

Outer Dowsing Offshore Wind

Draft Development Consent Order and Supporting Documents

Explanatory Memorandum (including ORBA)

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THE PLANNING ACT 2008

THE INFRASTRUCTURE PLANNING (APPLICATIONS: PRESCRIBED FORMS AND PROCEDURE) REGULATIONS 2009

THE PROPOSED OUTER DOWSING OFFSHORE WIND FARM ORDER

EXPLANATORY MEMORANDUM

1. Introduction

- 1.1 This explanatory memorandum accompanies an application for development consent (the **Application**) by GT R4 Limited, trading as Outer Dowsing Offshore Wind (the **Applicant**) to construct and operate the Outer Dowsing Offshore Wind Farm (**ODOW**). The explanatory memorandum explains the purpose and effect of each article of, and Schedule to, the draft Outer Dowsing Offshore Wind Farm Order (the **Order**), as required by Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.
- 1.2 Notwithstanding its repeal, the wording used in the draft Order has been derived from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (the **Model Provisions**) and the drafting used in Orders for similar developments made under the Planning Act 2008 (the **2008 Act**).
- 1.3 Since the Order seeks to apply and modify statutory provisions under section 120(5) of the 2008 Act concerning the compulsory acquisition of land, it has been drafted as a statutory instrument as required under section 117(4) of the 2008 Act.

2. Purpose of the Order

- 2.1 The purpose of the Order is to grant the Applicant development consent for a nationally significant infrastructure project (NSIP), namely an offshore generating station together with associated development.
- 2.2 The offshore generating station will be located in the Southern North Sea approximately 54km from the Lincolnshire coastline comprising up to 100 wind turbine generators, and a network of subsea array cables.
- 2.3 The Order also authorises associated development linked to the offshore generating station, which includes:
 - up to one offshore accommodation platform;
 - up to four small or up to two large offshore transformer substations;
 - a network of interlink cables;
 - up to four subsea export cable circuits;
 - up to six temporary trenchless technique exit pits;
 - up to two offshore reactive compensation platforms;
 - a temporary work area associated with the offshore works;

- up to two artificial nesting structures;
 - the creation and recreation of biogenic reef within the Inner Dowsing Race Bank and North Ridge Special Area of Conservation;
 - landfall connection works located at Wolla Bank, south of Anderby Creek;
 - onshore cables from the landfall to the onshore substation, including link boxes, earth pits and joint bays;
 - an onshore HVAC substation at Surfleet Marsh to the North of Spalding;
 - onshore cables from the onshore substation to a National Grid substation including link boxes, earth pits and joint bays;
 - accesses, temporary works areas, and landscaping;
 - drainage works, sustainable drainage system ponds, and surface water management systems; and
 - other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project.
- 2.4 The Order also authorises ancillary works within the Order limits.
- 2.5 The Order contains two deemed marine licences under section 66(1) of the Marine and Coastal Access Act 2009 (the **2009 Act**) for the offshore generating station, offshore platforms and offshore cables: one for the generation assets (licence 1) and one for the offshore transmission assets (licence 2).
- 2.6 The Order also contains four deemed marine licences under section 66(1) of the 2009 Act for the potential artificial nesting structures. There are two areas for the artificial nesting structures, as shown on the Works Plans Offshore, which are referred to as the northern area and the southern area. Within each area, up to two artificial nesting structures will be authorised, however a maximum of two artificial nesting structures in total across both areas will be constructed in the event that this compensatory measure is required. This is secured by condition in the deemed marine licences. Authorisation is sought to construct up to two artificial nesting structures within one area or one artificial nesting structure in each area.
- 2.7 Four marine licences have been provided in order that each potential artificial nesting structure would have its own marine licence associated with that structure.
- 2.8 The Order also contains a deemed marine licence under section 66(1) of the 2009 Act for the creation of biogenic reef in specified areas within the Inner Dowsing Race Bank and North Ridge Special Area of Conservation (as shown by Work No. 10 on the Works Plans Offshore) as a compensatory measure, should it be required.
- 2.9 The Order contains powers to acquire land, or rights, compulsorily for the construction and operation of the project.

Nationally Significant Infrastructure Project

- 2.10 Pursuant to sections 14(1)(a) and 15(3) of the 2008 Act, an offshore generating station in England or Wales having a capacity of more than 100MW is a NSIP.
- 2.11 Section 31 of the 2008 Act provides that development consent is required under the Act for development that is or forms part of a NSIP. As the proposed generating station is proposed to have a capacity of more than 100 MW it qualifies as a NSIP.

Associated Development

- 2.12 Section 115 of the Planning Act 2008 provides that, in addition to the NSIP for which development consent is required, consent may also be granted for associated development. Associated development is defined in the Planning Act as development which is associated with the NSIP or any part of it.
- 2.13 In determining what comprises associated development, the Secretary of State will have regard to the Department for Communities and Local Government ‘*Planning Act 2008: Guidance on associated development applications for major infrastructure projects*’, April 2013 (“Associated Development Guidance”).
- 2.14 The Associated Development Guidance provides that it is for the Secretary of State to decide on a case by case basis whether or not development should be treated as associated development. In making this decision, the Secretary of State will take into account the following core principles:
- “(i) The definition of associated development, as set out in paragraph 3 above, requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development, or help address its impacts;*
- (ii) Associated development should not be an aim in itself but should be subordinate to the principal development.*
- (iii) Development should not be treated as associated development if it is only necessary as a source of additional revenue for the applicant, in order to cross-subsidise the cost of the principal development. This does not mean that the applicant cannot cross-subsidise, but if part of a proposal is only necessary as a means of cross-subsidising the principal development then that part should not be treated as associated development.*
- (iv) 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 proposed major infrastructure project. When deciding whether it is appropriate for infrastructure which is on a larger scale than is necessary to serve a project to be treated as associated development, each application will have to be assessed on its own merits. For example, the Secretary of State will have regard to all relevant matters including whether a future application is proposed to be made by the same or related developer as the current application, the degree of physical proximity of the proposed application to the current application, and the time period in which a future application is proposed to be submitted.”*
- 2.15 The Associated Development Guidance states that it is expected that associated development will, in most cases, be typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support it. Examples provided include a grid connection for a commercial power station and specifically for

offshore generating stations examples include onshore substations, harmonic filter compounds, overhead/underground lines, jointing pits, sealing end compounds, sea/land cable interface buildings and structures, converter stations and associated storage, facilities for additional sub-sea cables to offshore platforms and additional circuit breakers or circuit breaker bays on offshore platforms.

- 2.16 The associated development for which the Order seeks authorisation includes an offshore accommodation platform, up to four small or up to two large offshore transformer substations, a network of interlink cables, up to six temporary trenchless technique exit pits, up to two offshore reactive compensation platforms, a temporary work area associated with the offshore works, up to two artificial nesting structures, the creation and recreation of biogenic reef, offshore export cables, onshore cables and associated infrastructure such as transition joint bays, joint bays and link boxes, and a new onshore substation at Surfleet Marsh, North of Spalding as well as works associated with connecting the project to the National Grid.
- 2.17 The offshore wind generating station is comprised within Work No. 1 of the Order. Work Nos. 2 to 25 of the Order are all associated development. They are directly related to the generating station by being part of the electrical transmission system and grid connection works necessary to operate the generating station or mitigation works required to address impacts which may arise during the construction and operation of the offshore generating station.

3. Part 1 Preliminary

Article 1 (Citation and commencement)

- 3.1 This article provides for the commencement and citation of the Order. It includes the date on which the Order comes into force, which may or may not be the date on which the Order is made.

Article 2 (Interpretation)

- 3.2 This article provides for the interpretation of the Order. Amongst other things, the Article defines wind turbine generator, offshore accommodation platform and offshore electrical installations as well as types of foundations and other structures such as the onshore HVAC substation. These definitions do not appear in the Model Provisions but relate to the specific project and are self-explanatory.
- 3.3 Definitions of documents submitted as part of the Application and which are referred to in the Order have been included.
- 3.4 A definition of “commence” has also been included in the Order. This definition excludes offshore preparation works such as surveys and monitoring and onshore preparation works such as site clearance, early planting of landscaping works, vegetation clearance, archaeological investigations, environmental surveys, ecological mitigation, surveys to assess ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of temporary means of enclosure, creation of site accesses and the temporary display of site notices or

advertisements. The effect of this definition is that the onshore and offshore preparation works can be carried out prior to the majority of the requirements contained in Part 3 of Schedule 1 to the Order being discharged and in the case of the offshore works, prior to a number of the conditions contained in Part 2 of the deemed marine licences in Schedules 10 to 16 being discharged. It is acknowledged however that some of the onshore and offshore preparation works themselves may have environmental effects and so such preparation works have been made subject to appropriate requirements and conditions to ensure that the relevant planning authority or the MMO, as the case may be, can approve details in respect of such works before they are carried out. For example, requirement 12 requires the approval of an ecological management plan prior to onshore preparation works being undertaken, requirement 17 requires that any archaeological investigations that are to be carried out as part of the onshore preparation works must only take place in accordance with a specific written scheme of investigation which has been submitted to and approved by Lincolnshire County Council in consultation with the relevant planning authority and Historic England, and requirement 22 requires that no stage of the onshore preparation works that would affect a public right of way (as specified in Schedule 3 (public rights of way to be temporarily stopped up)) can be undertaken until a public access management plan has been submitted to and approved by the relevant highway authority in consultation with the relevant planning authority. This approach to the definition of commence is critical to ensure that pre-commencement activities can be carried out in a timely manner prior to commencement of the works and do not hold up the construction of the project, whilst still being subject to appropriate controls and approvals.

- 3.5 A definition of "maintain" has been added to clarify what is authorised under article 4 (power to maintain authorised project) and that it does not permit the undertaker to carry out any maintenance operations which would cause different environmental effects to those identified in the Environmental Statement.
- 3.6 The definition of Order limits follows the definition in the Model Provisions and the East Anglia ONE North Offshore Wind Farm Order 2022 (the **East Anglia ONE North Order**) and the East Anglia TWO Offshore Wind Farm Order 2022 (the **East Anglia TWO Order**) and cross refers to the limits shown on the works plan.
- 3.7 The "undertaker" is defined as GT R4 Limited, which has the benefit of the provisions of the Order, subject to article 6 (*Benefit of the Order*).

4. Part 2 Principal Powers

Article 3 (Development consent etc. granted by the Order)

- 4.1 This article is based on Model Provision 2 (and the equivalent provision in the East Anglia ONE North and East Anglia TWO Orders) and, subject to the provisions of the Order, grants development consent for the authorised development and consent for the ancillary works within the Order limits or at the locations shown on the access to works plan, thereby authorising the construction of the authorised project. The reference to the locations shown on the access to works plan relates to the powers conferred on the undertaker by Article 13 (Access to works) which permits the undertaker to form new or improve existing means of

access in the locations specified in Schedule 5 (access to works) and shown on the access to works plan.) The authorised development means the development described in Part 1 of Schedule 1 and any other development authorised by this Order that is development within the meaning of section 32 of the 2008 Act. Ancillary works means the ancillary works described in Part 2 of Schedule 1 and any other works authorised by the Order. Together, these are defined as the authorised project.

- 4.2 The power to carry out the works is subject to the requirements attached to the Order as set out in Part 3 of Schedule 1.
- 4.3 Paragraph (2) provides for limits within which the undertaker can deviate in the construction of the works numbered in Schedule 1.

Article 4 (*Power to maintain authorised project*)

- 4.4 This article is based on Model Provision 3 (and the equivalent provisions in the East Anglia ONE North and East Anglia Two Orders and the Hornsea Four Offshore Wind Farm Order 2023 (the **Hornsea Four Order**)) and makes provision for the undertaker to maintain the authorised project, subject to any contrary provisions in the Order or any agreement made under the Order.
- 4.5 Paragraph (2) makes it clear that the power to maintain does not remove the requirement to obtain further marine licences under Part 4 of the Marine and Coastal Access Act 2009 for offshore works which are not covered by the deemed marine licences within the Order.

Article 5 (*Operation of generating station*)

- 4.6 This article authorises the undertaker to operate the authorised project. It is included pursuant to section 140 (operation of generating stations) of the Planning Act.

Article 6 (*Benefit of the Order*)

- 4.7 This article provides for the transfer of the whole or part of the benefit of the Order with the consent of the Secretary of State, subject to certain exceptions. The Order includes drafting which makes it clear that the provisions of Article 6 apply to the deemed marine licences and can be applied either in whole or in part. The Secretary of State must however consult the MMO before giving consent to the transfer or grant of any or all of the benefit of the provisions of the deemed marine licences.
- 4.8 Paragraph (6) provides that the undertaker does not need to obtain consent of the Secretary of State where the transferee or lessee is a holder of a licence under the Electricity Act 1989 or where the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed. Where consent is not required under these provisions, paragraph (8) requires written notification to be given to the Secretary of State and, where the transfer or grant relates to the exercise of powers in their area, to the MMO and the relevant planning authority, prior to a transfer or grant of any benefit.
- 4.9 Paragraph (7) limits the transfer or grant of the provisions of article 9 (street works), article 12 (temporary stopping up of streets), article 20 (compulsory acquisition of land), article 22 (compulsory acquisition of rights), article 28 (temporary use of land for carrying out the

authorised project) and article 29 (temporary use of land for maintaining the authorised project) so that such provisions have effect only for the benefit of the named undertaker and a person who is a transferee or lessee and who also holds a licence under the Electricity Act 1989 or, in respect of article 9, is a street authority.

- 4.10 Paragraph (8) makes provision for written notification to be provided and paragraphs (9) to (11) set out a notification process. The notification process has precedent in the East Anglia ONE North and East Anglia TWO Orders and the Hornsea Four Order. Paragraph (13) makes provision for service of such notices by electronic means.

Article 7 (Application and modification of legislative provisions)

- 4.11 Article 7 has the effect of dis-applying legislative provisions as they would apply but for this article.

- 4.12 Paragraph (1) provides for the modification of Regulation 6(1) of the Hedgerows Regulations 1997 so that removal of any hedgerow to which the Regulations apply is permitted for carrying out development which has been authorised by a development consent order made pursuant to the 2008 Act. The Hedgerows Regulations 1997 allow a local planning authority to object to and prohibit interference with a hedgerow. The normal exception for development permitted by a planning permission does not apply to development authorised by a development consent order and therefore this modification is necessary to extend the exception to development authorised by a development consent. This approach has precedent in the East Anglia ONE North and East Anglia TWO Orders, the Hornsea Four Order and the Norfolk Boreas Offshore Wind Farm Order 2021 (the **Norfolk Boreas Order**) and the Norfolk Vanguard Offshore Wind Farm Order 2022 (the **Norfolk Vanguard Order**).

- 4.13 Paragraph (2)(a) disapplies provisions of the Neighbourhood Planning Act 2017. This disapplication provides that the temporary possession provisions in that enactment would not take effect at the expense of the temporary possession provisions contained in the Order. There is precedent for this approach in the recent Hornsea Four Order, the East Anglia ONE North and East Anglia TWO Orders, and the Norfolk Boreas and Vanguard Orders. The rationale for this approach is that the wording of the temporary possession provisions within the Order is well established and the relevant provisions relating to temporary possession within the Neighbourhood Planning Act 2017 are currently untested. Furthermore, the relevant provisions of the Neighbourhood Planning Act 2017 have not yet been brought into force (and may never be), regulations required to provide more detail on the operation of the regime have not yet been made and there is no known date for implementation. There is therefore no certainty as to the requirements of the new temporary possession regime or indeed if it will come into force.

- 4.14 Paragraphs 2(b) to (e) provide for the disapplication of various additional consents which would otherwise be required from the Environment Agency, internal drainage boards or lead local flood authorities under the Environmental Permitting (England and Wales) Regulations 2016, the Water Resources Act 1991 and the Land Drainage Act 1991. These are the requirements for consents to carry out a relevant flood risk activity (which is defined in the

Order by reference to paragraph 3(1) of Schedule 25 (flood risk activities and excluded flood risk activities) to the 2016 Regulations) where necessary for the purposes of, or in connection with, the construction or maintenance of the authorised project under the 2016 Regulations, the requirement for approval under flood defence and land drainage byelaws made or deemed to be made under the Water Resources Act, the prohibition on placing obstructions in waterways which are not main rivers under the Land Drainage Act and byelaws made under the Land Drainage Act regulating the use and obstruction of watercourses. The Order dis-applies this requirement for in-principle consent in order to ensure that the project can proceed and instead provides for approval of detailed plans in the protective provisions for the Environment Agency and the internal drainage boards in Schedule 18. This largely follows the approaches taken in the Hornsea Four Order, the Norfolk Boreas and Vanguard Orders and the Triton Knoll Electrical System Order 2016.

- 4.15 Paragraph (3) disapplies the provisions of the Lindsey County Council (Sandhills) Act 1932 (“the Sandhills Act”). The Sandhills Act applies to land within the Order Limits at the landfall, and provides for the designation of controlled sandhills within the land to which it applies. The Sandhills Act makes it unlawful to erect any structures (defined as a dwellinghouse, shed, but or tent or other building structure or erection of any description other than a fence) or fences (defined as including a fence, wall, hedge, bank or other erection for enclosing land or forming an obstruction to the passage of vehicles or of persons on foot) on any part of the controlled sandhills without a licence granted under the provisions of the Sandhills Act by the County Council. The Sandhills Act also prohibits other activities on the controlled sandhills, including the cutting of any tree, shrub, plant, grass or other vegetation, or to remove any soil from the controlled sandhills. The Order disapplies the Sandhills Act and the requirement for consent under the same to ensure that the project can proceed. This approach has precedent in the Triton Knoll Electrical System Order 2016.
- 4.16 Section 150 of the Planning Act 2008 provides that where an order granting development consent includes a provision the effect of which is to remove a requirement for a prescribed consent or authorisation to be granted, the order may only be granted if the relevant body has consented to the inclusion of the provision. Discussions are currently ongoing with the Environment Agency and the relevant drainage authorities regarding protective provisions that would allow the Environment Agency and the relevant drainage authorities to consent to the disapplication of the various water and drainage related consents under Article 6(2)(b) to (e) of the Order.

Article 8 (*Defence to proceedings in respect of statutory nuisance*)

- 4.17 This article reflects Model Provision 7 and provides that no-one shall be able to bring statutory nuisance proceedings under the Environmental Protection Act 1990 in respect of noise if the noise is created in the course of constructing or maintaining the authorised project and for which a notice under section 60 of the Control Pollution Act 1974 has been served or consent under section 61 of the Control Pollution Act 1974 has been given; if the noise results from the use of the authorised project whilst being used in compliance with requirement 25 (control of noise during operational phase) or if the noise cannot be reasonably avoided as a consequence of the authorised project. This approach has precedent

in the East Anglia ONE North and East Anglia TWO Orders, the Hornsea Four Order and the Hornsea Three Offshore Wind Farm Order 2020 (the **Hornsea Three Order**).

5. Part 3 Streets

Article 9 (*Street works*)

- 5.1 This article is based on Model Provision 8 and provides that the undertaker may enter any of the streets specified in Schedule 2 (streets subject to street works) as are within the Order limits to undertake the activities listed. The right given by the article is a statutory right for the purposes of 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the New Roads and Street Works Act 1991.

Article 10 (*Application of the 1991 Act*)

- 5.2 This article provides that relevant provisions of the New Roads and Street Works Act 1991 which apply to the carrying out of street works within the meaning of that Act, are to apply to the temporary stopping up, alteration or diversion of a street under article 12 (temporary stopping up of streets), even if no street works within the meaning of that Act are being carried out. This would, for example, require the undertaker to make arrangements, so far as practicable, for utilities to gain access to their apparatus. This provision largely follows article 9 of the East Anglia ONE North and East Anglia TWO Orders and the Hornsea Four Order.

Article 11 (*Temporary stopping up of public rights of way*)

- 5.3 This article is adapted from the Model Provisions and appears in similar form in the Norfolk Boreas and Norfolk Vanguard Orders. It allows the temporary stopping up of the public rights of way specified in column (2) of Schedule 3 (public rights of way to be temporarily stopped up) during the construction of the authorised project provided that the diversion route described in column (4) of Schedule 3 (or as otherwise approved by the relevant highway authority) is first provided to the required standard. The provision also requires that the undertaker must provide reasonable access for pedestrians going to or from premises abutting a public right of way affected by the temporary stopping up of a public right of way under this article if there would otherwise be no such access.
- 5.4 Paragraph (2) provides that the undertaker may use any public right of way temporarily stopped up under the powers conferred by this article within the Order limits as a temporary working site.

Article 12 (*Temporary stopping up of streets*)

- 5.5 This article is largely based on Model Provision 11 and appears in the East Anglia ONE North and East Anglia TWO Orders. It provides for the temporary stopping up, alteration or diversion of streets (other than public rights of way specified in Schedule 3 (public rights of way to be temporarily stopped up) as these are dealt with in Article 11 (Temporary stopping up of public rights of way)), subject to the consent of the street authority concerned which may attach reasonable conditions to any such consent or, in the case of the temporary

stopping up, alteration or diversion of those streets specified in Schedule 4 (streets to be temporarily stopped up), following consultation with the street authority.

- 5.6 Paragraph (2) departs from the Model Provision and provides that the undertaker may use any street temporarily stopped up under the powers conferred by this article within the Order limits as a temporary working site. Paragraph (7) extends Model Provision 11 and inserts a time limit of 56 days for the street authority to respond to an application for consent under this article. Failure to do so within the time limit, or failure to give reasons for a refusal, will result in consent being deemed to have been given. Paragraphs (2) and (7) are preceded in the East Anglia ONE North Order, the East Anglia TWO Order, the Norfolk Boreas Order and the Norfolk Vanguard Order, and the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020.

Article 13 (*Access to works*)

- 5.7 This article reflects Model Provision 12 and provides that the undertaker may form new or improve existing means of access in the locations specified in Schedule 5 (access to works) and for any other access, with the approval of the relevant highway authority after consulting the relevant planning authority in accordance with Requirement 20 (highway accesses). This article also extends Model Provision 12 stating that if the relevant highway authority fails to make a decision within 56 days of the undertaker's application, consent will be deemed to have been granted. This reflects wording included in the Hornsea Four Order, the East Anglia ONE North Order and the East Anglia TWO Order.

Article 14 (*Agreements with street authorities*)

- 5.8 This article is based on Model Provision 13 and provides that street authorities and the undertaker may enter into agreements with respect to any temporary stopping up, alteration or diversion of a street authorised by the Order, the construction of any new street authorised by the Order or the carrying out of works in the streets referred to in article 9 (*Street works*).

Article 15 (*Power to alter layout etc. of streets*)

- 5.9 This article allows for the alteration of the layout of any street for the purposes of construction, operation or maintenance, subject to obtaining the consent of the street authority and to the restoration of such streets to the reasonable satisfaction of the street authority, and includes altering the level or width of the street, making and maintaining passing places, and altering, removing, replacing and relocating any street furniture. As with earlier articles, a deemed approval mechanism is provided for. This article is not found in the Model Provisions but similar provisions can be found in the Hornsea Three Order and the Hornsea Four Order.

Article 16 (*Traffic regulation*)

- 5.10 This article allows the undertaker, subject to the consent of the traffic authority, to prohibit vehicular access, waiting of vehicles and impose speed restrictions on vehicles on particular roads specified in Schedule 6 (traffic regulation) for the purposes of the construction of the authorised development.
- 5.11 This article also provides that the undertaker may, with the consent of the traffic authority, for the purposes of or in connection with construction of the authorised development, impose

temporary traffic regulation orders. Paragraph (5) permits the removal of said traffic regulation orders by the undertaker from time to time by subsequent exercise of the same power.

- 5.12 Paragraphs (1) and (2) enable the undertaker to impose traffic regulation orders in respect of roads for the purposes of the authorised development, whether or not within the Order Limits, provided the consent of the traffic authority is obtained. Article 16(2)(d) enables the undertaker to place or maintain traffic signs (which is defined in the Order as having the same meaning as in section 64(1) of the Road Traffic Regulation Act 1984).
- 5.13 In order to exercise the powers conferred by this article, the undertaker must, in addition to obtaining the consent of the traffic authority, notify the chief officer of police and advertise its intention as directed by the traffic authority. This article is necessary to allow the construction of the authorised development to be carried out in a safe manner, and to minimise disruption as far as possible.
- 5.14 Article 16(8) confirms that where a traffic authority fails to respond to an application for consent under paragraph (1) within 56 days of receiving the application, it is deemed to have given its consent. This is to ensure that the undertaker can impose the traffic regulation orders within a necessary timeframe to suitably control traffic along the specified roads, as necessary, during construction. As elsewhere, it is considered necessary to enable the undertaker to exercise its powers in an efficient and expeditious manner, whilst still providing the traffic authority a sufficient amount of time to either approve or reject the application.
- 5.15 This article is based on a similar provision in the National Grid (Richborough Connection Project) Development Consent Order 2017, and the Manston Airport Development Consent Order 2022.

6. Part 4 Supplemental Powers

Article 17 (Discharge of water)

- 6.1 This article reflects Model Provision 14 (and the equivalent provisions within the East Anglia ONE North Order, the East Anglia TWO Order and the Hornsea Four Order) and provides that the undertaker may use any watercourse or public sewer or drain, in connection with the construction and maintenance of the authorised project with the approval and superintendence (if provided) of the person to whom it belongs (such approval may be subject to reasonable terms and conditions, but shall not be unreasonably withheld). In a departure from the Model Provisions but in keeping with and existing precedent, this article also makes provision for a 28 day time limit for a person to respond to an application for consent, failing which consent is deemed to have been given. This follows the approach taken in the East Anglia ONE North Order, the East Anglia TWO Order and the Hornsea Four Order.
- 6.2 Paragraph (7) of the Model Provision has been updated to refer to the environmental permitting regime under the Environmental Permitting (England and Wales) Regulations 2016.

Article 18 (*Authority to survey and investigate the land onshore*)

- 6.3 This article is based on Model Provision 16 (and the equivalent provisions in the Hornsea Four Order) and confers on the undertaker a power to enter any land shown within the Order limits or which may be affected by the authorised project in order to survey or investigate the land. It provides that no trial holes, bore holes or trenches may be made in land forming part of a railway, land held by or in right of the Crown, land located within a highway boundary or in a private street without the consent of Network Rail, the Crown, the highway authority or the street authority respectively. It adds to Model Provision 16 to make it clear that the undertaker may also place on, leave on and remove from the land apparatus and welfare facilities for use in connection with the survey and investigation of land and the making of trial holes, bore holes and trial trenches. It also provides that following completion of any survey, monitoring or investigation works all equipment and apparatus placed on the land must be removed.
- 6.4 Following the precedent in the East Anglia ONE North Order, the East Anglia TWO Order, the Hornsea Four Order and the Norfolk Boreas Order, the article also makes provision for a 28 day time limit for a highway authority or a street authority to respond to an application for consent, failing which that consent is deemed to have been given. Similar provisions do not apply in relation to Network Rail or the Crown.

Article 19 (*Removal of human remains*)

- 6.5 This article is based on Model Provision 17 and the equivalent provision in the Norfolk Vanguard Order and the Norfolk Boreas Order. It enables the undertaker to remove human remains from the Order limits, and provides a process for notification and identification of the human remains as well as their re-internment or cremation. The undertaker would be required to pay the reasonable expenses associated with this process.
- 6.6 This article departs from the Model Provision in that paragraph (12) excludes the requirement to give notice before the removal of remains which the undertaker is satisfied were interred more than 100 years ago and that no relative or personal representative of the deceased is likely to object to their removal. This approach has precedent in the A66 Northern Trans-Pennine Development Consent Order 2024, the Great Yarmouth Third River Crossing Development Consent Order 2020, and the A303 (Amesbury to Berwick Down) Development Consent Order 2020. Paragraph (13) requires that the undertaker seeks and complies with a direction from the Secretary of State under paragraph (15) regarding the treatment of such remains following their removal. This is required to ensure that the appropriate treatment of such remains does not delay the implementation of authorised development.
- 6.7 Whilst it is not anticipated that any human remains will be encountered during construction works, it is possible that human remains could be found within the Order limits.

7. Part 5 Powers of Acquisition

Article 20 (*Compulsory acquisition of land*)

- 7.1 This article provides that the undertaker may acquire compulsorily so much of the Order land as is required for the authorised project or to facilitate it, or is incidental to it. Article 23 makes consequential provision for the extinguishment of rights in the land upon entry

onto the land concerned or upon the date of acquisition, but also provides for rights to be excluded from extinguishment where extinguishment via statutory process is not appropriate or required. The article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in article 23 (private rights).

- 7.2 Whilst Article 20 provides broad powers, it is subject to paragraph (2) of article 22 (compulsory acquisition of rights) and article 28 (temporary use of land for carrying out the authorised project). In practice, pursuant to the other Articles, the powers are limited, and for the great majority of the Outer Dowsing Order land, will be restricted to some combination of the acquisition of specified new rights (Article 22), and specified powers of temporary possession (Article 28). This reflects the approach taken in the East Anglia ONE North Order, the East Anglia TWO Order, the Norfolk Boreas Order, the Norfolk Vanguard Order and the Hornsea Four Order.

Article 21 (Time limit for exercise of authority to acquire land compulsorily)

- 7.3 This article is based on Model Provision 20 and provides a time limit of seven years beginning on the day on which this Order is made to exercise the powers of compulsory acquisition of land. It departs from the Model Provisions in that the time limit has been extended from five to seven years. This extra time is required to enable the undertaker to procure only title to or rights over land compulsorily once the construction works have taken place thus restricting the impact to the final as-built affected areas. A seven year time limit can also be found in the Hornsea Three Order, the Hornsea Four Order, the East Anglia ONE North Order and the East Anglia TWO Order.

Article 22 (*Compulsory acquisition of rights*)

- 7.4 Article 22 enables the undertaker to acquire rights over land, including new rights and existing rights if applicable.
- 7.5 The article is drafted so as to allow the undertaker flexibility to acquire new rights in the Order land if appropriate rather than outright acquisition under Article 20 (*Compulsory acquisition of land*). This flexibility allows the undertaker to reduce the areas required for freehold acquisition and rely on new, permanent rights instead if this is appropriate in the circumstances. This flexibility is necessary to allow for continued negotiations with persons with an interest in the Order land and is a provision that is now usual in offshore wind orders. This was accepted in the East Anglia ONE North Order, the East Anglia TWO Order, the Norfolk Vanguard Order, the Norfolk Boreas Order and the Hornsea Four Order.
- 7.6 Article 22 also enables the undertaker to impose restrictive covenants as set out in Schedule 7 (land in which only new rights etc. may be acquired) to the Order for the protection of the cables, jointing bays and any ducts that will be installed as part of the authorised development. Such protection has been given in the East Anglia ONE North Order, the East Anglia TWO Order, the Norfolk Boreas Order, the Norfolk Vanguard Order and in the Hornsea Four Order. It is considered that the nature of the authorised development is appropriate for such restrictive covenants and the predominantly agricultural nature of the Order lands would not be unduly burdened by the imposition of restrictive covenants.

- 7.7 Paragraph (2) departs from the Model Provisions in providing that, in the case of the Order land specified in Schedule 7 (land in which only new rights etc. may be acquired), the undertaker may exercise the powers of compulsory acquisition to acquire compulsorily such new rights or impose such restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of Schedule 7. In relation to such land outright acquisition is not required.
- 7.8 The undertaker's rights under paragraph (2) are therefore limited to the acquisition of such new rights or restrictive covenants as are set out in Schedule 7.
- 7.9 Paragraph (3) provides that where the undertaker needs only to acquire a right over land, it shall not be obliged to acquire any greater interest in that land.
- 7.10 Paragraph (4) refers to modifications to enactments in relation to the creation of new rights and their compensation as a result of the creation of a new right. It is considered that such a modification to the statutory provisions relating to the acquisition of new rights is necessary because they do not operate clearly in relation to the creation of new rights over land. Accordingly a new schedule (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) has been incorporated, modelled on numerous development consent orders including the East Anglia ONE North Order, the East Anglia TWO Order, the Norfolk Vanguard Order, the Norfolk Boreas Order and in the Hornsea Four Order as well as the provisions of the Local Government (Miscellaneous Provisions) Act 1976 which apply in relation to compulsory purchase orders made by local authorities.
- 7.11 Paragraphs (5) and (6) provide 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.
- 7.12 Paragraph (8) provides that the special category land is discharged from rights, trusts and incidents so far as those are inconsistent with the exercise of the new rights acquired by the undertaker for the authorised development. Further details on the special category land and the application of section 132(3) of the 2008 Act are set out in the Statement of Reasons.

Article 23 (*Private rights*)

- 7.13 Model Provision 22 is amended, as explained in relation to article 20 (*Compulsory acquisition of land*), so as to apply to private rights generally and not just to rights of way.
- 7.14 Article 23, which reflects the equivalent provisions in the East Anglia ONE North Order and the East Anglia TWO Order, provides that private rights over land subject to compulsory acquisition under articles 20 and 22 of the Order are not to have effect to the extent that the continuance of those rights are inconsistent with the exercise of the powers under articles 20 and 22.
- 7.15 Paragraph (2) envisages that some rights may be acquired voluntarily through the grant of a lease. A reference to section 152 of the Planning Act is inserted into paragraph (4) to make it clear that the compensation payable under this article is not a new right to compensation, but is the compensation payable for injurious affection which would normally arise under

section 10 of the Compulsory Purchase Act 1965, but which, in relation to a development consent order (to which section 10 does not apply), arises instead under section 152 of the Planning Act.

Article 24 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981)

7.16 This article provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981 and provides for that Act to have effect subject to certain modifications. It gives the undertaker the option to acquire land by this method rather than through the notice to treat procedure. This article is based on Model Provision 23 and has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016 amendments to the Compulsory Purchase (Vesting Declarations) Act 1981.

Article 25 (Modification of Part 1 of the Compulsory Purchase Act 1965)

7.17 This article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the 2008 Act. This provision reflects changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (4) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 28 or 29 of this Order. Whilst this is not a Model Provision, these modifications have broad precedent in the East Anglia ONE North Order, the East Anglia TWO Order, the Hornsea Three Order and the Hornsea Four Order.

Article 26 (Acquisition of subsoil or airspace only)

7.18 This article provides that the undertaker may acquire compulsorily the subsoil or airspace only of the land referred to in article 20 (compulsory acquisition of land) or article 22 (compulsory acquisition of rights) as may be required, instead of acquiring the whole of the land or an interest in the whole of the land.

7.19 This follows Model Provision 24 in terms of subsoil but extends it to include the acquisition of airspace. There are precedents for this in the East Anglia ONE North Order, the East Anglia TWO Order, the Norfolk Boreas Order and the Norfolk Vanguard Order.

Article 27 (Rights under or over streets)

7.20 This article, which follows Model Provision 27 and can be found in the East Anglia ONE North and East Anglia TWO Orders, the Norfolk Vanguard and Boreas Orders and the Hornsea Four Order, empowers the undertaker to use the subsoil under or airspace above any street within Order limits without being required to acquire any part of the street or any easement or right in it.

Article 28 (Temporary use of land for carrying out the authorised project)

7.21 This article, based on Model Provision.28, enables the undertaker in connection with the carrying out of the authorised project, to take temporary possession of land listed in column (2) of Schedule 9 (land of which temporary possession may be taken). Additionally to the

Model Provisions, paragraph (1)(a)(ii) also provides for the powers of temporary possession to apply to any other Order land which is subject to compulsory acquisition under the Order provided the compulsory acquisition process has not begun in relation to it. This follows the approach adopted in a number of recent development consent orders, including the East Anglia ONE North, East Anglia TWO, Hornsea Four, Norfolk Vanguard and Norfolk Boreas Orders. It allows greater flexibility in the event that following further detailed design of the works it is decided that only temporary occupation rather than permanent acquisition of land is required. A benefit of structuring the Order powers in this way is also to limit the amount of land that needs be ultimately acquired, or over which new rights are acquired, from landowners.

- 7.22 Article 28(1)(b)-(f) stipulate various activities that can be undertaken pursuant to the Article. This list has been modified from the Model Provision to stipulate project specific activities (e.g. removal of agricultural plant and apparatus), and has precedent in the Hornsea Three and Hornsea Four Orders.
- 7.23 Paragraph (11) provides that the special category land is temporarily discharged from rights, trusts and incidents so far as those are inconsistent with the exercise of the powers under Article 28 and only for the period during which those powers are being exercised and has precedent in the Hornsea Four Order.

Article 29 (*Temporary use of land for maintaining authorised project*)

- 7.24 This article follows Model Provision 29 and similar provisions in the East Anglia ONE North and East Anglia TWO Orders. It allows the undertaker to take temporary possession of any land within the Order limits during the maintenance period for the purpose of maintaining the authorised project. The maintenance period is defined as five years from the date on which the authorised project first exports electricity to the national electricity transmission network, and any period falling between the date at which temporary possession is no longer permitted under article 28 and the date on which the authorised project first exports electricity to the national electricity transmission network.
- 7.25 Paragraph (12) provides that the special category land is temporarily discharged from rights, trusts and incidents so far as those are inconsistent with the exercise of the powers under Article 29, and only for the period during which those powers are being exercised and has precedent in the Hornsea Four Order.

Article 30 (*Statutory undertakers*)

- 7.26 This article authorises the undertaker to acquire land and new rights in land or impose restrictive covenants over land belonging to statutory undertakers as shown on the land plans within the Order land and described in the book of reference. Paragraph (a) has adapted paragraph (a) of Model Provision 31 and combined it with paragraph (c) of that same Model Provision.
- 7.27 It differs from the Model Provisions in that paragraph (b) provides for the extinguishment of rights and the removal or relocation of apparatus belonging to statutory undertakers over or within Order land over which powers of outright compulsory acquisition and the

acquisition of rights are exercisable. Thus it is not restricted to specific apparatus which has been shown on the land plans and described in the book of reference. In practice it is impracticable to show and describe all such apparatus.

- 7.28 The power makes it unnecessary to rely on the provisions under sections 271 and 272 of the Town and Country Planning Act 1990 for extinguishing rights of statutory undertakers, but means that it is necessary to establish a process for dealing with such matters. For this reason, the article provides that the powers granted will be subject to the protective provisions in the Schedule. This article has precedent in the East Anglia ONE North, East Anglia TWO, Hornsea Four, Norfolk Vanguard and Norfolk Boreas Orders.

Article 31 (*Recovery of costs of new connections*)

- 7.29 This article, which follows Model Provision 33 and can be found in the East Anglia ONE North, East Anglia TWO, Hornsea Four, Norfolk Vanguard and Norfolk Boreas Orders, provides for compensation to owners or occupiers of property where apparatus is removed in accordance with article 30 (*statutory undertakers*).

8. Part 6 Operation

Article 32 (*Deemed marine licences under the 2009 Act*)

- 8.1 This article provides for seven deemed marine licences (one for the generation assets, one for the offshore transmission assets, four for the potential artificial nesting structures for the reasons set out in paragraph 2.6 of this Explanatory Memorandum, and one for the creation of biogenic reef in specified areas within the Inner Dowsing Race Bank and North Ridge Special Area of Conservation (as shown by Work No. 10 on the Works Plans Offshore)). The terms for each licence are set out in Schedules 10 to 16. The licences are required for the deposit at sea within the Order limits of the specified substances and articles and the construction works in or over the sea and/or under the seabed.
- 8.2 The generation and transmission deemed marine licences have been drafted in a way that allows for flexibility as to whether certain works are constructed as generation assets or transmission assets. For example, both the generation and transmission assets deemed marine licences authorise the construction of the offshore accommodation platform and the interlink cables in order to avoid drawing an arbitrary line as to where the generation assets end and the transmission assets begin, however the deemed marine licences restrict what can be constructed across the two deemed marine licences to that assessed in the Environmental Statement. In addition, there are overarching controls within Schedule 1 of the Order limiting the maximum number of offshore platforms and interlink cables to that assessed in the Environmental Statement.
- 8.3 The artificial nesting structure deemed marine licences have been drafted on the basis that within each area, up to two artificial nesting structures will be authorised, however a maximum of two artificial nesting structures in total will be constructed in the event that this compensatory measure is required which is secured by condition in the deemed marine licences. Authorisation is sought to construct up to two artificial nesting structures within one area with none in the other area or one artificial nesting structure in each area.

- 8.4 The deemed marine licence for the creation of biogenic reef within the Inner Dowsing Race Bank and North Ridge Special Area of Conservation has been drafted to provide the Applicant with the licence it requires to undertake Work No. 10 (creation and recreation of biogenic reef within the Inner Dowsing Race Bank and North Ridge Special Area of Conservation) of the Order should it be required.

9. Part 7 Miscellaneous and general

Article 33 (Application of landlord and tenant law)

- 9.1 This article is based on Model Provision 35 (and equivalent provisions in the East Anglia ONE North and East Anglia TWO Orders) and overrides the application of landlord and tenant law so far as it may prejudice the operation of any agreement for leasing the whole or part of the authorised development or the right to operate the same agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised project.

Article 34 (Amendment of local legislation)

- 9.2 This article provides (pursuant to section 120(5)(a) of the 2008 Act) for the disapplication of certain requirements which would otherwise apply under specific pieces of local legislation.
- 9.3 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.
- 9.4 In the context of the authorised development being of national significance, the Order should be the predominant authorising instrument for the works. The purpose of the regime created by the 2008 Act is to ensure that DCOs provide a unified consent for NSIPs, and the undertaker considers that disapplying and amending certain legislative provisions, as set out in the Order, is proportionate in this context. It is considered proportionate as the provision makes clear that the legislation will only be disapplied insofar as the local legislation is inconsistent with a provision of, or a power conferred by, the Order. The disapplication of local legislation in this manner is precedented (see, for example, article 41 of the Boston Alternative Energy Facility Order 2023).

Article 35 (Operational land for purposes of the 1990 Act)

- 9.5 This article, which follows Model Provision 36 and can be found in the East Anglia ONE North and East Anglia TWO Orders and the Hornsea Four Order, provides that development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990 (cases in which land is to be treated as not being operational land) for the purposes of that Act. The purpose of this is to ensure that the land on which the authorised project is constructed will be "operational land" under section 263 of the 1990 Act and that permitted development rights under Part 15 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, will apply in relation to the land used for the purposes of the authorised development.

Article 36 (Felling of lopping of trees and removal of hedgerows)

- 9.6 This article provides that, subject to Article 36 (*trees subject to tree preservation orders*), the undertaker may fell or lop or cut back the roots of any tree or shrub within or overhanging the Order limits to prevent it from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project. Such provisions can also be found in the East Anglia ONE North and East Anglia TWO Orders and the Hornsea Four Order.
- 9.7 Article 35 also enables the undertaker to remove hedgerows within the Order limits and important hedgerows specified in Schedule 17. This power is supported by the modification of Regulation 6 of the Hedgerows Regulations 1997 in article 6 of the Order.

Article 37 (*Trees subject to tree preservation orders*)

- 9.8 This article allows the undertaker to fell or lop or cut back the roots of any tree within or overhanging land within the Order limits which is subject to a tree preservation order made after 13 October 2023. The reference to a certain date ensures that the provision will apply to trees that were only made subject to preservation orders after the application for a development consent order was prepared in order to prevent it obstructing or interfering with onshore preparation works, the construction, maintenance or operation of the authorised project, or from constituting an unacceptable source of danger (whether to children or to other persons). Compensation is provided for if loss or damage is caused. The Applicant has committed to installing cables by trenchless techniques under the existing trees subject to tree preservation orders within the Order Limits. This article has precedent in the East Anglia ONE North and the East Anglia TWO Orders.

Article 38 (*Protective Provisions*)

- 9.9 This article gives effect to the protective provisions in Schedule 18 (protective provisions).

Article 39 (*Arbitration*)

- 9.10 This article makes provision for any dispute arising under the provisions of the Order, unless otherwise provided for, to be settled by arbitration. Paragraph (2) confirms that matters for which the consent or approval of the Secretary of State or the Marine Management Organisation is required will not be subject to arbitration. The arbiter will be appointed by the parties or, failing agreement, by the Secretary of State. The concept derives from the Model Provisions but changes, including the addition of a new schedule (Schedule 19 (arbitration rules)), have been made to provide a more bespoke and relevant arbitration process. This follows the approach taken in the East Anglia ONE North and East Anglia TWO Orders.

Article 40 (*Requirements, appeals, etc.*)

- 9.11 This article gives effect to Schedule 20 (procedure for discharge of requirements) which provides a procedure for the discharge of requirements. Such an approach is recommended in Planning Inspectorate Advice Note 15: Drafting Development Consent Orders and has precedent in the Norfolk Vanguard and Norfolk Boreas Orders, the East Anglia ONE North and East Anglia TWO Orders, and the Hornsea Four Order.

Article 41 (*Certification of plans etc.*)

9.12 This article requires the undertaker to submit copies of the documents, plans and sections referred to in Schedule 21 (documents to be certified) to the Secretary of State, for certification as true copies following the making of the Order.

Article 42 (*Abatement of works abandoned or decayed*)

9.13 This article authorises the Secretary of State to issue a written notice to the undertaker requiring the repair, restoration or removal of the specified works where they have been abandoned or allowed to fall into decay. This power is stated to be without prejudice to any notice served under section 105(2) of the Energy Act 2004 requiring the submission of a decommissioning scheme. This provision can be found in the Norfolk Vanguard and Norfolk Boreas Orders, the East Anglia ONE North and East Anglia TWO Orders, and the Hornsea Four Order.

Article 43 (*Saving provisions for Trinity House*)

9.14 This article 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 Norfolk Vanguard and Norfolk Boreas Orders, the East Anglia ONE North and East Anglia TWO Orders, and the Hornsea Four Order. It is intended to provide protection to Trinity House

Article 44 (*Crown Rights*)

9.15 This article is not found in the Model Provisions but protects the Crown's position in relation to its own estates, rights, powers, privileges, authorities and exemptions. The Crown's written consent is required where any land, hereditaments or rights of the Crown are to be used, entered or interfered with as a result of granting of the Order, although there is no conditionality in respect of third party interests in Crown land. This article reflects recent Orders including Norfolk Vanguard and Norfolk Boreas Orders, the East Anglia ONE North and East Anglia TWO Orders, and the Hornsea Four Order.

Article 45 (*Funding*)

9.16 This article is not found in the Model Provisions but is based on recent precedent within the East Anglia ONE North and East Anglia TWO Orders, and the Hornsea Four Order. It precludes the compulsory acquisition powers from being exercised before appropriate security arrangements in respect of payment of compensation are in place and are approved by the Secretary of State. The guarantee or alternative form of security need be in place for a maximum period of 15 years.

Article 46 (*Compensation provisions*)

9.17 This article gives effect to Schedule 22 (compensation measures) which contains provisions on compensation to protect the coherence of the national site network for kittiwake. The Schedule also contains without prejudice provisions on compensation to protect the coherence of the national site network for guillemot, and razorbill, and without prejudice benthic compensation measures in relation to sandbanks and biogenic reef, should the Secretary of State consider that it is necessary.

Article 47 (*Service of Notices*)

9.18 This article governs how any notices that may be served under the Order are deemed to have been served properly. In particular it allows service by email with the consent of the recipient and deals with the situation of service on an unknown landowner. The provision is necessary because the service of notice provisions under sections 229 and 230 of the Act only apply to notices served under the Act itself and do not apply to notices served under the Order. This article is preceded in, for example, the Norfolk Vanguard and Norfolk Boreas Orders, the East Anglia ONE North and East Anglia TWO Orders, and the Hornsea Four Order.

10. Schedules

Schedule 1 (*Authorised project*)

- 10.1 Part 1 of Schedule 1 specifies the authorised development comprising the numbered works.
- 10.2 The authorised development will be constructed in accordance with the design parameters set out in the requirements in Part 3 and in the Environmental Statement.
- 10.3 The project parameters are at a level of sufficient detail to enable a proper assessment of the likely environmental effects on a worst-case scenario. This approach is consistent with the “Rochdale Envelope” and the Applicant has had regard to the Planning Inspectorate’s advice note nine “Rochdale Envelope”. Flexibility is required so as to ensure that the undertaker can take advantage of new developments and emerging products in the market for offshore wind turbine generators and other equipment. The potential ability to exploit these prospective factors (and take advantage of any cost benefits) is necessary in a competitive international market.
- 10.4 The ancillary works are set out in Part 2.
- 10.5 Part 3 sets out the requirements that the undertaker must comply with in relation to the construction and operation of the authorised project. Where appropriate, controls are also included in certain requirements in relation to pre-commencement works. These requirements take a similar form to planning conditions.
- 10.6 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.
- 10.7 With regard to the structure of the onshore requirements, it should be noted that the principles informing the onshore mitigation are largely set out in a number of outline documents submitted with the Application. This follows the approach taken in the East Anglia ONE North and East Anglia TWO Orders.
- 10.8 The requirements have been drafted in line with recently approved offshore generating station DCOs including the Hornsea Four, Norfolk Boreas, Norfolk Vanguard, East Anglia One North and East Anglia Two Orders.

Requirement 1 (*Time limits*)

10.9 Specifies the time limit for commencing the authorised development as five years from the date the Order comes into force.

Requirements 2 to 6 (*Detailed offshore design parameters*)

10.10 These requirements set out the detailed design parameters within which the authorised development must be constructed. Requirement 2 deals with the dimensions and other characteristics of wind turbine generators including the dimensions of the different foundation types. Requirement 3 specifies the parameters associated with the offshore electrical installations, offshore accommodation platform and offshore artificial nesting structures including the dimensions of the different foundation types and the dimensions of the structures. Requirement 3 also limits the total number of offshore electrical installations and offshore accommodation platforms that can be constructed. Requirement 4 provides that no more than fifty per cent of the total of the foundations of the wind turbine generators, offshore electrical installations, accommodation platform and offshore artificial nesting structures combined can be gravity base structure foundations. It also prevents the installation of any surface penetrating infrastructure, namely wind turbine generators, offshore transformer substations and offshore accommodation platforms within an offshore restricted build area shown hatched black on the Works Plans Offshore. Requirement 5 limits the total volume of scour protection for wind turbine generators, the offshore accommodation platform, offshore electrical installations and offshore artificial nesting structures. Requirement 6 limits the number of offshore export cables, and the total length of each of the array cables, interlink cables and offshore export cables. Requirement 6 also limits the maximum number of cable crossings for each respective cable type (unless otherwise agreed with the MMO), and limits the total volume and footprint of cable protection. The purpose of these requirements is to ensure that the authorised development is restricted to that which has been assessed in the Environmental Statement.

Requirement 7 (*Offshore decommissioning*)

10.11 This requirement requires an offshore decommissioning programme to be submitted to the Secretary of State prior to the commencement of Work Nos. 1 to 7.

Requirement 8 (*Stages of authorised development onshore*)

10.12 This requirement requires a written scheme setting out all the stages of the onshore transmission works (i.e. the works from landfall to, and including, the onshore substation and connection to the National Grid substation) to be approved by the relevant planning authority before commencement of the onshore transmission works.

Requirement 9 (*Detailed onshore design parameters*)

10.13 This requirement requires approval of details of the proposed works at the onshore HVAC substation (which must be in accordance with the design principles statement) by the relevant planning authority in consultation with Lincolnshire County Council and, in respect of the finished ground levels, in consultation with the Environment Agency.

10.14 The Applicant's commitment to install the cables and ducts forming part of Work No. 11 and Work No. 12 at the landfall using a trenchless technique is also secured. Taken together

these restrictions ensure that the impact of the onshore works is minimised in line with the assessment and commitments contained in the Application.

Requirement 10 (*Provision of landscaping*)

10.15 This provision requires a landscape management plan to be approved by the relevant planning authority in consultation with Lincolnshire County Council before the relevant stage of the onshore transmission works may commence. The landscape management plan must be in accordance with the outline landscape and ecological management strategy. The landscape management plan must be implemented as approved.

Requirement 11 (*Implementation and maintenance of landscaping*)

10.16 This requirement requires the undertaker to carry out and maintain all landscaping works in accordance with the landscape management plan approved under requirement 10, accordance with the relevant recommendations of appropriate British Standards. The undertaker is also required to replace trees or shrubs planted as part of the landscaping scheme which die or become seriously damaged or diseased within 5 years of planting.

Requirement 12 (*Ecological management plan*)

10.17 This requirement provides that no stage of the onshore transmission works shall commence until an ecological management plan for that stage of the onshore transmission works based on the outline landscape and ecological management strategy and reflecting survey results, and the mitigation measures in the Environmental Statement has been approved by the relevant planning authority in consultation with the relevant statutory nature conservation body. The requirement sets out a number of plans that are to be included in the ecological management plan.

10.18 Requirement 12 also requires an ecological management plan to be submitted to and approved by the relevant planning authority in consultation with the relevant statutory nature conservation body in respect of the onshore preparation works prior to such works being carried out.

10.19 The ecological management plans must include an implementation timetable and must be implemented as approved.

Requirement 13 (*Fencing and other means of enclosure*)

10.20 This requirement provides that the undertaker is required to obtain the written approval from the relevant planning authority for any proposed permanent fences, walls or other means of enclosure for each stage of the connection works prior to that stage commencing. Where any permanent fencing relates to the onshore HVAC substation then that fencing must be erected before it is brought into use and it must then be maintained throughout the lifetime of that piece of infrastructure.

Requirement 14 (*Temporary fencing and other temporary means of enclosure*)

10.21 This requirement requires the details of any temporary fences, walls, or other means of enclosure required for the construction of the onshore transmission works to be included in the code of construction practice approved under requirement 18 (Code of construction

practice) and must accord with the outline code of construction practice. Requirement 14 also requires all construction sites to remain securely fenced in accordance with the code of construction practice.

Requirement 15 (*Operational drainage management and emergency flood response*)

10.22 This requirement prevents construction of the onshore HVAC substation from commencing until an operational drainage management plan in respect of works (which accords with the outline operational drainage management plan) has been submitted to and approved by the relevant planning authority, in consultation with the lead local flood authority (being Lincolnshire County Council). The plan must include provision for the maintenance of any measures identified and must be implemented as approved.

10.23 Paragraph (2) requires an operational emergency flood response plan in respect of the onshore HVAS substation to be submitted to and approved by the relevant planning authority, in consultation with the lead local flood authority (being Lincolnshire County Council) prior to the operation of the onshore substation. The plan must be implemented as approved.

Requirement 16 (*Contaminated land and groundwater*)

10.24 This requirement provides that no stage of the onshore transmission works may be commenced until a scheme dealing with any contamination of land, to include groundwater, which is likely to cause significant harm to persons or controlled waters or the environment has been submitted to and approved by the relevant planning authority in consultation with the Environment Agency. The scheme to be submitted to discharge this requirement must include an investigation and assessment report to identify the extent of contamination and necessary remedial measures, together with a management plan which sets out long term measures with respect to any contaminants remaining on the site. Any remediation required must be undertaken in accordance with the approved scheme.

Requirement 17 (*Onshore archaeology*)

10.25 This requirement provides that the relevant stage of the onshore works may not commence until a written scheme of archaeological investigation (which must accord with the outline onshore written scheme of investigation for archaeological works and be informed by the pre-commencement archaeological investigations) has been submitted to and approved by Lincolnshire County Council in consultation with the relevant planning authority and Historic England. Thereafter the scheme must be undertaken in accordance with the approved details.

10.26 Requirement 17 also requires a written scheme of archaeological investigation (which must accord with the onshore outline written scheme of investigation for archaeological works) to be submitted to and approved by Lincolnshire County Council in consultation with the relevant planning authority and Historic England in respect of archaeological investigations carried out as part of the onshore preparation works prior to such works being carried out.

10.27 Requirement 17 makes provision for analysis, publication and dissemination of results and archive deposition of any archaeological site investigations.

Requirement 18 (*Code of construction practice*)

10.28 Provides that the relevant stage of the onshore transmission works shall not commence until a code of construction practice for that stage of the onshore transmission works has been submitted to and approved by the relevant planning authority following consultation, as appropriate, with Lincolnshire County Council, the Environment Agency, the relevant statutory nature conservation body, Anglian Water Services Limited in relation to the surface water drainage strategy and, if applicable, the MMO. The code must cover all the matters in the outline code of construction practice and must include the plans and strategies listed within the requirement. The code of construction practice must be implemented as approved.

Requirement 19 (*Construction hours*)

10.29 This requirement provides for construction hours for the onshore transmission works and construction-related traffic movements on specified days, with exceptions for certain activities such as continuous operations, delivery and unloading of abnormal loads, landfill works, or any time-critical elements of the onshore transmission works. Any deviation from the standard construction hours must be agreed in advance by the relevant planning authority, save where continuous 24-hour working is required for trenchless techniques, in which case the undertaker must notify the relevant planning authority in advance of such works. Requirement 19 makes it clear that where a trenchless technique is to take place within 100 metres of an occupied dwelling, the works must take place within the hours specified in paragraph (1) unless otherwise agreed in advance with the resident of that dwelling and notified to the relevant planning authority.

Requirement 20 (*Highway accesses*)

10.30 This requires that prior to the construction of any permanent or temporary means of access, or alteration of an existing means of access to a highway, an access plan for that access, including for the siting, design, layout and any access management measures must be submitted to and approved by the local highway authority. The highway accesses must be constructed, altered and maintained in accordance with the approved details.

Requirement 21 (*Traffic*)

10.31 This requirement requires that no stage of the onshore works can commence until a construction traffic management plan (in accordance with the outline construction traffic management plan) and a travel plan (in accordance with the outline travel plan) in respect of that stage have been submitted to and approved by the relevant highway authority in consultation with the relevant planning authority. The requirement requires that the plans are implemented on commencement of the relevant stage of the onshore works.

Requirement 22 (*Public rights of way*)

10.32 This requirement prevents any stage of the onshore works that would affect a public right of way specified in Schedule 3 from being undertaken until a public access management plan in respect of that stage and in accordance with the outline public access management plan, has been submitted to and approved by the relevant highway authority in consultation with

the relevant planning authority. Any alternative public rights of way must be implemented in accordance with the approved strategy.

Requirement 23 (Restoration of land used temporarily for construction)

10.33 This requirement provides that any land (landward of mean low water) used temporarily as part of the onshore transmission works must be reinstated in accordance with details approved by the relevant planning authority in consultation with the relevant highway authority (save, for the avoidance of doubt, where the land forms part of the approved permanent works or the approved landscaping) within twelve months after completion of the relevant stage of the onshore transmission works, or such other period as the relevant planning authority may approve.

Requirement 24 (Onshore decommissioning)

10.34 This requirement requires the undertaker to notify the relevant planning authority of the date of the permanent cessation of commercial operation of the onshore transmission works and provides that following the cessation, an onshore decommissioning plan in respect of the onshore transmission works must be submitted to and approved by the relevant planning authority in consultation with the relevant highway authority, the relevant statutory nature conservation body and the Environment Agency. The decommissioning plan must be implemented as approved.

Requirement 25 (Control of noise during operational phase)

10.35 This requirement sets rating levels for standard operational noise arising from the operation of the onshore HVAC substation and specifies the locations for measuring the noise, and provides for a monitoring scheme to be submitted to and approved by the relevant planning authority prior to the HVAC substation commencing operation. The monitoring scheme must be implemented as approved.

Requirement 26 (Control of artificial light emissions during operational phase)

10.36 This requires that the onshore HVAC substation must not begin operation until an operational artificial light emissions management plan (which accords with the outline operational artificial light emissions management plan) providing details of artificial light emissions during the operation of the onshore HVAC substation has been approved by the relevant planning authority. The approved plan must be implemented upon, and maintained during, the operation of the onshore HVAC substation.

Requirement 27 (Aviation Lighting)

10.37 Provides that lighting must be used as required by the Air Navigation Order 2016 and as determined necessary for aviation safety. This requirement also provides that lighting installed specifically to meet Ministry of Defence aviation safety requirements must remain operational for the life of the authorised development unless otherwise agreed in writing with the Ministry of Defence.

Requirement 28 (Requirement for written approval)

10.38 Provides that where any requirement requires the approval of the Secretary of State, the relevant planning authority or another person such approval shall be in writing.

Requirement 29 (*Amendments to approved details*)

10.39 This requirement provides that any details approved pursuant to any requirement shall be taken to include any amended details which are subsequently approved, provided that any amendments to or deviations from the approved details are in accordance with the principles and assessments set out in the Environmental Statement.

Requirement 30 (*Skills, supply chain and employment*)

10.40 This requirement provides that prior to commencement of any stage of the onshore works, a skills, supply chain and employment plan in relation to that stage must be submitted to and approved by the relevant planning authority in consultation with Lincolnshire County Council. The plan to be submitted must identify opportunities for individuals and businesses to access employment and supply chain opportunities associated with that stage of the onshore works and the means for publicising such opportunities. The approved skills, supply chain and employment plan must be implemented as approved.

Requirement 31 (*Soil management plan*)

10.41 This requirement requires that no stage of the onshore works can commence until a soil management plan (in accordance with the outline soil management plan) in respect of that stage has been submitted to and approved by the relevant planning authority in consultation with the Lincolnshire County Council. The requirement requires that the plan is implemented as approved.

Requirement 32 (*Cromer and Claxby Radar Mitigation*)

10.42 This requirement requires that appropriate mitigation against any adverse effects on the primary surveillance radars at Cromer and Claxby and NATS' associated air traffic management operations is approved by the Secretary of State in consultation with NATS before the wind turbine generators can be installed. The approved scheme must be implemented and the authorised development must be operated in accordance with the approved scheme.

Schedule 2 (*Streets subject to street works*)

10.43 Sets out those streets which are to be the subject of street works

Schedule 3 (*Public rights of way to be temporarily stopped up*)

10.44 Sets out those public rights of way which are to be temporarily stopped up.

Schedule 4 (*Streets to be temporarily stopped up*)

10.45 Sets out those streets which are to be temporarily stopped up.

Schedule 5 (*Access to works*)

10.46 Sets out details of access points to the works.

Schedule 6 (*Traffic regulation*)

10.47 Sets out details of speed limit restrictions, prohibitions on vehicular access and no waiting restrictions that may be imposed by the undertaker.

Schedule 7 (*Land in which only new rights etc may be acquired*)

10.48 Sets out the areas of land in which only new rights may be acquired by the undertaker and the purpose for which rights may be acquired, and also details, where relevant, the restrictive covenants that apply to the relevant plots to protect the installed cables.

Schedule 8 (*Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions*)

10.49 Sets out changes to the existing compensation and compulsory purchase legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965, and reflects any necessary changes arising as a result of the Housing and Planning Act 2016.

Schedule 9 (*Land of which temporary possession may be taken*)

10.50 Sets out details of such land that may be occupied under temporary powers, and the purpose for which temporary possession may be taken.

Schedule 10 (*Deemed licence under the 2009 Act – generation assets (licence 1)*) and **Schedule 11** (*Deemed licence under the 2009 Act – transmission assets (licence 2)*)

10.51 Schedules 10 and 11 set out the deemed marine licences for the generation assets and the transmission assets respectively.

10.52 The Model Provisions do not provide a draft deemed marine licence, however standard provisions and structure have been developed and included within Orders granted under the 2008 Act. The Applicant has adopted a similar approach for the authorised project. Pre-application comments from the MMO and Natural England were taken into account when drafting these deemed marine licences.

10.53 The licences are deliberately drafted to be standalone documents. This reflects the fact that they will have a wide distribution to contractors and agents. Also, they are documents which, based on past experience, are likely to be varied from time to time. Such variations will be much easier to follow if the licences have been prepared on a standalone basis. As a result, there is intentional repetition from the main Order of various definitions and the description of the authorised works.

10.54 The provisions referred to below relate to the deemed marine licences for the generation assets (licence 1) and the transmission assets (licence 2).

Part 1 – Licensed marine activities

10.55 Paragraph 1 (*Interpretation*) provides interpretation of certain words and phrases used in the licence and contact details for key organisations relevant to the content of the licence. Many of these are identical to those used in Article 2 of the Order.

10.56 Paragraphs 2 to 4 (*Details of licensed marine activities*) specify the licensable marine activities which are authorised by the licence in connection with the construction and operation of the generation assets (licence 1) and offshore transmission assets (licence 2).

The section deliberately repeats in full the description of the relevant works from Part 1 of Schedule 1. Reference is also included to disposal of material as a result of construction drilling and preparation works for construction of the generating station and associated development (as appropriate).

10.57 Paragraph 5 sets out the grid coordinates for those works within the deemed marine licence.

10.58 Paragraph 6 confirms that the deemed marine licence shall remain in force until the scheme has been decommissioned.

10.59 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 6 (*Benefit of the Order*). Section 72(7) permits the licensing authority to transfer a marine licence to another person. Section 72(8) provides that "a licence may not be transferred except in accordance with subsection 7". Article 6 (*Benefit of the Order*) however provides for the transfer to take place in a different way to section 72(7). Since article 6 is different from the precise wording of section 72(7) of the 2009 Act it is necessary to specify that section 72(7) only applies to a transfer not falling within article 6 in order to enable article 6 to operate. Without specifying this, article 6 might be claimed to be inoperative because of adopting a different wording from section 72(7).

10.60 Paragraph 8 confirms that where any condition requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under the licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved by the MMO.

10.61 Paragraph 9 notes that any amendments to approved details must be in accordance with the principles and assessments set out in the Environmental Statement.

10.62 Paragraphs 1 to 9 are standard provisions, for which recent precedent can be found in the East Anglia ONE North and East Anglia TWO Orders, and the Hornsea Four Order.

Part 2 – Conditions

10.63 Conditions 1 to 3 (*Design parameters*) specify the design parameters associated with the works comprised within the authorised scheme. This largely replicates requirements 2 to 6 of Part 3 of Schedule 1 however since the offshore accommodation platform and interlink cables are permitted under both licences, each licence includes a condition preventing the total number of offshore accommodation platform and the total length of platform link cables, and the volume and area of their cable protection, constructed across both licences from exceeding the maximum assessed within the Environmental Statement and authorised under Schedule 1 of the Order. The licences also include some restrictions which are not included in Schedule 1 of the Order, this is because it is considered more appropriate for these parameters to be controlled within the deemed marine licences due to their nature (i.e. parameters associated with deposit volumes such as volume of cable protection).

10.64 Condition 4 (*Maintenance of the authorised development*) confirms that the undertaker may maintain the authorised scheme except where the terms of the licence or an agreement made under the licence provides otherwise. No maintenance works whose likely effects are not

assessed in the environmental statement may be carried out, unless otherwise approved by the MMO, and such approval may be given only where it has been demonstrated to the satisfaction of the MMO that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement. There is precedent for a maintenance condition in the Hornsea Three and Hornsea Four Orders.

- 10.65 Condition 5 (*Vessels under the undertaker's control*) obliges the undertaker to issue to operators of vessels under its control operating within the Order limits a code of conduct to prevent collision risk or injury to marine mammals, and to ensure appropriate co-ordination of vessels within its control operating within the Order limits so as to reduce collision risk to other vessels including advisory safe passing distances for vessels. There is precedent for this condition in the Hornsea Four Order.
- 10.66 Condition 6 (*Extension of time periods*) confirms that any time period given to either the MMO or the undertaker may be extended with the agreement of the other party in writing, which agreement is not to be unreasonably withheld or delayed. Precedent for this condition can be found on the Hornsea Three Order and the Hornsea Four Order.
- 10.67 Condition 7 (*Notifications and inspection*) 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 publicising commencement and progress of the licensed activities. This condition follows recent precedent in the East Anglia ONE North and East Anglia TWO Orders, and the Norfolk Vanguard and Norfolk Boreas Orders.
- 10.68 Condition 8 (*Aids to navigation*) provides 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. These are all standard provisions which have been incorporated into recently granted Orders under the 2008 Act in respect of offshore wind farms, including the East Anglia ONE North and East Anglia TWO Orders, and the Norfolk Vanguard and Norfolk Boreas Orders.
- 10.69 Condition 9 (*Colouring of structures*) sets the colour of structures from highest astronomical tide to a height to be directed by Trinity House and the colour for the rest of the structure. This follows standard colouring conditions which have been incorporated into recently granted Orders under the 2008 Act in respect of offshore wind farms, including the Hornsea Four Order, the East Anglia ONE North and East Anglia TWO Orders, and the Norfolk Vanguard and Norfolk Boreas Orders.
- 10.70 Condition 10 (*Aviation safety*) requires the undertaker to notify the Defence Infrastructure Organisation Safeguarding regarding the construction of the scheme and its parameters. This is a standard condition and follows the wording of the same condition in the East Anglia ONE North and East Anglia TWO orders.
- 10.71 Condition 11 (*Chemicals, drilling and debris*) sets standards that must be met by the undertaker in respect of the chemicals and other substances that can be used and how they can be stored, transported and where they can be disposed of. There are also provisions

relating to chemicals and other substances that cannot be disposed of and a procedure to be followed should objects be dropped unintentionally. This is a standard condition which has been incorporated into recently granted Orders under the 2008 Act in respect of offshore wind farms.

10.72 Condition 12 (*Force majeure*) provides for the notification of deposits made in an emergency. This follows standard colouring conditions which have been incorporated into recently granted Orders under the 2008 Act in respect of offshore wind farms.

10.73 Condition 13 (*Pre-construction plans and documentation*) provides for the submission for approval, before the commencement of licensed activities, of a plan showing the proposed location, grid co-ordinates, 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 a construction programme and monitoring plan, a construction method statement, a project environmental management plan, a marine mammal mitigation protocol (where driven or part driven foundations are proposed), a written scheme of archaeological investigation, an offshore operations and maintenance plan, an aids to navigation management plan and, in licence 2 only, a biogenic reef mitigation plan.

10.74 Condition 14 requires any archaeological reports produced in accordance with the pre-construction plans and documentation condition to be agreed with Historic England. It also requires each of the documents for approval under that condition to be submitted for approval at least four months prior to the intended start of construction, and that each approved document be complied with.

10.75 Condition 15 (*Offshore safety management*) provides 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. This is a standard condition which has been incorporated into recently granted Orders under the 2008 Act in respect of offshore wind farms including the Hornsea Four Order and the East Anglia ONE North and East Anglia TWO Orders.

10.76 Condition 16 (*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. This is a standard condition which has been incorporated into recently granted Orders under the 2008 Act in respect of offshore wind farms.

10.77 Condition 17 (*Pre-construction monitoring and surveys*) specifies the manner in which the undertaker shall discharge its obligation under Condition 13 to put forward proposals for pre-construction surveys/monitoring, and provides an indicative list of the expected pre-construction surveys.

10.78 Condition 18 (*Construction monitoring*) specifies the manner in which the undertaker shall discharge its obligation under Condition 13 to put forward proposals for construction surveys/monitoring, and requires that in the event that driven or part-driven pile foundations

are proposed, such proposals must include certain noise monitoring. It provides for the MMO to require further noise monitoring depending on the results.

10.79 Condition 19 (*Post construction*) specifies the manner in which the undertaker shall discharge its obligation under Condition 13 to put forward proposals for post-construction surveys/monitoring, and provides an indicative list of the expected post-construction surveys. The pre-construction, construction monitoring and post-construction conditions all largely follow precedent set by recent offshore wind orders granted under the 2008 Act.

10.80 Condition 20 (*Reporting of impact pile driving*) provides that where driven or part-driven pile foundations are proposed to be used the undertaker must provide information of the expected location, start and end dates of impact pile driving to the Marine Noise Registry, and must notify the MMO following provision of such information to the Marine Noise Registry. This is a standard condition which has been incorporated into recently granted Orders under the 2008 Act in respect of offshore wind farms.

10.81 Condition 21 (*Deployment of cable protection*) provides that any cable protection to be installed following completion of construction in locations where cable protection was not installed during construction must be deployed within 10 years of completion of construction unless otherwise agreed by the MMO in writing. This condition was developed following comments received from the MMO during the pre-application consultation and largely reflects the equivalent condition in the Hornsea Four Order.

10.82 Condition 22 (*Southern North Sea Special Area of Conservation Site Integrity Plan (Piling)*) provides that before piling activities can commence, a project specific Southern North Sea SAC Site Integrity Plan (which accords with the in principle site integrity plan) must be submitted to and approved by the MMO in consultation with the relevant statutory nature conservation body. The condition sets out what the SIP must contain and that it must be submitted to the MMO no later than six months prior to the commencement of piling activities. It also provides that the SIP may be amended with the prior written approval of the MMO in consultation with the relevant statutory nature conservation body. There is precedent for this condition in the Hornsea Four Order.

10.83 Condition 23 of licence 1 (*Completion of construction*) requires a close out report to be submitted to the MMO, the Maritime and Coastguard Agency, the UK Hydrographic Office and the relevant statutory nature conservation body to confirm the date of completion of construction and final details of the wind turbine generators installed. The condition prevents any further construction activities from being undertaken following completion of construction. This is a standard condition which has been incorporated into recently granted Orders under the 2008 Act in respect of offshore wind farms.

Schedule 12 (*Deemed licence under the 2009 Act – northern artificial nesting structure 1*), **Schedule 13** (*deemed licence under the 2009 Act – northern artificial nesting structure 2 (licence 4)*), **Schedule 14** (*deemed licence under the 2009 Act – southern artificial nesting structure 1 (licence 5)*) **Schedule 15** (*deemed licence under the 2009 Act – southern artificial nesting structure 2 (licence 6)*)

10.84 Schedules 12 to 15 set out the deemed marine licences for four potential artificial nesting structures.

10.85 There are two areas for the artificial nesting structures, as shown on the Works Plans Offshore. Within each area, up to two artificial nesting structures will be authorised, however a maximum of two artificial nesting structures in total will be constructed in the event that this compensatory measure is required. This is secured by condition in the deemed marine licences. Authorisation is sought to construct up to two artificial nesting structures within one area or one artificial nesting structure in each area.

10.86 Incorporating deemed marine licences for compensatory measures into the Order is a novel approach but is considered to be justified and appropriate to ensure the undertaker has the consents necessary to proceed with the Project and any required compensatory measures where these are sufficiently defined. There is no precedent within any Orders granted under the 2008 Act in respect of offshore wind farms for deemed marine licences for artificial nesting structure development.

Part 1 – Licensed marine activities

10.87 Paragraph 1 (*Interpretation*) provides interpretation of certain words and phrases used in the licence and contact details for key organisations relevant to the content of the licence. Many of these are identical to those used in Article 2 of the Order.

10.88 Paragraphs 2 to 4 (*Details of licensed marine activities*) specify the licensable marine activities which are authorised by the licence in connection with the construction, operation and maintenance of the potential artificial nesting structure. The section deliberately repeats in full the description of the relevant works from Part 1 of Schedule 1. Reference is also included to disposal of material as a result of construction drilling and preparation works for foundation works and associated development (as appropriate).

10.89 Paragraph 5 sets out the grid coordinates for those works within the deemed marine licence.

10.90 Paragraph 6 confirms that the deemed marine licence shall remain in force until the authorised scheme has been decommissioned.

10.91 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 6 (*Benefit of the Order*). Section 72(7) permits the licensing authority to transfer a marine licence to another person. Section 72(8) provides that "a licence may not be transferred except in accordance with subsection 7". Article 6 (*Benefit of the Order*) however provides for the transfer to take place in a different way to section 72(7). Since article 6 is different from the precise wording of section 72(7) of the 2009 Act it is necessary to specify that section 72(7) only applies to a transfer not falling within article 6 in order to enable article 6 to operate. Without specifying this, article 6 might be claimed to be inoperative because of adopting a different wording from section 72(7).

10.92 Paragraph 8 confirms that where any condition requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under the licence, the

approved details, plan or scheme are taken to include any amendments that may subsequently be approved by the MMO.

10.93 Paragraph 9 notes that any amendments to approved details must be in accordance with the principles and assessments set out in the Environmental Statement.

Part 2 – Conditions

10.94 Condition 1 (*Design parameters*) specifies the design parameters associated with the works comprised within the authorised scheme. The licences include some restrictions which are not included in Schedule 1 of the Order, this is because it is considered more appropriate for these parameters to be controlled within the deemed marine licences due to their nature (i.e. parameters associated with deposit volumes such as volume of scour protection).

10.95 Condition 2 (*Maintenance of the authorised development*) confirms that the undertaker may maintain the authorised scheme except where the terms of the licence or an agreement made under the licence provides otherwise. No maintenance works whose likely effects are not assessed in the environmental statement may be carried out, unless otherwise approved by the MMO, and such approval may be given only where it has been demonstrated to the satisfaction of the MMO that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

10.96 Condition 3 (*Vessels under the undertaker's control*) obliges the undertaker to issue to operators of vessels under its control operating within the Order limits a code of conduct to prevent collision risk or injury to marine mammals, and to ensure appropriate co-ordination of vessels within its control operating within the Order limits so as to reduce collision risk to other vessels including advisory safe passing distances for vessels.

10.97 Condition 4 (*Extension of time periods*) confirms that any time period given to either the MMO or the undertaker may be extended with the agreement of the other party in writing, which agreement is not to be unreasonably withheld or delayed.

10.98 Condition 5 (*Notifications and inspection*) 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 publicising commencement and progress of the licensed activities.

10.99 Condition 6 (*Aids to navigation*) provides 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.

10.100 Condition 7 (*Colouring of structures*) sets the colour of structures from highest astronomical tide to a height to be directed by Trinity House and the colour for the rest of the structure.

10.101 Condition 8 (*Chemicals, drilling and debris*) sets standards that must be met by the undertaker in respect of the chemicals and other substances that can be used and how they can be stored, transported and where they can be disposed of. There are also provisions

relating to chemicals and other substances that cannot be disposed of and a procedure to be followed should objects be dropped unintentionally.

- 10.102 Condition 9 (*Force majeure*) provides for the notification of deposits made in an emergency.
- 10.103 Condition 10 (*Aviation safety*) requires the undertaker to notify the Defence Infrastructure Organisation Safeguarding regarding the construction of the licensed activities and its parameters. This is a standard condition and is based on the wording of the same condition in the East Anglia ONE North and East Anglia TWO orders.
- 10.104 Condition 11 (*Pre-construction plans and documentation*) provides for the submission for approval, before the commencement of licensed activities, of a plan showing the proposed location, grid co-ordinates, dimensions and choice of foundation for the artificial nesting structure, as well as the proposed layout of the artificial nesting structure, 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 a construction programme, a construction method statement, a project environmental management plan, a marine mammal mitigation protocol (where driven or part driven foundations are proposed), an offshore operations and maintenance plan and a written scheme of archaeological investigation.
- 10.105 Condition 12 requires each of the documents for approval under condition 10 to be submitted for approval at least three months prior to the intended start of construction, and that each approved document be complied with.
- 10.106 Condition 13 (*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.
- 10.107 Condition 14 (*Reporting of impact pile driving*) provides that where driven or part-driven pile foundations are proposed to be used the undertaker must provide information of the expected location, start and end dates of impact pile driving to the Marine Noise Registry, and must notify the MMO following provision of such information to the Marine Noise Registry.
- 10.108 Condition 15 (*Southern North Sea Special Area of Conservation Site Integrity Plan (Piling)*) provides that before piling activities can commence, a project specific Southern North Sea SAC Site Integrity Plan (which accords with the in principle site integrity plan so far as relevant to the authorised scheme) must be submitted to and approved by the MMO. The condition sets out what the SIP must contain and that it must be submitted to the MMO no later than three months prior to the commencement of piling activities.

Schedule 16 (*Deemed licence under the 2009 Act – biogenic reef creation (licence 7)*)

- 10.109 Schedule 16 sets out the deemed marine licence for the biogenic reef creation proposed in Work No. 10 (creation and recreation of biogenic reef within the Inner Dowsing Race Bank and North Ridge Special Area of Conservation) of the Order.

10.110 Incorporating deemed marine licences for compensatory measures into the Order is a novel approach but is considered to be justified and appropriate to ensure the undertaker has the consents necessary to proceed with the Project and any required compensatory measures where these are sufficiently defined. There is no precedent within any Orders granted under the 2008 Act in respect of offshore wind farms for deemed marine licences for biogenic reef creation.

Part 1 – Licensed marine activities

10.111 Paragraph 1 (*Interpretation*) provides interpretation of certain words and phrases used in the licence and contact details for key organisations relevant to the content of the licence. Many of these are identical to those used in Article 2 of the Order.

10.112 Paragraphs 2 to 4 (*Details of licensed marine activities*) specify the licensable marine activities which are authorised by the licence in connection with the creation, re-creation and maintenance of biogenic reef. The section deliberately repeats in full the description of the relevant works from Part 1 of Schedule 1.

10.113 Paragraph 5 sets out the grid coordinates for those works within the deemed marine licence.

10.114 Paragraph 6 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 6 (*Benefit of the Order*). Section 72(7) permits the licensing authority to transfer a marine licence to another person. Section 72(8) provides that "a licence may not be transferred except in accordance with subsection 7". Article 6 (*Benefit of the Order*) however provides for the transfer to take place in a different way to section 72(7). Since article 6 is different from the precise wording of section 72(7) of the 2009 Act it is necessary to specify that section 72(7) only applies to a transfer not falling within article 6 in order to enable article 6 to operate. Without specifying this, article 6 might be claimed to be inoperative because of adopting a different wording from section 72(7).

10.115 Paragraph 7 confirms that where any condition requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under the licence, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved by the MMO.

10.116 Paragraph 8 notes that any amendments to approved details must be in accordance with the principles and assessments set out in the Environmental Statement.

Part 2 – Conditions

10.117 Conditions 1 (*Design parameters*) specifies the total volume of cultch that can be deposited as part of the authorised scheme

10.118 Condition 2 (*Maintenance of the authorised development*) confirms that the undertaker may maintain the authorised scheme except where the terms of the licence or an agreement made under the licence provides otherwise. No maintenance works whose likely effects are not assessed in the environmental statement may be carried out, unless otherwise

approved by the MMO, and such approval may be given only where it has been demonstrated to the satisfaction of the MMO that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

10.119 Condition 3 (*Vessels under the undertaker's control*) obliges the undertaker to issue to operators of vessels under its control operating within the Order limits a code of conduct to prevent collision risk or injury to marine mammals, and to ensure appropriate co-ordination of vessels within its control operating within the Order limits so as to reduce collision risk to other vessels including advisory safe passing distances for vessels.

10.120 Condition 4 (*Extension of time periods*) confirms that any time period given to either the MMO or the undertaker may be extended with the agreement of the other party in writing, which agreement is not to be unreasonably withheld or delayed.

10.121 Condition 5 (*Notifications and inspection*) 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 publicising commencement and progress of the licensed activities.

10.122 Condition 6 (*Chemicals and debris*) sets standards that must be met by the undertaker in respect of the chemicals and other substances that can be used and how they can be stored and transported. There are also provisions relating to chemicals and other substances that cannot be disposed of and a procedure to be followed should objects be dropped unintentionally.

10.123 Condition 7 (*Force majeure*) provides for the notification of deposits made in an emergency.

10.124 Condition 8 (*Pre-construction plans and documentation*) provides for the submission for approval, before the commencement of licensed activities, of a plan showing the proposed location of the biogenic reef, 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 a construction programme, a construction method statement and a written scheme of archaeological investigation.

10.125 Condition 9 requires each of the documents for approval under condition 8 to be submitted for approval at least three months prior to the intended start of construction, and that each approved document be complied with.

10.126 Condition 10 (*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.

Schedule 17 (*Removal of important hedgerows*)

10.127 Sets out important hedgerows to be removed.

Schedule 18 (*Protective provisions*)

- 10.128 Sets out protective provisions for the benefit of statutory undertakers whose equipment may be affected by the authorised project.
- 10.129 Protections for utilities are routinely included in orders and are set out in Part 1. Protections for electronic communication code providers are routinely included in orders and are set out at Part 2.
- 10.130 The Applicant has engaged with and is continuing to engage with a number of relevant statutory undertakers to agree bespoke protective provisions for inclusion in the Order. Draft versions of protective provisions are included in schedule 18 for those parties where discussions are relatively progressed, however these remain subject to further change prior to and during examination. Protective provisions for additional statutory undertakers will be included in the Order once they are further progressed.
- 10.131 Part 3 of Schedule 18 includes draft protective provisions for the benefit of Anglian Water Services Limited.
- 10.132 Part 4 of Schedule 18 includes draft protective provisions for the benefit of the Environment Agency.
- 10.133 Part 5 of Schedule 18 includes draft protective provisions for the benefit of the drainage authorities.
- 10.134 Part 6 of Schedule 18 includes draft protective provisions for the benefit of the Harbour Authority, Port of Boston Limited.

Schedule 19 (*Arbitration Rules*)

- 10.135 This schedule provides an arbitration process secured by the Order. The wording is based on similar schedules in the East Anglia ONE North and East Anglia TWO Orders.
- 10.136 The Applicant considers that it is important to provide a robust process within which substantive differences between the parties can be resolved. The intention is to achieve a fair, impartial and binding award on substantive differences between the parties and to receive determination within 4 months from the date the arbitrator is first appointed to ensure that disputes are resolved quickly. Given the need for new power projects, and in particular, for renewable energy, as identified in the National Policy Statements, it is imperative that any disputes are resolved promptly to enable delivery of the authorised project in a timely manner.
- 10.137 Schedule 19 refers to the person who commenced the arbitration as the Claimant and the other party as the Respondent.
- 10.138 The timetable for the process is as follows:
- (a) Within 14 days of the Arbitrator being appointed the Claimant must serve on the Respondent and the Arbitrator a statement of claim and all supporting evidence to support the claim.
 - (b) Within 14 days of receipt of the Claimant's statement of claim and supporting evidence the Respondent must serve on the Claimant and the Arbitrator a statement of defence and all

supporting evidence to support its defence, together with any objections to the Claimant's documentation.

- (c) Within 7 days of receipt of the Respondent's documentation the Claimant may make a Statement of Reply.

10.139 The costs of the arbitration will be awarded by the arbitrator on the general 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 20 (*Procedure for discharge of requirements*)

10.140 This schedule provides a procedure for the discharge of requirements in order to ensure the timely discharge of requirements and to provide an appeals mechanism. The inclusion of such a schedule is recommended in Planning Inspectorate Advice Note 15: Drafting Development Consent Orders and Schedule 20 is largely based on the proposed schedule contained within Advice Note 15.

10.141 The Schedule specifies a period of 56 days for the discharging authority to determine an application, but makes provision for a longer period to be agreed between the undertaker and the discharging authority. Provision is made for further information to be requested and submitted and provides timescales associated with this process.

10.142 The Schedule provides that fees for applications to discharge requirements will be paid to the discharging authority in accordance with the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012.

Schedule 21 (*Documents to be certified*)

10.143 This schedule sets out all of the documents to be certified under the Order including documents forming the environmental statement (Part 1) and other documents (Part 2).

Schedule 22 (*Compensation provisions*)

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

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

10.146 The Applicant's assessment cannot rule out an adverse effect on the integrity on the kittiwake feature of the Flamborough and Filey Coast Special Protection Area. Part 1 of this schedule secures the compensation measures for the kittiwake feature of the Flamborough and Filey Coast Special Protection Area proposed by the Applicant. The measures include artificial nesting structure(s), payment of a contribution to the Marine Recovery Fund, payment of a financial contribution towards the establishment of compensation measures by

another party, and collaboration with another party in the delivery of compensation measures.

10.147 Without prejudice to the Applicant's position that there will be no adverse effect on the integrity on the guillemot or razorbill features of the Flamborough and Filey Coast SPA as a result of the Project alone or in combination, the Applicant has prepared Parts 2 and 3 of this schedule to secure compensatory measures for guillemot and razorbill should the Secretary of State conclude that such measures are necessary. The measures for guillemot and razorbill include predator eradication, measures to reduce disturbance, improve habitat and/or introduce predator control measures at key nesting sites, artificial nesting structure(s), payment of a contribution to the Marine Recovery Fund, payment of a financial contribution towards the establishment of compensation measures by another party, and collaboration with another party in the delivery of compensation measures.

10.148 Without prejudice to the Applicant's position that there will be no adverse effect on the integrity of the sandbank or biogenic reef features of the Inner Dowsing, Race Bank, and North Ridge Special Area of Conservation as a result of the Project alone or in combination, the Applicant has prepared Parts 4 and 5 of this schedule to secure sandbank and biogenic reef compensatory measures should the Secretary of State conclude that such measures are necessary.

10.149 The measures for the sandbank feature include biogenic reef seeding of oyster and/or blue mussel beds within the Inner Dowsing, Race Bank, and North Ridge Special Area of Conservation, proposed measures to extend a Special Area of Conservation, measures to remove marine debris, the removal of redundant infrastructure such as telecommunication cables, the removal of aggregate industry pressures, measures to protect the sandbank features outside a Special Area of Conservation from industry pressures, the creation or restoration of seagrass bed habitat comprising the planting of seagrass seeds and/or shoots, payment of a contribution to the Marine Recovery Fund, payment of a financial contribution towards the establishment of compensation measures by another party, and collaboration with another party in the delivery of compensation measures.

10.150 The measures for the biogenic reef feature include biogenic reef seeding of oyster and/or blue mussel beds within the Inner Dowsing, Race Bank, and North Ridge Special Area of Conservation, proposed measures to extend a Special Area of Conservation, measures to remove marine debris, measures to protect biogenic reef features outside a Special Area of Conservation from industry pressures, payment of a contribution to the Marine Recovery Fund, payment of a financial contribution towards the establishment of compensation measures by another party, and collaboration with another party in the delivery of compensation measures.

10.151 Each of the species or habitat specific parts of the schedule provides details that must be included in the compensation, implementation and monitoring plan. As set out above, each part of the schedule includes options for the undertaker to elect to (1) pay a contribution to the Marine Recovery Fund wholly or partly in substitution for one or more of the compensation measures or as an adaptive management measure, (2) pay a financial

contribution towards the establishment of compensation measures by another party wholly or partly in substitution for one or more of the compensation measures or as an adaptive management measure, and (3) collaborate with another party in the delivery of compensation measures wholly or partly in substitution for one or more of the compensation measures or as an adaptive management measure. These options have been provided to allow for opportunities for strategic compensation to be explored by the undertaker.

10.152 The Applicant's position remains that there will be no adverse effect on integrity of any feature other than kittiwake and so the Applicant would submit that Parts 2 to 5 of this Schedule should be removed from the Development Consent Order as made. However, if the Secretary of State takes a different view, the proposed structure of the schedule would allow the compensation measures for one species to be changed or removed without affecting the operation of compensation for other species.