

**PLANNING ACT 2008**

**THE INFRASTRUCTURE PLANNING (EXAMINATION PROCEDURE) RULES 2010**

**JOINT RELEVANT REPRESENTATION REGARDING THE APPLICATION BY EQUINOR  
NEW ENERGY LIMITED FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR  
THE SHERINGHAM AND DUDGEON EXTENSION PROJECTS**

**PLANNING INSPECTORATE REFERENCE EN010109**

**RELEVANT REPRESENTATION MADE ON BEHALF OF:**

**MR CLIVE HAY-SMITH  
MR PAUL MIDDLETON (20032995)  
PRIORY HOLDINGS LIMITED**

**DATE OF REPRESENTATIONS: 14 NOVEMBER 2022**



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(JZC/243043.0001)

## EXECUTIVE SUMMARY

- A. We act for Mr Clive Hay-Smith, Mr Paul Middleton and Priory Holdings Limited (“**Our Clients**”) in relation to the Sheringham and Dudgeon Extension Projects (“**Projects**”) for which development consent has been applied for by Equinor New Energy Limited (“**Equinor**”).
- B. Mr Clive Hay-Smith has interests affected by the Projects under title numbers NK259663 and NK274667 and Mr Paul Middleton has interests affected by the Projects under title numbers NK469059 and NK412600 (together referred to as “**Our Clients’ Land**”).
- C. Priory Holdings Limited carries on farming operations on the land owned by Mr Hay-Smith under title number NK274667 and these activities are operationally connected to Mr Middleton’s farming operations on the land owned by Mr Middleton under title numbers NK469059 and NK412600. These farming operations are carried out on 417 hectares of land around Weybourne.
- D. The Projects involve the taking of temporary access, the carrying out of construction works and the acquisition of rights in connection with land in which Our Clients have interests.
- E. Our Clients shall register individually as Interested Parties but it is their intention that they will act jointly where practical, in order to assist the Examination. This relevant representation has been prepared on that basis.
- F. Our Clients’ position may be summarised as follows and is explained in more detail in this relevant representation:
- a. Mr Hay-Smith and Mr Middleton have been issued with heads of terms for a proposed private agreement by Equinor’s representatives but discussions as to any such private arrangements for access or the acquisition of rights have not progressed. Neither Mr Hay-Smith nor Mr Middleton have entered into any agreement with Equinor. Our Clients would welcome further discussion with Equinor as to such private arrangements provided these take into account Our Clients’ concerns with the Project as summarised below.
  - b. Our Clients fully support the expansion of the UK’s offshore wind farm infrastructure as being in the country’s long-term strategic and environmental interests. Our Clients do not have an in-principle objection to off-shore wind farms.
  - c. However, based on the information before the Examination at present Our Clients have a number of particular concerns relating to the approach that Equinor appear to be taking with regard to the construction and the operation of the onshore cable runs associated with the Project. It appears to Our Clients that the Project is likely to have a severe impact on Our Clients’ farming operations on Our Clients’ Land for a number of years and also any wider aspirations Our Clients have for this land.
  - d. In particular Our Clients consider that the potential length of the construction phase for the Projects<sup>1</sup> and the potential for the Projects’ stated construction access requirements to remove the ability of Our Clients’ farming operations to access

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<sup>1</sup> Particularly if the Projects are constructed concurrently and the first of the Projects does not lay the ducts for the second of the Projects i.e. an option in “scenario 1”

critical parts of Our Clients' farm<sup>2</sup> could effectively prevent Our Clients' farming operations from being carried on for a number of years and affect the future viability of these operations too.

- e. The blight of uncertainty around the timing and long-term impact of the Projects directly impacts on Our Clients' joint and several ability to undertake succession planning and diversification including the sale or tenancy of their respective farming enterprises.
- f. We also consider that at this stage insufficient detail has been provided in terms of the rights that the Projects would acquire from the land owned by Mr Hay-Smith and Mr Middleton or the operation of the proposed accesses to the Project for Our Clients to fully understand the impact of the Project on them and their interests.
- g. Our Clients' are also concerned as to how the proposed impacts on the future use of Our Clients' Land for farming activities is to be protected during the operational phase and after the decommissioning of the Projects. This concern arises from ongoing drainage and irrigation issues that Our Clients have experienced on Our Clients' Land following works which were commissioned by Equinor (then known as Statoil) to construct the original Sheringham Shoal Offshore (SCIRA) Wind Farm in 2009/10.

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<sup>2</sup> E.g. grain drying/storage and associated operational buildings as discussed in more detail below.

## **Introduction and background**

1. We act for Mr Clive Hay-Smith, Mr Paul Middleton and Priory Holdings Limited (“**Our Clients**”) in relation to the Sheringham and Dudgeon Extension Projects (“**Projects**”) for which development consent has been applied for by Equinor New Energy Limited (“**Equinor**”).
2. The Projects involve the taking of temporary access, the carrying out of construction works and the acquisition of rights in connection with land in which Our Clients have interests as set out below.
3. Our Clients shall register individually as Interested Parties but it is their intention that they will act jointly where practical, in order to assist the Examination. This relevant representation has been prepared on that basis. Mr Paul Middleton has registered as an Interested Party under reference 20032995. Our Clients’ current primary interest in the land affected by the Project is for farming.
4. In general terms farming is currently facing uncertainty arising from a number of factors. The security that basic payments once offered is being withdrawn, farmers are being asked to deliver more for the environment from their customers, supply chains and the Government but without a crystallised level of support, high levels of inflation are exerting upward pressure on input prices while commodity prices are reducing in some cases and there are demands from non-agricultural land use such as solar, development, bioenergy, tree planting and biodiversity improvements which could take land out of agricultural production<sup>3</sup>.

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<sup>3</sup> The Rock Review (October 2021) - <https://www.gov.uk/government/publications/the-rock-review-working-together-for-a-thriving-agricultural-tenanted-sector/the-rock-review-summary-and-recommendations>

### Land and interests affected

5. Mr Hay-Smith has interests affected by the Projects under title numbers NK259663 and NK274667 and Mr Middleton has interests affected by the Projects under title numbers NK469059 and NK412600 (together referred to as “**Our Clients’ Land**”).
6. Our Clients’ Land forms part of the Norfolk Coast Area of Outstanding Natural Beauty.
7. Mr Middleton has actively farmed the 53 hectare freehold land comprising Home Farm, Weybourne as a trading partnership (MA Perkins and PB Middleton) with his late mother, Monica Perkins who died in August 2021.
8. Mr Middleton has also been employed as the Farm Manager of Priory Holdings Limited since 2002. Mr Middleton’s own farming business partnership is legally and financially independent of Priory Holdings Limited but is reliant on the shared operational infrastructure of the two, integrated farming operations.
9. The Book of Reference [APP-026] records Our Clients’ interests in the following plots as shown on the Revision B Land Plans [AS-002]:
  - 9.1. Mr Hay-Smith:
    - 9.1.1. Acquisition of rights in the following plots: 02-002, 02-006, 02-010, 02,012, 02-015, 03-008, 03-010 and 04-003.
    - 9.1.2. Temporary possession: 02-007, 02-008, 02-009, 02-014, 03-001, 03-002, 03-005, 03-006, 03-007, 04-002, 04-004, 04-011 and 04-013.
  - 9.2. Mr Middleton:
    - 9.2.1. Acquisition of rights in the following plots: 01-036, 01-044, 02-002, 02-004, 02-005 and 02-006.
    - 9.2.2. Temporary possession: 01-040, 01-041, 01-042, 01-043, 02-001, 02-003 and 02-007.
10. Priory Holdings Limited carries on farming operations on the land owned by Mr Hay-Smith under title number NK274667 and these activities are operationally connected to Mr Middleton’s farming operations on the land owned by Mr Middleton under title numbers NK469059 and NK412600.
11. For the past twenty years Our Clients have jointly farmed Our Clients’ Land for an all-able, rotational crop system growing sugar beet and malting barley on a three year rotational cycle across this combined land holding.
12. Whilst both entities are legally independent, Mr Middleton and Priory Holdings Limited’s operations rely on fully integral use of common machinery (e.g. tractors, drills and combine harvester), infrastructure (e.g. grain drying and storage) and labour. As set out above, Mr Middleton is employed as Priory Holdings Limited’s Farm Manager.
13. Our Clients’ Land includes a modern 2,000 tonne on-floor drying and grain storage building which was purpose built for Priory Holdings Limited in 2008. There is also an adjacent, secure farm equipment machinery storage and workshop building which was also constructed in 2008. These units serve Our Clients’ combined farm operations and are currently accessed by separate private farm entrances off the main Station

Road and A149. As discussed in more detail below, both of these entrances and related service roads are proposed for accesses to the Projects and for temporary possession under the draft DCO. This would render safe and ready access to these essential facilities and equipment impossible.

14. Priory Holdings Limited currently has a Higher Level Stewardship scheme (AG00424686) with Natural England which ends in November 2023. Natural England has offered an extension of up to 5 years. Mr Middleton has an Entry-Level Countryside Stewardship Scheme with Natural England (494899) which ends in December 2027. Both Schemes relate to land affected by the Projects.
15. In light of the above and Our Clients' other concerns set out below, Our Clients' fear that the Projects could prevent their participation in and compliance with existing and any extended/proposed environmental schemes and options.
16. Our Clients have recently been informed that the Environment Agency and Norfolk Rivers Trust will be on site on 15 November 2022 to oversee a previously agreed reintroduction of a threatened species of native freshwater crayfish in the chalk stream that intersects Mr Hay-Smith's land to the west of Station Road. We are instructed that this is the same site that was subject to an invasive borehole survey by Equinor (or their representatives) in July 2022. Mr Hay-Smith requested ecological survey information prior to the carrying out of any such borehole survey work by Equinor's representatives as there were concerns over the potential environmental impact of proposed survey work on the chalk-bed stream. However, such ecological survey information was only forthcoming from Equinor's representatives after this borehole survey work was completed following the issue of a formal section 172 notice to gain access to this part of Our Clients' Land.

### **Our Clients' engagement with Equinor**

17. Mr Hay-Smith's agents, Brown & Co, submitted a response to Equinor's Preliminary Environmental Information Report ("PEIR") consultation in June 2021. This response made the following points:
  - 17.1. It would be preferable if the landfall location and onshore cable route was located away from the village of Weybourne and clear of residential and other built-up environments.
  - 17.2. The Projects would blight impacted properties whichever route is chosen and will interfere with farming, intended diversification projects, construction proposals and planning opportunities.
  - 17.3. Concern was expressed about legacy issues which may not be adequately addressed associated with farming activities, diversification, development, rural land use and freedom to use and exploit private ownership rights.
  - 17.4. The proposed onshore cable route would dissect and environmentally sensitive, spring-fed chalk beck and bankside setting to the west of Station Road (this being the same area referred to in paragraph 16 above). This site is part of a joint on-going project between Mr Hay-Smith, Priory Holdings Limited and the Environment Agency to restore native wildlife including trout, water voles, newts and otters in a regenerated/replanted indigenous woodland setting.
  - 17.5. Routing of the onshore cables across the Station Road/Sandy Hill Lane roadway will further exacerbate the environmental impact on native trees and hedgerows to both the east and west of the road which forms a critical entry point to the village of Weybourne.
  - 17.6. The routing of the onshore cables will also severely impact the safety and business operation of the Station Road farm service road and buildings as the cable would run parallel to the farm's entrance splay, service road, grain dryer, timber storage yard and equipment shed.
18. Many of the points above remain concerns to Our Clients as summarised below.
19. Mr Hay-Smith and Mr Middleton were issued with heads of terms for a private land agreement by Equinor on 31 May 2022. Our Clients have a number of concerns around the Project as set out below and as a result it has not been possible to move the consideration of these heads of terms forward without further information on the Project. However, the submitted application before the Examination leaves a number of these concerns outstanding as set out below.
20. However, Our Clients would welcome further discussion with Equinor as to such private arrangements provided these take into account Our Clients' concerns with the Project.
21. Our Clients consider that they have remained cooperative with Equinor's representatives during previous discussions on their preparations for the Projects. However, Mr Hay-Smith has encountered difficulties with Equinor refusing to pay any legal costs relating to work carried out in connection with Equinor's previous proposals to route the onshore cable runs through Mr Hay-Smith's Highlands (Cherry Trees

Farm) property in Weybourne. Mr Hay-Smith was also subject to formal section 172 notices issued to gain survey access to part of Our Clients' Land at a time when ill-health and concerns over the potential environmental impact of proposed survey work on a chalk-bed stream delayed Mr Hay-Smith's consent to carry out this survey work under a private licence arrangement.



## **Impact on Our Clients' businesses**

### 22. Impact during construction phase(s) of the Projects

#### 22.1. The nature of the Projects' construction

- 22.1.1. Paragraph 49 of the Planning Statement [AS-031] sets out that the Projects may be constructed at the same time or at different times. If the Projects are built at the same time both Projects could be constructed within four years but if built at different times each Project would require a four year period of construction. If built at different times the offset between the start of the construction of the first Project and the construction of the second Project may vary from two to four years. The maximum period during which construction could therefore take place is eight years for both Projects. The earliest construction start date is 2025.
- 22.1.2. Paragraph 278 of Chapter 4 (Project Description) of the Environmental Statement [APP-090] states that the installation of the onshore ducts and cables is expected to take up to 24 months (for one of the Projects constructed in isolation), 26 months (for both Projects constructed concurrently) or two separate periods of 24 months for the Projects where construction is carried out sequentially.
- 22.1.3. As set out in paragraphs 281 and 296 of Chapter 4 (Project Description) of the Environmental Statement [APP-090] once the cable ducts have been installed (to a minimum depth of 1.2m) there is a separate process of cable pulling to be carried out. The cable ducts would first be installed within trenches and backfilled with soil before the cables are pulled through the pre-laid ducts "at a later stage in the construction programme".
- 22.1.4. However, the scenarios as defined in the draft DCO [AS-009] cater for the Projects to be constructed entirely separately, meaning that the first of the Projects which is constructed may not necessarily lay the ducts for the second of the Projects which is carried out at a later date.
- 22.1.5. Paragraph 277 of Chapter 4 (Project Description) of the Environmental Statement [APP-090] sets out that whilst the cable duct installation works are envisaged to be a "continuous activity" the haul road (being 5m in width to 8m at passing bay locations) would need to be retained throughout much of the cable corridor to maintain access to each work front, potentially therefore throughout the expected 24 (or 26) month construction period(s).
- 22.1.6. In addition, paragraphs 301 and 302 of Chapter 4 (Project Description) of the Environmental Statement [APP-090] set out that one below ground "link box" per circuit shall be required within 10m proximity to the joining bay locations to allow the cables to be bonded to earth. These would require periodic access by technicians for inspection and testing during operation and it is assumed that one would be required every 1km.

- 22.1.7. Paragraph 191 of Chapter 19 (Land Use Agriculture and Recreation) of the Environmental Statement [APP-105] states that it is assumed that each link box would result in a permanent land take of 2m x 2m given the need for these to be accessed via manhole covers at ground level and an above ground marker would be required to mark the location of each link box.
- 22.1.8. Paragraph 105 of Chapter 19 (Land Use Agriculture and Recreation) of the Environmental Statement [APP-105] identifies the “worst-case” scenario for impacts to drainage would be where the Projects are constructed sequentially because this would require two periods of disruption to agricultural drainage for two periods of onshore cable installation work. The construction work would also require the topsoil to be stripped (as set out in paragraph 131 of this Chapter 19).
- 22.1.9. On the basis of the information submitted by Equinor as part of the application there remains a great deal of uncertainty as to how the Projects shall be constructed and when. Our Clients’ key concerns are as follows:
- 22.1.9.1. It appears that the earliest substantive construction work could begin is 2025 but the draft DCO [AS-009] would authorise the compulsory acquisition of land for up to seven years after the DCO is made.
- 22.1.9.2. Indeed, Requirement 1 in Schedule 2 Part 1 of the draft DCO requires the respective Projects to simply “commence” within seven years beginning with the date the DCO comes into force.
- 22.1.9.3. Therefore, assuming that the DCO is granted in late 2023 it could be that the Projects do not even commence until late 2030.
- 22.1.9.4. In addition, there is further uncertainty over the different “scenarios” catered for in the draft DCO. This is particularly so given the two potentially entirely separate 24 month construction periods that could be carried out, each requiring a haul road and potentially other construction apparatus such as security fencing etc. to remain in place on Our Clients’ Land during much of these periods.
- 22.1.9.5. This uncertainty is reinforced by the power in Article 26 of the draft DCO [AS-009] to enter on and take temporary possession of land enduring until one year after the date of completion of the part of the authorised project specified in the respective part of column (4) of Schedule 9 of the draft DCO [AS-009].
- 22.1.9.6. All of the above create significant uncertainty for Our Clients’ in their short and long term planning of their farming operations on Our Clients’ Land and in trying to navigate the current uncertainty being experienced by the farming industry regardless of the Projects.

## 22.2. The access and rights sought by Equinor

### 22.2.1. Permanent acquisition of rights:

- 22.2.1.1. We cannot comment at present on the extent of rights sought by Equinor as Schedule 7 of the submitted draft DCO [AS-009] does not include any detail of the precise nature of the rights sought by Equinor. We contrast this to the detail provided within Column 2 of Schedule 7 to the recently made East Anglia ONE North Offshore Wind Farm Order 2022 which provides greater detail on the extent of rights sought.
- 22.2.1.2. Our Clients' request that further detail is provided on the extent of rights sought to be permanently acquired.
- 22.2.1.3. However, what is clear at present is that the acquisition of rights over Our Clients' land and construction of the Projects (or one of them) on the area identified on the Land Plans would sever Our Clients' Land in a number of cases and in any event disturb the ability for Our Clients to farm Our Clients' Land. The impact of this is detailed further below.
- 22.2.1.4. This is notwithstanding the potential impact of the construction of the Projects (or one of them) on the irrigation systems and soil quality on Our Clients' Land.

### 22.2.2. Temporary possession of land:

- 22.2.2.1. The power under Article 26 of the draft DCO [AS-009] to enter on and take temporary possession of land enduring until one year after the date of completion of the part of the authorised project specified in the respective part of column (4) of Schedule 9 of the draft DCO is broad.
- 22.2.2.2. This is particularly so when this relates to key existing accesses on to Our Clients Land in the case of plots 03-002 and 02-014. The temporary possession of these plots would prevent access to this part of the farm and the buildings located to the south of this area of land to the north of the railway line. The impact of this is detailed further below.
- 22.2.2.3. Our Clients request clarity and justification as to why two separate accesses onto the land east of Station Road and the south of the A149 Sheringham Road are required.
- 22.2.2.4. We can see no reference in the Outline Code of Construction Practice [APP-302], Outline Construction Traffic Management Plan [APP-301] or Chapter 19 (Land Use and Recreation) of the Environmental Statement [APP-105] which considers even the possibility of sharing such accesses with farmers to ensure their operations are not adversely impacted during the construction phase and in the years following this.

22.2.2.5. Article 26(1)(c) would allow the construction of security fencing and whilst it is understood that details of the fencing would need to be submitted and approved under Requirement 14 there is no guarantee that such fencing would not be erected so as to physically prevent Our Clients' access to Our Clients' Land.

22.2.2.6. Further, Article 26(1)(b) would allow the removal of any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from land subject to temporary possession. However, under Article 26(4) there would be no requirement to replace any building, structure, drain or electric line removed under Article 26.

### 22.2.3. Access to Works:

22.2.3.1. Our Clients have reviewed the Access to Works Plan (Revision B) [AS-006]. It appears the following accesses are proposed to Our Clients' Land:

#### 22.2.3.1.1. Mr Hay-Smith:

22.2.3.1.1.1. Construction Access: ACC03, ACC04, ACC05, ACC07 and ACC09

22.2.3.1.1.2. Early Works Access: ACEW04, ACEW05, ACEW06, ACEW09 and ACEW100.

#### 22.2.3.1.2. Mr Middleton:

22.2.3.1.2.1. Construction Access: [ACC02, ACC03]

22.2.3.1.2.2. Early Works Access: [ACEW02, ACEW03]

22.2.3.2. However, at present it is not clear what the distinction between an "Early Works Access" and a "Construction Access" is. Our Clients request clarity on this point.

22.2.3.3. The accesses identified by ACC05 and ACEW06 are existing farm accesses and are the only ways to access the land owned by Mr Hay-Smith and farmed by Priory Holdings Limited to the east of Station Road and the south of the A149 Sheringham Road. The use of these accesses and associated temporary possession of plots 03-002 and 02-014 would prevent access to this part of the farm and the buildings located to the south of this area of land to the north of the railway line.

22.2.3.4. As set out above, Mr Middleton and Priory Holdings Limited's farming operations rely on fully integral use of

common machinery (e.g. tractors, drills and combine harvester), infrastructure (e.g. grain drying and storage) and labour.

22.2.3.5. Access to Our Clients' modern 2,000 tonne on-floor drying and grain storage building and adjacent secure farm equipment machinery storage and workshop building which serve Our Clients' combined farm operations are currently accessed by separate private farm entrances off the main Station Road and A149.

22.2.3.6. Both of these entrances and related service roads are proposed for accesses to the Projects and for temporary possession under the draft DCO. This would render safe and ready access to these essential facilities and equipment impossible.

22.2.3.7. The proposed routing of the onshore cable runs associated with the Projects effectively bisects Our Clients' total farmed area of 471 hectares preventing free and contiguous access to land and essential infrastructure over an indeterminate timeframe.

22.2.3.8. This not only creates operational uncertainty for Our Clients' farming operations but also would have a direct and negative impact on the financial viability of the individual and combined farming operations.

22.2.3.9. Indeed, Mr Middleton is 59 years old and Mr Hay-Smith is 65 years old and the blight of uncertainty around the timing and long-term impact of the Projects directly impacts on Our Clients' joint and several ability to undertake succession planning and diversification including the sale or tenancy of their respective farming enterprises.

22.2.3.10. In addition, given the impacts of the Projects identified in these representations, it is Our Clients' position that the Projects may also jeopardise the fulfilment of Our Clients' contractual arrangements with third parties for sugar beet and malting barley tonnage.

22.2.3.11. It also appears there is an error in Schedule 6 of the draft DCO as reference ACEW100 is used twice.

## 22.3. Other comments on the provisions on the draft DCO [AS-009]

22.3.1. We note that pursuant to Requirement 9(1) in Schedule 2 Part 1 of the draft DCO [AS-009] the authorised project must not commence until a notification has been submitted as to whether scenario 1, 2, 3 or 4 shall be commenced.

22.3.2. Requirement 9(4) then requires each scheme to be implemented as notified under "sub-paragraphs (2), (3) and (4)". However, there is no reference to sub-paragraph (1) and therefore at present no requirement

to implement the scheme in accordance with the notification which is required under Requirement 9(1). We request the Examining Authority consider this point.

22.3.3. Our Clients also have a concern with the broad power under Article 34 of the draft DCO to fell or lop trees and remove hedgerows (including cutting back the roots of trees or shrubs). This power would extend not only to trees or shrubs within or overhanging land within the Order limits but also simply “*near to any part of the authorised project*” if the undertaker “reasonably believes” it necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the Projects or an apparatus used in connection with them.

22.3.4. The term “*near to any part of the authorised project*” is vague and does not give any certainty as to the scope of this broad power. Our Clients question why such a power should be required and whether this can be justified by Equinor in this case. Indeed, if Equinor require certain trees or shrubs “*near*” to the Projects to be affected in this way we question why these are not included within the Order limits. This is particularly so given the location of this part of the Projects in the Norfolk Coast AONB.

### 23. Impact during operational phase of the Projects

23.1. Our Clients’ note the post construction assessment and proposed mitigation measures set out in Chapter 19 (Land Use Agriculture and Recreation) of the Environmental Statement [APP-105].

23.2. However, it is noted that much of the detail as to the drainage for the operational phase is left to Requirement 17 in the draft DCO [AS-009].

23.3. In this regard, whilst we note Requirement 17(4) includes a requirement to implement as approved each operational drainage plan we note that there is no requirement for the details (presumably including the apparatus and measures) set out in the approved operational drainage plan(s) to be maintained and managed.

23.4. There is no express requirement in Requirements 17(1), (2) or (3) for the operational drainage plan to include measures for maintenance and management.

23.5. In addition, it appears from Requirement 17(3) that the operational drainage plan may only relate to the onshore substation and not matters relating to the onshore cables and associated apparatus. Indeed, the Outline Operational Drainage Plan submitted [APP-307] only deals with the onshore substation.

23.6. It appears to us that whilst the Outline Code of Construction Practice [APP-302] which would inform the codes submitted under Requirement 19 of the draft DCO discusses drainage matters (including surface water drainage) this appears to be solely in the context of the construction phase of the Projects (or any one of them). In addition and in any event, Requirement 19(3) would only require the “construction works” for each phase to be in accordance with the relevant approved code of construction practice.

- 23.7. It is therefore not clear to Our Clients how the drainage associated with the operational phase of the Projects (or any one of them) – even if this includes the reinstatement of alteration of existing drainage systems – is to be controlled.
- 23.8. Further and importantly, it does not appear that there is any enforceable requirement that requires the undertaker of the Projects (or any one of them) to monitor, manage and maintain the drainage systems which have through the construction and subsequent operation of the Projects (or any one of them) been installed or altered. Given the unresolved legacy land drainage issues experienced by Our Clients since the initial construction of the original (and now to-be-extended) offshore wind farm in 2009/10, Our Clients request that clarity is sought on how post-construction drainage matters are to be approved and, if required, enforced.

#### 24. Impact during the decommissioning of the Projects

- 24.1. Paragraph 222 of Chapter 19 (Land Use Agriculture and Recreation) of the Environmental Statement [APP-105] states that no decision has yet been made regarding the final decommissioning policy for the onshore export cables. However, this paragraph sets out that it is likely that the cables would be pulled through the ducts and removed, with the ducts themselves left in situ.
- 24.2. It is also noted that whilst Requirement 8 in the draft DCO [AS-009] requires a decommissioning programme to be submitted to the Secretary of State for approval before offshore works on either of the Projects begins.
- 24.3. However, this should be contrasted with Requirement 29 which deals with onshore decommissioning. Requirement 29 would only require an onshore decommissioning programme to be submitted to the planning authority for approval within six months of the permanent cessation of the commercial operation of either of the Projects.
- 24.4. This approach and proposed trigger means that the uncertainty as to the approach to decommissioning shall endure throughout the proposed 40 year operational life of the Projects. We question whether Equinor could provide any further certainty or parameters for the decommissioning of the Projects at this stage.
- 24.5. We also note that unlike, for example, Requirement 20 in the East Anglia ONE North Offshore Wind Farm Order 2022, Requirement 29(1) in the draft DCO [AS-009] would allow the planning authority to alter the obligations of this Requirement given the addition of the wording “*unless otherwise agreed in writing by the relevant planning authority*”. This has the potential to create further uncertainty as to the decommissioning of the Projects. We question whether this approach is appropriate in this case.
- 24.6. In any event, at this stage Our Clients’ simply cannot form a robust view on the impact that the decommissioning may have on Our Clients’ Land and their business operations.
- 24.7. At the very least it appears that the removal of the cables as part of decommissioning work may involve the reinstatement of a haul road and

access to the link boxes in a similar way to the cable pulls associated with the construction phase of the Projects (or any one of them).

**Howes Percival LLP**

**14 November 2022**