



# Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Projects

## The Applicant's Closing Statement

**Revision A**

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## Glossary of Acronyms

ALARP	As Low As Reasonably Practicable
BDC	Broadland District Council
CIA	Cumulative Impact Assessment
CoS	Chamber of Shipping
DCO	Development Consent Order
DEFRA	Department for the Environment and Rural Affairs
DEL	Dudgeon Extension Limited
DEP	Dudgeon Offshore Wind Farm Extension Project
DOW	Dudgeon Offshore Wind Farm
EIA	Environmental Impact Assessment
EPP	Evidence Plan Process
EPS	European Protected Species
ES	Environmental Statement
ETG	Expert Topic Group
EU	European Union
HVAC	High-Voltage Alternating Current
HVDC	High-Voltage Direct Current
IMC	Instrument Meteorological Condition
IROPI	Imperative Reasons of Overriding Public Interest
ISO	International Standards Organisation
km	Kilometre
LPA	Local Planning Authority
MW	Megawatts
NNDC	North Norfolk District Council
NorCC	Norwich City Council
NP	National Park
NPI	Non Production Installation
NPPF	National Planning Policy Framework
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
OS	Ordnance Survey

OWF	Offshore Wind Farm
PEIR	Preliminary Environmental Information Report
PPs	Protective Provisions
PRA	Preliminary Risk Assessment
SEL	Scira Extension Limited
SEP	Sheringham Offshore Wind Farm Extension Project
SNC	South Norfolk Council
SNS	Southern North Sea
SoS	Secretary of State
SOW	Sheringham Shoal Offshore Wind Farm
UK	United Kingdom
VMC	Visual Meteorological Condition

## Glossary of Terms

Dudgeon Offshore Wind Farm Extension Project (DEP)	The Dudgeon Offshore Wind Farm Extension onshore and offshore sites including all onshore and offshore infrastructure.
DEP offshore 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).
DEP onshore site	The Dudgeon Offshore Wind Farm Extension onshore area consisting of the DEP onshore substation site, onshore cable corridor, construction compounds, temporary working areas and onshore landfall area.
DEP North array area	The wind farm site area of the DEP offshore site located to the north of the existing Dudgeon Offshore Wind Farm
DEP South array area	The wind farm site area of the DEP offshore site located to the south of the existing Dudgeon Offshore Wind Farm
DEP wind farm site	The offshore area of DEP within which wind turbines, infield cables and offshore substation platform/s will be located and the adjacent Offshore Temporary Works Area. This is also the collective term for the DEP North and South array areas.
European site	Sites designated for nature conservation under the Habitats Directive and Birds Directive. This includes candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation, potential Special Protection Areas, Special Protection Areas, Ramsar sites, proposed Ramsar sites and sites compensating for damage to a European site and is defined in regulation 8 of the Conservation of Habitats and Species Regulations 2017, although some of the sites listed here are afforded equivalent policy protection under the National Planning Policy Framework (2021) (paragraph 176) and joint Defra/Welsh Government/Natural England/NRW Guidance (February 2021).
Evidence Plan Process (EPP)	A voluntary consultation process with specialist stakeholders to agree the approach, and information to support, the EIA and HRA for certain topics.
Expert Topic Group (ETG)	A forum for targeted engagement with regulators and interested stakeholders through the EPP.

Grid option	Mechanism by which SEP and DEP will connect to the existing electricity network. This may either be an integrated grid option providing transmission infrastructure which serves both of the wind farms, or a separated grid option, which allows SEP and DEP to transmit electricity entirely separately.
Horizontal directional drilling (HDD) zones	The areas within the onshore cable route which would house HDD entry or exit points.
Infield cables	Cables which link the wind turbine generators to the offshore substation platform(s).
Interlink cables	<p>Cables linking two separate project areas. This can be cables linking:</p> <ol style="list-style-type: none"> <li>1) DEP South array area and DEP North array area</li> <li>2) DEP South array area and SEP</li> <li>3) DEP North array area and SEP</li> </ol> <p>1 is relevant if DEP is constructed in isolation or first in a phased development.</p> <p>2 and 3 are relevant where both SEP and DEP are built.</p>
Interlink cable corridor	This is the area which will contain the interlink cables between offshore substation platform/s and the adjacent Offshore Temporary Works Area.
Integrated Grid Option	Transmission infrastructure which serves both extension projects.
Jointing bays	Underground structures constructed at regular intervals along the onshore cable route to join sections of cable and facilitate installation of the cables into the buried ducts.
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

Offshore cable corridors	This is the area which will contain the offshore export cables or interlink cables, including the adjacent Offshore Temporary Works Area.
Offshore export cable corridor	This is the area which will contain the offshore export cables between offshore substation platform/s and landfall, including the adjacent Offshore Temporary Works Area.
Offshore export cables	The cables which would bring electricity from the offshore substation platform(s) to the landfall. 220 – 230kV.
Offshore scoping area	An area presented at Scoping stage that encompassed all planned offshore infrastructure, including landfall options at both Weybourne and Bacton, allowing sufficient room for receptor identification and environmental surveys. This has been refined following further site selection and consultation for the PEIR and ES.
Offshore substation platform (OSP)	A fixed structure located within the wind farm site/s, containing electrical equipment to aggregate the power from the wind turbine generators and convert it into a more suitable form for export to shore.
Offshore Temporary Works Area	An Offshore Temporary Works Area within the offshore Order Limits in which vessels are permitted to carry out activities during construction, operation and decommissioning encompassing a 200m buffer around the wind farm sites and a 750m buffer around the offshore cable corridors. No permanent infrastructure would be installed within the Offshore Temporary Works Area.
Onshore cable corridor	The area between the landfall and the onshore substation sites, within which the onshore cable circuits will be installed along with other temporary works for construction.
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.
PEIR boundary	The area subject to survey and preliminary impact assessment to inform the PEIR.



Separated Grid Option	Transmission infrastructure which allows each project to transmit electricity entirely separately.
Sheringham Shoal Offshore Wind Farm Extension Project (SEP)	The Sheringham Shoal Offshore Wind Farm Extension onshore and offshore sites including all onshore and offshore infrastructure.
SEP offshore site	Sheringham Shoal Offshore Wind Farm Extension consisting of the SEP wind farm site and offshore export cable corridor (up to mean high water springs).
SEP onshore site	The Sheringham Shoal Wind Farm Extension onshore area consisting of the SEP onshore substation site, onshore cable corridor, construction compounds, temporary working areas and onshore landfall area.
SEP wind farm site	The offshore area of SEP within which wind turbines, infield cables and offshore substation platform/s will be located and the adjacent Offshore Temporary Works Area.
Study area	Area where potential impacts from the project could occur, as defined for each individual Environmental Impact Assessment (EIA) topic.
The Applicant	Equinor New Energy Limited. As the owners of SEP and DEP, Scira Extension Limited and Dudgeon Extension Limited are the named undertakers that have the benefit of the DCO. 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.

## 1 Introduction

1. This document presents the Applicant's Closing Statement for the Sheringham Shoal Offshore Wind Farm Extension Project (SEP) and Dudgeon Offshore Wind Farm Extension Project (DEP) Development Consent Order (DCO) examination.
2. 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 DCO. 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.
3. The purpose of this document is to provide the Examining Authority (ExA) with the Applicant's closing view on why, on key issues raised in examination, it considers the ExA can recommend SEP and DEP be granted consent. The document aims to draw together information on key issues raised in the course of the examination to provide a clear summary of the Applicant's final position on any matters outstanding with Interested Parties.
4. In the Planning Inspectorate's Rule 6 Letter dated 13 December 2022 (the Rule 6 Letter), Annex F requested that the Applicant submit Statements of Common Ground (SoCG) with a number of Interested Parties and Other Parties. A number of draft and final SoCGs have been submitted throughout the examination. The Applicant has submitted a final version of **The Applicant's Statement of Commonality (Revision H)** [document reference 12.45] at Deadline 8 which provides an overview of the final status of all SoCGs requested in Annex F of the Rule 6 Letter.
5. The Applicant has also been engaged throughout the Examination with Statutory Undertakers to discuss protection of apparatus that SEP and DEP interact with or are in proximity to. Through the examination the Applicant has submitted a position statement to provide the ExA with the status of those negotiations. A final version of the **Applicant's Statutory Undertakers Position Statement (Revision E)** [document reference 12.46] at Deadline 8.
6. This document should be read in conjunction with **The Applicant's Statement of Commonality (Revision H)** [document reference 12.45] and **The Applicant's Statutory Undertakers Position Statement (Revision E)** [document reference 12.46].

## 2 S104 Planning Act 2008

7. The **Planning Statement** [AS-031] sets out the structure of the decision making for the Application pursuant to section 104 of the Planning Act 2008 and makes the Applicant's over-arching case for the DCO being granted. This has been supplemented by the **Marine Plan Policy Review** [REP1-060] and the **Addendum to the Planning Statement** [document reference 9.1.2].
8. This Closing Statement is structured to seek to assist the ExA and the Secretary of State when applying section 104.
9. Section 104(2)(b) of the Planning Act 2008 lists matters the Secretary of State must have regard to in deciding applications for orders granting development consent, which includes submitted Local Impact Reports. **Section 4** of this document

provides an overview of the Local Impact Reports submitted by the Local Planning Authorities at Deadline 1 of the examination, and demonstrates how the Applicant has progressed and so far as has been possible, resolved the matters raised in the Local Impact Reports.

10. The Applicant has nothing to add to the Planning Statement and the Marine Plan Policy Review as regards the requirement for the Secretary of State to have regard to appropriate marine policy documents under section 104(2)(aa), save to highlight the exception contained at East Inshore and East Offshore Marine Plan policy description that *“An example of an authorisation made in exceptional circumstances may be Nationally Significant Infrastructure Projects”*, and save for the specific points made in relation to the MCA's case on one relevant marine policy below.
11. The Applicant has nothing to add to the Planning Statement in relation to the prescribed matters which the Secretary of State must have regard to under section 104(2)(c).
12. Section 104(3) gives primacy to the applicable NPSs, in this case EN1, EN3 and EN5 and requires that the Secretary of State's decision “must be made in accordance” with the relevant NPSs, save where specified exceptions apply. NPS accordance is considered in **Section 3**.
13. The application of the Habitats Regulations arises pursuant to the NPSs, but also pursuant to section 104(5) and 104(6) regarding legal compliance. This is addressed in **Section 5**.
14. The Applicant does not consider that any of the exceptions under section 104(4) to (8) applies beyond consideration of compliance with the Habitats Regulations already referred to. The Applicant would highlight that, in relation to section 104(7) (adverse impact outweighing the scheme's benefits), the courts have made it clear that this does not permit the unconstrained application of a general planning balance, given the primacy which must be accorded to NPS compliance under section 104(3).

### 3 National Policy Statement Compliance

#### 3.1 Overview

15. The **Planning Statement** (Revision B) [AS-031] sets out the structure of the decision making for the Application pursuant to section 104 PA 2008 and makes the Applicant's over-arching case for the DCO being granted. This has been supplemented by the **Marine Plan Policy Review** [REP1-060] and the **Addendum to the Planning Statement** [document reference 9.1.2].
16. As noted in the Planning Statement, any decision under section 104, as stated in paragraph 4.1.2 of NPS EN-1 the Secretary of State *“should start with a presumption in favour of granting consent to applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused”*. This frames the whole analysis.

17. In short, the presumption is in favour of applications that accord with any relevant NPSs and the key test is to assess, on the balance of probabilities, whether the application is in accordance with the relevant NPSs and should therefore be consented, unless certain specified exceptions (referenced in **Section 2** above) apply.
18. This presumption in favour is reinforced by the classification of offshore wind projects as a “critical national priority” in the current draft EN-3 NPS as considered in the **Addendum to the Planning Statement** [document reference 9.1.2], which will be an “important and relevant” consideration in the decision under section 104.

### 3.2 Need Case

19. The **Project Vision** [APP-313] submitted with the DCO application set out the clear vision for and objectives of the proposed development, stating that:
 

*“The Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Project will double the generation capacity of the existing assets by 2030, making a meaningful contribution to the UK’s offshore wind and decarbonisation targets.*

*As a result of our long-term presence in Norfolk, Equinor has identified the need to take a coordinated approach to the development of the two projects, to minimise impacts on local communities and to maximise benefits for the area. As a result of this coordinated planning, the Project has proposed utilising a shared transmission asset through Norfolk, and has been selected as a Pathfinder project in coordinated offshore transmission development under the UK Government’s Offshore Transmission Network Review. The design of the shared transmission asset will enhance the environment and create lasting value for local people and communities in Norfolk.”*
20. It set out the Project Objectives as:
  - **Decarbonisation:** To generate low carbon electricity from an offshore wind farm by 2030 in support of the UK target to generate 50GW of offshore wind power by 2030 and associated carbon reduction targets
  - **Security of supply:** To export electricity to the UK National Grid to support UK commitments for offshore wind generation and security of supply
  - **Optimisation:** To coordinate and optimise generation and export capacity within the constraints of available sites and onshore transmission infrastructure whilst delivering project skills, employment and investment benefits in the Norfolk area
21. It set out the overarching Design Objectives for SEP and DEP, anchored in the 5 pillars of Climate, People, Places and Value (in accordance with the four principles from the National Infrastructure Commission’s ‘*Design Principles for National Infrastructure*’), and Safety to reflect the Applicant’s commitment to providing a safe and secure working environment.
22. Section 4 of the **Planning Statement (Revision B)** [AS-031] considers key National Policy Statement (NPS) policy on need and the different aspects of that need, including the urgency of the need for renewable electricity generation in particular and demonstrates how SEP and DEP meets this need.

23. Section 104 of the Planning Act 2008 makes clear that the SoS “*must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of the subsections*” of specified exceptions apply. Therefore, subject to the exceptions in Section 104 above and as stated in paragraph 4.1.2 of NPS EN-1 the SoS “*should start with a presumption in favour of granting consent to applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused*”. In short, the presumption is in favour of applications that accord with any relevant NPSs and the key test is to assess, on the balance of probabilities, whether the application is in accordance with the relevant NPSs and should therefore be consented, unless certain specified exceptions (set out above) apply.
24. SEP and DEP and its Project Objective 1 “**Decarbonisation**: *To generate low carbon electricity from an offshore wind farm by 2030 in support of the UK target to generate 50 GW of offshore wind power by 2030 and associated carbon reduction targets*”:
- directly address the “**urgent need for new (and particularly low carbon) energy** NSIPs to be brought forward as soon as possible, and certainly in the next 10 to 15 years, given the crucial role of electricity as the UK decarbonises its energy sector” (paragraph 3.3.15 NPS EN-1),
  - meet the UK need for “the types of energy infrastructure covered by ... NPS [EN-1] in order to achieve energy security at the same time as **dramatically reducing greenhouse gas emissions**” (paragraph 3.1.1)
  - displace from fossil fuel generating stations and **reduce greenhouse gas emissions by approximately 700,000 to 1,500,000 tonnes** CO<sub>2</sub> per year, contributing to meeting national and international targets on carbon dioxide (CO<sub>2</sub>) reduction in line with the requirements of the Climate Change Act 2008 (2050 Target Amendment) Order 2019.
25. SEP and DEP and its Project Objective 2 “**Security of supply**: *To export electricity to the UK National Grid to support UK commitments for offshore wind generation and security of supply*”:
- will provide approximately **2.5% of the UK’s current shortfall in meeting the 50 GW target** for offshore wind electricity generation by 2030 set out in the British Energy Security Strategy (HM Government 2022), equivalent to powering over 785,000 UK homes per annum (equivalent to 3% of all UK homes);
  - address the importance “*that our **supply of energy remains secure, reliable and affordable***” set out in NPS EN-1, which considers that “*offshore wind is expected to provide the largest single contribution towards the 2020 renewable energy generation targets*” (paragraphs 2.1.2 and 3.4.3);

- contribute to the NPS EN-1 **“minimum need of 59 GW of new electricity capacity by 2025”**, of which 33 GW is needed from renewable energy, in the context of the overall dwindling of UK generation capacity and renewable generation capacity reaching only 12 additional GW of capacity since 2011 (paragraph 3.3.22 and 3.3.23); and
  - contribute to The Promotion of the Use of Energy from Renewable Sources Regulations 2011 and NPS EN-1 (paragraph 3.4.5) **requirement for the UK to meet a target of 15 per cent of total energy consumption being from renewables**, in the context of 12.3 per cent of total energy consumption being from renewables in 2022 (BEIS 2022 Table 6.5b).
26. SEP and DEP as an Offshore Transmission Network Review Pathfinder Project and its Project Objective 3 **“Optimisation: To coordinate and optimise generation and export capacity within the constraints of available sites and onshore transmission infrastructure whilst delivering project skills, employment and investment benefits in the Norfolk area”**:
- advance, as a coordinated application across two wind farms sites, policy in the Energy White Paper: Powering Our Net Zero and Offshore Transmission Network Review to **“implement changes to the existing regime to facilitate coordination in the short-medium term”** (BEIS 2020b);
  - provide power for over **785,000 UK homes** equivalent to 85% of the number of homes in East Anglia;
  - create up to **1,730 and 230 full-time equivalent jobs** during the construction and operational phases respectively;
  - yield an estimated overall construction value of £2.14 billion (in current pricing) and operational and maintenance value of around £32.1 million and £800 million Gross Value Added, including **£450 million GVA** to East Anglia;
  - maximise local skills and employment opportunities through the **Skills and Employment Plan** being developed in consultation with local authorities secured by a Requirement in the **Draft DCO (Revision K)** [document reference 3.1], and
  - deliver **Biodiversity Net Gain** benefits including additional planting, native species and ecological enhancement as well as contributing to the mitigation of climate change and thus the effects it is having on future biodiversity in the UK.
27. In line with policy in NPS EN-1 *that “the Examining Authority and Secretary of State should take into account its potential benefits including its contribution to meeting the need for energy infrastructure, job creation and any long term or wider benefits”* (paragraph 4.1.3).

28. Overall SEP and DEP would make a significant contribution to the achievement of the UK's national renewable energy targets, and to the UK's contribution to global efforts to reduce the effects of climate change and would represent a substantial contribution to UK 2030 energy targets by providing approximately 2.5% of the UK's current shortfall in meeting the 50 GW target for offshore wind electricity generation by 2030. Furthermore, SEP and DEP would have a direct positive benefit by providing renewable energy which could be equivalent to securing energy supply for approximately 785,000 UK households (representing 3% of all UK households).

### 3.3 Development Scenarios

29. The Applicant prepared and submitted the **Scenarios Statement** [APP-034] with the DCO application to provide an overview and explanation of the project development scenarios within the application for SEP and DEP.
30. Subsequently, the Applicant has provided further information and justification related to the need for the project development scenarios, and how they have been fully assessed within the Environmental Statement, and provided for in the **draft DCO (Revision K)** [document reference 3.1] and associated DCO application documents, in the following submissions:
- **Response to ExA Request for a table of the anticipated adverse effects for each proposed scenario** [PDA-002];
  - **Supplementary Figures to Scenarios Statement** [PDA-005];
  - **The Applicant's Responses to the Examining Authority's First Written Questions** [REP1-036];
  - **The Applicant's Responses to the Examining Authority's Second Written Questions** [REP3-101];
  - **Supplementary Information to the Scenarios Statement** [REP3-074];
  - **The Applicant's response to the Examining Authority's Third Written Questions** [REP5-049];
  - **The Applicant's response to the Examining Authority's Fourth Written Questions** [document reference 21.5]; and
  - **The Applicant's Response to the Examining Authority's Rule 17 Letter** [document reference 22.2].
31. The Applicant considers that it has clearly set out its ambition to deliver SEP and DEP together with an integrated transmission system, highlighting that its preference in this regard is entirely aligned with that of the local community. The local planning authorities have demonstrated support for the principle of the development of SEP and DEP, as evidenced in the SoCGs. South Norfolk Council, Broadland District Council and North Norfolk District Council, all agree that there is a need to provide new forms of renewable energy generation (ID 1 of Table 3: Project-wide considerations of the **Final Statement of Common Ground with South Norfolk Council** (Revision C) [document reference 12.6], **Final Statement of Common Ground with Broadland District Council** (Revision C) [document reference 12.7] and **Final Statement of Common Ground with North Norfolk District Council** (Revision B) [document reference 14.23]). Of note, in their Local Impact Report (LIR) [REP1-082], North Norfolk District Council state that the Full

Council agreed a motion declaring a Climate Emergency. Paragraph 3.5 of the LIR accordingly recognises the 'project's contribution to renewable energy is a significant **positive impact**'.

32. The Applicant has explained that it had already committed to co-ordination between SEP and DEP, prior to the launch of the Offshore Transmission Network Review (OTNR) and the September 2021 drafts of the Energy NPSs, and has confirmed its 'Pathfinder' status (see Section 3 of the **Scenarios Statement** [APP-034] and Section 2.3.3 of the **Supplementary Information to the Scenarios Statement** [REP3-074]).
33. The Minister's letter provided at Appendix A of the **Supplementary Information to the Scenarios Statement** [REP3-074] states (emphasis added): "*[t]he concept of Pathfinder projects was created for such projects that are **leading the way in utilising the enabling regulatory and policy changes being developed by project partners to meet the OTNR objectives**. Having reviewed this proposal, I am encouraged by the degree of coordination being pursued and look forward to applying the learnings from delivering this project to the wider OTNR.*"
34. The Applicant notes that the consultation draft NPSs may, where appropriate, also be considered important and relevant to the recommendation and decision on the application. Coordination of offshore windfarm connections is raised in the recently published revised draft NPS EN-1 (March 2023). It recognises a series of initiatives aimed at improving the levels of coordination for transmission systems and states: "*3.3.72 The strategic approach to network planning, including the Holistic Network Design (HND) for onshore-offshore transmission, planned HND follow-on exercises and the proposed move to Centralised Strategic Network planning for the onshore-offshore network, allows for clearer identification of needs and includes upfront consideration of environmental and community impacts. These strategic network planning exercises should be taken into account in the consenting process, supporting those projects identified in the network designs/plans to help expedite the progress of those projects as they are brought forward for consent. Further details are provided in Section 2.13 of EN-5*".
35. As the Applicant has highlighted in the Application and throughout the Examination, SEP and DEP are exemplars for the emerging NPS policy for co-ordination between projects. The Application delivers a co-ordinated solution for projects with separate ownership groups. This has involved a single export cable route for much of its length, a single landfall, a single grid corridor and single onshore substation location, with additional coordination in the construction phase, depending on the scenario delivered. The Applicant has also included two alternative integrated grid solutions and has demonstrated its commitment to delivering this in an integrated way if the regulatory and commercial circumstances allow. The Applicant has underlined its commitment to deliver SEP and DEP in a coordinated manner through the inclusion of an onshore collaboration requirement (see Requirement 33 of the **draft DCO (Revision K)** [document reference 3.1]) and an offshore collaboration condition in each deemed marine licence (see Condition 24 of Schedules 10 and 11 and Condition 23 of Schedules 12 and 13 of the **draft DCO (Revision K)** [document reference 3.1]).



36. The design options set out within the **Scenarios Statement** [APP-314] define the project parameters which have informed the environmental assessment. The Environmental Statement adopts a Rochdale Envelope approach to the assessment, ensuring a realistic worst case for each topic has been considered. The Applicant has responded to queries raised by the Examining Authority on the assessment of impacts on different topic areas including transport. For transport, the worst-case scenarios comprises either an in-solation scenario, 1(a) or 1(b), or a concurrent scenario, 1(d), and development of SEP and DEP both of which vary in terms of peak vehicle movements and durations of construction, as set out within the **Transport Assessment** [APP-269]. The concurrent scenario has been assessed on the basis on early contractor input, making realistic use of finite resources, sharing infrastructure such as access roads and extending the durations of certain activities. The **Outline Construction Traffic Management Plan (OCTMP)** [REP5-027] includes a comprehensive strategy for monitoring, reporting and enforcing against the maximum daily vehicle trips assessed within the Environmental Statement, which has been agreed with Norfolk County Council and National Highways, as set out in the **Statement of Common Ground with Norfolk County Council** [REP7-043] and the **Statement of Common Ground with National Highways** [document reference 12.22].

### 3.4 Grid Connection and Assessment of Alternatives

#### 3.4.1 Grid Connection Agreement

37. The Applicant recognises that Interested Parties have made representations throughout the examination in relation to the grid connection point for SEP and DEP.
38. The **Cable Statement** [APP-283] submitted with the DCO application confirmed that a Grid Connection Agreement has been secured by the Applicant for a connection to the existing National Grid Norwich Main substation in Norfolk.
39. Section 3.6 of **Chapter 3 Site Selection & Assessment of Alternatives** of the ES [APP-089] set out that following completion of the Connection and Infrastructure Options Note (CION) Process an offer was made to the Applicant for connection at Norwich Main substation, which was subsequently accepted by the Applicant in May 2019.
40. For completeness the Applicant notes that, as set out in Table 20, ID16 of **The Applicant's Comments on Written Representations** [REP2-017], the Applicant has since made a Modification Application (ModApp) to National Grid for an increase in transmission entry capacity such that the grid connection is available and secured should there be any future opportunity to amend the capacity in the Agreements for Lease (AfLs) prior to construction of SEP and DEP. A Grid Connection offer was made by National Grid in November 2022 for the increased transmission entry capacity at the Norwich Main substation. The Applicant has set out in Table 20, ID16 of **The Applicant's Comments on Written Representations** [REP2-017] that if the opportunity arises to realise a greater capacity, this will not require any of the existing parameters for SEP and DEP to increase. The Grid Connection Agreement with National Grid has a connection date of 2027 for the 719MW existing capacity (stage 1) (which accords with the capacities secured in

the AfLs with The Crown Estate (TCE)). The ModApp offered and now signed allows for the increase in transmission entry capacity at a connection date of 2031 (stage 2). The Applicant therefore confirms that it has a Grid Connection Agreement in place, as can be evidenced on the publicly available Transmission Entry Capacity (TEC) register kept by National Grid ESO.

### 3.4.2 Site Selection and Assessment of Alternatives

41. The site selection and assessment of alternatives process described in **Chapter 3 Site Selection & Assessment of Alternatives** of the ES [APP-089] sought to identify the most appropriate locations for the onshore substation (section 3.10), onshore cable corridor selection (section 3.9), landfall and offshore export cable route corridor (section 3.7), and temporary works areas (section 3.8). The site selection process was predicated on the location of SEP and DEP offshore array areas, and the grid connection point at Norwich Main.
42. The Applicant highlights that representations made have focused on the grid connection point (Norwich Main) rather than raising any substantive concerns regarding the wider site selection process to deliver the connection to Norwich Main. The Applicant submits that the lack of representations regarding the key elements of its project including its coordinated landfall, grid corridor and substation location establishes that these have been effectively unchallenged in the examination and thereby accepted if not implicitly endorsed. It is these key locational and related decisions which would normally be the focus of an Examination, where there is (as here) no legal requirement to demonstrate that the 'best' connection point has been selected.
43. In Q2.2.2.1 of the Examining Authority's Second Written Questions (WQ2) [PD-012] the Applicant and National Grid ESO were requested by the ExA to submit a jointly prepared response to further questions relating to the CION process and the grid connection point which was offered at Norwich Main substation.
44. The Applicant has provided a copy of The Connection and Infrastructure Options Note (CION) Process, Guidance Note v4.0 (NGESO, November 2018) (the CION guidance) at B.9 of **Appendix B - Supporting documents to the Applicant's Responses to the Examining Authority's Second Written Questions** [REP3-103]. The Applicant confirmed in response to Q2.2.2.1c that it does not consider the CION guidance to be a material consideration in the ExA's recommendation to the Secretary of State given that the process for NGESO making a grid connection offer to a customer is regulated separately under a different relevant legislative framework from that under which consent is sought (i.e. the Planning Act 2008 and relevant secondary legislation).

### 3.4.3 National Policy Position

45. NPS policy is clear that alternatives are relevant only in specified circumstances. Policy paragraph 4.4.2 of NPS EN-1 requires that where alternatives have been studied: *"applicants are obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied. This should include an indication of the main reasons for the applicant's choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility;"*

46. The Applicant also reiterates its response (prepared in discussion with National Grid ESO) to Q2.2.2.1d of **The Applicant's Responses to the Examining Authority's Second Written Questions** [REP3-101] that Paragraph 2.2.1 of the March 2023 draft NPS EN-5 fully recognises that *"the initiating and terminating points – or development zone – of new electricity networks infrastructure is not substantially within the control of the applicant. Siting is determined by:*
- *the location of new generating stations or other infrastructure requiring connection to the network, and/or*
  - *system capacity and resilience requirements determined by the Electricity System Operator."*
47. Similarly, paragraph 2 of Schedule 4 to the EIA Regulations requires that the Environmental Statement must include:
- "2. A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the developer, which are relevant to the proposed project and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects"*
48. In the case of both NPS policy and the EIA Regulations, the requirement to consider alternatives applies to those studied by the Applicant where the Applicant has made a selection of a "chosen option" (EIA Regulations) and not to other processes by other national or other organisations in which the Applicant has been consulted.
49. Designated NPS EN-1 policy also clearly limits any need to consider alternatives where it states (in paragraph 4.4.1) that: *"this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option"*.
50. It is therefore the Applicant's firm position that the determination of the grid connection point at Norwich Main substation, which was offered following completion of the CION process under the relevant Ofgem regulated process, is not a question before the ExA in making its recommendation to the Secretary of State on the DCO application, since the policy position makes clear that *"the initiating and terminating points – or development zone – of new electricity networks infrastructure is not substantially within the control of the applicant"* and that alternatives should only have been considered and assessed if they constitute options where the developer has made the selection of a 'chosen option' within the applicant's sole control. Other options, including those that featured in CION processes controlled by others are not options from which the applicant could have, "chosen" in the terms set out in the EIA Regulations, and therefore could not all have been assessed in the Environmental Statement.
51. As is referenced in its **Addendum to the Planning Statement** [document reference 9.1.2] NPS policy on alternatives would be unchanged by the recent consultation draft NPSs (March 2023). This position is consistent with the case law on alternatives which confirms that only in exceptional circumstances is there an obligation to consider alternatives, where a specific legal obligation to do so does not apply. As the Applicant has previously submitted information on alternatives has been provided where legally required in relation to the **Habitats Regulations**

**Derogation – Provision Evidence** [APP-063] and in the Environmental Statement **Chapter 3 – Site Selection & Assessment of Alternatives** [APP-116] where alternatives studied are set out in full. There are no other exceptional circumstances that would require information on alternatives applying in this case.

### 3.4.4 Impacts on the Local Community

52. The Applicant recognises that many of the concerns raised by Interested Parties with regard to the grid connection point and assessment of alternatives relates in part to the wider issue of overall cumulative impacts on the local community.
53. As set out in **Supplementary Information to the Scenarios Statement** [REP3-074] the Applicant has given very careful consideration to the current context within Norfolk where a number of other NSIP and local infrastructure projects are being promoted or have already received consent.
54. Through the pre-application process the Applicant has also sought ways to minimise and mitigate any adverse impacts on the local community, having specific regard to the potential for cumulative effects. As set out in Table 1-2 of the **Consultation Report** [APP-029] the Applicant had regard to consultation feedback received from a range of stakeholders, and made changes to the project design, or committed to additional mitigation accordingly to address concerns.
55. Paragraphs 64 – 67 of the **Supplementary Information to the Scenarios Statement** [REP3-074] cite the additional commitments made by the Applicant which seek to minimise the cumulative effects of the onshore construction work onshore on the local community.

### 3.5 Shipping and Navigation

56. The Applicant has taken considerable care with respect to the design of SEP and DEP, ensuring accordance of the application with NPS policies on shipping and navigation, and in it taking into account consultation responses, compliance with section 49 of the Planning Act 2008 and specific guidance and methodologies required by the Maritime and Coastguard Agency (MCA) notably Marine Guidance Note (MGN) 654. It has engaged in meaningful dialogue with all of its stakeholders, listening respectfully to the views and judgement of statutory and non-statutory bodies throughout the development process including through the completion of the Navigation Risk Assessment (NRA) [APP-198].
57. The Applicant would highlight in particular the following documents among its various submissions: Deadline 7 Submission - **21.11 The Applicant's Comments on MCA Deadline 6 Submission** [REP7-72] and the Deadline 3 Submission **6.3.13.2 Navigational Safety Technical Note** [REP3-031].
58. The recent Issue Specific Hearing (ISH7) was important for the Applicant to ensure that there was an opportunity for the Examining Authority (ExA) to hear the position from all shipping and navigation interests, demonstrate its evidenced responses and to encourage a dialogue between the parties and the ExA which might steer the Examination towards resolution on this matter.
59. As reported (Deadline 7 Submission - **21.3 Written Summary of the Applicant's Oral Submissions at Issue Specific Hearing 7** [REP7-063]) the Applicant is disappointed that it finds itself in the position of being requested to present a change

to the Order Limits (red line boundary) of DEP North. The Applicant considers that it has acted in good faith to address the MCA's concern, which was brought to the table very late in the process (including the NRA process) and over 5 months into the post-application period. The Applicant summarises here the steps it has taken in considering the MCA's position:

- Revisited the modelling work undertaken in line with the MCA's methodology, providing additional information not normally required as part of an NRA in the form of a sensitivity analysis (Deadline 3 Submission **6.3.13.2 Navigational Safety Technical Note** [REP3-031]). This technical note also addressed comments around the corridor calculation, passing distances and existing precedent and built on the work submitted as part of the NRA;
- Sought to engage extensively with the MCA outside of the formal Examination process with a view to understanding its position, providing additional evidence and finding ways that the parties could reach a common understanding of the matters raised (Deadline 7 Submission - **21.3 Written Summary of the Applicant's Oral Submissions at Issue Specific Hearing 7** [REP7-063] Table 1(3)i);
- Engaged with Trinity House and the United Kingdom (UK) Chamber of Shipping (CoS) as the other primary Shipping and Navigation interests engaged in the Examination process in order to confirm their respective positions and seek further advice from them as appropriate (particularly with regards to technical matters pertaining to their remit e.g. Trinity House's advice on the controlling depth described below); and
- Reviewed the need and justification for a change to the red line boundary, having particular regard to the relevant National and Marine Policies (see below).

60. The Applicant highlights that it has submitted a final **Statement of Common Ground with Trinity House** at Deadline 7 [REP7-044] which reports that all matters are agreed and that Trinity House supports the As Low As Reasonably Practicable (ALARP) conclusion of the NRA. Most notably Trinity House has confirmed they agree with the Applicant that the controlling depth (a depth at which vessels typically consider the edge of navigable sea room) within the Outer Dowsing Channel is 10 metres. This value is important in that it is a key determining factor in sea room calculations and the MCA's case for a change to the red line boundary as discussed at ISH7 and demonstrated in the Applicants Deadline 6 Submission - Evidence to support the Applicant's response to ISH7 Agenda Item 4.ii [REP6-024]. The MCA has stated the controlling depth is a 15.3 metre wreck which is not supported by Applicants evidence (vessel traffic survey data) or Trinity House and unrealistically reduces navigable sea room.

61. Trinity House has also helpfully confirmed that navigational safety in the DEP North area can be adequately managed through Aids to Navigation (i.e., lighting and marking of structures, or additional / relocated buoyage) which is already included as embedded mitigation within the NRA and Chapter 13 Shipping Navigation [APP-

- 099]. The Applicant welcomes the constructive engagement and the expert view provided by Trinity House on this matter.
62. The Applicant highlights the important confirmations made in Trinity House's Post Hearing Summary submitted at Deadline 7 [REP7-124]. Captain Harris reaffirmed the Trinity House position in its written submission at Deadline 5 [REP5-096] that it acknowledged the reduction in width and the increase in risk which this entailed but would not go as far as to say "that the risk was unacceptable". This confirms that the project is ALARP and tolerable (tolerable if ALARP as per MGN654 terminology).
63. Captain Harris concurred with the Applicant that it appears vessels will in reality use 0.5 nautical miles (nm) as the minimum passing distance but also stated that Trinity House uses 1 nm as the average passing distance when assessing projects. This aligns with the Applicants conservative modelling as demonstrated in the 'Graphical visualisation of modelled future case scenario' submitted as part of [REP6-024] where 1nm is used. Following ISH7 Captain Harris narrates that "[t]he ExA enquired whether there was anything Trinity House would disagree with and as to whether Trinity House considered that the modelling showed what would realistically happen in practice. Captain Harris responded that, in Trinity Houses opinion, the modelling is correct [REP7-124]. The Applicant also considers it important to note that all three SoCGs submitted and relevant for Shipping and Navigation state that the methodology for undertaking the NRA (including its modelling) is 'Agreed' [MCA Draft REP3-079, Trinity House Final REP7-044 and the UK CoS Final REP7-055].
64. As discussed at ISH7 [REP7-063] the Applicant maintains that the embedded and additional mitigations proposed within the NRA [APP-198] are sufficient to mitigate risks to ALARP including for multiple vessels transiting in the Outer Dowsing Channel (noting the probability of this is very low as per the Concurrent Vessel Analysis including in REP6-024). This includes internationally required compliance by vessels with the International Regulations for the Prevention of Collisions at Sea (COLREGS) which in the Applicant's opinion has not been sufficiently considered by the MCA in their consideration of risk despite being the regulating authority for the UK. Trinity House (Captain Harris) also considered that (in agreement with the Applicant) by using COLREGS vessels could be navigated safely even with the reduced sea room [REP7-124] and as a seafarer noted that vessels using COLREGs (specifically referencing Rule 8b – Action to Avoid Collision) should be able to navigate safely in this area with the proposed Order Limits.
65. A final important point to note in relation to Trinity House's attendance at the ISH7 is as Captain Harris narrates that "[t]he ExA stated that it understood that Trinity House had potentially suggested an obstacle free zone and enquired as to whether this was still required in its view. Captain Harris clarified that TH had not suggested this". To confirm Trinity House are not advocating for a reduction in the Order Limits (red line boundary) [REP7-124].
66. The Applicant has also submitted a final Statement of Common Ground with the CoS [REP7-055] and whilst the CoS also maintains a view that DEP North 'unnecessarily protrudes into the Outer Dowsing Channel' and is a 'suboptimal use of seabed' they have confirmed that the disagreement is not material to the in-isolation impact significance of SEP and DEP. This aligns with the Applicant's

position and the outcomes of the NRA that recognises that collision and allision risk will increase with the development of SEP and DEP (noting this increase occurs at all offshore wind farm developments) but that the developments are ALARP (i.e., no material change to risk).

67. Finally, the Applicant reiterates that regular operators (who navigate the area both frequently and infrequently using qualified Mariners) have been engaged throughout the pre-application process (including at the hazard workshop and individual consultation meetings), and at submission had no outstanding concerns relating to navigation safety with the embedded and additional mitigation in place. The Applicant has made recent contact with those interests in order to provide evidence requested by the ExA in its fourth written questions [REP7-065] and notes that this has not raised any new or renewed concerns from those parties.
68. From the previous paragraphs it is clear that the MCA is the outlier with respect to concerns regarding DEP North. Whilst the Applicant acknowledges the CoS strongly advocates for not developing to the western extent of DEP North, the non-material disagreement confirms that the NRA is evidenced and robust, and that SEP and DEP are ALARP. As Mrs Westwood stated at ISH7 [REP7-063], if there was a real concern about collision risk (or any other navigational safety matters) it would be raised by the operators and other consultees (as seen with other NSIP projects) within the pre application process noting the numerous opportunities available to do so.
69. It remains the Applicant's position that the MCA has failed to demonstrate with evidence that that moving the Order Limits (red line boundary) to the Outer Dowsing Buoy-to-Dudgeon Buoy line ('the buoy-to-buoy line') would yield a material change in navigation safety or that the NRA has not sufficiently demonstrate ALARP.
70. Furthermore the Applicant has demonstrated that by using the MCA's own calculations but by taking into account that the controlling depth is in fact the 10m contour, and not the 15.3 wreck as reported by the MCA, there is sufficient sea room for vessels to safely navigate with a minor encroachment into the Order Limits (red line boundary).
71. The Applicant has demonstrated by any reasonable standard that the buoy-to-buoy line proposed as alternative Order Limits, would be arbitrary and unjustified in the context of the facts of this application. For the applicant to present this, even on a without prejudice basis, to the ExA and the Secretary of State would be disingenuous and give rise to an avoidable legal flaw in the decision were the Secretary of State to impose it. The imposition of requirements must meet the normal tests for planning conditions, one of which is reasonableness. A requirement imposing a restriction based on the buoy-to-buoy line would fail that test.
72. Based on the evidence presented as part of the examination the simple fact is that the NRA's conclusion was correct – the process (which the MCA took full part in with all the relevant information available) worked as intended and the Order Limits (red line boundary) in the application is indeed ALARP. The concern which the MCA raised in its Written Representation has been exhaustively addressed and been found to be unsupported.

73. The recent decision in relation to the challenge to the Sizewell C DCO decision (R (Together Against Sizewell) v SS BEIS [2023] EWHC 1526 (Admin)) considers the case law on the deference normally accorded to an expert body. At paragraph 108, the court notes that “[t]he level of reasoning which the law expects of a decision-maker disagreeing with the view of an expert body may depend upon whether that view is an unreasoned statement or assertion, or a conclusion which is supported by an explanation and/or evidence”. In this case the Applicant submits that the MCA’s view is not supported by adequate explanation or evidence. If a No Structures Area is to be imposed, it must be based on reasons which can be understood and applied to other projects and it must achieve a meaningful navigational benefit. Neither applies in this case.
74. The Applicant considers that the MCA’s conduct in relation to SEP and DEP and the NRA process is of concern at an industry-wide level and has written to the Chief Executive to raise this in such terms. A copy of its letter is attached to this Closing Statement and its contents are self-explanatory.
75. In conclusion, whilst it is acknowledged that, as a result of the Project, sea room alongside DEP North would be reduced and that there would be an expected increase in navigational this is the case at every offshore windfarm so far consented under the DCO and subsequently constructed, such a marginal increase would not be justification for refusal of consent for any aspect of the application set out by the proposed Order Limits (aka the red line boundary), because:
- the navigational impacts are concluded to be Not Significant in Environmental Impact Assessment terms and no comparable alternative assessment which would bring this into question has or could be provided;
  - the determining factor is the requirement in the Planning Act 2008 that the decision must be made in accordance with the National Policy Statement, NPS EN-3 policy is very clear that consent may be granted despite effects of navigation, where it states at paragraph 2.6.167 that: “Providing proposed schemes have been carefully designed by the applicants, and that the necessary consultation with the MCA and the other navigation stakeholders listed above has been undertaken at an early stage, mitigation measures may be possible to negate or reduce effects on navigation to a level sufficient to enable the [SoS] to grant consent” and the proposed scheme has been carefully designed and with necessary consultation with the MCA and other navigation stakeholders and mitigation has already reduced risks to ALARP;
  - because, given that NPS EN-3 (paragraph 2.6.168) requires regard to be had “to the extent and nature of any obstruction of or danger to navigation” and the NRA [APP-198] has concluded that navigation risks remain ALARP and shows disruption and economic loss are minimised, and transit times are not appreciably longer (Table 18.1);
  - because, in view of the requirement in NPS EN-3 (paragraph 2.6.169) that regard is to be had “to the likely overall effect of the development” the fact that effects on navigational risk and deviations are low and minimal respectively, is important and relevant, as is the fact that reducing the Order Limits, as proposed



by the MCA, would disproportionately and materially reduce the generating capacity of and compromise the UK's ability to meet the "urgent need for new (and particularly low carbon), energy NSIPs to be brought forward as soon as possible", displace 700,000 to 1,500,000 tonnes CO<sub>2</sub> per year necessary to meet national and international targets on carbon dioxide (CO<sub>2</sub>) reduction in line with the requirements of the Climate Change Act 2008 (2050 Target Amendment) Order 2019, and would see the provision of 2.5% of the UK's current shortfall in meeting the 50 GW target falter.

76. Furthermore, Policy PS2 of the East Inshore and East Offshore Marine Plan does not prevent low risk and minimal changes, in navigational terms, from being consented, in significant part because the policy context states that "An example of an authorisation made in exceptional circumstances may be Nationally Significant Infrastructure Projects", this key part of the PS2 policy context is not included in the MCA's quotation of the policy [REP6-026].
77. To set a precedent that any introduction of structures in the sea, whereby sea room is "neither kept in the same state nor at the same level" presents an unacceptable risk to navigation would have prevented the consenting of every offshore wind farm to date. All consented offshore wind farms have created displacement and increased navigational risk i.e. increased collision/allision risk or the introduction of allision risk, often to a greater extent than at SEP and DEP given its ALARP risk and minimal diversional effect.

### 3.6 Seascape and Landscape Visual Impact

78. The Applicant's assessment of the seascape, landscape and visual impacts that will potential arise from SEP and DEP is set out within:
- a. **Environmental Statement Chapter 25 - Seascape and Visual Impact Assessment** [APP-111]
  - b. **Environmental Statement Chapter 26 - Landscape and Visual Impact Assessment** [APP-112]
  - c. **Impacts on the Qualities of Natural Beauty of Norfolk Coast Area of Outstanding Natural Beauty** [APP-311]

and through submissions made during the examination, including:

- **The Applicant's Comments on Norfolk Coast Partnership's Deadline 6 Submission** [document reference 21.7]
  - Responses within Q1.17 and Q1.18 of **The Applicant's Responses to the Examining Authority's First Written Questions** [REP1-036]
  - Responses within Q1.17 of **The Applicant's Responses to the Examining Authority's Second Written Questions** [REP3-101]
  - Responses within Q1.17 of **The Applicant's response to the Examining Authority's Third Written Questions** [REP5-049]
79. This section does not repeat the information that has been set out by the Applicant through the Application and Examination, but instead addresses key points of disagreement with stakeholders.

### 3.6.1 Seascape impacts

80. The Applicant submitted with the Application its **Offshore Design Statement** [APP-312] that explains the Applicant's approach to designing SEP and DEP and demonstrates how the Applicant has fulfilled the requirement for good design as set out within NPS EN-1 (section 4.5).
81. The final design of SEP and DEP will be confirmed through detailed engineering design studies that will be undertaken post-consent to enable the commencement of construction. It is not possible to confirm the final layout of the turbines at this stage, which will depend on turbine choice within the project parameters at the time of construction albeit it will need to meet the requirements of MGN 654.
82. However, consideration of seascape, landscape and visual matters informed the selection of the SEP and DEP Areas for Lease (AfL) at the outset of the projects. It was decided to minimise (in so far as possible) the inclusion of the SEP AfL between the southern edge of SOW and the Norfolk coast due to the proximity of sensitive land-based receptors, and to ensure a sufficient gap between SEP and Race Bank OWF. Other factors such as a combined cable corridor and landing help to reduce potential impacts. These are embedded design factors that have mitigated the potential seascape and visual impacts of SEP and DEP.
83. The Applicant has made commitments during the Examination that will have consequential benefits for the seascape and visual impact, although the conclusions of the Applicant's assessment (which is based on a Realistic Worst Case Scenario) would not change overall. The Applicant has agreed to a turbine restriction zone in the southeast and southwest corners of SEP to mitigate potential impacts on red-throated diver. One implication of this is that it is now certain that the final location of the nearest operational turbines will be further from the coast and the relevant onshore receptors. As a consequence of this commitment, these operational turbines would appear marginally smaller on the horizon (and smaller than the visualisations submitted in support of **Environmental Statement Chapter 25 - Seascape and Visual Impact Assessment** [APP-111]).
84. The Applicant's assessment of effects on visibility and seascape character is set out in **Environmental Statement Chapter 25 - Seascape and Visual Impact Assessment** [APP-111]. In addition to this, the document, **Impacts on the Qualities of Natural Beauty (QNB) of Norfolk Coast Area of Outstanding Natural Beauty** [APP-311] sets out the Applicant's assessment of the potential impacts on the Qualities of Natural Beauty (QNBs) of the Norfolk Coast Area of Outstanding Natural Beauty (NCAONB). The latter is a discrete assessment, focussing on how the key QNBs of the NCAONB could be affected as a consequence of construction and operation of the SEP and DEP. This is achieved by drawing together the conclusions of relevant assessments (undertaken for the ES) into a single report. It draws upon, where relevant, the assessment of effects on character and views contained within the SVIA. Together, these two documents [APP-111 and APP-311] represent the Applicant's full assessment of effects in line with best practice guidance. Agreement to this approach between Natural England and the Applicant is recorded in **Final SoCG with Natural England (Onshore) (Revision B)** [document reference 12.13].

85. The key areas of disagreement in respect of the potential seascape and visual impacts of SEP and DEP is between the Applicant and Natural England concerning the impacts on the NCAONB. In summary, the Applicant's position is that:
- a. In EIA terms, there would be a moderate adverse effect on the character and views of the NCAONB from SEP and a moderate-slight adverse effect from DEP.
  - b. However, the impacts on the NCAONB and its QNBs are limited in extent. Whilst the assessment identifies some impacts on the special qualities, these impacts are limited geographically and would not undermine the integrity of the designated area. This assessment is set out in detail within [APP-311].
  - c. The presence of existing offshore wind farms is relevant to the conclusions on overall impact. They influence the existing baseline environmental context in which SEP and DEP would be constructed and operate. The Applicant considers that it is notable that there were very limited representations made by members of the public or community councils concerning the seascape effects of SEP and DEP. This perhaps reflects the view that there is an acceptance of offshore wind as a response to climate change, particularly within a seascape where existing wind farms are already present.
  - d. Overall, it is assessed that the AONB's recorded QNBs will all remain, as will its relative undeveloped/unspoilt character. Its integrity will be retained. There are no effects alone or cumulatively that would undermine the purposes of designation of the AONB as a consequence of the construction and operation of SEP and DEP.
86. The Applicant's conclusions are based on detailed assessments in line with best practice guidance. Through the Examination the Applicant has provided further justification for the conclusions that it has reached. This stands in stark contrast to Natural England's position. Natural England have not provided a detailed assessment. They have not provided justification of their position through Examination, despite having the opportunity to do so either in writing or at Issue Specific Hearings 2 or 4. The Applicant considers that it has presented a credible and evidenced assessment of the potential impacts that SEP and DEP would have on the NCAONB. The Applicant would invite the Secretary of State to accept the Applicant's conclusions in preference to those of Natural England.
87. The Applicant notes that through the Examination, the position of the Norfolk Coast Partnership (NCP) has changed. The Applicant has addressed this in detail within **The Applicant's Comments on Norfolk Coast Partnership's Deadline 6 Submission** [document reference 21.7]. As noted by the NCP in their deadline 6 submission, they require to balance the views of various organisations in presenting a single position. The Applicant considers that the key points that the Secretary of State ought to take from the NCP's latest position are:
- a. The NCP's updated position does not state that the impacts would be significant in EIA terms, which aligns with the positions of NNDC and the Applicant.
  - b. The NCP's updated position does not suggest that the integrity of the NCAONB would be breached.

- c. The NCP's updated position does not suggest that the general public's experience, enjoyment, and use of the NCAONB will be significantly impacted.
- 88. The Applicant is in broad agreement with the NCP on those points. The Applicant also draws attention to Natural England's acknowledgement of NCP's views, given their role, local knowledge and perspective, to which NE would defer.
- 89. The Applicant submits that, having regard to all evidence presented through the Examination, the Secretary of State should conclude that (a) there are no effects alone or cumulatively that would undermine the purposes of designation of the AONB as a consequence of the construction and operation of SEP and DEP and (b) in the overall planning balance, the potential seascape and visual effects are acceptable.

### 3.6.2 Landscape and visual impacts

- 90. The Applicant's assessment of landscape and visual impacts are set out in **Environmental Statement Chapter 26 - Landscape and Visual Impact Assessment** [APP112]. Broadland District Council and South Norfolk District Council agree with the Applicant's approach to its Landscape and Visual Impact Assessment (LVIA), agreeing to how the Applicant has characterised the Baseline Environment; how the Assessment Methodology is appropriate to assess the potential onshore impacts; and how the Project-Alone Conclusions are appropriate in identifying and assessing the significance of (in EIA terms) and effects of change resulting from the construction, operation and decommissioning of SEP and/or DEP on landscape and visual receptors (see **Final Statement of Common Ground with Broadland District Council (Revision C)** [document reference 12.6] and **Final Statement of Common Ground with South Norfolk Council (Revision C)** [document reference 12.7]).
- 91. There is also general agreement between the Applicant and stakeholders that the onshore elements of SEP and DEP would have a minimal impact on the AONB, as summarised in submissions by NNDC and NCP:
  - a. NNDC [REP3-125]: *"NNDC considers that the onshore cable route will incur minor temporary effects during construction, and that the residual effects will be minimal"*
  - b. NCP [REP5-102]: *"The effects of the onshore elements, so far as they affect the AONB, are minimal, given the routing, undergrounding and mitigation of the cable construction activities."*
- 92. The key area of disagreement between the Applicant and the Councils, is that the Councils consider that the operation of the onshore substation will have a significant impact when considered cumulatively with other projects.
- 93. The Applicant's assessment of those potential effects is set out in detail within **Environmental Statement Chapter 26 - Landscape and Visual Impact Assessment** [APP112]. In summary:
  - a. In respect of Hornsea Project Three Offshore Wind Farm Substation, there would be little to no visibility beyond the immediate context of the SEP/DEP substation. The ZVIs of SEP/DEP and Hornsea Three substation would not overlap. It is unlikely that SEP and DEP substation would be visible to a great

- degree with Hornsea Three substation from any locations due to screening effects of intervening vegetation and topography. The combined cumulative impacts would be unlikely to give rise to effects greater than those of SEP and/or DEP Projects alone.
- b. In respect of the East Anglia Green Energy Enablement Project, that project's proposals to install new overhead 400kV cables and steel lattice pylons would be similar in nature to the existing overhead cables and pylon already found within the landscape in close proximity to the onshore substation for SEP and DEP. Given that context, the potential cumulative effects of SEP and/or DEP and East Anglia Green Energy Enablement (GREEN) Project would be no greater than SEP and/or DEP alone.
94. The Applicant considers that no evidence has been presented during the Examination that would indicate a basis on which the Secretary of State should depart from the conclusions presented in the Applicant's assessments.
95. The Applicant submitted with the Application its **Design and Access Statement (Revision B)** [REP3-056] that explains the Applicant's approach to designing the onshore works for SEP and DEP and demonstrates how the Applicant has fulfilled the requirement for good design as set out within NPS EN-1 (section 4.5).
96. The final design of the onshore works, including the substation, of SEP and DEP will be confirmed through detailed engineering design that will be undertaken post-consent, informed by pre-construction surveys. In respect of the onshore substation, the final design will require to be approved by the planning authority in accordance with Requirement 10 of the **draft DCO (Revision K)** [document reference 3.1]. The Applicant notes that sub-paragraph (5) of that Requirement secures that (a) the design submitted in accordance with the **Design and Access Statement (Revision B)** [REP3-056] and (b) the design will have been subject to review by an independent design review panel that will make recommendations to the planning authority. Through these requirements, it is secured that the design principles set out within the **Design and Access Statement (Revision B)** [REP3-056] will be carried through into the final design.
97. Additional mitigations in respect of landscape and visual impact are secured through requirement 11 (provision of landscaping), requirement 12 (implementation and maintenance of landscaping), requirement 22 (control of artificial light emissions) and requirement 25 (restoration of land used temporarily for construction).

### 3.7 Other Onshore Matters

98. The offshore export cable makes landfall at Weybourne beach, to the west of Weybourne cliffs. A transition joint bay would be installed below ground inland from the coast to connect the offshore and onshore cables. From here the onshore cable corridor extends south for approximately 60km and would connect to a new onshore substation south of Norwich.
99. The SEP and DEP onshore site is primarily rural and agricultural in nature with pockets of woodland and small settlements in proximity to the cable corridor. The installation of cables and pipelines is a common and well understood form of development. The likely impacts of such development, and the mitigations to offset

them, are well understood, and often standardised across industries. There will be temporary disruption of the land use whilst this occurs, but the land will be restored and agricultural use resumed. The Applicant has worked extensively with the landowners involved and has also learned lessons from the construction of SOW and DOW.

### 3.7.1 Construction

100. The Applicant has sought to minimise construction effects of the projects through a detailed consideration of the route selection and through mitigation and compensation where impacts are predicted to occur.
101. In accordance with standard practice management and monitoring, the construction of the onshore works will primarily be managed through the Code of Construction Practice (CoCP) and corresponding management plans detailed within the CoCP. Requirement 19 of the **draft DCO (Revision K)** [document reference 3.1] secures that no phase of the onshore works may commence until a CoCP (which must accord with the **Outline Code Of Construction Practice (Revision B)** [document reference 9.17]) for that phase has been submitted to and approved by the relevant planning authority following consultation as appropriate with Norfolk County Council, the Environment Agency, Natural England and, if applicable, the MMO.
102. Additional management arrangements for construction are also secured through DCO Requirements 11 (provision of landscaping), 12 (implementation and maintenance of landscaping), 13 (ecological management plan), 14 (fencing and other means of enclosure), 15 (traffic and transport), 18 (onshore archaeology), 20 (construction hours), 23 (European protected species: onshore), 24 (public rights of way strategy) and 25 (restoration of land used temporarily for construction).
103. The Applicant has undertaken an assessment of the potential environmental impacts of SEP and DEP during construction (**Environmental Statement** [document reference 6.1]), the conclusions of which are summarised in Table 4-1 of the **Supplementary Information to the Scenarios Statement** [document reference 9.28.2]. With the exception of the potential temporary impact on land used for agriculture (considered at section 3.7.3 below) and seascape, landscape and visual impacts (considered at section 3.6), the **Environmental Statement** [document reference 6.1] concluded that there would be no significant residual impacts as a result of SEP and DEP, or as a result of SEP and DEP cumulatively with other projects.

### 3.7.2 Ecology

104. The Applicant has undertaken an assessment of the potential impacts of SEP and DEP on ecological receptors as a result of the construction, operation and decommissioning of the projects. As set out in detail within **Chapter 20 - Onshore Ecology and Ornithology (Revision C)** [REP3-026] and the **Addendum to Environmental Statement Chapter 20 Onshore Ecology and Ornithology** [REP2-053] the assessment concludes that SEP and DEP will have no significant impacts, whether alone or cumulatively with other projects.

### 3.7.2.1 Designated sites

105. The **Report to Inform Appropriate Assessment (RIAA)** [APP-059] submitted with the Application and the **Report to Inform the Appropriate Assessment (RIAA) (onshore) Technical Note** [REP2-050] conclude that it can be ruled out beyond reasonable scientific doubt that any AEoI would occur to designated sites forming part of the National Site Network. Natural England are in broad agreement with this (see Table 4, **Appendix A.2 Supporting Documents for the Applicant's Responses to the Examining Authority's Fourth Written Questions** [document reference 21.5.1]), with the exception of:
- a. the white-clawed crayfish, brook lamprey and bullhead features of the River Wensum SAC. Natural England's position is that AEoI cannot be ruled out until a bentonite breakout plan is agreed. Natural England consider this should be secured by a standalone requirement in the DCO.
  - b. the pink-footed geese feature of the North Norfolk Coast SPA and Ramsar. Natural England's position is that a standalone requirement should be imposed in the DCO to secure mitigation measures for pink-footed geese.
106. The Applicant considers that Natural England's position is unjustified and misplaced.
107. Adequate mitigation is already secured through the control mechanisms proposed through the **draft DCO (Revision K)** [document reference 3.1] and associated management plans. Including standalone requirements for these measures would provide no substantive benefit.

#### 3.7.2.1.1 River Wensum SAC

108. Mitigation in respect of the River Wensum SAC is secured within the **Outline Ecological Management Plan (Revision E)** [document reference 9.19] and the **Outline Code of Construction Practice (Revision G)** [document reference 9.17] which are secured by Requirements 13 and 19 of the **draft DCO (Rev K)** [document reference 3.1], respectively.
109. The **Outline Code of Construction Practice (Revision G)** [document reference 9.17] contains mitigation measures for sediment management (Section 8.1.1), pollution prevention (Section 8.1.2) and bentonite breakout (8.1.4). The Applicant notes that Natural England is a named consultee for the planning authority when it comes to them discharging requirement 19.
110. This is an entirely standard approach to securing such mitigation measures and is the approach taken by other nationally significant infrastructure projects, including Hornsea Four Offshore Wind Farm Order 2023, Norfolk Boreas Offshore Wind Farm Order 2021 and The Hornsea Three Offshore Wind Farm Order 2020. The Applicant's position is set out more fully in ID 4 of the **Applicant's Response to the Examining Authority's Rule 17 Letter dated 12 July 2023** [document reference 22.2].
111. The Secretary of State can be satisfied that with the implementation of the mitigation measures proposed, he can conclude that there will be no AEoI of the River Wensum SAC.

### 3.7.2.1.2 North Norfolk Coast SPA and Ramsar

112. Requirement 13 (Ecological management plan) of the **draft DCO (Revision K)** [document reference 3.1] requires an Ecological Management Plan (to be based on the **Outline Ecological Management Plan (Revision E)** [document reference 9.19]) to be submitted to approved by the Local Planning Authority, in consultation with Natural England and other bodies, prior to the commencement of any phase of the onshore works.
113. The **Outline Ecological Management Plan (Revision E)** [document reference 9.19] commits the Applicant to provide a Pink Footed Geese Mitigation Plan (see section 3.3.1) and includes an example of what could be included within the management plan, the exact details to be confirmed and finalised once pre-construction surveys have concluded. This demonstrates that mitigation is readily available and secured. The Applicant notes that Natural England is a named consultee for the planning authority when it comes to them discharging requirement 13.
114. The Applicant is not aware of any precedent for a standalone requirement to mitigate potential impacts on pink footed geese. In fact, where mitigation for this species has been secured (for example, Hornsea Project Three), it was done so in a similar manner to what is proposed by the Applicant in this application (i.e. within an existing management plan). The Applicant considers that Natural England's position is unjustified and without merit.
115. Notwithstanding, the Applicant has provided drafting on a 'without prejudice' basis for a requirement that could be imposed should the Secretary of State agree with Natural England. The Applicant's position is set out more fully in ID 5 of the **Applicant's Response to the Examining Authority's Rule 17 Letter dated 12 July 2023** [document reference 22.2].
116. The Secretary of State can be satisfied that with the implementation of the mitigation measures proposed through requirement 13 and the **Outline Ecological Management Plan (Revision E)** [document reference 9.19], he can conclude that there will be no AEoI of the North Norfolk Coast SPA.

### 3.7.3 Agriculture

117. The Applicant has undertaken an assessment of the potential impacts of SEP and DEP on agricultural receptors within **Environmental Statement - Chapter 19 - Land Use, Agriculture and Recreation (Revision B)** [REP2-022]. The assessment concluded that, taking account of the proposed mitigation measures, there would be no significant impacts, with the exception of a potential moderate adverse impact being predicted with respect to temporary loss of land for agriculture.
118. It is important to note that this assessment considered the impact of SEP and DEP across the cable route as a whole i.e. assessing the impact on agriculture for a construction project that would cover an area of more than 20ha of land over a period of 24 months. This does not necessarily reflect the impact that will be experienced by individual landowners. The Applicant also notes that this impact would be fully reversible. The Applicant will fully reinstate agricultural land and there will be no restriction on ordinary agricultural use once the cable is installed.



119. A key point of disagreement between the Applicant and the National Farmers Union (NFU) through the Examination is the adequacy of mitigation measures proposed to reduce the potential effects on agricultural land and businesses and the level of information that has been provided at this stage by the Applicant.
120. The Applicant considers that the mitigation proposed goes beyond that which has been secured for other similar nationally significant infrastructure projects. In particular, the **Outline Code of Construction Practice (Revision F)** [document reference 9.17] includes mitigation measures specific to agriculture (section 7), requiring the Applicant to set out in detail how it will approach:
  - a. soil handling, reinstatement and aftercare (see also section 6 of the **OCoCP**);
  - b. measures to avoid impacts on, or carry out reinstatement of, land/field drainage; and
  - c. measures to avoid impacts on, or carry out reinstatement of, any irrigation and water supply.
121. The Applicant has committed through the **Outline Code of Construction Practice (Revision F)** [document reference 9.17] to ensure that the measures set out within the CoCP will align with any 'construction practice addendum' that forms part of private agreements entered into with landowners. The Applicant considers that, through the ongoing negotiations to secure land rights voluntarily, the landowners have been provided considerable information about how construction impacts will be mitigated.
122. The **Outline Code of Construction Practice (Revision F)** [document reference 9.17] also commits the Applicant to appoint an Agricultural Liaison Officer (ALO) prior to the commencement of the construction works, who will be the primary contact for ongoing engagement with owners, their agents and occupiers of land about practical agricultural matters before and during the construction process. Post-construction the ALO will remain appointed for up to one year in order to manage remediation issues.
123. The Applicant considers that through these measures, the temporary construction impacts on landowners and occupiers of agricultural land can be mitigated and managed to an acceptable level.
124. The Applicant considers that the points that remain outstanding with the landowner interest group (and as reiterated by the NFU) are commercial matters related to the acquisition of land rights, rather than being matters that are properly to be considered through the planning system. Negotiations with the landowner interest group are ongoing and the Applicant continues to seek to acquire all rights necessary to carry out the onshore works on a voluntary basis. Where rights cannot be agreed and the Applicant exercises powers of compulsory acquisition, landowners and occupiers will be entitled to compensation in the usual manner in accordance with the compensation code.

### 3.7.4 Traffic and Transport

125. The Applicant has undertaken an assessment of the potential impacts of SEP and DEP in relation to traffic and transport. As set out in detail within Environmental Statement Chapter 24 - Traffic and Transport [APP-110] the assessment concludes

that, with suitable mitigation measures imposed, SEP and DEP will have no significant impacts, whether alone or cumulatively with other projects. Agreement on these matters with the two relevant highway authorities is recorded in the **Final Statement of Common Ground with National Highways** [document reference 12.22] and the **Final Statement of Common Ground with Norfolk County Council** [REP7-043].

126. Requirement 15 of the **draft DCO (Revision K)** [document reference 3.1] secures that no phase of the onshore works may commence until for that phase a construction traffic management plan (which must be in accordance with the **Outline Construction Traffic Management Plan (Revision D)** [REP5-027]), as appropriate for the relevant phase, has for that phase 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.
127. The **Outline Construction Traffic Management Plan (Revision D)** [REP5-027] includes a comprehensive set of measures that ensures there will not be significant cumulative impact during the construction of SEP and DEP with other projects. The mitigation of potential cumulative impacts from construction related traffic when different developments are taking place in the same geographic area is a common and well understood practice. It is not novel to this examination, unique to the Norfolk Coast, or indeed restricted to developments to facilitate offshore wind farms. Securing measures through construction traffic management plans, which can include requirements to coordinate with other developers, is a standard and well understood approach.
128. Measures proposed by the Applicant include:
  - a. Prohibiting Heavy Goods Vehicle (HGV) traffic associated with SEP and DEP from utilising specific roads and villages (e.g. through Attlebridge, Barford, Blind Lane, Cantley Lane South, Cawston, Horsford, Oulton, Plumstead; and Weston Longville);
  - b. Adhering to 'cumulative caps' on HGV movements on specific link roads to manage potential cumulative impacts associated with the construction of Norfolk Vanguard/Boreas and Hornsea Project Three;
  - c. Committing to an increased number of HDD crossings to minimise road closures and diversions, listed within Annex C of the **Outline Construction Traffic Management Plan (Revision D)** [REP5-027];
  - d. Introduction of measures to manage light vehicle movements through Oulton.
129. It has further been agreed with Norfolk County Council [REP2-033] that the potential for cumulative impacts between the construction phases of various highway schemes plus SEP and DEP can be managed through the respective projects' Construction Traffic Management Plans.
130. The Secretary of State can be satisfied that, with the implementation of the proposed mitigation, there will be no significant residual impacts as a result of traffic or transport.

## 4 Local Impact Reports

131. Section 104(2) of the Planning Act 2008 lists matters the Secretary of State must have regard to in deciding applications for orders granting development consent. These matters include any Local Impact Reports submitted by relevant local authorities. The following local authorities submitted Local Impact Reports at Deadline 1:

- Broadland District Council [REP1-066 – REP1-070]
- East Suffolk Council [REP1-076]
- Norfolk County Council [REP1-080]
- North Norfolk District Council [REP1-082]
- South Norfolk Council [REP1-090 – REP1-101]

132. The Applicant responded to the above Local Impact Reports in **The Applicant's Comments on the Local Impact Reports** [REP2-039] at Deadline 2.

133. The Applicant has been working closely with the local authorities to reach agreement on the matters raised in the Local Impact Reports. These Local Impact Reports should be read in conjunction with the **Applicant's Statement of Commonality (Revision H)** [document reference 12.45] and the Statements of Common Ground (SoCG) that the Applicant has entered into and which have been developed over the duration of the Examination:

- Norfolk County Council entered into a SoCG on 5 July 2023 which confirms that there are no matters of disagreement between the parties (Revision E) [document reference 12.17].
- Broadland District Council entered into a SoCG on 10 July 2023 which confirms that there are no matters of disagreement between the parties (Revision C) [document reference 12.7].
- South Norfolk Council entered into a SoCG on 10 July 2023 which confirms that there is one matter of disagreement between the parties (Revision C) [document reference 12.6].
- North Norfolk District Council entered into a SoCG on 13 July 2023 which confirms there are two matters of disagreement between the parties which result in a material impact (Revision B) [document reference 14.32].

134. The Applicant and East Suffolk Council agreed not to submit an SoCG into the Examination.

135. The following sub-sections provide a summary of the outstanding matters that the Applicant has not reached an agreement on with South Norfolk Council and North Norfolk District Council.

### 4.1.1.1 Cumulative Effects

136. South Norfolk Council's concern relates to the cumulative impacts around Norwich Main Substation, where the Onshore Substation is proposed and in particular the Norwich to Tilbury electricity transmission infrastructure. The Applicant agrees with South Norfolk Council's position that there is a significant effect on users of a group

of PRoWs which encircle the Onshore Substation and has worked closely with the Council to develop its mitigation proposals in order to minimise the potential impacts that could arise on the surrounding landscape character and visual amenity within the local areas.

137. The Applicant and South Norfolk Council agree on all other matters relating to landscape and visual, including the Applicant's approach to the Cumulative Impact Assessment, as set out in the **Final Statement of Common Ground with South Norfolk District Council** (Revision C) [document reference 12.6].

#### 4.1.1.2 Socio-economics and Tourism

138. North Norfolk District Council's concerns relate to localised impacts on tourism within its area. These concerns were raised in its Local Impact Report [REP1-082] and then again in its responses to the Examining Authority's first written questions [REP2-058] and second written questions [REP3-125]. The Applicant's latest position is set out in **The Applicant's Response to North Norfolk District Council's Deadline 3 Submission** [REP4-030]. The issues raised by North Norfolk District Council relate to the potential impacts on tourism and subsequently the income of tourism businesses within North Norfolk during the Project's construction phase (specifically the cable corridor construction phase). North Norfolk District Council has raised concerns that the impact of the Project on tourism has been underestimated by the Applicant. The Applicant disagrees with the conclusions reached by North Norfolk District Council and has presented evidence showing that offshore wind farms do not have a negative impact on tourism. No evidence, to date, has been presented to support the position of North Norfolk District Council that the impacts on tourism have been underestimated by the Applicant. The Applicant refers North Norfolk District Council and the Examining Authority to Paragraph 5.12.7 of the Overarching National Policy Statement EN-1 which states "*the [SoS] may conclude that limited weight is to be given to assertions of socio-economic impacts that are not supported by evidence (particularly in view of the need for energy infrastructure as set out in this NPS)*". Rev
139. The Applicant continues to engage with North Norfolk District Council and is willing, in principle, and has made a commitment to contribute to further research to understand the impact of offshore wind developments on tourism volume and value in North Norfolk outside the DCO/Examination process (see **The Applicant's Responses to the Examining Authority's Second Written Questions** [REP3-101]).

## 5 Habitats Regulations Assessment (HRA)

140. Before he can grant consent for SEP and DEP, the Secretary of State is required to undertake a Habitats Regulations Assessment to consider the potential impacts that the projects would have on designated sites within the National Site Network. The Secretary of State will need to determine whether adverse effects on integrity (AEoI) of those sites can be excluded and, if that is not the case, whether consent can be granted on the basis of a derogation from the Habitats Regulations.
141. This submission summarises the Applicant's derogation case. It is not intended to be a rebuttal of every point raised by interested parties, including Natural England.

## 5.1 Legal and Policy Context

142. The EU Habitats Directive (92/43/EEC) and the EU Birds Directive (2009/147/EC) are transposed into UK law by The Conservation of Habitats and Species Regulations 2017 (Conservation of Habitats and Species Regulations) and The Conservation of Offshore Marine Habitats and Species Regulations 2017 (Offshore Habitats Regulations) (referred to together as the “Habitats Regulations”). The Habitats Regulations remain in force (subject to certain amendments) following the UK’s withdrawal from the EU.
143. Under the Habitats Regulations, a “competent authority” is required to exercise its functions in accordance with the requirements set out in the regulations. When determining a DCO application, the Secretary of State, as competent authority, will need to carry out an appropriate assessment to determine the potential impact of the project on any protected sites in the national site network. If the Secretary of State cannot conclude that the project will have no AEoI on any site in the network, then development consent can only be granted if additional requirements, known as a ‘derogation’, can be met.
144. Where the Secretary of State is unable to conclude that AEoI can be ruled out, they must assess the project in the context of Regulations 64 and 68 of the Conservation of Habitats and Species Regulations and Regulations 29 and 36 of the Offshore Habitats Regulations.
145. Regulations 64(1) of the Conservation of Habitats and Species Regulations and 29(1) of the Offshore Habitats Regulations state:  
*“If the competent authority is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest...the competent authority may agree to the plan or project notwithstanding a negative assessment of the implications for the site.”*
146. Regulations 68 of the Conservation of Habitats and Species Regulations and 36 of the Offshore Habitats Regulations go on to state:  
*“Where...a plan or project is agreed to, notwithstanding a negative assessment of the implications for a European site or a European offshore marine site...the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of [the National Site Network] is protected.”*
147. Guidance on the application of a Habitats Regulations derogation case sets out that this is a sequential process. The competent authority must be satisfied of the following, in turn:
- a. There are no alternative solutions to the project.
  - b. There are imperative reasons of overriding public interest (IROPI) for consent to be granted for the project.
  - c. Compensatory measures can be secured that ensure the overall coherence of the National Site Network is protected.

## 5.2 Outcomes of the Appropriate Assessment and Need for a Derogation Case for SEP and DEP

148. As part of the application, the Applicant submitted a **Report to Inform Appropriate Assessment (RIAA)** [APP-059] with subsequent updates provided throughout the Examination in the **Apportioning and HRA Updates Technical Note (Revision E)** [document reference 13.3], which provides the information necessary for the competent authority to undertake an appropriate assessment to determine if there is any AEoI on the national site network.
149. Prior to the application, the Applicant undertook extensive stakeholder consultation, which took account of emerging outcomes from other UK offshore wind farm DCO applications and decisions. Informed by that consultation process, the Applicant submitted a proposed derogation case and compensatory measures for certain ornithological features of protected sites within the National Site Network. The Applicant's derogation case is set out within the **Habitats Regulations Derogation: Provision of Evidence** [APP-063].
150. The ornithological features and their respective sites are:
- Sandwich tern from the North Norfolk Coast (NNC) Special Protection Area (SPA) and the Greater Wash (GW) SPA. The Applicant's **RIAA** [APP-059] and the **Apportioning and HRA Updates Technical Note (Revision E)** [document reference 13.3] concludes that AEoI cannot be ruled out as a result of predicted mortality due to the collision risk, when considered in-combination with other offshore wind farms (OWFs). As such, the Applicant has provided compensatory measures as part of its consent application to compensate for the predicted effects from SEP and DEP.
  - Kittiwake from the Flamborough and Filey Coast (FFC) SPA. The Applicant's **RIAA** [APP-059] and the **Apportioning and HRA Updates Technical Note (Revision E)** [document reference 13.3] concludes that AEoI cannot be ruled out as a result of predicted mortality due to collision risk, when considered in-combination with other OWFs. As such, the Applicant has provided compensatory measures as part of its consent application to compensate for the predicted effects from SEP and DEP.
  - Guillemot from FFC SPA. The Applicant's **RIAA** [APP-059] and the **Apportioning and HRA Updates Technical Note (Revision E)** [document reference 13.3] concludes that there will be no AEoI as a result of predicted mortality due to displacement, either alone or in-combination with other OWFs. Natural England do not agree with that conclusion. The Applicant has therefore submitted "without prejudice" compensatory measures that could be applied to provide compensation for the predicted effects should the Secretary of State conclude that it is unable to rule out AEoI with respect to this feature.
151. Prior to submission of the application and during the course of the Examination there has been a point of difference between the Applicant and Natural England in respect of whether AEoI could be ruled out for:
- a. The gannet feature of the FFC SPA;

- b. The razorbill feature of the FFC SPA; and
  - c. The red-throated diver feature of the GW SPA and Outer Thames Estuary SPA.
- 152. The Applicant has presented further information and made further mitigation commitments through the Examination, such that Natural England is now in agreement that AEol can be ruled out for gannet and red-throated diver (see the **Final Statement of Common Ground (SoCG) with Natural England (HRA Derogation) (Revision B)** [document reference 12.15]).
- 153. In respect of red-throated diver, the Applicant has maintained throughout the Examination that sufficient measures were secured within proposed management plans that AEol could be ruled out for this species as a feature of both the GW SPA and Outer Thames Estuary SPA. This included, for example, a commitment to the Best Practice Protocol for red-throated diver through the **Outline Project Environmental Management Plan (Revision D)** [document reference 9.10]. Despite the Applicant presenting further information to justify its position through the Examination, Natural England would not agree with the Applicant's conclusions that AEol could be ruled out. The Applicant considers that the position maintained by Natural England throughout the Examination had no reasonable scientific basis.
- 154. Nevertheless, the Applicant continued to engage with Natural England to seek to address their concerns. The Applicant has now secured a series of mitigations that has allowed Natural England to agree that AEol can be ruled out for red-throated diver (see the **Final Statement of Common Ground (SoCG) with Natural England (HRA Derogation) (Revision B)** [document reference 12.15]). These measures include:
  - Commitment to export cable laying seasonal restriction within the GW SPA from 01 Nov to 31 March (secured through requirement 24 (seasonal restriction));
  - Commitment to a turbine free zone to avoid potential impacts on areas of the GW SPA (secured through an amendment to the **Works Plans (Offshore) (Revision D)** [document reference 2.7]);
  - Commitment to utilising existing transit routes to minimise potential impacts from O&M vessels (secured through the OPEMP); and
  - Commitment to consider the potential for crew transfer vessels to travel in convoy en route to the wind farm sites and seeking to do so where it is considered practicable (secured through the OPEMP).
- 155. Whilst the Applicant strongly disagrees with Natural England's rationale for such measures being imposed, the Applicant has had to compare the impact on the project of making the concessions necessary to reach agreement with Natural England with the project impacts of potential compensatory measures, if it were not prepared to make those concessions. The Applicant has concluded that the impacts of potential compensatory measures were greater and it has reluctantly made the concessions necessary to reach agreement with Natural England to avoid a conclusion of AEol in Natural England's view.
- 156. In respect of the razorbill feature of the FFC SPA, the Secretary of State's decision in respect of the application for development consent for the Hornsea Project Four

Offshore Wind Farm was issued on 12 July 2023. The Habitats Regulations Assessment undertaken by the Secretary of State *inter alia* concluded that displacement mortalities would not undermine the conservation objectives for the razorbill feature of the FFC SPA and an AEol from Hornsea Project Four alone, and in-combination with other projects, could be excluded. As outlined in the **RIAA** [APP-059] and the **Apportioning and HRA Updates Technical Note (Revision E)** [document reference 13.3], the contribution of SEP and DEP to in-combination totals was extremely small (an annual upper 95% confidence limit mortality of 3 birds (mean value of 4)). As such, the Applicant considers that it is no longer necessary to present 'without prejudice' compensation measures relating to razorbill. Based on the information presented by the Applicant and in line with their decision for Hornsea Project Four, the Secretary of State can conclude that AEol can be ruled out for razorbill.

157. The Applicant has agreed with Natural England that there would be no AEol in respect of any other ornithological features of designated sites forming part of the National Site Network (see the **Final Statement of Common Ground (SoCG) with Natural England (HRA Derogation) (Revision B)** [document reference 12.15]).

### 5.3 No alternative solutions and IROPI

158. Sections 4 and 5 of the **Habitats Regulations Derogation: Provision of Evidence** [APP-063] include a comprehensive assessment of whether (i) there are any alternative solutions to SEP and DEP and (ii) there are IROPI for consent to be granted, notwithstanding the conclusion that AEol cannot be ruled out for designated sites.
159. The assessment of alternatives followed available guidance, included a 'do nothing scenario', and considered alternative locations, scale, design, methodology and timing. It concluded that there are no feasible alternative solutions which could host comparable scale offshore wind farms and that meet the project need and objectives.
160. The assessment of whether there are IROPI for SEP and DEP to be carried out considered the projects against international and UK law and policy. It concluded that the environmental and social benefits to the UK from increasing the generation of low carbon energy are clear, with SEP and DEP providing a critical contribution. SEP and DEP contribute to the UK's legally binding climate change targets by helping to decarbonise the UK's energy supply, whilst contributing to the essential tasks of ensuring security of supply and providing low-cost energy for consumers, in line with the UK Government's national policies. There is a demonstrable overriding public interest in delivering SEP and DEP and the policy objectives they would serve is considered to override the potential conservation interests at risk.

### 5.4 Compensation measures

161. As set out above, where consent is granted on the basis of a derogation, the Habitats Regulations require the appropriate authority to secure that any necessary compensatory measures are taken to ensure that the overall coherence of the National Site Network is protected.



162. The Applicant considers that the Secretary of State can be confident that the necessary compensation measures can be secured where it is demonstrated that:
- There is a suitable legal mechanism to ensure delivery of the compensation measures;
  - The proposed compensation measures have sufficient ecological merit; and
  - There is a clear plan for practical delivery of the measures.
163. This section considers the various compensation measures proposed by the Applicant as part of their derogation case and details why the Secretary of State can be satisfied that suitable measures can be secured that will ensure the overall coherence of the National Site Network is protected.
164. For each species, the Applicant has proposed a 'package' of compensation measures. Each package includes project-led measures that would be delivered by the relevant undertaker for each of SEP and DEP. The Applicant has also included within schedule 17 of the **draft DCO (Revision K)** [document reference 3.1], the option, following consent of the Secretary of State, for strategic or collaborative measures to be undertaken in substitution for project-led measures, or as adaptive management (see **Section 5.5**).

#### 5.4.1 Legal mechanism to secure compensation

165. A number of DCOs have been granted in recent years for offshore wind farms on the basis of a derogation from the Habitats Regulations. Those DCOs have included provisions to ensure that the measures are legally secured, including: Hornsea Three Offshore Wind Farm Order 2020, Norfolk Boreas Offshore Wind Farm Order 2021, Norfolk Vanguard Offshore Wind Farm Order 2022, East Anglia ONE North Offshore Wind Farm Order 2022, East Anglia TWO Offshore Wind Farm Order 2022 and Hornsea Four Offshore Wind Farm Order 2023.
166. Whilst the precise detail of the compensation measures differs from project to project, each DCO contains similar provisions to secure the delivery of those measures. That well precedented approach has been the starting point for the Applicant in drafting provisions to secure the compensation measures proposed for SEP and DEP.
167. The Applicant has included provisions within schedule 17 of the **Draft DCO (Revision K)** [document reference 3.1] that it considers are sufficient to secure that the necessary compensatory measures will be undertaken for ornithological features and sites where the Applicant has concluded that AEoI cannot be ruled out. In respect of the 'without prejudice' measures for guillemot from FFC SPA, the Applicant has proposed drafting within the **Proposed Without Prejudice DCO Drafting (Revision D)** [document reference 3.1.3] that could be included within the DCO should the Secretary of State conclude that AEoI cannot be ruled out for that species.
168. As noted above, the structure of the provisions in schedule 17 of the **draft DCO (Revision K)** [document reference 3.1] is based on the approach that has been accepted in a number of recent offshore wind farms. This provides for a staged process to be carried out post-consent to develop the final detail of the compensation measures and thereafter implement them:

- **Stage 1** – a steering group is established to progress and finalise the scope and extent of the compensation measures to be delivered. The Applicant will submit the details of the steering group and their scope of work to the Secretary of State for approval.
- **Stage 2** – the undertaker consults with the steering group and formulates a compensation, implementation and monitoring plan (CIMP) for delivery of the compensation measures. This plan will be based on the outline CIMP submitted with the application. The CIMP is submitted to the Secretary of State for approval.
- **Stage 3** – The undertaker must implement the CIMP and confirm to the Secretary of State when the measures have been completed.

169. For each species, the relevant Part of Schedule 17 contains a condition that imposes a timing control restricting commencement of operation of the wind farm until the relevant compensation measures have been implemented. The Applicant considers that this is key to ensuring that the overall coherence of the National Site Network is protected. The coherence of the network is maintained by ensuring that the compensation measures are in place in a suitable timescale to offset impacts.

170. The relevant timescales are specific to the species and the compensation measures proposed. The Applicant has set out the rationale for the timing controls within:

- **Appendix 2 Sandwich Tern Compensation Document (Revision B)** [document reference 5.5.2]
- **Appendix 3 Kittiwake Compensation Document** [APP-072]
- **Appendix 4 Guillemot and Razorbill Compensation Document (Revision D)** [document reference 5.5.4].

In addition, the **Sandwich Tern – Quantification of Productivity Benefits Technical Note (Revision C)** [document reference 13.4] and **Gateshead Kittiwake Tower Modification - Quantification of Productivity Benefits Technical Note (Revision B)** [REP3-087] provide further information on the anticipated productivity benefits to be afforded by the proposed measures and, as appropriate, consideration of implementation timelines.

171. A condition is also included in Schedule 17 for each species that requires results from the monitoring scheme for the compensation measures to be submitted to the Secretary of State and Natural England on an annual basis. The report must include consideration of whether any measures have been ineffective and, where that is the case, propose adaptive management measures to address this. This ensures that there is a mechanism in place to validate the efficacy of the compensation measures and that, if necessary, adaptive management can be undertaken in a timely manner during the operational period of wind farms. This gives further confidence that the coherence of the National Site Network will be protected through the lifetime of the projects.

172. The Applicant considers that the provisions in Schedule 17 of the **draft DCO (Revision K)** [document reference 3.1] provide a robust and well-precedented legal mechanism to secure the compensation measures.

## 5.4.2 Compensation measures for Sandwich tern

173. The following documents set out the detail of the Applicant's proposed compensatory measures for Sandwich Tern
- **Appendix 2 Sandwich Tern Compensation Document (Revision B)** [document reference 5.5.2]
  - **Annex 2A Outline Sandwich Tern Compensation Implementation and Monitoring Plan (CIMP) (Revision B)** [document reference 5.5.2.1]
  - **Annex 2B Sandwich Tern Nesting Habitat Improvements Site Selection** [APP-071]
  - **Apportioning and Habitats Regulations Assessment Updates Technical Note (Revision E)** [document reference 5.5.2.1]
  - **Sandwich Tern – Quantification of Productivity Benefits Technical Note (Revision C)** [document reference 13.4]
  - **HRA Derogation and Compensatory Measures Update (Revision D)** [document reference 13.7].
174. The Applicant has calculated the scale of compensation necessary for Sandwich tern based on the upper 95% confidence interval collision rates, which the Applicant considers to be highly precautionary, but is in line with statutory nature conservation body guidance. This results in an annual mortality of 12-17 birds (mean value of 6-7).
175. The scale of compensation identified by the Applicant is to provide a gain equivalent to 17 adult birds per year. This will be achieved through restoring lost breeding range through nesting habitat improvements at Scar Point, Loch Ryan, which will make the population more robust to local impacts and improve productivity. This measure is supported by proposals that would improve breeding success at North Norfolk Coast SPA (to be undertaken at Blakeney Point) or at other SPAs (to be undertaken at the Farne Islands).

### 5.4.2.1 Sandwich Tern Nesting Habitat Improvements and Restoration of Lost Breeding Range at Scar Point, Loch Ryan – Inland Pool

#### 5.4.2.1.1 *Ecological merit*

176. The compensation measure proposed at Loch Ryan is to create a new breeding site for Sandwich tern through the creation of an inland pool. The site at Loch Ryan, which has historically supported nesting Sandwich tern, can confidently be predicted to be able to support at least 120-150 pairs of Sandwich terns.
177. If a colony of 150 pairs of Sandwich terns was restored at Loch Ryan and achieved average breeding success, this would produce an average of 24 recruits into the population each year, above the 95% upper confidence limit for the predicted impact of SEP and DEP. This has been stress-tested on a precautionary basis within the **Sandwich Tern – Quantification of Productivity Benefits Technical Note (Revision C)** [document reference 13.4].
178. The measure at Loch Ryan would restore breeding status to a geographical region from which the species has been extirpated. The Applicant considers, and Natural

England agrees, that this would represent a major qualitative conservation gain that would bring greater resilience to the wide National Site Network (see the **Final Statement of Common Ground (SoCG) with Natural England (HRA Derogation) (Revision B)** [document reference 12.15]).

179. The Applicant submits that the Secretary of State can have a high degree of confidence in the ecological merit of the proposals at Loch Ryan.

#### 5.4.2.1.2 *Practical delivery plan*

180. In its response to WQ4.14.1.7 of the Examining Authority's Fourth Written Questions, Natural England stated that its principal concern with the Loch Ryan proposals is the limited information presented to the Examination. The Applicant fundamentally disagrees with Natural England that an insufficient amount of information has been provided about the proposal.
181. The Applicant had extensive pre-application discussions with Natural England and other parties in relation to the proposals at Loch Ryan and developed a delivery plan that was necessarily going to take a significant time to mature. That is captured within the outline roadmap at Table 7-4 of **Appendix 2 Sandwich Tern Compensation Document Revision B** [document reference 5.5.2] and as updated in Table 6 of the **HRA Derogation and Compensatory Measures Update Revision D** [document reference 13.7]. The Applicant was encouraged to make the application at that time by Natural England.
182. The Applicant has provided regular updates and additional detail during the Examination through the **HRA Derogation and Compensatory Measures Update Revision D [document reference 13.7]** that demonstrate (i) there is a clear plan for the practical delivery of the measure and (ii) the Applicant has been making progress in line with the outline roadmap and delivery programme. The Applicant considers that the development of the measures is in line with its pre-application expectations.
183. The Applicant has progressed all key aspects for delivery during the Examination:
- **Location** – The Applicant has refined its site selection and has presented in Figure 7-2 and 7-3 of **Appendix 2 - Sandwich Tern Compensation Document (Revision B)** [document reference 5.5.2] four indicative options, all exceeding 2ha in size, where the inland pool could be located. The Applicant is in negotiations with all landowners where those sites are located to secure the necessary rights to develop the inland pool. The Applicant also retains a wider 'long-list' of options that could be revisited, if necessary.
  - **Land agreements** – The Applicant is in negotiations with two landowners in the area of search. The Applicant has received and submitted into Examination a letter of support from one of the landowners. The Applicant anticipates being able to secure the land voluntarily in due course, but notes that, as a backstop, SEL and DEL have compulsory acquisition powers through the Electricity Act 1989 (section 10(1) and schedule 3) and has submitted a KC written opinion confirming the availability of that power [REP4-043].

- **Design** – The outline design requirements (such as size, water depth, need for fencing) are agreed with Natural England. The Applicant is necessarily undertaking detailed design based on the outcome of site-specific surveys and landowner engagement.
- **Planning, licences and other consents** – The Applicant has given consideration within its timetable to the need to obtain other consents and licences to deliver the measure. The Applicant has received and submitted into the Examination an in-principle letter of support from the local planning authority.

184. Taking all of the above together, the Applicant is progressing the practical delivery of this compensation measure in line with its expectations pre-examination and as discussed with Natural England. The Applicant remains on course to deliver the measure in accordance with the outline roadmap.

185.

186. The Applicant considers that that Secretary of State can be confident that there is a clear plan for the practical delivery of the compensation measures and that this is being progressed in a suitable timescale. Furthermore, as already stated, the Secretary of State has the comfort of the restriction in the DCO which prevents the operation of SEP and DEP unless the CIMP has been approved and implemented.

#### 5.4.2.2 Improved breeding success at SPA sites other than NNC (the Farne Islands SPA)

##### 5.4.2.2.1 *Ecological merit*

187. The Applicant considers that the inclusion of these measures (and those outlined in **Section 5.2.3** below) within its overall package for Sandwich tern increases the robustness and confidence that the overall coherence of the National Site Network will be protected.

188. The Applicant is proposing a range of measures to improve breeding success at the Farne Islands, including:

- Deployment of 400 nest boxes and 400 shelters.
- Deployment of six cameras with video transmitted to a solar-powered battery driven base station where recorded video will be stored, which it is considered should allow a representative sample of nests to be monitored to record predation attempts by large gulls.
- Deployment of bamboo canes, if gull predation is determined as being an ongoing issue following deployment of nest boxes and shelters.

189. The Applicant recognises that Natural England and the National Trust do not support the measures proposed at the Farne Islands on the basis that these are not additional to the measures already included within the draft Site Management Plan [AS-042] and do not have sufficient ecological merit. The Applicant disagrees and is proposing the above measures in addition to those already contained within the Site Management Plan.

190. For the reasons set out within the **Sandwich Tern Compensation Document (Revision B)** [document reference 5.5.2], the Applicant maintains that the measures

have ecological merit and, given the severity of the situation at the Farne Islands, the Applicant considers it suitable and appropriate that the measures remain as part of the Applicant's package of compensation measures.

191. Furthermore, the Applicant notes that Defra has indicated that it intends to issue further guidance on compensation, which is expected to clarify the position on additionality. The Applicant considers that it is appropriate for this measure to remain within the compensation package pending that further guidance.

#### 5.4.2.2.2 *Practical delivery plan*

192. The Applicant recognises that the primary barrier to practical delivery of the measures is that they are not supported by the National Trust, as landowner of the Farne Islands. In the event that the Secretary of State concludes that the measures at the Farne Islands are an appropriate part of the compensation package for Sandwich tern, whether because they do represent additionality, or following a change in guidance, the Applicant hopes that the National Trust would reconsider its position.
193. The Applicant considers that the Secretary of State can conclude that these measures are practically deliverable.

#### 5.4.2.3 *Blakeney Point Predator Management Compensation Proposal*

##### 5.4.2.3.1 *Ecological merit*

194. The proposed compensation measure at Blakeney Point was not included in the Applicant's compensation package at the point that the application was submitted, as the Applicant had received advice from Natural England in April 2022 that these would not be considered additional to normal management practices. Natural England and the National Trust have since reconsidered their position on this, following abandonment of the Blakeney colony in the 2022 breeding season. On 23 May 2023, Natural England and the National Trust approached the Applicant to reopen discussions on compensation measures at Blakeney Point.
195. As a result of this change that occurred quite late in the Examination, these measures are necessarily less developed than others put forward by the Applicant.
196. However, the underlying proposition is a relatively simple one – that predator management at Blakeney Point will improve breeding success of Sandwich tern. The Applicant considers that it is likely that effective predator management would increase Sandwich tern numbers by more than the equivalent of the upper 95% CI of ca. 12-17 adults (mean ca. 6-7 adults) estimated to be killed by the development each year of operation.
197. Whilst the Applicant has not submitted detailed evidence that quantifies the expected benefits of the compensation measure, the Applicant considers that the Secretary of State can be confident that the measures do have ecological merit, that they would complement the measures to be delivered at Loch Ryan (as an alternative to measures at the Farne Islands) and that they provide resilience and increase confidence in the compensation package.
198. This position is supported by Natural England, which stated in its response to Q4.14.1.7 of the Examining Authority's Fourth Written Questions: "*We broadly*

*consider that the Blakeney Point measure is sufficiently developed as a supporting/resilience element of the compensation package, and have provided advice to the Applicant to strengthen the proposals.”*

#### 5.4.2.3.2 Practical delivery plan

199. The Applicant has amended **Appendix 2 - Sandwich Tern Compensation Document (Revision B)** [document reference 5.5.2] to include an outline roadmap for the delivery and implementation of the measures. Given the support of Natural England and the National Trust (which manages the site), the Applicant submits that the Secretary of State can have a high degree of confidence in the delivery plan.

#### 5.4.2.4 Conclusion on compensation measures for Sandwich tern

200. The Applicant submits that the Secretary of State can have a high degree of confidence that compensatory measures for Sandwich tern can be secured that will ensure the overall coherence of the National Site Network is protected. Each of the measures has a high degree of ecological merit (as recognised by Natural England) and has the in-principle support of landowners and local planning authorities, where additional agreements or consents are required. The legal mechanism set out within the **draft DCO (Revision K)** [document reference 3.1] provides the appropriate mechanism for the onward development and implementation of the measures and secures that they will be delivered in an appropriate timescale to offset any potential impacts.

#### 5.4.3 Compensation measures for kittiwake

201. The following documents set out the detail of the Applicant's proposed compensatory measures for Sandwich tern:

- **Appendix 3 Kittiwake Compensation Document** [APP-072]
- **Annex 3A Outline Kittiwake CIMP** [APP-073]
- **Gateshead Kittiwake Tower Modification – Quantification of Productivity Benefits Technical Note (Revision B)** [REP3-087]
- **Apportioning and Habitats Regulations Assessment Updates Technical Note (Revision E)** [document reference 5.5.2.1]
- **HRA Derogation and Compensatory Measures Update (Revision D)** [document reference 13.7].

202. The Applicant has calculated the scale of compensation necessary for kittiwake based on the upper 95% confidence interval collision rates, which the Applicant considers to be highly precautionary, but is in line with statutory nature conservation body guidance. This results in an annual mortality of 17 birds (mean value of 6).

203. The scale of compensation identified is to achieve increased production of approximately 140 extra chicks per year through measures undertaken at Gateshead. That will be achieved by facilitating the move of 110 pairs of kittiwakes from nest sites that fail to nest sites that achieve average breeding success.

### 5.4.3.1 Kittiwake Nest Site Improvements to Enhance Breeding Success – Gateshead

#### 5.4.3.1.1 *Ecological merit*

204. The Applicant is proposing to achieve the increased production of kittiwake chicks through modifications to the existing kittiwake tower at Saltmeadows. The Applicant's proposal differs from that of other developers proposing construction of artificial nesting structures by aiming to replace unsatisfactory nest sites with high quality nest sites, allowing higher breeding success to be achieved by birds that were nesting on unsatisfactory sites where they were failing to produce chicks. The Applicant's approach therefore does not rely entirely on an increase in breeding numbers to generate compensation, but delivers compensation through an increase in breeding success and an increase in breeding numbers through provision of high quality nesting space. In contrast to other proposals, the Applicant's approach would therefore, at least partially, be able to generate compensation even if breeding numbers did not increase, because relocation of failing pairs onto high quality nest sites will generate increased production of young birds.
205. Section 7.1 of the **Gateshead Kittiwake Tower Modification – Quantification of Productivity Benefits Technical Note (Revision B)** [REP3-087] estimates the scale of compensation that would be delivered by removing the under-performing south face and replacing this with two new north facing faces. This is anticipated to increase output by about 140 chicks per year. About 50% of fledglings are expected to survive to recruit as breeding adults, therefore the increase of about 140 chicks represents increased recruitment of about 70 adults per year, slightly over 35 of which could be expected to breed in SPA colonies.
206. The recruitment of an additional 35 adult birds into populations within the national site network means that the compensation would be provided at a ratio 2:1 when related to the upper 95% CI estimate of the collision mortality, and at more than 5:1 when related to the mean estimate of the collision mortality. This demonstrates that the proposed enhancement of the Saltmeadows tower will deliver compensation at a level which substantially exceeds the predicted collision mortality.
207. Whilst Natural England have a general policy position that any new artificial nest sites for kittiwake that are intended as compensation for offshore wind farms should be delivered offshore, they have recognised that in these facts and circumstances the proposal at Gateshead has the potential to provide appropriate compensation for SEP and DEP (**Final Statement of Common Ground (SoCG) with Natural England (HRA Derogation) (Revision B)** [document reference 12.15]).
208. The Applicant submits that the Secretary of State can have a high degree of confidence in the ecological merit of the measures proposed for kittiwake at Gateshead.
209. The key area of disagreement that remains between the Applicant and Natural England is the number of breeding seasons that the measure ought to be in place before SEP and DEP is operational. The Applicant's position is that three years is an appropriate period, whereas Natural England consider that four years would be appropriate.
210. Kittiwake start to breed on average at four years old and therefore the Applicant agrees that, as a starting point, the aim should be to have compensation measures



in place four years before the wind farm becomes operational. However, increasing the scale of compensation can readily be used to offset any accumulated deficit that might result in the first years of the compensation measure being installed. In the context of the urgent need for offshore wind farms to be developed, a shorter period may be appropriate where the scale of compensation to be provided is considered sufficient to offset any early deficit.

211. Furthermore, any accumulated mortality deficit could also be addressed by extending the period that the compensation measures are in place beyond the operational period of SEP and DEP and for a sufficient number of years to balance the accrued collision mortality debt. A slow rate of colonisation would have a similar effect and would be addressed in the same way. However, if throughout the operational phase of SEP and DEP, the scale of compensation being provided increased to a level sufficient to offset any mortality debt accrued in the early years, then this extended period of maintenance would not be required.
212. Whether it is appropriate for a shorter timescale to be imposed will depend on the facts and circumstances of each project. For example, the Hornsea Three Offshore Wind Farm (Amendment) Order 2023 was made on 17 April 2023 which *inter alia* reduced the number of breeding seasons that artificial nest structures needed to be in place prior to operation of turbines forming part of that development from four to three seasons in respect of two structures and from four to two seasons for another two structures.
213. The Applicant has set out in detail its position on the timescale to achieve compensation for SEP and DEP within section 6.4.6 of **Appendix 3 - Kittiwake Compensation Document** [APP-072], which is not repeated here. The Applicant considers that implementation of the proposed compensation three breeding seasons prior to operation of SEP and DEP would be appropriate in this case and that is the timing control that should be included in the DCO.

#### 5.4.3.1.2 *Practical delivery plan*

214. The Applicant included an outline delivery roadmap at Table 6-5 of **Appendix 3 - Kittiwake Compensation Document** [APP-072]. No material concerns have been raised about the practical delivery of the kittiwake compensation measures at Gateshead through Examination.
215. The Applicant has progressed all key aspects of delivery through the Examination:
- **Land agreements** – The Applicant is negotiating heads of terms with Gateshead Council, as the owner of the existing Saltmeadows tower and site. Gateshead Council have provided a letter of support which has been submitted into the Examination. The Council have granted the Applicant an access licence to undertake surveys.

- **Design** – Two illustrative designs have been produced during the Examination (see plates 1 and 2 of the **HRA Derogation and Compensatory Measures Update (Revision D)** [document reference 13.7]) that the Applicant has consulted on with Gateshead Council and Northumbria Ringing Group. The surveys undertaken by the Applicant indicate that these design options are feasible, and it is not expected that any reinforcement will be required to the steel lattice structure or concrete foundation of the tower. The final design will be determined in consultation with stakeholders, including Natural England.
- **Planning, licences and other consents** – The Applicant has commenced formal pre-application consultation with Gateshead Council, as local planning authority, in respect of a planning application. As noted above, Gateshead Council have provided in-principle support.

216. The Applicant considers that that Secretary of State can be confident that there is a clear plan for the practical delivery of the compensation measures and that this is being progressed in a suitable timescale.

#### 5.4.3.2 Conclusion on kittiwake compensation measures

217. The Applicant submits that the Secretary of State can have a high degree of confidence that the compensatory measure for kittiwake can be secured that will ensure the overall coherence of the National Site Network is protected. The measure has a high degree of ecological merit (as recognised by Natural England) and has the in-principle support of Gateshead Council as landowner and local planning authority. The legal mechanism set out within the **draft DCO (Revision K)** [document reference 3.1] provides the appropriate mechanism for the onward development and implementation of the measure and secures that it will be delivered in an appropriate timescale to offset any potential impacts.

#### 5.4.4 Compensation measures for guillemot

218. The Applicant notes that at the point of submission of the Application, it had put forward a 'without prejudice' compensation package of measures that included gannet, razorbill and guillemot. As noted above, during the Examination, the Applicant received confirmation from Natural England, as set out in the **Offshore Ornithology Statement of Common Ground Revision B** [document reference 14.8], that they agreed with the Applicant's conclusions that AEoI could be ruled out for gannet. As such, the Applicant considered that it was no longer necessary to present 'without prejudice' compensation measures relating to gannet and removed the measures relating to gannet from the compensation package. As also set out above, the Secretary of State's decision in respect of Hornsea Project Four Offshore Wind Farm concluded that displacement mortalities would not undermine the conservation objectives for the razorbill feature of the FFC SPA and an AEoI from Hornsea Project Four alone, and in-combination with other projects, could be excluded. As such, the Applicant considers that it is no longer necessary to present 'without prejudice' compensation measures relating to razorbill. The 'without prejudice' drafting in **Proposed Without Prejudice DCO Drafting (Revision D)** [document reference 3.1.3] has therefore been updated to remove references to

razorbill; however, due to time constraints, the other documents relevant to 'without prejudice' razorbill compensation have not been updated.

219. The Applicant's position is that AEoI can be ruled out for the guillemot feature of the FFC SPA. However, the Applicant has submitted a derogation case for this species on a 'without prejudice' basis, recognising that Natural England's position is that AEoI cannot be ruled out when the potential impact of SEP and DEP is considered in-combination with other projects. The Applicant is reviewing the decision for Hornsea Four, where the Secretary of State concluded that he could not rule out AEoI in respect of the guillemot feature of the FFC SPA. The Applicant requires time to fully review all of the relevant Hornsea Four documents to be able to give a properly considered response, and therefore does not propose to amend its position for this feature prior to the end of Examination.
220. The following documents set out the detail of the Applicant's proposed compensatory measures for guillemot:
- **Appendix 4 Guillemot and Razorbill Compensation Document (Revision D)** [document reference 5.5.4]
  - **Annex 4A Outline Guillemot and Razorbill CIMP (Revision B)** [REP5-018]
  - **Annex 4B Auk Bycatch Reduction Feasibility Statement** [REP3-023]
  - **Apportioning and Habitats Regulations Assessment Updates Technical Note (Revision E)** [document reference 5.5.2.1]
  - **HRA Derogation and Compensatory Measures Update (Revision D)** [document reference 13.7].
221. The Applicant has calculated the scale of compensation necessary using evidence-based 50% displacement rate and 1% mortality rate of displaced birds. This results in an annual upper 95% confidence limit mortality of 6 birds (mean value of 4). The Applicant's proposals would deliver compensation on a 1:1 basis.

#### 5.4.4.1.1 *Ecological merit*

222. The Applicant would deliver compensation measures through implementation of technologies that would reduce the bycatch of guillemot in trawl and in set net fisheries. In particular, the Applicant would seek to sign up fishers to implement remote electronic monitoring systems and above water deterrents (i.e. technologies such as looming-eye buoys) and would contribute to the evidence base regarding baseline levels of bycatch.
223. The Applicant confirmed in its response to the Rule 17 request at Deadline 8 [document reference 22.2] that it has committed to invest in trials of looming-eye buoys to reduce auk bycatch as a specific action in order to strengthen the evidence base with respect to the use of this technique as compensation for SEP and DEP.
224. As detailed above, the predicted annual mortality of guillemot from SEP and DEP is extremely small. The proposed bycatch reduction compensation measure would account for 1:1 losses due to offshore wind farm impacts, with no delay following implementation. As set out in table 10-2 of **Appendix 4 Guillemot and Razorbill Compensation Document (Revision D)** [document reference 5.5.4], the Applicant estimates that up to two vessels would be required to implement looming-eye buoys

/ above water deterrents to deliver the necessary scale of compensation for SEP and DEP based on a 1:1 compensation ratio.

225. Throughout the Examination, Natural England has expressed its reservations about the ecological merit of the use of looming-eye buoys and the proposed bycatch reduction measures as compensation measures. Natural England made similar submissions through the Examination of the DCO application for Hornsea Project Four.

226. On 12 July 2023, the Secretary of State issued its decision to grant the Hornsea Four Offshore Wind Farm Order 2023. The Secretary of State concluded in his decision letter that AEoI could not be ruled out for that project for the guillemot feature of the FFC SPA. In considering suitable compensation measures, the Secretary of State stated at paragraph 5.74 of his decision:

*“With regards to NE’s concerns around the effectiveness of LEBs in reducing bycatch, the Secretary of State is aware that a research study undertaken by the Applicant into bycatch mitigation using LEBs in 22 fishing enterprises, concluded that the technology was effective in reducing guillemot bycatch. He also notes that NE supported the LEB trial and agreed its theoretical merit and acknowledged that further work may yield adequate information on efficacy in the post-consent period. The Secretary of State considers that the Applicants supporting evidence (Guillemot and Razorbill Compensation Plan, Bycatch Reduction Ecological Evidence, Bycatch Reduction Roadmap and Bycatch Reduction Technology Selection Phase Summary) demonstrates that this measure is technically feasible and deliverable. Having reviewed the responses to the consultation letters, the Secretary of State is content that the LEB measure is likely to be additional to the normal/ standard measures required for the designation, protection and management of protected sites under the Habitats Regulations.”*

227. The Secretary of State concluded that suitable compensation measures could be secured for guillemot for the project to be granted development consent.

228. The Applicant’s proposal is in line with that which was proposed and accepted by the Secretary of State for Hornsea Project Four. On the basis of his decision for Hornsea Project Four, and given the extremely small scale of compensation that would be required for SEP and DEP, the Applicant submits that the Secretary of State can have confidence in the ecological merit of the proposed compensation measures.

#### 5.4.4.1.2 *Practical delivery*

229. The Applicant included an outline delivery roadmap at Table 10-4 of **Appendix 4 – Guillemot and Razorbill Compensation Document (Revision D)** [document reference 5.5.4]. Given the relatively small number of contracts that the Applicant would be required to enter into with fishers to deliver the compensation, the Applicant considers that the Secretary of State can be confident that there is a clear plan for the practical delivery of the compensation measures and that this can be progressed in a suitable timescale.

### 5.4.5 Strategic and collaborative measures

230. The Applicant considers that the proposed project-led compensatory measures set out above in sections 5.1 – 5.4 will, if required, fully compensate for the predicted impacts of SEP and DEP on designated sites and features. However, with a view to providing further resilience to the overall compensation package, and in the context of a rapidly developing legislative and policy context, the Applicant has also included within Schedule 17 of the **draft DCO (Revision K)** [document reference 3.1] provisions that would facilitate strategic or collaborative measures being utilised in substitution for project-led measures, or as adaptive management.

231. The Applicant has set out the rationale for the inclusion of the strategic/collaborative measures in the overall package within the following application documents:

- **Appendix 1 - Compensatory Measures Overview** [APP-064]
- **Strategic and Collaborative Approaches to Compensation and Measures of Equivalent Environmental Benefit** [APP-084])

and in responses submitted through the Examination, including to:

- Q1.14.1.20 in **The Applicant's Responses to the Examining Authority's First Written Questions** [REP1-036]
- Q2.14.1.4 in **The Applicant's Responses to the Examining Authority's Second Written Questions** [REP3-101]
- Q3.14.1.16 in **The Applicant's response to the Examining Authority's Third Written Questions** [REP-049]

#### 5.4.5.1 Policy context

232. The UK Government has recognised that one of the principal challenges for developers in relation to derogation is identifying and securing robust compensatory measures which are acceptable to regulators and statutory nature conservation bodies. Some of the most effective measures that could be delivered are not within the power of individual projects to deliver and would need action by government bodies.

233. To address this challenge, Defra is proposing reforms that would enable strategic compensation measures to be relied on as part of a derogation case under the Habitats Regulations. In June 2022, Defra stated it was proposing to “*enable compensatory measures to be identified and delivered strategically, introducing a mechanism to bring forward larger scale compensatory measures than those typically delivered at a project level*”. It went on to state that “*strategic compensatory measures could be delivered through a Marine Recovery Fund*” whereby “*the environmental benefits of strategic measures could be apportioned to multiple wind farm projects in meeting their project-level compensatory requirements*”.

234. The draft Energy Bill includes provisions that would (a) allow strategic compensation measures to be taken into account as part of a derogation from the Habitats Regulations and (b) empower the Secretary of State to make regulations that would establish a Marine Recovery Fund for that purpose.

235. The UK Government has stated its intention to have a mechanism to deliver strategic compensation in place by the end of 2023.

#### 5.4.5.2 Ecological merit

236. It remains the Applicant's view that the most effective compensation measure for impacts of offshore wind developments on Sandwich tern, kittiwake and guillemot in UK North Sea waters would be to reduce fishing pressure on sandeel stocks in order to maintain sandeel total stock biomass above the "one-third for the birds" threshold. Such a measure can only be delivered by Government.

#### 5.4.5.3 Relevance for SEP and DEP

237. The Applicant anticipates that the Secretary of State will make a decision on whether to grant development consent for SEP and DEP in Q1 2024, after the Government's target date for the MRF to be established. It is reasonably foreseeable that a suitable delivery mechanism for strategic compensation will become available either (a) by the time that this application is determined, or (b) within the necessary timescales for development of SEP and DEP. The Applicant would look to explore implementation either wholly or partly in substitution of project-led compensation measures or as part of an adaptive management approach for the relevant species. This is secured through schedule 17 of the **draft DCO (Revision K)** [document reference 3.1].

238. Including these measures provides additional robustness to the overall compensation package, including the provision of adaptive management (if required).

239. The Applicant notes that the Examining Authority for Hornsea Project Four recognised this in their recommendation report, stating (emphasis added):

*"13.12.122. The implementation of the MRF is set out in current policy, specifically the BESS, and the need for strategic compensation is recognised by the UK Government and TCE, as well as in the industry, and it has the general support of SNCBs and Non-Government Organisations. Nevertheless, neither the MRF nor any other appropriate vehicle for strategic compensation was in place at the end of the Examination.*

*13.12.123. The details of the strategic compensation in terms of locations, design, any necessary consents, timescales, and mechanism of implementation are as yet unknown. The SoS will need to be satisfied that this work could be in place at an appropriate juncture to compensate for the predicted AEol of the Flamborough and Filey Coast SPA. If all such details can be finalised and secured, the ExA is content that, in principle, strategic compensation as proposed could ensure the overall coherence of the UK National Site Network."*

240. Whilst the Applicant acknowledges that the Hornsea Four Offshore Wind Farm Order 2023 does not include provision for strategic measures, the Secretary of State's decision letter dated 12 July 2023 does not disagree with the analysis of the Examining Authority.

241. Furthermore, the drafting that secures strategic and collaborative measures within schedule 17 of the **draft DCO (Revision K)** [document reference 3.1] is such that

the Applicant could only utilise such measures with the consent of the Secretary of State. There is therefore no risk that the inclusion of these provisions within the DCO undermines the delivery of suitable compensation.

242. The Applicant maintains that it is reasonable and appropriate to include such provisions within the overall compensation package and within the DCO.

## 5.5 Conclusion on Habitats Regulations derogation

243. The Applicant has clearly set out within the Application documents and through its submissions during the Examination that there are no feasible alternative solutions to SEP and DEP that meet the project need and objectives. There is an imperative and overriding public interest in delivering SEP and DEP, which outweighs the potential conservation interests at risk. The Secretary of State can and should conclude that consent should be granted for SEP and DEP notwithstanding a negative assessment of the implications for sites in the National Site Network.
244. Furthermore, as summarised in **Section 5** above, the Applicant has proposed a comprehensive and robust package of compensatory measures that would ensure the overall coherence of the National Site Network is protected. The measures are ecologically sound, practically deliverable and legally secured through the **draft DCO (Revision K)** [document reference 3.1].
245. The Secretary of State can and should conclude that SEP and DEP meet the requirements for a derogation under the Habitats Regulations, including if the Secretary of State concludes (against the Applicant's position) that compensation is required for guillemot. As such, there is no barrier in terms of the Habitats Regulations Assessment to the Secretary of State granting development consent.

## 6 Marine Conservation Zone Assessment (MCZA)

### 6.1 Introduction – potential impacts on the Cromer Shoal Chalk Beds (CSCB) Marine Conservation Zone (MCZ)

246. SEP and DEP will be connected to shore by offshore export cables installed to the landfall at Weybourne, on the north Norfolk coast. There will be up to two export cables, installed in two separate trenches. Horizontal directional drilling (HDD) will be used for installation of the export cables at the landfall, from an onshore joint transition bay, under the intertidal zone to approximately 1,000m from the coastline. The export cable corridor passes through the Cromer Shoal Chalk Beds (CSCB) Marine Conservation Zone (MCZ).
247. The Applicant has undertaken considerable engagement with Natural England prior to submission of the application and through the Examination on matters relating to benthic ecology, including the potential impact that SEP and DEP would have on the CSCB MCZ.
248. A number of concerns raised by Natural England have been resolved through the Examination, as reflected in Natural England's Appendix K4 Deadline 7 Risk and Issues Log [REP7-110] and the **Final Statement of Common Ground with Natural England (Offshore) (Revision B)** [document reference 14.7]. However, Natural England maintains its position that the potential impacts of SEP and DEP

could hinder the conservation objectives of the CSCB MCZ. The Applicant has summarised below why it disagrees with that conclusion.

249. Furthermore, in light of Natural England's position, the Applicant has submitted on a 'without prejudice' basis information and DCO drafting that would secure the implementation of 'measures of equivalent environmental benefit' (MEEB) in the event that the Secretary of State does not agree with the Applicant.
250. This summary should be read alongside:
- a. **Stage 1 Cromer Shoal Chalk Beds Marine Conservation Zone Assessment (Revision B)** [document reference 5.6]
  - b. **Marine and Coastal Access Act (MCAA) Derogation – Provision Evidence** [APP-082]
  - c. **Appendix 1 – In-Principle Cromer Shoal Chalk Beds (CSCB) Marine Conservation Zone (MCZ) Measures of Equivalent Environmental Benefit (MEEB) Plan (Revision C)** [REP2-020]
  - d. **Outline Cromer Shoal Chalk Beds Marine Conservation Zone Cable Specification, Installation and Monitoring Plan (Revision B)** [document reference 9.7]
  - e. **Proposed Without Prejudice DCO Drafting (Revision D)** [document reference 3.1.3]

## 6.2 Legal and Policy Context

251. MCZs are designated by order under sections 116 and 117 of the Marine and Coastal Access Act 2009 (MCAA) for the purpose of conserving: (a) marine flora or fauna; (b) marine habitats or types of marine habitat; or (c) features of geological or geomorphological interest.
252. The Secretary of State is bound by the duties in relation to MCZs imposed by sections 125 (general duties) and 126 (duties in respect of certain decisions) of the MCAA.
253. Section 125 of the MCAA provides a general duty on public authorities to exercise their functions in a way that furthers the conservation objectives stated for the MCZ. Where this is not possible, the public authority is required to proceed in the manner that least hinders the achievement of the MCZ's conservation objectives. Section 126 of the MCAA sets out how decision makers are to carry out their duties in respect of decisions that would authorise an act that is capable of affecting (other than insignificantly) (i) the protected features of an MCZ and (ii) any ecological or geomorphological process on which the conservation of any protected feature of an MCZ is (wholly or in part) dependent.
254. Where significant risk of hindering the achievement of the MCZ conservation objectives cannot be ruled out, the authority must not grant authorisation unless the following conditions (Section 126(7) of the MCAA) can be met:
- “(a) there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of those objectives,*
- (b) the benefit to the public of proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it, and*



(c) *the person seeking the authorisation will undertake, or make arrangements for the undertaking of, measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MCZ.*"

255. Whilst there are similarities to the tests that are to be applied for a derogation under the Habitats Regulations (see section 5 above), there is a notable difference, in that under section 126 of the MCAA the risk of the proposed act hindering the conservation objectives of the MCZ does not need to be ruled out beyond reasonable scientific doubt. Instead, those provisions are only engaged where a significant risk of hindering the achievement of the objectives cannot be ruled out.

256. The conservation objectives for the CSCB MCZ require that the protected features (i) are maintained in a favourable condition and (ii) be brought into a favourable condition if they are not already in a favourable condition. The MCAA does not define what is meant by 'favourable condition'. Guidance issued by Defra on MCZ Designation states (paragraphs 14 and 15) (emphasis added):

*"Favourable condition is the condition that would be expected in the absence of significant anthropogenic pressures which have an adverse effect. The aim is to find an appropriate balance between safeguarding the marine environment and the sustainable use of marine resources. Anthropogenic impacts that do not have a significant adverse impact on the features will be allowed. For example, laying of a submarine cable across a feature where that cable covers only a small proportion of the feature and the parameters described in paragraph 7ii are not significantly affected. These will be assessed on a case by-case basis..."*

*The aim in terms of favourable condition is that the long-term trend for features should be stable or improving, and that they will be sufficiently resilient to recover from any temporary deterioration."*

### 6.3 Mitigation by design

257. The Applicant undertook a considerable amount of work prior to submission of the application to refine the project design to avoid and mitigate potential impacts on the CSBC MCZ. This early design work was informed by considerable engagement with Natural England and informed by learning from other offshore wind farm developments. Importantly, the Applicant was also able to utilise its experience and the data gained from the installation and subsequent monitoring of the export cables for Sheringham Offshore Wind Farm (SOW) and Dudgeon Offshore Wind Farm (DOW) that were also installed through the CSCB MCZ.

258. The Applicant considers that it has gone beyond what has previously been provided and expected to form part of a DCO application for an offshore wind farm. This includes providing greater levels of information and making firmer commitments to installation methods. These methods are set out in detail in the **Outline CSCB MCZ Cable Specification, Installation and Monitoring Plan (CSIMP) (Revision B)** [document reference 9.7] submitted at Deadline 7 and includes:

- a. Design mitigation that minimises the length and width of the cable corridor through the MCZ. The chosen route is nearby the existing DOW export cables, increasing confidence in the ability to achieve burial without the need to resort to external cable protection.

- b. Avoidance of cable crossings in the MCZ – the chosen route completely avoids cable crossings, removing a source of potential long term and permanent habitat loss through use of external cable protection.
  - c. Avoiding the outcropping chalk feature in the nearshore through the use of HDD, avoiding any direct impacts.
259. As noted above, the Applicant undertook considerable work prior to submission of the application that has allowed them to refine cable installation and burial techniques and mitigations. As set out in section 5.3 of the **Outline CSCB MCZ Cable Specification, Installation and Monitoring Plan (CSIMP) (Revision B)** [document reference 9.7] submitted at Deadline 7, a proposed scope of work has been provided to be undertaken post-consent to maximise the chance of burial success for SEP and DEP.
260. The Applicant is committed to minimising external cable protection in the CSCB MCZ and will continue to refine quantifies required in the detailed design stage. The Applicant has secured that the total quantity of external cable protection in the MCZ along the export cable corridor (including at the HDD exit) will not exceed 1,800m<sup>2</sup>. This is a significantly smaller amount than other similar projects installing cables through an MCZ, or areas with similar ground conditions, have been able to commit to. The Applicant has also committed to decommissioning of any external cable protection in the MCZ at the end of the project life, ensuring there will be no permanent habitat loss as a result of external cable protection within the MCZ.
261. In response to feedback from Natural England during the Examination, the Applicant has committed to further mitigation measures, including to secure the HDD exit location in the Weybourne Channel deposit to avoid any area of sub cropping chalk, as requested by Natural England (see section 5.1.5 **Outline CSCB CSIMP (Revision B)** [document reference 9.7]).

#### 6.4 Stage 1 Cromer Marine Conservation Zone Assessment

262. The Applicant submitted with the Application the **Stage 1 Cromer Shoal Chalk Beds (CSCB) Marine Conservation Zone Assessment (MCZA)** [APP-077], which provides the Secretary of State the relevant information to discharge their duties under section 126 of the MCAA.
263. The detail of that assessment is not repeated here. It includes an assessment of the potential impacts of SEP and DEP on the relevant broadscale habitats, habitat Features of Conservation Interest (FOCI) and features of geological interest. It concluded that the conservation objective of maintaining the protected features of the CSCB MCZ in a favourable condition or restoring them to favourable condition will not be hindered by the construction, operation and decommissioning phases of SEP or DEP in isolation, SEP and DEP, or cumulatively with any other plan, project or activity.
264. A point of disagreement between the Applicant and Natural England concerns the treatment of sub-cropping chalk in the assessment. Natural England's position is that across much of the site there are areas of subtidal chalk lying underneath a thin veneer of sand/sediment (i.e. the sub-cropping chalk) and therefore they advise that chalk with sediment veneer should be considered as subtidal chalk feature (HOCl 20) when assessing impacts, which is in accordance with their advice on

fishing activities. However, the Applicant has provided evidence in **ES Appendix 6.3 Sedimentary Processes in the Cromer Shoal Chalk Beds MCZ** [APP-182] that sea bed sediments in the offshore export cable corridor within the CSCB MCZ are static, with the exception of Holocene sand / subtidal sand, which is mobile under some conditions. Therefore, the potential for subtidal chalk to be exposed in the future is restricted to the subtidal sand areas identified by the geophysical survey although, even in these areas, given the thickness of the sands, it would only be possible for movement of the feather edges (where the sediment is thin and could all move), to generate new sea bed substrate. In areas where the sand is thicker, the movement of the surface layer would only result in exposure of further sand deeper in the sediment column. This point was agreed through the evidence plan process at Seabed ETG 2 (as set out in the **Offshore Statement of Common Ground with Natural England**, document reference 14.7). Therefore it would not be appropriate to treat chalk with sediment veneer in the manner suggested.

265. Through the **Outline CSCB CSIMP (Revision B)** [document reference 9.7] and supporting **Interim Cable Burial Study** [APP-292] the Applicant has demonstrated how it has used and will continue to apply the mitigation hierarchy to avoid, minimise and mitigate potential impacts on the designated features of the MCZ, as well as the sub-cropping chalk. These actions are appropriately secured through the requirement for the final CSIMP to be produced pre-construction.
266. The Applicant notes that the conclusion of the Stage 1 assessment, that achieving the conservation objectives will not be hindered by the authorised activities, is a positive one. This is a higher standard of confidence than would be required for the Secretary of State to conclude that the derogation provisions in section 126(7) of the MCAA are not engaged.
267. The Applicant submits that on the basis of the information presented in the Stage 1 Assessment, associated application documents and through examination, the Secretary of State can conclude that there is no significant risk of hindering the achievement of the conservation objectives for the CSCB MCZ.

## 6.5 Update to Condition Status for the CSCB MCZ

268. In May 2023, Natural England published an updated Conservation Advice Package for the CSCB MCZ. This included 'Supplementary Advice on Conservation Objectives' (SACOs). Natural England also commented within the **Draft Statement of Common Ground Natural England (Offshore)** [REP2-044]:

*"Natural England advises that projects that were built at the time of CSCB MCZ being officially proposed and designated are likely to be part of the baseline depending upon the time of the supporting surveys. However, for CSCB MCZ there has been subsequent lawful decisions where the assessment hasn't fully taken account of the predicted and/or as built impacts. Therefore, these ongoing impacts are thought to be hindering the conservation objectives for the site and must be taken into consideration in terms of the on-going carrying capacity of the site for further sustainable development. Therefore, Natural England doesn't agree with the cumulative assessments for the MCZ."*

269. The Applicant submitted an update to the Stage 1 assessment at Deadline 7 (**Stage 1 Cromer Shoal Chalk Beds Marine Conservation Zone Assessment (Revision**

- B)** document reference 5.6.5) that updated the cumulative habitat loss assessment to take account of the additional information provided. The points of relevance for the Stage 1 cumulative assessment were:
- a. It is estimated that up to 18,610m<sup>2</sup> (mixed sediment) and 864m<sup>2</sup> (coarse sediment) of gas pipeline protection has been installed within the MCZ between 2016 and 2021 (representing up to 0.04% of the subtidal mixed sediment feature, up to 0.0006% of the subtidal coarse sediment feature and up to 0.006% of the entire CSCB MCZ area).
  - b. There is the potential for installation of up to 2,900m<sup>2</sup> of external cable protection within the subtidal sand broadscale habitat feature by Hornsea Project Three (representing up to 0.016% of the subtidal sand broadscale habitat feature within the CSCB MCZ or 0.0009% of the total area of the MCZ).
270. Natural England's position in the SACO is that the cable installation for Hornsea Project Three would *"result in lasting habitat change/loss of subtidal sand feature with no guarantee that the protection can be satisfactorily removed and/or the habitat will ever return to its original state."*
271. The Applicant had already considered the potential cumulative impact for Hornsea Project Three within the original assessment, based on the information reported as part of that project's application. The Applicant considers that it is important that for both Hornsea Project Three and the referred to gas pipeline protection, it is likely that any external protections will be decommissioned in whole or in part in the future. Hornsea Project Three has a requirement to remove any external cable protection that is installed, at the time of decommissioning (circa. 35 years) and it is reasonable to assume that the protection for gas pipelines will be removed within the next 40 years. The potential habitat loss is therefore not permanent.
272. The critical point for the purposes of the cumulative assessment is that the spatial extent of this potential habitat loss remains very small in the context of the total area:
- a. Up to 0.026% of the subtidal sand feature (relevant to SEP and DEP and Hornsea Project Three cable protection only since no gas pipeline protection is installed in the subtidal sand feature);
  - b. up to 0.05% of the subtidal mixed sediment feature;
  - c. up to 0.016% of the subtidal coarse sediment feature; and
  - d. up to 0.0075% of total area of the CSCB MCZ.
273. On the basis that the proportion of the site that could be impacted is very small and that loss to the extent and distribution of the features will be long-term but temporary, the Applicant considers that the Secretary of State can conclude that the conservation objective of maintaining the protected features of the CSCB MCZ in a favourable condition, or restoring them to favourable condition, will not be hindered by SEP and DEP. The SACOs published in May 2023 do not change that conclusion.
274. Furthermore, the Applicant submits that the Secretary of State can be confident that there is no significant risk, such that the derogation provisions within section 126(7) of the MCAA are engaged.

## 6.6 Measures of Equivalent Environmental Benefit (MEEB)

275. Notwithstanding the above conclusions, the Applicant has submitted a derogation case under section 126(7) of the MCAA on a 'without prejudice' basis.

### 6.6.1 Measures proposed

276. If the Secretary of State concludes that MEEB is required to offset the potential impacts of SEP and DEP, the Applicant has set out within the **Marine and Coastal Access Act (MCAA) Derogation: Provision of Evidence** [APP-082] and **Appendix 1 In-Principle MEEB Plan (Revision C)** [REP2-020] measures that could be undertaken for this purpose.
277. The MEEB proposed would be the planting of an oyster bed within the CSCB MCZ. The aim would be to deploy and maintain an oyster bed of 10,000m<sup>2</sup> with an average density of 5 live oysters per m<sup>2</sup>. This would provide a greater than 1:5 ratio of MEEB, offering long term enhanced ecological function to the habitat being lost and would partially restore a historic feature of the region. This scale of restoration effort has also been selected because once fully functioning, it is expected that the native oyster bed would become self-sustaining.
278. Natural England supports the proposed MEEB in principle and agrees that it has ecological merit and, if required and successfully delivered, would compensate for the long-term loss of habitat from the installation of external cable protection (see **Draft Statement of Common Ground with Natural England (Offshore) (Revision B)** [document reference 14.7]).
279. No material concerns have been raised through the Examination about the ecological merit or efficacy of the proposal. The Secretary of State can be confident that the MEEB proposed can achieve its intended purpose.
280. The Applicant included an indicative timeline at Table 8.2 of **Appendix 1 In-Principle MEEB Plan (Revision C)** [REP2-020] for the installation of the measures. Once installed, monitoring will be undertaken throughout the lifetime of the oyster bed restoration project and results will be submitted to the Secretary of State and Natural England on (at least) an annual basis. In the unlikely event that development of an oyster bed within the CSCB MCZ is deemed to be unsuccessful, adaptive management or alternative MEEB can be undertaken in a timely manner. No material concerns have been raised about the practical delivery of the MEEB through the Examination.
281. The Secretary of State can be confident that there is a clear delivery plan in place for the installation of the MEEB.

### 6.6.2 DCO Drafting

282. A number of DCOs have been granted in recent years for offshore wind farms that include a requirement to provide benthic compensation measures, including: Hornsea Three Offshore Wind Farm Order 2020, Norfolk Boreas Offshore Wind Farm Order 2021 and Norfolk Vanguard Offshore Wind Farm Order 2022.
283. The Applicant has included drafting that would secure the MEEB within the **Proposed Without Prejudice DCO Drafting (Revision D)** [document reference 3.1.3]. This follows a similar structure to the drafting contained in Schedule 17 of

the **draft DCO (Revision K)** [document reference 3.1] that secures the implementation of compensation measures in terms of the Habitats Regulations. The Applicant has set out within section 5 above how the provisions would operate. The Applicant considers that this is a robust and well-precedented legal mechanism that can be used to secure the implementation of the MEEB, should the Secretary of State consider it is required.

#### 6.6.2.1 Timing control

284. The proposed drafting includes a timing mechanism that secures that no external cable protection works may be commenced within the CSCB MCZ until the MEEB Implementation and Monitoring Plan (MIMP) has been approved by the Secretary of State. A point of disagreement between the Applicant and Natural England is the suitability of this timing for implementation of the MEEB. Natural England's position is that no external cable protection should be installed until the MEEB is in place.
285. The Applicant has responded to this concern in detail through the Examination (including response to Q3.3.4.1 of **The Applicant's response to the Examining Authority's Third Written Questions** [REP5-049]). In summary:
- a. The Applicant's position is that, in the event the Secretary of State concludes that MEEB is required, this would be on the basis of there being potential for external cable protection being installed within the MCZ.
  - b. If during the pre-construction phase it was determined that no external cable protection for SEP and DEP was required to be installed within the MCZ, then the requirement to deliver MEEB would fall away.
  - c. The Applicant assumes any conclusion that MEEB was required would be on the basis of the potential cumulative long-term habitat loss impacts from the installation of external cable protection within the MCZ. There is no immediate impact from cable installation that would hinder the conservation objectives of the MCZ from being achieved. The MEEB therefore does not need to be in place before external cable protection is installed, or even shortly after, to achieve its intended purpose.
286. The Applicant considers that the controls proposed within the **Proposed Without Prejudice DCO Drafting (Revision D)** [document reference 3.1.3] are sufficient to secure the MEEB. By preventing installation of external cable protection until the MIMP is approved (condition 33), the Secretary of State can be confident that before those works take place a developed timeline and programme will be in place for the MEEB to be implemented to offset any potential impacts. Thereafter, the Applicant is required to implement the MIMP (condition 35) unless it is the case that no external cable protection works are required within the MCZ (condition 36), which would be ascertained by pre-commencement surveys.
287. The Applicant considers that the proposed timescale strikes an appropriate balance of ensuring that SEP and DEP can be delivered in a timely manner, delivering urgently needed renewable energy development as quickly as possible, whilst ensuring that MEEB will be implemented such that the potential adverse effects would be offset.

## 6.7 Conclusion on potential impacts on the Cromer Shoal Chalk Beds (CSCB) Marine Conservation Zone (MCZ)

288. Through extensive engagement with stakeholders pre-application, and informed by its experience with SOW and DOW, the Applicant has been able to commit to mitigation measures and provide information on the assessment of potential impacts to the MCZ that go beyond what has been provided previously and that is expected for offshore wind farm DCO applications. Through the mitigations that form part of the design of SEP and DEP, and through additional mitigations committed to, the Applicant has minimised the impacts that could occur within the CSCB MCZ.
289. Based on the information set out in Application documents and submitted through Examination, the Secretary of State can conclude that the conservation objectives of the CSCB MCZ will not be hindered by SEP and DEP. Furthermore, the Applicant submits that, at the very least, the Secretary of State can be confident that there is no significant risk of the conservation objectives being hindered by SEP and DEP, such that the derogation provisions within section 126(7) are engaged.
290. In the event that the Secretary of State concludes that such a risk cannot be ruled out, the Applicant has provided, on a 'without prejudice' basis, measures of equivalent environmental benefit that could be undertaken. The measures have the support of stakeholders (including Natural England), are ecologically sound, practically deliverable and could be legally secured through the provisions contained in the **Proposed Without Prejudice DCO Drafting (Revision D)** [document reference 3.1.3].
291. As such, there is no barrier in terms of the duties on the Secretary of State under the MCAA to them granting development consent for SEP and DEP.

## 7 Compulsory Acquisition

### 7.1 Legal tests

292. The Applicant's case for compulsory acquisition (including temporary possession powers) is set out in the **Statement of Reasons** (Revision E) [document reference 4.3] which has been updated at Deadline 7. This sets out the legal tests under section 122 and 123 and how they apply to the scheme and the various plots in the **Book of Reference** (Revision H) [document reference 4.1] which is being submitted in final form at Deadline 8. The funding proposals for the project and the compulsory acquisition compensation are set out in the **Funding Statement** (Revision B) [document reference 4.2].
293. The Statement of Reasons addresses the need for the project, the consideration of alternatives to compulsory acquisition, the funding position (explained in full in the Funding Statement) and the justification for the land take required, for permanent acquisition, acquisition of rights and temporary possession.
294. The Applicant submits that it has demonstrated that the powers it is seeking fall within the ambit of section 122 and 123.
295. The Applicant continues to negotiate with the various land interests affected by the scheme in order to reach voluntary agreements wherever possible and on the

compulsory powers being sought. A final update as regards the status of those negotiations is in the **Compulsory Acquisition Schedule (Revision D)** [document reference 12.5] which is submitted Deadline 8. Specific responses have been made at Deadline 8 to the Deadline 7 submissions of ADAS, the NFU, Mr Bond (as agents) and Mr Clive Hay-Smith and Priory Holdings Limited (as landowners). The Applicant intends to continue negotiations with land interests after the Examination with a view to signing binding option agreements with as many land interests as possible.

296. As explained in more detail in the Applicant's Deadline 8 responses, the Applicant rejects the assertions by ADAS, the NFU and Mr Bond that the Applicant has not continued to engage and negotiate with landowners. The terms of an option agreement are under active negotiation with the Land Interest Group and their appointed solicitors. As explained in its Deadline 8 response to the Land Interest Group it was understood that the main option would be resolved before landowner-specific points would be addressed in the options for specific landowners. This is an entirely reasonable and common approach. It is unreasonable for the Land Interest Group to claim that the Applicant has failed to continue to negotiate when the facts are so plainly otherwise. The Applicant would highlight that a substantial part of the delay in resolving the main option has been delay by the Land Interest Group in returning substantive comments, which includes two periods of 3 months awaiting substantive comments on iterations of the draft option agreement.
297. The Applicant has engaged with and responded to those landowners who have formally objected to powers being sought over their land through the formal Examination and outside that process. The Applicant submits that the objections raised do not overcome the Applicant's case made in the Statement of Reasons and by way of its specific responses in written and oral submissions. The position in relation to Statutory Undertakers is considered separately below.

## 7.2 Statutory Undertakers (s127 and s138 of the Planning Act 2008)

298. The latest position in relation to the various Statutory Undertakers affected by the project, who have made representations, is set out in the Applicant's **Statutory Undertakers' Position Statement (Revision E)** [document reference 12.46]. The Applicant has been able to reach agreement with a number of statutory undertakers to allow section 127 and section 138 considerations to be resolved as explained in that Statement.
299. The Applicant has submitted responses in relation to the position concerning the unresolved Statutory Undertakers, namely National Highways [document reference 22.4., Orsted Hornsea Project 3 [document reference 22.7] and Orsted Hornsea Project 4 [document reference 22.8]. The Applicant has also submitted a Joint Position Statement with Orsted [document reference 22.29]. Whilst the position in relation to Network Rail also remains unresolved, the Applicant and Network Rail are very close to reaching agreement and have agreed a joint update which is contained within the **Statutory Undertakers' Position Statement (Revision E)** [document reference 12.46]. The Applicant has also responded to Norfolk County Council in their role as promoter of the Norwich Western Link Road and its unexpected and very late request for protective provisions [document reference 22.6]. Where appropriate, these responses include addressing the claims of



'serious detriment' by the relevant statutory undertakers. The Applicant would stress that – as explained in its more detailed submissions – it is not enough for a statutory undertaker to assert a serious detriment it must provide evidence and reasoning for that assertion. Furthermore, the test is not mere 'detriment' but serious detriment, and there are numerous examples (some of which the Applicant has cited) of undertakers failing to meet the high bar required under the serious detriment test. For the avoidance of doubt, the Applicant will continue to negotiate and progress discussions with statutory undertakers where agreement has not been reached before the close of Examination with a view to reaching agreement and providing a further update to the Secretary of State in due course.

### 7.3 Perenco

300. In addition to **The Applicant's Comments on Perenco UK Limited's Deadline 7 Submission** [document reference 22.32], the Applicant makes the following final submissions. Given Perenco's interests are offshore, it does not engage section 127 or section 138 of the Planning Act 2008.
301. The Applicant and Perenco have had extensive and constructive engagement throughout the Examination with regards to the impact of the project on helicopter access to the Waveney platform and the Waveney – Durango pipeline. They have reached an agreement on impacts (**Appendix A.7 Joint Position Statement with Perenco** in **Supporting Documents for the Applicant's Responses to the Examining Authority's Fourth Written Questions** [document reference 21.5.1]), having agreed not to conclude a Statement of Common Ground. This Closing submission should also be read in conjunction with **The Applicant's Comments on Perenco UK Limited's Deadline 7 Submission** [document reference 22.23].
302. The Applicant and Perenco have agreed the terms of Protective Provisions in relation to the Waveney – Durango pipeline. This is reflected in Part 15 of Schedule 14 to the **draft DCO (rev K)** [document reference 3.1].
303. The terms of Protective Provisions in relation to the Waveney platform are agreed, save for one (fundamental) point of disagreement. The Protective Provisions provide for a turbine or platform exclusion area around the Waveney platform, defined as the "facilities proximity area" in the **draft DCO** (Revision K) [document reference 3.1]. The wording of the Protective Provisions is agreed, save that the Applicant considers the relevant radius for the turbine or platform exclusion area should be 1.26nm from the Waveney platform, whereas Perenco considers it should be 3nm.
304. The Applicant highlights that if Perenco's position is imposed in the DCO it would have a fundamental impact on the viability of DEP. This is apparent from the figure in Appendix A of **The Applicant's Comments on Perenco UK Limited's Deadline 7 Submission** [document reference 22.23], which shows the Perenco proposed 3nm exclusion area overlaid on the DEP-N array area. The figure demonstrates that the large majority of DEP-N would not be available for the construction of wind turbines or the substation platform, effectively sterilising the DEP-N area.
305. The question for the ExA and the Secretary of State is whether the Applicant has met the relevant tests in the National Policy Statements. The relevant section in EN-3 is paragraphs 2.6.176 to 2.6.188. The policy is aimed at successful co-

existence between the oil and gas sector and the offshore wind sector (paragraph 2.6.188). It urges that a pragmatic approach should be adopted by the Secretary of State where a proposed offshore wind farm potentially affects an oil and gas activity and states that the Secretary of State “*should expect the applicant to minimise negative impacts and reduce risks to as low as reasonably practicable*”. (The same point is made in paragraph 3.8.362 of the March 2023 draft EN-3 NPS).

306. The Applicant submits that it has minimised the negative impacts on Perenco's operation and that the level of impact is acceptable within the terms of this policy. First, the Applicant would highlight, that whilst it considers that Perenco's current helicopter operator could maintain visual meteorological conditions (VMC) access at 1.01nm it is nevertheless putting forward 1.26nm in the proposed Protective Provisions.
307. Second, the distance of 1.26nm is agreed between the parties to have, at most, a 4% loss of access opportunities for Perenco. The Applicant considers it is less than that, but is content for Secretary of State's decision to be made on the basis of up to 4% loss. The Applicant submits that a 4% reduction is a minimal impact on Perenco and satisfies paragraph 2.6.184 of NPS EN-3 (“*to minimise economic loss*”). Furthermore, it submits that it is clear that any greater distance is untenable due to the fundamental impact on the viability of DEP.
308. This flows from the fact that to reduce the 4% impact on access to 0% can only be achieved by a 3nm distance – no point in between has that effect. But, as has already been stressed, a 3nm distance has a fundamental impact on the viability of DEP. The balance of impacts to achieve the pragmatic co-existence between the two projects is clear at 1.26nm.
309. The other impact raised by Perenco was access during (future) decommissioning of the Waveney platform. In that regard, Perenco has not evidenced its assertion that the loss of night-time access would in practice impact decommissioning programmes. In Mr Prior's (the Applicant's helicopter expert) experience of working as a pilot in the Southern North Sea, the normal flight pattern is to drop off personnel on a Normally Unmanned Installation (such as Waveney) and collect them at either end of the day to maximise working hours (as described in Perenco's own submissions regarding working window, **Perenco Deadline 4 Submission – Technical Note** [REP4-051]). Then the helicopters through the middle of the day run flights to non-production installations such as decommissioning rigs. Perenco has data on helicopter flights to Non Production Installations during the decommissioning of their Guinevere and Pickerill platforms but have chosen not to provide the data to substantiate its claim. It should be stressed that night time access is already severely limited by the opening hours of Norwich Airport with little available flying time in darkness over the summer months.
310. Given the lack of evidence to substantiate its position relating to decommissioning access (see **The Applicant's Comments on Perenco UK Limited's Deadline 7 Submission** [document reference 22.23]) the Applicant submits that there is no reason to depart from the conclusion on the main access issue i.e. that it is minimal and has been minimised in accordance with the NPS. Finally, the only step which would permit night flying would be a 3nm no build distance, which has a fundamental effect on the viability of DEP-N.

311. The final policy strand relates to viability and safety. The parties agree that the project will not “*affect the future viability or safety of an existing or approved/licensed offshore infrastructure*” (paragraph 2.6.185 of EN-3, repeated in paragraph 3.8.365 of the March 2023 draft EN-3 NPS).
312. In conclusion, the impact on Perenco from the Applicant's proposed 1.26nm has to be contrasted with the impact on the Applicant of Perenco's proposed 3nm. The first is demonstrably minimal (a reduction of 2-4% of access). The second is demonstrably fundamental for the Applicant – see figure in Appendix A of **The Applicant's Comments on Perenco UK Limited's Deadline 7 Submission** [document reference 22.23]. The Applicant submits that its position should be preferred as having satisfied the NPS tests and allowing the pragmatic co-existence sought for under the NPS.

#### 7.4 Crown land and section 135

313. The Applicant has reached an agreed position with The Crown Estate Commissioners in relation to Crown land and the Applicant understands that The Crown Estate Commissioners is intending to provide their letter of consent at Deadline 8.
314. The Applicant has also reached an agreed position in relation to the Forestry Commission land and The Secretary of State for Environment, Food and Rural Affairs has confirmed its s135 consent. Please see Appendix B.5 of the **Supporting Documents for the Applicant's Responses to the Examining Authority's First Written Questions** [REP1-039].
315. The position relating to land owned by the Department for Transport and the MOD is explained in **The Applicant's Further Comments to the Examining Authority's Fourth Written Questions** [document reference 22.19]. The Applicant is confident that all matters can be resolved following close of Examination such that an update can be provided to the Secretary of State.

#### 7.5 National Trust

316. The Applicant is conscious that the National Trust has special legal protection for inalienable land. The Applicant has endeavoured to reach agreement with the National Trust by the end of the Examination to avoid the risk of special Parliamentary procedure being engaged in relation to the DCO. The latest position is explained in **The Applicant's Comments on National Trust's Deadline 7 Submission** [document reference 22.17] and **The Applicant's Compulsory Acquisition Schedule (Revision D)** [document reference 12.5]. The Applicant is confident that agreement can be reached with the National Trust and will update the Secretary of State accordingly.

#### 7.6 Public Open Space

317. The Applicant's position in relation to Public Open Space is addressed in the **Statement of Reasons** (Revision E) [document reference 4.3] which confirms that there will only be temporary interference with the use of the open space land. The Applicant therefore considers that the open space land when burdened with the rights sought in the **draft DCO (Revision K)** (document reference 3.1) will be no

less advantageous to the public than it was before and therefore the test set out in Section 132(3) of the Planning Act 2008 is satisfied. The latest update on the negotiation of the Option Agreements relating to Open Space land is provided in **The Applicant's Further Comments to the Examining Authority's Fourth Written Questions** [document reference 22.19].

## 8 Conclusion

318. The **Planning Statement** (Revision B) [AS-031] makes the case for the granting of development consent for the application through the application of all the relevant tests under Section 104 PA 2008, including accordance with designated NPS policies. This has been supplemented by the **Addendum to the Planning Statement** [document reference 9.1.2] which demonstrates accordance with the March 2023 consultation draft NPSs. The Planning Statement was also supplemented by the **Marine Policy Review** (REP1-060), which demonstrated compliance with relevant marine policy, to which the Secretary of State must have regard under section 104(2)(aa).
319. The Applicant submits that it has demonstrated that the Application is "in accordance" with NPSs EN-1, EN-3 and EN-5 in the terms of section 104(3) of the PA 2008. The Applicant does not consider that any of the exceptions in section 104(4) to (8) applies to override that conclusion. In particular, the Applicant has demonstrated compliance with the Habitats Regulations, as summarised in **Section 5** of this Closing Statement. The Applicant respectfully requests the Examining Authority to recommend and the Secretary of State to grant development consent and make the DCO in accordance with the **draft DCO (Rev K)** [document reference 3.1] submitted at Deadline 8.

## **Appendix A – Letter to Chief Executive of the Maritime and Coastguard Agency**



FAO Virginia McVea, Chief Executive MCA  
Maritime & Coastguard Agency  
Spring Place  
105 Commercial Road  
Southampton  
SO15 1EG

Our reference: C282-BS-Z-GA-00037  
17 July 2023

Dear Madam

**Maritime Coastguard Agency (MCA) objection to the Sheringham Shoal Extension Project (SEP) and Dudgeon Extension Project (DEP)**

Equinor New Energy Limited (Equinor) submitted an application for a Development Consent Order (DCO) on behalf of Scira Extension Limited (SEL) and Dudgeon Extension Limited (DEL) for the construction, operation and maintenance of two offshore windfarm extension projects off the North Norfolk coast known as Sheringham Shoal Extension Project (SEP) and Dudgeon Extension Project (DEP) (Planning Inspectorate reference EN010109) in September 2022.

Equinor is writing to the Chief Executive to raise its concerns regarding the maintained objection from the MCA in relation to the DCO application for SEP and DEP. Equinor has sought to resolve this objection throughout the 6 month Examination process which ends today (17 July 2023). It is submitting this letter into the Examination so that the Examining Authority, in preparing its recommendation report, and the Secretary of State for Energy Security and Net Zero (the Secretary of State), who will decide the application, are aware that Equinor is raising this issue with you directly.

**Headline Matters of Concern**

Equinor has two headline concerns. First, the way in which the objection has been raised and sustained by the MCA on SEP and DEP. Offshore Wind Farms are consented through the process set out in the Planning Act 2008, as nationally significant infrastructure projects. Through the National Policy Statements for Energy, that process imposes a duty on a developer to consult with the MCA prior to submitting an application and places considerable weight on the fact that they have done so. The MCA has a responsibility to engage as fully as possible with the developer at that stage, and should raise at that time any concerns that they have. A failure to do so, which then results in an objection at a later stage, will frustrate the intention of the Planning Act process.

Second, the implications of the MCA's approach for the credibility of Marine Guidance Note (MGN) 654 and the Navigation Risk Assessment (NRA) process for offshore wind in the UK going forward. This is of concern for Equinor's other projects in development in the UK and on a wider industry basis for the large programme of offshore wind projects through the Extensions, Round 4, ScotWind, INTOG and Celtic Sea leasing areas.

## SEP and DEP Application

Agreements for Lease (Afls) from The Crown Estate were entered for SEP and DEP in 2019. The DCO application was submitted on 5 September 2022, accepted for examination by the Planning Inspectorate on 3 October 2022, and an Examination was commenced on behalf of the Secretary of State on 17 January 2023. The boundary for the relevant part of DEP has not changed since the Afls were publicly announced by The Crown Estate in 2019.

Throughout the pre-application process (2019 – 2022) Equinor undertook significant consultation with a range of stakeholders, including the MCA and other shipping and navigation interests. Equinor has absolute confidence that it engaged in thorough and meaningful consultation, providing an opportunity for all parties to engage in good faith. In undertaking the pre-application consultation, Equinor not only met the statutory requirements of the Planning Act 2008, but also followed well established industry best practice processes with regards to the NRA which critically included a Hazard Workshop with participation from the MCA.

The MCA submitted a Relevant Representation on 19 October 2022 which raised no substantive matters but simply confirmed the MCA's request to be involved in the Examination as an Interested Party. Equinor continued to engage with the MCA with a view to progressing a Statement of Common Ground.

The MCA submitted an objection to part of the red line boundary (the western boundary of the area known as DEP North or DEP-N) at the Written Representations deadline (20 February 2023), over 5 months after the application had been submitted. This was the first indication that this objection would be made, despite 3 years of engagement prior to submission with the same boundary. The objection seeks a large 'no structures area' (preventing the construction of wind turbines or substation platforms) in part of the DEP-N area, which would have significant implications for the delivery of DEP.

The full technical material relating to the MCA's objection and Equinor's response is available at the project page for SEP and DEP on the Planning Inspectorate website<sup>1</sup>. It is not appropriate to set out the full detail in this letter, but in essence Equinor highlights that:

- No clear explanation has been provided by the MCA for not raising its objection before February 2023. The MCA has sought to suggest there was insufficient vessel traffic survey information provided during the NRA process, which has been rebutted by Equinor. The vessel traffic survey information at the PEIR stage was more comprehensive than that normally submitted and required for assessment at that stage. The vessel traffic survey information at the time of the Hazard Workshop and the final circulated draft of the NRA (provided to the MCA in July 2022 in advance of the DCO application submission) was the full information required under MGN 654;
- A full technical explanation was provided to questions asked by the MCA about the NRA 'worst case' collision risk assessment in its Written Representation, this explanation provided evidenced responses to address the MCA concerns;
- The MCA's arguments have appeared inconsistent with values changing and unevidenced in technical terms. In response to this Equinor has provided technical response to all of the questions raised by the MCA;
- The MCA's objection has been raised and maintained despite other stakeholders including regular operators who are familiar with the area having no outstanding / unmitigated concerns.

<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/projects/eastern/sheringham-and-dudgeon-extension-projects/?ipcsection=docs>

- The MCA's position is not fully supported by Trinity House including a key point regarding the controlling water depth of the relevant sea route which then relates to the calculation of available sea room;
- The MCA has fallen back on the assertion of professional judgment in defending its proposed 'no structures area', which is at odds with its own methodology and the intent of MGN 654. Whilst we recognise the remit of the MCA, in Equinor's opinion this undermines the entire MGN 654 process by seeking to override the consensus achieved in the NRA conclusions with a single judgement; and
- The 'no structures area' the MCA proposes has been demonstrated in Equinor's technical work to not make a material improvement to the navigational safety position (all scenarios are deemed ALARP by the NRA) and thereby compromises the delivery of DEP to no purpose.

### Implications for UK Offshore Wind delivery

MGN 654 including the methodology contained in Annex 1 sets out a well-established process which has been followed successfully for all consented offshore wind farms, including those promoted by Equinor and its partners. One of the key objectives of that process is to reach a consensus on the red line boundary and that objective is reflected as key advice in MGN 654. If the MCA is prepared to participate in the NRA process and remain silent on a concern about the red line boundary and only raise it after the application has been submitted, that undermines the credibility of the entire process, which has implications for the successful delivery of future offshore wind projects in the UK.

It is essential that if the MCA has an important objection to a project that it is raised before the application is made. If it does then raise an objection it is essential that it can substantiate its objection with sustainable technical arguments and evidence rather than asserting its expertise regarding safety matters despite all of its technical arguments having been addressed.

### Next steps

Equinor would like to meet you to discuss these concerns, both in relation to SEP and DEP and the implications of the MCA's approach in this case for the wider future UK offshore wind industry.

Yours sincerely,



Haldan Brustad  
Vice President  
Head of UK Renewables  
Equinor New Energy Limited