Morecambe Offshore Windfarm: Generation Assets

Development Consent Order Documents

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Explanatory Memorandum (Clean)

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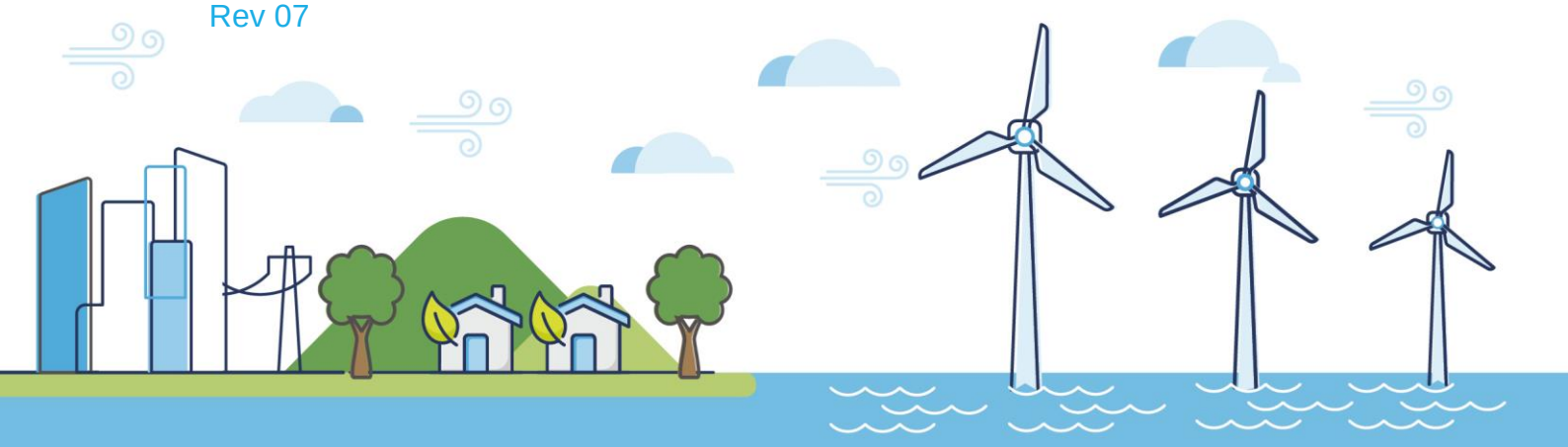

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Glossary of Acronyms

DCO	Development Consent Order
ES	Environmental Statement
NSIP	Nationally Significant Infrastructure Project
OFTO	Offshore Transmission Owner
OSP	Offshore Substation Platform
UK	United Kingdom
WTG	Wind Turbine Generator

Glossary of Unit Terms

MW	Megawatt

Glossary of Terminology

Applicant	Morecambe Offshore Windfarm Ltd
Application	This refers to the Applicant's application for a Development Consent Order (DCO). An application consists of a series of documents and plans which are published on the Planning Inspectorate's (PINS) website.
Generation Assets (the Project)	Generation assets associated with the Morecambe Offshore Windfarm. This is infrastructure in connection with electricity production, namely the fixed foundation wind turbine generators (WTGs), inter-array cables, offshore substation platform(s) (OSP(s)) and possible platform link cables to connect OSP(s).
Inter-array cables	Cables which link the WTGs to each other and the OSP(s).
Morgan and Morecambe Offshore Wind Farms: Transmission Assets	The transmission assets for the Morgan Offshore Wind Project and the Morecambe Offshore Windfarm. This includes OSP(s)[1], interconnector cables, Morgan offshore booster station, offshore export cables, landfall site, onshore export cables, onshore substations, 400kV cables and associated grid connection infrastructure such as circuit breaker infrastructure. Also referred to in this chapter as the Transmission Assets, for ease of reading.
Offshore substation platform(s)	A fixed structure located within the windfarm site, containing electrical equipment to aggregate the power from the WTGs and convert it into a more suitable form for export to shore.
Wind turbine generator (WTG)	A fixed structure located within the windfarm site that converts the kinetic energy of wind into electrical energy.
Windfarm site	The area within which the WTGs, inter-array cables, OSP(s) and platform link cables will be present.

[1] At the time of writing the Environmental Statement, a decision had been taken that the offshore substation platforms (OSPs) would remain solely within the Generation Assets application and would not be included within the Development Consent Order (DCO) application for the Transmission Assets. This decision post-dated the Preliminary Environmental Information Report (PEIR) that was prepared for the Transmission Assets. The OSPs are still included in the description of the Transmission Assets for the purposes of this document as the in-combination effects assessment carried out in respect of the Generation/Transmission Assets is based on the information available from the Transmission Assets PEIR and associated Habitats Regulation documentation.

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1 Introduction

1. Morecambe Offshore Windfarm Ltd (the "undertaker"), a joint venture between Zero-E Offshore Wind S.L.U. (Spain) (a Cobra group company) and Flotation Energy Ltd,[2] has made an application (the "Application") to the Secretary of State for a development consent order ("DCO") to authorise the generation assets of the Morecambe Offshore Windfarm, located within the windfarm site. This is to include wind turbine generators ("WTGs"), inter-array cables, offshore substation platforms ("OSPs") and possible platform link cables to connect OSPs (which is defined as the "authorised development" and described at Schedule 1 (Authorised Project) to the draft DCO which accompanies the Application and is entitled the Morecambe Offshore Windfarm Generation Assets Order 202[●] (the "Order")).

2. The purpose of an explanatory memorandum ("Memorandum") is to assist the Examining Authority, Interested Parties and the Secretary of State in understanding the rights and powers sought within the Order. This Memorandum therefore explains the purpose and effect of each Article of, and the Schedules to, the Order, as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the "Regulations").

3. As specified in the Planning Inspectorate's Advice Note Fifteen (Drafting Development Consent Orders), this Memorandum sets out:

    - *The source of the provision (whether it be a previous made DCO, or a novel provision)*
    - *The section or schedule of the Planning Act 2008 (the "2008 Act") under which it is made*
    - *Why it is relevant to the proposed development*
    - *Why the undertaker considers it to be important or essential to the delivery of the proposed development*

4. The undertaker has also had regard to the Government's Guidance 'Planning Act 2008: Content of a Development Consent Order required for Nationally

[2] On 6 February 2025, Copenhagen Infrastructure Partners' (CIP) fifth flagship fund (CI V) signed an agreement with Cobra and Flotation Energy to acquire the full ownership of the undertaker. The transaction will close pending fulfilment of customary transaction conditions including consent from The Crown Estate. Copenhagen Offshore Partners (COP), CIP's development and construction partner for offshore wind projects, will be leading the development and construction of the Project. Flotation Energy will remain involved as a development partner to the Project which will ensure continuity of expertise and knowledge.

Significant Infrastructure Projects' (the "DCO Content Guidance") in preparing the Order and this Memorandum.[3]

5. This document should be read alongside the Order and the other documents submitted in respect of the Application for the Order. Terms used in the Order have the same meaning in this Memorandum unless otherwise specified.

2 Purpose of the Order

2.1 Background

6. The undertaker has submitted the Application to the Secretary of State for a development consent order for the construction, operation and maintenance of an offshore wind power generating station (the "authorised development").

7. In summary the authorised development consists of:

- Up to 35 offshore wind turbine generators
- One or two offshore substation platforms
- A network of subsea inter-array cables (between the wind turbine generators and between the wind turbine generators and the offshore substation platforms) including cables crossings and cable protection
- A network of subsea platform link cables including cable crossings and cable protection
- Other offshore infrastructure including scour protection, cable protection measures, moorings and buoys

8. The offshore windfarm array will be located in the east Irish Sea approximately 30km west of the coast of Lancashire, England.

9. A detailed description of the authorised development is included in **Chapter 5 Project Description** of the Environmental Statement (Document Reference 5.1.5) [REP1-022].

10. The Order contains a deemed marine licence under section 66(1) of the Marine and Coastal Access Act 2009 (the "2009 Act"). Paragraph 54 of this Memorandum (Article 5 – Deemed marine licence under the 2009 Act) sets out the powers under which a DCO may 'deem' consent for a marine licence under the 2009 Act.

[3] "Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects" (Department for Levelling Up, Housing and Communities) (April 2024)

2.2 Nationally Significant Infrastructure Project

11. As an offshore generating station, Work No. 1 is a nationally significant infrastructure project ("NSIP") within sections 14 and 15 of the Planning Act 2008 (the "2008 Act").

12. Under sections 14(1)(a) and 15(3) of the 2008 Act, an offshore generating station is an NSIP if it is an offshore generating station with a capacity of more than 100 megawatts ("MW").

13. Section 15(4)(b) of the 2008 Act provides that an offshore generating station is a generating station situated within the Renewable Energy Zone, defined in section 84(4) of the Energy Act 2004 and section 235(1) of the 2008 Act as being the exclusive economic zone falling between 12nm and 200nm from the shore. Work No. 1 is 30km or over 15 nautical miles (nm) from the shore. Work No. 1 is an offshore generating station within the Renewable Energy Zone and its capacity will be more than 100MW. It accordingly falls within section 15(3).

14. As Work No. 1 is an NSIP, development consent under section 31 of the 2008 Act must be obtained from the Secretary of State to authorise it, and an application for a development consent order must be made to the Secretary of State, care of the Planning Inspectorate, under section 37 of the 2008 Act.

2.3 Associated Development

15. The Order also seeks consent for development which would constitute associated development (as provided for in Part 1 (authorised development) of Schedule 1 (authorised project) to the Order). Under section 115 of the 2008 Act, the Secretary of State may grant consent for development that is associated with an NSIP.

16. Guidance on associated development issued by the Secretary of State for Communities and Local Government in April 2013 (the "Associated Development Guidance") describes associated development as being

'*…typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project*' (paragraph 6) and '*requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development or help address its impacts. Associated development should not be an aim in itself but should be subordinate to the principal development*' (paragraph 5).[4]

[4] "Guidance on associated development applications for major infrastructure projects" (Department for Communities and Local Government) (April 2013)

17. Annex B of the Associated Development Guidance lists examples of associated development for offshore generating stations, including converter stations and associated storage; facilities for additional sub-sea cables to offshore platforms; and additional circuit breakers or circuit breaker bays on offshore platforms.

18. The associated development for which the Order seeks authorisation includes Work No. 2 (the offshore substation platforms each fixed to the seabed by a foundation, and subsea platform link cables including cable crossings and cable protection). Additional associated development includes scour protection, cable protection measures, the removal of material from the seabed, the disposal of material on the seabed within the Order limits, seabed preparation for foundation works, cable installation preparation, sandwave clearance, seabed levelling, boulder-clearance, the removal of out of service cables and static fishing equipment, and the disposal of drill arisings.

2.4 Ancillary Works

19. In order to ensure that the authorised development is constructed efficiently and without impediment, the Order also contains the powers to carry out ancillary works, i.e. works/provisions not consisting of development. These are set out in Part 2 (“ancillary works”) of Schedule 1 (“authorised project”) to the Order.

20. These ancillary works comprise:

- Moorings or other means of accommodating vessels in the construction or maintenance of the authorised project
- Marking buoys, beacons, fenders and other navigational warning or ship impact protection works

21. The authorised development together with the ancillary works comprises the “authorised project”.

2.5 Transmission Assets

22. It is intended that the transmission assets connecting the authorised project to the National Grid will be consented separately pursuant to an application for development consent submitted jointly by the undertaker and Morgan Offshore Wind Limited pursuant to a Direction issued by the Secretary of State under section 35 of the 2008 Act on 4th October 2022. This proposed development consent order will, if granted, authorise the transmission assets for both the Morecambe Offshore Windfarm and the Morgan Offshore Wind Project (another proposed windfarm unconnected to the undertaker which is to be located in the Irish Sea).

23. Notwithstanding the fact that the transmission assets are being progressed under a separate consent application, as the Application is for an offshore generating station, details of the proposed route and method of installation for any cable have been submitted pursuant to reg. 6(1)(b) of the Regulations (**Cable Statement**, Document Reference 4.2) [APP-020].

3 The Draft Order

24. The Order is based on the model provisions set out in Schedule 1 to the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the "Model Provisions") as well as relevant precedents for similar developments consented under the 2008 Act. The Localism Act 2011 (the "2011 Act") removed the requirement for the decision maker to have regard to the Model Provisions Order 2009 in deciding applications and so they no longer have any formal legal status. Secondary legislation under the 2011 Act also removed the requirement for an undertaker to explain in the explanatory memorandum divergences from the Model Provisions Order 2009, although it is noted that the "Legislation" page of the Inspectorate's website states that: "*… it may … still be useful and helpful for undertakers to show how and why they have departed from the Model Provisions Order in their applications*."

25. In addition, Planning Inspectorate Advice Note 13 'Preparing the draft Order and Explanatory Memorandum, February 2019' explains that they were intended as a guide for developers in drafting orders, rather than a rigid structure, but aided consistency and assisted in drafting a comprehensive set of lawful provisions.

26. Where there is a departure from the Model Provisions, or an article is based on other precedent DCOs, an explanation of the new provision is provided. However, the cross-references to other made DCOs are not intended to be comprehensive, and this Explanatory Memorandum does not refer to every single precedent which accords with the Order.

27. The undertaker has also had regard to recent draft DCOs submitted and accepted for examination by other offshore wind projects in preparing the Order and this Memorandum, although it acknowledges that these are not precedents or binding. In particular, given the proximity of the authorised project to other Round 4 offshore projects in the Irish Sea (Mona and Morgan), the undertaker has had regard to their draft DCOs to ensure the drafting is as consistent as possible for the benefit of PINS and other stakeholders.

28. Pursuant to Planning inspectorate Advice Note Nine 'Rochdale Envelope, July 2018', the Order adopts the 'Rochdale Envelope' whereby the maximum permitted consent envelope is provided for and assessed, allowing some of the scheme detail to be refined and approved post-consent. The approval of that detail is provided for within the Requirements in Schedule 2 to the Order.

29. The purpose and effect of the provisions of the Order are now explained in sequence.

4 Preamble and Part 1 – Preliminary

4.1 Preamble to the Order

30. As with every statutory instrument, the Order is introduced by a preamble, which amongst other things, recites the powers under which the instrument would be made.

4.2 Article 1 – Citation and commencement

31. Article 1 sets out the name of the Order and the date on which it comes into force. This article did not appear in the Model Provisions. However, it is a standard article that is included in all development consent orders.

4.3 Article 2 – Interpretation

32. Article 2(1) defines the terms used in the Order. It is a standard article and was included in the Model Provisions as article 1.

33. Particular definitions to note include:

34. "ancillary works" means the ancillary works described in Part 2 (ancillary works) of Schedule 1 and any other works authorised by the Order that are not development within the meaning of section 32 of the 2008 Act;

35. "authorised development" means the development and associated development described in Part 1 (authorised development) of Schedule 1 to the Order and any other development authorised by the Order that is development within the meaning of section 32 of the 2008 Act;

36. "authorised project" means the authorised development and the ancillary works authorised by the Order;

37. "commence" sets out what constitutes commencement. It defines "commence" as the first carrying out of any licensed activities authorised by the deemed marine licence, save for operations consisting of pre-construction surveys, monitoring surveys and unexploded ordnance surveys, and "commenced" and "commencement" are to be construed accordingly.

38. The effect of this definition is that some works may be carried out without the authorised project having "commenced". This enables the undertaker to carry out certain preparatory works prior to the submission of relevant details for approval under the requirements contained in Schedule 2 (requirements). These activities may in some cases need to be carried out in order to comply with the pre-commencement requirements (for example, to inform

assessments and proposals required to be submitted for approval) and are considered appropriate and proportionate by the undertaker.

39. The undertaker has had regard to the DCO Content Guidance which notes that "*the definition of commencement must not provide for preliminary works which are so extensive that they would be likely to have significant environmental effects themselves, and would normally need consideration and approval by the discharging authority prior to such works starting*". The undertaker does not consider the preliminary works to be so extensive as to have significant environmental effects in their own right.

40. The definition of "commence" is based on the wording used in other offshore precedents, including The Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 ("Sheringham and Dudgeon Extensions") (Article 2), The Hornsea Four Offshore Wind Farm Order ("Hornsea Four") (Article 2), and The East Anglia ONE North Offshore Wind Farm Order 2022 ("East Anglia 1N") (Article 2).

41. "maintain" includes inspect, maintain, upkeep, repair, adjust and alter the authorised project, and further includes remove, reconstruct and replace any of the ancillary works and any component part of the authorised project (but not including the removal or replacement of foundations) provided that such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement; and "maintenance" is to be construed accordingly.

42. The inclusion of "adjust" or "alter" is justifiable on the basis that during maintenance operations changes to existing specifications may be required. Similarly, "remove" is included as it may be necessary to remove something in order to repair, clean or replace it. It is considered that this is an appropriate definition, as it affords the flexibility required to enable the undertaker to respond to the range of maintenance activities that may need to be undertaken during the lifetime of the authorised project. It is also considered that this is a reasonable definition, given the proviso that any works to maintain the authorised project must not give rise to any materially new or materially different environmental effects to those identified in the Environmental Statement.

43. The definition of "maintain" is based on the wording used in other offshore precedents, including The Awel y Môr Offshore Wind Farm Order 2023 ("Awel y Môr") (Article 2), Hornsea Four (Article 2) and East Anglia 1N (Article 2).

44. "Order limits," which references the limits of land (seabed) to be used and shown on the **Offshore Works Plan** (Document Reference 2.3) within which the authorised project may be carried out, whose grid coordinates are set out in Part 1 of Schedule 1 (authorised development) to the Order and shown on

the **Offshore Order Limits and Grid Coordinates Plan** (Document Reference 2.4).

45. The "undertaker" is defined as Morecambe Offshore Windfarm Ltd, or any person who has the benefit of the Order in accordance with Article 7 (benefit of the Order).

46. Article 2(2) provides that measurements are approximate. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those listed in the Order, there is no issue over whether the works are permitted by the Order. Thus, this provision allows for a small tolerance with respect to any distances and points, although works will take place within the Order limits. It is commonplace to include such provision in development consent orders. See Awel y Môr (Article 2(3)), Hornsea Four (Article 2(3)) and The Norfolk Boreas Offshore Wind Farm Order 2021 ("Norfolk Boreas") (Article 2(3)).

47. Articles 2(3) and 2(4) tie references to lettered/numbered points and numbered works in the Order to the relevant plans referenced and to Schedule 1 to the Order, respectively.

48. Article 2(5) provides that any references to legislation or other instruments in the Order shall be construed as a reference to such legislation as it may subsequently be amended or re-enacted.

5 Part 2 – Principal Powers

5.1 Article 3 – Development consent etc. granted by the Order

49. This Article confers the principal power to construct the authorised project within the Order limits, subject to the provisions of the Order and the requirements provided at Schedule 2 (requirements) to the Order. The power for this Article is provided for under section 115(1) (in respect of the authorised development) and section 120(3) (in respect of the ancillary works) of the 2008 Act.

50. Schedule 1 (authorised project) to the Order describes the authorised project in detail, split into 'work numbers', each of which represents different sections or parts of the authorised project.

51. This article is based on the Model Provisions (Article 2), with the only substantive difference being that the model article does not refer to the ancillary works. This wording has precedent in Awel y Môr (Article 3), Norfolk Boreas (Article 3) and Hornsea Four (Article 3).

5.2 Article 4 – Operation of a generating station

52. This article provides that, once constructed, the undertaker has authorisation to use and operate the generating station. This is not a Model Provision but has precedent in Sheringham and Dudgeon Extensions (Article 29), Awel y Môr (Article 4), Hornsea Four (Article 32), East Anglia 1N (Article 30), The East Anglia TWO Offshore Wind Farm Order 2022 ("East Anglia Two") (Article 30), The Triton Knoll Offshore Wind Farm Order 2013 ("Triton Knoll Generation") (Article 5) and others. Section 140 of the 2008 Act provides that a DCO may include a provision authorising the operation of a generating station only if the development to which the DCO relates is or includes the construction or extension of a generating station, which the Order does. The power for this Article is provided under section 120(3) of the 2008 Act which authorises making provision relating to matters ancillary to the development for which development consent is granted. Section 120(4) provides that provision may be made under subsection 120(3) for or relating to any of the matters listed in Part 1 of Schedule 5. Paragraph 5 of Schedule 5 to the 2008 Act includes within the list of matters "The operation of a generating station".

53. Article 4(2) provides that grant of development consent does not relieve the undertaker of the need to obtain any other permits, licences or consents necessary to authorise the operation of the authorised project. This clarifies that the undertaker will still be required to obtain, for example, an electricity generation licence under the Electricity Act 1989 ("1989 Act"). A list of the other consents and licences anticipated to be required in connection with the authorised project is included with the Application (**Other Consents and Licences Required**, Document Reference 4.15).

5.3 Article 5 – Deemed marine licence under the 2009 Act

54. Article 5 grants the deemed marine licence included in Schedule 6 (Deemed Marine Licence under the 2009 Act: Morecambe Offshore Windfarm Generation Assets). The power for this Article is provided under section 120(3) of the 2008 Act which authorises making provision relating to matters ancillary to the development for which development consent is granted. Section 120(4) provides that provision may be made under subsection 120(3) for or relating to any of the matters listed in Part 1 of Schedule 5. Paragraph 30A of Schedule 5 to the 2008 Act includes within the list of matters "Deeming a marine licence". Section 149A of the 2008 Act provides that a development consent order may include provision deeming a marine licence if the activity is to be carried out wholly in one of the areas specified within section 149A(2) which the authorised project is. This article follows precedent orders, including Triton Knoll Generation (Article 8), Norfolk Boreas (Article 32) and Hornsea Four (Article 33).

5.4 Article 6 – Power to maintain the authorised project

55. Article 6(1) provides that the undertaker is authorised to maintain the authorised project at any time following its construction, subject to any contradictory provisions in the Order. As noted in paragraph 43 above, the definition of "maintain" provides flexibility to ensure that the undertaker can respond to a range of maintenance activities that may need to be undertaken during the lifetime of the authorised project. However, the definition is limited to activities that do not give rise to any "material new or materially different environmental effects" to ensure that no activities are authorised which could give rise to environmental effects which have not been assessed.

56. Article 6(2) makes clear that this power does not relieve the undertaker of its requirement to obtain any further licenses pursuant to Part 4 (marine licensing) of the 2009 Act.

57. The power for this Article is provided under section 120(3) of the 2008 Act.

58. This article follows the Model Provisions (Article 3) and precedent orders, including Sheringham and Dudgeon Extensions (Article 4), Awel y Môr (Article 5) and The Hornsea Three Offshore Wind Farm Order 2020 as corrected ("Hornsea Three") (Article 4).

5.5 Article 7 – Benefit of the Order

59. The "undertaker" is defined in Article 2 as Morecambe Offshore Windfarm Ltd or any person who has the benefit of the Order in accordance with Article 7. This article provides for the transfer of the whole or part of the benefit of the Order with the consent of the Secretary of State, subject to certain exceptions. The Order includes drafting which makes it clear that the provisions of Article 7 apply to the deemed marine licence and can be applied either in whole or in part.

60. Paragraph (1) provides that, subject to Article 7, the provisions of the Order have effect solely for the benefit of the undertaker. This Article overrides section 156(1) of the 2008 Act (as permitted by section 156(2)) which limits the benefit of the Order to anyone with an interest in the land. Due to the nature of the authorised project, it is entirely appropriate that the powers under the Order are only exercisable by the undertaker and not any other person with an interest in the Order limits (unless provided under the following subparagraphs). Article 7(1) is based on Article 4 of the Model Provisions.

61. Paragraph (2) provides the circumstances where the written consent of the Secretary of State is required to transfer or grant to another person the benefits of the Order. This is to ensure that any transferee or lessee is deemed appropriate and qualified by the Secretary of State to take over control of the authorised project under the Order.

62. Paragraph (3) provides that the Secretary of State shall consult with the MMO before giving consent to the transfer or grant to another person of the benefit of any or all of the provisions of the deemed marine licence and that the Secretary of State must have regard to any response received timeously from the MMO.

63. Paragraph (4) provides that the exercise of any transferred or granted benefits or statutory rights is subject to the same restrictions, liabilities and obligations as would apply under the Order if those benefits or rights were executed by the undertaker.

64. Paragraph (5) provides that the consent of the Secretary of State is not required where any such transfer or grant of the benefit of the Order is made to the holder of an electricity generation licence (under section 6 (licences authorising supply, etc.) of the 1989 Act). As licence holders are authorised to construct, operate and maintain generating stations, the undertaker considers it appropriate that no consent is required for transfers or grants to another licence holder (because in considering whether to grant a generating licence under the 1989 Act, the Secretary of State will have established the fitness of the licence holder and its suitability to take the benefit of the Order). Where consent is not required under these provisions, paragraph (7) requires written notification to be given to the Secretary of State and the MMO.

65. Paragraph (6) clarifies that references to the undertaker in the Order will include any transferee or lessee. Absent this provision, there would be a contradiction since strictly speaking only the undertaker could benefit from these works. Paragraph (6) does not apply to paragraphs (4), (7), (10) and (11), which relate to the transfer of functions between the undertaker and any transferee or lessee as, otherwise, they would not have effect.

66. Paragraphs (8), (9) and (10) provide clarity as to the timing and content of notices that must be given pursuant to paragraph (7) to facilitate the transfer or grant of the benefit of the Order.

67. Sections 72(7) and (8) of the 2009 Act stipulate that marine licences can only be transferred from a licensee to another person by way of an application made by the licensee and a variation granted by the licensing authority. Paragraph (11) is therefore necessary to clarify that sections 72(7) and (8) of the 2009 Act will not apply where a transfer or grant of the benefit of the provisions of the deemed marine licence is made pursuant to Article 7.

68. Paragraph (12) makes provision for service of any notice given pursuant to paragraph (7) by electronic means.

69. This article follows precedent orders including the Rampion 2 Offshore Wind Farm Order 2025 (“Rampion 2”) (Article 5), Sheringham and Dudgeon Extensions (Article 5), Awel y Môr (Article 6), Hornsea Four (Article 5), East Anglia 1N (Article 5) and Triton Knoll Generation (Article 6).

70. This article is necessary to allow the undertaker commercial flexibility to sell or lease the authorised development while ensuring that the Secretary of State still retains control over such a disposal (through the need to obtain consent where the disposal is not to another license holder). Without the ability to transfer the benefit, no party but the undertaker could operate the generating station without committing a criminal offence.

71. It is important as a matter of practicality that the Order and the deemed marine licence can be transferred together using the same process, as is provided for in this article. Under the Electricity Act 1989, there are regulatory requirements to separate interests in the electricity market between 'generation' and transmission'. To comply with these requirements, the offshore and onshore transmission infrastructure linked to an offshore generating station will, in most circumstances, require to be transferred to a separate offshore transmission owner ("OFTO") following a public tender exercise via Ofgem. An OFTO will therefore need to have the partial benefit of the Order and the deemed marine licence (in respect of any transmission-specific works, articles and requirements) and it is of practical importance that such partial transfer can be effected simultaneously.

6 Part 3 – Miscellaneous and General

6.1 Article 8 – Abatement of works abandoned or decayed

72. This article is intended to make sure that the undertaker will not abandon or allow to fall into decay the offshore works. It provides a power which enables the Secretary of State, following consultation with the undertaker, to serve a written notice on the undertaker requiring it, at its own expense, to remove or restore those works. Section 105 of the Energy Act 2004 makes provision for the Secretary of State being able to serve notice on the undertaker requiring it to submit a decommissioning programme for approval. The provisions of this article do not cut across this statutory provision but supplement it.

73. The wording of this article replicates the wording in Sheringham and Dudgeon Extensions (Article 38) and Awel y Môr (Article 35).

6.2 Article 9 – Saving provisions for Trinity House

74. This article is a standard provision intended to provide protection to Trinity House that is taken from the model provision for harbours (para. 53 of Schedule 3 (model provisions for harbours) to the Model Provisions) and is commonly used in DCOs for offshore generating stations. It has been included in Sheringham and Dudgeon Extensions (Article 35), Awel y Môr (Article 36), Hornsea Four (Article 42), East Anglia 1N (Article 40) and The East Anglia

THREE Offshore Wind Farm Order 2017 ("East Anglia Three") (Article 36), amongst others.

6.3 Article 10 – Crown rights

75. This article provides protection of the Crown's position. This article is not part of the Model Provisions but is included in order to protect the Crown's position in relation to its own estates, rights, powers, privileges, authorities or exemptions and to ensure that the Crown's written consent is required where any land, hereditaments or rights are to be taken, used, entered or interfered with under the powers conferred by the Order. This reflects the statutory position set out in section 135 of the 2008 Act and has been included in substantially the same form in a number of DCOs, including Sheringham and Dudgeon Extensions (Article 36), Awel y Môr (Article 37), East Anglia 1N (Article 41) and Hornsea Four (Article 43).

6.4 Article 11 – Protective provisions

76. This article gives effect to Schedule 3, which contains provisions protecting the interests of third parties. It was not included in the Model Provisions but is a standard article in development consent orders that include protective provisions.

6.5 Article 12 – Certification of documents and plans, etc.

77. This article reflects Article 41 of the Model Provisions and requires the undertaker to submit final versions of key documents referred to in the Order to the Secretary of State for certification as true copies following the making of the Order. The list of documents certified is included at Schedule 8 (documents to be certified) to the Order. This Article provides that any plans and documents that are certified under this Article can be used as evidence in any proceedings.

78. This Article is necessary to provide a procedure through which documents falling outside of the Order itself can be verified so that they can be relied upon. A similar approach has been taken in other DCOs, for example Sheringham and Dudgeon Extensions (Article 37), Awel y Môr (Article 40), East Anglia 1N (Article 36) and Hornsea Four (Article 38).

6.6 Article 13 – Service of notices

79. This article sets out the manner in which notices or other documents required or authorised to be served for the purposes of the Order are to be served. Among other things, it allows service by email with the consent of the recipient.

80. The article does not appear in the Model Provisions but is routinely included in orders authorising development. It is necessary as the service of notice provisions under sections 229 and 230 of the 2008 Act would not apply to

notices served under a DCO. The article has precedent in a number of DCOs including Sheringham and Dudgeon Extensions (Article 41), Hornsea Three (Article 44) and Awel y Môr (Article 41).

6.7 Article 14 – Requirements, appeals, etc.

81. This article gives effect to Schedule 4 (approval of matters specified in requirements) which provides a procedure for the discharge of requirements. Such an approach is recommended in Planning Inspectorate Advice Note 15: Drafting Development Consent Orders and has precedent in East Anglia 1N (Article 38).

6.8 Article 15 – Arbitration

82. This article is based on Article 42 of the Model Provisions and governs what happens when two parties disagree on the implementation of any provision of the Order. The matter is to be settled by arbitration, and if the parties cannot agree on who the arbitrator should be, this is decided by Secretary of State. It is common practice for DCOs to specify that the Secretary of State should perform this function. Paragraph (2) clarifies that any matter for which the consent or approval of the Secretary of State or the MMO is required shall not be subject to arbitration. This article has precedent in Sheringham and Dudgeon Extensions (Article 42), Awel y Môr (Article 44), Hornsea Four (Article 39) and East Anglia 1N (Article 37).

6.9 Article 16 – Approvals

83. This article was added to the Order to ensure that all approvals, amendments and requirements to complete the proposed development in accordance with the approved details are dealt with under similar arrangements.

84. It requires that all approvals (including confirmations and agreements) from or notifications to the Secretary of State or another organisation or body must be given in writing which, pursuant to paragraph (5), includes electronic transmission.

85. Paragraph (2) provides that details approved pursuant to the Order must be carried out as approved unless an amendment or variation is previously agreed.

86. Paragraph (3) prevents the approval of any such amendment or variation unless it is demonstrated to the satisfaction of the Secretary of State (or such other organisation or body specified in the Order) that the amendment is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

87. Paragraph (4) clarifies that details approved pursuant to the requirements include any amendments that may subsequently be approved.

88. There is no precedent in other offshore wind DCOs for this to be included within an article. However, there is precedent for similar language to be included within DCO requirements. Similar obligations were included in East Anglia 1N (Requirements 39 and 40), Hornsea Four (Requirements 30 and 31), and Awel y Môr (Requirements 26 and 27).

89. The inclusion of this article, and its application to the requirements set out in Schedule 2, any condition in Part 2 of Schedule 6, or any provision in Schedules 3, 6 or 7, removes the need to refer to individual approvals being "in writing". Additionally, this article ensures that there is no ambiguity as to how amendments are to be dealt with or the requirements for implementation of approved details.

6.10 Article 17 – Modification of the 2016 Order

90. This article modifies Article 223 (Lighting of wind turbine generators in United Kingdom territorial waters) of the Air Navigation Order 2016 (the "2016 Order") so that it applies to the authorised project. Without any such modification, Article 223 would only apply to wind turbine generators located in territorial waters (i.e. within 12 nautical miles of shore).

91. The article modifies Article 223 so that, for the purposes of the Order, it is to be read as also applying to any wind turbine generators which are situated in waters outside of the territorial sea designated as the Renewable Energy Zone by section 84(4) of the Energy Act 2004.

92. This article was added to the Order following questions posed by the Examining Authority during Examination[5] regarding the applicability of the 2016 Order to the authorised project.

93. Section 120(5) of the 2008 Act allows for a development consent order to include provisions modifying other statutory provisions which relate to any matter for which provision may be made in the order or which may appear to the Secretary of State to be necessary or expedient for giving full effect to any other provision of the order.

94. The 2016 Order is relevant to the Order, as appropriate and compliant aviation lighting is required for wind turbine generators over a certain height to ensure that any adverse effects on aircraft and other aviation or marine users are mitigated. As detailed in paragraph 111 below, a standard requirement (Requirement 3) has been included at the request of the Ministry of Defence

[5] See Action Point 26 in the Applicant's Response to Actions arising from Issue Specific Hearings 2, 3 and 4 [Examination Library Reference REP4-061], question 3DCO1 in the Examining Authority's Written Questions 3 [PD-018] and the Applicant's response to 3DCO in its Response to ExQ3 (Document Reference 9.66).

and Defence Infrastructure Organisation in this Order requiring aviation lighting in compliance with the 2016 Order. This has been included in numerous previous offshore wind farm development consent orders, including many granted or applied for beyond 12 nautical miles

95. However, there is no direct precedent for this article in other development consent orders, as, to date, it has not been realised that Article 223 is limited to wind turbine generators within territorial waters only. In drafting this article, the Applicant has had reference to East Anglia 1N (Article 6(1)) which seeks to apply, with modifications, other legislative provisions.

6.11 Article 18 – Compensation measures

96. This Article is presented on a without prejudice basis. Paragraph (1)gives effect to Schedule 7 (compensation measures) which contains without prejudice provisions on compensation measures to protect the national site network for lesser black-backed gull and red-throated diver, should the Secretary of State consider that it is necessary.

97. Paragraph (2) provides that any anticipatory steps which the Applicant – or any other party – takes to comply with the provisions of Schedule 7 before the Order is made will be treated as effective in complying with those provisions once the Order is made, thereby avoiding the need to repeat such steps. This is necessary as the Applicant requires to commence some preparatory works in connection with its without prejudice compensation measures post-Examination but pre-determination during a summer season. There is no precedent in other offshore wind DCOs for this to be included. However, there is precedent for similar language to be included in respect of DCO requirements, including The A122 (Lower Thames Crossing) Development Consent Order 2025 (Schedule 2, Part 2, Requirement 25)

7 Schedules

7.1 Schedule 1 (Authorised Project): Parts 1 (Authorised Development) and 2 (Ancillary Works)

98. Schedule 1 provides the details of the development for which development consent is sought, including associated development and other ancillary works. This Schedule should be read alongside the **Offshore Works Plan** (Document Reference 2.3) [APP-007]. A summary of the authorised development is contained in section 2 of this Memorandum.

99. Part 1 of Schedule 1 specifies the authorised development comprising the numbered works. The split of the authorised development between different work numbers is designed to enable the Order to refer to different parts of the authorised development by citing the relevant work number.

100. Table 1 provides the co-ordinates within which the authorised development may be situated.

101. Part 2 of Schedule 1 sets out the ancillary works. The split between the authorised development and the ancillary works is to distinguish between the ancillary works which are required to facilitate the authorised development but which do not form part of the authorised development for which development consent is needed. The ancillary works are works within the Order limits that fall within the scope of the work assessed in the environmental statement. Section 120(3) of the Planning Act 2008 provides that an order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted.

102. The project parameters are at a level of sufficient detail to enable a proper assessment of the likely environmental effects based on a worst-case scenario. This approach is consistent with the "Rochdale Envelope" and the undertaker has had regard to the Planning Inspectorate's Advice Note 9 'Rochdale Envelope, July 2018'. Flexibility is required so as to ensure that the undertaker can take advantage of new developments and emerging products in the market for offshore wind turbine generators and other equipment.

103. A detailed description of the authorised development is included in **Chapter 5 Project Description** (Document Reference 5.1.5) [REP1-022].

7.2 Schedule 2 – Requirements

104. The requirements in Schedule 2 are the equivalent of planning conditions and apply to the construction, operation and maintenance of the authorised project. Approvals are to be sought from the Secretary of State, following consultation with any other relevant bodies, or such other organisation or body as is specified. This is consistent with the processes and procedures employed by the promoters of other DCO schemes offshore, including Sheringham and Dudgeon Extensions (Schedule 2), Awel y Môr (Schedule 1 Part 3), Triton Knoll Generation (Schedule 1 Part 3) and Hornsea Four (Schedule 1 Part 3).

105. Whilst a number of the Model Provisions in respect of requirements have been followed, a structure for the requirements has been developed which reflects the undertaker's current expectations in terms of the control documents that will be prepared.

106. Requirement 1 (Time limits) specifies the time limit for commencing the authorised project as being seven years from the date on which the Order comes into force. This was included in the Model Provisions as requirement 2, although the period in the Model Provisions was five years from the date of the Order, as provided in regulation 6 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015.

107. A seven year period for commencement was included in Sheringham and Dudgeon Extensions (Requirement 1), Triton Knoll Generation (Requirement 2), Hornsea Four (Requirement 1) as well as other offshore wind DCOs and is considered appropriate given the scale of the project and the wider supply chain and economic climate. This includes the need to apply for government funding mechanisms (e.g. Contracts for Difference) which are currently operated under distinct 'application windows' for a short period each year.

108. Requirement 2 (Design parameters) restricts the construction and operation of the wind turbine generators to the area shown on the **Offshore Works Plan** (Document Reference 2.3) [APP-007]. Table 2 sets out the maximum parameters within which the authorised project must be constructed. These are the maximum design parameters which provide for the worst-case scenario and ensure that the development is built within the parameters of what has been assessed in the environmental statement. A similar requirement was included in Sheringham and Dudgeon Extensions (Requirements 2 to 7), Awel y Môr (Requirement 2), Triton Knoll Generation (Requirements 3 to 7) and Hornsea Four (Requirements 2 to 5). The Order also includes a provision that requires all of the wind turbine generators to be of the same height and rotor diameter, unless otherwise agreed by the Secretary of State, to ensure that the final turbine selection is uniform (i.e. that there is no mix of different sized turbines). Additionally, the Order includes a provision that prevents any part of the wind turbine generators from extending beyond or oversailing the Order limits.

109. The key constraints on the scale of the development are the maximum number of turbines, the maximum rotor diameter and the maximum total rotor swept area. The maximum total rotor swept area, which is the combined swept area of all wind turbine rotors within the Order Limits, acts as a control on the size and number of wind turbine generators that can be constructed. Whilst the Order secures a maximum rotor diameter of 280m, the Order does not allow for the maximum number of turbines (35 wind turbine generators) to be installed with 280m rotor diameter because that would result in an exceedance of the maximum rotor swept area specified in the Order. A maximum of 30 wind turbine generators can be installed with a maximum rotor diameter of 280 metres and remain within the maximum total rotor swept area. This approach ensures flexibility to install turbines utilising the latest available technology, whilst ensuring that the assessed worst case is realistic. This approach also avoids any requirement to constrain the development by reference to a maximum generating capacity, which can change over time for turbines of any given size, as technology develops (noting that a minimum capacity is identified, as explained below).

110. The undertaker does not consider that a minimum turbine number requires to be specified in this requirement, as paragraph 1 of Part 1 (Authorised Development) of Schedule 1 to the draft DCO makes it clear that the Project

is a “nationally significant infrastructure project as defined in sections 14 and 15 of the 2008 Act” and then provides the electrical output capacity: “being an offshore wind turbine generating station with electrical output capacity of over 100MW…”. It is not the number of turbines that determines whether or not an offshore generating station is an NSIP but the capacity threshold (see further paragraph 13 above). This follows the approach taken on other precedent DCOs including the Sheringham and Dudgeon Extensions, East Anglia 1N and Norfolk Boreas.

111. Requirement 3 (Aviation safety) imposes restrictions on the operation of the authorised project in the interest of aviation safety and makes provision for notifications regarding the authorised project to be submitted to the Defence Infrastructure Organisation Safeguarding prior to the commencement of the offshore works. A similar requirement was included in Sheringham and Dudgeon Extensions (Requirement 10), East Anglia 1N (Requirement 31) and Norfolk Boreas (Requirement 12).

112. Requirement 4 (Great Dun Fell, Lowther Hill and St Annes Primary Surveillance Radars) imposes restrictions on the operation of wind turbine generators until appropriate mitigation has been agreed by the Secretary of State to address the potential impacts of the authorised development on the Great Dun Fell, Lowther Hill and St Annes Primary Surveillance Radars. Similar requirements for the protection of other radar were included in Sheringham and Dudgeon Extensions (Requirement 28), Awel y Môr (Requirement 23), Hornsea Four (Requirement 29) and East Anglia 1N (Requirement 35).

113. Requirement 5 (Operation of Blackpool Airport) imposes restrictions on the construction of wind turbine generators and offshore substation platforms (excluding foundations) until appropriate mitigation can be implemented and maintained, and appropriate arrangements have been put in place with Blackpool Airport to ensure that that mitigation is in place before the construction of the wind turbine generators or offshore substation platforms. There is no precedent for this condition in other DCOs, although it replicates similar requirements used for the benefit of the Ministry of Defence and other aviation stakeholders in respect of radar. There are precedents for similar conditions in consents granted for onshore and offshore wind generating stations under section 36 of the Electricity Act 1989 (“Section 36 Consents”).

114. Requirement 6 (Operation of Walney Aerodrome) imposes restrictions on the construction and operation of wind turbine generators until a scheme to prevent or remove any potential adverse impacts of the authorised development on Walney Aerodrome (including instrument flight procedures, minimum sector altitudes and VHF communications) has been approved. There is no precedent for this condition in other DCOs, although it replicates similar requirements used for the benefit of the Ministry of Defence and other

aviation stakeholders in respect of radar. There are precedents for similar conditions in Section 36 Consents granted for onshore and offshore wind generating stations.

115. Requirement 7 (Operation of Warton Aerodrome) imposes restrictions on the construction and operation of wind turbine generators until a scheme to prevent or remove any potential adverse impacts of the authorised development on Warton Aerodrome (including instrument flight procedures, minimum sector altitudes, and VHF, DF and UHF communications) has been approved. There is no precedent for this condition in other DCOs, although it replicates similar requirements used for the benefit of the Ministry of Defence and other aviation stakeholders in respect of radar. There are precedents for similar conditions in Section 36 Consents granted for onshore and offshore wind generating stations.

116. Requirement 8 (Warton Aerodrome Primary Surveillance Radar) imposes restrictions on the rotation of any wind turbine generator blades until the Secretary of State confirms satisfaction that mitigation measures to prevent or remove any adverse impacts of the authorised development on the primary surveillance radar at Warton Aerodrome has been implemented satisfactorily. There is precedent for similar requirements in other DCOs in respect of other Ministry of Defence radar assets, including Sheringham and Dudgeon Extensions (Requirement 27).

117. Requirement 9 (Air traffic services at Isle of Man Airport) places restrictions on the construction of wind turbine generators (excluding foundations) until it has been established whether mitigation is required and, if so, a mitigation scheme has been established, and a mitigation agreement has been offered to the Isle of Man Airport. There is no precedent for this in other DCOs although it replicates similar requirements used for the MOD and other aviation stakeholders. There are precedents for similar conditions in Section 36 Consents granted for onshore and offshore wind generating stations.

118. Requirement 10 (Decommissioning) requires that, where the Secretary of State has served a notice requiring a written decommissioning programme to be approved pursuant to section 105(2) of the Energy Act 2004, this must be submitted for approval prior to the commencement of works. A similar requirement was included in Sheringham and Dudgeon Extensions (Requirement 7), East Anglia 1N (Requirement 10) and Norfolk Boreas (Requirement 14). This requirement operates in addition to the statutory requirements under the Energy Act 2004.

119. Requirement 11 (Port Access and Transport Plan) requires a port access and transport plan, which accords with the **Outline Port Access and Transport Plan** certified under the Order (Document Reference 6.7) [REP5-032], in respect of the port(s) to be approved by the relevant highway authority in consultation with the relevant planning authority where a port in England or

Wales is to be used for the transport over land of wind turbine generators, offshore substation platforms or foundations (including scour protection) in connection with the construction, operation or maintenance of the authorised development. This will not be required where the relevant highway authority has confirmed, after consultation with the relevant planning authority, that no such plan is required. For the purposes of this requirement "relevant planning authority" and "relevant highway authority" are the planning and highway authority in whose area the relevant port is located. A similar requirement was included in The Dogger Bank Teesside A and B Offshore Wind Farm (Amendment) (No. 2) Order 2020 ("Dogger Bank C and Sofia") (Requirement 34).

120. Requirement 12 (Skills and Employment Plan) requires a skills and employment plan, which accords with the **Outline Skills and Employment Plan** certified under the Order (Document Reference 6.11) [REP5-040] in respect of the authorised development to be approved by the relevant authorities and then implemented for the lifetime of the authorised development. For the purposes of this requirement, "relevant authority" means any planning authority in whose area a marshalling port or operation and maintenance base used in connection with the authorised development is located. A similar requirement was included in Sheringham and Dudgeon Extensions (Requirement 26).

7.3 Schedule 3 – Protective provisions

121. Schedule 3 sets out protective provisions that are being discussed with third parties whose apparatus or works may be affected by the authorised project. These currently include:

122. Part 1 (for the protection of offshore cables) of Schedule 3 includes draft protective provisions for the benefit of offshore cables that are situated within the Order limits, namely the Lanis-1 and Hibernia A cables. It secures a commitment made in the ES that would prevent any part of the authorised development from being constructed within 500 metres of these cables, unless otherwise agreed. There is precedent for a similar set of protective provisions the Dogger Bank C and Sofia (Part 4 of Schedule 12).

123. Parts 2 and 3 include draft protective provisions for the benefit of oil and gas operators in the vicinity of the authorised development, namely Harbour Energy[6] (Part 2) and Spirit Energy Production UK Limited (Part 3). Parts 2 and 3 are in largely mirror terms (save for specific apparatus and site definitions and to reflect different commercial discussions). These parts secure the

[6] The owner of legal and beneficial interests in United Kingdom Continental Shelf Block 110/7a D is currently Chrysaor Resources (Irish Sea) Limited, which is a subsidiary of Harbour Energy. For ease, the undertaker has drafted Part 2 so that it is for the benefit of Harbour Energy and Chrysaor.

following commitments, which have evolved from the original commitments made within the Environmental Statement as a result of further discussions with both Harbour Energy and Spirit Energy Production UK Limited:

- Restriction on construction of WTGs, OSPs or temporary surface infrastructure within 500 metres of pipelines or cables used for Harbour's or Spirit's licensed activities and within the 1 nautical mile marine corridor between the Calder and CPP1 platforms (save for where this has been requested by a statutory consultee and the owner is to not unreasonably withhold their consent)
- An enduring restriction on construction of wind turbine generators or offshore substation platforms within 1.5 nautical miles of Harbour's and Spirit's platforms until the platforms are decommissioned, unless otherwise agreed
- An interim restriction on construction of wind turbine generators or offshore substation platforms within 3.76 nautical miles of Harbour's and Spirit's platforms until the earlier of either the date of cessation of production at that platform (being the date on which hydrocarbon production permanently ceases) or 1 January 2029. This is to ensure a just transition between the decommissioning platforms/operations and CNP infrastructure
- Restriction on construction of wind turbine generators within a 2 nautical mile corridor measured at 220 degrees from the CPP1 platform
- Restriction on construction of wind turbine generators or offshore substation platforms within 100 metres of legacy and relief wells located within the Order limits (or within 100 metres of the Order limits) and which are specifically named in Table 3, which is to protect future assets for the Morecambe Net Zero project

All of these commitments can be seen on the Spirit and Harbour Protective Provisions Plan.

124. Part 4 (For the protection of Stena Line Limited) sets out draft protective provisions in favour of Stena Line Limited in respect of its Liverpool to Belfast route. It secures a commitment to inform Stena Line Limited prior to carrying out any construction works located within 1.5 nautical miles of the Liverpool to Belfast route or any works that involve the installation of subsea cables and to consult with Stena Line Limited before submitting a vessel traffic management plan. There is no precedent for similar protective provisions, and these remain the subject of ongoing discussion with Stena Line Limited.

125. The protective provisions set out in Schedule 3 remain subject to further change prior to and during examination as discussions with third parties continue.

126. Given the entirely offshore setting of the authorised project, the Order does not include the standard protective provisions that are used for the benefit of onshore statutory undertakers or onshore electronic communication code providers.

7.4 Schedule 4 – Approval of matters specified in requirements

127. Schedule 4 provides a procedure for the discharge of requirements to ensure the timely discharge of requirements and to make provision for an appeal mechanism. The inclusion of such a schedule is recommended in Planning Inspectorate Advice Note 15: Drafting Development Consent Orders, and Schedule 4 is largely based on the proposed schedule contained within Advice Note 15.

128. The Schedule specifies a period of eight weeks for the discharging authority to determine the application, but makes provision for a longer period to be agreed between the undertaker and the discharging authority. Provision is made for further information to be requested and submitted and provides timescales associated with this process. This reflects the process that has been established in a number of other DCOs, for example Sheringham and Dudgeon Extensions (Part 2 of Schedule 2) and East Anglia 1N (Schedule 16).

129. Given the entirely offshore setting of the authorised project, the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 do not apply and, consequently, the Schedule does not make provision for fees for applications to discharge requirements.

7.5 Schedule 5 – Arbitration rules

130. This Schedule sets out the rules that apply to the arbitration of any dispute between parties. It is made effective by Article 15 (arbitration) of the Order. The undertaker considers that this approach provides greater certainty and clarity to all parties involved in the process and is preferential to the approach adopted in the Model Provisions. This reflects the process that has been established in other DCOs, including Sheringham and Dudgeon Extensions (Schedule 15), Hornsea Three (Schedule 14) and Awel y Môr (Schedule 12).

131. The timetable for the arbitration process is provided in paragraph 3. The costs of the arbitration will be awarded by the arbitrator and the principle that each party will bear its own costs unless either party behaved unreasonably. Costs will include the arbitrator's costs together with the reasonable legal fees and other costs incurred by the other party.

7.6 Schedule 6 – Deemed Marine Licence under the 2009 Act: Morecambe Offshore Windfarm Generation Assets

132. This Schedule sets out the terms of the deemed marine licence referred to in Article 5. The Model Provisions do not provide a draft deemed marine licence; however, standard provisions and structure have been developed and included within other DCOs granted under the 2008 Act. The deemed marine licence follows the standard structure developed by previous development consent orders for offshore wind farms, including Sheringham and Dudgeon Extensions (Schedules 10 and 11), Hornsea Four (Schedule 11), Norfolk Boreas (Schedules 9 and 10), East Anglia 1N (Schedule 13) and Triton Knoll (Schedule 2).

133. The deemed marine licence is deliberately drafted such that it can be read independently of the rest of the Order Schedules and, as such, there is intentional repetition from the Order of various definitions and the description of the authorised development.

134. Pre-application comments and consultation responses from the MMO, Natural England and other consultees were taken into account when drafting the licence. The licence includes the standard navigation conditions for offshore renewable energy installations, as agreed by the MMO, Trinity House, the Maritime and Coastguard Agency (MCA) and UK Hydrographic Office (UKHO), which were shared with the undertaker at statutory consultation. The undertaker has made minor changes to these standard conditions for grammatical purposes and to reflect other deemed marine licence precedents. These standard conditions have also evolved following discussions with stakeholders at Examination.

7.6.1 Part 1 – Licensed Activities

135. Paragraph 1 (Interpretation) of the Deemed Marine Licence defines the key terms used in the Deemed Marine Licence, which are largely identical to the terms defined in Article 2 (Interpretation) of the Order.

136. Paragraphs 2 to 4 (Details of licensed marine activities) provides details of the licensed activities in terms of construction, operation and maintenance. Paragraph 3 replicates the description of the authorised project (comprising of the authorised development, associated development and ancillary works) in Schedule 1 (authorised project) to the Order. Paragraph 4 describes the substances that may be disposed of as part of construction of the authorised project. These are not included in Schedule 1 to the Order, as it is considered more appropriate for these parameters to be controlled within the deemed

marine licence. Paragraph 5 and Table 4 set out the co-ordinates within which the licensed activities may be situated.

137. Paragraph 5 restricts the construction, maintenance and operation of the licensed activities to co-ordinates specified in Table 4 and shown on the **Offshore Order Limits and Grid Coordinates Plan** (Document Reference 2.4) [APP-008].

138. Paragraph 6 confirms that the deemed marine licence remains in force until the authorised project has been decommissioned.

139. Paragraph 7 confirms that the provisions of section 72(7) and (8) of the 2009 Act do not apply to any transfer of the deemed marine licence unless it is a transfer not falling within Article 7 of the Order. This is necessary to ensure that there is no conflict between the operation of Article 7 of the Order and the 2009 Act.

140. Paragraph 8 provides that the undertaker must notify the MMO of any materially false or misleading information on which the granting of the licence was based as soon as is reasonably practicable and must provide the correct information.

141. Paragraphs 1 to 5 are standard provisions in deemed marine licences, for which precedents can be found in Sheringham and Dudgeon Extensions (Part 1 of Schedules 10 and 11), Hornsea Four (Part 1 of Schedule 11), and East Anglia 1N (Part 1 of Schedule 13).

7.6.2 Part 2 – Conditions

142. The paragraphs in Part 2 are the equivalent of marine licence conditions and apply to the licensed activities. Approvals are to be sought from the MMO in consultation with the relevant statutory nature conservation body, Trinity House, the MCA and the UKHO (as appropriate). This is consistent with the processes and procedures employed by the promoters of other DCO schemes offshore.

143. Paragraph (Condition) 1 (Design parameters) and Table 5 repeat the design parameters included in Table 2 of Schedule 2 (requirements) to the Order.

144. Paragraph (Condition) 2 (Maintenance of the authorised project) confirms that the undertaker may at any time maintain the authorised project except where the terms of the licence provides otherwise. No maintenance works can be undertaken until an offshore operation and maintenance plan in accordance with the **Outline Offshore Operation and Maintenance Plan** (Document Reference 6.6) [REP5-030] is submitted to and approved by the MMO. Paragraph 2(4) requires all maintenance works to be carried out in accordance with the approved offshore operation and maintenance plan. Paragraphs 2(5) and (6) require an annual maintenance report to be submitted to the MMO

within one month following the first anniversary of the date of first operation of the authorised development and every year thereafter. Paragraph 2(7) requires a consolidated maintenance report to be submitted every fifth year. There are precedents for a maintenance condition in Hornsea Four (paragraph 4 of Part 2 of Schedule 11) and Hornsea Three (paragraph 5 of Part 2 of Schedule 11).

145. Paragraph (Condition) 3 (Extension of time periods) confirms that any time period given to either the undertaker or the MMO may be extended with the agreement of the other party. There are precedents for this condition in Sheringham and Dudgeon Extensions (paragraph 6 of Part 2 of Schedules 10 and 11), Hornsea Four (paragraph 6 of Part 2 of Schedule 11) and Hornsea Three (paragraph 6 of Part 2 of Schedule 11).

146. Paragraph (Condition) 4 (Notifications and inspections) provides a procedure of supplying copies of the licence to agents and contractors, restricting the use of the licence to contractors and vessels notified to the MMO and publicising commencement notices and other incident notices (such as the exposure of cables or damage to the project) of the licensed activities. There are precedents for this condition in Sheringham and Dudgeon Extensions (paragraph 7 of Part 2 of Schedules 10 and 11), Hornsea Four (paragraph 7 of Part 2 of Schedule 11) and East Anglia 1N (paragraph 10 of Part 2 of Schedule 13).

147. Paragraph (Condition) 5 (Aids to navigation) requires the undertaker to exhibit such aids to navigation as Trinity House may direct from time to time. This condition also requires the undertaker to publish notices to mariners and give notification of the progress of works to Trinity House. There are precedents for this condition in Sheringham and Dudgeon Extensions (paragraph 8 of Part 2 of Schedules 10 and 11), Hornsea Four (paragraph 8 of Part 2 of Schedule 11) and East Anglia 1N (paragraph 11 of Part 2 of Schedule 13).

148. Paragraph (Condition) 6 (Colouring of structures) sets the colour of structures from highest astronomical tide to a minimum of such height to be directed by Trinity House and the colour for the rest of the structure. There are precedents for this condition in Sheringham and Dudgeon Extensions (paragraph 9 of Part 2 of Schedules 10 and 11), Hornsea Four (paragraph 9 of Part 2 of Schedule 11) and East Anglia 1N (paragraph 12 of Part 2 of Schedule 13).

149. Paragraph (Condition) 7 (Chemicals, drilling and debris) sets standards that must be met by the undertaker in respect of the chemicals and other substances that can be used and how they can be stored, transported and where they can be disposed of. There are also provisions relating to chemicals and other substances that cannot be disposed of and a procedure to be followed should objects which may reasonably cause a hazard in the marine environment be dropped unintentionally. There are precedents for this condition in Sheringham and Dudgeon Extensions (paragraph 10 of Part 2 of

Schedules 10 and 11), Hornsea Four (paragraph 11 of Part 2 of Schedule 11) and East Anglia 1N (paragraph 14 of Part 2 of Schedule 13).

150. Paragraph (Condition) 8 (Force majeure) provides for deposits outside of the Order limits during emergency situations provided that sufficient notice is then given to the MMO. Paragraph 8(2) provides that unauthorised deposits must be removed at the undertaker's expense unless otherwise agreed with the MMO. There are precedents for this condition in Sheringham and Dudgeon Extensions (paragraph 11 of Part 2 of Schedules 10 and 11), Hornsea Four (paragraph 12 of Part 2 of Schedule 11) and East Anglia 1N (paragraph 15 of Part 2 of Schedule 13).

151. Paragraph (Condition) 9 (Pre-construction plans and documentation) requires the undertaker to obtain the approval, before the commencement of licensed activities or any phase thereof, of a range of documentation, including:

- A design plan, which accords with the **Design Statement** (Document Reference (Document Reference 4.3) [REP5a-007]
- A construction programme
- A monitoring plan, which accords with the **In Principle Monitoring Plan** (Document Reference 6.4) [final revision submitted at Deadline 6]
- An offshore construction method statement which includes details regarding cable specification, installation and monitoring, scour protection management and cable protection management and which accords with the **Outline Construction Method Statement** (Document Reference 9.49) [final revision submitted at Deadline 6]
- An offshore project environmental management plan, which accords with the **Outline Project Environmental Management Plan** (Document Reference 6.2) [REP5a-023]
- An offshore archaeological written scheme of investigation, which accords with the **Outline Offshore Written Scheme of Investigation** (Document Reference 6.10) [REP5-038]
- An offshore operation and maintenance plan, which accords with the **Outline Offshore Operation and Maintenance Plan** (Document Reference 6.6) [REP5-030]
- An aids to navigation management plan
- In the event that driven or part-driven pile foundations are proposed to be used, a marine mammal mitigation protocol, in accordance with the **Draft Marine Mammal Mitigation Protocol** (Document Reference 6.5) [final revision submitted at Deadline 6]

- A vessel traffic management plan, which accords with the **Outline Vessel Traffic Management Plan** (Document Reference 6.9) [REP5a-031]
- A fisheries liaison and co-existence plan, which accords with the **Outline Fisheries Liaison and Co-Existence Plan** (Document Reference 6.3) [REP5a-025]

152. Condition 9 is required to secure monitoring and mitigation measures proposed by the undertaker in its environmental statement. It also secures key design commitments such as:

- Layout in compliance with MGN654
- Micro-siting up to 55m in any direction
- Micro-siting relating to any benthic habitats of conservational, ecological or economic importance

153. There are precedents for this condition in Sheringham and Dudgeon Extensions (paragraph 12 of Part 2 of Schedules 10 and 11), Hornsea Four (paragraph 13 of Part 2 of Schedule 11) and East Anglia 1N (paragraph 17 of Part 2 of Schedule 13).

154. Paragraph (Condition) 10 stipulates the time period in which approvals given under paragraph 9 should be determined by the MMO unless otherwise stated or agreed. There are precedents for this condition in Sheringham and Dudgeon Extensions (paragraph 14 of Part 2 of Schedules 10 and 11), Hornsea Four (paragraph 14 of Part 2 of Schedule 11) and East Anglia 1N (paragraph 18 of Part 2 of Schedule 13).

155. Paragraph (Condition) 11 (Safety zones) requires a safety zone application under the Energy Act 2004. There is precedent for this condition in Rampion 2 (Condition 13 in Schedules 11 and 12) which was granted consent on 4 April 2025 while the Application was in Examination.

156. Paragraph (Condition) 12 (Offshore safety management) requires the undertaker to comply with MGN654 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues”. It has been included in response to a request from Trinity House during statutory consultation. Additionally, MGN654 sets out many of the best practice obligations that the undertaker has proposed to comply with in its environmental statement, such as in relation to wind turbine generator layout (i.e. two lines of orientation). There are precedents for this condition in Sheringham and Dudgeon Extensions (paragraph 15 of Part 2 of Schedules 10 and 11) and Hornsea Four (paragraph 15 of Part 2 of Schedule 11).

157. Paragraph (Condition) 13 (Reporting of engaged agents, contractors and vessels) requires the undertaker to provide the MMO details of agents and

contractors engaged in licensed activities. Paragraph 13(4) requires the deemed marine licence to be provided by the undertaker to any agents, contractors, subcontractors or vessels that will carry out any licensed activities. This condition is necessary to ensure that the MMO, as enforcing authority, has contact details for any parties carrying out licensed activities and also to ensure that any parties carrying out licensed activities are aware of the obligations under the deemed marine licence. There are precedents for this condition in Sheringham and Dudgeon Extensions (paragraph 16 of Part 2 of Schedules 10 and 11), Hornsea Four (paragraph 16 of Part 2 of Schedule 11) and East Anglia 1N (paragraph 19 of Part 2 of Schedule 13).

158. Paragraph (Condition) 14 (Pre-construction monitoring and surveys) requires the undertaker to submit a pre-construction monitoring plan or plans in accordance with the in principle monitoring plan for approval by the MMO. The condition sets out what must be included within the monitoring plan. There are precedents for this condition in Sheringham and Dudgeon Extensions (paragraph 17 of Part 2 of Schedules 10 and 11), Hornsea Four (paragraph 17 of Part 2 of Schedule 11) and East Anglia 1N (paragraph 20 of Part 2 of Schedule 13).

159. Paragraph (Condition) 15 (Construction monitoring) requires the undertaker to submit a construction monitoring plan or plans in accordance with the in principle monitoring plan for approval by the MMO. The monitoring plan or plans must include details of construction monitoring, including piling noise monitoring for the first four piled foundations of each piled foundation type and vessel traffic monitoring. There are precedents for this condition in Sheringham and Dudgeon Extensions (paragraph 18 of Part 2 of Schedules 10 and 11), Hornsea Four (paragraph 18 of Part 2 of Schedule 11) and East Anglia 1N (paragraph 21 of Part 2 of Schedule 13).

160. Paragraph (Condition) 16 (Post-construction monitoring) requires the undertaker to submit a post-construction monitoring plan or plans in accordance with the in principle monitoring plan for approval by the MMO. There are precedents for this condition in Sheringham and Dudgeon Extensions (paragraph 19 of Part 2 of Schedules 10 and 11), Hornsea Four (paragraph 19 of Part 2 of Schedule 11) and East Anglia 1N (paragraph 22 of Part 2 of Schedule 11).

161. Paragraph (Condition) 17 (Reporting of scour and cable protection) requires the undertaker to provide the MMO with a report within four months of the date of the completion of construction providing the location and volume of cable protection and scour protection. There are precedents for this condition in Sheringham and Dudgeon Extensions (paragraph 20 of Part 2 of Schedules 10 and 11).

162. Paragraph (Condition) 18 (Completion of construction) requires the undertaker to submit a close-out report to the MMO within four months of the

date of the completion of construction confirming the final number and parameters (relevant for ornithological collision risk modelling) of the installed wind turbine generators, the as built plans, the coordinates of the wind turbine generators, offshore substation platforms and the cables. Thereafter, no further construction activities can be undertaken under the licence. There are precedents for this condition in Sheringham and Dudgeon Extensions (paragraph 21 of Part 2 of Schedules 10 and 11) and East Anglia 1N (paragraph 31 of Part 2 of Schedule 13).

163. Paragraph (Condition) 19 (Marine Noise Registry) requires the undertaker to submit information compliant with the Marine Noise Registry requirements to the MMO in relation to driven or part-driven pile foundation works. There are precedents for this condition in East Anglia 1N (paragraph 23 of Part 2 of Schedule 13) and Norfolk Boreas (paragraph 21 of Part 4 of Schedule 9).

164. Paragraph (Condition) 20 (Underwater sound management strategy) requires submission and approval of an underwater sound management strategy, which must be in accordance with the **Outline Underwater Sound Management Strategy** (Document Reference 9.32) [REP5a-042], before commencement of any piling activities. This condition requires the underwater sound management strategy submitted to include details of the noise reduction measures and/or noise abatement system that will be utilised to manage sound where driven or part-driven pile foundations are proposed. This condition also prevents piling activities from being undertaken between 15 February and 31 March (inclusive) unless such activities are deemed necessary and the underwater sound management strategy approved by the MMO includes any additional mitigation requirements for such activities (which must thereafter be implemented). All piling activities must be carried out in accordance with the approved strategy for the duration of such activities. This condition has been included following requests from the MMO and Natural England to secure a strategy for the management of underwater sound impacts.

165. Paragraph (Condition) 21 (Deployment of new cable protection and scour protection) requires the deployment of cable protection and scour protection (save for the replenishment or replacement of existing protection, which constitutes maintenance) to take place within ten years from the date on which the operation of the authorised project commences, unless otherwise agreed by the MMO. This condition has been included following requests from Natural England.

7.7 Schedule 7 – Compensation measures

166. This Schedule is made of two parts.

167. Part 1 Compensation measures: Morecambe Bay and Duddon Estuary Special Protection Area and Ribble and Alt Estuaries Special Protection Area

secures the delivery of measures to ensure the overall coherence of the national site network in respect of lesser black-backed gull features should the Secretary of State conclude that such measures are necessary.

168. Without prejudice to the undertaker's position that there will be no adverse effect on the integrity on the lesser black-backed gull features of the Morecambe Bay and Duddon Estuary Special Protection Area and the Ribble and Alt Estuaries Special Protection Area as a result of the Project alone or in combination, the undertaker has prepared Part 1 of Schedule 7 to secure compensatory measures for lesser black-backed gull should the Secretary of State conclude that such measures are necessary.

169. The compensation measures include:

- The construction of a mammalian predator-proof exclusion fence and removal of mammalian predators within the fenced enclosure at key lesser black-backed gull nesting site(s) or
- The management and improvement of vegetation and scrub habitat for nesting lesser black-backed gulls at key lesser black-backed gull nesting site(s)

170. Schedule 7 provides details that must be included in the compensation, implementation and monitoring plan ("CIMP") for lesser black-backed gull, which must be in accordance with the outline compensation and implementation monitoring plan submitted with the Application.

171. Part 1 includes options for the undertaker to elect to pay a contribution to a strategic compensation fund in substitution for the compensation measures. This option has been provided to allow for opportunities for strategic compensation to be explored by the undertaker.

172. The undertaker's position remains that there will be no adverse effect on integrity of the lesser black-backed gull features of the Morecambe Bay and Duddon Estuary Special Protection Area and the Ribble and Alt Estuaries Special Protection Area as a result of the Project alone or in-combination. As such, the undertaker would submit that Part 1 of Schedule 7 (and Article 18 should Part 2 of Schedule 7 also be removed) should be removed from the Development Consent Order as made.

173. Part 2 Compensation measures: Liverpool Bay / Bar Lerpwl Special Protection Area secures the delivery of measures to compensate, either through a contribution to the strategic compensation fund or through a project-alone measure, for impacts to red-throated diver, should the Secretary of State conclude that such measures are necessary. This has been prepared without prejudice to the undertaker's position that there will be no adverse effect on the integrity of red-throated diver in the Liverpool Bay / Bar Lerpwl SPA.

174. Depending on which compensation measure is advanced then Part 2 of Schedule 7 sets out corresponding measures. Should the option for contribution to the strategic compensation fund be advanced then this must be agreed with the Secretary of State and provided in accordance with an agreement. Should the project-alone measure option be advanced then details of this must be provided through a compensation and implementation monitoring plan, and the measures must be implemented before any wind turbine generators are erected, unless otherwise agreed with the Secretary of State.

175. The undertaker's position remains that there will be no adverse effect on the integrity of the red-throated diver features of the Liverpool Bay / Bar Lerpwl SPA as a result of the Project alone or in combination. As such, the undertaker would submit that Part 2 of Schedule 7 (and Article 16 should Part 1 of Schedule 7 also be removed) should be removed from the Development Consent Order as made.

7.8 Schedule 8 – Documents to be certified

176. This Schedule sets out all of the documents that are to be certified under Article 12 of the Order, including documents forming the environmental statement.