



# The Planning Inspectorate Yr Arolygiaeth Gynllunio

**The Planning Act 2008**

**Dogger Bank Creyke Beck Offshore Wind Farm**

**Examining Authority's Report of Findings and Conclusions**

**and**

**Recommendation to the  
Secretary of State for Energy and Climate Change**

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**Panel Member**

**Examining Authority**

**Date: 17 November 2014**

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## **Examining Authority's findings and conclusions and recommendation in respect of the proposed Dogger Bank Creyke Beck Offshore Wind Farm**

The application, dated 21 August 2013, was made under section 37 of the Planning Act 2008 (PA 2008) and was received in full by the Planning Inspectorate on 29 August 2013. The application was accepted for examination on 25 September 2013. The examination began on 18 February 2014 and was completed on 18 August 2014.

The applicant is Forewind Limited (APP-002), a consortium comprising four companies: RWE Innogy UK, SSE, Statkraft, and Statoil. However the development of the Dogger Bank Creyke Beck project would be taken forward under two special purpose companies. These are known as 'Dogger Bank Project 1 Bizco Limited' (in relation to Dogger Bank Creyke Beck A) and 'Dogger Bank Project 4 Bizco Limited' (in relation to Dogger Bank Creyke Beck B).

The proposed development comprises:

- (i) Two wind farms (known respectively as project A and project B), each with an installed capacity of up to 1.2GW.
- (ii) Both project A and project B will comprise an offshore converter platform, up to 4 offshore collector platforms and up to 5 meteorological masts, along with accommodation or helicopter platforms and inter-array cabling;
- (iii) Offshore associated development including high voltage direct current (HVDC) export cables;
- (iv) Onshore associated development including: HVDC export cables laid underground from landfall at Ulrome to the proposed site of the converter station(s) near Cottingham; up to 2 converter stations, and high voltage, alternating current (HVAC) cables from the converter stations to the National Grid substation at Creyke Beck; and
- (v) All associated temporary work to facilitate the construction, operation and maintenance of the wind farms.

### **Summary of Recommendation:**

The Examining Authority recommends that the Secretary of State for Energy and Climate Change should make the Order in the form attached.

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**ERRATA SHEET – Dogger Bank Creyke Beck Offshore Wind Farm  
Ref. EN010021**

**Examining authority’s Report of Findings and Conclusions and  
Recommendation to the Secretary of State for the Department of  
Energy and Climate Change, dated 17 November 2014.**

**Corrections agreed by the Examining Authority prior to a decision  
being made**

<b>Page No.</b>	<b>Paragraph</b>	<b>Error</b>	<b>Correction</b>
8	2.6	“principle”	“principal”
9	2.9	“principle”	“principal”
11	2.21	“999Bi”	“99Bi”
39	5.28	“The Electricity Act 2004...”	“The Energy Act 2004...”
58	5.124	“...ES Chapter 35”	“...ES Chapter 6.35”
59	5.129	“ESP”	“EPS”
77	7.2(iv)	“”...very large extent When..”	“...very large extent. When...”
See 84	8.3	“xiv” “xv” “xvi”	“i” “ii” “iii”
121	14.1	“..question whether... ”	“..question of whether..”
132	14.59	“..open space will no less...”	“..open space will be no less..”
134	14.64	“...referred to in Article 42...”	“...referred to in Requirement 22...”
136	14.74	“PA2800”	“PA2008”
143	14.107	“..how soil will be striped..”	“..how soil will be stripped..”
178	15.91	“..relationship Radar..”	“..relationship to Radar..”
191	16.4	“..Dogger Bank Creyke Beck A and B Offshore	“..Dogger Bank Creyke Beck Offshore Wind Farm Order..”

<b>Page No.</b>	<b>Paragraph</b>	<b>Error</b>	<b>Correction</b>
		Wind Farm Order..”	

# **1 INTRODUCTION**

- 1.1 The application, dated 21 August 2013, was made under section 37 of the Planning Act 2008 (PA 2008) and was received in full by the Planning Inspectorate on 29 August 2013. The application was accepted for examination on 25 September 2013. The examination began on 18 February 2014 and was completed on 18 August 2014.
- 1.2 The applicant is Forewind Limited (APP-002), a consortium comprising four companies: RWE Innogy UK, SSE, Statkraft, and Statoil. However the development of the Dogger Bank Creyke Beck project would be taken forward under two special purpose companies. These are known as 'Dogger Bank Project 1 Bizco Limited' (in relation to Dogger Bank Creyke Beck A) and 'Dogger Bank Project 4 Bizco Limited' (in relation to Dogger Bank Creyke Beck B).
- 1.3 The proposed development comprises:
- (i) Two wind farms (known respectively as project A and project B), each with an installed capacity of up to 1.2GW.
  - (ii) Both project A and project B will comprise an offshore converter platform, up to 4 offshore collector platforms and up to 5 meteorological masts, along with accommodation or helicopter platforms and inter-array cabling;
  - (iii) Offshore associated development including high voltage direct current (HVDC) export cables;
  - (iv) Onshore associated development including: HVDC export cables laid underground from landfall at Ulrome to the proposed site of the converter station(s) near Cottingham; up to 2 converter stations, and high voltage, alternating current (HVAC) cables from the converter stations to the National Grid substation at Creyke Beck; and
  - (v) All associated temporary work to facilitate the construction, operation and maintenance of the wind farms.
- 1.4 On 14 November 2013 the Secretary of State for Communities and Local Government appointed the following Panel of three Examining Inspectors as the Examining Authority (ExA) for the application under section 65 of the PA 2008 as amended (PD-003):
- Frances Fernandes (Lead Panel member)
  - Ken Barton (Panel member)
  - Mike Hayes (Panel member)
- 1.5 This document is the Panel's Report to the Secretary of State for Energy and Climate Change (SoS). It sets out the Panel's findings and conclusions and the recommendation, as required by s83(1) of PA 2008.

- 1.6 The application project is a Nationally Significant Infrastructure Project (NSIP) because each of the proposed wind farms is expected to have a capacity of up to 1.2 GW (up to 2.4GW in total). As such they both qualify as an NSIP pursuant to section 14(1)(a) and 15(3) of the Planning Act 2008. Therefore the applicant is obliged to submit an application to the SoS for development consent under s37 of the 2008 Planning Act.
- 1.7 The application is Environmental Impact Assessment (EIA) development as defined by the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (EIA Regulations). It was accompanied by an Environmental Statement (ES) which in the view of the Panel met the definition given in Regulation 2(1) of these regulations. Additional environmental information was received during the pre-examination stage, including a consolidated ornithology addendum (REP-065 to REP-070).
- 1.8 In reaching its recommendation, the Panel has taken into account, according to the terms required by EIA regulation 3(2), the environmental information as defined in EIA regulation 2(1) including the ES and any other information on the environmental effects of the development. The applicant gave notice (PD-023) under s56 PA 2008 to the persons prescribed that the application had been accepted and gave them an opportunity to make Relevant Representations. It certified (PD-024) on 11 November 2013 that this had been carried out. 56 Relevant Representations were subsequently received (REP-008 to 064).
- 1.9 A list of procedural decisions made by the ExA (PD-001 to 037) is shown in the examination library appended to this Report.
- 1.10 A preliminary meeting was held on 18 February 2014 at which the applicant and all other interested parties and statutory parties were able to make representations about how the application should be examined. The timetable for the examination (PD-007), a procedural decision of the ExA under Rule 8 of the Infrastructure Planning (Examination Procedure) Rules 2010 (EPR), was issued to interested parties on 25 February 2014. It was accompanied by the ExA's questions in writing and notification of the publication of the note of the preliminary meeting.
- 1.11 The Panel issued two rounds of written questions, the first on the 25 February 2014 (PD-008) and the second on the 30 April 2014 (PD-018). Five requests for further information or written comments under Rule 17 of the Examination Procedure Rules (EPR) were issued on 23 May 2014 (PD-019), 14 July 2014 (PD-031), 24 July 2014 (PD-034), 29 July 2014 (PD-035), and 12 August 2014 (PD-036).
- 1.12 Onshore inspections of sites to which the application related were carried out through Cottingham, Beverly and along the cable route



in the company of Interested Parties (IPs) on 3 April and 2 July 2014. In addition the Panel carried out a familiarisation visit and other unaccompanied site visits at different times during the course of the examination

- 1.13 As set out in the timetable for the examination (PD-007), as notified on 5 March 2014 (PD-011) , the following hearings were held:
- (i) Open Floor Hearing held on Monday 31 March 2014;
  - (ii) Issue Specific Hearing on the Development Consent Order (DCO) and Deemed Marine Licences (DMLs) held on Tuesday 1 & Wednesday 2 April 2014;
  - (iii) Issue Specific Hearing (ISH) on biodiversity, biological environment and ecology, and Habitats Regulation Assessment (HRA) held on Friday 4 April 2014;
  - (iv) Issue Specific Hearings on biodiversity, biological environment and ecology, and HRA held on Tuesday 3 May 2014;
  - (v) Issue Specific Hearing on the DCO and DMLs held on Thursday 5 May 2014;
  - (vi) Issue Specific Hearing on biodiversity, biological environment and ecology, and HRA held on Tuesday 1 July 2014.
  - (vii) Compulsory Acquisition Hearing held on Thursday 3 & Friday 4 July 2014;
  - (viii) Issue Specific Hearing on the DCO and DMLs held on 16 July 2014.
- 1.14 As required under s60 of the PA 2008, relevant local authorities were invited to submit a Local Impact Report (LIR). A LIR was received by East Riding of Yorkshire Council (ERYC) (REP-074), and was the only LIR received during the examination.
- 1.15 Under Regulation 5(2)(g) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP), where required, an application must be accompanied with sufficient information to enable the SoS to meet his statutory duties as the competent authority under the Habitats and Marine Regulations relating to European Sites. A HRA Report (APP-044 to 052) was therefore submitted with the application. The applicant also submitted the matrices to inform the Report on the Implications for European sites (RIES) (APP-052). The matrices were subsequently updated throughout the examination (REP-068, REP-176, REP-177, REP-401, and REP-402). The RIES compiles, documents and signposts the information received with the application and during its examination (PD-033).
- 1.16 All IPs were invited to provide comments on the RIES on 14 July 2014 (PD-031). Two comments were received (REP-514, REP-518). The RIES is made available to the SoS in the online library of examination documents on the Planning Portal's website for this application. This information would enable the SoS to carry out an

Appropriate Assessment (AA) if required as part of his statutory duties as the competent authority.

1.17 In addition to the consent required under the PA 2008 (which is the subject of this report and recommendation), the proposal is subject to the need for the following separate consents and permits as set out in the applicant's Consents and Licences Required Under Other Legislation Document (APP-053).

- (i) An energy generation licence under section 6 of the Electricity Act 1989;
- (ii) Appropriate Assessment and Habitats Regulations Assessment under The Conservation of Habitats and Species Regulations 2010 and The Offshore Marine Conservation (Habitats etc) Regulations 2007;
- (iii) European Protected Species Licence (offshore) under The Conservation of Habitats and Species Regulations 2010 and The Offshore Marine Conservation (Habitats etc) Regulations 2007;
- (iv) Safety Zones under the Energy Act 2004;
- (v) Decommissioning Scheme under the Energy Act 2004;
- (vi) Notification of construction project under Construction (Design and Management) Regulations 2007;
- (vii) European Protected Species licence (onshore) under The Conservation of Habitats and Species Regulations 2010 and The Offshore Marine Conservation (Habitats etc) Regulations 2007;
- (viii) Licence under section 16 of the Wildlife and Countryside Act 1981;
- (ix) Licence to authorise work affecting badgers or interfering with badger setts under the Protection of Badgers Act 1992;
- (x) Licence to erect any structure in, over or under any water which is part of a main river under section 109 of the Water Resources Act 1991;
- (xi) Byelaws for flood defence and drainage purposes under Schedule 25 of the Water Resources Act 1991;
- (xii) Prohibition on obstructions in watercourses under Section 23 of the Land Drainage Act 1991;
- (xiii) Prohibition on removal of certain hedgerows without consent under the Hedgerow Regulations 1997;
- (xiv) Waste production under the Site Waste Management Plans Regulations 2008;
- (xv) Approval of health and safety codes of practice under the Health and Safety at Work Act 1974;
- (xvi) Environmental permit for water discharge or waste/registration of an exempt waste operation under the Environmental Permitting England and Wales Regulations 2007.

1.18 The Report below sets out respectively the main features of the proposal and its site, the legal and policy context, the extent and adequacy of the environmental assessment, the Panel's findings

and conclusions on all the important and relevant issues, and finally its recommendation. Chapters 4 to 12 and Chapter 15 are based on the principal issues identified by the Panel at the outset of the examination; Chapter 13 summarises the case for development, whilst Chapter 14 considers compulsory acquisition.

1.19 The Order as recommended to be made by the SoS is attached as Appendix D. The full list of Appendices attached to this report are:

- i) Appendix A: Document library;
- ii) Appendix B: Events in the examination;
- iii) Appendix C: Abbreviations;
- iv) Appendix D: Recommended Development Consent Order and Deemed Marine Licences

## **2 MAIN FEATURES OF THE PROPOSAL AND SITE**

### **The application**

#### ***Details of the application***

- 2.1 The application was made by Forewind Ltd for development consent to construct a new offshore wind farm and associated offshore infrastructure with a total installed capacity of up to 2.4GW. The proposed project would stand in the North Sea approximately 131 km from the Holderness coast and comprise up to 400 three bladed, horizontal axis wind turbines.

#### ***Site description***

- 2.2 The Crown Estate zone 3 lies in the North Sea. The zone has an overall area of 8,639km<sup>2</sup>, with its outer limit broadly coincident with the limit of the UK continental shelf. The applicant is proposing to develop an offshore array wholly within the zone. The array would cover 1,114km<sup>2</sup> of the area, 515km<sup>2</sup> for project A and 599km<sup>2</sup> for project B.
- 2.3 Water depths in the proposed offshore array area range from a minimum of 20m below Lowest Astronomical Tide (LAT), deepening to a maximum of 35m below LAT. Water depths in the export cable corridor zone range from 2.5m below LAT close to shore to 66m below LAT (APP-086). The seabed geology is described in the Marine Physical Processes chapter of the ES (APP-086).
- 2.4 The proposed onshore site consists of landfall north of Ulrome and a cable route running underground approximately 30km south-west, up to two new converter stations which would be north of the A1079 between Beverley and Cottingham in the East Riding of Yorkshire. The cable route would then connect to the National Grid at the existing substation at Creyke Beck.

#### ***Principal works***

- 2.5 The authorised development is described within Schedule 1 Part 1 of the recommended Development Consent Order (DCO). The DCO divides the development into works relating to project A, those relating to project B, and those that are shared between the two projects.

#### ***Project A***

- 2.6 The principle offshore works are described in Works No.1A as an offshore wind turbine generating station with a gross electrical output capacity of up to 1.2 GW comprising up to 200 wind turbine generators each fixed to the seabed by monopole, multi leg or gravity base type foundations. The work also comprises up to four offshore collector platforms, an offshore converter platform, up to

two offshore accommodation or helicopter platforms, up to 5 meteorological stations and a network of inter-array cables laid on or beneath the seabed.

- 2.7 Offshore associated development within the meaning of s115(2) PA 2008 is contained within Works No.2A, being up to two export cables for the transmission of high voltage direct current together with fibre optic cables for the transmission of electronic communications on or beneath the seabed.
- 2.8 Onshore associated development is described in Works No.3A to 9A, comprising up to two export cables for the transmission of high voltage direct current together with fibre optic cables for the transmission of electronic communications. It would also include landfall transition joint bays and horizontal directional drill launch pits, construction compounds, and National Grid substation connection works. A range of other associated development is described including means of access; bunds, habitat creation, boreholes and other such works as may be necessary or expedient for the purposes of the development within the scope of the works assessed by the Environmental Statement.

*Project B*

- 2.9 The principle offshore works are described in Works No.1B as an offshore wind turbine generating station with a gross electrical output capacity of up to 1.2 GW comprising up to 200 wind turbine generators each fixed to the seabed by monopole, multi leg or gravity base type foundations. The work also comprises up to 4 offshore collector platforms, an offshore converter platform, up to 2 offshore accommodation or helicopter platforms, up to 5 meteorological stations and a network of inter-array cables laid on or beneath the seabed.
- 2.10 Other offshore development is contained within Works No.2BA, 2BC and 2B, being up to two export cables for the transmission of high voltage direct current together with fibre optic cables for the transmission of electronic communications on or beneath the seabed.
- 2.11 Onshore works are contained within Works No.3B to 9B and would comprise up to two export cables for the transmission of high voltage direct current together with fibre optic cables for the transmission of electronic communications. It would also include landfall transition joint bays and horizontal directional drill launch pits, construction compounds, and National Grid substation connection works. A range of other associated development is described including means of access; bunds, habitat creation, boreholes and other such works as may be necessary or expedient for the purposes of the development within the scope of the works assessed by the ES.

### *Shared Works*

- 2.12 The above paragraphs describe works that are specific to either Project A or Project B, however other works are shared between the two projects.
- 2.13 With regards to the offshore elements, Works No.2T is a temporary work area for vessels to carry out intrusive activities during construction.
- 2.14 Several onshore works are shared, these being Works No.7, 10A, 10B, 10C, 10D, 10E and 10F. Works No.7 comprises up to 2 electrical converter substations and compounds. Works 10A-10F comprises various access roads to provide construction and maintenance access from the public highway to the site.

### *Ancillary Works*

- 2.15 Schedule 1 Part 2 of the recommended DCO describes ancillary works, in relation to the offshore works of Project A and Project B and shared Works No.2T. These ancillary works are temporary landing places, temporary or permanent buoys and other navigation warning or ship protection works, temporary works for the protection of land or structures, cable protection, cable route preparation works, the removal, reconstruction or alteration of the position of subsea cables and pipelines.

### ***Development described in the environmental statement***

- 2.16 The ES assessed a greater maximum envelope than has been applied for in the draft DCO submitted with the application. The applicant has explained in the Marine and Coastal Ornithology Chapter of the ES (APP-090, paragraph 3.3.50) that following the release of preliminary environmental information at the pre-application stage a decision was taken to reduce the number of turbines for each project (A and B) from 300 to 200, and to increase the minimum rotor tip height from 22m to 26m. This was done to provide mitigation for bird collisions with the turbines. Other embedded mitigation is also described in this chapter of the ES.

### ***Key location maps and plans***

- 2.17 The applicant submitted the original plans with the application documents, including the Location Plans (APP-004 and APP-005), the Land Plan Key Plan (APP-009), the Offshore Land Plan (APP-008), Special Category Land Plans (APP-022), and Works Plans (offshore and onshore) (APP-011 and APP-012).
- 2.18 During the course of the examination amended land plans were submitted at Deadline V (REP-346) to reflect amended plot boundaries as a result of new landowners. Plots 25A, 25B, 26A and 26B, became 25A, 25B, 26A, 26B, 25AA and 25BB.

- 2.19 Revised work plans were also submitted at Deadline V to reflect a proposed reduction to the Order limits as a result of Work 9C no longer being required by the applicant (REP-370 to REP-373). See paragraph 2.22 below for further discussion of this change to the application. Land Plans submitted at this deadline (REP-374 to REP-378) also show amendments to plot numbers, being the deletion of 157D, 163 and 171 and creation of the revised plot numbers 157A, 158, 162, 165 (i) (ii) (iii), 170 and 172.
- 2.20 Amended Land Plans and Special Category Land Plans were submitted at Deadline VII as a result of certain plots being split into sub-plots (plots 1A, 1B, 2, 4A, 4B, 137, 165) (REP-435 to REP-440).
- 2.21 At Deadline VIII further updated Land Plans and Special Category Land Plans were submitted to show that plots 99A and 99B have been split into sub-plots (99Ai, 99Aii, 999Bi and 99Bii).

### ***Amendments to the application during examination***

- 2.22 During the examination the applicant made an application to the Panel to reduce the extent of the Order Limits, with regard to Works No. 9C. This Work is described in the draft DCO as *"National Grid substation connection works location above ground and including a connection bay within the National Grid substation contain isolation switchgear and electronic equipment for the connection of the export cable system to the transmission network"*
- 2.23 In response to the Panel's questions about the use of this Work (Q115 of the first written questions (PD-008) and Q39 of the 2nd written questions (PD-018)) the applicant confirmed that it no longer envisaged any works would be undertaken in Works No.9C. In their response to the Panel's second written questions at Deadline IV (REP-281) the applicant also stated that National Grid Electricity Transmission had confirmed that it no longer required any of the work to be located in Works No. 9C.
- 2.24 As a result of this change, the applicant submitted a number of revised documents, including updated Land Plans (REP-374 to 378), Works Plans (REP-370 to 373), DCO (REP-387) and Book of Reference (REP-344).
- 2.25 The applicant also set out their arguments for this change against the tests laid out in DCLG Guidance for the examination of applications for development consent arguing that the removal of Works No.9C would not: constitute a material change to the application; result in a new project; prejudice any interested parties and would not result in any new consequential significant effects.

- 2.26 The Panel's consideration of the applicant's arguments is set out in its procedural decision sent to all interested parties on 13 August 2014 (PD-037). The Panel explained that the change applied for was not a material change and would cause no prejudice to any party. No objections were received to that conclusion. The removal of Works No.9c is therefore recommended by the ExA to the SoS for acceptance and this Report is made on the basis of the revised scheme.
- 2.27 There is no planning history relevant to the application site according to paragraph 4.1 of the LIR from ERYC (REP-074).
- 2.28 Cumulative effects with other projects in the locality are considered in ES Chapter 33 (APP-166). ES Chapter 4 Appendix A (APP-065) describes a 6 stage process for identifying offshore plans and projects that might contribute to a cumulative effect. 1,665 projects were on the original list which was subsequently reduced to 486 that were taken forward and considered in each relevant chapter of the ES. The various plans and projects are identified in ES Chapter 33 Tables 5.2 to 5.15 inclusive. Onshore plans and projects considered are set out in detail in ES Chapter 33 at Table 4.3. The principal project with the potential to result in cumulative effects onshore is the National Grid Carbon Capture and Storage Project (currently at the pre-application stage). It is identified that overlap in the construction phases of the two projects could result in highway and amenity issues. This is considered further in Chapter 12 Traffic and Transportation.



### **3 LEGAL AND POLICY CONTEXT**

3.1 The legal and policy context as understood by the applicant is described primarily in the Planning and Design Statement (APP-057) and ES Chapter 3 - Legislation and Policy (APP-063) as submitted with the application.

#### **Planning Act 2008, as amended**

3.2 PA 2008 s104(1) applies "in relation to an application for an order granting development consent if a national policy statement (NPS) has effect in relation to development of the description to which the application relates." The application is for a NSIP, namely an offshore generating station with a gross electrical output capacity of up to 2,400 MW comprising up to 400 wind turbine generators (divided by the applicant into project A and project B). The Panel finds that the proposal falls within the terms of s14(1)(a) in that it consists of the construction of a generating station and within s15(3) as the capacity exceeds 100 megawatts and therefore that s104 of the PA2008 applies. Furthermore, national policy statements have effect in relation to this application.

3.3 PA 2008 s104(2) sets out the matters to which the SoS must have regard in deciding an application submitted in accordance with PA 2008. In summary, the matters set out in s104(2) include any relevant NPS, any appropriate marine policy documents, any LIR and any other matters the SoS thinks are both important and relevant to the decision.

3.4 PA2008 s104(3) requires that the SoS must decide the application in accordance with any relevant NPS, except to the extent that the SoS is satisfied that doing so would:

- (i) lead to the United Kingdom being in breach of its international obligations;
- (ii) lead to the SoS being in breach of any duty imposed on him under any enactment;
- (iii) be unlawful under any enactment; or
- (iv) the adverse impact of the proposed development would outweigh its benefits; or
- (v) that any prescribed condition for deciding the application otherwise than in accordance with the NPS would be met.

3.5 This report sets out the Panel's findings, conclusions, and recommendation taking these matters fully into account.

#### **NATIONAL POLICY STATEMENTS**

3.6 The NPSs most relevant to this application are EN-1, EN-3, and EN-5 which were designated by the SoS on 19 July 2011 in accordance with s5 of PA 2008. They therefore provided the primary basis for the Panel's examination of the application.

## Overarching NPS for Energy (EN-1)

- 3.7 This NPS sets out national policy for energy infrastructure, including the role of offshore wind which is expected to provide the largest single contribution towards the 2020 renewable energy targets. Part 4 of EN-1 makes clear that the assessment of applications for energy NSIPs *"should start with a presumption in favour of granting consent"* and sets out the assessment principles to be applied. The Panel has applied the tests set out in EN-1 as one of the primary bases for its examination of the application.
- 3.8 Section 4.2 of NPS EN-1 sets out the policy principles applicable to the use of a Rochdale envelope approach in energy development consenting. It states: *"[w]here some details [of a proposal] are still to be finalised the ES should set out, to the best of the applicant's knowledge, what the maximum extent of the proposed development may be in terms of site and plant specifications, and assess, on that basis, the effects which the project could have to ensure that the impacts of the project as it may be constructed have been properly assessed."* Paragraph 2.16 of this report discusses the project as assessed in the ES.
- 3.9 NPS EN-1 (paragraph 5.3.5) summarises the government's biodiversity strategy objectives as follows:
- 3.10 *"A halting, and if possible a reversal, of declines in priority habitats and species, with wild species and habitats as part of healthy, functioning ecosystems,"* and;
- "The general acceptance of biodiversity's essential role in enhancing the quality of life, with its conservation becoming a natural consideration in all relevant public, private and non-governmental decisions and policies."*
- 3.11 NPS EN-1 goes on to suggest that decision-makers should consider these objectives in the context of climate change, where, *"failure to address this challenge will result in significant adverse impacts to biodiversity"*. This policy direction is relevant to a renewables/low carbon generation project such as the proposal considered in this report. The decision-maker is advised (paragraphs 5.3.7-5.3.8) to;
- "avoid significant harm to biodiversity",* whilst ensuring that, *"appropriate weight is attached to designated sites of international, national and local importance; protected species; habitats and other species of principal importance for the conservation of biodiversity: and to biodiversity and geological interests within the wider environment"*.
- 3.12 NPS EN-1 is clear in this regard that the most important tier of biodiversity sites are those identified through the means of international conventions and European Directives. Decision-makers are also encouraged to afford the same tier of protection

to candidate Special Areas of Conservation, potential Special Protection Areas (pSPAs) and to listed Ramsar sites,

- 3.13 Where harm is unavoidable NPS EN-1 (paragraph 5.3.18) suggests that the applicant should include appropriate mitigation, discussed in the following terms:

*"during construction, they will seek to ensure that activities will be confined to the minimum areas required for the works;*

*during construction and operation best practice will be followed to ensure that risk of disturbance or damage to species or habitats is minimised, including as a consequence of transport access arrangements;*

*habitats will, where practicable, be restored after construction works have finished; and,*

*opportunities will be taken to enhance existing habitats and, where practicable, to create new habitats of value within the site ..."*

- 3.14 Further aspects of NPS EN-1 are referred to as relevant throughout this report.

### **NPS for Renewable Energy Infrastructure (EN-3)**

- 3.15 This NPS sets out additional policy specific to renewable energy applications, including proposed offshore wind generation stations exceeding 100MW. Section 2.6 of EN-3 sets out detailed assessment principles for offshore wind proposals, and these have been applied by the Panel as one of the primary bases for its examination of the application.

- 3.16 Section 2.6 of NPS EN-3 goes on to consider the implications of the Rochdale envelope approach in the context of renewable energy development. As a matter of policy, NPS EN-3 makes clear that certain matters may not be specified precisely in an application. These matters include the:

*"precise location and configuration of turbines and associated development;*

*foundation type;*

*exact turbine tip height;*

*cable type and cable route, and*

*exact locations of offshore and/or onshore substations..."*

- 3.17 The NPS provides these matters as an example, but does not seek to closely prescribe which matters must be precisely assessed and

which matters are capable of assessment within a more flexible Rochdale envelope based approach.

- 3.18 NPS EN-3 sets out more detailed considerations relevant to offshore wind farms. It makes clear that mitigation should be considered in terms of the careful design of the development itself and of the construction techniques employed. Ecological monitoring is likely to be appropriate, both to enable the better management of the proposal itself and also given the lack of scientific knowledge to provide further useful information relevant to the management of future projects.
- 3.19 In terms of impacts on birds, NPS EN-3 policy considerations relevant to this project include, at paragraph 2.6.101, effects relating to:
- (i) collisions between birds and rotating blades;
  - (ii) bird disturbance due to construction activities;
  - (iii) bird displacement during the operational phase, resulting in the loss of foraging areas; and
  - (iv) impacts on bird flight-lines and associated increased energy use by birds.
- 3.20 The use of collision-risk modelling, and policy on the approach to be taken by decision-makers to such analysis, is considered in full in the NPS. It is a widely used predictive technique in assessing the impact of offshore wind farms on birds.
- 3.21 In terms of impacts on marine mammals, NPS EN-3 policy considerations relevant to this project include, at paragraph 2.6.92, effects relating to:
- (i) feeding areas;
  - (ii) migration or commuting routes;
  - (iii) baselines noise levels;
  - (iv) predicted construction and operation noise levels, and
  - (v) the duration of any potentially disturbing activity.

### ***Renewable Energy Directive***

- 3.22 The Renewable Energy Directive sets out legally binding targets for Member States with the expectation that by the year 2020, 20% of the European Union's energy mix and 10% of transport energy will be generated from renewable energy sources. The UK's contribution to the 2020 target is that by then 15% of energy will be from renewable sources. The UK Renewable Energy Strategy 2009 (Renewable Energy Strategy) sets out how the UK proposes to meet the targets.
- 3.23 The targets within the Renewable Energy Directive have been taken into account by the Panel.

***Habitats Directive (Council Directive 92/43/EEC)***

- 3.24 The Habitats Directive (together with the Council Directive 79/409/EEC on the conservation of wild birds (Wild Birds Directive) (Birds Directive)) forms the cornerstone of Europe's nature conservation policy. It is built around two pillars: the Natura 2000 network of protected sites and the strict system of species protection. The directive protects over 1000 animals and plant species and over 200 habitat types (for example: special types of forests; meadows; wetlands; ), which are of European importance.

***Wild Birds Directive (Council Directive 2009/147/EC)***

- 3.25 The Wild Birds Directive is a comprehensive scheme of protection for all wild bird species naturally occurring in the European Union. The directive recognises that habitat loss and degradation are the most serious threats to the conservation of wild birds. It therefore places great emphasis on the protection of habitats for endangered as well as migratory species. It requires classification of areas as Special Protection Areas (SPAs) comprising all the most suitable territories for these species. Since 1994 all SPAs form an integral part of the Natura 2000 ecological network.
- 3.26 The Wild Birds Directive bans activities that directly threaten birds, such as the deliberate killing or capture of birds, the destruction of their nests and taking of their eggs, and associated activities such as trading in live or dead birds. It requires Member States to take the requisite measures to maintain the population of species of wild birds at a level which corresponds, in particular, to ecological, scientific, and cultural requirements while taking account of economic and recreational requirements.
- 3.27 The applicant submitted an Information for Appropriate Assessment Report with the application (APP-046) that identified sites and species to be included in the assessment of which, further consideration is given in Chapter 5 of this report. In relation to SPAs and Ramsar sites these include:
- (i) sites designated for breeding seabird populations.
  - (ii) sites designated for breeding colonies.
  - (iii) sites designated for wintering/passage seabird populations.

***The Conservation of Habitats and Species Regulations 2010 (as amended) the Habitats Regulations***

***Conservation of Habitats and Species (Amendment) Regulations 2012***

- 3.28 The Conservation of Habitats and Species Regulations 2010 replaced The Conservation (Natural Habitats, &c.) Regulations 1994 (as amended) in England and Wales. The Conservation of

Habitats and Species Regulations 2010 (which are the principal means by which the Habitats Directive is transposed in England and Wales) updated the legislation and consolidated all the many amendments which have been made to the regulations since they were first made in 1994.

- 3.29 The Conservation of Habitats and Species Regulations 2010 apply in the terrestrial environment and in territorial waters out to 12 nautical miles. The EU Habitats and Wild Birds Directives are transposed in UK offshore waters by separate regulations. The Offshore Marine Conservation (Natural Habitats &c.) Regulations 2007 (as amended).
- 3.30 The Conservation of Habitats and Species (Amendment) Regulations 2012 came into force on 16 August 2012.
- 3.31 These Regulations amend the Habitats Regulations. They place new duties on public bodies to take measures to preserve, maintain and re-establish habitat for wild birds. They also make a number of further amendments to the Habitats Regulations to ensure certain provisions of Directive 92/43/EEC (the Habitats Directive) and Directive 2009/147/EC (the Wild Birds Directive) are transposed clearly.
- 3.32 This has relevance to consideration of impacts on Sites of Special Scientific Interest (SSSIs) and on protected species and habitats.
- 3.33 The Terrestrial Ecology Chapter of the applicant's ES provides a list of statutory designated sites at paragraph 4.2.1 (APP-144) that are located within 1km of the proposed development. This includes the Leven Canal SSSI.
- 3.34 Further consideration is given to these matters in Chapter 5 of this report

***Offshore Marine Conservation (Natural Habitats, etc.) Regulations 2007 (as amended) (the 2007 Offshore Regulations)***

***Offshore Marine Conservation (Natural Habitats etc.) (Amendment) Regulations 2012***

- 3.35 The Offshore Marine Conservation (Natural Habitats, etc.) Regulations 2007 (as amended) transpose Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) and Council Directive 79/409/EEC on the conservation of wild birds (Wild Birds Directive) into national law. They came into force on 21 August 2007. These regulations apply to the UK's offshore marine area which covers waters beyond 12 nautical miles (nm), within British Fishery Limits and the seabed within the UK Continental Shelf Designated Area. The Habitats Regulations form the legal basis for the implementation of the Habitats Directive and Birds

Directive in terrestrial areas of the UK and territorial waters out to 12 nm.

- 3.36 The Offshore Habitats Regulations fulfil the UK's duty to comply with European law beyond inshore waters and ensure that activities regulated by the UK that have an effect on important species and habitats in the offshore marine environment can be managed. Under the Regulations, any competent authority has a general duty, in the exercise of any of their functions, to have regard to the EU Habitats and Wild Birds Directives.
- 3.37 The Offshore Marine Conservation (Natural Habitats, etc.) (Amendment) Regulations 2012 came into force on 16 August 2012.
- 3.38 The Offshore Marine Conservation (Natural Habitats, etc.) (Amendment) Regulations amend the 2007 Offshore Regulations. They place duties on competent authorities in relation to the offshore marine area, to take steps to meet the objective of preserving, maintaining and re-establishing habitat for wild birds, and use all reasonable endeavours to avoid any pollution or deterioration of habitats for wild birds. They also provide for a duty on the Secretary of State to take such steps to encourage research and scientific work relating to the offshore marine area as s/he considers necessary for the purpose of the protection, management and use of wild bird populations.

### ***Water Framework Directive***

- 3.39 On 23 October 2000, the "Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for the Community action in the field of water policy" or, in short, the EU Water Framework Directive (the WFD) was adopted.
- 3.40 The WFD was published in the Official Journal (OJ L 327) on 22 December 2000 and entered into force the same day. Some amendments have been introduced into the Directive since 2000<sup>1</sup>.
- 3.41 Twelve "Water notes" which intend to give an introduction and overview of key aspects of the implementation of the WFD are available to download.<sup>2</sup>
- 3.42 Chapter 10 Appendix A of the applicant's ES (APP-089) provides an assessment of compliance with the WFD. At paragraph 5.2 the assessment states that mitigation measures have been considered, including for example the commitment to bury the cables from Mean Low Water Springs (MLWS) out to 350m. This is set out in Chapter 8 of this report.

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<sup>1</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:02000L0060-20090625:EN:NOT>

<sup>2</sup> [http://ec.europa.eu/environment/water/participation/notes\\_en.htm](http://ec.europa.eu/environment/water/participation/notes_en.htm)

### **European Marine Strategy Framework Directive**

3.43 The Marine Strategy Framework Directive<sup>3</sup> (MSFD) forms the environmental pillar of the Integrated European Marine Policy which aims to provide a coherent legislative framework for the joined-up governance of the marine environment.

3.44 The MSFD is transposed into UK legislation through the Marine Strategy Regulations 2010. Key requirements of the legislation are:

*"establishment of a monitoring programme to measure progress toward Good Environmental Status (as defined by 11 high level descriptors) by July 2014 and;*

*establishment of a programme of measures for achieving Good Environmental Status by 2016."*

3.45 The Panel has therefore had regard to the MSFD in its examination of the application.

### **Marine and Coastal Access Act 2009**

3.46 The Marine and Coastal Access Act 2009 (MCA Act) introduced the production of marine plans and designation of Marine Conservation Zones (MCZ) in UK waters as well as establishing the Marine Management Organisation (MMO). The UK Marine Policy Statement (MPS) and marine planning are dealt with below. Under the MCA Act the Secretary of State for Environment Food and Rural Affairs designated, on 21 November 2013, 27 MCZs around the English coast to form part of a network of Marine Protected Areas (MPAs). Further designations are proposed in two phases over the next three years. No designated MCZs would be affected by the proposed development. The MMO is responsible for enforcing against the general offence of damaging an MCZ. The MMO has no role in final decisions regarding MCZ site selection process and proposed MCZs are put forward to the Department for Environment, Food and Rural Affairs (DEFRA) for decision. At present there are 27 designated MCZ's (the first tranche) with further tranches due to follow, although no details of these further tranches were available at the time of examination.

### **UK Marine Policy Statement**

3.47 The UK Marine Policy Statement (MPS) was prepared and adopted for the purposes of s44 of the Marine and Coastal Access Act 2009 and was published on 18 March 2011 by all the UK administrations as part of a new system of marine planning being introduced across UK seas.

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<sup>3</sup> Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy



- 3.48 The MPS is the framework for preparing Marine Plans and taking decisions affecting the marine environment. It contributes to the achievement of sustainable development in the UK marine area. The UK marine area includes the territorial seas and offshore area adjacent to the UK, which includes the area of sea designated as the UK Exclusive Economic Zone (the Renewable Energy Zone until the Exclusive Economic Zone comes into force) and the UK sector of the continental shelf. It includes any area submerged by seawater at mean high water spring tide, as well as the tidal extent (at mean high water spring tide) of rivers, estuaries and creeks.<sup>4</sup>
- 3.49 The MPS is the framework for marine planning systems within the UK. It provides the high level policy context, within which national and sub-national Marine Plans will be developed, implemented, monitored, amended and will ensure appropriate consistency in marine planning across the UK marine area. The MPS also sets the direction for marine licensing and other relevant authorisation systems.
- 3.50 The MPS has provided the overarching policy context for the Panels consideration of the application offshore works and DMLs.

### ***East Inshore and East Offshore Marine Plans***

- 3.51 The East Inshore and East Offshore areas are the first areas in England to be selected for the production of marine plans. The plans were adopted and published on 2 April 2014. The East Inshore area includes a coastline that stretches from Flamborough Head to Felixstowe. The East Offshore area encompasses the marine area from 12 nautical miles out to the maritime borders with the Netherlands, Belgium and France. At paragraph 2.3.8 of the Planning and Design Chapter of the ES (APP-057) the applicant states that the offshore elements of the proposed Dogger Bank Creyke Beck wind farm will be mostly within the areas covered by the marine plans.
- 3.52 The Panel notes that the plans contain a number of objectives and policies that must be taken into consideration, particularly Objective 3 in paragraph 66, which states that the plan should -
- '... realise sustainably the potential of renewable energy, particularly offshore wind, which is likely to be the most significant transformational economic activity over the next 20 years in the East marine plan areas, helping to achieve the UK's energy security and carbon reduction objectives'.*
- 3.53 Policies elaborate the ten objectives of the plans and cover economic growth and employment benefits, renewable energy, support for communities, conservation of heritage assets and

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<sup>4</sup> see Marine and Coastal Access Act 2009 s42(3) and (4)

seascape, conservation of the marine ecosystem, protection of and recovery of biodiversity, support for MPAs, support for climate change adaptation and mitigation and integration with other plans.

- 3.54 Under s104(2)(aa) of PA 2008 the Secretary of State must have regard to '...the appropriate marine policy documents.' The appropriate marine policy documents are therefore the MPS and the adopted East Inshore and East Offshore Plans.

### **Other legal and policy provisions**

#### ***The Wildlife and Countryside Act 1981 (as amended)***

- 3.55 The Wildlife and Countryside Act 1981 is the primary legislation which protects animals, plants, and certain habitats in the UK. The Act provides for the notification and confirmation of SSSIs. These sites are identified for their flora, fauna, geological or physiographical features by the countryside conservation bodies (in England, Natural England). The Act also contains measures for the protection and management of SSSIs.
- 3.56 The Act is divided into four parts: Part I relating to the protection of wildlife, Part II relating to designation of SSSIs and other designations, Part III on public rights of way and Part IV on miscellaneous provisions. If a species protected under Part I is likely to be affected by development, a protected species license will be required from Natural England (NE). This has relevance to consideration of impacts on SSSIs and on protected species and habitats.
- 3.57 In relation to the application the applicant has stated in the Consents and licences under other legislation Chapter of the ES (APP-053) that European Protected Species (EPS) Licenses may be applied for post-consent, for both offshore and onshore elements of the scheme. In addition an application may be made to Natural England, post-consent, for a licence under section 16 of the Wildlife and Countryside Act 1981, for the onshore elements of the scheme.
- 3.58 Consideration is given to the effects on protected species and designated sites in Chapter 5 of this report.

#### ***Natural Environment and Rural Communities Act 2006***

- 3.59 The Natural Environment and Rural Communities Act 2006 (NERC) made provision for bodies concerned with the natural environment and rural communities, in connection with wildlife sites, SSSIs, National Parks and the Broads. It includes a duty that every public body must, in exercising its functions, have regard so far as is consistent with the proper exercising of those functions, to the purpose of biodiversity. In complying with this, regard must be given to the United Nations Environment Programme Convention on Biological Diversity of 1992.

- 3.60 This is of relevance to biodiversity, biological environment and ecology and landscape matters in the proposed development. These matters are considered in detail in Chapter 5 of this report

***Transboundary effects***

- 3.61 The application was first screened under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 (EIA Regulations) by the Secretary of State on 30 July 2012 and a Transboundary Screening Matrix was published (PD-029). The screening sought to identify whether or not there was potential for likely significant effects on other Member States of the European Economic Area (EEA) as a result of a given project. Regulation 24 of the EIA Regulations transposes Article 7 of EU Directive 85/337/EC, as amended, into UK Law.
- 3.62 The initial transboundary screening was based on the information contained in the applicant's Scoping Report that accompanied its request for a Scoping Opinion. The transboundary screening was undertaken on a precautionary basis, as explained in the Planning Inspectorate's Advice Note 12: Transboundary Impacts Consultation.
- 3.63 The screening process determined the potential for significant effects on the environment in another EEA State in relation to: fish and shellfish species and marine mammals; European sites and bird species; and commercial fisheries and commercial vessels. The Planning Inspectorate, on behalf of the Secretary of State, determined that the following EEA States should be notified about the proposals: Belgium, Denmark, France, the Netherlands, Germany, Norway and Sweden.
- 3.64 On 7 August 2012, in accordance with Regulation 24(2)(b) of the EIA Regulations, a notice was placed in the London Gazette (PD-028) and letters were sent to the relevant bodies in the States listed above. Following notification, Germany (PD-026) and the Netherlands (PD-025) stated that they wished to participate in the Regulation 24 process. No response was received from the other five EEA states.
- 3.65 Following acceptance of the application, the project was re-screened by the Planning Inspectorate, on behalf of the Secretary of State, on 20 September 2013 (PD-029). This process identified likely significant effects on the environment in the same seven EEA states as the original screening and all seven were again consulted at that time. On that occasion Belgium indicated an intention to participate in the process and there was no reply from the other six States (PD-027).
- 3.66 Germany, and the Netherlands were subsequently notified on 30 October 2013 of the opportunity to comment on the application documents, and Belgium was consulted in the same way on 4

November 2013. All three States were invited to the Preliminary Meeting (PD-004, PD-005, PD-006) but none attended and no further communication has been received from these three States.

- 3.67 The applicant's assessment of transboundary issues in ES Chapter 32 (APP-164) considers effects during the construction, operation and decommissioning phases, both in isolation and cumulatively with other relevant plans, projects and activities.
- 3.68 The Panel is aware of the on-going duty to have regard to transboundary matters throughout the examination. In addition to the Regulation 24 process, the Panel asked the EEA states of Belgium, Denmark, France, the Netherlands, Germany, Norway and Sweden, in its first written question 10 (PD-008) and second written question 94 (PD-018), whether they wished to participate in the examination and, if so, to provide information on any likely significant effects of the proposed application on the environment of their State, and the measures envisaged to reduce or eliminate such effects. No responses were received from any of the seven states to either question.
- 3.69 In respect of the interests of other EEA states, potential adverse impacts identified by the applicant include: potential damage to subsea cables and pipelines; displacement of foreign fishing vessels through the loss of traditional fishing grounds due to construction and operation; and, impacts on shipping interests. Transboundary matters, where relevant, are addressed in various chapters of this report.
- 3.70 The sequence of events was to start with a very precautionary stance which was then refined during the examination to reach the conclusions set out in Chapters 4 to 11 of this report leading to the final conclusion in Chapter 13.
- 3.71 The Panel does not consider that there would be any effects that would have a Likely Significant Effect (LSE) on the environment in another EEA State as a result of Dogger Bank Creyke Beck A and B due, at least in part, to the distance from those states.
- 3.72 The Panel is satisfied that, with regard to Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, all transboundary matters have been addressed and there are no matters outstanding that would argue against the Order being made in the form attached at Appendix D of this report.

***United Nations Environment Programme Convention on Biological Diversity 1992***

- 3.73 As required by Regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, the Panel has had regard to this Convention and in particular Article 14 in its consideration of the likely impacts of the proposed development and appropriate objectives and mechanisms for mitigation and compensation. In

particular the Panel finds that compliance with the UK provisions on environmental impact assessment and transboundary consultation, referred to above, satisfies, with regard to impacts on biodiversity, the requirements of Article 14.

### **Local Impact Report**

- 3.74 In deciding the application the SoS, under s104 (2) (b) PA2008, must have regard to any LIR.
- 3.75 There is also a requirement under s60 (2) of PA 2008 to give notice in writing to each local authority falling under s56A inviting them to submit LIRs. This notice was given via the Rule 8 letter on 25 February 2014 (PD-007).
- 3.76 A Local Impact Report was submitted by East Riding of Yorkshire Council (REP-074). The principal matters raised in the LIR were:
- (i) support for the proposal due to its significant contribution to increased provision of renewable energy;
  - (ii) that the converter stations would be of a significant scale and have a negative effect on the landscape, but with appropriate landscaping and design the visual impact of the development would be far outweighed by the benefits;
  - (iii) that the Council was satisfied that the DCO reflects the advice given by various Officers on impacts on highway safety, heritage assets, residential amenity, ecology and public rights of way; and
  - (iv) that the Council does not object to the proposal.
- 3.77 The Panel have had regard to all these matters raised in the LIR and these are considered in the relevant chapters of this report.

### **The Development Plan**

- 3.78 Paragraph 4.1.5 of NPS EN-1 indicates that the decision-maker may consider Development Plan Documents (DPDs) or other documents in the Local Development Framework (LDF) both important and relevant to his consideration of the application.
- 3.79 The applicant's Local Planning Context section of the Legislation and Policy Chapter of the ES (APP-063) sets out its consideration of the relevant local plan policy. It has identified the following local plans as relevant to the consideration of the proposed development:
- (i) East Riding Local Plan Draft Strategy Document (2013);
  - (ii) East Riding Local Plan Draft Allocations Document (2013);
  - (iii) Beverly Borough Local Plan (adopted June 1996) (saved policies);and
  - (iv) Holderness District Wide Local Plan (adopted 1999) (saved policies).

- 3.80 The Panel notes that the Council agrees with the applicant on which local policy documents should be considered. Where relevant the Panel has taken these Plans and individual policies into consideration.

### **National Planning Policy Framework**

- 3.81 On 27 March 2012 a final approved National Planning Policy Framework (NPPF) was published. The NPPF replaced a number of policy documents including Planning Policy Guidance (PPG) and Planning Policy Statements (PPS).
- 3.82 The NPPF does not contain policies specific to NSIPs, but does set out that NSIPs should be determined in accordance with the PA2008 and relevant NPS. The NPPF, however, may be considered as a matter both important and relevant to the application, as set out in NPPF paragraph 3. Several core principles are set out in the NPPF, including the importance of sustainable growth and development, and of preserving the natural and built environment.
- 3.83 National Planning Practice Guidance (NPPG) was published on 6 March 2014, providing guidance in relation to the policies set out within the NPPF. It cancels and replaces various circulars and guidance documents including several which were of particular relevance to this examination. These are:
- (i) planning for Biodiversity & Geological Conservation: A guide to good practice (2006);
  - (ii) circular 02/99 – Environmental Impact Assessment; and
  - (iii) circular 11/95 – Use of conditions in planning permissions.
- 3.84 As part of its second round questions, the Panel asked the applicant to identify the changes, if any, to the National Policy Statement regime and/ or the policy context as a consequence of the NPPG. The applicant offered its view that the publication of NPPG did not change the National Policy Statement Regime and that the cancellation of some of the guidance was also not considered by the applicant to have any impact upon the examination or decision (REP-281).

### **Other National Policy**

- 3.85 Other relevant Government policy has been taken into account by the Panel, including:
- (i) Energy White Paper Meeting the Challenge (May 2007);
  - (ii) UK Low Carbon Transition Plan;
  - (iii) National Strategy for Climate and Energy (July 2009);
  - (iv) UK Renewable Energy Strategy (July 2009);
  - (v) Planning our electric future: a White Paper for secure affordable and low carbon electricity (July 2011);
  - (vi) The National Infrastructure Plan (2011);
  - (vii) The National infrastructure Plan Update (2012); and

(viii) The National Infrastructure Plan (2013).

## **4 HISTORIC ENVIRONMENT**

### **Introduction**

- 4.1 Section 3 of the Infrastructure Planning (Decisions) Regulations 2010 indicates that when deciding an application for development consent the SoS must have regard to the desirability of:
- (i) preserving any listed building or its setting or any features of special architectural or historic interest which it possesses;
  - (ii) preserving or enhancing the character or appearance of a conservation area; and
  - (iii) preserving any scheduled ancient monument or its setting.
- 4.2 ES Chapter 18, Marine and Coastal Archaeology (APP-129), and Chapter 27, Onshore Cultural Heritage (APP-147), summarise the assessment requirements of EN-1 and EN-3. These include, at EN-1 paragraph 5.8.8 the requirement to provide a description of the significance of the heritage assets affected by the proposed development, and the contribution of their setting to that significance.
- 4.3 The criteria decision-makers are to apply in considering the significance and value of heritage assets, and the weight to be given to their conservation in determining whether or not to approve the development consent application, are set out in paragraph 5.8.14 of EN-1.
- 4.4 Paragraph 2.6.139 of EN-3 recognises that heritage assets can be affected directly by the siting of the development itself; and, indirectly by changes to the physical marine environment caused by the proposed infrastructure itself or its construction. Paragraph 2.6.144 indicates that the decision-maker should be satisfied that offshore wind farms and associated infrastructure have been designed sensitively, taking into account known heritage assets and their status, for example features designated as protected wrecks.
- 4.5 The UK MPS states, at paragraph 2.6.6.3 "The view shared by the UK Administrations is that heritage assets should be enjoyed for the quality of life they bring to this and future generations, and that they should be conserved through marine planning in a manner appropriate and proportionate to their significance. Opportunities should be taken to contribute to our knowledge and understanding of our past by capturing evidence from the historic environment and making this publically available, particularly if a heritage asset is to be lost". MPS paragraph 2.6.6.9 states "Where the loss of the whole or a material part of a heritage asset's significance is justified, the marine plan authority should identify and require suitable mitigating actions to record and advance understanding of the significance of the heritage asset



before it is lost. Requirements should be based on advice from the relevant regulator and advisors”.

### **Offshore and Onshore Heritage Assets**

- 4.6 The applicant addressed the potential impact of the proposed development, both offshore and onshore, in ES Chapter 18: Marine and Coastal Archaeology (APP-129), ES Chapter 18 Appendix A: Dogger Bank Tranche A Archaeology and Cultural History Technical Report (APP-130), ES Chapter 18 Appendix B: Dogger Bank Creyke Beck Written Scheme of Investigation (APP-131), and ES Chapter 27: Onshore Cultural Heritage (APP-147), and ES Chapter 27 Appendix A: Cultural Heritage Impact Assessment (APP-148). These documents include an assessment of the significance of the assets that might potentially be affected.
- 4.7 ES Chapter 18 describes the existing offshore environment in respect of known, and potential, archaeological features within the study area. It also identifies potential impacts on archaeological and cultural heritage resources associated with the construction, operation and decommissioning phases of the proposal. ES Chapter 27 performs a similar task in relation to onshore heritage assets.
- 4.8 Offshore, ES Chapter 18 identifies 67 records of sites and ‘find spots’ in the intertidal area, six of which represent extant archaeological remains dating from World War II. Direct impacts to these six sites would be prevented by locating construction activities at the landfall to avoid the receptors. Within the export cable corridor there are sixteen recorded wrecks and four additional wrecks identified during the assessment of geophysical data. Direct impacts on these twenty sites would be prevented by use of 100m Archaeological Exclusion Zones (AEZ) preventing development related activities within their boundaries. There are a further 247 ‘A2’ anomalies of possible archaeological interest but direct impacts on these would be prevented by micrositing the design layout to avoid them. There are no known submerged prehistoric receptors or submerged aviation receptors within the Offshore Study Area or the Cable Route Study Area.
- 4.9 Onshore, ES Chapter 27 records that surveys of the proposed construction areas were undertaken in 2011 and 2012, including some trial trenches, and known cultural heritage sites were avoided as far as possible when identifying the preferred location of the converter stations and the cable route. There are no World Heritage Sites, Registered Battlefields, Registered Parks and Gardens, or Conservation Areas within a proposed 500m study area, although there are two Scheduled Ancient Monuments (SAMs) and seven listed buildings. The ES states that the setting of the SAMs would not be impacted by the construction or operation of the proposal and no further mitigation is proposed. Similarly, the proposed cable route is not considered by the ES to

have any impact on the setting of the listed buildings as the cables would be buried and the above ground cable corridor reinstated to its former condition following installation.

- 4.10 A total of 141 non-designated archaeological assets have been identified within a 500 metre study area and, in addition, numerous archaeological features and 22 sites of archaeological interest have been identified through survey of the cable routes. Direct impacts have been identified for several of these assets. Potential mitigation would include a written scheme of investigation (WSI) for archaeological works providing for preservation in situ, a watching brief, or preservation by record secured by Requirement 20 of the recommended DCO if made. Residual impacts are set out in ES Chapter 27 Table 6.2 and indicate that there would be no substantial harm to heritage assets.
- 4.11 Potential indirect impacts are identified on the settings of 5 SAMs and 4 listed buildings. These include the Grade I listed Beverley Minster some 3 kilometres north of the converter stations site within the Beverley (Minster Area) Conservation Area. The Statement of Common Ground (SoCG) with Beverley Town Council (REP-318) states that, while there is agreement that the visual impacts for Beverley Minster were adequately considered in the site selection process, Beverley Town Council do not agree that it 'is satisfied on the landscape and visual impact assessment presented in the ES, and the measures secured in the DCO are appropriate and adequate' and do not agree with the landscape and visual impact assessment findings.
- 4.12 In its letter to the applicant on 28th May 2013, English Heritage (EH) (REP-175) states that it 'accepts that views from, and the significance of, Beverley Minster and St Mary's church will not be harmed by the development proposal.' ERYC noted in its LIR (REP-074) in discussing the views of Beverley Minster from the converter stations site and of the converter stations from the Minster that 'the overall impact is assessed as negligible and no additional mitigation is required.'
- 4.13 ES Chapter 27 indicates that the operational converter stations would not be visible from ground level at the Minster, although they might be visible from the top of the Minster tower. ES Chapter 27 notes that the converter stations would not be a prominent feature in the landscape, would not dominate the minimal views, and would not affect the setting of Beverley Minster. A similar conclusion is reached in respect of other SAMs and listed buildings in the wider area. The ExA agrees with these assessments.
- 4.14 EH submitted a relevant representation (REP-061) and responded to the Panel's first and second written questions (REP-168 and REP-334). There were also relevant representations from ERYC

(REP-032), Humber Archaeology Partnership (HAP) (REP-041), which is a separate consultee although part of both Hull City Council and ERYC, and K J Moore and Sons of Lodge Farm Dunnington (REP-062) who had concerns about burial sites and a World War II plane that might be beneath their land. In response to the ExA's first questions, MMO indicated in a number of answers that it deferred to EH in respect of impacts of offshore works on monuments in, on, or under, the seabed (REP-164).

- 4.15 In response to the concerns of the landowners at Lodge Farm Dunnington, and the Panel's first written question 6, the applicant confirmed that an archaeological geophysical survey had been carried out in the cable route and had not identified any anomalies that could be linked to a crash site, or that required further characterisation by trenching at that time. There was sufficient information for the ES to conclude the impacts would be reduced to an acceptable level following the implementation of a mitigation strategy secured through Requirement 20 of the recommended DCO, if made. This strategy would include a second phase of trench evaluation, including several trenches at Lodge Farm, and it is anticipated this would be undertaken between 2015 and 2022 if the Order were to be confirmed.
- 4.16 A SoCG between Forewind and ERYC (REP-121), and ERYC's LIR (REP-074), set out ERYC's view that there would be no loss of, or substantial harm to, the significance of any listed building or conservation area as a result of the proposed development in terms of section 5.8 of EN-1. Furthermore, that the converter stations would have a minimal effect on views to and from Beverley Minster, which consequently would suffer no loss of significance through any direct impacts or impacts on its setting. The SoCG records that there are no areas of specific disagreement or unresolved matters.
- 4.17 A SoCG between the applicant, EH and HAP (REP-122) records that the residual impacts of the development on known onshore cultural heritage and terrestrial archaeology are appropriately predicted as:
- (i) minor adverse or negligible during construction;
  - (ii) minor adverse or negligible during operation; and
  - (iii) negligible during decommissioning.

Measures set out in ES Chapter 27 Table 12.1, to mitigate potential impacts on known archaeology, are acknowledged by EH to be appropriate to reduce predicted impacts to an acceptable level and the same strategy would also apply to additional archaeological remains identified during further post-consent evaluation works. The SoCG records that there are no areas of specific disagreement or unresolved issues.

- 4.18 An offshore SoCG between the applicant and EH (REP-123) includes many matters of specific agreement and concludes that there were no unresolved issues in respect of either marine archaeology or historic seascape character.
- 4.19 An amendment to Requirement 27 of the applicant's original draft DCO (APP-023), Requirement 20 in the recommended DCO, if made, was agreed between EH/HAP and the applicant (Answer to First Written Questions: question 65 Appendix 1)(REP-192). This relates to onshore works and requires the implementation of a programme of archaeological works.
- 4.20 EH's relevant representation (REP-061) suggested some amendments to the DMLs in the application draft DCO to tie the high level WSI into the DCO and include seabed anomalies or sites of historic interest within a 500 metre buffer. Conditions 9(1)(g) and 14(2)(b) of DMLs 1 and 2 and conditions 8(1)(g) and 13(2)(b) of DMLs 3 and 4 in the recommended DCO, if made, reflect these suggested amendments.
- 4.21 EH confirmed in answer to a second written question at Deadline IV (REP-334) that, subject to the inclusion of an amendment proposed by the applicant, its request for specific conditions in respect to the preparation of archaeological WSI would be satisfied.
- 4.22 At Deadline VIII EH stated (REP-466) that, other than amending Article 42(1)(h) in the Panel's draft DCO (PD-032) by the addition of the word archaeological to "the outline archaeological written scheme of investigation (offshore)", it had no further comments to offer on the Panels draft DCO. Article 42(1)(h) has now become Article 42(1)(g) in the recommended Order and refers to the ES series of documents that includes the written scheme of investigation but does not include the word archaeological. The ExA does not consider this a critical difference.

### **Transboundary Effects**

- 4.23 In terms of transboundary effects, any potential impacts would be limited to artefacts of non-British origin, such as wrecks or aircraft, found within the marine development area. In the Dogger Bank zone it is expected that there may be aircraft of US or German origin, and within the export cable corridor there are wrecks of Swedish and Danish origin. Known archaeological receptors within the UK Renewable Energy Zone would be protected from direct damage by AEZs of 100 metres. Military receptors are protected under the Protection of Military Remains Act 1986. The ExA agrees with the assessment in the ES that enforcement of this protection would prevent any transboundary impacts on archaeological receptors within the Dogger Bank zone or the export cable corridor.

## **Conclusions**

- 4.24 There is no evidence to counteract the conclusions reached by EH, ERYC and HAP, including the lack of impact on Beverley Minster and its setting. On the basis of the examination, and the submissions and responses it has considered, the ExA concludes that the potential impact of Dogger Bank Creyke Beck A and B on both the onshore and offshore historic and archaeological environments has been properly addressed in terms of the Infrastructure Planning (Decisions) Regulations, EN-1 and EN-3. The appropriate safeguards are included within the recommended DCO to ensure the archaeology in the vicinity of the proposed development would be properly investigated and recorded, in accordance with the procedures required by the statutory agencies and local authorities.
- 4.25 The ExA concludes that there are no heritage, or historic environment, matters that would weigh against the Order being made.

## **5 BIODIVERSITY, BIOLOGICAL ENVIRONMENT AND ECOLOGY**

### **Introduction**

- 5.1 The Panel's consideration of issues includes a review of the effects of the proposal on European sites either alone, or in combination with other plans and projects. This would enable the SoS to carry out an AA of the implications for European sites in view of the sites' conservation objectives, if considered necessary. The report also considers the effects of the proposal on other protected sites and species. The Panel is not the competent authority for the purposes of the Habitats Regulations Assessment (HRA), the SoS, as decision maker, performs this role.
- 5.2 In response to the requirements of Regulation 5(2)(g) of the Applications: Prescribed Forms and Procedures (APFP) Regulations 2009 (as amended), the applicant provided an HRA Report (APP-044, APP-045 and APP-046). The information in this report was determined to be sufficient to accept the application for examination.
- 5.3 The Secretariat of the Planning Inspectorate has worked with the Panel to produce a RIES for the proposal (PD-033). This was published for consultation on 14 July 2014. The RIES was compiled from the application documents and relevant material and information received up to Deadline VI, 7 July 2014. When completed the RIES was made available to interested parties for comment. Responses to the RIES were submitted by the applicant (REP-518) and NE (REP-514). The RIES is not amended and reissued, as suggested by NE, and the process can be relied on by the SoS for the purposes of Regulation 61(3) of the Conservation of Habitats and Species Regulations 2010 and Regulation 25(3) of the Offshore Marine Conservation Regulations 2007. However, the comments of both the applicant and NE have been taken into consideration in this report.
- 5.4 Potential impacts considered as part of the applicant's HRA process include habitat loss (prey resource), disturbance/displacement, habitat loss (barrier effects), physical damage (collision risk), and in-combination effects.

### **Project Location**

- 5.5 The Dogger Bank zone is located in the North Sea off the east coast of Yorkshire (APP-068). Dogger Bank Creyke Beck A and B would be roughly 130 kilometres offshore and export cables for both projects would run to a landfall north of Ulrome on the Holderness coast in the East Riding of Yorkshire. From the landfall, underground HVDC cables would continue to the proposed convertor stations south of Beverley from where underground HVAC cables would connect to the existing nearby Creyke Beck substation.

- 5.6 Some offshore elements of the project would be within the Dogger Bank Site of Community Importance (SCI) but no other part of the area within the Order limits would adjoin, or be within, any other European site. However, the proposal would be ecologically connected to European sites some distance away that provide habitat for species that might be affected by the development.

### **Designated Sites and Habitats**

- 5.7 European sites include SCI, Special Areas of Conservation (SACs), candidate Special Areas of Conservation (cSACs) and Special Protection Areas (SPAs) that are protected under the Habitat Regulations. As a matter of policy the Government also applies the Habitat Regulations to potential SPAs (pSPAs), proposed SACs (pSACs), Ramsar sites and, in England, proposed Ramsar sites and sites identified, or required, as compensatory measures for adverse effects on any of the above.
- 5.8 The applicant's HRA Report identifies an extensive list of European sites that have been considered, including sites within and outside the UK. Tables 5.4 and 5.5 of the applicant's HRA Screening Report (APP-045) set out the UK sites considered, which are shown on Figures 5.1 and 5.2. Table 5.6 identifies European sites in other EEA States that have been considered.
- 5.9 These comprise 27 sites in Germany, 33 in the Netherlands, 6 in Belgium, 32 in Denmark, 28 in Sweden, 22 in France, and 2 in Norway. Table C2 of HRA report Appendix C (APP-049) sets out the final LSE screening for non-UK European sites. HRA report Appendix D (APP-050) is a summary of AA findings for those sites where LSE has been identified. The applicant has concluded no LSE, or Adverse Effect on Integrity (AEOI), for all non-UK European Sites. This conclusion is not challenged and no representations have been received relating to any non-UK sites.
- 5.10 Turning to sites in the UK, Column 1 of Annex 1 to the RIES (PD-033) lists 199 European sites located in the UK. Column 2 identifies those sites on the list for which the applicant concludes no LSE, whilst Column 3 sets out those where the applicant concluded there would be LSE. This information is set out in HRA report Appendix C (APP-049) Table C1. HRA report Appendix D (APP-050) sets out the applicant's conclusion of no AEOI for those sites taken forward for AA. Column 4 lists the European sites for which the applicant's conclusion of no AEOI is not disputed. This leaves five European sites where the applicant's conclusion of no AEOI was disputed by NE / Joint Nature Conservation Committee (JNCC) (REP-047 and REP-051) and RSPB (REP-207) at the beginning of the examination. These five sites are: Dogger Bank SCI; Farne Islands SPA; Flamborough Head and Bempton Cliffs SPA; Flamborough and Filey Coast pSPA; and the Forth Islands SPA.

- 5.11 Although there is a Scottish site on the list, the Forth Islands SPA, Scottish Natural Heritage (SNH) did not register to be an Interested Party (IP). SNH took no active part in the examination and did not respond to the Panel's written questions, or to a request to provide tables identifying areas of agreement and disagreement in respect of the Scottish site (PD-008 Questions 34, 35, 41, 46 and 47, PD-018 Questions 2 and 10). NE confirmed it was not its remit to consider impacts on Scottish sites but agreed to alert SNH to any applications/impacts it might wish to consider (REP-333).
- 5.12 SNH provided an e-mail to the applicant dated 15 April 2014 (REP-271). This confirmed that "SNH and JNCC therefore conclude no LSE with regards to northern gannet, common guillemot and razorbill associated with any Scottish SPA". The e-mail goes on to state that SNH is content that JNCC's advice has covered potential breeding season effects on seabirds from Scottish SPAs adequately, and that it is content for the applicant to follow NE's recommendations in relation to impact assessment in the non-breeding season. SNH also states that it "will place no additional or separate requirements upon you [the applicant] in this regard".
- 5.13 The Dee Estuary SAC and the Dee Estuary SPA and Ramsar sites are jointly managed by NE and Natural Resources Wales (NRW). NE confirmed that there would be no LSE for the SAC and no AEOI for the SPA and Ramsar sites. NRW did not register to become an IP and did not respond to the Panel's written questions (PD-018 Questions 3 and 10) but NE stated it was reasonable for the Panel to proceed on the assumption that NRW had no objection to NE's position (REP-333 and REP-340).
- 5.14 RSPB, which is not a statutory consultee, did not attend any of the hearings but provided written representations and responded to written questions. At Deadline IV (REP-328) RSPB agreed with the Panel's intention to focus the examination on the five sites still of concern. No additional European sites or features that might be affected by the application have been identified by any IPs.
- 5.15 Indeed, it was RSPB that identified the Forth Islands SPA as of concern in paragraphs 6.1-6.3 of its written representation (REP-166), and as part of its response to the Panel's second written question 10 (REP-283). Its view is that increases in proportions of displacement and mortality should be presented to allow their sensitivity to be considered. This information is included in Appendix A10 of Technical Annex A to ES Chapter 11 (APP-091) but was not carried forward to the applicant's HRA. RSPB did not provide any further comments in relation to the Forth Islands SPA.
- 5.16 The conservation objectives of the European sites listed above are presented in Annex 3 to the RIES (PD-033) with the exception of the Flamborough and Filey Coast pSPA, for which there are no conservation objectives. The Flamborough and Filey Coast pSPA is



effectively an extension of the Flamborough Head and Bempton Cliffs SPA. The applicant and NE confirm that the SoS's AA for East Anglia ONE used the same objectives for the Flamborough and Filey Coast pSPA as for the Flamborough Head and Bempton Cliffs SPA. Draft conservation objectives were provided to DECC, at the SOS's request, following the East Anglia ONE examination and are not, therefore, provided on the PINS website for that project. In these circumstances, the Panel has applied the Flamborough Head and Bempton Cliffs SPA objectives to the Flamborough and Filey Coast pSPA.

- 5.17 The five European sites that were still the subject of dispute at the beginning of the examination formed the focus of the examination. The qualifying features of these sites are set out in Tables 4A and 4B of the RIES (PD-033). Table 4A includes the qualifying features where the applicant concluded no LSE whilst Table 4B includes those qualifying features taken forward to AA, due to disagreement between the applicant and IPs over whether there would be a LSE. Both NE and the applicant commented on the footnotes to Table 4B with NE confirming that Razorbill was included as a qualifying feature of the Farne Islands SPA in error and that puffin are included as part of the assemblage of the Flamborough and Filey Coast pSPA but are not a specifically named species. NE is 'content' that the species have been considered adequately within the assessment (REP-514 point 6, REP-518 point 24).
- 5.18 Other sites noted as of concern by NE (REP-212) are:
- (i) Flamborough Head SAC;
  - (ii) Humber Estuary SAC;
  - (iii) Durham Coast SSSI;
  - (iv) The Farne Islands SSSI;
  - (v) Flamborough Head SSSI; and
  - (vi) Holderness Inshore rMCZ.
- 5.19 Concerns about Flamborough Head SAC relate to the breeding seabird feature of the Flamborough Head SSSI. The Farne Islands SSSI is part of The Farne Islands SPA where concern has been expressed in respect of ornithology, and kittiwakes have been raised as of concern in relation to the Durham Coast SSSI. These sites are, therefore, considered under other matters later in this chapter. The Humber Estuary SAC and Holderness Inshore recommended Marine Conservation Zone (rMCZ) are considered in Chapter 8, Marine and Coastal Processes, of this report as concerns raised related to longshore sediment transportation.

### ***Dogger Bank SCI***

- 5.20 The proposed Dogger Bank Creyke Beck A and B site lies within the Dogger Bank SCI which would, therefore, be subject to direct damage to the sole feature of the SCI, 'Sandbanks which are

slightly covered by sea water all the time', due to the introduction of hard infrastructure during construction and operation. The SCI has an area of 12,331 km<sup>2</sup> and is considered to be in an unfavourable condition. The conservation objectives reflect this by seeking to "restore the sandbanks to favourable condition" (PD-033 Annex 3 and REP-333 Appendix C). However, NE advised that at this time "no positive management measures have been implemented" (REP-514 Point 11).

- 5.21 Considering the Dogger Bank Creyke Beck A and B projects alone, NE considers that there would be no adverse effect on the integrity of Dogger Bank SCI from Dogger Bank Creyke Beck A and B alone, provided that when operation ceased there was successful decommissioning, including the removal of all infrastructure that lies on, or protrudes above, the seabed. This should also include removal of all protection measures such as rock and mattresses (REP-333 Appendix C) because the introduction of hard structures could lead to changes in benthic communities.
- 5.22 NE referred to the *Sweetman* case (REP-416 Summary of Oral Case paragraph 27). That case involved the permanent loss of limestone pavement in Ireland, and the European Court of Justice indicated that in such circumstances member states should treat permanent impacts very seriously in any decision making process. NE's advice on AEOI, for the projects alone, is based on its view that rather than being permanent, habitat loss would be temporary, albeit long-term, if the habitat was allowed to recover following decommissioning.
- 5.23 NE advised that, other than the *Sweetman* case, there is no clear guidance on what constitutes either long, or short, term temporary and that it was open to the SoS to interpret and conclude a position based on the guidance and advice of NE. In this case where there is no guidance and no clear thresholds NE suggests that a risk based approach may be appropriate. The ExA concurs with NE's position.
- 5.24 NE advocates a risk based approach to adaptive management with mitigation measures being put in place such that any impacts would be 'temporary long-term' (REP-340). This approach would inform what was required at the time of decommissioning. NE describes this as "allowing for a pragmatic but suitably precautionary approach" (REP-416). Such measures are suggested by NE as it is not certain what impacts there might be on the sandbanks, in particular from drill arisings (REP-333 Appendix C, REP-416 paragraph 23).
- 5.25 There is relative uncertainty as to how disposal mounds would interact over the lifetime of the project. If they comprise of sand, it is considered that there would be no impact. However, there is the possibility of clay being present in the drill arisings from foundation installation. The applicant expects these to winnow

away over time to leave only sand and so have no impact, but disposal mound behaviour in relation to clay is not fully understood and there is some potential for the interest feature of the site to be changed (REP-416).

- 5.26 Consequently, monitoring and surveys, secured by Conditions 9(1)(b), 14, 15 and 16 attached to DMLs 1 and 2 and Conditions 8(1)(b), 13, 14 and 15 attached to DMLs 3 and 4 in the recommended DCO, if made, would take place during the lifetime of the project. At decommissioning, consideration would be given to any removal/remedial/restoration work required based on the monitoring outcomes. NE agrees that decommissioning would be adequately secured within the DCO/DMLs and the In Principle Monitoring Plan (IPMP) (REP-514 Point 14).
- 5.27 Such an approach has been used before. NE referred to the effect of the installation of export cable at the Lincs offshore wind farm (Round 2) on the saltmarsh feature of the Wash SAC (REP-416 paragraph 25), whilst the applicant referred to adaptive monitoring in relation to shellduck at Hinkley Point C power station (REP-391 Paragraphs 5.37-5.38).
- 5.28 The Electricity Act 2004 gives the SoS the power to require a decommissioning programme and Requirement 10 in the recommended DCO, if made, would ensure that no offshore works would commence until a decommissioning programme, including addressing the possibility of abandonment or decay, has been submitted to the SoS for approval (REP-391). The applicant advised that a similar requirement is incorporated in the Triton Knoll (Requirement 19), Galloper (Requirement 17), and East Anglia ONE, (Requirement 9) DCOs (REP-391).
- 5.29 The decommissioning programme would be secured through Requirement 10 in the recommended DCO, if made. It should require the removal of all infrastructure that lies on, or protrudes above, the seabed, including all scour/cable protection measures such as rock and mattresses.
- 5.30 Changes in topography and surface sediment should also be monitored to inform any mitigation and the development parameters of any future offshore wind farms within the SCI. Any persistent clay casts produced as drill arisings during monopole foundation installation should also be removed. These measures would be secured through Conditions 9(1)(b), 14, 15 and 16 of DMLs 1 and 2 and Conditions 8(1)(b), 13, 14 and 15 of DMLs 3 and 4 in the recommended DCO, if made.
- 5.31 A draft In Principle Monitoring Plan (IPMP) (REP-410) has been produced following consultation with MMO and NE and sets out the basis for delivering the monitoring measures required by the conditions in the DMLs. It allows for discussion post consent to agree the exact detail of the monitoring required. NE agreed that

decommissioning would be adequately secured within the DCO/DMLs and the IPMP (REP-514 Point 14).

- 5.32 NE's view that the Dogger Bank Creyke Beck projects would have a long term, but temporary, impact on habitat, provided that all the infrastructure that lies on, or protrudes above, the seabed, including all protection measures, is removed at decommissioning, is in the ExA's view a key consideration. The relatively small loss of habitat, together with the temporary nature of the loss, ensured by an approved decommissioning programme, would allow the SoS to conclude that there would be no AEOI due to Dogger Bank Creyke Beck A and B projects alone.
- 5.33 NE is uncertain about the effect on site integrity from Dogger Bank Creyke Beck A and B in combination with oil and gas industry development, aggregate extraction areas and the Dogger Bank Teesside A and B offshore renewable scheme (but excluding fishing)(REP-333 Appendix C). This is because the magnitude of the potential impact lies within a 'contentious' range in relation to previous decisions.
- 5.34 A review of legal judgements and Inspectors' decisions by Hoskin and Tyldesley (2006), 'How the scale of effects on internationally designated nature conservation sites in Britain has been considered in decision making: A review of authoritative decisions', concludes that habitat losses in the order of 0.1% or less have, in some cases, been regarded as having an adverse effect on site integrity (REP-333 Appendix C). The applicant estimates that in this case there would be small direct and indirect habitat losses, in combination with other projects, of some 0.17% of the entire Annex I habitat, which is considered to be of European interest in the Habitats Directive, within the Dogger Bank SCI (REP-348). However, the applicant states that both the review by Hoskin and Tyldesley, and the Habitats Regulations Assessment Handbook DTA Publications Limited (September) 2013, emphasise that percentage loss is only one consideration to be assessed in the 'integrity test' and the ecological function should also be considered.
- 5.35 The applicant is of the view that the Dogger Bank Creyke Beck projects, alone and in combination with other plans and projects would not have an adverse effect on the integrity of the Dogger Bank SCI, primarily due to the very small scale and localised effects that would arise in relation to the key physical and ecological processes that characterise and maintain the function of Dogger Bank SCI. The assessment, as presented in the applicant's EIA and HRA, did not predict any large-scale changes in the distribution of seabed sediments, habitats, and the associated benthic communities, across the Dogger Bank SCI Annex I habitat (REP-416).

- 5.36 Notwithstanding the loss of 0.17% of the Annex I habitat in the Dogger Bank SCI, with adaptive management, as suggested by NE, and decommissioning secured by the conditions listed above and Requirement 10, the ExA considers that the SoS could conclude no AEOI for Dogger bank Creyke Beck A and B in combination with other plans or projects, excluding fishing.
- 5.37 When considering potential fishing effects on the SCI, whilst the applicant's assessment is stated to incorporate fishing activity as part of the existing baseline, the applicant maintains that fishing is not a 'plan or project', and so should not be included in any in combination assessment. This is because fishing in the Dogger Bank SCI is not a regulated or defined activity making a meaningful assessment impossible in the applicant's view (REP-391).
- 5.38 However, NE has advised the ExA that it is of the view that fishing should be considered a plan or project, following a steer from DEFRA (REF-416). NE has referred the ExA to DEFRA guidance on fisheries as a plan or project which NE advises "has indicated that fishing activity should be considered as if it were a plan or project" (REP-333 Appendix C NE's emphasis). NE have advised that "in summary DEFRA's guidance states a strong preference that the assessment of fishing activities in inshore European Marine Sites is consistent with the provision of Article 6(3), i.e. treated as a plan or project, and that appropriate management measures should be put in place to avoid damage/degradation of site features. By extension of this, there is a preference that offshore fisheries should be considered in the same way in relation to European Marine Sites to ensure compliance with the Habitats Directive" (REP-416, Annex A).
- 5.39 When fishing is added to the in combination considerations, NE maintains that it cannot conclude no AEOI (REP-333 Appendix C). NE has reached this conclusion based on the overwhelming contribution of fishing activities to the unfavourable condition of the site. Indeed, NE considers that the combined effects of non-fishing impacts are significantly smaller in magnitude than the inter-annual variation in pressure from fishing activities (REP-333, Appendix C).
- 5.40 However, NE has advised the ExA to consider the effects of the proposed development in the context of the proposed fisheries management measures, which NE hopes would be fully implemented and make a significant contribution to the restoration of the site to favourable condition (REP-333, Appendix C). NE have advised that DEFRA intend to submit proposals to the European Commission for fisheries measures to ensure that protection is consistent with Article 6 of the Habitats Directive so that appropriate regulations are in place in 2016 (REP-416, Annex A). NE has advised that these fisheries management proposals "would mean that unlimited fishing activities could only occur in about one

third of the SCI" (REP-333, Appendix C). NE has explained that legislative measures will be proposed by the European Commission in accordance with Common Fisheries Policy (REP-416, Annex A). NE has advised that "the proposed fisheries management plans are agreed at a technical level but their implementation remains under discussion between relevant member states. As such it is unclear if, and when the plans will be implemented" (REP-514, Point 10). NE has confirmed that the correct mechanism for implementing fisheries management changes would be through amendments to the European Commission on Common Fishery Policy and not through mitigation in the draft DCO or DMLs (REP-514, Point 11). This position is also agreed by the applicant (REP-518).

- 5.41 NE has advised that there are uncertainties surrounding the relationship between loss of extent and reduced fishing activity which would depend, amongst other matters, on future fishing patterns, fishing intensity, gear types used and recovery times of benthic communities (REP-416, REP-514 Point 16). However, NE has stated that "we recognise that the impact of fisheries is considerably greater than the other components of the in-combination scenario" (REP-340) and that "in comparison to fisheries the impacts from the Offshore Wind Farm (OWF) would be considered of a smaller scale" (REP-514, Point 16).
- 5.42 NE stated at the biodiversity, biological environment and ecology ISH on 1 July, and in its Deadline V response (REP-340), that in these circumstances the SoS should not immediately consider alternatives and then Imperative Reasons of Overriding Public Interest (IROPI) as the most appropriate approach as this could be considered a disproportionate application of the Habitats Directive. In its comments on the RIES (REP-514, Point12) NE states that "IROPI would not necessarily be an appropriate route and [NE] is therefore satisfied that the risk based adaptive management approach taken is sufficient. This approach involves monitoring of the disposal mounds throughout the lifetime of the project followed by appropriate management at decommissioning, as required. This should remove the need for consideration of alternatives and IROPI...".
- 5.43 NE advises (rep-416 paragraphs 24 and 25) that under IROPI there would need to be either recreation of habitat, which given the size, form and function, and geological formation, of the sandbanks is considered impossible, or designation of another site, which NE feels would be an inappropriate route. No other mitigation is considered necessary, or possible, by NE. However, following requests by the Panel the applicant provided information on alternatives and IROPI which is discussed later in this chapter.
- 5.44 The ExA notes that the DEFRA guidance on which NE relies is an "overarching policy and delivery document". Although having no statutory weight the document strongly recommends (amongst

other things) that regulatory authorities treat fishing activities as a “project or plan” which should be subject to AA before issuing site level permits for fishing activities. The intention of treating fishing as a “project or plan” is therefore to ensure the effective regulation and management of commercial fisheries. The ExA also has some sympathy with the applicant’s view that as fishing is not a regulated activity it would be impossible to meaningfully assess the implications for the Dogger Bank SCI of the Dogger Bank project in combination with fishing. In this context the ExA considers that the SoS does not therefore need to consider the in combination effects of fishing and could conclude no AEOI

- 5.45 However, in the event that the SoS takes a different view and proposes to treat fishing as a “project or plan” the effects of which should be considered in combination, the ExA considers, having regard to the advice of NE, that it would not be unreasonable to conclude that future fishing activities at the Dogger Bank SCI are expected to reduce under the proposed fisheries management measures, in accordance with the Common Fisheries Policy thereby reducing the overwhelming contribution of fishing activities to the unfavourable condition of the SCI. The ExA, having considered the advice of NE, also considers that it would not be unreasonable to conclude that the smaller scale impacts of the proposed development would be managed through the risk based adaptive management approach, secured through condition 9(1)(b) in DMLs 1 and 2 and 8(1)(b) of DMLs 3 and 4 of the recommended DCO, if made, and decommissioning secured by Requirement 10. In these circumstances, given the adaptive management measures and decommissioning, it could be concluded that there would be no AEOI of the Dogger Bank SCI from the projects.

### **Marine and Coastal Ornithology**

- 5.46 Species for which NE and RSPB could not agree with the applicant’s conclusion of no AEOI at the Flamborough and Filey Coast pSPA, the Flamborough Head and Bempton Cliffs SPA, the Farne Islands SPA and the Forth Islands SPA include northern gannet, black-legged kittiwake, common guillemot, razorbill, and Atlantic puffin (REP-166 paragraph 4.1, REP-047/051 Section 4). RSPB also mention great and lesser black-backed gulls although its detailed submissions (REP-166 Written Representations paragraph 4.1) predominantly refer to gannets, kittiwakes and auk species. The applicant’s conclusions of no AEOI for other breeding/assemblage features are not disputed. A generic approach has been adopted by the applicant and accepted by NE, as its advice would be no different whether it was for a species designated as part of a breeding assemblage feature or a qualifying breeding species feature in its own right (REP-416). However, at the Panel’s request the matrices for the sites were updated to include species listed in their own right as well as those

listed as assemblage features to clarify the approach (REP-401, REP-402).

- 5.47 When the examination began NE and RSPB had concerns about in combination and cumulative impacts (REP-047, REP-051 paragraph 6.11, REP-155). NE referred to its tiered approach (REP-155) and stated that the applicant had only included projects in Tiers 3, Projects consented but not constructed, to 5, Projects identified in the Planning Inspectorate Programme of Projects, when Tier 1, Projects built and operational, and 2, Projects under construction, should also have been included. NE's summary of case presented at the ISH on 4 April 2014 (REP-213) identifies four Tier 1 omitted sites as: Gunfleet Sands; Kentish Flats; Lynn and Inner Dowsing; and Scroby Sands. RSPB confirmed (REP-207) that its concern was that projects that predate the baseline data collection have not been included although they have not been operational for long enough to have a full effect on the baseline. In addition, RSPB stated Inchcape, Moray and Beatrice OWFs should also be included.
- 5.48 In response (REP-230), the applicant maintains that the Tier 1 sites omitted have been operating long enough for at least one generation to reach breeding maturity, but that in any event, from information provided by NE, the likely contribution of these projects to any in combination impact would be very small. In relation to Inchcape, Moray and Beatrice OWFs, the applicant maintained that all available data had been used.
- 5.49 NE's Ornithology Position Statement at Deadline IV (REP-333 Appendix A) records that the applicant has shared its work on cumulative and in combination collision effects with NE. NE notes the exclusion of Tier 5 projects but is satisfied that the Tier 1 projects have now been included. In terms of displacement, not all previous project ESs addressed it, but NE records that it hoped to work with the applicant to reach an understanding of the total effect.
- 5.50 NE's submission at Deadline V (REP-340) confirmed that projects in Tier 1 were now included but those in Tier 5 weren't. NE's Supplementary Ornithological Expert Report (updated) 7 July 2014 ((REP-416) records that no Tier 5 projects are included in the in combination test but recognises that there may be less confidence in these figures as they have not yet been subject to examination.
- 5.51 In its written representation, and its answers to the Panel's first written questions, (REP-166 and REP-207) RSPB raised particular concerns about the use of the extended Band model option 3, the use of a 99% avoidance rate for gannets, not adopting a range of percentage mortality in the assessment of displacement, and the use of Potential Biological Removal model (PBR) rather than Population Viability Analysis model (PVA). These concerns are



generally echoed in the original concerns of NE in its joint relevant representation with JNCC (REP-047, REP-051) as explained below.

- 5.52 At the first ISH on biodiversity, biological environment and ecology NE explained that PVA models rely on data collected at the colony in question, or a suitable proxy, and that these data sets cover more parameters with regard to how the colony behaves. PBR is more simplistic with a theoretical growth rate. Both are valid and have been used in Offshore Wind Farm (OWF) analysis but they are different. NE's starting point is that if there is data for PVA then this should be used (REP-212).
- 5.53 RSPB indicated in response to the Panel's first written questions (REP-207) that it did not comment on the Dogger Bank SCI, that it still had outstanding concerns about the Flamborough and Filey Coast pSPA and the Flamborough Head and Bempton Cliffs SPA; that on the information then available it considered that it was unlikely that there would be any effect on the integrity of the Farne Islands SPA; but that it was not possible to exclude the risk of an adverse effect on the Forth Islands SPA. RSPB's position was reiterated in its response to the Panel's second written questions (REP-283).
- 5.54 During the course of the examination a number of meetings took place between the applicant and NE and additional information was submitted as listed in the RIES (PD-033). RSPB has not commented on this additional information or the RIES.
- 5.55 The final position of NE is set out in its Supplementary Ornithological Expert Report (updated) dated 7 July 2014 (REP-416). This report acknowledges that the applicant corrected a number of figures within an annex to the Report and that, insofar as the amendments change any of the conclusions, the amendments have been taken on trust and would be reviewed by NE's specialist by Deadline IX 5 August 2014. However, no further comments were submitted by NE.

### **Flamborough and Filey Coast pSPA**

- 5.56 The species identified by NE as being of particular concern at the Flamborough and Filey Coast pSPA such that NE could not agree with the applicant's conclusion of no AEOI at the start of the examination include northern gannet, black-legged kittiwake, guillemot, and razorbill.
- 5.57 In respect of northern gannets, NE concludes in its Supplementary Ornithological Expert Report (updated) that it is able to agree no AEOI for the project alone, under all scenarios, and in combination for most scenarios (REP-416). The scenarios include basic Band model options 1 and 2, avoidance rates of 98%, 99%, and 99.5%, and the applicant's predicted collision mortality, which uses the extended Band model and makes assumptions about effects from

other projects in combination. NE concludes that it is not possible to rule out a significant impact using the basic Band model and a 98% avoidance rate according to PVA outputs. Using a basic model and a 99% avoidance rate would not result in a significant effect according to PBR or PVA (REP-514 Point 23).

- 5.58 In the PBR model equation  $PBR = N_{min} \times R_{max}/2 \times F_R$  The various factors are defined in Appendix 14 to the SoCG between the applicant and NE/JNCC as follows:
- (i)  $PBR$  = the number of additional animals which can be removed safely;
  - (ii)  $N_{min}$  = the minimum population estimate;
  - (iii)  $R_{max}$  = maximum net recruitment rate; and
  - (iv)  $F_R$  = a recovery factor
- 5.59 Dillingham and Fletcher (2008) 'Estimating the ability of birds to sustain additional human caused mortalities using a simple decision rule and allometric relationships' *Biological Conservation*. 141: 1783-1792, suggested reasonable levels for  $F_R$  as follows:
- (i)  $F_R = 1.0$  for populations of 'least concern' species that are known to be increasing or stable;
  - (ii)  $F_R = 0.5$  for populations of 'least concern' species that are declining or of uncertain trend;
  - (iii)  $F_R = 0.3$  for populations of 'near threatened' species; and
  - (iv)  $F_R = 0.1$  for populations of 'vulnerable' and 'endangered' species (REP-140).
- 5.60 In NE's Supplementary Ornithological Expert Report (updated) (REP-416) at a 98% avoidance rate, additional mortality is predicted as being 342.7 for PBR, based on an  $F_R$  value of 0.4, and NE's view, on balance, is that there would be no AEOI. However, PVA models submitted for Hornsea Project One suggested that a lower value of 200 was a suitable lower limit at which to conclude no AEOI. This would be achieved in relation to the Dogger Bank Creyke Beck projects if an avoidance rate of 99% rather than 98% was used (REP-416 Annex 1 Table 1).
- 5.61 A Review of Avoidance Rates in Seabirds at Offshore Wind Farms was attached as Appendix 15 to a SoCG between NE/JNCC and the applicant (REP-141). This noted that the default 98% avoidance rate largely derives from terrestrial studies where species exhibit a general lack of macro-avoidance compared to seabirds. It suggests that 98% should be regarded as overly precautionary in respect of collision risk for seabirds. Moreover, it notes that the evidence base that informed SNH (2010) 'Use of avoidance rates in the SNH Wind Farm Collision Risk Model', indicates that where avoidance rates have been derived from empirical data, reported values have been in excess of 99%. Indeed, when micro-avoidance and macro-avoidance rates are combined the overall

avoidance rate for all species considered to be prone to collision risk is typically greater than 99.5%.

- 5.62 RSPB questions the use of a 99% avoidance rate for breeding northern gannets (REP-166). NE considers that it is not in a position to amend its recommendation that a 98% avoidance rate is appropriate, pending the completion of a review by Marine Scotland Science that was not available before the close of the examination. The applicant points out that in the decision on East Anglia ONE the SoS agreed with the Panel and used a 99% avoidance rate for northern gannet in his AA (REP-392) reflecting the decision on Triton Knoll where a 99% avoidance rate for gannet was also considered to be appropriate. In addition, The Scottish Ministers have consented two recent schemes, Beatrice and Moray OWFs, using a general avoidance rate of 99% for the former and 99.5% for gannets in the latter (REP-289 and REP-292).
- 5.63 In view of the review attached to the SoCG, and these recent decisions, the ExA disagrees with the advice from NE in respect of avoidance rates and considers that a rate of 99% would be appropriate and can be justified for northern gannets (REP-394 and REP-395). This would lead to a conclusion of no AEOI on the Flamborough and Filey Coast pSPA in respect of this species.
- 5.64 This conclusion is reinforced by NE's note in its updated report (Rep-416 paragraph 11) that:
- (i) collision predictions for OWFs in the Greater Wash have been attributed to the pSPA but tracking data at the pSPA suggests few, if any, foraging trips to those OWFs which could lead to an overestimation of collision mortality;
  - (ii) several projects contributing to the in combination test may be overestimates, due to changes to worst case Rochdale envelope project designs, such that actual operational projects are smaller than originally designed;
  - (iii) although no tier 5 projects are included in the applicant's in combination test (Navitus Bay, Hornsea Project Two, East Anglia 3 and East Anglia 4) it is recognised that there may be less confidence in these figures not yet tested at examination; and
  - (iv) no data from Breeveertien II OWF is included due to a lack of transparency in modelling and avoidance rates used but it would be very likely to contribute negligible mortality due to the distance to the Flamborough and Filey Coast pSPA colony and the size of the wind farm.
- 5.65 In terms of black-legged kittiwake, NE concludes that there would be no AEOI for the project alone or in combination under all scenarios including basic Band model options 1 and 2, avoidance rates of 98%, 99%, and 99.5%, and the applicant's predicted collision mortality, which uses the extended Band model and

makes assumptions about effects from other projects in combination (REP-416 updated report). In respect of common guillemot and razorbill, NE concludes that there would be no AEOI for the project alone or in combination under all scenarios including assumptions of 70% displacement and 10% mortality that are the upper end of the range of effects NE advise is considered. In the absence of any evidence to the contrary the ExA agrees with NE's conclusions.

### ***Flamborough Head and Bempton Cliffs SPA***

- 5.66 At Appendix 3 of ES Appendix 11A: Ornithology Technical Report (APP-091), the applicant presents consultee comments from NE in respect of a recent review of the site boundary, interest features and reference populations of the Flamborough Head & Bempton Cliffs SPA. NE advises that for the purposes of the ES and HRA for this application, these potential changes should be reflected in the assessment of the application's impacts on the SPA. NE provided population data, which includes seabirds from the proposed terrestrial extension at Filey Brigg, as the most up-to-date population estimates for the Flamborough Head & Bempton Cliffs SPA, which the applicant has used for the purposes of its assessments. Paragraph 1.4.4 of the applicant's Consolidated Ornithological Addendum (COA) (APP-068) states that it "assesses impacts upon the Flamborough & Filey Coast pSPA. As the Flamborough Head & Bempton Cliffs SPA boundary is contained within the area covered by the pSPA, there is no need to also consider the impacts upon the classified site area".
- 5.67 The applicant states in its Deadline VI Updated HRA Integrity Matrices (Matrix A55b) (REP-401) that "Natural England reaches a conclusion of no AEOI for displacement impact alone or when combined with predicted mortalities from collision" in relation to northern gannet at the Flamborough Head and Bempton Cliffs SPA. In paragraph 9 of its Supplementary Ornithological Expert Report (REP-416), NE supports this conclusion in that "the additional worst case mortality from displacement does not alter the conclusion of no adverse effect on site integrity as the PBR threshold will not be exceeded". In its comments on the RIES (REP-514 Point 22) NE confirms that the comment also applies to northern gannet at the Flamborough Head and Bempton Cliffs SPA.
- 5.68 Black legged kittiwake was a species of concern to NE at the Flamborough Head and Bempton Cliffs SPA. However, following the submission of additional information (REP-393, REP-395, and REP-396), NE now accepts that there would be no AEOI at the Flamborough Head and Bempton Cliffs SPA for the project alone, or in combination, under all scenarios including basic or extended Band Model options, avoidance rates of 98%, 99% and 99.5%, and PBR or PVA.

- 5.69 NE's position on Razorbill and common guillemot at the Flamborough Head and Bempton Cliffs SPA is summarised in Table 3 of Annex A to its Supplementary Ornithological Expert Report updated (REP-416) which notes NE has not identified any concerns in relation to auks and concludes that there would be no AEOI at all displacement and mortality rates considered.
- 5.70 The ExA concludes that there is no evidence that would justify departing from NE's advice in respect of the Flamborough Head and Bempton Cliffs SPA.

### ***Farne Islands SPA***

- 5.71 NE's position on likely impacts to kittiwakes breeding at the Farne Islands SPA is informed by the applicant's final submissions on collision risk for kittiwakes (REP-416 and REP-396). Kittiwakes were identified as part of the assemblage at this SPA by the 2001 SPA review (Stroud et al 2001 The UK SPA Network: its scope and content Vols 1 – 3 JNCC Peterborough). NE agrees a conclusion of no AEOI for the site for the project alone, and in combination with other plans and projects, under all scenarios including basic Band model options 1 and 2, 98%, 99%, and 99.5% avoidance rates, and the applicant's predicted collision mortality (REP-416).
- 5.72 In respect of guillemot, NE also agrees a conclusion of no AEOI alone and in combination with other plans and projects under scenarios including assumptions of 70% displacement and 10% mortality (REP-416).
- 5.73 Razorbill was originally referred to by NE as a qualifying feature of the Farne Islands SPA but NE now accepts that is an error (REP-514 Point 6). Razorbills were identified as part of the breeding seabird assemblage in the 2001 SPA review. It is accepted that there would be no AEOI under all displacement and mortality rates considered for Razorbills. There is little or no evidence to suggest that the advice of NE should not be accepted on this matter.
- 5.74 The ExA therefore concludes that there would be no AEOI on the Farne Islands SPA in respect of any feature or assemblage species.

### ***Forth Islands SPA***

- 5.75 The species identified by RSPB as being of particular concern at the Forth Islands SPA such that RSPB could not agree with the applicant's conclusion of no AEOI include northern gannet and Atlantic puffin as breeding species and black-legged kittiwake, common guillemot and razorbill as breeding assemblage species.
- 5.76 RSPB maintains that, on the information available at the time, it was not possible to exclude the risk of an adverse effect on the Forth Islands SPA (REP-207). However, SNH has not raised any objection and indicates that there is no requirement for projects in Scottish waters to assess impacts on SPAs outside the breeding

season under HRA. Indeed, in an e-mail to the applicant (REP-271), SNH states "SNH and JNCC therefore conclude no LSE with regards to northern gannet, common guillemot and razorbill associated with any Scottish SPA". These are species mentioned by RSPB. Whilst RSPB has also referred to black-legged kittiwake and Atlantic puffin there are no impacts anticipated at sites closer to Dogger Bank Creyke Beck A and B and no concerns raised by SNH.

- 5.77 In the light of SNH's stance, and noting RSPB's precaution, the ExA recommends that the SoS could conclude that there would be no AEOI for the Forth Islands SPA.

### ***Conclusion***

- 5.78 The ExA considers that an avoidance rate of 99% for northern gannet would be appropriate. Its use would result in no AEOI of the Flamborough and Filey Coast pSPA, Flamborough Head and Bempton Cliffs SPA, and the Forth Islands SPA for that feature. Other features of the Flamborough and Filey Coast pSPA, Flamborough Head and Bempton Cliffs SPA, Farne Islands SPA were not considered of concern and there is little evidence to suggest that the advice of NE, that there would be no AEOI in respect of those other features, should not be accepted.
- 5.79 Similarly, despite RSPB's precaution, the evidence set out above would allow the conclusion that there was no AEOI for the Forth Islands SPA.

### ***Applicant's View on Extended Band Model***

- 5.80 NE accepts that the use of basic Band model option 2, subject to an avoidance rate of 98% is appropriate. This is what generally underlies the conclusions reached above (REP-340, REP-416). However, the applicant maintains that option 3 (extended Band model) should be used (REP-392). Whilst a decision on whether option 2 or 3 should be used might be of general scientific interest, in the context of this specific examination it has little relevance given the ExA's conclusions reached in respect of all features and assemblage species of the SPA and pSPA sites on the basis of the precautionary use of the basic Band model option 2.

### ***Other Matters***

- 5.81 In response to Question 34 of the Panel's first written questions (PD-008) NE indicated that it could not agree that all relevant European sites had been identified, as the SPAs for migratory birds had not been considered (APP-169). Subsequently, in an addendum to the SoCG between NE/JNCC and the applicant, NE stated that it could conclude no LSE for all migratory waterbird features assessed at all SPAs (REP-213) and confirmed that all sites and features had been appropriately identified (REP-212). In response to Question 7 of the Panel's second round of written

questions (PD-018) NE again verified that the applicant had correctly identified and assessed all the relevant SPAs for migratory waterbirds (REP-333).

- 5.82 In respect of EIA, NE identified seven species where the applicant's conclusion on significance of effects was not agreed by NE: northern gannet, black-legged kittiwake, common guillemot, razorbill, Atlantic puffin, lesser black-backed gull, and great black-backed gull.
- 5.83 In respect of northern gannet, NE's position is informed by the applicant's submissions on collision risk (REP-395). The predicted number of year round collisions at Dogger Bank Creyke Beck A and B using basic Band model option 1 and 98% avoidance rate is 30 and the predicted cumulative collisions at the North Sea scale assuming all projects in Tiers 1-4, adult birds, and consented design envelopes, would be 3,221. The tier classification is that provided by NE/JNCC in their response to the original Ornithological Addendum for the Dogger Bank Creyke Beck projects (REP-137). The tiered approach is also addressed in an addendum to the SoCG between the applicant and NE (REP-213).
- 5.84 The contribution made by Dogger Bank Creyke Beck to predicted collisions is recognised as being very small, at 0.55% of the cumulative total, as the majority of impacts stem from projects in Scottish waters, probably due to the proximity of a gannetry at Bass Rock of ~110,000 individuals (REP-416). However, cumulative impacts from Scottish waters and Dogger Bank Creyke Beck equates to a major adverse significant impact. If an avoidance rate of 99% is assumed, as the ExA recommends, the predicted impacts would reduce to one of moderate adverse significance (REP-416 paragraphs 15 and 16).
- 5.85 NE has derived a PBR model to further investigate the likely impacts from these predictions. NE notes that the model suggests that mortality levels are sustainable under all scenarios (REP-416).
- 5.86 An alternative PVA model has been developed at the national scale which indicates a risk of decline under certain thresholds (WWT 2012 SOSS-04 Gannet Population Viability Analysis Slimbridge). NE concludes that whilst it is not possible to rule out a significant impact using a basic Band model option 1 or 2 and 98% avoidance rate according to PVA outputs, it could be concluded that a basic Band model, and 99% avoidance rate would not result in a significant impact according to both PBR and PVA outputs (REP-416).
- 5.87 As stated above, the ExA considers that the use of an avoidance rate of 99% for northern gannets is appropriate and the SoS has concluded as such on a number of previous OWF applications. On the basis of using a basic Band model option 1 and 2 and a 99% or 99.5% avoidance rate NE concludes that there would be no

significant impact according to PBR and PVA outputs (REP-416 paragraph 24).

- 5.88 NE advises that there are some uncertainties surrounding EIA impact on black-legged kittiwakes at the North Sea scale as approximately 50% of the overall population are not part of the designated SPA populations. However, PBR models suggest effects are sustainable under scenarios corresponding to  $F_R$  values up to 0.2. This is considered an appropriate value reflecting the general decline in the species and the contribution of SPA birds to the North Sea total. NE advises "there are some uncertainties surrounding EIA impact to kittiwakes at the North Sea scale. However, PBR models suggest effects are apparently sustainable under scenarios corresponding to  $F_R$  values up to 0.2" (REP-416).
- 5.89 In respect of guillemots, NE advises that PBR models suggest effects at the North Sea cumulative scale would be sustainable under all scenarios and agree the applicant's conclusion of minor significance for the project alone and cumulatively at the North Sea scale (REP-416).
- 5.90 For razorbills NE concludes, in the worst case scenario, that "the predicted mortality corresponds to an  $F_R$  value of 0.38 which is considered sustainable even with a moderate impact identified" (REP-416 paragraphs 75-76).
- 5.91 NE advises (REP-416) that "the impacts to puffins at national and biogeographic scales are considered of minor significance in EIA terms for the project alone. The contribution Dogger Bank Creyke Beck OWF may make to a cumulative impact is likely to be small, but uncertainty remains about the full scale of impact due to the lack of data for some projects of relevance".
- 5.92 In respect of both lesser black-backed gulls and great black-backed gulls NE is of the view that the impacts at national and biogeographic scales are considered of minor significance in EIA terms both from the project alone and in terms of cumulative impact (REP-416).
- 5.93 The black-legged kittiwake population at the Durham Coast SSSI was recorded as having 5,086 breeding adults in 2012 (REP-416 paragraph 44). The colony is some 185km from the nearest point of the Dogger Bank Creyke Beck site and NE acknowledges that therefore connectivity between them is unlikely (REP-416).
- 5.94 However, assuming as a precaution that Dogger Bank Creyke Beck A and B are within range of all breeding birds in the breeding season, and using the applicant's apportioning methodology (REP-393), an assumption can be made that 0.69% of the total number of black-legged kittiwakes estimated in the North Sea may originate from the Durham Coast SSSI. In the spring and autumn migration seasons it is estimated, on the same basis, that 0.13%



of birds originate from the SSSI and in the winter birds from the SSSI are estimated to comprise 0.2% of the North Sea total (REP-416).

- 5.95 Applying these proportions to the estimated collisions presented by the applicant (REP-393) results in 4 predicted collisions in a year for the Durham Coast SSSI black-legged kittiwake population. This relates to Band model options 1 and 2 collision estimates and an avoidance rate of 98%. Assuming an annual mortality rate of 13.5%, as per the applicant's submission (REP-067), gives a background mortality of 686.6 deaths per annum and an additional worst case of 4 deaths. This would equate to an increase in background mortality of 0.59%. Such an increase is, in NE's view, likely to be indiscernible and any contribution to cumulative impact is unlikely to materially alter any assessment rendering a cumulative assessment unnecessary (REP-416).
- 5.96 NE advises that "the impacts to the Durham Coast SSSI are considered of minor [adverse] significance in EIA terms both from the project alone and the contribution it may make to a cumulative impact" (REP-416). In those circumstances the ExA does not consider that the interest feature of the SSSI would be damaged.
- 5.97 In respect of the Flamborough Head SAC, NE states that the only aspect of concern is the breeding seabird feature of the Flamborough Head SSSI (REP-340 paragraph 25). Given the conclusions above relating to the breeding seabird and breeding seabird assemblage of the Flamborough and Filey Coast pSPA and Flamborough Head and Bempton Cliffs SPA, which includes the SSSI, the ExA considers that any impact on the birds of the SSSI would only be of minor significance (REP-392 paragraph 4 and REP-416).
- 5.98 The Farne Islands SSSI forms part of the Farne Islands SPA and given the advice of NE that there would be no AEOI on any of the breeding species features or breeding species assemblages of this SPA it follows that any impact on the birds of the SSSI would only be of minor significance (REP-392 Paragraph 4 and REP-416).
- 5.99 Whilst NE notes that ornithological monitoring during construction was not secured in either the DCO/DMLs or the IPMP (REP-423), it was later recorded during the examination as being under discussion (REP-465). A later version of the IPMP (REP-485) includes ornithological monitoring during construction. Monitoring would be secured by Condition 15(2)(c) of DMLs 1 and 2 and Condition 14 of DMLs 3 and 4 in the recommended DCO, if made.

***Alternatives, imperative reasons of overriding public interest, and compensatory measures***

- 5.100 At the first ISH on biodiversity, biological environment and ecology the Panel raised the question of alternatives and IROPI, as NE and RSPB could not agree with the applicant's conclusion of no AEOI in relation to certain European sites. The applicant stated that it was committed to the view that the in combination assessment is based on scientific evidence, with an appropriate level of precaution, to conclude beyond scientific doubt that there would be no adverse effect on the integrity at any sites, and therefore has not considered alternatives and IROPI (REP-220).
- 5.101 In response to Question 24 of the Panel's second written questions the applicant reiterated this view and noted that, given its views, an answer was provided with considerable reluctance (REP-301). As the Panel's question does not specifically refer to compensatory matters the applicant has not addressed that topic in its response.
- 5.102 The applicant suggests that the no alternatives test begins with identification of need, which is set out in ES Chapter 2 (APP-062). The key target of delivering renewable energy generating capacity for the UK is identified in its response to the Panel's second written question 24 as unconstrained and, therefore, the applicant maintains that, logically, all relevant projects are needed. The applicant suggests that this is sufficient to satisfy the "absence of alternative solutions" test under Article 6(4) of the Habitats Directive but additionally sets out secondary submissions to give the SoS comfort on the matter, including the fact that some sites or zones have been abandoned or are unlikely to be developed to their full capacity, even when consented, due amongst other factors to economics and 'buildability' (REP-301).
- 5.103 The applicant highlights the overarching European, and national, policy requirement for a sustainable energy supply from renewables. Although the projects would be provided by private companies, the purpose would be to satisfy the public interest. Site appraisal was initiated by the Government through Strategic Environmental Assessments (SEAs) and refined by the Crown Estate through SEA and Zone Appraisal and Planning studies. The applicant holds that the project is of both social and economic importance in combating climate change and in contributing to the provision of a sustainable future.
- 5.104 The Panel asked questions as mentioned above, both in writing and at the biodiversity, biological environment and ecology ISH hearings, about alternatives and IROPI. It also pointed the applicant towards PINS Advice Note 10 page 4 which states "The ExA's report will assess evidence from the examination relating to the case for no alternatives, IROPI and compensation". Notwithstanding this the applicant maintains that if a negative AA is made it expects that an opportunity will be given to make

further representations on Article 6(4) which states that where an AA has been carried out and results in a negative assessment then consent will only be granted if there are no alternative solutions, there are IROPI for the development and compensatory measures have been secured (REP-301).

- 5.105 NE's comments on the need for alternatives, IROPI and compensation were made in relation to Dogger Bank SCI and have been considered at paragraph 5.43 above in this Chapter.

### **Marine Mammals**

- 5.106 Table 2.1 of ES Chapter 14 (APP-119) sets out the specific assessment requirements for marine mammals that appear in paragraphs 2.6.90 to 2.6.99 of EN-3.
- 5.107 Relevant representations from NE/JNCC (REP-047 and REP-051), MMO (REP-020), Whale and Dolphin Conservation (WDC) (REP-031), and The Wildlife Trusts (TWT) (REP-039) refer to marine mammals. The main concerns surround mitigation of noise impacts during construction and the monitoring of impacts against the assessment in the ES. WDC's written representation (REP-153) confirms that its primary concern is the noise pollution from pile driving. Species of particular concern are harbour porpoise, minke whales, white beaked dolphin, harbour seals and grey seals, although fish could also be affected.

### **Noise Mitigation**

- 5.108 ES Chapter 14 (APP-119) characterises the existing marine mammal environment using both existing, and site specific, survey data and establishes potential impacts. Table 12.1 sets out worst case scenarios for Dogger Bank Creyke Beck A or B in isolation and the impact assessment does not report significant effects for any marine mammal receptor species.
- 5.109 ES Chapter 14 (APP-119) notes that exposure to high levels of underwater sound can cause hearing impairment. Sound exposure above certain levels and durations can result in recoverable hearing loss, Temporary Threshold Shift, or, following greater exposures (at higher intensity or longer duration), to Permanent Threshold Shift (PTS).
- 5.110 The ES Chapter 14 (APP-119) accepts that there is a large amount of uncertainty in the assessment of potential impacts of underwater noise from pile driving on marine mammals. It states that mitigation, through the development of a marine mammal mitigation protocol (MMMP), would prevent occurrences of noise thresholds that could lead to instantaneous PTS in all species. The MMMP would be secured through conditions 9(1)(e) of DMLs 1 and 2 and 8(1)(e) of DMLs 3 and 4 in the recommended DCO, if made.

- 5.111 An assessment using precautionary noise thresholds, and a model that does not account for seals holding their heads out of the water preventing exposure, indicates that cumulative dose PTS may occur in grey seal. Although the numbers potentially exposed to these noise thresholds are not quantified in the ES, it considers that the worst case impacts would be minor as numbers in the Dogger Bank Creyke Beck A and B site area are low (APP-119 Sect 12).
- 5.112 ES Chapter 14 Table 12.2 (APP-119) provides a similar summary of potential impacts for Dogger Bank Creyke Beck A and B in combination but also concludes minor adverse impacts at worst. There is potential for overlapping noise footprints from pile driving during construction of both Dogger Bank Creyke Beck A and B projects, but even though concurrent pile driving might occur, the significance of the impacts would not be double that of the projects built in isolation.
- 5.113 The ES states that the cumulative impacts of Dogger Bank Creyke Beck A and B, Dogger Bank Teesside A and B, and aggregate extraction area 466/1, the projects shown on ES Chapter 14 Fig 10.1b (APP-119) closest to Dogger Bank Creyke Beck A and B, would not increase the levels of significance beyond the combined impacts of the Creyke Beck A and B projects.
- 5.114 Table 12.4 of ES Chapter 14 (APP-119) summarises the cumulative impacts from projects outside the Dogger Bank Zone and highlights the potential for moderate adverse impacts to harbour porpoise as a result of disturbance from pile driving. This is based on data that shows the potential for a high magnitude of effect with more than 10% of the North Sea harbour porpoise population being disturbed at any one time.
- 5.115 This represents a precautionary assessment with a large amount of uncertainty as potential limitations to the supply chain and the possible adoption of alternative foundation solutions may reduce the number of sites pile driving at the same time. Disturbance impacts at the scale presented in the cumulative impact assessment are an on-going consideration and the applicant is involved in wider industry initiatives, such as the Offshore Renewable Joint Industry Programme (ORJIP), aimed at understanding the population level consequences of disturbance. However, these wider industry initiatives would not be within the remit of the DCO and so cannot be taken into account.
- 5.116 NE raised noise mitigation as a concern at Deadline II (REP-155). However, at Deadline V (REP-340) NE confirmed that it agrees with the assessment undertaken by the applicant and confirmed its position that mitigation is adequately secured within the DCO and DMLs in the form of the MMMP, the detail of which would be agreed by the relevant authorities, including the MMO in consultation with the relevant statutory nature conservation body.

A soft start procedure is expected as a bare minimum but it is acknowledged that by the time of construction there may be other options, although as these are unknown they cannot be taken into consideration at this time. NE notes that an agreed change to the wording of condition 9(1)(e), now (c) in DMLs 1 and 2 and condition 8(1)(e) now (c) in DMLs 3 and 4 would capture the need for noise monitoring and this is included in the recommended DCO, if made (REP-340).

- 5.117 Although WDC considers that monopole foundations should not be used (REP-031), the ExA agrees with NE that mitigation through an MMMP, secured through conditions attached to the DMLs, would be adequate in addressing adverse effects on marine mammals and would allow the MMO to ensure that any proposed foundation types that were approved under the DMLs were acceptable.

### ***Monitoring***

- 5.118 TWT believes that comprehensive monitoring is required to confirm the assumptions in the ES (REP-039). This would also address its view that harbour porpoise should be a qualifying feature of the Dogger Bank SCI, which it is not currently (REP-154). MMO and NE in their relevant representations (REP-047, REP-051 and REP-020) advocate comprehensive monitoring, although NE acknowledges that the applicant is already collaborating in a strategic research project Disturbance Effects on the Harbour Porpoise of the North Sea (DEPONS), and contributes to ORJIP which has several workstreams relating to marine mammals. These wider industry initiatives would not be required by the DCO and so cannot be considered as mitigation. Monitoring secured through conditions 9(1)(e) of DMLs 1 and 2 and condition 8(1)(e) of DMLs 3 and 4 would contribute to expanding knowledge of marine mammals.
- 5.119 MMO's responses to Questions 32 and 33 of the Panel's first written questions (REP-164) indicate that noise monitoring for one pile in each of the first four structures should be carried out. MMO agreed a proposal for ambient noise monitoring with the applicant (REP-329) but suggested different wording from that agreed for a DML condition to achieve it. This has been incorporated into condition 15(2)(a) of DMLs 1 and 2 and condition 14 of DMLs 3 and 4. Conditions 14 and 16 of DMLs 1 and 2 and conditions 13 and 15 of DMLs 3 and 4 also require an IPMP (REP-485 Appendix 5) that would address monitoring over the lifetime of the project, and a draft of which has been produced in consultation with relevant parties. Pre and post construction surveys would be approved by the MMO.

### ***Corkscrew Injuries***

- 5.120 A further concern, raised in writing by WDC (REP-153) and at the second ISH on biodiversity, biological environment and ecology by

TWT (HR-018), is the possibility of corkscrew injuries, particularly to harbour porpoise as well as seals. The ORJIP Project 4 raises concerns about whether the current JNCC guidance is fit for purpose and TWT considers that the applicant should apply the ORJIP findings.

- 5.121 ES Chapter 14 (APP-119) assesses the potential for corkscrew injuries in harbour seal in particular to be significant, although this is based on a precautionary approach with no mitigation proposed. The actual risk of this impact occurring in the Dogger Bank Zone is stated to be low due to the small numbers in the area compared to other developments that have been included in the cumulative impact assessment as these are much closer to high risk areas such as SACs designated for harbour seal.
- 5.122 Impacts at Dogger Bank Creyke Beck would not be significant but the applicant maintains that should any new measures be developed to minimise corkscrew injuries they would be adopted. However, as these would not be secured by the DCO, if made, they would only be an aspiration and should not be taken into account in this assessment.
- 5.123 NE in its Deadline V response (REP-340) states that widening of the current condition that refers to the MMMP has been agreed in principle between NE, MMO and the applicant to allow future consideration of the best mitigation for corkscrew injuries within the MMMP. This has subsequently been reflected in the IPMP that deals, amongst other matters, with principles of marine mammal monitoring. In its Deadline VI submission (REP-416) NE confirmed that condition 9(1)(e) of DMLs 1 and 2 and 8(1)(e) of DMLs 3 and 4 in the recommended DCO, if made, have been widened to address TWT's concern about such injuries. NE stated it had no outstanding concerns on this topic and the applicant confirmed that the amendments had also been agreed with TWT (REP-391).

### **Prey**

- 5.124 WDC, in its relevant representation (REP-031) and NE/JNCC in their SoCG (REP-126) highlight possible impacts on sandeels that are prey to marine mammals. As a mitigation measure, the applicant has omitted development from part of the site where sandeels are most abundant, and the potential impacts of changes in prey resource on marine mammals is assessed on this basis in ES Chapter 14. This embedded mitigation would be ensured by the western section of Tranche A being excluded from the Order Limits as set out in ES Chapter 35 Table 2.1 (APP-168).
- 5.125 NE/JNCC, in their SoCG (REP-126) with the applicant, record some outstanding concerns about impacts due to changes in prey resource, but additional clarification was attached at Appendix 21 to the SoCG. Having reviewed the additional clarification, NE confirmed at paragraph 44 on page 169 of its Deadline II

submission (REP-156) that it is now content with the assessment, but in line with the MMO suggested a survey programme. This is secured by conditions 14(2)(d) attached to DMLs 1 and 2 in the recommended DCO, if made, that relate to the array area. There is no need for a similar condition in respect of the export cable corridor.

### ***EPS Licences***

- 5.126 In their Deadline II representation (REP-155) NE states that EPS licences would be necessary for all cetacean species that might be disturbed. In ES Chapter 14, the applicant identifies that this might include harbour porpoise, minke whale and white beaked dolphin (APP-199). NE also recognises in its Deadline V submission (REP-340) that the required licences would be dependent on the final design parameters, in accordance with the Rochdale envelope, which will be defined at a later stage, and thus licences would be applied for post making the DCO.
- 5.127 At Deadline V (REP-340) NE confirmed that no 'letters of no impediment' would be issued, and that EPS licence applications would be applied for pre-construction and would be informed by the applicant's involvement with projects such as DEPONS and other mitigation measure projects.
- 5.128 At Deadline V (REP-384) MMO notes that EPS licence applications should be submitted at least six weeks before construction is due to start. It further sets out that based on the evidence presented so far, and the requirement to submit and agree a MMMP, it would be reasonable to assume that licences could be issued provided that the applications were appropriately detailed, suitably evidenced and based on relevant legislation at the time of application.
- 5.129 In their Deadline VI submission (REP-416) NE confirms there are no outstanding concerns about ESP licenses.
- 5.130 Under the Habitats Regulations, although the ExA is not the consenting authority, the ExA needs to have regard to the Habitats Directive to be satisfied that its derogation tests can be met and that a licence would be forthcoming, if required, post consent. The ExA has no reason to believe, in the light of the above, why any EPS licences, if required post consent, would not be granted by the MMO. Having regard to the Habitats Directive, the ExA is satisfied that the derogation tests could be met if a licence was required.

### ***Data***

- 5.131 WDC, in its SoCG with the applicant (REP-083), questions the adequacy of the data used to assess marine mammal populations. ES Chapter 14 acknowledges the limitations of the Small Cetaceans in the European Atlantic and North Sea (SCANS-II) and

Cetacean Offshore Distribution and Abundance (CODA) data and records that, as they are still considered the most robust and extensive data source, their use was agreed with NE.

- 5.132 NE/JNCC's relevant representations (REP-047 and 051) notes they are largely content with the approach to define the magnitude of effects on populations and noted that there were ongoing discussions to provide clarity on the approach to the population level significance of the predicted effects. However, a subsequent SoCG between NE/JNCC and the applicant (REP-126) notes that the impact assessment methodology is agreed and that the only unresolved matter relates to impact on sandeels, which is considered above in this chapter.
- 5.133 NE agrees with the conclusions in the ES that the effects on marine mammals from the project alone would be unlikely to be detrimental to the maintenance of marine mammal populations at a favourable conservation status (REP-047, REP-051). They also agree that in combination with other developments in the Dogger Bank zone it is also unlikely to be detrimental to population levels. There is no evidence that would lead the ExA to reach a contrary view.

### ***Wider Plans***

- 5.134 TWT suggests, in its relevant representation and Deadline II submission (REP-154 and REP-039), a plan for wider marine biodiversity enhancement. The SoCG between the applicant and TWT (REP-102) records this as an unresolved issue between the parties. Whilst TWT considers the applicant's measures to be mitigation rather than enhancement, and advocates a contribution to a Coastal/Marine Biodiversity Fund to support wider research, little detail of such a fund has been submitted. Outside the DCO the applicant provides data through the Joint Cetacean Protocol (JCP) and its parent companies contribute to the ORJIP which has several workstreams relating to marine mammals. Within the DCO, monitoring, secured through conditions 9(1)(b), 14, 15 and 16 to DMLs 1 and 2 and conditions 8(1)(b), 13, 14 and 15 of DMLs 3 and 4 would provide a further source of information.
- 5.135 In the light of the information provided, there is little justification for requiring the applicant to contribute to a Fund, should one be set up and consequently there is no provision in the recommended DCO, if made, for such a requirement.

### **Fish and Shellfish**

- 5.136 Paragraphs 2.6.73 to 2.6.77 of EN-3 identify specific assessment requirements for fish and shellfish ecology. These are set out in Table 2.1 of ES Chapter 13 (APP-111).
- 5.137 The existing fish and shellfish environment is characterised in ES Chapter 13 (APP-111) using existing and site specific survey data,



and potential impacts are summarised in Table 12.1 of ES Chapter 13. The assessment has considered the adult, juvenile and egg stages of the fish and shellfish species associated with the study area as defined in section 3.1 of ES Chapter 13.

- 5.138 Potential impacts identified in ES Chapter 13 (APP-111) include: disturbance or loss of habitat due to installation of the proposed infrastructure; increased suspended sediment concentrations and sediment re-deposition, which is addressed in Chapter 8 Marine and coastal processes of this report; the effect of underwater noise due to construction and operational activities, which is covered in the marine mammals section of this Chapter; and the potential effect of electric and magnetic field emissions from subsea cables.
- 5.139 The impact assessment predicts that none of the identified effects would result in a significant impact on fish or shellfish. This is due to factors including: the fact that available habitats for breeding species surrounding the project area are large in comparison with the development footprint itself; noise mitigation measures would be used during piling operations enabling fish to swim away and reduce their exposure; the effects of increased suspended sediment concentration would be temporary, localised, and with minimum deposition due to tidal movements; and electromagnetic field emissions from cables would be limited to their immediate vicinity (APP-111 Sect 12).
- 5.140 Relevant representations were provided by, amongst others, the MMO (REP-020) and jointly by NE/JNCC (REP-047 and REP-051). MMO notes that overall the data presented in the ES is proportionate and appropriate. However, whilst it generally agrees with the assessment in the ES concerning predicted impacts on fish and shellfish, it considers that a programme to measure the actual impact of development, particularly at a suitable biological level in relation to sandeel should be carried out. This would be secured by condition 14(2)(d) of DMLs 1 and 2 in the recommended DCO, if made. A similar provision is not required in DMLs 3 and 4 relating to the cable corridor which would not have the same impact on the sandeel grounds. NE's Deadline VI submission (REP-416) notes at paragraph 8 that NE made no comments in relation to the herring spawning season, Holderness Fishing Industry Group (HFIG) and the community fund issues discussed.
- 5.141 In relation to the export cable corridor crossing herring spawning grounds, MMO advocates the following condition: "No works shall be carried out by, or on behalf of, the undertaker as part of, or in relation to, the authorised scheme between 15 August and 15 October each year on the export cable route within the area defined by co-ordinates [to be added]" (REP-389 Section 1.3 and REP-424). This remains an area of disagreement between MMO and the applicant.

- 5.142 The period of restriction was originally longer and, subsequent to the suggested wording, the suggested area of restriction has also been reduced following consideration of further data. MMO's response to Deadline VIII (REP-503) dated 24 July 2014 notes that the area is defined on the applicant's amended Offshore order limits and grid coordinates plan (Rep-411) and the co-ordinates are identified along the export cable route at points red 2 to red 46 at the onshore end and red 6 to red 42 at the offshore end.
- 5.143 MMO's stance is based on advice from the Centre for Environment, Fisheries and Aquaculture Science (Cefas) (REP-382 Annex 1) and is consistent with other marine licences. Although the applicant maintains other infrastructure has been installed through the area, this may have been subject to the Coastal Protection Act 1949, which made no provision for ecological impacts.
- 5.144 Notwithstanding this, the applicant issued a herring clarification note as Appendix 8 to a SoCG with MMO (REP116) and a summary of its case at Deadline V Appendix 16 (REP-363). The applicant understands that the perceived need for a restriction is based on The International Council for the Exploration of the Sea (ICES) 2013 Report of the Herring Assessment Group for the Area South of 62°N, 12-21 March 2013 ICES CM.2013/ACOM: 06. This refers specifically to negative impacts on spawning habitat by activities such as aggregate dredging that remove far larger areas of seabed than that which would be associated with the export cable installation.
- 5.145 The effect of increased suspended sediment from the installation of the proposed export cable on eggs and larvae is also a consideration. The development would lead to a maximum suspended sediment concentration from each release point generally below 20mg/l except one around 20km from the coast where it is estimated to be up to 100mg/l. Deposition near the coast would be only around 0.078mm reaching about 2.77mm further offshore with greater than 1mm persisting for up to 64 hours. Background suspended sediment concentrations near to the coast are of roughly equivalent magnitudes and only small changes are predicted along the export cable corridor (REP-407). As such the ExA considers that the proposal would have no significant effect on herring spawning habitat.
- 5.146 In any event, the ICES advice is that the Dogger Bank zone's Herring stock is classified as being at full reproductive capacity and is being harvested sustainably (REP-363). The proposed development would only affect 0.02% of the total Flamborough Head spawning grounds, although as herring do not spawn across every part of the spawning ground every year this could be misleading. Table 4 of the clarification note (REP-116 Appendix 8) calculates that between 0.0% and 0.05% of the Flamborough Head larvae could be impacted.

- 5.147 This needs to be balanced against the impacts of the restriction on the development. In response to the Panel's 2nd round of written questions Q30 Appendix 1 (REP-304) indicates that:
- (i) restricted flexibility would increase the overall cost and risk profile of the project;
  - (ii) increased risk of delays that could cost from £40-60 million to £150-170 million for an illustrative 6 month delay;
  - (iii) increased risk to cable integrity with costs of a single repair of £100-170 million;
  - (iv) increased risk of incremental cost increases that could reach millions;
  - (v) potential increase in health and safety risks; and
  - (vi) sub-optimal solutions might lead to additional cable protection that might actually have a greater impact on the spawning habitat.
- 5.148 The ExA considers that the suggested protective condition would be disproportionate, bearing in mind the small scale of any impact on herring spawning, and should not be attached to the DMLs.
- 5.149 North East Inshore Fisheries and Conservation Authority's (NEIFCA) only outstanding concern relates to sediment loading in the water column (REP-027). This is addressed in Chapter 8 Marine and coastal processes, of this report and, briefly, above.
- 5.150 In conclusion the ExA considers that there would be no significant impact on fish and shellfish.

### **Marine and Intertidal Ecology**

- 5.151 The specific assessment requirements for marine and intertidal ecology set out in paragraphs 2.6.81, 2.6.83, 2.6.113, 2.6.119 and 2.6.120 of EN-3 are summarised in Table 2.1 of ES Chapter 12 (APP-094).
- 5.152 ES Chapter 12 (APP-094) indicates that site specific surveys were commissioned to characterise the existing environment. These are summarised in Table 3.1. The marine subtidal and intertidal habitats recorded across the main Dogger Bank Creyke Beck A and B sites and export cable corridors are typical for the central North Sea. A range of biotopes were recorded and grouped into seven Valued Ecological Receptors (VERs) based on their sensitivity.
- 5.153 The sensitivity of the habitats within the study area to the impacts predicted during construction, operation, and decommissioning of the proposed development, as assessed in ES Chapter 12 (APP-094), range from low to high with the magnitude of effects generally negligible to low due to the small spatial extent of effect compared with the wider distribution of similar habitats. Consequently, the majority of impacts have been assessed in the ES as negligible to minor adverse.

- 5.154 A discrete VER in the near shore section of the export cable corridor has been identified as potentially supporting Annex I biogenic reef, the sensitivity of which to the effects of cable installation and operation has been judged as high. However, the magnitude of any effects on this VER are assessed as low resulting in a prediction in the ES of minor adverse impact.
- 5.155 The impact assessment also considered the potential for impacts on subtidal habitats that correspond to the boundary of the Dogger Bank SCI to adversely affect its integrity. No such adverse effects are predicted in the ES. Due to the lack of significant impacts no specific mitigation is proposed, but monitoring proposals, secured by conditions 9(1)(b), 14, 15 and 16 attached to DMLs 1 and 2 and conditions 8(1)(b), 13, 14 and 15 in DMLs 3 and 4, would test the predictions in the ES and lead to adaptive management as mentioned in the consideration of the Dogger Bank SCI above.
- 5.156 MMO, in its relevant representation (REP-020), accepts that the impacts in ES Chapter 12 (APP-094) have been assessed appropriately. However, concern was expressed that drill arisings, if any, could include more mud and clay potentially affecting dispersal and contaminant levels, although the ES states that any impacts would not be significant as they would be minor adverse or negligible. A disposal plan was suggested to be secured through the DMLs.
- 5.157 A subsequent SoCG between MMO and the applicant (REP-116) identified one unresolved issue relating to whether a disposal plan could be included as part of a construction method statement secured by conditions 9(1)(c)(i) in DMLs 1 and 2 and 8(1)(c)(i) in DMLs 3 and 4 in the recommended DCO, if made. At the second biodiversity, biological environment and ecology ISH on 3 May 2014, MMO confirmed that as the construction method statement requires details of drilling methods and disposal of drill arisings it was content. MMO's Deadline V submission (REP-384) states at paragraph 2.12 that suspended sediment monitoring in relation to the disposal mounds is no longer required.
- 5.158 A joint relevant representation by NE and JNCC, (REP-047 and REP-051) identified a number of concerns. These include: the impact of cable protection along the export cable corridor; and, the possible scenario of four cofferdams in the intertidal area, on the longshore sediment transport along the Holderness coast. These are dealt with in Chapter 8, Marine and coastal processes, of this report. Other concerns raised are the effect of sediment plumes during construction; the amount of cable protection and its effect on benthic receptors; and, how VERs and the Marine Life Information Network (MarLIN) sensitivity index have been used in the sensitivity assessments.

- 5.159 Similar concerns were raised as unresolved issues in a SoCG between NE/JNCC and the applicant (REP-126), although this records that the applicant had provided additional information to NE. A written representation (REP-156) at Deadline II suggests a number of measures to mitigate any impact and reiterates the concern over the use of the MarLIN sensitivity index as it does not support assessment of sensitivity to permanent habitat loss.
- 5.160 The applicant responded to NE's concerns about use of the sensitivity index and clarified the extent of permanent loss as distinct from temporary loss, in a comment on NE's written representation (REP-229). The worst case permanent loss equates to 0.062% of the area of the Dogger Bank SCI, 0.045% of the UK Annex 1 sandbank habitat in less than 20 metres water depth and 0.007% of the entire UK sandbank resource in waters up to 60 metres depth. Given the limited extent of permanent loss, the ExA considers that the use of the MarLIN sensitivity index is appropriate and notes NE's acceptance that it is, in effect, the industry standard (REP-155).
- 5.161 In its summary of the second biodiversity, biological environment and ecology ISH (REP-340) NE confirmed that conditions had been suggested to be attached to the DMLs to ensure monitoring to validate the assessment in the ES. Subsequently, the wording of conditions 15(2) of DMLs 1 and 2 and 14(2) of DMLs 3 and 4 were agreed in principle and are now in the recommended DCO, if made. Condition 14(1) attached to DMLs 1 and 2 and condition 13(1) of DMLs 3 and 4 require proposals to be in accordance with the principles set out in the IPMP, the latest version of which is listed in Article 42 of the recommended DCO, if made (REP-429) which includes monitoring of the disposal mounds. With these measures in place the ExA considers that there would be no significant adverse impact on marine and intertidal ecology.

### **Onshore Ecology**

- 5.162 Chapter 25 of the ES summarises, at Table 2.1, the assessment requirements set out in paragraphs 5.3.3, 5.3.4 and 5.3.18 of EN-1.
- 5.163 ES Chapter 25 (APP-144) indicates that surveys were undertaken at the converter stations site, and along the onshore cable route, during 2011 and 2012. This included surveys for habitats, birds, bats, otters, water voles, reptiles and great crested newts. Sites of ecological importance, such as ponds, woodland, and sites designated for nature conservation, were avoided in identifying the preferred site for the converter stations and the cable route, which are mainly located within agricultural land of low ecological value.
- 5.164 Notwithstanding this, the cable route would cross 75 water bodies, many of which support important flora and fauna. The largest water bodies to be crossed include the River Hull, the Leven Canal,

and Barmston Drain and these have the greatest ecological potential. These features would be safeguarded by using Horizontal Direct Drilling (HDD) to avoid direct impacts. In addition, a method statement for laying cables across other water bodies, secured by Requirement 22, Code of construction practice of the recommended DCO, if made, would be agreed with NE to ensure that impacts on species such as water voles would be minimised.

- 5.165 Both Seaton Parish Council (PC) (REP-471) and Leven PC (REP-493) expressed a general concern about the impacts on ecology, whilst the latter also had a concern about the Leven Canal SSSI. Neither the SSSI, nor Figham Pastures Local Wildlife Site (LWS) (Figham Common), would be directly impacted as the cables would be laid by HDD passing beneath them and the HDD compounds would be around 20 metres outside the SSSI and LWS boundaries as shown on Onshore Works Plan Sheet 19, Works No 6A and 6B (APP-012).
- 5.166 Similarly, there would not be any direct impact on Beverley Parks Local Nature Reserve (LNR). However, to enable construction of the operational access road to the converter stations site, it would be necessary to remove around 40m of species poor hedgerow and the possible need to fell or reduce the canopy of some mature or semi-mature trees adjacent to the LNR. The applicant confirmed that no trees subject to a Tree Preservation Order (TPO) have been identified within the Order limits (REP-219) and the felling or canopy reduction would be authorised by Article 38 of the recommended DCO, if made.
- 5.167 ES Chapter 25 (APP-144) states that woodland and scrub are important at the District scale but any impacts on it would not be significant. No ancient woodland has been identified within the Order limits. Much of the woodland within the study area is in small planted copses and not of high ecological value, although they form a relatively well connected habitat resource in combination with the hedgerow network and are of particular importance to bats. Site selection sought to avoid woodland sites and only around 1.3 hectares falls within the working footprints of each of the two projects A and B. This is predominantly scrub on the western edge of Figham Pastures LWS which would not be directly impacted as it lies within the span of the HDD proposed in this location.
- 5.168 Hedgerows are considered important at the District/County scale in the ES (APP-144), but are typically species poor and do not qualify as important under the Hedgerow Regulations. However, they are an integral part of the agricultural landscape and help provide connectivity between habitat features and resources for bats and birds.

- 5.169 Impacts on hedges would include temporary removal of sections to allow the cable route to pass, together with the hedgerow loss associated with the construction of the operational access road to the converter stations site. There would be around 62 hedgerow crossings totalling approximately 1.1 kilometre of temporary hedgerow loss for each of the two projects A and B. However, as the cable route has targeted gaps in existing hedges, the length lost temporarily would be minimised (REP-112 paragraph 3.2.8).
- 5.170 Mitigation would include supervision by an ecological clerk of works (ECoW), secured through Requirement 22 of the recommended DCO, if made, that requires a Code of Construction Practice (CoCP) to be in accordance with an Outline CoCP (REP-486) which in turn requires an ECoW and, where practicable, cutting hedges in the winter months. An equivalent length of hedgerow to that removed for cable crossing would be replanted as soon as possible following construction. This would be ensured by Requirement 14(h) in the recommended DCO, if made. Hedgerows identified as being of higher value for bats would incorporate groups of hedgerow shrubs at 9 metre intervals and a licensed bat worker would check any semi-mature to mature trees that are to be felled or have canopy reduction. This would be secured through Requirement 22 of the recommended DCO, if made, and the CoCP.
- 5.171 At the converter stations site, Requirement 26 of the recommended DCO, if made, would require a written scheme for the management and mitigation of artificial light emissions. Additional hedgerow planting over and above replacement would be incorporated into the converter station's site landscape mitigation and secured through Requirement 14 of the recommended DCO, if made. This would require a landscaping scheme to be submitted prior to commencement of each stage of the onshore works.
- 5.172 The ExA considers that these measures would address the concerns of Beswick (REP-505), and Lissett and Ulrome (REP-496 and REP-499) PCs which seek retention of hedgerows and landscape restoration.
- 5.173 At the second ISH on biodiversity, biological environment and ecology, it was confirmed that Yorkshire Wildlife Trust (YWT) would address onshore matters whilst TWT would deal with offshore issues. However, prior to this ISH, TWT acknowledged in its relevant representation (REP-039) that there would be reinstatement of hedgerows, as well as habitat improvements at the converter stations site, but considered that this amounted to insufficient mitigation/compensation rather than enhancement. TWT maintain that, given the scale of development, significant biodiversity gains should be provided to meet the requirements of EN-1 and EN-3.

- 5.174 YWT, in a SoCG (REP-112), and TWT, in a written representation at Deadline II (REP-154), noted that disruption during construction would be temporary, but highlighted that all habitats had some value and that hedgerows, whilst species poor in regional terms, have a high value in East Yorkshire due to the paucity of this type of habitat. Replacement habitat would take time to re-establish following construction and so an impact would be likely. YWT maintain that as impacts had been underestimated the 'net gain', claimed in ES Chapter 25 paragraph 7.2.5, should be considered as mitigation/compensation.
- 5.175 YWT claims (REP-154) that habitat enhancement would be located around the converter stations, rather than throughout the cable route, and that provision should contribute to coherent ecological networks as highlighted in both the 'Lawton Review' and the NPPF. No further detail of these references was provided.
- 5.176 An additional 500 metres of new hedgerow would be created, over and above any reinstatement, together with 25 hectares of woodland/scrub, 1,500 metres of ditch/swale, and 1 hectare of wetland habitat secured through Requirements 14 (Landscaping) and 21 (Ecological Management Plan) of the recommended DCO, if made. Whilst the primary driver of additional provision might be landscaping and drainage, habitats would be created and be a net gain.
- 5.177 The ExA considers that the new hedgerow over and above replacement hedgerow would prevent any significant impact on hedgerows and that further mitigation/compensation, as sought by YWT, would not be warranted. The mitigation measures were agreed by NE in a SoCG (REP-111) that concluded there were no unresolved onshore issues. ERYC also confirmed at the biodiversity, biological environment and ecology ISH on 3 June 2014 that it was content with the measures proposed.
- 5.178 YWT further maintain that local landowners should be encouraged to improve their land for wildlife with a fund to deliver focussed environmental benefits. As any impact would be minimal, the Panel agrees with the applicant's view (REP-342 Paragraph 1.16) that it would be difficult to justify any further measures. In response to the Panel's question at the second ISH on biodiversity, biological environment and ecology as to whether an ecological management plan could make provision for providing advice to farmers, the applicant indicated (REP-353) that it would only have easements over a very narrow corridor of land and little influence over landowners' management of their wider holdings.
- 5.179 ES Chapter 25 (APP-144) notes that water voles are abundant but patchily distributed across the study area. There are some 42 water courses where they are, or have the potential to be, present in the future. Of these, 24% would be drilled using HDD and so, although there would be some noise from the works, would not be



directly affected. An ECoW would supervise and all watercourses where water voles are, or have the potential to be, present would have pre construction surveys secured through DCO Requirement 28. A displacement protocol is identified in ES Chapter 25 and would be ensured through Requirement 21 of the recommended DCO, if made, and an ecological management plan approved by ERYC following consultation with NE.

- 5.180 YWT (REP-112) and TWT (REP-143) are concerned that the impacts on water voles may have been underestimated. Consequently they suggest that a 'fallback' position of translocation should be prepared in case displacement was unsuccessful. Examples of projects where translocation had been necessary were submitted (REP-338). However, these were not linear projects like in this case. The applicant provided examples of linear projects that had been carried out successfully using displacement without the need for translocation (REP-342 and REP-359). Although displacement measures would be in place for a total of two years they would not be required for that long for the full length of the cable run due to the linear nature of the cable laying. Best practice, as advocated by the Water Vole Conservation Handbook Third Edition Strachan, Moorhouse & Gelling 2012, has been followed and for linear projects this advocates mitigation in the form of displacement, as proposed. NE confirmed its support for the use of best practice methods and does not consider that an EPS licence would be required (REP-340).
- 5.181 Grass snakes, Great crested newts, bats, and otters were also considered in ES Chapter 25 (APP-144). The unchallenged conclusion in each case was that provided the mitigation set out in the ES was fully implemented then negligible residual impacts were predicted. NE confirmed (REP-340) that although there was relatively little evidence of these species along the cable route there was the potential for them. Further surveys would be carried out prior to construction, secured through DCO Requirement 28 (European protected species – onshore) of the recommended DCO, if made.
- 5.182 ES Chapter 25 (APP-144) considers farmland birds associated with the agricultural landscape and hedgerows. Surveys indicate a species rich farmland bird population which is mobile and adaptable. Given the scale of the farmland landscape in the East Riding of Yorkshire, the proposal would not have any significant impact. In addition to supervision by an ECoW, cutting hedgerows in winter, and replacing hedgerows removed, that would be provided for a single project, if two projects were constructed simultaneously then in addition nest boxes and supplementary feed would be provided. These measures would be addressed in a Construction Environmental Management Plan (CEMP) secured through Requirement 23 of the recommended DCO, if made.

- 5.183 Marsh Harriers, which are a protected species on the Amber list of Birds of Conservation Concern and are also listed on Schedule 1 of the Wildlife and Countryside Act 1981, as amended, have been recorded in the area of the Leven Canal in particular but there is no evidence of their breeding locally. The ES concludes that with the mitigation measures proposed there would be a negligible residual impact. An e-mail to RSPB on behalf of the applicant dated 31 January 2014 (REP-076) records a conversation in which RSPB is noted as stating that it did not intend to comment on the application in respect of onshore bird resource and that it would typically only respond to proposals that have the potential to affect sites that are nationally significant for onshore bird populations, which is not the case with this development.
- 5.184 Apart from the concerns expressed by TWT and YWT, there were no specific objections relating to onshore ecology. The EA in a SoCG (REP-093) noted that its previous comments on biodiversity had been incorporated into the proposals and that there were no areas of specific disagreement. ERYC stated in its relevant representation (REP-042) that ecology was a key consideration. The LIR (REP-074) records no concerns on biodiversity and ecology, subject to mitigation, and a SoCG (REP-121) states there are no areas of disagreement. Similarly a SoCG between NE and JNCC and the applicant (REP-111) notes no areas of disagreement and that Requirement 28 of the recommended DCO, if made, secures additional surveys whilst NE's summary of the third biodiversity, biological environment and ecology ISH (REP-416) states that it has no outstanding concerns on onshore matters.
- 5.185 Deadline VII Appendix 11 (REP-447) sets out the onshore mitigation measures and the mechanisms through which they would be secured, including Requirements: 21 Ecological management plan; 22 Code of construction practice; and 28 European protected species – onshore, in the recommended DCO, if made. With these mitigation measures in place, the ExA does not consider that the impact on terrestrial ecology would be significant and no significant residual impacts have been identified either during the construction, operation or decommissioning phases.

### **Transboundary Effects**

- 5.186 ES Chapter 32 (APP-165) summarises the potential transboundary effects of the Dogger Bank Creyke Beck A and B projects. All the transboundary impacts identified are judged in the ES to range from no impact to minor adverse (REP-165 Table 4.1).
- 5.187 Effects on European designated sites, and the features of those sites, are considered earlier in this Chapter.
- 5.188 Potential impacts on fish and shellfish are identified in the ES as underwater noise, temporary disturbance of the sea bed,

increased suspended sediments and loss of habitat, EMF emissions and the introduction of hard substrates. However, most of the potential effects are predicted to be localised and as the nearest EEA State boundary is with the Netherlands some 40km from Dogger Bank Creyke Beck no transboundary impacts are identified in the ES.

- 5.189 No transboundary impacts on marine and inter tidal ecology are identified in the ES. Direct impacts on habitat such as the placement of cables and foundations, scour protection and vessel activity would be limited to the immediate vicinity and so would have no direct transboundary impacts. In terms of indirect impacts, hydrodynamic modelling predicts that the levels of suspended sediment and sediment deposition would not have an impact on marine ecology outside UK waters.
- 5.190 None of the EEA States consulted under Regulation 24 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 took part in the examination or replied to the ExA's written questions (Question 10 PD-008, Question 94 PD-017), as detailed in Chapter 3 of this report. There is, therefore, no evidence that would suggest that the ExA do other than accept the assessment of transboundary impacts set out in the ES.

### **Overall Conclusions**

- 5.191 Notwithstanding the loss of 0.17% of the Annex I habitat in the Dogger Bank SCI, the temporary nature of the loss, the implementation of adaptive management as suggested by NE and secured by conditions in the DMLs, and decommissioning secured through the DCO, the ExA considers that the SoS could conclude no AEOI for Dogger Bank Creyke Beck A and B both alone, and in combination with other plans or projects, excluding fishing.
- 5.192 In the event that the SoS takes a different view and proposes to treat fishing as a "project or plan", in the light of NE's advice the ExA considers that it could be concluded that future fishing activities at the Dogger Bank SCI could be expected to reduce the overwhelming contribution of fishing activities to the unfavourable condition of the SCI, that the smaller scale impacts of the proposed development would be managed through a risk based adoptive management approach, secured through conditions attached to the DMLs in the DCO, and decommissioning secured through the DCO. In these circumstances, there would be no AEOI of the Dogger Bank SCI from the projects.
- 5.193 The ExA is of the view that an avoidance rate of 99% would be acceptable in relation to northern gannet. With that assumption there would be no AEOI on any of the feature species or assemblage species at the Flamborough and Filey Coast pSPA, the Flamborough Head and Bempton Cliffs SPA, the Farne Islands SPA and the Forth Islands SPA. Provided an avoidance rate of 99% is

accepted for northern gannet there would be no significant impact on ornithological features of any other protected sites.

- 5.194 The ExA concurs with NE that the conclusions in the ES that the effects on marine mammals from Dogger Bank Creyke Beck alone, or in combination with other developments in the Dogger Bank zone, would be unlikely to be detrimental to the maintenance of marine mammal populations at a favourable conservation status.
- 5.195 A condition precluding works in the export cable corridor during the herring spawning season is not considered necessary by the ExA. With the mitigation measures secured through requirements in the recommended DCO, if made, and conditions attached to the DMLs within the DCO, the ExA concludes that there would be no significant impact on fish or shellfish or on marine and intertidal ecology.
- 5.196 Onshore mitigation measures would be ensured by requirements in the recommended DCO, if made. ERYC and NE record no concerns about onshore ecology, subject to mitigation and there is no evidence to suggest any different view should be reached.
- 5.197 The applicant's HRA Report has identified European sites in other EEA States that have been considered. The applicant has concluded no LSE, or AEOI, for all non-UK European sites. These conclusions are not challenged and no representations have been received relating to any non-UK sites. Transboundary effects have also been considered in the ES and no other representations have been received on that topic. The ExA therefore considers that the conclusions in the ES that transboundary impacts range from no impact to minor adverse be accepted.
- 5.198 There is no reason, on grounds related to European sites, biodiversity, biological environment and ecology, why the DCO could not be confirmed.

## **6 FISHING**

### **Introduction**

- 6.1 ES Chapter 15 Table 2.1 (APP-122) summarises the assessment requirements set out in EN-3 paragraphs 2.6.127, 2.6.129 and 2.6.130. These include consultation with statutory advisors and representatives of the fishing industry, including inshore fisheries groups. The applicant's assessment should also include detailed surveys of the effects on fish stocks of commercial interest, and any potential reduction in those stocks, as well as likely constraints on fishing activity within the project boundary.
- 6.2 Recognising the potential for transboundary effects, the applicant consulted EEA State governments and fishing industry groups, particularly commercial fishermen who have an interest in the Dogger Bank area. This is summarised in ES Chapter 32 Table 2.1 (APP-165).
- 6.3 Relevant representations were received from, and SoCG agreed with, NEIFCA (REP-027 and REP-085), Bridlington Harbour Commissioners (REP-037 and REP-101), The National Federation of Fishermen's Organisations (NFFO)/VisNed (UK and the Netherlands) (REP-019, REP-058, and REP-086), and the Danish Fishermen's Association (REP-022 and REP-092). In addition, SoCGs were also agreed with the HFIG (REP-091), Swedish Fishermen's Federation (REP-100), Norwegian Fishermen's Federation (REP-103), Comite Regional des Peches Maritime (France) (REP-094) and Rederscentrale (Belgium) (REP-088).
- 6.4 NEIFCA, the Danish Fishermen's Association, the Swedish Fishermen's Federation, the Norwegian Fishermen's Federation, the Comite Regional des Peches Maritime, and Rederscentrale all agreed that they had no outstanding unresolved issues.
- 6.5 MMO raised concerns about herring spawning grounds (REP-116), which are dealt with in Chapter 5 of this report, Biodiversity, Biological Environment and Ecology, whilst NE expressed concerns about sediment and sandeels (REP-126). The former is considered in Chapter 8 of this report, Marine and Coastal Processes, whilst the latter is addressed in the Marine Mammals sub-section of Chapter 5 Biodiversity, Biological Environment and Ecology.

### **Effects on Commercial Fishing**

- 6.6 The effects on commercial fishing are considered in ES Chapter 15 (APP-122). Fishing vessels from several European countries target a range of commercial species of fish and shellfish in the Dogger Bank zone, and the export cable corridor, using a variety of fishing gears. ES Chapter 32 Table 4.1 (APP-165) states that satellite tracking surveys indicate that the majority of fishing vessels within the site area are from Denmark (68%), followed by the UK (14%), then Sweden (6%), and the Netherlands (4.8%). The rest of the

countries fishing in the Dogger Bank zone account for only 2.4% of satellite sightings by the MMO. The western periphery of the Dogger Bank zone is particularly important for sandeel fishing, whilst potting for lobster and crab predominate in the nearshore area of the cable corridor.

6.7 Potential impacts have been assessed for European and UK fishing fleets (APP-122) and include:

- (i) temporary or complete loss of, or restricted access to, traditional fishing grounds;
- (ii) interference with, or displacement of, fishing activity;
- (iii) fastening risk, including from spoil, accidentally dropped or discarded objects, and cable protection measures;
- (iv) safety issues (considered in Chapter 10 of this report Radar, Navigation and Search and Rescue Operations);
- (v) increased travel times to fishing grounds (considered in Chapter 10 of this report, Radar, Navigation and Search and Rescue Operations); and
- (vi) impacts on commercially exploited species of fish and shellfish (covered in Chapter 5 of this report Biodiversity, Biological Environment and Ecology).

6.8 Chapter 32 of the ES states that for most foreign vessels operating within the Dogger Bank zone it is anticipated that there would be a minor adverse, or negligible, impact as a result of the proposals. The applicant concludes that the only expected significant impact on commercial fishing interests is the potential loss of fishing area for crab and lobster due to cable installation. However, this would be restricted to the duration of the cable installation works (APP-122).

6.9 A cumulative impact assessment considered the impacts on commercial fishing from the proposed development, as well as plans, projects, and activities within known fishing ranges. This identified no significant cumulative impacts, with the exception of a potential adverse impact on Danish seine fishing vessels operating within the Dogger Bank site.

6.10 ES Chapter 15 (APP-122) notes that given the relatively low numbers of vessels involved, the seine fishing grounds appear to be comparatively extensive. Through the consultation period the potential for alternative areas for seine net fishing emerged, as such the effect is anticipated to be minor adverse, and the wider cumulative impact is expected to be relatively small (APP-165). Consequently, the Danish Fishermen's Association's SoCG with the applicant records that there are no unresolved issues between them (REP-092).

6.11 The recommended DCO, if made, would include condition 9(1)(d) to DMLs 1 and 2 and condition 8(1)(d) to DMLs 3 and 4. These make provision for a Fisheries Liaison Officer and Fisheries Liaison

Plan (FLP) (REP-479). A draft version of the FLP sets out the intended approach (REP-181). In response to the Panel's second written question 61 (REP-329), MMO stated that it had reviewed the draft FLP and was content with it, although it would not sign off compensation agreements as these were considered to be a private matter between the parties.

- 6.12 The Bridlington Harbour Commissioners and HFIG expressed some concerns about the adequacy of the applicant's information but provided little detail to support their assertion. NFFO/VisNed (REP-086) also raised a number of concerns, although both VisNed and the Danish Fishermen's Association stated that fishermen would find a way to fish within the wind farm if there were fish there. Notwithstanding this, the applicant maintains that its assessment is based on information from the fishing industry. Assessment has been carried out at a fleet, rather than a boat, level but the applicant stated that, in part, this was due to data restrictions, and standard EIA practice had been used.
- 6.13 The possibility of post installation surveys to ascertain whether fishing could take place in the vicinity of the cables was raised and the applicant agreed to consider it (REP-086). Whilst not setting out specific answers, the IPMP (REP-485) and the draft FLP (REP-181) provide for information gathering. In any event, Requirement 6 of the recommended DCO, if made, and Condition 3(12) of DML3 and Condition 3(13) of DML 4 would ensure that cable protection would be limited to a maximum of 10% of the cumulative length of all cables laid between mean low water springs and the 10 metre depth contour, as measured against LAT prior to the start of construction.
- 6.14 Other concerns were compensation for loss of earnings and the temporary relocation of static fishing gear in the nearshore area. These are matters that would be addressed in the FLP, the draft version of which includes a compensation strategy.
- 6.15 Both NFFO/VisNed (REP-086) and Rederscentrale (REP-088) raised the question of a community fund. Little specific detail was submitted, although NFFO/VisNed provided details of possible research projects (REP-383). There is little information on the purpose of such a fund, why it might be necessary and how it would be administered. Whilst reference was made to the West of Morecombe Fisheries Fund, the 'projects' it has funded appear to relate to the purchase of equipment, and not to research that would benefit the wider fishing community. The ExA does not consider that the need for a community fund is relevant to the assessment (REP-408).

## **Conclusions**

- 6.16 On the basis of the submissions and responses to written questions it has considered, the ExA does not consider that there

are any outstanding significant issues relating to commercial fisheries that would justify the Order not being made.



## **7 LANDSCAPE / SEASCAPE AND VISUAL EFFECTS**

### **Introduction**

- 7.1 ES Chapter 20 deals with Seascape and Visual Character, and Table 2.1 (APP-133) summarises the assessment requirements set out in EN-3 paragraphs 2.6.203 and 2.6.205. ES Chapter 21 (APP-134), and the accompanying Appendix A (REP-135), address Landscape and Visual Character, and Table 2.1 (APP-134) summarises the requirements set out in EN-1 paragraphs 5.9.5, 5.9.7 and 5.9.9 to 5.9.16. In this chapter the applicant's assessment of seascape and visual effects are considered first along with any representations and responses in relation to this aspect and then the assessment and examination in relation to landscape and visual character is considered.

### **Seascape**

- 7.2 The applicant undertook a Seascape Visual Impact Assessment (SVIA) and summarises its findings in Section 12 of ES Chapter 20 (APP-133). It identified:
- (i) no significant impacts on the seascape character of the landfall and across inshore waters and the cable route study areas;
  - (ii) that the construction and operation of the generator stations would have no significant impacts on onshore or inshore receptors due to the distance of the wind turbines offshore;
  - (iii) that although impacts on the seascape character of the development at the generator stations are predicted, these are deemed to be negligible in the context of the North Sea. Despite the high magnitude of visual change as a consequence of wind turbines within areas up to 15-20km from the development area boundary in clear weather conditions, the overall experience of receptors travelling across the North Sea would not be significantly affected;
  - (iv) that the historic seascape character at surface level would be altered within the development area due to 'renewable energy installation', resulting in a high magnitude of change and locally significant (major) impacts; however, the sensitivity of the affected sub-types is judged to be low, due to their low heritage value and very large extent. When viewed in the context of the wider historic seascape character of the North Sea, impacts are not judged to be significant;
  - (v) that no significant cumulative, combined or transboundary impacts are predicted; and
  - (vi) that the offshore and onshore works would coincide at the landfall for the relatively short period of the landfall works, but no significant impacts are predicted.

- 7.3 English Heritage (EH) submitted a relevant representation (REP-061) questioning the sensitivity of the applicant's methodology in assessing the change in seascape character following the development of the wind farms. In its first written questions (PD-008), the Panel questioned the applicant's assessment of the historic seascape character of the development site (Q2) in the context of heritage assets. The applicant entered into discussion with EH and the SoCG with EH at Deadline I (REP-122) confirmed there were no unresolved issues between the applicant and EH in respect of historic seascape character.
- 7.4 In its SoCG, ERYC (REP-121) agreed there were no outstanding issues in relation to seascape and visual character.
- 7.5 In the absence of any evidence to the contrary, the Panel agrees that the development of Dogger Bank Creyke Beck would have no significant effect on visual perception from the coast (onshore or inshore), due primarily to the distance of the array offshore, or on the character of the coast itself during the operational phase. Also, visual impact during construction would be of short duration and low significance. Furthermore, visual impact on receptors at sea during construction, operation and decommissioning would be of low significance for Dogger Bank Creyke Beck in its own right or cumulatively.

### **Landscape**

- 7.6 The applicant undertook an Onshore Landscape Visual Impact Assessment (LVIA) (APP-135), and summarised its assessment of the potential impact of Dogger Bank Creyke Beck on the baseline landscape and visual environment in Section 12 of ES Chapter 21 (APP-134). It concluded that during construction and decommissioning works there would be disturbance resulting in a number of temporary minor and moderate adverse impacts along the HVDC and HVAC cable route and at the site of the converter stations; but that these would be localised and short or medium term, occurring during construction works or for a period post construction while landscaping matures. There would be no above ground evidence of the cable route and landscape and visual impacts are not predicted.
- 7.7 The converter stations would have some minor and moderate adverse residual impacts during construction. In the operational phase the applicant predicts minor, moderate and major adverse residual impacts on landscape and visual receptors, but these would be localised and set in the context of a landscape where built development is already a characteristic. The applicant identified three major adverse visual impacts from the proposed operation of the converter stations in respect of visual receptors:
- (i) National Cycle Network Route 1 (NCNR-1) between Wanless Farm and Poplar Farm is assessed as having high visual

sensitivity for residential and recreational receptors and where there would be a major adverse residual impact under all scenarios, as a consequence of the high magnitude of change caused by the introduction of a large scale industrial feature into a part of the view that is relatively undeveloped in relation to views from this location to the east. Existing views to Beverley Minster would be obscured from some sections of the track under scenario I, Creyke Beck A substation operating in isolation, and scenario III, both A and B operating in parallel.

- (ii) NCN-1, south of the over-bridge over the A1079 is assessed as having high visual sensitivity for residential and recreational receptors in scenario II, Creyke Beck B operating in isolation, and scenario III, both Creyke Beck A and B substations operating in parallel. The applicant predicts that in both these scenarios, the major adverse impact in year one would reduce over time to moderate adverse by year ten, as the converter station landscape mitigation matures.
- (iii) Beverley Parks Nature Reserve near Model Farm is assessed as having high visual sensitivity for residential and recreational receptors where under scenarios II and III the applicant predicts major adverse residual impacts in year one reducing to moderate adverse impacts in year ten.

7.8 Paragraph 9.26 of ES Chapter 21 Appendix A (APP-135) explains the applicant's assessment that in all three scenarios the view of the converter stations from Poplar Farm in the operational phase would undergo a high magnitude of change and the residual level effect on residential receptors would be major. Paragraph 14.3 (APP-135) summarises the position that the potential for significant residual effects during operation at the converter station site is limited to a small number of residential properties (Poplar Farm and Model Farm), recreational users of local Public Rights of Way (PRoW), and the NCNR-1 between Cottingham and Model Farm. Additionally, there would be significant effects on people travelling along the A1079 who would gain intermittent close range views of the converter stations.

7.9 In its first written questions (PD-008), the Panel asked a number of questions (Q14 and Q101 to 117) including, but not restricted to:

- (i) securing mitigation in the DCO for the plans referenced in the ES (Q14);
- (ii) that the LVIA was conducted according to best practice (Q101);
- (iii) the inter-relationship of impacts and how they have been addressed (Q103);
- (iv) how the effectiveness of mitigation embedded in the ES and secured through the DCO and a range of implementation plans can be assessed (Q104 and Q109);

- (v) that the approach to assessing cumulative impact in terms of the LVIA has been agreed with stakeholders (Q105);
- (vi) how mitigation of visual impacts would be secured around the converter stations during construction and operation (Q106, Q107, Q108);
- (vii) how the detailed design of the converter station would be secured and the submission of a draft design and access statement (Q110, Q112 and Q116);
- (viii) how monitoring and maintenance of landscaping works would be secured (Q111);
- (ix) the assessment of impacts at Creyke Beck Substation and the relationship between Works 9A, 9B and 9C (Q114 and Q115); and
- (x) the views of ERYC on the visual impacts of the converter station and the effectiveness and security of the proposed mitigation and monitoring measures (Q117).

- 7.10 The applicant responded at Deadline II (REP-174, REP-179, REP-180, REP-196 and REP-197). In response to the Panel's first written questions (PD-008), the applicant submitted a table summarising all onshore mitigation measures in relation to construction and operation. This included reference to which chapter in the ES mitigation measures were discussed and how they were secured in the draft DCO (REP-201). An updated table was resubmitted for Deadline VII (REP-447).
- 7.11 The proposed mitigation measures were considered in some detail during the examination in response to representations from IPs and as a result of the Panel's own questioning. These discussions are referenced in this report in this chapter and in Chapters 5, 9 and 12.
- 7.12 In its SoCG, ERYC (REP-121) agrees the applicant's approach to landscape and visual issues; the design of the onshore elements; and the landscape mitigation measures are acceptable; and, further, that the environmental effects of construction and operation on landscape and visual receptors would be secured through DCO Requirement 20 (12 in recommended DCO) - Detailed design approval onshore; Requirement 32 (26 in recommended DCO) - control of artificial light emissions; and Requirement 35 (29 in recommended DCO) - Restoration of land used temporarily for construction. Both ERYC and the applicant agreed that there are no areas of specific disagreement between them on these matters.
- 7.13 In relation to the predicted outstanding major adverse residual impacts from the converter stations under all scenarios on visual receptors from NCNR-1 between Wanless Farm and Poplar Farm, the Panel notes the comments from ERYC in its LIR (REP-074) that notwithstanding the significant scale and irreversible effect on the landscape of the converter stations the location would be optimal,

the siting incorporates an existing mature tree belt, the proposal envisages substantial additional landscaping and that the harmful impact of the converter station on the landscape is supported.

- 7.14 The Panel visited the various viewpoints from which the applicant had constructed visualisations of the converter station at both one and ten year time scales. It considered the effectiveness of the proposed landscape mitigation and concluded that, bearing in mind the converter stations are planned to be removed at the end of the operational phase and the level of assessed visual harm would be significantly mitigated by the planned landscaping scheme that on balance the location of the converter stations would be acceptable.
- 7.15 In so far as residential receptors at Model Farm and Poplar Farm are concerned, the Panel noted the tree planting close to Model Farm on its south side, which would provide a partial visual barrier to the converter stations further to the south; and that Poplar Farm is located south of the A1079, albeit in close proximity to the converter station sites. The Panel noted the applicant's proposals to provide landscape screening around the converter station sites, secured through Requirement 14 (Provision of landscaping) and Requirement 15 (Implementation and maintenance of landscaping) in the ExAs recommended DCO; the limit placed on its height is secured through Requirement 12 (2) (Detailed design approval onshore); and the consultation that took place with stakeholders in relation to micro-siting of the converter stations.
- 7.16 The Skidby Parish Council's SoCG with the applicant (REP-107) agreed that the final site selection of the converter stations adequately balanced flood risk; views of Beverley Minster; presence of existing landscape for screening and land availability and the final choice was made in consultation with the Converter Station Working Group. Cottingham Parish Council (REP-113) and Woodmansey Parish Council (REP-117) agreed that a full landscape and visual assessment had been completed, and that a representative of the parish council(s) had been a member of the Converter Station Working Group.
- 7.17 During the course of the examination changes were made to a number of Requirements in the draft DCO relevant to the consideration of landscape and visual impacts. In particular, Requirement 12 in the ExA's recommended DCO 'Detailed design approval onshore' was amended by the applicant to provide clarification in respect of the restricted height of the converter stations and the width of the grid connection corridor in Works No. 6A, 6B, 8A and 8B (REP-222; REP-386; REP-388; REP-413; REP-414; REP-476 and REP-480). Requirement 22 of the applicant's draft DCO, now Requirement 14 of the ExA's recommended DCO, 'Provision of landscaping' was amended at Version 2 to ensure that each landscaping scheme for the different stages of the project will, if approved, be drawn up in accordance with the amended

draft landscaping scheme submitted with the ES and now proposed as a certified plan within Article 42 (REP-222 and REP-386).

- 7.18 One further matter in relation to Requirement 12, relates to Requirement 12 (3) (i) and Requirement 12 (4). The wording of the requirement (which was provided by the applicant) is silent in relation to the width of the corridor in relation to the temporary construction compounds, whereas Requirement 12 (3) (ii) and (iii) identify dimensions explicitly. The SoS might wish to consider inserting wording in Requirement 12 to clarify the exception relating to temporary construction compounds in the terms set out below:

*(3) (i) Where temporary construction compounds are established as shown on the Works Plans certified with the Order under Article 42 it may (until the compounds are removed) at those points exceed the width limitation of 36 metres up to the width of the temporary construction compounds as set out in the Environmental Statement Project Description.*

*(4) . . . except for where temporary construction compounds are established as shown on the Works Plans certified with the Order under Article 42 it may (until the compounds are removed) at those points exceed the width limitation of 38 metres up to the width of the temporary construction compounds as set out in the Environmental Statement Project Description.*

- 7.19 Having considered the applicant's ES, the response to questions and the representations, the Panel is of the view that the assessment requirements set out in EN-1 in respect of landscape and visual effects have been met. Furthermore, that the provisions in the recommended draft DCO ensure that the required mitigation identified in the ES, and during the examination for the construction, operational and decommissioning phases to address adverse SLVIA impacts, would be secured through:

- (i) Article 29 (4) Temporary use of land for carrying out the authorised project;
- (ii) Article 30 (5) Temporary use of land for maintaining authorised project;
- (iii) Article 42 (h) Draft landscaping scheme and (i) Outline Code of Construction Practice – Certification of plans and documents;
- (iv) Requirement 12 and 13 – Detailed design approval onshore;
- (v) Requirement 14 – Provision of landscape;
- (vi) Requirement 15 –Implementation and maintenance of landscaping;
- (vii) Requirement 16 – Fencing and other means of enclosure;
- (viii) Requirement 21 – Ecological management plan;

- (ix) Requirement 22 – Code of Construction Practice and Construction Environmental Management Plan;
- (x) Requirement 23 – Construction environmental management plan;
- (xi) Requirement 26 – Control of artificial light emissions;
- (xii) Requirement 29 – Restoration of land used temporarily for construction; and
- (xiii) Requirement 31 – Onshore decommissioning.

7.20 The ExA acknowledges that whilst there is predicted to be a major adverse effect in respect of a small number of receptors – including Poplar Farm and Model Farm, it is satisfied that mitigation measures have been put in place and that in this case the potential contribution Dogger Bank Creyke Beck can make to meeting national renewable energy targets outweighs the potential individual harm and that the residual major adverse impacts anticipated by the applicant are acceptable.

### **Transboundary effects**

7.21 ES Chapter 32 (APP-165) identifies that the proposed OWF could potentially have an impact on the landscape/seascape character of the Dogger Bank zone due to visibility from another EEA State or, the cumulative sequential visibility for any receptors crossing the North Sea. Due to its distance from coastlines of any EEA States, the proposed OWF would not be visible during construction, operation or decommissioning.

7.22 Receptors crossing the North Sea may pass a number of OWFs but, in the context of the southern North Sea, the magnitude of any cumulative sequential impact is anticipated in the ES to be negligible. In the absence of any evidence to the contrary the ExA agrees with the ES assessments.

### **Conclusions**

7.23 On the basis of the representations it has considered, the ExA does not consider that there are any outstanding significant issues or transboundary effects relating to landscape seascape and visual effects that would justify not recommending that the Order be made.

## **8 MARINE AND COASTAL PROCESSES**

### **Introduction**

- 8.1 Tables 2.1 in both ES Chapters 9, Marine physical processes (APP-086), and 10, Marine water and sediment quality (APP-088), summarise the relevant NPS assessment requirements set out in EN-1 and EN-3.
- 8.2 EN-1 advises that the decision maker should be satisfied that the proposed development would be resilient to coastal erosion and deposition, taking account of climate change, during the project's operational life and any decommissioning period. New development in areas of dynamic shorelines where the proposal could inhibit sediment flow, or have an adverse impact on coastal processes at other locations, should not normally be consented. Impacts on coastal processes must be managed to minimise adverse impacts on other parts of the coast and applicants should have restoration plans for areas of foreshore disturbed by direct works and undertake pre and post-construction coastal monitoring arrangements with defined triggers for intervention and restoration.
- 8.3 Representations on this issue were received from ERYC (REP-042 and REP-074), Lissett and Ulrome Parish Council (REP-496 and REP-500), the MMO (REP-020), NE/JNCC (REP-047 and REP-051) and North Eastern Inshore Fisheries and Conservation Authority (NEIFCA) (REP-027). The most significant issues raised were;
- (xiv) Coastal erosion at the landfall site;
  - (xv) Waste, debris, and suspended sediment; and,
  - (xvi) The effect on longshore sediment transportation.
- 8.4 NEIFCA agreed, in a SoCG (REP-085), that no significant impacts have been identified as a direct, or indirect, result of increases in suspended sediment and associated deposition arising from the export cables, and that it had no outstanding issues.

### **Coastal Erosion**

- 8.5 Landfall would be north of Ulrome, as shown on the Location Plan Onshore (APP-005) where the coast is undefended. ERYC's monitoring data for that area, recorded between 1989 and April 2013, suggests that the cliffs are eroding at a rate of roughly 1.8 metres a year but it is noted that a significant storm could increase this. No new defences are proposed as part of the Dogger Bank Creyke Beck projects, and the proposal would, therefore, be in accordance with ERYC's non-statutory Shoreline Management Plan (REP-074, Section 6.8 and REP-172, response to first written question 119).
- 8.6 The applicant estimated that over the lifetime of the project, the existing cliff face could retreat by around 100 metres (REP-174,



response to Question 120). To account for this, and provide additional contingency, the onshore cable transition bay, where the onshore and offshore cables would meet and HDD under the coastline would begin, would be located approximately 250 metres inshore of the current coastline.

- 8.7 ERYC notes that the cliff at the landfall is approximately 5 metres high so that a buried depth of 15-18 metres would ensure that the cable would never become exposed as the cliff or foreshore erodes, and that the use of HDD would ensure the cliffs and beach were not unduly disturbed (REP-074).
- 8.8 Given these points, ERYC's coastal engineers state that the development would have minimal, or no, impact on coastal processes, and should not itself be affected by cliff or foreshore erosion (REP-074). The ExA agrees with this conclusion on coastal erosion.

### **Waste, debris, and suspended sediment**

- 8.9 Dogger Bank Creyke Beck A and B would be in the south west area of the overall Dogger Bank zone (APP-068 paragraph 2.1.5). Chapter 9 of the ES states that water depths of 20-40 metres are common in the region of the site, whilst water depths along the export cable corridor vary from 20 metres at the offshore end, deepening to 66 metres half way, before becoming shallower to less than 5 metres close to the landfall site (APP-086 paragraph 12.1.1).
- 8.10 Any impacts that the proposed offshore windfarm (OWF) might have would be controlled, in part, by restrictions on a number of project elements. This would reflect the assumptions made relating to the likely permutations to elements of the proposed OWF assessed in the ES (the Rochdale Envelope). The restrictions would be ensured by a number of requirements secured within the recommended DCO, if made. These requirements are considered in turn.
- 8.11 Requirements 3 and 4 would set parameters relating to the turbines and meteorological masts. These would include dimensions, swept areas, separation distances, and the cumulative footprint on the seabed. The Requirements would also control the foundation dimensions and, where proposed, the number and diameter of piles, the hammer energy during installation, together with the total subsea/scour footprint and volume.
- 8.12 The total number, and sizes, of offshore platforms would be controlled by Requirement 5, as would their foundation type and the number of piles if multileg foundations rather than gravity bases were selected.
- 8.13 Parameters set out in Requirement 6 relate to cables and would restrict the number and length of HVDC and HVAC cables and the

total area of export cable protection and inter-array cable protection. Cable protection would be precluded within 350m seaward of mean low water springs measured as a straight line and limited to 10% of the cumulative length of all cables laid between mean low water springs and the 10m depth contour as measured against LAT prior to the start of construction.

- 8.14 These restrictions would, where relevant, be reflected in Conditions 3 and 4 attached to DMLs 1, 2, and Condition 3 attached to DMLs 3 and 4.
- 8.15 ES Chapter 10 Marine Water and Sediment Quality (APP-088) states that existing sediment and water quality is generally considered to be good. A concern, identified in ES Chapter 10 Table 12.1 for all three stages, construction, operation, and decommissioning, is the risk of pollution. Overall, residual impacts on marine water and sediment quality are predicted in the ES to be negligible in the nearshore area, or minor adverse in the offshore area. This is for both the projects alone or cumulatively. No mitigation or monitoring, other than putting control measures in place, is considered necessary in the ES.
- 8.16 The application draft DCO (APP-023) included conditions attached to the DMLs requiring accidental spillages to be reported to the MMO. This has now been amended such that Condition 7 attached to DMLs 1 and 2, and Conditions 6 attached to DMLs 3 and 4, in the recommended DCO, if made, relating to chemicals, drilling and debris, require that any, rather than just accidental, spillage be reported.
- 8.17 Similarly, Condition 8 attached to DMLs 1 and 2, and Condition 7 attached to DMLs 3 and 4, would require notification to the MMO should it become necessary, for safety reasons, for any unauthorised deposits to be made on the seabed. The same Condition would also make provision, on the reasonable request of the MMO, for the unauthorised deposits to be removed. The imposition of these conditions would ensure the necessary control measures were in place as agreed between the applicant and the MMO.
- 8.18 In the area of the OWF the seabed form indicates limited migration of sediment, whilst the geometry of sand waves on the sea bed in the vicinity of the cable corridor indicates sediment transport to the south (APP-086 paragraph 12.1.1). Chapter 9 of the ES (APP-086) identifies that the greatest potential for changes to the current wave and tidal regimes is during operation of the OWF but changes are predicted to be small. Condition 3 to DMLs 1 and 2 would ensure that the wave reflection coefficient values for the turbine foundations were as set out in the ES. The ExA notes that the changes would not change regional sediment transport pathways and morphology and accepts that view.

- 8.19 The effect of foundation and cable installation on sediment transportation has been modelled (APP-086). The seabed in the area is mostly sand with less than 5% mud in the surface sediments. Consequently the sediment available to be suspended in the water column is limited. Suspended sediment concentrations along most of the export corridor are less than 2mg/l but increase to between 75-300mg/l in the nearshore area due to coastal erosion.
- 8.20 Whilst suspended sediment concentrations would be raised for a time, deposition in the vicinity of sandeel habitat is not predicted to exceed 0.4mm and the predicted deposition after the 30 day simulation is 0.1mm or less across the whole footprint. In respect of the export cable, in Chapter 9 of the ES (APP-086) the applicant's assessment indicates that it could create maximum suspended sediment concentrations of 100mg/l near the coast, although elsewhere along the cable corridor it would generally be less than 20mg/l. This would be similar to background concentration levels.
- 8.21 During operation there is the potential for sediment plumes caused by scour of the seabed around non-scour protected foundations (APP-086). A comparison of operational scour volumes with naturally occurring release of sediment during one-year storm shows predicted scour volumes would be less than half the volume that would be suspended in a one-year storm. Scour volumes would be more than five times less than the volumes that would be produced during a 50-year storm.
- 8.22 Cumulative effects of sediment plume interaction with other OWFs and aggregate licence areas have been considered. The unchallenged conclusion in ES Chapter 9 (APP-086) is that it is unlikely that plumes from other OWFs would interact with Dogger Bank Creyke Beck and no cumulative effects are anticipated.
- 8.23 The MMO originally had concerns about monitoring of drill arisings and suspended sediment concentrations, the extent of cable protection, and whether any receptors would be affected by wave impacts (REP-020). It is accepted in a SoCG between the applicant and MMO (REP-116) that MMO's concerns about the latter have been addressed. In their relevant representations (REP-047 and REP-051) NE/JNCC expressed concerns about modelling of sediment plumes, the effect of the possible cofferdams in the intertidal area, and the amount of cable protection that might be required.
- 8.24 In terms of monitoring, MMO confirmed at the ISH on 3 June 2014 (HR-017, HR-018, HR-019) that, as the construction method statement requires details of drilling methods and disposal of drill arisings, it was content. In its Deadline V submission (REP-384) MMO confirmed that, following a further discussion with Cefas, suspended sediment concentration monitoring is no longer

required. Notwithstanding this, at Deadline VIII the applicant provided an updated In Principle Monitoring Plan (IPMP) which includes post construction surveys for scour and monitoring of any disposal mounds secured by Condition 15 of DMLs 1 and 2 (REP-485).

- 8.25 The MMO agreed in a SoCG with the applicant (REP-116) that the effect of cable protection had been adequately addressed in section 7.5 of ES Chapter 9 (APP-086). In a SoCG between the applicant and NE/JNCC (REP-126) it was agreed that a realistic worst case scenario for cable protection had been provided for and was sufficient to inform the consenting process, as a detailed pre-construction cable burial assessment would be required to be submitted to MMO for consultation with NE.
- 8.26 The applicant's response to second written question 64 states that it provided NE with clarification on outstanding points and that, in an Addendum to the SoCG between the applicant and NE/JNCC, the latter states that they are content, subject to a commitment from the applicant to four points (REP-281). These matters are now agreed and secured through the recommended DCO, if made, in Requirement 6 and Condition 9 of DMLs 1 and 2 and Conditions 3 and 8 to DMLs 3 and 4. Monitoring measures are set out in the IPMP secured by Conditions 14, 15 and 16 of DMLs 1 and 2 and Conditions 13, 14, and 15 of DMLs 3 and 4.
- 8.27 Conditions 9 and 10 of DMLs 1 and 2 and Conditions 8 and 9 of DMLs 3 and 4 would require details of the turbines and cable layouts to be approved prior to construction work commencing. The Conditions would also require, amongst other matters, a pre-construction programme, a construction method statement, a project environmental management and monitoring plan, and a cable specification and installation plan to be submitted to the MMO underpinning the licensed activities.
- 8.28 With these measures being secured there are no outstanding concerns relating to waste, debris, cable protection and suspended sediment deposition that the ExA considers would justify not making the DCO.

### **Longshore sediment transportation**

- 8.29 Longshore sediment transportation takes place within 250 metres of the cliffs at Ulrome, equivalent to within 50 metres seaward of MLWS (REP-174) response to first written question 121 and REP-146 Appendix 20 to SoCG between the applicant and the SNCBs. Cables would be buried up to a distance of 550 metres from the cliffs and the amount of cable protection would be restricted so that there would be no material impact on longshore sediment transportation (REP-174 response to first written question 128).

- 8.30 The worst case scenario at landfall is considered to be the construction over a continuous four month period of four 10 metre long cofferdams across the beach area. These would offer a partial barrier to longshore sediment transportation. Assessment in ES Chapter 9 (APP-086) indicates that this would interrupt less than 2% of the annual sediment transportation at the landfall, with the majority bypassing the cofferdams.
- 8.31 Paragraph 5.19 of Chapter 5 identifies that the Humber Estuary SAC and the Holderness Inshore rMCZ were originally of concern to NE. However, NE's summary of the oral case put at the ISH on 3 June 2014 (REP-340 paragraph 19), and addendum to SoCG (REP-213) confirmed that, following further assurances from the applicant regarding longshore drift, secured by Requirement 6 of the recommended DCO, if made, and Condition 3 of DMLs 3 and 4, they were now content that there would be no AEOI to Natura 2000 sites south of the project area. This includes the Humber Estuary SAC. NE also stated that the assurances meant that there would be no significant impacts on the Holderness Inshore rMCZ (REP-340 paragraph 30).

### **Transboundary Effects**

- 8.32 ES Chapter 32 (APP-165) identified potential transboundary impacts due to:
- (i) increased suspended sediment concentrations and depositions;
  - (ii) risk of accidental spillage;
  - (iii) deterioration in water quality due to increased turbidity or re-suspension of contaminants;
  - (iv) effects of scour;
  - (v) changes to wave and tidal current regimes; and
  - (vi) interruption to longshore sediment transport.
- 8.33 The ES assessment established that transboundary effects would only occur if the suspended sediment plume from Dogger Bank Creyke Beck crossed the boundary to the east of the Dogger Bank zone into Dutch waters. Sediment plumes are not predicted to do that and, in any event, any effects were calculated to be within the range experienced during natural conditions. Sediment deposition is anticipated to be short lived and scour is expected to be limited to the immediate vicinity of the OWF foundations. In both cases the ES concluded that there would be no transboundary impact due to sediment plumes (APP-086 Sections 6.2, 7.4 and 10.2, APP-165 Table 4.1).
- 8.34 Contaminant levels in the study area were found to be below Cefas Action Level 2, the contaminant level above which disposal at sea is generally considered to be unsuitable, and Canadian Sediment Quality Guidelines Probable Effect Levels (PEL) which is a non-statutory database standard. Any contaminants would be

expected to disperse quickly. The effect would be localised and consequently no transboundary impacts have been identified (APP-088 Sections 6 and 7).

- 8.35 The ES predicts that changes to waves and tidal currents would be of low magnitude in international waters with limited secondary effects on sea bed morphology. Consequently there would be negligible transboundary effects from these changes. Longshore sediment transportation would only arise at the landfall site and there would be no transboundary effects as a result (APP-086 Section 7.2).

### **Conclusions**

- 8.36 The development would have little impact on coastal processes, and should not, itself, be affected by erosion. There are no outstanding concerns relating to waste, debris, cable protection and suspended sediment deposition. Furthermore, there would be no AEOI to Natura 2000 sites south of the project area, including to the Humber Estuary SAC, and no significant impacts on the Holderness Inshore rMCZ. There is no evidence to counteract the assessment in the ES that there would be negligible, or no, transboundary impacts as a result of the development.
- 8.37 In the light of this, the ExA is content that the potential impacts of Dogger Bank Creyke Beck A and B have been properly addressed in terms of EN-1 and EN-3. The safeguards included within the recommended DCO would ensure that there would be no significant impact on marine and coastal processes. There is, therefore, nothing to justify the Order not being made.

## **9 ONSHORE CONSTRUCTION AND OPERATION EFFECTS**

### **Introduction**

- 9.1 Effects related to onshore construction and operation are varied and as a consequence, are discussed in several chapters within the ES; including but not restricted to Chapter 5: Project Description; Chapter 24: Onshore Geology, Water Resources and Land Quality; Chapter 26: Land Use and Agriculture; Chapter 29: Noise and Vibration and Chapter 30: Air Quality. Within each chapter, the applicant sets out the matters to be addressed by reference to EN-1 and EN-3 where this is appropriate.
- 9.2 A common thread running through the applicant's assessment of the effects is that the predicted impacts of the proposed application after mitigation would be minor adverse, negligible or have no impact during construction and operation.
- 9.3 In response to the Panel's first written questions, (PD-008 Q132) the applicant submitted a table summarising all onshore mitigation measures in relation to construction and operation. This included reference to which chapter in the ES mitigation measures were discussed and how and where they are secured in the draft DCO (REP-174). This table was updated and resubmitted for Deadline VII (REP-447).
- 9.4 In very broad terms, construction mitigation measures include but are not restricted to matters such as habitat reinstatement; contaminative soil or waste; soil quality; water quality and resources; waste; ecology; land drainage; construction traffic; construction noise and air quality. Operational mitigation measures include specific measures in relation to the proposed converter station; landscape screening; air quality; flood risk, soil heating; root growth and reinstatement of land.
- 9.5 The proposed mitigation measures were considered in some detail at the examination in response to representations from IPs and as a result of the Panel's own questioning. These discussions are referenced in this report in this chapter and in Chapters 5; 7 and 12.

### **Decommissioning**

- 9.6 Turning to decommissioning, the applicant considered that these would be no worse than effects related to construction. Secured by Requirement 31 in the recommended DCO, if made, decommissioning would be subject to a separate scheme based on the onshore decommissioning statement which accompanied the application. The scheme would be approved by the local planning authority within three months of the end of commercial operation of the onshore works. As such, the applicant does not consider in detail decommissioning effects in the ES.

- 9.7 The Panel received very few representations in respect of decommissioning, although one IP did express their concerns about the potential for land to be blighted as a result of cables being left underground after construction (REP-336). The Panel notes their concern.
- 9.8 Having considered the representations put forward by the applicant and others in relation to decommissioning, the ExA is of the view that the effects during decommissioning would be no worse than the effects in relation to construction. The ExA considers that the provisions contained within the decommissioning statement coupled with the scheme secured by Requirement 31 of the recommended DCO, if made, provide sufficient security in this regard.

### **Representations**

- 9.9 Representations have been received in respect of onshore construction and operational matters from parish councils, East Riding of Yorkshire Council (ERYC), the Environment Agency (EA), Yorkshire Water, the Beverley and North Holderness Internal Drainage Board (BNHIDB), and others, many of which entered into SoCGs with the applicant at the request of the Panel in its Rule 6 letter (PD-003) and during the examination (PD-022).
- 9.10 EA / Yorkshire Water and ERYC conclude that there are no unresolved issues with the applicant (REP-093; REP-121).
- 9.11 All but one of the parish councils along the route of the cable corridor agreed a SoCG, confirming that there were no unresolved issues related to onshore construction effects. North Frodingham PC also submitted a SoCG towards the end of the examination (REP-492). It confirmed that the assessment and mitigation proposed in the ES was appropriate and adequate for air quality, noise, vibration and health effects. However, it raised several other concerns which are discussed at appropriate points during this chapter. The Panel did not receive a finalised SoCG from North Frodingham PC before the close of the examination.
- 9.12 Neighbouring parishes adjacent to the route of the cable corridor were not asked to sign a SoCG with the applicant. However, at the Panel's request, the applicant wrote to them asking whether they wished to make representations (PD-022; REP-491). Generally, most declined, although in cases where they did make a representation these have been considered by the Panel.

### **Code of Construction Practice**

- 9.13 The Code of Construction Practice (CoCP) is a central element of the strategy for mitigating the effects of the proposed application onshore during construction. The outline CoCP sets out the principles of mitigation during construction in one document, providing the basis for a detailed CoCP to be approved by the local



planning authority, should the recommended DCO be made (REP-486).

- 9.14 In response to concerns from EA (REP-157), IPs, and questioning from the Panel, the outline CoCP was revised and updated several times during the examination, with the inclusion of new sections relating to landscape restoration, recreation (specifically PRow), land quality, port related traffic; management and mitigation of artificial light emissions, and management of both surface and groundwater water resources (REP-446).
- 9.15 The outline CoCP is referenced as a document to be submitted to the SoS for certification in the recommended Order, under Article 42. The CoCP itself is secured by Requirement 22 of the recommended DCO, if made.
- 9.16 The areas covered by the outline CoCP include:
- (i) general principles including health and safety;
  - (ii) noise and vibration;
  - (iii) air quality including dust management;
  - (iv) land use and agriculture, including management of soils, land drainage and biosecurity;
  - (v) waste management and land quality;
  - (vi) traffic and access, including details of port related traffic;
  - (vii) management of water resources;
  - (viii) recreation;
  - (ix) terrestrial ecology (including the management and mitigation of artificial light emissions);
  - (x) terrestrial archaeology; and
  - (xi) landscape restoration.
- 9.17 The outline CoCP also requires the preparation of a Construction Environment Management Plan (CEMP). The CEMP would provide the plan for monitoring, reporting and auditing environmental compliance in accordance with regulations and licences.
- 9.18 The CEMP would be approved by the local planning authority and would be secured by Requirement 23 of the recommended DCO, if made. In response to the Panel's first written questions, an outline CEMP has been prepared by the applicant listing which topics the CEMP would cover, based on mitigation measures identified in the ES. These include (but the applicant comments, are not limited to): landscape and visual amenity; pollution prevention; ecology; soil management; archaeology and the built environment; traffic; noise; air quality; and site waste management (REP-178).
- 9.19 In response to further questioning from the Panel, the applicant prepared a visual aid illustrating the relationship between the CoCP and other plans (REP-444). The visual aid also indicates

how the various plans, schemes and method statements would be secured in the draft Order by reference to specific requirements.<sup>5</sup>

- 9.20 North Frodingham PC raised concerns about the voluntary nature of the considerate contractor's scheme, and the suggestion that appointed contractors would be 'encouraged to register' with the scheme. This in their view, left opportunities for contractors not to comply (REP-492).
- 9.21 In response, the applicant argued that, adherence to the CoCP was mandatory and that it would be policed (REP-525). The Panel notes ERYC were satisfied that concerns in relation to dust, fumes, noise and vibration had been addressed in the CoCP and CEMP. ERYC confirmed in its SoCG that there were no unresolved issues with the applicant, and that the contents of the CoCP would be sufficient to mitigate the impacts of construction upon local amenity (REP-121). Given these factors, the ExA is of the view that although participation in the considerate contractor's scheme would be voluntary, the mandatory mitigation that would be secured via the CoCP would be sufficient to secure appropriate mitigation. Furthermore, the wording of the CoCP at Requirement 22 of the recommended DCO, if made, would ensure that construction works would be carried out with as little disturbance as reasonably practicable.
- 9.22 A further matter in relation to the CoCP relates to drafting amendments proposed by EA in its written representation (REP-157), which sought to ensure the delivery of construction phase mitigation in line with the measures included in the ES. EA confirmed that subject to its proposed amendments being included and protective provisions in favour of the EA being agreed and included in the recommended DCO, it would be satisfied not to be cited in the CoCP requirement (REP-157; REP-093).
- 9.23 The Panel notes that protective provisions in favour of EA were agreed with the applicant and are included in Part 5 of Schedule 8 of the recommended DCO, if made. Protective Provisions are discussed in more detail in Chapter 15 of this report.
- 9.24 In addition to the CoCP, the recommended DCO, if made, includes other project wide requirements in relation to construction hours, telecommunications, authority to survey, and restoration of land used temporarily for construction. These requirements, as set out in the recommended DCO, are summarised below:

***Requirement 24 - construction hours.***

- 9.25 Lissett and Ulrome PC argued for a reduction in working hours from 7am to 7pm (as proposed by the applicant), to 8am to 6pm,

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<sup>5</sup> It should be noted that the Visual Aid submitted by the applicant includes reference to the numbering of the requirements as they relate to version 4 of the draft DCO (REP-413)

so as not to disturb tourists. The PC also argued that no work should take place between mid-July and the end of August (REP-499).

- 9.26 In response, the applicant was of the view that 7am to 7pm were standard working hours for a major construction project, particularly given that the majority of construction areas would be located within arable land away from known tourist destinations. The applicant also referred to its assessment of tourism receptors and its findings, which indicated that there would be no significant adverse impacts to tourism receptors (REP-528).
- 9.27 That aside, in response to questions from the Panel, the applicant reduced construction working hours on a Saturday and included no working on public holidays as well as bank holidays.
- 9.28 A more detailed consideration of the effect of the proposed application on tourism is provided in Chapter 11 of this report. However, the Panel notes and agrees with the findings of Chapter 23 of the applicants ES which assesses the effects of the proposed application on tourism and recreation, and in particular, Table 12.1. This identifies only minor adverse impacts to onshore tourist destinations such as coastal villages; caravan and camp sites. The ExA is satisfied with the construction working hours subsequently set out at Requirement 24 of the recommend DCO.

***Requirement 29 - Restoration of land used temporarily for construction***

- 9.29 This requires the removal of apparatus and restoration of land to its former condition or such other condition as the relevant planning authority may approve, within six months or if later, by the end of the next available planting season. A fuller discussion of this requirement is provided later in this Chapter under the section on sequencing of construction.

***Requirement 30 - interference with telecommunications.***

- 9.30 This includes details of the steps to be taken if there should be any interference with telecommunications or television equipment at residential properties.
- 9.31 The Panel is content that the CoCP reflects the range of onshore mitigation measures assessed in the ES and summarised in the table submitted for Deadline VII (REP- 447). The CoCP combined with CEMPs for each stage of the proposed works and additional Requirements 24; 29 and 30 provides in the Panels view, a comprehensive strategy for mitigating the effects of the proposed development onshore, during construction.

## **Converter Stations (Works No.7)**

- 9.32 The application for Dogger Bank Creyke Beck includes proposals for the construction of two converter stations (Works No.7), one for each project. These would be built on farmland on a site north of the A1079, about 1km north of the existing substation at Creyke Beck between Beverley and Cottingham (APP-068). The nearest receptors identified on the works plan for the converter station site are: Halfway House; Model Farm; Poplar Farm and Wanlass Farm.
- 9.33 ERYC considered Works No.7 to be the main issue in relation to the proposed application as it is 'the largest and most visible' part of the proposals (REP-074). It referred to the active participation of the Council in the Converter Station Working Group and its heavy involvement in agreeing their siting prior to the application for development consent being submitted to the Planning Inspectorate. Matters relating to proposed siting, landscape and visual impact of the converter stations are discussed in Chapter 7 of this report.
- 9.34 The Council was of the view that "the dialogue and level of consultation (with the applicant) has exceeded all minimum expectations as set out in the 2008 Planning Act and EIA regulations" and that the application as submitted reflected the Councils views expressed during the consultation period (REP-074).
- 9.35 The Panel noted that it received very few representations in respect of the proposed converter stations and none from IPs at the four nearest receptors. ERYC's SoCG confirmed that it had no areas of specific disagreement (REP-121).
- 9.36 SoCGs were signed with each of the parish councils in the vicinity of the converter stations, including Woodmansey PC (REP-117); Skidby PC (REP-107) and Cottingham PC (REP-113). All three parish councils confirmed they were satisfied that in relation to air quality; noise and vibration and health effects, the assessment and mitigation proposed in the ES and secured in the DCO was appropriate and adequate. In addition, Cottingham PC and Woodmansey PC also agreed the same for landscape and visual effects. The three parish councils agreed they had no unresolved issues relating to onshore construction effects and that they had no outstanding issues about the proposal for development consent.
- 9.37 If the recommended DCO is made, construction activities at Works No.7 would be controlled by the CoCP as discussed earlier in this Chapter. The recommended Order also includes a number of requirements aimed at controlling operational activities at Works No. 7 (although some of these requirements are also project wide). These are discussed in turn below.

**Requirement 18 - Surface and foul water drainage**

- 9.38 Requirement 18 - Surface and Foul Water drainage requires that no stage of the onshore works must commence until written details of the surface and foul water drainage systems have been submitted to and approved in writing by the relevant planning authority, following consultation with EA and relevant drainage and sewerage authorities. This Requirement is project wide in its focus, and would apply to all onshore aspects of the project.
- 9.39 In both its relevant and written representations (REP-050; REP-157), EA raised two points in respect of the Surface and Foul Water requirement as set out in the application draft DCO (APP-023). Firstly, although Works No.7 would be located within Flood Zone 1, it is within an area that would be susceptible to ground water flooding. EA confirmed it was satisfied with the content and conclusions of the applicants Flood Risk Assessment which recognised the need for an adequate drainage system to ensure that any increases in flood risk elsewhere from run-off were adequately mitigated. EA also welcomed the inclusion of a requirement on Surface and Foul Water drainage. However, EA proposed amendments to the wording of the Requirement, to ensure appropriate mitigation would be secured in relation to flood risk. EA confirmed that if the amendments were carried through to the recommended Order, the EA would have no objection on flood risk grounds (REP-157).
- 9.40 The Panel notes that EA's SoCG, agreed with the applicant, confirms the inclusion of the requested drafting amendments in this requirement (REP-093). These are carried through to the recommended DCO, if made, at Requirement 18.
- 9.41 The second point raised by EA, related to the protection of groundwater and surface waters. EA confirmed that Works No.7 lies within Source Protection Zone 2. In this zone, groundwater extractions are at risk from potentially polluting activities. EA advised that it was critical that appropriate risk management and mitigation was secured in these zones. As such, EA proposed amendments to the wording of the draft requirement, to ensure that appropriate mitigation would be secured in relation to groundwater.
- 9.42 As with flood risk issues, EA confirmed it would have no objection on the basis of risks to groundwater, if the amendments were carried through to the recommended Order (REP-157). The Panel also notes that EA's SoCG with the applicant, confirms agreement to the inclusion of the requested drafting amendments (REP-093).
- 9.43 The Panel can confirm that EA's amendments to this requirement were made by the applicant in later versions of the DCO and are included in the ExA's recommended Order. Requirement 19 is a second requirement in respect of Surface and Foul Water drainage

following discussions with EA. It ensures that operational activities at Works No.7 would take account of the mitigation measures detailed in Chapter 7 of the ES. At the request of the EA, this requirement includes details of any proposed underground oil separators, storage bund installations and an emergency plan, including provisions to ensure that controlled waters are protected in an emergency event (REP-157).

- 9.44 The Panel notes that the provision of an emergency plan secured by Requirement 19 of the recommended DCO, is separate to the detailed emergency plan secured by Requirement 32 of the recommended DCO. Requirement 32 requires a detailed emergency response plan to be approved in writing with ERYC, following consultation with National Grid Electricity Transmission (NGET) specifically for Creyke Beck Sub Station.

***Requirement 25– Control of noise during operational phase***

- 9.45 This requirement relates to operational noise at Works No.7 and includes setting noise levels of 35dB as outlined in BS4142 at the receptors of Halfway House, Model Farm, Poplar Farm and Wanlass Farm. Noise effects at Wanlass Farm and Poplar Farm were assessed in the ES as high (APP-157; Table 7.6). The applicant confirmed in answers to the Panel’s first round questions, that noise modelling was based on a realistic worst case scenario(REP-174). ERYC also confirmed that, “the configuration and orientation of the two converter stations in relation to each other is probably optimal vis a vis the protection of nearby residents from noise” (REP-172). Following the Panel’s further questioning at the third ISH on the DCO, the applicant identified and proposed the inclusion of grid coordinates for reference purposes; to indicate the centroid locations of the four receptors from which noise measurements would be taken.
- 9.46 The Panel is satisfied that Requirement 25, coupled with the use of landscaping and good design to minimise noise in the layout of the converter station site (discussed in detail in Chapter 7) would ensure the effective management and control of noise emanating from the converter station site during operation.

***Requirement 26 - Control of artificial light emissions***

- 9.47 This ensures that a written scheme for the management and mitigation of artificial light emissions at Works No.7 is approved in writing with the local planning authority following consultation with the relevant statutory nature conservation body. Artificial light emissions are discussed in more detail in Chapter 5 Biodiversity, Biological Environment, Ecology and Habitat Regulation Assessment, and Chapter 7, Landscape/Seascape and Visual Impact.

- 9.48 On the basis of the submissions and responses it has considered, the ExA does not consider that there are any outstanding significant issues relating to the converter stations site, that would justify the DCO not being made.

### **Cable Corridor**

- 9.49 The applicant's proposals for the onshore construction of the cable corridor is summarised in the ES at Chapter 5. Cables would be buried at a depth of approximately 1.5m. HVDC cables would run from landfall, approximately 30km to the converter stations, whereupon HVAC cables would transport electricity from the converter station some 2km to the existing Creyke Beck substation (APP-014). Typical cable trench dimensions per project are provided at Table 4.5 of Chapter 5 (APP-068).
- 9.50 The cables would pass through mainly agricultural land described by the applicant as being used mostly for crops. The proposed route would also cross a number of obstacles, including major roads, large watercourses, a Network Rail line, various utility service providers and common land at Figham Pastures. Table 4.3 of ES Chapter 5 summarises the key elements of the onshore export cable route (APP-014). Where possible, the route of the cable corridor was sited away from residential receptors and in the one location where this was not possible, acoustic measures would be put in place. A temporary haul road is also proposed for most of the cable route. This is discussed in more detail in relation to construction traffic in Chapter 12 of this report, Traffic and Transportation.
- 9.51 Representations were received from ERYC, parish councils and landowners (or land agents acting on their behalf). ERYCs view was that the cabling works would be temporary below ground works and that the principal impacts would be during construction. ERYC also expressed their view that as the development would be below ground it "ultimately would have no impact" (REP-074).
- 9.52 Parish councils along the route of the cable corridor (Leven PC, Beeford PC, Tickton and Routh PC and Brandesburton PC (REP-493; REP-494; REP-498; and REP-495 respectively) agreed SoCGs with the applicant in which they confirmed that '*the contents of the code (of construction practice) were sufficient to mitigate the impacts of construction upon local amenity*'. Although North Frodingham PC and the applicant submitted a draft SoCG, as discussed earlier in this Chapter, no final version of the SoCG was received before the close of the examination.
- 9.53 Notwithstanding agreement to a SoCG, some parishes submitted further representations about specific matters in relation to the route of the cable corridor. Leven PC was concerned that the works involved in crossing the Leven Canal would damage the Leven Canal SSSI and surrounding environment (REP-493).

- 9.54 The applicant explained that the Canal would be crossed by means of HDD to minimise the potential for polluting activities occurring in proximity to the SSSI; referring to the plans that would need to be approved by the local planning authority prior to the start of construction, including an outline CEMP for the water environment and a dust management plan<sup>6</sup> and an ecological management plan<sup>7</sup> (REP-527). Further discussion of the Leven Canal and the response of EA, can be found in Chapter 5 of this report 'Biodiversity, Biological Environment, Ecology and Habitat Regulation Assessment.'
- 9.55 Beswick PC (REP-505) and North Frodingham PC (REP-492) raised the issue of land drainage. This appeared to the Panel to be a matter that caused particular concern amongst IPs and had also been raised by several landowners (or their agents) at the CA hearing (HR-029 – HR032). Beswick PC wanted confirmation that both piped and under drainage would be included in the landscape restoration proposals. The applicant provided this, pointing to the discussion in the ES at Chapter 26 (APP-146, paragraph 6.26). Furthermore, the applicant also confirmed that the CoCP would ensure that landowners would be engaged in discussions about their existing land drainage and that suitably qualified drainage consultants would be appointed to carry out the task (REP-517).
- 9.56 In the same vein, North Frodingham PC called for an expert in land drainage to be appointed to assess and approve accurate reinstatement of the land to its former condition. The parish council commented that in its view, whilst ERYC had employees conversant with surface water drainage, it was not as well qualified in matters of land drainage as it pertains to agricultural land. These sentiments were echoed by landowners and a land agent, George F White LLP, on behalf of its client at the CA hearing (HR-029-HR-032).
- 9.57 George F White LLP followed up the CA hearing with a representation on behalf of its clients directly affected by the proposals (REP-504). In its view, ERYC did not have the "*professional capability*" to deal with "*such complex matters as drainage, surface and ground water movement, soil storage and restoration.*" George F White called for the appointment of a drainage expert. In response to concerns from IPs about suitable officer expertise in ERYC, the applicant confirmed that it had entered into a Planning Performance Agreement (PPA) with ERYC. This would provide funds to allow ERYC to appoint their own drainage experts to assist with approving post-construction drainage works (REP-525). The applicant also drew attention to the CoCP, explaining that the matters on which landowners would

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<sup>6</sup> An outline CEMP for the water environment and a dust management plan would be secured by Requirement 23 of the recommended DCO, if made.

<sup>7</sup> An ecological management plan would be secured by Requirement 22 of the recommended DCO, if made.



be consulted were outlined in section 6 of the CoCP and the “commitments made in the outline CoCP with regards to land use and agriculture, namely the appointment of a suitably qualified drainage consultant and the necessity to consult the landowner on the management of soils and drainage” would address the concerns expressed. Furthermore, that in the discharge of requirements, ERYC would need to consult relevant statutory bodies which would provide specialist and technical advice. Combined, these measures coupled with Requirement 22; CoCP would, in the applicants view, ensure the local planning authority were suitably equipped to discharge such matters (REP-413; REP-517).

- 9.58 Given the strength of views expressed from IPs in relation to the drainage matters discussed above, the Panel proposed the introduction into the draft DCO of a new requirement specifically focussed on water courses and drainage (PD-031). At the third ISH, the applicant acknowledged the concerns of IPs and the new requirement proposed by the Panel. However, it argued that instead of introducing a new requirement, amendments could be made to the existing requirement relating to the CoCP, so that it was more specific about the concerns expressed by IPs and to ensure that it fully reflected the onshore topics relating to construction assessed in the ES (REP-413; REP-480). In addition, the applicant also amended the outline CoCP to include specific reference to the appointment of an independent drainage consultant (REP-446).
- 9.59 The applicant referred to Chapter 26, Land Use Agriculture which sets out many of the detailed mitigation measures relating to landowners concerns, including compaction, bio-security, soil management as well as land drainage (REP-428). The applicant confirmed that in the ES, *“land drains were identified as a highly sensitive receptor and mitigation arrangements would be discussed with each individual landowner”* (REP-428).
- 9.60 The Panel agrees with the approach proposed by the applicant to be more specific about drainage matters in the drafting of the Outline CoCP and the wording of the associated requirement in the draft DCO. Requirement 22 of the recommended DCO, if made, includes this updated drafting.

### **Sequencing of construction and other matters**

- 9.61 A further matter raised by IPs at the CA hearing in particular, and in other submissions, related to the approach to construction of the two projects onshore. IPs questioned why it would be necessary for agricultural land to be disturbed twice, calling for all work to be done in one operation, to minimise disruption for the landowner (North Frodingham PC REP-492; George F White, REP-504).

- 9.62 The applicant referred to submissions made throughout the examination about the need for flexibility, given that the projects could be built at different times by two different operators. The applicant also confirmed that compensation would be payable to landowners along the onshore cable route for each period of construction disturbance (REP-517). Finally, the applicant referred to draft DCO, Requirement 29 – Restoration of land used temporarily for construction, which would secure the reinstatement of land six months after that stage of the construction works was complete. After some discussion with IPs at the CA hearing, the applicant amended Requirement 29 to include additional wording to ensure that land was restored to its former condition within six months, or “*if later, by the end of the next available planting season.*” (REP-480). As a result of these measures, the applicant considered it had addressed concerns of landowners over the potential for a sequential approach to the construction of Dogger Bank Creyke Beck A and B.
- 9.63 The ExA is satisfied that the additional disruption caused by the sequential approach to construction is necessary, sufficiently mitigated and that compensation for disturbance is provided for. The recommended DCO, if made, includes at Requirement 29, the amended drafting of the provision relating to the restoration of land used temporarily for construction.

#### **Other matters raised by IPs**

- 9.64 Other matters raised by IPs in relation to the proposed construction and operation of Dogger Bank Creyke Beck included concerns about dust, which the applicant argued it had addressed via the draft DCO requirement relating to the CoCP which includes specific reference to air quality and dust management.<sup>8</sup> Other IPs were concerned about bio-security, which the applicant confirmed is also addressed by the CoCP<sup>9</sup>.
- 9.65 The Panel is satisfied that the CoCP would ensure that reasonable steps were taken to minimise any detrimental impacts or concerns in relation to dust and bio-security.
- 9.66 Some IPs raised concerns about health effects (REP-029; REP-030); and EMFs, including North Frodingham PC (REP-492) and Lissett and Ulrome PC (REP-499). The applicant referred to Chapter 5, Appendix C of the ES (APP-071), which contains a health impact assessment. This concludes that the components and specification of the onshore aspects of the proposal would not generate significant health risks. The applicant also provided a fact sheet setting out the measures it had taken and this was provided at Deadline VII (REP-445).

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<sup>8</sup> Requirement 22 (2)(b) of the recommended DCO, if made, includes reference to the CoCP, air quality and dust management.

<sup>9</sup> Requirement 22 (2)(f) of the recommended DCO, if made, includes reference to bio-security.

- 9.67 The Panel notes that ERYC did not have concerns in relation to health issues (REP-121). The Panel also noted the response from Public Health England which confirmed it had no concerns about the Dogger Bank Creyke Beck application (REP-045). As such, the Panel is satisfied that the mitigation measures secured by the CoCP and requirements discussed earlier in this Chapter, would adequately address health concerns.
- 9.68 IPs also raised issues connected to the land fall site and coastal erosion. Chapter 8 of this report, Marine and Coastal Processes, considers these issues. The parish councils of Barmston and Fraisthorpe (REP-119) Skipsea (REP-497) and Lissett and Ulrome all agreed to SoCGs confirming no outstanding issues (REP-496; REP-499).

### **Conclusions**

- 9.69 On the basis of the submissions and responses it has considered, the ExA does not consider that there are any outstanding significant issues relating to construction and operational effects that would justify the DCO not being made.

## **10 RADAR, NAVIGATION, AND SEARCH AND RESCUE OPERATIONS**

### **Introduction**

- 10.1 Specific assessment requirements relating to shipping and navigation are set out in EN-3 paragraphs 2.6.153, 2.6.154, 2.6.156, 2.6.157, 2.6.160 and 2.6.180 which are summarised in ES Chapter 16 Table 2.1 (APP-126). These include: consultation with the Marine Management Organisation (MMO), the Maritime and Coastguard Agency (MCA), the relevant General Lighthouse Authority, in this case Trinity House Lighthouse Service (THLS), relevant industry bodies, and representatives of recreational users such as the Royal Yachting Association (RYA); and, the carrying out of a Navigational Risk Assessment (NRA) (APP-127) using MCA methodology and taking into consideration issues highlighted in MGN 371 Offshore Renewable Energy Installations - Guidance on UK Navigational Practice, Safety and Emergency Response Issues. The applicant should expect to minimise negative impacts to as low as reasonably practicable (ALARP).
- 10.2 In relation to Military Activities and Civil Aviation, Table 2.1 of ES Chapter 19 (APP-132) summarises the assessment requirements of EN-1 and EN-3. Consultees include the Ministry of Defence (MoD), Civil Aviation Authority (CAA) and National Air Traffic Services (NATS) and assessment should include potential impacts on the operation of communications, navigation and surveillance infrastructure, civil and military flight patterns, other defence assets and aerodrome operational procedures.
- 10.3 Consultation is summarised in ES Chapter 16 Table 2.2, Chapter 19 Table 2.2, and Chapter 32 Table 2.1 (APP-165) and included the bodies mentioned above and shipping operators known to have an interest in the area.
- 10.4 Representations were received from MMO, MCA, THLS, Associated British Ports Humber Estuary Services, RYA, Royal Association of Netherlands Shipowners (KVNR), UK Chamber of Shipping, CAA, MoD, and SERCO (Radar). Concerns raised include: the use of curved arrays; navigational safety; cumulative effects; the number of vessels if simultaneous construction takes place; and, the wording of requirements and conditions relating to Aids to Navigation.

### **Radar and aviation**

- 10.5 Military airfield radar and air defence radar were scoped out of the ES assessment due to the distance between the Dogger Bank Creyke Beck A and B arrays and the closest radar installation. The UK Military Low Flying System was scoped out due to the distance of the OWF offshore and its location significantly outside the boundaries of the low flying system (APP-132). SERCO's radar

modelling team states that there are no documents that require a response from them (REP-286) and a SoCG between the applicant and the MoD (REP-105) notes that there are no unresolved issues. NATS, and meteorological, radar sites are also scoped out of the ES assessment due to the distance of the OWF from the nearest installations and NATS, when consulted on the draft ES, indicated that it had no comments to make.

10.6 Other matters scoped out of assessment (APP-132) are:

- (i) Commercial and other civil aviation activities, due to the location of the arrays, the regular operating parameters of these receptors, marking the proposed offshore wind farm (OWF) on charts, and the installation of appropriate lighting that would be ensured by Requirements 8 and 9 of the recommended DCO, if made;
- (ii) Helicopter Main Routes (HMRs) and offshore helicopter operations, due to the location of the OWF relative to the HMRs;
- (iii) Military and civilian aerodromes due to the distance of the site offshore; and
- (iv) Civilian communications, navigation and surveillance infrastructure, due to the distance of the arrays offshore well beyond the range at which there might be an impact.

10.7 The Panel notes that in addition to the MoD, CAA notes in a SoCG (REP-095) that it has no unresolved issues.

### **Shipping and navigation**

10.8 A marine traffic survey identified 7 main routes operating within a 10nm (18.5km) buffer around Dogger Bank Creyke Beck A and B, with the majority of vessels being tankers and cargo vessels. Fishing activity is recorded across much of the proposed site, with a high density of vessels to the west of Dogger Bank Creyke Beck B during the sandeel fishing season of April to June. Recreational vessel activity is noted as being very low (APP-126).

10.9 Where deviations from main routes would be required, the maximum time increases would be 7 minutes (0.34%) for Dogger Bank Creyke Beck A, 0.5 minute (0.03%) for Dogger Bank Creyke Beck B and 9 minutes (0.51%) for Dogger Bank Creyke Beck A and B (APP-126).

10.10 Collision risk modelling has been carried out. For Dogger Bank Creyke Beck A and B there would be an increase to 1 collision every 578 years for vessel to vessel collisions and an additional vessel to structure collision risk of 1 every 1791 years. Mitigation would enable these risks to be brought within ALARP parameters (APP-126). In line with MGN 371, impacts on navigation, collision risk and communication were assessed in the ES and found to be within tolerable limits.

- 10.11 The applicant, in response to matters raised by the MCA in its SoCG with the applicant (REP-097), states that it was not able to agree to a standard layout across all projects in the Dogger Bank zone. In addition, whilst the applicant was committed to a single point of contact for emergency response situations, it was unable to commit to one maritime co-ordination centre for all projects across the zone but it was committed to working with the MCA, and other navigation bodies to create a suitable and safe scheme. The ExA considers that this would be acceptable.
- 10.12 The MCA stressed the need for agreed layouts and construction programming to be embedded in the DMLs. Schedule 7 Part 1A paragraph 2, Part 2A paragraph 2, Part 3A paragraph 2 and Part 4A paragraph 2 detail the licensed marine activities in each of the four DMLs. Conditions 9 and 10 attached to DMLs 1 and 2 and Conditions 8 and 9 attached to DMLs 3 and 4 would require layouts to be approved by MMO following consultation with the MCA and THLS, and for a construction programme to be agreed (REP-097).
- 10.13 Fishing associations from various nationalities also comment that curved layouts could prove problematic for the continuation of fishing within the project areas (REP-162).
- 10.14 However, curved layouts have been removed from the design envelope in the light of comments from the MCA, RYA, UK Chamber of Shipping, The Cruising Association and THLS (REP-343 Paragraph 6.1), although the perimeter of the OWF could still be curved,
- 10.15 The UK Chamber of Shipping's relevant representation (REP-040) requested that cables in the export cable corridor be buried for navigational safety reasons. Following the issue of first written question 89, submissions were made by the MMO and the applicant (PD-008, REP-164, REP-174). MMO originally requested that cables be buried to a depth of 1.5 metres. In Appendix 3 to the SoCG between the applicant and MMO, justification was given as to why this was not appropriate. The applicant noted that acceptable ground conditions would require cables to be protected or buried to a depth that would allow normal fishing operations. MMO sought post construction surveys to verify cable depths.
- 10.16 The applicant considered that post installation surveys to determine whether cables were sufficiently buried would be included in a cable specification and installation plan (REP-174). Whilst the principle was not disputed by IPs, the wording was not agreed by the MMO (REP-274, REP-329 Question 30). In response to second written question 14 the MMO accepted that an upper limit for cable protection was secured through Requirement 6 in the DCO and Condition 3 in all four DMLs (REP-329).

- 10.17 In its comments on the MMO's answers to second written question 30 (REP-380), the applicant stated that an amendment to Condition 9(1)(f) of the DMLs 1 and 2 and Condition 8(1)(f) of DMLs 3 and 4 had been agreed to ensure that the cable specification plan includes details of the methodology and extent of surveys to confirm burial depths, and this would be captured in draft DCO version 2 (REP-221). MMO confirmed its acceptance of the wording relating to a cable specification and installation plan in its Deadline VI submission (REP-389).
- 10.18 Restrictions on cable lengths and cable protection would be achieved by Requirement 6 of the recommended DCO, if made, and Condition 3(10) in DMLs 1 and 2 and Condition 3(9), (10), (11) and (12) in DML 3 and Condition 3(10), (11), (12) and (13) in DML 4. Condition 6(1) in DMLs 1 and 2 and 5(1) in DMLs 3 and 4 would require details of cable protection areas and volumes to be notified to MMO in relation to each licence. A cable specification and installation plan would be required by Condition 9(1)(f) in DMLs 1 and 2 and Condition 8(1)(f) in DMLs 3 and 4, whilst Conditions 15(2) and 16(1) in DMLs 1 and 2 and Condition 15(1) in DMLs 3 and 4 relate to the provision of an In Principle Monitoring Plan (IPMP), addressing the need for construction monitoring and post construction surveys.
- 10.19 In the interests of safety, Condition 12 of DMLs 1 and 2 and Condition 11 of DMLs 3 and 4 would require the MMO to be notified in advance of any agents or contractors to be engaged in licensed activities. In addition, requirements relating to vessels that would be engaged in licensed activities are set out in Condition 13 of DMLs 1 and 2 and Condition 12 of DMLs 3 and 4.
- 10.20 Paragraphs 2(2) of Schedule 7 Parts 1A, 2A, 3A, and 4A of the recommended DCO, if made, indicate that the licensed works would include construction, maintenance and operation of the licensed works. Condition 17 of DMLs 1 and 2 and Condition 16 of DMLs 3 and 4 in the recommended DCO, if made, would require a post-construction maintenance plan to be approved by the MMO prior to commissioning and to be updated at least every three years in the event of any changes or adoption of new technologies or techniques.
- 10.21 Also in the interests of safety, Condition 8 in DMLs 1 and 2 and Condition 7 in DMLs 3 and 4, Force Majeure, would require notification of the MMO in the event of unauthorised deposits on the seabed following a threat to human life or a vessel. If reasonably requested by the MMO the unauthorised deposit would have to be removed at the expense of the undertaker.
- 10.22 A Safety Zone Statement (APP-054) clarifies that final safety measures would be defined by final layouts in consultation with the relevant marine authorities. However, worst case parameters would be rolling 500 metre safety zones during construction

around active works and during operation around sites of any exceptional major maintenance work. 500 metre zones are also proposed around manned platforms for safety reasons. The applicant's assessment in the ES concludes that there would be no significant effects on shipping and navigation. THLS and RYA both indicate they have no unresolved issues in this respect (REP-099 and REP-089).

- 10.23 Mitigation would be provided by an Emergency Response and Co-operation Plan (ERCoP) that would be required to be in accordance with MGN 371 and approved by MMO in consultation with the MCA (REP-162). This would be ensured by Condition 11 of DMLs 1 and 2 and Condition 10 of DMLs 3 and 4. The MCA indicated it was content with the wording of these conditions (REP-506).
- 10.24 MMO's relevant representation (REP-020) refers to an Aids to Navigation Plan. During the course of the examination a number of conditions relating to navigational aids were discussed between the applicant, MMO, MCA and THLS. Final agreed wording is set out in MMO's Deadline IX submission (REP-512 Annex A). Also at Deadline IX, the applicant confirmed that it was content in principle with the suite of Aids to Navigation conditions agreed by MMO, MCA and TLHS, subject to minor amendments for drafting consistency (REP-517). The Panel has looked carefully at the drafting of these conditions, and after making a number of minor alterations has included them at Conditions 9(1), 10(1), and 18 to 24 of DMLs 1 and 2 and Conditions 8(1), 9(1), and 17-23 of DMLs 3 and 4 in the recommended DCO, if made.
- 10.25 The ES Chapter 15 (APP-122), and the draft DMLs (APP-023), refer to the International Regulations for Preventing Collisions at Sea (COLREGS). In response to the Panel's first written question 143, the MMO responded that a condition requiring the Regulations to be complied with was unnecessary as compliance is required in any event (REP-164). In its Deadline IX submission (REP-512) MMO confirmed it had no particular view with regard to including a condition requiring compliance with the COLREGS, but advised contacting the Department for Transport and MCA. THLS stated in an e-mail dated 5 August 2014 that it agreed with MMO's position (REP-529). As a precaution, in the absence of consultation with the Department for Transport and MCA, Condition 13(5) in DMLs 1 and 2 and Condition 12(5) of DMLs 3 and 4 would require signals to be exhibited in accordance with the COLREGS.
- 10.26 Notwithstanding the lack of provision of a single maritime co-ordination centre for the zone, and the possibility of a curved array perimeter, mitigation would ensure that risks would be brought within ALARP parameters. Consequently there would be no justification for not making the Order.

### **Search and rescue activities and MoD practice and exercise**



## **areas**

- 10.27 The change in the offshore operating environment might constrain certain elements of Search and Rescue (SAR) (APP-132). The applicant had had discussions with SAR agencies and the adoption of mitigation measures in the ES would reduce the overall impact on SAR activities to the lowest level possible. These include:
- (i) marking the OWFs on aeronautical charts;
  - (ii) plotting individual turbines for use in GPS/radar datasets;
  - (iii) lighting the turbines in accordance with Requirements 8 and 9 of the application, and recommended DCO, if made;
  - (iv) marking turbines and blades in accordance with requirements to make them conspicuous; and
  - (v) ensuring the turbines have a radar 'signature' to satisfy stakeholders who might need to traverse the site in poor visibility.
- 10.28 An Aids to Navigation Plan, required by condition 18(1) of DMLs 1 and 2 and condition 17(1) of DMLs 3 and 4 would ensure the mitigation and would be agreed by MMO following consultation with THLS and MCA. With the revised procedures taking account of the changes caused by the OWF, SAR operations could take place safely.
- 10.29 In respect of MoD's Flamborough Head practice and exercise areas (PEXA), Table 12.1 of ES Chapter 19 (APP-132) sets out the proposed mitigation. This would also be ensured by the Aids to Navigation Plan and no residual impacts are anticipated in the ES. A SoCG between the applicant and the MoD (REP-105) notes that there are no unresolved issues.

## **Transboundary matters**

- 10.30 The assessment in the ES identified only negligible impacts on MoD practice and exercise areas and aeronautical SAR operations (APP-165). Consequently the ES anticipated no transboundary impacts on military activities or civil aviation.
- 10.31 There are no unresolved matters with any commercial shipping interest including, The Royal Association of Netherlands Shipowners (KVNOR) (REP-104) and the European Community Shipowners Association (REP-096). Shipping interests are being proactively managed through the South North Sea Offshore Wind Forum (SNSOWF) and any impact would be minor adverse.
- 10.32 There are no outstanding unresolved issues between the applicant and operators of international subsea cables and pipelines in respect of crossings and proximity agreements and buffer zones during construction including: Tata Communications (REP-090); The Parkmead Group and Bridge Energy (REP-082); and, NG Carbon (REP-531).

- 10.33 The unchallenged conclusion in the ES is that there would be no transboundary impacts on the aggregates industry or oil and gas activity. There are no transboundary wind farm developments or carbon capture and storage sites in the vicinity of Dogger Bank and therefore there would be no transboundary impacts in respect of those activities.
- 10.34 There is no evidence that would lead the ExA to reach a different view on transboundary impacts to those set out in the ES in respect of radar, navigation, military activity, civil aviation, and search and rescue operations.

### **Conclusions**

- 10.35 Given the mitigation that would be ensured by DCO requirements and DML conditions, and the lack of unresolved issues between the applicant and stakeholders, the ExA considers that there are no radar, navigation or search and rescue considerations that would weigh against the proposed development, or the making of the DCO. Similarly there is no evidence that there would be any significant transboundary impacts on EEA States in terms of military activities, civil aviation, shipping or other marine users, such as the aggregates industry and cable or pipeline operators, that would justify not making the DCO.

## **11 SOCIO-ECONOMIC IMPACTS**

### **Introduction**

- 11.1 EN-1 advises the decision maker to have regard to the potential socio-economic impacts of the proposed development, and to consider any relevant positive provisions the developer has made, or is proposing to make, to mitigate impacts; any legacy benefits; and any options for phasing of the development in relation to impacts. The decision maker should also consider whether measures are necessary to mitigate any adverse impacts of the development.
- 11.2 In undertaking its assessment of the socio-economic effects, the applicant set out two construction scenarios: single project build, in which case the two projects would be built sequentially, and two projects build, in which instance the projects would be built simultaneously. In this way the applicant explained, maximum duration effects and maximum peak effects would be captured and therefore, the worst case scenarios identified (APP-136).
- 11.3 The applicant concluded that in all scenarios (both construction and operation), the project would have 'potential beneficial impacts' on direct and indirect employment generation. This was backed up by forecasts of employment in the different construction scenarios. Table 5.3 of Chapter 22 of the applicant's ES forecasts a worst case scenario for the assessment of socio economic impacts. In this assessment, in the low scenario, with one project the applicant forecast a construction workforce of 1,680 workers. In the operational phase, this drops to 396 jobs. If the two projects were built at the same time, the applicant assesses the workforce for construction to be the equivalent to 3,360 workers (APP-136).
- 11.4 The applicant confirmed, in response to the Panel's first round questions, that the existing level of services and accommodation within the Yorkshire and Humber region would be 'sufficient' and that no additional temporary accommodation would be required for workers during the construction phase (REP-174).
- 11.5 On several occasions the applicant made clear that the ports of construction and operation were not yet known and as such, it was not possible to make a meaningful assessment of socio economic effects at named ports (APP-136). The Panel understands that the choice of port depends on a number of factors to be determined following consent, if the SoS is so minded. Therefore, the ExA agrees with the applicant's conclusion that it is not possible to make a meaningful assessment of socio economic impacts at named ports.
- 11.6 The applicant also provided an assessment of the socio economic effects cumulatively, taking into account other plans, projects and

activities. In this scenario also, the applicant assessed that there would be 'potential beneficial cumulative effects for the regional economy in addition to the direct and indirect employment' (APP-136).

- 11.7 The need to maximise opportunities to the UK and local area was a matter touched upon in Scarborough Borough Council's relevant representation (REP-049). The Panel sought more details in respect of a programme to facilitate the development of the supply chain in Yorkshire and Humberside and the Champions of Wind programme, including whether there was an intention to secure either or both of the two initiatives through the DCO or some other mechanism (PD-008). The applicant summarised its involvement in the initiatives, but confirmed that it was not its intention to secure implementation via the DCO or alternative mechanism (REP-174). As such the Panel affords little weight to these initiatives in its deliberations.
- 11.8 The Panel received a number of relevant representations from IPs supportive of the application and the benefits it would bring to the strengthening of this part of the renewable energy sector and the move to decarbonise energy production.<sup>10</sup>
- 11.9 In so far as the effects on tourism and recreation are concerned, the applicant confirmed that the proposed application did not include any proposals to build on open space that might be used for recreation (APP-137). ES Chapter 23 Table 12.1 summarises the potential impacts arising on tourism and recreation. The residual impact after mitigation is described as minor adverse, negligible or no impact. The one case where that conclusion was not reached by the applicant related to NCN Route 1. Both NCN Route 1 and PRow are discussed in Chapter 12, Traffic and Transportation.
- 11.10 One IP was concerned that the proposal would affect their plans to establish a new business near to the northern end of the cable corridor, where it meets landfall. They argued that they had not been consulted on the proposed application (REP-419).
- 11.11 In responding, the applicant stated that all local residents were invited to public exhibitions in 2012 and 2013 with details of the proposal and that, in addition, the local parish council had been contacted at various times as part of formal statutory consultation, prior to the application being submitted to the Planning Inspectorate. The applicant also explained that the property in question was located 200 metres away from the cable route and approximately 80 metres away from the primary construction compound at Ulrome. As such, the applicant confirmed that in its

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<sup>10</sup> See for example REP-008; REP-010; REP-015; REP-016; REP-049;

view, construction noise impacts at the property would be negligible (REP-528).

- 11.12 At the same time, ERYC confirmed that it did not consider tourism and recreation would be adversely affected by the proposals (REP-074). Very few additional representations were made in respect of socio-economic matters by IPs. ERYCs view was positive, commenting that the proposed application, when considered with others, would have the potential for 'huge cumulative benefits' to the region's economy (REP-074).

### **Transboundary effects**

- 11.13 ES Chapter 32 (APP-165) identifies that the proposed OWF could potentially have an impact on tourism and recreation by disrupting diving, angling or wildlife tours from other EEA States. However, no such tourism activities, originating in other EEA States, are known to occur in the vicinity of the Dogger Bank zone, which is a considerable distance from the coast where such activities would usually take place. In these circumstances, there is no reason to consider that there would be any transboundary impacts on tourism and recreation.

### **Conclusions**

- 11.14 In conclusion, the Panel notes that the overwhelming majority of representations from IPs were in favour of the proposed application in view of the positive effects on the economy and meeting the need for low carbon energy. The Panel also notes ERYC's view that the proposed application, when considered with others, would have the potential for 'huge cumulative benefits' to the region's economy, albeit ERYC did not attempt to provide any quantity or scale to this assertion.
- 11.15 On the basis of the submissions and responses it has considered, the ExA considers that there are no outstanding significant issues in respect of socio-economic effects, that would justify the DCO not being made.

## **12 TRAFFIC AND TRANSPORTATION**

### **Introduction**

- 12.1 The transport strategy for managing and mitigating the effects of bringing materials and workers to the project during construction is set out in Chapter 28 of the ES (APP-149). Appendices E; F and G of the chapter set out details in relation to projected materials, anticipated HGV and LGV movements and their distribution across the project area (APP-154; APP-155; APP-156). In summary, the main measures are:
- i) to minimise impact upon local communities and the local highway network by encouraging HGVs to use ERYCs prioritised HGV Route Network, thereby avoiding unsuitable routes;
  - ii) to reduce the overall numbers of trips on the highway network by provision of remote, temporary haul roads alongside the cable corridor;
  - iii) to reduce the impact of traffic on local communities and decrease the volume of materials needed to upgrade private access tracks, by locating access points to the project close to main A and B roads; and
  - iv) to minimise disruption to access, through the use of HDD techniques where these would be appropriate. ES Chapter 5, Appendix D provides a plan and summary of all road and track crossings and the proposed crossing technique to be deployed (APP-072).
- 12.2 Other measures to reduce the potential for disturbance to local communities or other sensitive receptors during construction include:
- i) locating the main construction compounds away from sensitive receptors; and
  - ii) avoiding the use of routes that would be either unsuitable or would cause disturbance to sensitive locations.
- 12.3 The ES includes an assessment of the roads expected to be used during the construction of the proposed project, to identify those that would be sensitive to changes in traffic flows. The findings indicate that after mitigation, residual impact of effects such as safety, severance, pedestrian amenity and driver delay during construction, would be either minor adverse or negligible (APP-149).
- 12.4 Turning specifically to the site of the proposed converter stations, the applicant would locate the construction compounds for each converter station away from sensitive receptors and would also provide access via the A1079, thus avoiding the village of Cottingham.

- 12.5 The onshore mitigation measures in relation to construction traffic are summarised in a table prepared by the applicant in response to first round questions, and then resubmitted for Deadline VIII (REP-447).

### **Adequacy of the transport proposals**

- 12.6 The Panel noted ERYCs confirmation that it had been engaged in detailed negotiation with the applicant over a long period of time. Whilst accepting that there would be some disruption to the highway network during construction, ERYC was 'satisfied' with the proposals (REP-074). Furthermore, it confirmed that the principles of the works accesses to the cable route, construction compounds and converter station were acceptable (REP-074).
- 12.7 The Highways Agency stated it had no objection in principle to the application and was content that the safe operation of the project would be adequately covered by the inclusion of a requirement for a Construction Management Plan. As such, it had no further comment to make (REP-079; REP-106).
- 12.8 The Panel did not receive any representations from other IPs in relation to the overall transport strategy. However, IPs did make representations about specific elements of the transport proposals and these are considered at appropriate points during this Chapter.

### **Construction Traffic Management Plan**

- 12.9 A Construction Traffic Management Plan (CTMP) would operate to further mitigate the effects of traffic and ensure it was properly managed during the construction period.
- 12.10 The CTMP would be secured in the recommended DCO, if made, by Requirement 27 - Construction Traffic Routing and Management Plan. Requirement 27 ensures that the CTMP would be approved by the relevant local planning authority following consultation with the local highway authority for the area.
- 12.11 In response to the Panel's questioning at the third ISH on the DCO, this requirement now includes at 27(1) reference to port related traffic and the need to consult with the local highway authority within which the port is located; at 27(4), the need for a travel plan which must be in accordance with the details submitted in the CoCP; and at 27(5) that the plans approved must be implemented upon commencement of the relevant stage of construction works.

### **Public Rights of Way and National Cycle Network Route 1**

- 12.12 In so far as Public Rights of Way (PRoW) are concerned, Willerby and Beswick PCs as well as ERYC were concerned about the impact of the proposals on PRoW and the need to maintain access or

provide clear, sign posted alternative routes (REP-472; REP-505; REP-074). Sustrans also wished to see suitable provision made for cyclists during construction and operation and continued access in relation to National Cycle Network Route 1 NCNR-1 (REP-044). ERYC requested its involvement in determining alternative routes where closures were proposed (REP-074).

- 12.13 In response, the applicant confirmed that the outline CoCP refers specifically to a PRow officer agreeing to the need for any diversion, temporary closure or crossing control of a PRow (REP-517). This would also be secured by Requirement 22 of the recommended DCO, if made. This requires that the CoCP would include plans for public and private access across the Order limits providing details of temporary re-routing of PRow and the provision of signage and other information alerting the public to the construction works (REP-480).
- 12.14 The Panel also notes that the SoCG signed with ERYC confirms that the list of footpaths within the draft DCO is an accurate list of PRow potentially affected, and that ERYC also agreed that the measures outlined in Chapter 23 of the ES, represent an "appropriate suite of measures to minimise potential impacts to as low as practicable".
- 12.15 In addition the Panel notes that the draft DCO (REP-480) only includes powers to temporarily close footpaths listed in Schedule 3 and shown on the Streets and Public Rights of Way Plan. There are no proposals for the permanent closure of PRow.
- 12.16 In so far as NCN Route 1 is concerned, the applicant confirmed that construction traffic for the converter station would not cross over the route. Furthermore, in order to avoid any conflict between users of NCNR-1 and HGVs, particularly at the point where NCNR-1 crosses the A1079 via the over-bridge, a traffic management system would operate to control HGV traffic when others were using it (APP-149). During operation, access between the proposed converter stations would be along the Park Lane track, past Model Farm. This access route would be upgraded and passing places provided (APP-137). Sustrans acknowledged receipt of the applicant's response, stating that they did not wish to add anything further, other than a request to be consulted well in advance of any temporary closure or diversion (REP-124).

### **Other representations**

- 12.17 Several parish councils raised concerns in relation to the effect of construction traffic on, for example, the A164 and roads between Beverley and Leven and Brandesburton to Beeford (REP-472; REP-471). The applicant confirmed that traffic would have a negligible impact on these routes and the Panel agrees with this conclusion (REP-517).



- 12.18 The need to maintain road access at all times was a matter raised by the EA and Seaton PC (REP-279; REP-471). The applicant confirmed that access would be maintained during cable installation, which could include placing a metal plate or similar across the road for vehicles requiring access (REP-366; REP-517).
- 12.19 Lissett and Ulrome PC disagreed with the applicant's assessment of the effects of the proposals on traffic using the B1242 (Allison Lane). They argued that this was a busy route and often blocked by tractors and horses. The applicant stated that the B1242 was assessed as a rural road in the ES, used to access small settlements, and identified as a medium sensitive road link. Whilst there would be an increase of traffic, assessed as an increase of 24% in the worst case scenario during construction, the applicant concluded that the road would have sufficient spare capacity to accommodate this extra traffic (REP-528).
- 12.20 The applicant also drew attention to the range of mitigation measures outlined in the ES such as the introduction of a 30mph speed limit along the B1242 and the use of wheel washers and road sweepers, to minimise material being taken out of the construction works. These measures, combined with the measures outlined in the ES (APP-149) and the CTMP discussed earlier in this Chapter, would lead to a minor adverse impact on traffic in Lissett and Ulrome parish (REP-517).

### **Effects during operation**

- 12.21 The applicant concludes that during operation, traffic and transportation effects would be negligible due to the very low numbers of vehicles that would be required for maintenance and associated activities (APP-149).

### **Cumulative effects**

- 12.22 As discussed in Chapter 2, the principal project with the potential to result in cumulative effects onshore, would be the National Grid Carbon Capture and Storage Project. At the close of examination, this was at pre-application stage. The applicant states in its ES that 'there is no overlap of study areas and there is not considered to be any cumulative impact upon tourism and recreation receptors.' (APP-137). The Panel probed this further during its first round questions, whereupon the applicant confirmed its position as stated in the ES (REP-174).
- 12.23 The Carbon Capture and Storage Project landfall site is proposed some 2kms north of the Dogger Bank Creyke Beck landfall site. Furthermore, the proposed route of the Carbon Capture and Storage Project is proposed at some distance north of the Dogger Bank Creyke Beck onshore cable route. As such, the ExA considers that there would be no cumulative effects arising from the proposed Carbon Capture and Storage Project.

## **Conclusions**

- 12.24 The ExA concludes that during construction, Dogger Bank Creyke Beck would have effects on traffic, transport and the PRoW network. However, the applicant has proposed a range of measures to mitigate these impacts during this phase of the proposed development. It is the ExA's view that the mitigation measures would be sufficient to reduce the impact on transport infrastructure to acceptable levels.
- 12.25 During operation, the ExA has no reason to disagree with the applicants findings that the effects would be negligible. The ExA also concludes that there would be no cumulative effects arising from other projects onshore. It is therefore the view of the ExA, that traffic and transportation effects do not preclude the making of the DCO as recommended.

## 13 CASE FOR AND AGAINST DEVELOPMENT

### Introduction

- 13.1 The Panel has taken into account all representations received. The Panel has also considered all other important and relevant matters and has also taken these into account.
- 13.2 In relation to the granting of development consent, and as set out in the preceding chapters, the ExA has reached a number of conclusions. These are set out below:
- (i) that having regard to the tests in the Infrastructure Planning (Decisions) Regulations 2010, any harm to heritage assets would be less than substantial and sufficient safeguards to minimise impacts on both the onshore and offshore historic and archaeological environments would be secured through the Order, if made;
  - (ii) that for the reasons set out in Chapter 5, the ExA concludes that if fishing is not considered as if it were a plan or project then the SoS could conclude that with adaptive management and decommissioning, there would be no Adverse Effect on Integrity (AEOI) in respect of the Dogger Bank SCI;
  - (iii) that if the SoS proposes to treat fishing as if it were a plan or project then, having regard to the advice of NE, it would not be unreasonable to conclude that under proposed fisheries management the overwhelming contribution of fishing activities to the unfavourable condition of the Dogger Bank SCI would be reduced. The smaller scale impacts of the proposed development would be managed through the risk based adaptive management approach and decommissioning such that there would be no AEOI on the Dogger Bank SCI as a result of the projects;
  - (iv) that for the reasons set out in Chapter 5, an avoidance rate of 99% for northern gannet can be justified as acceptable, and that with such an assumption there would be no AEOI on the Flamborough and Filey Coast pSPA due to the project alone, or in combination with other plans or projects;
  - (v) that there would be no AEOI due to the project, either alone or in combination with other plans or projects, in respect of the Flamborough Head and Bempton Cliffs SPA or the Farne Islands SPA. Whilst noting the precaution of RSPB, which is not a statutory consultee, there is no evidence that there would be any AEOI of the Forth Islands SPA. There would be no LSE on any migratory waterbird features assessed at all SPAs;
  - (vi) that for the reasons set out in Chapter 5: appropriate measures would mitigate impacts on marine mammals; a restrictive condition relating to herring spawning should not be attached to the DMLs in the DCO as it would be disproportionate given the small scale of impact; there would be no significant impact on fish and shellfish; and that with

- mitigation secured through the DMLs there would be no significant impact on marine and intertidal ecology;
- (vii) that with the mitigation measures secured through the recommended DCO there would be no significant residual impacts on terrestrial ecology;
  - (viii) that in respect of EIA, there would be no predicted impacts on species or sites that would prevent the SoS from making the Order;
  - (ix) that for the reasons given in Chapter 6 there are no outstanding significant issues relating to commercial fisheries;
  - (x) that for the reasons set out in Chapter 7 there would be no significant impact on landscape/seascape that would preclude making the Order;
  - (xi) that for the reasons set out in Chapter 8 there would be little impact on coastal processes; coastal erosion would not affect the proposal during its lifetime; there are no outstanding concerns relating to waste, debris, cable protection and suspended sediment deposition; there would be no AEOI to the Humber Estuary SAC and no significant impacts on the Holderness Inshore rMCZ;
  - (xii) that for the reasons given in Chapter 9 there are no outstanding significant issues relating to construction and operational effects that would justify not recommending the DCO to be made;
  - (xiii) that for the reasons set out in Chapter 10 there are no radar, navigation or search and rescue considerations that would weigh against making the DCO;
  - (xiv) that for the reasons set out in Chapter 11 there are no socio-economic reasons why the Order should not be made;
  - (xv) that the Dogger Bank Creyke Beck A and B projects would have effects on traffic, transport and the PRow network but the mitigation measures, secured through the DCO would be sufficient to reduce the impact on transport infrastructure to acceptable levels. During operation the effects would be negligible;
  - (xvi) that it is accepted that EPS licenses would be necessary for all cetacean species. However, the MMO confirmed that, on the basis of evidence presented so far, it would be reasonable to assume that licenses could be issued and NE confirmed it had no outstanding concerns about EPS licenses.

## **Conclusions**

- 13.3 The ExA concludes that, for the reasons set out in the preceding chapters and summarised above, development consent should be granted, subject to the incorporation of the changes it has made to the DCO as discussed in Chapter 15 below.

## **14 COMPULSORY ACQUISITION**

### **Introduction**

- 14.1 The Panel's approach to the question whether and what CA powers it should recommend to the SoS to grant has been to seek to apply the relevant sections of PA2008, notably s122 and s123, the Guidance<sup>11</sup>, and the Human Rights Act 1998; and in the light of the representations received, and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.
- 14.2 The Panel understands, however, that the application DCO (APP-023) deals with both the development itself and CA powers. The case for CA powers cannot properly be considered unless and until the Panel has formed a view on the case for the development overall, and the consideration of the CA issues must be consistent with that view.
- 14.3 The Panel has shown that it has reached the view that development consent should be granted as set out in Chapter 13. The question therefore that the Panel addresses here is the extent to which, in the light of the factors set out above, the case is made for CA powers necessary to enable the development to proceed.

### **The Request for Compulsory Acquisition Powers**

- 14.4 The application DCO (APP-023) seeks compulsory acquisition powers for a combination of freehold land, and the creation or extinguishment of rights over land; both on a permanent and temporary basis outlined in the Statement of Reasons (APP-026) submitted with the application. It includes rights for both Dogger Bank Creyke Beck A and Dogger Bank Creyke Beck B generation projects to install cables onshore at the landfall site north of Ulrome, cable corridors, for both HVDC and HVAC cables; access for future maintenance, the construction of two converter stations and the connections to the national grid at Creyke Beck sub-station.
- 14.5 Rights in respect of temporary possession during construction and in respect of maintenance for 22 plots are also sought outwith Compulsory Acquisition (CA) procedures and are dealt with later in this Chapter.
- 14.6 The application was accompanied by a Statement of Reasons (APP-026), a Funding Statement (APP-025), a Book of Reference (APP-027) and Land Plans comprising a key plan (APP-009) and 23 detailed sheets at scale 1:2500 (APP-010). The Book of Reference

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<sup>11</sup> Planning Act 2008, Guidance related to procedures for compulsory acquisition (CLG, 2013)

and Land Plans have been revised during the course of the examination.<sup>12</sup>

- 14.7 The final revised Book of Reference (REP-534) identifies 197 plots of land, a number of which were subdivided during the examination to achieve clarity in respect of either their status or the rights being sought. These amendments are recorded in revisions to the Land Plans referred to in paragraph 14.6 above and included for certification in Article 42(1)(d) of the ExA's recommended DCO. The Land Plans record in pink those parcels where permanent control of the land or permanent rights are sought and in blue the 22 plots where temporary possession (not CA) is sought on land required for temporary construction compounds.
- 14.8 The Order Land comprises an area of approximately 161.54 hectares (399 acres) and represents the land, rights and interests required for the onshore infrastructure associated with the Dogger Bank Creyke Beck projects and comprising Works No 3A and 3B to 10A-F inclusive, as set out in Appendix 1 to the Statement of Reasons (APP-026) and Part 1 of Schedule 1 of the draft submitted Order (APP-023). The applicant proposed the removal of Works No 9C from the application DCO (APP-023), following discussions with National Grid (REP-482). In its procedural decision (PD-037) the Panel agreed and in the light of this, has considered the proposed application as amended. The amendment resulted in the deletion of three plots (157D, 163 and 171) and the creation of a number of revised plot numbers (157A, 158, 162, 165(i)(ii)(iii), 170 and 172).
- 14.9 During the course of the examination the Panel raised a series of questions, issues and requests for further submissions in respect of (a) the applicant's proposals in the application DCO (APP-023) for disapplying and modifying existing legislation and statutory powers and (b) proposed amendments to Articles and Requirements in the application DCO (APP-023) relating to the exercise of the compulsory acquisition of land and rights and temporary possession. These aspects of the examination are considered in Chapter 15 of this report.

### **The purposes for which the land is required**

- 14.10 The Statement of Reasons indicates that CA powers are required:
- i) to acquire the freehold;

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<sup>12</sup> Book of reference revisions include REP-323 and REP-324, REP-344 and REP-345, REP-430 and REP-431, REP-460, REP-521 and REP-534. Land Plan revisions include: REP-346, REP-374, REP-375, REP-376, REP-377, REP-435, REP-436, REP-437, REP-438, REP-439, REP-440, REP-489

- ii) to acquire new rights; and
- iii) to remove existing easements servitudes and other private rights in relation to all plots.

- 14.11 The applicant seeks power through Article 21 of the ExA's recommended DCO to acquire so much of the Order lands as is required for Project A for Bizco 1 and Project B for Bizco 4; and through Article 24 of the ExA's recommended DCO to acquire rights where permanent control of rights (both existing and created) is required. Paragraph 7.1.13 of the Statement of Reasons lists those permanent rights being generally sought and Schedule 5 lists those Order lands where CA is confined to the acquisition of such new rights as are required for the purpose specified.
- 14.12 For those plots where only rights are to be acquired, as set out in Schedule 5 of the recommended DCO, the Book of Reference (REP-534) identifies a 'class' of rights as the rights applicable to an individual plot required to be exercised in order to construct and operate the two projects. Eleven classes of permanent rights and one (Class 9) of temporary rights, required in relation to the temporary work areas and acquired under Article 29 of the ExA's recommended DCO, are defined.
- 14.13 Freehold rights are not sought in respect of areas owned or used by statutory undertakers, Network Rail and National Grid, or land forming part of a highway or watercourse or in the case of common land or open space.

### **Other matters**

- 14.14 The ExA's recommended DCO, Article 26, seeks to incorporate the provisions of the Compulsory Purchase (General Vesting Declarations) Act 1981 with some possible modifications.

### **The requirements of the Planning Act 2008**

- 14.15 Compulsory acquisition powers can only be granted if the conditions set out in sections 122 and 123 of the PA2008 are met.
- 14.16 Section 122 (2) requires that the land must be required for the development to which the development consent relates or is required to facilitate or is incidental to the development. In respect of land required for the development, the land to be taken must be no more than is reasonably required and be proportionate.<sup>13</sup>
- 14.17 Section 122(3) requires that there must be a compelling case in the public interest which means that the public benefit derived from the compulsory acquisition must outweigh the private loss that would be suffered by those whose land is affected. In

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<sup>13</sup> Guidance related to procedures for compulsory acquisition DCLG February 2010

balancing public interest against private loss, compulsory acquisition must be justified in its own right. But this does not mean that the compulsory acquisition proposal can be considered in isolation from the wider consideration of the merits of the project. There must be a need for the project to be carried out and there must be consistency and coherency in the decision-making process.

- 14.18 s123 requires that the SoS must be satisfied that one of the conditions in subsections (2) to (4) is met before granting a development consent order including provisions authorising the compulsory acquisition of land: The conditions are:
- (i) that the application for the order includes a request for compulsory acquisition of land to be authorised (subsection (2));
  - (ii) that all persons with an interest in the land consent to the inclusion of the provision (subsection (3)); and
  - (iii) that the prescribed procedure has been followed in relation to the land (subsection (4)).
- 14.19 The ExA is satisfied that the condition in s123 (2) is met because the application for the DCO included a request for compulsory acquisition of the land to be authorised.
- 14.20 A number of general considerations also have to be addressed either as a result of following applicable guidance or in accordance with legal duties on decision-makers:
- (i) all reasonable alternatives to compulsory acquisition must be explored;
  - (ii) the applicant must have a clear idea of how it intends to use the land and to demonstrate funds are available; and
  - (iii) the decision-maker must be satisfied that the purposes stated for the acquisition are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

### **How the Panel examined the case for Compulsory Acquisition**

- 14.21 The Panel raised questions in relation to the request for compulsory acquisition powers in its first questions (PD-008) published alongside its Rule 8 letter on 25 February 2014. The questions covered a range of issues including progress in respect of negotiations with statutory undertakers, clarification of rights sought and the information provided in the Book of Reference, issues around Crown Land and special category land, the Funding Statement and clarification of the other consents being sought. Further questions explored the application DCO (APP-023) particularly in relation to consent to transfer the benefit of the



Order, disapplication and modification of legislative provisions and the identification of statutory undertakers' land in the Book of Reference.

- 14.22 The applicant's response is set out in its Response to the Panel's First Written Questions (REP-174) and various appendices including an update on negotiations with landowners (REP-191)
- 14.23 These issues were further pursued in the Panel's Second Written Questions (PD-018). The applicant provided detailed responses (REP-281), including a report on progress in respect of protective provisions (REP-302), the unilateral undertakings (REP-315) and an updated Book of Reference (REP-323).
- 14.24 At Deadline V the applicant submitted amended Land Plan Sheet nos. 3 and 4 in respect of Plot nos. 25A, 25B, 26A, 26B, 25AA and 25BB to reflect new ownerships (REP-346) and a revised Book of Reference (REP-344). Following the second ISH in respect of the DCO/DMLs, the applicant submitted Appendix 18 at Deadline 5, which provided Clarification on the CA Rights sought (REP-365) and at Appendix 24 an update on discussions with the Crown Estate (REP-379) in respect of s135 of PA2008.
- 14.25 On 2 July 2014 the Panel held an accompanied site visit to seven locations where landowners and other IPs had made representations (HR-025 and HR-042).
- 14.26 A hearing in respect of compulsory acquisition was held on 3 and 4 July 2014 (HR-025), which was attended by four landowners and a landowner's agent, all of whom had been present on the site visit some of the time. The Panel pursued a number of matters, including, but not restricted to:
- (i) the current situation in relation to negotiations with landowners;
  - (ii) an outline of the applicant's case in relation to the submitted Land and Works plans along the length of the cable corridor and converter station site from the proposed landfall to the national grid connection at Creyke Beck;
  - (iii) representations made by affected parties including the key issues that the Panel discerned from the previous day's site visit:
  - (iv) alternative sites and routing;
  - (v) Crown and special land;
  - (vi) statutory undertaker land and apparatus;
  - (vii) the status of documentation accompanying the application for the grant of CA powers; and
  - (viii) mechanisms for ensuring CA is adequately and securely funded.
- 14.27 In advance of the hearing, submissions were received from: John Beaumont and Jill Lazenby (HR-043), Peter Mawer (Cranswicks)

on behalf of James Anthony Dean and Sharon Julie Dean (HR-044 and HR-045) and Paul Butler (Ulllyotts) on behalf of a number of land owners (HR-046).

14.28 Submissions were made at Deadline VII from John Beaumont and Jill Lazenby (REP-418), Mr and Mrs Riddle (REP-419), Ulrome and Lissett Parish Council (REP-420) and Leonards on behalf of a number of clients (REP-421, REP-422 and REP-464).

14.29 During the course of the examination a number of amendments were made to the Land Plans, Book of Reference, Works Plans and Order Limit Plans. Apart from responding to new information and correcting errors, the principal reasons were:

- (i) the request, included in the recommended DCO, to remove Works No 9C from the draft DCO, which required amendments to the Works Plan, Land Plan and Order Limits Plan (REP-370, REP-371, REP-372, REP-373, REP-437, REP-438, REP-439, REP-378). The applicant's response to the Panel's Rule 17 request for further information and written comments (PD-031) was provided at Deadline VIII (REP-482) and the Panel's procedural decision was issued on 13 August 2014 (PD-037).
- (ii) the Panel's request at the CA hearing for the removal of plots separated into various parts where it was unclear to which 'part' the new rights being sought applied. Amendments were required to plots 1A, 1B, 4A, 4B, 137 and 165 (REP-435) and are shown on amended Land Plans at Sheet 1 (REP-436), Sheet 21 (REP-437), Sheet 22 (REP-438) and Sheet 23 (REP-439).
- (iii) a series of revisions to the Book of Reference were submitted during the course of the examination to reflect new information and revisions to plot boundaries, and also to provide greater clarity in respect of the new rights being sought and the plots to which they applied as follows: Deadline IV May 2014 (REP-323), Deadline V June 2014 (REP-344), Deadline VII July 2014 (REP-430), Deadline IX August 2014 (REP-521), Deadline X August 2014 (REP-534).

### ***The applicant's case***

14.30 The applicant argues that the timing of the commencement of both projects and the exercise of any CA powers are governed by the challenge of assembling the resources to deliver two major projects on the one hand, and the need to meet grid connection obligations with National Grid, the earliest of which is in April 2017, on the other. Article 23 of the ExA's recommended DCO grants authority for the applicant or its successors to exercise powers of compulsory acquisition within a period of seven years from the making of the DCO. Beyond this time limit no Notice to Treat can be served or vesting declaration executed.

- 14.31 Central to the applicant's position is the need for a flexible approach to the construction of the two projects by the two undertakers (Bizcos) that would be established to deliver them, and provision to enable them to go ahead at different times. Accordingly, the CA provisions allow the respective undertakers only to acquire so much land as is needed for the relevant onshore works and not for both sets of works (Statement of Reasons paragraph 7.1.15 APP-026); an approach the applicant states, would minimise land take and disruption to affected landowners. To facilitate this it would be necessary to allow one undertaker to acquire rights over land which would form part of the adjacent set of works in a number of locations secured through Article 9 - Power to make agreements, in the ExA's recommended DCO.
- 14.32 The applicant's case for the grant of CA powers is set out in the Statement of Reasons (APP-026) particularly Section 7, together with the Funding Statement (APP-025) and revised Book of Reference (REP-534). The documents which accompanied the application include a substantial amount of information regarding baseline conditions, site selection, the proposed development, environmental impact and other relevant matters. The Statement of Reasons should, therefore, be read alongside the application documents (and any subsequent amendments) set out in paragraph 2.2.6 of the Statement of Reasons. Additional information in relation to Crown land, open space, local authority and statutory undertakers' land was submitted in response to the Panel's questions and in further representations submitted by the applicant.
- 14.33 Section 5 of the Statement of Reasons (APP-026) sets out a general justification of the Order Lands and a detailed description of the onshore route with reference to the Land Plans. At the CA hearing, the applicant gave a detailed outline of the onshore route and proposed works on a plot by plot basis (REP-483 and HR-029, HR-030, HR-031, HR-032, HR-033, HR-034). The cable landfall is on the beach north of Ulrome, where HDD would be used to install the HVDC export cable under the beach and adjoining cliffs to Works No 5A and 5B where the jointing transition bays are located. The Order Lands between the beach and the jointing transition bays are drawn more extensively than the cable corridor to provide both adequate separation between cables and the flexibility to use HDD to link with the temporary coffer dams to be located between mean high and low water. The applicant provided an indicative Beach Works Plan (REP-461).
- 14.34 The extent of the works is shown on the Onshore Works Plans 1-23 submitted with the application (APP-012) and amended during the examination. Sheet nos. 22 and 23 (REP-371, REP-372) were amended at Deadline V as a consequence of the applicant's request to withdraw Works No.9C from the application.

- 14.35 The onshore cable corridor (Works Nos. 6A and 6B) proceeds in a generally southerly direction for approximately 30kms through primarily arable farmland to the converter station site Works No. 7. The maximum total width for the two cable systems is 36m, except for areas of major HDD where a width of 53m or, in one area at Figham Common, 70m is required. The width required would accommodate space for cable trenches, temporary haul roads, drainage and temporary topsoil and subsoil storage. The applicant provides a cross-section of the cable corridor in its Project Description submitted with the Environmental Statement (APP-068). There are two HVDC cables plus a fibre-optic communication cable per project to be laid either directly in a trench 1.2m deep or in ducts where greater protection or flexibility is required. Following construction all above ground structures are to be removed, sub and topsoil replaced and the land returned to its previous use.
- 14.36 The proposed cable corridor includes a number of plots identified in the Book of Reference (REP-534) as special category and Crown land, notably at the landfall site where the beach and foreshore comprises open space as shown on amended Special Category Land Plan Sheet 1 (REP-440) and common land at Figham Common shown on Special Category Land Plan Sheet 1 (APP-022). Crown Land is located on the beach and foreshore and in the bed of the River Hull (APP-021). Although the cable corridor passes through a largely agricultural area, at Woodmansey, it is located relatively close to a number of houses and is intended to cross the A1174 and a private garden area by HDD as shown on the amended Land Plan Sheet 19 (REP-489). HDD is proposed for a number of locations where water courses, the Hull-Scarborough rail line and important highways are crossed and, most notably at Figham Common and the adjoining River Hull.
- 14.37 The site for the two proposed converter stations comprises approximately 10ha and is located on agricultural land south of Beverley, adjoining the north boundary of the A1079, to the west of the Hull-Scarborough rail line and south of Model Farm.
- 14.38 The HVAC cable corridor crosses the A1079 to the south and proceeds for approximately 1.5kms to the Creyke Beck Sub Station to connect to the national grid. HVAC requires the laying of three cables per project and consequently the area of corridor defined in the Order is 38m in width for both projects to allow for the extra cabling and relocation of sub and topsoil.
- 14.39 Some land parcels are required for above ground infrastructure; notably at Works No 7 - the converter station and associated landscape mitigation, road widening and new access road; however, the majority of work consists of laying cables underground in the cable corridor, where land will be substantially reinstated to its former use after the works have taken place.

- 14.40 In these circumstances, it is the applicant's intention, once the freehold has been acquired and construction completed, that the respective undertakers (Bizcos) would offer to transfer the freehold back to the former landowner in return for the prior grant in the undertaker's favour of various rights and/or restrictions, to ensure that its apparatus is protected and can be maintained throughout the operational life of the project. This approach mirrors the position being sought through private treaty whereby affected landowners enter into an Option Agreement entitling the undertaker to call on the landowner to enter into a Deed of Grant of Easement, which secures within the cable corridor the right to lay, inspect, maintain, repair and renew the cable route and restricts the landowner from certain activities on the surface, which might interfere with the cables installed below.
- 14.41 The applicant contends that the proposed compulsory acquisition of all the interests sought is for a legitimate purpose, namely, to allow implementation of the development to which the application for development consent relates.

***The applicant's case for specific parcels of land***

*Crown land*

- 14.42 The applicant set out in the Statement of Reasons (APP-026) that there are no proposals to compulsorily acquire any Crown interest and provided a plan (APP-021) indicating the land in the control of the Crown above mean low water, including subsidiary interests, and the bed of the River Hull.
- 14.43 The onshore elements of the project require land owned or controlled by the Crown at the River Hull crossing, Plot nos.98A and 98B (Works No. 6A and 6B) and at the beach north of Ulrome, Plot Nos. 1Ai, 1Bi and 4Bi (Works No. 3A and 3B). There are agreements in place between the Crown Estate and the applicant in respect of both the cable crossing, the foreshore north of Ulrome and HDD under the bed of the River Hull at Figham Common (REP-125).
- 14.44 In its response to the Panel's second round questions, the Crown Estate confirmed that for the purpose of s135(1)(a) PA2008 the interests which are sought to be compulsorily acquired are held otherwise than on behalf of the Crown (REP-278). Further, the Crown Estate consents for the purpose of s135(2) to the inclusion of Article 41 in the recommended DCO (REP-278), which protects the rights of the Crown.
- 14.45 The applicant's submission at Deadline V (REP-379) refers to an Agreement for Lease, issued by the Crown Estate to the applicant, covering an area seaward from Mean High Water within which the offshore cable route lies, which secures the rights to the foreshore crossing. The submission explains that there are plots of land

registered to parties other than the Crown Estate, which extend from above existing Mean High Water into the foreshore (Works No. 3A and 3B) – plots 1A and 1B are registered to Amazon Investments and plots 4A and 4B are registered to Wilfred Michael Houghton and Jean Catherine Frank. The applicant's final submitted revised Book of Reference (REP-534) identifies in Part 4 five plots (1Ai, 1Bi, 4Bi, 98A and 98B) in which there is a Crown interest.

- 14.46 The Crown Estate state that '(it) will not consent to Compulsory Acquisition of such Crown land at this stage' (REP-278). The Crown Estate and the applicant 'agree that there is nothing in the wording of s135 that requires the consent of the Crown Estate to be given in absolute terms' and that Article 41(b) in the ExA's recommended DCO, requiring the further consent of the appropriate Crown authority prior to the compulsory acquisition of any interest in any land which is Crown Land, will ensure that the terms of s135(1)(b) are met (REP-339). A framework is in place for preventing the exercise of CA powers in the absence of Crown consent to the satisfaction of both the applicant and the Crown Estate. There is no evidence of express consent being given to the acquisition of interests on Crown Land held otherwise than by or on behalf of the Crown. It will therefore be necessary for the SoS to decide whether or not express consent under s135(1) in relation to Article 21 authorising compulsory acquisition and s135(2) in relation to provisions applying to Crown Land should be obtained before the DCO can be made. In the event that the SoS requires express consent, in the light of the representations it has received it does not appear to the ExA that there is any reason why express consent under s135 (1) and 135 (2) should not be forthcoming.

*Statutory undertakers' land: s127 and s138 Planning Act 2008*

- 14.47 The applicant's Statement of Reasons (APP-026) makes it clear in paragraph 7.1.12 that it is not seeking to acquire the freehold over areas owned or used by statutory undertakers, Network Rail and National Grid or land forming part of a highway or watercourse. The final version of the Book of Reference (REP-534) indicates which class of new rights are being sought in relation to each plot in which statutory undertakers have an interest.
- 14.48 The applicant identified nine statutory undertakers for the purpose of s127 PA2008 (REP-516), of which five submitted representations containing objections and four made no representation. In addition representations were received from National Grid Carbon Ltd in respect of the planned Yorkshire and Humber Carbon Capture and Storage offshore pipeline. The statutory undertakers comprise:
- (i) National Grid Electricity Networks (NGET);
  - (ii) National Grid Gas (NGG);

- (iii) Northern Powergrid (NP);
- (iv) Network Rail (NR);
- (v) Yorkshire Water Services (YWS);
- (vi) British Telecom (BT);
- (vii) KCOM;
- (viii) Northern Gas Networks (NGN) and
- (ix) INEOS.

- 14.49 National Grid Electricity Networks, National Grid Gas and Northern Powergrid all have significant interests in a large number of plots within and in the proximity of Creyke Beck Sub-station where the applicant has an agreement to connect to the national grid and all submitted representations and objections.
- 14.50 The cable corridor is required to cross the Network Rail Hull-Scarborough rail line by HDD at Plots 120 A and B and in a number of locations could potentially interfere with Yorkshire Water, KCOM, INEOS, Northern Gas Networks and BT apparatus.
- 14.51 By the end of the examination, all the representations and formal objections had been withdrawn and appropriate protective provisions and side-agreements were agreed between the applicant and NGET and National Grid Gas (REP-535), Yorkshire Water (REP-536), Northern Powergrid (REP-530), Network Rail Infrastructure Ltd (REP-275) and National Grid Carbon (REP-531).
- 14.52 In the case of BT, INEOS, KCOM and Northern Gas Networks, no representations were received and the applicant provided evidence of advanced discussions in relation to appropriate easements or working agreements to demonstrate that there will be no serious detriment to these undertakers if the Order is approved (REP-516). The Panel was satisfied with this evidence of no serious detriment being caused to statutory undertaker operations by the applicant's CA proposals.
- 14.53 Accordingly the ExA considers that, in the absence of any representations it will not be necessary for the SoS to be satisfied that the test in PA2008 s127(3) in relation to the CA of rights over statutory undertakers' land is met. In relation to PA2008 s138, the power to extinguish rights, remove or reposition apparatus and acquire new rights within the Order limits (and having regard to the agreed protective provisions set out in Parts 1 to 4 of Schedule 8 to the Order), the SoS can be satisfied that this is necessary for the purpose of carrying out the development.

*Special category land*

- 14.54 Compulsory acquisition of Special Category land (or rights in land) is subject to the tests set out in PA2008 s131 and s132 as amended by the Growth and Infrastructure Act 2013. Section 132 (which is relevant in this case), requires that an Order granting development consent be subject to Special Parliamentary

Procedure to the extent that it authorises the compulsory acquisition of a right over common land or public open space by the creation of a new right, unless the SoS is satisfied that one of the subsections of (3) to (5) applies and has recorded that fact in the instrument containing the Order.

14.55 The applicant's Statement of Reasons (APP-026) makes it clear in paragraph 7.1.12 that it is not seeking to acquire the freehold over areas designated as common land or open space as, in its opinion, these designations provide sufficient safeguard for the land and development that only the acquisition of rights is required.

14.56 Part 5 of the final version of the Book of Reference (REP-534) indicates nine plots comprising part of the beach or foreshore at Ulrome in the area of Works No. 3A and 3B and part of 4A and 4B and shown on Onshore Special Category Land Plan Amendment Sheet 01 Rev 4 (REP-440); and a further twelve plots comprising common land at Figham Common, part of Works No. 6A and 6B and shown on Onshore Land Plan Amendment Sheet 19 Rev 8 (REP-489).

*Open space*

14.57 The land identified in the final version of the Book of Reference (REP-534) as Special Category (ii) – Open Space (in respect of beach or foreshore) comprises Plot nos. 1Ai, 1Aii, 1Bi, 1Bii, 2i, 4Ai, 4Bi, 4Bii, 4Biii and for these plots new permanent rights set out in Class 11 of the Book of Reference (rights in respect of laying down and maintaining underground cables) are sought.

14.58 The applicant set out its position in relation to special category land (open space) and s132 of PA2008 in its Statement of Reasons (APP-026) and recognises that while access to the beach is difficult, particularly for vehicles, it is used for walking and other recreational activities (paragraph 9.1.21). Having described the work that will take place on the beach, essentially the making of temporary coffer dams to enable the cable drilled by HDD from the cliff top area to be joined with the undersea cable and accessed entirely from the sea by boat, the applicant concludes in paragraph 9.1.26 that, because the physical appearance of the land will be unaffected, the use of the beach for recreational activities will carry on uninterrupted and public access to the beach will not be permanently affected, 'the open space when burdened with the rights sought by the Order will be no less advantageous to the protected persons' (set out in PA2008 s132 (3)).

14.59 In its first written questions the Panel asked ERYC to comment on the applicant's view that when burdened with the rights being sought the open space will no less advantageous to the protected persons (PD-008) (Q60e) and repeated the question in its second written questions (PD-018) (Q79a). No response was received



from ERYC. The Panel tested the assertion that a public right of way would be maintained on the beach at all times during the period that work would take place in the coffer dams in its first written questions (Q160) and the applicant submitted a Beach Works Outline Method Statement (REP-206), which included an indicative Beach Works Plan and a further submission (REP-459) in respect of Public Beach Access. The Beach Works Outline Method Statement is referenced in the Code of Construction Practice (REP-486) submitted at Deadline VIII and referenced in Article 42 of the recommended DCO as a certified document. There were no other submissions in relation to the special category open space land within the Order.

- 14.60 Having considered the application, ES and the submissions received in relation to its written and verbal questions, it is the ExA's view that in respect of the Special Category Open Space land in the Order, the test of PA2008 s132(3) has been met and that, accordingly, s132(2) in respect of the need for special parliamentary procedure does not apply. Article 34 of the recommended DCO gives effect to the undertakers' rights to enter onto special category land pursuant to Article 24 (compulsory acquisition of rights); lists the designated plots and records the SoS satisfaction that the special category land when burdened with the order rights will be no less advantageous to affected persons than it was before the imposition of the order rights on the special category land, in the event that the SoS concurs with the ExA's recommendation.

### ***Figham Common***

- 14.61 The land identified in the final version of the Book of Reference (REP-534) as Special Category Land (ii) – Common Land forms part of Figham Common and comprises Plot nos. 99Aii, 99Bii, 100A, 100B, 101A, 101B, 102A, 102B, 103A, 103B, 104A and 104B. For these plots new permanent rights set out in Class 4 of the Book of Reference (rights in respect of laying down and maintaining underground cables) are sought.
- 14.62 The applicant's proposal is to HDD under Figham Common, for which a corridor 70m wide and 425m long is required. The Statement of Reasons (APP-026) sets out a description of the Figham Common land, the works that are proposed and the arrangements for the management of the Common by the twelve Pasture Masters elected from the 'Pasture Freeman' in accordance with the Beverley Commons Act 1836 (REP-194) to provide for the Better Regulation of Certain Common Pastures within the Borough of Beverley in the East Riding of the County of York' (the 1836 Act). In paragraph 9.1.17 of the Statement of Reasons, the applicant claims that for the purposes of s132 (3) of the 2008 Act, the common land will look no different during or after the HDD operations have been completed and that the new rights being sought are entirely consistent with the current use of the land and,

as a consequence, claims that the common land when burdened with the rights sought by the Order will be no less advantageous to the protected persons.

- 14.63 The Panel tested this claim through Q60 (d) of its first written questions, a question that was repeated in its second written questions at Q79 (PD-018). No response was received from the Beverley Common Pasture Masters; but the applicant advised during the CA hearings that the Pasture Masters had been consulted on and had contributed to the explanation of their work set out in the Statement of Reasons (REP-483 paragraph 5.2). ERYC commented (REP-330) that it is the Commons Authority in respect of Figham Common and owns the land, which is managed by the Pasture Masters according to the Act of 1836 and (REP-458) clarified that on the basis of the information available to it, the requirements of s132 of PA2008 have been met.
- 14.64 Because of the possibility of geotechnical surveys being carried out on the surface of the Common prior to the HDD operation, the Panel requested a Method Statement for Survey Works at Figham Common (REP-449), which is referenced in the Code of Construction Practice, referred to in Article 42 of the ExA's recommended DCO. Additionally the Panel raised the issue of possible boreholes with ERYC (REP-458) who confirmed that the Council continued to be of the view that, in principle, the terms of s132(3) of PA2008 continued to be met, providing that any adverse impacts of the boreholes are mitigated.
- 14.65 Having considered the application, ES and the submissions received in relation to its written and verbal questions, it is the ExA's view that, in respect of the Special Category Common Land in the Order, the test of PA2008 s132(3) has been met and that, accordingly, s131(3) in respect of the need for special parliamentary procedure does not apply. Article 34 of the ExA's recommended DCO gives effect to the undertakers' rights to enter onto special category land pursuant to Article 24 (compulsory acquisition of rights); lists the designated plots and records the SoS satisfaction that the special category land, when burdened with the order rights, will be no less advantageous to affected persons than it was before the imposition of the order rights on the special category land, in the event that the SoS concurs with the ExA's recommendation.

### ***Human rights***

- 14.66 The applicant sets out its case in respect of human rights considerations in the Statement of Reasons (APP-026) and it was discussed further at the CA hearing (REP-483).

## ***Alternatives to CA***

- 14.67 In the Statement of Reasons (APP- 026), the applicant describes the 'evolution' of Dogger Bank Creyke Beck and the process of consultation with communities and stakeholders that took place prior to the submission of the application. In terms of the onshore infrastructure, the connection to the national grid at Creyke Beck Sub Station represented a fixed point with flexibility around the location of the cable landfall, the route of the HVDC and HVAC cable corridors and the siting of the converter stations.
- 14.68 The Statement of Reasons summarises the process of selecting the location and land take for each onshore element and the process of consultation that took place. Chapter 6 of the Environmental Statement (APP-073) goes into further detail in respect of the process, explaining the various potential alternatives, the criteria against which they were assessed and the consultation procedures that took place, including a community working group to address the micro-siting of the converter station site and the routing of the cable corridors.
- 14.69 The cable corridor route selection process involved a micro-siting exercise that reduced the width of the HVDC corridor from 50m to 36m and a route was selected after consultation that wherever possible followed a straight line, crossed fields rather than buried under highways and kept close to field boundaries. This approach, the applicant claims, minimises disruption and land take. The chosen converter station site was selected following consultation with a community working group (APP-073 and APP-080). It is clear to the Panel that a number of alternatives for the cable landfall, converter station site and both HVDC and HVAC cable corridors were considered and evaluated to attempt to achieve a balance between operational outcomes, reducing disruption to settlements and residential properties in particular, and efficient land take (APP-073; APP-075; APP-077; APP078 and APP-080).
- 14.70 In the Statement of Reasons (APP-026), the applicant states that it is the intention to seek a negotiated solution to the acquisition of land and rights and that initial heads of terms, including financial terms, were first presented to landowners and/or their agents on the route of the cable corridors and converter station site in October 2012 (HVDC route) and January 2013 (HVAC route). Further that, while convinced of the need to obtain CA powers to ensure Dogger Bank Creyke Beck can be delivered according to the planned programme, the applicant remains committed to continuing private treaty negotiations with affected parties.
- 14.71 In its Statement of Reasons (APP-026) the applicant states that in addition to private treaty negotiations with agricultural landowners, negotiations were underway at the time the application was submitted with:

- (i) The Crown Estate - in connection with the River Hull and the beach;
- (ii) Figham Common Pasture Masters and East Riding of Yorkshire Council;
- (iii) Network Rail; and
- (iv) National Grid - in connection with the required land rights at Creyke Beck substation.

14.72 Through the examination, the Panel requested regular updates on the progress of all these negotiations through written questions and verbal updates and subsequent submissions at both DCO and CA hearings (REP-191, REP-433, HR-047).

14.73 At Deadline IX, the applicant submitted a final update (REP-519) in respect of private treaty negotiations, which stated that, at 4 August 2014, private treaty negotiations were either completed or heads of terms agreed and solicitors instructed for 72% of the route length; a further 3% of the route length had agreed heads of terms, subject to client's approval, and 25% of the route remained under negotiation. The Panel regarded the information on the progress of private treaty negotiations as evidence that alternatives to CA were being pursued by the applicant.

***The case under s122***

14.74 The applicant sets out its case that the tests under s122(2) and s122(3) of PA2800 are met in its Statement of Reasons (APP-026). Section 14 sets out its case in respect of need, intended use and reasonableness, legitimacy, necessity, proportionality and justification in terms of interfering with human rights. It contends that:

- (i) the tests in paragraphs 20 – 22 of the Guidance<sup>14</sup> in relation to conformity with national energy policy are met;
- (ii) all reasonable alternatives to compulsory acquisition have been explored;
- (iii) there are no impediments to the delivery of the project;
- (iv) negotiations have been undertaken with those individuals, businesses and organisations affected by Dogger Bank Creyke Beck;
- (v) the human rights considerations have been taken into account at every stage of the project's evolution; and
- (vi) that public benefits will outweigh the private loss that would be suffered by those whose land and/or interests are to be compulsorily acquired.

14.75 Additionally the applicant contends that confirmation of the CA powers in the Order are necessary to ensure Dogger Bank Creyke Beck can be delivered within a reasonable timescale to meet contractual commitments with the Crown Estate and NGET, and to

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<sup>14</sup> DCLG Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land 2013

make an important contribution to the achievement of the Government's renewable energy targets. Accordingly the applicant concludes that there is a compelling case in the public interest (as defined in s122(3) of the PA2008) to acquire the Order land.

### **Power to override rights and easements**

- 14.76 Paragraph 7.1.24 of the Statement of Reasons (APP-026) sets out the applicant's intention to implement the powers of CA by way of a General Vesting Declaration with the intention that any existing easements, covenants, rights and other interests (whether vested in a statutory undertaker or otherwise) in the Order Land, which might prejudice the delivery of the project, be overridden or extinguished. In the opinion of the ExA this is a reasonable approach in order to ensure that the project if approved can be delivered.

### **Availability and adequacy of funds**

- 14.77 Pursuant to the Regulations<sup>15</sup>, the applicant submitted a Funding Statement with the application (APP-025) setting out details of the funding which is in place for the acquisition of the onshore land and interests required for the construction, operation and maintenance of the projects and the implementation and construction of the projects themselves.
- 14.78 The applicant signalled its intention to secure a guarantee of funds to meet compensation liabilities for compulsory acquisition, through a unilateral undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 for each of the two Projects A and B. Paragraph 3.10 of the Funding Statement (APP-025) sets out the intended provisions to be secured through the unilateral undertakings. The Funding Statement explains that funding for the implementation of each of the projects would be the responsibility of the undertakers and 'barring any currently unforeseen circumstances, no funding shortfalls are anticipated' (paragraph 4.2, APP-025).
- 14.79 The Panel pursued both the question of the mechanisms by which the four companies comprising the partnership making the application (Forewind) would ensure adequate resources to implement, manage and decommission both projects were in place and secondly, that funds for CA and compensation were, and would remain, secured.
- 14.80 The applicant's position in relation to funding all aspects of the two projects is summarised in its submission on Funding of Dogger Bank and Creyke Beck Projects (REP-452), submitted following

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<sup>15</sup> Regulation 5(2)(h) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

questioning at the CA hearing (REP-483). The applicant argues that its four partners are substantial operators in the field of renewable energy at a European scale, with a clear track record of delivering large scale renewable energy schemes and that furthermore, each is part of a larger parent conglomerate.

- 14.81 The applicant sought to demonstrate that adequate mechanisms, protocols, conditions and commitments would be in place to ensure that each project, which would require a funding resource of around £3bn, could not proceed until funds were in place. In its submission Funding of Dogger Bank Creyke Beck Projects at Deadline VII (REP-452) it seeks to provide evidence that the structures put in place via the Bizcos ensure that the capital funding required to deliver these two major projects are viable and capable of delivering the resource that is required. Additionally, it points out that the applicant's four shareholders have a combined value of around £100 billion and that each of the four companies, RWE, SSE, Statoil and Statkraft, have a considerable portfolio of large energy assets and have demonstrated an ability to deliver some of the UK's largest offshore wind projects. The intention is that the applicant's shareholders will take the leading role of 'operator' in each of the projects, including delivery of project specific financial strategies.
- 14.82 The applicant advises that the cost of CA and compensation, estimated on the basis of professional advice at £3m per project (REP-483), would comprise a very small portion of the overall cost and, even without legally enforceable guarantees, would be manageable by the four partners and any successor commercial undertakers (REP-452).
- 14.83 In response to questions from the Panel at the CA hearing, the applicant submitted a representation setting out the position still further (REP-483). Funding of Dogger Bank and Creyke Beck Projects (REP-452) explains how offshore decommissioning liabilities would be met through DECC's mandatory decommissioning scheme<sup>16</sup>, which would ensure that sufficient funds would be available to meet liabilities. Offshore and onshore decommissioning plans and programmes, set out in the Decommissioning Statement submitted with the application (APP-059), would be secured via the Requirement 10 for offshore decommissioning and Requirement 31 for onshore decommissioning within the ExA's recommended draft DCO.
- 14.84 In its submission at Deadline III, Commercial Clarification (REP-257 and REP-258) the applicant responded to the Panel's questions at the first DCO hearing in relation to the role and structure of Bizco 1 and Bizco 4 in implementing the DCO. This set out an example of a legally binding Bizco structure and

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<sup>16</sup> DECC Guidance to developers on offshore wind decommissioning.

arrangements to ensure that participant shareholders in the project have or can meet their financial obligations to deliver the projects.

- 14.85 In its second written questions (PD-018), the Panel asked (Q53) for clarification of the commercial underpinning and whether safeguarding of the DBCB projects would be maintained through the Bizco 1 and Bizco 4 arrangements envisaged in the draft DCO. Furthermore, how the integrity of the project, the obligations in the DCO, side agreements and secure and robust resourcing would be maintained through the life of the projects in the light of the potential for the individual commercial partners to change. The Panel asked the applicant to set out the planned company structure and funding arrangements.
- 14.86 The applicant responded to Q53 (REP-281) and referred back to the previous submission at Deadline III (REP-257) and emphasised that, while it might change in detail as circumstances and participants change, there is a robust and viable commercial framework behind the Bizcos. At the CA hearing a further discussion took place in relation to deliverability and raising and securing finance (REP-483). Both at the hearing and in the following submission at Deadline VII Funding of Dogger Bank Creyke Beck projects (REP-452), the applicant provided an explanation of the mechanisms that would need to be in place before the undertaker could reach the Final Investment Decision (FID).
- 14.87 FID ensures that there are structures set up for investment to be in place when required and that investors would have the finances available for the project. The FID is the trigger that signals the projects will commence. It is not made until full funding for the project(s) is in place. A key influence on the confidence levels required to ensure a positive decision at FID is the entry by the undertakers into a Contract for Difference (CfD) with government around twelve months ahead of the FID decision. The CfD sets the pre-determined strike price and guarantees the undertaker the price for each unit of electricity produced.
- 14.88 It is the ExA's view, having considered all relevant representations and submissions, that the commercial organisational and institutional framework would be in place to ensure that sufficient funds would be available at the appropriate time to enable the projects to be built out in full, operated, and at the end of their life be decommissioned.

### ***Unilateral Undertaking***

- 14.89 The applicant provided updates on negotiations in relation to securing unilateral undertakings (UU) pursuant to Section 106 of the Town and Country Planning Act 1990 at Deadline III (REP-261), and provided a draft UU (REP-259).

- 14.90 In its second written questions (PD-018) the Panel asked both the applicant and ERYC a series of questions about the ability of the draft UU to meet the requirements of s106 of the TCPA 1990 (as amended). ERYC's response (REP-332) raised a number of questions about the appropriateness of using a UU in circumstances where the UU seeks to use the Council's enforcement powers where the Council has "no significant role in making the DCO". It suggested that alternative ways of securing the funds should be found, and also questioned whether the applicant had sufficient interest in any of the land with which to 'bind' any UU and satisfy the requirements of s106 obligations. The applicant's response at Deadline V (REP-362) provided an update on discussions with ERYC on the UU and stated that both parties have reservations about the use of a UU pursuant to a s106 obligation to provide security; but were continuing to negotiate on the terms of a UU under s106 of the TCPA 1990 (as amended).
- 14.91 At the CA hearing, the applicant stated that ERYC confirmed that the requirements of s106 have been met in respect of the draft UU (REP-426) and confirmed (REP-483) that it would provide for:
- (i) a compensation figure of £3m;
  - (ii) the length of security period increased to 15 years from 10 in an earlier draft;
  - (iii) explicit reference to be made to the use of a parent company guarantee if that would be appropriate at the time; and
  - (iv) the ability to offer a form of cash security for the proposed CA to ERYC.
- 14.92 At Deadline VII, a further draft UU was submitted (REP-432) and a Position Statement (REP-451) in which the applicant stated that the UU would bind the undertaker's interest in the land owned by the Crown Estate at the River Hull (Plots 98A and 98B). A copy of the relevant Land Registry Register of Title in respect of the two plots was provided. A submission at Deadline VIII (REP-478) provided the plans of the two Crown Estate plots which would bind the UU and, at Deadline IX, the applicant provided copies of two UUs signed by the applicant, each dated 1 August 2014 (REP-523).
- 14.93 The UU (REP-523) makes provision in respect of each project that the use or development of the Developer's Land (i.e. Plot nos 98A or 98B) in accordance with the DCO will not commence unless and until the security has been provided to the Council; and that no powers of CA will be exercised unless and until the security has been provided to the Council. Prior to this either a Security Report, or confirmation that the security amount will be £3m, and the identified form of security, which may be a parent company guarantee, bond, bank guarantee, cash deposit, policy of insurance or some other form acceptable to the Council, will be provided to the Council.



- 14.94 The UU provides the mechanism by which the CA powers cannot be implemented without demonstration of the financial provisions for compensation. The ExA concludes for the reasons set out in detail in Chapter 14, that the UU does provide an acceptable mechanism for ensuring financial provisions for compensation are secured.
- 14.95 Accordingly, on the basis of the submissions made and the evidence provided, including copies of the two signed unilateral undertakings made pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended), the ExA is satisfied that secure arrangements are in place to ensure that the cost of CA and compensation in respect of the onshore works for Dogger Bank Creyke Beck can be met by the applicant.
- 14.96 Paragraph 4.2 of the signed UU (REP-523) states that the undertaking shall only take effect if in determining the DCO, the SoS (4.2.1) grants powers of CA to the Developer in the DCO; and (4.2.2) expressly states in his decision letter granting the DCO that the obligations given by the Developer in clauses 3 and 4 of (this) undertaking are a necessary and material consideration for the purposes of the SoS decision to grant such compulsory purchase powers in the DCO. The ExA recommends that should the SoS approve the DCO including making the CA order he expressly states in his decision letter that the obligations given by the Developer in clauses 3 and 4 of the UU are a necessary and material consideration for the purposes of the SoS decision to grant such compulsory powers in the DCO.

## **OBJECTIONS**

- 14.97 In this section, dealing with objections from landowners and those whose rights are to be acquired, the Panel first sets out the objections, then the applicant's response and finally the Panel's views on the objections. Objections in respect of statutory undertakers, special category land and Crown Land are dealt with above.
- 14.98 After dealing with local authority land, representations, objections, responses and any further actions are recorded by name of the objector and are presented in alphabetical order.

### ***Local authority land***

- 14.99 ERYC's valuation and estates surveyor in a relevant representation (REP-032) objected to the application DCO on the grounds that acquiring the freehold title to the land in question by compulsion would be unduly onerous and oppressive. He made particular reference to Plot nos. 118A and 118B, which were the subject of a secure agricultural tenancy, on the grounds that acquiring the land would result in a severed reversion, leading to complications with the future management of the tenancy and holding (REP-032).

The applicant informed the CA hearing that the objection lodged in relation to the agricultural tenancy had been withdrawn (REP-483) and this was confirmed by ERYC in an email to the applicant (REP-453).

***Objection CA1: John Beaumont and Jill Lazenby***

14.100 These two objectors occupy a property in which the applicant's proposal is to acquire plot nos. 110A, 110B, 111A, 111B in order to HDD under both Hull Road (A1174) and part of the open garden area surrounding the dwelling. Mr Beaumont, the owner, and Ms Lazenby, an occupier, were separately registered as IPs and submitted a number of representations in their individual names. Additionally Mr Beaumont was also represented by Martin Swann of R Hornsey and Sons (REP-057) and also appeared at the CA hearing.

14.101 A number of the representations made by Mr Beaumont and Ms Lazenby concerned a dispute with the applicant and its agents principally concerning authority to access the grounds of the property for pre-application survey purposes (REP-151). After considering the matter, the Panel has concluded that the dispute which occurred prior to the submission of the application is not a matter for the Panel to examine because essentially it amounts to a dispute between the applicant and Mr Beaumont and Ms Lazenby, and does not address the arguments as to whether compulsory acquisition of land and/or rights meets the tests set out in s122 of PA2008, or address either the proposed DCO or CA directly, which is the Panel's remit.

14.102 In so far as compulsory acquisition matters are concerned, Mr Beaumont and Ms Lazenby objected to:

- (i) the proximity of the cable corridor to the residential property (REP-029) (REP-030) (REP-167);
- (ii) the potential devaluation of their land and property and health implications attached thereto. (REP-029) (REP-030);
- (iii) the potential for the land being blighted if cables were left in-situ when the operational phase was complete (REP-336);
- (iv) the impractical timescale of seven years within which the two projects could commence because it would create uncertainty and impacts on future planning (REP 418) (REP-167); and
- (v) two projects undertaken separately would double the disruption (REP-418) (REP-167).

14.103 Prior to the CA hearing John Beaumont and Jill Lazenby (HR-043) made a submission drawing attention to further communication from the applicant concerning Heads of Terms discussions and a map in connection with a potential agreement for access for maintenance over Mr Beaumont and Ms Lazenby's land.

14.104 The applicant responded specifically to Mr Beaumont and Ms Lazenby's complaint in respect of survey access (REP-235) (REP-240) and in (REP-240) stated that the distance of the cable easement from their property would be 65m and consequently would not have any material impact on the property.

***Objection CA2: Paul Butler (Ullyotts)***

14.105 Mr Butler submitted a representation on behalf of a number of unnamed landowners which made a series of suggestions for amendments to the DCO; included a challenge that the undertaker cannot make a compelling case in the public interest to justify compulsory acquisition; and made suggestions for how claims for compensation could be handled (HR-046).

***Objection CA3: Anna Fell (George F. White) on behalf of Richard Nicholson Ltd and Richard Alan Nicholson and Lesley Joan Nicholson***

14.106 Submitted a number of representations (REP-158) including giving evidence at the open-floor hearing (HR-005). Objections were based on concerns that the cable route dissects their client's land and would have a detrimental impact on the farming business and future development plans. It would prevent the future development of a wind turbine on a significant part of the land and the creation of a commercial fishing lake. It was not necessary to create an easement in perpetuity for a scheme consented for only 25 years and with a limited operational life. Further, it was questioned whether it was necessary to carry out the work in two phases and that it should be completed in one phase.

14.107 There was further concern about the long term effects on land drainage and lack of detailed drainage surveys. It was stated that insufficient consideration had been given to the potential flood risk, propensity for construction to damage field drains or the soil structure thereby decreasing porosity and percolation potential. There was a lack of information on how soil will be striped, stored, managed and replaced and a concern that the 'pipeline' operator determined through the OFTO regulations will be competent and will comply with the covenants regarding reinstatement, maintenance and drainage.

14.108 The objection stated that the 9 year option period is excessive. There was no information on habitats/ecology surveys and no consultation with the landowner. Acquiring the freehold title is unduly onerous and all reasonable alternatives to CA have not been explored. The proposed interference with the rights and interests in the land is unnecessary and disproportionate and there is no evidence that sufficient funds are available to meet the costs

associated with land assembly. Finally the objection questioned whether guaranteeing funds to meet the compensation liabilities for CA by way of a unilateral undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 is a sufficient level of guarantee.

14.109 Further, clarity is required in the DCO in relation to commencement of operations and that a Notice to Treat cannot be served after 7 years from the approval of the Order and the definition of 'construction phase' is unclear. The objection to the projects going ahead in two phases was repeated and concerns expressed over the blighting effect of the 7 year commencement period in respect of future development plans and the ability of the developer to object to other, nearby proposals.

14.110 The applicant responded to the objections made on behalf of Richard Nicholson Ltd, Richard Alan Nicholson and Lesley Joan Nicholson (REP-234 and REP-237). A further response to a submission at Deadline VIII (REP-504) is contained within comments on stakeholder representations at Deadline IX (REP-517).

***Objection CA4: Peter Michael Mawer (Cranswicks) on behalf of a number of landowners at the eastern end of the cable route***

14.111 Mr Mawer represented a number of land owners on whose behalf a common set of objections were put forward including

- (i) the option period being sought by the applicant (9 years) was excessive (REP-034);
- (ii) the DCO should set a date of commencement for the development of not less than 3 years after approval of the DCO (REP-034);
- (iii) the cables for both projects should be laid in one operation (REP-034) (REP-152);
- (iv) the time limit for exercising CA rights should be limited to 5 years and the work completed in 12 months (REP-152);
- (v) cable laying operations should be completed and the excavations filled in a timely manner and no longer than 6 months for each land holding. (REP-152);
- (vi) as a condition of the DCO, the developer should appoint an independent drainage consultant to supervise the reinstatement of land drains during and after works (REP-152);
- (vii) there should be a DCO condition requiring that the land be returned to the owner in the same condition in which it was acquired and would be reinstated within 3 months of the work being completed, and that it should not be capable of disposal to third parties (REP-152); and

(viii) the DCO should protect the land owners rights by imposing a 'lift and shift' condition on the developer through the lifetime of the development (REP-152)

14.112 These representations were later updated in a submission for the CA hearing (HR-044). The objections were that the time limit for executing CA powers should be to 5 years, with a limit of 12 months to complete the work; the work should be undertaken in one operation; the excavation period should be limited to 6 months; and if the work is carried out in two phases, the land should be reinstated for agricultural production during the intervening period.

14.113 Further, the importance of appointing an independent drainage consultant and that the land be reinstated to its original condition within 3 months of the cable laying operation was emphasised. A 'lift and shift' obligation should be imposed on the operator to require it to relocate cables should they impede agricultural activity or development proposals. There was a need to protect the land retained in agricultural production from damage by vehicles and ensuring vehicles remain within the Order limits and use the designated haul roads. There needs to be proper arrangements for landowners to cross the cable corridor when under construction in order to access severed parts of the land and cables should be laid below any possible agricultural working depth and that liability for damage remains with the operator.

14.114 Additionally Cranswicks submitted a land drainage system plan on land in which James Anthony Dean and Sharon Julie Dean (G. Deans and Sons) had an interest and which the Panel had visited on the site visit to the CA hearing (HR-045).

14.115 The applicant responded specifically to the points made by Mr Mawer of Cranswicks on behalf of various landowners at the Eastern end of the cable corridor (REP-236).

***Objection CA5: K J Moore and Sons***

14.116 (REP-013) K J Moore and Sons submitted a relevant representation concerned with the possibility of archaeological features beneath their land, damage to land drainage and access arrangements and a further relevant representation (REP-062) via Martin Swann of R Hornsey and Sons reserving the right to make further representations. No further representations were received.

***Objection CA6: Edward Henry Smith (R Hornsey and Sons) on behalf of S M Calvert and Miss K G Howell***

14.117 The following points were made by R Hornsey and Sons:

- (i) The proposed 9 year option period was too long (REP-054).
- (ii) Cables should be installed in parallel (REP-054; REP-165)
- (iii) Cable easements at Cottingham should be moved further to the east (REP-054; REP-165); and.
- (iv) Proposed 7 year period for commencement is too long (REP-165)

14.118 The applicant responded to Hornseys on behalf of S M Calvert and Miss K G Howell (REP-239).

***Objection CA7: Martin Swann (R Hornsey and Sons) on behalf of C C Freear***

14.119 This included a relevant representation reserving the right to make a written statement on a range of matters (REP-059). No further representations were received.

***Objection CA8: Martin Swann (R Hornsey and Sons) on behalf of NB and SP Hart***

14.120 Mr Swann submitted a relevant representation on behalf of Mr and Mrs Hart reserving the right to make a written statement on a range of matters (REP-060) and further representations expressing concern at the proximity of the works and cables to the property (REP-167); that the proposed 7 year period for commencement was too long and that the cables should be installed in parallel (REP-167).

14.121 The applicant responded to Hornseys on behalf of Mr and Mrs Hart (REP-241)

***Objection CA9: Martin Swann (R Hornsey and Sons) on behalf of M H and C Norman***

14.122 Mr Swann submitted a relevant representation reserving the right to make a written statement on a range of matters (REP-063). No further representations were received.

***Objection CA10: Martin Swann (R Hornsey and Sons) on behalf of W H Scott and Sons***

14.123 Mr Swann submitted a relevant representation reserving the right to make a written statement on a range of matters (REP-064). No further representations were received.

***Applicant's response to objectors***

14.124 During the examination the applicant provided a series of responses to the objections and other submissions in both general terms and specifically on a case by case basis.

14.125 At Deadline I it provided a Written Representation (REP-162) responding to the relevant representations in respect of CA, and

emphasised that private treaty negotiations were continuing with landowners and their agents and that negotiated agreements and CA were seeking to achieve the same objective whereby freehold was returned to the landowner subject to restrictions to allow the projects to proceed and operate securely. At Deadline III the applicant provided a common response to the issues raised by landowners and those with an interest in the land (REP-234).

### **Panel's response to objections**

- 14.126 The Panel has examined all the submissions made by objectors, the responses of the applicant, the evidence which has been produced and the exchanges which took place at the CA hearing. In addition it conducted an accompanied site visit to view the situation on the ground when requested by landowners and other stakeholders.
- 14.127 The majority of points made by the objectors related to general issues of principle in relation to the rights being sought, for example, to the length of the option period, the 7 years within which commencement can take place and Notice to Treat served, and the potential for the projects to be constructed separately, or practical matters relating to the construction phase, in particular the impact of the projects on land drainage and the watercourses in the area, reinstatement and the need for consultation with landowners before work commenced on the ground.
- 14.128 These issues were examined at hearings, in further representations and the Panel's views on them are discussed elsewhere in this report.

### **Temporary works areas**

- 14.129 Through Article 28 of the draft submitted Order (APP-023) the applicant seeks rights set out in Class 9 of the revised Book of Reference (REP-534) in respect of the use of 22 plots (nos. 176 - 197) on a temporary basis during construction and set out in Schedule 6 of the application DCO; and, through Article 29, of the application DCO, rights to take temporary possession of any land within the Order limits for maintenance purposes during the maintenance period.
- 14.130 Temporary works areas are described on the order Plans as 'Land which is temporarily required and subject to the suspension of private rights'. These areas are required for primary and intermediate temporary works (or construction) compounds to facilitate on-shore construction. Each project allocates three primary compounds for cable laying, and one for the converter station and five intermediate compounds along both the HVDC and HVAC corridors. ES Project Description (APP-068) describes in Section 4 the need for these temporary work areas, described also as 'works compounds' and 'construction compounds', in the cable

corridor, and describes their number, size and purpose. The Works Plans accompanying the Order designate these temporary works areas as 'temporary construction compounds'. The ExA's recommended DCO provides a definition of 'construction compound' within the Interpretation Article, which makes clear the temporary nature of these areas.

14.131 The Temporary Works Areas are coloured blue on the Order plans and are not subject to CA; but rather the applicant's submitted draft Order at Article 28 (APP-023) gives the right for possession to be taken on a temporary basis during the construction phase. At Deadline VII, the applicant provided an Outline Method Statement for Establishing Temporary Work Areas (REP-442), which is referenced in the draft outline Code of Construction Practice (REP-486). At the CA hearing, the applicant stated that it has taken a deliberate decision to reduce the size of the Temporary Work Areas (REP-483). Two objections to the proposed temporary possessions were received, as follows:

***Objection TP1: Mark J Broadhurst (Leonards) on behalf of Robin Thomas Jackson, Mary Jackson, Nigel Robin Jackson, Mark William Jackson, Nigel Robin Jackson and Mark William Jackson***

14.132 Mr Broadhurst objected to the proposed Temporary Working Areas identified upon their client's land at Plot nos. 178, 177, 178 and 179 (REP-421) on the grounds of size and location and because the proposed use was of a commercial nature to the benefit of the developer and outside the requirement for cable laying. Additional land would be severed under the current proposal. A copy of the applicants Onshore Works Plan Sheet 02 was supplied to indicate the location of the plots concerned (REP-511). This objection was received late in the examination and no response was made by the applicant.

***Objection TP2: Mark J Broadhurst (Leonards) on behalf of Jayne Briggs, Katie Briggs, Nikolas Rupert and Harry Briggs***

14.133 Mr Broadhurst objected to the proposed Temporary Working Areas identified upon their client's land Plot nos. 192 and 193 (REP-422) on the grounds of size and location in view of the interested parties proposals to develop that land for alternative use. This objection was received late in the examination and no response was made by the applicant.

14.134 Having considered the two objections made in respect of the proposed temporary working areas at Plot nos. 176, 177, 178, 179 (Jacksons) and 192 and 193 (Briggs), in the light of the applicant's proposals and further representations, the Panel accepts the need



for the proposed temporary working areas in the locations and size shown on the Order Plans and sees no reason not to recommend the inclusion of Article 29 and Schedule 6 of the recommended DCO, and the granting of Class 9 temporary new rights identified in the Book of Reference. Article 29 (formerly 28) of the ExA's recommended DCO gives effect to the exercise of the new rights identified in Class 9 of the Book of Reference (REP-534) for the Plots described in Schedule 6 of the DCO - Land of which Temporary Possession may be taken.

### **Alternatives**

14.135 The DCLG Guidance<sup>17</sup> requires (paragraph 8) that –

*'The promoter should be able to demonstrate to the satisfaction of the decision-maker that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored...'*

14.136 The ExA has considered this in terms of the selection of the site, the scale of the development proposed, the specific characteristics of the development and then in relation to the proposed acquisition of each parcel of land.

14.137 The question of alternative potential sites and locations for the cable landfall, cable corridor and converter station site were pursued by the Panel at the CA hearing (REP-483). The applicant provided a detailed plot by plot explanation of the route chosen for the cable corridors and explained that the original 50m wide cable corridor for both projects in parallel had been reduced to 36m for HVDC cables and 38m for HVAC cables, except where HDD was required where the width would extend to 52m except in the case of Figham Common where it would be 70m. In addition the areas required for temporary works had been reduced in area.

14.138 The ExA is mindful of the size of the project; its ability to contribute to national renewable energy sources; the evidence of consideration of alternatives; its own testing of proportionality and reasonableness in the land and rights, etc. sought through CA; the importance of securing land along the entire length of the 32km cable corridors in order for the project to be viable and the progress that has been made in securing rights through private treaty negotiations. In the light of these considerations it concludes that the land for which CA powers are being sought is required to enable the construction, operation and maintenance of the onshore elements of Dogger Bank Creyke Beck and that there is no alternative to the use of CA powers, if required.

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<sup>17</sup> DCLG Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land

## Conclusions

14.139 The ExA's approach to the question of whether and what compulsory acquisition powers it should recommend to the Secretary of State to grant has been to seek to apply the relevant sections of the Act, notably s122 and s123, the Guidance<sup>18</sup>, and the Human Rights Act 1998; and, in the light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

14.140 The ExA has shown in Chapter 13 that it has reached the view that development consent should be granted. The question therefore that the ExA addresses here is the extent to which, in the light of the factors set out above, the case is made for compulsory acquisition powers necessary to enable the development to proceed.

### ***The public benefit***

14.141 The effect of s122(1) and s122(2) of PA 2008 is to provide that the land to be subject to CA must be required for the development to which the development consent relates; effectively that the land needs to be acquired, or rights over, or under it acquired or impediments upon it removed, in order that the development can be carried out.

14.142 To reach a judgement on this requirement the approach the Panel have taken was to examine:

- (i) the case which has been made for the grant of CA powers in respect of each and every plot included in the Book of Reference;
- (ii) the justification for the inclusion of the plots in the Statement of Reasons;
- (iii) the type and extent of interests sought;
- (iv) the stated use of the Order land and whether there are clear and necessary proposals in relation to each plot sought; and
- (v) the potential effects and consequences of taking the land proposed.

14.143 The ExA is satisfied that, in the event of the grant of development consent for Dogger Bank Creyke Beck as applied for, there would be a need to acquire the rights and interests in the CA land, and the powers sought in the DCO would be required to implement the development.

14.144 With regard to section 122(3), in considering whether there is a compelling case in the public interest, there are a number of

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<sup>18</sup> Planning Act 2008, Guidance related to procedures for compulsory acquisition (CLG, 2013)

issues to be considered in balancing the public interest against the private loss which would occur.

- 14.145 The need for new nationally significant energy infrastructure projects is recognised by NPSs EN-1, EN-3 and EN-5. NPS EN-1 explains that electricity meets a significant proportion of our overall energy needs and our reliance on it is likely to increase. It states that the UK needs all the types of energy infrastructure covered by it in order to achieve energy security at the same time as dramatically reducing greenhouse gas emissions. It advises that all applications for such development should be assessed on the basis that there is a need for those types of infrastructure. It sets out, in section 3.3, the key reasons why the Government believes that there is an urgent need for new electricity NSIPs.
- 14.146 The NPPF acknowledges the pre-eminence of NPSs in policy terms when considering NSIPs. It is clear from the relevant NPSs that there is a national need for electricity generating capacity of the type that is the subject of the application. There is a need in the public interest to protect the cables/ducts, once installed, and to ensure that the supply of electricity is not impeded. That represents a significant public benefit to be weighed in the balance.
- 14.147 In the ExA's opinion, in accordance with the two NPSs, the public benefits associated with the construction and use of Dogger Bank Creyke Beck would be clear, substantial and compelling.

### ***Private loss***

- 14.148 In the light of the CA Guidance, paragraph 13, the Panel has considered what assessment had been made of the effect upon affected persons and their private loss that would result from the exercise of compulsory powers.
- 14.149 The Panel recognises that the onshore element of the project has been designed so that the majority of works would take place beneath the ground. The cable corridor routes selected seek to minimise or avoid interaction with urban areas, residential property, non-agricultural businesses and other infrastructure. The extent of any private loss has therefore been mitigated both through the selection of the route and the undergrounding of the cables along it and the use of HDD in sensitive locations.
- 14.150 The majority of the plots would be agricultural land which, in the long-term, would be relatively insensitive to the proposed onshore infrastructure works. The undergrounding of the cables and ducts would enable the land to be returned to its original agricultural purpose post-construction; although subject to new permanent conditions following CA. The Panel has paid particular attention to the representations received in relation to the importance of land drainage in the vicinity of the cable corridors; the importance of

land being restored to its former condition as quickly as possible after cable laying is complete and between implementation of Projects A and B if not constructed simultaneously, and have proposed amendments to the draft DCO to ensure that these issues are properly secured.

14.151 Plots 110A, 110B, 111A and 111B are the only Order lands in residential use and are part of the garden area owned by John Beaumont and in which he and Jill Lazenby submitted an objection and a number of representations, which have been heard and considered. The Panel notes that the cable corridor is 65m from their residence and the proposal is to install the cables by HDD under the garden area. The ExA concludes that this is a reasonable and proportionate approach.

14.152 In the ExA's opinion, in accordance with the two NPSs, the public benefits associated with the construction and use of Dogger Bank Creyke Beck would be clear, substantial and compelling.

### ***Adequacy of funding***

14.153 Paragraphs 17 and 18 of the CA Guidance<sup>19</sup> set out the need for a Funding Statement to accompany the application and the information which that document should contain regarding the resource implications of the proposed scheme.

14.154 The two projects comprising Dogger Bank Creyke Beck combined will need a capital resource in the order of £6b to fund their construction. The ExA is satisfied that the partners in Forewind, the applicant, (a) are of adequate size and standing to promote projects of this size and (b) have put in place a series of robust mechanisms to ensure that the undertakers (Bizco 1 and Bizco 4) cannot proceed with Dogger Bank Creyke Beck unless the necessary capital funding is in place (REP-257, REP-258 and REP-452).

14.155 Resources for CA and compensation have been professionally estimated at £3m per project. The applicant states that it has expended £50m in seeking to achieve consent for Dogger Bank Creyke Beck to proceed, and the signed unilateral undertaking secures the resources for funding this aspect of the scheme and ensures that CA cannot take place unless and until security has been provided to the satisfaction of the local authority. Article 8 (4) Consent to transfer benefit of Order ensures that no transfer of the benefits and rights granted by the Order can take place unless the transferee or lessee holds a licence under the Electricity Act 1989 or the time limit for claims has elapsed and no avenue for further claims exists.

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<sup>19</sup> DCLG Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land. September 2013

14.156 The ExA concludes that the commercial organisational and institutional framework is in place to ensure that the schemes cannot proceed unless adequate capital resourcing is in place, and that arrangements are in place to ensure that the cost of CA and compensation in respect of the onshore works for Dogger Bank Creyke Beck are secure.

***Human Rights Act<sup>20</sup> 1998 considerations***

14.157 A key consideration in formulating a compelling case is that of the interference with human rights which would occur if compulsory acquisition powers are granted and exercised.

14.158 The applicant acknowledges in Section 13 of its Statement of Reasons (APP-026) that the DCO engages a number of the articles of the Human Rights Act:

- (i) It would affect Article 1 of the First Protocol (rights of those whose property is to be compulsorily acquired and whose peaceful enjoyment of their property is to be interfered with);
- (ii) Article 6 entitles those affected by CA powers sought for the project to a fair and public hearing of their objections; and
- (iii) Article 8 protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with the law and is necessary in the interests of national security, public safety or the economic well-being of the country.

14.159 The applicant states that all owners and occupiers of land affected by the proposals have been contacted and that representations could be made in response to notice under s56 PA 2008 or at any CA hearing advertised or held in public by the Panel.

14.160 In the Statement of Reasons and at the CA hearings the applicant set out the considerations that arise and stated that it had carefully considered the balance to be struck between individual rights and the wider public interest.

14.161 Having regard to the relevant provision of the Human Rights Act, the ExA has considered the individual rights interfered with and the submissions made by affected parties in this regard and are satisfied that:

- (i) in relation to Article 1 of the First Protocol that the proposed interference with the individual's rights would be lawful, necessary, proportionate and justified in the public interest;
- (ii) in relation to Article 6 we are satisfied that all objections which have been made have either been resolved with the objector, or the objectors have had the opportunity to

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<sup>20</sup> <http://www.legislation.gov.uk/ukpga/1998/42/contents>

- present their cases to us in writing and at the CA hearings;  
and  
(iii) in relation to Article 8 the interference is in accordance with the law and is necessary in the interests of the economic well-being of the country and accordingly Article 8 is not breached.

### **The ExA's recommendations on the granting of CA powers**

#### ***s122 (2) - The purpose for which compulsory acquisition is sought***

14.162 This section of the Act sets out the purposes for which compulsory acquisition may be authorised. In the light of the CA Guidance, it is necessary to consider whether the applicant has justified its proposals for the compulsory acquisition of the land.

14.163 The ExA is satisfied that the legal interests in all the plots of land included in the revised Book of Reference and shown on the Land Plans (as amended) would be required for both the principal development and the associated development identified by the application. The requirements of s122 (2) (a) of PA2008 are therefore met.

#### ***s122(3) – Whether there is a compelling case in the public interest***

14.164 The ExA concludes that:

- (i) the development for which the land is sought would be in accordance with national policy as set out in the relevant NPSs and development consent should be granted;
- (ii) the NPSs identify a national need for electricity generating capacity of the type that is the subject of the application;
- (iii) there is a need to secure the land and rights required and to construct the development within a reasonable commercial timeframe, and the development represents a significant public benefit to weigh in the balance;
- (iv) the private loss to those affected has been mitigated through the selection of the application land; the undergrounding of the cables/ducts and the extent of the rights and interests proposed to be acquired;
- (v) the applicant has explored all reasonable alternatives to the compulsory acquisition of the rights and interests sought. There are no alternatives which ought to be preferred;
- (vi) adequate and secure funding would be available to enable the compulsory acquisition within the statutory period following the Order being made; and
- (vii) the resource implications of a possible acquisition resulting from a blight notice have been taken into account;

14.165 The proposed interference with the human rights of individuals would be for legitimate purposes that would justify such

interference in the public interest and to a proportionate extent. Taking these various factors together, the ExA therefore concludes that there is a compelling case in the public interest for land and interests to be compulsorily acquired and therefore the proposal would comply with s122 (3) of the PA2008.

## **15 DRAFT DEVELOPMENT CONSENT ORDER**

### **Introduction**

- 15.1 A draft Development Consent Order (DCO) incorporating four Deemed Marine Licences (DML) (APP-023) along with an Explanatory Memorandum (APP-024) was submitted as part of the application for development consent by the applicant. The Explanatory Memorandum describes the purpose of the application draft DCO, and each of its articles and schedules.
- 15.2 The application draft DCO was based (with some differences as detailed in the Explanatory Memorandum) on the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 as well as what the applicant refers to as 'relevant precedents' such as Orders made under the Transport and Works Act (APP-024).

### **Draft versions of the DCO / DMLs and overview of changes**

- 15.3 The DCO, if made, would grant development consent for two offshore wind farms: Dogger Bank Creyke Beck A and Dogger Bank Creyke Beck B and associated development, including cable corridors and grid connection points. Powers would be conferred on two companies, referred to in the draft Order as Bizco 1 and Bizco 4, with whom responsibility would lie for the construction and operation of the two windfarms and associated development. Bizco 1 and Bizco 4 are also defined as the undertaker in Article 2 of the recommended DCO. Full details of the proposed development are provided in Chapter 2 of this report.
- 15.4 Given the complexity of the application, the draft DCO itself, was identified as a Principal Issue as referenced in the Panel's Rule 6 letter (PD-003). Throughout the examination, the Panel probed into the detail of its structure and effectiveness through written questions, three ISHs on the draft DCO and Rule 17 requests for information towards the close of the examination. As a consequence, the applicant produced five successive versions of the draft DCO as listed below:
- (i) application draft DCO dated 19 August 2013 (APP-023);
  - (ii) revised DCO version 2 dated 15 April 2014 (APP-221) plus a comparison version between version 2 and the application draft (APP-222) received for Deadline III;
  - (iii) revised DCO version 3 dated 23 June 2014 (REP-387) plus a comparison between version 2 and version 3 (REP-388) received for Deadline V(A);
  - (iv) revised DCO version 4 dated 7 July 2014 (REP-412) plus a comparison between version 4 and the application version (REP-413) received for Deadline VI; and
  - (v) revised DCO version 5 dated 24 July 2014 (REP-479) plus a comparison between version 4 and version 5 (REP-480) received for Deadline VIII;



- 15.5 Towards the end of the examination, the Panel issued three Rule 17 requests resulting in several further proposed changes by the applicant to the draft DCO. The proposed changes, and the Panel's views in response, are discussed at relevant points in this Chapter.
- 15.6 Between receipt of versions 4 and 5 of the applicant's draft DCO, the Panel also issued a draft DCO, containing matters requiring clarification from IPs and the applicant, as well as proposed additions and deletions to the draft DCO (PD-032). This was discussed in detail at the third ISH on the draft DCO, allowing time for the applicant and other IPs to submit a summary of their views in writing after the hearing and also allowing IPs and the applicant to comment on any comments made in respect of the Panel's draft DCO (Deadline IX).

### **Articles**

- 15.7 Articles in the recommended DCO include principal powers (Articles 3 - 12); Streets (Articles 13-16); Supplemental Powers (Articles 17 - 20); Powers of Acquisition (Articles 21-34) and Miscellaneous and General (Articles 35 - 44). During the course of the examination, changes were proposed to some of the Articles by the applicant to address matters raised by IPs and the Panel. These are considered in turn below.

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

#### *Construction Compound*

- 15.8 As part of second round questions, the Panel proposed that the definition of the term 'site compound' be included in the draft DCO (question 47, PD-018). In response, the applicant stated that it had removed the term from the draft DCO, proposing that reference should instead be made to 'compound' providing a definition for this under Article 2. The Panel was content with this proposed change.

#### *Maintain*

- 15.9 The applicant proposed the inclusion of 'to the extent assessed in the Environmental Statement' in response to the Panel's concern at the second ISH on the DCO, that maintain was not confined to the maintenance activities assessed in the ES. Version 3 of the DCO (REP-387) and DCO Change Log (REP-386) reflects this revised wording.
- 15.10 At the request of the Panel during the third ISH on the DCO, the applicant's written summary of the Oral Hearing (REP-477) includes a summary of the maintenance activities assessed in the ES and their location within the ES.

*Undertaker – ‘for such period as that applies to that person’*

- 15.11 Question 79 of the Panel’s first written questions requested clearer wording of the term ‘undertaker’. Although undertaker is referred to in Article 7 of the application draft DCO, given that the explanatory memorandum defines ‘undertaker’ as ‘any other person who has the benefit of this Order in accordance with section 156’, in addition to the named companies, the Panel questioned whether the definition of undertaker should be made more precise. The applicant proposed the addition of the words ‘for such time as that section applies to that person’ in Article 2 (Interpretation) and this was included in Version 2 of the draft DCO.
- 15.12 The Panel noted that, ‘any other person who has the benefit of the Order in accordance with section 156 of the 2008 Act for such period as that section applies to that person’ was deleted from Version 5 of the draft DCO. The Panel is also aware that this wording was removed by the SoS in granting development consent to two recent windfarm applications.<sup>21</sup>
- 15.13 The Panel is content that the definition of undertaker is narrowed further by omitting reference to s156. It is the ExA’s view that the drafting is improved and greater clarity is given to the definition of the undertaker, by the deletion of the reference to s156. Given this, and the precedent set in the recent Orders on Rampion Offshore Windfarm and East Anglia One Offshore Windfarm, the ExA does not propose to re-insert this wording into the recommended Order.

***Article 3 Development consent etc. granted by the Order***

- 15.14 The Panel was concerned by two matters triggered by this Article. Firstly, the commencement period and secondly, sequencing and the maximum length of time that could elapse between the completion of one project and the commencement of the second project.
- 15.15 Question 68 of the Panel’s first written questions (PD-008), picks up MMO’s concern expressed in its relevant representation in relation to the commencement time period. The Panel requested the applicant to confirm that the timescales applied for were consistent with the draft DCO and the information in ES Chapter 5 Table 6.1.
- 15.16 In responding, the applicant confirmed that the draft DCO required the development to commence within a timeframe of seven years, should consent be awarded, and that this was provided for in Article 3(2) of the application draft DCO. The applicant stated this was consistent with the latest construction start offshore provided

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<sup>21</sup> Rampion Offshore Windfarm and East Anglia One Offshore Windfarm

within Table 6.1 of Chapter 5 of the ES. In relation to other timescales, the applicant argued that these would be agreed post-consent, via submission of a programme of works approval of which would need to be sought from the MMO.

15.17 At the first DCO hearing, the Panel sought additional justification for the seven year commencement period. The applicant's summary of its oral case (REP-217) includes reference to Appendix 33 (REP-255) in which the applicant points to the following matters, which combined have led the applicant to suggest a seven year commencement period:

- (i) the scale of the projects proposed (1.2GW) and their distance offshore (each project lying approximately 200km from the nearest port). The applicant suggests new methods might need to be developed for the installation and maintenance of the windfarm and that, the applicant believes, would take time to engineer, procure and sanction investments;
- (ii) the limited annual availability and capacity of Contracts for Difference (CfD) which the applicant argues, may lead to a 'queue' and competition for the number of CfDs available, which in turn might delay the earliest investment decision date;
- (iii) the availability of financing for the offshore wind market given its large capital requirements (the applicant estimates the cost of constructing either project to be in the order of £3bn); and
- (iv) competition for a relatively limited supply chain.

15.18 Given these points, the applicant was of the view that it had made a realistic and pragmatic assessment of the timescales involved and the need for a seven year commencement period.

15.19 In considering whether seven years was reasonable, the Panel noted that the points raised by the applicant primarily related to the challenges of offshore construction. Given this and the distance away from landfall of the two proposed array areas the Panel is of the view that a seven year commencement period is reasonable in the context of Dogger Bank Creyke Beck and therefore does not propose any changes to the commencement period in the recommended Order.

15.20 The second matter arising in relation to Article 3, relates to the sequencing of the two projects and the maximum period that could potentially elapse between the first and second project. These concerns were raised by several landowners (or their agents) at the Compulsory Acquisition hearing, (HR-029 and HR-032). The landowners wished to understand, in relation to onshore elements, why the cable route for Project A and Project B could not be laid at the same time, thereby minimising disruption to crops and farming more generally. Furthermore, if this was not to be the case, what the maximum length would be of the

construction period, if the second project did not commence until after the start of the first.

- 15.21 The applicant argued that it needed to retain maximum flexibility with the application and as such, could neither rule in nor rule out the possibility that the two projects would be built either in parallel or sequentially. The applicant also made the following points:
- (i) if built at different times, the duration of the gap between the end of construction of the first project and the start of construction of the second project might vary from overlapping to up to a gap of 2.5 years;
  - (ii) assuming a maximum construction period per project of six years and taking the point above into account, the maximum period over which the construction of Dogger Bank Creyke Beck A and B could take place would be 11 years and 6 months (REP-174).
- 15.22 In so far as the relationship between the completion of one project and commencement of the second is concerned, and in response to earlier questioning from the Panel, the applicant confirmed that the draft DCO would require development to commence within seven years of the date of the Order, if made, and the Panel notes the EIA has been carried out on this basis. However, it also recognised that the application draft DCO did not contain any further restriction requiring the second project to start within a certain time from that date. As such, the applicant proposed new drafting at Article 3(2), (3), and (4) to ensure that both projects and the shared works would be begun no later than seven years from the date of the coming into force of the Order (REP-222). In response to a request by the Panel, the applicant prepared a further note to explain in detail the reasoning behind the approach to construction and justification of the seven year time limit (REP-484).
- 15.23 The applicant also referred to the proposed requirement that would necessitate the restoration of land used temporarily for construction within six months, suggesting inclusion of the words 'or by the end of the next available planting season' as a way to further ensure the project would be completed within a defined timescale.
- 15.24 The Panel considers that the drafting inserted into Article 3, coupled with the additional words at the end of Requirement 29 of the recommended DCO, address both the need for certainty around the potential duration of Project A and B and the maximum potential gap allowable between the two projects. Yet, at the same time, would safeguard the applicant's expressed need for flexibility in its approach to the delivery of Projects A and B. In so far as landowners are concerned, Requirement 29 would also provide, in the Panel's view, additional certainty to landowners that the applicant would restore land to its previous condition in a

timely manner and thereby reduce the period of disruption to their land. As such Article 3, as drafted in version 5 of the draft DCO, is included in the recommended Order.

**Article 8 – Consent to transfer benefit of the Order**

- 15.25 During the course of the examination, the implications of Article 8 were the topic of much debate, resulting in a number of written questions, discussion at each of the three issue specific hearings, and a Rule 17 request for further information towards the close of the examination. In its representations the MMO has confirmed that it welcomed the inclusion of separate DMLs within the draft DCO for the proposed generation and transmission assets. This, the MMO states, accords with its advice that where parts of the project are likely to be taken forward by separate undertakers, then the DCO should contain more than one DML (REP-274).
- 15.26 The MMO also requested that additional drafting be included in Article 8, such that it would be consulted prior to any transfer of the benefits of the Order, providing details such as the person responsible for carrying out the activities, location and timing of works etc (REP-274). The applicant and the MMO reached agreement on this point, such that version 5 of the draft DCO included the proposed insertion of a clause at Article 8(7) which would require the undertaker to consult the MMO prior to the transfer to another person; and inclusion of an amendment to Article 8(9) which requires the MMO to be informed in writing within 14 days (previously 21 days) should any agreement come into effect which transfers the relevant provisions to another person (REP-480). These proposed changes have been carried forward into Article 8 of the ExA's recommended DCO, together with some minor changes to the drafting in the interests of clarity, which don't materially alter the intention and effect of the articles which have been subject to examination.
- 15.27 One matter remaining unresolved at the close of the examination relates to the MMO's concerns about the practical operation of the DMLs in terms of 'compliance, monitoring and enforcement'. Specifically, the MMO's role as the 'responsible regulatory authority to ensure works undertaken in the marine environment are done in accordance with the DML'. (Deadline III REP-274). Throughout the examination, the MMO was concerned that its ability to monitor and/or enforce the DMLs following transfer of relevant provisions in the DMLs to a transferee or lessee, would be difficult, because the DMLs appear to overlap where certain works (as described below) appear in both transmission and generation DMLs (REP-274).
- 15.28 By way of context, the transmission assets (Schedule 7, DMLs 3 and 4) include not only the Works No. for the export cable corridor (Works No. 2A 3A 2B and 2BA or 3BC (depending on the final exit point of the export cable from the array area for DBCB B project)

and 3B; but also the Works No. for the array area (1A and 1B). The applicant's reasoning for this approach was that the cut-off point between the ownership of the generation and transmission assets would be the offshore convertor platforms, which would be located within the description of the generating station, and that the precise point would only be known during the construction phase. Given this, the DMLs for the transmission assets cover the whole of the array area. In so far as Works No.2T is concerned, this was not considered to be a contentious area by any party.

15.29 In stating its case, the applicant stressed that DMLs 3 and 4 would only authorise the placement of transmission assets within the array area and would not licence the construction of the generation assets. This is captured in the applicant's response to the Panel's first written question 75 (REP-174). In an attempt to address the concerns of the MMO, the applicant proposed the insertion of additional drafting in paragraph 2(5) of DMLs 3 and 4 following the second issue specific hearing, to make clear that both licences would not authorise the construction of DML 1 and 2 Works No. 1A(a) and Works No. 1B(a) (DCO Version 3 – REP-388).

15.30 During the second DCO ISH the MMO, whilst agreeing with the proposed amendment, restated its concern that the works specified for DMLs 3 and 4 should not overlap with the works specified for DMLs 1 and 2 and that, as currently drafted, there could be difficulties of enforcement during construction (HR-020 and HR-021).

- (i) In the applicant's opinion, the mechanism of enforcement would be the same, regardless of the number of 'split' licences, provided that MMO was aware of who was doing what and where. Taking into consideration the MMO's concerns in this area, the applicant proposed the insertion of further drafting at Condition 1 of DMLs 1 & 2; and Condition 5 1 (a) of DMLs 3 and 4 (REP-388). This would require that prior to the licensee undertaking any licensable activity under each licence, the MMO was informed of the name of the licensee undertaking the activities;
- (ii) the works being undertaken pursuant to that licence;
- (iii) the maximum length of any HVAC cables within the relevant work number being constructed pursuant to that licence;
- (iv) the maximum total area and volume for any cable protection for HVAC inter-platform cables within the relevant work number being constructed pursuant to that licence; and
- (v) the maximum number of offshore collector platforms to be constructed under that licence.

15.31 By so doing, the applicant argued, the above wording would *'inform the MMO of who was responsible for the various activities and infrastructure, and they would be able to monitor and enforce*

*adherence to the maximum parameters by virtue of Requirements 3 to 6 of the DCO'* (Question 59 REP-281). In addition, the applicant argued, it would mean that no work could commence under any licence until the MMO was clear which works would fall within that licence (HR-049-051).

- 15.32 The applicant also suggested further drafting amendments to DMLs 1 & 2 to include the wording 'up to the point of connection with the transmission assets' with similar wording in DMLs 3 & 4, 'from the point of connection with the generation assets.' (REP-480).
- 15.33 Whilst the MMO agreed to the proposed additions to the drafting of the Order, they maintained their view that these amendments did not solve the problem of overlap and the need for the point between transmission and generation to be defined.
- 15.34 Prior to the third ISH into the DCO, the Panel published a draft version of the DCO containing a number of comments and proposed drafting amendments. Amongst these, was the inclusion of suggested wording for insertion into the DMLs that attempted to address the concerns raised about Article 8 in relation to overlap and enforcement. The Panel requested the MMO's view and if it was not satisfied with the proposed drafting, to provide an alternative suggestion for inclusion in the draft DCO, which would overcome its concerns in relation to transmission and generation.
- 15.35 The Panel's draft of the DCO was discussed in detail at the third ISH. The MMO did not agree with the Panel's proposed drafting as it did not meet its concerns about overlap. In response to further pressure from the Panel for the two parties to find common ground, the applicant proposed the insertion of a clause into each DML that would 'explicitly confirm' that any works notified to the MMO could not exceed the maximum parameters of the DCO set out in Schedule 1. The applicant argued that this would give the MMO a direct enforcement mechanism under the DMLs and further address the MMO's concern about overlap and double licencing. (DML 1 & 2 Condition 6(1)(b) and DML 3 & 4 Condition 5(1)(b). At the third ISH, the MMO agreed to consider this insertion but was not sure that it would address its concerns (HR-050).
- 15.36 During the second DCO ISH, the applicant had pointed to two other factors that were still unclear, these being the ownership of the collector stations, which would not be known until an OFTO was appointed, which in turn would affect whether they would sit within the generation or transmission licences. Secondly, the length of HVAC cabling and area and volume of HVAC cable protection falling within each DML which although included within the total parameters of each project and specified in the DCO, could not be determined in detail until the final layout is known. This is because the lengths of HVAC cable which fall within the generation and transmission ownership would depend on the

precise locations of the turbines and offshore platforms within the array areas. (HR-020-HR-023)

- 15.37 In responding to these matters, and following the third ISH on the DCO, the MMO proposed that Works No.1A (and 1B in respect of DML 2) should be contained within the generation DMLs only. Except for Works No.1A(b)(ii) which in the MMO's view should be moved to the DML 3 (and 1B (b) (ii) to DML 4) together with the associated cable protection, scour protection, and drill arisings set out in the offshore design parameters (Deadline VIII REP-503). The MMO also proposed the inclusion of additional parameters in relation to scour protection and drill arisings as a way to secure optimum mitigation. (Condition 5(8) and Condition 5(9) REP-503).
- 15.38 The applicant did not support the changes proposed by the MMO to Works No.1A. In its response to Deadline VIII (b) (REP-509) it explained why it disagreed with Works No.1A (and 1B in respect of DML2) only being contained within the generation licence (with the exception of 1A(b)(ii)) due to the overlap area of infrastructure between the DMLs, hence the reason for it being unable to determine the final connection point.
- 15.39 However, in reconsidering the splitting of the generation and transmission assets, the applicant suggested the possibility of alternative additional parameters that could be included as part of the DML conditions. These additional parameters are outlined in Table 2 of Deadline VIII (b) and seek to split out parameters for the length of HVAC and HVDC cables and the volume of cable protection in relation to the generation or transmission licences of each project.
- 15.40 In responding to Deadline VIII (b), the MMO welcomed the clarity over lengths of cable and cable protection volume and the ExA's recommended Order now includes the additional drafting at Requirement 6 and Condition 3 as referred to in Table 15.3. That aside, the MMO maintained its view that there would still be duplication between the licences, and that there was not enough information to fully differentiate between them (REP-512).
- 15.41 One further matter raised by the MMO towards the end of the examination, was its view that the applicant would need to amend the DML in any event, post consent. As such, the MMO considered that no duplication of work items between the DMLs should be allowed thus ensuring clear lines of enforcement. (Deadline VIII(b) REP-510). The applicant did not agree, suggesting there would only be limited circumstances under which an amendment would be necessary given the 'small area of overlap' between the licences (Deadline IX REP-517).
- 15.42 Having considered all relevant and important matters in relation to the implications of Article 8, the Panel is mindful of the additions



that the applicant has proposed to the draft DCO and DMLs to overcome the concerns of the MMO about overlap between DMLs 1 & 2 and 3 & 4. The proposed additions are discussed above and include in summary terms:

- (i) the undertaker to consult with the MMO prior to the transfer to another person;
- (ii) the need to inform the MMO in writing within 14 days should any agreement come into effect;
- (iii) the insertion of drafting which would confirm that DMLs 3 & 4 would only authorise placement of the transmission assets and would not permit construction;
- (iv) the insertion of drafting to inform the MMO prior to the carrying out of any licensable activity; and
- (v) the further clarification between transmission and generation licence parameters for the length and volume of cable and cable protection in relation to HVAC and HVDC.

15.43 Whilst not directly overcoming the MMO's concerns about overlap between the licences, the Panel is content that, on balance, these amendments to the DCO and DMLs would provide the MMO with the knowledge it needs to fulfil its role in relation to compliance, monitoring and enforcement of the four DMLs, pending the precise point of transmission and generation being established.

15.44 The Panel agrees with the view of the MMO that the DMLs will need to be changed post consent, when the precise point has been established. However, the Panel does not consider the splitting out of licences any further is necessary, given the absence of knowledge around the precise point of transmission and generation and given the raft of amendments discussed above.

15.45 In addition to the concerns raised by the MMO in relation to Article 8, the Panel raised a number of matters specifically in relation to Article 8 (4).

15.46 At the third DCO hearing (REP-477), the Panel questioned the applicant on the appropriateness of paragraph (4) being located within Article 8. The applicant explained that Article 8(4) and (5) are not model provisions. Article 8(4) prescribes the characteristics of a transferee or lessee to whom benefits under the Order may be transferred without the consent of the SoS; essentially that they must either be a licensee under the Electricity Act 1989, or the transfer must take place after the settlement of claims for compensation in respect of the acquisition and use of land under the Order, thus protecting the interests of landowners and others with an interest in the land (APP-024).

15.47 The applicant's view was that the driver for SoS consent to transfer is the requirement under Regulation 5(2)(h) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 for the proposed order to indicate

how the authorisation of compulsory acquisition is to be funded. The applicant also considered that a licence holder under the Electricity Act 1989 would be required to meet stringent regulatory requirements and the tests to be applied by the SoS in relation to CA compensation and other financial liabilities need to be met through the examination process

- 15.48 Consequently, in both cases, as the required test would have been met, it would not be necessary for there to be a second order SoS consent. The applicant further pointed out that the same formulation is contained within the made East Anglia One Windfarm Order 2014 (SI 2014/1599) at Article 5(4) and (8). The Panel concurred with this view and the proposed wording of Article 8(4).

### ***Article 9 Power to make agreements***

- 15.49 Although there are no proposed drafting changes to Article 9 (other than minor edits for consistency and the relocation of the Article from Part 6 of the application DCO: Miscellaneous and General, to Part 2 Principal Powers), the Panel wanted to understand more, asking the applicant to fully justify Article 9, whether it meets the desired ends and would work in practice, given that there was no precedent for this in other Orders made by the Secretary of State (PD-031).
- 15.50 In responding, the applicant referred to the Explanatory Memorandum, explaining that Article 9 was specific to this application, 'facilitating the entry by Bizco 1 and Bizco 4 into agreements where powers may be exercised by either party or jointly'. The Article acknowledges that Bizco 1 and Bizco 4 need to have access to each other's land for construction and decommissioning, and the Article looks to facilitate that (REP-477).
- 15.51 The applicant also confirmed that the Article was not a Model Provision but had been derived from other industries where joint working practices are more typically found (REP-477).
- 15.52 In considering the implications of this Article, the Panel looked carefully at the work numbers relating to the two projects. In so doing, the Panel questioned whether the work numbers referred to in Schedule 6 (relating to Article 29) were correct or were in fact transposed. After checking, the applicant confirmed that the work numbers had been incorrectly transposed. (REP-342) Version 3 of the draft DCO was amended to contain the correct work numbers (REP-342).
- 15.53 The Panel noted that there were no comments raised from IPs in relation to Article 9 and were satisfied with the applicant's answers to its questions. As such, Article 9 is retained within the recommended Order.

**Article 10 Disapplication and modification of legislative provisions**

- 15.54 Article 10 of the ExA's recommended DCO 'Disapplication and modification of legislative provisions' seeks to disapply and/or modify a number of existing statutes and regulations that impact on the construction and subsequent maintenance of Dogger Bank Creyke Beck pursuant to s120(5)(a) of PA2008.
- 15.55 The original submission included (APP-023) a proposal to disapply s23 of the Land Drainage Act 1991. The Beverley and North Holderness Internal Drainage Board (BNHIDB) did not consent to this (REP-108). It was agreed between the parties that if the power to disapply s23 of the Land Drainage Act 1991 were withdrawn, BNHIDB would have no further objection to the Dogger Bank Creyke Beck DCO (REP-319); accordingly it was removed from the draft DCO by the applicant (REP-386).
- 15.56 In its recommended form the draft DCO seeks to apply disapplication in five cases:
- i) Water Resources Act 1991**
- 15.57 The applicant seeks to disapply s109 (structures in, over or under a main river) of the Water Resources Act 1991 and the provision of any byelaws made under, or having effect as if made under paragraphs 5, 6 or 6A of Schedule 25 of the Water Resources Act 1991. The Environment Agency agreed to the disapplication at Deadline V after agreement was reached on the content of the Protective Provision contained in Schedule 8 Part 1 of the ExA's recommended DCO (REP-382).
- ii) Beverley Commons Act 1836**
- 15.58 The applicant seeks to disapply the Beverley Commons Act 1836 by excluding the provisions in relation to the exercise of any of the powers conferred under the Order so far as they apply to Figham Common (APP-023) (APP-024). In its first written questions (PD-008) the Panel asked the applicant at Q81(a) to clarify the meaning of 'excluded' in Article 9 of the draft submitted DCO and the applicant responded (REP-174) that the disapplication of the provisions of the Act is not necessitated by the project; but is intended to restrict the application of the provisions of the (1836) Act to the extent that they could frustrate the construction, maintenance or use of Figham Common for the proposed cable route; it suggested that 'excluded' be replaced with 'suspended' and made this change to the draft DCO at Deadline II (REP-192). ERYC stated (REP-331) that in principle it supported the proposed disapplication of the 1836 Act, subject to the agreement of the Beverley Pasture Masters and provided every effort is made to 'direct drill' underneath the common. No communication was received from the Beverley Common Pasture Masters, who are

identified in Part 1 of the Book of Reference as having an interest in land subject to compulsory acquisition and as such are affected persons; although they did not make any representations during the examination.

- 15.59 At the DCO/DML ISH on 5 June, the Panel asked if the consent of the Pasture Masters is needed in respect of the disapplication and asked for further information on the discussions that had taken place. The applicant expressed the view that their consent was not needed as there 'was no reference to the Pasture Masters in s150 of PA2008' (REP-343). It produced a further submission at Deadline V (REP-364) and confirmed its view that 'there are no specific requirements within the enactments for a consent or authorisation for the acquisition of the proposed rights or the carrying out of works proposed in the DCO. Accordingly s.150 does not apply.' It stated that confirmation was being sought from the Pasture Masters that they have no objection to the terms of Article 10 of the ExA's recommended DCO in relation to Figham Common. At the close of the examination no communication had been received from the Beverley Common Pasture Masters.
- 15.60 It is possible for a DCO to apply, modify, or exclude a statutory provision (such as provisions in the Beverley Commons Act 1836) under s120 (5) (a). This is subject to provisions in Chapter 1 part 7 of PA2008 including s150. In this case, it is noted that any consent required under the Beverley Commons Act 1836 is not a prescribed consent or authorisation which would trigger s150. Nonetheless, it is noted that ERYC as Commons Authority do not object in principle to inclusion of Article 10 (3) and although it would have been preferable to have received the Pasture Masters' agreement to an article which affects their interests (as requested by ERYC) express consent is not required under s150. It is the ExA's view therefore that the applicant's proposal in Article 10 of the ExA's recommended DCO to disapply the provisions of the Beverley Commons Act 1836 by suspending its provisions, as defined in Article 10 (3), is reasonable under the circumstances.

***iii) Party Wall, etc Act 1996***

- 15.61 Article 10 of the applicant's submitted DCO (APP-023) proposes the disapplication of s6 of the Party Wall, etc Act 1996 (underpinning of adjoining buildings) in relation to a proposal to excavate, or excavate for and erect anything, in exercise of the powers conferred by the Order. The Explanatory Memorandum (APP-024) explains that the purpose of this disapplication is to 'avoid works which have been authorised by the Order being held up by the process of making party wall awards under the Party Wall Act and is based on the Crossrail Act 2008'.
- 15.62 In its first written questions (PD-008) the Panel asked a series of questions about this proposed disapplication. The applicant confirmed that there were 'adjoining landowners' that might be

affected; that comprehensive protection for any buildings or structures affected by the works are provided for in Article 17 'Protective works to buildings' (Article 18 in the ExAs recommended DCO), which is a precedent model clause and s6 of the 1996 Act is unnecessary.

- 15.63 The Panel asked a further question on this issue in its second written questions (PD-018) (Q50) questioning whether Article 18(17) was necessary and why disapplication of s6 of the Party Wall, etc Act 1996 was necessary. The applicant's reply (REP-281) reiterated the view that Article 18 (previously 17) grants a wider power to enable protective works to a building lying within the Order limits irrespective of whether those works would otherwise be covered by the Party Wall Act; buildings or structures could be erected between the granting of the Order and the date of undertaking any works pursuant to it, which could be 8.5 years from the date of consent; and, the provisions are included to provide the necessary rights and compensation mechanism to avoid frustrating scheme delivery.
- 15.64 No representations were received on the proposed disapplication of the Party Wall, etc Act 1996. Having considered the provisions in Article 18 'Protective work to buildings' of its recommended DCO, it is the ExA's view that the applicant's proposal in Article 10 of the ExA's recommended DCO to disapply s6 of the Party Wall, etc Act 1996 (underpinning of adjoining buildings) in relation to a proposal to excavate, or excavate for and erect anything, in exercise of the powers conferred by the Order as defined in Article 10(4), is reasonable under the circumstances.

***iv) Hull and Leven Canal Act 1801 and York and North Midland Railway (Canals Purchase) Act 1847***

- 15.65 The applicant proposes to HDD under the Leven Canal (APP-026). The original submitted DCO (APP-023) sought to empower the undertaker in constructing Works No. 6A and 6B to do either or both of (a) hold, use and appropriate such parts of the disused canal as it may require for the purposes of the authorised project; and (b) take down and remove such parts of the disused canal as the undertaker does not require for the purpose and that on the relevant date all the powers and obligations conferred or imposed in relation to that part of the disused canal that is within the Order limits shall cease to have effect.
- 15.66 In its first written questions (PD-008) (Q81 (e)), the Panel asked for further clarification of the effect of this proposed disapplication. The applicant responded (REP-174) and confirmed that other provisions of the relevant enactments not relating to that part of the disused Leven Canal will remain extant. Following the first DCO hearing, the draft DCO was amended at Deadline III (REP-222) to clarify that the disapplication of legislation relating to the Leven Canal is restricted to the relevant provisions.

- 15.67 At Deadline IV the applicant responded to the Panel's second written question (Q33) in respect of the proposed Hull and Leven Canal Act 1801 disapplication (REP-281). The applicant provided copies of both the 1801 and 1847 Acts (REP-306) and stated that the 1801 Act imposes wide ranging powers relating to construction, operation and on-going maintenance of the Leven Canal; includes powers to enter onto land in the exercise of those powers, and imposes related powers to enter onto land in the exercise of those powers and imposes related powers to lease rates to third parties. Those rights and powers passed to the York and North Midland Rail Company by virtue of the 1847 Act which itself imposed further obligations related to maintenance. The relevant provisions are confirmed in sections 1 and 14 of the 1801 Act and s35 of the 1847 Act which are now expressly referred to in the revised DCO (REP-222).
- 15.68 No representations were received in connection with this proposed disapplication. At the DCO hearing held on 5th June 2014, the Panel asked the applicant to respond to the tests set out in s150 of the PA2008 in respect of the disapplication of statutory provisions in relation to the Leven Canal (REP-343). In its response (REP-364), the applicant stated that in respect of the Leven Canal there are no specific requirements within the enactments for a consent, or authorisation for the acquisition of the proposed rights or the carrying out of works proposed in the DCO and, accordingly, s150 of PA2008 does not apply.
- 15.69 The Panel has concluded that there is no reason why the disapplication set out in Article (5) and (6) of the ExA's recommended DCO should not be allowed.

***v) Hedgerow Regulations 1997***

- 15.70 In its original submitted DCO (APP-023), the applicant proposed to disapply obligations to obtain consents under the Hedgerow Regulations 1997 by virtue of Article 38(3) and (4). In its first written questions (PD-008) (Q85) the Panel raised a number of questions about the need for this disapplication, whether a better approach might be to use the power of s120(5)(a) of PA2008 to modify the Hedgerow Regulations 1997 to define the authorised development as 'permitted work' and, if so, whether it should be dealt with by Article 9 (now Article 10). In its response (REP-281) the applicant agreed with the suggestion of inserting a reference to development consent in Regulation 6(1) of the Hedgerow Regulations 1997 and amended the DCO accordingly at Deadline III (REP-221 and REP-222) including the deletion of Article 38 (4) (REP-414).
- 15.71 In its response to the Panel's first written question no. 85, ERYC stated that the operations would appear to fall within exemption 6(1) of the Hedgerow Regulations 1997 (REP-172). In its second written questions (PD-018) (Qs 51 and 52), the Panel asked for

evidence of any hedgerows categorised as 'important' under the Regulations within the Order Lands. The applicant confirmed that there were no hedgerows identified as 'important' or protected within the Order limits; that the methodology for the reinstatement of all hedgerows will be provided within the Landscaping Scheme secured by Requirement 22 'Implementation and maintenance of landscaping' of the revised DCO (version 2) submitted at Deadline III (REP-222) (now Requirement 15 in the ExAs recommended draft DCO). ERYC responded (REP-330) that it considered the proposals for dealing with hedgerows in the ES were satisfactory and that, in its view, the operations planned by the applicant would appear to be covered by the exemption in Reg 6(1)(e) of the Hedgerow Regulations – i.e. the removal of any hedgerow to which the regulations apply is permitted if planning permission is granted or deemed to be granted.

- 15.72 The ExA has considered the representations made and concludes that the amendment of the Hedgerow Regulations 1997 secured by Article 10 (8) of the ExA's recommended DCO establishes the project on the same basis as if planning permission were granted under the 1990 Planning Act and allows that work to any 'important' or protected hedgerows within the Order Lands will be permitted under the Regulations. The LPA is content with this situation and the Panel is satisfied that the removal and reinstatement of any hedgerows will be subject to LPA approval under requirements in the DCO. Accordingly, the ExA recommends that the Hedgerow Regulations 1997 be amended in accordance with Article 10 (8).

#### ***Article 24 Compulsory acquisition of rights***

- 15.73 Article 24 enables the undertaker to acquire rights by the creation of new rights. It provides that, in the case of the Order Land specified in Schedule 5 (which sets out land in which only new rights, etc. may be required), the undertaker's CA powers are limited to the acquisition of such new rights, etc as may be required for the purposes specified in relation to the land in column (2) of Schedule 5, and set out in the Book of Reference (REP-534). The Panel proposed at the CA hearing that Article 24 (3) and (4) be amended to remove the possibility of one Bizco frustrating development by the other Bizco and the addition of paragraph (6) to ensure that following the completion of works undertaken under the acquisition of new rights, etc the land is restored to its original condition (REP-483). Deadline VI (REP-415) confirms the applicant's agreement to these changes, which were incorporated into DCO version 4 (REP-413).
- 15.74 The ExA recommends acceptance of the amended Article 24 as shown in its recommended DCO, which now removes a potential obstacle to delivering the two projects should the Order be approved and ensures that land subject to the acquisition of new rights is restored to its former condition.

**Article 29 Temporary use of land for carrying out the authorised project and Article 30(29) – Temporary use of land for maintaining authorised project**

- 15.75 Article 29 allows the land coloured blue on the Land Plan to be occupied temporarily while the works are carried out, and also any of the land for permanent acquisition (coloured pink and set out in Schedule 6) that the applicant has not taken possession of; it is almost identical to general model provision 28.
- 15.76 At the CA hearing (REP-483), the Panel expressed concern at the apparent overlap between the general powers in the Article and the specific Class 9 rights identified in the Book of Reference. As a result the applicant amended Article 29 at Deadline VII to remove the duplication and clarify the distinction between the general and specific rights (REP-450). Additionally, Article 29 (4) was also amended to require the undertaker to restore land of which temporary possession has been taken to its original condition. The ExA is content that the applicant's drafting amendments resolve concerns in relation to potential overlap between the general powers in the Article and Class 9 rights.
- 15.77 Following the Panel's concern that the phrase 'reasonable satisfaction of the owner' lacked clarity (REP-343) the applicant proposed at Deadline V (A) that Article 29 (4) and Article 30 (5) be amended to require the undertaker to restore land of which temporary possession had been taken for maintenance purposes to its original condition (REP-386). The ExA is content with the revised wording which is contained within its recommended draft DCO.

**Article 31 Statutory undertakers**

- 15.78 The applicant proposed at Deadline V (A) that Article 31(2) be amended to change the definition of statutory undertakers to include public communications providers, thereby extending the benefits of Article 32 (Recovery of costs for new connections) to those companies (REP-386). The ExA agrees with this proposed change and it is included within its recommended draft DCO.

**Article 34(33) Special category land**

- 15.79 At the CA hearing (REP-483) the Panel requested that references in the Book of Reference to part plots; where plots are designated as having special category status as open space in part or where part of the plot is to be acquired by freehold and part by new rights, be amended and re-assigned to ensure each plot description accurately reflects its designation and the acquisition powers being sought. At Deadline VII the applicant submitted an amended Book of Reference (REP-431) and revised Land Plans (REP-435; REP-436; REP-437; REP-438; REP-439 and REP-440) in



respect of common land at Figham Common and open space at the beach north of Ulrome to remove partial plots.

- 15.80 The ExA is content that these amendments give greater clarity to the applicant's intentions and that the revised Book of Reference and Land Plans accurately reflect these amendments

***Requirement 30 Restoration of land used temporarily for construction***

- 15.81 Following discussion at the second DCO hearing (REP-343) the applicant proposed an amendment to Requirement 30 requiring the restoration of land used temporarily for construction to its former condition within six months of the completion of the relevant stage of the onshore works (REP-413). Requirement 30 was further amended to clarify that, if reinstatement was not possible within six months of completion of the relevant stage of the onshore works, the end of the next available planting season should be the final deadline for reinstatement (REP-480).
- 15.82 The ExA is satisfied that these amendments ensure that the interests of landowners affected by temporary uses are protected in so far as the restoration of their land is concerned and accordingly recommends they be accepted by the SoS.

***Article 42 Certification of plans etc.***

- 15.83 Article 42 of the draft DCO includes the details of the documents that the undertaker must provide to the SoS including for example, the offshore and onshore order limits; the Book of Reference, Land Plan, Works Plans, the Environmental Statement and Code of Construction Practice. Many of these documents were updated during the course of the examination, and the updated reference is included in version 5 of the draft DCO (REP-480). In addition, Article 42 refers to various draft plans. Although these are not included in the application draft DCO, they are now referred to in the applicant's latest version of the draft DCO. These plans include: the draft landscaping scheme; draft fisheries liaison plan; in principle monitoring plan and the outline maintenance plan. The fully developed detailed versions are reserved for subsequent approval in the discharge of the relevant requirements. To ensure that all relevant plans were appropriately referenced and that no plans or documents were inadvertently missed, the Panel asked the applicant to undertake a full audit of all plans and documents, with a view to ensuring that Article 42 was comprehensive (HR-049-HR-051). Article 42 of the recommended Order provides that comprehensive list.

***Article 44 Arbitration***

- 15.84 Provisions for measures in respect of arbitration should disputes occur, was a matter raised by George F White LLP on behalf of its clients (REP-504). The applicant referred to Article 44 of the draft

DCO (REP-413). This would require that any differences would be referred to and settled by a single arbitrator to be agreed between parties, or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the SoS (REP-480).

15.85 The ExA is satisfied that this Article provides an appropriate process to settle disputes should the need arise.

**Schedule 1 – Authorised Project and Requirements**

15.86 The Panel identified the main areas of discussion and changes made by the applicant in relation to Schedule 1 Authorised Project. These are listed in the Table 15.1 below with reference to where the changes are discussed in this report.

*Table 15.1 Main areas of discussion and changes made to Schedule 1<sup>22</sup>*

<b>Part No. / Requirement No.</b>	<b>Description</b>	<b>Reference</b>
Part 1	<b>Authorised Development</b>	Section below on Schedule 1 – Authorised Project in this chapter.
Part 2	<b>Ancillary Works</b>	Section below on Schedule 1 – Authorised Project in this chapter
Req. 1	<b>Interpretation</b>	Section below on Schedule 1 – Authorised Project in this chapter.
Req. 2	<b>Time Limits</b>	Section below on Schedule 1 – Authorised Project in this chapter.
Req. 3	<b>Detailed offshore design parameters</b>	In Chapter 8 Marine and Coastal Processes
Req. 4	<b>Detailed offshore design parameters</b>	In Chapter 8 Marine and Coastal Processes
Req.5	<b>Detailed offshore design parameters</b>	In Chapter 8 Marine and Coastal Processes
Req. 6	<b>Detailed offshore design parameters</b>	In Chapter 8 Marine and Coastal Processes

<sup>22</sup> In this table, red indicates a requirement that has been removed.

Req. 7	<b>Layout Rules</b>	Section below on Schedule 1 – Authorised Project in this chapter. and in Chapter 10 Radar, Navigation, and Search and Rescue
Req.8	<b>Aviation Lighting</b>	In Chapter 10 Radar Navigation and Search and Rescue
Req.9	<b>Aviation Lighting</b>	In Chapter 10 Radar Navigation and Search and Rescue
Req.10	<b>Offshore Decommissioning</b>	In Chapter 5 Biodiversity, Biological Environment, Ecology and Habitat Regulation Assessment
Req. 11	<b>Stages of the authorised development onshore</b>	Section below on Schedule 1 – Authorised Project in this chapter.
Req. 12	<b>Detailed Design Approval Onshore</b>	In Chapter 7 Landscape / Seascape and Visual Effects
Req. 11	Offshore Safety Management	This requirement is deleted from the recommended DCO but is included at Condition 11 (in DMLs 1&2) and Condition 12 (in DMLs 3 & 4)
Req. 13- 18 (12 – 17 in Version 4)	Aids to Navigation	These requirements have been deleted from the recommended DCO but have been relocated into the DMLs at Condition 18-24 (in DMLs 1 & 2) and Conditions 17-23 (in DMLs 3 & 4)23
Req. 13	<b>Detailed Design Approval Onshore</b>	In Chapter 7 Landscape / Seascape and Visual Effects
Req.14	<b>Provision of Landscaping</b>	In Chapter 7 Landscape / Seascape and Visual Effects
Req. 15	<b>Implementation and maintenance of</b>	In Chapter 7 Landscape / Seascape and Visual

	<b>landscaping</b>	Effects
Req. 16	<b>Fencing and other means of enclosure</b>	In Chapter 7 Landscape / Seascape and Visual Effects
Req. 17	<b>Highway Accesses</b>	In Chapter 12 Traffic and Transportation
Req 18	<b>Surface and foul water drainage</b>	Section below on the recommended Order in this chapter and in Chapter 9 Onshore Construction and Operational Effects
Req 19	<b>Surface and foul water drainage</b>	In Chapter 9 Onshore Construction and Operational Effects
Req 20	<b>Archaeology</b>	In Chapter 4 Onshore Archaeology and Heritage Assets
Req 21	<b>Ecological Management Plan</b>	In Chapter 5 Biodiversity, Biological Environment, Ecology and Habitat Regulation Assessment
Req 22	<b>Code of Construction Practice</b>	In Chapter 9 Onshore Construction and Operational Effects
Req 23	<b>Construction Environmental Management Plan</b>	In Chapter 9 Onshore Construction and Operational Effects
Req 24	<b>Construction Hours</b>	In Chapter 9 Onshore Construction and Operational Effects
Req 25	<b>Control of noise during operational phase</b>	In Chapter 9 Onshore Construction and Operational Effects
Req 26	<b>Control of Artificial Light Emissions</b>	In Chapter 9 Onshore Construction and Operational Effects In Chapter 5 Biodiversity, Biological Environment, Ecology and Habitat Regulation Assessment
Req 27	<b>Construction Traffic routing and management plan</b>	In Chapter 12 Traffic and Transportation

Req 28	<b>European Protected Species - Onshore</b>	In Chapter 5 Biodiversity, Biological Environment, Ecology and Habitat Regulation Assessment
Req 29	<b>Restoration of land used temporarily for construction</b>	In Chapter 9 Onshore Construction and Operational Effects
Req 30	<b>Interference with telecommunications</b>	In Chapter 9 Onshore Construction and Operational Effects
Req 31	<b>Onshore Decommissioning</b>	In Chapter 9 Onshore Construction and Operational Effects
Req 32	<b>Detailed Emergency Response Plan</b>	In Chapter 9 Onshore Construction and Operational Effects

### ***Part 1 Authorised Development***

15.87 The Panel were concerned that the distinction between Project A and Project B was not clearly set out in the description of the authorised development in Schedule 1, Part 1. (HR-006-HR-009) To address the Panel's concerns, the applicant redrafted Part 1, such that the Works No. comprising Project A and Project B are listed separately in the DCO for onshore and offshore works. Part 1 was further amended to include a separate list of shared works (REP-222).

15.88 The Panel also considered that it was not clear where the shared works were located (HR-006-HR-009). Version 2 of the draft DCO (REP-222) was amended to identify the shared works and thereby improve clarity.

### ***Requirement 1: Interpretation***

15.89 A further area where the Panel requested more clarity from the applicant was in relation to the definition of stages (HR-006 - HR-009). The Panel noted that throughout the draft DCO there were references to stages, but that these stages were not defined on the face of the Order. As such, the applicant identified in Version 2 of the draft DCO each stage and the works associated with it (REP-222).

### ***Requirement 2: Time Limits***

15.90 Time limits are discussed in detail earlier in relation to Article 3 above.

### **Requirement 7: Layout Rules**

- 15.91 Layout rules and their relationship Radar, Navigation and Search and Rescue Operations are discussed in Chapter 10. This part of the report considers the location of the Requirement in the recommended Order and its drafting.
- 15.92 During the examination, there was discussion between the applicant and the MMO in relation to the location of the layout rules requirement and whether it should be duplicated in the DCO and DMLs, or only referred to in the DMLs. The MMO argued that it should only be included in the DMLs to avoid this duplication (HR-049 - HR-051). The applicant did not agree. It explained that the layout rules were a fundamental element of the mitigation package relied upon in the ES, which had enabled bodies such as the MMO, Trinity House, MCA and fishermen to remove their objection to the DCO application. If layout rules were only to appear in the DMLs, the applicant argued that it would be possible to implement the authorised development without the key mitigation measures relied upon. Thus ensuring that layout rules remained on the face of the DCO was, in the applicant's view, 'essential' (REP-477).
- 15.93 A second matter on which the Panel sought further views via a Rule 17 request (PD-035) related to the suggestion by the applicant at the third ISH into the DCO, to link approval by the MMO of the layout rules with notification of the physical point of connection between generation and transmission assets (PD-035). In responding, although not disagreeing with the proposal, the MMO maintained its view that this would not resolve its concerns about duplication of works across the DMLs. The MMO also drew attention to the fact that the layout rules did not have a specific timeframe for submission to the MMO for approval other than before the construction of wind turbines and platforms (REP-510).
- 15.94 The applicant in responding to the Panel's Rule 17 request (PD-035), proposed amended wording to that which they had suggested at the third ISH, which sought to improve clarity of the requirement and avoid any potential misinterpretation (REP-509). The applicant also agreed with the MMO's concerns about the lack of timeframe, proposing insertion into the DMLs of an addition that would include reference to the layout rules, such that these would need to be approved at least four months prior to the intended start of construction, except where otherwise stated or unless otherwise agreed in writing by the MMO (REP-517).
- 15.95 The Panel is of the view that in this instance, the duplication of Layout Rules on the face of the Order and in the DMLs is appropriate, given that the layout rules are a corner stone of the mitigation associated with the application and as such should be within the DCO as well as the DMLs. Furthermore, the Panel considers that by joining together approval by the MMO of layout

rules and notification of the precise point of transmission and generation, the MMO is provided with another layer of comfort in relation to activities connected with transmission and generation, which in turn, would further assist MMO in the delivery of its statutory role.

- 15.96 The ExA's recommended Order includes the changes proposed by the applicant in relation to Layout Rules and DML Condition 10(1) for DMLs 1 & 2 and DML Condition 9(1) for DMLs 3 & 4. This is detailed in Table 15.3 below.

### **Requirement 11**

- 15.97 In response to the Panels questioning at the first DCO hearing, this requirement was made more precise by the applicant through the addition of a written scheme that would set out '*the phasing of construction of each stage of the onshore works*' (REP-222).

### **Schedules 2 - 6**

- 15.98 The Panel identified errors and discrepancies in Schedules 2 to 6, which the applicant was asked to remedy. These included:
- (i) the insertion of Carr Lane into Schedule 3;
  - (ii) various changes to plot numbers and rights in Schedule 5 (discussed in Chapter 14, Compulsory Acquisition); and
  - (iii) transposition of Project A and Project B work numbers in Schedule 6 (discussed earlier and in Chapter 14, Compulsory Acquisition).

### **Schedule 7 - Deemed Marine Licences**

- 15.99 The Panel identified various changes that were needed to Schedule 7 of the DCO by the applicant. DMLs 1 & 2 for Project A and Project B (generation) are identical in purpose, albeit each licence refers to that specific project. In so far as DMLs 3 & 4 are concerned, these are also broadly similar to DMLs 1 & 2, bar the omission of the reference to Condition 4 in DMLs 1 & 2, that being the detailed offshore design parameters in relation to offshore platforms. This is because DMLs 3 & 4 do not include offshore platforms.
- 15.100 Given the similarities between DMLs 1 & 2; and DMLs 3 & 4, it is not the Panel's intention to discuss the applicant's changes to all four licences separately, but to do this by reference to DML 1 and 2 with the corresponding Condition number as it appears in DMLs 3 & 4 in brackets.

**Table 15.2** Reference to where changes are discussed to Schedule 7 by the applicant during the examination.

<b>Para / Condition. No.</b>	<b>Description in Schedule 7</b>	<b>Reference</b>
1	<b>Interpretation</b>	Section on Schedule 7 in this Chapter
2	<b>Details of licensed marine activities</b>	In Chapter 8 – Marine and Coastal Processes
Cond. 3 & 4  (Cond.3 in DMLs 3 & 4)	<b>Detailed offshore design parameters</b>	In Chapter 8 – Marine and Coastal Processes
Cond 5  (Cond.4 in DMLs 3 & 4)	<b>Layout rules</b>	Section on Schedule 7 in this chapter
Cond 6  (Cond.5 in DMLs 3 & 4)	<b>Notifications and inspections</b>	Section on Schedule 7 in this chapter
Cond 7  (Cond.6 in DMLs 3 & 4)	<b>Chemicals, drillings and debris</b>	In Chapter 8 – Marine and Coastal Processes
Cond 8  (Cond.7 in DMLs 3 & 4)	<b>Force Majeure</b>	In Chapter 10 Radar, Navigation and Search and Rescue Operations
Cond 9 & 10  (Cond.8 & 9 in DMLs 3 & 4)	<b>Pre-construction plans and documentation</b>	In Chapter 8 – Marine and Coastal Processes
Cond 11  (Cond.10 in DMLs 3 & 4)	<b>Offshore safety management</b>	In Chapter 10 Radar, Navigation and Search and Rescue Operations
Cond 12  (Cond.11 in DMLs 3 & 4)	<b>Reporting of engaged agents, contractors and vessels</b>	In Chapter 10 Radar, Navigation and Search and Rescue Operations
Cond 13	<b>Equipment and</b>	In Chapter 10 Radar,



(Cond.12 in DMLs 3 & 4)	<b>operation of vessels engaged in licensed activities</b>	Navigation and Search and Rescue Operations
Cond 14 (Cond.13 in DMLs 3 & 4)	<b>Pre-construction monitoring</b>	In Chapter 5 Biodiversity, Biological Environment, Ecology and Habitat Regulation
Cond 15 (Cond.14 in DMLs 3 & 4)	<b>Construction monitoring</b>	In Chapter 8 – Marine and Coastal Processes
Cond 16 (Cond.15 in DMLs 3 & 4)	<b>Post construction surveys</b>	In Chapter 5 Biodiversity, Biological Environment, Ecology and Habitat Regulation
Cond 17 (Cond.16 in DMLs 3 & 4)	<b>Post construction surveys</b>	In Chapter 8 – Marine and Coastal Processes
Cond 18 - 24 (Cond.17 - 23 in DMLs 3 & 4)	<b>Proposed Aids to Navigation</b>	In Chapter 10 Radar, Navigation and Search and Rescue Operations

***Paragraph 1: Interpretation***

15.101 During the course of the examination, a number of changes were made to improve clarity and preciseness of interpretation. Additional amendments were also added to reference the various plans referred to in the application. All definitions were agreed by IPs and the applicant.

***Paragraph 2: Details of licenced marine activities***

15.102 This was modified to include details of ancillary works and an additional paragraph relating to decommissioning following the first ISH on the DCO (REP-222). All changes have been agreed by IPs and the applicant.

**Condition 3: Detailed offshore design parameters**

15.103 This includes the introduction of details such as total cable protection for HVAC inter-array cables and HVAC inter-platform cables and the maximum number of vessels carrying out impact piling not to exceed two. All definitions were agreed by IPs and the applicant.

**Condition 5:(4 in DMLs 3 &4): Layout Rules**

15.104 Following receipt by the Panel of Version 5 of the DCO (REP-480) the applicant has proposed changes to the layout rules in response to the MMO's wider concerns about overlap of the licences and the relationship between transmission and generation. These changes are discussed in detail earlier in this Chapter under Requirement 7 and are detailed in Table 15.3 below.

**Condition 6: (5 in DMLs 3 &4): Notifications and Inspections**

15.105 In response to the MMO's wider concerns about overlap of the licences and the relationship between transmission and generation, this included a new clause 6(1)(a) to advise the MMO in advance of any licensed activities that are to be undertaken (REP-388). A second amendment ensures that works notified do not exceed the maximum parameters set out in Schedule 1 of the draft DCO (REP-480). Both changes are discussed in detail earlier in this Chapter under Article 8.

**Condition 9 (8 in DMLs 3 &4): Offshore Safety Management**

15.106 Inclusion of a new Condition in version 5 of the draft DCO (REP-480) in response to the request from the MMO that this should appear as a Condition in each of the four DMLs and not as a Requirement in the DCO to avoid unnecessary overlap (HR-049 - HR-051). The applicant, whilst having no objection to the inclusion of the Requirement as a Condition in the DMLs did not agree with its removal as a requirement in the DCO (REP-477).

15.107 It is the Panel's view that this provision is specifically focused on mitigating the effect of the proposal on the safe delivery of offshore safety management and as such, is intrinsically linked to the DMLs. Separate onshore safety arrangements are covered by Requirements in the DCO. There is, therefore, no need for offshore safety management to also be covered by a requirement in the DCO. This is different to Requirement 7, Layout Rules which define the parameters of the offshore array and general layout arrangements for the Project A and B offshore works. Given that the layout rules are fundamental to the works proposed, they should appear on the face of the DCO, not just a condition in the DMLs.

15.108 The Panel can find little justification for the retention of offshore safety management as a requirement on the face of the DCO and considers this more appropriately located within the DMLs. As such, the ExA's recommended Order therefore includes the deletion of Requirement 11 and inclusion of Offshore Safety Management as a Condition in each DML.

***Conditions: 18-24 (17-23 in DMLs 3 &4) Proposed aids to navigation conditions***

15.109 An initial draft of the provisions in relation to Aids to Navigation was included in the application DCO (APP-023). The MMO made it clear from the outset that it was in discussion with Trinity House and would respond later in the examination with an agreed set of updated Conditions that would reflect latest convention and practice. The MMO also requested that the Aids to Navigation requirements be relocated within the DMLs (HR-049 - HR-051).

15.110 The applicant did not object to the proposal for relocation, including in version 5 of the DCO the most up to date drafting, in advance of final agreed wording from the MMO and Trinity House. (REP-480) The MMO submitted the final agreed wording at Deadline IX (REP-512). The applicant agreed the changes, subject to some minor amendments for consistency with the DMLs and DCO and in line with good SI practice (REP-517).

15.111 The ExA agrees to the proposed Conditions in respect of Aids to Navigation and has included these in the ExA's recommended Order subject to minor edits for consistency and good practice as detailed in Table 15.3 below.

**The recommended DCO**

15.112 After considering all important and relevant matters, the ExA appends the recommended Order at Appendix D to this report for consideration by the SoS.

15.113 There are several changes from the applicant's last version of the draft DCO. These changes are listed in Table 15.3 together with where they are discussed in this report.

15.114 The recommended DCO is the applicant's last submitted version of the draft DCO (REP-480) but includes:

- i) drafting changes which do not affect the meaning or purpose of the DCO. These are not captured in Table 15.3 below; and
- ii) amendments made by the Panel which have been considered in consultations during the examination and therefore the applicant and other interested parties have had an opportunity to set out their views upon them, as reflected in the relevant chapters of this report.

Table 15.3 The ExAs recommended amendments to the applicants last submitted version of the draft DCO

<b>No.</b>	<b>Reference</b>	<b>Amendments made by the ExA</b>	<b>Reasoning/ reference to reasoning for the amendment</b>
<b>Part 1</b>	<b>Project B Offshore</b>	Insertion of " <i>2. Associated development within the meaning of section 115(2) of the 2008 Act comprising</i> "	Insertion of title for clarity and consistency
<b>Req. 6</b>	<b>Detailed Offshore design parameters</b>	<p>(5) The length of HVAC cables comprising Works No. 1A / 1B in DMLs 1 and 2 (generation) must not exceed 950km.</p> <p>(6) The length of HVAC cables comprising Works No. 1A / 1B in DMLs 3 and 4 (transmission) must not exceed 320 km</p>	These insertions are included in the DCO as well as the DMLs, as they are an integral part of the detailed offshore design parameters and provide clarity. Discussed earlier in this Chapter under Article 8.
<b>Req. 7</b>	<b>Layout Rules</b>	<p>After the words "<i>(2) No construction of any wind turbine generator or offshore platform forming part of the Project A Offshore works must commence until the MMO, in consultation with the MCA, has approved the general layout arrangements for the Project A Offshore works.</i>" the words "<i>These layout arrangements must specify the physical point of connection between generation and transmission assets for Project A.</i>" have been inserted.</p> <p>After the words (3) No construction of any wind turbine generator or offshore platform forming part of the Project B</p>	Discussed earlier in this Chapter under Requirement 7

		Offshore works must commence until the MMO, in consultation with the MCA, has approved the general layout arrangements for the Project B Offshore works. The words <i>"These layout arrangements must specify the physical point of connection between generation and transmission assets for Project B."</i> have been inserted.	
<b>Req. 11</b>	<b>Offshore Safety Management</b>	This has been deleted from the requirements.	Discussed earlier in this Chapter under Condition 9
<b>Req. 12</b>	<b>Detailed design approval onshore</b>	After the words (3) ii) where major drilling is proposed, in which case the width <i>"of the corridor occupied by the grid connection comprising Works No. 6A and 6B"</i> must not exceed 53 metres; and iii) where drilling under Figham Common is required, in which case the width <i>"of the corridor occupied by the grid connection comprising Works No. 6A and 6B"</i> must not exceed 70 metres.	See Chapter 7 Landscape Seascape and Visual Effects
<b>Req. 22</b>	<b>Code of Construction Practice</b>	After the words <i>"a method statement for the crossing of watercourses which includes a scheme and programme (including a timescale) for any crossing, diversion and reinstatement of a designated main river or ordinary watercourse"</i> the words <i>"has been submitted to and, after consultation with the Environment Agency, Internal Drainage Board and / or Lead Local Flood</i>	See Chapter 9 Onshore construction and operational effects.

		<p><i>Authority, approved in writing by the relevant planning authority. The designated main river or ordinary watercourse shall be crossed, diverted and subsequently reinstated in accordance with the approved scheme and programme" have been inserted.</i></p>	
<b>Condition 3</b>	<b>Detailed offshore design parameters</b>	<p>New (10) has been inserted:  <i>"(10) The total cable protection for HVAC inter-array cables (excluding cable crossing) will not exceed an area of 0.5557 km<sup>2</sup> or a volume of 217,850 m<sup>3</sup> within Works No. 1A."</i></p> <p>New (13) has been inserted:  <i>"(13) The length of HVAC cables comprising Works No.1A must not exceed 950 km."</i></p>	Discussed earlier in this Chapter under Article 8
<b>Condition 5</b>	<b>Layout Rules</b>	<p>After the words "<i>No construction of any wind turbine generators and offshore platform(s) forming part of the authorised scheme must commence until the MMO, in consultation with the MCA, has approved their general layout arrangements.</i>" the words "<i>These layout arrangements must specify the physical point of connection between generation and transmission assets for Project A<sup>24</sup>.</i>" have been inserted.</p>	Discussed earlier in this Chapter under Article 8

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<sup>24</sup> Or Project B is referring to DMLs 2 & 4

<b>Condition 9 (iii)</b>	<b>Pre-construction plans and documentation</b>	After the words " <i>proposed pre-construction surveys, a proposed format and content for a baseline report, construction monitoring, post construction monitoring and related reporting</i> " the words " <i>in accordance with Conditions 14, 15 and 16. The preconstruction survey programme and all pre-construction survey methodologies shall be submitted to the MMO for written approval at least four months prior to the commencement of any survey works detailed within</i> " have been reinserted.	Minor Editing Re-instatement of text accidentally deleted by the applicant
<b>Condition 10 (1)</b>	<b>Pre-construction plans and documentation</b>	After the words " <i>Each programme, statement, plan, protocol or scheme required to be approved under condition 9</i> " the words " <i>or condition 5</i> " have been inserted.	Discussed earlier in this Chapter under Article 8
<b>Conditions 18 – 24 in DMLs 1 and 2; Conditions 17- 23 in DMLs 3 and 4</b>	<b>Aids to Navigation</b>	Deletion of Aids to Navigation Conditions included in Version 5 of the draft DCO. These were superseded at the end of the examination by an updated set of Conditions agreed jointly by MMO, Trinity House and MCA.	Discussed earlier in this Chapter under Conditions 17- 23.

## Protective Provisions

15.115 Article 43 gives effect to Schedule 8 of the ExA's recommended draft DCO. Schedule 8 contains five sets of protective provisions all of which were agreed, or were close to being agreed, at the end of the examination by the appropriate statutory undertakers as follows:

- (i) Part 1 'Protection for electricity, gas, water and sewerage undertaker'. Agreed by: Yorkshire Water (REP-536) National Grid Gas (REP-535) National Grid Electricity Networks (REP-535) Northern Powergrid (REP-530).
- (ii) Part 2 'Protection of Network Rail Infrastructure Limited'. Network Rail Infrastructure Limited agreed to the proposed protective provision in its relevant representation (REP-026).
- (iii) Part 3 'For the protection of operators of electronic communications code networks'. KCOM – no objection to the project; but no confirmatory letter was received by the Panel (REP-516) BT – agreed protective provision (REP-457).
- (iv) Part 4 'Protection of offshore cables and pipelines'. The applicant confirmed that they were in the final stages of negotiating a crossing agreement with INEOS (REP-516).
- (v) Part 5 'For the protection of the Environment Agency'. The Environment Agency confirmed agreement to the protective provision on 11 June 2014 (REP-382).

**s120 (5) (a) and s126 – modifications and disapplication**

15.116 The recommended Order seeks in a number of instances to apply s120 (5)(a) of PA2008 and apply, modify or exclude a statutory provision. Since the DCO is in the form of a statutory instrument, it would comply with s117 (4) of PA2008. Furthermore, no provision would contravene the provisions of s126 which relates to the modification or exclusion of a compensation provision.

**Unilateral Undertaking / PPA / MMO fees**

15.117 The applicant submitted a UU specifically in relation to securing the funds necessary should compulsory acquisition be required. (REP-). The Unilateral Undertaking is discussed in more detail in Chapter 14 Compulsory Acquisition. In broad terms the UU provides the mechanism by which the CA powers cannot be implemented without demonstration of the financial provisions for compensation. The ExA concludes for the reasons set out in detail in Chapter 14, that the UU does provide an acceptable mechanism for ensuring financial provisions for compensation are secured.

15.118 The Panel has also received confirmation that a Planning Performance Agreement has been signed between the applicant and ERYC. ERYC has confirmed it considers the PPA sufficient to secure the funds necessary to discharge the requirements of the DCO.

15.119 The MMO has powers to charge fees for the review of post consent monitoring for projects subject to EIA authorised by Regulation 24(A) of the Marine Works (Environmental Impact Assessment) Regulations 2007 (as amended) and is of the opinion that it would be permissible to charge a reasonable fee for post consent monitoring required under a DML granted as part of a DCO, in line with the HM Treasury Guidance, 'Managing Public Money'.



15.120 Its suggested wording, based on a condition proposed for Hornsea One OWF, is "The undertaker must pay a reasonable fee to the MMO in respect of the expenses incurred by the MMO in assessing and interpreting any monitoring report submitted to the MMO pursuant to the conditions of this licence. The fee shall be calculated in accordance with the MMO Licensing Fees and Charges Scheme." (REP-164, REP-274, REP-384).

15.121 The MMO notes that the matter may become academic owing to the imminent passing of the draft Public Bodies (Marine Management Organisation)(Fees) Order 2014 laid before Parliament on 13 May 2014 and subject to the affirmative procedure which expired on 4 July 2014, although the outcome was not reported to the examination (REP-384). It is not the ExA's place to anticipate what Parliament's intention might be. Indeed, the ExA agrees with the applicant's view that charges, if any, should be consistent with the charging structure and Regulations in force at the time the work is undertaken (REP-226). As such, a condition requiring the payment of fees should not be attached to the DMLs.

### **Conclusion**

15.122 Subject to the amendments proposed in Table 15.3 above, the Panel considers the recommended Order as set out in Appendix D to be acceptable having regard to all matters forming part of the application, the development sought and put before us at the examination.

## **16 SUMMARY OF CONCLUSIONS AND RECOMMENDATION**

16.1 In relation to the application for compulsory acquisition powers within the recommended Order, the ExA in summary concludes:

- (i) that the development for which the land is sought would be in accordance with national policy as set out in the relevant NPSs;
- (ii) that the NPSs identify a national need for electricity generating capacity;
- (iii) that the need to secure the land and rights required, and to construct the development within a reasonable commercial timeframe, represents a significant public benefit;
- (iv) that the private loss to those affected has been mitigated through the selection of the application land, the undergrounding of the cables and the extent of the rights and interests proposed to be acquired;
- (v) that the applicant has explored all reasonable alternatives to the compulsory acquisition of the rights and interests sought and there are no alternatives that ought to be preferred;
- (vi) that adequate and secure funding would be available to enable the compulsory acquisition within the statutory period following the Order being made;
- (vii) that the proposed interference with the human rights of individuals would be for legitimate purposes that would justify such interference in the public interest and to a proportionate extent.

16.2 Taking these various factors together, there is a compelling case in the public interest for the compulsory acquisition powers sought in respect of the CA land shown on the Land Plans (as amended). The ExA therefore concludes that the proposal would comply with s122(3) of PA2008.

16.3 In relation to s104 of PA 2008, the ExA further concludes in summary:

- (i) that making the recommended Order would be in accordance with National Policy Statements EN-1 and EN-3 and would also be in accordance with the Marine Policy Statement, the adopted Marine Plans, any relevant development plans and other relevant policy, all of which have been taken into account in this report;
- (ii) that the ExA has had regard to the Local Impact Report from ERYC in making its recommendation;
- (iii) that all transboundary impacts have been assessed, have been made known to the relevant EEA States, and would be appropriately mitigated were the recommended Order to be made;
- (iv) that in making the Order the SoS would be fulfilling the duties under the relevant EU Directives as transposed into UK law by regulation, as well as the biodiversity duty under the

NERC Act, subject to any necessary Habitat Regulation Assessment;

- (v) that whilst the SoS is the competent authority under the Habitat Regulations, the ExA finds that, in its view, the proposal would not adversely affect European sites, species or habitats, and the ExA has taken this finding into account in reaching its recommendation;
- (vi) that in regard to all other matters and representations received, the ExA found no important and relevant matters that would individually or collectively lead to a different recommendation to that below;
- (vii) that there is no adverse impact of the proposal that would outweigh its benefits; and
- (viii) that there is no reason to indicate the application should be decided other than in accordance with the relevant National Policy Statements.

### **RECOMMENDATION**

- 16.4 For all the above reasons, and in the light of the ExA's findings and conclusions on important and relevant matters set out in this report, the ExA recommends the Secretary of State for Energy and Climate Change makes the Dogger Bank Creyke Beck A and B Offshore Wind Farm Order in the form recommended at Appendix D.

# APPENDICES

## APPENDIX A – DOCUMENT LIBRARY

### Original Application Documents

APP-001	<u>1.1 Cover letter to the Planning Inspectorate</u>
APP-002	<u>1.2 Application Form</u>
APP-003	<u>1.3 Copies of Newspaper Notices</u>
APP-004	<u>2.1 Location Plan Offshore</u>
APP-005	<u>2.1 Location Plan Onshore</u>
APP-006	<u>2.2 Offshore Order limits and grid co-ordinates</u>
APP-007	<u>2.2 Onshore Order limits and grid co-ordinates</u>
APP-008	<u>2.3.1 Land Plan Offshore</u>
APP-009	<u>2.3.2 Land Plan Onshore - key plan</u>
APP-010	<u>2.3.2 Land Plan Onshore - Sheets 1-23</u>
APP-011	<u>2.4.1 Offshore works plan (with key plan)</u>
APP-012	<u>2.4.2 Onshore works plan (with key plan)</u>
APP-013	<u>2.5.1 Indicative extent of marine licences - spatial</u>
APP-014	<u>2.5.2 Indicative extent of marine licences - cross section</u>
APP-015	<u>2.6 Access to works plan (including key plan)</u>
APP-016	<u>2.7 Streets and public rights of way plan (including key plan)</u>
APP-017	<u>2.8.1 Offshore nature conservation sites</u>
APP-018	<u>2.8.2 Onshore nature conservation sites plan (inc key plan)</u>
APP-019	<u>2.9.1 Offshore sites or features of the historic environment</u>
APP-020	<u>2.9.2 Onshore sites or features of the historic environment (including key plan)</u>
APP-021	<u>2.10 Crown Land Plan (including key plan)</u>
APP-022	<u>2.11 Special Category Land Plan - Sheets 1 and 2</u>
APP-023	<u>3.1 Draft Development Consent Order</u>
APP-024	<u>3.2 Explanatory Memorandum</u>
APP-025	<u>4.1 Funding Statement</u>

APP-026	<u>4.2 Statement of Reasons</u>
APP-027	<u>4.3 Book of Reference</u>
APP-028	<u>5.1 Consultation Report</u>
APP-029	<u>5.1 Consultation Report Appendix A- Stakeholder Engagement Plan</u>
APP-030	<u>5.1 Consultation Report Appendix B- Fisheries Liaison Plan</u>
APP-031	<u>5.1 Consultation report Appendix C- Consultees</u>
APP-032	<u>5.1 Consultation Report Appendix D- Section 42 Cover Letters (Stage 1 Consultation)</u>
APP-033	<u>5.1 Consultation Report Appendix E- Section 42 Cover Letters (Stage 2 Consultation)</u>
APP-034	<u>5.1 Consultation Report Appendix F- Statement of Community Consultation (SoCC)</u>
APP-035	<u>5.1 Consultation Report Appendix G- Section 47 First Stage Consultation Materials</u>
APP-036	<u>5.1 Consultation Report Appendix H- Section 47 Second stage consultation materials</u>
APP-037	<u>5.1 Consultation Report Appendix I- Newsletters</u>
APP-038	<u>5.1 Consultation Report Appendix J- Community Working Group</u>
APP-039	<u>5.1 Consultation Report Appendix K- Section 48 Notices</u>
APP-040	<u>5.1 Consultation Report Appendix L- EIA Regulation 24</u>
APP-041	<u>5.1 Consultation Report Appendix M- Relevant response tables</u>
APP-042	<u>5.1 Consultation Report Appendix N- Other Communication Records</u>
APP-043	<u>5.1 Consultation Report Appendix O- Examples of general press coverage</u>
APP-044	<u>5.2 Habitats Regulations Assessment Report - Introduction</u>
APP-045	<u>5.2 Habitats Regulations Assessment Report - Screening Report</u>
APP-046	<u>5.2 Habitats Regulations Assessment Report - Information for Appropriate Assessment Report</u>
APP-047	<u>5.2 Habitats Regulations Assessment Report Appendix A - Screening Report consultation responses</u>
APP-048	<u>5.2 Habitats Regulations Assessment Report Appendix B - HRA responses to consultation comments</u>
APP-049	<u>5.2 Habitats Regulations Assessment Report Appendix C - Final LSE screening for all European sites</u>

- APP-050 [5.2 Habitats Regulations Assessment Report Appendix D - Appropriate assessment findings for SPAs and Ramsars](#)
- APP-051 [5.2 Habitats Regulations Assessment Report - Screening Matrices](#)
- APP-052 [5.2 Habitats Regulations Assessment Report - Integrity Matrices](#)
- APP-053 [5.4 Consents and licences required under other legislation](#)
- APP-054 [7.1 Safety Zone Statement](#)
- APP-055 [7.2 Cable Details and Grid Connection Statement](#)
- APP-056 [7.3 Statutory Nuisance Statement](#)
- APP-057 [8.1 Planning and design statement](#)
- APP-058 [8.2 Outline code of construction practice](#)
- APP-059 [8.3 Outline decommissioning statement](#)
- APP-060 [8.4 Health and safety statement](#)

### **Environmental Statement**

- APP-061 [6.1 Environmental Statement Chapter 1 - Introduction](#)
- APP-062 [6.2 Environmental Statement Chapter 2 - Project Need](#)
- APP-063 [6.3 Environmental Statement Chapter 3 - Legislation and Policy](#)
- APP-064 [6.4 Environmental Statement Chapter 4 - EIA Process](#)
- APP-065 [6.4.1 Environmental Statement Chapter 4 Appendix A - Forewind Cumulative Impact Assessment Strategy - Offshore](#)
- APP-066 [6.4.2 Environmental Statement Chapter 4 Appendix B - Forewind Cumulative Impact Assessment Strategy - Onshore](#)
- APP-067 [6.4.3 Environmental Statement Chapter 4 Appendix C - Scoping Report and Scoping Opinion](#)
- APP-068 [6.5 Environmental Statement Chapter 5 - Project Description](#)
- APP-069 [6.5.1 Environmental Statement Chapter 5 Appendix A - NPL Underwater Noise Technical Report](#)
- APP-070 [6.5.2 Environmental Statement Chapter 5 Appendix B - Foundation Characterisation Study](#)
- APP-071 [6.5.3 Environmental Statement Chapter 5 Appendix C - Creyke Beck Health Impact Assessment](#)
- APP-072 [6.5.4 Environmental Statement Chapter 5 Appendix D - Yorkshire Onshore Cable Route Crossings](#)

APP-073	<u>6.6 Environmental Statement Chapter 6 - Site Selection and Alternatives</u>
APP-074	<u>6.6.1 Environmental Statement Chapter 6 Appendix A - Offshore Project Boundary Report</u>
APP-075	<u>6.6.2 Environmental Statement Chapter 6 Appendix B - Landfall Selection Report</u>
APP-076	<u>6.6.3 Environmental Statement Chapter 6 Appendix C - Characterising the Cable Onshore Study Area</u>
APP-077	<u>6.6.4 Environmental Statement Chapter 6 Appendix D - Identification of the Onshore Converter Station Study Area</u>
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APP-081	<u>6.6.8 Environmental Statement Chapter 6 Appendix H - National Grid Statement Regarding Onshore Interface Points</u>
APP-082	<u>6.7 Environmental Statement Chapter 7 - Consultation</u>
APP-083	<u>6.8 Environmental Statement Chapter 8 - Designated Sites</u>
APP-084	<u>6.8.1 Environmental Statement Chapter 8 Appendix A - Screening of all UK Sites in study area</u>
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APP-086	<u>6.9 Environmental Statement Chapter 9 - Marine Physical Processes</u>
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APP-089	<u>6.10.1 Environmental Statement Chapter 10 Appendix A - Water Framework Compliance Assessment</u>
APP-090	<u>6.11 Environmental Statement Chapter 11 - Marine and Coastal Ornithology</u>
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- APP-093 [6.11.3 Environmental Statement Chapter 11 Appendix C - Designated Sites Screened In](#)
- APP-094 [6.12 Environmental Statement Chapter 12 - Marine and Intertidal Ecology](#)
- APP-095 [6.12.1 Environmental Statement Chapter 12 Appendix A - GEMS Survey Report](#)
- APP-096 [6.12.2 Environmental Statement Chapter 12 Appendix B - Gardline Cable Corridor Results Report May to June 2011 - Part 1](#)
- APP-097 [6.12.2 Environmental Statement Chapter 12 Appendix B - Gardline Cable Corridor Results Report May to June 2011 - Part 2](#)
- APP-098 [6.12.2 Environmental Statement Chapter 12 Appendix B - Gardline Cable Corridor Results Report May to June 2011 - Part 3](#)
- APP-099 [6.12.2 Environmental Statement Chapter 12 Appendix B - Gardline Cable Corridor Results Report May to June 2011 - Part 4](#)
- APP-100 [6.12.3 Environmental Statement Chapter 12 Appendix C - Gardline Cable Corridor Inshore Survey Results Report - Part 1](#)
- APP-101 [6.12.3 Environmental Statement Chapter 12 Appendix C - Gardline Cable Corridor Inshore Survey Results Report - Part 2](#)
- APP-102 [6.12.4 Environmental Statement Chapter 12 Appendix D - EMU Benthic Ecology Characterisation Survey and Appendices - Part 1](#)
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- APP-106 [6.12.5 Environmental Statement Chapter 12 Appendix E - PMSL Epifaunal Survey Report](#)
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- APP-112 [6.13.1 Environmental Statement Chapter 13 Appendix A - Fish and Shellfish Technical Report - Part 1](#)
- APP-113 [6.13.1 Environmental Statement Chapter 13 Appendix A - Fish and Shellfish Technical Report - Part 2](#)
- APP-114 [6.13.2 Environmental Statement Chapter 13 Appendix B - Creyke Beck PMSL Inshore Trammel Net Report](#)
- APP-115 [6.13.3 Environmental Statement Chapter 13 Appendix C - Pelagic Fish Characterisation Survey](#)
- APP-116 [6.13.4 Environmental Statement Chapter 13 Appendix D - Adult and Juvenile Fish Characterisation Survey](#)
- APP-117 [6.13.5 Environmental Statement Chapter 13 Appendix E - Dogger Bank Sandeel Survey Report](#)
- APP-118 [6.13.6 Environmental Statement Chapter 13 Appendix F - Dogger Bank Creyke Beck August Shellfish Survey Report Parts 1 and 2](#)
- APP-119 [6.14 Environmental Statement Chapter 14 - Marine Mammals](#)
- APP-120 [6.14.1 Environmental Statement Chapter 14 Appendix A - Dogger Bank Seal Telemetry](#)
- APP-121 [6.14.2 Environmental Statement Chapter 14 Appendix B - DMP Stats Dogger Bank Analysis Report](#)
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APP-132	<u>6.19 Environmental Statement Chapter 19 - Military Activities and Civil Aviation</u>
APP-133	<u>6.20 Environmental Statement Chapter 20 - Seascape and Visual Character</u>
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APP-135	<u>6.21.1 Environmental Statement Chapter 21 - Appendix A - Onshore Landscape and Visual Impact Assessment</u>
APP-136	<u>6.22 Environmental Statement Chapter 22 - Socio-Economics</u>
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APP-139	<u>6.24.1 Environmental Statement Chapter 24 Appendix A - Phase 1 Contaminated Land Desk Study</u>
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APP-144	<u>6.25 Environmental Statement Chapter 25 - Terrestrial Ecology</u>
APP-145	<u>6.25.1 Environmental Statement Chapter 25 Appendix A - Ecological Impact Assessment - Onshore Electrical Connection</u>
APP-146	<u>6.26 Environmental Statement Chapter 26 - Land Use and Agriculture</u>
APP-147	<u>6.27 Environmental Statement Chapter 27 - Onshore Cultural Heritage</u>
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APP-149	<u>6.28 Environmental Statement Chapter 28 - Traffic and Access</u>
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APP-151	<u>6.28.2 Environmental Statement Chapter 28 Appendix B - Typical construction access arrangements</u>
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- APP-154 [6.28.5 Environmental Statement Chapter 28 Appendix E - Projected material and employee numbers](#)
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- APP-157 [6.29 Environmental Statement Chapter 29 - Noise and Vibration](#)
- APP-158 [6.30 Environmental Statement Chapter 30 - Air Quality](#)
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- APP-164 [6.31 Environmental Statement Chapter 31 - Inter-relationships](#)
- APP-165 [6.32 Environmental Statement Chapter 32 - Transboundary Effects](#)
- APP-166 [6.33 Environmental Statement Chapter 33 - Cumulative Impact Assessment](#)
- APP-167 [6.34 Environmental Statement Chapter 34 - Conclusions](#)
- APP-168 [6.35 Environmental Statement Chapter 35 - Summary of Monitoring and Mitigation](#)
- APP-169 [6.36 Environmental Statement - Non-Technical Summary](#)

### **Development Consent Order**

#### **Received with Application**

- APP-023 [3.1 Draft Development Consent Order](#)

### **Development Consent Order**

#### **Received for Deadline III**

- REP-221 [Forewind - Revised DCO version 2 - clean](#)
- REP-222 [Forewind - Revised DCO version 2 - comparison](#)

**Development Consent Order**

**Received for Deadline V(A)**

REP-386     Forewind - DCO Change log June 2014

REP-387     Forewind - Revised DCO Version 3- clean

REP-388     Forewind - Revised DCO Version 3- comparison

**Development Consent Order**

**Received for Deadline VI**

REP-412     Forewind - Revised DCO version 4- clean

REP-413     Forewind - Revised DCO version 4- comparison

**Development Consent Order**

**Received for Deadline VIII**

REP-479     Forewind - Revised DCO version 5- clean

REP-480     Forewind - Revised DCO version 5- comparison

**Updated Application Documents**

**Received for Deadline IV**

REP-323     Forewind - Book of Reference (May 2014) Clean version

REP-324     Forewind - Book of Reference (May 2014) Comparison version

**Updated Application Documents**

**Received for Deadline V**

REP-344     Forewind - Book of Reference (June 2014) clean version

REP-345     Forewind - Book of Reference (June 2014) comparison version

**Updated Application Documents**

**Received for Deadline VII**

REP-430     Forewind - Updated Book of Reference - clean

REP-431     Forewind - Updated Book of Reference - comparison

**Updated Application Documents**

**Received for Deadline IX**

REP-521     Forewind - Updated Book of Reference (August 2014) clean version

**Updated Application Documents**

## **Received for Deadline X**

REP-534 [Forewind - Book of Reference \(clean version\)](#)

## **ExA Version DCOs**

PD-032 [ExA version of the draft DCO](#)

## **Procedural Decisions**

PD-001 [Section 55 Acceptance Checklist](#)

PD-002 [Letter confirming acceptance](#)

PD-003 [Rule 6 Letter](#)

PD-004 [Invitation Letter to the Preliminary Meeting - Netherlands](#)

PD-005 [Invitation Letter to the Preliminary Meeting - Belgium](#)

PD-006 [Invitation Letter to the Preliminary Meeting - Germany](#)

PD-007 [Rule 8 letter](#)

PD-008 [ExA first written questions](#)

PD-009 [ExA first written questions clarification note](#)

PD-010 [Letter to BT from the Examining Authority confirming IP status](#)

PD-011 [Notification of Hearings and Site Visit Letter](#)

PD-012 [Letter to Karen Riddle confirming IP status](#)

PD-013 [Letter to France notifying of the Examining Authority's second written questions](#)

PD-014 [Letter to Norway notifying of the Examining Authority's second written questions](#)

PD-015 [Letter to Denmark notifying of the Examining Authority's second written questions](#)

PD-016 [Letter to Sweden notifying of the Examining Authority's second written questions](#)

PD-017 [ExA second written questions cover letter](#)

PD-018 [ExA second written questions document](#)

PD-019 [Rule 17 Letter - Request for information and notification of proposed Site Visit](#)

PD-020 [Rule 8 \(3\) Letter - Notification of Timetable variation, Site Visit and Arrangements for Hearings](#)

PD-021 [Rule 13 Letter - Direction regarding notification of Hearings](#)

- PD-030 [Invitation to Participate in the Examination - Letter sent to persons in Part 3 of the Book of Reference](#)
- PD-022 [Rule 8\(3\) - Notification of timetable variation letter sent on 7 July 2014](#)
- PD-031 [ExA's DCO, RIES and a R17 request for further information](#)
- PD-034 [Rule 17 and 8\(3\) Letter - Request for further information and timetable variation letter sent on 24 July 2014](#)
- PD-035 [Rule 17 and \(8\)3 Letter - Request for further information and timetable variation letter sent on 29 July 2014](#)
- PD-036 [Rule 17 and 8\(3\) Letter 12 August - Request for further information and timetable variation letter sent on 12 August 2014](#)
- PD-037 [Procedural decision letter regarding changes to the application - Issued by the ExA on 13 August 2014](#)
- PD-038 [Email to Yorkshire Water - Confirmation of withdrawal of representations](#)
- PD-039 [Email to National Grid Plc - Confirmation of withdrawal of representations and IP status](#)
- PD-040 [S99 Letter - Letter closing the examination](#)

### **Certificates**

- PD-023 [Section 56 notice](#)
- PD-024 [Forewind - Certificates of Compliance with s56 and s59 and Regulation 13](#)

### **Adequacy of Consultation Representations**

- REP-001 [Scarborough Borough Council](#)
- REP-002 [City of York Council](#)
- REP-003 [Hull City Council](#)
- REP-004 [North Lincolnshire Council](#)
- REP-005 [North Yorkshire County Council \(NYCC\)](#)
- REP-006 [East Riding of Yorkshire Council \(ERYC\)](#)
- REP-007 [Doncaster Council](#)

### **Relevant Representations**

- REP-008 [Rob Ogden](#)
- REP-009 [The Crown Estate](#)
- REP-010 [Modus Seabed Intervention Ltd](#)
- REP-011 [Skidby Parish Council](#)

REP-012 [East Anglia Offshore Wind Ltd](#)

REP-013 [K J Moore & Sons](#)

REP-014 [Alan Rayner](#)

REP-015 [Susan Willmington](#)

REP-016 [Victor Delstanche](#)

REP-017 [Donald Malcolm Watson](#)

REP-018 [ABP Humber Estuary Services](#)

REP-019 [Coop. Vereniging Kottervisserij Nederland u.a. \(VisNed\)](#)

REP-020 [Marine Management Organisation \(MMO\)](#)

REP-021 [Royal Yachting Association](#)

REP-022 [Danish fishermen's association](#)

REP-023 [Tata communication UK Ltd](#)

REP-024 [Martin Donnelly](#)

REP-025 [The Parkmead Group plc](#)

REP-026 [Network Rail Infrastructure Limited](#)

REP-027 [North Eastern Inshore Fisheries and Conservation Authority](#)

REP-028 [Clive Waring](#)

REP-029 [John Beaumont](#)

REP-030 [Jill Lazenby](#)

REP-031 [Whale and Dolphin Conservation](#)

REP-032 [East Riding of Yorkshire Council](#)

REP-033 [Beverley & North Holderness Internal Drainage Board](#)

REP-034 [Peter Michael Mawer on behalf of various landowners at the Eastern end of the cable route](#)

REP-035 [Barmston & Fraisthorpe Parish Council](#)

REP-036 [SMart Wind Limited](#)

REP-037 [Bridlington Harbour Commissioners](#)

REP-038 [Royal Association of Netherlands Shipowners \(KVNR\)](#)

REP-039 [The Wildlife Trusts](#)

REP-040 [UK Chamber of Shipping](#)



REP-041 [Humber Archaeology Partnership](#)

REP-042 [East Riding of Yorkshire Council- 2nd Rep](#)

REP-043 [National Grid Carbon Limited](#)

REP-044 [Sustrans](#)

REP-045 [Public Health England](#)

REP-046 [Trinity House](#)

REP-047 [Natural England](#)

REP-048 [National Grid Electricity Transmission Plc and National Grid Gas Plc](#)

REP-049 [Scarborough Borough Council](#)

REP-050 [Environment Agency](#)

REP-051 [Joint Nature Conservation Committee](#)

REP-052 [Royal Society for the Protection of Birds](#)

REP-053 [Friends of the Earth](#)

REP-054 [Edward Henry Smith on behalf of S M Calvert and K G Howell](#)

REP-055 [Yorkshire Water](#)

REP-056 [Northern Powergrid \(Yorkshire\) plc](#)

REP-057 [Martin Swann on behalf of J Beaumont](#)

REP-058 [National Federation of Fishermen's Organisations](#)

REP-059 [C C Freear](#)

REP-060 [N B & S P Hart](#)

REP-061 [English Heritage](#)

REP-062 [K J Moore & Sons](#)

REP-063 [M H & C Norman](#)

REP-064 [W H Scott & Sons](#)

**Pre Exam correspondence**

REP-065 [Forewind - Covering letter for Consolidated Ornithology Addendum](#)

REP-066 [Forewind - Consolidated Ornithology Addendum – Introduction](#)

REP-067 [Forewind - Consolidated Ornithology Addendum Part 1 – Update to the cumulative and in-combination assessment](#)

- REP-068 [Forewind - Consolidated Ornithology Addendum Part 2 – Habitats Regulation Integrity Matrices](#)
- REP-069 [Forewind - Consolidated Ornithology Addendum Part 3 – Plans](#)
- REP-070 [Forewind - Consolidated Ornithology Addendum Part 4 - Consultation Responses and Change Log](#)
- REP-071 [Forewind - Update on discussions with The Crown Estate](#)
- REP-072 [Forewind - Progress on Statements of Common Ground](#)
- REP-073 [Letter from Royal Society for the Protection of Birds \(RSPB\) to the Examining Authority submitted before the Preliminary Meeting](#)

### **Deadline I - 4 March 2014**

#### **LIRs and SoCGs**

- REP-074 [East Riding of Yorkshire Council \(ERYC\) - Local Impact Report](#)
- REP-075 [ERYC - Minutes of Planning Committee meeting](#)
- REP-076 [Royal Society for the Protection of Birds \(RSPB\) - Update on Statement of Common Ground letter](#)
- REP-077 [Homes and Communities Agency \(HCA\) - Email confirming position of HCA](#)
- REP-078 [National Grid Carbon \(NGC\) - Letter regarding Statement of Intent with Forewind](#)
- REP-079 [Forewind - Statement of Common Ground - Summary and Index](#)
- REP-080 [Forewind - Statement of Common Ground - Tables of Commonality](#)
- REP-081 [Forewind - Statement of Common Ground correspondence with NGC](#)
- REP-082 [Forewind - Statement of Common Ground with Parkmead and Bridge Energy](#)
- REP-083 [Forewind - Statement of Common Ground with Whale and Dolphin Conservation \(WDC\)](#)
- REP-084 [Forewind - Statement of Common Ground correspondence with RSPB \(Offshore\)](#)
- REP-085 [Forewind - Statement of Common Ground with North Eastern Inshore Fisheries Conservation Authority \(NEIFCA\)](#)
- REP-086 [Forewind - Statement of Common Ground with VisNed and National Federation of Fishermen's Organisations \(NFFO\)](#)
- REP-087 [Forewind - Statement of Common Ground correspondence with Scottish Natural Heritage \(SNH\)](#)

- REP-088 [Forewind - Statement of Common Ground with Rederscentrale](#)
- REP-089 [Forewind - Statement of Common Ground with Royal Yachting Association \(RYA\)](#)
- REP-090 [Forewind - Statement of Common Ground with Tata Communications](#)
- REP-091 [Forewind - Statement of Common Ground with Holderness Fishing Industry Group \(HFIG\)](#)
- REP-092 [Forewind - Statement of Common Ground with Danish Fishermen's Association](#)
- REP-093 [Forewind - Statement of Common Ground with Environment Agency and Yorkshire Water Services](#)
- REP-094 [Forewind - Statement of Common Ground with Comite Regional des Peches Maritimes \(CRPMEM\)](#)
- REP-095 [Forewind - Statement of Common Ground with Civil Aviation Authority \(CAA\)](#)
- REP-096 [Forewind - Statement of Common Ground correspondence with European Community Shipowners' Association \(ECSA\)](#)
- REP-097 [Forewind - Statement of Common Ground with Maritime and Coastguard Agency \(MCA\)](#)
- REP-098 [Forewind - Statement of Common Ground with Public Health England \(PHE\)](#)
- REP-099 [Forewind - Statement of Common Ground with Trinity House](#)
- REP-100 [Forewind - Statement of Common Ground with Swedish Fishermen's Federation \(SFF\)](#)
- REP-101 [Forewind - Statement of Common Ground correspondence with Bridlington Harbour Commissioners](#)
- REP-102 [Forewind - Statement of Common Ground with the Wildlife Trusts \(Offshore\) \(Late submission\)](#)
- REP-103 [Forewind - Statement of Common Ground with Norwegian Fishermen's Association \(NFA\)](#)
- REP-104 [Forewind - Statement of Common Ground correspondence with Royal Association of Netherlands Shipowners \(KVNR\)](#)
- REP-105 [Forewind - Statement of Common Ground with Ministry of Defence \(MOD\)](#)
- REP-106 [Forewind - Statement of Common Ground correspondence with Highways Agency](#)
- REP-107 [Forewind - Statement of Common Ground with Skidby Parish Council](#)
- REP-108 [Forewind - Statement of Common Ground correspondence with Beverley North Holderness Internal Drainage Board](#)

- REP-109 [Forewind - Statement of Common Ground with UK Chamber of Shipping](#)
- REP-110 [Forewind - Statement of Common Ground correspondence with Beverley Town Council](#)
- REP-111 [Forewind - Statement of Common Ground with Natural England \(Onshore\)](#)
- REP-112 [Forewind - Statement of Common Ground with Yorkshire Wildlife Trust \(Onshore\)](#)
- REP-113 [Forewind - Statement of Common Ground with Cottingham Parish Council](#)
- REP-114 [Forewind - Statement of Common Ground with RSPB \(Onshore\)](#)
- REP-115 [Forewind - Statement of Common Ground correspondence with Northern Powergrid](#)
- REP-116 [Forewind - Statement of Common Ground with Marine Management Organisation \(MMO\)](#)
- REP-117 [Forewind - Statement of Common Ground with Woodmansey Parish Council](#)
- REP-118 [Forewind - Statement of Common Ground with Scarborough Borough Council](#)
- REP-119 [Forewind - Statement of Common Ground with Barmston and Fraisthorpe Parish Council](#)
- REP-120 [Forewind - Statement of Common Ground with National Grid Electricity Transmission and National Grid Gas \(NGET and NGG\)](#)
- REP-121 [Forewind - Statement of Common Ground with East Riding of Yorkshire Council \(ERYC\)](#)
- REP-122 [Forewind - Statement of Common Ground with English Heritage and Humber Archaeology Partnership \(Onshore\)](#)
- REP-123 [Forewind - Statement of Common Ground with English Heritage Offshore](#)
- REP-124 [Forewind - Statement of Common Ground correspondence with Sustrans](#)
- REP-125 [Forewind - Statement of Common Ground with The Crown Estate](#)
- REP-126 [Forewind - Statement of Common Ground with Joint Nature Conservation Committee \(JNCC\) and Natural England \(NE\) \(Offshore\)](#)
- REP-127 [Forewind - Appendix 1 of Statement of Common Ground with JNCC and NE \(Offshore\) Dogger Bank Offshore Environment Workshop Minute](#)
- REP-128 [Forewind - Appendix 2 of Statement of Common Ground with JNCC and NE \(Offshore\) 14 February 2013 Creyke Beck HRA Screening \(excl ornithology\) Minutes](#)
- REP-129 [Forewind - Appendix 3 of Statement of Common Ground with JNCC and NE \(Offshore\) 11 March 2013 Creyke Beck HRA Screening Ornithology Minutes](#)

- REP-130 [Forewind - Appendix 4 of Statement of Common Ground with JNCC and NE \(Offshore\) 18 June 2013 Creyke Beck s42 Response Benthic Ecology, Physical Processes and Fish Minutes](#)
- REP-131 [Forewind - Appendix 5 of Statement of Common Ground with JNCC and NE \(Offshore\) 19 June 2013 Creyke Beck s42 Response Ornithology Minutes](#)
- REP-132 [Forewind - Appendix 6 of Statement of Common Ground with JNCC and NE \(Offshore\) 19 June 2013 Creyke Beck s42 Response Marine Mammals Minutes](#)
- REP-133 [Forewind - Appendix 7 of Statement of Common Ground with JNCC and NE \(Offshore\) 7 October 2013 Creyke Beck Ornithology and Benthic Application Minutes](#)
- REP-134 [Forewind - Appendix 8 of Statement of Common Ground with JNCC and NE \(Offshore\) 10 October 2013 Creyke Beck Marine Mammals Application Minutes](#)
- REP-135 [Forewind - Appendix 9 of Statement of Common Ground with JNCC and NE \(Offshore\) Forewind Response to JNCC NE s42 comments](#)
- REP-136 [Forewind - Appendix 10 of Statement of Common Ground with JNCC and NE \(Offshore\) JNCC NE Dogger Bank Creyke Beck Relevant Representation](#)
- REP-137 [Forewind - Appendix 11 of Statement of Common Ground with JNCC and NE \(Offshore\) JNCC NE Dogger Bank Creyke Beck Ornithological Addendum Response](#)
- REP-138 [Forewind - Appendix 12 of Statement of Common Ground with JNCC and NE \(Offshore\) Forewind Marine Mammals Approach to Assessment Note](#)
- REP-139 [Forewind - Appendix 13 of Statement of Common Ground with JNCC and NE \(Offshore\) Forewind response to JNCC NE and MMO relevant representation points on marine physical processes](#)
- REP-140 [Forewind - Appendix 14 of Statement of Common Ground with JNCC and NE \(Offshore\) PBR at Flamborough Head and Filey Coast pSPA for Kittiwake and Gannet](#)
- REP-141 [Forewind - Appendix 15 of Statement of Common Ground with JNCC and NE \(Offshore\) Avoidance Rate Study](#)
- REP-142 [Forewind - Appendix 16 of Statement of Common Ground with JNCC and NE \(Offshore\) Forewind response to selected JNCC NE relevant representation points on ornithology](#)
- REP-143 [Forewind - Appendix 17 of Statement of Common Ground with JNCC and NE \(Offshore\) Forewind response to JNCC NE relevant representation points on Marine and Intertidal Ecology](#)
- REP-144 [Forewind - Appendix 18 of Statement of Common Ground with JNCC and NE \(Offshore\) Clarifications on foundation footprints](#)

- REP-145 [Forewind - Appendix 19 of Statement of Common Ground with JNCC and NE \(Offshore\) Email regarding Flamborough Head and Filey Coast pSPA](#)
- REP-146 [Forewind - Appendix 20 of Statement of Common Ground with JNCC and NE \(Offshore\) Further Marine Physical Processes clarification regarding longshore sediment transport](#)
- REP-147 [Forewind - Appendix 21 of Statement of Common Ground with JNCC and NE \(Offshore\) Sandeel clarification note](#)
- REP-148 [Forewind - Appendix 22 of Statement of Common Ground with JNCC and NE \(Offshore\) Herring clarification note](#)
- REP-149 [Forewind - Appendix 23 of Statement of Common Ground with JNCC and NE \(Offshore\) NE and JNCC outstanding concerns regarding Option 3 of the Band model](#)
- REP-150 [Forewind - Appendix 24 of Statement of Common Ground with JNCC and NE \(Offshore\) Statement of Common Ground Comment Log](#)

## **Deadline II - 18 March 2014**

### **Written Representations**

- REP-151 [John Beaumont and Jill Lazenby](#)
- REP-152 [Peter Michael Mawer \(Cranswicks\) on behalf of various landowners at the Eastern end of the cable route](#)
- REP-153 [Whale and Dolphin Conservation \(WDC\)](#)
- REP-154 [The Wildlife Trusts](#)
- REP-155 [Natural England- Summary of Written Rep](#)
- REP-156 [Natural England- Written Rep](#)
- REP-157 [Environment Agency](#)
- REP-158 [Richard Nicholson Ltd, Richard Nicholson and Lesley Nicholson](#)
- REP-159 [National Grid Electricity Transmission and National Grid Gas \(NGET and NGG\)](#)
- REP-160 [National Grid Carbon \(NGC\)](#)
- REP-161 [Forewind- Summary of Written Rep](#)
- REP-162 [Forewind- Written Rep](#)
- REP-163 [Alan Rayner](#)
- REP-164 [Marine Management Organisation- Written Rep and Response to First Questions](#)
- REP-165 [Edward Smith](#)

REP-166 [Royal Society for the Protection of Birds \(RSPB\)](#)

REP-167 [Martin Swann](#)

## **Deadline II - 18 March 2014**

### **Response to Examining Authority's First Questions**

REP-164 [Marine Management Organisation- Written Rep and Response to First Questions](#)

REP-168 [English Heritage](#)

REP-169 [The Crown Estate](#)

REP-170 [Environment Agency](#)

REP-171 [National Grid Electricity and National Grid Gas \(NGET and NGG\)](#)

REP-172 [East Riding of Yorkshire Council \(ERYC\)](#)

REP-173 [Trinity House](#)

REP-174 [Forewind- Response to First Questions](#)

REP-175 [Forewind- Question 1 Appendices 1-7 Correspondence with English Heritage](#)

REP-176 [Forewind- Question 8 Appendix 1 HRA Screening Matrices](#)

REP-177 [Forewind- Question 8 Appendix 2 HRA Integrity Matrices](#)

REP-178 [Forewind- Question 11 Appendix 1 Outline CEMP](#)

REP-179 [Forewind- Question 14 Appendix 1 Draft Landscaping Scheme](#)

REP-180 [Forewind- Question 14 Appendix 2 Summary status of offshore plans referred to in the ES, DCO and/or DML](#)

REP-181 [Forewind- Question 14 Appendix 3 Draft Fisheries Liaison Plan \(FLP\)](#)

REP-182 [Forewind- Question 15 Appendix 1 Danish sandeel fishing VMS figure](#)

REP-183 [Forewind- Question 23 Appendix 1 Sandeel Clarification Note](#)

REP-184 [Forewind- Question 27 Appendix 1 Herring Spawning Clarification Note](#)

REP-185 [Forewind- Question 40 Appendix 1 Option 2 collision risk summary tables and apportioning tables](#)

REP-186 [Forewind- Question 40 Appendix 2 Displacement – populations in buffer zones around projects](#)

REP-187 [Forewind- Question 40 Appendix 3 Population scales / apportioning non-breeding season impacts to individual SPAs](#)

REP-188 [Forewind- Question 40 Appendix 4 Submission made by SMartWind - Population Scale Information for Ornithological EIA Species](#)

- REP-189 [Forewind- Question 40 Appendix 5 Final Habitats Regulations Assessment for Triton Knoll Offshore Wind Farm](#)
- REP-190 [Forewind- Question 56 Appendix 1 Draft Precautionary Method of Working for Great Crested Newts](#)
- REP-191 [Forewind- Question 59 Appendix 1 - Current situation in relation to negotiations with landowners](#)
- REP-192 [Forewind- Question 65 Appendix 1 - Table of proposed DCO / DML changes](#)
- REP-193 [Forewind- Question 75 Appendix 1 - Visual guide to ownership responsibilities in the DCO/DMLs](#)
- REP-194 [Forewind- Question 81 Appendix 1 - Beverley Commons Act 1836](#)
- REP-195 [Forewind- Question 99 Appendix 1 - Norwegian VMS 2007 - 2011](#)
- REP-196 [Forewind- Question 103 Appendix 1 - Table of listed buildings, impacts on their heritage setting and visual impacts](#)
- REP-197 [Forewind- Question 110 Appendix 1 - Design and Access Statement: Dogger Bank Creyke Beck - Onshore Converter Stations](#)
- REP-198 [Forewind- Question 123 Appendix 1 - Figure of changes to significant wave height produced for Dogger Bank Teesside A & B consultation](#)
- REP-199 [Forewind- Question 127 Appendix 1 - Offshore Temporary Works Areas Clarification Note](#)
- REP-200 [Forewind- Question 130 Appendix 1 - Outline Offshore Maintenance Plan](#)
- REP-201 [Forewind- Question 132 Appendix 1 - Schedule of all onshore mitigation measures relied upon for construction and operation](#)
- REP-202 [Forewind- Question 133 Appendix 1 - Table of worst case assumptions](#)
- REP-203 [Forewind- Question 135 Appendix 1 - Cable System Design Study](#)
- REP-204 [Forewind- Question 141 Appendix 1 - Updated noise modelling](#)
- REP-205 [Forewind- Question 149 Appendix 1 - Shipping and navigation cumulative impact assessment alternative figure](#)
- REP-206 [Forewind- Question 160 Appendix 1 - Beach Works Outline Method Statement](#)
- REP-207 [Royal Society for the Protection of Birds \(RSPB\)](#)
- REP-208 [National Grid Carbon \(NGC\)](#)

**Deadline III - 15 April 2014**

**Comments on WRs, comments on responses to first written questions, comments on LIR, comments on matrices, responses to comments on**



**consolidated ornithology addendum, written summaries of oral cases at ISHs, draft s106 agreements**

- REP-209 [GTC](#)
- REP-210 [Trinity House - Comments on responses to ExAs first questions](#)
- REP-211 [Natural England - Written Summary of the oral case put forward by NE for the DCO DML ISH 1 & 2 April 2014](#)
- REP-212 [Natural England - Written Summary of the oral case put forward by NE for the HRA ISH 4th April 2014](#)
- REP-213 [Natural England - Appendix A- SoCG Addendum](#)
- REP-214 [Natural England - Appendix B- DCO and DML updates](#)
- REP-215 [Natural England - Appendix C- Deadline III Tables identifying areas of agreement and disagreement](#)
- REP-216 [Alan Rayner - Comments on Written Representations](#)
- REP-217 [Forewind - Submission Summary and Index](#)
- REP-218 [Forewind - Written summary of the oral case put at the Open Floor Hearing](#)
- REP-219 [Forewind - Written summary of the oral case put at the 1st DCO and DML Hearings](#)
- REP-220 [Forewind - Written summary of the oral case put at the 1st HRA Hearing](#)
- REP-221 [Forewind - Revised DCO version 2 - clean](#)
- REP-222 [Forewind - Revised DCO version 2 - comparison](#)
- REP-223 [Forewind - Appendix 1 - Comments on East Riding of Yorkshire Council Local Impact Report and responses to ExA first written questions](#)
- REP-224 [Forewind - Appendix 2 - Comments on English Heritage responses to ExA first written questions](#)
- REP-225 [Forewind - Appendix 3 - Comments on Environment Agency written representation and responses to ExA first written questions](#)
- REP-226 [Forewind - Appendix 4 - Comments on Marine Management Organisation written representation](#)
- REP-227 [Forewind - Appendix 5 - Comments on National Grid Carbon written representation and responses to ExA first written questions](#)
- REP-228 [Forewind - Appendix 6 - Comments on National Grid Electricity Transmission/National Grid Gas written representation and responses to ExA first written questions](#)
- REP-229 [Forewind - Appendix 7 - Comments on Natural England written representation and response to Ornithological Addendum](#)

- REP-230 [Forewind - Appendix 8 - Comments on Royal Society for the Protection of Birds written representation, responses to ExA first written questions and response to Ornithological Addendum](#)
- REP-231 [Forewind - Appendix 9 - Comments on Trinity House responses to ExA first written questions](#)
- REP-232 [Forewind - Appendix 10 - Comments on Whale and Dolphin Conservation Society written representation](#)
- REP-233 [Forewind - Appendix 11 - Comments on Wildlife Trust written representation](#)
- REP-234 [Forewind - Appendix 12 - Comments on written representations - Common Response to issues raised by landowners & those with an interest in land](#)
- REP-235 [Forewind - Appendix 13 - Comments on written representation of Mr John Beaumont & Mrs Jill Lazenby](#)
- REP-236 [Forewind - Appendix 14 - Comments on written representation of Cranswicks on behalf of various landowners at the Eastern end of the cable](#)
- REP-237 [Forewind - Appendix 15 - Comments on written representation of George F. White on behalf of Richard Nicholson Limited, Richard Alan Nicholson & Lesley Joan Nicholson](#)
- REP-238 [Forewind - Appendix 16 - Comments on written representation of Alan Rayner](#)
- REP-239 [Forewind - Appendix 17 - Comments on written representation of Hornseys on behalf of Mr SM Calvert & Miss KG Howell](#)
- REP-240 [Forewind - Appendix 18 - Comments on written representation of Hornseys on behalf of Mr J Beaumont](#)
- REP-241 [Forewind - Appendix 19 - Comments on written representation of Hornseys on behalf of Mr & Mrs Hart](#)
- REP-242 [Forewind - Appendix 20 - Addendum to Deadline II submission](#)
- REP-243 [Forewind - Appendix 21 - Nearshore sediment transport – clarification note to Natural England](#)
- REP-244 [Forewind - Appendix 22 - Ornithology meeting – draft agenda for 28th April](#)
- REP-245 [Forewind - Appendix 23 - Gull collision risk assessment review](#)
- REP-246 [Forewind - Appendix 24 - Option 2 collision risk numbers for lesser black backed gull and great black backed gull](#)
- REP-247 [Forewind - Appendix 25 - Flamborough Head and Filey Coast PSA Apportioning Review – Gannet and kittiwake](#)
- REP-248 [Forewind - Appendix 26 - In-combination apportioning review](#)

- REP-249 [Forewind - Appendix 27 - Update on shipping and navigation statements of common ground](#)
- REP-250 [Forewind - Appendix 28 - Update on discussions between Forewind and RSPB](#)
- REP-251 [Forewind - Appendix 29 - HRA Table of Mitigation](#)
- REP-252 [Forewind - Appendix 30 - Cable landfall HDD clarification note](#)
- REP-253 [Forewind - Appendix 31 - Summary of case for apportioning methodology](#)
- REP-254 [Forewind - Appendix 32 - DCO stages – plan and clarification note](#)
- REP-255 [Forewind - Appendix 33 - Construction timings clarification note](#)
- REP-256 [Forewind - Appendix 34 - Summary status of onshore plans referred to in the ES and DCO](#)
- REP-257 [Forewind - Appendix 35 - Commercial clarification Part 1 of 2](#)
- REP-258 [Forewind - Appendix 35 - Commercial clarification Part 2 of 2](#)
- REP-259 [Forewind - Appendix 36 - Draft Unilateral Undertaking](#)
- REP-260 [Forewind - Appendix 37 - DCO Requirements for the Local Planning Authority to Discharge](#)
- REP-261 [Forewind - Appendix 38 - Update on Planning Performance Agreement and Unilateral Undertaking discussions with East Riding of Yorkshire Council \(ERYC\)](#)
- REP-262 [Forewind - Appendix 39 - Table of proposed DCO/DML changes](#)
- REP-263 [Forewind - Appendix 40 - Confirmation from ERYC on the content of DCO schedules 2 to 4](#)
- REP-264 [Forewind - Appendix 41 - Relationship between DCO stages, work numbers and CPO rights](#)
- REP-265 [Forewind - Appendix 42 - Update on protective provisions](#)
- REP-266 [Forewind - Appendix 43 - Plans showing ownership structure and interactions between the DMLs and Work No.s](#)
- REP-267 [Forewind - Appendix 44 - Parameters for Dogger Bank Creyke Beck Work No. 7 – Converter Stations](#)
- REP-268 [Forewind - Appendix 45 - Approach to Noise Monitoring as outlined in DCO Requirement 31](#)
- REP-269 [Forewind - Appendix 46 - Summary of DCO protective provisions](#)
- REP-270 [Forewind - Appendix 47 - Southern North Sea Offshore Wind Forum \(SNSOWF\) updated cumulative report](#)

- REP-271 [Forewind - Appendix 48 - Summary of Scottish Natural Heritage \(SNH\) position](#)
- REP-272 [Forewind – Addendum to the Statement of Common Ground between Forewind and the Maritime and Coastguard Agency \(Late submission\)](#)
- REP-273 [National Grid Carbon - Letter to Forewind \(Late submission\)](#)
- REP-274 [Marine Management Organisation](#)

**Deadline IV - 19 May 2014**

**Responses to ExA’s Second Written Questions**

- REP-275 [Network Rail Infrastructure Ltd](#)
- REP-276 [Serco](#)
- REP-277 [Royal Yachting Association](#)
- REP-278 [The Crown Estate](#)
- REP-279 [Environment Agency](#)
- REP-280 [The Wildlife Trusts](#)
- REP-281 [Forewind – Response to Second Written Questions](#)
- REP-282 [Forewind - Question 6 Appendix 1 Flamborough Head Birds Directive Sites’ PINS Matrices](#)
- REP-283 [Forewind - Question 10 Appendix 1 Collated tables from Natural England and RSPB in relation to outstanding concerns related to the Habitats Regulations Assessment](#)
- REP-284 [Forewind - Question 22 Appendix 1 Ornithology Position Paper](#)
- REP-285 [Forewind - Question 22 Appendix 2 Guide to Ornithology Submissions](#)
- REP-286 [Forewind - Question 22 Appendix 3 Consideration of Precaution within the Ornithology Assessment](#)
- REP-287 [Forewind - Question 22 Appendix 4 Beatrice Offshore Wind Farm Appropriate Assessment](#)
- REP-288 [Forewind - Question 22 Appendix 5 Beatrice Offshore Wind Farm Appropriate Assessment](#)
- REP-289 [Forewind - Question 22 Appendix 6 Beatrice Offshore Wind Farm Avoidance Rate Study](#)
- REP-290 [Forewind - Question 22 Appendix 7 Moray offshore Wind Farm Decision letters](#)
- REP-291 [Forewind - Question 22 Appendix 8 Moray Offshore Wind Farm Appropriate Assessments](#)

- REP-292 [Forewind - Question 22 Appendix 9 Moray Offshore Wind Farm Avoidance Rate Study](#)
- REP-293 [Forewind - Question 22 Appendix 10 PVA Note Produced for Hornsea Project One](#)
- REP-294 [Forewind - Question 22 Appendix 11 Flamborough Kittiwake Population Note Produced for Hornsea Project One](#)
- REP-295 [Forewind - Question 22 Appendix 12 Update to in-combination tables](#)
- REP-296 [Forewind - Question 22 Appendix 13 Update to DIII Appendix 25](#)
- REP-297 [Forewind - Question 22 Appendix 14 Update to EIA and HRA Conclusions Based on Option 2 Outputs](#)
- REP-298 [Forewind - Question 22 Appendix 15 Actions and Updates from Meetings with NE on 28 April 2014 and 13 May 2014](#)
- REP-299 [Forewind - Question 22 Appendix 16 Seabird Densities and Important Sandeel Areas relative to Dogger Bank Creyke Beck](#)
- REP-300 [Forewind - Question 22 Appendix 17 Update to PBR for Kittiwake and Gannet \(update to Appendix 15 to the SoCG with NE and JNCC\)](#)
- REP-301 [Forewind - Question 24 Appendix 1 Response to Question 24](#)
- REP-302 [Forewind - Question 28 Appendix 1 Protective Provisions for the Environment Agency](#)
- REP-303 [Forewind - Question 29 Appendix 1 Comments on Natural England's Written Representation](#)
- REP-304 [Forewind - Question 30 Appendix 1 Export Cable Seasonal Restrictions](#)
- REP-305 [Forewind - Question 30 Appendix 2 Draft In Principle Monitoring Plan](#)
- REP-306 [Forewind - Question 33 Appendix 1 Copies of the 1801 Hull and Leven Canal Act and the 1847 York and North Midland Railway \(Canals Purchase\) Act](#)
- REP-307 [Forewind - Question 34 Appendix 1 Plans and Elevations](#)
- REP-308 [Forewind - Question 44 Appendix 1 MMO & Natural England Meeting Agenda and Actions](#)
- REP-309 [Forewind - Question 46 Appendix 1 Update to original table of proposed DCO / DML changes](#)
- REP-310 [Forewind - Question 56 Appendix 1 Statement of Intent from Forewind and Letter of No Objection In Principle from Shell](#)
- REP-311 [Forewind - Question 56 Appendix 2 Statement of Intent between Forewind and Gassco](#)

- REP-312 [Forewind - Question 60 Appendix 1 Schedule setting out measures of success for discharge of requirements and conditions](#)
- REP-313 [Forewind - Question 68 Appendix 1 Economic Benefits Study Technical Paper](#)
- REP-314 [Forewind - Question 68 Appendix 2 Economic Benefits Study Headline Report](#)
- REP-315 [Forewind - Question 81 Appendix 1 Updated Unilateral Undertaking](#)
- REP-316 [Forewind - Question 82 Appendix 1 Unilateral Undertaking Plan 1](#)
- REP-317 [Forewind - Question 86 Appendix 1 Statement of Common Ground between Forewind and Natural England and JNCC \(offshore\)](#)
- REP-318 [Forewind - Question 86 Appendix 2 Statement of Common Ground with Beverley Town Council](#)
- REP-319 [Forewind - Question 86 Appendix 3 SoCG Correspondence with Beverley and North Holderness Internal Drainage Board](#)
- REP-320 [Forewind - Question 87 Appendix 1 Updated Statement of Common Ground Summary](#)
- REP-321 [Forewind - Question 87 Appendix 2 Updated Tables of Commonality](#)
- REP-322 [Forewind - Question 88 Appendix 1 Matters secured through the DCO requirements](#)
- REP-323 [Forewind - Book of Reference \(May 2014\) Clean version](#)
- REP-324 [Forewind - Book of Reference \(May 2014\) Comparison version](#)
- REP-325 [National Grid Electricity Transmission and National Grid Gas](#)
- REP-326 [National Grid Carbon](#)
- REP-327 [SMart Wind](#)
- REP-328 [Royal Society for the Protection of Birds \(RSPB\)](#)
- REP-329 [Marine Management Organisation](#)
- REP-330 [East Riding of Yorkshire Council](#)
- REP-331 [East Riding of Yorkshire Council further rep \(late submission\)](#)
- REP-332 [East Riding of Yorkshire Council Third Rep \(Late submission\)](#)
- REP-333 [Natural England](#)
- REP-334 [English Heritage](#)

**Deadline V - 16 June 2014**

**Comments on responses to ExA's second questions, written summaries of oral case put forward at HRA and DCO/DML hearings**

- REP-335 [GTC](#)
- REP-336 [John Beaumont and Jill Lazenby](#)
- REP-337 [Energetics](#)
- REP-338 [The Wildlife Trusts](#)
- REP-339 [The Crown Estate - Agreed position with Forewind 2014 \(Also submitted by Forewind as Appendix 24\)](#)
- REP-340 [Natural England](#)
- REP-341 [Forewind - Deadline V Summary and Index](#)
- REP-342 [Forewind - Written summary of oral case put forward at hearing on 3 June 2014](#)
- REP-343 [Forewind - Written summary of oral case put forward at hearing on 5 June 2014](#)
- REP-344 [Forewind - Book of Reference \(June 2014\) clean version](#)
- REP-345 [Forewind - Book of Reference \(June 2014\) comparison version](#)
- REP-346 [Forewind - Land Plan amendment](#)
- REP-347 [Forewind - Statement of Intent with Northern Powergrid](#)
- REP-348 [Forewind - Appendix 1- Comments on responses to ExA second questions from Natural England](#)
- REP-349 [Forewind - Appendix 2- Comments on responses to ExA second questions from RSPB](#)
- REP-350 [Forewind - Appendix 3- Comments on responses to ExA second questions from the Wildlife Trusts](#)
- REP-351 [Forewind - Appendix 4- Comments on responses to ExA second questions from East Riding of Yorkshire Council](#)
- REP-352 [Forewind - Appendix 5- Comments on responses to ExA second questions- Question 69](#)
- REP-353 [Forewind - Appendix 6 Clarification note regarding Requirement 28](#)
- REP-354 [Forewind - Appendix 7- Offshore plans visual aid](#)
- REP-355 [Forewind - Appendix 8- Summary of DEPONS project](#)
- REP-356 [Forewind - Appendix 9- Fisheries community fund](#)
- REP-357 [Forewind - Appendix 10- Summary of marine mammals case](#)

- REP-358 [Forewind - Appendix 11- Offshore wind impacts on crustaceans](#)
- REP-359 [Forewind - Appendix 12- Water voles clarification](#)
- REP-360 [Forewind - Appendix 13 - Split between generation and transmission](#)
- REP-361 [Forewind - Appendix 14- MMO and Forewind note on enforcement](#)
- REP-362 [Forewind - Appendix 15- Update on SoCG between Forewind and East Riding of Yorkshire](#)
- REP-363 [Forewind - Appendix 16- Herring spawning summary of case](#)
- REP-364 [Forewind - Appendix 17- Note on Beverley Commons and Hull & Leven Canal Act](#)
- REP-365 [Forewind - Appendix 18- Clarification on Compulsory Acquisition rights sought](#)
- REP-366 [Forewind - Appendix 19- Comments on responses to ExA second questions from the Environment Agency](#)
- REP-367 [Forewind - Appendix 20- Notes on works at NGET substation](#)
- REP-368 [Forewind - Appendix 21- Watercourse Crossing Outline Method Statement](#)
- REP-369 [Forewind - Appendix 22- Revised outline CoCP](#)
- REP-370 [Forewind - Appendix 23- Revised plans for Work no 9c](#)
- REP-371 [Forewind - Appendix 23\(1\)- Amended works plan](#)
- REP-372 [Forewind - Appendix 23\(2\)- Amended works plan \(clean\) sheet 22-23](#)
- REP-373 [Forewind - Appendix 23\(3\)- Amended works plan \(comparison\) sheet 22-23](#)
- REP-374 [Forewind - Appendix 23\(4\)- Amended works plan \(clean\) sheet 22](#)
- REP-375 [Forewind - Appendix 23\(5\)- Amended works plan \(clean\) sheet 23](#)
- REP-376 [Forewind - Appendix 23\(6\)- Amended works plan \(comparison\) sheet 22](#)
- REP-377 [Forewind - Appendix 23\(7\)- Amended works plan \(comparison\) sheet 23](#)
- REP-378 [Forewind - Appendix 23\(8\)- Amended onshore order limits and grid coordinates plan](#)
- REP-379 [Forewind - Appendix 24 - The Crown Estate and Forewind agreed position on s135](#)
- REP-380 [Forewind - Appendix 25 - Comments on responses to ExA second questions from MMO](#)
- REP-381 [Forewind - Appendix 26 - Correspondence regarding protective provisions](#)
- REP-382 [Forewind - Appendix 27 - Letter from Environment Agency](#)



- REP-383 [National Federation of Fishermen's Organisations and Visned](#)
- REP-384 [Marine Management Organisation](#)
- REP-385 [Marine Management Organisation - Further email submitted \(Late submission\)](#)
- REP-417 [Equality and Human Rights Commission - Correspondence regarding application received in response to letter of 23 May 2014](#)

**Deadline V(A) - 23 June 2014**

- REP-386 [Forewind - DCO Change log June 2014](#)
- REP-387 [Forewind - Revised DCO Version 3- clean](#)
- REP-388 [Forewind - Revised DCO Version 3- comparison](#)

**Deadline VI - 7 July 2014**

**Any written summary of an oral case put at the Issue Specific Hearing and any documents/amendments requested by the ExA**

- REP-389 [Marine Management Organisation](#)
- REP-390 [Yorkshire Wildlife Trust](#)
- REP-391 [Forewind - Written Summary of Oral case put at HRA Hearing](#)
- REP-392 [Forewind - Appendix 1- Summary of final ornithology position](#)
- REP-393 [Forewind - Appendix 2- Apportioning of kittiwake populations](#)
- REP-394 [Forewind - Appendix 3- Apportioning of gannet populations](#)
- REP-395 [Forewind - Appendix 4- Final kittiwake and gannet in-combination tables](#)
- REP-396 [Forewind - Appendix 5- Final kittiwake in-combination tables](#)
- REP-397 [Forewind - Appendix 6- Apportioning of guillemot and razorbills](#)
- REP-398 [Forewind - Appendix 7- Updated in-combination displacement assessment for guillemot and razorbill](#)
- REP-399 [Forewind - Appendix 8- Final guillemot and razorbill in-combination tables](#)
- REP-400 [Forewind - Appendix 9- Review of CEH study](#)
- REP-401 [Forewind - Appendix 10- Updated HRA integrity matrices](#)
- REP-402 [Forewind - Appendix 11- Updated HRA screening matrices](#)
- REP-403 [Forewind - Appendix 12- Extended band model flight height sensitivity test](#)
- REP-404 [Forewind - Appendix 13- Updated offshore plans visual aid](#)
- REP-405 [Forewind - Appendix 14- Updated guide to ornithology submissions](#)

- REP-406 [Forewind - Appendix 15- Forewind position on Dogger Bank SCI site integrity](#)
- REP-407 [Forewind - Appendix 16- Response to MMO comments on herring spawning](#)
- REP-408 [Forewind - Appendix 17- Response to NFFO and VisNed letter](#)
- REP-409 [Forewind - Appendix 18- Offshore decommissioning guidance](#)
- REP-410 [Forewind - Appendix 19- Updated draft IPMP](#)
- REP-411 [Forewind - Amended plan- Offshore order limits and grid coordinates merged](#)
- REP-412 [Forewind - Revised DCO version 4- clean](#)
- REP-413 [Forewind - Revised DCO version 4- comparison](#)
- REP-414 [Forewind - DCO Change log July 2014](#)
- REP-415 [Forewind - DCO changes proposed at CA Hearings](#)
- REP-416 [Natural England](#)

#### **Deadline VII - 11 July 2014**

#### **Any written summary of an oral case put at the Compulsory Acquisition Hearing and any documents/amendments requested by the ExA and Comments on applicant's final draft DCO**

- REP-418 [John Beaumont and Jill Lazenby](#)
- REP-419 [Mr and Mrs Riddle](#)
- REP-420 [Ulrome and Lissett Parish Council](#)
- REP-421 [Leonards on behalf of Robin Thomas Jackson, Mary Jackson, Nigel Robin Jackson and Mark William Jackson](#)
- REP-422 [Leonards on behalf of Jayne Briggs, Katie Briggs, Nikolas Rupert and Harry Briggs](#)
- REP-423 [Natural England](#)
- REP-424 [Marine Management Organisation](#)
- REP-425 [Quadrant Pipelines Limited and associated companies](#)
- REP-426 [Forewind - Draft Unilateral Undertaking of development consent obligations put at CAH](#)
- REP-427 [Forewind - Submission summary and index](#)
- REP-428 [Forewind - Written Summary of CA Hearing Oral Case - 3-4 July 2014](#)
- REP-429 [Forewind - Offshore in Principle Monitoring Plan](#)

REP-430 [Forewind - Updated Book of Reference - clean](#)

REP-431 [Forewind - Updated Book of Reference - comparison](#)

REP-432 [Forewind - Appendix 1 - Draft Unilateral Undertaking](#)

REP-433 [Forewind - Appendix 2 - Landowner negotiation update](#)

REP-434 [Forewind - Appendix 3 - DCO change log since version 4](#)

REP-435 [Forewind - Appendix 4 - Updated Land Plans - cover and intro](#)

REP-436 [Forewind - Appendix 4 - Onshore Land Plan - Amendment - Sheet 1](#)

REP-437 [Forewind - Appendix 4 - Onshore Land Plan - Amendment - Sheet 21](#)

REP-438 [Forewind - Appendix 4 - Onshore Land Plan - Amendment - Sheet 22](#)

REP-439 [Forewind - Appendix 4 - Onshore Land Plan - Amendment - Sheet 23](#)

REP-440 [Forewind - Appendix 4 - Onshore Special Category Land Plan - Amendment - Sheet 1](#)

REP-441 [Forewind - Appendix 5 - Good Neighbour Agreement](#)

REP-442 [Forewind - Appendix 6 - Outline method statement for temp works areas](#)

REP-443 [Forewind - Appendix 7 Method Statement for Horizontal directional Drill](#)

REP-444 [Forewind - Appendix 8 - Onshore plans visual aid](#)

REP-445 [Forewind - Appendix 9 - Electric and Magnetic Fields Fact Sheet](#)

REP-446 [Forewind - Appendix 10 - Revised Outline CoCP version 3](#)

REP-447 [Forewind - Appendix 11 - Onshore mitigation measures and the mechanisms through which they are secured](#)

REP-448 [Forewind - Appendix 12 - Equality](#)

REP-449 [Forewind - Appendix 13 Outline Method Statement for Survey Works at Figham Common](#)

REP-450 [Forewind - Appendix 14 - Clarification on CA rights sought](#)

REP-451 [Forewind - Appendix 15 - Position statement on unilateral undertaking](#)

REP-452 [Forewind - Appendix 16 - Funding of the DBCB projects](#)

REP-453 [Forewind - Appendix 17 - Confirmation of removal of objection in relation to tenancy from ERYC](#)

REP-454 [Forewind - Appendix 18 HDD access maintenance and reliability clarification](#)

REP-455 [Forewind - Appendix 19 - Haul Road Clarification Note](#)

REP-456 [Forewind - Appendix 20 - Fishing rights at Ulrome beach](#)

- REP-457 [Forewind - Appendix 21 - Summary of negotiations with statutory undertakers](#)
- REP-458 [Forewind - Appendix 22 - Update from ERYC and pasture masters in relation Figham Common](#)
- REP-459 [Forewind - Appendix 23 - Public Beach Access](#)
- REP-460 [Forewind - Appendix 24 - Notes on amendments to book of reference](#)
- REP-461 [Forewind - Appendix 25 - Beach works method statement](#)
- REP-462 [Forewind - Appendix 26 - Planning performance agreement](#)
- REP-463 [Fulcrum \(Late submission\)](#)
- REP-464 [Leonards \(Late submission\)](#)

### **Deadline VIII**

**In relation to item 21 any written summary of an oral case put at the DCO and DML issue specific hearings and any documents / amendments, any final s106 agreement, any written comments on ExA's draft DCO**

- REP-465 [Natural England](#)
- REP-466 [English Heritage](#)
- REP-467 [Trinity House](#)
- REP-468 [Beverley and North Holderness Internal Drainage Board](#)
- REP-469 [Environment Agency](#)
- REP-470 [Swanland Parish Council](#)
- REP-471 [Seaton Parish Council](#)
- REP-472 [Willerby Parish Council](#)
- REP-473 [Forewind - Joint statement with National Grid Carbon](#)
- REP-474 [Forewind - Joint statement with National Grid Electricity and National Grid Gas](#)
- REP-475 [Forewind - Submission summary and index](#)
- REP-476 [Forewind - Comments on ExA draft DCO](#)
- REP-477 [Forewind - DCO-DML Hearing summary 16 July 2014](#)
- REP-478 [Forewind - Unilateral Undertaking Plans](#)
- REP-479 [Forewind - Revised DCO version 5- clean](#)
- REP-480 [Forewind - Revised DCO version 5- comparison](#)

- REP-481 [Forewind - Appendix 1- Planning performance agreement with ERYC](#)
- REP-482 [Forewind - Appendix 2- Removal of work area 9c](#)
- REP-483 [Forewind - Appendix 3- Amended written summary of CA Hearing oral case](#)
- REP-484 [Forewind - Appendix 4- Seven year consent duration](#)
- REP-485 [Forewind - Appendix 5- Offshore in principal monitoring plan](#)
- REP-486 [Forewind - Appendix 6- Outline code of construction practice- version 4](#)
- REP-487 [Forewind - Appendix 7- Update on NGET and NGG agreement](#)
- REP-488 [Forewind - Appendix 8- Update on NGC agreement](#)
- REP-489 [Forewind - Appendix 9- Revised land plans \(partial plots\)](#)
- REP-490 [Forewind - Appendix 10- Final offshore plans visual aid](#)
- REP-491 [Forewind - Statements of Common Ground with Parish Councils](#)
- REP-492 [Forewind - Statement of Common Ground correspondence with Frodingham Parish Council](#)
- REP-493 [Forewind - Statement of Common Ground correspondence with Leven Parish Council](#)
- REP-494 [Forewind - Statement of Common Ground correspondence with Beeford Parish Council](#)
- REP-495 [Forewind - Statement of Common Ground correspondence with Brandesburton Parish Council](#)
- REP-496 [Forewind - Statement of Common Ground correspondence with Lissett and Ulrome Parish Council](#)
- REP-497 [Forewind - Statement of Common Ground correspondence with Skipsea Parish Council](#)
- REP-498 [Forewind - Statement of Common Ground correspondence with Tickton and Routh Parish Council](#)
- REP-499 [Lissett and Ulrome Parish Council](#)
- REP-500 [Lissett and Ulrome Parish Council \(Late submission\)](#)
- REP-501 [National Grid Electricity and National Grid Gas](#)
- REP-502 [National Grid Carbon](#)
- REP-503 [Marine Management Organisation](#)
- REP-504 [Richard Nicholson and Lesley Nicholson \(Late submission\)](#)
- REP-505 [Beswick Parish Council \(Late submission\)](#)

## **Deadline VIIIa**

### **Responses to the Examining Authority's Rule 17 request of 24 July 2014**

REP-506 [Maritime and Coastguard Agency](#)

REP-507 [Forewind](#)

REP-508 [Fulcrum](#)

## **Deadline VIIIb**

### **Responses to the Examining Authority's Rule 17 request of 29 July 2014**

REP-509 [Forewind](#)

REP-510 [Marine Management Organisation](#)

## **Deadline IX**

**Any written comments on the RIES, including the matrices prepared by the ExA to inform RIES, any written comments on the final s106 agreement, any further comments on the written comments received to the ExA's draft DCO, any written comments on SoCGs and/or representations in writing received in response to Deadline VIII, comments on the applicant's response to the ExA's Rule 17 request of 14 July 2014, comments in light of any revised DCO from the applicant, Comments on any responses to the ExA's Rule 17 requests of 24 July 2014 and 29 July 2014**

REP-511 [Leonards](#)

REP-512 [Marine Management Organisation](#)

REP-513 [Burton Agnes Parish Council](#)

REP-514 [Natural England](#)

REP-515 [Forewind - Submission summary and index](#)

REP-516 [Forewind - Statutory undertakers update](#)

REP-517 [Forewind - Comments on Stakeholder Representations](#)

REP-518 [Forewind - Comments on Report on the Implications for European Sites \(RIES\)](#)

REP-519 [Forewind - Landowner negotiation update](#)

REP-520 [Forewind - Update on interactions with the Yorkshire and Humber CCS Project](#)

REP-521 [Forewind - Updated Book of Reference \(August 2014\) clean version](#)

REP-522 [Forewind - Statements of Common Ground with Parish Councils \(version 2\)](#)

REP-523 [Forewind - Unilateral Undertaking](#)

- REP-524 [Forewind - SoCG Correspondence with Beeford Parish Council](#)
- REP-525 [Forewind - SoCG Correspondence with North Frodingham Parish Council](#)
- REP-526 [Forewind - SoCG Correspondence with Brandesburton Parish Council](#)
- REP-527 [Forewind - SoCG Correspondence with Leven Parish Council](#)
- REP-528 [Forewind - SoCG Correspondence with Lissett and Ulrome Parish Council](#)
- REP-529 [Trinity House](#)
- REP-530 [Northern Powergrid \(Yorkshire\) plc](#)
- REP-531 [National Grid Carbon](#)
- REP-532 [National Grid Electricity and National Grid Gas](#)

### **Correspondence**

- REP-536 [Yorkshire Water- Withdrawal of representations](#)

### **Deadline X**

### **Responses to the Examining Authority's Rule 17 request of 12 August 2014**

- REP-533 [Forewind - Written response](#)
- REP-534 [Forewind - Book of Reference \(clean version\)](#)
- REP-535 [National Grid Gas and National Grid Electricity](#)

### **Preliminary Meeting**

- HR-001 [Audio recording of Preliminary Meeting](#)
- HR-002 [Preliminary meeting note](#)

### **Open Floor Hearing 31 March 2014**

- HR-003 [Forewind - Notification notice for hearings from 31 March to 4 April 2014](#)
- HR-004 [Hearing Agendas and Site Visit Itinerary for w/c 31 March 2014](#)
- HR-005 [Audio Recording – Recording of OFH on 31 March 2014](#)

### **Issue Specific Hearing 1 & 2 April 2014**

### **Development Consent Order and Deemed Marine Licence**

- HR-006 [Audio Recording – Session 1 of ISH on DCO/DML on 1 April 2014](#)
- HR-007 [Audio Recording - Session 2 of ISH on DCO/DML on 1 April 2014](#)
- HR-008 [Audio Recording – Session 1 of ISH on DCO/DML on 2 April 2014](#)
- HR-009 [Audio Recording - Session 2 of ISH on DCO/DML on 2 April 2014](#)

### **Accompanied Site Visit 3 April 2014**

HR-004 [Hearing Agendas and Site Visit Itinerary for w/c 31 March 2014](#)

HR-010 [Forewind – Information Pack for the ASV on 3 April 2014](#)

### **Issue Specific Hearing 4 April 2014**

#### **HRA- methodology and impacts on birds and marine mammals, also including mitigation measures to avoid, reduce and offset any major adverse transboundary effects**

HR-011 [Audio Recording - Session 1 of ISH on HRA and ecology on 4 April 2014](#)

HR-012 [Audio Recording - Session 2 of ISH on HRA and ecology on 4 April 2014](#)

HR-013 [RSPB – Comments on Table 4 of the ExA’s agenda for ISH on 4 April 2014](#)

HR-036 [Environment Agency - Update on position regarding matters relating to HRA](#)

### **Issue Specific Hearing 3 and 4 June 2014**

#### **Biodiversity, Biological Environment and Ecology, and Habitats Regulation Assessment**

HR-014 [Forewind - Notification notice for hearings from 3 June to 4 July 2014](#)

HR-015 [Hearing Agendas - Agendas for Issue Specific Hearing w/c 2 June 2014](#)

HR-016 [Forewind - Witness Resumes for HRA Issue Specific Hearing](#)

HR-017 [Audio Recording - Session 1 - Due to technical difficulties session 1 of the Issue Specific Hearing relating to biodiversity, biological environment and ecology, and habitats regulation assessment on 3 June 2014 is unavailable](#)

HR-018 [Written note of Session 1 – ISH of 3 June 2014 - Due to a failed audio recording a written note has been produced of this hearing session](#)

HR-019 [Audio Recording - Session 2 - 3 June 2014](#)

### **Issue Specific Hearing 5 June 2014**

#### **Draft development consent order including the draft Deemed Marine Licences (DMLs)**

HR-020 [Morning audio recording - Session 1 - 5 June 2014](#)

HR-021 [Morning audio recording - Session 2 - 5 June 2014](#)

HR-022 [Afternoon audio recording - Session 1 - 5 June 2014](#)

HR-023 [Afternoon audio recording - Session 2 - 5 June 2014](#)

HR-037 [Forewind - DCO Change log working draft – 5 June 2014 submitted at the hearing 5 June 2014](#)



HR-038 Forewind - Outstanding DCO-DML points between Forewind, Marine Management Organisation and Natural England submitted at the hearing 5 June 2014

HR-039 Forewind - Correspondence with East Riding of Yorkshire Council submitted in advance of Hearing of 5 June 2014

### **Issue Specific Hearing 1 July 2014**

#### **Habitats Regulation Assessment**

HR-024 Forewind - Notification notice for hearings from 1 to 3 July 2014

HR-025 Hearing Agenda and Site Visit Itinerary - Agendas for Issue Specific Hearing, Accompanied Site Visit and Compulsory Acquisition Hearing w/c 30 June 2014

HR-026 Audio Recording 01-07-2014 Morning session 1 - Recording of the ISH on HRA matters held on 1 July 2014

HR-027 Audio Recording 01-07-2014 Morning Session 2 - Recording of the ISH on HRA matters held on 1 July 2014

HR-028 Audio Recording 01-07-2014 Afternoon session - Recording of the ISH on HRA matters held on 1 July 2014

HR-040 Natural England - Supplementary Ornithological Expert Report submitted in advance of hearing on 1 July 2014

HR-041 Natural England - Annex 1 of Supplementary Ornithological Expert Report submitted in advance of hearing on 1 July 2014

#### **Accompanied Site Visit 2 July 2014**

HR-025 Hearing Agenda and Site Visit Itinerary - Agendas for Issue Specific Hearing, Accompanied Site Visit and Compulsory Acquisition Hearing w/c 30 June 2014

HR-042 Forewind - Information pack for the accompanied site visit on 2 July 2014

#### **Compulsory Acquisition Hearing 3 and 4 July 2014**

HR-025 Hearing Agenda and Site Visit Itinerary - Agendas for Issue Specific Hearing, Accompanied Site Visit and Compulsory Acquisition Hearing w/c 30 June 2014

HR-029 Audio Recording 03-07-2014 Morning session 1 -Audio Recording of Compulsory Acquisition Hearing

HR-030 Audio Recording 03-07-2014 Morning session 2 -Audio Recording of Compulsory Acquisition Hearing

- HR-031 [Audio Recording 03-07-2014 Afternoon session 1-Audio Recording of Compulsory Acquisition Hearing](#)
- HR-032 [Audio Recording 03-07-2014 Afternoon session 2 - Audio Recording of Compulsory Acquisition Hearing](#)
- HR-033 [Audio Recording 04-07-2014 Morning session 1 -Audio Recording of Compulsory Acquisition Hearing](#)
- HR-034 [Audio Recording 04-07-2014 Morning session 2 - Audio Recording of Compulsory Acquisition Hearing](#)
- HR-043 [John Beaumont & Jill Lazenby - Submission for the Compulsory Acquisition Hearing of 3 July 2014](#)
- HR-044 [Cranswicks - Submission for the Compulsory Acquisition Hearing of 3 July 2014](#)
- HR-045 [Cranswicks - Additional Submission for the Compulsory Acquisition Hearing of 3 July 2014](#)
- HR-046 [Paul Butler on behalf of Ulliyotts - Submission for the Compulsory Acquisition Hearing of 3 July 2014](#)
- HR-047 [Forewind - Landowner negotiation update submitted to inform the compulsory acquisition hearing on 3 July 2014](#)

### **Issue Specific Hearing 16 and 17 July 2014**

#### **DCO and DML**

- HR-035 [Forewind - Notification notice for hearings for 16 and 17 July 2014](#)
- HR-048 [Hearing Agenda for DCO ISH on 16 and 17 July 2014](#)
- HR-049 [Audio Recording 16-07-2014 Session 1](#)
- HR-050 [Audio Recording 16-07-2014 Session 2](#)
- HR-051 [Audio Recording 16-07-2014 Session 3](#)

#### **Transboundary Documents**

- PD-025 [Netherlands Response to Reg 24 Transboundary Consultation](#)
- PD-026 [Germany Response to Reg 24 Transboundary Consultation](#)
- PD-027 [Belgium Response to Reg 24 Transboundary Consultation](#)
- PD-028 [Reg 24 Notice - London Gazette](#)
- PD-029 [Transboundary screening matrix](#)

#### **Report on the Implications for European Sites (RIES)**

- PD-033 [Report on the Implications for European Sites \(RIES\)](#)

## APPENDIX B - EVENTS IN THE EXAMINATION

The table below lists the main events occurring during the examination and the main procedural decisions taken by the ExA.

Date	Examination Event
Tuesday 18 February 2014	Preliminary Meeting
Tuesday 25 February 2014	Issue by ExA of: Examination timetable ExA first written questions
Tuesday 4 March 2014	Deadline I Deadline for receipt by the ExA of: Local Impact Report from any local authorities Finalised Statements of Common Ground requested by ExA
Tuesday 18 March 2014	Deadline II Deadline for receipt by the ExA of: Written Representations (WRs) by all interested parties Comments on Relevant Representations (RRs) Summaries of all RR's exceeding 1500 words Summaries of all WRs exceeding 1500 words Comments on Matrices prepared by the applicant to inform the Report on the implications for European Sites Comments on consolidated ornithological addendum provided by the applicant Responses to ExA's first written questions Notification of wish to speak at a Compulsory Acquisition hearing Notification of wish to make oral representations at an issue specific hearing on the draft Development Consent Order (DCO) and Deemed Marine Licence (DML) Notification of wish to make oral representation at an Issue Specific Hearing Notification of wish to speak at an open floor hearing Notification of wish to attend site visit in the company of interested parties and any representations relating to proposed locations to visit
Monday 31 March 2014	Open floor hearing
Tuesday 1 – Wednesday 2 April 2014	Issue Specific Hearing – Development Consent Order and Deemed Marine Licence

Thursday 3 April 2014	Accompanied site visit
Friday 4 April 2014	Issue Specific Hearing on HRA – methodology and impacts on birds and marine mammals. Also including mitigation measures to avoid, reduce and if possible offset any major adverse transboundary effects
Tuesday 15 April 2014	Deadline III Deadline for receipt by the ExA of: Comments on WRs Comments on Responses to ExA’s first written questions Comments on Local Impact Report Responses to comments on matrices prepared by the applicant to inform the Report on Implications for European Sites Responses to comments on the consolidated ornithological addendum In relation to item 5 any written summary of an oral case put at the Open Floor Hearing and any documents/amendments requested by the ExA In relation to item 6 and 8 any written summary of an oral case put at the Issue Specific Hearings and any documents/amendments requested by the ExA Draft s106 Agreements
Wednesday 30 April 2014	Issue by ExA of: ExA second written questions
Monday 19 May 2014 *2pm*	Deadline IV Deadline for receipt by the ExA of: Responses to ExA’s second written questions
Tuesday 3 – Wednesday 4 June 2014	Issue Specific Hearing on Biodiversity, Biological Environment and HRA
Thursday 5 June 2014	Issue Specific Hearing – Development Consent Order and Deemed Marine Licence
Monday 16 June 2014 *2pm*	Deadline V Deadline for receipt by the ExA of: Comments on responses to ExA’s second written questions In relation to item 12 any written summary of an oral case put at the HRA Issue Specific Hearing and any documents/amendments requested by the ExA Any written summary of an oral case put at the

	DCO and DML Issue Specific Hearings and any documents/amendments requested by the ExA
Monday 23 June 2014 *2pm*	Deadline V(A)  Submission of applicants revised draft DCO following the issue specific hearing on the DCO and DML, including one clean and one tracked change copy.
Tuesday 1 July 2014	Issue Specific Hearing on HRA
Wednesday 2 July 2014	Accompanied site visit
Thursday 3 July and Friday 4 July 2014	Compulsory Acquisition Hearing
Monday 7 July 2014 *2pm*	Deadline VI  Any written summary of an oral case put at the HRA Issue Specific Hearing and any documents/amendments requested by the ExA  Submission of applicant's final draft Development Consent Order (DCO)
Friday 11 July 2014	Deadline VII  Any written summary of an oral case put at the Compulsory Acquisition Hearing and any documents/amendments requested by the ExA  Comments on applicant's final draft DCO
Monday 14 July 2014	Issue by the Examining Authority:  The Report on the Implications for European Sites (RIES), including the Matrices prepared by the ExA to inform RIES will be published on the Infrastructure Pages of the Planning Portal website  The ExA's draft DCO
Wednesday 16 – Thursday 17 July 2014	Issue specific hearing on Development Consent Order and Deemed Marine Licence (DML)
Thursday 24 July 2014 *2pm*	Deadline VIII  Any written summary of an oral case put at the DCO and DML Issue Specific Hearings and any documents / amendments

	<p>Any final draft s106 Agreement</p> <p>Statements of Common Ground and/or representations in writing as requested by the ExA</p> <p>Any written comments on ExA's draft DCO</p> <p>Applicant's response to the ExA's Rule 17 request of 14 July 2014</p> <p>Submission of revised DCO from the applicant following matters discussed at the DCO hearing</p>
<p>Wednesday 30 July 2014 *2pm*</p>	<p>Deadline VIII(a)</p> <p>Responses to the Examining Authority's Rule 17 request of 24 July 2014</p>
<p>Friday 1 August 2014 *12 noon*</p>	<p>Deadline VIII(b)</p> <p>Responses to the ExA's Rule 17 request of 29 July 2014</p>
<p>Tuesday 5 August 2014</p>	<p>Deadline IX</p> <p>Any written comments on the RIES, including the Matrices prepared by the ExA to inform RIES</p> <p>Any written comments on the final s106 agreement</p> <p>Any further comments on the written comments received to the ExA's draft DCO</p> <p>Any written comments on Statements of Common Ground and/or representations in writing received in response to Deadline VIII</p> <p>Comments on the applicant's response to the ExA's Rule 17 request of 14 July 2014</p> <p>Comments in light of any revised DCO from the applicant</p> <p>Comments on any responses to the ExA's Rule 17 request of 24 July 2014</p> <p>Comments on any responses to the ExA's Rule request of 29 July 2014</p>

Friday 15 August 2014 12 noon	Deadline X  Responses to the Examining Authority's Rule 17 request of 12 August 2014
Monday 18 August 2014 11.59pm	Deadline X(a)  Comments on Responses to the ExA's Rule 17 request of 12 August 2014
Monday 18 August 2014	Close of Examination

## **APPENDIX C - LIST OF ABBREVIATIONS**

AA – Appropriate Assessment  
AEOI – Adverse Effect on Integrity  
AEZ – Archaeological Exclusion Zones  
ALARP – As Low as Reasonably Practicable  
AP – Affected Person  
APFP - Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009  
ASV – Accompanied Site Visit  
BNHIDB – Beverley and North Holderness Internal Drainage Board  
CA – Compulsory Acquisition  
CAA – Civil Aviation Authority  
CEMP – Construction Environmental Management Plan  
CfD – Contract for Difference  
CoCP – Code of Construction Practice  
CODA – Cetacean Offshore Distribution and Abundance data  
COLREGS – International Regulations for Preventing Collisions at Sea  
CTMP – Construction Traffic Management Plan  
DBCBC – Dogger Bank Creyke Beck  
DCLG – Department for Communities and Local Government  
DCO – Development Consent Order  
DECC – Department of Energy and Climate Change  
DEFRA – Department for Environment, Food and Rural Affairs  
DEPONS – Disturbance Effects on the Harbour Porpoise of the North Sea  
DML - Deemed Marine Licence  
DPD – Development Plan Document  
EA – Environment Agency  
ECoW – Ecological Clerk of Works  
EEA – European Economic Area  
EH – English Heritage  
EIA – Environment Impact Assessment  
EM – Explanatory Memorandum  
EMF- Electro Magnetic Field  
EPR - Infrastructure Planning (Examination Procedure) Rules 2010  
EPS – European Protected Species  
ERCoP – Emergency Response and Co-operation Plan  
ERYC – East Riding of Yorkshire Council  
ES – Environmental Statement  
ExA - Examining Authority  
FID – Final Investment Decision  
FLP – Fisheries Liaison Plan  
HAP- Humber Archaeology Partnership  
HDD – Horizontal Directional Drilling  
HFIG – Holderness Fishing Industry Group  
HMR – Helicopter Main Route  
HRA – Habitats Regulation Assessment  
HVAC – High Voltage Alternating Current  
HVDC – High Voltage Direct Current  
ICES – International Council for the Exploration of the Sea  
IP – Interested Party  
IPMP – In Principle Monitoring Plan



ISH – Issue Specific Hearing  
IROPI - Imperative Reasons of Overriding Public Interest  
JCP – Joint Cetacean Protocol  
JNCC – Joint Nature Conservation Committee  
KVNR – Royal Association of Netherlands Shipowners  
LAT – Lowest Astronomical tide  
LDF – Local Development Framework  
LIR – Local Impact Report  
LSE – Likely Significant Effects  
LWS – Local Wildlife Site  
MarLIN – Marine Life Information Network  
MCA – Maritime and Coastguard Agency  
MCZs – Marine Conservation Zones  
MLWS – Mean Low Water Springs  
MMMP – Marine Mammal Mitigation Protocol  
MMO – Marine Management Organisation  
MOD – Ministry of Defence  
MPA – Marine Protected Areas  
MPS - Marine Policy Statement  
MSFD – Marine Strategy Framework Directive  
NATS – National Air Traffic Services  
NCN – National Cycle Network  
NE - Natural England  
NEIFCA – North Eastern Fisheries Conservation Authority  
NERC – Natural Environment and Rural Communities Act  
NFFO – National Federation of Fishermen’s Organisations  
NGC – National Grid Carbon Plc  
NGET – National Grid Electricity Transmission Plc  
NGG – National Grid Gas  
NI - National Infrastructure  
NP – National Powergrid  
NPPF – National Planning Policy Framework  
NPPG – National Planning Practice Guidance  
NPS – National Policy Statement  
NRA – Navigational Risk Assessment  
NRW – Natural Resource Wales  
NSIP – Nationally Significant Infrastructure Project  
OFH – Open Floor Hearing  
OFTO – Offshore Transmission Owner  
ORJIP – Offshore Renewable Joint Industry Programme  
OWF – Offshore Wind Farm  
PA 2008 – Planning Act 2008  
PBR - Potential Biological Removal  
PC – Parish Council  
PINS- Planning Inspectorate  
PPA - Planning Performance Agreement  
PPG – Planning Policy Guidance  
PPS – Planning Policy Statements  
PTS – Permanent Threshold Shift  
PVA – Population Viability Analysis  
RIES – Report on the Implications for European Sites  
rMCZs – Recommended Marine Conservation Zones

RR – Relevant Representation  
PRoW – Public Right of Way  
RSPB – Royal Society for the Protection of Birds  
RYA – Royal Yachting Association  
SAC – Special Areas of Conservation  
SAM – Scheduled Ancient Monument  
SAR – Search and Rescue  
SCANS-II – Small Cetaceans in the European Atlantic and North Sea data  
SCI – Site of Community Importance  
SEA – Strategic Environmental Assessment  
SLVIA – Seascape, Landscape and Visual Impact Assessment  
SNH – Scottish National Heritage  
SoCG – Statement of Common Ground  
SoS – Secretary of State  
SNSOWF – South North Sea Offshore Wind Forum  
SPA – Special Protection Area  
SSSI – Sites of Special Scientific Interest  
THLS – Trinity House Lighthouse Service  
TPO – Tree Preservation Order  
TWT – The Wildlife Trusts  
UU – Unilateral Undertaking  
VER – Valued Ecological Receptor  
WDC – Whale and Dolphin Conservation  
WFD – Water Framework Directive  
WR – Written Representation  
WSI – Written Scheme of Investigation  
YWT – Yorkshire Wildlife Trust

**APPENDIX D – RECOMMENDED DEVELOPMENT CONSENT ORDER  
AND DEEMED MARINE LICENCES**

**201X No.**

**INFRASTRUCTURE PLANNING**

**The Dogger Bank Creyke Beck Offshore Wind Farm Order  
201X**

*Made* - - - - 201X

*Coming into force* - - 201X

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An application has been made to the Secretary of State in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 made under sections 37, 42, 48, 51, 56, 58, 59 and 232 of the Planning Act 2008 (“the 2008 Act”)(a) for an Order under sections 37, 55, 115, 120, 121, 122, 140 and 149A of the 2008 Act;

The application was examined by an Examining authority appointed by the Secretary of State pursuant to Chapter 4 of the 2008 Act;

The Examining authority, having considered the national policy statements relevant to the application and concluded that the application accords with these statements as set out in section 104(3) of the 2008 Act;

The Examining authority, having considered the objections made and not withdrawn, and the application with the documents that accompanied the application, has recommended the Secretary of State to make an Order giving effect to the proposals comprised in the application with modifications which in its opinion do not make any substantial change in the proposals;

The notice of the Secretary of State’s determination was published;

As the Secretary of State in exercise of the powers conferred by sections 114, 115, 120, 121, 122 and 149A of the 2008 Act the Secretary of State makes the following Order.

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(a) 2008 c.29

# PART 1

## Preliminary

### Citation and commencement

1. This Order may be cited as the Dogger Bank Creyke Beck Offshore Wind Farm Order and comes into force on 201X.

### Interpretation

2.—(1) In this Order—

“the 1801 Act” means the Hull and Leven Canal Act 1801(a);

“the 1847 Act” means the York and North Midland Railway (Canals Purchase) Act 1847(b);

“the 1961 Act” means the Land Compensation Act 1961(c);

“the 1965 Act” means the Compulsory Purchase Act 1965(d);

“the 1980 Act” means the Highways Act 1980(e);

“the 1990 Act” means the Town and Country Planning Act 1990(f);

“the 1991 Act” means the New Roads and Street Works Act 1991(g);

“the 2004 Act” means the Energy Act 2004(h);

“the 2008 Act” means the Planning Act 2008(i);

“the 2009 Act” means the Marine and Coastal Access Act 2009(j);

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- (a) 1801 c.xxxii
  - (b) 1847 c.ccxvi
  - (c) 1961 c.33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c.65). There are other amendments to the 1961 Act which are not relevant to this Order.
  - (d) 1965 c.56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c.71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c.34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c.67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c.23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c.15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c.39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No.1). There are other amendments to the 1965 Act which are not relevant to this Order.
  - (e) 1980 c.66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c.22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c.51); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 (c.29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c.71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11), by section 64(1) (2) and (3) of the Transport and Works Act (c.42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c.51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c.19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c.29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c.15). There are other amendments to the 1980 Act which are not relevant to this Order.
  - (f) 1990 c.8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
  - (g) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
  - (h) 2004 c.20
  - (i) 2008 c.29.
  - (j) 2009 c.23.

“ancillary works” means the ancillary works described in Part 2 of Schedule 1 (authorised project) and any other works authorised by the Order and which are not development within the meaning of section 32 of the 2008 Act;

“array area” means the area within which Works Nos. 1A(a) to (d) and 1B(a) to (d) may be constructed which are the areas enclosed within a straight line drawn between points whose coordinates are set out in the respective tables in Part 1 of Schedule 1 to this Order and which are shown on the offshore works plans;

“authorised development” means the development and associated development described in Part 1 of Schedule 1 (authorised project) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

“the authorised project” means the authorised development and the ancillary works authorised by this Order;

“Bizco 1” means Doggerbank Project 1 Bizco Limited (Company number 7791991) whose registered office is 55 Vastern Road, Reading, Berkshire RG1 8BU;

“Bizco 4” means Doggerbank Project 4 Bizco Limited (Company number 7914510) whose registered office is 55 Vastern Road, Reading, Berkshire RG1 8BU;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“cable” includes, in respect of any onshore cable, direct lay cables and/or cables laid in cable ducts; and in respect of any cable whether onshore or offshore includes fibre optic cables;

“cable crossings” means the crossing of existing sub-sea cables and pipelines by the inter-array, interconnecting and/or export cables authorised by this Order together with physical protection measures including cable protection;

“cable protection” means the measures to protect cables from physical damage and exposure due to loss of seabed sediment, including, but not limited to, the use of bagged solutions filled with grout or other materials, protective aprons or coverings, mattresses, flow energy dissipation devices or rock and gravel burial;

“carriageway” has the same meaning as in the 1980 Act;

“combined platform” means a single offshore platform constructed in an array area comprising two or more of any of the following—

- (a) an offshore collector platform;
- (b) an offshore converter platform;
- (c) an offshore accommodation or helicopter platform;

“commence” means either—

- (a) in relation to the licensed marine activities referred to in the deemed marine licences in Schedule 7 to this Order (deemed marine licence under the Marine and Coastal Access Act 2009) beginning to carry out any of those activities except for the pre-construction surveys and monitoring and in respect of the authorised development; or
- (b) beginning to carry out any material operation (as defined in Section 155 of the 2008 Act) in respect of the authorised development, forming part of the authorised project other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and “commencement” and “commenced” shall be construed accordingly;

“commercial operation” means—

- (a) in relation to Project A, the exporting, on a commercial basis, of electricity from the wind turbine generators comprised within those works; and



(b) in relation to Project B, the exporting, on a commercial basis, of electricity from the wind turbine generators comprised within those works;

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“construction compound” means a secure temporary construction area associated with the onshore works, including temporary fencing, lighting and ground preparation, to be used for the location of site offices; general storage; storage of plant, cable drums, ducting and other construction materials; welfare facilities; car parking; waste management; lay-down areas; banded generators and fuel storage or any other means of enclosure and areas for other facilities required for construction purposes;

“Dogger Bank Zone” means the Dogger Bank Offshore Wind Farm Zone located in the North Sea between 125 kilometres and 290 kilometres off the coast of the East Riding of Yorkshire and extending over an area of approximately 8,660 km<sup>2</sup>;

“draft fisheries liaison plan” means the document certified as the draft fisheries liaison plan by the Secretary of State for the purposes of this Order;

“draft landscaping scheme” means the document certified as the draft landscaping scheme by the Secretary of State for the purposes of this Order;

“electrical converter substation and compound” means an electrical converter(s) housed within one or more converter halls and a compound containing electrical equipment including power transformers, switchgear, reactive compensation equipment, harmonic filters, cables, lightning protection systems including masts, control buildings, communications masts, back-up generators, access, fencing and other associated equipment, structures or buildings;

“Examining authority” means the Examining authority appointed under the 2008 Act to examine the application to this Order;

“the Environmental Statement” means the document certified as the Environmental Statement by the Secretary of State for the purposes of this Order and submitted with the application together with any supplementary or further environmental information submitted in support of the application;

“gravity base foundation” means a foundation type which rests on the seabed and supports the wind turbine generator, meteorological station or offshore platform primarily due to its own weight and that of added ballast, with or without skirts or other additional fixings, which may include associated equipment including J-tubes and access platforms and separate topside connection structures or an integrated transition piece. Sub types for wind turbine generators and meteorological stations include conical gravity base and flat-based gravity base. Sub types for platforms include: offshore platform conical or flat-base gravity base foundations, and offshore platform semi-submersible gravity base foundations;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“horizontal directional drilling” is a steerable trenchless method of installing underground pipes, ducts and cables in a shallow arc along a prescribed underground bore path by using a surface launched drill;

“HVAC” means high voltage alternating current;

“HVDC” means high voltage direct current;

“In Principle Monitoring Plan” means the document certified as the In Principle Monitoring Plan by the Secretary of State for the purposes of this Order;

“the land plan” means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

“the limits of deviation” means the limits of deviation for the onshore works comprised in the authorised development shown on the onshore works plans;

“maintain” includes upkeep, inspect, repair, adjust, alter, relay and remove to the extent assessed in the Environmental Statement, and any derivative of maintain is to be construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“mean low water springs” or “MLWS” means the average of the low water heights occurring at the time of spring tides which is also the outermost extent of the relevant planning authority jurisdiction;

“meteorological mast” or “meteorological station” means a fixed or floating structure housing or incorporating equipment to measure wind speed and other meteorological and oceanographic characteristics, including a topside which may house electrical switchgear and communication equipment and associated equipment, and marking and lighting;

“MMO” means the Marine Management Organisation;

“monopole foundation” means foundation options based around a single vertical pillar structure driven, drilled, or embedded into the seabed by means such as suction and/or gravity. This main support structure may change in diameter via tapers and abrupt steps. Sub types for wind turbine and meteorological stations include: monopole with steel monopile footing, monopole with concrete monopile footing, and monopole with a single suction-installed bucket footing;

“multileg foundation” means foundation options based around structures with several legs or footings. This includes jackets, tripods, and other structures which include multiple large tubulars, cross-bracing, or lattices. Multileg foundations may be fixed to the seabed by footings which are driven, drilled, screwed, jacked-up, or embedded into the seabed by means such as suction and/or gravity. Sub types for wind turbine generators and meteorological stations include multilegs with driven piles, drilled piles, screw piles, suction buckets, and/or jack up foundations. Sub types for platforms include: offshore platform jacket foundations (potentially using driven piles, suction buckets and/or screw piles) and offshore platform jack up foundations;

“National Grid substation” means the existing National Grid Electricity Transmission UK Substation located at Creyke Beck;

“offshore accommodation or helicopter platform” means a platform (either singly or as part of a combined platform) housing or incorporating some or all of the following: accommodation for staff during the construction, operation and decommissioning of the offshore works, landing facilities for vessels and helicopters, re-fuelling facilities, communication and control systems, electrical systems such as metering and control systems, J-tubes, small and large scale electrical power systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore collector platform” means a platform (either singly or as part of a combined platform) housing or incorporating electrical switchgear and/or electrical transformers, electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore converter platform” means a platform (either singly or as part of a combined platform) housing or incorporating high voltage direct current electrical switchgear and/or electrical transformers and other equipment to enable HVDC transmission to be used to convey the power output of the multiple wind turbine generators to shore including electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity

generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore platform” means any of the following—

- (a) an offshore accommodation or helicopter platform;
- (b) an offshore collector platform;
- (c) an offshore converter platform; or
- (d) a combined platform

“the offshore Order limits plan” means the plans certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of this Order;

“offshore works” means the Project A Offshore works and the Project B Offshore works, the relevant shared works and any other authorised development associated with those works;

“offshore works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order;

“the onshore Order limits plan” means the plans certified as the onshore Order limits and grid coordinates plan by the Secretary of State for the purposes of this Order;

“the onshore works” means the Project A Onshore works, the Project B Onshore works, the shared works and any other authorised development associated with those works;

“the onshore works plans” means the plans certified as the works plans by the Secretary of State for the purposes of this Order;

“Order land” means the land shown on the land plan which is within the limits of land to be acquired and described in the book of reference;

“the Order limits” means—

- (a) the limits shown on the offshore Order limits and grid coordinates plan within which the offshore works may be constructed as part of the authorised project; and
- (b) the limits of deviation shown on the onshore works plans within which the onshore works may be constructed as part of the authorised development;

“outline Code of Construction Practice” means the document certified as the outline Code of Construction Practice by the Secretary of State for the purposes of this Order;

“outline maintenance plan” means the document certified as the outline maintenance plan by the Secretary of State for the purposes of this Order;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(a);

“Project A” means the Project A Offshore works and the Project A Onshore works;

“Project A Offshore works” means Works Nos. 1A, 2A and 3A and any other authorised development associated with those works;

“Project A Onshore works” means Works Nos. 4A, 5A, 6A, 8A and 9A and any other authorised development associated with those works;

“Project B” means the Project B Offshore works and the Project B Onshore works;

“Project B Offshore works” means Works Nos. 1B, 2B, 2BA, 2BC and 3B and any other authorised development associated with those works;

“Project B Onshore works” means Works Nos. 4B, 5B, 6B, 8B and 9B and any other authorised development associated with those works;

“relevant planning authority” means East Riding of Yorkshire Council;

“Requirements” means those matters set out in Part 3 Schedule 1 (requirements) to this Order;

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(a) 1981 c.67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c.34). There are other amendments to the 1981 Act which are not relevant to this Order.

“scheduled works” means the numbered works specified in Schedule 1 to this Order, or any part of them;

“scour protection” means protection against foundation scour and subsea damage, for example from trawling, through reinforcement measures and measures to prevent loss of seabed sediment around foundation bases. These measures include the use of bagged solutions filled with grout or other materials, protective aprons, mattresses, flow energy dissipation devices and rock and gravel burial;

“the shared works” means Works Nos. 2T, 7 and 10A to 10F;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means —

- (a) in relation to the Project A Offshore works and the Project A Onshore works, Bizco 1;
- (b) in relation to the Project B Offshore works and the Project B Onshore works, Bizco 4; and
- (c) in relation to the shared works, Bizco 1 or Bizco 4;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“wind turbine generator” means a structure comprising a tower, rotor with 3 blades, nacelle and ancillary electrical and other equipment which may include: J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter transfer facilities and other associated equipment, fixed to a foundation; and

“works plans” means the plans certified as the onshore works plans and offshore works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised project shall be taken to be measured along that work, except in respect of the parameters referred to in Part 3 Requirements 3 to 6 and 13; and in Schedule 7 deemed marine licences Part 1B and Part 2B conditions 3 and 4; and Part 3B and Part 4B Condition 3.

(4) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(5) References in this Order to points identified by letters are to be construed as references to the points so lettered on the onshore works plans.

(6) A reference in this Order to a co-ordinate is a reference to World Geodetic System 1984 datum.

(7) The expression “includes” shall be construed without limitation.

## PART 2

### Principal Powers

#### **Development consent etc. granted by the Order**

3.—(1) Subject to the provisions of this Order and the Requirements the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) The development forming Project A for which development consent is granted under paragraph (1) must be begun within seven years of the date of the coming into force of this Order.

(3) The development forming Project B for which development consent is granted under paragraph (1) must be begun within seven years of the date of the coming into force of this Order.

(4) The development forming the shared works for which development consent is granted under paragraph (1) must be begun within seven years of the date of the coming into force of this Order.

(5) Notwithstanding anything in this Order or shown on the offshore works plans the undertaker may construct Works Nos. 2BA or 2BC but must not construct both Works Nos. 2BA and 2BC under the powers conferred by this Order.

#### **Maintenance of authorised project**

4.—(1) The undertaker may at any time maintain, and maintain from time to time, the authorised project except to the extent that this Order and any agreement made under this Order provides otherwise.

(2) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under part 4 of the 2009 Act.

#### **Operation of generating station**

5.—(1) The undertaker is hereby authorised to operate and use the authorised development for generating and transmitting electricity.

(2) This article does not relieve the undertaker of any requirements to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an electricity generating station.

#### **Requirements, appeals, etc.**

6.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by Requirements 13 to 34 (inclusive) (Requirements that relate to land above mean low water springs), the following provisions apply in respect of that application as they would if the consent, agreement or approval so required was required by a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989(a).

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(a) 1989 c. 29.

## **Benefit of the Order**

7. Subject to article 8 (consent to transfer benefit of Order), the provisions of this Order shall have effect solely for the benefit of the undertaker.

## **Consent to transfer benefit of Order**

8.—(1) The undertaker may, subject to the provisions of this article, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed, except where paragraph (4) applies in which case no such consent shall be required.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (3), shall include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) This paragraph applies where—

- (a) the transferee or lessee is a person who holds a licence under the Electricity Act 1989; or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made;
  - (ii) any such claim has been made and has been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of any such claim;
  - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation shall be payable.

(5) The provisions of article 13 (street works), 14 (temporary stopping up of streets), 21 (compulsory acquisition of land), 24 (compulsory acquisition of rights), 29 (temporary use of land for carrying out the authorised project) and 30 (temporary use of land for maintaining authorised project) shall have effect only for the benefit of a transferee or lessee who is also—

- (a) in respect of Works Nos. 1A, 1B, 2A, 2BA, 2BC, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7, 8A, 8B, 9A, 9B, 10A, 10B, 10C, 10D, 10E and 10F a person who holds a licence under the Electricity Act 1989; or
- (b) in respect of functions under article 13 (street works) relating to a street, a street authority.

(6) Notwithstanding anything contained in Part IV of the 2009 Act, but subject to paragraph (3), the undertaker may pursuant to an agreement under paragraph (1) transfer to another person relevant provisions.

(7) The undertaker must consult the MMO prior to the transfer to another person where the relevant provisions pursuant to an agreement under paragraph (1) and where paragraph (4) applies.

(8) The Secretary of State must consult the MMO prior to giving consent to the undertaker to transfer to another person relevant provisions pursuant to an agreement under paragraph (1).

(9) Not later than fourteen days after any agreement under paragraph (1) comes into effect which transfers relevant provisions to another person the transferor must give written notice to the

MMO stating the name and address of the person to whom the relevant provisions are transferred, the details of the relevant provisions transferred and the date when the transfer took effect.

(10) Sections 72(7) and (8) of the 2009 Act shall not apply to a transfer of relevant provisions by the undertaker to another person pursuant to an agreement under paragraph (1).

(11) In this article “relevant provisions” means any of the provisions of the marine licences specified in either Parts 1A, 2A, 3A and 4A of Schedule 7 to this Order together with the corresponding Conditions set out in Parts 1B, 2B, 3B and 4B of Schedule 7 to this Order.

### **Power to make agreements**

9.—(1) Subject to paragraph (4), Bizco 1 and Bizco 4 may enter into and carry into effect agreements with respect to the exercise of any powers conferred by this Order to acquire land or rights over land and the construction, maintenance, use and operation of the offshore works and the onshore works or any part or parts thereof and as to any other matters incidental or subsidiary thereto or consequential thereon, including the defraying of or the making of contributions towards the cost of the matters aforesaid by Bizco 1 or by Bizco 4 or by Bizco 1 and Bizco 4 jointly.

(2) Subject to paragraph (4), any such agreement may provide (inter alia) for the exercise by Bizco 1 or Bizco 4, or Bizco 1 and Bizco 4 jointly, of all or any of the powers of Bizco 1 or Bizco 4 conferred under this Order, in respect of the lands and works referred to in subsection (1) above or any part or parts thereof and for the transfer to and vesting in Bizco 1 or Bizco 4 or Bizco 1 and Bizco 4 jointly, of those lands and works or any part or parts thereof together with the rights and obligations of Bizco 1 or Bizco 4 in relation thereto.

(3) The exercise by Bizco 1 or Bizco 4 or by Bizco 1 and Bizco 4 jointly, of any of the powers of this Order shall be subject to the like provisions in relation thereto as would apply if those powers were exercised by Bizco 1 and Bizco 4 alone, and accordingly those provisions with any necessary modifications shall apply to the exercise of such powers by Bizco 1 or Bizco 4, or by Bizco 1 and Bizco 4 jointly.

(4) In constructing—

- (a) Works Nos. 2A, 3A, 4A, 5A, 6A, 8A and 9A Bizco 1 may enter onto the relevant land for the purpose of constructing those works;
- (b) Works Nos. 2B, 2BA or 2BC, 3B, 4B, 5B, 6B, 8B and 9B Bizco 4 may enter onto the relevant land for the purpose of constructing those works;
- (c) Works Nos. 7, 10A, 10B, 10C, 10D, 10E and 10F, Bizco 1 may in common with Bizco 4, enter onto the land required for those works to construct those works; and
- (d) Works Nos. 7, 10A, 10B, 10C, 10D, 10E and 10F, Bizco 4 may in common with Bizco 1, enter onto the land required for those works to construct those works.

(5) In paragraph 4(a) “relevant land” means the land shown on the works plans within the Order limits for Works Nos. 2B, 2BA or 2BC, 3B, 4B, 5B, 6B, 8B and 9B which has been acquired for the purpose of the Project B Onshore works and the Project B Offshore works.

(6) In paragraph 4(b) “relevant land” means the land shown on the works plans within the Order limits for Works Nos. 2A, 3A, 4A, 5A, 6A, 8A and 9A which has been acquired for the purpose of the Project A Onshore works and the Project A Offshore works.

(7) Bizco 1 and Bizco 4 may enter into, and carry into effect, agreements for the transfer to and vesting in Bizco 1 or Bizco 4, or Bizco 1 or Bizco 4 jointly of —

- (a) any of the works authorised by the Order or any part of any of those works; or
- (b) any works, lands or other property required for the purposes of those works;

together with any rights and obligations (whether or not statutory) of Bizco 1 or Bizco 4 relating thereto.

## Disapplication and modification of legislative provisions

10.—(1) The following provisions do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project—

- (a) section 109 (structures in, over or under a main river) of the Water Resources Act 1991(a); and
- (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991, which require consent or approval for the carrying out of the works.

(2) The provisions of the Beverley Commons Act 1836(b) and any byelaws, rules, orders or regulations made under that Act are hereby suspended and shall not have effect in relation to the exercise of any of the powers conferred under this Order so far as they apply to Figham Common.

(3) In paragraph (2) “suspended” in respect of any provision, (“provision”) means unenforceable to the extent that the provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;
- (b) action taken in pursuance of a power conferred by this Order would require the consent of another person under any provision;
- (c) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken; or
- (d) action taken in pursuance of a power or duty under the provision would or might interfere with the exercise of any work authorised by this Order.

(4) Section 6 of the Party Wall etc. Act 1996(c) (underpinning of adjoining buildings) shall not apply in relation to a proposal to excavate, or excavate for and erect anything, in exercise of the powers conferred by this Order.

(5) In constructing Works Nos. 6A and 6B the undertaker may do either or both of the following—

- (a) hold, use and appropriate such parts of the disused canal as it may require for the purposes of the authorised project;
- (b) take down and remove such parts of the disused canal as the undertaker does not require for those purposes.

(6) On the relevant date all of the powers and obligations that may be conferred or imposed by the relevant provisions in relation to that part of the disused canal that is within the Order limits shall cease to have effect.

(7) Except as provided in paragraph (6) the 1801 and 1847 Acts shall remain in full force and effect.

(8) For the purposes of the carrying out of development authorised by this Order, regulation 6(1) of the Hedgerow Regulations 1997(d) shall be deemed to be amended by the insertion at the end of paragraph 6(1)(e) of “(ee) For carrying out development for which development consent is conferred under an Order pursuant to section 114 of the Planning Act 2008”.

(9) In this article—

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- (a) 1991 c. 57. Section 106 was amended by the Water Act 2003 (c. 37), section 36(20 and 99 subject to the transitional provisions contained in article 6 of, and Schedule 3 to, S.I. 2004/641. There are other amendments to section 106 which are not relevant to this Order.
  - (b) 1836 c.lxx.
  - (c) 1996 c.40.
  - (d) S.I. 1997/1160.



“disused canal” means that part of the former Leven Canal authorised by the relevant enactments;

“main river” means a main river within the meaning of Part IV of the Water Resources Act 1991;

“provision” in article (3) means any provision, byelaw, rule or regulation;

“relevant date” means the date of entry by the undertaker onto any part of the disused canal for the purposes of exercising any power under Part 5 of this Order; and

“the relevant provisions” means sections 1 and 14 of the 1801 Act and section 35 of the 1847 Act.

### **Abatement of works abandoned or decayed**

**11.** Where the offshore works or any part of them are abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, issue a written notice requiring the undertaker at its own expense to repair and restore or remove the offshore works or any relevant part of it, without prejudice to any notice served under section 105(2) of the 2004 Act. The notice may also require the restoration of the site of the relevant part(s) of the offshore works to a safe and proper condition within an area and to such an extent as may be specified in the notice.

### **Defence to proceedings in respect of statutory nuisance**

**12.—(1)** Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(a) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(b); or
  - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in compliance with requirement 26; or
  - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.

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(a) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(b) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.

(3) The provisions of this article do not affect the application to the authorised development of section 158 of the 2008 Act (nuisance: statutory authority) or any rule of common law having similar effect.

## PART 3

### Streets

#### Street works

**13.**—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus under the street;
- (d) maintain apparatus under the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

#### Temporary stopping up of streets

**14.**—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 3 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the streets and public rights of way plan, in column (1) of that Schedule.

(4) The undertaker must not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

#### Access to works

**15.** The undertaker may, for the purposes of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, in the location specified in columns (1) and (2) of Schedule 4 (access to works);
- (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

#### **Agreements with street authorities**

- 16.—**(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street (including any structure carrying the street over or under the authorised development) under the powers conferred by this Order;
  - (b) the maintenance of the structure of any bridge or tunnel carrying a street over or under the authorised development;
  - (c) any stopping up, alternation or diversion of a street under the powers conferred by this Order; or
  - (d) the execution in any street specified in article 13 (street works) of any of the works referred to in article 13.
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
  - (c) contains such terms as to payment and otherwise as the parties consider appropriate.

## **PART 4**

### **Supplemental Powers**

#### **Discharge of water**

**17.—**(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(a) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

- (4) The undertaker must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.

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(a) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

(5) The undertaker must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) This article does not authorise the entry into inland fresh waters or coastal waters of any matter whose entry or discharge into those waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(a).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(9) This article does not relieve the undertaker of any obligation to obtain from the Environment Agency any permit or licence or any other obligation under any other legislation that may be required to authorise the making of a connection to, or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) or the discharge of any water into any watercourse, sewer or drain pursuant to paragraph (2).

### **Protective work to buildings**

**18.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised project; or
- (b) after the completion of that stage of the authorised project in the vicinity of the building at any time up to the end of the period of five years beginning with the day on which that stage of the authorised project is brought into commercial operation.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage.;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than fourteen days’ notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

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(a) S.I. 2010/675.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of ten days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 44 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five years beginning with the day on which that stage of the authorised project carried out in the vicinity of the building is brought into commercial operation it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that stage of the authorised project,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 10(2) of the 1965 Act (compensation for injurious affection).

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised project; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised project.

#### **Authority to survey and investigate the land**

**19.—(1)** The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project and —

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least fourteen days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes shall be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld.

(5) After completion of the activities being undertaken pursuant to this article any apparatus should be removed as soon as practicable and the land should be restored to its original condition.

(6) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Removal of human remains**

20.—(1) In this article “the specified land” means the land within the limits of deviation.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised project; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.

(5) At any time within fifty six days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question shall be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857(a) (bodies not to be removed from burial grounds, except under faculty, without licence of Secretary of State) shall not apply to a removal carried out in accordance with this article.

## PART 5

### Powers of Acquisition

#### **Compulsory acquisition of land**

**21.**—(1) Bizco 1 may acquire compulsorily so much of the Order land as is required for the Project A Onshore works, the Project A Offshore works, the shared works or to facilitate, or is incidental, to the construction and maintenance of those works.

(2) Bizco 4 may acquire compulsorily so much of the Order land as is required for Project B Onshore works, the Project B Offshore works and the shared works or to facilitate, or is incidental, to the construction and maintenance of those works.

(3) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) shall be discharged from all rights, trusts and incidents to which it was previously subject.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article is subject to article 9 (Power to make agreements), article 24 (compulsory acquisition of rights) and article 29 (temporary use of land for carrying out the authorised project).

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(a) 1857 c.81. There are amendments to this Act which are not relevant to this Order.

### **Compulsory acquisition of land – incorporation of the mineral code**

22. Part 2 of Schedule 2 to the Acquisition of Land Act 1981( ) (minerals) is incorporated in this Order subject to the modifications that for “the acquiring authority” substitute “the undertaker”.

### **Time limit for exercise of authority to acquire land compulsorily**

23.—(1) After the end of the period of seven years beginning on the day on which this Order is made—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 26 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(a).

(2) The authority conferred by article 29 (temporary use of land for carrying out the authorised project) must cease at the end of the period referred to in paragraph (1), but nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights**

24.—(1) Subject to paragraphs (2), (3) and (4) the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 21 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Part 1 of Schedule 5 (land in which only new rights etc., may be acquired) the powers of compulsory acquisition conferred under this Order are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) In the case of the Order land specified in column (1) of Part 2 of Schedule 5 (land in which only new rights etc., may be acquired) Bizco 1 may exercise a power to acquire rights conferred by paragraph (1) over that land.

(4) In the case of the Order land specified in column (1) of Part 3 of Schedule 5 (land in which only new rights etc., may be acquired) Bizco 4 may exercise a power to acquire rights conferred by paragraph (1) over that land.

(5) Subject to section 8 of the 1965 Act where the undertaker acquires a right over the Order land under this article the undertaker shall not be required to acquire a greater interest in that land.

(6) After completion of any activities pursuant to the exercise of the rights pursuant to this article the land must be restored, so far as practicable, to its original condition.

### **Private rights of way**

25.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

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(a) 1981 c.66. Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.



(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plan, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes

(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 31 (statutory undertakers) applies.

(6) Paragraphs (1) to (3) shall have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land,

(ii) the undertaker's appropriation of it,

(iii) the undertaker's entry onto it, or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs shall not apply to any right of way specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right of way is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

**26.—**(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

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(a) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

(b) published in a local newspaper circulating in the area in which the land is situated”

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

#### **Acquisition of part of certain properties**

**27.—**(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of twenty one days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner must be required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of six weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

### **Rights under or over streets**

**28.**—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised project and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised project.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

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

29.—(1) The undertaker may, in connection with the carrying out of the authorised project enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule exercising the rights identified in Class 9 in the book of reference.

(2) Not less than fourteen days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule 6.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to its original condition but the undertaker shall not be required to replace a building removed under this article.

(5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1).

(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

### **Temporary use of land for maintaining authorised project**

30.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than twenty eight days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to its original condition.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article "the maintenance period", in relation to any part of the authorised project, means the period of five years beginning with the date on which that stage of the authorised project is brought into commercial operation.

### **Statutory undertakers**

**31.**—(1) Subject to the provision of Parts 1 to 4 of Schedule 8 to the Order the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan within the Order limits;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers within the Order limits; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers within the Order limits.

(2) In this article a reference to a statutory undertaker includes a reference to a public communications provider.

### **Recovery of costs of new connections**

**32.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 31 (statutory undertakers), any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or

sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article shall not have effect in relation to apparatus or Part 3 of the 1991 Act applies.

(4) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003; and

“public utility undertaker” has the same meaning as in the 1980 Act.

### **Application of landlord and tenant law**

**33.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

### **Special category land**

**34.**—(1) Upon entry by the undertaker on to the special category land pursuant to article 24 (compulsory acquisition of rights), so much of the special category land as shall be required for the purposes of the exercising by the undertaker of the order rights shall be discharged from all rights, trusts and incidents to which it was previously subject.

(2) In accordance with section 132(3) of the 2008 Act, the Secretary of State is satisfied that the special category land when burdened with the order rights will be no less advantageous to affected persons than it was before the imposition of the order rights on the special category land.

(3) In this article—

“affected persons” means—

- (a) the persons in whom the special category land was previously vested;
- (b) other persons, if any, entitled to rights in common or other rights; and
- (c) the public;

“order rights” means rights exercisable over the special category land by the undertaker under article 24 (compulsory acquisition of rights);

“the special category land” means the land identified as

- (d) (forming part of Figham Common and numbered 99Aii, 99Bii, 100A, 100B, 101A, 101B, 102A, 102B, 103A, 103B, 104A and 104B in the East Riding Yorkshire in the book of reference; and

- (e) forming open space and numbered 1Ai, 1Aii, 1Bi, 1Bii, 2i, 4Ai, 4Bi, 4Bii and 4Biii, in the East Riding Yorkshire in the book of reference on the plan entitled “Special Category Land Plan” attached to the land plan.

## PART 6

### Miscellaneous and General

#### **Railway and navigation undertakings**

**35.**—(1) Subject to the following provisions of this article, the undertaker may not under article 13 (street works) break up or open a street where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by a railway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but must not be unreasonably withheld.

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

#### **Trees subject to tree preservation orders**

**36.**—(1) The undertaker may fell or lop any tree within the Order limits, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1)—

- (a) the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

(4) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part I of the 1961 Act.

#### **Operational land for purposes of the 1990 Act**

**37.** Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as operational land for the purposes of that Act).

#### **Felling or lopping of trees and removal of hedgerows**

**38.—**(1) The undertaker may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker shall do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) The undertaker may remove any hedgerows within the Order limits that may be required to be removed for the purposes of carrying out the authorised development.

(4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

### **Deemed licences under the Marine and Coastal Access Act 2009**

**39.** The undertaker is granted deemed licences under Part 4 Chapter 1 of the 2009 Act—

- (a) to carry out the Project A Offshore works and make the deposits specified in Parts 1A and 2A of Schedule 7 subject to the Conditions set out in Parts 1B and 2B of that Schedule; and
- (b) to carry out the Project B Offshore works and make the deposits specified in Parts 3A and 4A of Schedule 7, subject to the Conditions set out in Parts 3B and 4B of that Schedule.

### **Saving for Trinity House**

**40.** Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

### **Crown Rights**

**41.—**(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee—:

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
  - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
  - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
  - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown Land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

### **Certification of plans and documents etc**

**42.—**(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of—



- (a) the offshore Order limits and grid co-ordinates plan (comprising the offshore Order limits and grid co-ordinates plan amendment drawing number F-OFC-MA-801, application reference 2.2, date 03/07/2014);
- (b) the onshore Order limits and grid co-ordinates plan (comprising onshore Order limits and grid co-ordinates plan amendment sheets 1 and 2 drawing number F-ONC-MA-801, date 13/06/2014);
- (c) the book of reference (comprising – August 2014);
- (d) the land plan (comprising onshore Land Plans, drawing numbers PA-2500-LP-01-23 Rev 7, August 2013; onshore Land Plan Amendment Sheet 1, drawing number PA-2500-LP-01-23 Rev 7, July 2014; onshore Land Plan Amendment Sheet 3, drawing number PA-2500-LP-01-23 Rev 6, June 2014; onshore Land Plan Amendment Sheet 4, drawing number PA-2500-LP-01-23 Rev 6, June 2014; onshore Land Plan Amendment Sheet 18, drawing number PA-2500-LP-01-23 Rev 8, July 2014; onshore Land Plan Amendment Sheet 19 drawing number PA-2500-LP-01-23 Rev 8, July 2014; onshore Land Plan Amendment Sheet 21, drawing number PA-2500-LP-01-23 Rev 7, July 2014; onshore Land Plan Amendment Sheet 22, drawing number PA-2500-LP-01-23 Rev 7, June 2014; onshore Land Plan Amendment Sheet 23, drawing number PA-2500-LP-01-23 Rev 7, June 2014);
- (e) the onshore works plans (comprising - drawing number F-ONC-MA-803, application reference 2.4.2, date 14/08/2013; onshore works plan amendment sheets 22 and 23 drawing number F-ONC-MA-803, date 13/06/2014);
- (f) the offshore works plans (drawing number F-OFC-MA-802, application reference 4.2.1, date 14/08/2013);
- (g) the Environmental Statement (comprising all documents in the series application reference 6.1 to 6.30.5);
- (h) draft landscaping scheme date March 2014);
- (i) outline Code of Construction Practice (comprising - document number F-EXC-RW-DVIII-App6, Deadline VIII – Appendix 6 – Revised CoCP, date July 2014);
- (j) draft fisheries liaison plan (comprising- document number F-EXC-EQ-014-A3, Question 14 Appendix 3, Examining authority’s First Written Questions, issue number 2.0, date March 2014);
- (k) In Principle Monitoring Plan (comprising - document number F-EXC-RW-DVIII-App5, Deadline VIII – Appendix 5 – Updated IPMP, date July 2014); and
- (l) outline maintenance plan (comprising- Responses to the Examining authority’s First Written Questions - Question 130 Appendix 1 - outline offshore maintenance plan, date March 2014).

for certification that they are true copies of the documents referred to in this Order.

(2) A plan or document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

**Protective provisions**

43. Schedule 8 shall have effect.

**Arbitration**

44. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

Signed by authority of the Secretary of State for Energy and Climate Change

Address  
Date

*Name*  
Head of Unit  
Department of Energy and Climate Change

# SCHEDULES

## SCHEDULE 1

Article 3

### Authorised Project

#### PART 1

#### Authorised Development

1. A nationally significant infrastructure Project as defined in sections 14 and 15 of the 2008 Act located in the Dogger Bank Zone comprising—

#### Project A Offshore Works

Work No. 1A—

- (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 1.2 gigawatts comprising up to 200 wind turbine generators each fixed to the seabed by monopole, multileg or gravity base type foundations situated within the coordinates of the array area specified in the following table, and further comprising works (b) to (d) below;

Coordinates for the array area

<i>Point</i>	<i>Latitude (Decimal Degrees)</i>	<i>Longitude (Decimal Degrees)</i>
CBA-1	54.835241	1.633573
CBA-2	54.838412	2.174407
CBA-3	54.808700	2.227327
CBA-4	54.659286	1.976949
CBA-5	54.741685	1.632884

- (b) up to seven offshore platforms comprising the following:
- (i) up to four offshore collector platform(s) situated within the array area specified in the table in Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundations;
  - (ii) an offshore converter platform situated within the array area specified in the table in Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundations;
  - (iii) up to two offshore accommodation or helicopter platform(s) situated within the array area specified in the table in Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundations;
  - (iv) or any of the platforms comprised in Work No. 1A(b)(i) to Work No. 1A(b)(iii) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundations;
- (c) up to five meteorological station(s) situated within the array area specified in the table in Work No. 1A(a) either fixed to the seabed by monopole, multileg or gravity base type foundations, or utilising a floating support structure anchored to the seabed;
- (d) A network of cables for the transmission of electricity and electronic communications laid on or beneath the seabed and including cable crossings between—

- (i) any of the wind turbine generators comprising Work No. 1A(a);
- (ii) any of the wind turbine generators comprising Work No. 1A(a) and Work No. 1A(b) and Work No. 1A(c); and
- (iii) any of the works comprising Work No. 1A(b) and Work No. 1A(c);
- (iv) the offshore converter platform or the combined platforms and the export cable route in Work No. 2A.

2. Associated development within the meaning of section 115(2) of the 2008 Act comprising—

Work No. 2A – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid on or beneath the seabed between Work No. 1A(b)(ii) or 1A(b)(iv) and Work No. 3A including cable crossings and situated within the coordinates of the export cable corridor area specified in the offshore Order limits plan;

### **Project A Onshore Works**

In the East Riding of Yorkshire

Work No. 3A – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, between mean low water springs and mean high water springs and connecting Work No. 2A with Work No 4A;

Work No. 4A – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground by way of horizontal directional drill between Work No. 3A at mean high water springs and the landfall transition joint bays forming Work No. 5A including the construction of haul roads;

Work No. 5A – landfall transition joint bays and horizontal directional drill launch pits, together with associated landfall works construction compound, and up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground connecting Work No. 4A with Work No. 6A including the construction of haul roads;

Work No 6A – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground in ducts if necessary from Work No. 5A and running in a generally SSW direction for a distance of 30 kilometres to Work No. 7. Work No. 6A includes the construction of haul roads and construction access;

Work No 8A – up to three export cables for the transmission of high voltage alternating current electricity together with fibre optic cables for the transmission of electronic communications, laid underground in ducts if necessary from the electrical converter substation comprised in Work No. 7 and running in a southerly direction for a distance of approximately two kilometres to the connection bay within the National Grid substation connection works comprising Work No. 9A including the construction of haul roads;

Work No. 9A – National Grid substation connection works connecting Work No. 8A to the transmission network and comprising up to three export cables for the transmission of high voltage alternating current electricity, fibre optic cables for the transmission of electronic communications, a connection bay within the National Grid substation incorporating isolation switchgear, circuit bay equipment, overhead tubular connectors and switching and measuring equipment located above and below ground;

In connection with Works Nos. 3A to 9A, the undertaker is granted development consent for the further associated development shown on the plans referred to in the Requirements, or approved pursuant to the Requirements, including—

- (a) ramps, means of access and footpaths;
- (b) bunds, embankments, swales, landscaping and boundary treatments;
- (c) habitat creation;
- (d) boreholes;
- (e) jointing bays, manholes and other works associated with cable laying including tunnelling works and horizontal directional drilling beneath watercourses, roads and other features;
- (f) water supply works, foul drainage provision and surface water management systems;
- (g) temporary structures to facilitate the crossing of watercourses including bailey bridges;
- (h) construction lay down areas and compounds and their restoration;
- (i) works to remove, reconstruct or alter the position of apparatus including mains, sewers, drains, cables and pipelines; and
- (j) such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the works assessed by the Environmental Statement.

**Project B Offshore Works**

Work No. 1B—

- (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 1.2 gigawatts comprising up to 200 wind turbine generators each fixed to the seabed by monopole, multileg or gravity base type foundations, situated within the coordinates of the array area specified in the following table, and further comprising works (f) to (h) below;

Coordinates for the array area

<i>Point</i>	<i>Latitude (Degrees)</i>	<i>(Decimal Longitude Degrees)</i>	<i>(Decimal</i>
CBB-1	55.074509	1.505499	
CBB-2	55.078127	1.557882	
CBB-3	55.100307	1.673135	
CBB-4	55.102152	1.854982	
CBB-5	54.859236	1.861874	
CBB-6	54.870965	1.473897	
CBB-7	54.968002	1.488779	
CBB-8	54.971992	1.488363	

- (b) up to seven offshore platforms comprising the following:
  - (i) up to four offshore collector platform(s) situated within the array area specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundations;
  - (ii) an offshore converter platform situated within the array area specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundations;
  - (iii) up to two offshore accommodation or helicopter platform(s) situated within the array area specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundations;
  - (iv) or any of the platforms comprised in works Work No. 1B(b)(i) to 1B(b)(iii) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundations;

- (c) up to five meteorological station(s) situated within the array area specified in the table Work No. 1B(a) either fixed to the seabed by monopole, multileg or gravity base type foundations, or utilising a floating support structure anchored to the seabed;
- (d) a network of cables for the transmission of electricity and electronic communications laid on or beneath the seabed and including cable crossings between—
  - (i) any of the wind turbine generators comprising Work No. 1B(a);
  - (ii) any of the wind turbine generators comprising Work No. 1B(a) and Work No. 1B(b) and 1B(c); and
  - (iii) any of the works comprising Work No. 1B(b) and 1B(c);
  - (iv) the offshore converter platform or the combined platforms and the export cable route in Works Nos. 2BA or 2BC.

2. Associated development within the meaning of section 115(2) of the 2008 Act comprising—

Work No. 2BA – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid on or beneath the seabed between Work No. 1B(b)(ii) or 1B(b)(iv) and Work No. 2B and including cable crossings and situated within the coordinates of the export cable corridor area specified in the offshore Order limits plan;

Work No. 2BC – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid on or beneath the seabed between Work No. 1B(b)(ii) or 1B(b)(iv) and Work No. 1A and between Work No. 1A and Work No. 2B and including cable crossings and situated within the coordinates of the export cable corridor area specified in the offshore Order limits plan;

Work No. 2B – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid on or beneath the seabed between Work No. 2BA or Work No. 2BC and Work No. 3B and including cable crossings and situated within the coordinates of the export cable corridor area specified in the offshore Order limits plan;

### **Project B Onshore Works**

In the East Riding of Yorkshire—

Work No. 3B – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, between mean low water springs and mean high water springs and connecting Work No. 2B with Work No. 4B;

Work No. 4B – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground by way of horizontal directional drill between Work No. 3B at mean high water springs and the landfall transition joint bays forming Work No. 5B and including the construction of haul roads;

Work No. 5B –landfall transition joint bays and horizontal directional drill launch pits, together with associated landfall works construction compound, and up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground connecting Work No. 4B with Work No. 6B including the construction of haul roads;

Work No 6B – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground in ducts if necessary from Work No. 5B and running in a generally SSW direction for a distance of 30 kilometres to Work No. 7. Work No. 6B includes the construction of haul roads and construction access;

Work No 8B – up to three export cables for the transmission of high voltage alternating current electricity together with fibre optic cables for the transmission of electronic communications, laid underground in ducts if necessary from the electrical converter substation(s) comprised in Work No. 7 and running in a southerly direction for a distance of two kilometres to the connection bay within the National Grid substation connection works comprising Work No. 9B including the construction of haul roads;

Work No. 9B – National Grid substation connection works connecting Work No. 8B to the transmission network and comprising up to three export cables for the transmission of high voltage alternating current electricity, fibre optic cables for the transmission of electronic communications, a connection bay within the National Grid substation incorporating isolation switchgear, circuit bay equipment, overhead tubular connectors and switching and measuring equipment located above and below ground;

In connection with Works Nos. 3B to 9B, the undertaker is granted development consent for the further associated development shown on the plans referred to in the Requirements, or approved pursuant to the Requirements, including—

- (a) ramps, means of access and footpaths;
- (b) bunds, embankments, swales, landscaping and boundary treatments;
- (c) habitat creation;
- (d) boreholes;
- (e) jointing bays, manholes and other works associated with cable laying including tunnelling works and horizontal directional drilling beneath watercourses, roads and other features;
- (f) water supply works, foul drainage provision and surface water management systems;
- (g) temporary structures to facilitate the crossing of watercourses including bailey bridges;
- (h) construction lay down areas and compounds and their restoration;
- (i) works to remove, reconstruct or alter the position of apparatus including mains, sewers, drains, cables and pipelines; and
- (j) such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the works assessed by the Environmental Statement.

#### **Shared works—**

##### **Offshore**

Work No. 2T – a temporary work area for vessels to carry out intrusive activities during construction, including vessels requiring anchor spreads alongside the cable corridors.

##### **Onshore**

##### **In the East Riding of Yorkshire—**

Work No. 7 – up to two electrical converter substations and compounds for converting high voltage direct current electricity carried by Works Nos. 6A and 6B to high voltage alternating current electricity, including landscaping;

Work No. 10A – access road to the north of Allison Lane (B1242) to provide construction and maintenance access from the public highway to the development site including up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground in ducts if necessary linking Work No. 5B to Work No. 7;

Work No. 10B – access road to the north of Grange Road to provide construction and maintenance access from the public highway to the development site including up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the

transmission of electronic communications, laid underground in ducts if necessary linking Work No. 5B to Work No. 7;

Work No. 10C – access road to the north of the A1035 (east) to provide construction and maintenance access from the public highway to the development site including up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground in ducts if necessary linking Work No. 5B to Work No. 7;

Work No. 10D – access road to the south of the A1035 (west) to provide construction and maintenance access from the public highway to the development site including up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground in ducts if necessary linking Work No. 5B to Work No. 7;

Work No. 10E – access road to the north of Hull Road (A1174 east) to provide construction and maintenance access from the public highway to the development site including up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground in ducts if necessary linking Work No. 5B to Work No. 7;

Work No. 10F – access road to the south of Hull Road (A1174 west) to provide construction and maintenance access from the public highway to the development site including up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid underground in ducts if necessary linking Work No. 5B to Work No. 7.

In connection with Works Nos. 7 and 10A to 10F, the undertaker is granted development consent for the further associated development shown on the plans referred to in the Requirements, or approved pursuant to the Requirements, including—

- (a) ramps, means of access and footpaths;
- (b) bunds, embankments, swales, landscaping and boundary treatments;
- (c) habitat creation;
- (d) boreholes;
- (e) jointing bays, manholes and other works associated with cable laying including tunnelling works and horizontal directional drilling beneath watercourses, roads and other features;
- (f) water supply works, foul drainage provision and surface water management systems;
- (g) temporary structures to facilitate the crossing of watercourses including bailey bridges;
- (h) construction lay down areas and compounds and their restoration;
- (i) works to remove, reconstruct or alter the position of apparatus including mains, sewers, drains, cables and pipelines; and
- (j) such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised project and which fall within the scope of the works assessed by the Environmental Statement.

## PART 2

### Ancillary Works

In relation to the Project A Offshore works, the Project B Offshore works and Work No. 2T comprised in the shared works, works comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised development;



- (b) temporary or permanent buoys, beacons, fenders and other navigational warning or ship impact protection works;
- (c) temporary works for the protection of land or structures affected by the authorised development;
- (d) cable protection, scour protection or dredging;
- (e) cable route preparation works including boulder removal and obstruction clearance, dredging and pre-sweeping; and
- (f) the removal, reconstruction or alteration of the position of subsea cables and pipelines.

## PART 3

### Requirements

#### **Interpretation**

##### **1. In this Part of this Schedule**

“the CAA” means the Civil Aviation Authority constituted by the Civil Aviation Act 1982;

“HAT” means highest astronomical tide;

“highway authority” means East Riding of Yorkshire Council;

“onshore works” means Works Nos. 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7, 8A, 8B, 9A, 9B and 10A to 10F and any related associated development;

“stages” means each of the following stages of the onshore works which may be constructed in sequential order or otherwise—

Stage 1 - Works Nos. 3A, 4A and 5A;

Stage 2 - Works Nos. 3B, 4B and 5B;

Stage 3 - Works Nos. 6A, 8A and 10A, 10B, 10C, 10D, 10E and 10F;

Stage 4 - Works Nos. 6B, 8B and 10A, 10B, 10C, 10D, 10E and 10F;

Stage 5 - Work No. 7;

Stage 6 - Work No. 9A; and

Stage 7 - Work No. 9B;

“UK Hydrographic Office” means the UK Hydrographic Office of Admiralty Way, Taunton, Somerset TA1 2DN.

#### **Time limits**

2.—(1) Project A must commence no later than the expiration of seven years beginning with the date this Order comes into force or such longer period as the Secretary of State may hereafter direct in writing.

(2) Project B must commence no later than the expiration of seven years beginning with the date this Order comes into force or such longer period as the Secretary of State may hereafter direct in writing.

(3) The shared works must commence no later than the expiration of seven years beginning with the date this Order comes into force or such longer period as the Secretary of State may hereafter direct in writing.

#### **Detailed offshore design parameters**

3. Foundation structures associated with wind turbine generators, offshore platforms and meteorological stations which are part of the authorised scheme must have a cumulative total

footprint on the seabed, including any scour protection employed and any drill arising deposits, of no greater than 1.1498 km<sup>2</sup> within each Work No. (Work No. 1A and Work No. 1B).

4.—(1) Subject to paragraph (2), no wind turbine generator forming part of the authorised scheme must—

- (a) exceed a height of 315 metres when measured from HAT to the tip of the vertical blade;
- (b) exceed a rotor diameter of 215 metres;
- (c) be less than a multiple of six times the rotor diameter from the nearest wind turbine generator in any direction being not less than 700 metres measured between turbines; and
- (d) have a distance of less than 26 metres between the lowest point of the rotating blade of the wind turbine generator and the level of the sea at HAT.

(2) The wind turbine generators comprised in either Work No. 1A or Work No. 1B must be sized such that if they were installed to the maximum permitted gross generating capacity specified for those works the total rotor swept area for each Work No. would not exceed 4.35 km<sup>2</sup>.

(3) Wind turbine generator and meteorological mast foundation structures forming part of the authorised scheme must be of one or more of the following foundation options: monopole, multileg or gravity base.

(4) No wind turbine generator or meteorological mast foundation structure employing a footing of driven piles forming part of the authorised scheme must—

- (a) have more than six driven piles;
- (b) in the case of single pile structures have a pile diameter of greater than 10 metres and employ a hammer energy during installation of greater than 3000kJ;
- (c) in the case of two or more pile structures have a pile diameter of greater than 3.5 metres and employ a hammer energy during installation of greater than 2300kJ.

(5) The foundations for wind turbine generators will be in accordance with the wave reflection coefficient values as set out at Fig 3.16 within Chapter 5 and Appendix 5.B of the Environmental Statement.

(6) No wind turbine generator foundation will have a seabed footprint area of subsea/scour protection (excluding foundation footprint) of more than 3,777 m<sup>2</sup>.

(7) The foundations for wind turbine generators and meteorological stations will not exceed the dimensions set out below—

<i>Foundation type (monopole, multileg or gravity base foundations)</i>	<i>Maximum width of main supporting structure in metres</i>	<i>Maximum seabed footprint area per foundation (excluding scour protection) in m<sup>2</sup></i>
Wind turbine generator and meteorological station foundation	61	2,376

(8) The total seabed footprint area of subsea/scour protection for wind turbine generator foundations (excluding foundation footprint) will not exceed 0.7554km<sup>2</sup> within each work number (Work No. 1A and Work No. 1B).

(9) The volume of subsea/scour protection material for wind turbine foundations within Work No. 1A and Work No. 1B will not exceed 1,084,800 m<sup>3</sup> within each work number.

(10) References to the location of a wind turbine generator are references to the centroid point at the base of the turbine.

(11) No lattice tower forming part of a meteorological station must exceed a height of 315 metres above HAT.

5.—(1) The total number of offshore platforms forming part of the authorised scheme must not exceed fourteen comprising—

- (a) up to eight offshore collector platform(s);
- (b) up to two offshore converter platform(s);
- (c) up to four offshore accommodation or helicopter platform(s);
- (d) or any of the platforms comprised in (1)(a) to (c) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundations.

(2) The dimensions of any offshore collector platforms forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed 75 metres in length, 75 metres in width and 85 metres in height above HAT.

(3) The dimensions of any offshore converter platform forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed 125 metres in length, 100 metres in width and 105 metres in height above HAT.

(4) The dimensions of any offshore accommodation or helicopter platform(s) forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed 125 metres in length, 100 metres in width and 105 metres in height above HAT.

(5) The dimensions of any combined platforms forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed the total footprint of the individual platforms incorporated within it.

(6) Offshore platform foundation structures forming part of the authorised scheme must be one or more of the following foundation options: gravity base or multileg.

(7) No offshore platform foundation structure employing a footing of driven piles forming part of the authorised scheme must—

- (a) have more than twenty four driven piles;
- (b) have a pile diameter of greater than 2.744 metres and employ a hammer energy during installation of greater than 1900kJ.

(8) No offshore platform foundation will have a seabed footprint area of subsea/scour protection (excluding foundation footprint) of more than 8,742 m<sup>2</sup>.

(9) The foundations for offshore platforms will not exceed the dimensions set out below:

<i>Foundation type</i>	<i>Offshore collector platform (multileg or gravity base foundation)</i>	<i>Offshore converter platform (multileg or gravity base foundation)</i>	<i>Offshore accommodation or helicopter platform (multileg or gravity base foundation)</i>
Maximum seabed footprint area per foundation (excluding scour protection) in m <sup>2</sup>	5,625	12,500	12,500

6.—(1) Only Work No. 2BA or Work No. 2BC shall be constructed.

(2) The number of HVDC cables within Works Nos. 2A and 3A must not exceed two. The total length of HVDC cables within Works Nos. 1A, 2A, 3A and 4A must not exceed 420 km.

(3) The number of HVDC cables within Works Nos. 2B, 2BA, 2BC and 3B must not exceed two. The total length of HVDC cables within Works Nos. 1B, 2B, 2BA, 2BC, 3B and 4B must not exceed 378 km.

(4) The length of HVAC cables comprising Work No. 1A must not exceed 1,270 km and the length of cables comprising Work No. 1B must not exceed 1,270 km.

(5) The length of HVAC cables comprising Work No. 1A / 1B in DMLs 1 and 2 (generation) must not exceed 950km.

(6) The length of HVAC cables comprising Work No. 1A / 1B in DMLs 3 and 4 (transmission) must not exceed 320 km.

(7) The total export cable protection (excluding cable crossings) will not exceed an area of 1.3391 km<sup>2</sup> within the Project A Offshore works and 1.2217 km<sup>2</sup> within the Project B Offshore works or a volume of 1,302,200 m<sup>3</sup> within the Project A Offshore works and 1,188,090 m<sup>3</sup> within the Project B Offshore works.

(8) No cable protection will be employed within 350 metres seaward of mean low water springs (MLWS), measured as a straight line.

(9) The total cable protection for HVAC inter-array cables and HVAC inter-platform cables (excluding cable crossings) will not exceed an area of 1.5554km<sup>2</sup> or a volume of 1,190,000m<sup>3</sup> within Work No. 1A and will not exceed an area of 1.5554km<sup>2</sup> or a volume of 1,190,000m<sup>3</sup> within Work No. 1B.

(10) Cable protection will be limited to 10% of the cumulative length of all cables laid between mean low water springs and the 10m depth contour as measured against LAT prior to the start of construction./

### **Layout Rules**

7.—(1) The positions of wind turbine generators and offshore platform(s) must be arrayed in accordance with parameters applicable to Works Nos. 1A and 1B specified in requirement 4 and the principles within section 5.2 of Chapter 5 of the Environmental Statement.

(2) No construction of any wind turbine generator or offshore platform forming part of the Project A Offshore works must commence until the MMO, following consultation with the MCA, has approved the general layout arrangements for the Project A Offshore works. These general layout arrangements must specify the physical point of connection between generation and transmission assets for Project A.

(3) No construction of any wind turbine generator or offshore platform forming part of the Project B Offshore works must commence until the MMO, following consultation with the MCA, has approved the general layout arrangements for the Project B Offshore works. These general layout arrangements must specify the physical point of connection between generation and transmission assets for Project B.

(4) The construction of the wind turbine generators and offshore platforms must be carried out as approved.

### **Aviation Lighting**

8.—(1) The boundaries of each project will be marked by lighting wind turbine generators forming part of the authorised development. These must be illuminated day and night by a light with a luminous intensity of at least 2000 candela or infrared lighting.

(2) Paragraph (1) shall not apply to the illumination of any wind turbine generator in respect of which the Secretary of State following consultation with the Ministry of Defence shall have dispensed with such requirement or shall have specified alternative lighting requirements in writing.

9. The undertaker must exhibit such lights, with such shape, colour and character as are required by Air Navigation Order 2009, or as directed by the CAA.

## **Offshore Decommissioning**

**10.** No offshore works must commence until a written decommissioning programme, including addressing the possibility of abandonment or decay, in compliance with any notice served upon the undertaker by the Secretary of State pursuant to section 105(2) of the 2004 Act has been submitted to the Secretary of State for approval.

## **Stages of authorised development onshore**

**11.** The onshore works must not commence until a written scheme setting out the phasing of construction of each stage of the onshore works has been submitted to and approved in writing by the relevant planning authority. The onshore works must be carried out in accordance with the approved scheme.

## **Detailed design approval onshore**

**12.—**(1) Except where the onshore works are carried out in accordance with the plans (or relevant parts of the plans) listed in Requirement 14, no stage of the onshore works must commence until details of the layout, scale, levels and external appearance of same so far as they do not accord with the authorised plans, have been submitted to and approved in writing by the relevant planning authority. This must include a section showing cable depths for Works Nos. 4A and 5A and 4B and 5B. The onshore works must be carried out in accordance with the approved details.

(2) No building (excluding lightning protection) forming part of Work No. 7 must exceed twenty metres in height, above the existing ground level. Ground level must be defined for this purpose as 14.5 metres above ordnance datum (AOD).

(3) The width of the corridor occupied by the grid connection comprising Works No. 6A and 6B, and any related associated development, once constructed, must not exceed 36 metres, with the exception of—

- (i) temporary construction compounds;
- (ii) where major drilling is proposed, in which case the width of the corridor occupied by the grid connection comprising Works No. 6A and 6B must not exceed 53 metres; and
- (iii) where drilling under Figham Common is required, in which case the width of the corridor occupied by the grid connection comprising Works No. 6A and 6B must not exceed 70 metres.

(4) The width of the corridor occupied by the grid connection comprising Works No. 8A and 8B and any related associated development once constructed must not exceed 38m, except for the temporary construction compounds .

**13.—**(1) The onshore works must be carried out in accordance with the approved plans submitted with the application and listed below, except in respect of any part of such plans which are indicative or expressly state that they do not show details for approval (unless otherwise agreed in writing by the relevant planning authority is within the scope of the works assessed in the Environmental Statement and falls within the Order limits)—

- (a) onshore Order limits and grid co-ordinates plan (comprising onshore Order limits and grid co-ordinates plan amendment sheets 1 and 2, drawing number F-ONC-MA-801, date 13/06/2014); and
- (b) onshore works plans (comprising drawing number F-ONC-MA-803, application reference 2.4.2, date 14/08/2013; onshore works plan amendment Sheets 22 and 23 drawing number F-ONC-MA-803, date 13/06/2014).

(2) Where any alternative details are approved pursuant to this Requirement, those details are deemed to be substituted for the corresponding details previously approved pursuant to this Requirement..

### **Provision of landscaping**

14. No stage of the onshore works must commence until a written landscaping scheme and associated work programme in relation to each stage of the onshore works has been submitted to and approved in writing by the relevant planning authority. Each landscaping scheme must be drawn up in accordance with the relevant measures contained within the draft landscaping scheme and include details of all proposed hard and soft landscaping works, including—

- (a) location, number, species, size and planning density of any proposed planting, including any trees;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) proposed finished ground levels;
- (d) minor structures, such as furniture, refuse or other storage units, signs and lighting;
- (e) proposed and existing functional services above and below, ground, including drainage, power and communications cables and pipelines, manholes and supports;
- (f) details of existing trees to be retained, with measures for their protection during the construction period;
- (g) retained historic landscape features and proposals for restoration, where relevant; and
- (h) implementation timetables for all landscaping works.

### **Implementation and maintenance of landscaping**

15.—(1) All landscaping works must be carried out in accordance with a written landscaping scheme approved under Requirement 15 and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standards or other recognised codes of good practice.

(2) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted.

### **Fencing and other means of enclosure**

16.—(1) No stage of the onshore works must commence until written details of all proposed permanent and temporary fences, walls or other means of enclosure for that stage have been submitted to and approved in writing by the relevant planning authority.

(2) All construction sites must remain securely fenced at all times during construction of the onshore works.

(3) Any temporary fencing must be removed on completion of the relevant work.

(4) Any approved permanent fencing in relation to Work No. 7 must be completed before the relevant work is brought into use.

### **Highway accesses**

17.—(1) No stage of the onshore works must commence until for that stage, written details of the siting, design, layout and any access management measures for any new permanent or temporary means of access to a highway to be used by vehicular traffic, or any alteration to an existing means of access to a highway used by vehicular traffic, has, after consultation with the highway authority, been submitted to and approved in writing by the relevant planning authority.

(2) The highway accesses must be constructed in accordance with the approved details.

(3) No stage of the onshore works must be brought into commercial operation until for that stage, written details identifying the routes and accesses for operational maintenance has, following consultation with the highway authority, been submitted to and approved in writing by the relevant planning authority.

## **Surface and foul water drainage**

**18.—**(1) No stage of the onshore works must commence until written details of the surface and (if any) foul water drainage system (including means of pollution control) for that stage have, following consultation with the relevant sewerage and drainage authorities and the Environment Agency, been submitted to and approved in writing by the relevant planning authority.

(2) The surface water drainage works must restrict surface water discharge to no more than the greenfield run off rate (1.4l/s/ha) in line with the recommendations of the Flood Risk Assessment (Appendix B to Chapter 24 of the Environmental Statement);

(3) The submitted details must—

- (a) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site (surface water drainage scheme);
- (b) include a timetable for implementation (foul and surface water schemes); and
- (c) provide a management and maintenance plan for the lifetime of the proposed schemes (foul and surface water management).

(4) The surface and foul water drainage systems must be constructed, managed and maintained in accordance with the approved details and the timing / phasing arrangements embodied within the approved written details.

**19.—**(1) Work No. 7 must not commence until a detailed scheme addressing the matters referred to in this Requirement has been submitted to and approved in writing by the relevant planning authority following consultation with the Environment Agency. The scheme must take account of the mitigation measures in relation to operational activities at the converter station site, as detailed within section 7 of Chapter 24 of the Environmental Statement, and must include—

- (a) Details of any proposed underground oil separators, including the full structural details of the installation and the mitigation to be embedded into the design of the installation in order to protect ground and surface waters;
- (b) Details of the proposed storage bund installations, including full structural details of the installation and the mitigation to be embedded into the design of the installation in order to protect ground and surface waters; and
- (c) An emergency plan, including provisions to ensure that controlled waters are protected in an emergency event.

(2) The scheme must be implemented as approved in writing by the relevant planning authority.

## **Archaeology**

**20.—**(1) No stage of the onshore works must commence until the implementation of a programme of archaeological work has been secured in relation to that stage in accordance with a written scheme of archaeological investigation that has been submitted to and approved in writing by the relevant planning authority.

(2) The scheme must—

- (a) set out a pre-construction programme of archaeological evaluation which defines the extent, character and significance of archaeological sites and the extent of areas that do not require detailed excavation. The results of the evaluation will inform subsequent mitigation strategies;
- (b) set out the programme and methodology for site investigation and recording;
- (c) set out provision for the monitoring of geotechnical test pits in areas of significance as defined by the archaeological evaluation;
- (d) set out the programme for post investigation assessment, the results of which will inform the scope of analysis;
- (e) provide for analysis of the site investigation and recording;

- (f) provide for publication and dissemination of the analysis and records of the site investigation;
- (g) nominate a competent person or organisation to undertake the works set out within the written scheme of investigation; and
- (h) set out provision for the notification in writing to the Curatorial Officer of the Humber Archaeology Partnership of the commencement of archaeological works and the opportunity to monitor such works.

(3) No stage of the onshore works must commence until in relation to the relevant work the relevant site investigation has been completed as approved, and such completion has been approved in writing by the relevant planning authority.

(4) No stage of the onshore works must be brought into commercial operation (excluding commissioning) until the site investigation and post investigation assessment have been completed in accordance with the programme in the approved scheme and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

(5) The written scheme in relation to the relevant work must be carried out as approved by the relevant planning authority.

### **Ecological management plan**

21.—(1) No stage of the onshore works must commence until a written ecological management plan for the onshore works reflecting the survey results and ecological mitigation and enhancement measures included in the Environmental Statement for that stage has been submitted to and approved in writing by the relevant planning authority following consultation with the relevant statutory nature conservation body.

(2) The ecological management plan must include an implementation timetable and must be carried out as approved by the relevant planning authority.

### **Code of Construction Practice (CoCP) and Construction Environmental Management Plan (CEMP)**

#### Code of construction practice

22.—(1) No stage of the onshore works must commence until a code of construction practice (CoCP) in accordance with the Outline Code of Construction Practice has been submitted to and approved in writing by the relevant planning authority for that stage of the onshore works.

(2) The CoCP must be written to reflect and ensure delivery of the construction phase mitigation measures included within the Environmental Statement and must include consideration of, but not be limited to, the following matters during construction of the onshore works—

- (a) construction noise and vibration management;
- (b) air quality including dust management;
- (c) sustainable waste management during construction;
- (d) traffic management and materials storage on site;
- (e) the mechanism for the public to communicate with the construction teams, including contact details;
- (f) land use and agriculture, including the management, excavation and removal of soils, land drainage, land quality and biosecurity;
- (g) management of water resources (surface water and groundwater) including details of surface water and drainage in accordance with the details provided under Requirement 19 (surface and foul water drainage);
- (h) a method statement for the crossing of watercourses which includes a scheme and programme (including a timescale) for any crossing, diversion and reinstatement of a designated main river or ordinary watercourse has been submitted to and, after consultation with the Environment Agency, Internal Drainage Board and / or Lead Local



Flood Authority, approved in writing by the relevant planning authority. The designated main river or ordinary watercourse shall be crossed, diverted and subsequently reinstated in accordance with the approved scheme and programme Unless otherwise permitted in the method statement, throughout the period of construction and of the connection works, all ditches, watercourses, field drainage systems and culverts must be maintained such that the flow of water is not impaired or the drainage onto and from adjoining land rendered less effective;

- (i) plans for public and private access across the development Order limits, including details of the temporary re-routing of public rights of way during the construction of the authorised development including the provision of signage and other information alerting the public to the construction works and any re-routing;
- (j) management and mitigation of artificial light emissions; and
- (k) details of emergency procedures during construction.

### **Construction environmental management plan**

**23.**—(1) Prior to the commencement of each stage of the onshore works a construction environmental management plan (CEMP) for that stage, drafted in accordance with the principles set out in the approved CoCP, must be submitted to and approved in writing by the relevant planning authority.

(2) All remediation, construction and commissioning works must be undertaken in accordance with the CoCP and CEMP, or any variation or replacement thereof previously approved in writing by the relevant planning authority for that stage of the onshore works.

### **Construction hours**

**24.**—(1) Construction work for the onshore works and any construction-related traffic movements to or from the site of the relevant work must not take place other than between 0700 hours and 1900 hours Monday to Friday and 0700 hours and 1300 hours Saturday, with no activity on Sundays, public or bank holidays, except—

- (a) where continuous periods of operation are required, such as concrete pouring and drilling;
- (b) for the delivery of abnormal loads to the onshore works, which may cause congestion on the local road network;
- (c) where works are being carried out on the foreshore;
- (d) where works are required to be carried out in an emergency; or
- (e) as otherwise agreed in writing with the relevant planning authority except where as required outside of these hours pursuant to details submitted and approved under any other Requirement.

(2) All construction operations which are to be undertaken outside the hours specified in paragraph (1) must be agreed with the relevant planning authority in writing in advance, and must be carried out within the times agreed with the relevant planning authority.

### **Control of noise during operational phase**

**25.**—(1) The noise emanating from the operation of Work No. 7 (including transformers, cooling fans, switch gear and power lines) must each or together not exceed operational noise levels of 35dB as given in BS4142 at the nearest receptors identified on the works plans and below—

- (a) Halfway House (504796; 436331);
- (b) Model Farm (504011; 436576);
- (c) Poplar Farm (503727; 435672); and

(d) Wanlass Farm (504385; 435168) (a).

(2) Noise measurements must be undertaken in free field conditions and expressed as five minute L(A)<sub>r</sub> values.

(3) All standby generator testing in relation to the onshore works must be undertaken during the hours of 0900 to 1700 on Mondays to Saturdays, and not at all on Sundays, public or bank holidays, unless otherwise agreed in writing with the relevant planning authority.

### **Control of artificial light emissions**

26.—(1) Work No. 7 must not be brought into operation until a written scheme for the management and mitigation of artificial light emissions during the operation of Work No. 7 has been submitted to and approved in writing by the relevant planning authority following consultation with the relevant statutory nature conservation body.

(2) The approved scheme for the management and mitigation of artificial light emissions must be implemented and maintained during the operation of the onshore works.

### **Construction traffic routing and management plan**

27.—(1) No stage of the onshore works must commence until written details of a construction phase traffic management plan (CTMP), including port related traffic, to be used for the management of construction traffic has been submitted to and approved in writing by the relevant planning authority following consultation with the local highway authority for the area within which the port is located.

(2) The CTMP must include details (including agreed routes) for abnormal indivisible loads (AIL) that will be delivered by road (or confirmation that no AILs will be required for construction of the authorised development). The details thereafter approved must be adhered to at all times during the time when AILs are to be transported to or from the authorised development by road.

(3) Notices must be erected and maintained throughout the period of construction at construction site exits, in accordance with the CTMP indicating to drivers the routes agreed by the relevant planning authority for traffic entering and leaving sites.

(4) A travel plan which must be in accordance with the details submitted within the Code of Construction Practice.

(5) The plans approved must be implemented upon commencement of the relevant stage of construction works.

### **European protected species - onshore**

28.—(1) No stage of the onshore works must commence until final pre-construction survey work has been carried out to establish whether a European protected species is present on any of the land affected, or likely to be affected, by any part of the onshore works or in any of the trees to be lopped or felled as part of the onshore works.

(2) Where a European protected species is shown to be present, the stage of the onshore works likely to affect the species must not begin until, after consultation with the relevant statutory nature conservation body and the Secretary of State for the Environment, Food and Rural Affairs, a scheme of protection and mitigation measures has been submitted to and approved in writing by the relevant planning authority. The onshore works must be carried out in accordance with the approved scheme.

(3) “European protected species” has the same meaning as in regulations 40 and 44 of the Conservation (Natural Habitats, &c.) Regulations 2010(a).

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(a) These grid co-ordinates (shown as Easting: Northing) are approximate locations to broadly demonstrate the centroid locations of each of the dwellings for reference purposes only. The co-ordinates are not intended to provide the position of any noise monitoring locations, which would subsequently be determined in accordance with BS4142 if necessary.

### **Restoration of land used temporarily for construction**

29. Subject to article 29 of this Order (Temporary use of land for carrying out the authorised project), any land landward of mean low water springs within the Order limits which is used temporarily for construction of the onshore works, and not ultimately incorporated in permanent works or approved landscaping, must be reinstated to its former condition, or such condition as the relevant planning authority may approve, within six months of completion of the relevant stage of the onshore works, or if later by the end of the next available planting season.

### **Interference with telecommunications**

30. In the event that the operation of the onshore works gives rise to interference with telecommunications or television equipment at nearby residential properties, a scheme to rectify the situation in relation to the onshore works must be submitted to the relevant planning authority for approval. The scheme must provide for the investigation by a qualified independent television engineer of any complaint of interference with television reception at a lawfully occupied dwelling (defined for the purposes of this condition as a building within Use Class C3 and C4 of the Town and Country Planning (Uses Classes) Order 1987 (as amended)(b) which lawfully exists or had planning permission at the date of this permission, where such complaint is notified to the undertaker by the relevant planning authority within twelve months of commercial operation. Where impairment is determined by the qualified television engineer to be attributable to the development, mitigation works must be carried out in accordance with the scheme which has been approved in writing by the relevant planning authority. The scheme must be carried out in accordance with the approved details.

### **Onshore decommissioning**

31. No later than three months prior to the cessation of commercial operation of the onshore works (in whole or in part), a scheme for the demolition and removal of the onshore works (in whole or in part), and the final proposed condition of the relevant land, including a proposed timetable, must be submitted to the relevant planning authority for approval. The proposed scheme must be based on the onshore decommissioning statement submitted with the application and carried out in accordance with the approved details.

### **Detailed Emergency Response Plan**

32.—(1) Construction of Works Nos. 9A or 9B must not commence until an emergency response plan relating to the construction and operation of that stage of the onshore works has been submitted for approval, in writing by the relevant planning authority following consultation with National Grid Electricity Transmission.

(2) The emergency plan must be carried out as approved.

### **Amendments to approved details**

33.—(1) With respect to any Requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority or another person, the approved details must be taken to include any amendments that have been approved in writing by the relevant planning authority or that other person.

(2) Any amendment to or variation from the approved details must be in accordance with the principles and assessments set out in the Environmental Statement

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(a) S.I. 2010/490.

(b) S.I. 1987/764.

## SCHEDULE 2

Article 13

### Streets subject to street works

<i>Extent of works shown by two reference points on the Streets and Public Rights of Way Plan (Drawing number: F-ONC-MA-807)</i>	<i>Description of street subject to works</i>	<i>Co-ordinate X</i>	<i>Co-ordinate Y</i>
R01A to R01B	Allison Lane	515819	456888
R02A to R02B	Barbriggs Lane	514782	455729
R03A to R03B	Skipsea Road	513687	454370
R04A to R04B	Dunnington Lane	513680	452890
R05A to R05B	Beverley Road (A165)	513278	452611
R06A to R06B	Grange Road	512239	451339
R07A to R07B	Moortown Road	511373	449791
R08A to R08B	Frodingham Road	511297	449433
R09A to R09B	Mill Lane	509729	448810
R10A to R10B	New Road	508720	448215
R11A to R11B	A1035	507872	442158
R12A to R12B	Carr Lane	507139	439611
R13A to R13B	Hull Road (A1174)	505778	437662
R14A to R14B	Long Lane	505045	436825
R15A to R15B	A1079	503935	436011

## SCHEDULE 3

Article 14

### Streets to be temporarily stopped up

<i>Extent of works shown by two reference points on the Streets and Public Rights of Way Plan (Drawing number: F-ONC-MA-807)</i>	<i>Description of street to be temporarily stopped up</i>	<i>Co-ordinate X</i>	<i>Co-ordinate Y</i>
R02A to R02B	Barbriggs Lane	514782	455729
R04A to R04B	Dunnington Lane	513680	452890
R07A to R07B	Moortown Road	511373	449791
R08A to R08B	Frodingham Road	511297	449433
R10A to R10B	New Road	508720	448215
R12A to R12B	Carr Lane	507139	439611
01a to 01b	Ulrome Footpath No.6	517038	458116
02a to 2b	Ulrome Footpath No.2	516449	457335
03a to 3b	Ulrome Footpath No.4	515639	456727
04a to 4b	Beeford Footpath No.6	513682	454413
05a to 5b	Brandesburton Footpath No.6	510774	449166
06a to 6b	Brandesburton Footpath No.15	509388	448668
07a to 7b	Leven Footpath No.4	508538	444983
08a to 8b	Tickton Bridleway No.5	507067	440975
09a to 9b	Tickton Footpath No.6	507121	440964
10a to 10b	Tickton Footpath No.7	507027	440416
11a to 11b	Tickton Footpath No.9	507135	438531
12a to 12b	Tickton Footpath No.12	506629	438217
13a to 13b	Beverley Footpath No.23	506580	438206
14a to 14b	Wilberforce Way	506342	438106
15a to 15b	Woodmansey Footpath No.4	504697	436214
19a to 19b	Skidby Footpath No.12	504526	435466
20a to 20b	Skidby Footpath No.12	504559	435252
21a to 21b	Skidby Footpath No.11	504556	435171
22a to 22b	Skidby Footpath No.11	504760	435073
23a to 23b	Skidby Footpath No.10	504704	434993

## SCHEDULE 4

Article 15

### Access to works

<i>Reference shown on Access to Works Plan (Drawing number: F-ONC-MA-805)</i>	<i>Description of street</i>	<i>Co-ordinate X</i>	<i>Co-ordinate Y</i>
A	Allison Lane (north)	515858	456861
B	Allison Lane (east)	515910	456816
C	Allison Lane (west)	515766	456930
D	Skipsea Road	513701	454372
E	Dunnington Lane	513699	452889
F	Grange Road (north)	512289	451305
G	Grange Road (east)	512293	451297
H	Grange Road (west)	512186	451376
I	A1035 (east)	508335	442223
J	A1035 (west)	508050	442148
K	Hull Road (A 1174 east)	505863	437638
L	Hull Road (A 1174 west)	505455	437813
M	Long Lane	505074	436809
N	Park Lane (north)	504379	436976
O	A1079	504106	435938

## SCHEDULE 5

Article 24

### Land in which only new rights etc. may be acquired

<i>(1) Plot Reference Number shown on Land Plans</i>	<i>(2) Purpose for which rights over land may be acquired</i>
<b>PART 1 - acquisition of new rights</b>	
1Bi, 1Bii, 4Bii, 4Biii, 16B, 19B, 21B, 23B, 29B, 32B, 34B, 36B, 41B, 49B, 56B, 58B, 60B, 62B, 64B, 66B, 72B, 74B, 76B, 83B, 84B, 85B, 90B, 88B, 98B, 99Bi, 99Bii, 100B, 101B, 102B, 103B, 104B, 109B, 117B, 120B, 121B	New right for the installation, inspection, maintenance, renewal, repair, replacement and use of two export cables for the transmission of high voltage direct current electricity, together with fibre optic cables for the transmission of electronic communications for the benefit of Bizco 4
152	New right for the installation, inspection, maintenance, renewal, repair, replacement and use of up to three export cables for the transmission of high voltage alternating current electricity, together with fibre optic cables for the transmission of electronic communications for the benefit of Bizco 4
153, 154, 155, 156, 157B, 159, 161, 162	New right for the construction of a new connection bay within the National Grid substation containing isolation switchgear and electrical equipment for the connection of the export cable to the transmission network for the benefit of Bizco 4
1Ai, 1Aii, 2, 4Ai, 16A, 19A, 21A, 23A, 29A, 32A, 34A, 36A, 41A, 49A, 56A, 58A, 60A, 62A, 64A, 66A, 72A, 74A, 76A, 83A, 84A, 85A, 88A, 90C, 98A, 99Ai, 99Aii, 100A, 101A, 102A, 103A, 104A, 109A, 117A, 120A, 121A	New right for the installation, inspection, maintenance, renewal, repair, replacement and use of two export cables for the transmission of high voltage direct current electricity, together with fibre optic cables for the transmission of electronic communications for the benefit of Bizco 1
151, 157C	New right for the installation, inspection, maintenance, renewal, repair, replacement and use of up to three export cables for the transmission of high voltage alternating current electricity, together with fibre optic cables for the transmission of electronic communications for the benefit of Bizco 1
157A, 157E, 165i, 166, 167, 168, 169, 170	New right for the construction of a new connection bay within the National Grid substation containing isolation switchgear and electrical equipment for the connection of the export cable to the transmission network for the benefit of Bizco 1
13E, 14, 15, 39E, 40, 81E, 82, 86, 87E, 87F, 87G, 87H, 87I, 107E, 107F, 108, 112E, 113	New right for the installation, inspection, maintenance, renewal, repair and replacement of two export cables for the transmission of high voltage direct current electricity, together with fibre optic cables for the transmission of electronic communications for the benefit of Bizco 1 and Bizco 4
137i, 137ii, 139, 140, 141, 142, 143, 144, 145	New right for: 1)the inspection, maintenance, renewal, repair and replacement of two export cables for the transmission of high voltage direct current electricity, together with fibre optic cables for the transmission of electronic communications;

<i>(1) Plot Reference Number shown on Land Plans</i>	<i>(2) Purpose for which rights over land may be acquired</i>
	<p>2)the inspection, maintenance, renewal, repair and replacement of up to three export cables for the transmission of high voltage alternating current electricity, together with fibre optic cables for the transmission of electronic communications; and</p> <p>3) the inspection, maintenance, renewal, repair and replacement of the converter stations</p> <p>in each case for the benefit of Bizco 1 and Bizco 4</p>
130	New right for the installation, inspection, maintenance, renewal, repair, replacement and use of two export cables for the transmission of high voltage alternating current electricity, together with fibre optic cables for the transmission of electronic communications for the benefit of Bizco 1 and Bizco 4
133, 134, 135, 137ii	New right for the installation, inspection, maintenance, renewal, repair and replacement of up to three export cables for the transmission of high voltage alternating current electricity, together with fibre optic cables for the transmission of electronic communications for the benefit of Bizco 1 and Bizco 4
158, 160, 164, 165ii, 165iii, 172, 173, 174, 175	New right for the inspection, maintenance, renewal, repair and replacement of the new connection bay within the National Grid substation for the benefit of Bizco 1 and Bizco 4
138	New right for landscaping together with the inspection, maintenance, renewal, repair and replacement of two export cables for the transmission of high voltage direct current electricity, together with fibre optic cable for the transmission of electronic communications for the benefit of Bizco 1 and Bizco 4
<b>PART 2 - acquisition of new rights (Bizco 1 may exercise a power to acquire rights conferred by paragraph (1) over that land)</b>	
112C	New right for the installation, inspection, maintenance, renewal, repair and replacement of two export cables for the transmission of high voltage direct current electricity, together with fibre optic cable for the transmission of electronic communications for the benefit of Bizco 1
157B	New right for the construction of a new connection bay within the National Grid substation containing isolation switchgear and electrical equipment for the connection of the export cable to the transmission network for the benefit of Bizco 1
<b>PART 3 - acquisition of new rights (Bizco 4 may exercise a power to acquire rights conferred by paragraph (1) over that land)</b>	
13C, 39C, 81C, 87C, 90A, 107C	New right for the installation, inspection, maintenance, renewal, repair and replacement of two export cables for the transmission of high voltage direct current electricity, together with fibre optic cable for the transmission of electronic communications for the benefit of Bizco 4



SCHEDULE 6

Article 29

Land of which temporary possession may be taken

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Plot Reference</i> <i>Number(s) shown on</i> <i>Land Plans</i>	<i>(3)</i> <i>Purpose for which</i> <i>temporary possession</i> <i>may be taken</i>	<i>(4)</i> <i>Relevant part of the</i> <i>authorised</i> <i>development</i>
<b>Land Plans - Sheet 2</b>			
In the administrative area of East Riding of Yorkshire Council	176	Access to work site	Work No.6B
In the administrative area of East Riding of Yorkshire Council	177	Access to work site	Work No.6A
In the administrative area of East Riding of Yorkshire Council	178	Work site and access	Work No.6B
In the administrative area of East Riding of Yorkshire Council	179	Work site and access	Work No.6A
<b>Land Plans - Sheet 5</b>			
In the administrative area of East Riding of Yorkshire Council	180	Work site and access	Work No.6A
<b>Sheet 6</b>			
In the administrative area of East Riding of Yorkshire Council	181	Work site and access	Work No.6B
<b>Sheet 7</b>			
In the administrative area of East Riding of Yorkshire Council	182	Access to work site	Work No.6B
In the administrative area of East Riding of Yorkshire Council	183	Access to work site	Work No.6A
In the administrative area of East Riding of Yorkshire Council	184	Work site and access	Work No.6B
In the administrative area	185	Work site and access	Work No.6A

of East Riding of Yorkshire Council			
<b>Sheet 11</b>			
In the administrative area of East Riding of Yorkshire Council	186	Work site and access	Work No.6B
In the administrative area of East Riding of Yorkshire Council	187	Work site and access	Work No.6A
<b>Sheet 15</b>			
In the administrative area of East Riding of Yorkshire Council	188	Work site and access	Works Nos. 6A & 6B
In the administrative area of East Riding of Yorkshire Council	189	Work site and access	Works Nos.6A & 6B
<b>Sheet 17</b>			
In the administrative area of East Riding of Yorkshire Council	190	Work site and access	Work No.6B
In the administrative area of East Riding of Yorkshire Council	191	Work site and access	Work No.6A
<b>Sheet 20</b>			
In the administrative area of East Riding of Yorkshire Council	192	Work site and access	Work No.6B
In the administrative area of East Riding of Yorkshire Council	193	Work site and access	Work No.6A
<b>Sheet 21</b>			
In the administrative area of East Riding of Yorkshire Council	194	Work site and access	Work No.7
In the administrative area of East Riding of Yorkshire Council	195	Work site and access	Work No.7
<b>Sheet 22</b>			
In the administrative area of East Riding of Yorkshire Council	196	Work site and access	Work No.8B
In the administrative area	197	Work site and access	Work No.8A

of East Riding of Yorkshire Council			
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## Deemed licences under The Marine and Coastal Access Act 2009

## PART 1A

## Licensed Marine Activities – Marine Licence 1: Project A Offshore (Generation - Works Nos. 1A and 2T)

**Interpretation**

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“Annex 1 Habitat” means such habitat as defined under the EU Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora;

“authorised deposits” means the substances and articles specified in paragraph 2(3);

“authorised scheme” means Works Nos. 1A and 2T described in paragraph 2 of this licence or any part or phase of those works;

“Bizco 1” means Doggerbank Project 1 Bizco Limited (Company number 7791991) whose registered office is 55 Vastern Road, Reading, Berkshire RG1 8BU;

“cable protection” means any measures to protect cables and prevent loss of seabed sediment, for example by use of grout bags, protective aprons, mattresses, flow energy dissipation devices or rock and gravel burial;

“cable crossings” means the crossing of existing sub-sea cables and pipelines by the inter-array, interconnecting and/or export cables authorised by this Order together with physical protection measures including cable protection;

“combined platform” means a single offshore platform combining two or more of the following—

- (a) an offshore collector platform;
- (b) an offshore converter platform;
- (c) an offshore accommodation or helicopter platform;

“commence” means the first carrying out of any part of the licensed activities except for the pre-construction surveys and monitoring and commencement must be construed accordingly;

“commercial operation” means in relation to the Project A Offshore works, the exporting, on a commercial basis, of electricity from the wind turbine generators comprised within those works;

“condition” means a condition in Part 1B of this licence;

“draft fisheries liaison plan” means the document certified as the draft fisheries liaison plan by the Secretary of State for the purposes of this Order;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“the Environmental Statement” means the document certified as the Environmental Statement by the Secretary of State for the purposes of this Order and submitted with the application together with any supplementary or further environmental information submitted in support of the application;

“gravity base foundation” means a foundation type which rests on the seabed and supports the wind turbine generator, meteorological station or offshore platform primarily due to its own weight and that of added ballast, with or without skirts or other additional fixings, which may include associated equipment including J-tubes and access platforms and separate topside connection structures or an integrated transition piece. Sub types for wind turbine generators and meteorological stations include conical gravity base and flat-based gravity base. Sub types for platforms include: offshore platform conical or flat-base gravity base foundations, and offshore platform semi-submersible gravity base foundations;

“HAT” means highest astronomical tide;

“In Principle Monitoring Plan” means the document certified as the In Principle Monitoring Plan by the Secretary of State for the purposes of this Order;

“the Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

“licensed activities” means the activities specified in Part 1A of this licence;

“maintain” includes inspect, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (ancillary works) of the Order and any component part of any wind turbine generator, offshore platform, meteorological station, electricity or communication cable described in Part 1 of Schedule 1 (authorised development) of the Order (but not including the removal or replacement of foundations) to the extent outlined within the post-construction maintenance plan; and “maintenance” must be construed accordingly;

“the Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“meteorological mast” or “meteorological station” means a fixed or floating structure housing or incorporating equipment to measure wind speed and other meteorological and oceanographic characteristics, including a topside which may house electrical switchgear and communication equipment and associated equipment, and marking and lighting;

“monopole foundation” means foundation options based around a single vertical pillar structure driven, drilled, or embedded into the seabed by means such as suction and/or gravity. This main support structure may change in diameter via tapers and abrupt steps. Sub types for wind turbine generators and meteorological stations include: monopole with steel monopile footing, monopole with concrete monopile footing, and monopole with a single suction-installed bucket footing;

“multileg foundation” means foundation options based around structures with several legs or footings. This includes jackets, tripods, and other structures which include multiple large tubulars, cross-bracing, or lattices. Multileg foundations may be fixed to the seabed by footings which are driven, drilled, screwed, jacked-up, or embedded into the seabed by means such as suction and/or gravity. Sub types for wind turbine generators and meteorological stations include multilegs with driven piles, drilled piles, screw piles, suction buckets, and/or jack up foundations. Sub types for platforms include: offshore platform jacket foundations (potentially using driven piles, suction buckets and/or screw piles) and offshore platform jack up foundations;

“notice to mariners” includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen’s harbourmasters, government departments and harbour and pilotage authorities;

“offshore accommodation or helicopter platform” means a platform (either singly or as part of a combined platform) housing or incorporating some or all of the following: accommodation for staff during the construction, operation and decommissioning of the offshore works, landing facilities for vessels and helicopters, re-fuelling facilities, communication and control systems, electrical systems such as metering and control systems, J-tubes, small and large

scale electrical power systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore collector platform” means a platform (either singly or as part of a combined platform) housing or incorporating electrical switchgear and/or electrical transformers, electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore converter platform” means a platform (either singly or as part of a combined platform) housing or incorporating high voltage direct current electrical switchgear and/or electrical transformers and other equipment to enable HVDC transmission to be used to convey the power output of the multiple wind turbine generators to shore including electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“the offshore Order limits plan” means the plans certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of this Order;

“offshore platform” means any of the following—

- (a) an offshore accommodation or helicopter platform;
- (b) an offshore collector platform;
- (c) an offshore converter platform; or
- (d) a combined platform

“the Order” means the Dogger Bank Creyke Beck Offshore Wind Farm Order 201X;

“the Order limits” means the limits shown on the offshore and onshore Order limits plans;

“outline maintenance plan” means the document certified as the outline maintenance plan by the Secretary of State for the purposes of this Order;

“scour protection” means protection against foundation scour and subsea damage, for example from trawling, through reinforcement measures and measures to prevent loss of seabed sediment around foundation bases. These measures include the use of bagged solutions filled with grout or other materials, protective aprons, mattresses, flow energy dissipation devices and rock and gravel burial;

“undertaker” means Bizco 1;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water; and

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter transfer facilities and other associated equipment, fixed to a foundation,

(2) A reference to any statute, order, regulation or similar instrument must be construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated:

- (a) all times must be taken to be Greenwich Mean Time (GMT);
- (b) all coordinates must be taken to be latitude and longitude decimal degrees to six decimal places. The datum system used is WGS84.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence shall be:

(a) Marine Management Organisation

Marine Licensing Team

Lancaster House

Hampshire Court

Newcastle upon Tyne

NE4 7YH

Email: [marine.consents@marinemangement.org.uk](mailto:marine.consents@marinemangement.org.uk)

Tel: 0300 123 1032

(b) Trinity House

Tower Hill

London

EC3N 4DH

Tel: 020 7481 6900;

(c) The United Kingdom Hydrographic Office

Admiralty Way

Taunton

Somerset

TA1 2DN

Tel: 01823 337 900;

(d) Marine and Coastguard Agency

Navigation Safety Branch

Bay 2/04

Spring Place

105 Commercial Road

Southampton

SO15 1EG

Tel: 023 8032 9191;

(e) Centre for Environment, Fisheries and Aquaculture Science

Pakefield Road

Lowestoft

Suffolk

NR33 0HT

Tel: 01502 562 244

(f) Natural England  
Foundry House  
3 Millsands  
Riverside Exchange  
Sheffield  
S3 8NH  
Tel: 0300 060 4911;

(g) JNCC  
Inverdee House  
Baxter Street  
Aberdeen  
AB11 9QA  
Tel: 01224 266 550;

(h) English Heritage  
Eastgate Court  
195-205 High Street  
Guildford  
GU1 3EH  
Tel: 01483 252 057;

(5) For information only, the details of the local MMO office to the authorised scheme is—

Marine Management Organisation  
Northern Marine Area  
Neville House  
Central Riverside  
Bell Street  
North Shields  
Tyne & Wear  
NE30 0LJ  
Tel: 0191 257 4520.

### **Details of licensed marine activities**

2.—(1) This licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act, subject to the conditions in Schedule 7 Part 1B—

- (a) the deposit at sea of the substances and articles specified in paragraph (3) below;
- (b) the construction of works in or over the sea and/or on or under the sea bed including the removal, reconstruction or alteration of the position of subsea cables and pipelines;
- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation;

(2) Such activities are authorised in relation to the construction, maintenance and operation of:

Work No. 1A—

- (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 1.2 gigawatts comprising up to 200 wind turbine generators each fixed to the seabed by



monopole, multileg or gravity base type foundations situated within the coordinates of the array area specified in the following table, and further comprising works (b) to (d) below;

Coordinates for the array area

<i>Point</i>	<i>Latitude (Decimal Degrees)</i>	<i>Longitude (Decimal Degrees)</i>
CBA-1	54.835241	1.633573
CBA-2	54.838412	2.174407
CBA-3	54.808700	2.227327
CBA-4	54.659286	1.976949
CBA-5	54.741685	1.632884

- (b) up to seven offshore platforms comprising the following:
  - (i) up to four offshore collector platform(s) situated within the array area specified in the table in Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundations;
  - (ii) an offshore converter platform situated within the array area specified in the table in Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundations;
  - (iii) up to two offshore accommodation or helicopter platform(s) situated within the array area specified in the table in Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundations;
  - (iv) or any of the platforms comprised in Work No. 1A(b)(i) to Work No. 1A(b)(iii) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundations;
- (c) up to five meteorological station(s) situated within the array area specified in the table in Work No. 1A(a) either fixed to the seabed by monopole, multileg or gravity base type foundations, or utilising a floating support structure anchored to the seabed;
- (d) A network of cables for the transmission of electricity and electronic communications laid on or beneath the seabed and including cable crossings between—
  - (i) any of the wind turbine generators comprising Work No. 1A(a);
  - (ii) any of the wind turbine generators comprising Work No. 1A(a) and Work No. 1A(b) and Work No. 1A(c); and
  - (iii) any of the works comprising Work No. 1A(b) and Work No. 1A(c)
  - (iv) the offshore converter platform or the combined platforms and the export cable route in Work No. 2A.

Work No. 2T –

a temporary work area for vessels to carry out intrusive activities during construction, including vessels requiring anchor spreads alongside the cable corridors.

Ancillary works in connection to the above-mentioned works comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised scheme;
- (b) temporary or permanent buoys, beacons, fenders and other navigational warning or ship impact protection works;
- (c) temporary works for the protection of land or structures affected by the authorised scheme;
- (d) cable protection, scour protection or dredging; and

- (e) cable route preparation works including boulder removal and obstruction clearance, dredging and pre-sweeping.

(3) The substances or articles authorised for deposit at sea are—

- (a) iron/steel/aluminium;
- (b) stone and rock;
- (c) concrete/grout;
- (d) sand and gravel;
- (e) plastic/synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and
- (g) marine coatings, other chemicals and timber.

(4) Subject to the licence conditions, this licence authorises the disposal of up to 1,107,411 m<sup>3</sup> of material of natural origin within Work No. 1A produced during construction drilling and seabed preparation for foundation works and cable sandwave preparation works.

(5) The undertaker must pursuant to paragraph (4) inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(6) This licence does not permit the decommissioning of the authorised scheme. No authorised decommissioning activity must commence until a written decommissioning programme in accordance with an approved programme under section 105(2) of the 2004 Act, has been submitted to the Secretary of State for approval. Furthermore, at least four months prior to carrying out any such works, the undertaker must notify the MMO of the proposed decommissioning activity to establish whether a marine licence is required for such works.

## PART 1B

### Conditions

#### Detailed offshore design parameters

3.—(1) Subject to paragraph (2), no wind turbine generator forming part of the authorised scheme must—

- (a) exceed a height of 315 metres when measured from HAT to the tip of the vertical blade;
- (b) exceed a rotor diameter of 215 metres;
- (c) be less than a multiple of six times the rotor diameter from the nearest wind turbine generator in any direction being not less than 700 metres measured between turbines ; and
- (d) have a distance of less than 26 metres between the lowest point of the rotating blade of the wind turbine generator and the level of the sea at HAT.

(2) The wind turbine generators comprised in Work No. 1A must be sized such that if they were installed to the maximum permitted gross generating capacity specified for those works the total rotor swept area would not exceed 4.35 km<sup>2</sup>.

(3) Wind turbine generator and meteorological mast foundation structures forming part of the authorised scheme must be of one or more of the following foundation options: monopole, multileg or gravity base.

(4) No wind turbine generator or meteorological mast foundation structure employing a footing of driven piles forming part of the authorised scheme must—

- (a) have more than six driven piles;
- (b) in the case of single pile structures have a pile diameter of greater than 10 metres and employ a hammer energy during installation of greater than 3000kJ;

(c) in the case of two or more pile structures have a pile diameter of greater than 3.5 metres and employ a hammer energy during installation of greater than 2300kJ.

(5) The foundations for wind turbine generators will be in accordance with the wave reflection coefficient values as set out at Fig 3.16 within Chapter 5 and Appendix 5.B of the Environmental Statement.

(6) No wind turbine generator foundation will have a seabed footprint area of subsea/scour protection (excluding foundation footprint) of more than 3,777 m<sup>2</sup>.

(7) The foundations for wind turbine generators and meteorological stations will not exceed the dimensions set out below—

<i>Foundation type Monopole, multileg or gravity base foundations</i>	<i>Maximum width of main supporting structure in metres</i>	<i>Maximum seabed footprint area per foundation (excluding scour protection) in m<sup>2</sup></i>
Wind turbine and meteorological station foundation	61	2,376

(8) The total seabed footprint area of subsea/scour protection for wind turbine generator foundations (excluding foundation footprint) will not exceed 0.7554km<sup>2</sup> within Work No. 1A.

(9) The volume of subsea/scour protection material for wind turbine generator foundations within Work No. 1A will not exceed 1,084,800 m<sup>3</sup>.

(10) The total cable protection for HVAC inter-array cables (excluding cable crossing) will not exceed an area of 0.5557 km<sup>2</sup> or a volume of 217,850 m<sup>3</sup> within Work No. 1A.

(11) References to the location of a wind turbine generator are references to the centroid point at the base of the turbine.

(12) No lattice tower forming part of a meteorological station must exceed a height of 315 metres above HAT.

(13) The length of HVAC cables comprising Work No.1A must not exceed 950 km.

4.—(1) The total number of offshore platforms forming part of the authorised scheme must not exceed seven comprising

- (a) up to four offshore collector platform(s);
- (b) up to one offshore converter platform(s);
- (c) up to two offshore accommodation or helicopter platform(s);
- (d) or any of the platforms comprised in (1)(a) to (c) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundations.

(2) The dimensions of any offshore collector platforms forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed 75 metres in length, 75 metres in width and 85 metres in height above HAT.

(3) The dimensions of any offshore converter platform forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed 125 metres in length, 100 metres in width and 105 metres in height above HAT.

(4) The dimensions of any offshore accommodation or helicopter platform(s) forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed 125 metres in length, 100 metres in width and 105 metres in height above HAT.

(5) The dimensions of any combined platforms forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed the total footprint of the individual platforms incorporated within it.

(6) Offshore platform foundation structures forming part of the authorised scheme must be one or more of the following foundation options: gravity base or multileg.

(7) No offshore platform foundation structure employing a footing of driven piles forming part of the authorised scheme must—

- (a) have more than twenty four driven piles;
- (b) have a pile diameter of greater than 2.744 metres and employ a hammer energy during installation of greater than 1900kJ.

(8) No offshore platform foundation will have a seabed footprint area of subsea/scour protection (excluding foundation footprint) of more than 8,742 m<sup>2</sup>.

(9) The foundations for offshore platforms will not exceed the dimensions set out below:

<i>Foundation type</i>	<i>Offshore collector platform (multileg or gravity base foundation)</i>	<i>Offshore converter platform (multileg or gravity base foundation)</i>	<i>Offshore accommodation or helicopter platform (multileg or gravity base foundation)</i>
Maximum seabed footprint area per foundation (excluding scour protection) in m <sup>2</sup>	5,625	12,500	12,500

(10) The number of vessels actively carrying out impact piling as part of the installation of driven pile foundations for the authorised scheme must at no time exceed two within Work No. 1A.

### Layout Rules

5.—(1) The positions of wind turbine generators and offshore platform(s) must be arrayed in accordance with parameters applicable to Work No. 1A specified in condition 3 and the principles within section 5.2 of Chapter 5 of the Environmental Statement.

(2) No construction of any wind turbine generator or offshore platform forming part of the authorised scheme must commence until the MMO, in consultation with the MCA, has approved their general layout arrangements. These layout arrangements must specify the physical point of connection between generation and transmission assets for Project A.

(3) The construction of the wind turbine generators and offshore platforms must be carried out as approved.

### Notifications and inspections

6.—(1) The undertaker must ensure that:

- (a) prior to the carrying out of any licensed activities under this licence, the undertaker must inform the MMO of—
  - (i) the name of the person undertaking the licensed activities,
  - (ii) the works being undertaken pursuant to this licence comprising those works necessary up to the point of connection with the transmission assets;
  - (iii) the maximum total area and volume for any cable protection for HVAC inter-array cables and HVAC inter-platform cables to be constructed within the array area pursuant to this licence; and
  - (iv) the maximum total area and volume for any cable protection to be constructed within the array area pursuant to this licence;

- (b) any works notified under this paragraph when combined with any works notified in paragraph (6) of Marine Licence 2 and paragraph (5) of Marine Licence 3 and 4 must not exceed the maximum parameters set out in Schedule 1 of the DCO.
  - (c) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
    - (i) all agents and contractors notified to the MMO in accordance with condition 11; and
    - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 11;
  - (d) within twenty eight days of receipt of a copy of this licence those persons referred to at paragraph (a) above must provide a completed confirmation form to the MMO confirming that they have read and will comply with the terms of the conditions of this licence.
- (2) Only those persons and vessels notified to the MMO in accordance with condition 11 are permitted to carry out the licensed activities;
- (3) Copies of this licence must also be available for inspection at the following locations:
- (a) the undertaker’s registered address;
  - (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit for the authorised deposits; and
  - (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits are to be made.
- (4) The documents referred to in paragraph (1)(a) must be available for inspection by an authorised enforcement officer at all reasonable times at the locations set out in paragraph 3(b) above.
- (5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.
- (6) The undertaker must inform the MMO Coastal Office in writing at least five working days prior to the commencement of the licensed activities or any phase of them.
- (7) Prior to the commencement of the licensed activities or any phase of them the undertaker must publish in the Kingfisher Fortnightly Bulletin details of the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant phase.
- (8) The undertaker must ensure that a notice to mariners is issued at least ten working days prior to the commencement of the licensed activities or any phase of them advising of the start date of Work No. 1A (wind turbine generation station, offshore platforms or other offshore construction activities) and the expected vessel routes from the local construction ports to the relevant locations.
- (9) The undertaker must ensure that the notices to mariners are updated and reissued at weekly intervals during construction activities and within five days of any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the Maritime and Coastguard Agency in accordance with the construction programme approved under condition 9(1)(b). Copies of all notices must be provided to the MMO.
- (10) The undertaker must notify—
- (a) the Hydrographic Office two weeks prior to the commencement and two weeks following completion of the authorised scheme in order that all necessary amendments to nautical charts are made; and
  - (b) the MMO, MCA and Trinity House once the authorised scheme is completed and any required lighting or marking has been established.

## **Chemicals, drilling and debris**

7.—(1) All chemicals used in the construction of the authorised scheme, including any chemical agents placed within any monopile or other foundation structure void, must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive or the Environment Agency Pollution Prevention Control Guidelines. Any spillages must be reported to the MMO marine pollution response team within the timeframes specified in the Marine Pollution Contingency Plan.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) Where foundation drilling works are proposed, in the event that any system other than water-based mud is proposed the MMO's written approval in relation to the proposed disposal of any arisings must be obtained before the drilling commences, which may also require a marine licence.

(5) The undertaker must ensure that any debris arising from the construction of the authorised scheme or temporary works placed below MHWS are removed on completion of the authorised scheme.

(6) At least ten days prior to the commencement of the licensed activities the undertaker must submit to the MMO an audit sheet covering all aspects of the construction of the licensed activities or any phase of them. The audit sheet must include details of—

- (a) loading facilities;
- (b) vessels;
- (c) equipment;
- (d) shipment routes;
- (e) transport;
- (f) working schedules; and
- (g) all components and materials to be used in the construction of the authorised scheme.

(7) The audit sheet must be maintained throughout the construction of the authorised scheme (or relevant phase) and must be submitted to the MMO for review at fortnightly intervals.

(8) In the event that the MMO becomes aware that any of the materials on the audit sheet cannot be accounted for it must require the undertaker to carry out a side scan sonar survey to plot all obstructions across a reasonable area of search agreed with the MMO where construction works and related activities have been carried out. Representatives of the Holderness Fishing Industry Group must be invited to send a representative to be present during the survey. Any obstructions that the MMO believes to be associated with the authorised scheme must be removed at the undertaker's expense.

## **Force majeure**

8. If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits otherwise than in accordance with condition 10(2) because the safety of human life and/or of the vessel is threatened—

- (a) within forty eight hours full details of the circumstances of the deposit must be notified to the MMO; and
- (b) upon reasonable written request by the MMO the unauthorised deposits must be removed at the expense of the undertaker.

## **Pre-construction plans and documentation**

9.—(1) The licensed activities or any phase of those activities must not commence until the following (insofar as relevant to that activity or phase of activity) have been submitted to and approved in writing by the MMO—

- (a) a plan to be agreed in writing with the MMO following consultation with Trinity House and the MCA which shows—
  - (i) the number, specification(s) and dimensions of the wind turbine generators;
  - (ii) the proposed location, including grid co-ordinates and choice of foundation types for all wind turbine generators, offshore platforms and meteorological stations;
  - (iii) the dimensions of all monopole, multileg and gravity base foundations, if used; and
  - (iv) the proposed layout of HVAC cables,

to ensure conformity with the description of Work No. 1A and compliance with conditions 3-5 above;

- (b) a detailed construction and monitoring programme to include details of—
  - (i) the proposed construction start date;
  - (ii) proposed timings for mobilisation of plant, delivery of materials and installation works; and
  - (iii) proposed pre-construction surveys, a proposed format and content for a baseline report, construction monitoring, post construction monitoring and related reporting in accordance with Conditions 14, 15 and 16. The preconstruction survey programme and all pre-construction survey methodologies shall be submitted to the MMO for written approval at least four months prior to the commencement of any survey works detailed within.
- (c) a construction method statement in accordance with the construction methods assessed in the Environmental Statement and including details of—
  - (i) drilling methods and disposal of drill arisings;
  - (ii) turbine, meteorological mast and platform location and installation, including scour protection and foundations;
  - (iii) cable installation;
  - (iv) impact piling including soft start procedures;
  - (v) the source of rock material used in construction and method to minimise contaminants and fines
  - (vi) contractors;
  - (vii) vessels; and
  - (viii) associated works;
- (d) a project environmental management and monitoring plan to include details of—
  - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents during construction and operation of the authorised scheme in relation to all activities carried out;
  - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
  - (iii) waste management and disposal arrangements including arrangements to ensure no waste concrete slurry or wash water from concrete or cement work is discharged;
  - (iv) the fisheries liaison officer appointed by the undertaker to be notified to the District Marine Officer for the MMO's Northern District. Evidence of liaison should be collated so that signatures of attendance at meetings, agenda and minutes of meetings with the fishing industry can be provided to the MMO if requested; and

- (v) a fisheries liaison plan in accordance with the draft fisheries liaison plan to include information on liaison with the fishing industry (including the fisheries liaison officer as in (iv) above) and a coexistence plan.
- (e) a marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, primarily auditory injury within the vicinity of any piling, and appropriate monitoring surveys in accordance with the In Principle Monitoring Plan to be agreed in writing with the MMO in consultation with the relevant statutory nature conservation body;
- (f) a cable specification and installation plan following consultation with the relevant statutory nature conservation body, to include—
  - (i) technical specification of offshore cables, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
  - (ii) a staged cable laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques; and
  - (iii) a scour protection management and cable protection plan providing details of the need, type, sources, quality and installation methods for scour protection and cable protection; and
  - (iv) details of methodology and extent of post lay survey, to confirm burial depths.
- (g) a written scheme of archaeological investigation in relation to offshore areas within the Order limits in accordance with Chapter 18 Appendix B of the Environmental Statement, industry good practice and after discussions with English Heritage to include—
  - (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
  - (ii) a methodology for any further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
  - (iii) within three months of any survey being completed a timetable to be submitted to the MMO setting out the timeframe for the analysis and reporting of survey data;
  - (iv) delivery of any mitigation including, where necessary, archaeological exclusion zones;
  - (v) monitoring during and post construction, including a conservation programme for finds;
  - (vi) archiving of archaeological material including ensuring that a copy of any agreed archaeological report is deposited with the English Heritage Archive by submitting an English Heritage OASIS form with a digital copy of the report; and
  - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme.

**10.—(1)** Each programme, statement, plan, protocol or scheme required to be approved under condition 9 or condition 5 must be submitted for approval at least four months prior to the intended start of construction, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 9.

### **Offshore safety management**

**11.—(1)** Offshore works must not commence until the MMO, in consultation with the MCA, has given written approval for an Emergency Response and Co-operation Plan (ERCoP) which includes full details of the ERCoP for the construction, operation and decommissioning phases of the authorised development in accordance with the MCA recommendations contained within MGN371 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational



Practice, Safety and Emergency Response Issues”. The ERCOP must include the identification of a point of contact for emergency response.

(2) The ERCoP must be implemented as approved.

(3) No authorised development seaward of MHWS must commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate to the authorised development contained within MGN371 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes.

### **Reporting of engaged agents, contractors and vessels**

**12.—**(1) The undertaker must provide the name and function of any agent or contractor appointed to engage in the licensed activities to the MMO at least two weeks prior to the intended start of construction.

(2) Each week during the construction of the authorised scheme a completed Hydrographic Note H102 must be provided to the MMO listing the vessels currently and to be used in relation to the licensed activities.

(3) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

### **Equipment and operation of vessels engaged in licensed activities**

**13.—**(1) All vessels employed to perform the licensed activities must be constructed and equipped to be capable of the proper performance of such activities in accordance with the Conditions of this licence and (except in the case of remotely operated vehicles or vessels) must comply with paragraphs (2) to (7) below.

(2) All motor powered vessels must be fitted with:

- (a) electronic positioning aid to provide navigational data;
- (b) radar;
- (c) echo sounder; and
- (d) multi-channel VHF.

(3) No radio beacon or radar beacon operating on the marine frequency bands must be installed or used without the prior written approval of the Secretary of State.

(4) All vessels’ names or identification must be clearly marked on the hull or superstructure.

(5) All vessels must exhibit signals in accordance with the requirements of the International Regulations for the Prevention of Collisions at Sea.

(6) All communication on VHF working frequencies must be in English; and

(7) No vessel must engage in the licensed activities until all the equipment specified in paragraph (2) is fully operational.

### **Pre-construction monitoring**

**14.—**(1) The undertaker must, in discharging condition 9(1)(b), submit details for written approval by the MMO of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report. The survey proposals must be in accordance with the principles set out in the In Principle Monitoring Plan and must specify each survey’s objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the Environmental Statement. The baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post construction comparison is intended and the justification for this being required.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, where appropriate and necessary it is expected that the pre-construction surveys will comprise—

- (a) an appropriate survey to determine the location and reasonable extent of any benthic habitats of conservation, ecological and/or economic importance (including Annex 1 habitats), in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works;
- (b) appropriate high resolution bathymetric surveys undertaken to International Hydrographic Organisation Order 1A standard and side-scan surveys of the area(s) within the Order limits in which it is proposed to carry out construction works, including a 500m buffer area around the site of each works. This should include the identification of sites of historic or archaeological interest (A1 and A3 receptors) and any unidentified anomalies larger than 5m in diameter (A2 receptors), which may require the refinement, removal or introduction of archaeological exclusion zones and to confirm project specific micro-siting requirements (for A2 receptors);
- (c) appropriate surveys of existing ornithological activity inside the area(s) within the Order limits in which it is proposed to carry out construction works, and any wider area(s) where appropriate, which is required to validate predictions in the Environmental Statement concerning key ornithological interests of relevance to the authorised scheme;
- (d) appropriate surveys of sandeel within the Order limits in which it is proposed to carry out construction works, and any wider area(s) where appropriate which is required to validate predictions in the Environmental Statement.

(3) The undertaker must carry out and complete the surveys to be undertaken under paragraph (1) in a timescale which must be agreed with the MMO.

### **Construction monitoring**

**15.**—(1) The undertaker must, in discharging condition 9(1)(b), submit details for approval by the MMO of any proposed surveys or monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme.

(2) The details of the construction monitoring must be submitted at least four months prior to the commencement of any survey works and provide the agreed reports in the agreed format in accordance with the agreed timetable. The survey proposals must be in accordance with the principles set out in the In Principle Monitoring Plan and must specify each survey's objectives. The construction surveys must comprise—

- (a) where driven or part-driven pile foundations (for each specific foundation type) are proposed to be used, measurements of noise generated by the installation of one pile from each of the first four structures with piled foundations, following which the MMO will determine whether further noise monitoring is required. The results of the initial noise measurements must be provided to the MMO within six weeks of the installation of the first relevant foundation piece. The assessment of this report by the MMO must determine whether any further noise monitoring is required;
- (b) vessel traffic monitoring by Automatic Identification System, including the provision of reports on the results of that monitoring periodically as requested by the MMO; and
- (c) appropriate surveys of ornithological activity inside the area(s) within the Order limits in which it is proposed to carry out construction works, and any wider area(s) where appropriate, dependent upon the outcomes of the pre-construction surveys, as agreed with the MMO in consultation with the relevant statutory nature conservation body.

### **Post construction surveys**

**16.**—(1) The undertaker must, in discharging condition 9(1)(b), submit details for written approval by the MMO of the four post-construction surveys proposed in paragraph (2), including methodologies and timings, and a proposed format, content and timings for providing reports on the results at least four months prior to the commencement of any survey works detailed within.

The survey proposals must be in accordance with the principles set out in the In Principle Monitoring Plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the Environmental Statement.

(2) Subject to receipt of specific proposals, it is expected that the post-construction surveys will comprise—

- (a) appropriate surveys of ornithological activity inside the area(s) within the Order limits in which construction works were carried out, and any wider area(s) where appropriate, which is required to validate predictions in the Environmental Statement concerning key ornithological interests of relevance to the authorised scheme;
- (b) appropriate high resolution bathymetric surveys undertaken to International Hydrographic Organisation Order 1A standard and side scan sonar surveys around a sample of infrastructure locations that are considered appropriate to assess any changes in seabed topography. For this purpose the undertaker will prior to the first such survey submit a desk based assessment (which takes account of all factors which influence scour) to identify the sample of infrastructure locations that are considered appropriate with greatest potential for scour. The survey will be used to validate the desk based assessment: further surveys may be required if there are significant differences between the modelled scour and recorded scour;
- (c) appropriate surveys of sandeel within the Order limits in which construction works were carried out, and any wider area(s) where appropriate;
- (d) dependent on the outcome of the surveys undertaken in condition 13(2)(a) above, appropriate surveys to determine the effects of construction activity on any benthic habitats of conservation, ecological and/or economic importance (including Annex 1 habitats) in whole or in part inside the area(s) within the Order limits to validate predictions made in the Environmental Statement;
- (e) vessel traffic monitoring by Automatic Identification System totalling a maximum of twenty eight days taking account of seasonal variations in traffic patterns over one year, following the commencement of commercial operation. A report will be submitted to the MMO and the MCA following the end of the monitoring; and
- (f) appropriate surveys to determine change in size and form of the drill disposal mounds over the lifetime of the authorised scheme.

(3) The undertaker must carry out the surveys under paragraph (1) and provide the reports in the agreed format in accordance with the timetable as agreed in writing with the MMO following consultation with the relevant statutory nature conservation body.

17. A post-construction maintenance plan will be submitted for written approval by the MMO at least four months prior to commissioning of the licensed activities, based upon the maintenance in the outline maintenance plan. An update to the post-construction maintenance plan must be submitted for approval every three years, or sooner in the event of any proposed major revision to planned maintenance activities, or the adoption of any new technologies or techniques applicable to programmed maintenance.

### **Aids to navigation**

18.—(1) Before commencement of the authorised scheme an aids to navigation management plan must be agreed in writing by the MMO following consultation with Trinity House and MCA specifying the—

- (a) aids to navigation to be established from the commencement of the authorised scheme to the completion of decommissioning;
- (b) monitoring and reporting of the availability of aids to navigation; and
- (c) notifications and procedures for ensuring navigational safety following failures to aids to navigation.

(2) The licensed activities must be carried out in accordance with any programme, statement, plan, protocol, scheme or other details approved under this licence condition.

19. The undertaker must keep Trinity House and the MMO informed of progress of the authorised scheme seaward of MHWS including—

- (a) notice of commencement of construction of the authorised scheme within twenty four hours of commencement having occurred;
- (b) notice within twenty four hours of any aids to navigation being established by the undertaker; and
- (c) notice within five working days of completion of construction of the authorised scheme.

20. The undertaker must notify Trinity House and the MMO of any failure of the aids to navigation including timescales and plans for remedying such failures, as soon as possible and no later than twenty four hours following the detection of any such failure.

21. The undertaker must at or near the authorised scheme during the whole period of the construction, operation, alteration, replacement or decommissioning of the authorised scheme seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and to take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct following consultation with the MMO..

22. The undertaker must submit reports quarterly to the MMO and Trinity House detailing the working condition of aids to navigation. Reports may be requested more frequently by the MMO or Trinity House and must be submitted by the undertaker as specified..

23. In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than twenty four hours following the identification of damage, destruction or decay, notify Trinity House and the MMO. The undertaker must also lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as directed by Trinity House following consultation with the MMO.

24. The undertaker must colour all structures which are part of the authorised scheme seaward of MHWS yellow (colour code RAL 1023) from at least HAT to a height approved by the MMO following consultation with Trinity House. Details of the remainder of the structures must be submitted to and approved in writing by the MMO following consultation with Trinity House prior to commencement of the authorised scheme. The structures must be coloured in accordance with approved details.

## PART 2A

### Licensed Marine Activities – Marine Licence 2: Project B Offshore (Generation - Works Nos. 1B and 2T)

#### Interpretation

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“Annex 1 Habitat” means such habitat as defined under the EU Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora;

“authorised deposits” means the substances and articles specified in paragraph 2(3);

“authorised scheme” means Works Nos. 1B and 2T described in paragraph 2 of this licence or any part or phase of those works;

“Bizco 4” means Doggerbank Project 4 Bizco Limited (Company number 7914510) whose registered office is 55 Vastern Road, Reading, Berkshire RG1 8BU;

“cable protection” means any measures to protect cables and prevent loss of seabed sediment, for example by use of grout bags, protective aprons, mattresses, flow energy dissipation devices or rock and gravel burial;

“cable crossings” means the crossing of existing sub-sea cables and pipelines by the inter-array, interconnecting and/or export cables authorised by this Order together with physical protection measures including cable protection;

“combined platform” means a single offshore platform combining two or more of the following—

- (a) an offshore collector platform;
- (b) an offshore converter platform;
- (c) an offshore accommodation or helicopter platform;

“commence” means the first carrying out of any part of the licensed activities except for the pre-construction surveys and monitoring and commencement shall be construed accordingly;

“commercial operation” means in relation to the Project B Offshore Works, the exporting, on a commercial basis, of electricity from the wind turbine generators comprised within those works;

“condition” means a condition in Part 2B of this licence;

“draft fisheries liaison plan” means the document certified as the draft fisheries liaison plan by the Secretary of State for the purposes of this Order;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“the Environmental Statement” means the document certified as the Environmental Statement by the Secretary of State for the purposes of this Order and submitted with the application together with any supplementary or further environmental information submitted in support of the application;

“gravity base foundation” means a foundation type which rests on the seabed and supports the wind turbine generator, meteorological station or offshore platform primarily due to its own weight and that of added ballast, with or without skirts or other additional fixings, which may include associated equipment including J-tubes and access platforms and separate topside connection structures or an integrated transition piece. Sub types for wind turbine generators and meteorological stations include conical gravity base and flat-based gravity base. Sub types for platforms include: offshore platform conical or flat-base gravity base foundations, and offshore platform semi-submersible gravity base foundations;

“HAT” means highest astronomical tide;

“In Principle Monitoring Plan” means the document certified as the In Principle Monitoring Plan by the Secretary of State for the purposes of this Order;

“the Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

“licensed activities” means the activities specified in Part 2A of this licence;

“maintain” includes inspect, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (ancillary works) of the Order and any component part of any wind turbine generator, offshore platform, meteorological station, electricity or communication cable described in Part 1 of Schedule 1 (authorised development) of the order (but not including the removal or replacement of foundations) to the extent outlined within the post-construction maintenance plan; and “maintenance” shall be construed accordingly;

“the Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“meteorological mast” or “meteorological station” means a fixed or floating structure housing or incorporating equipment to measure wind speed and other meteorological and oceanographic characteristics, including a topside which may house electrical switchgear and communication equipment and associated equipment, and marking and lighting;

“monopole foundation” means foundation options based around a single vertical pillar structure driven, drilled, or embedded into the seabed by means such as suction and/or gravity. This main support structure may change in diameter via tapers and abrupt steps. Sub types for wind turbine generators and meteorological stations include: monopole with steel monopile footing, monopole with concrete monopile footing, and monopole with a single suction-installed bucket footing;

“multileg foundation” means foundation options based around structures with several legs or footings. This includes jackets, tripods, and other structures which include multiple large tubulars, cross-bracing, or lattices. Multileg foundations may be fixed to the seabed by footings which are driven, drilled, screwed, jacked-up, or embedded into the seabed by means such as suction and/or gravity. Sub types for wind turbine generators and meteorological stations include multilegs with driven piles, drilled piles, screw piles, suction buckets, and/or jack up foundations. Sub types for platforms include: offshore platform jacket foundations (potentially using driven piles, suction buckets and/or screw piles) and offshore platform jack up foundations;

“notice to mariners” includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen’s harbourmasters, government departments and harbour and pilotage authorities;

“offshore accommodation or helicopter platform” means a platform (either singly or as part of a combined platform) housing or incorporating some or all of the following: accommodation for staff during the construction, operation and decommissioning of the offshore works, landing facilities for vessels and helicopters, re-fuelling facilities, communication and control systems, electrical systems such as metering and control systems, J-tubes, small and large scale electrical power systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore collector platform” means a platform (either singly or as part of a combined platform) housing or incorporating electrical switchgear and/or electrical transformers, electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore converter platform” means a platform (either singly or as part of a combined platform) housing or incorporating high voltage direct current electrical switchgear and/or electrical transformers and other equipment to enable HVDC transmission to be used to convey the power output of the multiple wind turbine generators to shore including electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“the offshore Order limits plan” means the plans certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of this Order;

“offshore platform” means any of the following—

- (a) an offshore accommodation or helicopter platform;
- (b) an offshore collector platform;
- (c) an offshore converter platform;
- (d) a combined platform;

“the Order” means the Dogger Bank Creyke Beck Offshore Wind Farm Order 201X;

“the Order limits” means the limits shown on the offshore and onshore Order limits plans;

“outline maintenance plan” means the document certified as the outline maintenance plan by the Secretary of State for the purposes of this Order;

“scour protection” means protection against foundation scour and subsea damage, for example from trawling, through reinforcement measures and measures to prevent loss of seabed sediment around foundation bases. These measures include the use of bagged solutions filled with grout or other materials, protective aprons, mattresses, flow energy dissipation devices and rock and gravel burial;

“undertaker” means Bizco 4;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water; and

“wind turbine generator” or means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter transfer facilities and other associated equipment, fixed to a foundation.

(2) A reference to any statute, order, regulation or similar instrument shall be construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated:

- (a) all times shall be taken to be Greenwich Mean Time (GMT);
- (b) all coordinates shall be taken to be latitude and longitude decimal degrees to six decimal places. The datum system used is WGS84.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence shall be—

(a) Marine Management Organisation

Marine Licensing Team

Lancaster House

Hampshire Court

Newcastle upon Tyne

NE4 7YH

Email: [marine.consents@marinemanagement.org.uk](mailto:marine.consents@marinemanagement.org.uk)

Tel: 0300 123 1032

(b) Trinity House

Tower Hill

London

EC3N 4DH

Tel: 020 7481 6900;

- (c) The United Kingdom Hydrographic Office  
Admiralty Way  
Taunton  
Somerset  
TA1 2DN  
Tel: 01823 337 900;
- (d) Marine and Coastguard Agency  
Navigation Safety Branch  
Bay 2/04  
Spring Place  
105 Commercial Road  
Southampton  
SO15 1EG  
Tel: 023 8032 9191;
- (e) Centre for Environment, Fisheries and Aquaculture Science  
Pakefield Road  
Lowestoft  
Suffolk  
NR33 0HT  
Tel: 01502 562 244
- (f) Natural England  
Foundry House  
3 Millsands  
Riverside Exchange  
Sheffield  
S3 8NH  
Tel: 0300 060 4911;
- (g) JNCC  
Inverdee House  
Baxter Street  
Aberdeen  
AB11 9QA  
Tel: 01224 266 550;
- (h) English Heritage  
37 Tanner Row  
York  
YO1 6WP  
Tel: 01904 601901;

(5) For information only, the details of the local MMO office to the authorised scheme is—



Marine Management Organisation  
Northern Marine Area  
Neville House  
Central Riverside  
Bell Street  
North Shields  
Tyne & Wear  
NE30 1LJ  
Tel: 0191 257 4520.

**Details of licensed marine activities**

2.—(1) This licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act, subject to the conditions in Schedule 7 Part 2B—

- (a) the deposit at sea of the substances and articles specified in paragraph (3) below;
- (b) the construction of works in or over the sea and/or on or under the sea bed including the removal, reconstruction or alteration of the position of subsea cables and pipelines; and
- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation.

(2) Such activities are authorised in relation to the construction, maintenance and operation of:

Work No. 1B—

- (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 1.2 gigawatts comprising up to 200 wind turbine generators each fixed to the seabed by monopole, multileg or gravity base type foundations, situated within the coordinates of the array area specified in the following table, and further comprising works (b) to (d) below;

Coordinates for the array area

<i>Point</i>	<i>Latitude (Decimal Degrees)</i>	<i>Longitude (Decimal Degrees)</i>
CBB-1	55.074509	1.505499
CBB-2	55.078127	1.557882
CBB-3	55.100307	1.673135
CBB-4	55.102152	1.854982
CBB-5	54.859236	1.861874
CBB-6	54.870965	1.473897
CBB-7	54.968002	1.488779
CBB-8	54.971992	1.488363

- (b) up to seven offshore platforms comprising the following:
  - (i) up to four offshore collector platform(s) situated within the array area specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundations;
  - (ii) an offshore converter platform situated within the array area specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundations;

- (iii) up to two offshore accommodation or helicopter platform(s) situated within the array area specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundations;
- (iv) or any of the platforms comprised in Work No. 1B(b)(i) to 1B(b)(iii) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundations;
- (c) up to five meteorological station(s) situated within the array area specified in the table Work No. 1B(a) either fixed to the seabed by monopole, multileg or gravity base type foundations or utilising a floating support structure anchored to the seabed;
- (d) a network of cables for the transmission of electricity and electronic communications laid on or beneath the seabed and including cable crossings between—
  - (i) any of the wind turbine generators comprising Work No. 1B(a);
  - (ii) any of the wind turbine generators comprising Work No. 1B(a) and Work No. 1B(b) and 1B(c); and
  - (iii) any of the works comprising Work No. 1B(b) to 1B(c)
  - (iv) the offshore converter platform or the combined platforms and the export cable route in Work No. 2BA or Work No. 2BC.

Work No. 2T –

a temporary work area for vessels to carry out intrusive activities during construction, including vessels requiring anchor spreads alongside the cable corridors.

Ancillary works in connection with the above-mentioned works comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised scheme;
  - (b) temporary or permanent buoys, beacons, fenders and other navigational warning or ship impact protection works;
  - (c) temporary works for the protection of land or structures affected by the authorised scheme.
  - (d) cable protection, scour protection or dredging; and
  - (e) cable route preparation works including boulder removal and obstruction clearance, dredging and pre-sweeping.
- (3) The substances or articles authorised for deposit at sea are—
- (a) iron/steel/aluminium;
  - (b) stone and rock;
  - (c) concrete/grout;
  - (d) sand and gravel;
  - (e) plastic/synthetic;
  - (f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and
  - (g) marine coatings, other chemicals and timber.

(4) Subject to the licence Conditions, this licence authorises the disposal of up to 1,107,411 m<sup>3</sup> of material of natural origin within Work No. 1B produced during construction drilling and seabed preparation for foundation works and cable sandwave preparation works.

(5) The undertaker must pursuant to paragraph (4) inform the MMO of the location and quantities of material disposed of each month under the Order, by submission of a disposal return by 31 January each year for the months August to January inclusive, and by 31 July each year for the months February to July inclusive.

(6) This licence does not permit the decommissioning of the authorised scheme. No authorised decommissioning activity must commence until a written decommissioning programme in

accordance with an approved programme under section 105(2) of the 2004 Act, has been submitted to the Secretary of State for approval. Furthermore, at least four months prior to carrying out any such works, the undertaker must notify the MMO of the proposed decommissioning activity to establish whether a marine licence is required for such works.

## PART 2B

### Conditions

#### Detailed offshore design parameters

3.—(1) Subject to paragraph (2), no wind turbine generator forming part of the authorised scheme must—

- (a) exceed a height of 315 metres when measured from HAT to the tip of the vertical blade;
- (b) exceed a rotor diameter of 215 metres;
- (c) be less than a multiple of six times the rotor diameter from the nearest wind turbine generator in any direction being not less than 700 metres measured between turbines ; and
- (d) have a distance of less than 26 metres between the lowest point of the rotating blade of the wind turbine generator and the level of the sea at HAT.

(2) The wind turbine generators comprised in Work No. 1B must be sized such that if they were installed to the maximum permitted gross generating capacity specified for those works the total rotor swept area would not exceed 4.35 km<sup>2</sup>.

(3) Wind turbine generator and meteorological mast foundation structures forming part of the authorised scheme must be of one or more of the following foundation options: monopole, multileg or gravity base.

(4) No wind turbine generator or meteorological mast foundation structure employing a footing of driven piles forming part of the authorised scheme must—

- (a) have more than six driven piles;
- (b) in the case of single pile structures have a pile diameter of greater than 10 metres and employ a hammer energy during installation of greater than 3000kJ;
- (c) in the case of two or more pile structures have a pile diameter of greater than 3.5 metres and employ a hammer energy during installation of greater than 2300kJ.

(5) The foundations for wind turbine generators will be in accordance with the wave reflection coefficient values as set out at Fig 3.16 within Chapter 5 and Appendix 5.B of the Environmental Statement.

(6) No wind turbine generator foundation will have a seabed footprint area of subsea/scour protection (excluding foundation footprint) of more than 3,777 m<sup>2</sup>.

(7) The foundations for wind turbine generators and meteorological stations will not exceed the dimensions set out below—

<i>Foundation type Monopole, multileg or gravity base foundations</i>	<i>Maximum width of main supporting structure in metres</i>	<i>Maximum seabed footprint area per foundation (excluding scour protection) in m<sup>2</sup></i>
Wind turbine generator and meteorological station foundation	61	2,376

(8) The total seabed footprint area of subsea/scour protection for wind turbine generator foundations (excluding foundation footprint) will not exceed 0.7554km<sup>2</sup> within Work No. 1B.

(9) The volume of subsea/scour protection material for wind turbine generator foundations within Work No. 1B will not exceed 1,084,800 m<sup>3</sup>.

(10) The total cable protection for HVAC inter-array cables (excluding cable crossings) will not exceed an area of 0.5557km<sup>2</sup> or a volume of 217,850m<sup>3</sup> within Work No. 1B.

(11) References to the location of a wind turbine generator are references to the centroid point at the base of the turbine.

(12) No lattice tower forming part of a meteorological station must exceed a height of 315 metres above HAT.

(13) The length of HVAC cables comprising Work No.1B must not exceed 950 km.

4.—(1) The total number of offshore platforms forming part of the authorised scheme must not exceed seven comprising

- (a) up to four offshore collector platform(s);
- (b) up to one offshore converter platform(s);
- (c) up to two offshore accommodation or helicopter platform(s);
- (d) or any of the platforms comprised in (1)(a) to (c) can be co-joined to a create combined platform fixed to the seabed by multileg or gravity base type foundations.

(2) The dimensions of any offshore collector platforms forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed 75 metres in length, 75 metres in width and 85 metres in height above HAT.

(3) The dimensions of any offshore converter platform forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed 125 metres in length, 100 metres in width and 105 metres in height above HAT.

(4) The dimensions of any offshore accommodation or helicopter platform(s) forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed 125 metres in length, 100 metres in width and 105 metres in height above HAT.

(5) The dimensions of any combined platforms forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed the total footprint of the individual platforms incorporated within it.

(6) Offshore platform foundation structures forming part of the authorised scheme must be one or more of the following foundation options: gravity base or multileg.

(7) No offshore platform foundation structure employing a footing of driven piles forming part of the authorised scheme must—

- (a) have more than twenty four driven piles;
- (b) have a pile diameter of greater than 2.744 metres and employ a hammer energy during installation of greater than 1900kJ.

(8) No offshore platform foundation will have a seabed footprint area of subsea/scour protection (excluding foundation footprint) of more than 8,742 m<sup>2</sup>.

(9) The foundations for offshore platforms will not exceed the dimensions set out below:

<i>Foundation type</i>	<i>Offshore collector platform (multileg or gravity base foundation)</i>	<i>Offshore converter platform (multileg or gravity base foundation)</i>	<i>Offshore accommodation or helicopter platform (multileg or gravity base foundation)</i>
Maximum seabed footprint area per foundation	5,625	12,500	12,500

(excluding scour protection) in m2			
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(10) The number of vessels actively carrying out impact piling as part of the installation of driven pile foundations for the authorised scheme must at no time exceed two within Work No. 1B.

### Layout Rules

5.—(1) The positions of wind turbine generators and offshore platform(s) must be arrayed in accordance with parameters applicable to Work No. 1B specified in condition 3 and the principles within section 5.2 of Chapter 5 of the Environmental Statement.

(2) No construction of any wind turbine generator or offshore platform forming part of the authorised scheme must commence until the MMO, in consultation with the MCA, has approved their general layout arrangements. These layout arrangements must specify the physical point of connection between generation and transmission assets for Project B.

(3) The construction of the wind turbine generators and offshore platforms must be carried out as approved.

### Notifications and inspections

6.—(1) The undertaker must ensure that:

- (a) prior to the carrying out of any licensed activities under this licence, the undertaker must inform the MMO of—
  - (i) the name of the person undertaking the licensed activities,
  - (ii) the works being undertaken pursuant to this licence comprising those works necessary up to the point of connection with the transmission assets,
  - (iii) the maximum total area and volume for any cable protection for HVAC inter-array cables and HVAC inter-platform cables to be constructed within the array area pursuant to this licence; and
  - (iv) the maximum total area and volume for any cable protection to be constructed within the array area pursuant to this licence;
- (b) any works notified under this paragraph when combined with any works notified in paragraph (6) of Marine Licence 1 and paragraph (5) of Marine Licence 3 and 4 must not exceed the maximum parameters set out in Schedule 1 of the DCO;
- (c) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
  - (i) all agents and contractors notified to the MMO in accordance with condition 11; and
  - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 11;
- (d) within twenty eight days of receipt of a copy of this licence those persons referred to at paragraph (a) above must provide a completed confirmation form to the MMO confirming that they have read and will comply with the terms of the Conditions of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 12 are permitted to carry out the licensed activities;

(3) Copies of this licence must also be available for inspection at the following locations:

- (a) the undertaker's registered address;
- (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit for the authorised deposits; and

- (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits are to be made.
- (4) The documents referred to in paragraph (1)(a) must be available for inspection by an authorised enforcement officer at all reasonable times at the locations set out in paragraph 3(b) above.
- (5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.
- (6) The undertaker must inform the MMO Coastal Office in writing at least five working days prior to the commencement of the licensed activities or any phase of them.
- (7) Prior to the commencement of the licensed activities or any phase of them the undertaker must publish in the Kingfisher Fortnightly Bulletin details of the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant phase.
- (8) The undertaker must ensure that a notice to mariners is issued at least ten working days prior to the commencement of the licensed activities or any phase of them advising of the start date of Work No. 1B (wind turbine generation station, offshore platforms or other offshore construction activities) and the expected vessel routes from the local construction ports to the relevant locations.
- (9) The undertaker must ensure that the notices to mariners are updated and reissued at weekly intervals during construction activities and within five days of any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the Maritime and Coastguard Agency in accordance with the construction programme approved under condition 9(1)(b). Copies of all notices must be provided to the MMO.
- (10) The undertaker must notify—
- (a) the Hydrographic Office two weeks prior to the commencement and two weeks following completion of the authorised scheme in order that all necessary amendments to nautical charts are made; and
  - (b) the MMO, MCA and Trinity House once the authorised scheme is completed and any required lighting or marking has been established.

### **Chemicals, drilling and debris**

- 7.—(1) All chemicals used in the construction of the authorised scheme, including any chemical agents placed within any monopile or other foundation structure void, must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).
- (2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive or the Environment Agency Pollution Prevention Control Guidelines. Any spillages must be reported to the MMO marine pollution response team within the timeframes specified in the Marine Pollution Contingency Plan.
- (3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.
- (4) Where foundation drilling works are proposed, in the event that any system other than water-based mud is proposed the MMO's written approval in relation to the proposed disposal of any arisings must be obtained before the drilling commences, which may also require a marine licence.
- (5) The undertaker must ensure that any debris arising from the construction of the authorised scheme or temporary works placed below MHWS are removed on completion of the authorised scheme.

(6) At least ten days prior to the commencement of the licensed activities the undertaker must submit to the MMO an audit sheet covering all aspects of the construction of the licensed activities or any phase of them. The audit sheet must include details of—

- (a) loading facilities;
- (b) vessels;
- (c) equipment;
- (d) shipment routes;
- (e) transport;
- (f) working schedules; and
- (g) all components and materials to be used in the construction of the authorised scheme.

(7) The audit sheet must be maintained throughout the construction of the authorised scheme (or relevant phase) and must be submitted to the MMO for review at fortnightly intervals.

(8) In the event that the MMO becomes aware that any of the materials on the audit sheet cannot be accounted for it must require the undertaker to carry out a side scan sonar survey to plot all obstructions across a reasonable area of search agreed with the MMO where construction works and related activities have been carried out. Representatives of the Holderness Fishing Industry Group must be invited to send a representative to be present during the survey. Any obstructions that the MMO believes to be associated with the authorised scheme must be removed at the undertaker's expense.

### **Force majeure**

8. If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits otherwise than in accordance with condition 10(2) because the safety of human life and/or of the vessel is threatened—

- (a) within forty eight hours full details of the circumstances of the deposit must be notified to the MMO.
- (b) upon reasonable written request by the MMO the unauthorised deposits must be removed at the expense of the undertaker.

### **Pre-construction plans and documentation**

9.—(1) The licensed activities or any phase of those activities must not commence until the following (insofar as relevant to that activity or phase of activity) have been submitted to and approved in writing by the MMO—

- (a) a plan to be agreed in writing with the MMO following consultation with Trinity House and the MCA which shows—
  - (i) the number, specification(s) and dimensions of the wind turbine generators;
  - (ii) the proposed location, including grid co-ordinates and choice of foundation types for all wind turbine generators, offshore platforms and meteorological stations;
  - (iii) the dimensions of all monopole, multileg and gravity base foundations, if used; and
  - (iv) the proposed layout of HVAC cables,

to ensure conformity with the description of Work No. 1B and compliance with conditions 3-5 above;

- (b) a detailed construction and monitoring programme to include details of—
  - (i) the proposed construction start date;
  - (ii) proposed timings for mobilisation of plant, delivery of materials and installation works; and
  - (iii) proposed pre-construction surveys, a proposed format and content for a baseline report, construction monitoring, post construction monitoring and related reporting

in accordance with Conditions 14, 15 and 16. The preconstruction survey programme and all pre-construction survey methodologies shall be submitted to the MMO for written approval at least four months prior to the commencement of any survey works detailed within;

- (c) a construction method statement in accordance with the construction methods assessed in the Environmental Statement and including details of—
  - (i) drilling methods and disposal of drill arisings;
  - (ii) turbine, meteorological mast and platform location and installation, including scour protection and foundations;
  - (iii) cable installation;
  - (iv) impact piling including soft start procedures;
  - (v) the source of rock material used in construction and method to minimise contaminants and fines
  - (vi) contractors;
  - (vii) vessels; and
  - (viii) associated works;
- (d) a project environmental management and monitoring plan to include details of—
  - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents during construction and operation of the authorised scheme in relation to all activities carried out;
  - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
  - (iii) waste management and disposal arrangements including arrangements to ensure no waste concrete slurry or wash water from concrete or cement work is discharged;
  - (iv) the fisheries liaison officer appointed by the undertaker to be notified to the District Marine Officer for the MMO's Northern District. Evidence of liaison should be collated so that signatures of attendance at meetings, agenda and minutes of meetings with the fishing industry can be provided to the MMO if requested; and
  - (v) a fisheries liaison plan in accordance with the draft fisheries liaison plan to include information on liaison with the fishing industry (including the fisheries liaison officer as in (iv) above) and a coexistence plan.
- (e) a marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, primarily auditory injury within the vicinity of any piling, and appropriate monitoring surveys in accordance with the In Principle Monitoring Plan to be agreed in writing with the MMO in consultation with the relevant statutory nature conservation body;
- (f) a cable specification and installation plan following consultation with the relevant statutory nature conservation body, to include—
  - (i) technical specification of offshore cables, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
  - (ii) a staged cable laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques; and
  - (iii) scour protection management and cable protection plan providing details of the need, type, sources, quality and installation methods for scour protection and cable protection;
  - (iv) details of methodology and extent of post lay surveys, to confirm burial depths.



- (g) a written scheme of archaeological investigation in relation to offshore areas within the Order limits in accordance with Chapter 18 Appendix B of the Environmental Statement, industry good practice and after discussions with English Heritage to include—
  - (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
  - (ii) a methodology for any further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
  - (iii) within three months of any surveys being completed a timetable to be submitted to the MMO setting out the timeframe for the analysis and reporting of survey data.
  - (iv) delivery of any mitigation including, where necessary, archaeological exclusion zones;
  - (v) monitoring during and post construction, including a conservation programme for finds;
  - (vi) archiving of archaeological material including ensuring that a copy of any agreed archaeological report is deposited with the English Heritage Archive by submitting an English Heritage OASIS form with a digital copy of the report; and
  - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme.

**10.—**(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 9 or condition 5 must be submitted for approval at least four months prior to the intended start of construction, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 9.

### **Offshore safety management**

**11.—**(1) Offshore works must not commence until the MMO, in consultation with the MCA, has given written approval for an Emergency Response and Co-operation Plan (ERCoP) which includes full details of the ERCoP for the construction, operation and decommissioning phases of the authorised development in accordance with the MCA recommendations contained within MGN371 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues”. The ERCOP must include the identification of a point of contact for emergency response.

(2) The ERCoP must be implemented as approved.

(3) No authorised development seaward of MHWS must commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate to the authorised development contained within MGN371 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes.

### **Reporting of engaged agents, contractors and vessels**

**12.—**(1) The undertaker must provide the name and function of any agent or contractor appointed to engage in the licensed activities to the MMO at least two weeks prior to the intended start of construction.

(2) Each week during the construction of the authorised scheme a completed Hydrographic Note H102 must be provided to the MMO listing the vessels currently and to be used in relation to the licensed activities.

(3) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

### **Equipment and operation of vessels engaged in licensed activities**

13.—(1) All vessels employed to perform the licensed activities must be constructed and equipped to be capable of the proper performance of such activities in accordance with the Conditions of this licence and (except in the case of remotely operated vehicles or vessels) must comply with paragraphs (2) to (7) below.

(2) All motor powered vessels must be fitted with:

- (a) electronic positioning aid to provide navigational data;
- (b) radar;
- (c) echo sounder; and
- (d) multi-channel VHF.

(3) No radio beacon or radar beacon operating on the marine frequency bands must be installed or used without the prior written approval of the Secretary of State.

(4) All vessels' names or identification must be clearly marked on the hull or superstructure.

(5) All vessels must exhibit signals in accordance with the requirements of the International Regulations for the Prevention of Collisions at Sea.

(6) All communication on VHF working frequencies must be in English; and

(7) No vessel must engage in the licensed activities until all the equipment specified in paragraph (2) is fully operational.

### **Pre-construction monitoring**

14.—(1) The undertaker must, in discharging condition 9(1)(b), submit details for written approval by the MMO of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report. The survey proposals must be in accordance with the principles set out in the In Principle Monitoring Plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the Environmental Statement. The baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post construction comparison is intended and the justification for this being required.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, where appropriate and necessary it is expected that the pre-construction surveys will comprise—

- (a) an appropriate survey to determine the location and reasonable extent of any benthic habitats of conservation, ecological and/or economic importance (including Annex 1 habitats) in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works;
- (b) appropriate high resolution bathymetric surveys undertaken to International Hydrographic Organisation Order 1A standard and side-scan surveys of the area(s) within the Order limits in which it is proposed to carry out construction works, including a 500m buffer area around the site of each works. This should include the identification of sites of historic or archaeological interest (A1 and A3 receptors) and any unidentified anomalies larger than 5m in diameter (A2 receptors), which may require the refinement, removal or introduction of archaeological exclusion zones and to confirm project specific micro-siting requirements (for A2 receptors);
- (c) appropriate surveys of existing ornithological activity inside the area(s) within the Order limits in which it is proposed to carry out construction works, and any wider area(s) where appropriate, which is required to validate predictions in the Environmental Statement concerning key ornithological interests of relevance to the authorised scheme;

- (d) appropriate surveys of sandeel within the Order limits in which it is proposed to carry out construction works, and any wider area(s) where appropriate which is required to validate predictions in the Environmental Statement.
- (3) The undertaker must carry out and complete the surveys to be undertaken under paragraph (1) in a timescale which must be agreed with the MMO.

### **Construction monitoring**

**15.—**(1) The undertaker must, in discharging condition 9(1)(b), submit details for approval by the MMO of any proposed surveys or monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme.

(2) The details of the construction monitoring must be submitted at least four months prior to the commencement of any survey works and provide the agreed reports in the agreed format in accordance with the agreed timetable. The survey proposals must be in accordance with the principles set out in the In Principle Monitoring Plan and must specify each survey's objectives. The construction surveys must comprise—

- (a) where driven or part-driven pile foundations (for each specific foundation type) are proposed to be used, measurements of noise generated by the installation of one pile from each of the first four structures with piled foundations, following which the MMO will determine whether further noise monitoring is required. The results of the initial noise measurements must be provided to the MMO within six weeks of the installation of the first relevant foundation piece. The assessment of this report by the MMO must determine whether any further noise monitoring is required;
- (b) vessel traffic monitoring by Automatic Identification System, including the provision of reports on the results of that monitoring periodically as requested by the MMO; and
- (c) appropriate surveys of ornithological activity inside the area(s) within the Order limits in which it is proposed to carry out construction works, and any wider area(s) where appropriate, dependent upon the outcomes of the pre-construction surveys, as agreed with the MMO in consultation with the relevant statutory nature conservation body.

### **Post construction surveys**

**16.—**(1) The undertaker must, in discharging condition 9(1)(b), submit details for written approval by the MMO of the four post-construction surveys proposed in paragraph (2), including methodologies and timings, and a proposed format, content and timings for providing reports on the results at least four months prior to the commencement of any survey works detailed within. The survey proposals must be in accordance with the principles set out in the In Principle Monitoring Plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the Environmental Statement.

(2) Subject to receipt of specific proposals, it is expected that the post-construction surveys will comprise—

- (a) appropriate surveys of ornithological activity inside the area(s) within the Order limits in which construction works were carried out, and any wider area(s) where appropriate, which is required to validate predictions in the Environmental Statement concerning key ornithological interests of relevance to the authorised scheme;
- (b) appropriate high resolution bathymetric surveys undertaken to International Hydrographic Organisation Order 1A standard and side scan sonar surveys around a sample of infrastructure locations that are considered appropriate to assess any changes in seabed topography. For this purpose the undertaker will prior to the first such survey submit a desk based assessment (which takes account of all factors which influence scour) to identify the sample of infrastructure locations that are considered appropriate with greatest potential for scour. The survey will be used to validate the desk based assessment: further surveys may be required if there are significant differences between the modelled scour and recorded scour;

- (c) appropriate surveys of sandeel within the Order limits in which construction works were carried out, and any wider area(s) where appropriate;
- (d) dependent on the outcome of the surveys undertaken in condition 13(2)(a) above, appropriate surveys to determine the effects of construction activity on any benthic habitats of conservation, ecological and/or economic importance (including Annex 1 habitats) in whole or in part inside the area(s) within the Order limits to validate predictions made in the Environmental Statement;
- (e) vessel traffic monitoring by Automatic Identification System totalling a maximum of twenty eight days taking account of seasonal variations in traffic patterns over one year, following the commencement of commercial operation. A report will be submitted to the MMO and the MCA following the end of the monitoring; and
- (f) appropriate surveys to determine change in size and form of the drill disposal mounds over the lifetime of the authorised scheme.

(3) The undertaker must carry out the surveys under paragraph (1) and provide the reports in the agreed format in accordance with the timetable as agreed in writing with the MMO following consultation with the relevant statutory nature conservation body.

17. A post-construction maintenance plan will be submitted for written approval by the MMO at least four months prior to commissioning of the licensed activities, based upon the maintenance in the outline maintenance plan. An update to the post-construction maintenance plan must be submitted for approval every three years, or sooner in the event of any proposed major revision to planned maintenance activities, or the adoption of any new technologies or techniques applicable to programmed maintenance.

#### **Aids to navigation**

18.—(1) Before commencement of the authorised scheme an aids to navigation management plan must be agreed in writing by the MMO following consultation with Trinity House and MCA specifying the—

- (a) aids to navigation to be established from the commencement of the authorised scheme to the completion of decommissioning;
- (b) monitoring and reporting of the availability of aids to navigation; and
- (c) notifications and procedures for ensuring navigational safety following failures to aids to navigation.

(2) The licensed activities must be carried out in accordance with any programme, statement, plan, protocol, scheme or other details approved under this licence condition.

19. The undertaker must keep Trinity House and the MMO informed of progress of the authorised scheme seaward of MHWS including—

- (a) notice of commencement of construction of the authorised scheme within twenty four hours of commencement having occurred;
- (b) notice within twenty four hours of any aids to navigation being established by the undertaker; and
- (c) notice within five working days of completion of construction of the authorised scheme.

20. The undertaker must notify Trinity House and the MMO of any failure of the aids to navigation including timescales and plans for remedying such failures, as soon as possible and no later than 24 hours following the detection of any such failure.

21. The undertaker must at or near the authorised scheme during the whole period of the construction, operation, alteration, replacement or decommissioning of the authorised scheme seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and to take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct following consultation with the MMO.

22. The undertaker must submit reports quarterly to the MMO and Trinity House detailing the working condition of aids to navigation. Reports may be requested more frequently by MMO or Trinity House and must be submitted by the undertaker as specified. .

23. In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than twenty four hours following the identification of damage, destruction or decay, notify Trinity House and MMO. The undertaker must also lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as as directed by Trinity House following consultation with the MMO.

24. The undertaker must colour all structures which are part of the authorised scheme seaward of MHWS yellow (colour code RAL 1023) from at least HAT to a height approved by the MMO following consultation with Trinity House. Details of the remainder of the structures must be submitted to and approved in writing by the MMO following consultation with Trinity House prior to commencement of the authorised scheme. The structures must be coloured in accordance with approved details.

## PART 3A

### Licensed Marine Activities – Marine Licence 3: Project A Offshore (Transmission - Works Nos. 2A, 3A and 2T)

#### Interpretation

1.—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“Annex 1 Habitat” means such habitat as defined under the EU Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora;

“authorised deposits” means the substances and articles specified in paragraph 2(3);

“authorised scheme” means Works Nos. 1A, 2A, 3A and 2T described in paragraph 2 of this licence or any part or phase of those works;

“Bizco 1” means Doggerbank Project 1 Bizco Limited (Company number 7791991) whose registered office is 55 Vastern Road, Reading, Berkshire RG1 8BU;

“cable protection” means any measures to protect cables and prevent loss of seabed sediment, for example by use of grout bags, protective aprons, mattresses, flow energy dissipation devices or rock and gravel burial;

“cable crossings” means the crossing of existing sub-sea cables and pipelines by the inter-array, interconnecting and/or export cables authorised by this Order together with physical protection measures including cable protection;

“combined platform” means a single offshore platform constructed in an array area comprising two or more of any of the following—

(a) an offshore collector platform;

(b) an offshore converter platform;

(c) an offshore accommodation or helicopter platform;

“commence” means the first carrying out of any part of the licensed activities except for the pre-construction surveys and monitoring and commencement shall be construed accordingly;

“commercial operation” means in relation to the Project A Offshore Works, the exporting, on a commercial basis, of electricity from the wind turbine generators comprised within those works;

“condition” means a condition in Part 3B of this licence;

“draft fisheries liaison plan” means the document certified as the draft fisheries liaison plan by the Secretary of State for the purposes of this Order;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“the Environmental Statement” means the document certified as the Environmental Statement by the Secretary of State for the purposes of this Order and submitted with the application together with any supplementary or further environmental information submitted in support of the application;

“gravity base foundation” means a foundation type which rests on the seabed and supports the wind turbine generator, meteorological station or offshore platform primarily due to its own weight and that of added ballast, with or without skirts or other additional fixings, which may include associated equipment including J-tubes and access platforms and separate topside connection structures or an integrated transition piece. Sub types for wind turbine generators and meteorological stations include conical gravity base and flat-based gravity base. Sub types for platforms include: offshore platform conical or flat-base gravity base foundations, and offshore platform semi-submersible gravity base foundations;

“In Principle Monitoring Plan” means the document certified as the In Principle Monitoring Plan by the Secretary of State for the purposes of this Order;

“the Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

“licensed activities” means the activities specified in Part 3A of this licence;

“the Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“maintain” includes inspect, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (ancillary works) of the Order and any component part of any offshore platform, meteorological station, electricity or communication cable described in Part 1 of Schedule 1 (authorised development) of the Order (but not including the removal or replacement of foundations) to the extent outlined within the post-construction maintenance plan; and “maintenance” shall be construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“multileg foundation” means foundation options based around structures with several legs or footings. This includes jackets, tripods, and other structures which include multiple large tubulars, cross-bracing, or lattices. Multileg foundations may be fixed to the seabed by footings which are driven, drilled, screwed, jacked-up, or embedded into the seabed by means such as suction and/or gravity. Sub types for wind turbine generators and meteorological stations include multilegs with driven piles, drilled piles, screw piles, suction buckets, and/or jack up foundations. Sub types for platforms include: offshore platform jacket foundations (potentially using driven piles, suction buckets and/or screw piles) and offshore platform jack up foundations;

“notice to mariners” includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen’s harbourmasters, government departments and harbour and pilotage authorities;

“offshore collector platform” means a platform (either singly or as part of a combined platform) housing or incorporating electrical switchgear and/or electrical transformers, electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore converter platform” means a platform (either singly or as part of a combined platform) housing or incorporating high voltage direct current electrical switchgear and/or electrical transformers and other equipment to enable HVDC transmission to be used to convey the power output of the multiple wind turbine generators to shore including electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“the offshore Order limits plan” means the plans certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of this Order;

“offshore platform” means any of the following—

- (a) an offshore accommodation or helicopter platform;
- (b) an offshore collector platform;
- (c) an offshore converter platform; or
- (d) a combined platform;

“the Order” means the Dogger Bank Creyke Beck Offshore Wind Farm Order 201X;

“the Order limits” means the limits shown on the offshore and onshore Order limits plans;

“outline maintenance plan” means the document certified as the outline maintenance plan by the Secretary of State for the purposes of this Order;

“scour protection” means protection against foundation scour and subsea damage, for example from trawling, through reinforcement measures and measures to prevent loss of seabed sediment around foundation bases. These measures include the use of bagged solutions filled with grout or other materials, protective aprons, mattresses, flow energy dissipation devices and rock and gravel burial;

“undertaker” means Bizco 1; and

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water.

(2) A reference to any statute, order, regulation or similar instrument shall be construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated:

- (a) all times shall be taken to be Greenwich Mean Time (GMT);
- (b) all coordinates shall be taken to be latitude and longitude decimal degrees to six decimal places. The datum system used is WGS84.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence shall be—

- (a) Marine Management Organisation  
Marine Licensing Team  
Lancaster House  
Hampshire Court  
Newcastle upon Tyne  
NE4 7YH  
Email: [marine.consent@marinemanagement.org.uk](mailto:marine.consent@marinemanagement.org.uk)

Tel: 0300 123 1032

- (b) Trinity House  
Tower Hill  
London  
EC3N 4DH  
Tel: 020 7481 6900;
- (c) The United Kingdom Hydrographic Office  
Admiralty Way  
Taunton  
Somerset  
TA1 2DN  
Tel: 01823 337 900;
- (d) Marine and Coastguard Agency  
Navigation Safety Branch  
Bay 2/04  
Spring Place  
105 Commercial Road  
Southampton  
SO15 1EG  
Tel: 023 8032 9191;
- (e) Centre for Environment, Fisheries and Aquaculture Science  
Pakefield Road  
Lowestoft  
Suffolk  
NR33 0HT  
Tel: 01502 562 244
- (f) Natural England  
Foundry House  
3 Millsands  
Riverside Exchange  
Sheffield  
S3 8NH  
Tel: 0300 060 4911;
- (g) JNCC  
Inverdee House  
Baxter Street  
Aberdeen  
AB11 9QA  
Tel: 01224 266 550;



(h) English Heritage  
 37 Tanner Row  
 York  
 YO1 6WP  
 Tel: 01904 601901;

(5) For information only, the details of the local MMO office to the authorised scheme is—

Marine Management Organisation  
 Northern Marine Area  
 Neville House  
 Central Riverside  
 Bell Street  
 North Shields  
 Tyne & Wear  
 NE30 1LJ  
 Tel: 0191 257 4520.

**Details of licensed marine activities**

2.—(1) This licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act, subject to the conditions in Schedule 7 Part 3B—

- (a) the deposit at sea of the substances and articles specified in paragraph (3) below;
- (b) the construction of works in or over the sea and/or on or under the sea bed including the removal, reconstruction or alteration of the position of subsea cables and pipelines ; and
- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation.

(2) Subject to sub-paragraph (5), such activities are authorised in relation to the construction, maintenance and operation of—

Work No. 1A—

- (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 1.2 gigawatts comprising up to 200 wind turbine generators each fixed to the seabed by monopole, multileg or gravity base type foundations situated within the coordinates of the array area specified in the following table, and further comprising works (b) to (d) below;

Coordinates for the array area

<i>Point</i>	<i>Latitude (Decimal Degrees)</i>	<i>Longitude (Decimal Degrees)</i>
CBA-1	54.835241	1.633573
CBA-2	54.838412	2.174407
CBA-3	54.808700	2.227327
CBA-4	54.659286	1.976949
CBA-5	54.741685	1.632884

- (b) up to seven offshore platforms comprising the following:

- (i) up to four offshore collector platform(s) situated within the array area specified in the table in Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundations;
  - (ii) an offshore converter platform situated within the array area specified in the table in Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundations;
  - (iii) up to two offshore accommodation or helicopter platform(s) situated within the array area specified in the table in Work No. 1A(a) and being fixed to the seabed by multileg or gravity base type foundations;
  - (iv) or any of the platforms comprised in Work No. 1A(b)(i) to Work No. 1A(b)(iii) can be co-joined to create a combined platform fixed to the seabed by multileg or gravity base type foundations;
- (c) up to five meteorological station(s) situated within the array area specified in the table in Work No. 1A(a) either fixed to the seabed by monopole, multileg or gravity base type foundations, or utilising a floating support structure anchored to the seabed;
- (d) A network of cables for the transmission of electricity and electronic communications laid on or beneath the seabed and including cable crossings between—
- (i) any of the wind turbine generators comprising Work No. 1A(a);
  - (ii) any of the wind turbine generators comprising Work No. 1A(a) and Work No. 1A(b) and Work No. 1A(c); and
  - (iii) any of the works comprising Work No. 1A(b) to 1A(c);
  - (iv) the offshore converter platform or the combined platforms and the export cable route in Work No. 2A.

Work No. 2A – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid on or beneath the seabed between Work No. 1A(b)(ii) or 1A(b)(iv) and Work No. 3A including cable crossings; and situated within the coordinates of the export cable corridor area specified in the offshore Order limits plan;

Work No. 3A – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, between mean low water and mean high water and connecting Work No. 2A with Work No. 4A; and

Work No. 2T – a temporary work area for vessels to carry out intrusive activities during construction, including vessels requiring anchor spreads alongside the cable corridors.

Ancillary works in connection with the above-mentioned works comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised scheme;
  - (b) temporary or permanent buoys, beacons, fenders and other navigational warning or ship impact protection works;
  - (c) temporary works for the protection of land or structures affected by the authorised scheme; and
  - (d) cable protection, scour protection or dredging; and
  - (e) cable route preparation works including boulder removal and obstruction clearance, dredging and pre-sweeping.
- (3) The substances or articles authorised for deposit at sea are—
- (a) iron/steel/aluminium;
  - (b) stone and rock;
  - (c) concrete/grout;

- (d) sand and gravel;
- (e) plastic/synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works and cable sandwave preparation works;
- (g) marine coatings, other chemicals and timber;

(4) This licence does not permit the decommissioning of the authorised scheme. No authorised decommissioning activity must commence until a written decommissioning programme in accordance with an approved programme under section 105(2) of the 2004 Act, has been submitted to the Secretary of State for approval. Furthermore, at least four months prior to carrying out any such works, the undertaker must notify the MMO of the proposed decommissioning activity to establish whether a marine licence is required for such works.

(5) This licence does not permit the construction of Work No. 1A(a).

## PART 3B

### Conditions

#### Detailed offshore design parameters

3.—(1) The dimensions of any offshore collector platforms forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed 75 metres in length, 75 metres in width and 85 metres in height above HAT.

(2) The dimensions of any offshore converter platform forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed 125 metres in length, 100 metres in width and 105 metres in height above HAT.

(3) The dimensions of any combined platforms forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed the total footprint of the individual platforms incorporated within it.

(4) Offshore platform foundation structures forming part of the authorised scheme must be one or more of the following foundation options: gravity base or multileg.

(5) No offshore platform foundation structure employing a footing of driven piles forming part of the authorised scheme must—

- (a) have more than twenty four driven piles;
- (b) have a pile diameter of greater than 2.744 metres and employ a hammer energy during installation of greater than 1900kJ.

(6) No offshore platform foundation will have a seabed footprint area of subsea/scour protection (excluding foundation footprint) of more than 8,742 m<sup>2</sup>.

(7) The foundations for offshore platforms will not exceed the dimensions set out below—

<i>Foundation type</i>	<i>Offshore collector platform (multileg or gravity base foundation)</i>	<i>Offshore converter platform (multileg or gravity base foundation)</i>
Maximum seabed footprint area per foundation (excluding scour)	5,625	12,500

protection) in m2		
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(8) The number of HVDC cables within Works Nos. 2A and 3A must not exceed two. The total length of HVDC cables within Works Nos. 1A, 2A and 3A must not exceed 420 km.

(9) The total cable protection for HVAC inter-platform cables (excluding cable crossings) will not exceed an area of 0.9997 km<sup>2</sup> or a volume of 972,150 m<sup>3</sup> within Work No. 1A.

(10) The total export cable protection (excluding cable crossings) will not exceed an area of 1,3391 km<sup>2</sup>, or a volume of 1,302,200 m<sup>3</sup>.

(11) No cable protection will be employed within 350 metres seaward of mean low water springs (MLWS), measured as a straight line.

(12) Cable protection will be limited to 10% of the cumulative length of all cables laid between mean low water springs and the 10m depth contour as measured against LAT prior to the start of construction.

(13) The length of HVAC cables comprising Work.No 1A must not exceed 320 km.

### Layout Rules

4.—(1) The offshore platform(s) must be positioned in accordance with the principles within section 5.2 of Chapter 5 of the Environmental Statement.

(2) No construction of any offshore platform must commence until the MMO has approved its general position. These general layout arrangements must specify the physical point of connection between generation and transmission assets for Project A.

(3) The construction of the offshore platforms must be carried out as approved.

### Notifications and inspections

5.—(1) The undertaker must ensure that:

(a) prior to the carrying out of any licensed activities under this licence, the undertaker must inform the MMO of—

(i) the name of the person undertaking the licensed activities,

(ii) the works being undertaken pursuant to this licence comprising those works necessary from the point of connection with the generation assets,

(iii) the maximum total area and volume for any cable protection for HVAC inter-array cables and HVAC inter-platform cables to be constructed within the array area pursuant to this licence; and

(iv) the maximum total area and volume for any cable protection to be constructed within the array area pursuant to this licence;

(b) any works notified under this paragraph when combined with any works notified in paragraph (6) of Marine Licence 1 and 2 and paragraph (5) of Marine Licence 4 must not exceed the maximum parameters set out in Schedule 1 of the DCO.

(c) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—

(i) all agents and contractors notified to the MMO in accordance with condition 10; and

(ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 10;

(d) within twenty eight days of receipt of a copy of this licence those persons referred to at paragraph (a) above must provide a completed confirmation form to the MMO confirming that they have read and will comply with the terms of the Conditions of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 10 are permitted to carry out the licensed activities;

- (3) Copies of this licence must also be available for inspection at the following locations:
- (a) the undertaker's registered address;
  - (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit for the authorised deposits; and
  - (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits are to be made.
- (4) The documents referred to in paragraph (1)(a) must be available for inspection by an authorised enforcement officer at all reasonable times at the locations set out in paragraph 3(b) above.
- (5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.
- (6) The undertaker must inform the MMO Coastal Office in writing at least five working days prior to the commencement of the licensed activities or any phase of them.
- (7) Prior to the commencement of the licensed activities or any phase of them the undertaker must publish in the Kingfisher Fortnightly Bulletin details of the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant phase.
- (8) The undertaker must ensure that a notice to mariners is issued at least ten working days prior to the commencement of the licensed activities or any phase of them advising of the start date of Works Nos. 2A and 3A and the expected vessel routes from the local construction ports to the relevant locations.
- (9) The undertaker must ensure that the notices to mariners are updated and reissued at weekly intervals during construction activities and within five days of any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the Maritime and Coastguard Agency in accordance with the construction programme approved under condition 8(1)(b). Copies of all notices must be provided to the MMO.
- (10) The undertaker must notify—
- (a) the Hydrographic Office two weeks prior to the commencement and two weeks following completion of the authorised scheme in order that all necessary amendments to nautical charts are made; and
  - (b) the MMO, MCA and Trinity House once the authorised scheme is completed and any required lighting or marking has been established.

### **Chemicals, drilling and debris**

6.—(1) All chemicals used in the construction of the authorised scheme, including any chemical agents placed within any monopile or other foundation structure void, must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive or the Environment Agency Pollution Prevention Control Guidelines. Any spillages must be reported to the MMO marine pollution response team within the timeframes specified in the Marine Pollution Contingency Plan.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) The undertaker must ensure that any debris arising from the construction of the authorised scheme or temporary works placed below MHWS are removed on completion of the authorised scheme.

(5) At least ten days prior to the commencement of the licensed activities the undertaker must submit to the MMO an audit sheet covering all aspects of the construction of the licensed activities or any phase of them. The audit sheet must include details of—

- (a) loading facilities;
- (b) vessels;
- (c) equipment;
- (d) shipment routes;
- (e) transport;
- (f) working schedules; and
- (g) all components and materials to be used in the construction of the authorised scheme.

(6) The audit sheet must be maintained throughout the construction of the authorised scheme (or relevant phase) and must be submitted to the MMO for review at fortnightly intervals.

(7) In the event that the MMO becomes aware that any of the materials on the audit sheet cannot be accounted for it must require the undertaker to carry out a side scan sonar survey to plot all obstructions across a reasonable area of search agreed with the MMO where construction works and related activities have been carried out. Representatives of the Holderness Fishing Industry Group must be invited to send a representative to be present during the survey. Any obstructions that the MMO believes to be associated with the authorised scheme must be removed at the undertaker's expense.

### **Force majeure**

7. If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits otherwise than in accordance with condition 9(2) because the safety of human life and/or of the vessel is threatened—

- (a) within forty eight hours full details of the circumstances of the deposit must be notified to the MMO; and
- (b) upon reasonable written request by the MMO the unauthorised deposits must be removed at the expense of the undertaker.

### **Pre-construction plans and documentation**

8.—(1) The licensed activities or any phase of those activities must not commence until the following (insofar as relevant to that activity or phase of activity) have been submitted to and approved in writing by the MMO—

- (a) a plan to be agreed in writing with the MMO following consultation with Trinity House and the MCA which sets out the proposed details of the authorised scheme to ensure conformity with the description of Works Nos. 2A and 3A. This includes—
  - (i) proposed layout of the HVAC and HVDC cables;
  - (ii) the proposed location, including grid co-ordinates, and choice of foundation types for any offshore platforms; and
  - (iii) the dimensions of all monopole, multileg and gravity foundations, if used;
- (b) a detailed construction and monitoring programme to include details of—
  - (i) the proposed construction start date;
  - (ii) proposed timings for mobilisation of plant, delivery of materials and installation works; and
  - (iii) proposed pre-construction surveys, a proposed format and content for a baseline report, construction monitoring, post construction monitoring and related reporting in accordance with Conditions 13, 14 and 15. The preconstruction survey programme and all pre-construction survey methodologies shall be submitted to the MMO for

written approval at least four months prior to the commencement of any survey works detailed within.

- (c) a construction method statement in accordance with the construction methods assessed in the Environmental Statement and including details of—
  - (i) drilling methods and disposal of drill arisings;
  - (ii) platform location and installation, including scour protection and foundations;
  - (iii) cable installation;
  - (iv) impact piling including soft start procedures;
  - (v) the source of rock material used in construction and method to minimise contaminants and fines
  - (vi) contractors;
  - (vii) vessels; and
  - (viii) associated works;
- (d) a project environmental management and monitoring plan to include details of—
  - (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents during construction and operation of the authorised scheme in relation to all activities carried out;
  - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
  - (iii) waste management and disposal arrangements including arrangements to ensure no waste concrete slurry or wash water from concrete or cement work is discharged;
  - (iv) the fisheries liaison officer appointed by the undertaker to be notified to the District Marine Officer for the MMO's Northern District. Evidence of liaison should be collated so that signatures of attendance at meetings, agenda and minutes of meetings with the fishing industry can be provided to the MMO if requested;
  - (v) a fisheries liaison plan in accordance with the draft fisheries liaison plan to include information on liaison with the fishing industry (including the fisheries liaison officer as in (iv) above) and a coexistence plan; and
  - (vi) a mitigation scheme for any features of ecological importance identified by the survey referred to in condition 12(2)(a);
- (e) a marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, primarily auditory injury within the vicinity of any piling, and appropriate monitoring surveys in accordance with the In Principle Monitoring Plan to be agreed in writing with the MMO in consultation with the relevant statutory nature conservation body;
- (f) a cable specification and installation plan following consultation with the relevant statutory nature conservation body, to include—
  - (i) technical specification of offshore cables, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
  - (ii) a staged cable laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques;
  - (iii) cable protection plan providing details of the need, type, sources, quality and installation methods for cable protection; and
  - (iv) details of methodology and extent of post lay survey, to confirm burial depths;
- (g) a written scheme of archaeological investigation in relation to offshore areas within the Order limits in accordance with Chapter 18 Appendix B of the Environmental Statement, industry good practice and after discussions with English Heritage to include—

- (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
  - (ii) a methodology for any further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
  - (iii) within three months of any survey being completed a timetable to be submitted to the MMO setting out the timeframe for analysis and reporting of survey data;
  - (iv) delivery of any mitigation including, where necessary, archaeological exclusion zones;
  - (v) monitoring during and post construction, including a conservation programme for finds;
  - (vi) archiving of archaeological material including ensuring that a copy of any agreed archaeological report is deposited with the English Heritage Archive by submitting an English Heritage OASIS form with a digital copy of the report; and
  - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme.
- (h) in the event that a temporary cofferdam is constructed in Work No. 3A a method statement for the monitoring and redistribution of sediment must be agreed in writing with the MMO.

**9.—**(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 8 or condition 4 must be submitted for approval at least four months prior to the intended start of construction, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 8.

### **Offshore safety management**

**10.—**(1) Offshore works must not commence until the MMO, in consultation with the MCA, has given written approval for an Emergency Response and Co-operation Plan (ERCoP) which includes full details of the ERCoP for the construction, operation and decommissioning phases of the authorised development in accordance with the MCA recommendations contained within MGN371 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues”. The ERCOP must include the identification of a point of contact for emergency response.

(2) The ERCoP must be implemented as approved.

(3) No authorised development seaward of MHWS must commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate to the authorised development contained within MGN371 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes.

### **Reporting of engaged agents, contractors and vessels**

**11.—**(1) The undertaker must provide the name and function of any agent or contractor appointed to engage in the licensed activities to the MMO at least two weeks prior to the intended start of construction.

(2) Each week during the construction of the authorised scheme a completed Hydrographic Note H102 must be provided to the MMO listing the vessels currently and to be used in relation to the licensed activities.

(3) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.



### **Equipment and operation of vessels engaged in licensed activities**

12.—(1) All vessels employed to perform the licensed activities must be constructed and equipped to be capable of the proper performance of such activities in accordance with the Conditions of this licence and (except in the case of remotely operated vehicles or vessels) must comply with paragraphs (2) to (7) below.

(2) All motor powered vessels must be fitted with:

- (a) electronic positioning aid to provide navigational data;
- (b) radar;
- (c) echo sounder; and
- (d) multi-channel VHF.

(3) No radio beacon or radar beacon operating on the marine frequency bands must be installed or used without the prior written approval of the Secretary of State.

(4) All vessels' names or identification must be clearly marked on the hull or superstructure.

(5) All vessels must exhibit signals in accordance with the requirements of the International Regulations for the Prevention of Collisions at Sea.

(6) All communication on VHF working frequencies must be in English; and

(7) No vessel must engage in the licensed activities until all the equipment specified in paragraph (2) is fully operational.

### **Pre-construction monitoring**

13.—(1) The undertaker must, in discharging condition 8(1)(b), submit details for written approval by the MMO of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report. The survey proposals must be in accordance with the principles set out in the In Principle Monitoring Plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the Environmental Statement. The baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post construction comparison is intended and the justification for this being required.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, where appropriate and necessary it is expected that the pre-construction surveys will comprise—

- (a) an appropriate survey to determine the location and reasonable extent of any benthic habitats of conservation, ecological and/or economic importance (including Annex 1 habitats), in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works; and
- (b) appropriate high resolution bathymetric surveys undertaken to International Hydrographic Organisation Order 1A standard and side-scan surveys of the area(s) within Work No. 2A within the Order limits in which it is proposed to carry out construction works. This should include the identification of sites of historic or archaeological interest (A1 and A3 receptors) and any unidentified anomalies larger than 5m in diameter (A2 receptors), which may require the refinement, removal or introduction of archaeological exclusion zones and to confirm project specific micrositing requirements (for A2 receptors).

(3) The undertaker must carry out and complete the surveys to be undertaken under paragraph (1) in a timescale which must be agreed with the MMO.

### **Construction monitoring**

14. The undertaker must, in discharging condition 8(1)(b), submit details for approval by the MMO of any proposed surveys or monitoring, including methodologies and timings, to be carried

out during the construction of the authorised scheme. The details of the construction monitoring must be submitted at least four months prior to the commencement of any survey works and provide the agreed reports in the agreed format in accordance with the agreed timetable. The survey proposals must specify each survey's objectives. In any event, such monitoring must, where driven or part-driven pile foundations (for each specific foundation type) are proposed to be used, include measurements of noise generated by the installation of one pile from each of the first four structures with piled foundations, following which the MMO will determine whether further noise monitoring is required. The results of the initial noise measurements must be provided to the MMO within six weeks of the installation of the first relevant foundation piece. The assessment of this report by the MMO must determine whether any further noise monitoring is required.

### **Post construction surveys**

15.—(1) The undertaker must, in discharging condition 9(1)(b), submit details for written approval by the MMO of the four post-construction surveys proposed in paragraph (2), including methodologies and timings, and a proposed format, content and timings for providing reports on the results at least four months prior to the commencement of any survey works detailed within. The survey proposals shall be in accordance with the In Principle Monitoring Plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the Environmental Statement.

(2) Subject to receipt of specific proposals, it is expected that the post-construction surveys will comprise—

- (a) appropriate high resolution bathymetric surveys undertaken to International Hydrographic Organisation Order 1A standard and side scan sonar surveys around a sample of infrastructure locations that are considered appropriate to assess any changes in seabed topography. For this purpose the undertaker will prior to the first such survey submit a desk based assessment (which takes account of all factors which influence scour) to identify the sample of infrastructure locations that are considered appropriate with greatest potential for scour. The survey will be used to validate the desk based assessment: further surveys may be required if there are significant differences between the modelled scour and recorded scour; and
- (b) dependent on the outcome of the surveys undertaken in condition 13(2)(a) above, appropriate surveys to determine the effects of construction activity on any benthic habitats of conservation, ecological and/or economic importance (including Annex 1 habitats) in whole or in part inside the area(s) within the Order limits to validate predictions made in the Environmental Statement.

(3) The undertaker must carry out the surveys under paragraph (1) and provide the reports in the agreed format in accordance with the timetable as agreed in writing with the MMO following consultation with the relevant statutory nature conservation body.

16. A post-construction maintenance plan will be submitted for written approval by the MMO at least four months prior to commissioning of the licensed activities, based upon the maintenance in the outline maintenance plan. An update to the post-construction maintenance plan must be submitted for approval every three years, or sooner in the event of any proposed major revision to planned maintenance activities, or the adoption of any new technologies or techniques applicable to programmed maintenance.

### **Aids to navigation**

17.—(1) Before commencement of the authorised scheme an aids to navigation management plan to be agreed in writing by the MMO following consultation with Trinity House and MCA specifying the—

- (a) aids to navigation to be established from the commencement of the authorised scheme to the completion of decommissioning;
- (b) monitoring and reporting of the availability of aids to navigation; and

(c) notifications and procedures for ensuring navigational safety following failures to aids to navigation.

(2) The licensed activities must be carried out in accordance with any programme, statement, plan, protocol, scheme or other details approved under this licence condition.

**18.** The undertaker must keep Trinity House and the MMO informed of progress of the authorised scheme seaward of MHWS including—

- (a) notice of commencement of construction of the authorised scheme within twenty four hours of commencement having occurred;
- (b) notice within twenty four hours of any aids to navigation being established by the undertaker; and
- (c) notice within five working days of completion of construction of the authorised scheme.

**19.** The undertaker must notify Trinity House and the MMO of any failure of the aids to navigation including timescales and plans for remedying such failures, as soon as possible and no later than twenty four hours following the detection of any such failure.

**20.** The undertaker must at or near the authorised development during the whole period of construction, operation, alteration, replacement or decommissioning of the authorised development seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and to take such other steps for the prevention of danger to navigation as Trinity House may direct following consultation with the MMO..

**21.** The undertaker must submit reports quarterly to the MMO and Trinity House detailing the working condition of aids to navigation. Reports may be requested more frequently by the MMO or Trinity House and must be submitted by the undertaker as specified. .

**22.** In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than twenty four hours following the identification of damage, destruction or decay, notify Trinity House and MMO. The undertaker must also lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as as directed by Trinity House following consultation with the MMO.

**23.** The undertaker must colour all structures which are part of the authorised scheme seaward of MHWS yellow (colour code RAL 1023) from at least HAT to a height approved by the MMO following consultation with Trinity House. Details of the remainder of the structures must be submitted to and approved in writing by the MMO following consultation with Trinity House prior to commencement of the authorised scheme. The structures must be coloured in accordance with approved details.

## PART 4A

### Licensed Marine Activities – Marine Licence 4: Project B Offshore (Transmission - Works Nos. 2B, 2BA or 2BC, 3B and 2T)

#### Interpretation

**1.**—(1) In this licence—

“the 2004 Act” means the Energy Act 2004;

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009;

“Annex 1 Habitat” means such habitat as defined under the EU Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora;

“authorised deposits” means the substances and articles specified in paragraph 2(3);

“authorised scheme” means Works Nos. 1B, 2BA, 2BC, 2B, 3B and 2T described in paragraph 2 of this licence or any part or phase of those works;

“Bizco 4” means Doggerbank Project 4 Bizco Limited (Company number 7914510) whose registered office is 55 Vastern Road, Reading, Berkshire RG1 8BU;

“cable protection” means the measures to protect cables from physical damage and exposure due to loss of seabed sediment, including, but not limited to, the use of bagged solutions filled with grout or other materials, protective aprons or coverings, mattresses, flow energy dissipation devices or rock and gravel burial;

“cable crossings” means the crossing of existing sub-sea cables and pipelines by the inter-array, interconnecting and/or export cables authorised by this Order together with physical protection measures including cable protection;

“combined platform” means a single offshore platform constructed in an array area comprising two or more of any of the following—

- (a) an offshore collector platform;
- (b) an offshore converter platform;
- (c) an offshore accommodation or helicopter platform;

“commence” means the first carrying out of any part of the licensed activities except for the pre-construction surveys and monitoring and commencement shall be construed accordingly;

“commercial operation” means in relation to the Project B Offshore Works, the exporting, on a commercial basis, of electricity from the wind turbine generators comprised within those works;

“condition” means a condition in Part 4B of this licence;

“draft fisheries liaison plan” means the document certified as the draft fisheries liaison plan by the Secretary of State for the purposes of this Order;

“enforcement officer” means a person authorised to carry out enforcement duties under Chapter 3 of the 2009 Act;

“the Environmental Statement” means the document certified as the Environmental Statement by the Secretary of State for the purposes of this Order and submitted with the application together with any supplementary or further environmental information submitted in support of the application;

“gravity base foundation” means a foundation type which rests on the seabed and supports the wind turbine generator, meteorological station or offshore platform primarily due to its own weight and that of added ballast, with or without skirts or other additional fixings, which may include associated equipment including J-tubes and access platforms and separate topside connection structures or an integrated transition piece. Sub types for wind turbine generators and meteorological stations include conical gravity base and flat-based gravity base. Sub types for platforms include: offshore platform conical or flat-base gravity base foundations, and offshore platform semi-submersible gravity base foundations;

“In Principle Monitoring Plan” means the document certified as the In Principle Monitoring Plan by the Secretary of State for the purposes of this Order;

“the Kingfisher Fortnightly Bulletin” means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

“licensed activities” means the activities specified in Part 3A of this licence;

“the Marine Management Organisation” or “MMO” means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence;

“maintain” includes inspect, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (ancillary works) of the Order and any component part of any offshore platform, meteorological station, electricity or communication cable described in Part 1 of Schedule 1 (authorised development) of the Order (but not including the removal or replacement of foundations) to the extent outlined within the post-construction maintenance plan; and “maintenance” shall be construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“multileg foundation” means foundation options based around structures with several legs or footings. This includes jackets, tripods, and other structures which include multiple large tubulars, cross-bracing, or lattices. Multileg foundations may be fixed to the seabed by footings which are driven, drilled, screwed, jacked-up, or embedded into the seabed by means such as suction and/or gravity. Sub types for wind turbine generators and meteorological stations include multilegs with driven piles, drilled piles, screw piles, suction buckets, and/or jack up foundations. Sub types for platforms include: offshore platform jacket foundations (potentially using driven piles, suction buckets and/or screw piles) and offshore platform jack up foundations;

“notice to mariners” includes any notice to mariners which may be issued by the Admiralty, Trinity House, Queen’s harbourmasters, government departments and harbour and pilotage authorities;

“offshore collector platform” means a platform (either singly or as part of a combined platform) housing or incorporating electrical switchgear and/or electrical transformers, electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“offshore converter platform” means a platform (either singly or as part of a combined platform) housing or incorporating high voltage direct current electrical switchgear and/or electrical transformers and other equipment to enable HVDC transmission to be used to convey the power output of the multiple wind turbine generators to shore including electrical systems such as metering and control systems, J-tubes, landing facilities for vessels and helicopters, re-fuelling facilities, accommodation for staff during the construction, operation and decommissioning of the offshore works, communication and control systems, auxiliary and uninterruptible power supplies, large scale energy storage systems, standby electricity generation equipment, cranes, storage for waste and consumables including fuel, marking and lighting and other associated equipment and facilities;

“the offshore Order limits plan” means the plans certified as the offshore Order limits and grid coordinates plan by the Secretary of State for the purposes of this Order;

“offshore platform” means any of the following—

- (a) an offshore accommodation or helicopter platform;
- (b) an offshore collector platform;
- (c) an offshore converter platform; or
- (d) a combined platform;

“outline maintenance plan” means the document certified as the outline maintenance plan by the Secretary of State for the purposes of this Order;

“scour protection” means protection against foundation scour and subsea damage, for example from trawling, through reinforcement measures and measures to prevent loss of seabed sediment around foundation bases. These measures include the use of bagged solutions filled with grout or other materials, protective aprons, mattresses, flow energy dissipation devices and rock and gravel burial;

“the Order” means the Dogger Bank Creyke Beck Offshore Wind Farm Order 201X;

“the Order limits” means the limits shown on the offshore and onshore Order limits plans;

“undertaker” means Bizco 4; and

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil

vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water.

(2) A reference to any statute, order, regulation or similar instrument shall be construed as a reference to a statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated:

- (a) all times shall be taken to be Greenwich Mean Time (GMT);
- (b) all coordinates shall be taken to be latitude and longitude decimal degrees to six decimal places. The datum system used is WGS84.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence shall be—

(a) Marine Management Organisation

Marine Licensing Team

Lancaster House

Hampshire Court

Newcastle upon Tyne

NE4 7YH

Email: [marine.consents@marinemanagement.org.uk](mailto:marine.consents@marinemanagement.org.uk)

Tel: 0300 123 1032

(b) Trinity House

Tower Hill

London

EC3N 4DH

Tel: 020 7481 6900;

(c) The United Kingdom Hydrographic Office

Admiralty Way

Taunton

Somerset

TA1 2DN

Tel: 01823 337 900;

(d) Marine and Coastguard Agency

Navigation Safety Branch

Bay 2/04

Spring Place

105 Commercial Road

Southampton

SO15 1EG

Tel: 023 8032 9191;

(e) Centre for Environment, Fisheries and Aquaculture Science

Pakefield Road

Lowestoft  
Suffolk  
NR33 0HT  
Tel: 01502 562 244

(f) Natural England  
Foundary House  
3 Millsands  
Riverside Exchange  
Sheffield  
S3 8NH  
Tel: 0300 060 4911;

(g) JNCC  
Inverdee House  
Baxter Street  
Aberdeen  
AB11 9QA  
Tel: 01224 266 550;

(h) English Heritage  
37 Tanner Row  
York  
YO1 6WP  
Tel: 01904 601901;

(5) For information only, the details of the local MMO office to the authorised scheme is—

Marine Management Organisation  
Northern Marine Area  
Neville House  
Central Riverside  
Bell Street  
North Shields  
Tyne & Wear  
NE30 1LJ  
Tel: 0191 257 4520.

#### **Details of licensed marine activities**

2.—(1) This licence authorises the undertaker (and any agent or contractor acting on their behalf) to carry out the following licensable marine activities under section 66(1) of the 2009 Act, subject to the conditions in Schedule 7 Part 4B—

- (a) the deposit at sea of the substances and articles specified in paragraph (3) below;
- (b) the construction of works in or over the sea and/or on or under the sea bed including the removal, reconstruction or alteration of the position of subsea cables and pipelines; and

- (c) the removal of sediment samples for the purposes of informing environmental monitoring under this licence during pre-construction, construction and operation.

(2) Subject to sub-paragraph (5), such activities are authorised in relation to the construction, maintenance and operation of—

Work No. 1B—

- (a) an offshore wind turbine generating station with a gross electrical output capacity of up to 1.2 gigawatts comprising up to 200 wind turbine generators each fixed to the seabed by monopole, multileg or gravity base type foundations, situated within the coordinates of the array area specified in the following table, and further comprising works (b) to (d) below;

Coordinates for the array area

<i>Point</i>	<i>Latitude (Decimal Degrees)</i>	<i>Longitude (Decimal Degrees)</i>
CBB-1	55.074509	1.505499
CBB-2	55.078127	1.557882
CBB-3	55.100307	1.673135
CBB-4	55.102152	1.854982
CBB-5	54.859236	1.861874
CBB-6	54.870965	1.473897
CBB-7	54.968002	1.488779
CBB-8	54.971992	1.488363

- (b) up to seven offshore platforms comprising the following:
  - (i) up to four offshore collector platform(s) situated within the array area specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundations;
  - (ii) an offshore converter platform situated within the array area specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundations;
  - (iii) up to two offshore accommodation or helicopter platform(s) situated within the array area specified in the table Work No. 1B(a) and being fixed to the seabed by multileg or gravity base type foundations;
  - (iv) or any of the platforms comprised in Work No. 1B(b)(i) to 1B(b)(iii) can be co-joined to create a combined platform, fixed to the seabed by multileg or gravity base type foundations;
- (c) up to five meteorological station(s) situated within the array area specified in the table Work No. 1B(a) either fixed to the seabed by monopole, multileg or gravity base type foundations, or utilising a floating support structure anchored to the seabed;
- (d) a network of cables for the transmission of electricity and electronic communications laid on or beneath the seabed and including cable crossings between—
  - (i) any of the wind turbine generators comprising Work No. 1B(a);
  - (ii) any of the wind turbine generators comprising Work No. 1B(a) and Work No. 1B(b) and 1B(c); and
  - (iii) any of the works comprising Work No. 1B(b) and 1B(c);
  - (iv) the offshore converter platform or the combined platforms and the export cable route in Work No. 2BA or 2BC.



Work No. 2B – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications laid on or beneath the seabed between Work No. 2BA or 2BC and Work No. 3B including cable crossings and situated within the coordinates of the export cable corridor area specified in the offshore and onshore Order limits plans; and

Work No. 2BA – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid on or beneath the seabed between Work No. 1B(b)(ii) or (iv) and Work No. 2B and including cable crossings and situated within the coordinates of the export cable corridor area specified in the offshore Order limits plan; or

Work No. 2BC – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, laid on or beneath the seabed between Work No. 1B(b)(ii) or (iv) and Work No. 1A and between Work No. 1A and Work No. 2B and including cable crossings and situated within the coordinates of the export cable corridor area specified in the offshore Order limits plan; and

Work No. 3B – up to two export cables for the transmission of high voltage direct current electricity together with fibre optic cables for the transmission of electronic communications, between mean low water and mean high water and connecting Work No. 2B with Work No. 4B; and

Work No. 2T – a temporary work area for vessels to carry out intrusive activities during construction, including vessels requiring anchor spreads alongside the cable corridors.

Ancillary works in connection with the above-mentioned works comprising—

- (a) temporary landing places, moorings or other means of accommodating vessels in the construction and/or maintenance of the authorised scheme;
- (b) temporary or permanent buoys, beacons, fenders and other navigational warning or ship impact protection works;
- (c) temporary works for the protection of land or structures affected by the authorised scheme;
- (d) cable protection, scour protection or dredging; and
- (e) cable route preparation works including boulder removal and obstruction clearance, dredging and pre-sweeping.

(3) The substances or articles authorised for deposit at sea are—

- (a) iron/steel/aluminium;
- (b) stone and rock;
- (c) concrete/grout;
- (d) sand and gravel;
- (e) plastic/synthetic;
- (f) material extracted from within the offshore Order limits during construction drilling and seabed preparation for foundation works and cable sandwave preparation works; and
- (g) marine coatings, other chemicals and timber.

(4) This licence does not permit the decommissioning of the authorised scheme. No authorised decommissioning activity must commence until a written decommissioning programme in accordance with an approved programme under section 105(2) of the 2004 Act, has been submitted to the Secretary of State for approval. Furthermore, at least four months prior to carrying out any such works, the undertaker must notify the MMO of the proposed decommissioning activity to establish whether a marine licence is required for such works.

(5) This licence does not permit the construction of Work No. 1B(a).

## PART 4B

### Conditions

#### Detailed offshore design parameters

3.—(1) The dimensions of any offshore collector platform forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed 75 metres in length, 75 metres in width and 85 metres in height above HAT.

(2) The dimensions of any offshore converter platform forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed 125 metres in length, 100 metres in width and 105 metres in height above HAT.

(3) The dimensions of any combined platforms forming part of the authorised scheme (excluding towers, helicopter landing pads, masts and cranes) must not exceed the total footprint of the individual platforms incorporated within it.

(4) Offshore platform foundation structures forming part of the authorised scheme must be one or more of the following foundation options: gravity base or multileg.

(5) No offshore platform foundation structure employing a footing of driven piles forming part of the authorised scheme must—

- (a) have more than twenty four driven piles;
- (b) have a pile diameter of greater than 2.744 metres and employ a hammer energy during installation of greater than 1900kJ.

(6) No offshore platform foundation will have a seabed footprint area of subsea/scour protection (excluding foundation footprint) of more than 8,742 m<sup>2</sup>.

(7) The foundations for offshore platforms will not exceed the dimensions set out below:

<i>Foundation type</i>	<i>Offshore collector platform (multileg or gravity base foundation)</i>	<i>Offshore converter platform (multileg or gravity base foundation)</i>
Maximum seabed footprint area per foundation (excluding scour protection) in m <sup>2</sup>	5,625	12,500

(8) Only Work No. 2BA or Work No. 2BC must be constructed.

(9) The number of HVDC cables within Works Nos. 2B, 2BA, 2BC and 3B must not exceed two. The total length of HVDC cables within Works Nos. 1B, 2B, 2BA, 2BC and 3B must not exceed 378 km.

(10) The total cable protection for HVAC inter-platform cables (excluding cable crossings) will not exceed an area of 0.9997km<sup>2</sup> or a volume of 972,150 m<sup>3</sup> within Work No. 1B.

(11) The total export cable protection (excluding cable crossings) will not exceed an area of 1.2217 km<sup>2</sup> , or a volume of 1,188,090 m<sup>3</sup>.

(12) No cable protection will be employed within 350 metres seaward of mean low water springs (MLWS), measured as a straight line.

(13) Cable protection will be limited to 10% of the cumulative length of all cables laid between mean low water springs and the 10m depth contour as measured against LAT prior to the start of construction.

(14) The length of HVAC cables comprising Work No.1B must not exceed 320 km.

### **Layout Rules**

4.—(1) The offshore platform(s) must be positioned in accordance with the principles within section 5.2 of Chapter 5 of the Environmental Statement.

(2) No construction of any offshore platform must commence until the MMO has approved its general position. These general layout arrangements must specify the physical point of connection between generation and transmission assets for Project B.

(3) The construction of the offshore platforms must be carried out as approved.

### **Notifications and inspections**

5.—(1) The undertaker must ensure that:

- (a) prior to the carrying out of any licensed activities under this licence, the undertaker must inform the MMO of—
  - (i) the name of the person undertaking the licensed activities,
  - (ii) the works being undertaken pursuant to this licence comprising those works necessary from the point of connection with the generation assets,
  - (iii) the maximum total area and volume for any cable protection for HVAC inter-array cables and HVAC inter-platform cables to be constructed within the array area pursuant to this licence; and
  - (iv) the maximum total area and volume for any cable protection to be constructed within the array area pursuant to this licence;
- (b) any works notified under this paragraph when combined with any works notified in paragraph (6) of Marine Licence 1 and 2 and paragraph (5) of Marine Licence 3 must not exceed the maximum parameters set out in Schedule 1 of the DCO.
- (c) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—
  - (i) all agents and contractors notified to the MMO in accordance with condition 10; and
  - (ii) the masters and transport managers responsible for the vessels notified to the MMO in accordance with condition 10;
- (d) within twenty eight days of receipt of a copy of this licence those persons referred to at paragraph (a) above must provide a completed confirmation form to the MMO confirming that they have read and will comply with the terms of the Conditions of this licence.

(2) Only those persons and vessels notified to the MMO in accordance with condition 10 are permitted to carry out the licensed activities;

(3) Copies of this licence must also be available for inspection at the following locations:

- (a) the undertaker's registered address;
- (b) any site office located at or adjacent to the construction site and used by the undertaker or its agents and contractors responsible for the loading, transportation or deposit for the authorised deposits; and
- (c) on board each vessel or at the office of any transport manager with responsibility for vessels from which authorised deposits are to be made.

(4) The documents referred to in paragraph (1)(a) must be available for inspection by an authorised enforcement officer at all reasonable times at the locations set out in paragraph 3(b) above.

(5) The undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised scheme.

(6) The undertaker must inform the MMO Coastal Office in writing at least five working days prior to the commencement of the licensed activities or any phase of them.

(7) Prior to the commencement of the licensed activities or any phase of them the undertaker must publish in the Kingfisher Fortnightly Bulletin details of the vessel routes, timings and locations relating to the construction of the authorised scheme or relevant phase.

(8) The undertaker must ensure that a notice to mariners is issued at least ten working days prior to the commencement of the licensed activities or any phase of them advising of the start date of Works Nos. 2B and 3B and the expected vessel routes from the local construction ports to the relevant locations.

(9) The undertaker must ensure that the notices to mariners are updated and reissued at weekly intervals during construction activities and within five days of any planned operations and maintenance works and supplemented with VHF radio broadcasts agreed with the Maritime and Coastguard Agency in accordance with the construction programme approved under condition 8(1)(b). Copies of all notices must be provided to the MMO.

(10) The undertaker must notify—

- (a) the Hydrographic Office two weeks prior to the commencement and two weeks following completion of the authorised scheme in order that all necessary amendments to nautical charts are made; and
- (b) the MMO, MCA and Trinity House once the authorised scheme is completed and any required lighting or marking has been established.

### **Chemicals, drilling and debris**

6.—(1) All chemicals used in the construction of the authorised scheme, including any chemical agents placed within any monopile or other foundation structure void, must be selected from the List of Notified Chemicals approved for use by the offshore oil and gas industry under the Offshore Chemicals Regulations 2002 (as amended).

(2) The undertaker must ensure that any coatings/treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by Health and Safety Executive or the Environment Agency Pollution Prevention Control Guidelines. Any spillages must be reported to the MMO marine pollution response team within the timeframes specified in the Marine Pollution Contingency Plan.

(3) The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment, including bunding of 110% of the total volume of all reservoirs and containers.

(4) The undertaker must ensure that any debris arising from the construction of the authorised scheme or temporary works placed below MHWS are removed on completion of the authorised scheme.

(5) At least ten days prior to the commencement of the licensed activities the undertaker must submit to the MMO an audit sheet covering all aspects of the construction of the licensed activities or any phase of them. The audit sheet must include details of—

- (a) loading facilities;
- (b) vessels;
- (c) equipment;
- (d) shipment routes;
- (e) transport;
- (f) working schedules; and

(g) all components and materials to be used in the construction of the authorised scheme.

(6) The audit sheet must be maintained throughout the construction of the authorised scheme (or relevant phase) and must be submitted to the MMO for review at fortnightly intervals.

(7) In the event that the MMO becomes aware that any of the materials on the audit sheet cannot be accounted for it must require the undertaker to carry out a side scan sonar survey to plot all obstructions across a reasonable area of search agreed with the MMO where construction works and related activities have been carried out. Representatives of the Holderness Fishing Industry Group must be invited to send a representative to be present during the survey. Any obstructions that the MMO believes to be associated with the authorised scheme must be removed at the undertaker's expense.

### **Force majeure**

7. If, due to stress of weather or any other cause the master of a vessel determines that it is necessary to deposit the authorised deposits otherwise than in accordance with condition 9(2) because the safety of human life and/or of the vessel is threatened—

- (a) within forty eight hours full details of the circumstances of the deposit must be notified to the MMO;
- (b) upon reasonable written request by the MMO the unauthorised deposits must be removed at the expense of the undertaker.

### **Pre-construction plans and documentation**

8.—(1) The licensed activities or any phase of those activities must not commence until the following (insofar as relevant to that activity or phase of activity) have been submitted to and approved in writing by the MMO—

- (a) a plan to be agreed in writing with the MMO following consultation with Trinity House and the MCA which sets out the proposed details of the authorised scheme to ensure conformity with the description of Works Nos. 2B, 2BA or 2BC and 3B. This includes—
  - (i) proposed layout of the HVAC and HVDC cables;
  - (ii) the proposed location, including grid co-ordinates, and choice of foundation types for any offshore platforms; and
  - (iii) the dimensions of all monopole, multileg and gravity foundations, if used;
- (b) a detailed construction and monitoring programme to include details of—
  - (i) the proposed construction start date;
  - (ii) proposed timings for mobilisation of plant, delivery of materials and installation works; and
  - (iii) proposed pre-construction surveys, a proposed format and content for a baseline report, construction monitoring, post construction monitoring and related reporting in accordance with Conditions 13,14 and 15. The preconstruction survey programme and all pre-construction survey methodologies must be submitted to the MMO for written approval at least four months prior to the commencement of any survey works detailed within;
- (c) a construction method statement in accordance with the construction methods assessed in the Environmental Statement and including details of—
  - (i) drilling methods and disposal of drill arisings;
  - (ii) platform location and installation, including scour protection and foundations;
  - (iii) cable installation;
  - (iv) impact piling including soft start procedures;
  - (v) the source of rock material used in construction and method to minimise contaminants and fines

- (vi) contractors;
  - (vii) vessels; and
  - (viii) associated works;
- (d) a project environmental management and monitoring plan to include details of—
- (i) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents during construction and operation of the authorised scheme in relation to all activities carried out;
  - (ii) a chemical risk assessment to include information regarding how and when chemicals are to be used, stored and transported in accordance with recognised best practice guidance;
  - (iii) waste management and disposal arrangements including arrangements to ensure no waste concrete slurry or wash water from concrete or cement work is discharged;
  - (iv) the fisheries liaison officer appointed by the undertaker to be notified to the District Marine Officer for the MMO's Northern District. Evidence of liaison should be collated so that signatures of attendance at meetings, agenda and minutes of meetings with the fishing industry can be provided to the MMO if requested;
  - (v) a fisheries liaison plan in accordance with the draft fisheries liaison plan to include information on liaison with the fishing industry (including the fisheries liaison officer as in (iv) above) and a coexistence plan; and
  - (vi) a mitigation scheme for any features of ecological importance identified by the survey referred to in condition 12(2)(a);
- (e) a marine mammal mitigation protocol, the intention of which is to prevent injury to marine mammals, primarily auditory injury within the vicinity of any piling, and appropriate monitoring surveys in accordance with the In Principle Monitoring Plan to be agreed in writing with the MMO in consultation with the relevant statutory nature conservation body;
- (f) a cable specification and installation plan following consultation with the relevant statutory nature conservation body, to include—
- (i) technical specification of offshore cables, including a desk-based assessment of attenuation of electro-magnetic field strengths, shielding and cable burial depth in accordance with industry good practice;
  - (ii) a staged cable laying plan for the Order limits, incorporating a burial risk assessment to ascertain suitable burial depths and cable laying techniques;
  - (iii) cable protection plan providing details of the need, type, sources, quality and installation methods for cable protection; and
  - (iv) the details of methodology and extent of post lay survey, to confirm burial depths;
- (g) a written scheme of archaeological investigation in relation to offshore areas within the Order limits in accordance with Chapter 18 Appendix B of the Environmental Statement, industry good practice and after discussions with English Heritage to include—
- (i) details of responsibilities of the undertaker, archaeological consultant and contractor;
  - (ii) a methodology for any further site investigation including any specifications for geophysical, geotechnical and diver or remotely operated vehicle investigations;
  - (iii) within three months of any survey being completed a timetable to be submitted to the MMO setting out the timeframe for analysis and reporting of survey data;
  - (iv) delivery of any mitigation including, where necessary, archaeological exclusion zones;
  - (v) monitoring during and post construction, including a conservation programme for finds;

- (vi) archiving of archaeological material including ensuring that a copy of any agreed archaeological report is deposited with the English Heritage Archive by submitting an English Heritage OASIS form with a digital copy of the report; and
  - (vii) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised scheme.
- (h) in the event that a temporary cofferdam is constructed in Work No. 3B a method statement for the monitoring and redistribution of sediment will be agreed in writing with the MMO.

9.—(1) Each programme, statement, plan, protocol or scheme required to be approved under condition 8 or condition 4 must be submitted for approval at least four months prior to the intended start of construction, except where otherwise stated or unless otherwise agreed in writing by the MMO.

(2) The licensed activities must be carried out in accordance with the approved plans, protocols, statements, schemes and details approved under condition 8.

### **Offshore safety management**

10.—(1) Offshore works must not commence until the MMO, in consultation with the MCA, has given written approval for an Emergency Response and Co-operation Plan (ERCoP) which includes full details of the ERCoP for the construction, operation and decommissioning phases of the authorised development in accordance with the MCA recommendations contained within MGN371 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues”. The ERCoP must include the identification of a point of contact for emergency response.

(2) The ERCoP must be implemented as approved.

(3) No authorised development seaward of MHWS must commence until the MMO, in consultation with the MCA, has confirmed in writing that the undertaker has taken into account and adequately addressed all MCA recommendations as appropriate to the authorised development contained within MGN371 “Offshore Renewable Energy Installations (OREIs) – Guidance on UK Navigational Practice, Safety and Emergency Response Issues” and its annexes.

### **Reporting of engaged agents, contractors and vessels**

11.—(1) The undertaker must provide the name and function of any agent or contractor appointed to engage in the licensed activities to the MMO at least two weeks prior to the intended start of construction.

(2) Each week during the construction of the authorised scheme a completed Hydrographic Note H102 must be provided to the MMO listing the vessels currently and to be used in relation to the licensed activities.

(3) Any changes to the supplied details must be notified to the MMO in writing prior to the agent, contractor or vessel engaging in the licensed activities.

### **Equipment and operation of vessels engaged in licensed activities**

12.—(1) All vessels employed to perform the licensed activities must be constructed and equipped to be capable of the proper performance of such activities in accordance with the Conditions of this licence and (except in the case of remotely operated vehicles or vessels) must comply with paragraphs (2) to (7) below.

(2) All motor powered vessels must be fitted with:

- (a) electronic positioning aid to provide navigational data;
- (b) radar;
- (c) echo sounder; and

(d) multi-channel VHF.

(3) No radio beacon or radar beacon operating on the marine frequency bands must be installed or used without the prior written approval of the Secretary of State.

(4) All vessels' names or identification must be clearly marked on the hull or superstructure.

(5) All vessels must exhibit signals in accordance with the requirements of the International Regulations for the Prevention of Collisions at Sea.

(6) All communication on VHF working frequencies must be in English; and

(7) No vessel must engage in the licensed activities until all the equipment specified in paragraph (2) is fully operational.

### **Pre-construction monitoring**

13.—(1) The undertaker must, in discharging condition 8(1)(b), submit details for written approval by the MMO of proposed pre-construction surveys, including methodologies and timings, and a proposed format and content for a pre-construction baseline report. The survey proposals must be in accordance with the principles set out in the In Principle Monitoring Plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the post-construction position and/or will enable the validation or otherwise of key predictions in the Environmental Statement. The baseline report proposals must ensure that the outcome of the agreed surveys together with existing data and reports are drawn together to present a valid statement of the pre-construction position, with any limitations, and must make clear what post construction comparison is intended and the justification for this being required.

(2) Subject to receipt from the undertaker of specific proposals pursuant to this condition, where appropriate and necessary it is expected that the pre-construction surveys will comprise—

(a) an appropriate survey to determine the location and reasonable extent of any benthic habitats of conservation, ecological and/or economic importance (including Annex 1 habitats), in whole or in part inside the area(s) within the Order limits in which it is proposed to carry out construction works; and

(b) appropriate high resolution bathymetric surveys undertaken to International Hydrographic Organisation Order 1A standard and side-scan surveys of the area(s) within Works Nos. 2B, 2BA or 2BC within the Order limits in which it is proposed to carry out construction works. This should include the identification of sites of historic or archaeological interest (A1 and A3 receptors) and any unidentified anomalies larger than 5m in diameter (A2 receptors), which may require the refinement, removal or introduction of archaeological exclusion zones and to confirm project specific micro-siting requirements (for A2 receptors).

(3) The undertaker must carry out and complete the surveys to be undertaken under paragraph (1) in a timescale which must be agreed with the MMO.

### **Construction monitoring**

14. The undertaker must, in discharging condition 8(1)(b), submit details for approval by the MMO of any proposed surveys or monitoring, including methodologies and timings, to be carried out during the construction of the authorised scheme. The details of the construction monitoring must be submitted at least four months prior to the commencement of any survey works and provide the agreed reports in the agreed format in accordance with the agreed timetable. The survey proposals must specify each survey's objectives. In any event, such monitoring must, where driven or part-driven pile foundations (for each specific foundation type) are proposed to be used, include measurements of noise generated by the installation of one pile from each of the first four structures with piled foundations, following which the MMO will determine whether further noise monitoring is required. The results of the initial noise measurements must be provided to the MMO within six weeks of the installation of the first relevant foundation piece. The assessment of this report by the MMO must determine whether any further noise monitoring is required.



### **Post construction surveys**

**15.**—(1) The undertaker must, in discharging condition 9(1)(b), submit details for written approval by the MMO of the four post-construction surveys proposed in paragraph (2), including methodologies and timings, and a proposed format, content and timings for providing reports on the results at least four months prior to the commencement of any survey works detailed within. The survey proposals must be in accordance with the principles set out in the In Principle Monitoring Plan and must specify each survey's objectives and explain how it will assist in either informing a useful and valid comparison with the pre-construction position and/or will enable the validation or otherwise of key predictions in the Environmental Statement.

(2) Subject to receipt of specific proposals, it is expected that the post-construction surveys will comprise—

- (a) appropriate high resolution bathymetric surveys undertaken to International Hydrographic Organisation Order 1A standard and side scan sonar surveys around a sample of infrastructure locations that are considered appropriate to assess any changes in seabed topography. For this purpose the undertaker will prior to the first such survey submit a desk based assessment (which takes account of all factors which influence scour) to identify the sample of infrastructure locations that are considered appropriate with greatest potential for scour. The survey will be used to validate the desk based assessment: further surveys may be required if there are significant differences between the modelled scour and recorded scour; and
- (b) dependent on the outcome of the surveys undertaken in condition 13(2)(a) above, appropriate surveys to determine the effects of construction activity on any benthic habitats of conservation, ecological and/or economic importance (including Annex 1 habitats) in whole or in part inside the area(s) within the Order limits to validate predictions made in the Environmental Statement.

(3) The undertaker must carry out the surveys under paragraph (1) and provide the reports in the agreed format in accordance with the timetable as agreed in writing with the MMO following consultation with relevant statutory nature conservation body.

**16.** A post-construction maintenance plan will be submitted for written approval by the MMO at least four months prior to commissioning of the licensed activities, based upon the maintenance in the outline maintenance plan. An update to the post-construction maintenance plan must be submitted for approval every three years, or sooner in the event of any proposed major revision to planned maintenance activities, or the adoption of any new technologies or techniques applicable to programmed maintenance.

### **Aids to navigation**

**17.**—(1) Before commencement of the authorised scheme an aids to navigation management plan to be agreed in writing by the MMO following consultation with Trinity House and MCA specifying the—

- (a) aids to navigation to be established from the commencement of the authorised scheme to the completion of decommissioning;
- (b) monitoring and reporting of the availability of aids to navigation; and
- (c) notifications and procedures for ensuring navigational safety following failures to aids to navigation.

(2) The licensed activities must be carried out in accordance with any programme, statement, plan, protocol, scheme or other details approved under this licence condition.

**18.** The undertaker must keep Trinity House and the MMO informed of progress of the authorised scheme seaward of MHWS including—

- (a) notice of commencement of construction of the authorised scheme within twenty four hours of commencement having occurred;

- (b) notice within twenty four hours of any aids to navigation being established by the undertaker; and
- (c) notice within five working days of completion of construction of the authorised scheme.

**19.** The undertaker must notify Trinity House and the MMO of any failure of the aids to navigation including timescales and plans for remedying such failures, as soon as possible and no later than twenty four hours following the detection of any such failure.

**20.** The undertaker must at or near the authorised scheme during the whole period of the construction, operation, alteration, replacement or decommissioning of the authorised scheme seaward of MHWS exhibit such lights, marks, sounds, signals and other aids to navigation, and to take such other steps for the prevention of danger to navigation as Trinity House may from time to time direct following consultation with the MMO..

**21.** The undertaker must submit reports quarterly to the MMO and Trinity House detailing the working condition of aids to navigation. Reports may be requested more frequently by the MMO or Trinity House and must be submitted by the undertaker as specified. .

**22.** In case of damage to, or destruction or decay of, the authorised scheme seaward of MHWS or any part thereof the undertaker must as soon as possible and no later than twenty four hours following the identification of damage, destruction or decay, notify Trinity House and the MMO. The undertaker must also lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as as directed by Trinity House following consultation with the MMO.

**23.** The undertaker must colour all structures which are part of the authorised scheme seaward of MHWS yellow (colour code RAL 1023) from at least HAT to a height approved by the MMO following consultation with Trinity House. Details of the remainder of the structures must be submitted to and approved in writing by the MMO following consultation with Trinity House prior to commencement of the authorised scheme. The structures must be coloured in accordance with approved details.

## Protective Provisions

## PART 1

## Protection for electricity, gas, water and sewerage undertakers

1. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity utility undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989)(a), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas utility undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water utility undertaker, mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
- (d) in the case of a sewerage utility undertaker
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991(b); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(c);
- (c) a water utility undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage utility undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the onshore works, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

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(a) 1989 c.29.  
 (b) 1991 c.56.  
 (c) 1986 c.44.

**3.** This Part of this Schedule does not apply to—

- (a) apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act; and
- (b) the offshore works.

**4.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

**5.—(1)** If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of a utility undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) shall authorise the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

**6.—(1)** Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along the authorised scheme, the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised scheme and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised scheme for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than twenty eight days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker shall be entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of twenty one days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 6 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than twenty eight days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(6) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Part of this Schedule (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or exercise of statutory powers for such apparatus);

- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;
- (c) the survey of any land, apparatus or works, the inspection, superintendence and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by the undertaker of any power under this Order; and
- (d) any other work or thing rendered reasonably necessary in consequence of the exercise by the undertaker of any such power,

within a reasonable time of being notified by the utility undertaker that it has incurred such expenses.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 44 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1) shall if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

**9.—(1)** Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided by the utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise must be made without the consent of the undertaker which, if it withholds such consent, must have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

10. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

11. In relation to any dispute arising under this paragraph the reference in article 44 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

## PART 2

### Protection of Network Rail Infrastructure Limited

1. The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 736 of the Companies Act 1985(a) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the 1993 Act) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

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(a) 1985 c.6.

“specified work” means so much of any of the onshore works as is situated upon, across, under, over or within 15 metres of, or may in any way affect, railway property.

3.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures, and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

4.—(1) The undertaker must not exercise the powers conferred by article 19 (authority to survey and investigate the land) or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(4) Where Network Rail is asked to give its consent pursuant to this paragraph 4, such consent must not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by the end of the period of twenty eight days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of twenty eight days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further period of twenty eight days the engineer has not intimated his approval or disapproval, he shall be deemed to have approved the plans as submitted.

(3) If by the expiry of twenty eight days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation, decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works) and such protective works as may be



reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker, in either case with all reasonable dispatch and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

**6.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer; and
- (c) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule shall impose any liability on the undertaker with respect to any costs, damages, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractor or agents.

**7.** The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

**8.** Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

**9.—**(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work or during a period of twenty four months after the completion of that work in order to ensure the safety of railway property or the continued safe and efficient operation of the railway of Network Rail such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail's desires itself to construct that part of the specified work which if in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail shall assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of the specified work under paragraph 5(1), pay to Network Rail all reasonable expenses to which Network Rail may be

put and compensation for any loss which it may suffer by means of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such savings must be set off against any such sum payable by the undertaker to Network Rail under this paragraph.

**10.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**11.—(1)** In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the onshore works where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the onshore works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph shall apply to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the onshore works giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised works take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph(a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph(a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution shall be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) shall have effect subject to the sub-paragraph.

(6) If at any time prior to the commencement of regular operation of the onshore works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) shall apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 44 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

**12.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

**13.** The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it must have first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**14.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that fifty six days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**15.—(1)** The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker must indemnify Network Rail and keep Network Rail indemnified from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision must not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this Part of this Schedule.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand must be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) must include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (1) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs must, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work, or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the 1993 Act.

**16.** Network Rail must, on receipt of a request from the undertaker, from time to time provide to the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part 1 of the Railways Act 1993.

20. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 42 (certification of plans) of this Order and any such notice must be given no later than twenty eight days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The undertaker must no later than twenty eight days from the date that the plans are submitted to and certified by the Secretary of State in accordance with article 42 (Certification of plans) are certified by the Secretary of State, provide to Network Rail a set of plans which relate to the specified works in the form of a computer disc with read only memory.

### PART 3

#### For the protection of operators of electronic communications code networks

1.—(1) The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Schedule—

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communication code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(a);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

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(a) See section 106.

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

2. The temporary stopping up or diversion of any street under article 14 (temporary stopping up of streets) does not affect any right of the operator under paragraph 9 of the electronic communications code to maintain any apparatus which, at the time of the stopping up or diversion, is in that street.

3.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised works or their construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator, the promoter must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—

(i) make reasonable compensation to an operator for loss sustained by it; and

(ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Sub-paragraph (1) does not apply to—

(a) any apparatus in respect of which the relations between the promoter and an operator are regulated by the provisions of Part 3 of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.

(3) Nothing in sub-paragraph (1) imposes any liability on the promoter with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(4) The operator must give the promoter reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand may be made without the consent of the promoter which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) Any difference arising between the promoter and the operator under this Part of this Schedule is to be referred to and settled by arbitration under article 44 (arbitration).

## PART 4

### Protection of offshore cables and pipelines

1. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the Company concerned.

2. In this Part of this Schedule—

“the cables” means the whole or any part of the UK-Germany-6 cable, the TATA North Europe Cable and UK-Denmark-4 cable;

“the Company” means Cable and Wireless Worldwide and BT Subsea in relation to the UK-Germany-6 cable; BT in relation to the UK-Denmark-4 cable; Tata Communications in relation to the TATA North Europe Cable; Shell UK Limited in relation to the Shearwater to Bacton (SEAL) pipeline and Gassco in relation to the Langed Pipeline;

“construction” includes execution, placing and altering and cognate expressions shall be construed accordingly;

“the Langed Pipeline” means the underwater pipeline transporting Norwegian natural gas to the United Kingdom across the North Sea;

“the pipelines” means the whole or any part of the Langed pipeline and the Shearwater to Bacton (SEAL) pipeline which are used for the conveyance of any hydrocarbon fuel and in respect of which a Company has an interest for the time being, together with any associated plant and equipment serving those pipelines;

“plans” includes sections, drawings, calculations, methods of construction, particulars and specifications;

“the protected property” means the cables and pipelines—

- (a) any part of which is situated within the Order limits for the offshore works; and
- (b) in respect of which a Company has an interest for the time being;

“protective works” has the meaning given in paragraph 11 below;

“the Shearwater to Bacton (SEAL) Pipeline” means the gas pipeline connecting the Shell terminal in the UK to the Shearwater and Elgin-Franklin gas fields in the Central North Sea;

“specified matter” means any of the following—

- (a) the construction, maintenance, operation or use of the offshore works;
- (b) the construction, maintenance, operation or use of any protective works or safeguarding works; and
- (c) any preparatory action in connection with any activity mentioned in (a) or (b) above;

“the Surveyor” means the surveyor or engineer appointed for the purposes of this Part 4 of this Schedule 9;

“TATA North Europe Cable” means the active telecommunications cable laid between North Yorkshire in the UK and the Netherlands across the North Sea;

“UK-Denmark-4 cable” means the out of service telecommunications cable laid between the UK and Denmark;

“UK-Germany-6 Cable” means the out of service telecommunications cable laid between the UK and Germany;

“the works” means Works Nos. 1A, 1B, 2A, 2B, 2BA, 2BC, 2T, 3A and 3B.

**3.** In this Part of this Schedule references to the Company are references to any (or, as the case may be, each) Company which has an interest in the protected property concerned for the time being.

**4.** In this Part of this Schedule references to a Company include references to its successors in title in respect of any protected property.

**5.** Notwithstanding anything in this Order as shown on the works plans the undertaker must not pursuant to the powers of this Order appropriate and remove any protected property otherwise than by agreement with the Company.

**6.** Notwithstanding anything in this Order, except in the case of any part of the protected property which the Company certifies in writing is permanently disused, the undertaker must not exercise the powers of the Order to relocate any protected property until suitable alternative facilities have been provided by the undertaker and are available for use to the reasonable satisfaction of the Company.

**7.** The undertaker must use its best endeavours—

- (a) in exercising any of the powers in this Order to avoid or (failing avoidance) to minimise any damage or disruption to the protected property; and
- (b) without prejudice to (a) above, to ensure that the works do not at any time fall into such a condition as to compromise the integrity or operation of the protected property.

**8.** Not less than eight months before commencing to construct the works the undertaker must furnish to the Company a programme for the works proposed and a general indication of the nature and location of those works and, if within twenty eight days from the receipt by a Company of that programme and general indication the Company gives notice in writing to the undertaker that any part of the offshore works indicated in the programme may in any way affect protected property, paragraphs 10 and 11 below shall apply with respect to that part of those works.

**9.** Upon giving any notice to the undertaker under paragraph 8 above, the Company must furnish existing drawings showing to the best of its knowledge the position and depth of the relevant part of the protected property.

**10.** Not less than four months before commencing to construct any part of the offshore works which may significantly affect the protected property, the undertaker must furnish to the Company detailed plans and specifications of the relevant part of the offshore works and must have due regard to any representations made by a Company relating to such plans or to the programme for the works and make reasonable changes required to avoid risk of harm to the cables by the construction.

**11.** At any time within a period of one month from the receipt by the Company of the plans referred to in paragraph 10 above the Company may by notice in writing to the undertaker specify any reasonable temporary or permanent works or measures (the “protective works”) which in its reasonable opinion should be carried out or taken by the undertaker before the commencement of or during the construction of the works in order to ensure the stability of the protected property (shown on the drawings furnished by the Company under paragraph 9 above) or to protect them from injury and such protective works must be constructed by the undertaker at its own expense and under the inspection (if any) of the Company.

**12.** Except in the case of protective works that the Company has informed the undertaker in writing may be carried out during the construction of the works, the undertaker must not commence the construction of any work within fifty metres of, or which may in any way affect, the protected property until the protective works relating to the work have been completed to the reasonable satisfaction of the Company.

**13.** In the case of protective works of which the Company has informed the undertaker in writing as mentioned in paragraph 12 above, the undertaker must comply with all reasonable requirements of the Company arising from its inspection under paragraph 11 above as promptly as practicable after the undertaker has been notified of such requirements.

**14.** Except in an emergency (when it must give such notice as may be reasonably practicable) the undertaker must give the Company not less than fifty six days’ notice of its intention to carry out any works for the repair or maintenance of the works in so far as such works may affect or interfere with the protected property.

**15.** The undertaker must repay to the Company the reasonable expenses properly incurred by the Company in or in connection with the removal and relaying or replacing of any part of protected property, including the provision, laying down or placing of any alternative facilities.

**16.** The undertaker must repay to the Company the reasonable expenses properly incurred by the Company in or in connection with the preparation of drawings or notice referred to in paragraphs 8 or 10 above and by the Company in the watching and inspecting of any protective works relating to protected property.

**17.** The preceding provisions of this Part of this Schedule must not apply in relation to any protected property laid by or for the use of the Company after the coming into force of this Order.

**18.** Nothing in this Part of this Schedule shall affect any enactment or any regulations made under any enactment or any agreement regulating the relations between the undertaker and the Company in respect of any protected property laid within the Order limits for the offshore works on the date on which this Order comes into force.



## PART 5

### For the protection of the Environment Agency

1.—(1) For the protection of the Agency, the following provisions, unless otherwise agreed in writing between the undertaker and the Agency, have effect.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” are construed accordingly;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring and any ancillary works constructed as a consequence of works carried out for drainage purposes;

“the fishery” means any watercourse within the limits of deviation containing fish and fish in such waters and the spawn, habitat or food of such fish;

“plans” includes sections, drawings, specifications and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources;

“watercourse” means all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer.

2.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within twenty eight days of the receipt of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 12.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within two months of the submission of the plans for approval or receipt of further particulars if such particulars have been required by the Agency and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

3. Without limitation on the scope of paragraph 2 but subject always to the provision of that paragraph as to reasonableness, the requirements which the Agency may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new

works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage;
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of the specified work.

4.—(1) Subject to sub-paragraph (2), the specified work, and all protective works required by the Agency under paragraph 3 must be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency, and an officer of the Agency is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than fourteen days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than seven days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 8, if within a reasonable period, being not less than twenty eight days from the date when a notice under sub-paragraph (4) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not except in emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

5.—(1) Subject to sub-paragraph (6), the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 8, if, within a reasonable period being not less than twenty eight days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) If there is any failure by the undertaker to obtain consent or comply with conditions imposed by the Agency in accordance with the provisions of this Part of this Schedule the Agency may serve written notice requiring the undertaker to cease all or part of the specified works and the undertaker must cease the specified works or part of them until it has obtained the consent or complied with the condition unless the cessation of the specified works or part of them would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(6) This paragraph does not apply to drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not prescribed by the powers of the Order from doing so.

6. Subject to paragraph 8, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

7.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work, damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 8, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the undertaker the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 8, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker the reasonable cost of so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

8.—(1) Nothing in paragraphs 4(4), 5(3), 6, 7(3) and (4) authorises the Agency to execute works on or affecting the authorised development without the prior consent in writing of the undertaker.

(2) Consent under sub-paragraph (1) must not be unreasonably withheld or delayed and the undertaker is deemed to have given its consent if it has not refused consent within 2 calendar months of receiving a written request by the Agency.

9. The undertaker must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule; and
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

**10.**—(1) Without affecting the other provisions of this Part of this Schedule, the undertaker must indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or in any groundwater, which is caused by the construction of any of the specified works or any act or omission of the undertaker its contractors, agents or employees whilst engaged upon the work.

(2) The Agency must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

**11.** The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

**12.** Any dispute arising between the undertaker and the Agency under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 44 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by the undertaker the Agency, after notice in writing by one to the other.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order grants development consent for, and authorises the construction, operation and maintenance of two generating stations in the sea between 125 kilometres and 290 kilometres off the coast of the East Riding of Yorkshire together with all necessary and associated development. For the purposes of the development the Order authorises the compulsory acquisition of land and rights in land and rights to use land as well as to override easements and other rights. The Order also provides a defence in proceedings in respect of statutory nuisance. The Order imposes Requirements in connection with the development for which it grants development consent.

The Order also grants deemed marine licences for the marine licensable activities, being the deposit of substances and articles and the carrying out of works, involved in the construction of the generating stations and associated development. The deemed marine licences impose Requirements in connection with the deposits and works for which they grant consent.

A copy of the plans and book of reference referred to in this Order and certified in accordance with article 42 (certification of plans, etc) of this Order may be inspected free of charge at the offices of East Riding of Yorkshire Council, County Hall, Cross Street, Beverley.