.' [REP-143].
- 4.3.7 Those interested party or affected person industry bodies which the Panel considers to be significant in respect of this application are:

- Sembcorp Utilities (UK) Ltd (Sembcorp);
- SABIC UK Petrochemicals Limited (SABIC); and
- GrainCo.

4.3.8 There is no explicit policy guidance in the National Policy Statements in respect of the impact of offshore wind farms on major onshore industrial operations such as the Wilton Complex. However, paragraph 4.1.3 of the Overarching National Policy Statement for Energy (EN-1) states that 'In considering any proposed development, and in particular when weighing its adverse impacts against its benefits ...' the Panel 'should take into account its potential benefits ... and its potential adverse impacts'.

4.3.9 Paragraph 4.1.4 of the Overarching National Policy Statement for Energy (EN-1) states that 'social and economic benefits and adverse impacts' should be taken into account 'at national, regional and local levels'.

4.3.10 Also, in paragraph 2.5.32 of the National Policy Statement for Renewable Energy Infrastructure (EN-3) it states that 'The impacts identified in Part 5 of EN-1 and this NPS are not intended to be exhaustive ...' and that the Panel ... 'should therefore consider any impacts which it determines are relevant and important to its decision.'

Sembcorp

4.3.11 In its relevant representation [REP-071], Sembcorp states that it 'is a major industrial energy and integrated utilities service provider to the process industry in the Tees Valley (which is, in turn, the largest integrated chemical complex in the UK in terms of manufacturing capacity and the second largest in Western Europe).'

4.3.12 Sembcorp 'owns approximately 667 hectares of land at Wilton International; of which approximately 170 hectares is heavy and light industrial development plots. Since 2003, Sembcorp has invested over £200 million developing new assets and improving its existing facilities '... with a view to securing inward investment and further industrial customers.' [REP-071].

4.3.13 Sembcorp expressed itself as 'generally in favour of the project.' and 'recognises a number of benefits which the project will bring' [REP-071]. It is part of its diversification plan for the Wilton Complex that it contains energy generation and related uses. Historically the site hosted a coal fired and combined cycle gas generating facilities (the latter in the process of decommissioning, providing power to the energy intensive industrial uses present on the site. In more recent times, new development has included biomass and energy from waste generation. Some wind turbines have been constructed and there are proposals for more, contributing towards carbon emissions reduction for a heavy energy consuming site. The applicant's converter stations form a contribution to that diversification. They would also be very

appropriately sited, within an existing industrial area, largely screened from nearby residents by existing landscaped, acoustic and blast bunding.

- 4.3.14 Sembcorp also stated [REP-071] that '... Wilton International is a hub of petrochemical, speciality and other process manufacturing businesses and these businesses are vital contributors not only to the regional, but also the national economy'. It raised the following operational concerns:
- cable route width and alignment sterilising high value development plots;
 - an error in the route at the GrainCo grain storage and processing site;
 - construction and operational impacts on Wilton business operations and development;
 - being 'blamed' for noise impacts from the converter stations; and
 - EMF and heat from buried cables.
- 4.3.15 These concerns form the basis of a SoCG with the applicant [REP-120] and are discussed below.
- 4.3.16 Sembcorp identified a cable route issue in its (late) response to ExQ1 question 3.3 [REP-129], specifically referring to the HDD entry point at the eastern end of the site adjacent to the A174 roundabout access as 'in the largest remaining consented development plot ... and the cable alignment ... is such that there is a significant reduction in the land area for future development ...' but, following the second Issue Specific hearing and further discussions with the applicant, this representation was withdrawn [REP-314].
- 4.3.17 In paragraph 4.1 of the SoCG [REP-120], the error in respect of the GrainCo facility was acknowledged by the applicant: 'and, 'subject to an agreement upon the remainder of the route '[i]t was not Forewind's intention to affect Grainco. It was always envisaged ... that the route ... would remain on Sembcorp's freehold land. Alignment through Wilton International, it ... is willing to enter into legal agreements for ... a route which runs to the south of the Grainco site.' In its (late) submission for Deadline IV [REP-233], Sembcorp reported that 'agreement in principle has been reached that the cable route should be realigned' (plans PA 2526-LP-05 and -06 refer).
- 4.3.18 Referring to the regional and national importance of businesses within the Wilton complex in respect of construction impacts on Wilton business operations, Sembcorp states that 'accordingly any development ... must ... not materially disrupt those existing residents ...' and expresses itself as 'understandably keen to ensure that the works are undertaken ... so as not to affect existing operations'. Explicit reference is made to 'chemical and manufacturing processes' and, in respect of traffic, that this 'does not block or restrict access' [REP-071].

- 4.3.19 In respect of noise impacts from the proposed converter stations, Sembcorp 'is keen to ensure that the noise of the converter stations, any other parts of the onshore development ... during construction, maintenance or decommissioning does not ... restrict existing operations ... nor prevent the development of future projects' [REP-071], and responded to ExQ1 question 10.8 to say that 'ambient noise levels ... fallen significantly in the past few years ...' [REP-129]. Although its response to the Panel's Rule 17 question [R17-27] was not unequivocal, it appears that the basis for a common approach has been agreed and consequently there is nothing to suggest that this is now an issue which the Panel needs to consider further [REP-540].
- 4.3.20 Sembcorp is 'keen to ensure that neither the cables nor the converter stations generate EMF s and/or heat which could adversely affect existing operations ... and/or prevent or limit the type of project that could be attracted to the adjacent development plots' [REP-071].
- 4.3.21 The Panel undertook an accompanied site visit to the Wilton complex on the afternoon of 15 October 2014 in order to obtain an overview of operations on the site and in particular to view:
- the HDD entry point at the eastern end of the site;
 - the passage of the proposed cable alignments within the Wilton Complex; and
 - the proposed change to the cable alignment to avoid the GrainCo facility.
- 4.3.22 The consequent proposed change to the order limits to avoid the GrainCo site, and hence the need for a change to the application, was heard on day 3 of the first issue-specific hearing on 16 October 2014 and is discussed further below. The need for a change to the area of land subject to compulsory acquisition is dealt with in chapter 6 of this report.

SABIC

- 4.3.23 SABIC UK Petrochemicals Limited (SABIC) (an affected person and a tenant of Sembcorp) is not explicitly described in the Environmental Statement and made no representation until the examination was well under way on 5 November 2014 [REP-295]. At that point its representation focused primarily on the impact and potential impact of the proposal on its business, without much detail of what type or size that business is or its regional and national importance.
- 4.3.24 SABIC is a subsidiary of SABIC Europe bv. It's parent company SABIC (Saudi Basic Industries Corporation) is one of the world's leading manufacturers of chemicals, fertilisers, plastics and metals.
- 4.3.25 SABIC is a major regional industry, effectively continuing the ICI legacy by producing and selling specialist chemical products, and 'owns and operates facilities on and around the Wilton International site including

- The Olefins 6 facility (known as the Cracker)
- The Trans-Pennine Ethylene Pipeline (known as the TPEP)
- Three brine pipes which broadly follow the route of the TPEP
- a drain associated with the brine pipes and which would manage accidental spillage [REP-295].

4.3.26 Explaining SABIC's (late) submission for Deadline III dated 5 November 2014[REP-295], Bond Dickinson states that 'SABIC has been in discussions (with the applicant) ... for some time ... however these discussions have centred around technical issues relating to the crossing point of Works 6A and 6B and the TPEP and Brine Mains. There have not been any discussions in relation to legal issues arising out of the proposed Development Consent Order. As a result, SABIC have come to realise relatively late in the day that they need to make representations to ensure that they are able to continue to operate from the Wilton Site.'

4.3.27 Although much of the cable would be buried in conventional trench, HDD would be used at certain key locations 'including the Trans Pennine Ethylene Pipeline ...' [REP-071]. SABIC's concerns [REP-295] nevertheless relate to operational issues in respect of:

- access to the Cracker, both day-to-day and in respect of 'the multi-million pound improvement and upgrade to SABIC's Olefins 6 plant ...' [REP-071], due to take place in 2016 and for which plans are at an advanced stage;
- potential severance of its Trans-Pennine Ethylene Pipeline (TPEP), which 'is used to transport ethylene ... to Ineos' Castner-Keller facility at Runcorn';
- potential severance of the Brine Pipes, which 'would effectively shut down operations at Wilton. The brine ... is highly concentrated and would kill any vegetation it came into contact with ...';
- any adverse effects on the Drain, 'a very important safety feature relating to the Reservoirs'.

4.3.28 Further information pertaining to the Cracker site including abnormal indivisible load (AIL) access arrangements was provided by SABIC following the second Issue-Specific Hearing [REP-313].

GrainCo Ltd

4.3.29 GrainCo Ltd (GrainCo) owns and operates a grain storage and processing facility which is an integral part of the Wilton Complex and its linked operations [REP-071]. Grain is used as feedstock for bioethanol. The cable alignment as originally submitted ran through the GrainCo land, but this was resolved during the examination and is no longer a concern (See Chapter 2 and Chapter 6).

Economic weight

- 4.3.30 The Panel enquired into the potential impacts of the development affecting the Wilton operators and the following evidence was presented in response;
- 4.3.31 Sembcorp [REP-540, Appendix C] provided evidence of the effects of impacts affecting the Wilton Complex (all operators interests):
- The Wilton Complex is a significant contributor to the estimated £10 billion of annual sales generated by the process industry in the Tees Valley.
 - Of the order of 2,000 people work at Wilton.
 - Dealing solely with the cost of disruption to Sembcorps own assets, costs of £400-500,000 per day could be incurred.
- 4.3.32 SABIC [REP-541] provided evidence of the effects of shutting down its Cracker plant:
- Margin £500k per day 2014/15 prices or £1,000,000 at 2017 prices;
 - Shutdown costs typically 10 days £5M;
 - Fixed costs of operation £100M p.a.; and
 - Employment headcount 300 (2014/15); 450 (2017).
- 4.3.33 The applicant [REP-539] provided the following evidence of equivalence in terms of the economic weight of its activities:
- the largest single contribution towards the 2020 renewable energy generation targets;
 - 8,410GWh (gigawatt hours), enough to power approximately 1.8 million homes;
 - Construction - 1,092 and 1,644 full time equivalent (FTE) direct employment and 588 to 984 indirect employment;
 - Operation - 216 and 300 FTE direct employment and 180 to 216 indirect employment;
 - indicative single project capital expenditure of £3.6billion (£7.2 billion application total);
 - has estimated the costs of a single operational cable repair offshore, due to lost revenue and works costs, would be in the region of £112m to £175m; and
 - wind farm revenue would typically be expected to be on average around £1.5m per day.

Effects on agriculture

- 4.3.34 The cable alignment passes across agricultural land from the landfall to the Wilton Complex and as it leaves Wilton onwards to the NGET substation. Representations were received from affected persons as detailed in Chapter 6 on the basis that they were all provided within the context of concerns about compulsory acquisition.

4.3.35 Potential effects on land were raised including, issue of sterilisation of the land above the cable [REP-290], drainage and cropping [REP-308], access, noise, security and vibration during construction [REP-378], the effects on field drainage [REP-393-397].

4.3.36 In terms of access, security, noise, vibration and drainage the DCO requirement 26 and the Code of Construction Practice (CoCP) makes provision for mitigation, cascading down to requirements 27 and the Construction Environmental Management Plan (CEMP), providing for construction method statements, drainage method statements, and the construction, noise and vibration management plan [REP-494]. Land sterilisation and cropping are dealt with compensation matters in CA.

4.3.37 Conclusions

4.3.38 In respect of the Wilton Complex including the land interests of Sembcorp and SABIC there were potential residual effects of major significance. The major concern remaining at the end of the examination was that the applicant's works would be implemented in a way that would leave Wilton operators exposed to events or disruption that could have the effect of harming the safe operation of plant, damaging infrastructure, adversely affecting the ability of plant operators to deliver planned maintenance or planned upgrades.

4.3.39 The applicant made clear that it would not wish to harm the operation of any Wilton plant or give rise to any adverse effects. However, in the absence of clear protective provisions, Sembcorp and SABIC remained unclear that the applicant would protect their interests. The difficulty faced by Sembcorp and SABIC was that the applicant's draft protective provisions essentially left judgements about the operational effects of complex petrochemical plant in the hands of the applicant.

4.3.40 Having heard both the applicant and the Wilton Parties on this point, the Panel formed the view that the applicant's/undertakers works and the Wilton operations were essentially of equal weight. A further consideration was that, because of the applicant's proposed transfer of benefits provisions (which the Panel considers more broadly to be necessary to enable the commercial development of the application proposal) the applicant will not necessarily be the undertaker and so cannot make direct agreements or undertakings. Measures to ensure that that the Wilton Parties operations are adequately protected have to set within the DCO.

4.3.41 The implications of this were that the management of protective provisions should not in the Panel's view rest in the hands of the undertakers alone. There should in the Panel's view be broad equity between the undertakers and the Wilton Parties, and the Wilton Parties' expertise in relation to their own operations should be used to manage down potential conflict between them and the undertakers. This reasoning is taken further in respect of the proposed protective

provisions in the Panel's consideration of CA and of the DCO provisions in Chapters 6 and 7 below.

- 4.3.42 In terms of agriculture, taking these remaining issues into account, the Panel concludes that the public benefits of the project significantly outweigh its effects given mitigation secured through DCO requirements 26 and 27, the CoCP, the CEMP and related plans.

4.4 FISHING

- 4.4.1 The effects of the application on sea use for fisheries were issues that again resulted in significant engagement between the Panel and IPs.

- 4.4.2 Matters relating to offshore social and economic impacts on commercial fisheries are covered by the applicant in chapter 15 of the Environmental Statement [APP-119].

- 4.4.3 These matters were examined both through written questions and on the second day of the second issue-specific hearing on 12 November 2014. Additional time was also made available on the first day of the third issue-specific hearing on 2 December 2014.

- 4.4.4 Matters relating to effects on fish species and the status of fishing (as a plan or project) were also examined through written questions and were heard at the first issue-specific hearing in October 2014: these matters are covered in chapter 5.

- 4.4.5 The area of the Dogger Bank in which the application proposal is situated is a location where major offshore commercial fishing takes place. There is also day fishing activity in inshore waters in the area traversed by the proposed export cable.

- 4.4.6 The applicant has agreed Statements of Common Ground with no issues unresolved with the following organisations:

- German Fishermen's Association [REP-075];
- Swedish Fishermen's Federation [REP-084];
- Rederscentrale (Belgian fishermen and shipowners) [REP-093];
- Norwegian Fishermen's Association and Fiskebat [REP-094];
- Redcar and Teesbay Fishermen's Association [REP-103];
- Comite Regional des Peches Maritimes et des Elevages Marins (Nord Pas-de-Calais Picardie) [REP-107];
- North Eastern Inshore Fisheries and Conservation Authority (NEIFCA) [REP-122]

- 4.4.7 Residual issues relating to effects on fisheries are then divided into:

- Offshore fishing issues (involving the NFFO and VisNed); and
- Inshore fishing issues (involving EPIC Regeneration for Hartlepool Fishermen's Society Ltd (HFS).

The balance of benefit and harm

- 4.13.14 The test in PA2008 s 104 (7) provides that the SoS must decide an application in accordance with NPS policy unless:
- 'the adverse impact of the proposed development would outweigh its benefits'.
- 4.13.15 There were two bodies which made representations that the balance between the need for the application proposals as supported in NPS policy and the adverse effects of the harm that might be done by them should be struck in favour of rejecting the application. Representations from Sembcorp and SABIC in respect of the Wilton Complex sought reassurance that cable alignments passing through this specialised industrial site and close to large petrochemical plant could be constructed and operated without a significant risk of harm to these facilities.
- 4.13.16 The harm suggested as arising related to:
- damage to existing Wilton Complex service infrastructure by construction works, leading to the leakage of piped materials such as saturated brine or ethane;
 - lack of coordination between the applicant's proposed works and works to Wilton Complex plant;
 - effects (arising from compulsory acquisition) on the interplay of existing rights enabling companies within the Wilton Complex to share infrastructure and products; and
 - obstruction of access, particularly to a steam cracker and to a laydown area intended to be used for the upgrade of the cracker, a major project in its own right.
 - The effects of these harms could include significant environmental and/or economic damages including pollution incidents, plant shut downs with consequential economic and employment losses and, due to increased uncertainty, investment decisions that lead to either delayed implementation or higher project costs.
- 4.13.17 In circumstances where the risk of such harm could not be adequately controlled, Sembcorp and SABIC submitted that the consequential prospects of harm to society, the economy and / or the environment were potentially of such seriousness that the application proposals should not proceed. The applicant took the view that this case could not be made out and that the balance of benefit favoured the grant of the application as submitted.
- 4.13.18 The Panel has carefully considered the balance to be struck here, as the matters of concern to Sembcorp and SABIC are ones that it considers to be of significant weight. The Panel considers that applicants proposed powers in Part 5 of the DCO, (powers if acquisition) in addition to Part 3 powers over street works if unalloyed would damage the future economic prospects of the Wilton Complex.

4.13.19 Equally, the Panel considers that the protective provisions proposed by Sembcorp and SABIC to be included in Schedule 8 Part 6 of the DCO, if left unalloyed would damage the deliverability and commercial viability of the project. However, as set out above, the Panel takes the view that the potential harm done can be sufficiently mitigated, as long as there are appropriately crafted protective provisions in place. The compulsory acquisition implications of this are set out in Chapter 6 below. The amendments to Schedule 8 Part 6 necessary to achieve an appropriate planning balance are discussed further in Chapter 7.

4.13.20 In relation to other issues:

- the relationship of the proposed development to sea uses, the inshore and offshore fishing industries;
- the achievement of grid connections;
- whether the proposal represents good design;
- effects on biodiversity, ecology and the natural environment;
- construction, operation and decommissioning effects at sea;
- construction, operation and decommissioning effects on land;
- social and economic effects at sea;
- social and economic effects on land;
- historic environment effects; and
- seascape, landscape and visual effects;

the Panel notes that there were few matters raised by interested parties and affected persons. Similarly the Panel found that there are few impact considerations of any weight. On balance, none indicate against the grant of the Order by the Secretary of State.

4.13.21 In relation to these remaining issues, the Panel concludes that the DCO as recommended in Appendix A below provides sufficient mitigation to address the few issues raised.

Conclusions

4.13.22 The Panel concludes that the need case for the application is supported by NPS policy. It has not been challenged in representations in a way that would entitle the Panel to recommend against the application. The site selection process was compliant with NPS policy and again has not been put to challenge. The balance of benefit and harm within the Wilton Complex is significant in the Panels final recommendation but can be addressed. On that basis, the Panel concludes that the case for development is made out and therefore the issues raised can be carried forward for consideration in respect of HRA (Chapter 5), CA (Chapter 6), for detailed consideration of the DCO (Chapter 7) and to the over-arching conclusion (Chapter 8).

individual circumstances here that would justify a departure from the findings that the Panel has already made. The Panel therefore observes that the applicant's proposals for the cable corridor are acceptable subject to satisfactory safeguards in respect of security and reinstatement. The Code of Construction Practice to be approved by the local planning authority under requirement 26 (of the same name) includes a land use and agriculture element that addresses drainage and soils and plans for private access across the alignments.

Sembcorp Utilities (UK) Limited (Sembcorp)

- 6.4.88 Concerns were raised by Sembcorp in respect of the plots shown on the Land Plan and recorded in the Book of Reference as follows:
- Plots 45A, 45B, 46A, 46B, 47A, 47B, 48, 49A, 49B, 50, 51A, 51B, 52A-C, 53, 55, 56, 57, 58, 58B, 58F-H, 58X-Z, 59, 59i, 60A, 60B, 61A, 61B, 64, 66, 67A-F, 74; 86, 87; freehold interest.
- 6.4.89 Although all plots are in the ownership of Sembcorp, not all plots are within the Wilton Complex itself.
- 6.4.90 The Wilton Complex is a large, specialised industrial, research and development park hosting petrochemical and energy industries. It is chiefly occupied by an integrated petrochemical facility within a secure perimeter, but also contains some undeveloped land. The complex is owned by Sembcorp, but individual industrial processes are carried on by a range of individual operators who hold leases and receive infrastructure support from Sembcorp. Chapter 2 of this report set out a description and history of the Wilton Complex, the role of Sembcorp and the activities undertaken there by Sembcorp's tenants, which should be referred to by the reader at this point as it provides useful context for the description and reasoning which follows.
- 6.4.91 The Sembcorp objection also relates closely to that of SABIC set out from paragraph 6.4.125 below. SABIC is a tenant of Sembcorp and operates a cracking plant within the Wilton Complex. The Panel has given their objections individual consideration although recognising that their operational interests are closely interrelated.

Objection

- 6.4.92 Sembcorp has expressed itself throughout the examination as generally in favour of the principle of the application proposal. It is in the process of negotiating heads of terms with the applicant prior to preparing and executing the necessary land agreements [REP-070] for what it would hope to be the siting of the converter stations, the routing of the HVDC cable alignments to it and the routing of the HVAC cable alignment from it through the Wilton Complex [REP-129].
- 6.4.93 However, concerns were raised by Sembcorp in its representations in respect of:

- the width of the cable alignments passing through the Wilton Complex [REP-071, REP-129];
- the sterilisation of potential industrial development plots [REP-071, REP-129, REP-532]; and
- the routing of the cables through land recently developed and occupied by GrainCo on a long lease [REP-071].

6.4.94 Significant areas of land within and adjacent to the secure perimeter of the Wilton Complex remain undeveloped. Sembcorp is seeking tenants and developers for this land (GrainCo being is one), with a preference for new use and development that will make best use of this existing heavy industrial, petrochemical and energy industry location with extensive access to existing production processes and specialist infrastructures and with a port close by. This endeavour is supported through the designation of undeveloped land in this location as an Enterprise Zone. Sembcorp's vision for the future of this land, its significance and the general suitability of the applicant's proposed use and development of it is shared with Redcar and Cleveland Borough Council [REP-073] and the Local Economic Partnership Tees Valley Unlimited [REP-072].

6.4.95 Sembcorp submitted that poorly considered siting, poor coordination of acquisition, and poorly executed construction of the cables and related infrastructure by the applicant and the Bizcos could reduce the development potential of this specialised industrial land by reducing plot sizes and generating new development constraints. However, the concern that the applicant's proposals would affect the newly developed GrainCo facility was resolved through a proposed change to the application (identified in Chapter 2) and which Sembcorp now supports.

6.4.96 The matters raised in the Sembcorp objection were heard on 13 November 2014 and 13 January 2015. Following the 13 November 2014 hearing, Sembcorp submitted a progress update [REP-314] confirming (at page 2 paragraph 3) the withdrawal of its remaining representations in respect of land sterilisation and the width of cable corridors (to the extent that too much or unnecessary land or rights were sought). It follows that these objections to the application from Sembcorp are resolved. It should also be noted that Sembcorp does not object to the principle that the converter stations should be located within its land holding.

6.4.97 In paragraph 3 on page 2 of its update [REP-314], Sembcorp summarised its remaining concerns as relating to:

- objections to the applicant being granted compulsory acquisition powers within Wilton; and
- the need for the applicant to propose and negotiate key requirements and protective provisions to form a new Part 6 of Schedule 8 to the DCO in respect of the Wilton complex (the Wilton Provisions) as part of the DCO.

6.4.98 At and following the 13 November 2014 hearing, Sembcorp made the following submissions [REP-402]:

- it has since 2003 held the role of 'ringmaster' in relation to the Wilton Complex, in a manner that has enabled the continued safe, effective and integrated operation of diverse, complex and potentially hazardous industrial plant in separate ownerships, thus inferring that it should be treated as being analogous to a statutory undertaker;
- this 'ringmaster' role has enabled potential conflicts between tenants managing and upgrading large and complex plant to be avoided in a manner that has maximised the social and economic benefit to be obtained from the complex as a whole;
- the application proposal was for what amounted to another energy industry use of land on the Wilton Complex, and the passage of the cable alignments and the related development process within the complex would best be regulated alongside other existing and proposed uses and developments within the complex, in order to avoid unforeseen conflicts between the application proposal and other use and development; and
- it did not believe that the applicant had demonstrated that the public benefit arising from compulsory acquisition in the Wilton complex outweighs the private loss

6.4.99 Following the 13 January 2015 hearing, Sembcorp submitted a summary of representations [REP-483], appending a joint Sembcorp/SABIC version of protective provisions for the Wilton Complex (described as the 'Wilton Provisions') and also reinforcing its arguments that:

- it effectively operates in a manner analogous to a statutory undertaker within the Wilton Complex and should continue to do so in order to protect the economic benefit to be derived from the activities taking place within the complex; and
- the applicant's proposals in respect of funding and insurances in place in respect of the protection of apparatus and rights of operators within the Wilton Complex are insufficient, should the applicant's proposed works disrupt these in any way

6.4.100 In order to assist in progressing agreement on the Wilton Provisions, the Panel issued on 21 January 2015 question 17-20 under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010. Sembcorp submitted a response [REP-540] which effectively reiterated the points it made at the 13 January 2015 hearing, there having been no significant movement in the applicant's position.

6.4.101 In particular, Sembcorp submitted that it remained opposed to the granting of compulsory acquisition powers within the Wilton Complex, stating that the applicant should give up powers which, by its own oral submissions on 13 January 2015, it does not expect to use (Appendix A paragraph 4). The applicant should align its operations within the complex with the established principles and procedures adopted by all

the other Wilton operators. The applicant should accept that it is but one of the 'ecosystem' of operators there and should be subject to a method for expert determination of any dispute affecting the relationship between the delivery of the application proposal and another Wilton operation.

- 6.4.102 Sembcorp also expressed remaining concerns in respect of the level of insurance being subject to expert determination after works have commenced, and invited the Panel to modify the draft DCO to include SABIC's version of the Wilton Provisions.
- 6.4.103 In order to assist in its determination of public benefit and private loss, and whether a change to the DCO were feasible, the Panel issued questions 17-30 and 17-31 under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010 to the applicant and SABIC on 29 January 2015. These questions sought views on the balance to be struck between the needs of Wilton operators and the needs of the applicant. In its comment on the Panel's Rule 17 question 17.31, Sembcorp expressed itself as being in favour of changing the draft DCO to enhance protective provisions for the Wilton Complex and to remove compulsory acquisition powers, without recommending refusal of the application as a whole. It also supported SABIC's latest iteration of the draft Wilton Provisions [REP-540].
- 6.4.104 In its closing submission [REP-550], Sembcorp reiterated its opposition to the granting of compulsory acquisition powers, acknowledging that adoption of SABIC's version of the Wilton Provisions might slightly extend the cost and/or delivery time of the application proposal but would not prevent it from going ahead.
- 6.4.105 Sembcorp remained concerned that the granting of compulsory powers to the applicant would be used (by the applicant's successors) to circumvent the Wilton Provisions, and again invited the Panel to consider:
- whether the public benefit outweighs private loss; and
 - whether compulsory acquisition of the Wilton land should be excised from the DCO

The applicant's response

- 6.4.106 The applicant's case explaining the overarching need for compulsory acquisition [REP-327] does not address the specific issues arising within the Wilton Complex in detailed terms. A response to the issues raised at the 13 November 2014 hearing was given orally at that hearing and in writing thereafter [REP-373].
- 6.4.107 Following the 4 December 2014 hearing, at which the applicant's overall case for compulsory acquisition was examined and tested by the Panel, the applicant submitted a summary of the hearing [REP-424], and also made written submissions in respect of Deed of Grant [REP-418] and Restrictive Covenants [REP-419]. A response to the issues raised at the 13 January 2015 hearing was given orally at that

hearing and submitted in writing thereafter [REP-466]. In summary, the applicant's position was that little movement had occurred between the parties.

- 6.4.108 The applicant provided its proposed wording for the Wilton Provisions and stated that its case relevant to compulsory acquisition is that:
- the DCO powers should be capable of exercise subject to the Wilton Provisions; and
 - the additional control and absence of compulsory acquisition powers proposed by the Wilton parties put the delivery programme at risk and may deter funders [REP-471]
- 6.4.109 In its Deadline IX (27 January 2015) response to the Panel's Rule 17 question 17-20, the applicant confirmed [REP-502] that its preferred Wilton Provisions had been submitted to the Panel within version 7 of the draft DCO at Deadline IX (27 January 2015) [REP-499, REP-500]. The applicant also acknowledged that issues of principle remained outstanding: these were submitted separately by the applicant as a Statement of Reservations at Deadline X (2 February 2015) [REP-537].
- 6.4.110 In its Deadline X (2 February 2015) response to the Panel's Rule 17 question 17-31, the applicant argued against excising the Wilton section of the cable route from the DCO [REP-539] on the basis that:
- its draft protective provisions (as included in version 7 of the draft DCO) provide proportionate, robust and enforceable mechanisms for addressing the legitimate concerns about the effect of the project on operations at Wilton; and
 - its proposed Wilton Provisions strike the right balance between public benefit and private loss
- 6.4.111 In its Deadline X (2 February 2015) response to the Panel's Rule 17 question 17-32, the applicant acknowledged that important private interests could be affected by its proposal, and that the continued safe and economic operation of Wilton businesses, including the SABIC cracker, is in the public interest [REP-539].
- 6.4.112 However, the applicant submitted that there is a balance to be struck between the national public interest of its proposal and the public and private interests in the operations at Wilton, and in its response to question 17-32 quantified the potential socioeconomic benefits of its application proposal [REP-539].
- 6.4.113 The applicant made its final submission to the Panel by way of a response to Sembcorp's Deadline X (2 February 2015) submissions [REP-547] at Deadline XI (4 February 2015). In its response, the applicant stated that the project could be delivered with the SABIC version of the Wilton provisions (albeit that these subordinate the national interest to the interests of Wilton operators and that there are safeguards preventing improper exercise of the DCO powers), but not

if part of the cable route is excised. The applicant also appended a further and final draft version of its Wilton Provisions.

Panel consideration

- 6.4.114 The Panel undertook an accompanied site inspection to view the Wilton Complex on 15 October 2014 [REP-070, HR-015]. The Panel has also given careful consideration to the submissions made by Sembcorp and to the responses from the applicant.
- 6.4.115 Although some progress was made during the examination period, core differences in position remain between the applicant and Sembcorp in respect of compulsory acquisition and protective provisions.
- 6.4.116 As set out in Chapter 4, the Wilton Complex as a whole is a highly significant economic asset. It is not an NSIP or the subject of NPS policy. Nor do Sembcorp or any of the Wilton Complex tenants have the status of statutory undertakers. However, the Wilton Complex does make an important and relevant contribution to national economic life as an integrated petrochemical facility. This is a matter to which the Panel attaches considerable weight. The success of the Wilton operation as such is secured through the 'ringmaster' role played by Sembcorp since 2003, whereby each individual tenant is provided with the infrastructure that it requires to operate and that the development plans of each tenant and operator are balanced with those of other tenants and operators to ensure that the safety and economic well-being of each is achieved without compromising the safety and economic well-being of its neighbours.
- 6.4.117 Sembcorp achieves these outcomes in large part through the complex interplay of existing contracts and property rights that regulate its relationship with tenant plant operators and regulate access and the exchange of materials through highly complex shared infrastructure. It also acts in many respects as a 'quasi-public authority', convening, representing and regulating its tenants to maximise shared benefit and minimise conflict. The unfettered operation of compulsory acquisition powers in the absence of engagement between the undertakers and Sembcorp could have significant adverse effects on the continued safe and economic operation of the Wilton Complex.
- 6.4.118 The continued safe operation of the Wilton complex, employment and the generation of economically significant products and other economic benefits there is in the public as well as the private interest. The applicant acknowledges this. The public benefit offered by the continued successful operation of the Wilton Complex as a whole is relevant and important under the PA2008, is substantial and forms an important and relevant consideration in the decision to be taken on this application. It follows that there is not a simple trade-off within the Wilton Complex between the public interest as represented by the development of the proposed NSIP and the private interests of Sembcorp.

- 6.4.119 This is important because, just as the applicant is concerned that Sembcorp as 'ringmaster' of the Wilton Complex might act to frustrate the delivery of the application proposal if too much power is ceded to it over decisions relating to delivery, so Sembcorp is concerned about the applicant being provided with powers that enable it to interfere with the operations of Sembcorp and others within the Wilton Complex. Sembcorp's concerns are essentially that the applicant and its successors in title have neither the duty nor necessarily the technical understanding to balance their needs against those of Sembcorp and its tenants.
- 6.4.120 This position takes account of the fact that several Sembcorp tenants are operating large, technically complex and high economic value petrochemical plant. This is plant which may cause significantly adverse and possibly hazardous social, economic and environmental effects should access to it be blocked, repairs or upgrades be delayed or significant infrastructure be damaged. If the applicant has pre-emptive powers, including the compulsory acquisition of land within the operational area of such an integrated petrochemical plant, the potential for the timing of acquisition and development and for the interference with access, operations and other upgrade proposals could be significantly detrimental to the continuing safe and economic operation of plant, both that of individual operators and within the Wilton Complex as a whole.
- 6.4.121 The main disagreement is focused on where and how the balance between the public benefit of the applicant's proposal and of the Wilton operations on the one hand and the private loss to the various operations at Wilton, including existing and planned employment, is to be struck. Here, the Panel is clear that the weight to be accorded to the public benefit of the applicant's NSIP is equivalent to the weight to be accorded to the continuing safe and economic operation of the Wilton Complex.
- 6.4.122 The Panel has deliberated at length as to whether the compulsory acquisition and related powers associated with this section of the cable route through the Wilton Complex should be excised from the Order. The Panel concludes that this would be a disproportionate response in view of the wider benefits of the applicant's proposal as a whole. This is because, as set out in Chapter 7 below, the Panel is satisfied that protective provisions capable of controlling the effects of the exercise of compulsory acquisition and related powers on Sembcorp's interests can be included in the DCO and has recommended accordingly. As is explained more fully in Chapter 7, the purpose of the proposed protective provisions is to ensure that the applicant cannot use CA (in addition to other) powers in a way that would frustrate or damage planned maintenance and upgrade proposals for the Wilton Complex and lead to substantial social and economic harm. The protective provisions as recommended by the Panel would provide that the applicant must consult with Wilton owners and operators before putting CA powers into effect. The effect of these changes would be to ensure that the undertakers' delivery programme is designed taking

full account of any Wilton upgrades and maintenance proposals. It is not necessary to excise the compulsory acquisition powers in order to respond to Sembcorp's concerns.

- 6.4.123 In reaching this conclusion, the Panel has noted Sembcorp's support for the principle of the application as a whole and for the use of land at Wilton to host development associated with it. The Panel also notes that the delivery of the cable alignments through the Wilton Complex is agreed to be technically feasible, as long as the applicant is prepared to take its place as one of the 'eco system' of entities active within the complex, ensuring that its needs are balanced with those of other entities rather than taking precedence over them. This is a matter to which the Panel returns in Chapter 7 below (the DCO) where Schedule 8 Part 6 (protective provisions for the Wilton Complex) are discussed.
- 6.4.124 The Panel therefore observes that the applicant's compulsory acquisition proposals for the cable corridor as a whole are acceptable subject to satisfactory protective provisions which safeguard Sembcorp's interests locally while enabling the project as a whole to proceed. The means by which this can be achieved is set out in Chapter 7 below when discussing protective provisions in Schedule 8 Part 6 of the DCO.

SABIC UK Petrochemicals Limited (SABIC)

- 6.4.125 Concerns were raised by Bond Dickinson representing SABIC in respect of the plots shown on the Land Plan and recorded in the Book of Reference as follows:
- Plots 42A, 42B, 43A, 43B, 44A, 44B; easements or other private rights; and
 - plots 48, 49A, 49B, 50; 52A, 53; right of way
- 6.4.126 Although all plots are on Wilton land, not all are within the Wilton Complex itself. They relate chiefly to access, including access for large loads such as Abnormal Indivisible Loads, to the Cracker and to the Trans Pennine Ethylene Pipeline (TPEP) and the Brine Pipes.

Objection

- 6.4.127 In its written representation [REP-295], SABIC's relevant concerns are in respect of extinguishment of rights in relation to access to the Cracker, particularly in view of the planned overhaul in 2016, and in respect of the TPEP and the Brine Pipes.
- 6.4.128 At the 13 November 2014 hearing, SABIC's initial view was that it required protection of its easements, and that the Wilton Provisions might be capable of allaying its concerns [REP-313].
- 6.4.129 SABIC also stated that planning consent will be required for the planned 2016 upgrade to the Cracker, for which an application has been submitted, but not for a maintenance overhaul [REP-313].

7 THE DEVELOPMENT CONSENT ORDER

7.0 INTRODUCTION

7.0.1 This chapter of the report addresses the draft Development Consent Order (DCO). It contains two main parts:

- **Part 7.1: From the application to the applicant's Preferred Revised Draft DCO** summarises changes proposed during the early part of the examination, up to and including the DCO issue-specific hearings and publication by the Panel of a revised Draft DCO (based on version 6) on 23 December 2014 taking issues raised and comments into account [REP-426].
- **Part 7.2: Towards the recommended Draft DCO** addresses a second stage, in which the Panel sought written representations from the applicant and IPs on the applicant's Preferred Revised Draft DCO (v7) that it issued with commentary at Deadline IX on 27 January 2015.

7.0.2 The main issues addressed in this chapter relate to the absence of agreement between the applicant, SABIC and Sembcorp (the Wilton parties) about a range of matters requiring provision in the DCO including compulsory acquisition and the protection of the Wilton Complex.

7.0.3 Towards the end of the examination it became apparent that significant points of principle remained outstanding between the applicant and the Wilton parties. These issues related to the cable alignments through the Wilton Complex, the management of the potential effects of the application proposal on operations at Wilton (in particular SABIC's operations) and the settlement of protective provisions for Wilton operators.

7.0.4 The Panel continued to encourage dialogue between the applicant and the Wilton parties to remove or narrow the remaining points of difference. Once it became likely that agreement would not be reached, the Panel requested final position statements from the applicant and each Wilton party by the close of the examination. Moving towards the close of the examination, the Panel also issued a final round of questions. These set out a range of possible decisions that the Panel might make ahead of a recommendation to the SoS. This process enabled all IPs (but particularly the applicant and the Wilton parties) to review and respond to a range of possible outcomes that the Panel might recommend to address the absence of agreement and provide their views upon them.

7.0.5 These final statements and the responses to the final questions form the basis of the Panel's Recommended Draft DCO, which is included as Appendix A to this report.

7.1.8 Version 4 DCO [REP-251] (Change log [REP-253]) included clarification of the responsibilities of the MMO and changes to ensure that the SoS receives and certifies the following plans and documents:

- outline Code of Construction Practice;
- draft fisheries liaison plan;
- In Principle Monitoring Plan; and
- outline post construction maintenance plan.

The Panel had identified these as key to securing environmental mitigation.

7.1.9 Version 5 DCO [REP-374] (Change log [REP-376]) set out changes that were being considered regarding consent to transfer benefit of the Order to address the MMO's concerns.

7.1.10 Version 6 DCO [REP-426] (Change log [REP-428]) corrected errors identified by the applicant and responded to further matters raised in oral responses given at hearings, together with matters arising from relevant representations, written representations and statements of common ground were then used to develop an Examining Authority commentary on the draft DCO, which aimed to take all outstanding matters raised up to that point into account. This was published as the Consultation Draft DCO [PD-048 on 23 December 2014]. Submissions on the form and content of the DCO that the Panel might recommend were sought.

7.1.11 A period until 19 January 2015 was provided for the submission of written representations on the Consultation Draft DCO [PD-048], following which the applicant was requested to provide a consolidated preferred draft DCO, taking full and reasoned account of all matters raised in the examination up to that point. This was provided as DCO Version 7 [REP-499-501], the content of which is addressed in detail in section 7.2 below.

7.1.12 On the basis that, all IPs and other persons participating in the examination were provided with opportunities to participate in oral hearings, to comment on the Consultation Draft DCO [PD-048] and in turn were able to respond to DCO Version 7 [REP-499-501], the Panel is satisfied that iterations of the draft DCO prior to Version 7 have to a large extent passed into history. We do not analyse those documents in any further detail here.

7.2 TOWARDS THE RECOMMENDED DRAFT DCO

7.2.1 This part sets out the Panel's detailed reasoning on the DCO as recommended together with all changes proposed to be made to it, in response to issues which arose from Panel's Consultation Draft DCO [PD-048] responses to that consultation by IPs and further written representations that raised DCO-relevant matters after the DCO consultation had taken place.

- 7.2.2 It takes account of representations made for Deadline VIII (19 January 2015) by the applicant [REP-467-468], a draft DCO Version 7 [REP-499-500] and change log [REP-501] prepared in response to the consultation draft DCO. The applicant sought to address as many of the outstanding concerns from the first stage of the examination as they considered that they were able to address in DCO Version 7.
- 7.2.3 A significant number of the changes fall into the following types:
- non-substantive changes, to place the DCO into conformity with the Statutory Instrument template;
 - non-contentious or non-substantive changes to remedy minor technical drafting concerns which do not materially affect the examined proposal; or
 - confirmation of non-contentious changes proposed by the Panel in the notes to our Consultation Draft DCO, for example to confirm references to a plan or drawing.
- 7.2.4 The DCO version 7 became what is referred to below as the applicant's preferred draft and changes to it from the Panel's Consultation Draft DCO are all addressed below.
- 7.2.5 The applicant also submitted an updated Hierarchy of Offshore and Onshore Plans that are referred to within the DCO, many of which secure mitigation [REP-494].
- 7.2.6 In addition to the applicant, the following IPs made submissions that responded to the Panel's DCO consultation and these are also taken into account in the Panel's reasoning.

Responses to the draft as a whole

- **MMO**
- Submissions from the MMO providing comprehensive commentary on the draft DCO, with particular reference to the DMLs [REP-459][REP486][REP-533].
-
- **The Crown Estate**
- Submissions from The Crown Estate providing commentary on the draft DCO and addressing the question of Crown consent to the provisions of the DCO [REP-482][REP-544].

Responses relating to the natural environment and mitigation measures

- **NE**
- Submissions from NE providing commentary on the draft DCO and noted no wish to make further submissions at Deadlines X and XI [REP-462][REP-485][REP-542][REP-549].

Responses relating to protective provisions

- **Northumbrian Water Ltd (NWL)**

- Submissions from NWL seeking to resolve protective provisions [REP-383].
- **National Grid Electricity Transmission (NGET)**
- Submissions from NGET, seeking to resolve commercial agreements and protective provisions [REP-458][REP530][REP-543].
- **Northern Powergrid (North East) Ltd (NPG)**
- Submissions from NPG, confirming resolution of commercial agreements and withdrawing outstanding representations [REP-531].

Responses relating to the Wilton Complex

- **Sembcorp**
- Submissions from Sembcorp in respect of compulsory acquisition and protective provisions for the Wilton Complex [REP-483][REP-540][REP-550].
- **SABIC**
- Submissions from SABIC in respect of compulsory acquisition and protective provisions for its plant in the Wilton Complex [REP-463][REP-487][REP-541][REP-548].

Final responses from the applicant

- Submissions responding to the MMO with post preferred draft DCO changes [REP-546]; and
- Submissions responding to Sembcorp (and SABIC) with post preferred draft DCO changes [REP-547].

7.2.7 Some of the issues raised in these submissions address progress in ongoing negotiations between the applicant and IPs about matters of detail where there is relatively little contention. For example, submissions from NWL, NGET and NPG record progress towards agreement on protective provisions and commercial agreements. The major outstanding subject matters subject to unresolved contention after the submission of the applicant's preferred draft DCO are as follows:

- matters relating to marine construction and operation and the DMLs, raised by the MMO;
- matters relating to securing decommissioning, raised by the Panel and NE; and
- disputed provisions for the Wilton integrated petrochemical facility (the Wilton Complex), affecting the interests of freeholders Sembcorp and major plant operators SABIC.

7.2.8 These are addressed immediately below on a subject matter basis. This part then concludes by consideration of the remaining provisions of the draft DCO that have been the subject of any outstanding

concern by the Panel or IPs, taken in part and schedule order. Recommendations for changes are made in respect of those matters that applicant's preferred draft DCO has not addressed.

Marine Considerations

7.2.9 The MMO made submissions following its consideration of the Consultation Draft DCO and the applicant's preferred draft DCO [REP-459] expressing concern at the applicant's proposed approach to:

- article 2 (interpretation) and related matters of interpretation;
- article 8 (transfer of benefit); and
- article 10 (power to make agreements).

At the core of each of these concerns was the view that the applicant was providing a level of flexibility in the DCO that was not warranted and that would provide the MMO with insufficient certainty as to who (at any one time) would be responsible for the development or operation of the application proposal. If transfers of benefit were to take place, the MMO considered that it needed a means to know who would be responsible for construction or operation as the case may be and in turn was subject to the benefit and burden of the Order or parts of it.

7.2.10 The power to make agreements was an equivalent concern, as this supports the ability of the undertakers / Bizcos to assign duties and benefits between themselves by agreement.

7.2.11 The applicant set out its response [REP-503] which the Panel has considered. This largely acceded to the MMO's definitional concerns and set out a range of amendments that have been included in the applicants preferred draft DCO.

7.2.12 On article 8 the applicant strongly resisted, basing its view on the approach taken to the transfer of benefit in the Hornsea One made Order. For commercial and risk control reasons, the applicant wishes to be able to transfer all or part of the benefit of the order including all or part of the benefit of a DML - in effect meaning that the application proposal might be subdivided into tranches smaller than array A and array B, within those works areas.

7.2.13 The Hornsea Order provides that the undertaker, with the consent of the SoS may transfer to another person any or all of their benefit of the provisions of this Order (including the deemed marine licences) and such related statutory rights.

7.2.14 The examining authority's report of findings and conclusions for Hornsea Project One noted: -

"... if it is legal then it should not be refused, but must be made a practicable proposition. The ExA's view is that the applicant's final proposals for Article 34 make this both practicable and transparent,

there. It has reviewed the applicant's drafting in requirement 15 which provides that '[t]he submitted scheme shall accord with the principles set out in the Outline Decommissioning Statement.' It is satisfied that the security for decommissioning is present, but that the subsequent discretion of the SoS under the 2004 Act has not been fettered.

7.2.25 Finally, on a separate matter, NE made clear that it is content that all plans required to secure appropriate mitigation have been captured in the DMLs. However, it requested that all plans which have been referred to within the DMLs that have not been defined, should be so defined. The applicant's preferred draft DCO has included provision in each DML defining the relevant plans. Having had sight of these changes, NE confirmed that it had no further submissions to make.

7.2.26 The Panel is satisfied that the recommended draft DCO addresses NE's concerns, without a requirement for any further changes.

The Wilton Provisions

7.2.27 The most significant element of dispute around the development of the DCO in the examination process related to the development of protective provisions for the Wilton Land and Wilton Complex. The applicant, Sembcorp and SABIC (the Wilton Parties) were able to reach broad agreement that protective provisions (the Wilton Provisions) were necessary (DCO Schedule 8 Part 6). However, as is recorded in Chapter 4 above, at the end of the examination there was still substantial disagreement on the precise form which those provisions should take. Whilst the Panel encouraged negotiations between the parties and held hearings seeking agreement, it became clear that full agreement could not be achieved by the examination closing date.

7.2.28 The Panel's approach to this disagreement in DCO terms was to ensure that:

- the applicant had stated its preferred form of the draft Wilton Provisions;
- the Wilton Parties had equivalently stated their preference in an alternative form of the draft Wilton Provisions;
- the differences between these and positions and the reasons for them were understood by the parties and by the Panel;
- each party made a 'statement of reservations' in which the matters on which there was outstanding disagreement were made clear;
- at the same time, a Rule 17 question process was used to explore the parties views on a wide range of alternative solutions that the Panel could consider.

It follows that all IPs and affected persons to whom the Wilton Provisions were relevant had a full and fair opportunity to make their case on the development of these provisions to the Panel. This in turn

ensures that, whilst the Panel makes recommendations below in respect of protective provisions that were not fully agreed by the applicant or the Wilton Parties, there are no aspects of the provisions as recommended by the Panel that have not been considered by both the applicant and the Wilton Parties.

- 7.2.29 The Panel commenced its consideration of the DCO provisions by considering whether the nature of the disagreement between the applicant and Wilton Parties was so substantial that it would not be possible to put forward Provisions of any description as a matter of principle, and so the Order would have to fail. Neither the applicant nor the Wilton Parties agreed that this was the case. The Panel is satisfied that meaningful and effective Wilton provisions can be included in a recommended Order.
- 7.2.30 In such circumstances, the Panel has made recommendations that adjudicate between the position of the applicant and the positions of the Wilton Parties. Its starting point has been the applicant's preferred draft Wilton Provisions as set out in DCO v7 [REP-499]. The Panel has recommended amendments drawn from the Wilton Parties representations [REP-540, 541, 547, 548 and 550], whilst also taking full account of the applicant's responses to these [REP-536, 537, 539 and 547].
- 7.2.31 As is set out in Chapter 4 above, in the light of these submissions, the Panel agreed as follows.
- Changes to the applicant's preferred draft Wilton Provisions are required to address the important and relevant concerns raised by the Wilton Parties, enabling existing operations, employment, chemical production and economic benefit to be protected, which we find to be important and relevant and upon which we have placed substantial weight.
 - However, these changes must not be of a magnitude that leaves the undertakers with an un-implementable Order and projects (because if they were of this magnitude, then the Panel would not consider it appropriate to recommend that the Order be made in such terms).
- 7.2.32 The Panel's recommended changes in summary are as follows.
- The Wilton Parties sought to dis-apply the Order powers conferred by article 15 (temporary stopping up of streets), article 16 (access to works), article 18 (discharge of water), article 20 (authority to survey and investigate the land), article 22 (compulsory acquisition of land), article 25 (compulsory acquisition of rights), article 26 (private rights of way), article 28 (rights under or over streets), article 29 (temporary use of land for carrying out the authorised project) and article 30 (temporary use of land for maintaining the carrying out the authorised project) ("the identified powers") unless consent in writing has been obtained from the relevant Wilton party.

- The Panel agrees with this request, but on the basis that such consent must not be unreasonably withheld (a provision to which the Wilton parties were prepared to agree).
- Having regard to the applicant's statement of reservations, the Panel considers that it is then very important to ensure that the Wilton Provisions specify that the undertakers may refer the question of consent unreasonably withheld to an expert person for determination. It should be noted that the applicant and the Wilton parties both agreed on the necessity of providing for expert determination to resolve disputes under these provisions - they did not reach final agreement as to what powers would be within the scope of this person's appointment. What the Panel recommends to be now paragraph 19 achieves this outcome.
- The Wilton Parties draft Wilton Provisions sought the inclusion of decision guidelines for the expert person, essentially to ensure that Wilton operational and economic considerations must be taken into account, whilst also balancing these against a requirement that the undertakers operational and economic considerations must equally be taken into account. The applicant had opposed the Wilton draft on this point, but the Panel agrees that it is necessary for the expert person to be required to consider these matters. If they do so however, the Panel also considers that the decision guidelines must be reasonable and balanced and must equally require the expert person to have regard to the undertakers powers to deliver a NSIP and the significance of the application proposal.
- The applicant was concerned that if the Wilton Parties obtained a consent process to be discharged before the undertakers could exercise any of the identified powers, the Wilton Parties could subject the application proposal to unreasonable delay.
- To address this, the Panel has recommended what amounts to a right of appeal benefiting the undertakers. In circumstances where a Wilton Party does not respond to and decide a consent application after thirty days, the undecided application for consent is deemed to have been unreasonably withheld and can be referred to the expert person for determination. In this way, the Wilton Parties cannot frustrate the project.
- The Panel has agreed with the applicant's proposal that there should be a time limit on operation of the expert's jurisdiction of sixty days. This is again to ensure timeliness and reduce the risk of delay to the application proposal.
- The applicant and the Wilton Parties both agreed that an expert determination would be final and binding, unless there was a 'manifest error' in its outcome. The Panel considers that it is important to ensure that a dispute about what constitutes 'manifest error' does not lead to uncertainty. For this reason, it recommends that in any such instance, arbitration under article 44 of the DCO would be the means to finally address any such dispute.

7.2.33 The Panel's recommended provisions accede to Sembcorp's request in oral hearings that the undertaker should join the existing Wilton noise

liaison committee, as its works and operations would be perceived by neighbouring residents as 'Wilton' problems. This appears to be a reasonable request, without which there will be activities within Wilton that are accounted upon to this committee, and other activities which are not. This is provided in paragraphs 14 and 15 of the provisions.

- 7.2.34 Using these means, the Panel agrees that it is appropriate to enable all Part 3 and Part 5 powers in the DCO to be capable of being exercised in the Wilton Land and Wilton Complex, once consent for their exercise has been applied for and granted. The potentially harmful effects of the applicant's unalloyed exercise of these powers on the Wilton operations has been made subject to an expert resolution process that would apply before any of the powers identified in the first bullet point of paragraph 7.2.32 above could be exercised. This would provide greater certainty to the Wilton Parties than the applicant's alternative, which would have left the powers subject to 'best endeavours' provisions requiring the undertakers to consider Wilton Parties interests and avoid harm to them.
- 7.2.35 The applicant's best endeavours provisions 'to minimise , as far as reasonably practicable' the effect of the operation of the unalloyed versions of " the identified powers" (as set out in the DCO version 7 in paragraph 3, are recommended to be removed from the draft DCO. This is because they would leave the Wilton Parties subject to the substantial concern that the identified powers could be used without an expert determination of the justification for project delivery arrangements that would harm the manufacturing capability at Wilton and the economic benefit flowing from it, which that Panel has found to be relevant and important.
- 7.2.36 A worst case scenario would be that an undertaker seeks consent to commence the operation of say article 25(compulsory acquisition) powers in Wilton and the relevant Wilton Party refuses consent or fails to deal with the application within thirty days. The undertaker would then either change the delivery timetable and arrangements to address the concerns raised (accepting them as reasonable) or refer the matter to the expert for determination (as unreasonable or undetermined). Sixty days after a reference to the expert there would be a binding decision taking account of the concerns raised and mitigations sought by the Wilton party and the public interest in the Wilton operations as well as the public interest justification for the applicant's request.
- 7.2.37 Only if the expert were to make what all parties refers to as 'manifest error' would there be any further delay, and there the Panel recommends that it is necessary for article 44 to apply and to deliver a final and binding determination shortly thereafter.
- 7.2.38 It appears that these recommended amendments address the Wilton Parties' concerns and provide a clear means whereby these can be taken into account before the identified powers are used by the

undertaker, but would not provide any significantly likelihood of substantial delay or uncertainty in the project.

- 7.2.39 The Panel recommends that the DCO should be revised to include Schedule 8 Part 6, the Wilton Provisions, as set out in Appendix A.

Other Protective Provisions

- 7.2.40 In addition to the submissions about and after the Consultation Draft DCO made by the Wilton parties, second stage written representations about relevant protective provisions were made by Northumbrian Water Ltd (NWL)[REP-383], National Grid Electricity Transmission (NGET)[REP-458][REP530][REP-543] and Northern Powergrid (North East) Ltd (NPG)[REP-531]. Each of these bodies reached agreement with the applicant over the protection of their interests and these agreements are reflected in the applicants preferred draft DCO.
- 7.2.41 There are no protective provisions in relation to civil and military aviation, ports and harbours, shipping and navigation. However, there are no outstanding concerns from the CAA, the MoD, any airport or aviation undertaking, port, harbour, shipping or navigation undertakers. The Panel is satisfied that no additional provisions on these subject matters are required.

The Remaining Provisions of the DCO

- 7.2.42 The remainder of this part addresses the draft DCO components as follows:

- articles (articles 1 - 44);
- authorised development (Schedule 1, Part 1);
- ancillary works (Schedule 1, Part 2);
- requirements (Schedule 1, Part 3);
- access and street works (Schedules 2, 3 and 4);
- compulsory acquisition and temporary possession (Schedules 5 and 6);
- form and function of the DMLs;
- generation assets DMLs (Schedule 7, Parts 1 (A and B) and 2 (A and B)); and
- transmission assets DML (Schedule 7, Parts 3 (A and B) and 4 (A and B)); and
- protective provisions (Schedule 8).

Articles (articles 1 - 44)

- 7.2.43 The principal powers proposed to be granted in the draft DCO articles are as follows:

- to carry out the authorised development (including associated development) and ancillary works relating to the construction of two offshore wind farms (project A to be delivered by Bizco 2 and

APPENDICES

**APPENDIX A: RECOMMENDED DEVELOPMENT CONSENT
ORDER**

201X No.

INFRASTRUCTURE PLANNING

**The Dogger Bank Teesside A and B Offshore Wind Farm Order
201X**

Made - - - - [***] 201X

Coming into force - - [***] 201X

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 - PART 2A — Licensed Marine Activities – Marine Licence 2: Project B Offshore (Generation – Work Nos. 1B and 2T)
 - PART 2B — Conditions
 - PART 3A — Licensed Marine Activities – Marine Licence 3: Project A Offshore (Transmission - Work Nos. 2A, 3A and 2T)
 - PART 3B — Conditions
 - PART 4A — Licensed Marine Activities – Marine Licence 4: Project B Offshore (Transmission - Work Nos. 2B, 3B and 2T)
 - PART 4B — Conditions
- SCHEDULE 8 — Protective Provisions
 - PART 1 — Protection for electricity, gas, water and sewerage undertakers
 - PART 2 — Protection of Network Rail Infrastructure Limited
 - PART 3 — For the protection of operators of electronic communications code networks
 - PART 4 — Protection of offshore cables and pipelines
 - PART 5 — For the protection of the Environment Agency
 - PART 6 — For the protection of owners and operators at Wilton

An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 made under sections 37, 42, 48, 51, 56, 58, 59 and 232 of the Planning Act 2008 (“the 2008 Act”)(a) for an Order under sections 37, 55, 115, 120, 121, 122, 140 and 149A of the 2008 Act;

The application was examined by an Examining authority appointed by the Secretary of State pursuant to Chapter 4 of the 2008 Act;

The Examining authority, having considered the national policy statements relevant to the application and concluded that the application accords with these statements as set out in section 104(3) of the 2008 Act;

The Examining authority, having considered the objections made and not withdrawn, and the application with the documents that accompanied the application, has recommended the Secretary of State 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 in the proposals;

The notice of the Secretary of State’s determination was published;

As the Secretary of State in exercise of the powers conferred by sections 114, 115, 120, 121, 122 and 149A of the 2008 Act the Secretary of State makes the following Order.

(a) 2008 c.29

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Dogger Bank Teesside A and B Offshore Wind Farm Order and comes into force on 201X.

Interpretation

2.—(1) In this Order—

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

“the 1965 Act” means the Compulsory Purchase Act 1965(b);

“the 1980 Act” means the Highways Act 1980(c);

“the 1990 Act” means the Town and Country Planning Act 1990(d);

“the 1991 Act” means the New Roads and Street Works Act 1991(e);

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

“the 2008 Act” means the Planning Act 2008(g);

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

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

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- (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.
- (b) 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 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.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.
- (c) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.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 (c.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 (c.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 (c.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 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.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 (c.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 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (d) 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 (c.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.
- (e) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (f) 2004 c.20
- (g) 2008 c.29.
- (h) 2009 c.23.

“array area” means the area within which Work Nos. 1A(a) to (e) and 1B(a) to (e) may be constructed which are the areas enclosed within a straight line drawn between points whose coordinates are set out in the respective tables in Part 1 of Schedule 1 to this Order and which are shown on the Offshore Order Limits and Grid Co-ordinates Plan;

“Array Location and Layout Plan” means the plan which details the specification and layout of all wind turbine generators, HVAC cables, substations, platforms and meteorological masts;

“authorised development” means the development and associated development described in Part 1 of Schedule 1 (authorised project) and any other development 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;

“Bizco 2” means Doggerbank Project 2 Bizco Limited (Company number 07791977) whose registered office is 55 Vastern Road, Reading, Berkshire RG1 8BU;

“Bizco 3” means Doggerbank Project 3 Bizco Limited (Company number 07791964) whose registered office is 55 Vastern Road, Reading, Berkshire RG1 8BU;

“the 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;

“cable” includes, in respect of any onshore cable, direct lay cables and/or cables laid in cable ducts; and in respect of any cable whether onshore or offshore may include fibre optic cables;

“cable crossings” means the crossing of existing sub-sea cables and pipelines by the inter-array, inter platform and/or export cables authorised by this Order together with physical protection measures including cable protection;

“cable protection” means the measures to protect cables from physical damage and exposure due to loss of seabed sediment. The range of remedial cable protection parameters and technology options, to the extent assessed in the Environmental Statement, including, but not limited to, the use of bagged solutions filled with grout or other materials, protective aprons or coverings, mattresses, flow energy dissipation devices or rock and gravel burial;

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

“combined platform” means a single offshore platform constructed in an array area comprising two or more of any of the following—

- (a) an offshore collector platform;
- (b) an offshore converter platform;
- (c) an offshore accommodation or helicopter platform;

“commence” means either—

- (a) in relation to the licensed marine activities seaward of MHWS referred to in the deemed marine licences in Schedule 7 to this Order (deemed marine licence under the Marine and Coastal Access Act 2009) the first carrying out of any licensed marine activities authorised by the deemed marine licences except for the pre-construction surveys and monitoring; or
- (b) in relation to the activities landward of MLWS and beginning to carry out any material operation (as defined in section 155 of the 2008 Act) in respect of the authorised development, forming part of the authorised development other than operations consisting of site clearance, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “commencement” is to be construed accordingly;

“commercial operation” means—

- (a) in relation to the Project A Offshore works, the exporting, on a commercial basis, of electricity from the wind turbine generators comprised within those works; and

(b) in relation to the Project B Offshore works, the exporting, on a commercial basis, of electricity from the wind turbine generators comprised within those works;

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

“construction compound” means a secure temporary construction area associated within the onshore works, including temporary fencing, lighting and ground preparation, to be used for the location of site offices; general storage; storage of plant, cable drums, ducting and other construction materials; welfare facilities; car parking; waste management; lay-down areas; banded generators and fuel storage or any other means of enclosure of areas required for construction purposes;

“Dogger Bank Zone” means the Dogger Bank Offshore Wind Farm Zone located in the North Sea between 125 kilometres and 290 kilometres off the UK coast and extending over an area of approximately 8,660 km²;

“draft fisheries liaison plan” means the document certified as the draft fisheries liaison plan by the Secretary of State for the purposes of this Order;

“electrical converter substation and compound” means an electrical converter(s) housed within one or more converter halls and a compound containing electrical equipment including power transformers, switchgear, reactive compensation equipment, harmonic filters, cables, lightning protection systems including masts, control buildings, communications masts, back-up generators, access, fencing and other associated equipment, structures or buildings;

“Examining authority” means the Examining authority appointed under the 2008 Act to examine the application to this Order;

“the Environmental Statement” means the document certified as the Environmental Statement by the Secretary of State for the purposes of this Order and submitted with the application together with any supplementary or further environmental information submitted in support of the application;

“gravity base foundation” means a foundation type which rests on the seabed and supports the wind turbine generator, meteorological station or offshore platform primarily due to its own weight and that of added ballast, with or without skirts or other additional fixings, which may include associated equipment including J-tubes and access platforms and separate topside connection structures or an integrated transition piece. Sub types for wind turbine generators and meteorological stations include conical gravity base and flat-based gravity base. Sub types for platforms include: offshore platform conical or flat-base gravity base foundations, and offshore platform semi-submersible gravity base foundations;

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

“horizontal directional drilling” is a steerable trenchless method of installing underground pipes, ducts and cables in a shallow arc along a prescribed underground bore path by using a surface launched drill;

“HVAC” means high voltage alternating current;

“In Principle Monitoring Plan” means the document certified as the In Principle Monitoring Plan by the Secretary of State for the purposes of this Order;

“the land plan” means the Land Plan Offshore and Onshore Land Plan as certified as the land plan by the Secretary of State for the purposes of this Order;

“maintain” includes upkeep, inspect, repair, adjust, alter, relay and remove, to the extent assessed in the Environmental Statement and any derivative of maintain is to be construed accordingly;

“MCA” means the Maritime and Coastguard Agency or any successor to its function;

“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 of the low water heights occurring at the time of spring tides which is also the outermost extent of the relevant planning authority jurisdiction;

“meteorological mast” or “meteorological station” means a fixed or floating structure housing or incorporating equipment to measure wind speed and other meteorological and oceanographic characteristics, including a topside which may house electrical switchgear and communication equipment and associated equipment, and marking and lighting;

“the Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of each deemed licence under the 2009 Act or any successor to its function;

“monopole foundation” means foundation options based around a single vertical pillar structure driven, drilled, or embedded into the seabed by means such as suction and/or gravity. This main support structure may change in diameter via tapers and abrupt steps. Sub types for wind turbine generators and meteorological stations include: monopole with steel monopile footing, monopole with concrete monopile footing, and monopole with a single suction-installed bucket footing;

“multileg foundation” means foundation options based around structures with several legs or footings. This includes jackets, tripods, and other structures which include multiple large tubulars, cross-bracing, or lattices. Multileg foundations may be fixed to the seabed by footings which are driven, drilled, screwed, jacked-up, or embedded into the seabed by means such as suction and/or gravity. Sub types for wind turbine generators and meteorological stations include multilegs with driven piles, drilled piles, screw piles, suction buckets, and/or jack up foundations. Sub types for platforms include: offshore platform jacket foundations (potentially using driven piles, suction buckets and/or screw piles) and offshore platform jack up foundations;

“National Grid substation” means the existing National Grid Electricity Transmission UK Substation located at Lackenby;

“offshore accommodation or helicopter platform” means a platform (either singly or as part of a combined platform) housing or incorporating some or all of the following: accommodation for staff during the construction, operation and decommissioning of the offshore works, landing facilities for vessels and helicopters, re-fuelling facilities, communication and control systems, electrical systems such as metering and control systems, small and large scale electrical power systems, J-tubes, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore collector platform” means a platform (either singly or as part of a combined platform) housing or incorporating electrical switchgear and/or electrical transformers, electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore converter platform” means a platform (either singly or as part of a combined platform) housing or incorporating high voltage direct current electrical switchgear and/or electrical transformers and other equipment to enable High Voltage Direct Current transmission to be used to convey the power output of the multiple wind turbine generators to shore including electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore platform” means any of the following—

- (a) an offshore accommodation or helicopter platform;
- (b) an offshore collector platform;

- (c) an offshore converter platform; or
- (d) a combined platform

“the Offshore Order Limits Plan and Grid Co-ordinates Plan” means the plans certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of this Order;

“offshore works” means the Project A Offshore works and the Project B Offshore works, the relevant shared works and any other authorised development associated with those works;

“offshore works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order;

“the Onshore Order Limits Plan and Grid Co-ordinates Plan” means the plans certified as the onshore Order limits and grid coordinates plan by the Secretary of State for the purposes of this Order;

“onshore works” means the Project A Onshore works, the Project B Onshore works, the shared works and any other authorised development associated with those works;

“onshore works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order;

“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;

“the Order limits” means—

- (a) the limits shown on the Offshore Order Limits and Grid Coordinates Plan within which the offshore works may be constructed as part of the authorised project; and
- (b) the limits shown on the Onshore Order Limits and Grid Coordinates Plan within which the onshore works may be constructed as part of the authorised project;

“outline Code of Construction Practice” means the document certified as the outline Code of Construction Practice by the Secretary of State for the purposes of this Order;

“outline post construction maintenance plan” means the document certified as the outline post construction 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(a);

“Project A” means the Project A Offshore works and the Project A Onshore works;

“Project A Offshore works” means Work Nos. 1A, 2A and 3A and any other authorised development associated with those works;

“Project A Onshore works” means Work Nos. 4A, 5A, 6A and 8A and any other authorised development associated with those works;

“Project B” means the Project B Offshore works and the Project B Onshore works;

“Project B Offshore works” means Work Nos. 1B, 2B and 3B and any other authorised development associated with those works;

“Project B Onshore works” means Work Nos. 4B, 5B, 6B and 8B and any other authorised development associated with those works;

“relevant planning authority” means Redcar and Cleveland Borough Council;

“relevant planning authority for the port” means Redcar and Cleveland Borough Council as the local planning authority responsible for the port used to service construction of offshore works and the local planning authority or authorities responsible for any port or ports outside the Redcar and Cleveland Borough which will be used to service construction of offshore works;

“restricted work area” means restricted work area shown on offshore works plans;

(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.

“requirements” means those matters set out in Part 3 Schedule 1 (requirements) to this Order;
“scheduled works” means the numbered works specified in Schedule 1 to this Order, or any part of them;

“scour protection” means measures to prevent loss of seabed sediment around foundation bases by use of bagged solutions filled with grout or other materials, protective aprons, mattresses, flow energy dissipation devices and rock and gravel burial;

“the shared works” means Work Nos. 2T, 7, 7L, 8S, 9 and 10A to 10K;

“statutory undertaker” means any person falling within section 127(8) of the 2008 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;

“streets and public rights of way plans” means the plans certified by the streets and public rights of way plans by the Secretary of State for the purposes of this Order;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

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

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

“undertaker” means —

- (a) in relation to the Project A Offshore works and the Project A Onshore works, Bizco 2;
- (b) in relation to the Project B Offshore works and the Project B Onshore works, Bizco 3;
and
- (c) in relation to the shared works, Bizco 2 or Bizco 3.

“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, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“wind turbine generator” means a structure comprising a tower, rotor with 3 blades, 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 transfer facilities and other associated equipment, fixed to a foundation; and

“works plans” means the plans certified as the onshore works plans and offshore works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(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 are to be taken to be measured along that work, except in respect of the parameters referred to in Part 2 requirements 3 to 12 and 18; and in Schedule 7 deemed marine licences Part 1B Conditions 3 to 11 and Part 2B Conditions 3 to 11; and Part 3B Conditions 3 to 8 and Part 4B Conditions 3 to 8.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(5) References in this Order to points identified by letters are to be construed as references to the points so lettered on the onshore works plans.

(6) A reference in this Order to a co-ordinate is a reference to World Geodetic System 1984 datum (WGS84).

(7) The expression “includes” is to be construed without limitation.

- (c) the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

10.—(1) Without affecting the other provisions of this Part of this Schedule, the undertaker must indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or in any groundwater, which is caused by the construction of any of the specified works or any act or omission of the undertaker its contractors, agents or employees whilst engaged upon the work.

(2) The Agency must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

11. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

12. Any dispute arising between the undertaker and the Agency under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 44 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and after notice in writing by one to the other.

PART 6

For the protection of owners and operators at Wilton

1.—(1) The following provisions, unless otherwise agreed in writing between the parties, have effect.

(2) In this Part of this Schedule:-

“alternative apparatus” means alternative apparatus adequate to serve the owner of the apparatus in question in a manner no less efficient than previously;

“apparatus” means mains, pipes, cables, sewers, drains, ditches, watercourses or other apparatus and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“construction access plan” means a plan identifying how access will be maintained to land within the Wilton Complex during the construction of the authorised project and shall identify—

- (a) any restrictions on access, including the timing of restrictions;
- (b) any alternative accesses or routes of access which may be available to the undertaker using the Wilton Site Roads within the Wilton Complex;
- (c) details of how the needs and requirements of persons with operations at the Wilton Complex (including their needs and requirements in relation to any programmed works which they have notified to the other operators at the Wilton Complex as of the date when the plan is published) have been taken into account in preparing the plan.

“description of the works” means a detailed description of those works and includes full detail of any protective measures proposed to be incorporated as part of those works (for example to safeguard any apparatus the removal of which has not been required by the undertaker under paragraph 4 (2));

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

“maintenance access plan” means a plan identifying how access will be maintained to land within the Wilton Complex during the maintenance of the authorised project and shall identify—

- (d) any restrictions on access, including the timing of restrictions;
- (e) any alternative accesses or routes of access which may be available to the undertaker using the Wilton Site Roads within the Wilton Complex;
- (f) details of how the needs and requirements of persons with operations at the Wilton Complex (including their needs and requirements in relation to any programmed works which they have notified to the other operators at the Wilton Complex as of the date when the plan is published) have been taken into account in preparing the plan.

“major works” means works by any person requiring the closure diversion or regulation of any of the Wilton Site Roads;

“owner” in the context of the Wilton Land means any party with an interest in the land, with rights in, on under over the Wilton Land or with apparatus in, on or under the Wilton Land and in the context of the Wilton Complex means any owner or occupier within the Wilton Complex and their successors in title;

“operator” means any person who is responsible for the construction, operation, use, inspection, adjustment, alteration, repair, maintenance, renewal, removal or replacement of any apparatus or alternative apparatus in the Wilton Complex but who is not an owner in the context of the Wilton Land or the Wilton Complex.

“Wilton Complex” means the industrial and manufacturing plant shown edged red on Plan T-MIS-0065-01;

“Wilton Land” means the Wilton Complex and Plots 42A, 42B, 43A, 43B, 44A, 44B, 63A, 63B, 64, 65, 66, 67A, 67B, 67C, 67D, 67E, 67F, 68, 86 and 87; and

(3) “Wilton Site Roads” mean any of the roads shown in [red] on T-MIS-0066-01, to the extent these are within the Wilton Complex and includes any part of such a road or part of the width of such a road.

2. The following provisions of this Part of this Schedule have effect for the benefit of owners and operators within the Wilton Complex and owners of the Wilton Land.

3.—(1) The undertaker must not exercise the powers conferred by article 15 (temporary stopping up of streets), article 16 (access to works), article 18 (discharge of water), article 20 (authority to survey and investigate the land), article 22 (compulsory acquisition of land), article 25 (compulsory acquisition of rights), article 26 (private rights of way), article 28 (rights under or over streets), article 29 (temporary use of land for carrying out the authorised project) and article 30 (temporary use of land for maintaining the carrying out the authorised project) (together “the identified powers”) over the Wilton Land without the consent in writing of the relevant owner of the Wilton Land over whose land the exercise of any of the identified powers is sought, or without the written consent of the relevant operator where the exercise of any identified powers affects apparatus in the Wilton Land that is operated for the benefit of the Wilton Complex.

(2) Where a person is asked to give consent pursuant to paragraph 3 (1), such consent must not be unreasonably withheld.

(3) In the event that—

- (a) the undertaker considers that consent has been unreasonably withheld it may refer the request to an expert appointed in accordance with paragraph 19 for determination.

(b) an owner or operator fails to determine a request for consent within a period of 30 days consent shall be deemed to have been unreasonably withheld and the undertaker may refer the request to an expert appointed in accordance with paragraph 19 for determination.

(4) The undertaker must not in the exercise of the powers of this Order acquire, appropriate, extinguish or suspend any rights in land where the authorised project can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment or suspension.

(5) The undertaker in the exercise of the powers of this Order must at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on owners and operators including any disruption to access and supplies of utilities and other services which are required by them in order to carry out their operations.

(6) Save in the case of emergency, or as otherwise provided for within this Part, the undertaker shall give the affected owners of the Wilton Land a minimum of 30 days notice of the proposed exercise of any of the identified powers.

(7) Before carrying out any works on any part of the authorised project on the Wilton Land the undertaker must put in place a policy of insurance, consistent with the terms proposed in this sub-paragraph or as may be determined by the expert in accordance with paragraph 19, with a reputable insurer against consequential loss and damage suffered by owners of the Wilton Land and evidence of that insurance shall be provided on request to owners of the Wilton Land.

(8) Not less than 90 days before the carrying out of any works on any part of the authorised project on the Wilton Land, or when proposing to change the terms of the insurance policy, the undertaker must notify the owners of the Wilton Land of details of the terms or cover of the insurance policy that it proposes to put in place including the proposed level of the cover to be provided.

(9) The undertaker shall maintain insurance in relation to works or the use of the authorised project affecting owners of the Wilton Land during the operation of the authorised project at the level specified in the notice of proposed insurance.

(10) If any owner or operator believes that any proposed exercise of the identified powers is in breach of paragraph 3(1) or 3(4) or there is a dispute about the terms or level of cover of the proposed insurance to be provided under paragraph 3(7) then they shall be entitled to refer the matter to an expert for determination under paragraph 19 and the undertaker must not exercise the relevant identified power(s) until that determination has been provided.

(11) Nothing in this Part of the Schedule shall apply to apparatus in respect of which the relations between the undertaker and an owner are regulated by the provisions of Part 3 of the 1991 Act.

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any estate, interest or right in any land in which any apparatus is placed, that apparatus must not be removed and any right to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation and equivalent rights for the alternative apparatus have been granted to the owner or operator of the apparatus.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the owner or operator in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case the undertaker must afford to the owner the necessary facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed

between the owner or operator in question and the undertaker or in default of agreement settled by a person appointed under paragraph 19.

(4) The owner or operator in question must, after the alternative apparatus to be provided or constructed has been agreed or determined by an expert in accordance with paragraph 19, and after the grant to the owner of any such facilities and rights as are referred to in sub-paragraph (2), and also after the expiration of any applicable notice period in respect of the works under the Pipelines Safety Regulations 1996, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the owner or operator in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the owner or operator, shall be executed by the undertaker without unnecessary delay to an appropriate standard and in a safe manner.

(6) In the event that works are executed by the undertaker in accordance with sub-paragraph (5) the owner or operator of the apparatus must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.

(7) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3,000 millimetres of the apparatus without the written agreement of the owner or operator such agreement not to be unreasonably withheld.

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to an owner or operator facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the owner or operator in question or in default of agreement determined by an expert in accordance with paragraph 19 such terms to be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along the authorised development, the expert must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised project and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to and be no less favourable as a whole than the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised project for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the expert materially worse than the rights enjoyed by them in respect of the apparatus to be removed, the expert must make such provision for the payment of compensation by the undertaker to that owner or operator as appears to the expert to be reasonable having regard to all the circumstances of the particular case.

6.—(1) Not less than 30 days before starting the execution of any works of the type referred to in paragraph 4(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 4(2), and in all cases where such works are within 3,000 millimetres of any apparatus the removal of which has not been required by the undertaker under paragraph 4(2), the undertaker must submit to the owner or operator in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may

be made in accordance with sub-paragraph (3) by the owner or operator for the alteration or otherwise for the temporary or permanent protection of the apparatus, or for securing access to it, and the owner or operator must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of those works.

(3) Any requirements made by an owner or operator under sub-paragraph (2) must (except in circumstances where the same reasonably arise from the owners or operators watching, monitoring and inspection of those works) be made within a period of 30 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it and where the works relate to the installation or construction of the authorised project such requirements may require the protective measures referred to in sub-paragraph (2) to be retained in place at any time that the authorised project is installed.

(4) If an owner or operator in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 3 to 7 must apply as if the removal of the apparatus had been required by the undertaker under paragraph 4(2).

(5) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 30 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph must apply to and in respect of the new plan, section and description.

(6) On the reasonable and evidenced request of an owner or operator affected by proposed works the undertaker shall extend the periods in this paragraph by a reasonable time.

(7) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall undertake those works in such manner as has regard to the potential lack of suitable temporary or permanent protection of the owner's or operator's apparatus and must give to the owner or operator in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

7.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to an owner or operator the reasonable expenses incurred by that owner or operator in, or in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus under any provision of this Part of this Schedule;
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;
- (c) the survey of any land, apparatus or works, the watching, inspection, superintendence and monitoring of works or the installation or removal of any temporary works in consequence of the exercise by the undertaker of any power under this Order;
- (d) the design, project management, supervision and implementation of works;
- (e) the negotiation and grant of necessary rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus;
- (f) monitoring the effectiveness of any protective measures referred to in paragraph 6(3) and the installation of any additional protective measures reasonably required in order to deal with any deficiency in the expected level of protection afforded by those protective measures; and
- (g) any other work or thing reasonably required in consequence of the exercise by the undertaker of any such power or by the service by the undertaker of any notice, plan, section or description, within a reasonable time of being notified by the owner that it has incurred such expenses.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by an expert in accordance with paragraph 19 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the owner in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) In determining whether the placing of apparatus of a type or capacity or of particular dimensions or the placing of apparatus at a particular depth, as the case may be, are necessary under sub-paragraph (3) regard must be had to current health and safety requirements, current design standards, relevant good practice and process design specification.

(5) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must 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 must be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to an owner or operator in respect of works by virtue of sub-paragraph (1) must, if it confers a financial benefit on the owner or operator by deferment of the time for renewal of the apparatus in the ordinary course of that owner's business practice, be reduced by the amount which represents that benefit.

8.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the authorised project and any such works referred to in paragraph 4(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an owner or operator, or there is any interruption in any service provided by or operations of the owner or operator, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that owner or operator in making good such damage or restoring the supply and operations; and
- (b) make compensation to that owner or operator and any other person whose supply or operations are affected by the interruption for any other expenses, loss, damages, penalty or costs incurred by them,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an owner or operator, its officers, servants, contractors or agents.

(3) An owner or operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of any claim made against the owner or operator by any third party shall be made without the consent of the undertaker which, if it withholds such

consent, must have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

9.—(1) The undertaker must not in the exercise of the powers conferred by this Order unreasonably delay or prevent the construction, installation, adjustment, alteration, operation, use, repair, maintenance, renewal, inspection, removal or replacement of apparatus in the Wilton Land.

(2) If an owner or operator considers that the undertaker is in breach of paragraph (1) it may refer the matter to an expert for determination pursuant to paragraph 19.

10.—(1) Subject to sub-paragraph (2) the undertaker will afford to owners of the Wilton Land rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of apparatus in the Wilton Land acquired by the undertaker or affecting the rights of, or permitted under the rights acquired by, the undertaker granted upon such terms and conditions to be materially no worse than the terms and conditions that apply to similar apparatus affecting the authorised works as may be agreed between the undertaker and the person wishing to construct, adjust, alter, use, repair, maintain, renew, inspect, remove and replace apparatus in question or in default of agreement determined by an expert in accordance with paragraph 19.

(2) In settling the terms and conditions of any grant of rights regard shall be had to the terms and conditions applicable from time to time to the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and/or replacement of other apparatus within the Wilton Complex.

11.—(1) Before carrying out any construction works affecting access rights over the Wilton Site Roads, the undertaker must prepare a draft construction access plan and, publicise and consult upon this draft plan with owners and operators in the Wilton Complex.

(2) The undertaker must take account of the responses to consultation referred to in sub-paragraph (1) before approving the construction access plan.

(3) No works affecting access rights over the Wilton Site Roads shall commence until thirty days after the approved construction access plan has been served on owners and operators in the Wilton Complex.

12.—(1) Before carrying out any maintenance works affecting access rights over the Wilton Complex, the undertaker must prepare a draft maintenance access plan and, publicise and consult upon this draft plan with owners and operators in the Wilton Complex.

(2) The undertaker must take account of the responses to consultation referred to in sub-paragraph (1) before approving the maintenance access plan.

(3) No works affecting access rights shall commence until thirty days after the approved construction access plan has been served on owners and operators in the Wilton Complex

13.—(1) In preparing a construction access plan pursuant to paragraph 11 or a maintenance access plan pursuant to paragraph 12 the undertaker shall—

(a) establish the programme for any other major works within the Wilton Complex and shall programme the construction or maintenance of the authorised project to prevent (or, if such conflict cannot be reasonable prevented, to minimise) any conflict between the construction or maintenance of the authorised project and the programmed major works; and

(b) establish where an owner or operator has a reasonable expectation to exercise access rights over particular Wilton Site Roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby it can be met.

(2) For the purposes of this paragraph “programmed” means that the owner of the Wilton Site Roads has been notified of the dates between which works are programmed to be carried out.

(3) In exercising any right of access over the Wilton Site Roads, the undertaker must repay to the owner the reasonable expenses incurred by that owner in operating, repairing, maintaining, renewing, inspecting and replacing that Wilton Site Road together with any perimeter

gatehouses and other security serving the Wilton Complex having regard to user within a reasonable time of being notified by the owner that it has incurred such expenses.

(4) On the reasonable and evidenced request of an owner or operator in the Wilton Complex affected by proposed works the undertaker shall extend the periods in this paragraph by a reasonable time.

(5) Where a reference is made to expert determination in accordance with paragraph 19 in relation to any disagreement about a construction access plan the appointed person shall have regard to—

- (a) whether major works were, at the date of the consultation already programmed to take place;
- (b) the extent to which the authorised project can be accommodated simultaneously with the programmed major works;
- (c) the usual practice in respect of conditions or requirements subject to which authorisation is given by the owner of the Wilton Site Road;
- (d) the undertaker's programme in respect of the authorised project and the extent to which it is reasonable for it to carry out the authorised project at a different time;
- (e) the availability (or non-availability) of other times during which the authorised project could be carried out;
- (f) the programme in respect of the major works and the extent to which it is reasonable for the owner or operator at the Wilton Complex to carry out the major works at a different time; and
- (g) the financial consequences of the decision on the undertaker and on any owner and operator in the Wilton Complex.

14. Before undertaking any work in the Wilton Land or exercising any rights relating to or affecting the Wilton Land the undertaker will consult with the owners of the Wilton Land.

15. Before undertaking any works in the Wilton Land or exercising any identified powers relating to or affecting owners or operators in the Wilton Complex the undertaker will participate in any relevant consultation groups operated in the Wilton Complex.

16. Before undertaking any construction works on the Wilton Land or commencing the operation of Schedule 1 Part 1 Work No 7 where any of these might reasonably be expected to give rise to significantly perceptible effects beyond the Wilton Land in terms of—

- (a) construction or operational noise and vibration management;
- (b) air quality including dust emissions;
- (c) waste management;
- (d) traffic management and materials storage on site;
- (e) water management (surface water and groundwater); or
- (f) artificial light emissions—

the undertaker will participate in any relevant community environmental liaison group that might from time to time be established between the owners or operators at the Wilton Complex and local residents.

17.—(1) Subject to sub-paragraph (2) in undertaking any works in the Wilton Land or exercising any rights relating to or affecting owners and operators in the Wilton Complex the undertaker will comply with such conditions, requirements or regulations relating to the health, safety, security and welfare as are operated in relation to access to or activities within the Wilton Complex.

(2) In carrying out any works as part of the authorised project the undertaker will not be bound by any condition, requirement or regulation that is—

- (a) introduced after the date on which notice of those works was given unless its introduction is by way of legislation or policy emanating from the government, any relevant government agency, local government or the Police; or
- (b) determined by the expert following a determination under paragraph 19 to—
 - (i) create significant engineering, technical or programming difficulties; or
 - (ii) materially increase the cost of carrying out those works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation arises as a consequence of a direction from a police or government authority.

18. The undertaker will co-operate with the owners and operators in the Wilton Complex to respond promptly to any complaints raised in relation to the construction or operation of the undertaker's authorised project within the Wilton Complex or the traffic associated with the authorised project.

19.—(1) Except as provided for in sub-clause (7) below, the provisions of article 44 do not apply to this Part.

(2) Any difference under this Part may be referred to and settled by a single independent and suitable person acting as an expert holding appropriate professional qualifications and being a member of a professional body relevant to the matter in dispute, such person to be agreed between the differing parties or failing agreement identified on the application of either party, with notice to the other, by the local authority.

(3) All parties involved in settling any difference must use best endeavours to do so within a maximum of 60 days from the date of an expert first being proposed.

(4) The fees of the expert shall be shared between the differing parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the differing parties to make submission to the expert in writing in a specified period;
- (b) permit the differing parties to make comments on the submissions made by the other party;
- (c) give reasons for their decision

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
- (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost effective manner;
- (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (i) any other important and relevant consideration.

(7) Any determination shall be final and binding save where manifest effort is found in which case the difference which has been subject to expert determination may be referred to and settled by arbitration under article 44.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for, and authorises the construction, operation and maintenance of two generating stations in the sea between 125 kilometres and 290 kilometres off the UK coast together with all necessary and associated development. For the purposes of the development this Order authorises the compulsory purchase of land and rights in land and rights to use land as well as to override easements and other rights. The Order also provides a defence in proceedings in respect of statutory nuisance. The Order imposes requirements in connection with the development for which it grants development consent.

The Order also grants deemed marine licences for the marine licensable activities, being the deposit of substances and articles and the carrying out of works, involved in the construction of the generating stations and associated development. The deemed marine licences impose requirements in connection with the deposits and works for which they grant consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 42 (certification of plans, etc) of this Order may be inspected free of charge at the offices of Redcar and Cleveland Borough Council, Redcar & Cleveland House, Kirkleatham Street, Redcar, TS10 1RT.

APPENDIX E: LIST OF ABBREVIATIONS

Abbreviation or usage	Reference
AA	Appropriate Assessment
AONB	Area of Outstanding Natural Beauty
APFP regulations	Applications: Prescribed Forms and Procedures
CA	Compulsory Acquisition
CAA	Civil Aviation Authority
CDM	Construction (Design and Management)
Cefas	Centre for Environment, Fisheries and Aquaculture Science
CIA	Cumulative Impact Assessment
CPO	Compulsory purchase order, not made under the Planning Act 2008
CRA	Collision Risk Assessment
CRM	Collision Risk Model
cSAC	candidate Special Area of Conservation
CUSC	Connection and Use of System Code
DCLG	Department for Communities and Local Government
DCLG compulsory acquisition guidance	'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land', Department of Communities and Local Government, September 2013
DCO	Development consent order (made or proposed to be made under the Planning Act 2008 (as amended))
DECC	Department of Energy and Climate Change
DEFRA	Department for Environment, Food and Rural Affairs
DML	Deemed Marine Licence
EA	Environment Agency
EEZ	Exclusive Economic Zone
EH	English Heritage
EIA	Environmental Impact Assessment
EMF	Electro Magnetic Field
EPR	Examination Procedure Rules
ERCOP	Emergency Response Co-operation Plan
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
GES	Good Environmental Status
GW	Gigawatt
HDD	Horizontal Directional Drilling
HPA	Health Protection Agency
HRA	Habitat Regulations Assessment
HSC	Historic Seascape Characterisation
HSE	Health and Safety Executive
IPMP	In Principle Monitoring Plan
ISH	Issue Specific Hearing

Abbreviation or usage	Reference
JNCC	Joint Nature Conservation Committee
LA	Local Authority
LAT	Lowest Astronomical Tide
LBBG	Lesser Black-backed Gull
LDF	Local Development Framework
LIR	Local Impact Report
LPA	Local Planning Authority
MACAA2009	Marine and Coastal Access Act 2009
MCA	Maritime and Coastguard Agency
MCZ	Marine Conservation Zone
MHWS	Mean High Water Springs
MMMP	Marine Mammal Mitigation Protocol
MMO	Marine Management Organisation
MoD	Ministry of Defence
MPS	Marine Policy Statement
MW	Megawatt
NE	Natural England
NERCA2006	The Natural Environment and Rural Communities Act
NFFO	National Federation of Fishermen's Organisations
NGET	National Grid Electricity Transmission
nm	Nautical Miles
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
NPS	National Policy Statement
NRA	Navigation Risk Assessment
OFCOM	The independent regulator and competition authority for UK communications industries
OFGEM	The independent regulator and competition authority for UK gas and electricity markets
OFTO	Offshore Transmission Operator
PA2008	Planning Act 2008
PVA	Population Viability Analysis
Ramsar	The Ramsar Convention on Wetlands
RES	Renewable Energy Sources
REWS	Radar Early Warning System
REZ	Renewable Energy Zone
RIES	Report on the Implications for European Sites
RSPB	Royal Society for the Protection of Birds
RYA	Royal Yachting Association
SAC	Special Area of Conservation
SNCB	Statutory Nature Conservation Body
SNCBs	Statutory Nature Conservation Bodies – a collective reference
SOCG	Statement of Common Ground
SoS	Secretary of State
SPA	Special Protection Area
SSSI	Sites of Special Scientific Interest

Report to the Secretary of State

Abbreviation or usage	Reference
SLVIA	Seascape, Landscape and Visual Impact Assessment
TB	Transboundary
TEC	Transmission Entry Capacity
UNEP	United Nations Environmental Programme
UNESCO	United Nations Educational, Scientific and Cultural Organisation
VER	Valued Ecological Receptors
ZTV	Zone of theoretical visibility