



# Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Projects

Explanatory Memorandum (Tracked – Revisions F/G)

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## Glossary of Acronyms

CfD	Contract for Difference
DCO	Development Consent Order
DCLG	Department for Communities and Local Government
DEL	Dudgeon Extension Limited (incorporated under company number 12148301 and registered in England)
DEP	Dudgeon Offshore Wind Farm Extension Project
DOW	Dudgeon Offshore Wind Farm
EIA	Environmental Impact Assessment
Km	Kilometre
MCA	Maritime and Coastguard Agency
MMO	Marine Management Organisation
MW	Megawatts
NSIP	Nationally Significant Infrastructure Project
OFTO	Offshore Transmission Owner
SEL	Scira Extension Limited (incorporated under company number 12239260 and registered in England)
SEP	Sheringham Offshore Wind Farm Extension Project
UK	United Kingdom
UKHO	United Kingdom Hydrographic Office
WTG	Wind Turbine Generator

## Glossary of Terms

1981 Act	Compulsory Purchase (Vesting Declarations) Act 1981
1991 Act	New Roads and Street Works Act 1991
2009 Act	Marine and Coastal Access Act 2009
2009 Order	Infrastructure Planning (Provisions) (England and Wales) Order 2009
APFP Regulations	The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
Creyke Beck	Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (as amended)
Dudgeon Offshore Wind Farm Extension site	The Dudgeon Offshore Wind Farm Extension consisting of the DEP wind farm site, interlink cable corridors and offshore export cable corridor (up to mean high water springs).
Dudgeon Offshore Wind Farm Extension Project (DEP)	The Dudgeon Offshore Wind Farm Extension onshore and offshore sites including all onshore and offshore infrastructure.
East Anglia One North	The East Anglia One North Wind Farm Order 2022
East Anglia Two	The East Anglia Two Wind Farm Order 2022
Glyn Rhonwy	Glyn Rhonwy Pumped Storage Generating Station Order 2017 (as amended)
Hornsea Three	The Hornsea Three Offshore Wind Farm Order 2020
Hornsea Two	The Hornsea Two Offshore Wind Farm Order 2016 (as amended)
Landfall	The point at the coastline at which the offshore export cables are brought onshore, connecting to the onshore cables at the transition joint bay above mean high water
Norfolk Boreas	The Norfolk Boreas Offshore Wind Farm Order 2021
Norfolk Vanguard	The Norfolk Vanguard Offshore Wind Farm Order 2022
Offshore export cables	The cables which would bring electricity from the offshore substation platform(s) to the landfall. 220 – 230kV.

Offshore substation platform	A fixed structure located within the wind farm area, containing electrical equipment to aggregate the power from the wind turbine generators and convert it into a more suitable form for export to shore.
Onshore export cables	The cables which would bring electricity from the landfall to the onshore substation. 220 – 230kV.
Onshore Substation	Compound containing electrical equipment to enable connection to the National Grid.
Order limits	The area subject to the application for development consent, including all permanent and temporary works for SEP and DEP.
Order	The draft Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order
Port of Tilbury	The Port of Tilbury Expansion Order 2019
Sheringham Shoal Offshore Wind Farm Extension site	Sheringham Shoal Offshore Wind Farm Extension lease area.
Sheringham Shoal Offshore Wind Farm Extension Project (SEP)	The Sheringham Shoal Offshore Wind Farm Extension site as well as all onshore and offshore infrastructure.
Teesside A and B	The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 (as amended)
The APFP Regulations	Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (S.I. 2009/2264).
The Applicant	Equinor New Energy Limited. As the owners of SEP and DEP, Scira Extension Limited (SEL) and Dudgeon Extension Limited (DEL) are the named undertakers that have the benefit of the Development Consent Order. References in this document to obligations on, or commitments by, 'the Applicant' are given on behalf of SEL and DEL as the undertakers of SEP and DEP.
Silvertown Tunnel	Silvertown Tunnel Order 2018
Trinity House	The Corporation of Trinity House
Transition joint bay	Connects offshore and onshore export cables at the landfall. The transition joint bay will be located above mean high water.

## 1 EXPLANATORY MEMORANDUM

### 1.1 Introduction

1. This memorandum explains the purpose and effect of each article of, and Schedule to, the draft Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order (the Order), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations).
2. Regulation 5(2)(c) requires explanatory memoranda to explain “*the purpose and effect of provisions in the draft order*”.

### 1.2 Purpose of the Order

3. Equinor New Energy Limited (the Applicant) is applying to the Secretary of State for a Development Consent Order (DCO) for the construction, operation and decommissioning of two offshore wind power generating stations – the Sheringham Shoal Offshore Wind Farm Extension Project (SEP) and the Dudgeon Offshore Wind Farm Extension Project (DEP) (which together comprise the “authorised development” for the purposes of the Order).
4. Two companies are named as undertakers in the draft Order:
  - Scira Extension Limited (SEL) (company number 12239260), which is registered in England and is a wholly owned subsidiary of the Applicant; and
  - Dudgeon Extension Limited (DEL) (company number 12148301), which is registered in England and is owned by three entities:
    - the Applicant owns 35 per cent;
    - Masdar Offshore Wind UK Limited owns 35 per cent; and
    - CR Power (UK) Limited owns 30 per cent.
5. SEL are the owners of SEP and DEL are the owners of DEP. As such, SEL and DEL are both undertakers for the purposes of the Order.
6. A single planning process and DCO application is intended to provide for consistency in the approach to the assessment, consultation and examination, as well as increased transparency for a potential compulsory acquisition process.
7. In summary the authorised development consists of two offshore energy generating stations and electrical connections comprising:
  - the SEP array area comprising up to 23 offshore wind turbine generators which will be located to the north of the existing Sheringham Shoal offshore wind farm in the Greater Wash region of the southern North Sea approximately 15.8km off the North Norfolk coast.

- the DEP array areas comprising up to 30 offshore wind turbine generators which will be located in the Greater Wash region of the southern North Sea approximately 26.5km off the North Norfolk coast. The wind turbine generators will be located in up to two array areas known as DEP North (which would be located to the north of the existing Dudgeon Offshore Wind Farm) and DEP South (which would be located to the south of the existing Dudgeon Offshore Wind Farm).
  - other offshore infrastructure including substation platforms (of which there will either be two in total – one for each project - or one platform for an integrated offshore substation located in SEP) and buoys;
  - interlink (sub-sea) cables to connect together DEP North and DEP South or, in the event an integrated offshore substation platform is constructed, to connect the array areas to the integrated offshore substation located in SEP;
  - up to two offshore export cable circuits to bring the power generated to shore;
  - landfall at Weybourne, on the North Norfolk Coast and onshore electrical connections and cabling; and
  - up to two new onshore substations to allow transmission of electricity to the National Grid via onward connections to the existing Norwich Main substation.
8. A detailed explanation of the authorised development is set out in **Chapter 4 Project Description of the Environmental Statement** (document reference 6.1.4) which accompanies the application.
9. The Order also seeks to confer upon SEL and DEL powers of compulsory acquisition of land or rights over land which are required for the onshore elements of the authorised development or to facilitate them, or that are incidental to them within the meaning of section 122 of the Planning Act 2008.
10. As the Order seeks to apply and modify statutory provisions under section 120(5) of the Planning Act 2008 including in relation to drainage, hedgerows and the compulsory acquisition of land, it has been drafted as a statutory instrument as required under section 117(4) of the Planning Act 2008.

### 1.3 Nationally Significant Infrastructure project

11. Under sections 14(1)(a) and 15(3) of the Planning Act 2008a generating station is a nationally significant infrastructure project (NSIP) where;
- it is in waters in or adjacent to England up to the seaward limits of the territorial sea; and
  - its capacity is more than 100 megawatts (MW).
12. SEP and DEP both qualify as NSIPs as they are offshore generating stations within the territorial sea waters adjacent to England and each generating station will have a capacity of more than 100MW.



13. As the authorised development comprises two NSIPs, development consent must be obtained from the Secretary of State to authorise them, and an application for a DCO must be made to the Secretary of State, care of the Planning Inspectorate, under section 37 of the Planning Act 2008.

#### 1.4 Scenarios and Works Descriptions

14. In recognition of the fact that each project is owned by separate companies and in order to provide sufficient flexibility to the way in which the two extension projects can be constructed, the Order provides for the authorised development to be delivered in a number of ways as follows:

- Scenario 1 means each project is constructed ~~separately~~ in any one of the following ways:
  - the construction of the Sheringham Shoal Extension Project only where the Dudgeon Extension Project does not proceed to construction;
  - the construction of the Dudgeon Extension Project only where the Sheringham Shoal Extension Project does not proceed to construction;
  - sequential construction of the Sheringham Shoal Extension Project then the Dudgeon Extension Project or vice versa; or
  - concurrent construction of the two projects;
- Scenario 2 means the two projects are constructed sequentially and whichever project is constructed first will install the ducts for the second project;
- Scenario 3 means either SEL or DEL constructs on behalf of both itself and the other project an integrated onshore substation and connection to National Grid's Norwich Main Substation (the relevant works are identified in the Order as the scenario 3 integrated onshore works) and all other onshore and offshore works are constructed either concurrently or sequentially;
- Scenario 4 means either SEL or DEL constructs on behalf of both itself and the other project both the onshore and offshore integrated works including the integrated offshore substation, the integrated onshore substation and the onshore and offshore cables (the relevant works are identified in the Order as the integrated offshore works and scenario 4 integrated onshore works) and all other onshore and offshore works are constructed either concurrently or sequentially.

15. Schedule 1 (Authorised Development) to the draft Order contains a list of numbered works comprising the authorised development. To reflect the fact that the draft Order authorises two NSIPs which could be delivered in various ways, the authorised works are split out as follows:

- Work Nos. 1A to 22A (the ‘A’ Works) – these are the works for which SEL only has development consent and compulsory acquisition powers. The SEP offshore generating station is comprised within Work Nos. 1A and 2A. Work nos. 3A to 22A are the offshore and onshore grid transmission and connection works (including associated mitigation works) and are associated development. In scenario 1 or scenario 2, only the ‘A’ works will be constructed; there would be no ‘C’ Works. Work Nos. 1A, 2A, 10A, 11A, 13A, 14A and 18A to 22A are applicable to all four scenarios.
- Work Nos. 1B to 22B (the ‘B’ Works) – these are the works for which DEL only has development consent and compulsory acquisition powers. The DEP offshore generating station is comprised within Work Nos. 1B and 2B. Work nos. 3B to 22B are the offshore and onshore grid transmission and connection works (including associated mitigation works) and are associated development. In scenario 1 or scenario 2, only the ‘B’ works will be constructed; there would be no ‘C’ works. Work No. 1B, 2B, 10B, 11B, 13B, 14B and 18B to 22B are applicable to all four scenarios.
- Work Nos. 3C to 7C and Work Nos. 8C, 9C, 12C and 15C to 17C (the ‘C’ Works) – these are the onshore and offshore integrated transmission and grid connection works for which both SEL and DEL would have the benefit of development consent and compulsory acquisition powers.
- In scenario 3, Work Nos. 15C to 17C (defined in the Order as the “scenario 3 integrated onshore works”) would be undertaken instead of Work Nos. 14A to 16A and Work Nos. 14B to 16B where SEL and DEL opt to construct the integrated onshore substation (but not the integrated offshore substation). In scenario 3, either SEL or DEL would rely on the powers in the Order to deliver the integrated onshore substation and connection to Norwich Main alongside the relevant A and B Works.
- In scenario 4, offshore Work Nos. 3C to 7C (defined in the Order as the “integrated offshore works”) would be undertaken instead of Work Nos. 3A to 7A and 3B to 7B and onshore Work Nos. 8C, 9C 12C and 15C to 17C (defined in the Order as the “scenario 4 integrated onshore works”) would be undertaken instead of Work Nos. 8A, 8B, 9A, 9B, 12A, 12B, 15A to 17A and 15B to 17B. In scenario 4, either SEL or DEL would rely on the powers in the Order to deliver an integrated electrical system both onshore and offshore including:
  - an integrated offshore substation platform located in SEP as opposed to two separate offshore substation platforms, one for each project;
  - an integrated onshore substation and connection to Norwich Main; and

- up to two cable circuits and ducts (including landfall transmission works) between the offshore integrated substation platform and the onshore integrated substation.
- Work Nos. 6A and 6B or 6C (in the event of scenario 4) denote an area around the offshore cable corridor and each project’s array areas which can be used for temporary construction purposes only (including, for example, the anchoring of vessels) by both SEL and DEL to facilitate the installation of the offshore infrastructure. For the avoidance of doubt, no cables or other offshore structures could be installed in this area under Work Nos. 6A and 6B or 6C.

16. **Table 1-1** below sets out which work numbers will be constructed in each scenario.

*Table 1-1: Work Numbers for Each Scenario*

Scenario	SEP Works	DEP Works
1	1A to 22A	1B to 22B
2	1A to 22A	1B to 22B
3	1A to 14A, 15C to 17C, 18A to 22A	1B to 14B, 15C to 17C, 18B to 22B
4	1A, 2A, 3C to 9C, 10A, 11A, 12C, 13A, 14A, 15C to 17C and 18A to 22A	1B, 2B, 3C to 9C, 10B, 11B, 12C, 13B, 14B, 15C to 17C and 18B to 22B

17. To ensure only one scenario is implemented, the Order includes a Requirement for SEL and DEL to give notice of which scenario will be implemented to the local planning authority before commencing development. An equivalent condition is included in the deemed marine licences to ensure the Marine Management Organisation (MMO) are similarly notified.
18. A more detailed explanation of the project development scenarios is set out in the **Scenarios Statement** (document reference 9.28) which accompanies the application.

### 1.5 Associated development

19. The draft Order specifically authorises development which is associated with each NSIP. The Secretary of State may, under the provisions of section 115(4A) of the Planning Act 2008, grant consent for development that is associated with an NSIP.
20. Guidance on associated development has been issued by the Secretary of State<sup>1</sup>. Paragraph 5 of the Department for Communities and Local Government (DCLG) Guidance sets out core principles which must be taken into account by the Secretary of State when deciding whether or not development should be treated as associated development. In summary:

<sup>1</sup> ‘Guidance on associated development applications for major infrastructure projects’ (Department for Communities and Local Government) (April 2013) (the DCLG Guidance)

- There should be “a direct relationship between associated development and the principal development.”
  - “Associated development should therefore either support the construction or operation of the principal development, or help address its impacts.”
  - “Associated development should not be an aim in itself but should be subordinate to the principal development.”
21. In most cases therefore associated development will be *“typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project”* (paragraph 6). The grid connection for a commercial power station is given as a specific example of associated development.
  22. The two offshore wind generating stations (the NSIPs) are comprised within Work Nos. 1A and 2A for SEP and 1B and 2B for DEP. Work Nos. 3A to 22A and 3B to 22B or 3C to 7C, 8C, 9C, 12C and 15C to 17C are all associated development. They are directly related to the two generating stations by being part of the electrical transmission system and grid connection works necessary to operate the two generating stations or mitigation works required to address impacts which may arise during the construction and operation of the two offshore generating stations.
  23. In addition, the core principles in paragraph 5 of the Guidance also states that *“Associated development should be proportionate to the nature and scale of the principal development. However, this core principle should not be read as excluding associated infrastructure development (such as a network connection) that is on a larger scale than is necessary to serve the principal development if that associated infrastructure provides capacity that is likely to be required for another major infrastructure project.”*
  24. There is precedent for including two NSIPs in one DCO where the two NSIPs have either the same or adjacent Order limits for some or all elements of the associated development. This approach has previously been taken in The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (as amended) (Creyke Beck), The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 (as amended) (Teesside A and B) and The Hornsea Two Offshore Wind Farm Order 2016 (as amended) (Hornsea Two). This enables some associated development to be undertaken on a joint and/or overlapping basis whereby one undertaker constructs an element of work for the benefit of both projects such as would be the case for various elements of each project’s associated development in scenarios 2, 3 or 4 of the Order. This approach allows for the undertakers, wherever possible, to construct both projects in the most efficient and timely manner available at the point at which one or both projects are ready to start construction.
  25. All elements of each project either constitute part of one of the NSIPs or are associated development within the meaning of section 115(4A) of the Planning Act 2008, and so can properly be authorised by the Order.

## 1.6 Ancillary Matters

26. The Order also authorises ancillary works within the Order limits. These are works that do not constitute development but are required to facilitate the construction of the authorised development.
27. In addition to providing for the construction and operation of the authorised development, the Order will, in accordance with section 122, section 120(3) and Schedule 5 of the Planning Act 2008, authorise the acquisition of land and rights over land, and the extinguishment of, or interference with, interests in or rights over land. The **Book of Reference** (document reference 4.1) sets out a description of the land and interests included in the Order. The Order and the **Book of Reference** should be read together with the **Statement of Reasons** (document reference 4.3) which accompanies the Application and sets out the justification for the acquisition of or interference with the Order land.
28. Other ancillary matters include the application and disapplication of legislation, the power to undertake works to streets, and the ability to take temporary possession of land.

## 1.7 The Order

29. The Order is based on the model provisions set out in Schedule 1 to the Infrastructure Planning (Provisions) (England and Wales) Order 2009 (the 2009 Order) as well as relevant precedents. Whilst the 2009 Order has been repealed, Planning Inspectorate Advice Note 13 'Preparing the draft Order and Explanatory Memorandum, April 2012' explains that the model provisions were intended as a guide for developers in drafting Orders, rather than a rigid structure, but aided consistency and assisted developers to draft a comprehensive set of lawful provisions.
30. The Order adopts the 'Rochdale Envelope' whereby the maximum permitted consent envelope is provided for and assessed in the Environmental Impact Assessment, allowing some of the scheme detail to be approved post-consent. The approval of that detail is provided for within the Requirements in Schedule 2 Part 1 of the Order and the conditions in the deemed Marine Licenses in Schedules 10 to 13 of the Order.
31. The form of the Order has had regard to recent, comparable precedent Orders including The Hornsea Three Offshore Wind Farm Order 2020 (Hornsea Three), The Norfolk Boreas Offshore Wind Farm Order 2021 (Norfolk Boreas) and The Norfolk Vanguard Offshore Wind Farm Order 2022 (Norfolk Vanguard), The East Anglia One North Wind Farm Order 2022 (East Anglia One North) and The East Anglia Two Wind Farm Order 2022 (East Anglia Two).
32. As the Order seeks development consent for two NSIPs within the same Order, regard has also been had to previous Orders where a similar approach has been taken such that consent has been granted for more than one NSIP within the same Order. In particular, Hornsea Two and Teesside A and B (both as amended by various non-material change applications).

## 1.8 Part 1 Preliminary

### 1.8.1 Article 1 - Citation and commencement

33. Article 1 sets out the name of the Order and the date on which it comes into force.
34. This article did not appear in the model provisions. However, it is a standard article that is included in all DCOs.

### 1.8.2 Article 2 - Interpretation

35. Article 2(1) defines the terms used in the Order. It is a standard article and was included in the model provisions as article 1.
36. Definitions to note include:

- "commence". The definition of "commence" is based on the wording used in various other offshore wind DCOs ~~Norfolk Vanguard and Norfolk Boreas~~ and excludes various pre-commencement activities from triggering commencement of either the licensed marine activities (authorised by the deemed marine licences) or the onshore works.
- "pre-commencement works". This definition lists out the activities which are excluded from the definition of "commence" in relation to the onshore works. ~~This allows certain~~ Where "pre-commencement works" are not considered 'development' pursuant to Section 55 of the Town and County Planning Act 1990 or would normally benefit from permitted development rights under the Town and Country Planning (General Permitted Development) (England) (Order 2015, it is not normally necessary for those activities to be subject to additional controls within a DCO. However, where appropriate certain "pre-commencement works" are subject to relevant controls within the requirements in Schedule 2 of the Order. These are noted where relevant in Section 2.2 below. ~~for onshore site preparation and offshore pre construction surveys and monitoring to be undertaken with appropriate controls in place.~~

- “integrated works”. The definitions for “integrated works”, “integrated offshore works”, “scenario 3 integrated onshore works” and “scenario 4 integrated onshore works” are used to identify the relevant C works that would be undertaken in each scenario and the works for which both SEL and DEL jointly have consent and compulsory acquisition powers. The integrated offshore works are only applicable to scenario 4 in the event a single, integrated offshore substation platform can be constructed. The integrated onshore works definitions identify the onshore C works that are relevant to scenario 3 and those that are relevant to scenario 4. In both scenario 3 and scenario 4, one onshore substation would be constructed. The difference is that in scenario 4 the entire length of the offshore and onshore export cables starting from the integrated offshore substation platform would be constructed on an integrated, rather than project specific basis. In scenario 3, the export cables between each project’s offshore substation platform would remain project specific i.e. they remain as A and B works.
- "maintain". A definition of "maintain" has been added to make clear what is authorised under article 4, and that this does not permit the undertaker to depart from the description of the authorised development in Schedule 1 or to carry out maintenance operations which would cause new or different environmental effects to those identified in the Environmental Statement.
- “Order limits” which means the red line boundary for authorised development as shown on the works plans and the land plans.
- “scenario 1”, “scenario 2”, “scenario 3”, and “scenario 4”. The scenario definitions have been included to set out clearly on the face of the Order the different ways in which SEP and DEP could be constructed. The use of the scenario definitions throughout the Order will enable the construction of the two projects to come forward in the most appropriate way depending on the relevant circumstances at the time the projects are ready to start discharging pre-commencement requirements and conditions. In particular, the definitions are used in Part 1 (authorised development) of Schedule 1 (authorised project) to the Order to identify which works are relevant to each project development scenario.

- “undertaker”. The Order authorises two projects (SEP and DEP) which are owned by separate companies, SEL and DEL. Each company is the undertaker in respect of its NSIP and, depending on which project development scenario is implemented, part of each company’s project may be constructed as an integrated work. The term "undertaker" is therefore defined to make clear that each company is the relevant undertaker for its own project but where any integrated works are implemented, the company that exercises the powers under the Order in relation to an integrated work will be responsible for any restrictions, liabilities and obligations arising in relation to those integrated works. This is based on a similar approach to the definition of undertaker in Hornsea Two.
37. Article 2(2) expands the definition of rights over land in the same way as many other DCOs including Hornsea Two, Norfolk Boreas, and Norfolk Vanguard, East Anglia One North and East Anglia Two.
38. Articles 2(3) defines measurements as approximate. The purpose of this is to ensure that if upon construction of the works it transpires that the distances are marginally different to those listed in the Order, there is no issue over whether the Order permits the works. It is now common practice to include such provision in development consent orders; the model provisions included similar wording in article 1(3) and similar wording is used in Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two.
39. Article 2(4) confirms that references to works are to the works numbered in Schedule 1.

### 1.8.3 Part 2 Principal Powers

#### 1.8.3.1 Article 3 – Development consent etc. granted by the Order

40. Article 3 is based on the equivalent provisions in Hornsea Two and Teesside A and B and provides development consent for the authorised development and ancillary works described in Part 1 and Part 2 of Schedule 1. Together the authorised development and the ancillary works form the authorised project.
41. SEL is authorised to carry out any ‘A’ works listed in Schedule 1 and related ancillary works. DEL is authorised to carry out any ‘B’ works listed in Schedule 1, and related ancillary works. Both SEL and DEL are authorised to carry out the integrated works denoted with a ‘C’ in Schedule 1 and related ancillary works.



42. Development consent is subject to the provisions of the Order which includes the requirements listed in schedule 2 and the conditions contained within the deemed marine licences in Schedule 10 to 13 of the Order and therefore all the relevant management plans secured through either the requirements or the conditions. This is regardless of whether SEP and DEP are constructed under scenario 1, 2, 3 or 4. ~~including the requirements listed in Schedule 2.~~ This is based on article 2 of the model provisions, with the only substantive difference being that article 2 of the model provisions does not refer to consent being granted for ancillary works, which is the approach that is now taken in other offshore wind development consent orders including Hornsea Two, Teesside A and B, Hornsea Three, Norfolk Vanguard and Norfolk Boreas, East Anglia One North and East Anglia Two.

#### 1.8.3.2 Article 4 – Maintenance of the authorised development

43. This article provides the undertaker with a general power to maintain the authorised development, subject to any contradictory provisions in the Order. This provision follows model provision 3, article 4 of Hornsea Three, article 5 in both of Norfolk Boreas and Norfolk Vanguard and article 4 in both East Anglia One North and East Anglia Two.

#### 1.8.3.3 Article 5 - Benefit of Order

44. Article 5 overrides section 156(1) of the Planning Act 2008 (as permitted by section 156(2)) to transfer the benefit of the Order to the undertaker rather than anyone with an interest in the land. This is appropriate because the Order includes powers of compulsory acquisition that need to be backed by assurances regarding the ability of each project company to cover any compensation payable. In any event, it would be impractical for a variety of landowners to implement the Order.
45. This article allows the benefit of the Order to be transferred or leased to others by the undertaker. With regards to the deemed marine licences included in Schedules 10 to 13 of the Order, Article 5 only provides for each deemed marine licence to be transferred as a whole and not leased. This article is necessary to allow the undertaker commercial freedom to sell or lease the authorised development while ensuring that the Secretary of State can control such sale or lease through the need to obtain their consent. Without the ability to transfer the benefit, no party but the undertaker could operate the power station without committing a criminal offence. This article is therefore necessary to ensure that the authorised development is fundable and could be sold or leased in the future.
46. The exercise of any transferred benefits or rights is subject to the same restrictions, liabilities and obligations as would apply under the Order if those benefits or rights were exercised by the undertaker. The consent of the Secretary of State is required for a transfer or grant, except where it is made to specified categories of person.
47. Specifically, consent is not required to transfer the benefit to a holder of an electricity generation licence. As these transfers are restricted to persons holding appropriate licences, such persons will already have been determined to be fit to operate such facilities.

48. In addition, bespoke drafting has been added to Article 5 at sub-paragraph (8)(b) so that consent is not required to transfer the benefit of the Order to a company that is either wholly owned by or a subsidiary of SEL and/or DEL. This is to allow flexibility to the way the two projects' transmission assets may be constructed and/or operated in the future. It allows for a GridCo to be introduced and maximises the potential to bring forward the transmission assets in an integrated manner.
49. The Article includes a procedure to be adopted when making an application to the Secretary of State for consent. Aside from the bespoke drafting referred to in paragraph 48 above, the drafting of this article reflects the equivalent provision in recent development consent orders including Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two.

#### 1.8.3.4 Article 6 - Disapplication and modification of legislative provisions

50. This article provides for the disapplication of certain requirements which would otherwise apply under public general legislation, as well as local legislation as authorised by section 120(5)(a) of the Planning Act 2008 (what may be included in order granting development consent). Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order.
51. Article 6(1)(a) to (d) disapples the requirement for various consents which would otherwise be required from the Environment Agency and relevant drainage authorities specifically, these are the requirements for consents for the placing of structures on, over or under rivers, the construction of culverts, together with the requirements for approval under flood defence and land drainage byelaws. These are consents for activities which may be a necessary part of constructing the authorised development. To provide certainty that the authorised development can proceed, the Order disapples the requirement for separate statutory consents to be obtained in relation to these activities. These provisions are included in Norfolk Boreas and Norfolk Vanguard.
52. Section 150 of the Planning Act 2008 provides that where an order granting development consent includes a provision the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted, the order may only be granted if the relevant body has consented to the inclusion of the provision. The Applicant is currently in discussion with the Environment Agency and the relevant drainage authorities with regards to the disapplication of the various water and drainage related consents under Article 6(1)(a) to (d) of the Order and relevant protective provisions.

53. Article 6(1)(e) disapplies the provisions of the Neighbourhood Planning Act 2017 (the 2017 Act) relating to the temporary possession of land. This is on the basis that the temporary possession of land is dealt with by articles [29-26](#) and [30-27](#) and the wording of those provisions is well established. The 2017 Act provisions differ from those in the Order and are untested, as they are not yet in force, it is therefore necessary to disapply them in case they should come into force in the future. This disapplication has been included in a number of offshore generating station development consent orders including most recently Hornsea Three, Norfolk Boreas and Norfolk Vanguard, East Anglia One North and East Anglia Two.
54. Article 6(2) provides for the modification of Regulation 6(1) of the Hedgerows Regulations 1997 to provide that removal of any hedgerow to which the Hedgerow Regulations 1997 relates is permitted for the carrying out or maintenance of development which has been authorised by a DCO. This is precedented in a number of other development consent orders including Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two.

#### 1.8.3.5 Article 7 - Defence to proceedings in respect of statutory nuisance

55. Section 158 of the Planning Act 2008 confers statutory authority for the purposes of a defence in civil or criminal proceedings for nuisance. This article provides a defence to proceedings brought in a magistrates' court under section 82(1) of the Environmental Protection Act 1990 in relation to certain nuisances set out in paragraph 79(1)(g) of Environmental Protection Act 1990.
56. A broad defence to civil and criminal proceedings for nuisance is provided by section 158 of the Planning Act 2008. However, the view taken under the NSIP regime is that section 158 does not extend to the relatively rare situation by which if, somebody considers that the local authority ought to be tackling a nuisance using its statutory nuisance powers, but it is not, that person may apply to the magistrates' court under section 82 of the Environmental Protection Act 1990. Accordingly, this article is seeking to fill in a legislative gap by extending the effect of section 158.
57. As section 158 does not distinguish between different types of nuisance, the logical position is that this article should apply to all categories of nuisance. However, as a matter of practice other projects have been more discriminating and have asked whether there is any possibility of a statutory nuisance occurring, leading to specific types of nuisance being referred to. The undertaker has followed this approach by seeking to restrict the application of this article so that it only applies to nuisances that have been identified as potentially resulting from the authorised development, as set out in the **Environmental Protection Statement of Engagement (Statutory Nuisance Statement)** (document reference 5.9) accompanying the application. This ensures that this article is focused only on those nuisances that may be of relevance, whilst also reflecting the logic and correct interpretation of section 158.
58. The defence is available if the nuisance relates to:

- the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and is attributable to the carrying out of the authorised development in accordance with a notice served, or consent given, under the Control of Pollution Act 1974; or
- the construction, maintenance or use of the authorised development and cannot reasonably be avoided.

59. This article is based on article 7 of the model provisions and recent orders including Article 7 in each of Hornsea Three and East Anglia One North and East Anglia Two and Article 8 in Norfolk Vanguard and Norfolk Boreas Hornsea Three. The references to section 65 of the Control of Pollution Act 1974 are omitted because that section has been repealed.

### 1.8.4 Part 3 Streets

#### 1.8.4.1 Article 8 – Street works

60. Article 8 allows the undertaker to interfere with and execute works in or under the streets within the Order limits for the purposes of the authorised development. The authority given by this article is a statutory right for the purposes of sections 48(3) and 51(1) of the New Roads and Street Works Act 1991 (the 1991 Act). Certain provisions of the 1991 Act apply to works carried out under this article, subject to the provisions of article 9 (application of the 1991 Act).
61. Article 8 is based on article 8 of the model provisions.

#### 1.8.4.2 Article 9 – Application of the 1991 Act

62. Article 9 provides for the application of the 1991 Act. Although not included in the model provisions, there is precedent for including these provisions in previous orders, for example, most recently in article 9 in each of Hornsea Three, East Anglia One North and East Anglia Two and Article 14 of Norfolk Vanguard and Norfolk Boreas.

#### 1.8.4.3 Article 10 – Temporary stopping up of streets

63. This Article allows for the temporary alteration, diversion or restriction of streets for the purposes of authorised development, whilst ensuring that essential pedestrian access to and from premises along that street is maintained if necessary (paragraph (3)). This power is required because it is necessary to be able to restrict the use of the street in order to allow installation of the cables. Closures and traffic management will also be required to facilitate the creation or improvement of junctions. Where possible and safe, closures for access junction works will be partial only and not close the full width of the carriageway. Further details of the access strategy for SEP and DEP including a number of outline access/junction designs can be found in the **Transport Assessment** (document reference 6.3.24.1). Paragraph (2) confers a power on the undertaker where a street has been temporarily stopped up under this article to use it as a temporary working site. It is not anticipated that any street would be used as a working site except when undertaking works affecting the carriageway itself.

64. Paragraph (6) provides a right to compensation for any person suffering loss due to the suspension of a private right of way under this article. The undertaker is not aware of any private rights of way in streets however this article is retained as precautionary in the case that unidentified, extant title rights to take exist along the same lines as the current public highway.
65. Paragraph (7) states that where the street authority fails to notify the undertaker of its decision in respect of an application for consent within 28 days of the application being made is deemed to have given its consent. This time limit is considered necessary to remove the possibility for delay and provide certainty that the authorised development can be delivered by the undertaker in a timely fashion. As NSIPs, the authorised development should not be at risk of being held up due to a failure to respond to an application for consent.
66. This provision has been included in numerous previous orders including article 10 of Hornsea Three, article 12 of East Anglia One North and East Anglia Two and article 11 of Norfolk Vanguard and Norfolk Boreas.

#### 1.8.4.4 Article 11 – Temporary stopping up of public rights of way

67. This article allows the undertaker, where it is in connection with the carrying out of the authorised development, to temporarily stop up a public right of way where it is specified in Schedule 4 of the Order to the extent stipulated in the same schedule. This article is not a model provision, but it is preceded in article 11 each of Hornsea Three, East Anglia One North and East Anglia Two and article 10 of Norfolk Boreas and Norfolk Vanguard.

#### 1.8.4.5 Article 12 – Access to works

68. This article allows accesses, which are either specified in Schedule 6 or which are subject to the approval of the relevant planning authority in consultation with the highway authority, to be created within the Order limits. It is anticipated that this article will be relied on by the undertaker to provide temporary accesses as required during the construction period, with all permanent means of access (including private means of access) forming part of the authorised development. This article departs from the model provisions (article 12) to provide the undertaker with a general power to provide means of access should that be necessary or expedient but is preceded in previous orders including article 12, Norfolk Boreas and Norfolk Vanguard and article 13 of East Anglia One North and East Anglia Two.
69. The inclusion of this article is considered to be appropriate as it will help to ensure that the authorised development can be carried out expeditiously by allowing the undertaker to create new temporary accesses as and where required, particularly in response to requests from landowners, occupiers and other affected parties.

#### 1.8.4.6 Article 13 – Agreements with street authorities

70. This article allows street authorities and the undertaker to enter into agreements relating to any temporary stopping up, alteration or diversion of a street authorised by the Order, or the carrying out of works in the streets referred to in Article 8 of the Order. This article follows the approach taken in article 13 in each of Hornsea Three, Norfolk Boreas and Norfolk Vanguard and article 14 of both East Anglia One North and East Anglia Two.

### 1.8.5 Part 4 Supplemental powers

#### 1.8.5.0 Article 14 - Discharge of water

- 71. This article sets out the circumstances in which the undertaker is entitled to discharge water into a watercourse, public sewer or drain, and its purpose is to establish statutory authority for doing so.
- 72. The effect of sub-paragraph (3) is that this can only be done with the consent of the owner. Consent can be given subject to reasonable terms and conditions, but cannot be unreasonably withheld.
- 73. Sub-paragraph (5) requires the undertaker to take reasonably practicable steps to ensure that any water that is discharged is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- 74. This article follows article 15 of Hornsea 3.

#### 1.8.5.1 Article 15 – Protective work to buildings

75. The purpose of this article is to allow the undertaker to undertake protective works to buildings affected by the authorised development. It was included in the model provisions as article 15 and is a fairly standard provision that is often included in DCOs.

#### 1.8.5.2 Article 16 - Authority to survey and investigate the land

- 76. This article gives the undertaker the power to enter land for the purpose of surveying and investigating. It provides that the undertaker must give 14 days' notice before exercising the powers of entry. Compensation is payable for any loss or damage caused. Paragraphs (1) and (3) to (5) were included in the model provisions as article 16. The first part of paragraph 2 was also included in the model provisions but additional wording has been added to clarify that the notice to be served on landowners must include certain details where certain specified activities will be undertaken.
- 77. Paragraph (9) applies section 13 of the Compulsory Purchase Act 1965, thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the article is refused. This paragraph was included in article 16 the Silvertown Tunnel Order 2018 (Silvertown Tunnel) and article 19 of The Port of Tilbury Expansion Order 2019 (Port of Tilbury) as well as more recently in article 17 in each of Hornsea Three, East Anglia One North and East Anglia Two and article 16 of Norfolk Vanguard and Norfolk Boreas.

### 1.8.5.3 Article 17 - Removal of human remains

78. This article requires the undertaker, before it carries out any development or works which will or may disturb any human remains, to remove those remains. This article is included on a precautionary basis in case human remains are discovered while carrying out the authorised development.
79. Without this article, authorisation from the appropriate Minister would be required to remove remains. The article sets out a process of notification of the discovery of remains and for their removal and reinternment or cremation. The removal of any remains is required to be carried out in accordance with any directions which may be given by the Secretary of State. Article 18 follows model provision 17 and was included in article 28 of The Glyn Rhonwy Pumped Storage Generating Station Order 2017 (as amended) (Glyn Rhonwy), and article 17 of both Norfolk Vanguard and Norfolk Boreas.

## 1.8.6 Part 5 Powers of Acquisition

### 1.8.6.1 Article 18 - Compulsory acquisition of land

80. This article authorises the acquisition of land by compulsory purchase. It grants SEL the power to acquire (subject to consent from DEL) the land that is required for any of the 'A' works and any of the (integrated) 'C' works depending on which project development scenario is progressed and vice versa grants DEL the power to acquire (subject to consent from SEL) the land that is required for any of the 'B' works or the (integrated) 'C' works again depending on which project development scenario is taken forwards. The **Statement Of Reasons** (document reference 4.3) explains in more detail how any Compulsory Acquisition powers sought under the DCO are intended to have effect in different scenarios.
81. The Order land for both projects is the same and therefore the consent of the other undertaker is necessary when exercising powers of compulsory acquisition to ensure coordination between the two projects such that each project will be able to secure appropriate land and rights for construction, operation and maintenance of its project assets.
82. The operation of this Article is subject to articles 20 (compulsory acquisition of rights), 23 (acquisition of subsoil or airspace only), 26 (temporary use of land for carrying out authorised development) and 37 (crown rights) which are explained below.
83. Article 18 is based on article 18 of the model provisions. This power applies to all of the land required for the authorised development.

### 1.8.6.2 Article 19 - Time limit for exercise of authority to acquire land compulsorily

84. This article gives the undertaker seven years to issue notices to treat or to execute a general vesting declaration to acquire the land that may be compulsorily acquired under the Order. These are the two main procedural methods by which the process of compulsorily acquiring land may be undertaken should the Order be made.

85. The article also sets a seven year time limit on the power to take temporary possession of land under article 26, although it does not prevent the undertaker from remaining in possession of land after that time so long as possession was taken within the seven year limit.
86. This article was included in the model provisions as article 20. The seven year time limit has been included in a number of offshore wind DCOs. It was included in article 24 of Teesside A and B, and article 19 of each of, Hornsea Three, East Anglia One North and East Anglia Two and is considered appropriate for Sheringham Shoal and Dudgeon Extensions given the combined nature and scale of the two projects as well as the need to secure separate Contract for Difference (CfD) awards prior to the commencement of construction of either project. Further details about the CfD regulatory regime is set out in the **Scenarios Statement** (document reference 9.28).

### 1.8.6.3 Article 20 - Compulsory acquisition of rights

87. This article allows for rights over land to be acquired as well as the land itself, and also for new rights to be created over land. This includes the power to impose restrictive covenants. The public benefit of this is that it would allow the undertaker to reduce the land subject to outright acquisition if possible and rely on rights instead.
88. Paragraph (3) provides that for the land described in Schedule 7, the undertaker's powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as set out in that Schedule.
89. The power to impose restrictive covenants will allow for the possibility of reducing the land subject to outright acquisition and thus enable a more proportionate exercise of compulsory powers. It is therefore in the public interest.
90. Paragraph (4) provides that where the undertaker only needs to acquire rights over land it is not obliged to acquire any greater interest in that land.
91. Paragraph (5) applies Schedule 8, which imposes modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation code applies to the additional categories of acquisition covered by the Order and the creation of new rights and the imposition of restrictive covenants in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired).
92. Article 20 is based on article 21 of the model provisions. It differs from the model provisions in the following respects (which reflects the approach in recent DCOs including articles 20 of each of Hornsea Three, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two):
- Paragraphs (1) and (2) allow the undertaker to acquire existing rights and create new rights over any of the Order land. Although the Applicant has sought to identify all of the plots which are to be subject to the acquisition or creation of rights and has set these out in Schedule 7, this provision ensures that the undertaker retains the flexibility to acquire or create rights over land where that land might otherwise have to be acquired outright.



- Paragraph (3) is included to clarify that the land identified in Schedule 7 may only be subject to the acquisition or creation of rights or imposition of restrictive covenants, and may not be subject to outright acquisition.
- Paragraph (4) refers to Schedule 2A of the Compulsory Purchase Act 1965, as modified by Schedule 8, rather than section 8 of the Compulsory Purchase Act 1965. The effect is to limit the possible exceptions to this article to cases where part only of a house, building, factory, park or garden belonging to a house is being acquired.
- Paragraph (5) confirms that Schedule 8 has effect for the purpose of modifying compensation provisions to ensure that they apply to the compulsory acquisition or creation of rights, or imposition of restrictive covenants, under this article.
- Paragraphs (6) and (7) set out a mechanism for the transfer of rights to statutory undertakers with the consent of the secretary of state in circumstances where order land is required for the diversion or relocation of their apparatus.

#### 1.8.6.4 Article 21 - Private rights over land

93. This article provides for the extinguishment of private rights over land that is subject to compulsory acquisition pursuant to the Order. In so far as the undertaker acquires land or creates new rights over land under the Order, where the continuance of private rights over that land would be inconsistent with the exercise of the right being acquired or created then the private rights in question will be extinguished.
94. Paragraph (2) provides that rights over the Order land that is already owned by the undertaker are extinguished on commencement of any activity authorised by the Order which interferes with or breaches those rights.
95. Paragraph (3) provides that all private rights over land which the undertaker takes temporary possession of under the Order will be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.
96. Paragraphs (4) to (8) make provision for compensation and for circumstances where rights are preserved.
97. Article 21 is based on article 22 of the model provisions. Whilst it differs from the model provisions in certain respects as set out below, the changes mirror the approach taken in other DCOs including article 21 in each of Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two. It differs from the model provisions in the following respects:
  - It applies to all private rights, not just private rights of way. This is to reflect the broad nature of private rights that may exist over the Order land including easements.
  - Paragraph (2) is included to confirm that where land is subject to the acquisition or creation of rights or the imposition of restrictive covenants, any other rights in that land are extinguished if their continuance would be incompatible with the right or covenant being acquired or created by the undertaker.

- Paragraph (3) is included to clarify the position where the undertaker takes temporary possession of land.

#### 1.8.6.5 Article 22 – Application of the 1981 Act

98. This article applies the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 (the 1981 Act) (with minor modifications to ensure consistency between the terms of the Order and the 1981 Act) to compulsory acquisition under the Order so that the undertaker has the option to acquire land via the vesting declarations procedure.
99. Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase (the other being by means of a notice to treat). They allow several parcels to be acquired at once and therefore more efficiently than under the notice to treat procedure.
100. The modifications to the 1981 Act contained in this article can be summarised as follows:
- Paragraph (3) modifies section 1(2) so that section 1 applies to the undertaker.
  - Paragraph (4) modifies section 5 to remove the reference to situations where the compulsory purchase order is subject to special parliamentary procedure.
  - Paragraph (5) omits section 5A, on the basis that the Order prescribes the time limit for compulsory acquisition in article 19.
  - Paragraph (6) modifies the statutory reference in section 5B(1), on the basis that the Planning Act 2008 contains equivalent provisions that apply in respect of development consent orders. The cross-reference to section 5A is also modified, to reflect that the time limit is set out in article 19.
  - Paragraph (7) modifies the statutory references in section 6(1) (b), on the basis that the Planning Act 2008 contains equivalent provisions that apply in respect of development consent orders.
  - Paragraph (9) modifies paragraph 1(2) of Schedule A1 to change the reference to compulsory purchase orders excluding land that is 9 metres or more below the surface from the counter-notice procedure.
  - Paragraph (10) clarifies that references to the Compulsory Purchase Act 1965 in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 of the Planning Act 2008 and as modified by article 29, on the basis that both section 125 and article 29 modify the provisions of the 1965 Act.
101. Article 22 is based on article 23 of the model provisions. Due to extensive changes to the relevant provisions of the 1981 Act since the model provisions came into force, the wording of this article departs significantly from the model provisions. The drafting of this article follows article 22 in each of Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two.

#### 1.8.6.6 Article 23 - Acquisition of subsoil or airspace only

102. This article allows the undertaker to acquire, or acquire or create rights in, the subsoil below land or the airspace over land, rather than having to acquire the land itself.
103. The purpose of article 23 is to give the undertaker the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on landowners which is in the public interest.
104. This article is based on article 24 of the model provisions in relation to subsoil acquisition but differs by the inclusion of airspace. This approach is however precedented in article 24 of each of Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two.

#### 1.8.6.7 Article 24 – Modification of Part 1 of the 1965 Act

105. The purpose of this article is to ensure consistency between the terms of the Order and the Compulsory Purchase Act 1965, as applied by section 125 of the Planning Act 2008.

#### 1.8.6.8 Article 25 - Rights under or over streets

106. The purpose of this article is to allow the undertaker to appropriate and use land above or below streets within the Order limits, without having to acquire the street or any right or easement in it. The exercise of this power, without acquisition, is prohibited in the circumstances set out in paragraph (3). Compensation is payable for any loss or damage caused to an owner or occupier of land affected by the power of appropriation where no acquisition has taken place.
107. The authorised development crosses streets and creates new accesses onto existing streets in several places. This article allows those works to be undertaken without interfering with the ownership of land under and above streets which is often separately held from the highway authority interest in the street itself.
108. This article was included in the model provisions as article 27 and is generally included in development consent orders including in article 25 of each of Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two.

#### 1.8.6.9 Article 26 - Temporary use of land for carrying out the authorised development

109. The purpose of this article is to allow the land set out in Schedule 9 to be occupied temporarily while the works are carried out. This is land which is required during construction of the authorised development but which is not required permanently. Article 26 also allows for the temporary occupation of any of the land intended for permanent acquisition that has not yet been acquired.

110. The article is based on article 28 of the model provisions, with the modifications listed below, which are included to minimise the amount of land that is required to be subject to permanent acquisition and to extend the notice period from a minimum of 14 days to a minimum of 28 days. These modifications are preceded in numerous development consent orders including, in respect of the first and second bullet points, in Article 26 of each of Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two. The modifications are:

- First, the ability to occupy land temporarily that is subject to powers of permanent acquisition but that has not yet been acquired (paragraph (1)(a)(ii)) has been added. This allows the undertaker to occupy land without having to acquire it immediately and allows for permanent acquisition of land for the as-built scheme.
- Secondly, paragraph (1)(e) has been added so that permanent works specified in column (2) of Schedule 9, and any other permanent mitigation works in connection with the authorised development, may be left on land that has been temporarily occupied, rather than having to acquire such land for this purpose. The intended scope of 'mitigation works' is any permanent works necessary and appropriate to mitigate the impacts of the authorised development (e.g. landscaping or ecological mitigation works).
- Thirdly, paragraph 2 requires at least 28 days' notice of entry to be served on the owners and occupiers.

111. The inclusion of this article is important to ensure that the authorised development can be carried out efficiently and expeditiously following the making of the Order. The undertaker is entitled to either occupy and use land pending its permanent acquisition, or to temporarily occupy and use land that is not to be permanently acquired, with provision made for the restoration of the land and the payment of compensation to the affected landowners and occupiers for any loss or damage arising. These powers are considered to be reasonable given the status of the authorised development as two NSIPs.

112. If the powers conferred by this article were not included then the undertaker would be forced to seek permanent rights over, or the permanent acquisition of, all of the land required for both construction and operation of the authorised development, which would be disproportionate for those plots which have been identified as being suitable for temporary occupation and use.

#### 1.8.6.10 Article 27 - Temporary use of land for maintaining the authorised development

113. This article provides that the undertaker may take temporary possession of land within the Order limits, as required for the purpose of maintaining the authorised development, at any time within the "maintenance period" as defined in paragraph (11). This power could be used for example to create a safe working area around the electrical cables should maintenance works be required and for the replacement of trees, hedges and shrubs as required by a landscape management plan approved and implemented in accordance with requirements 11 and 12.

- 114. Paragraph (1)(b) authorises the construction of such temporary works and buildings on the land as may be reasonably necessary for that purpose. Under paragraph (5) all temporary works must be removed before the undertaker gives up possession under this article and the land must be restored to the reasonable satisfaction of the owners.
- 115. This power does not apply in relation to houses, gardens or any other occupied buildings (paragraph (2)).
- 116. Paragraph (3) requires at least 28 days' notice of intended entry to be served on the owners and occupiers of the land in question.
- 117. Paragraphs (6) to (8) provide for compensation to be paid to owners and occupiers of land of which temporary possession is taken under this article.
- 118. This article was included in the model provisions as article 29 and is also included as article 27 in Hornsea Three, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two.

#### 1.8.6.11 Article 28 - Statutory undertakers

- 119. This article allows the undertaker to extinguish rights of statutory undertakers and remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the Land Plans and described in the Book of Reference. In practice it is impractical to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land is required.
- 120. As the land over which this power may be exercised is shown on the **Land Plans** (document reference 2.3), and the beneficiaries of such rights are described in the **Book of Reference** (document reference 3.1), the requirements of Regulations 5(2)(i)(iii) and 7(1)(c) of the APFP Regulations are satisfied.
- 121. This article is based on article 31 of the model provisions. It differs from the model provisions in that the article is expressed to be subject to article 41 and the protective provisions.

#### 1.8.6.12 Article 29 - Recovery of costs of new connections

- 122. This article provides that if any statutory undertaker's apparatus is removed and this halts a supply from that apparatus to owners or occupiers of premises such that they have to seek a connection to other apparatus, then their reasonable costs in obtaining a new supply can be claimed from the undertaker.
- 123. This article was included in the model provisions as article 33 and has been included on a number of offshore wind farm development consent orders including Article 29 of Hornsea Three, East Anglia One North and East Anglia Two and Article 30 of Norfolk Boreas and Norfolk Vanguard.

## 1.8.7 Part 6 Operations

### 1.8.7.1 Article 30 – Operation of generating station

124. Pursuant to section 140 (operation of generating stations) of the Planning Act 2008, article 30 permits SEL to operate and use the SEP offshore generating station and permits DEL to operate and use the DEP offshore generating station.
125. Paragraph (3) provides that grant of development consent does not relieve the undertaker of the need to obtain any other necessary consents to operate the authorised development. This clarifies that the operator will still require to obtain, for example, an electricity generation licence under the Electricity Act 1989.
126. This article is included as standard in other development consents for offshore generating stations including Hornsea Two, Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two.

### 1.8.7.2 Article 31 - Deemed marine licences under the 2009 Act

127. Article 31 grants the deemed marine licences included in schedules 10 to 13 of the Order under Part 4 of the Marine and Coastal Access Act 2009 (the 2009 Act). As the Order grants development consent for two NSIPs, there are four deemed marine licences in total, two for each project. Each project has one deemed marine licence for the generation assets and one for the transmission assets. The approach of including separate generation and transmission deemed marine licences for offshore wind farm development consent orders is a standard approach for offshore schemes. It allows for the separate transfer of the transmission assets within the transmission licences to an Offshore Transmission Owner (OFTO), whilst the generation assets can be retained by the relevant undertaker for each project. This approach has been taken on numerous DCOs for offshore generating stations including Hornsea Two, Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two.

## 1.8.8 Part 7 Miscellaneous and General

### 1.8.8.1 Article 32 – Application of landlord and tenant law

128. This article provides that any agreement for the transfer of the benefit of the Order overrides landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate it.
129. This article follows article 35 of the model provisions and is generally included in DCOs.

### 1.8.8.2 Article 33 - Operational land for purposes of the 1990 Act

130. The effect of this article is that the land within the Order limits is to be treated as the operational land of a statutory undertaker for the purposes of the Town and Country Planning Act 1990 (the 1990 Act). Although section 264 of the 1990 Act is entitled “cases in which land is to be treated as not being operational land”, subsections (3) and (4) set out cases in which land is to be treated as operational land.

131. This article was included in the model provisions as article 36. This article is necessary to ensure that development is correctly classified under the 1990 Act and benefits from the appropriate permitted development rights.

#### 1.8.8.3 Article 34 - Felling or lopping of trees and removal of hedgerows

132. This article allows any tree or shrub that is near the authorised development to be felled or lopped, or have its roots cut back, if it is considered to obstruct the construction, operation or maintenance of the authorised project or endanger anyone using it. Compensation is payable for any loss or damage caused.

133. Further, this article also authorises the removal of any hedgerow as defined in the Hedgerow Regulations 1997. The authorised project includes the removal of a number of hedgerows. This article is based on article 39 of the model provisions and recent DCOs for offshore generating stations including article 34 of Hornsea Three, East Anglia One North and East Anglia Two and article 35 of Norfolk Vanguard and Norfolk Boreas.

#### 1.8.8.4 Article 35 - Trees subject to tree preservation orders

134. Article 35 provides that the undertaker may fell or lop or cut back the roots of any tree which is subject to a tree preservation order or shrub to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development. Compensation is provided for if loss or damage is caused.

135. The article is a model provision save that the article applies generally to any tree subject to a tree preservation order made before and after the date of the Order coming into effect and either within or overhanging the Order limits.

#### 1.8.8.5 Article 36 - Saving provisions for Trinity House

136. This is a model provision for harbours and is commonly used in DCOs for offshore generating stations. It has, for example, most recently been included in Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two. It is intended to provide protection to Trinity House.

#### 1.8.8.6 Article 37 - Crown rights

137. Article 37 is not a model provision, but it reflects the terms of section 135 of the Planning Act 2008 and is also precedented. It has been used in many made orders, including Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two.

#### 1.8.8.7 Article 38 – Certification of plans etc.

138. This article provides for various application plans and documents to be certified by the Secretary of State as true copies of those documents following the making of the Order and links to Schedule 18 where the documents are set out.

#### 1.8.8.8 Article 39 - Abatement of works abandoned or decayed

139. This article is intended to make sure that neither SEL nor DEL will abandon or allow to fall into decay the offshore works for SEP or DEP respectively. It provides a power which enables the Secretary of State, following consultation with the undertaker, to serve notice on the undertaker requiring it, at its own expense, to remove or restore those works. Section 105 of the Energy Act 2004 makes provision for the Secretary of State being able to serve notice on the undertaker requiring it to submit a decommissioning programme for approval. The provisions of this article do not cut across this statutory provision but supplement it.

#### 1.8.8.9 Article 40 – Funding

140. Article 40 provides that the undertaker may not exercise a number of powers prior to it putting into place a guarantee or security equal to its potential liability to compensation payable under the Order which is approved by the Secretary of State. Save for paragraphs (8) and (9), this Article is based on precedent in Teesside A and B, Hornsea Two, Hornsea Three, East Anglia One North and East Anglia Two.

141. Paragraphs (8) and (9) are novel drafting which provide the opportunity for SEL and DEL to demonstrate to the Secretary of State that neither a parent company guarantee or an alternative form of security is required because the undertakers are sufficiently funded to meet any liability to pay compensation under the Order. The inclusion of these paragraphs reflects the fact that in many other DCOs, where an undertaker is considered to be sufficiently funded to meet its liabilities, there is no equivalent provision requiring a parent company guarantee or another alternative form of security to be provided by the relevant undertaker. A clear example of this are DCOs where National Highways are the undertaker.

#### 1.8.8.10 Article 41 – Protective provisions

142. This article gives effect to Schedule 14, which contains provisions protecting the interests of third parties. It was not included in the model provisions but is a standard article in development consent orders that include protective provisions.

#### 1.8.8.11 Article 42 - Service of notices

143. This article governs the service of notices required to be given under the Order. In particular it allows service by email with the consent of the recipient (paragraph (1)(c)), and deals with the situation of service on an unknown landowner (paragraph (4)).

144. This article was not included in the model provisions but is a sensible addition that has been included in previous similar orders for example, article 44 of Hornsea Three, article 43 of Norfolk Vanguard and Norfolk Boreas and article 45 of East Anglia One North and East Anglia Two.



### 1.8.8.12 Article 43 - Arbitration

145. This article governs any disagreement about any provision of the Order, except for those which are covered by article 36. Unless the Upper Tribunal (Lands Chamber) has jurisdiction, the matter is to be settled by arbitration. If the parties cannot agree on who the arbitrator should be then this will be decided by the Secretary of State.
146. An arbitration article was included in the model provisions as article 42. This article departs from the model provisions in that it applies Schedule 15 which sets out more detailed rules and a process for arbitration in order to provide greater certainty to all parties involved in the process who may rely on this provision. A similar approach has been taken in recent DCOs including Hornsea Three, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two.

### 1.8.8.13 Article 44 - Procedure in relation to approvals, etc. under requirements

147. This Article applies section 78 of the 1990 Act to the discharge of requirements included in Schedule 2 of the Order. This means the undertaker has a right to appeal to the Secretary of State if an application is made to discharge a requirement and that application is refused or determined.

### 1.8.8.14 Article 45 – Modification of DOW section 36 consent

148. Article 45 is included in order to modify the section 36 consent for the existing Dudgeon Offshore Wind Farm (DOW) (reference 12.04.09.04/227C) which was not built out to its full consented parameters. The effect of the article will be to amend the DOW section 36 consent parameters to reflect the reduced as built project and the reduced number of as built turbines. A letter from Dudgeon Offshore Wind Farm Limited confirming that it agrees to the inclusion of this provision in the Order is appended at **Appendix 1**.
149. This article is necessary in order to provide legal certainty that no further development can take place under the DOW section 36 consent and therefore allows for the release of what is known in the industry as environmental ‘headroom’. The environmental assessments for ornithology for SEP and DEP have therefore been undertaken on the basis of both the consented parameters and the reduced as-built parameters of DOW. Using the as-built parameters for the purposes of assessing the cumulative impacts of the projects provides for a more realistic assessment of the worst-case impacts.
150. Section 120(5) of the Planning Act 2008 provides that an order granting development consent may “*apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order*”. Article 6 and Schedule 13 of The Riverside Energy Park Order 2020 are precedent for using a DCO to modify an existing section 36 consent in accordance with section 120(5).

### 1.8.8.15 Article 46 – Compensation

151. This Article gives effect to Schedule 17 (compensation) should the secretary of state consider that it is necessary.

## 2 SCHEDULES

### 2.1 Schedule 1 – Authorised Project

152. Schedule 1 specifies the authorised development, which is described in detail in **Chapter 4 Project Description of the Environmental Statement** (document reference 6.1.4) by reference to numbered works and the **Works Plan (onshore)** (document reference 2.6) and the **Works Plan (Offshore)** (document reference 2.7).
153. As explained in more detail in section 2 above, the numbered works have been separated out between the two NSIPs which broadly follows the approach of other DCOs (Teesside A and B, Creyke Beck and Hornsea Two) that have authorised more than one offshore generating station NSIP within the same order. The offshore and onshore works for SEP are listed first as ‘A’ works, followed by the offshore and onshore works for DEP as ‘B’ works, and then the integrated works as ‘C’ works which are relevant to scenarios 3 and 4 as set out above.
154. Schedule 1 also includes descriptions of the associated and ancillary development for the purposes of each project.

### 2.2 Schedule 2 – Requirements

155. The requirements in Schedule 2 of the Order are the equivalent of planning conditions. They apply to the construction and operation of the authorised development and reflect the processes and procedures usually employed by the undertaker when implementing a project such as this. [Where appropriate, controls are also included in certain requirements in relation to pre-commencement works.](#)
156. The requirements provide that the various details and plans to be approved must, where appropriate, reflect the mitigation measures included in the Environmental Statement. The requirements also provide that the approved details and plans must be implemented as approved, unless further amendments to them are approved.
157. Reference to a phase of onshore works in the requirements means either a phase of the SEP onshore works, the DEP onshore works, the scenario 3 integrated onshore works or the scenario 4 integrated onshore works depending on which scenario is implemented.
158. The requirements have been drafted in line with recently approved offshore generating station DCOs including Hornsea 3, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two.
159. **Requirement 1** (time limits) specifies the time limit for commencing the authorised development as seven years from the date on which the Order comes into force. This was included in the model provisions as requirement 2. A time limit of seven years follows the approach taken in Teesside A and B and Hornsea 3 and is considered appropriate for SEP and DEP given the combined nature and scale of the two projects and the need to secure separate contracts for difference awards prior to the commencement of construction of either project.

160. **Requirements 2 to 7** (detailed offshore design parameters) set out the detailed offshore design parameters. The purpose of the requirements is to ensure that the authorised development is restricted to the maximum parameters for each project which have been assessed in the Environmental Statement.
161. **Requirement 8** (offshore decommissioning) provides for a (offshore) decommissioning programme to be submitted to the Secretary of State prior to the commencement of the offshore works and replicates the wording used in numerous offshore generating station DCOs to date including most recently the East Anglia One North and East Anglia Two.
162. **Requirement 9** (scenarios and phases of authorised development) provides that SEL and DEL must give notice to the relevant planning authority setting out which scenario will be implemented before any part of the onshore works commence. The deemed marine licences contain an equivalent condition requiring notification to the MMO as set out at paragraph 210 below. This drafting is based on requirement 15 of Norfolk Boreas. It is a key mechanism to enable the relevant planning authority to identify which works will be implemented and for the relevant requirements relating to a particular scenario to be discharged appropriately.
163. It also prevents either project from commencing its onshore works until a written scheme setting out the phases of the relevant works is submitted and approved by the relevant planning authority. This drafting follows the approach taken in other offshore generating station DCOs.
164. **Requirement 10** (detailed design parameters onshore) requires approval of detailed parameters for the onshore substation works for each project. Under sub-paragraph (5), the detailed parameters must be in accordance with the **Design and Access Statement** [document reference 9.3] and have been subject to an independent design review. The same approval is required in the event the onshore substation is to be constructed on an integrated basis as Work No. 15C rather than two separate substations as Work Nos. 15A and 15B.
165. It also provides for approval of the precise location of the permanent access road leading to the SEP and DEP onshore substations in scenarios 1 and 2 or the integrated substation in scenario 3 and 4. The permanent substation access road is part of Work Nos. 19A and 19B. Its precise location cannot be fixed at this stage because the most appropriate location for it is contingent upon which scenario is taken forwards and the detailed design of the onshore substation(s) in the relevant scenario. The precise location of the substation access road will depend on the final orientation of the substation(s) and the need to locate it in the best way possible to minimise potential flooding impacts in this area.
166. Sub-paragraph (9) limits (save for specified exceptions) the width of the onshore cable corridor to 45 metres wide in the event of scenario 1(a) or 1(b) (which provide for the situation where only one project is constructed).
167. **Requirement 11** (Provision of Landscaping) and **Requirement 12** (Implementation and Maintenance of Landscaping) require the approval and implementation of a landscape management plan before any phase of the onshore works may commence.

168. The landscaping management plan must be in accordance with the **Outline Landscape Management Plan** (document reference 9.18) and must include details of the ongoing maintenance and management of the landscaping works. The maintenance period for replacing as necessary any trees or shrubs planted in accordance with a landscape management plan is 10 years save that the maintenance period for replacing any trees or shrubs planted as mitigation for the onshore substation(s) lasts throughout the operational lifetime of the authorised development.
169. **Requirement 13** (ecological management plan) provides that no phase of the onshore works shall commence until an ecological management plan (which is in accordance with the **outline Ecological Management Plan** (document reference 9.19)) for the relevant phase of works has been approved by the relevant planning authority in consultation with Natural England. The ecological management plan must be implemented as approved. In addition, sub-paragraph 2 requires a specific pre-commencement Ecological Management Plan to be approved prior to undertaking pre-commencement site clearance works
170. **Requirement 14** (fencing and other means of enclosure) provides that the details of any permanent fencing or other means of enclosure for any phase of the onshore works must be approved before the relevant phase is commenced and must be carried out as approved. The requirement also provides that the permanent fencing around the onshore substation(s) must be in place before the onshore substation(s) are used.
171. **Requirement 15** (traffic and transport) provides that no phase of the onshore works can commence until a construction traffic management plan (in accordance with the **outline Construction Traffic Management Plan** (document reference 9.16)) in respect of the relevant phase of works has been submitted to and approved by the relevant planning authority in consultation with Norfolk County Council or in respect of the strategic road network National Highways. The outline construction traffic management plan will include a travel plan and access management plan. The requirement requires that the plan is implemented on commencement of the relevant stage of the onshore works.
172. **Requirement 16** (highway accesses) prevents commencement of construction of any new permanent or temporary highway accesses until an access plan for that new access has been submitted and approved by the relevant planning authority in consultation with Norfolk County Council or in respect of accesses onto the strategic road network National Highways. The highway accesses must only be constructed or altered in accordance with the approved details.
173. **Requirement 17** (operational drainage strategy) provides that works relating to the construction of either the SEP or DEP onshore substations (under Work Nos. 15A or 15B) or the integrated onshore substation (under Work No. 15C) and the onward transmission connection between the onshore substation(s) to National Grid's Norwich Main Substation (Work Nos. 16A and 16B and 17A and 17B or Work Nos. 16C and 17C) must not commence until an operational drainage strategy is approved by the relevant planning authority following consultation with the lead local flood authority and the Environment Agency. Each operational drainage strategy must accord with the outline operational drainage strategy and must be implemented as approved.

174. **Requirement 18** (onshore archaeology) provides for submission to and approval by the relevant planning authority (after consultation with Norfolk County Council and the statutory historic body) of a written scheme of archaeological investigation (a 'WSI') for each phase of the onshore works. For the avoidance of doubt, the drafting requires a WSI to be submitted and approved prior to commencement of each phase which, for the purposes of this requirement only, includes commencement of any intrusive archaeological investigations where relevant. Each scheme must accord with the outline written scheme of investigation (onshore) and include the details specified in the requirement.
175. **Requirement 19** (code of construction practice) provides that no phase of each project's onshore works shall commence until a code of construction practice (CoCP) for the relevant phase of works has been submitted to and approved by the relevant planning authority. The CoCP must cover all the matters in the outline code of construction practice as well as the matters listed within the requirement and it must be implemented as approved. In approving the code of construction practice the relevant planning authority must consult, as appropriate, with Norfolk County Council, the Environment Agency, Natural England and if applicable, the MMO. In addition, sub-paragraph (4) requires pre-commencement screening and fencing works to be carried out in accordance with a specific plan which must accord with the relevant details contained within the outline CoCP and which must be submitted to the relevant LPA for approval.
176. **Requirement 20** (construction hours) sets out standard construction hours of 07.00 to 19.00 Monday – Friday, and 07.00 hours to 13.00 hours on Saturdays, save where there are emergency or non-intrusive works or the works fall within one of the exceptions listed in the requirement or as otherwise agreed with the relevant planning authority in accordance with sub-paragraphs (2) and (4). For clarity, the requirement includes a definition of 'emergency' and sub-paragraph (5) requires the undertaker to notify the relevant planning authority of any emergency works undertaken as soon as reasonably practicable.
177. **Requirement 21** (Control of noise during operational phase) requires a noise management plan to be submitted prior to commencing construction of the onshore substation(s) in order to control and monitor noise emissions during the operation of each project's onshore substation in the case of scenario 1 or 2 or the integrated substation in the case of scenario 3 or 4.
178. **Requirement 22** (control of artificial light emissions) place restrictions on artificial light emissions from the operation of each project's onshore substation in the case of scenario 1 or 2 or the integrated substation in the case of scenario 3 or 4.
179. **Requirement 23** (European protected species: onshore) prohibits the commencement of any phase of onshore works until pre-construction surveys to identify whether any European Protected Species is present or could be affected by the relevant works have been carried out. If a European Protected Species is present then a scheme of protection and mitigation is required to be approved and implemented or a European Protected Species licence must be granted.

180. **Requirement 24** (public rights of way) prevents any phase of the onshore works that would affect a public right of way specified in Schedule 4 from being undertaken until a public rights of way strategy in respect of that stage and in accordance with the outline public rights of way strategy, has, after consultation with Norfolk County Council, been submitted to and approved by the relevant planning authority. Any alternative public rights of way must be implemented in accordance with the approved strategy.
181. **Requirement 25** (restoration of land used temporarily for construction) requires land used for temporary construction works to be reinstated within 12 months of completion of the relevant phase of works.
182. **Requirement 26** (local skills and employment) provides that no phase of the onshore works can commence until a skills and employment plan (in accordance with the **outline Skills and Employment Plan** (document reference 9.23)) has been submitted to and approved by Norfolk County Council in consultation with the relevant planning authority, which has responsibility for the provision of education and associated services across the whole of the county of Norfolk. The requirement requires the plan to identify opportunities for individuals and businesses based in the local area to access employment opportunities associated with the construction, operation and maintenance of the authorised development. The plan must be implemented as approved.
183. **Requirements 27** (Ministry of Defence surveillance operations) and **28** (Cromer and Claxby Primary Surveillance Radars) impose restrictions on the operation of the authorised development in the interests of air defence and air safety for military and civil airspace. The restrictions on operation will apply until the Secretary of State, having consulted with either the Ministry of Defence (in respect of requirement 27) or NATS (En-Route) Plc (in respect of requirement 28), has confirmed in writing that appropriate mitigation will be implemented and maintained for the lifetime of the authorised project.
184. **Requirement 29** (onshore decommissioning) requires each undertaker to notify the relevant planning authority of the date of the permanent cessation of commercial operation of the onshore works relating to its project and provides that following the cessation, onshore decommissioning plans in respect of those works must be submitted to and approved by the relevant planning authority. The decommissioning plans must be implemented as approved.
185. **Requirement 30** requires SEL and DEL to notify the relevant planning authority and the MMO of the first generation of power from their respective projects.
186. **Requirement 31** confirms that details approved pursuant to the requirements include any amendments that may subsequently be approved. This was included in the model provisions as requirement 37.
187. **Requirement 32** (Contaminated land and groundwater scheme) requires the undertaker to carry out any pre-commencement remedial work and onshore works in respect of any ground contamination or other adverse ground conditions only in accordance with a scheme which will be agreed with the relevant planning authority in consultation with the Environment Agency.

~~187.~~188. **Requirement 33 (onshore collaboration) requires SEL and DEL, in the event of scenario 1(c), 1(d) or 2, to share plans and documents with each other before submitting them for approval under the requirements.**

~~188.~~189. **Part 2 of Schedule 2** sets out the process for approvals and discharge of requirements and reflects the approach taken in other DCOs including Thurrock Flexible Generation Plant Development Consent Order 2022, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two.

### 2.3 Schedule 3 – Streets subject to street works

~~189.~~190. This schedule sets out those streets which are to be subject to street works.

### 2.4 Schedule 4 – Public rights of way to be temporarily stopped up

~~190.~~191. This schedule sets out those public rights of way which are to be temporarily stopped up.

### 2.5 Schedule 5 – Streets to be temporarily stopped up

~~191.~~192. This schedule sets out those streets which are to be temporarily stopped up.

### 2.6 Schedule 6 – Access to works

~~192.~~193. This schedule sets out details of access points to the works.

### 2.7 Schedule 7 - Land in which only new rights etc. may be acquired

~~193.~~194. This schedule lists the plots of land within which the undertaker may only acquire rights and cannot acquire ownership. The rights which the undertaker may acquire are set out in Column (2).

### 2.8 Schedule 8 – Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants

~~194.~~195. Modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965 to provide for the acquisition of rights and imposition of restrictive covenants as well as acquisition of ownership of the land.

### 2.9 Schedule 9 - Land of which only temporary possession may be taken

~~195.~~196. This schedule lists the plots of land of which the undertaker may only take temporary possession and cannot acquire rights or ownership of the land.

### 2.10 Schedules 10 – 13 Deemed Marine Licences

~~196.~~197. Schedules 10 to 13 include the four deemed marine licences. There are two licences for each project - a generation licence and a transmission licence. Pre-application comments from the MMO have been taken into account when drafting the four deemed marine licences.

~~197.~~198. The licences are deliberately drafted as standalone documents and follow the approach taken on numerous offshore generating station DCOs including most recently Hornsea 3, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two.

~~198.~~199. Schedule 10 sets out the deemed marine licence for the Sheringham Shoal Extension Project generation assets.

~~199.~~200. Schedule 11 sets out the deemed marine licence for the Dudgeon Extension Project generation assets.

~~200.~~201. Schedule 12 sets out the deemed marine licence for the Sheringham Shoal Extension Project transmission assets.

~~201.~~202. Schedule 13 sets out the deemed marine licence for the Dudgeon Extension Project transmission assets.

~~202.~~203. Schedules 12 and 13 include authorisation for the integrated offshore works in the event that project development scenario 4 is progressed.

~~203.~~204. The structure of all four licences is broadly the same as follows:

### 2.10.1 Part 1 – Licensed Marine Activities

~~204.~~205. Paragraph 1 (interpretation) provides interpretation of certain words and phrases used in the licence. Many of which are identical to the main Order or have been tweaked to make sense in the offshore only context.

~~205.~~206. Paragraphs 2 to 4 (Details of licensed activities) sets out a description of the licensed activities by reference to the relevant Work Nos. in Schedule 1 of the main Order. The split in work numbers is summarised in Table 1-2.

Table 1-2: Work Numbers for Each Marine Licence

Deemed Marine Licence	Work Nos.
Schedule 10 – Licence 1: Sheringham Shoal Extension Project generation licence	Work nos. 1A and 2A (in all scenarios) and Work No. 6A (in scenarios 1 to 3) or 6C (in scenario 4)
Schedule 11 – Licence 2: Dudgeon Extension Project generation licence	Work no. 1B and 2B(in all scenarios) and Work No. 6B (in scenarios 1 to 3) or 6C (in scenario 4)(
Schedule 12 – Licence 3: Sheringham Shoal Extension Project transmission licence	Work Nos. 3A to 7A (in the event of scenarios 1, 2 or 3) or 3C to 7C (in the event of scenario 4 )
Schedule 11 – Licence 4: Dudgeon Extension Project transmission licence	Work Nos. 3B to 7B (in the event of scenarios 1, 2 or 3) or 3C to 7C (in the event of scenario 4 )

~~206.~~207. Paragraph 5 sets out the grid coordinates for those works within the deemed marine licence.

~~207.~~208. Paragraph 6 confirms the deemed marine licence will remain in force until the scheme has been decommissioned.



~~208.~~209. Paragraph 7 confirms that section 72(7) and (8) (*Variation, suspension, revocation and transfer*) of the 2009 Act does not apply to a transfer of the deemed marine licences falling within article 5 (Benefit of the Order). Section 72(7) permits the licensing authority to transfer a marine licence to another person. Section 72(8) provides that "*a licence may not be transferred except in accordance with subsection 7*". Article 5 (Benefit of the Order) however provides for a transfer to take place in a different way to section 72(7). Since article 5 is different from the precise wording of section 72(7) of the 2009 Act it is necessary to specify that section 72(7) only applies to a transfer not falling within article 5 in order to enable article 5 to operate. Without specifying this, article 5 might be claimed to be inoperative because of adopting a different wording from section 72(7).

~~209.~~210. Paragraph 8 confirms that where any condition requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under the licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved by the MMO. Paragraph 8(2) further confirms that any amendments to approved details must be in accordance with the principles and assessments set out in the Environmental Statement and that approval by the MMO of any amendment or variation may only be given where it has been demonstrated to the satisfaction of the MMO that it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

~~210.~~211. Paragraph 9 requires the undertaker to notify the MMO immediately if it becomes aware that any information on which the granting of the licence was based was materially false or misleading and to correct such information in writing. ~~notes that any amendments to approved details must be in accordance with the principles and assessments set out in the Environmental Statement.~~

## 2.10.2 Part 2 – Conditions

~~211.~~212. *Conditions 1 to 3 of marine licence 1 and 2 / Conditions 1 and 2 of marine licence 3 and 4 (Design parameters)* specify the design parameters associated with the works comprised within the authorised project relevant to each deemed marine licence. This largely replicates the design parameters in the requirements but also include some restrictions which are not included in Schedule 1 of the Order, this is because it is considered more appropriate for these parameters to be controlled within the deemed marine licences due to their nature (e.g. parameters associated with hammer energy).

~~212.~~213. *Condition 4 of marine licence 1 and 2 / Condition 3 of marine licence 3 and 4 (Scenarios and phases of the authorised project)* provides that the authorised project must not be commenced until the undertaker has notified the MMO of which scenario will be constructed and provides for approval of a written scheme setting out the phases of construction of the authorised project. This mirrors the approach taken in requirement 9 with regards to the relevant planning authority.

~~213.~~214. *Condition 5 of marine licence 1 and 2 / Condition 4 of marine licence 3 and 4 (Vessels under the undertaker's control)* provides for a code of conduct to be issued to vessels operating within the Order limits under the undertaker's control to reduce the risk of injury to marine mammals.

~~214.~~215. *Condition 6* of marine licence 1 and 2 / *Condition 5* of marine licence 3 and 4 (*Extensions of time periods*) confirms that any time periods given in the licence may be extended with the agreement of the other party.

~~215.~~216. *Condition 7* of marine licence 1 and 2 / *Condition 6* of marine licence 3 and 4 (*Notifications and inspections*) provides for a system of supplying copies of the licence to agents and contractors, restricting the use of contractors and vessels to those notified to the MMO and where appropriate the Maritime and Coastguard Agency (MCA), Trinity House, United Kingdom Hydrographic Office and/or the Kingfisher Information Service of Seafish, and publicising commencement and progress of the licensed activities.

~~216.~~217. *Conditions 8 and 9* of marine licence 1 and 2 / *Conditions 7 and 8* of marine licence 3 and 4 (*Aids to navigation and Colouring of structures*) provide for various matters to aid navigation in the vicinity of the authorised scheme, including the provision of various navigation aids; the ongoing availability of the aids to navigation; notification of the progress of works to Trinity House and the MMO and the colouring of structures.

~~217.~~218. *Condition 10* of marine licence 1 and 2 / *Condition 9* of marine licence 3 and 4 (*Aviation safety*) requires the undertaker to exhibit lights as required by the Air Navigation Order 2016 and determined necessary for aviation safety and to notify the Defence Infrastructure Organisation Safeguarding regarding the construction of the scheme and its parameters.

~~218.~~219. *Condition 11* of marine licence 1 and 2 / *Condition 10* of marine licence 3 and 4 (*Chemicals, drilling and debris*) restricts the use of chemicals and other substances and provides for the disposal of certain drilling arisings and the monitoring of construction materials so as to identify those which may accidentally fall into the sea, which shall then be investigated and, where identified, recovered.

~~219.~~220. *Condition 12* of marine licence 1 and 2 / *Condition 11* of marine licence 3 and 4 (*Force majeure*) provides for the notification of deposits made in an emergency within or outside of the Order limits.

~~220.~~221. *Conditions 13* of marine licence 1 and 2 / *Condition 12* of marine licence 3 and 4 (*Pre-construction plans and documentation*) provides for the submission for approval, before the commencement of licensed activities, of a plan showing the proposed location, dimensions and choice of foundation of all elements of the authorised scheme to ensure that the licensed activities conform with the description of the works and the design parameters specified within the conditions. It also provides for submission for approval of the following:

- a plan prepared in accordance with the layout commitments. setting out proposed details of the authorised project
- a construction programme and monitoring plan;
- a construction method statement;
- a project environmental management plan;

- (in the transmission licences only) a specific cable specification, installation and monitoring plan for the cable corridor within the Cromer Shoal Chalk Beds Marine Conservation Zone (cable specification details etc. for cables laid outwith the Marine Conservation Zone will accord with the details provided in the construction method statement);
- an archaeological written scheme of investigation (offshore);
- an offshore operations and maintenance plan;
- an aids to navigation management plan
- a marine mammal mitigation protocol where driven or part-driven pile foundations are used;
- a mitigation scheme for any benthic habitats of conservation, ecological and/or economic importance constituting Annex I reef habitats where identified during pre-construction surveys;
- an ornithological monitoring plan; and
- a navigation management plan.

~~224.~~222. In most cases outline or in principle versions of these schemes and plans are being submitted with the DCO application and the versions of these documents that are submitted for approval will need to be in accordance with the outline or in principle plan or scheme.

~~222.~~223. *Condition 14* of marine licence 1 and 2 / *Condition 13* of marine licence 3 and 4 (Site Integrity Plan) requires submission and approval of a Site Integrity Plan which must be in accordance with the **In Principle Site Integrity Plan for the Southern North Sea Special Area of Conservation** (document reference 9.6) before commencement of any piling activities;

~~223.~~224. *Condition 15* of marine licence 1 and 2 / *Condition 14* of marine licence 3 and 4 requires any pre-construction plans and documentation submitted for approval under conditions 15 or 14 to be submitted for approval at least four months prior to the intended start of construction (subject to any amendments specified elsewhere in the conditions), and requires each approved document to be complied with. This follows the approach taken on other offshore generating station DCOs including Hornsea 3, Norfolk Boreas and Norfolk Vanguard.

~~224.~~225. *Condition 16* of marine licence 1 and 2 / *Condition 15* of marine licence 3 and 4 (*Offshore safety management*) states that no part of the authorised project may commence until the MMO has confirmed that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate contained within MGN654 and its annexes.

~~225.~~226. *Condition 17* of marine licence 1 and 2 / *Condition 16* of marine licence 3 and 4 (*Reporting of engaged agents, contractors and vessels*) requires the undertaker to provide to the MMO details of agents and contractors engaged to carry out the licensed activities, and a weekly update as to which vessels are being used during construction.

~~226.~~227. *Condition 18* of marine licence 1 and 2 / *Condition 17* of marine licence 3 and 4 (*Pre-construction monitoring and surveys*) specifies the manner in which the undertaker shall discharge its obligation under Condition 13/12 to put forward proposals for pre-construction surveys/monitoring, and provides an indicative list of the expected pre-construction surveys.

~~227.~~228. *Condition 19* of marine licence 1 and 2 / *Condition 18* of marine licence 3 and 4 (*Construction monitoring and surveys*) specifies the manner in which the undertaker shall discharge its obligation under Condition 13/12 to put forward proposals for construction surveys/monitoring, and specifically requires certain noise monitoring. It provides for the MMO to require further noise monitoring depending on the results.

~~228.~~229. *Condition 20* of marine licence 1 and 2 / *Condition 19* of marine licence 3 and 4 (*Post construction monitoring and surveys*) specifies the manner in which the undertaker shall discharge its obligation under Condition 13/12 to put forward proposals for post-construction surveys/monitoring, and provides an indicative list of the expected post-construction surveys.

~~229.~~230. *Condition 21* of marine licence 1 and 2 / *Condition 20* of marine licence 3 and 4 (*Reporting of scour and cable protection*) provides for the undertaker to give details of the location and volume of scour and cable protection.

~~230.~~231. *Condition 22* of licences 1 and 2 / *Condition 21* of licences 3 and 4 (*Completion of construction*) requires the submission of a close out report (confirming the date of completion of construction and final as built details of the installed Wind Turbine Generators and cables as appropriate) to the MMO, MCA, Trinity House, UKHO and relevant statutory nature conservation bodies within 3 months of completion of construction. The condition prohibits construction activities following completion of construction.

~~231.~~232. *Condition 23* of licences 1 and 2 / *Condition 22* of licences 3 and 4 (*Sediment sampling*) requires the submission of a sample plan to the MMO.

~~232.~~233. *Condition 24* of licences 1 and 2 / *Condition 23* of licences 3 and 4 (*Collaboration*) requires the undertaker to submit relevant plans to the other undertaker (as appropriate) prior to submission of those plans to the MMO. Any comments received following that sharing of plans must be provided to the MMO when the plans are submitted to them.

## 2.11 Schedule 14 – Protective Provisions

~~233.~~234. This schedule sets out a number of protections for various bodies to ensure that the powers sought in the Order are exercised appropriately.

~~234.~~235. Protections for utilities are routinely included in orders and are set out in Part 1.

~~235.~~236. Protections for electronic communication code providers are routinely included in orders and are set out at Part 2.

~~236.~~237. The Applicant is currently negotiating additional protective protections with a number of statutory undertakers. Draft versions of each parties protective provisions are included in Schedule 14 as set out below but are subject to further change prior to and during Examination.

- Part 3 provides for the protection of Network Rail Infrastructure Limited
- Part 4 provides for the protection of the Environment Agency
- Part 5 provides for the protection of Drainage Authorities.
- Part 6 provides for the protection of National Grid Gas PLC
- Part 7 provides for the protection of National Grid Electricity Transmission PLC.
- Part 8 provides for the protection of Cadent Gas Limited
- Part 9 provided for the protection of Anglian Water Services Limited
- Part 10 provides for the protection of Orsted Hornsea Project Three
- Part 11 provides for the protection of Norfolk Vanguard
- Part 12 provides for the protection of Norfolk Boreas
- Part 13 provides for the protection of UK Power Networks Limited and Eastern Power Networks PLC
- Part 14 provides for the protection of National Highways

## 2.12 Schedule 15 – Arbitration Rules

~~237.~~238. This schedule provides an arbitration process. It is considered that this approach will provide greater certainty to all parties involved in the process and is preferential to the approach adopted in the model provisions. This is preceded in recent offshore generating station DCOs including Hornsea Three, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two.

## 2.13 Schedule 16 – Hedgerows

~~238.~~239. This Schedule sets out those hedgerows; potentially important hedgerows; important hedgerows; and hedgerows to be removed for the purposes of carrying out the authorised project.

## 2.14 Schedule 17 - Compensation Measures

~~239.~~240. This Schedule secures compensatory measures to ensure the overall coherence of the national site network should the Secretary of State conclude that such measures are necessary.

~~240.~~241. The Schedule is separated into different parts, with each part securing the submission and approval of a species specific compensation, implementation and monitoring plan. Each species specific plan must be in accordance with the relevant outline compensation, implementation and monitoring plan as certified.

~~241.~~242. If the Secretary of State takes the view that compensation measures are not required, the proposed structure of the Schedule would allow the compensation measures for one species to be changed or removed without affecting the operation of compensation for other species.

## **2.15 Schedule 18 – Documents to be certified**

~~242.~~243. The sets out the various application plans and documents to be certified by the Secretary of State as true copies of those documents following the making of the Order.

## APPENDIX 1 - LETTER FROM DUDGEON OFFSHORE WIND FARM LIMITED DATED 9 AUGUST 2022

Dudgeon Offshore Wind Limited  
Company no.: 04418909  
Equinor New Energy Ltd  
One Kingdom Street  
London W2 6BD  
United Kingdom

To: The Rt Hon Kwasi Kwarteng, MP  
Secretary of State  
Department for Business, Energy & Industrial Strategy  
1 Victoria Street  
London SW1H 0ET

9<sup>th</sup> August 2022

Dear Secretary of State

**Application for development consent for Dudgeon Offshore Wind Farm Extension Project (DEP) and Sheringham Shoal Offshore Wind Farm Extension Project (SEP)**

As you are aware, Dudgeon Offshore Wind Limited (“DOWL”) owns and operates the Dudgeon Offshore Wind Farm (“DOW”). DOW was granted consent under section 36 of the Electricity Act 1989 on 6 July 2012 (reference 12.04.09.04/227C) and has been subsequently varied (“the Section 36 Consent”).

The Section 36 Consent was granted subject to conditions, including a limit on the maximum generating capacity of the development of 560MW (condition 3) and a requirement (in condition 11) for the development to be constructed to conform to the specification set out in Annex B to the Consent. Annex B provides for a maximum of 77 wind turbine generators.

The DOW wind farm became operational on 7<sup>th</sup> February 2017. DOW was not built out to its full permitted capacity and nor were the maximum number of wind turbine generators permissible installed within the development. The operational capacity of DOW as constructed is therefore 402MW and only 67 wind turbine generators have been built.

DOWL has no intention to carry out any further development under the Section 36 Consent. On that basis, DOWL hereby agrees to the inclusion of a provision in the DCO for DEP and SEP which has the effect of modifying the Section 36 Consent upon commencement of the offshore works relating to DEP to prevent the construction of any further wind turbine generators as part of DOW by reducing the maximum capacity and the number of turbines to that already constructed. This restriction is intended to be permanent i.e. DOWL has no intention of seeking any later amendment to the section 36 consent to undo the effect of these proposed changes.

Yours Faithfully



Kamala Hajiyeva

Director

CC Equinor New Energy Limited