



N O R T H F A L L S

Offshore Wind Farm

Applicant's Closing Statement

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1. INTRODUCTION

1.1 Purpose of this Document

1.1.0 This document is designed to assist the Examining Authority (ExA) and the Secretary of State (SoS) with their final evaluation of the Development Consent Order (DCO) application for the North Falls Offshore Wind Farm (the Project).

1.1.1 It presents the Applicant's position on the Principal Issues identified by the ExA in their Initial Assessment of Principal Issues (Annex C, Rule 6 letter **[PD-006]**), and other outstanding concerns raised throughout the Examination process.

1.1.2 The document summarises the Applicant's case, as detailed in the application documents, hearings, Statements of Common Ground (SoCGs), and other Examination documents.

1.1.3 Additionally, it provides the Applicant's position on unresolved matters with Interested Parties (IPs) and reiterates the needs, benefits, and overarching justification for the Project.

1.2 Project Overview

1.2.0 North Falls is a Nationally Significant Infrastructure Project (NSIP). Consent to construct, operate and decommission North Falls is therefore being requested from the Secretary of State for the Department for Energy Security & Net Zero (DESNZ), under the Planning Act 2008, which sets out a statutory framework for the principal consents required.

1.2.1 North Falls would be developed as an extension to the existing Greater Gabbard Offshore Wind Farm. Greater Gabbard Offshore Wind Farm has been operational since 2012 and generates enough low-carbon renewable energy each year to power the equivalent of more than 400,000 United Kingdom (UK) homes. Greater Gabbard Offshore Wind Farm has invested significantly in Suffolk throughout its construction period and operational lifetime to date. This includes the development of an operations and maintenance base in Lowestoft, creating approximately 100 long term jobs, and a Community Fund to deliver benefit in Lowestoft and the surrounding areas.

1.3 Policy Framework – National Policy Statement

1.3.0 The following provides an overview of the relevant statutory and policy framework governing the proposal for the Project, but for further details Policy and Legislative Context [**APP-017**].

1.3.1 North Falls is an NSIP under the Planning Act 2008 due to its capacity exceeding 100 Megawatts (MW), and as such the Project requires development consent by a DCO made by the SoS for Energy Security and Net Zero.

1.3.2 The North Falls application for development consent must be determined in accordance with Section 104 of the Planning Act 2008. This means that the Secretary of State must determine the North Falls application in accordance with the relevant National Policy Statements (NPS), specifically NPS EN-1 and NPS EN-3 for offshore wind farms, and NPS EN-5 for onshore grid connection infrastructure.

1.3.3 The SoS must also consider marine policy documents, local impact reports, prescribed matters related to the development, and any other important and relevant issues. Relevant marine policy documents include the Marine Policy Statement, the South East Inshore Marine Plan, the East Inshore Marine Plan, and the East Offshore Marine Plan. Additionally, the National Planning Policy Framework and the adopted Development Plan are also of relevance.

National Policy Statement EN-1

1.3.4 NPS EN-1 is the overarching NPS for Energy and outlines the government's policies for new energy NSIPs. It emphasises the urgent need for renewable energy infrastructure, such as North Falls, to ensure energy security and achieve net zero emissions.

1.3.5 NPS EN-1 establishes the policy context for projects of Critical National Priority (CNP), highlighting the government's commitment to fully decarbonise national energy systems by 2035 and enhance energy independence, resilience, and security. North Falls is CNP infrastructure.

National Policy Statement EN-3

1.3.6 NPS EN-3 outlines policies specific to offshore wind technology. It emphasises offshore wind's vital role in meeting energy demands and decarbonising the national energy system, with a government target of up to 50 GW of offshore wind capacity by 2030. NPS EN-3 guides assessments, mitigation, compensatory measures, and decision-making for offshore wind farm applications. It acknowledges the complexity of offshore wind farm development, allowing for flexibility in applications when details are unknown, and stresses the importance of assessing potential impacts through the 'Rochdale Envelope' approach (as set out in the Project Description [**APP-019**]).

National Policy Statement EN-5

1.3.7 NPS EN-5 covers technology-specific issues related to new electricity network infrastructure. For North Falls, it is relevant to the onshore Export Cable Corridor (ECC), Onshore Substation (OnSS), and connection to the NGET's Norwich to Tilbury Project. NPS EN-5 guides assessments, mitigation, and decision-making by the SoS for these components of North Falls.

Compliance with the National Policy Statements

1.3.8 The Applicant has assessed policy compliance during the pre-application, application, and Examination stages, and shows how it complies with each relevant policy in 9.10 National Policy Statements Accordance Table (Rev 2) and in the Planning Statement (Rev 3

1.4 Needs Case

1.4.0 The need for the Project is set out in the Needs Case and Project Benefits Statement [**REP2-004**].

1.5 Coordination

1.5.0 The Applicant has proactively collaborated with other NSIPs (listed below) throughout the early design stages up and until the date of this Statement. North Falls has engaged proactively with these projects and with stakeholders, by taking a lead-role in developing the options for both offshore and onshore infrastructure co-ordination as set out in the Co-ordination Report [**REP1-004**].

1.5.1 North Falls has appropriately considered and explored the relevant options with respect to coordinating the design of the Project, both onshore and offshore, and that in both the process for developing the proposals and the design outcomes for the Project, North Falls has acted in accordance with the relevant policy requirements set out in NPS EN-1, NPS EN-3, and NPS EN-5.

1.5.2 The three key NSIPs with which North Falls has coordinated with are:

- The Five Estuaries Offshore Wind Farm (herein referred to as 'Five Estuaries') promoted by Five Estuaries Offshore Wind Farm Ltd comprising an extension to the Galloper Offshore Wind Farm, for the construction, operation, maintenance, and decommissioning of an offshore wind farm with a generating capacity greater than 100 Megawatts (MW);

- The Sea Link Project promoted by National Grid Electricity Transmission (herein referred to as 'NGET') and comprising of a high voltage direct current (HVDC) sub-sea cable link measuring circa 130km between Suffolk and Kent; and
- The Norwich to Tilbury and East Anglia Connection Node Substation Project (hereinafter referred to as the 'Norwich to Tilbury Project') is being promoted by NGET which comprises a 184 km of new electricity transmission reinforcement between Norwich and Tilbury made up mostly of overhead line and pylons, along with some underground cables, and a new 400 kV substation on the Tendring peninsula – the East Anglia Connection Node ('EACN').

Coordination with Five Estuaries

1.5.3 North Falls and Five Estuaries share the same connection point to the national electricity transmission network and have considered similar landfall locations for their export cables and export cable corridor (ECC). Both projects identified infrastructure options to support either project independently or in co-location.

1.5.4 Following consultation feedback and a commitment by North Falls and Five Estuaries to seek to co-ordinate and collaborate where practicable in order to minimise both projects' environmental and social effects, the onshore electrical connection options set out under Option 1 and 2 (see below) were designed in coordination with Five Estuaries. This involves the development of a shared ECC, landfall location, and single site for onshore substations. This has enabled a reduction in the number of export circuits within the shared ECC and reduced land take among other efficiencies and reductions in environmental and community impacts.

1.5.5 In order to allow the flexibility for coordinated construction, the draft DCO (Document Reference: 6.1) has been drafted to allow for scenarios based on the gap between the two projects meeting their respective Final Investment Decisions (FIDs).

1.5.6 Three 'build options' covering the onshore delivery scenarios are being presented as part of the application:

- Build option 1: The Applicant only constructs those works required for North Falls (which excludes the works proposed under Work No. 6B and 12B being the additional cable ducting for Five Estuaries).
- Build Option 2 (being Build Option 2A and Build Option 2B as set out in the draft DCO): The Applicant and Five Estuaries each consents ducts for their own and the other project, with the first to construct completing

ducting and the later pulling electrical cables through pre-laid ducts at a later date.

- Build Option 3. The Applicant has an offshore connection.

1.5.7 The inclusion of Works to install a second set of ducts for Five Estuaries means that the width of the corridor which may be required is slightly wider than it would be for North Falls in isolation, as the corridor includes works proposed under Work No. 6B and 12B for the cable ducting for Five Estuaries. However, by following this approach project efficiencies, with associated reduction in overall land take and environmental impacts, can be realised.

1.5.8 The substation sites for North Falls and Five Estuaries have been co-located in one area designed to co-ordinate with the EACN proposals. While each project would retain the responsibility for separate substation builds, the design would be co-ordinated to minimise land take and reduce environmental impacts.. The Design Vision **[REP5-004]** presents the Applicant's approach to the design of the North Falls onshore substation and its associated infrastructure on the basis of co-located substations.

1.5.9 Reduction in the potential impacts would mainly be associated with the reduction in overall land take, which include avoiding duplication of construction access works, and the associated reduction in construction traffic volumes.

Coordination with National Grid Electricity Transmission

1.5.10 North Falls and Five Estuaries have the same connection point, the EACN which is part of NGET's Norwich to Tilbury Project. The need to coordinate with nearby construction projects is addressed in the Code of Construction Practice (CoCP) **[REP7-025]** which will seek to reduce impacts. This includes completion of a pre-consent soil survey and preparation of a Soil Management Plan; delivery of good practice measures to limit construction noise; appointment of an Agricultural Liaison Officer for the benefit of owners, their agents and occupiers of land; delivery of construction drainage mitigation measures.

1.5.11 Further detail of coordination between the Applicant and Five Estuaries and NGET is described in the Tripartite Position Statement which is attached as Appendix A to the Co-ordination Report, **[REP1-004]**. It sets out the interactions around the onshore project substation areas, where there is potential for co-ordination or overlapping interests.

2. OPERATIONAL LIFETIME AND DECOMMISSIONING REQUIREMENTS

2.1.0 The Applicant submits it is not necessary, and would be highly irregular, to include a requirement in the DCO limiting the operational lifetime of the Project.

2.1.1 As per paragraph 3 of Chapter 5, Project Description of the Environmental Statement [**APP-019**], the 30-year operational period is indicative and approximate, based on design life and other assumptions. It is not a maximum parameter. The lifespan may be longer or shorter, depending on a range of technical, commercial and environmental factors that cannot be predicted with certainty now. It would be undesirable to curtail the lifespan of a generating asset based on an assumption.

2.1.2 The DCO and dDML do not grant the power to repower or decommission the project – only to construct and maintain – and therefore a further marine licence, and further environmental assessment, would be required for repowering or decommissioning activities, along with a Decommissioning Programme. It is therefore clear that any repowering or decommissioning would be subject to new consents or variations, and as such inserting an end date would not provide benefit.

2.1.3 A fixed end date for the operational period is not normally included in DCOs and DMLs for offshore wind farms. For example, Mona, Rampion 2, Sheringham Shoal and Dudgeon Extension, Hornsea 3 and Hornsea 4 DCOs do not include a fixed end date for the operational period.

2.1.4 The standard approach is that taken in Article 44 of the DCO Article, which leaves the operational life open but gives the Secretary of State the power to require the repair or decommissioning of the asset pursuant to the Energy Act 2004 provisions. It is the Applicant's position that any additional control is unnecessary.

2.1.5 There are clear benefits to leaving the operational life span of the project open ended. It is common in the UK, and indeed often necessary, for generating assets to continue to operate beyond their original assumed design life. If a wind farm remains in good and serviceable condition and can safely continue to operate beyond 30 years within the parameters of the DCO and DMLs, it should be able to do so.

3. NATIONAL LANDSCAPES

3.1.0 The Applicant and other interested parties including Natural England, Suffolk County Council (**SCC**), the National Landscape (AONB) Partnerships and the Suffolk and Essex Coast and Heaths National Landscape Partnership (**SECHNLP**) and Essex County Council) have made various representations in respect of the application and scope of the duty set out in section 85(A1) of the Countryside and Rights of Way Act 2000 (**Duty**).

3.1.1 The Applicant's position on this point has been set out in various documents submitted to the Examination including the Applicant's Response to Relevant Representations from Statutory Consultees and Non Prescribed Consultees [**REP1-045**] (see the response to SECHNLP-01), the Applicant's Response to Actions List for ISH1 and ISH2 [**REP4-037**], the Applicant's Position Statement on various issues relating to National Landscapes [**REP5-068**], the Applicant's responses to SCC's submissions in the Applicant's Response to Deadline 6 Submissions [**REP7-053**] and the Applicant's Response to Deadline 7 Submissions and Comments on Responses to ExQ3 [**Document ref: 9.116, (rev 0)**] and the Applicant's responses to Natural England's submissions in the Applicant's Response to Natural England's Deadline 5 submissions [**REP6-059**] and Applicant's Response to Deadline 7 Submissions and Comments on Responses to ExQ3 [**Document ref: 9.116, (rev 0)**].

3.1.2 The Applicant submits that its position is supported by guidance published by Defra on 16 December 2024 titled '*Guidance for relevant authorities on seeking to further the purposes of Protected Landscapes*'¹ and relevant case law including *New Forest National Park Authority v Secretary of State for Housing, Communities and Local Government and Mr Simon Lillington* [2025] EWHC 726.

3.1.3 Section 85(A1) of the Countryside and Rights of Way Act 2000 (**CRoW Act**) states:

'In exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, a relevant authority other than a devolved Welsh authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.'

¹ DEFRA, Guidance for relevant authorities on seeking to further the purposes of Protected Landscapes (2024). Available at: [Guidance for relevant authorities on seeking to further the purposes of Protected Landscapes - GOV.UK](#); Accessed on: 17 July 2025.

3.1.4 The Duty applies to relevant authorities as defined in section 85(3) of the CRoW Act and does not differentiate between the categories listed in that definition.

3.1.5 The Secretary of State and the Applicant are relevant authorities for the purpose of the Duty. The Applicant refers to its response to item 6 in its Position Statement on various issues relating to National Landscapes [REP5-068] which sets out why the Applicant is a relevant authority.

3.1.6 The Applicant submits that the Duty is engaged when a relevant authority exercises or performs functions **in relation to, or so as to affect** land in an area of outstanding natural beauty (National Landscape) in England. The Applicant reiterates that the Duty is an active duty to **seek to further** the purpose of conserving and enhancing the natural beauty of the relevant National Landscape – it is not a duty to conserve and enhance or even a duty to further the purpose of conserving and enhancing.

3.1.7 The Dedham Vale National Landscape (DVNL) and the Suffolk and Essex Coast and Heaths National Landscape (SECHNL) are relevant to the design, construction and delivery of the Project.

3.1.8 The Applicant submits that the Applicant and the Secretary of State can discharge the Duty in respect of the DVNL and SECHNL on the basis of actions already undertaken without the need for the imposition of any additional measures. This Applicant has maintained and justified this position in the various documents listed above at 3.1.1.

3.1.9 The SECHNL and DVNL were key considerations for the Applicant when considering and developing the alignment of the cable corridor and the extent of the offshore array as set out in ES Chapter 29 Seascape, landscape and Visual Impact Assessment [APP-043] and ES Chapter 4 Site Selection and Assessment of Alternatives [APP-018]. The cable corridor alignment and location of the onshore substation for the Project have been sensitively designed so that those elements have no impact on the DVNL. The Applicant also reduced the size of the offshore wind turbine array which, in turn, reduced potential visual impacts on the SECHNL.

3.1.10 These design choices are clear examples of the Applicant exercising or performing its functions (i.e. designing and developing a project to deliver electricity generating infrastructure) in relation to the SECHNL and DVNL in a way that seeks to further the purpose of conserving and enhancing those National Landscapes. The Applicant submits that, under a proper construction of the Duty, it is correct and appropriate to consider these actions when determining whether the Applicant and the Secretary of State can discharge the Duty.

3.1.11 SCC considers that the Applicant needs to undertake additional measures to enable it to discharge the Duty. SCC has confirmed that it does not submit that the scale of the Project needs to be reduced further in order to comply with the Duty but has suggested that the Applicant should be required to make a financial contribution.

3.1.12 The Applicant notes that there is no legal, policy or guidance requirement to always include specific measures (whether financial or otherwise) within a development to enhance a National Landscape regardless of the level of impact.

3.1.13 The Applicant submits that the Secretary of State must exercise judgment as to whether the measures proposed as part of the Project to avoid and reduce impacts on the statutory purposes of the DVNL and SECHNL are sufficient, appropriate, reasonable and proportionate and whether it would be appropriate, reasonable and proportionate to require any further measures. This includes consideration of:

- the scale, extent and significance of any harm to the National Landscapes;
- the relevant planning policies including the Overarching National Policy Statement for Energy (EN1), (DESNZ, 2024) regarding minimising and mitigating landscape effects and Critical National Priority infrastructure; and
- whether the development has been designed sensitively taking into account siting, engineering, operational and other relevant constraints.

3.1.14 The Applicant maintains its position that the Applicant has discharged the Duty in respect of the Project and that the Secretary of State can be confident that the Duty can be discharged when determining the DCO Application without the need to impose additional compensatory measures or requirements. The Applicant submits that because it considers that the measures it has undertaken to date are sufficient to discharge the Duty (in respect of both the Applicant and the Secretary of State) it would not be reasonable or appropriate to impose additional measures on the Applicant or Project such as a financial contribution.

3.1.15 The Applicant has, however, prepared a set of draft National Landscape Enhancement Scheme principles on a *without prejudice* basis at the request of the Examining Authority (see the Applicant's Response to ExA's Request for further information (Rule 17) - National Landscapes [REP6-062]) and is engaging with the SECHNLP, SCC and other interested parties in respect of these draft principles.

3.1.16 The Applicant reiterates that its position is that the Duty can be discharged in respect of the Project without these additional measures but also maintains, as set out in the draft principles, that any compensation required would need to be proportionate to the level of impact that the Project may have on the relevant National Landscape and must be put towards projects / enhancements that directly address those impacts in terms of subject matter and geographical scope.

4. LVIA

4.1.0 The Applicant, Tendring District Council (TDC) and Essex County Council (ECC) have made representations concerning the impacts of the onshore substation on the local landscape and in particular on the special qualities of the Dedham Vale National Landscape (DVNL).

4.1.1 The Applicant's position is that the impacts of the onshore substation on landscape character and visual amenity are localised, as set out in the Landscape and Visual Impact Assessment (LVIA) in Chapter 29 of the ES **[APP-044]**. The onshore substation is located around 1.8km from the boundary of the DVNL, and due to this distance and intervening screening by buildings and trees, any views of the onshore substation from within the DVNL will be very limited. The Applicant has provided further detail on the likely visibility of the proposed onshore substation from within the DVNL at pages 10-12 of Applicant's Response to Actions List for ISH1 and ISH2 **[REP4-036]**. It is the Applicant's position that there will be no impacts on the special qualities of the DVNL as a result of the Project.

4.1.2 Landscape mitigation proposals have been put forward as part of the Outline Landscape and Environmental Mitigation Strategy (OLEMS) (Rev 6) **[REP7-028]**. The implementation of the landscape mitigation proposals as set out in the OLEMS is secured by Requirement 7 of the draft DCO (Rev 9), and approval of the final landscape scheme is within the control of ECC. The Applicant accepts that the proposals do not fully mitigate the adverse effects (as is recognised in NPS EN-1 as being expected for nationally significant infrastructure projects), but submits that they are appropriate and proportionate to the scale and nature of the Project, and are in character with the receiving landscape.

5. SLVIA

5.1.0 The Applicant, Natural England, SCC and the SECHNLP have made various submissions relating to the effects of the offshore wind farm on the

special qualities of the SECHNL and the special character of the Suffolk Heritage Coast (SHC).

5.1.1 The Applicant has carried out a comprehensive Seascape, Landscape and Visual Impact Assessment (SLVIA) in ES Chapter 29 **[APP-043]**. This identifies significant effects on views from certain key locations along the coast between Felixstowe and Orford Ness, including locations within the SECHNL and SHC. The SLVIA considered the potential for the offshore wind farm to alter the characteristics of the coastal landscapes and concluded that effects would not be significant. The SLVIA assessed the potential for effects on the special qualities of the SECHNL and concluded that these would not be significant (see Table 29.21 of **[APP-043]**).

5.1.2 The Applicant has noted comments from Natural England that certain effects have been underestimated. Having reviewed these effects, the Applicant is satisfied that the findings of the SLVIA are reliable, and submits that Natural England have not provided detailed assessment to support their claims of effects being underestimated.

5.1.3 In response to comments from Natural England, the Applicant provided further detail in the Assessment of the Special Qualities of the Suffolk and Essex Coast and Heaths National Landscape and Suffolk Heritage Coast - Technical Note **[REP5-038]**. This sets out in detail the predicted effects of the offshore wind farm on the special qualities of the SECHNL and the special character of the SHC. The Technical Note concludes that the Project will give rise to moderate-minor (not significant) effects on three of the special qualities and, by extension, moderate-minor (not significant) effects on the Scenic Quality and Relative Wildness aspects of the natural beauty of the SECHNL. Sixteen other special qualities that were assessed would experience negligible effects or no change. Effects would only be experienced along the coastal edge of the SECHNL, between the River Deben and Orford Ness, where there would be potential views of the offshore wind farm.

5.1.4 The Applicant stands by the position set out in the Technical Note and summarised above, and highlights that the offshore wind turbines will be located at least 40km from the SECHNL. At such distances, the turbines may be visible on around 20% of days annually (see paragraph 28 of **[REP5-038]**).

5.1.5 The Applicant also notes that the mitigation hierarchy has been followed during the design process for the offshore array, as set out in ES Chapter 4 Site Selection and Assessment of Alternatives **[APP-018]**. The Applicant has taken significant steps through the design evolution process to avoid, reduce and mitigate effects associated with the offshore array. This has included the significant reduction and then complete removal of the 'northern array' which was previously included (refer to Figures 4.1 and 4.2 in **[APP-050]**) to increase separation between the wind turbines and the SECHNL. In addition, a reduction in turbine height between the PEIR and DCO application further reduced likely

visual impact of the offshore array. These changes have resulted in a Project which has less than significant effects on the landscapes and special qualities of the SECHNL, as outlined above.

6. COMPULSORY ACQUISITION

Land required for onshore substation

6.1.0 As the final detailed design has not yet been undertaken, all of the land identified within the Applicant's Land Plans [**AS-018**], being plots 15-014, 15-016 and 16-001, is required for the North Falls substation and associated infrastructure as part of the onshore substation works area. Justification for the permanent acquisition of this land is set out within paragraph 5.3 of the Statement of Reasons [**AS-028**]. The Applicant also refers to its Response to Q6.1.6 and Q6.1.7 of Applicant's Response to Written Questions (ExQ1) [**REP2-020**] which provides detail as to the items required for the substation and why all the land is required. The onshore substation will comprise the following items:

- the onshore substation itself;
- a construction compound to allow works within the onshore substation area to be managed and coordinated;
- drainage works including attenuation ponds;
- access roads to the onshore substation and construction compounds; and
- mitigation planting / earthworks to ensure the onshore substation visual impacts are mitigated.

6.1.1 The Design Vision [**REP5-004**] presents the approach to the design of the Project's onshore substation and its associated infrastructure. As the Five Estuaries is being developed in close proximity, the Design Vision has been developed on the basis of co-located substations. This coordinated approach supports ensuring efficient land use and minimises cumulative impacts.

6.1.2 Mitigation measures including landscaping and visual screening are required to address significant adverse effects identified through the Environmental Impact Assessment (EIA) process. The Outline Landscape and Ecological Management Strategy [**REP6-035**] provides an illustrative vision for landscaping, and how these mitigation measures could be delivered. The indicative layout is based on the 'Realistic Worst Case Scenario' for North Falls and the 'Maximum Design Scenario' for Five Estuaries, as assessed in the EIA.

6.1.3 As the final detailed design of these items has yet to be finalised, it is not currently possible to identify or define the exact area required within the onshore substation works area for the NFOWF substation alone. Consequently, the Applicant's current position is that all of the relevant land identified within the land plans [AS-018] is required to deliver the NFOWF substation and at this time it is not possible to provide a plan for the NFOWF substation only.

6.1.4 However, as stated by the Applicant in its oral submissions at the Compulsory Acquisition Hearing, the Applicant is only able to exercise the compulsory acquisition powers over the land it actually requires for the Project (see [REP6-064]). Therefore, in a scenario where only North Falls comes forward, compulsory acquisition powers would only be exercised over the area of land required for North Falls once the detailed design has been finalised.

6.1.5 The Applicant refers to the Applicant's Land Rights Tracker [Document ref: 8.4, (rev 5)] which describes and records the status of the negotiations of voluntary agreements with Affected Parties in respect of land rights required for the Project and protective provisions with statutory undertakers.

Network Rail Infrastructure Limited

6.1.6 The Applicant refers to the protective provisions contained in Schedule 14, Part 5 of the draft DCO [Document ref: 6.1, (rev 9)] and Network Rail Infrastructure Limited's (Network Rail) preferred protective provisions submitted at Deadline 3 [REP3-066].

6.1.7 The Applicant inserted updated protective provisions in favour of Network Rail into the draft DCO at Deadline 5 including the requested paragraphs relating to electromagnetic interference (see [REP5-008]).

6.1.8 The Applicant submits that the material elements of the protective provisions are agreed save in respect of paragraph 46 as shown in [REP3-066]. These agreed provisions ensure that Network Rail's approval is required for any works that may affect the railway or any of Network Rail's apparatus or property. As a result, there will be no serious detriment to Network Rail's undertaking.

6.1.9 In respect of paragraph 46, Network Rail has requested provisions that place a restriction on a significant number of powers in the draft DCO (including the power to maintain the authorised development, compulsory acquisition of land and the power to temporarily use land to carry out the authorised development) in respect to any railway property (as defined within the protective provisions) without the prior consent of Network Rail.

6.1.10 Network Rail have also proposed a restriction on the Applicant's ability to acquire, use, acquire new rights over or seek to impose any restrictive covenants over any railway property or extinguish any existing rights of Network Rail over third party property without the consent of Network Rail.

6.1.11 These restrictions are in addition to the requirement for the Applicant to obtain approval from Network Rail on the technical aspects of any works.

6.1.12 Whilst Heads of Terms have been agreed, the Applicant and Network Rail have not yet negotiated or completed a voluntary property agreement for the necessary rights to construct, use and maintain the Project on, or in respect of, railway property (see the update on negotiations contained in the Applicant's Land Rights Tracker submitted at Deadline 8 [**Document ref: 8.4, (rev 5)]**).

6.1.13 In the absence of a voluntary agreement, any restriction on the use of the compulsory acquisition powers and other powers under the draft DCO would result in a material impediment to the delivery of the Project.

6.1.14 As mentioned above, the protective provisions require the technical details to be approved by Network Rail prior to carrying out any works that may affect railway property. Accordingly, the Applicant's position is that the use of compulsory acquisition powers and other relevant powers under the draft DCO will not result in any serious detriment to Network Rail's undertaking.

6.1.15 The Secretary of State has previously determined that the use of compulsory acquisition powers in respect of statutory undertakers' land and rights can be acceptable to ensure the deliverability of a NSIP where it has not been possible to reach agreement on the terms of a voluntary property agreement provided that the technical details of any works are approved by the statutory undertaker (see, for example, paragraphs 6.6 to 6.23 of the Secretary of State's decision letter for the Immingham Open Cycle Gas Turbine Order 2020.²

6.1.16 The Applicant's position is that the protective provisions contained in Schedule 14, Part 5 are sufficient and will ensure there will be no serious detriment to the carrying out of Network Rail's statutory undertaking.

² Secretary of State for the Department for Business, Energy & Industrial Strategy, Planning Act 2008: Application for development consent for the VPI Immingham Open Cycle Gas Turbine Plant, South Killingholme, North Lincolnshire (7 August 2020). [Accessible at: this [link](#) (Accessed: 23 July 2025)].

7. TENDRING DISTRICT COUNCIL – CONSTRUCTION WORKING HOURS AND TOURISM

Construction working hours

7.1.0 The Applicant, ECC and TDC have made representations during the Examination with regards the Project's proposed working hours, as set out in Section 1.3.1 of the Outline Code of Construction Practice **[REP7-025]**.

7.1.1 The Applicant and ECC have agreed upon construction working hours of 0700-1900 Monday to Saturday, with restrictions on certain 'high impact' activities between 1300-1900 on Saturdays, defined in Section 1.3.1 of the Outline Code of Construction Practice **[REP7-025]**. However TDC disagree with the proposed working hours, and instead request that:

- No vehicle related to the works should arrive on-site before 07:30 or leave after 19:00 (except in emergencies);
- Working hours should be limited to 0800-1800 Monday to Friday, and 0800-1300 on Saturdays; and
- No working of any kind should be permitted on Sundays or Public/Bank Holidays.

7.1.2 The Applicant believes it has proposed reasonable and proportionate working hours, which have been identified as a balance between compliance with British Standard (BS)5228-1:2009 +A1:2014 'Code of Practice for noise and vibration control on construction and open sites, Part 1 – Noise' (BS5228-1) maximising the daily working period in order to reduce the overall construction duration and reducing effects arising from an extended construction period. The Applicant also notes that these working hours are standard for other NSIP schemes, including Five Estuaries.

7.1.3 The Applicant cannot agree to TDCs proposed restricted working hours on the following basis:

- If the working hours were to be reduced, this would have a consequential effect upon the length of the construction programme. Currently, as a worst case some sections of the onshore project area are expected to be subject to construction activities for up to 27 months. Should the working hours be reduced to 0800-1800 Monday-Friday and 0800-1300 on Saturday, this would reduce working time by around 17 hours per week, equating to a 28% reduction in available weekly working time. This is the equivalent of adding a further 8 months to the construction programme.

- In practice, reducing the working hours in the day also decreases the percentage of the daily working time available for task-work, i.e. time in addition to mobilisation/de-mobilisation which predominantly happens at the start and the end of the day. This has the potential to further increase the construction programme.
- Furthermore, whilst some sections of the Project will have a lower overall construction duration than 27 months, works on these sections are generally staggered such that the demand for resource can be optimised and cumulative effects from the concurrent construction of sections is reduced. Reducing the effective working hours would result in a greater degree of overlap between activities and consequently potentially greater effects, e.g. from noise and road and traffic.
- Reducing the daily working hours may give rise to secondary effects from construction traffic movements by reducing the period in the day in which deliveries can occur, and therefore resulting in higher hourly flows and potentially in greater effects during each hour of the working day. These higher hourly flows could create conflicts around other sensitive time periods raised by ECC and other relevant stakeholders, e.g. the Applicant's commitment to avoiding HGV movements through Thorpe-le-Soken during school start and finish times.
- A consequence of restricting working hours to after 0800 is that employees will need to travel in the network peak hour (which there has been a strong desire to avoid) and also during the more sensitive hours for non-motorised users, e.g. children walking to school. The Applicant considers that the strategy proposed to avoid peak hours through demand management aligns with the requirement of Overarching National Policy Statement for Energy (EN-1) (DESNZ, 2024) (paragraph 5.14.11 and 5.14.15) which promotes demand management measures over new transport infrastructure.
- The changes to working hours proposed by TDC would lead to a redistribution of construction traffic and could lead to increases in peak daily HGV movements on certain links, with the potential to cause additional noise effects.
- Reducing the daily working hours extends the duration of individual tasks (e.g. route preparation, trench excavation and backfill, re-instatement works) during construction of the onshore cable route. Doing so has the potential to extend activities beyond the 10-day in 15 threshold for generating significant noise effects at Noise and Vibration-Sensitive Receptors (NVSRs) along the onshore cable route. Irrespective of whether this 10-day threshold is exceeded, noise-induced annoyance is dependent on duration as well as noise level at the NVSR.

7.1.4 The Applicant's position is that its proposed working hours are proportionate, and an important component of the embedded and additional mitigation of noise, traffic and other associated effects, and any reduction in those hours would potentially give rise to additional significant effects.

Tourism

7.1.5 The Applicant and TDC have been unable to reach an agreement during Examination regarding the potential effects upon tourism receptors during the Project's construction.

7.1.6 It is the Applicant's position that effects upon tourism have been assessed in detail within the Environmental Statement (specifically, within Section 32.4.6 of Environmental Statement Chapter 32 Tourism and Recreation **[APP-046]**), and the assessment conducted is robust and supported by strong evidence base. The assessment considered a range of baseline factors, including visitor types, length of stay, and the structure of the local tourism economy. This information informed the assessment of the potential magnitude of impact and receptor sensitivity, which together determined the overall significance of effects. Volume and value data were disaggregated by coastal, countryside, and urban visitor categories, and specific tourism assets within the coastal area were also considered. Specific effects arising from changes in traffic and noise were considered in detail, drawing on the effects assessed on other chapters such as ES Chapter 26 Noise and Vibration **[APP-040]** and ES Chapter 27 Traffic and Transport **[APP-041]**.

7.1.7 This detailed assessment found no significant effects upon tourism receptors, as confirmed in Table 32.31 of Environmental Statement Chapter 32 Tourism and Recreation **[APP-046]**.

7.1.8 Given the absence of significant effects no additional mitigation measures beyond those embedded in the Project have been proposed.

7.1.9 TDC contend that the potential for significant tourism effects exists, in particular around the coastal zone, and they propose construction monitoring of tourism receptors in order to provide a baseline from which to monitor changes in tourism value over time. TDC have not presented evidence to the Applicant which supports this position.

7.1.10 Firstly, the Applicant contends that a robust baseline has been presented in ES Chapter 32 **[APP-046]**. Secondly, that monitoring tourism impacts, as suggested by TDC, with the specific purpose of understanding whether and to what extent the Project affects tourism activity would require extensive, long-term, longitudinal studies to be carried out to produce robust evidence that avoids the risk of survey bias. Such monitoring activity would at a minimum require pre-construction works baseline data and count data, or business performance data, repeated during construction, and post-completion. One-off

surveys of visitors and/or businesses carried out (for example) during construction, or at completion, would not be a robust method of delivering monitoring activity. They are prone to respondent bias, and lack the application of any control group or counterfactual method to enable the effects of a development to be isolated from other factors. Furthermore it is uncertain whether TDC would be able to gain the answers they are looking for from such a study. The complexity associated with undertaking such a monitoring study is disproportionate to the nature of the issue, given the conclusion in ES Chapter 32 Tourism and Recreation **[APP-046]** of no significant effects, and the absence of any evidence from TDC to contradict these conclusions and support such a complex monitoring scheme. Therefore the Applicant has not proposed further monitoring related to tourism impacts.

8. OPERATIONAL NOISE PROTOCOL

8.1.0 In response to concerns raised by ECC and TDC, the Applicant has worked with Five Estuaries and NGET to prepare a joint Onshore substations operational noise and the outline noise complaints protocol **[REP3-043]**, which sets out the outline protocol for dealing with noise complaints raised by members of the public during operation of the three projects' onshore substations.

8.1.1 Whilst the Applicant, ECC, and TDC have agreed much of the Onshore substations operational noise and the outline noise complaints protocol **[REP3-043]**, ECC and TDC have residual concerns regarding the duration of the time to investigation noise complaints, and the need for a 'Joint Panel' between the three operators to investigate complaints. The Applicant's position on these matters is summarised below:

- The cumulative operational noise level limits are so low that all evidence suggests complaints regarding normal operations of all the substations simultaneously are extremely unlikely to occur. The substation noise would only exceed these limits if a fault has developed in one or more items of plant. The likelihood that equipment faults have developed in more than one substation simultaneously is extremely low. It is therefore highly unlikely that multiple operators could contribute to a justifiable noise complaint.
- A complaint investigation would start with all three substation operators undertaking an independent site walkaround to identify any equipment operating incorrectly, within 48 hours of receipt of a complaint. It is only in the highly unlikely scenario that the complainant has detected a fault with the plant that the site walkaround could not identify, where the investigations would be undertaken consecutively, starting with the closest substation to the complainant.

- The Onshore substations operational noise and the outline noise complaints protocol **[REP3-043]** provides a collective responsibility for complaint investigation via the most practical method available and a Joint Panel would not improve this process.

8.1.2 The Onshore substations operational noise and the outline noise complaints protocol **[REP3-043]** is an outline document, the purpose of which is to identify the method by which a complaint would be investigated, not to reach agreement on details such as timeframes for the investigation. The timeframes proposed by the Applicant are the expected maximum, based on extensive professional experience, accounting for practicalities such as weather condition requirements, availability of qualified individuals and equipment, and arranging access to the substation and amenity area of a residential dwelling. Nevertheless, the planning authority will have the opportunity to review details such as timeframes in the final version which will be submitted for their approval post-DCO consent.

9. BENTHIC ECOLOGY

Summary

9.1.0 The Applicant has provided the information necessary to meet the requirements of the Habitats Regulations and the Marine and Coastal Access Act 2009 (**MCAA**) in respect of benthic receptors. This includes detailed, comprehensive and precautionary ecological assessments as set out in the updated RIAA Part 2 **[REP7-013/014]** and MCZA **[REP7-019/20]** which identify, quantify and evaluate the potential impacts of North Falls.

9.1.1 The Applicant has gone above and beyond in an effort to meet the requests of SNCB. In particular, North Falls' Order Limits do not overlap any Marine Protected Area (**MPA**) designated for benthic receptors. Benthic MPAs have been avoided by North Falls through site selection and cable routing decisions, in line with SNCB advice.

9.1.2 Unlike numerous other existing and consented offshore wind farms, direct and long-lasting impacts on benthic MPAs from cable installation or any cable protection have been entirely avoided. The only effects from North Falls on benthic MPAs would be indirect, temporary and short-duration.

9.1.3 The RIAA accordingly concludes there would be no AEOL in respect of any SAC and the MCZA concludes there would be no significant risk of hindering the conservation objectives of any MCZ.

9.1.4 These conclusions are unquestioned save in respect of the Margate and Long Sands Special Area of Conservation (**MLS SAC**) and the Kentish Knock East Marine Conservation Zone (**KKE MCZ**). These MPAs are addressed further below.

Level of certainty and the precautionary principle

9.1.5 The Applicant has provided substantial evidence to support its conclusions in respect of the MLS SAC and KKE MCZ. To supplement and validate the assessments in the EIA, RIAA and MCZA, the Applicant provided further hydrodynamic modelling at Deadline 4 [**REP4-041**], Deadline 6 [**REP6-053**] and Deadline 7 [**REP7-041**], which have examined a comprehensive range of realistic to highly conservative worst-case scenarios. Ecological interpretation of the implications of the modelling was provided in [**REP4-042**] at Deadline 4 and through the updated RIAA Part 2 [**REP7-013/014**] and MCZA [**REP7-019/20**].

9.1.6 The level of evidence and certainty required when undertaking an Appropriate Assessment (AA) under the Habitats Regulations is well established. The key principles are summarised in *R (Mynydd & Gwynt Ltd) v Secretary of State for Business, energy, & Industrial Strategy* [2018]³. So far as relevant here these include:

- (a) In the light of the precautionary principle, a project is likely to have a significant effect so as to require an AA if the risk cannot be excluded on the basis of objective information⁴.
- (b) An AA should be appropriate to the task in hand, to satisfy the competent authority that the project will not adversely affect the integrity of the site concerned. That requires a high standard of investigation but the issue ultimately rests on the judgement of the authority⁵.
- (c) Absolute certainty is not required. If no certainty can be established, having exhausted scientific means and sources it will be necessary to work with probabilities and estimates, which must be identified and reasoned⁶.
- (d) A party who alleges that there is a risk which should not be excluded must produce credible objective evidence that there

³ EWCA Civ 231, see paragraphs 8 and 9.

⁴ Waddenzee at [44].

⁵ (Champion) v North Norfolk District Council [2015] UKSC 52, Carnwath at [41].

⁶ Waddenzee, Advocate General at [107] and [97], endorsed in Champion and in Smyth v Secretary of State [2015] EWCA Civ 174.

is a real, rather than a hypothetical, risk which should be considered⁷.

- (e) The decision-maker must take into account secured mitigation and evidence about its effectiveness⁸.

9.1.7 Therefore, a degree of uncertainty is inherent to any assessment process as it necessarily involves prediction and modelling. In a prior assessment, there is never absolute certainty, which leading case law on the HRA process accepts is "almost impossible to attain"⁹.

9.1.8 In the context of an MCZ Assessment (**MCZA**), the case law relating to the Habitats Regulations does not directly apply. It may serve as a useful benchmark, subject to some important legal distinctions which flow from the legislative drafting of the MCAA.

9.1.9 An MCZA is required where a project is capable of significantly affecting the protected features of an MCZ or any ecological or geomorphological process on which those protected features depend¹⁰. However, section 126(6) of the MCAA goes on to provide that authorisation for an act may be granted if the authority is satisfied there is "no significant risk" of the act hindering the achievement of the conservation objectives stated for the MCZ. There must be a significant risk of a negative outcome, or in other words a high probability of a negative outcome. It is not enough that there is a possible risk of a negative. This is a different lens to HRA.

9.1.10 Considering the totality of the evidence and assessment submitted by the Applicant, the appropriate level of evidential certainty required by the Habitats Regulations and the MCAA has been provided. Insofar as there may be lingering reservations and doubts expressed by Natural England, on the totality of the evidence there are cogent reasons to conclude no AEOI / no significant hindrance.

Kentish Knock East MCZ

9.1.11 The Applicant has proactively implemented substantial mitigation to avoid direct impacts, and to minimize temporary indirect impacts, on KKE MCZ. These include:

⁷ Sullivan LJ, at paragraph 37, R (Boggis and Anor) v Natural England, [2009] EWCA Civ 1061.

⁸ Commission v Germany C-142/16, at [38].

⁹ Waddenzee C-127/02, at para 107.

¹⁰ MCAA, section 126(1)(b). An act which is insignificant in its effects can effectively be discounted.

- (f) reducing the array area (following Section 42 feedback) to remove any overlap with the KKE MCZ (secured by amendment to the Order Limits).
- (g) a 50m minimum buffer distance from the KKE MCZ (secured as inherent to avoid turbine blades extending outside the Order Limits).
- (h) removing the WCS Gravity Base foundation option from the design envelope, which reduced the footprint of foundations; the volume of scour protection; and effects on the hydrodynamic regime due to reduced cross sectional area of the foundations (secured by removing the option from the dDCO).
- (i) a commitment that any disposal of dredged sediment or clay will be at least 1km from the KKE MCZ (secured in the outline Sediment Disposal Management Plan).

9.1.12 As a result, the residual effects on the protected features of the KKE MCZ would be indirect, temporary, short-lasting and small-scale.

9.1.13 The initial deposition of sediment from construction works in the array area would occur over a small area of the KKE MCZ and would be between 5cm to 60cm. As the sediment arising from within the array area is comparable to that of the designated features of the KKE MCZ and will be mobile, driven by the existing physical processes, the effect will be temporary as the sediment is naturally re-distributed by the prevailing waves and tidal currents. Therefore, the associated communities can be expected to recover. This is supported by monitoring at Greater Gabbard (CMAS, 2014) which shows the amount and distribution of coarse sediments remained similar pre- and post-construction and there was no material change to the communities.

9.1.14 When considering these temporary effects, it is very important to keep in mind that the KKE MCZ is designated for subtidal sand, mixed sediment and coarse sediment and that the dominant sediment type recorded in the North Falls array area during the site-specific benthic survey was medium to coarse sand. It follows that any suspended sediment arising from within the array area and subsequent deposition on the eastern edge of the KKE MCZ would be comparable sediment to the MCZ features.

9.1.15 A further important point to note is that the features of the KKE MCZ are not features of conservation importance (FOCI). In accordance with the MCZ project Ecological Network Guidance (JNCC, 2010) these were representative examples of broadscale habitats. Therefore, the habitats protected by the KKE MCZ are not threatened, rare or declining habitats in the wider context of the UK.

9.1.16 The hydrodynamic and sediment dispersal modelling [REP7-041/042] and updated MCZA [REP7-019/020] validate the Applicant's conclusion that there is no significant risk of hindering the conservation objectives of KKE MCZ.

Margate and Long Sands SAC

9.1.17 The Applicant has also proactively implemented substantial mitigation to avoid direct impacts, and to minimize temporary indirect impacts, on MLS SAC. These include:

- (j) avoiding any overlap with the MLS SAC, in response to feedback from Natural England during export cable corridor route selection (secured by amendment to the Order Limits).
- (k) Reducing the number of offshore export cables from four to two (secured by the maximum length of export cable in the dDCO).
- (l) Committing to export cables and any associated cable protection being a minimum of 150m from the MLS SAC (secured by Schedule 9 DML, condition 36).

9.1.18 As a result, the residual effects on the qualifying features of the MLS SAC would also be indirect, temporary, short-lasting and small-scale.

9.1.19 The modelling shows sediment will predominantly settle on the area of the SAC which is not Annex I Sandbank. Sediment arising within the offshore cable corridor will be comparable to that of the SAC and the depth of sediment deposition would be 5-15cm, within an area of only 0.24km² which overlaps the Annex I Sandbank feature of the SAC. This shallow, highly localised deposition of comparable sediment will rapidly be incorporated into the natural processes of the SAC (see Section 2.4.3.1.1 of the RIAA Part 2 [REP7-013/014]). As such there will be no AEOI of the MLS SAC.

9.1.20 NE's Deadline 7 response to ExA Q3 10.0.4 confirms that Natural England is satisfied that the hydrodynamic and dispersion modelling [REP4-040] has demonstrated that sediment dispersion and subsequent deposition within MLS SAC is below MarESA thresholds. As a result, ME advise that sediment deposition impacts from construction are unlikely to result in an AEOI of the site.

9.1.21 The 150m buffer ensures any cable protection would have no discernible effect on the MLS SAC, as demonstrated by hydrodynamic modelling (Hydrodynamic and Dispersion Modelling Report [REP7-041/042]) and assessed in the RIAA Part 2 [REP7-013/014]. The additional modelling at Deadline 7 based on a highly conservative worst case scenario of cable

protection in the offshore cable corridor in proximity to the MLS SAC, taking into account the 150m buffer between cable protection and the SAC. This additional modelling confirms there will be no discernible effect in the SAC from cable protection placed anywhere in the offshore cable corridor. Therefore, the Applicant understands this resolves Natural England's concerns and an AEOL of the MLS SAC can be ruled out.

9.1.22

Applicant's position on the Need for Derogation for Benthic

9.1.23 On the evidence summarised above, the Applicant's position remains, very firmly, that, beyond any reasonable scientific doubt, there is no AEOL for MLS SAC and no significant risk of hindering the conservation objectives of the KKE MCZ.

9.1.24 The Applicant considers Natural England has been unhelpfully opaque in its position on whether a derogation case is required for benthic habitats, hinting at uncertainties and doubt. The Applicant had understood that matters could be resolved satisfactorily with Natural England before the end of Examination and, in particular, had been given the understanding by Natural England that its advice at Deadline 7 would be that measures of equivalent environmental benefit (**MEEB**) would not be required for KKE MCZ.

9.1.25 It is hoped that Natural England will clarify its position at Deadline 8. However, given the continuing ambiguity and in line with advice in NPS EN-1, the Applicant submitted a 'without prejudice' derogation case for the MLS SAC at Deadline 7 [**REP7-015** and **REP7-043**] and has, reluctantly, submitted a 'without prejudice' derogation case for the KKE MCZ at Deadline 8 [9.110, Re 9 and 9.73, Rev 3].

9.1.26 In its Deadline 7 submission [**REP7-087**], Natural England regrettably seeks to draw a misleading comparison between North Falls and the Sheringham and Dudgeon Extension Projects (SEP&DEP), for which development consent was granted in April 2024.

9.1.27 Previous decisions of the Secretary of State in determining applications for development consent are not binding and each case must be determined on its own facts and circumstances. However, previous decisions can be relevant from a principle of consistency in decision making, to the extent considering comparable factual scenarios.

9.1.28 Though correct that SEP&DEP was subject to a derogation and requires MEEB in respect of impacts from the project on the Cromer Shoal Chalk Beds

MCZ¹¹, the important distinction is that SEP&DEP has export cabling within the MCZ and the WCS would involve direct and long-lasting impacts (40 year duration of the project). There is no ecological equivalence between North Falls's impact (indirect, temporary deposition effect) and SEP&DEP (direct, long-lasting habitat loss).

9.1.29 There is also no precedent for a derogation case being required for indirect, temporary effects on benthic habitats, such as has been requested for North Falls. Where compensation measures or MEEB have been required for benthic habitats to date, this has been due to direct long-lasting (potentially irreversible) impacts resulting from project infrastructure within the designated site. Even then, there are cases where it has been determined there will be no significant risk of hindrance on conservation objectives despite the fact there will be project infrastructure within an MCZ (for example, Hornsea Three).

9.1.30 Applying the mitigation hierarchy, the Applicant has taken extensive measures to avoid placing physical infrastructure within the MLS SAC and KKE MCZ, and to set back works from these sites. Adopting these measures has a corresponding, material financial impact in terms of more expensive cable routing and the loss of developable seabed area with generating potential.

9.1.31 The additional cost of providing compensation and/or MEEB, which the Applicant in good faith sought to avoid in following SNCB advice, would have a further material financial impact on North Falls.

10. ORNITHOLOGY

10.1.0 The Applicant has set out below an overview of its position on the need for derogation under the Habitats Regulations for ornithological features of designated sites, and addresses by exception key outstanding points of disagreement with Natural England and/or RSPB. A failure to address any particular matter raised by Natural England and/or RSPB should not be inferred to be acceptance by the Applicant of that particular matter.

10.1.1 The submissions made above in the content of Benthic Ecology concerning the appropriate level of certainty and the precautionary principle are not repeated for brevity, but apply equally to ornithology

¹¹ [Decision of the Secretary of State on the Application for the Sheringham Shoal and Dudgeon Offshore Wind Farm Extension Project](#) at [4.19].

Derogation overview

10.1.2 The RIAA Part 4 [**APP-178**] concludes AEOL for lesser black-backed gull (**LBBG**) from the Alde Ore Estuary SPA. At Deadline 6, the Applicant acknowledged that in consenting Rampion 2, the Secretary of State concluded that AEOL could not be ruled out beyond reasonable scientific doubt for in-combination effects on guillemot at the Flamborough and Filey Coast (**FFC**) SPA and Farne Islands SPA; and Kittiwake at FFC SPA. As the effects of Rampion 2 are similar to North Falls for these species, the Applicant accepts that the Secretary of State is likely to consider the contribution of North Falls to be material also.

10.1.3 The Applicant has identified compensatory measures for these three species (LBBG, kittiwake and guillemot) which can fully compensate the effects of the Project (taking into account the Applicant's preferred approach and Natural England's approach, where these differ). The Applicant understands Natural England agrees appropriate compensatory measures and scale have been identified for these three species, subject to post-consent development of the detailed proposals. The legal obligation to implement the compensatory measures is secured in Schedule 15 of the draft DCO [**6.1, Rev 9**].

10.1.4 The Applicant maintains that there would be no AEOL in respect of Razorbill from FFC SPA or red throated diver (**RTD**) from the Outer Thames Estuary (**OTE**) SPA. Without prejudice to the Applicant's position presented in the RIAA Part 4 [**APP-178**], a derogation case, including compensatory measures, is provided for Razorbill from FFC SPA and RTD from the OTE SPA. If required, these measures can be secured in accordance with the Without prejudice HRA / MCZA DCO Schedules [9.73, Rev 3].

Lesser black-backed gull, Alde Ore Estuary SPA

10.1.5 The Applicant notes National Trust's revised position confirmed at Deadline 7 [**REP7-084**] and has updated the Lesser black backed gull Compensation Document [7.2.2, Rev 3] and the Outline Lesser black backed gull Compensation Implementation and Monitoring Plan [7.2.2.1, Rev 3] to reflect that Lantern Marshes is no longer a project-led option for North Falls.

10.1.6 The Applicant has retained a number of options throughout the Examination process to ensure there is resilience in the ability to deliver compensatory measures and for this reason the Applicant remains confident that a suitable site can be secured. Positive liaison with landowners for the other site options is ongoing, as reflected in the Habitats Regulations Assessment Land Rights Tracker [9.75, Rev 2].

10.1.7 Final site selection will be undertaken post consent, in consultation with the LBBG compensation steering group, as secured by the Outline Lesser black backed gull Compensation Implementation and Monitoring Plan [7.2.2.1, Rev 3].

Razorbill, FFC SPA

10.1.8 North Falls is 297 km from the FFC SPA based on the closest distance by sea between the array area and the SPA boundary. That is well beyond the relevant Mean Maximum Foraging Range of razorbill of 73.8km \pm 48.4 km SD (discussed in Section 4.4.4.7.2.1 of the RIAA Part 4 [**APP-178**]).

10.1.9 Modelled at-sea distributions of breeding adults, from tracking data collected during the breeding season from foraging breeding adult individuals (Cleasby et al. 2018, 2020; Wakefield et al. 2017), also suggest that the array area is a considerable distance beyond the breeding season foraging range of razorbill from the FFC SPA.

10.1.10 Based on this strong evidence, no connectivity is identified during the breeding season, and any potential displacement effects to the SPA population would be limited to the non-breeding season.

10.1.11 The Applicant's position is that the effect on razorbill would be 0.6 (0.2 – 1.3 95% CL) annual mortalities based on 50% displacement and 1% mortality. Based on Natural England's position of 70% displacement and 2% mortality, the effect on razorbill would be 1.6 (0.7 – 3.6 95% CL) annual mortalities (Section 4 of the Guillemot and Razorbill compensation document, Revision 2 [**REP6-023/024** clean/tracked]), Section 4.4.4.7.3 of the RIAA Part 4 [**APP-178**]). Whichever scenario is preferred, the predicted increase in the baseline mortality of the FFC SPA razorbill population would still be <0.1%.

10.1.12 The Applicant understands Natural England accepts its position on razorbill. At Deadline 7 Natural England stated in its risks and issues log [**REP7-090**] *"Compensatory measures to address the impacts to the razorbill feature remain 'without prejudice'. Given the small contribution of the project to the in-combination total, and the lack of a pre-existing AEOI judgement, we consider this approach to be appropriate"*.

10.1.13 It is also important to note that, in consenting the Hornsea Four Project, SEP&DEP and Rampion 2, the Secretary of State disagreed with Natural England's position regarding razorbill at FFC SPA and concluded that AEOI could be ruled out for those projects, alone and in-combination (DESNZ 2023a, 2024, 2025). Considering the recently consented Rampion 2 has similarly small and comparable predicted impact levels to North Falls, and that North Falls was included in the Rampion 2 in-combination assessment, the Applicant considers there is substantial evidence and precedent from previous

decisions of the Secretary of State to support ruling out AEOL beyond reasonable scientific doubt.

Red throated diver, OTE SPA

10.1.14 During the pre-application stage, the Applicant reduced the size of the North Falls array area, increasing the distance from the OTE SPA, to reduce the potential for and extent of displacement effects on red-throated divers (RTD). The remaining array area is 4.5km from the OTE SPA at its closest point.

10.1.15 In accordance with Natural England's advice, a precautionary area within the overlap of the 12km buffer of North Falls and the OTE SPA has been assessed for RTD displacement as a result of the presence of North Falls. The OTE SPA covers an area of c. 3,924 km². The 12km buffer of the North Falls array area overlaps 2.8% of the SPA area. However, all of that 2.8% SPA area within the precautionary 12km buffer of North Falls is already within the 12km buffer of an existing OWF and/or overlaps with International Maritime Organisation (IMO) shipping measures (discussed in the RIAA Part 4 Offshore Ornithology [APP-178], Section 4.4.1.4).

10.1.16 The IMO shipping measures include two busy shipping lanes running through the SPA and to the east of the SPA boundary, both passing through the precautionary 12km buffer of North Falls ([APP-178] Figures 4.1 and 4.2). RTDs are displaced by ships and shipping lanes and in the area where the 12km buffer of North Falls overlaps with the SPA, shipping traffic in these international shipping lanes, which are closer to the SPA than North Falls, will be the predominant source of displacement for RTDs. The levels of existing disturbance from Shipping together with existing OWFs mean that the RTDs using this area are more disturbance-tolerant individuals, and the presence of North Falls beyond the international shipping lanes would not result in any detectable change in the numbers present, or the distribution of RTDs in this area of the OTE SPA..

10.1.17 While the RTD feature of the OTE SPA is currently assessed by Natural England as being in unfavourable condition, Natural England's (2025) condition assessment states "*Non-breeding abundance [of red-throated diver is] meeting targets but supporting habitat attribute is failing.*"

10.1.18 Thus, as the area of the SPA within the precautionary 12km buffer of North Falls is already subject to sources of displacement for RTD, and North Falls would not contribute materially to any further effects from existing sources of displacement, North Falls will not influence the restoration objective for the supporting habitat. Accordingly, the Applicant's position is that an AEOL of RTD within the OTE SPA can be ruled out beyond reasonable scientific doubt for the Project alone and in-combination.

10.1.19 Additionally, Natural England has requested that there be a seasonal restriction on the installation of the export cable within the OTE SPA and a 2km buffer during construction, during the overwinter period of November to March inclusive. The Applicant maintains its position that this is not merited. As per responses to Natural England's Relevant Representations ([**REP1-044**], NE-229, NE-241), and [**REP6-060**] the Applicant maintains there would be no AEol from construction works in the offshore cable corridor.

Gannet, FFC SPA

10.1.20 The Applicant has concluded no AEol in relation to gannet at the FFC SPA for North Falls, alone, or in combination ([**APP-178**] Sections 4.4.4.3.1.3 and 4.4.4.3.2.3). Natural England agree with this conclusion, advising ([**REP2-054**], Q10.3.2) that AEol can be ruled out for the gannet feature of FFC SPA.

10.1.21 In reaching this conclusion, Natural England commented ([**REP2-054**], Q10.3.2) that *'The Applicant has demonstrated that mean (plus 95% CLs) project alone impacts lead to a 0.05% (0.00-0.12) increase in baseline mortality for the Northern gannet feature of FFC SPA. Thus, the level of project alone impact is considered undetectable against natural variation. Natural England conclude that any contribution to an in-combination AEol would be immaterial. Furthermore, we note that we have not yet advised any Examinations that there is a potential for AEol for gannet at FFC SPA.'*

10.1.22 The Applicant understands that as a result of methodological disagreement (application of a macro-avoidance factor, which both the Applicant and NE agree is appropriate), the RSPB considers that AEol cannot be ruled out for in-combination collision and displacement mortality on the North Gannet population. The RSPB considers that AEol cannot be ruled out for in-combination collision and /or displacement mortality on the North Gannet population and seek a derogation case for gannet at the FFC SPA. The Applicant disagrees that a derogation is required for gannet at the FFC SPA for the reasons summarised above and the Applicant's position is supported by Natural England.

Compensation measures

10.1.23 Proposed compensation measures have been developed in consultation with Natural England and RSPB pre-application, and during Examination the Applicant has continued to progress these proposed measures, providing evidence that measures are secured by the dDCO (or can be secured by the DCO for 'without prejudice' species where the Secretary of State may conclude that compensation is required). Further detail is provided in the updated Habitats Regulations Derogation Provision of Evidence submitted

at Deadline 7 [**REP7-016/017**] and the HRA Appendix 1 Compensatory Measures Overview [7.2.1, Rev 4].

10.1.24 The level of detail provided and the approach taken to secure the compensation measures in Schedule 15 of the dDCO is comparable to that accepted by the Secretary of State for other consented offshore wind farms such as Rampion 2.

10.1.25 Furthermore, the Outline CIMP's secure ongoing engagement with Compensation Steering Groups for each species and therefore the detailed plans developed post consent will continue to take onboard feedback from the RSPB and Natural England. Where compensation is required, the final scale, method and duration of the measures would be set out in a CIMP that would be agreed with a steering group (which would include Natural England) and approved by the Secretary of State, prior to implementation.

10.1.26 The CIMP will include final calculations that set out the required scale of compensation to ensure that there would be sufficient adult birds entering the population so that there would be no net population-level impacts on the affected species.

Other matters

10.1.27 The Applicant notes the RSPB raised concerns with the digital aerial survey methodology, which the Applicant responded to ([**REP1-045**], Section 2.17). However, Natural England has stated ([**RR-243**], NE ref F8) that appropriate baseline data has been gathered for the purposes of ornithological impact assessment.

10.1.28 The RSPB also raised concerns regarding Highly Pathogenic Avian Influenza (HPAI), however the Applicant has addressed this matter in Section 13.5.5 and species-specific assessments within ES Chapter 13 [**APP-027**]; Feature-specific assessments within the RIAA [**APP-178**] and Farne Islands SPA guillemot HRA update [**REP1-056**]; and Specific responses to RSPB's comments (Section 2.17 of [**REP1-045**]).

10.1.29 It is recognised by the Applicant that there is uncertainty as to how HPAI will impact populations. However, it is also the case that any population reduction is likely to result in a proportionate reduction in effects (i.e. collision or displacement mortality), as fewer birds from that colony would be present at the North Falls array area. Therefore, it is unlikely that impacts from Project (which in isolation are relatively small) would significantly interact with the effects of HPAI, and it is considered that the conclusions of the EIA and RIAA are sufficiently robust to account for this uncertainty.

11. MARINE MAMMALS

11.1.0 The Applicant notes Natural England's risk and issues log continues to identify outstanding issues regarding marine mammals. However, the Applicant maintains that a robust assessment has been undertaken and mitigation is appropriately identified and secured, to ensure no AEOL of SACs designated for marine mammals.

11.1.1 The Applicant has addressed or responded to Natural England's comments throughout the Examination, including in¹²:

11.1.2 9.14 Further Information Regarding Marine Mammals [REP1-057];

11.1.3 9.35 Further Information Regarding Marine Mammals Disturbance due to Vessel Presence [REP3-046]; and

11.1.4 9.81 Marine Mammal Assessment Clarifications [REP5-069].

11.1.5 Natural England's key outstanding concerns seem to relate to:

11.1.6 *Use of iPCoD modelling*: the Applicant has been clear that this method has been used alongside, and not in substitute for, the various methods requested by Natural England. The results of the iPCoD are not relied on in dictating the final conclusion of no significant effects for the project alone assessment (see Section 2.2.1 of Marine Mammal Assessment Clarifications note [REP5-069]). For the cumulative effects assessment, different assessment approaches were undertaken and results presented within Section 2.2.2.1 of Marine Mammal Assessment Clarifications note [REP5-069]. The Applicant maintains population modelling provides the most realistic understanding for cumulative disturbance but has provided an assessment using the dose response method for further information as requested by Natural England. The conclusions with the different approaches differed. Regardless, the residual effect will be reduced to a non-significant level of effect due to the mitigation proposed by the Project, as described in the draft MMMP and the outline SIP.

11.1.7 *Use of Noise Abatement Systems (NAS)*: the Applicant included a clarification statement at Deadline 5 on the use of NAS in the Outline Site Integrity Plan (SIP) [REP5-015] and draft Marine Mammal Mitigation Protocol (MMMP) [REP5-013], both of which are secured in the DMLs. These revisions to the Draft MMMP and Outline SIP regarding NAS were agreed between the Applicant and the MMO, and it is noted that the MMO welcomed the updated documents at Deadline 6 [REP6-082].

¹² As well as in the Applicant's response to NE [REP1-044]; [REP4-028]; [REP5-055]; [REP6-059]; [REP7-052].

11.1.8 *The underwater noise modelling locations:* the Applicant has explained throughout the Examination that the ‘north option’ originally modelled and which Natural England has continued to refer to, is no longer applicable since the Applicant reduced the array area following PEIR and removed the ‘northern array’. The modelling shows the ‘east’ and ‘south’ locations are the worst-case locations and have the largest impact ranges due to deeper water depths, as shown in the ES Appendix 12.3 Underwater Noise Modelling Report [APP-098]. Therefore, the calculations used for assessments are based on the WCS.

11.1.9 In respect of the Southern North Sea Special Area of Conservation (**SNS SAC**), the Outline SIP contains commitments to delivering mitigation to avoid AEOL of the designated harbour porpoise feature of the SNS SAC. There is significant precedent supporting the SIP approach and its ability to enable a conclusion of no AEOL to be reached. This has been used for the majority of consented offshore wind farms on the east of England, since the SNS SAC was identified as a possible SAC in 2016. The SIP approach enables the final mitigation to be based on industry practice, latest guidance, available knowledge and technology at the stage of detailed design.

11.1.10 The MMO policy papers shared at Deadline 1 [REP1-067] which “set out the direction of travel into reducing the noise at source for piling” and the NE/JNCC/Cefas joint position on Noise Abatement, itself refers to “evolving policies”. This highlights the importance of the SIP approach allowing the detail to be developed in consultation with the relevant SNCB and MMO post consent.

Compliance with Defra policy on marine noise

11.1.11 In developing its approach to noise mitigation methods as detailed in the outline SIP and draft MMMP, the Applicant has had regard to recent policy and guidance produced by Defra, JNCC, Natural England and Cefas regarding marine noise.

11.1.12 Defra’s January 2025 policy paper on reducing marine noise¹³ states that ‘given the expected increase in noise levels over the coming years, and the above outlined policy commitments, we expect that all offshore wind pile driving activity across all English waters will be required to demonstrate that they have utilised best endeavours to deliver noise reductions through the use of primary and/or secondary noise reduction methods in the first instance.’

11.1.13 The policy also states that ‘Applicants can propose the use of any noise reduction method (primary, secondary, or a combination of methods) in their marine licence application and/or their post-consent requirement discharge request’. The details of the necessary noise reduction methods to meet the legal

¹³ [Reducing marine noise - GOV.UK](#)

and policy requirements in the factual context of the project then need to be worked through with the MMO and the relevant SNCB.

11.1.14 The outline SIP and draft MMMP account for this expectation and provide the flexibility to apply primary and/or secondary noise reduction methods as determined to be appropriate post consent at the point of plan and project design finalisation, in accordance with the latest policy and guidance and in consultation with the relevant SNCB. As set out in the Outline Site Integrity Plan for the Southern North Sea SAC [REP5-014/015] and the draft MMMP [7.7, Rev 4], the Applicant is planning appropriately for the potential requirement for NAS, however maintains the position that noise effects on marine mammals may be suitable mitigated through alternative primary and/or secondary mitigations.

12. SHIPPING AND NAVIGATION

Summary

12.1.0 ES Chapter 15 on Shipping and Navigation [**APP-029**] and the Navigation Risk Assessment (**NRA**) [**APP-106**, **APP-107** and **APP-108**] undertaken for North Falls appropriately assess the potential effects of North Falls with respect to shipping and navigation during the construction, O&M and decommissioning phases, in line with relevant shipping and navigation legislation and guidance including with MGN 654 requirements.

12.1.1 This is agreed by the Maritime and Coastal Agency (**MCA**) (see SOCG, Document Reference 10.16, Rev 1) and the Corporation of Trinity House of Deptford Strond (**Trinity House**) (see SOCG, Document Reference 10.9, Rev 2). This is also agreed with the United Kingdom Chamber of Shipping (see respective SOCGs).

12.1.2 The EIA and NRA conclude that all residual effects will, subject to mitigation, be 'broadly acceptable' or 'tolerable', as described in accordance with MGN 654 and the Revised Guidelines for Formal Safety Assessment (**FSA**) for Use in the IMO Rule-Making Process (IMO, 2018)¹⁴. These conclusions are agreed by the MCA and Trinity House and not disputed by any of the IPs (remaining areas of disagreement with the ports are addressed below).

¹⁴ Revised Guidelines for Formal Safety Assessment (FSA) for Use in the Rule-Making Process. MSCMEPCC.2/Circ.12/Rev.2. Page 52 of 126.

12.1.3 The Applicant recognised that shipping and navigation is an important consideration for North Falls from the outset. As such, extensive consultation has been undertaken, and extensive mitigation has been committed to (see Table 15.3 in ES Chapter 15). Notably, as described in ES Chapter 15 (section 15.3.4, [APP-029]), this included a significant reduction to the array area (complete removal of the 'northern array area' and 26% reduction of what is now the array area (previously 'the southern array')). The Applicant also agreed to implement a 'structure exclusion zone', whereby no surface piercing infrastructure is installed within 1nm of routeing measures, and this is secured by dDCO requirement 29 (*obstacle free zone for navigational safety*).

12.1.4 In response to matters raised before Examination by, and discussed throughout Examination with, the MCA, Trinity House and the port IPs, the Applicant has committed to and secured additional mitigation measures through the dDCO and DMLs as discussed below.

12.1.5 As a result, the Secretary of State can be satisfied that the risk to shipping and navigation from North Falls is as low as reasonably practicable (**ALARP**) and all relevant policy and guidance has been complied with, including NPS EN-1 and EN-3, as evidenced in the policy and legislation section of the ES Chapter 15 and the National Policy Statements Accordance Table (Document Reference 9.10, Rev 2).

Galloper Recommended Route (Galloper RR)

12.1.6 As of Deadline 8, the Applicant has reached agreement on all material matters pertaining to the Galloper RR (see SOCG, Document Reference 10.16, Rev 1). This includes agreement on appropriate wording for the proposed dDCO requirement, which the Applicant included in the dDCO submitted at Deadline 7 [REP7-007]¹⁵.

12.1.7 Aside from inclusion of the DCO requirement for Galloper RR, the Applicant maintains its position as set out in the Applicant's Position Statement on the Galloper RR [REP5-071]. For the reasons set out in [REP5-071], the Applicant is very confident the removal of the Galloper RR will be ratified by the IMO in due course. In summary:

- (a) The Applicant has consulted widely and there has been no substantive concerns or objections from any ferry, shipping operator or recreational user regarding the proposed removal of the Galloper RR.

¹⁵ The requirement included in the dDCO at Deadline 7 incorporates the amendments sought by the MCA as set out in its Deadline 7 submission [REP7-081]. This accordingly supersedes the Applicant's submissions in [REP6-068].

- (m) In particular, the relevant coastal states for the Galloper RR, the UK and Belgium, support the removal of the Galloper RR. The Belgian Directorate have been consulted on the Formal Safety Assessment for the Removal of Galloper Recommended Route (FSA) **[REP2-025]** with a positive outcome. The MCA has now agreed to propose removal of the GRR at the 2025 Autumn UKSON session.
- (b) The data analysis and consultation' undertaken to date shows that the route is not being used for its originally intended purpose i.e., by ferries operating between Ostend and Harwich/Ipswich using the Sunk routeing measures.
- (c) Current usage by commercial vessels (cargo, passenger, tankers) and recreation craft is extremely low.
- (d) The Applicant has demonstrated that there are safe and viable alternative routeing options.

12.1.8 In its Deadline 7 submission **[REP7-081]** the MCA has clarified its view that the Galloper RR is a 'strategic route essential to regional, national and international trade' under paragraph 2.8.328¹⁶ of NPS EN-3. The Applicant maintains that the Galloper RR is appropriately considered in the context of NPS EN-3 paragraph 2.8.330, as a 'less strategically important shipping route'. Either way, there is consensus that the Galloper RR is not a 'recognised sea lane essential to international navigation' within NPS EN-3 paragraph 2.8.326.

12.1.9 However, regardless of the status of the Galloper RR in legal or policy terms, inclusion of the DCO requirement, as agreed with the MCA, ensures there can be no interference with Galloper RR and secures compliance with all relevant policy including EN-3 and the East Marine Plan (Policy PS1). Accordingly, no issue arises in terms of Sections 104(4) or (5) of the Planning Act 2008.

The Deep Water Routes (DWR) and Sunk Pilot Diamond

- 12.1.10 The Applicant has committed, in agreement with the port IPs, to:
- a DCO requirement which contains an offshore design parameter to install and maintain cables at a depth that will not preclude or impede future dredging up to 19m or 22m Chart Datum (**CD**) in agreed areas of the Sunk and Trinity Deep Water Routes and Sunk Pilotage Area. This is secured by dDCO requirement 2(3) and the associated Deep Water

¹⁶ The MCA submission referred to paragraph 318 but is understood to be referring to paragraph 328 of NPS EN-3.

Route Cable Installation Area (Future Dredging Depths) Plan **[REP6-055]**; and

- DML conditions which require that the cable works may not reduce navigable depth in the agreed areas of the Sunk and Trinity Deep Water Routes and Sunk Pilot Pilotage Area. This is secured by DML condition 13(4) and condition 22(1)(h)(ii) of Schedule 9,

each of which is an absolute legal requirement.

12.1.11 Beyond this, the Applicant has secured broad agreement with the port IPs on the mitigation measures, DML conditions and the content of the relevant outline mitigation plans, specifically the Navigation and Installation Plan (**NIP**), Cable Specification and Installation Plan (**CSIP**) and Sediment Disposal Management Plan (**SDMP**).

12.1.12 DML condition 22 (dDCO, Schedule 9) secures that the final versions of these plans submitted by the Applicant to the MMO for approval must accord with the content of the outline plans, and condition 22 was amended at Deadline 5 **[REP5-009]** to provide that the port IPs must be consulted by the MMO on the final plans before they can be approved by the MMO. This method of securing mitigation commitments through outline mitigation plans is a standard and robust approach accepted by most consultees and IPs, but also a pragmatic one to ensure that DCOs and DMLs do not become unwieldy.

12.1.13 The outline CSIP, NIP and SDMP have been the subject of extensive discussion with the port IPs and progressively updated through Deadlines 4 to 8 of Examination in response to feedback from the port IPs and the content is largely agreed. Mitigation commitments/ updates have included, *inter alia*:

- (n) Confirmation of no concurrent working across both DWR by North Falls, Five Estuaries and SeaLink, thereby always giving one access route into/ exit route from the ports, berths and jetties within the tidal Thames estuary (secured by oNIP).
 - (o) No boulder relocation into or inside the DWR and Sunk Pilotage Area (secured by oCSIP).
 - (p) No relocation of archaeological remains into or inside the DWR and Sunk Pilotage Area (secured by oCSIP).
 - (q) No disposal of dredged sediment inside the DWR and Sunk Pilot Diamond (secured by oSDMP).
- (a) Disposal material will not be placed in areas where material could migrate into the DWR (secured by oSDMP).

- (r) No wet storage within the DWR and Sunk Pilotage Area (secured by oCSIP).
- (s) No planned field joints within the DWR and Sunk Pilotage Area.
- (t) Commitment to provide as built documents of the export cables to the port IPs (secured by oCSIP).
- (u) Commitment to cables crossing the Trinity, Sunk A and Sunk B Deep Water routes being routed as far south as is practicable within the red line boundary and as far away from the Sunk Pilot Diamond as is reasonably practicable. It also commits to the cable between the DWR's being routed as far south as possible within the red line boundary as is reasonably practicable.

12.1.14 Further to the Applicant's technical note at Deadline 6 [**REP6-067**], the PLA confirmed at Deadline 7 [**REP7-094**] that it accepts there is no impact on the PLA's Holland Haven to Walton Pier radio link. Therefore, no mitigation or controls are required in respect of this matter.

12.1.15 At Deadline 7 the PLA also confirmed it is also satisfied that any cable protection required by North Falls is suitable controlled by DCO requirement 2(3) and that any cable crossings (with VE and SeaLink) would be outside the DWR as their respective red line boundaries/ order limits do not overlap with North Falls at the DWR or Sunk Pilot Diamond. Therefore, no further controls are required for these matters.

12.1.16 Suitable notification and consultation with the port IPs in respect of pre-construction, construction, and post-construction surveys, and UXO clearance are now addressed by new DML condition 37 (Schedule 9) added by the Applicant at Deadline 7 [**REP7-007**]. This *inter alia* addresses the PLA points raised in respect of the definitions of "commence" and "maintain" as used in the dDCO (see [**REP2-056**]).

12.1.17 Residual matters therefore relate to the need for (and form of) any Protective Provisions (**PPs**) and, related to that point, the port IPs request for approval/veto rights in respect of final mitigation plans. These are addressed below. The Applicant's position is that these residual disagreements with the port IPs do not impact the security or deliverability of key mitigations and commitments and have no bearing on shipping and navigation safety: the risk is ALARP.

12.1.18 In summary the Applicant has demonstrated compliance with NPS EN-3 in terms of reducing navigational risk to ALARP and minimising the impacts to ports and commercial shipping to an acceptable level, through site selection, design and mitigation measures.

Protective Provisions and Approval Rights

12.1.19 The Applicant and port IPs remain in disagreement regarding the port IPs request for PPs. The Applicant's position as to why PPs are neither appropriate nor required remains as set out its Deadline 4 submission [**REP4-044**] and need not be rehearsed again.

12.1.20 PPs are further rendered redundant by the series of amendments made to the dDCO and DML (Schedule 9) subsequent to Deadline 4. It is considered unnecessary and excessive to impose PPs to control matters that are already the subject of robust control mechanisms in the dDCO (e.g. DCO requirement 2(3)).

12.1.21 The Applicant and the port IPs also remain in disagreement over the port IP's desire to have an approval/veto right over plans secured under the DML. The Applicant has committed to consult with the port IPs both prior to and when seeking the approval of the CSIP, NIP and SDMP, but ultimately the regulator is the MMO and the plans will be submitted to them for their approval. It is submitted that ExA and Secretary of State can be confident and should proceed on the basis that the MMO will perform their functions and duties competently and appropriately.

13. Conclusion

13.1.0 North Falls is CNP infrastructure and benefits from very strong policy support. There is an urgent need for new, low carbon energy generation and specifically for offshore wind as a key part of the Government's strategy for decarbonisation of the energy sector.

13.1.1 NPS EN-1 affirms that 'Given the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS, the Secretary of State will 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'.

13.1.2 North Falls will deliver benefits to the local economy and communities. It will create investment, skills and employment opportunities and deliver at least 10% BNG.

13.1.3 The Applicant has applied the mitigation hierarchy in a rigorous way, to avoid, minimise and mitigate any significant effects to the extent practicable. Residual significant effects are inevitable in the context of NSIP projects and this is recognised in the NPS. The benefits of North Falls, particularly the delivery of new offshore wind generating capacity, outweigh the residual

adverse effects. The residual impacts of North Falls are acceptable in terms of NPS EN-1.

13.1.4 Where the HRA has concluded potential AEol, the Applicant has prepared a Derogation Case that demonstrates that: (1) there are no “alternative solutions”; (2) there are IROPI and (3) compensatory measures are secured to ensure that the overall coherence of the National Site Network.

13.1.5 There is a clear and compelling case in favour of the DCO being made. The Project accords with the relevant NPSs which have effect. None of sections 104(4) to (8) of the PA 2008 apply. Accordingly, the application should be determined in accordance with the relevant NPSs by granting consent.



HARNESSING THE POWER OF NORTH SEA WIND

North Falls Offshore Wind Farm Ltd

A joint venture company owned equally by SSE Renewables and RWE.

To contact please email contact@northfallsoffshore.com

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