

# **RWE Renewables UK Dogger Bank South (West) Limited**

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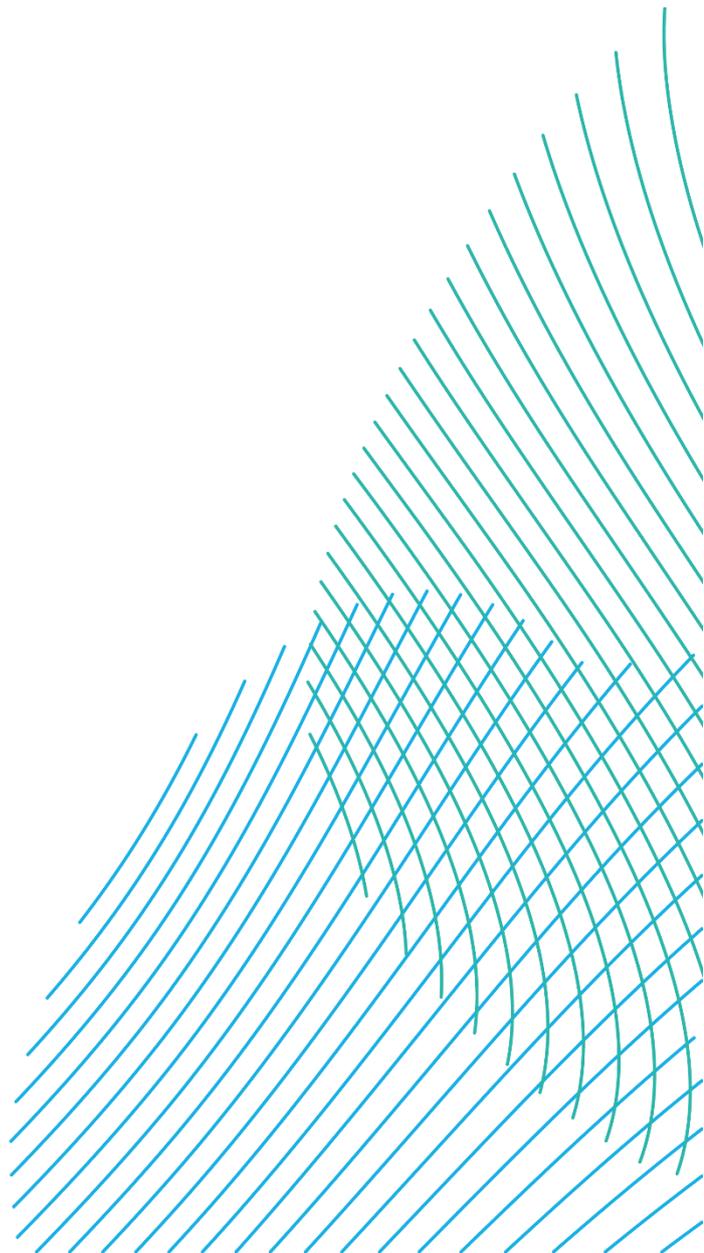
# **Dogger Bank South Offshore Wind Farms**

**Explanatory Memorandum  
Volume 3**

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## GLOSSARY

Term	Definition
APFP Regulations	The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
Applicants	RWE Renewables UK Dogger Bank South (West) Limited and RWE Renewables UK Dogger Bank South (East) Limited as the owners of DBS West and DBS East respectively
Application	The Applicants' application for development consent for the Projects
Deemed Marine Licence(s)	The deemed marine licences set out in Schedules 10 to 14 of the Order
NSIP	Nationally Significant Infrastructure Project
Order	The draft Dogger Bank South East and West Offshore Wind Farms Order 20[ ]
Projects	DBS East and DBS West (collectively referred to as the Dogger Bank South offshore wind farms)
1965 Act	The Compulsory Purchase Act 1965
1981 Act	Compulsory Purchase (Vesting Declarations) Act 1981
1990 Act	The Town and Country Planning Act 1990
1991 Act	The New Roads and Street Works Act 1991
2008 Act	The Planning Act 2008
2009 Act	The Marine and Coastal Access Act 2009

## 1 SUMMARY

1.1 This Explanatory Memorandum explains the purpose and effect of each article of, and Schedule to, the draft Dogger Bank South East and West Offshore Wind Farms Order 20[ ] (the "Order"), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the "APFP Regulations").

1.2 Regulation 5(2)(c) requires this memorandum to explain "*the purpose and effect of provisions in the draft order*".

2 **PURPOSE OF THE ORDER** RWE Renewables UK Dogger Bank South (East) Limited (incorporated in England under company number 13656240) ("DBSEL") and RWE Renewables UK Dogger Bank South (West) Limited (incorporated in England under company number 13656525) ("DBSWL") (DBSEL and DBSWL together being referred to as the "Applicants") are applying to the Secretary of State for Energy Security and Net Zero for a development consent order for the construction, operation and decommissioning of two offshore wind power generating stations – the DBS East Project and the DBS West Project (which together comprise the "authorised project" for the purposes of the Order). DBSEL are the owners of the DBS East Project and the DBSWL are the owners of the DBS West Project. As such, DBSEL and DBSWL are both the "undertaker" for the purposes of the Order.

2.2 A single Application allows for consistency across the Projects on the approach to assessments, consultation and examination. Separate Deemed Marine Licences are provided for in the Order to allow each Project to retain rights to their own particular assets should ownership of each Project change.

2.3 In summary, the authorised project consists of two offshore energy generating stations and electrical connections comprising:

- (a) The DBS East Project array area comprising up to 100 offshore wind turbine generators, which will be located approximately 122km from the East Riding of Yorkshire coast;
- (b) The DBS West Project array area comprising up to 100 offshore wind turbine generators, which will be located approximately 100km from the East Riding of Yorkshire coast;
- (c) Other offshore infrastructure including offshore electrical installations (of which there will be no more than eight, comprising no more than six offshore converter or collector platforms, one offshore accommodation platform, and one offshore switching platform) in-field cables and buoys;
- (d) Up to four HVDC offshore export cable circuits to bring the power generated to shore;
- (e) Landfall near Skipsea on the East Riding of Yorkshire coast and onshore electrical connections and cabling; and
- (f) Up to two new onshore converter stations to allow transmission of electricity to the National Grid via onward connections to the proposed Birkhill Wood National Grid Substation.

2.4 A detailed explanation of the authorised project is set out in **Environmental Statement Volume 1, Chapter 5 – Project Description (application ref: 7.5)** which accompanies the Application.

2.5 In order to allow the site selection process for the Projects to progress, National Grid ESO provided the Applicants with an indicative location for the new National Grid substation. In July 2022, National Grid ESO identified connections for both Projects to the UK electricity

network at the proposed Birkhill Wood National Grid Substation. The Substation is not part of the Projects, and therefore not part of the Application. The Substation will be constructed and owned by National Grid ESO. Connection to the Substation would be completed by National Grid or their appointed contractor, and is expected in 2029. The Substation has been considered in the Applicants' assessment of likely significant cumulative effects, as shown by **Environmental Statement, Appendix 6-1 Onshore Cumulative Effects Assessment Methodology, Annex A Onshore Cumulative Effects Long-List Schemes (application ref: 7.6.6.1)**.

- 2.6 The Order also seeks to confer upon the undertaker powers of compulsory acquisition of land or rights over land which are required for the onshore elements of the authorised project or to facilitate them, or that are incidental to them within the meaning of section 122 of the Planning Act 2008 (the "2008 Act").
- 2.7 As the Order seeks to apply and modify statutory provisions under Section 120(5) of the 2008 Act, it has been drafted as a statutory instrument as required under Section 117(4) of the 2008 Act.

### **3 NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECT**

- 3.1 Under sections 14(1)(a) and 15(3) of the 2008 Act, a generating station is a nationally significant infrastructure project ("NSIP") where;
  - (a) it is in waters in or adjacent to England up to the seaward limits of the territorial sea, or in a Renewable Energy Zone; and
  - (b) its capacity is more than 100 megawatts ("MW").
- 3.2 The DBS East Project and the DBS West Project both qualify as NSIPs as they are offshore generating stations within the Renewable Energy Zone and each generating station will have a capacity of more than 100MW.
- 3.3 The authorised project therefore constitutes two NSIPs. Under section 37 of the 2008 Act, development consent must be obtained from the Secretary of State to authorise NSIP(s), and an application for a DCO must be made to the Secretary of State, care of the Planning Inspectorate.

### **4 WORKS DESCRIPTIONS**

- 4.1 Part 1 (Authorised development) of Schedule 1 (Authorised project) to the Order contains a list of numbered works comprising the authorised development.
- 4.2 In recognition of the fact that the DBS East Project and the DBS West Project are owned by separate companies, and in order to provide sufficient flexibility to the way in which the two Projects can be constructed, the Order provides for the authorised project to be delivered in any one of the following ways:
  - (a) The construction of the DBS East Project only, where the DBS West Project does not proceed to construction;
  - (b) The construction of the DBS West Project only, where the DBS East Project does not proceed to construction;
  - (c) Sequential construction of the DBS East Project then the DBS West Project (where construction on either Project could commence first, but with overlapping construction. The first Project would install cable ducts for the second Project), or vice versa; or
  - (d) Concurrent construction of the two Projects.

- 4.3 To reflect the fact that the draft Order authorises two NSIPs which could be delivered in various ways, the authorised works are split out as follows:
- (a) Work Nos 1A to 34A (the 'A' Works) – these are the works for which DBSEL only has development consent and compulsory acquisition powers. The DBS East offshore generating station is comprised within Work No. 1A. Work Nos. 2A to 34A are the offshore and onshore grid transmission and connection works (including associated mitigation works) and are associated development. The Applicants have committed to build only the eastern onshore converter station if the DBS East Project is built in isolation. Work No. 25A comprises the western onshore converter station, and Work No. 26A comprises the eastern onshore converter station.
  - (b) Work Nos 1B to 34B (the 'B' Works) – these are the works for which DBSWL only has development consent and compulsory acquisition powers. The DBS West offshore generating station is comprised within Work No. 1B. Work Nos. 2B to 34B are the offshore and onshore grid transmission and connection works (including associated mitigation works) and are associated development. As the western onshore converter station will not be built if the DBS West Project is built in isolation, there is no Work No. 25B.
- 4.4 In order to ensure that only the eastern converter station is built if only the DBS East Project is taken forward, the Order includes a requirement (Sub-paragraphs (5) to (8) of requirement 8) for notification to be submitted prior to the commencement of the DBS East Project onshore works to the relevant planning authority as to whether DBSWL intends to commence development of the DBS West Project. If the notification gives notice that DBSWL does not intend to commence development, DBSEL is authorised only to build the eastern converter station and must not build the western converter station.

## 5 ASSOCIATED DEVELOPMENT

- 5.1 Part 1 of Schedule 1 of the Order specifically authorises development which is associated with the Projects. The Secretary of State may, under the provisions of Section 115(4A) of the 2008 Act, grant consent for development that is associated with an NSIP.
- 5.2 Guidance on associated development has been issued by the Secretary of State<sup>1</sup>. Paragraph 5 of the DCLG Guidance sets out core principles which must be taken into account by the Secretary of State when deciding whether or not development should be treated as associated development. In summary:
- (a) There should be “*a direct relationship between associated development and the principal development.*”
  - (b) “*Associated development should therefore either support the construction or operation of the principal development, or help address its impacts.*”
  - (c) “*Associated development should not be an aim in itself but should be subordinate to the principal development.*”
- 5.3 In most cases therefore associated development will be “*typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project*” (paragraph 6). The grid connection for a commercial power station is given as a specific example of associated development.
- 5.4 The two offshore wind generating stations (the NSIPs) are comprised within Work Nos. 1A for the DBS East Project and 1B for the DBS West Project. Work Nos. 2A to 34A and 2B to 34B are all associated development. They are directly related to the two generating

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

stations by being part of the electrical transmission system and grid connection works necessary to operate the two generating stations or mitigation works required to address impacts which may arise during the construction and operation of the two offshore generating stations.

- 5.5 In addition, the core principles in paragraph 5 of the Guidance also states that “*Associated development should be proportionate to the nature and scale of the principal development. However, this core principle should not be read as excluding associated infrastructure development (such as a network connection) that is on a larger scale than is necessary to serve the principal development if that associated infrastructure provides capacity that is likely to be required for another major infrastructure project.*”
- 5.6 There is precedent for including two NSIPs in one DCO where the two NSIPs have either the same or adjacent Order limits for some or all elements of the associated development. This approach has previously been taken in The Dogger Bank Creyke Beck Offshore Wind Farm Order 2015 (“Creyke Beck”), The Dogger Bank Teesside A and B Offshore Wind Farm Order 2015 (“Teesside A and B”), The Hornsea Two Offshore Wind Farm Order 2016 (“Hornsea Two”), and The Sheringham Shoal and Dudgeon Extensions Offshore Wind Farm Order 2024 (“SEP and DEP”). This enables some associated development to be undertaken on a joint and / or overlapping basis whereby one undertaker constructs an element of work for the benefit of both projects such as would be the case for various elements of each Project’s associated development. This approach allows for the undertakers, wherever possible, to construct both projects in the most efficient and timely manner available at the point at which one or both projects are ready to start construction.
- 5.7 In some cases there may be some overlap between associated development and works which form part of the NSIPs. All elements of each Project either constitute part of one of the NSIPs or are associated development within the meaning of section 115(4A) of the 2008 Act, and so can properly be authorised by the Order.

## **6 ANCILLARY WORKS**

- 6.1 The Order also authorises ancillary works within the Order limits, which are set out in Part 2 (Ancillary works) of Schedule 1 of the Order. These are works that do not constitute development but are required to facilitate the construction of the authorised development.
- 6.2 The authorised development and the ancillary works are together referred to in the Order as the “authorised project”.

## **7 ANCILLARY MATTERS**

- 7.1 In addition to providing for the construction and operation of the authorised project, the Order will, in accordance with Section 122, Section 120(3) and Schedule 5 of the 2008 Act, authorise the acquisition of land and rights over land, and the extinguishment of, or interference with, interests in or rights over land. The **Book of Reference (application ref: 4.2)** sets out a description of the land and interests included in the Order. The Order and the Book of Reference should be read together with the **Statement of Reasons (application ref 4.1)** which accompanies the Application and sets out the justification for the acquisition of or interference with the Order land.
- 7.2 Other ancillary matters include the application and disapplication of legislation, the power to undertake works to streets, and the ability to take temporary possession of land.

## **8 THE DRAFT ORDER**

- 8.1 The Order is based on the model provisions set out in Schedule 1 to the Infrastructure Planning (Provisions) (England and Wales) Order 2009 (the “Model Provisions”) as well as relevant precedents. Whilst the Model Provisions have been repealed, **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 developers to draft a comprehensive set of lawful provisions. The Department for Levelling Up, Housing and Communities' **'Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects'** (the "Guidance") explains the current approach to drafting a DCO is set in the Guidance, Advice Note 13, and is "...supplemented by precedents from made DCOs in recent years..." Regard has been had to the Guidance in the preparation of the draft Order.

- 8.2 The Order adopts the 'Rochdale Envelope' whereby the maximum permitted consent envelope is provided for and assessed in the Environmental Statement, allowing some of the scheme detail to be approved post-consent. The approval of that detail is provided for within the requirements in Part 1 (Requirements) of Schedule 2 of the Order, and the conditions in the Deemed Marine Licences in Schedules 10 to 14 of the Order.
- 8.3 The form of the Order has had regard to recent, comparable precedent Orders including The Hornsea Three Offshore Wind Farm Order 2020 ("Hornsea Three"), The Norfolk Boreas Offshore Wind Farm Order 2021 ("Norfolk Boreas") and The Norfolk Vanguard Offshore Wind Farm Order 2022 ("Norfolk Vanguard"), The East Anglia One North Wind Farm Order 2022 ("East Anglia One North"), The East Anglia Two Wind Farm Order 2022 ("East Anglia Two"), and The Hornsea Four Offshore Wind Farm Order 2023 ("Hornsea Four").
- 8.4 As the Order seeks development consent for two NSIPs within the same Order, regard has also been had to previous Orders where a similar approach has been taken such that consent has been granted for more than one NSIP within the same Order. In particular, SEP and DEP.

## **Part 1 – Preliminary**

### ***Article 1 – Citation and commencement***

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

### ***Article 2 - Interpretation***

- 8.7 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.
- 8.8 Definitions to note include:
- (a) "commence" - The definition of "commence" is based on the wording used in various other offshore wind DCOs and excludes various pre-commencement activities from triggering commencement of either the licensed marine activities (authorised by the Deemed Marine Licences) or the onshore works.
  - (b) "maintain" - A definition of "maintain" has been added to make clear what is authorised under article 4, and that this does not permit the undertaker to depart from the description of the authorised project in Schedule 1 or to carry out maintenance operations which would cause new or different environmental effects to those identified in the Environmental Statement.
  - (c) "Order land" – This means the onshore red line boundary for the authorised project as shown on the land plans and described in the Book of Reference.
  - (d) "Order limits" - This means the red line boundary for the authorised project as shown on the works plans and the land plans.

- (e) “pre-commencement works” - This definition lists out the activities which are excluded from the definition of “commence” in relation to the onshore works. Where “pre-commencement works’ are not considered ‘development’ pursuant to Section 55 of the Town and County Planning Act 1990 or would normally benefit from permitted development rights under the Town and Country Planning (General Permitted Development) (England) (Order) 2015, it is not normally necessary for those activities to be subject to additional controls within a DCO. However, where appropriate certain “pre-commencement works” are subject to relevant controls within the Requirements in Schedule 2 of the Order. These are noted where relevant below.
- (f) “undertaker” - The Order authorises two projects (the DBS East Project and the DBS West Project) which are owned by separate companies, DBSEL and DBSWL. Each company is the undertaker in respect of its NSIP. The term “undertaker” is therefore defined to make clear that each company is the relevant undertaker for its own Project and there where a company exercises the powers under the Order in relation to any works that company will be responsible for any restrictions, liabilities and obligations arising in relation to those works. This is based on a similar approach to the definition of undertaker in Hornsea Two and SEP and DEP.
- 8.9 Article 2(2) expands the definition of rights over land in the same way as many other DCOs including Hornsea Two, Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two and Hornsea Four.
- 8.10 Articles 2(3) defines measurements as approximate. The purpose of this is to ensure that if, upon construction of the works, it transpires that the distances are marginally different to those listed in the Order, there is no issue over whether the Order permits the works. It is now common practice to include such provision in development consent orders; the model provisions included similar wording in article 1(3) and similar wording is used in Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two and Hornsea Four.
- 8.11 Article 2(4) confirms that references to works are to the works numbered in Part 1 of Schedule 1.

## **Part 2 – Principal powers**

### ***Article 3 – Development consent granted by the Order***

- 8.12 Article 3 is based on the equivalent provisions in Hornsea Two and Teesside A and B and provides development consent for the authorised development and ancillary works described in Part 1 and Part 2 of Schedule 1. Together the authorised development and the ancillary works form the authorised project.
- 8.13 DBSEL is authorised to carry out the DBS East-only works listed in Schedule 1 and related ancillary works. DBSWL is authorised to carry out any DBS West-only works listed in Schedule 1, and related ancillary works.
- 8.14 Development consent is subject to the provisions of the Order, including the Requirements listed in Schedule 2 and the conditions contained within the Deemed Marine Licences in Schedule 10 to 14 of the Order, and therefore all the relevant management plans secured through either the Requirements or the conditions. This is based on article 2 of the Model Provisions, with the only substantive difference being that article 2 of the Model Provisions does not refer to consent being granted for ancillary works, which is the approach that is now taken in other offshore wind development consent orders including Hornsea Two, Teesside A and B, Hornsea Three, Norfolk Vanguard, Norfolk Boreas, East Anglia One North, East Anglia Two and Hornsea Four.

#### ***Article 4 – Maintenance of the authorised project***

- 8.15 This article provides the undertaker with a general power to maintain the authorised project, subject to any contradictory provisions in the Order. This follows article 4 of the Model Provisions, and reflects the equivalent provision in recent development consent orders including article 4 of Hornsea Three, East Anglia One North, East Anglia Two, and Hornsea Four, and article 5 of Norfolk Boreas and Norfolk Vanguard.

#### ***Article 5 – Benefit of the Order***

- 8.16 Article 5 overrides Section 156(1) of the 2008 Act (as permitted by Section 156(2)) to give the benefit of the Order to the undertaker rather than anyone with an interest in the land. This is appropriate because the Order includes powers of compulsory acquisition that need to be backed by assurances regarding the ability of each project company to cover any compensation payable. In any event, it would be impractical for a variety of landowners to implement the Order.
- 8.17 This article allows the benefit of the Order to be transferred or leased to others by the undertaker. With regards to the Deemed Marine Licences included in Schedules 10 to 14 of the Order, Article 5 only provides for each Deemed Marine Licence to be transferred as a whole and not leased. This article is necessary to allow the undertaker commercial freedom to sell or lease the authorised project while ensuring that the Secretary of State can control such sale or lease through the need to obtain their consent. Without the ability to transfer the benefit, no party but the undertaker could operate the generating station without committing a criminal offence. This article is therefore necessary to ensure that the authorised project is fundable and could be sold or leased in the future.
- 8.18 The exercise of any transferred benefits or rights is subject to the same restrictions, liabilities and obligations as would apply under the Order if those benefits or rights were exercised by the undertaker. The consent of the Secretary of State is required for a transfer or grant, except where it is made to specified categories of person.
- 8.19 Specifically, consent is not required to transfer the benefit to a holder of an electricity generation licence. As these transfers are restricted to persons holding appropriate licences, such persons will already have been determined to be fit to operate such facilities.
- 8.20 In addition, bespoke drafting has been added to Article 5 at sub-paragraph (8)(b) so that consent is not required to transfer the benefit of the Order to a company that is either wholly owned by or a subsidiary of DBSEL and/or DBSWL. This is to allow flexibility in the way the Projects' transmission assets may be constructed and/or operated in the future. It allows for a company dealing with grid connection ("GridCo") to be introduced and maximises the potential to bring forward the transmission assets in an integrated manner.
- 8.21 The article includes a procedure to be adopted when making an application to the Secretary of State for consent. The drafting of this article reflects the equivalent provision in recent development consent orders including Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two and Hornsea Four.

#### ***Article 6 – Disapplication and modification of legislative provisions***

- 8.22 This article provides for the disapplication of certain requirements which would otherwise apply under public general legislation, as well as local legislation as authorised by Section 120(5)(a) of the 2008 Act. Section 120(5)(a) provides that an order granting development consent may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the Order.
- 8.23 Article 6(1)(a) to (d) disapplies the requirement for various consents which would otherwise be required from the Environment Agency and relevant drainage authorities specifically, these are the requirements for consents for the placing of structures on, over or under rivers, the construction of culverts, together with the requirements for approval

under flood defence and land drainage byelaws. These are consents for activities which may be a necessary part of constructing the authorised development. To provide certainty that the authorised project can proceed, the Order disapplies the requirement for separate statutory consents to be obtained in relation to these activities. These provisions are included in Norfolk Boreas, Norfolk Vanguard and Hornsea Four.

- 8.24 Section 150 of the 2008 Act provides that where an order granting development consent includes a provision the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted, the order may only be granted if the relevant body has consented to the inclusion of the provision. The Environment Agency and the relevant drainage authorities have consented to the disapplication of the various water and drainage related consents under Article 6(1)(a) to (d) of the Order in recognition of which protective provisions have been included within Parts 3 and 4 of Schedule 15 (Protective provisions) of the Order to regulate and manage watercourse crossings.
- 8.25 Article 6(1)(e) disapplies the provisions of the Neighbourhood Planning Act 2017 (the “2017 Act”) relating to the temporary possession of land. This is on the basis that the temporary possession of land is dealt with by articles 29 and 30 and the wording of those provisions is well established. The 2017 Act provisions differ from those in the Order and are untested, as they are not yet in force. It is therefore necessary to disapply them in case they should come into force in the future. This disapplication has been included in a number of offshore generating station development consent orders including most recently Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two and Hornsea Four.
- 8.26 Article 6(2) provides for the modification of Regulation 6(1) of the Hedgerows Regulations 1997 (the “1997 Regulations”) to provide that removal of any hedgerow to which the 1997 Regulations relates is permitted for the carrying out or maintenance of development which has been authorised by a DCO. This is precedented in a number of other development consent orders including Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two and Hornsea Four.

**Article 7 - Defence to proceedings in respect of statutory nuisance**

- 8.27 Section 158 of the 2008 Act confers statutory authority for the purposes of a defence in civil or criminal proceedings for nuisance. This article provides a defence to proceedings brought in a magistrates’ court under Section 82(1) of the Environmental Protection Act 1990 in relation to certain nuisances set out in Section 79(1)(g) of the Environmental Protection Act 1990. The specified nuisances are:
- (a) *“(d) any dust, steam or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance”;*
  - (b) *“(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;”*
  - (c) *“(g) noise emitted from premises so as to be prejudicial to health or a nuisance”;*  
*and*
  - (d) *“(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street”.*
- 8.28 A broad defence to civil and criminal proceedings for nuisance is provided by Section 158 of the 2008 Act. However, the view taken under the NSIP regime is that Section 158 does not extend to the relatively rare situation by which if somebody considers that the local authority ought to be tackling a nuisance using its statutory nuisance powers, but it is not, that person may apply to the magistrates’ court under Section 82 of the Environmental Protection Act 1990. Accordingly, this article is seeking to fill in a legislative gap by extending the effect of Section 158.

- 8.29 As Section 158 does not distinguish between different types of nuisance, the logical position is that this article should apply to all categories of nuisance. However, as a matter of practice, other projects have been more discriminating and have asked whether there is any possibility of a statutory nuisance occurring, leading to specific types of nuisance being referred to. The undertaker has followed this approach by seeking to restrict the application of this article so that it only applies to nuisances that have been identified as potentially resulting from the authorised development, as set out in the **Statutory Nuisance Statement (application ref: 8.4)** accompanying the Application. This ensures that this article is focused only on those nuisances that may be of relevance, whilst also reflecting the logic and correct interpretation of Section 158.
- 8.30 The defence is available if the nuisance relates to:
- (a) the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and is attributable to the carrying out of the authorised project in accordance with a notice served, or consent given, under the Control of Pollution Act 1974; or
  - (b) the construction, maintenance or use of the authorised project and cannot reasonably be avoided.
- 8.31 This article is based on article 7 of the Model Provisions and recent orders including article 7 of Hornsea Three, East Anglia One North, East Anglia Two, and Hornsea Four and article 8 of Norfolk Vanguard and Norfolk Boreas. The references to Section 65 of the Control of Pollution Act 1974 are omitted because that section has been repealed.

### **Part 3 – Streets**

#### ***Article 8 – Street works***

- 8.32 Article 8 allows the undertaker to interfere with and execute works in or under the streets specified in Part 1 (Streets subject to permanent street works) of Schedule 3 within the Order limits for the purposes of the authorised project. The authority given by this article is a statutory right for the purposes of Sections 48(3) and 51(1) of the New Roads and Street Works Act 1991 (the “1991 Act”). Certain provisions of the 1991 Act apply to works carried out under this article, subject to the provisions of article 9 (Application of the 1991 Act).
- 8.33 Article 8 is based on article 8 of the Model Provisions.

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

- 8.34 Article 9 provides for the application of specified provisions of the 1991 Act to works carried out under article 8 and article 10. Although not included in the Model Provisions, there is precedent for including these provisions in previous orders, including article 9 of Hornsea Three, East Anglia One North, East Anglia Two and Hornsea Four, and article 14 off Norfolk Vanguard and Norfolk Boreas.

#### ***Article 10 – Temporary closure of streets***

- 8.35 This article allows for the temporary closure, restrict alteration, or diversion of streets for the purposes of the authorised project, whilst ensuring that essential pedestrian access to and from premises along that street is maintained if necessary (paragraph (3)). This power is required because it is necessary to be able to restrict the use of the street in order to allow installation of the cables. Closures and traffic management will also be required to facilitate the creation or improvement of junctions. Where possible and safe, closures for access junction works will be partial only and not close the full width of the carriageway.
- 8.36 Paragraph (2) confers a power on the undertaker where a street has been temporarily closed or restricted under this article to use it as a temporary working site. It is not

anticipated that any street would be used as a working site except when undertaking works affecting the carriageway itself.

- 8.37 Paragraph (6) provides a right to compensation for any person suffering loss due to the suspension of a private right of way under this article.
- 8.38 Paragraph (7) states that, where the street authority fails to notify the undertaker of its decision in respect of an application for consent within 28 days of the application being made, it is deemed to have given its consent. This time limit is considered necessary to remove the possibility for delay and provide certainty that the authorised project can be delivered by the undertaker in a timely fashion. As NSIPs, the authorised project should not be at risk of being held up due to a failure to respond to an application for consent.
- 8.39 This provision has been included in numerous previous orders including article 10 of Hornsea Three, article 12 of East Anglia One North and East Anglia Two and article 11 of Norfolk Vanguard and Norfolk Boreas.

***Article 11 - Closure and diversion of public rights of way***

- 8.40 This article allows the undertaker to temporarily stop up a public right of way, or permanently divert a right of way, where it is in connection with the carrying out of the authorised project.
- 8.41 Paragraph (1) allows the undertaker, where it is in connection with the carrying out of the authorised project, to temporarily stop up a public right of way where it is specified in Part 1 (Public rights of way to be temporarily closed) of Schedule 5 of the Order to the extent stipulated in the same schedule.
- 8.42 Paragraph (6)) allows the undertaker, where it is in connection with the carrying out of the authorised project, to permanently divert a public right of way where it is specified in Part 2 (Public rights of way to be permanently diverted) of Schedule 5 of the Order to the extent stipulated in the same schedule.
- 8.43 This article is not included in the Model Provisions, but it is preceded in article 11 each of Hornsea Three, Hornsea Four, East Anglia One North and East Anglia Two and article 10 of Norfolk Boreas and Norfolk Vanguard.

***Article 12 – Power to alter layout, etc. of streets***

- 8.44 This article is not included in the Model Provisions but does appear in a similar form in other DCOs, for example the Southampton to London Pipeline Development Consent Order 2020 (“Southampton to London”), and The River Humber Gas Pipeline Replacement Order 2016 (“River Humber”). The article is provided for under section 120(3) and (4) together with paragraph 15 of Part 1 of Schedule 5 to the 2008 Act, namely the carrying out of civil engineering or other works.
- 8.45 Paragraph (1) permits the undertaker to temporarily alter the layout of the streets listed Part 2 (Streets subject to temporary street works) of Schedule 3 to the Order, in connection with the carrying out of the proposed project. The article also provides a power to carry out works in any of these streets.
- 8.46 Paragraph (2) provides broader powers available for those streets not listed in Schedule 3, subject to the consent of the street authority, with such consent not to be unreasonably withheld or delayed as set out in paragraph (4). This enables the undertaker to acquire the necessary flexibility to alter streets which, at the date on which the Order is made, are not listed within Schedule 3. Paragraph (2) also sets out a broad range of works that the undertaker may undertake on any street, including altering the level or increasing the width of any street, making and maintaining passing places, altering existing facilities in streets and providing facilities for the management and protection of pedestrians (for example, pedestrian crossings). The range of activities provided for in article 11(2) can be found in other DCOs for example Southampton to London and River Humber.

- 8.47 Paragraph (3) ensures that any street temporarily altered must be restored to the reasonable satisfaction of the street authority.
- 8.48 Paragraph (5) provides that where consent for the exercise of powers under paragraph (2) is not provided within 28 days of receipt, the undertaker is to be treated as having been granted deemed consent.

#### ***Article 13 – Access to works***

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

#### ***Article 14 – Agreements with street authorities***

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

#### ***Article 15 – Use of private roads***

- 8.52 The article authorises the temporary use of private roads within the Order limits by persons or vehicles, for the purposes of, or in connection with, the construction and maintenance of the authorised project, without the need for the undertaker to acquire a permanent right of way over that land. Paragraph (2) clarifies that the undertaker will be liable for any loss or damage a person may suffer by reason of the exercise of this power.
- 8.53 This article does not create a right of the undertaker to exclude other users. This article has been based on article 13 of Southampton to London.

#### **Part 4 – Supplemental powers**

##### ***Article 16 – Discharge of water***

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

8.57 This article follows article 15 of Hornsea Three, Norfolk Vanguard and Hornsea Four.

**Article 17 – Protective work to buildings**

8.58 The purpose of this article is to allow the undertaker to undertake protective works to buildings affected by the authorised project. It was included in the Model Provisions as article 15.

**Article 18 – Authority to survey and investigate land onshore**

8.59 This article gives the undertaker the power to enter land for the purpose of surveying and investigating. It provides that the undertaker must give 14 days' notice before exercising the powers of entry. Compensation is payable for any loss or damage caused. Paragraphs (1) and (3) to (5) were included in the Model Provisions as article 16. The first part of paragraph (2) was also included in the Model Provisions but additional wording has been added to clarify that the notice to be served on landowners must include certain details where certain specified activities will be undertaken.

8.60 Paragraph (9) applies section 13 of the Compulsory Purchase Act 1965 (the “1965 Act”), thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the article is refused. This paragraph was included in article 16 the Silvertown Tunnel Order 2018 (Silvertown Tunnel) and article 19 of The Port of Tilbury Expansion Order 2019 (Port of Tilbury) as well as more recently in article 17 in each of Hornsea Three, East Anglia One North and East Anglia Two, article 16 of Norfolk Vanguard and Norfolk Boreas, and article 16 of Hornsea Four.

**Article 19 – Removal of human remains**

8.61 This article requires the undertaker, before it carries out any development or works which will or may disturb any human remains, to remove those remains. This article is included on a precautionary basis in case human remains are discovered while carrying out the authorised project.

8.62 Without this article, authorisation from the appropriate Minister would be required to remove remains. The article sets out a process of notification of the discovery of remains and for their removal and reinternment or cremation. The removal of any remains is required to be carried out in accordance with any directions which may be given by the Secretary of State. Article 19 generally follows article 17 of the Model Provisions, and was included in article 28 of The Glyn Rhonwy Pumped Storage Generating Station Order 2017 (Glyn Rhonwy), and article 17 of both Norfolk Vanguard and Norfolk Boreas.

8.63 Paragraphs (12) and (13) depart from the Model Provisions, as paragraph (12) excludes the requirement to give notice before the removal of human remains where the undertaker is satisfied that the remains were interred more than 100 years ago, and that no relative or personal representative of the deceased is likely to object to their removal. Paragraph (13) requires the undertaker to seek and comply with direction from the Secretary of State regarding the treatment of such remains following their removal. These paragraphs were included in article 52 of the A428 Black Cat to Caxton Gibbet Development Consent 2022.

**Part 5 – Powers of acquisition**

**Article 20 – Compulsory acquisition of land**

8.64 This article authorises the acquisition of land by compulsory purchase. It grants DBSEL the power to acquire (subject to consent from DBSWL) the land that is required for any of the DBS East-only works, and vice versa grants DBSWL the power to acquire (subject to consent from DBSEL) the land that is required for any of the DBS West-only works. The **Statement of Reasons (application ref: 4.1)** explains in more detail how any compulsory acquisition powers sought under the DCO are intended to have effect.

- 8.65 The Order land for both Projects is the same and therefore the consent of the other undertaker is necessary when exercising powers of compulsory acquisition to ensure coordination between the two Projects such that each Project will be able to secure appropriate land and rights for construction, operation and maintenance of its project assets.
- 8.66 The operation of this article is subject to articles 23 (compulsory acquisition of rights), 26 (acquisition of subsoil or airspace only), 29 (temporary use of land for carrying out the authorised project) and 40 (crown rights) which are explained below.
- 8.67 Article 21 is based on article 18 of the Model Provisions. This power applies to all of the land required for the authorised project. Power to acquire other land, including the permanent ecological mitigation land, is required as these elements must be able to be delivered for the authorised project to be acceptable in environmental and ecological terms.

***Article 21 - Time limit for exercise of authority to acquire land compulsorily***

- 8.68 This article gives the undertaker seven years to issue notices to treat or to execute a general vesting declaration to acquire the land that may be compulsorily acquired under the Order. These are the two main procedural methods by which the process of compulsorily acquiring land may be undertaken should the Order be made.
- 8.69 The article also sets a seven year time limit on the power to take temporary possession of land under article 29, although it does not prevent the undertaker from remaining in possession of land after that time so long as possession was taken within the seven year limit.
- 8.70 This article was included in the Model Provisions as article 20. The seven year time limit has been included in a number of offshore wind DCOs. It was included in article 24 of Teesside A and B, article 19 of each of, Hornsea Three, East Anglia One North and East Anglia Two, and article 20 of Hornsea Four. It is considered appropriate for the Projects given the combined nature and scale of the two Projects as well as the need to secure separate Contract for Difference (“CfD”) awards prior to the commencement of construction of either Project.

***Article 22 – Compulsory acquisition of rights***

- 8.71 This article allows for rights over land to be acquired as well as the land itself, and also for new rights to be created over land. This includes the power to impose restrictive covenants. The public benefit of this is that it would allow the undertaker to reduce the land subject to outright acquisition if possible and rely on rights instead.
- 8.72 Paragraph (3) provides that for the land described in Schedule 7, the undertaker's powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as set out in that Schedule.
- 8.73 The power to impose restrictive covenants will allow for the possibility of reducing the land subject to outright acquisition and thus enable a more proportionate exercise of compulsory powers. It is therefore in the public interest.
- 8.74 Paragraph (4) provides that where the undertaker only needs to acquire rights over land it is not obliged to acquire any greater interest in that land.
- 8.75 Paragraph (5) applies Schedule 8 of the Order, which imposes modifications to the compulsory purchase and compensation provisions under general legislation. They do not affect the entitlement to compensation, but generally ensure that the compensation code applies to the additional categories of acquisition covered by the Order and the creation of new rights and the imposition of restrictive covenants in particular. This is a consequence of the extension of land acquisition powers to these categories (done to allow lesser land interests to be acquired).

- 8.76 Article 20 is based on article 21 of the Model Provisions. It differs from the Model Provisions in the following respects (which reflects the approach in recent DCOs including article 20 of Hornsea Three, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two, and article 21 of Hornsea Four):
- (a) Paragraphs (1) and (2) allow the undertaker to acquire existing rights and create new rights over any of the Order land. Although the Applicants have sought to identify all of the plots which are to be subject to the acquisition or creation of rights and has set these out in Schedule 7, this provision ensures that the undertaker retains the flexibility to acquire or create rights over land where that land might otherwise have to be acquired outright.
  - (b) Paragraph (3) is included to clarify that the land identified in Schedule 7 may only be subject to the acquisition or creation of rights or imposition of restrictive covenants, and may not be subject to outright acquisition.
  - (c) Paragraph (4) refers to Schedule 2A of the 1965 Act, as modified by Schedule 8, rather than section 8 of the 1965 Act. The effect is to limit the possible exceptions to this article to cases where part only of a house, building, factory, park or garden belonging to a house is being acquired.
  - (d) Paragraph (5) confirms that Schedule 8 has effect for the purpose of modifying compensation provisions to ensure that they apply to the compulsory acquisition or creation of rights, or imposition of restrictive covenants, under this article.
  - (e) Paragraphs (6) and (7) set out a mechanism for the transfer of rights to statutory undertakers with the consent of the Secretary of State in circumstances where Order land is required for the diversion or relocation of their apparatus.

**Article 23 – Private rights over land**

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

that land are extinguished if their continuance would be incompatible with the right or covenant being acquired or created by the undertaker.

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

#### **Article 24 – Application of the 1981 Act**

- 8.82 This article applies the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 (the “1981 Act”) (with minor modifications to ensure consistency between the terms of the Order and the 1981 Act) to compulsory acquisition under the Order so that the undertaker has the option to acquire land via the vesting declarations procedure.
- 8.83 Vesting declarations are one of two ways of acquiring land that is subject to compulsory purchase (the other being by means of a notice to treat). They allow several parcels to be acquired at once and therefore more efficiently than under the notice to treat procedure.
- 8.84 The modifications to the 1981 Act contained in this article can be summarised as follows:
  - (a) Paragraph (3) modifies section 1(2) so that section 1 applies to the undertaker.
  - (b) Paragraph (4) modifies section 5 to remove the reference to situations where the compulsory purchase order is subject to special parliamentary procedure.
  - (c) Paragraph (5) omits section 5A, on the basis that the Order prescribes the time limit for compulsory acquisition in article 22.
  - (d) Paragraph (6) modifies the statutory reference in section 5B(1), on the basis that the 2008 Act contains equivalent provisions that apply in respect of development consent orders. The cross-reference to section 5A is also modified, to reflect that the time limit is set out in article 22.
  - (e) Paragraph (7) modifies the statutory references in section 6(1)(b), on the basis that the 2008 Act contains equivalent provisions that apply in respect of development consent orders.
  - (f) Paragraph (9) modifies paragraph 1(2) of Schedule A1 to change the reference to compulsory purchase orders excluding land that is 9 metres or more below the surface from the counter-notice procedure.
  - (g) Paragraph (10) clarifies that references to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 of the 2008 Act and as modified by article 27, on the basis that both section 125 and article 27 modify the provisions of the 1965 Act.
- 8.85 Article 25 is based on article 23 of the Model Provisions. Due to extensive changes to the relevant provisions of the 1981 Act since the model provisions came into force, the wording of this article departs significantly from the Model Provisions. The drafting of this article follows article 22 in Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two, and article 23 in Hornsea Four.

#### **Article 25 – Statutory authority to override easements and other rights**

- 8.86 This article confirms that the undertaker is authorised to carry out or use the authorised project despite it involving interference with a third party right relating to land.
- 8.87 Paragraphs (2), (4) and (5) make provision for compensation to any person whose land is injuriously affected by such interference.
- 8.88 This article follows article 24 of Hornsea Four, article 19 of the Immingham Open Cycle Gas Turbine Order 2020, and article 25 of the Longfield Solar Farm Order 2023.

### ***Article 26 – Acquisition of subsoil or airspace only***

- 8.89 This article allows the undertaker to acquire, or acquire or create rights in, the subsoil below land or the airspace over land, rather than having to acquire the land itself.
- 8.90 The purpose of article 26 is to give the undertaker the flexibility to minimise so far as is possible the extent of interests to be acquired, with consequently less impact on landowners which is in the public interest.
- 8.91 This article is based on article 24 of the Model Provisions in relation to subsoil acquisition but differs by the inclusion of airspace. This approach is however precedented in article 24 of each of Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two.

### ***Article 27 – Compulsory acquisition of land: minerals***

- 8.92 This article incorporates Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 to any land acquired by the undertaker that may contain mines and minerals. The effect of this provision is that the undertaker is prevented from acquiring the rights to any mines and minerals underneath the acquired land, unless expressly purchased, and provides mine owners with the ability to work the mines and extract minerals, subject to restrictions. This article is based on the model provisions, and follows article 28 of The HyNet Carbon Dioxide Pipeline Order 2024.

### ***Article 28 – Modification of Part 1 of the 1965 Act***

- 8.93 The purpose of this article is to ensure consistency between the terms of the Order and the 1965 Act, as applied by Section 125 of the 2008 Act.

### ***Article 29 – Rights under or over streets***

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

### ***Article 30 – Temporary use of land for carrying out the authorised project***

- 8.97 The purpose of this article is to allow the land set out in Schedule 9 to be occupied temporarily while the works are carried out. This is land which is required during construction of the authorised project but which is not required permanently. Article 29 also allows for the temporary occupation of any of the land intended for permanent acquisition that has not yet been acquired.
- 8.98 This article is based on article 28 of the Model Provisions, with the modifications listed below, which are included to minimise the amount of land that is required to be subject to permanent acquisition and to extend the notice period from a minimum of 14 days to a minimum of 28 days. These modifications are precedented in numerous development consent orders including, in respect of the first and second bullet points, in Article 26 of

each of Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two and, in respect of all three bullet points, in article 28 of Hornsea Four. The modifications are:

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

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

8.100 The undertaker is not, however, permitted to compulsorily acquire land or rights in land which is set out in Schedule 9 (land of which only temporary possession may be taken) of the Order.

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

***Article 31 – Temporary use of land for maintaining the authorised project***

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

8.103 Paragraph (1)(b) authorises the construction of such temporary works and buildings on the land as may be reasonably necessary for that purpose. Under paragraph (5) all temporary works must be removed before the undertaker gives up possession under this article and the land must be restored to the reasonable satisfaction of the owners.

8.104 This power does not apply in relation to houses, gardens or any other occupied buildings (paragraph (2)).

8.105 Paragraph (3) requires at least 28 days' notice of intended entry to be served on the owners and occupiers of the land in question.

8.106 Paragraphs (6) to (8) provide for compensation to be paid to owners and occupiers of land of which temporary possession is taken under this article.

- 8.107 This article was included in the Model Provisions as article 29 and is also included as article 27 in Hornsea Three, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two, and article 29 in Hornsea Four.

#### ***Article 32 – Statutory undertakers***

- 8.108 This article allows the undertaker to extinguish rights of statutory undertakers and remove and reposition their apparatus. Reference is made to the Order land so that this power is not restricted to apparatus which has been specifically shown on the **Land Plans (application ref: 2.7)** and described in the Book of Reference. In practice it is impractical to show and describe all such apparatus and so a general power for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within any of the Order land is required.
- 8.109 As the land over which this power may be exercised is shown on the Land Plans, and the beneficiaries of such rights are described in the Book of Reference, the requirements of Regulations 5(2)(i)(iii) and 7(1)(c) of the APFP Regulations are satisfied.
- 8.110 This article is based on article 31 of the Model Provisions. It differs from the Model Provisions in that the article is expressed to be subject to article 45 and the protective provisions in Schedule 15.

#### ***Article 33 – Recovery of costs of new connections***

- 8.111 This article provides that if any statutory undertaker's apparatus is removed and this halts a supply from that apparatus to owners or occupiers of premises such that they have to seek a connection to other apparatus, then their reasonable costs in obtaining a new supply can be claimed from the undertaker.
- 8.112 This article was included in the Model Provisions as article 33 and has been included on a number of offshore wind farm development consent orders including article 29 of Hornsea Three, East Anglia One North and East Anglia Two, article 30 of Norfolk Boreas and Norfolk Vanguard, and article 31 of Hornsea Four.

### **Part 6 - Operations**

#### ***Article 34 – Operation of generating station***

- 8.113 Pursuant to Section 140 (operation of generating stations) of the 2008 Act, article 34 permits DBSEL to operate and use the DBS East Project and permits DBSWL to operate and use the DBS West Project.
- 8.114 Paragraph (3) provides that grant of development consent does not relieve the undertaker of the need to obtain any other necessary consents to operate the authorised development. This clarifies that the operator will still require to obtain, for example, an electricity generation licence under the Electricity Act 1989.
- 8.115 This article is included as standard in other development consents for offshore generating stations including Hornsea Two, Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two and Hornsea Four.

#### ***Article 35 – Deemed marine licences under the 2009 Act***

- 8.116 Article 35 grants the deemed marine licences included in Schedules 10 to 14 of the Order under Part 4 of the Marine and Coastal Access Act 2009 (the “2009 Act”). As the Order grants development consent for two NSIPs, there are five deemed marine licences in total. Each Project has one deemed marine licence for the generation assets and one for the transmission assets, and the fifth marine licence relates to the cabling inter-linking the two Projects. The approach of including separate generation and transmission deemed marine licences for offshore wind farm development consent orders is a standard approach for offshore schemes. It allows for the separate transfer of the transmission

assets within the transmission licences to an Offshore Transmission Owner (“OFTO”), whilst the generation assets can be retained by the relevant undertaker for each project. This approach has been taken on numerous DCOs for offshore generating stations including Hornsea Two, Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two and Hornsea Four.

## **Part 7 – Miscellaneous and general**

### ***Article 36 – Application of landlord and tenant law***

8.117 This article provides that any agreement for the transfer of the benefit of the Order overrides landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development or the right to operate it.

8.118 This article follows article 35 of the Model Provisions.

### ***Article 37 – Operational land for purposes of the 1990 Act***

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

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

### ***Article 38 – Felling or lopping of trees and removal of hedgerows***

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

8.122 Further, this article also authorises the removal of any hedgerow as defined in the 1997 Regulations. The authorised project includes the removal of a number of hedgerows. This article is based on article 39 of the Model Provisions and recent DCOs for offshore generating stations including article 34 of Hornsea Three, East Anglia One North and East Anglia Two, article 35 of Norfolk Vanguard and Norfolk Boreas, and article 36 of Hornsea Four.

### ***Article 39 – Trees subject to tree preservation orders***

8.123 Article 39 provides that the undertaker may fell or lop or cut back the roots of any tree which is subject to a tree preservation order or shrub to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development. Compensation is provided for if loss or damage is caused.

8.124 The article is included in the Model Provisions, save that the article applies generally to any tree subject to a tree preservation order made before and after the date of the Order coming into effect and either within or overhanging the Order limits.

### ***Article 40 – Saving provisions for Trinity House***

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

### ***Article 41 – Crown rights***

- 8.126 Article 41 is not a model provision, but it reflects the terms of Section 135 of the 2008 Act and is also precedented. It has been used in many made orders, including Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two, and Hornsea Four.

***Article 42 – Certification of plans and documents, etc.***

- 8.127 This article provides for various application plans and documents to be certified by the Secretary of State as true copies of those documents following the making of the Order and links to Schedule 19 where the documents are set out.

***Article 43 – Abatement of works abandoned or decayed***

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

***Article 44 - Funding***

- 8.129 Article 44 provides that the undertaker may not exercise a number of powers prior to it putting into place a guarantee or security equal to its potential liability to compensation payable under the Order which is approved by the Secretary of State. Save for paragraphs (8) and (9), this Article is based on precedent in Teesside A and B, Hornsea Two, Hornsea Three, East Anglia One North and East Anglia Two.
- 8.130 Paragraphs (8) and (9) provide the opportunity for DBSEL and DBSWL to demonstrate to the Secretary of State that neither a parent company guarantee or an alternative form of security is required because the undertakers are sufficiently funded to meet any liability to pay compensation under the Order. The inclusion of these paragraphs reflects the fact that in many other DCOs, where an undertaker is considered to be sufficiently funded to meet its liabilities, there is no equivalent provision requiring a parent company guarantee or another alternative form of security to be provided by the relevant undertaker. A clear example of this are DCOs where National Highways are the undertaker. These paragraphs were included in article 39 of SEP and DEP.

***Article 45 – Protective provisions***

- 8.131 This article gives effect to Schedule 15, 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.

***Article 46 – Service of notices***

- 8.132 This article governs the service of notices required to be given under the Order. In particular, it allows service by email with the consent of the recipient (paragraph (1)(c)) and deals with the situation of service on an unknown landowner (paragraph (4)).
- 8.133 This article was not included in the Model Provisions but reflects provisions in previous similar orders for example, article 44 of Hornsea Three, article 43 of Norfolk Vanguard and Norfolk Boreas, article 45 of East Anglia One North and East Anglia Two, and article 47 of Hornsea Four.

***Article 47 - Arbitration***

- 8.134 This article governs any disagreement about any provision of the Order, except for those which are covered by article 40. Unless the Upper Tribunal (Lands Chamber) has

jurisdiction, the matter is to be settled by arbitration. If the parties cannot agree on who the arbitrator should be then this will be decided by the Secretary of State.

- 8.135 An arbitration article was included in the Model Provisions as article 42. This article departs from the Model Provisions in that it applies Schedule 16 which sets out more detailed rules and a process for arbitration in order to provide greater certainty to all parties involved in the process who may rely on this provision. A similar approach has been taken in recent DCOs including Hornsea Three, Norfolk Vanguard, Norfolk Boreas, East Anglia One North, East Anglia Two and Hornsea Four.

**Article 48 – Requirements, appeals, etc.**

- 8.136 This article provides that any agreement or approval required under the Order must be given in writing, and must not be unreasonably withheld or delayed. It also provides that the approvals process set out in Part 2 (Approval of matters specified in requirements) of Schedule 2 has effect in relation to the requirements set out in Part 1 (Requirements) of Schedule 2.

**Article 49 – Compensation**

- 8.137 This article gives effect to Schedule 18 (compensation measures) should the Secretary of State consider that it is necessary.

**Article 50 - Inconsistent planning permissions**

- 8.138 Paragraph (1) permits certain development authorised by way of a planning permission which has been initiated prior to the commencement of the authorised project to continue to be implemented design physical incompatibility with the authorised project.
- 8.139 Paragraphs (2) to (6) address inconsistencies between the Order and implementation of the authorised project and developments previously consented under the planning regime which have already been implemented.
- 8.140 These provisions seek to address any overlap with other planning conditions and planning obligations, and to provide clarity in terms of enforcement and which consent has effect.
- 8.141 This wording is deemed necessary following *Hillside Park Limited v Snowdonia National Park Authority [2022] UKSC 30*. In that case, the Supreme Court ruled that, unless there is an express provision otherwise, whether another planning permission may lawfully be implemented depends upon whether it remains physically possible to carry out the development authorised by the second permission considering what has already been done under the first permission.
- 8.142 Paragraph (6) ensures that enforcement action is not taken in respect of planning permissions granted under the 1990 Act which are inconsistent with the works and exercise of powers under the Order.
- 8.143 This article was not included in the Model Provisions. This article is based on article 8(2) of the Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024.

**Article 51 – No double recovery**

- 8.144 This article provides that compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition, the article provides that there is not to be double recovery under two or more different provisions of this Order.
- 8.145 This article was not provided for in the Model Provisions, but has been included in granted orders, including The Port of Tilbury (Expansion) Order 2019. This article simply reflects the established position that a claimant in a compulsory purchase matter shall be compensated for no more than and no less than their loss.

## 9 SCHEDULES

### Schedule 1 – Authorised project

- 9.1 Part of Schedule 1 specifies the authorised development and associated development, which is described in detail in Chapter 5 Project Description of the Environmental Statement by reference to numbered works and the **Works Plan (Offshore (application ref: 2.5))** and the **Works Plan (Onshore) (application ref: 2.6)**.
- 9.2 As explained in more detail in section 4 above, the numbered works have been separated out between the two NSIPs which broadly follows the approach of other DCOs (Teesside A and B, Creyke Beck and Hornsea Two) that have authorised more than one offshore generating station NSIP within the same order.
- 9.3 Part 2 of Schedule 1 includes descriptions of the ancillary works for the purposes of each Project.
- 9.4 The authorised development, associated development and ancillary works comprise the “authorised project”.

### Schedule 2 - Requirements

- 9.5 The requirements in Part 1 (Requirements) of Schedule 2 of the Order are the equivalent of planning conditions. They apply to the construction, operation and decommissioning of the authorised project and reflect the processes and procedures usually employed by the undertaker when implementing a project such as this. Where appropriate, controls are also included in certain requirements in relation to pre-commencement works.
- 9.6 The requirements provide that the various details and plans to be approved must, where appropriate, reflect the mitigation measures included in the Environmental Statement. The requirements also provide that the approved details and plans must be implemented as approved, unless further amendments to them are approved.
- 9.7 Reference to a phase of onshore works in the requirements means either a phase of the DBS East onshore works, or the DBS West onshore works.
- 9.8 The requirements have been drafted in line with recently approved offshore generating station DCOs including Hornsea Three, Norfolk Boreas, Norfolk Vanguard, East Anglia One North, East Anglia Two and Hornsea Four.
- 9.9 **Requirement 1** (Time limits) specifies the time limit for commencing the authorised project as seven years from the date on which the Order comes into force. This was included in the Model Provisions as requirement 2. A time limit of seven years follows the approach taken in Teesside A and B, Hornsea Three and Hornsea Four, and is considered appropriate for DBS East and DBS West given the combined nature and scale of the two projects and the need to secure separate contracts for difference awards prior to the commencement of construction of either Project.
- 9.10 **Requirements 2 to 6** (Detailed offshore design parameters) set out the detailed offshore design parameters. The purpose of the requirements is to ensure that the authorised project is restricted to the maximum parameters for each Project which have been assessed in the Environmental Statement.
- 9.11 **Requirement 7** (Offshore decommissioning) provides for an offshore decommissioning programme to be submitted to the Secretary of State prior to the commencement of the offshore works and replicates the wording used in numerous offshore generating station DCOs to date including most recently the East Anglia One North and East Anglia Two.
- 9.12 **Requirement 8** (Phases of authorised development) prevents either Project from commencing its onshore works until a written scheme setting out the phases of the

relevant works is submitted and approved by the relevant planning authority. This drafting follows the approach taken in other offshore generating station DCOs.

- 9.13 In order to ensure that only the eastern converter station is built if only the DBS East Project is taken forward, requirement 8 also prevents the DBSEL onshore works commencing until notification has been submitted to the relevant planning authority as to whether DBSWL intends to commence development of the DBS West Project. If the notification gives notice that DBSWL does not intend to commence development, DBSEL is authorised only to be build the eastern converter station and must not build the western converter station.
- 9.14 **Requirement 9** (Detailed design parameters onshore) requires approval of detailed parameters for the onshore converter station works for each Project. Under sub-paragraph (4), the detailed parameters must be in accordance with the **Design and Access Statement (application ref: 8.8)**.
- 9.15 It also provides for approval of the precise location of the permanent access road leading to the onshore converter stations. The permanent converter station access road is part of Work Nos. 22A and 22B. Its precise location cannot be fixed at this stage because the most appropriate location for it is contingent upon the detailed design of the onshore converter station(s). The precise location of the converter station access road will depend on the final orientation of the converter station(s).
- 9.16 **Requirement 10** (Provision of landscaping) and **Requirement 11** (Implementation and maintenance of landscaping) require the approval and implementation of a landscape management plan in respect of each phase of the onshore works before the relevant phase of the onshore works may commence.
- 9.17 The landscape management plan must be in accordance with the **Outline Landscape Management Plan (application ref: 8.11)** and must include details of the ongoing maintenance and management of the landscaping works. The maintenance period for replacing as necessary any trees or shrubs planted in accordance with a landscape management plan is 10 years.
- 9.18 **Requirement 12** (Ecological management plan) provides that no phase of the onshore works shall commence until an ecological management plan (which is in accordance with the **Outline Ecological Management Plan (application ref 8.10)**) for the relevant phase of works has been approved by the relevant planning authority in consultation with Natural England. The ecological management plan must be implemented as approved. In addition, sub-paragraph (2) requires a specific pre-commencement ecological management plan to be approved prior to undertaking pre-commencement site clearance works.
- 9.19 **Requirement 13** (Permanent fencing and other means of enclosure) provides that the details of any permanent fencing or other means of enclosure for any phase of the onshore works must be approved before the relevant phase is commenced and must be carried out as approved. The requirement also provides that the permanent fencing around the onshore converter station(s) must be in place before the onshore converter station(s) are used.
- 9.20 **Requirement 14** (Traffic and transport) provides that no phase of the onshore works can commence until a construction traffic management plan (in accordance with the **Outline Construction Traffic Management Plan (application ref: 8.13)**) in respect of the relevant phase of works has been submitted to and approved by the relevant planning authority in consultation with the relevant highway authorities. The construction traffic management plan will include travel plan measures. The requirement requires that the plan is implemented on commencement of the relevant stage of the onshore works.
- 9.21 **Requirement 15** (Highway accesses) prevents commencement of construction of any new permanent or temporary highway accesses until an access plan for that new access has been submitted and approved by the relevant planning authority in consultation with

the relevant highway authorities. The highway accesses must only be constructed or altered in accordance with the approved details.

- 9.22 **Requirement 16** (Construction and operational drainage strategy) provides that works relating to the construction of either of the onshore converter stations (under Work Nos. 25A, 26A or 26B) and the onward transmission connection between the onshore converter stations to National Grid's Birkhill Wood Substation (Work Nos. 31A to 34A and 31B to 34B) must not commence until a construction drainage strategy and an operational drainage strategy is approved by the relevant planning authority following consultation with the lead local flood authority and the Environment Agency. Each construction drainage strategy and each operational drainage strategy must accord with the Outline Drainage Strategy (**application ref: 8.12**) and must be implemented as approved.
- 9.23 **Requirement 17** (Surface and foul water drainage) provides for submission to and approval by the lead local flood authority (after consultation with the relevant sewerage and drainage authorities and the Environment Agency) of written details of the surface and (if any) foul water drainage system for the construction of each phase of the onshore works prior to commencement of the relevant phase. Requirement 17 also provides for submission to and approval by the lead local flood authority (after consultation with the relevant sewerage and drainage authorities and the Environment Agency) of written details of the surface and (if any) foul water drainage system for the operation of each phase of the onshore works prior to commencing operation of the relevant phase. The surface and foul water drainage system must be constructed, operated and maintained in accordance with the approved details.
- 9.24 **Requirement 18** (Onshore archaeology) provides for submission to and approval by the relevant planning authority (after consultation with the statutory historic body) of a written scheme of archaeological investigation (a 'WSI') for each phase of the onshore works. The drafting requires a WSI to be submitted and approved prior to commencement of each phase which, for the purposes of this requirement only, includes commencement of any intrusive archaeological investigations where relevant. Each scheme must accord with the Outline Onshore Written Scheme of Investigation (**application ref: 8.14**) and include the details specified in the requirement.
- 9.25 **Requirement 19** (Code of construction practice) provides that no phase of the onshore works can commence until a code of construction practice ("CoCP") for the relevant phase of works has been submitted to and approved by the relevant planning authority in consultation with (as appropriate) the Environment Agency, Natural England, and the Marine Management Organisation ("MMO"). The CoCP must cover all the matters in the Outline Code of Construction Practice (**application ref: 8.9**) as well as the matters listed within the requirement and it must be implemented as approved.
- 9.26 Sub-paragraph (4) requires pre-commencement screening and fencing works to be carried out in accordance with a specific plan which must accord with the relevant details contained within the Outline Code of Construction Practice (**application ref: 8.9**) and which has been submitted to and approved by the relevant planning authority.
- 9.27 **Requirement 20** (Construction hours for the onshore works) sets out standard construction hours of 07.00 to 19.00 Monday – Saturday, save where there are:
- (a) essential activities, including but not limited to those outlined in sub-paragraph (2), where full details are agreed in advance with the relevant planning authority in accordance with sub-paragraph (4);
  - (b) emergency works; or
  - (c) non-intrusive works, including but not limited to those outlined in sub-paragraph (3).

- 9.28 For clarity, sub-paragraph (6) provides a definition of 'emergency' and sub-paragraph (5) requires the undertaker to notify the relevant planning authority of any emergency works undertaken as soon as reasonably practicable.
- 9.29 **Requirement 21** (Control of noise during operational phase) requires a noise management plan to be submitted prior to commencing construction of the onshore converter stations in order to control and monitor noise emissions during the operation of each Project's converter station. Each noise management plan must be implemented as approved.
- 9.30 **Requirement 22** (Control of artificial light emissions) requires a written scheme for the management and mitigation of artificial light emissions to be submitted prior to the onshore converter stations being brought into operation in order to control and monitor artificial light emissions during the operation of each Project's converter station. Each scheme must be implemented as approved.
- 9.31 **Requirement 23** (European protected species: onshore) prohibits the commencement of any phase of onshore works until final pre-construction surveys to identify whether any European Protected Species are present or could be affected by the relevant works have been carried out. If a European Protected Species is present then a scheme of protection and mitigation is required to be approved and implemented or a European Protected Species licence must be granted. The onshore works must be carried out in accordance with any approved scheme.
- 9.32 **Requirement 24** (Public Rights of Way Management Plan) prevents any phase of the onshore works that would affect a public right of way specified in Schedule 4 from being undertaken until a public rights of way management plan in respect of that stage and in accordance with the Outline Public Rights of Way Management Plan (**application ref: 8.9 Appendix C**), has been submitted to and approved by the relevant planning authority. Any alternative public rights of way must be implemented in accordance with the approved management plan.
- 9.33 **Requirement 25** (Restoration of land used temporarily for construction) requires land used for temporary construction works to be reinstated within 12 months of completion of the relevant phase of works.
- 9.34 **Requirement 26** (Local skills and employment) provides that no phase of the onshore works can commence until a skills and employment strategy (in accordance with the **Outline Skills and Employment Strategy (application ref: 8.5)**) has been submitted to and approved by the relevant planning authority. The strategy must be implemented as approved.
- 9.35 **Requirement 27** (Onshore decommissioning) requires each undertaker to notify the relevant planning authority of the date of the permanent cessation of commercial operation of the onshore works relating to its Project, and provides that, following the cessation, onshore decommissioning plans in respect of those works must be submitted to and approved by the relevant planning authority. The decommissioning plans must be implemented as approved.
- 9.36 **Requirement 28** (Notification of generation of power) requires DBSEL and DBSWL to notify the relevant planning authority and the MMO of the first generation of power from their respective Projects.
- 9.37 **Requirement 29** (Contaminated land and groundwater scheme) requires the undertaker to carry out any pre-commencement remedial work and onshore works in respect of any ground contamination or other adverse ground conditions only in accordance with a scheme which will be agreed with the relevant planning authority in consultation with the Environment Agency.
- 9.38 **Requirement 30** (Port traffic) requires a port construction traffic management plan in respect of traffic to and from the construction port(s) to be submitted to and approved by

the relevant highway authority (in consultation with the relevant planning authority) prior to commencement of Works 1A or 1B. Requirement 31 also requires a port travel plan in respect of traffic to and from the operation port(s) to be submitted to and approved by the relevant highway authority (in consultation with the relevant planning authority) prior to Works 1A or 1B beginning to operate. A port construction traffic management plan, or a port travel plan, will not be required where the relevant highway authority has confirmed (after consultation with the relevant planning authority that such a plan is not 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 construction or operation port is located.

- 9.39 **Requirement 31** (Ministry of Defence radar mitigation) provides for a mitigation scheme to prevent or remove any unacceptable effects arising from the final approved layout of the authorised project on the air defence radar at Remote Radar Head (RRH) Staxton Wold and the Ministry of Defence’s air surveillance and control operations. Where a mitigation scheme is required, no relevant wind turbine generator within the authorised project may rotate its rotor blades until the Secretary of State (in consultation with the Ministry of Defence) confirms satisfaction that the appropriate mitigation will be implemented and maintained for the life of the authorised project.
- 9.40 **Requirement 32** (Biodiversity net gain) provides that no phase of the onshore works can commence until a biodiversity net gain strategy (in accordance with Appendix 18-10 of the Environmental Statement) has been submitted to and approved by the relevant planning authority. The strategy must be implemented as approved.
- 9.41 **Requirement 33** (Onshore monitoring plan) provides that no phase of the onshore works can commence until an onshore monitoring plan (in accordance with the Outline Code of Construction Practice) has been submitted to and approved by the relevant planning authority. The plan must be implemented as approved. This requirement is intended to secure onshore operational monitoring measures outlined in Chapter 19 Geology and Land Quality of the Environmental Statement.
- 9.42 **Requirement 34** (Amendments to approved details) confirms that details approved pursuant to the requirements include any amendments that may subsequently be approved. This was included in the Model Provisions as requirement 37.
- 9.43 **Requirement 35** (Onshore collaboration) requires DBSEL and DBSWL to share plans and documents with each other before submitting them for approval under the requirements.
- 9.44 Part 2 (Approval of matters specified in requirements) of Schedule 2 set out the process for the approval of matters specified in requirements.
- 9.45 Paragraph 1 provides a definition of “discharging authority”, which term is used throughout Part 2.
- 9.46 Paragraph 2 sets out time limits for decisions to be made following an application for any consent, agreement or approval required pursuant to a requirement or for any consent, agreement or approval further to any document referred to in any such requirement.
- 9.47 Paragraph 3 makes provision for circumstances where the discharging authority requires further information to be provided in relation to an application pursuant to paragraph 2.
- 9.48 Paragraph 4 sets out a process for appeals to the Secretary of State in relation to various matters related to such applications or further information requests. The inclusion of an appeals process is necessary to minimise the risk to timely delivery of the Projects. This process reflects the process set out in various made development consent orders, including the Hinkley Point C (Nuclear Generating Station) Order 2013, the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 (“Thames Tideway Tunnel”), and Hornsea Four.

- 9.49 The appeal process also applies where a notice under Section 60 or 61 of the Control of Pollution Act 1974 is issued. This reflects Thames Tideway Tunnel, and Hornsea Four.

**Schedule 3 – Streets subject to street works**

- 9.50 This schedule sets out those streets which are to be subject to permanent or temporary street works. Street works are mainly required to form new accesses, create visibility splays to allow for safe use of accesses and to improve existing visibility splays. Much of the work required will be undertaken in highway verges but occupation of some areas of carriageways may be required to create new accesses or provide safe working areas.

**Schedule 4 – Streets to be temporarily closed or restricted**

- 9.51 This schedule sets out those streets which are to be temporarily closed or restricted.

**Schedule 5 – Closure and diversion of public rights of way**

- 9.52 This schedule sets out those public rights of way which are to be temporarily closed or restricted or permanently diverted.

**Schedule 6 – Access to works**

- 9.53 This schedule sets out details of access points to the works. It identifies the public highways from which access can be taken and the plans show the area of those highways where access will be taken.

**Schedule 7 – Land in which only new rights, etc. may be acquired**

- 9.54 This schedule lists the plots of land within which the undertaker may only acquire rights and cannot acquire ownership. The rights which the undertaker may acquire are set out in column (2). The rights to be acquired have been divided into categories in order to ensure that only those rights necessary are taken over each plot. Restrictive covenants are also to be imposed to protect the electrical cables, to ensure that planting or habitat works carried out by the undertaker can be retained and maintained for the required period and to prevent future construction on land required for drainage.

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

- 9.55 This schedule modifies existing compensation legislation including the Land Compensation Act 1973 and the 1965 Act to provide for the acquisition of rights and imposition of restrictive covenants as well as acquisition of ownership of the land.

**Schedule 9 – Land of which only temporary possession may be taken**

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

**Schedules 10 – 14 – Deemed Marine Licences**

- 9.57 Schedules 10 to 14 include the five Deemed Marine Licences. There are two licences for each Project - a generation licence and a transmission licence, and a shared transmission licence for the cabling inter-linking the two Projects. The Applicants have consulted with the MMO in relation to the Projects, and have sought their input in relation to the Deemed Marine Licences. It is possible that proposed amendments to the Deemed Marine Licences will emerge from ongoing dialogue.

- 9.58 The Deemed Marine Licences are deliberately drafted as standalone documents and follow the approach taken on numerous offshore generating station DCOs including most recently Hornsea Three, Norfolk Vanguard, Norfolk Boreas, East Anglia One North and East Anglia Two, and Hornsea Four.

- 9.59 Schedule 10 sets out the Deemed Marine Licence for the DBS East Project generation assets.
- 9.60 Schedule 11 sets out the Deemed Marine Licence for the DBS West Project generation assets.
- 9.61 Schedule 12 sets out the Deemed Marine Licence for the DBS East Project transmission assets.
- 9.62 Schedule 13 sets out the Deemed Marine Licence for the DBS West Project transmission assets.
- 9.63 Schedule 14 sets out the Deemed Marine Licence for the transmission assets insofar as they relate to the cable inter-linking the two Projects.

The structure of all five licences is broadly the same as follows:

**Part 1 – Licensed marine activities**

- 9.64 Paragraph 1 (Interpretation) provides interpretation of certain words and phrases used in the licence, many of which are identical to article 1 of the Order, or have been amended to make sense in an offshore-only context. The term “authorised scheme” is defined as being the development authorised by the Deemed Marine Licence in question.
- 9.65 Paragraph 2 to 4 (Details of licensed marine activities) sets out a description of the licensed activities by reference to the relevant Work Numbers in Schedule 1 of the Order. The split in Work Numbers is summarised in Table 1-1.

*Table 1-1: Work Numbers for each Deemed Marine Licence*

Deemed Marine Licence	Work Numbers
Schedule 10 – Licence 1: DBS East Project generation licence	1A, 4A and 7A
Schedule 11 – Licence 2: DBS West Project generation licence	1B, 4B and 7B
Schedule 12 – Licence 3: DBS East Project transmission licence	2A, 3A, 6A, 7A and 8A
Schedule 13 – Licence 4: DBS West Project transmission licence	2B, 3B, 6B, 7B and 7B
Schedule 14 – Licence 5: DBS East Project and DBS West Project transmission licence	5A, 5B, 7A and 7B

- 9.66 Paragraph 5 sets out the grid coordinates for those works within the Deemed Marine Licence.

- 9.67 Paragraph 6 confirms the Deemed Marine Licence will remain in force until the authorised scheme has been decommissioned.
- 9.68 Paragraph 7 confirms that section 72(7) and (8) (Variation, suspension, revocation and transfer) of the 2009 Act does not apply to a transfer of the Deemed Marine Licences falling within article 5 (Benefit of the Order) of the Order. Section 72(7) permits the licensing authority to transfer a marine licence to another person. Section 72(8) provides that "a licence may not be transferred except in accordance with subsection 7". Article 5 (Benefit of the Order) however provides for a transfer to take place in a different way to section 72(7). As article 5 is different from the wording of section 72(7) of the 2009 Act it is necessary to specify that section 72(7) only applies to a transfer not falling within article 5 in order to enable article 5 to operate. Without specifying this, article 5 might be claimed to be inoperative because of adopting a different wording from section 72(7).
- 9.69 Paragraph 8 confirms that where any condition requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under the Deemed Marine Licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved by the MMO. Paragraph 8(2) further confirms that any amendments to approved details must be in accordance with the principles and assessments set out in the Environmental Statement and that approval by the MMO of any amendment or variation may only be given where it has been demonstrated to the satisfaction of the MMO that it is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.
- 9.70 Paragraph 9 requires the undertaker to notify the MMO immediately if it becomes aware that any information on which the granting of the Deemed Marine Licence was based was materially false or misleading.

### ***Part 2 - Conditions***

- 9.71 **Conditions 1 to 5** of Marine Licences 1 and 2, **Conditions 1 to 3** of Marine Licences 3 and 4 and **Condition 1** of Marine Licence 5 (Design parameters) specify the design parameters associated with the works comprised within the authorised scheme relevant to each Deemed Marine Licence. This largely replicates the design parameters in the requirements in Schedule 1 of the Order.
- 9.72 **Condition 6** of Marine Licences 1 and 2, **Condition 4** of Marine Licences 3 and 4 and **Condition 2** of Marine Licence 5 (Phases of authorised scheme) provides that the authorised scheme must not be commenced until a written scheme setting out the phases of construction of the authorised scheme has been submitted to and approved by the MMO. This mirrors the approach taken in requirement 8 with regards to the relevant planning authority.
- 9.73 **Condition 7** of Marine Licences 1 and 2, **Condition 5** of Marine Licences 3 and 4 and **Condition 3** of Marine Licence 5 (Vessels under the undertaker's control) provides for a code of conduct to be issued to vessels operating within the Order limits under the undertaker's control to reduce the risk of injury to marine mammals.
- 9.74 **Condition 8** of Marine Licences 1 and 2, **Condition 6** of Marine Licences 3 and 4 and **Condition 4** of Marine Licence 5 (Extensions of time periods) confirms that any time periods given in the licence may be extended with the agreement of the other party.
- 9.75 **Condition 9** of Marine Licences 1 and 2, **Condition 7** of Marine Licences 3 and 4 and **Condition 5** of Marine Licence 5 (Notifications and inspections) provides for a system of supplying copies of the licence to agents and contractors, restricting the use of contractors and vessels to those notified to the MMO and where appropriate the Maritime and Coastguard Agency ("MCA"), Trinity House, United Kingdom Hydrographic Office and/or the Kingfisher Information Service of Seafish, and publicising commencement and progress of the licensed activities.

- 9.76 **Conditions 10 and 11** of Marine Licences 1 and 2, **Conditions 8 and 9** of Marine Licences 3 and 4 and **Conditions 6 and 7** of Marine Licence 5 (Aids to navigation and Colouring of structures) provide for various matters to aid navigation in the vicinity of the authorised scheme, including the provision of various navigation aids; the ongoing availability of the aids to navigation; notification of the progress of works to Trinity House and the MMO and the colouring of structures.
- 9.77 **Condition 12** of Marine Licences 1 and 2, **Condition 10** of Marine Licences 3 and 4 and **Condition 8** of Marine Licence 5 (Aviation safety) requires the undertaker to exhibit lights as required by the Air Navigation Order 2016 and determined necessary for aviation safety and to notify the Defence Infrastructure Organisation Safeguarding regarding the construction of the authorised scheme and its parameters.
- 9.78 **Condition 13** of Marine Licences 1 and 2, **Condition 11** of Marine Licences 3 and 4 and **Condition 9** of Marine Licence 5 (Chemicals, drilling and debris) restricts the use of chemicals and other substances and provides for the disposal of certain drilling arisings and the monitoring of construction materials so as to identify those which may accidentally fall into the sea, which shall then be investigated and, where identified, recovered.
- 9.79 **Condition 14** of Marine Licences 1 and 2, **Condition 12** of Marine Licences 3 and 4 and **Condition 10** of Marine Licence 5 (Force majeure) provides for the notification of deposits made in an emergency within or outside of the Order limits.
- 9.80 **Condition 15** of Marine Licences 1 and 2, **Condition 13** of Marine Licences 3 and 4 and **Condition 11** of Marine Licence 5 (Pre-construction plans and documentation) provides for the submission for approval, before the commencement of licensed activities, of a plan showing the proposed location, dimensions and choice of foundation of all elements of the authorised scheme to ensure that the licensed activities conform with the description of the works and the design parameters specified within the conditions. It also provides for submission for approval of the following:
- (a) a plan setting out proposed details of the authorised scheme;
  - (b) a construction programme and monitoring plan (which accords with the **In-Principle Monitoring Plan (application ref: 8.23)**);
  - (c) a construction method statement (which accords with the **Cable Statement (application ref: 8.20)**);
  - (d) a project environmental management plan (which accords with the **Outline Project Environmental Management Plan (application ref: 8.21)**);
  - (e) an archaeological written scheme of investigation (offshore) (which accords with the **Outline Written Scheme of Investigation (Offshore) (application ref: 8.22)**);
  - (f) an offshore operations and maintenance plan (which accords with the **Outline Offshore Operations and Maintenance Plan (application ref: 8.24)**);
  - (g) an aids to navigation management plan;
  - (h) a marine mammal mitigation protocol where driven or part-driven pile foundations are used (which accords with the **Outline Marine Mammal Mitigation Protocol (application ref: 8.25)**);
  - (i) a mitigation scheme for any habits of principal importance where identified during pre-construction surveys (which accords with the **In-Principle Monitoring Plan (application ref: 8.23)**);
  - (j) an ornithological monitoring plan; and

- (k) a navigation management plan.
- 9.81 **Condition 16** of Marine Licences 1 and 2, and **Condition 14** of Marine Licences 3 and 4 (Site Integrity Plan) requires submission and approval of a Site Integrity Plan which must be in accordance with the **In Principle Site Integrity Plan for the Southern North Sea Special Area of Conservation (application ref: 8.26)** before commencement of any piling activities.
- 9.82 **Condition 17** of Marine Licences 1 and 2, **Condition 15** of Marine Licences 3 and 4 and **Condition 11** of Marine Licence 5 requires any pre-construction plans and documentation submitted for approval under conditions 16 or 14 to be submitted for approval at least four months prior to the intended start of construction (subject to any amendments specified elsewhere in the conditions) and requires each approved document to be complied with. This follows the approach taken on other offshore generating station DCOs including Hornsea 3, Norfolk Boreas and Norfolk Vanguard.
- 9.83 **Condition 18** of Marine Licences 1 and 2, **Condition 16** of Marine Licences 3 and 4 and **Condition 12** of Marine Licence 5 (Offshore safety management) states that no part of the authorised scheme may commence until the MMO has confirmed that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate contained within MGN654 and its annexes.
- 9.84 **Condition 19** of Marine Licences 1 and 2, **Condition 17** of Marine Licences 3 and 4 and **Condition 13** of Marine Licence 5 (Reporting of engaged agents, contractors and vessels) requires the undertaker to provide to the MMO details of agents and contractors engaged to carry out the licensed activities, and a weekly update as to which vessels are being used during construction.
- 9.85 **Condition 20** of Marine Licences 1 and 2, **Condition 18** of Marine Licences 3 and 4 and **Condition 14** of Marine Licence 5 (Pre-construction monitoring and surveys) specifies the manner in which the undertaker shall discharge its obligation under Condition 15/13/11 to put forward proposals for pre-construction surveys/monitoring and provides an indicative list of the expected pre-construction surveys.
- 9.86 **Condition 21** of Marine Licences 1 and 2, **Condition 19** of Marine Licences 3 and 4 and **Condition 15** of Marine Licence 5 (Construction monitoring and surveys) specifies the manner in which the undertaker shall discharge its obligation under Condition 15/13/11 to put forward proposals for construction surveys/monitoring, and specifically requires certain noise monitoring. It provides for the MMO to require further noise monitoring depending on the results.
- 9.87 **Condition 22** of Marine Licences 1 and 2, **Condition 20** of Marine Licences 3 and 4 and **Condition 17** of Marine Licence 5 (Post construction monitoring and surveys) specifies the manner in which the undertaker shall discharge its obligation under Condition 15/13/11 to put forward and carry out its proposals for post-construction surveys/monitoring and provides an indicative list of the expected post-construction surveys. It also requires the undertaker to carry out additional monitoring in the event any report submitted to the MMO under this condition identifies a need for additional monitoring.
- 9.88 **Condition 23** of Marine Licences 1 and 2, **Condition 21** of Marine Licences 3 and 4 and **Condition 17** of Marine Licence 5 (Reporting of scour and cable protection) provides for the undertaker to give details of the location and volume of scour and cable protection.
- 9.89 **Condition 24** of Marine Licences 1 and 2, **Condition 22** of Marine Licences 3 and 4 and **Condition 18** of Marine Licence 5 (Completion of construction) requires the submission of a close out report (confirming the date of completion of construction and final as built details of the installed wind turbine generators and cables as appropriate) to the MMO, MCA, Trinity House, UKHO and relevant statutory nature conservation bodies within 3 months of completion of construction. The condition prohibits further construction activities following completion of construction.

- 9.90 **Condition 25** of Marine Licences 1 and 2, **Condition 23** of Marine Licences 3 and 4 and **Condition 19** of Marine Licence 5 (Collaboration) requires the undertaker to submit relevant plans to the other undertaker (as appropriate) prior to submission of those plans to the MMO. Any comments received following that sharing of plans must be provided to the MMO when the plans are submitted to them.
- 9.91 **Condition 24** of Marine Licences 3 and 4 (Seasonal restriction) prevents piling activities taking place within the electrical switching platform search area (i.e. that part of the offshore export cable corridor within which the electrical switching platform may be constructed) between 1 August and 31 March (inclusive).

#### **Schedule 15 – Protective provisions**

- 9.92 This schedule sets out a number of protections for various bodies to ensure that the powers sought in the Order are exercised appropriately.
- 9.93 Protections for electricity, gas, water and sewerage undertakers are routinely included in development consent orders and are set out in Part 1. It is possible that bespoke protective provisions for specific statutory undertakers and utilities will emerge from ongoing dialogue, such that they will be removed from the ambit of Part 1, which currently applies to them.
- 9.94 Protections for operators of electronic communications code networks are routinely included in development consent orders and are set out in Part 2.
- 9.95 Crossings of and connections to drainage works are proposed, and protections for the Environment Agency and drainage authorities are under negotiation and are set out in Parts 3 and 4.
- 9.96 As the Projects will cross under a railway line, protections for Network Rail are included in Part 5.

#### **Schedule 16 – Arbitration Rules**

- 9.97 This schedule provides an arbitration process. It is considered that this approach provides greater certainty to all parties involved in the process. The specific process set out in this schedule is precededented in Hornsea Four.
- 9.98 The schedule refers to the person who commenced the arbitration as the Claimant and the other party as the Respondent. The schedule provides that:
- (a) Within 15 working days of the Arbitrator being appointed the Claimant shall serve on the Respondent and the Arbitrator a statement of case and all supporting evidence to support the claim.
  - (b) Within 15 working days of receipt of the Claimant's statement of case and supporting evidence the Respondent will serve a statement of defence and all supporting evidence to support its defence, together with any objections to the Claimant's documentation.
  - (c) Within 5 working days of receipt of the Respondent's documentation the Claimant may make a Statement of Reply.
  - (d) 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.

#### **Schedule 17 - Hedgerows**

- 9.99 This schedule sets out those hedgerows and important hedgerows to be removed for the purposes of carrying out the authorised project.

#### **Schedule 18 – Compensation measures**

- 9.100 This schedule secures compensation measures to ensure the overall coherence of the national site network should the Secretary of State conclude that such measures are necessary.
- 9.101 The Schedule is separated into 3 parts. Part 1 relates to the impact on the Dogger Bank SAC, where adverse impact on integrity is conceded. It provides for the approval and delivery of a plan for the implementation and monitoring of compensation.
- 9.102 Part 2 relates to kittiwake, for which an adverse impact on integrity by reference to the Flamborough and Filey Coast SPA has been conceded. It secures the submission and approval of a species specific compensation, implementation and monitoring plan, which must be in accordance with the relevant outline compensation, implementation and monitoring plan as certified. The DCO requires an implementation timetable to be part of the approved plan and for that timetable to specify the number of full breeding seasons to have elapsed before any turbine can operate. It leaves the number of years to be approved in the plan, rather than recording it on the face of the DCO. This allows a more flexible mechanism (an approval of an amendment to the plan by the Secretary of State) for that number of years to change, if required, than using the non-material change procedure under the Planning Act 2008, which is a more lengthy procedure.
- 9.103 Part 3 relates to guillemot, for which adverse impact on integrity by reference to the Flamborough and Filey Coast SPA has been conceded. It secures the submission and approval of a species specific compensation, implementation and monitoring plan, which must be in accordance with the relevant outline compensation, implementation and monitoring plan as certified. The DCO requires an implementation timetable to be part of the approved plan and for that timetable to specify the minimum period from the commencement of the predator eradication measures prior to the installation of any wind turbine tower. It leaves the period to be approved in the plan, which must be complied with, rather than recording it on the face of the DCO. This allows a more flexible mechanism (an approval of an amendment to the plan by the Secretary of State) for that period to change, if required, than using the non-material change procedure under the Planning Act 2008, which is a more lengthy procedure.
- 9.104 [Part 3 also refers to razorbill throughout in square brackets. Adverse impact on integrity is not conceded for razorbill, but a ‘without prejudice’ derogation case has been put forward. The compensation plan, if required, for razorbill would, in practice, be essentially the same as that for guillemot. For this reason references to razorbill have been included in the outline plan and in the DCO in square brackets. If the Secretary of State does not conclude that compensation is required, then all references to razorbill would be removed from the certified plan (post grant of DCO), the DCO and this paragraph would be removed from the certified Explanatory Memorandum.]

#### **Schedule 19 – Documents to be certified**

- 9.105 Schedule 19 sets out the various application plans and documents to be certified by the Secretary of State as true copies of those documents following the making of the Order.

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